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COLLECTION AND RECOVERY OF TAX AND ARREARS OF DEMANDS

PUBLIC ACCOUNTS COMMITTEE 1991-92

TENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

FIRST REPORT

PUBLIC ACCOUNTS COMMITTEE (1991-92)

(TENTH LOK SABHA)

COLLECTION AND RECOVERY OF TAX AND ARREARS OF DEMANDS

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

Presented in Lok Sabha on 11 *December,* 1991
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LOK SABHA SECRETARIAT
NEW DELHI

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this First Report of the Committee regarding Collection and recovery of tax and arrears of tax demands.

This Report is based on two audit Paragraphs viz., Para 2.01 of the Report (No. 6 of 1989) of the C&AG of India for the year ended 31 March, 1988 and Para 1.07 of the Report (No. 6 of 1990) of the C&AG of India for the year ended 31 March, 1989.

2. In this Report, the Committee have expressed their concern over the mounting arrears of tax demands which were of the order of Rs. 6560.71 crores (Provisional figures) as on 1.4.1990 as against Rs. 2625.81 crores as on 1.4.1986. The targets fixed for recovery of tax demands have not been achieved even once during the period 1985-86 to 1989-90 primarily because of lack of interest in the work at the level of supervisory officers besides other administrative deficiencies. The Committee have recommended that periodical studies into the working of various Income Tax Charges be conducted to improve efficiency.

3. The Committee have also noted that the tax recovery wing has been functioning with depleted strength and most of the existing staff is not sufficiently experienced in the recovery work. The Committee have recommended that adequate staff should be provided and suitable arrangements made for imparting training to those deployed in the field of tax recovery with a view to optimise their level of efficiency. The Committee have also recommended augmentation of the strength of first appellate authorities and setting up of additional benches of Appellate Tribunal to cope with the increasing work load with regard to appeals. The Committee have also favoured early finalisation of the proposal for setting up National Court/Tribunal of Direct Taxes to bring about uniformity in the judicial opinion on identical issues.

4. At present, the assessee is not required to pay the entire undisputed demand before an appeal is admitted under Section 249(4) of the Income tax Act 1961. The Committee have suggested that the law should be amended and payment of full undisputed demand be made a pre-condition to the admission of appeal so that there is no avoidable accumulation of arrears.

5. The Ministry of Finance (Revenue) have been experiencing difficulties because of the delay on the part of the Ministry of Law in the appointment of lawyers for pleading their cases in courts. The Committee have suggested that a review by both the Ministries for Finance and Law be undertaken to ensure that suitable lawyers are available to the Department of Revenue expeditiously especially in cases involving high stakes of revenue.

6. The audit paragraphs under report were examined by the Public Accounts Committee (1990-91) at their sitting held on 28 November, 1990.

7. The Committee considered and finalised this Report at their sitting held on 24 October, 1991. Minutes of sittings form Part II* of the Report.

8. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix VIII). 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 efforts made by the Public Accounts Committee (1990-91) in collecting written information and taking oral evidence of the representatives of the Ministry of Finance (Deptt. of Revenue) on the subject. The Committee also place on record their appreciation of the assistance rendered to them in the examination of the audit paragraphs by the Office of the C&AG of India.

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

New Delhi;
9 December, 1991

18 Agrahayana, 1913 (Saka)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee

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REPORT

Collection and Recovery of Tax and Arrears of Demand

This Report is based on two Paragraphs* of the Reports of the Comptroller & Auditor General of India on Direct Taxes (i) Para No. 2.01 of Audit Report (No. 6 of 1989) on "Procedure of collection and recovery of tax and Arrears of demands"; and (ii) Para No. 1.07 of Audit Report (No. 6 of 1990) on "Arrears of Tax Demands."

Introductory

2. In this Report, the Committee deal with the collection and recovery of arrears of demands of the Income tax. Since tax proceeds are the main source of revenue for the Central and State Governments, it is essential that due attention is paid to ensure prompt recovery of taxes. Income tax is one such tax which needs our special attention.

Collection of Tax

3. The Income-tax Act, 1961 (IT Act, 1961) provides for a number of modes for collection of tax. It also provides for deduction of tax at source in respect of certain types of income and also for payment of tax in advance by the assessee himself. Besides these modes of collection which are operative before the regular assessment is made, there is also the ordinary mode of collection of taxes i.e. after the regular assessment is completed or the relevant order is passed and a demand for the sum payable is made on the assessee.

4. Section 156 of the I.T. Act, 1961 provides that when any tax, interest, penalty, fine or any sum is payable in consequence of any other order passed under the Act, a Notice of demand in the prescribed form shall be served upon the assessee by the Assessing Officer. According to provisions of Section 220 of the Act any amount (otherwise than by way of advance tax) specified as payable in a Notice of demand is payable within 35 days of the service of the notice at the place and to the person mentioned in the notice. If the amount so specified is not paid within the statutory period, the assessee is deemed to be in default and shall be liable to pay simple interest at the rate of 15 per cent per annum (1.5 per cent for every month or part of month in respect of period falling on or after 1 April, 1989). Prior to 1 October 1984, the rate of interest leviable on this amount was 12 per cent per annum. In this connection, Section 221 further provides that when an assessee is in default in making payment of the tax, he shall, in addition to the amount of the arrears and the amount of

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* See Appendices I and II

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interest, be liable, by way of penalty, to pay such amount as the assessing officer may so direct, however, the total amount of penalty does not exceed the amount of tax in arrears. More deterrent provisions are contained in section 222 of the I.T. Act, 1961. Prior to the last amendment made to that Section, the Assessing Officer was to issue in the case of an assessee in default, a certificate of recovery to the Tax Recovery Officer under his signature specifying the amount of arrears due from the assessee and the Tax Recovery Officer, in turn, proceeded for recovery of the demand by attachment and sale of the assessee's movable or immovable property, arrest of the assessee and his detention in prison, appointing a receiver for the management of the assessee's movable and immovable properties etc. By virtue of an amendment carried out by Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1 April, 1989, the requirement of sending to the Tax Recovery Officer by the Assessing Officer, a certificate specifying the amount of arrears has been dispensed with and since then the Tax Recovery Officer has assumed jurisdiction automatically by specifying the amount due from an assessee in the prescribed form made out by himself. There is no time limit within which the Tax Recovery Officer is required to draw a statement under Section 222. However, in reply to a question, the Ministry of Finance (Deptt. of Revenue) have explained as under:

> ".....The Central Board of Direct Taxes decided on 1.2.1990 that unlike in the past, recovery certificates will not be drawn up by the TROs in all the cases and these will be drawn up only in cases where the Assessing Officer comes to conclusion that he cannot effect recovery and that specialised recovery action by the TRO (in the form of attachment / Sale of property and arrest / detention of the defaulter in civil prison) is called for to effect recovery or to otherwise protect the interests of revenue.....".

5. Besides these, some other modes of recovery are also available under Section 226 of the Income Tax Act, 1961, which can be resorted to by the Assessing Officer as well as the Tax Recovery Officer. Briefly, these modes of recovery are:

1) The Assessing Officer or the Tax Recovery Officer can ask the employer of the defaulting assessee to deduct the sum from payment chargeable under the head 'salary' payable to the defaulter.

2) The Assessing Officer or the Tax Recovery Officer may require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Assessing Officer so much of the money as is sufficient to pay the amount due by the assessee in respect of the arrears. Thus, the Assessing Officer can issue a Garnishee Order to a Bank, creditor, payer of any annuity, tenant, etc.

3) The Assessing Officer or the Tax Recovery Officer can also apply to the Court for payment to him of any money lying in the Court belonging to the Assessee.

4) The Assessing Officer or the Tax Recovery Officer can issue distraint warrant for the realisation of the arrears of income-tax by distraint and sale of movable property if he is duly authorised by the CIT in this behalf.

Under Section 227 of the Income-tax Act, 1961 recovery of tax in any case may also be entrusted to a State Government.

6. In order to safeguard the interest of revenue, there exist certain provisions which require the assessee to furnish tax clearance certificate. Under Section 230 of the Income Tax Act, 1961 a person who is not domociled in India (or who even if domiciled in India has no intention of returning to India) shall leave the territory of India only after obtaining a tax clearance certificate from Income Tax authorities. Under Section 230-A of the Income Tax Act, 1961 a person intending to transfer an immovable property worth over Rs. 2 lakhs shall have to obtain a tax clearance certificate from the Income Tax Department and only thereafter, the registering authority shall register the documents of transfer. Section 281 of the Income-tax Act prohibits any transfer of property during the pendency of any proceedings under this Act.

Arrears of Tax

7. The Audit para No. 1.07 of Report No. 6 of 1990 has brought out that as on 31 March, 1989 the gross outstanding demand (Corporation and Income Tax) was of the order of Rs. 5291.66 crores. The year-wise break up is as follows:—

(Rupees in Crores)

	Corporation Tax	Income Tax	Interest	Penalty	Total
Arrears of 1984-85 and earlier years	119.72	213.37	173.65	67.71	574.45
1985-86	59.53	90.18	85.35	19.95	254.99
1986-87	148.18	131.02	178.55	39.35	497.10
1987-88	443.98	225.58	372.92	84.35	1126.83
1988-89	1398.00	518.52	751.54	170.23	2838.29
Total:	2169.41	1178.67	1561.99	381.59	5291.66

8. The break-up of the gross demand range-wise as on 31.3.1989 as also the cases in respect of which the demand was outstanding is indicated in the following Table:

	Number of Cases	Gross arrears	Net arrears
		(Rs. in crores)	
(i) Cases upto Rs. 1 lakh.	3742710	1187.06	628.06
(ii) Over Rs. 1 lakh but not exceeding Rs. 5 lakhs.	19747	379.00	223.70
(iii) Over Rs. 5 lakhs but not exceeding Rs. 10 lakhs.	3752	271.54	138.29
(iv) Over Rs. 10 lakhs but not exceeding Rs. 25 lakhs.	2757	441.82	210.50
(v) Over Rs. 25 lakhs.	2256	3012.24	765.16
	3771232	5291.66	1965.71

9. On account of the mounting arrears of tax demands year after year, the Public Accounts Committee had repeatedly expressed concern and commented in their various reports* The observations made by the Committee in para 111 of their 79th Report (Sixth Lok Sabha) still require attention:

> "The Committee are distressed to find that despite assurances held out to the Committee in the past, the special drives launched by the Central Board of Direct Taxes, the additional posts created at various levels, the scheme of incentives or rewards and working improvements made to the law, rules and procedure, there has been no perceptible effect on the growth of arrears of corporation-tax and Income-tax."

Efforts to reduce arrears of demand

10. The Ministry of Finance have been making special efforts from time to time to liquidate or at least to arrest the growth of arrears of tax demands. In 1988, the Income-tax Department introduced a special scheme known as 'Time Window Scheme'. The main features of the scheme were:—

(a) the scheme was to operate from 1.7.1988 to 30.9.88.

(b) the scheme was applicable to all income-tax demands certified to the Tax Recovery Officers upto 31.3.86;

(c) the assessees were entitled to a rebate of 50 percent of the interest

* 6th, 21st, 28th, 46th Reports of the Third Lok Sabha, 3rd, 17th, 73rd, 76th, 117th Reports of the Fourth Lok Sabha; 51st, 87th, 115th, 150th, 186th Reports of the Fifth Lok Sabha; 79th; 142nd Reports of Sixth Lok Sabha and 217th Report of Seventh Lok Sabha.

chargeable under section 220(2) of the Income-tax act, if they make the full payment or the arrear demands together with 50 percent of the interest.

However, the results of the scheme were not encouraging as only about 900 assessees availed of the scheme and only 1.32 crores were realised as amount of tax alongwith interest.

11. Besides this special scheme, the Income-tax Department have also taken various other steps to recover the arrears of demand. The Ministry of Finance (Deptt. of Revenue) fixed annual targets to be achieved by the Income Tax Department. According to the Ministry of Finance (Department of Revenue) the principle of an annual Action Plan based on Management by objectives has been adopted by the Income-tax department, thereby making it an integral part of its functioning. The essence of the Action Plan, as formulated annually by the Board, is to identify some key result areas for concentrated action during that year against which targets are set. Reduction of arrears and current demand has been one of the key result areas identified in these Action Plans. The targets are fixed after inviting the suggestions of the Commissioners of income tax and taking note of the actual performance of the past. Normally the target is set at a certain percentage of the workload. These are slightly on the higher side so as to include an element of challenge in regard to their achievement. Progress of achievement is monitored monthly, through telegraphic reports (CAP-I regarding reduction in overall IT Demand), and quarterly, through Quarterly Control Statements. On the basis of the data received (from Quarterly Control Statements) a quarterly review is undertaken to highlight the achievement *vis-a-vis* the targets fixed. These reviews help in identifying the charges where the performance is lagging behind the targets so that corrective action can be taken in time. Besides this, a Scheme of Monthly Control mechanism has been instituted in the Department according to which all the functionaries of the level of Assessing Officers and above have to report through Monthly Control Statements and D.O. letters to their next higher officer, their monthly performance with reference to the targets fixed. After an indepth study of this information, the senior officers are required to write return D.O. letters to each officer reacting to the good and bad points relating to his performance for the month in different areas of work. Similarly, the Commissioners report to the Chief Commissioners who, in turn, report every month to the Chairman through a D.O. letter.

12. The targets for recovery of tax are fixed with references to gross arrears / current demands. The Committee enquired as to why the targets are not fixed with reference to net arrears / current demands, to which the Ministry, have explained that the targets are not fixed with reference to net arrears / current demands (which are arrived at after excluding from the gross arrears, items like demands not fallen due, amount claimed to have been paid but pending verification / adjustment, amount stayed / kept

in abeyance by Courts, Settlement Commission, income tax authorities etc. and amount for which instalments have been granted etc.) for the following reasons:—

a) If the targets are fixed with reference to net arrears / current demands, the Assessing Officers may have a tendency to complete the assessments in bigger cases towards the end of the financial year so that the demand does not become due for collection by the end of the financial year and thus, may not form part of net arrears.

b) Similarly, the assessing Officer may be liberal in granting "stay" of demand because such demands would then not be covered by Action Plan Targets.

c) There will also be no motivation for expeditious disposal of appeals because the disputed demands, when stayed, will also be outside the purview of the Action Plan Targets.

d) Because of several deductions from the gross demand from month to month, the net demand keeps varying and therefore it may not be feasible to fix the target against the net demand.

13. The following statement indicates the amount of arrears, collection made and achievement of action plan targets fixed by the CBDT during the last five years:

(Rs. in crores)

		1985-86	1986-87	1987-88	1988-89	1989-90
(a)	Amount of arrears demand with reference to which Action Plan Targets were fixed.					
	(i) Arrears—	2582.34	1385.27 (Arrears raised in 1985-86) and 1397.42 (old arrears)	3598.68	4094.48	5412.94
	(ii) Current—	6170.76	6912.86	7266.08	No separate target	12482.06
(b)	Collection of demand made					
	(i) Arrears—	1396.86	804.86 (against 85-86 arr.) and 467.74 (against old arrears)	1746.47	—do—	2745.36
	(ii) Current—	4730.43	4914.40	5122.11	—do—	8588.92

		1985-86	1986-87	1987-88	1988-89	1989-90
(c)	Action Plan Target					
	(i) Arrears—	55% of (a) (i)	85% of demand raised in 85-86 and 55% of old arrears as mentioned in a (i)	60% of (a) (i)	Demand carried forward on 1.4.89 should be 10% less than demand brought forward on 1.4.88	60% of (a) (i)
	(ii) Current—	85% of (a) (ii)	85% of (a) (ii)	85% of (a) (ii)		85% of (a) (ii)
(d)	Achievement of Action plan Target					
	(i) Arrears—	54.09% of (a) (i)	58.18% of arrears of 85-86 38.47% of old arr.	48.58% of (a) (i)	Demand carried forward on 1.4.89 was 29.24% more than the demand brought forward on 1.4.88.	50.72% of (a) (i)
	(ii) Current—	76.66% of (a) (ii)	70.49% of (a) (ii)	70.49%		68.81% of (a) (ii)

14. In reply to a question, the Ministry of Finance (Deptt. of Revenue) have informed the Committee that the tax arrears as on 1.4.1990 work out to Rs. 6560.71 crores (provisional figures). Of this amount, Rs. 409.51 crores (i.e. 6.24%) relate to the demands raised during 1984-85 and earlier years. The break-up of arrear demand is as follows:

		(Rs. in crores)
(i)	Demand which has not fallen due for payment either because of non-expiry of 30 days time allowed for payment or because of stays granted by the Courts.	1867.05
(ii)	Demand claimed to have been paid but verification/ adjustment is pending	100.89
(iii)	Demand recovery of which has been stayed by:	
	Courts	165.68
	Settlement Commission	41.84
	Tribunal	47.41
	I.T. authorities.	1352.31
(iv)	Demand for which payment in instalments has been allowed	92.01

(v)	Other demand (including the demand which is irrecoverable or in respect of which stay petitions are still under consideration)	2893.52
	Total	6560.71

15. As regards the reasons for the shortfall in collections against the annual targets, the Ministry of Finance (Deptt. of Revenue) have stated:

> "In the first place, the targets are fixed slightly on the higher side so as to have an element of challenge in them for the departmental officers. There were also certain deficiencies in the legal, provisions relating to recovery procedure which have since been rationalised by the amendments carried out through the Direct Taxes Laws (Amendment) Act, 1987 with effect from 1.4.1989. Other reasons for short-fall include stays granted by courts, other demands locked up in appeals and the demands not fallen due."

16. Conceding that despite a number of steps having been taken in the past, the Department had not been able to make any appreciable dent in the overall situation of outstanding tax demand, the Revenue Secretary stated during evidence:

> ".....it would not be very fair to evaluate the performance of the Department in terms of the absolute numbers. In any case, the current demand, the arrears demands etc. should be seen as a proportion of the total because if the total increases, naturally some increase in arrears is also unavoidable and inevitable. Instead of looking at the gross arrears demand, it cannot be fair to look at the net arrears demand. What I mean to say is that there may be an arrear demand which may not be recoverable for various reasons. A demand may not have fallen due. Suppose the demand was raised at the fag-end of the financial year—that is quite often the case—there is still 30 days' time for the assessee to pay the demand. Therefore, it is not due on the 31st of March when the reckoning is made.
>
> Then, there would be the demands where the assessee claims that he has already paid but the matter has to be verified. So in the case of those categories unless the verification is done—the question of making any further recoveries does not arise. Then, there are demands which are stayed by various courts and tribunals and even by the assessing officers for various reasons and the recovery is kept in abeyance. Therefore, those demands, having been stayed, are not strictly recoverable. And they should not be taken into account in the computation. Finally, considering the individual situation of the assessee, often the recovery is decided but made in instalments. Therefore, the entire demand cannot be considered as due if the instalments have been fixed."

17. Subsequently, in reply to another question, the Ministry of Finance (Deptt. of Revenue) have explained:

"The main reason for the sharp increase in arrears during the last few years is the increase in unrealised current demand most of which is disputed in appeals. The Board has taken among others the following main measures to tackle this problem:—

(i) All the Chief Commissioners have been asked to monitor the disposal of top 100 appeals of their regions which are pending with CsIT (Appeals).

(ii) The Chief Commissioners have also been asked to make requests to the President/Vice President of the Income Tax Appellate Tribunal to take appeals involving large demands for out of turn disposals and further to get stays vacated in cases where demands have been stayed by the courts.

(iii) The Board has also asked the Chief Commissioners to ensure that whenever a demand is created, it must be collected within a reasonable time and for this purpose collection is to be insisted upon in the following manner:—

(a) Demand against which no appeal has been filed	100% collection.
(b) Demand against which 1st appeal has been filed	100% collection unless stay has been granted by any authority.
(c) Demand against which 1st appeal has been decided.	100 per cent collection unless the demand has been stayed after taking approval of the Commissioner.

The Commissioners and Deputy Commissioners have been asked to carry out periodical inspections to ensure that demands are being recovered in the above manner.

(iv) The Chief Commissioners have also been asked to ensure that the Supervisory Officers actively involve themselves in the bigger cases of their charge so that high pitched assessments are not made.

(v) Director of Income-tax (Recovery) has been asked to carry out inspections of field officers in the matter relating to recovery of taxes, Tax Recovery Officers' work and dossier reports.

The Government is also considering a proposal to set up the National Tribunal of Direct Taxes for expediting the tax disputes.

Dossier Cases

18. In 1973, the Central Board of Direct Taxes issued instructions for preparation of complete dossiers on (i) individual cases in which demand exceeded Rs. 10 lakhs and (ii) film cases in which demand exceeded Rs. 1 lakh. According to these instructions the Assessing Officers were required to submit quarterly to the Board detailed information in the prescribed proforma, in respect of Income tax and other direct taxes, indicating the total demand, the reasons for the pendency of demand and action taken for recovery during the quarter. The Director of Income tax (Recovery) New Delhi maintains information in respect of dossier cases. Earliar, the Directorate of Recovery used to carry out review of various categories of the arrear demand cases as per the following limits:

(i) Arrear demand of Rs. 10 lakhs to Rs. 25 lakhs by Assistant Director of Income-tax;

(ii) Arrear demand of Rs. 25 lakhs to Rs. 1 crore by DDI.

(iii) Arrear demand above Rs. 1 crore by Director of Income-tax (Recovery) and Member (R&A) CBDT.

The recovery action in dossier cases by the above mentioned officers was menitored by the Directorate of Recovery and the Board directly. However, w.e.f. 26.10.1987, the review of dossier cases has been assigned to the Chief Commissioners/Director-General of Income-Tax.

19. Review of the dossier cases is done by the following officers:

	Cases involving tax arrears
Chief Commissioner/Director-General of Income tax.	Exceeding Rs. 10 lakhs (Rs. 25 lakhs in Metropolitan cities) upto Rs. 1 crore.
Director-General (Admn.)	Between Rs. 1 crore and Rs. 5 crores.
Central Board of Direct taxes.	Above Rs. 5 crores

20. It has also been decided that the Director of Income tax (Recovery) should inspect some field offices to monitor the compilance of instructions issued by the Board in the area of tax recovery, dossier reports and work of TROs. For this purpose, the Board has prepared a Recovery Inspection Manual which gives the ambit of inspection proposed to be conducted by the Director of Income tax (Recovery) in the matter of recovery, tax recovery officers work and dossier reports. Through these inspections, the Board would keep watch over the monitoring of dossier casese by Chief Commissioners.

21. The Table below gives information relating to the total number of dossier cases its clearance and backlog during the period from 1985-86 to 1989-90.

(i) *Clearance in terms of numbers*

Year	*Total*	*Clearance*	*Balance*
1989-90	6,713	1,843	4,870
1988-89	5,838	1,502	4,336
1987-88	3,712	1,210	2,502
1986-87	4,011	930	3,081
1985-86	3,067	835	2,232

(ii) *Clearance in terms of amounts involved*

(Rupees in crores)

	Arrear demand			*Current demand*		
	Gross	Clearance	Balance	Gross	Clearance	Balance
1989-90	3,225.33	1,690.53 (53%)	1,534.80	3,196.38	541.18 (17%)	2,655.20
1988-89	2,488.09	1,337.31 (54%)	1,150.78	2,103.71	315.79 (15%)	1,787.92
1987-88	2,033.59	1,138.98 (56.00%)	894.61	2,059.87	432.99 (21.02%)	1,626.88
1986-87	1,374.86	712.54 (51.93%)	662.32	1,579.29	221.55 (14.03%)	1,357.74
1985-86	1,106.68	593.14 (53.60%)	513.54	1,167.26	305.94 (26.21%)	861.32

22. The Committee find that the number of dossier cases have been showing a rising trend over the years. As on 31 March 1990, 4870 dossiers with tax demand of Rs. 4190.00 crores were pending recovery as against 4336 dossiers involving tax demand of Rs. 2938.70 crores pending as on 31 March, 1989. According to the Ministry of Finance (Deptt. of Revenue). The main reasons for the increase in the number of dossier cases were as follows:

(i) There has been continuous increase in the current demand raised every year and the increase has been particularly sharp during 1988-89 and 1989-90. Since a sizeable portion of the current demand is disputed demand, it remains uncollected till the disputes are finalised.

(ii) In a number of cases, the current demand does not become due for payment by 31st March although it is shown in the relevant dossier. This is becuase the tax payer is normally allowed 30 days time to make the payment.

(iii) In several cases, demand is stayed / kept in abeyance due to the orders of the courts, tribunals, Income-tax authorities and therefore, recovery is not immediately possible.

(iv) In many cases instalments are granted to tax-payers to make the payment, therefore a part of the demand remains outstanding till all the instalments are paid.

(v) Prior to 1988-89, the scrutiny cases in the Department were being selected by random sampling method. From 1988-89, the cases for scrutiny are selected after proper scrutiny, in accordance with the guidelines laid down by the Board. In other words, the Assessing Officers and the Supervisory Officers fully apply their mind in selecting the cases having potential for substantial additions / concealment etc. The result of this change in the procedure of selection is that more additions are made in the cases selected for scrutiny thereby resulting in creation of more demand.

(vi) The Board has also been laying great emphasis on the expenditious disposal of search and seizure assessments. This has also resulted in creation of demand which are disputed in appeal.

(vii) In some cases, the recovery is either not possible or takes a long time e.g. companies in liquidation cases where claims have been made before the Commissioners of payment, and other tax payers whose income is assessed to tax but is kept by them outside the country. A number of companies with huge tax arrears have also become sick and hence recovery from them is a difficult task.

(viii) In some cases, involving substantial arrears, matters are pending with the Settlement Commission and no recovery is possible till the Commission decides these matters.

23. On 25.2.1988, the Central Board of Direct Taxes issued instruction No. 1786 (Appendix-III) which disclosed the findings made by the Director of Income Tax (Recovery) Delhi during the course of a sample study in six charges to see whether proper and adequate attention was being paid to the collection of arrears demands. The study revealed a number of irregularities and administrative deficiencies in the Income tax charges.

Functioning of Tax Recovery Officers

24. Under the Income tax Act, 1961 the Assessing Officer and the Tax Recovery Officer are responsible for collection and recovery of taxes. Upto 31.3.1989, it was the duty of the Assessing Officer to draw a certificate called Tax Recovery Certificate and send the same to the concerned Tax Recovery Officer to enable him to initiate recovery of tax dues from the defaulter assessee. However, the Assessing Officer himself could also pursue the tax arrears.

25. The Table below indicates the tax demand certified to the TROs and the progress of recovery during the years 1984-85 to 1988-89:

(Rs. in crores)

Year	Certified demand in tax recovery certificate at the beginning of the year	Certified demand for which tax recovery certificats received	Total	Demand recovered	Balance at the end of the year
1984-85	1248.79	351.15	1599.94	530.55	1069.39
1985-86	1069.39	310.03	1379.42	404.40	975.02
1986-87	975.02	204.35	1179.37	393.49	785.88
1987-88	785.88	527.35	1313.23	407.37	905.86
1988-89	905.86	506.37	1412.23	375.56	1036.67
TOTAL	4984.94	1899.25	6884.19	2111.37	4772.82

26. Information furnished by the Ministry in respect of disposal of tax recovery certificates both in terms of targets norms fixed and the levels of achievement are given below:

	85-86	86-87	87-88	88-89	89-90
Reduction of certified arrears demand (Percentage of demand at the beginning of year)					
Target:	55%	55%	55%	60%	60%
Achievement:	42.44%	41.59%	42.08%	41.22%	N/A
Cash Collection					
Target	—	15% of arrears	10% of arrears or 20% of total reduction	same as in 87-88	12.5% of arrears
Achievement:	—	7.75%	6.4% of arrears; 15.22% of reduction	7.84% of arrears; 19.03% of total reduction	N/A
Disposal of recovery certificates					
Target:	3700	3700	3700	3700	3700
Achievement:	2090	1802	1222	1313	N/A

27. The pendency in the disposal of tax recovery certificates as the end of March, 1989 was as follows:

	No. of recovery cetificates	Amount involved (Rs. in crores)
Total RC's for disposal during 1988-89 (including brought forward on 1.4.1988 plus received during 1988-89):	22,24,533	1508.41
Disposal during 1988-89		
(a) Certificates wholly disposed off	2,50,862	375.82
(b) Certificates returned as irrecoverable	5,029	22.31
Total :	2,55,891	398.13
Pending Certificates :	19,68,642	1110.28

28. According to the Ministry of Finance (Deptt. of Revenue) the main reasons for the shortfall against the annual targets were as follows:

(i) The targets are fixed slightly on the higher side so as to have an element of challenge in them for the Tax Recovery Officers;

(ii) There were also certain deficiencies in the legal provisions relating to recovery procedure. These have since been rationalised by the amendment carried out through the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1.4.1989;

(iii) Many of the pending cases relate to hardcore tax defaulters where recovery is very difficult inspite of the best efforts by the TROs, owing to stalling methods adopted by the defaulters or non-availability of assets or non-traceability of defaulters;

(iv) As on 31.3.89 a total of 39,650 certificates involving demand of as much as Rs. 305 crores were locked up in stays granted by the Courts and other appellate authorities;

(v) Non-availability of sufficient man-power and other resources for recovery work;

29. The functioning of the Tax Recovery Machinery of the Department of Income tax has also been examined from time to time by various Committees/Commissions set up by Government, like the Direct Taxes Enquiry Committee (Wanchoo Committee), Direct Tax Laws Committee (Chokshi Committee) and Economic Administration Reforms Commission (EARC). The Chokshi Committee in its report submitted in 1978, had expressed concern about the lack of coordination between the ITOs and the TROs and the large volume of infructuous work arising as a result of duplication of work done by the ITO and TRO. It had recommended that the institution of the TROs should be done away with and recovery functions may be integrated with the assessment functions so as to end the disharmony between the Assessing Officer and the TRO.

30. EARC in its report submitted in 1983 did not argee to the

recommendation of the Chokshi Committee to abolish the institution of TRO. According to EARC, since the Income-Tax Officer would be busy with the assessment work, he would not be in a position to give undivided attention to coercive recovery action in the hard core cases where properties may have to be attached/sold or receivers appointed or defaulters even sent to civil prison. The EARC had also suggested to extend the time limit u/s 231 of the Income Tax Act, 1961 for commencement of the recovery action from one year to three years so as to reduce the duplication of ITOs & TRO's work. This suggestion was accepted by the Govt. and section 231 was amended with effect from 1.10.84. The EARC also suggested a simpler alternative to the issue of tax recovery certificate, which could be deemed to be a recovery procedure for the purpose of limitation u/s 231. Recovery certificates would then be issued only in the cases of arrears outstanding where coercive action is called for. The EARC also adivsed the CBDT to devise proper steps in accordance with its own best judgement to streamline the tax recovery procedures. After receiving the Report of the EARC, the CBDT, set up a committee of Commissioners of Income-tax to go into the provisions dealing with collection and recovery and to suggest ways to streamline and rationalise the recovery procedure and administration of the provision relating thereto. The proposals made by the Committee of Commissioners were considered further at different levels by the Govt. and were finally included in the Direct Tax Laws (Amendment) Bill, 1987. The amendments carried out through the Direct Tax Laws (Amendment) Act, 1987 with effect from 1.4.89 are in regard to both recovery procedure and organisational set up. These are broadly as under:

"(i) Abolition of the posts of Tax Recovery Commissioners in the cities of Delhi, Bombay, Calcutta, Madras and Ahmadabad

The experiment of placing the Tax Recovery Officers in these cities under the control of Recovery Commissioners did not prove successful. Therefore, in order to bring about better co-ordination between the TROs and the Assessing Officers, it was decided to place both of them under the same Commissioner.

(ii) Delegation of power by the Central Govt. to the Chief Commissioners to post an officer as TRO

Earlier, an officer used to be authorised by the Central Govt. through issue of notification in the official gazette, to function as TRO. This requirment of gazette notification caused avoidable delays and difficulties in authorising a departmental officer to work as TRO. TRO has been defined as an ITO authorised by the Chief Commissioner or Commissioner, by general or special orders in writing, to exercise the powers of the TRO.

(iii) Drawing up of a recovery certificate by the TRO himself instead of Assessing Oifficer sending the Recovery Certificate

Now, instead of Assessing Officer sending the tax recovery certificate to the TRO, the TRO can himself draw up a tax recovery certificate under Section 222 of the Income-tax Act. Consequently, sections 224 and 225 have also been amended to give power to the TRO to cancel or amend a recovery certificate or to stay the recovery of demand under certificate. However, since the relevant records remain in the possession of Assessing Officer, it has been administratively prescribed that the recovery certificate and details of assets of defaulter, will be got prepared by the Assessing Officer for the signatures of TRO.

(iv) Abolition of time limit for issue of recovery certificate

Earlier, there was an outer time limit of 3 years from the end of financial year in which a demand was released, to issue a recovery certificate in respect of that demand. As a result, as this time limit approached, recovery certificates used to be issued by the Assessing Officer mechanically in all the cases, irrespective of the quantum and nature of demand to be recovered. This increased the number of recovery certificates to unmanageable limits. Besides, since the certificates used to be issued in a hurry towards the close of this 3 year time limit, these used to be deficient in some cases regarding correctness of demand and other details, like details of assets of defaulter. Therefore, this time limit of 3 years has been abolished. Now, it has been prescribed administratively that the Assessing Officer will review every 3 months as to which are the cases which require specialised recovery action by the TRO. Recovery Certificates would be drawn up only in such cases with the approval of Deputy Commissioner. This staggering of issue of recovery certificates every 3 months and that too in limited number of cases, would ensure correctness of certificates. Besides, TRO will take recovery action in only hard core cases.

(v) Bifurcation of areas of work of Assessing Officer and the TRO

Earlier, the Assessing Officer and the TRO might be simultaneously pursuing recovery of the same demand. Now, it has been provided in law that after a recovery certificate has been issued by the Assessing Officer or drawn up by the TRO, the Assessing Officer will be precluded from exercising powers of recovery like attachment of bank accounts, debt etc. under Section 226 of the Income-tax Act in respect of that demand. TRO alone will pursue recovery of such demands. Thus, duplication in the work of Assessing Officer and the TRO has been eliminated."

31. In pursuance of the recommendations of the Public Accounts Committee (1983-84) made in their 217th Report (7th Lok Sabha) a comprehensive study of the working of the tax recovery machinery was conducted by the Directorate of O & M Services (IT). The Directorate of

O&M Services found that the working strength of officers and staff in the Tax Recovery wing was much less than the sanctioned strength. It therefore recommended that the 223 posts each of Inspectors, UDCs and LDCs, diverted in 1979 from Tax Recovery Wing to survey work should be restored and that the Commissioners of Income-tax should ensure that the Tax Recovery Officers are actually provided with the sanctioned strength. Suitable instructions were subsequently issued from the Board for the restoration of posts but it appears that the full sanctioned strength could not be provided to the recovery wings.

32. In 1989, the Board had again asked the Directorate of O&M services and the Directorate of Income-tax (Recovery) to examine the justification for continuation of 118 temporary posts of Tax Recovery Officers (out of total 223 posts sanctioned) and to suggest measures to tone up the system of recovery. After examining the matter, the Directorate recommended that:—

(a) efficient and experienced officers should be posted as Tax Recovery Officers;

(b) Tax Recovery Officers should be given full strength of staff and only those staff who have worked for 5 years in the assessment wards may be posted.

33. The Committee were also informed that the subject of functioning of tax recovery officers was also made a part of the Agenda of the Chief Commissioners' Conference held in October, 1990. The Chief Commissioners were asked in the Conference to provide suitable and adequate officers and staff for the tax recovery wings.

34. The position regarding sanctioned strength of officers and staff for tax recovery work during the last 5 years was as fallows:

	1985-86	1986-87	1987-88	1988-89	1989-90
C. I. T. (Recovery)	5	5	5	5	Nil
T.R.O	223	223	223	223	223
Inspector	688	688	688	688	688
Supervisor	54	54	54	54	54
Head Clerk	105	105	105	105	105
U.D.C.	688	688	688	688	688
L.D.C.	544	544	544	544	544
Stenographers	223	223	223	223	223
Notice Servers	669	669	669	669	669
Peon	487	487	487	487	487

The actual strength against the above posts has been as follows:—

	1985-86	1986-87	1987-88	1988-89	1989-90
C.I.T. (Recovery)	5	5	5	5	
T.R.O	202	187	195	191	To be
Inspector	388	401	403	466	Furnished
Supervisor	123	127	152	154	-
Head Clerk	-	-	-	-	
U.D.C.	442	462	385	454	later on.
L.D.C.	272	279	270	218	
Stenographers	174	169	170	183	
Notice Servers	353	370	360	362	
Peon	73	102	100	145	
T.A.	2	1			

35. During evidence, when asked whether the increase in the work load was due to the inadequate staff with the Department, the Chairman, Central Board of Direct Taxes stated as under:—

> "..... Normally the work is increasing. Against 27.60 lakhs entries of demands outstanding as on 31.3.1979 the number of entries has gone upto 40.72 lakhs as on 31.3.1990. When more certificates are there to handle, the work cannot be done without additional staff but we have to see the norms given to us and get the best out of what is available. One of the reasons I want to mention is that there are no infrastructural facilities available to our officers ....."

36. When it was pointed out that during their study visit to some charges of the Income tax, the Committee had been infomed that while the posts at the higher level were increased, the strength of the subordinate staff remained the same, the Revenue Secretary while conceding the fact stated that it had been in the hope that the subordinate staff would be available later. But because of economic reasons it was not done.

37. In reply to another question, the Revenue Secretary, stated:

> "..... There is a need for more in-depth study of the work of the tax recovery officers. We find that for some reason or the other, the disposal of recovery certificates by the TROs have been going down. Although there is reduction percentage-wise, the demand is more or less the same working to about 41 or 42 per cent but it seems that there is some scope for improvement in their work. Perhaps, either the manpower or the staff strength is inadequate or infrastructural support is needed. All these aspects need examination and we have decided that we will have to ask the Director General (DOMS) to undertake an in-depth study within a couple months or so to let us know as to what more can be done to make the tax recovery officers more effective in future..... But we feel that there is definitely scope for improvement..... "

38. During their on-the-spot study visits to various places, the Committee had been informed that the TROs mobility was hampered for want of

vehicles. The Committee invited the comments of the Ministry in the matter. In a written note the Ministry have informed as follows:—

> "The difficulty regarding mobility of the Tax Recovery Officers had come to the notice of the Ministry in the past. The Directorate of O&M Services had recommended in its report that all Commissioners of Income-tax (Recovery) should be given one jeep/van and in other charges also, the Tax Recovery Officers should be allowed to use the staff car/jeep available with the administrative Commissioners, DDI (Inv.) *etc.* This matter was also discussed in the All India Commissioners' Conference held in 1988. The Board, subsequently decided that the Chief Commissioners should ensure optimum utilisation of the existing vehicles by allowing the Tax Recovery Officers also to use the vehicles. However, it is quite possible that the Tax Recovery Officers mobility may still be hampered in several places due to non-availability of the vehicles exclusively for the tax recovery wings."

Pendency with appellate authorities

39. Under the provisions of the Income Tax Act, 1961 if an assessee is not satisfied with an assessment, he can file an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals). A second appeal can be preferred to the Income Tax Appellate Tribunal. Thereafter on a point of law a reference can be made to the High Court. The order of the High Court is open to appeal in the Supreme Court.

40. According to audit para, the total amount of tax arrears locked in appeals at the end of March, 1987 was Rs 650.64 crores in 62 Commissioners of Income tax-charges comprising 24,722 assessees. The Ministry of Finance (Deptt. of Revenue) have furnished the following figures about the pendency of appeals before the first appellate authorities for the last 5 years:

As on 1.4.1986 —	2,96,721
As on 1.4.1987 —	2,85,217
As on 1.4.1988 —	2,59,330
As on 1.4.1989 —	2,14,236
As on 1.4.1990 —	2,73,625

41. Answering a question regarding the number of cases which were in arrears for the last five years and the number of them which were under litigation in the Supreme Court/High Court and those pending with the Income-tax authorities for one reason or the other, the Ministry of Finance (Department of Revenue) stated as under:

> "The information regarding number of cases which are in tax arrears for the last five years as also the number out of them pending in High Court/Supreme Court or with the Income-tax

authorities, is not available in the Ministry. However, out of the total tax arrears of Rs. 6,560.71 crores (provisional figures) as on 1.4.1990 only Rs. 409.51 crores (in 6.24%) relate to the demands raised during 1984-85 and earlier years.

** ** **

The total number of cases under litigation in the High Court and Supreme Court as on 31.7.1990 is 45,000 and 5,544 respectively. It is not possible to give exact amount of money involved as no such statistics have been maintained and the references to the High Courts and Supreme Court both from the Department as well as from the tax payers, being only on points of law, the quantification of tax involved is rather difficult. However, the tax directly involved may be of the order of over Rs. 170 crores. About 20 per cent of the cases have been pending for over five years."

42. In reply to a question, the Ministry of Finance (Department of Revenue) expressed their inability to give the exact amount of tax locked in appeal emphasising that no statistics were maintained in this regard and it would not be feasible to go into the individual files and collect the statistics. The Ministry have, however, given information in respect of amount stayed/kept in abeyance which was Rs. 877.70 crores as on 31.12.1988 and Rs. 1424.84 crores as on 31.12.1989.

43. Explaining the reasons for the increase in the pendency of appeals during 1989-90, the Ministry have stated:

"The institution of appeals rose in 1989-90 by about 12% in the case of Deputy Commissioner of Income Tax (Appeals) and by about 21 per cent in the case of Commissioner of Income-tax (Appeals). The number of assessees and the number of assessments increased in 1989-90 leading to corresponding rise in institution of appeals. Further a large number of appeals were filed against adjustments under section 143(1)(a) consequent to the introduction of new assessment procedure from 1.4.1989. The disposal of appeals during 1989-90 also came down because of the decrease in the working strength of Deputy Commissioner (Appeals).

One of the reasons for large volume of appeals is the diversity of judicial opinion obtaining on a point of law. The multiplicity is sought to be corrected by constituting a National Tribunal of Direct Taxes, which would take over the work relating to the direct taxes from the High Courts. In fact, Law Commission has made such a recommendation in its 115th Report. This is being processed. With the setting up of this Tribunal, it is hoped that the number of appeals will reduce."

44. Taking a serious view of the heavy pendency of appeals, the Committee in their 217th Report (Seventh Lok Sabha) (1985-86) had

recommended as under:

> "The Appellate Assistant Commissioners and Commissioners (Appeals) and Appellate Tribunal are departmental quasi-judicial authorities. The Committee feel that unless a time-limit is fixed for their decision, the tendency is for the arrears to get accumulated. The Committee would like the Ministry to examine this aspect and fix a time limit for decision by these authorities.

45. Noticing the continuously heavy pendency in the disposal of appeals the Committee again in their 95th Report (Eighth Lok Sabha) (1987-88) had recommended that an upper time limit for disposal of appeals by the first appellate authorities should be laid down in law and in the meanwhile old pending appeals should be disposed of under a time bound programme. Complying with the recommendations of the Committee the Ministry of Finance (Department of Revenue) issued instructions in June 1987 stressing the need for expeditious disposal of appeals and an Action Plan for disposal of old and High Demand Appeals emphasising that no appeal remained pending beyond a period of 18 months. Despite this the pendency at the end of March 1990 was 2.74 lakhs. On a pointed question why the Ministry is averse to prescribing a time limit for the disposal of pending appeals as recommended by the Committee in their 95th Report, the Ministry of Finance (Department of Revenue) stated:

> "If the time limit is laid down in the direct tax laws for disposal of appeals by the Commissioner of Income Tax (Appeals)/Deputy Commissioner (Appeal) it is bound to increase administrative problems. In case an appeal is deemed to be allowed if not disposed of by the due date, even frivolous ground of appeals some of which may not be in accordance with law would be accepted. To achieve this result, the possibility of interested parties arranging for appeals files being "misplaced" or "lost" cannot also be ruled out. On the other hand, if the assessee is deemed to have lost his appeal on the expiry of limitation period, it would result in hardship to him. In both the cases, an appeal will be preferred by the Department or the assessee, as the case may be, to the Appellate Tribunal. Thus, prescribing a time limit for disposal of appeals is not likely to reduce the total volume of pendency of appeals. In any case, it would be viewed as an avoidable irritant.
>
> We are not aware of any law where such time limit is prescribed for disposal of appeals by appellate authorities."

46. Section 249(4) of the Income Tax Act, 1961 requires the assessee to pay the tax due on the income returned by him before an appeal is admitted. According to Section 220(6) the assessee is not treated as a defaulter in respect of the amount in dispute in appeal. The Committee

desired the Ministry to clarify whether the assessee was required to pay the undisputed amount of tax before an appeal regarding the disputed amount was admitted; also they desired to know whether any proposal was under consideration requiring the assessee to pay also a certain percentage of the disputed amount before the appeal was admitted in the interest of revenue collection. In their reply, the Ministry have stated:

> "Under section 249(4) the assessee is not obliged to pay the entire undisputed amount of tax before the appeal is admitted. He is required to pay only the tax due on the income returned by him (or the amount equal to advance tax where no return has been filed).
>
> There is at present no proposal to make a provision in the Act requiring the assessee to pay a percentage of the disputed amount before the appeal is admitted. The question as to whether the assessee should be required to pay a portion of the disputed amount before the appeal is admitted has to be decided with reference to the facts of each case. For instance, under the following situations, it will be quite inequitable to ask the assessee to pay any portion of the disputed tax before the appeal is admitted:
>
> (i) The points in dispute have been decided in favour of the assessee in an earlier year by the appellate authorities;
>
> (ii) The disputed point arose because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts, or the High Court of jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgement.
>
> (iii) The disputed addition to income has been assessed elsewhere also and the assessment in the case of the assessee is merely a protective assessment.

Under Section 220(6) of the Income-tax Act, the Income-tax Officer has the power to stay the recovery of the disputed tax during the pendency of the appeal. While exercising the discretion under this Section, he may ask the assessee in suitable cases to pay a percentage of the disputed amount before the appeal is decided. The Board has already issued guidelines to the Assessing Officers for dealing with applications under section 220(6) of the Income-tax Act. These guidelines are contained in Circular No. 530 dated 6.3.1989 (Appendix IV).

47. Indicating the steps taken to reduce the pendency, the Ministry have stated that:

1. the strength of Commissioner of Income-tax (Appeals) has been augmented.
2. norms for disposal of cases by CIT (Appeals) have been revised. As an interim measure, weightage for disposal of high demand appeals involving demand between Rs. 1 to 2 lakhs is given for

appeals disposed of after 1.1.1990 (as per instruction No. 1819 dated 15.5.1989 and Instruction No. 1835 dated 18.1.90 — Appendices V and VI).

3. Disposal of appeals relating to high demand cases was closely monitored by the Chief Commissioner of Income-tax.

4. Periodical review of cases involving tax demand exceeding Rs. 1 lakh was made by the Commissioners of Income tax and appropriate authorities were requested by them to dispose of these cases on out of turn basis.

48. During evidence, when asked in the context of the fact that the law did not at present require payment of the entire undisputed demand before the appeal is admitted, as to why the law should not make it clear that the tax payer should first be required to pay the undisputed part of the demand before the appeal is admitted for the disputed part of the demand, the Chairman, Central Board of Direct Taxes replied that they would consider the suggestion for amendment.

National Court / Tribunal of Direct Taxes

49. In 1986, the Ministry of Finance (Department of Revenue) prepared and presented to the House a "Discussion paper regarding Simplification and Rationalisation of Direct Tax Laws" which envisaged setting up of a National Court of Direct Taxes. The relevant extracts are given below:

> "The present system of reference to High Courts on questions of law has led to a situation where different interpretations have been given by different High Courts leading to the uneven application of the same law to similarly placed assessees. This is instrumental in further proliferation of tax litigation. The need is, therefore, to ensure early interpretation by an authority whose decisions have a binding force throughout the country. With this end in view, it is proposed to set up a high-powered appellate body under Article 323B or Entry No. 95 of List I of 7th Schedule to the Constitution to be known as 'National Court of Direct Taxes'. The National Court of Direct Taxes will have all India jurisdiction and have Benches at least at all the places where there are High Court Benches at present. The present advisory and writ jursidiction of the High Courts will be taken away. Since the jurisdiction of this proposed court will extend to the whole of India, the interpretations given by it will be uniformly applicable. Apart from this, setting up of such a body will ensure early finalisation of proceedings since no further appeal is proposed to be provided against its orders. The inherent power of the Supreme Court in the matter of writ under Article 32 and special leave petitions under Article 136 will, of course, remain."

50. When asked to apprise the Committee of the position regarding the setting up of a National Court on Direct Taxes, the Ministry have informed as follows:

> "The Group of Ministers to which certain questions relating to restructuring of appellate procedure in the Income-tax Department were referred, had decided that it should hear appeals only on substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure, 1908. Thus, the National Court of Direct Taxes would be a substitute for the work presently handled by the High Courts, with a change. The Ministry of Law had also advised that the name of the proposed body could be National Tribunal of Direct Taxes, and not National Court of Direct Taxes. While the matter was being processed for final decision, there was a change in Government and no view could be taken. The matter is now being considered afresh and after due interministrial consultations, it will be finalised as early as possible."

Modes of Recovery under Section 222 of the Income Tax Act, 1961

51. Section 222 of the Income Tax Act, 1961, provides for the following four modes of tax recovery which are considered to be coercive modes:

(a) Attachment and sale of the assessee's movable property;

(b) Attachment and sale of the assessee's immovable property;

(c) Arrest of the assessee and his detention in prison; and

(d) Appointment of a receiver for the management of the assessee's movable and immovable properties.

52. According to the Audit Paragraph, the first two of the above modes are generally resorted to and there also sale of property does not take place long after the attachment is effected. This is because attachment of property is quite often done only in order to safeguard the interests of revenue. As the tax demand may be disputed in appeals, the intention is not always to effect an immediate sale of the property. In fact, guidelines have been issued by CBDT in 1977 that attached properties should not be sold for realising demands disputed in appeals till the appeals are disposed of by the Appellate Tribunal. Further, the TROs before selling the property should take recourse to other modes of recovery where it is comparatively easier to recover the taxes. To some extent, attachment of property is a stop-gap arrangement to force the assessee to pay the outstanding taxes. In most of the cases after attachment, payments are made in parts and in instalments. Although, before attachment, titles are verified by the Deptt., as per its records, yet sometimes after the attachment, the defaulter brings other circumstantial evidence to dispute the title before the TRO or court. At times other beneficiaries also raise objections against the attachment. In certain cases, stay of recovery proceedings is granted by courts, Settlement Commission, Income-tax

Appellate Tribunal *etc.* There are various constraints in effecting the immediate sale of the attached property.

53. A statement at Appendix—VII indicates the disposal / pendency of attached movable and immovable properties for the period 1984-85 to 1988-89. It is seen therefrom that the pendency in the disposal of attached properties as at the end of March 1989 was 3,026 movable properties involving Rs. 35.01 crores and 4,895 immovable properties involving Rs. 177.10 crores against the disposal of 989 and 323 cases during the year 1989-90, the clearance being hardly 25% in movable and 6% in immovables. As to the reasons for the poor performance in the disposal of the attached properties the Ministry of Finance (Deptt. of Revenue) have informed as follows:

> "This is primarily because of the main objectives of attachment. Attachment of property is quite often done only in order to safeguard the interests of revenue. As the tax demand may be disputed in appeals, the intention is not always to effect an immediate sale of the property. Once the attached property is sold, it cannot revert to the assessee even if the relevant tax demand is cancelled in appeal. Therefore, sale of attached property has to await final crystalisation of demand. Attachment also works as an instrument to force the assessee to pay the outstanding taxes. In many cases, after attachment, payments are made in parts and in instalments. Besides, pending sale, the Department realises rent from the attached property.

Other reasons for low disposal of attached properties as enumerated by the Ministry of Finance are:

(1) Dispute about title to the properties are pending in courts. These disputes arise even though before attachment, titles may have been varified by the Department as per its records.

(2) Filing suits by banks, mortgages *etc.*

(3) Stay of recovery or stay of sale of attached property granted by the Courts.

(4) Pendency of cases in the Settlement Commission.

(5) Forfeiture of property of the defaulter under the Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act.

(6) Attached property falling under the land ceiling laws.

(7) Absence of bidders at the auction or bid amount not reaching the reserve price.

(8) Pendency of applications for adjustment of taxes or for waiver of interest/penalties.

(9) Insolvency of the defaulter.

(10) Liquidation of defaulting companies.

(11) The property attached being main residential houses which is exempt from attachment and sale.

(12) Delay in fixing reserve price of the property.

However, the Income-tax Department is quite concerned with the low disposal of attached properties. During April, 1990, the Board has written to all the Chief Commissioners of Income-tax to conduct regular quarterly reviews of recovery action in all cases where properties were lying attached with Tax Recovery Officers for over 5 years. A proforma has also been suggested for this review."

54. The Public Accounts Committee in their 95th Report (Eighth Lok Sabha) had expressed deep concern over the large number of immovable properties remaining without disposal for years after attachment thereof and observed that the Department had not made use of an effective mode of tax recovery available under Section 222 of the Income-tax Act, 1961. Having regard to the provisions of the Code of Civil Procedure, the Committee had stressed the need for prescribing a time limit for sale of immovable properties after attachment. The Ministry did not accept the above recommendation of the Committee on the plea that the property, if sold within a prescribed time limit, could not be restored to the assessee in case he subsequently gets a decision in his favour from any appellate authority and that there might be cases where property could not be sold within the time limit for want of bidders or due to bid amount being lower than the reserve price. In the 152nd Report (8 L.S.) containing action taken on the 95th report of the Committee, the Committee had held the view that the contingencies envisaged by the Ministry could very well be taken care of through incorporation of suitable provisions in law *i.e.* by allowing time consumed in appeals in computation of the time limit or by vesting property in Government till final disposal of the property in case no bidder comes forward within the time limit or the bid amount is lower than the reserve price. In order to forestall surreptitious sale or otherwise transfer of immovable properties attached towards tax recovery the Committee favoured provisions in law for taking possession of the title deeds in respect of such properties.

55. After considering the whole matter in consultation with the Ministry of Law, the Ministry of Finance (Deptt. of Revenue) intimated as follows:

"It has been decided that a time limit of three years from the date of the order of assessment *etc.* becoming final, will be prescribed for the disposal of immovable properties attached towards tax recovery. The concept of the order becoming final shall be defined in the Income-tax Act. The definition will provide that an order will be considered as final only after the appeals, if any, filed before various authorities as specified in Chapter XX of the Income-Tax Act, either by the Department or by the assessee, have been finalised. Orders, if any, passed under section 264 shall also be taken into account for this

purpose. An amendment to this effect will be made to the Second Schedule to the Income-tax Act.

The second recommendation regarding the vesting of the attached property with the Government in case no suitable bid is received within the period of three years would imply that such immovable property would be acquired by the Government at a price unilaterally fixed by it. This is not likely to stand the test of judicial scrutiny. Further from an administrative point of view this may lead to tremendous difficulties such as unwanted properties vesting in the Central Government, which it may find difficult to either utilise or sell. Besides, even under the existing law, Rule 59 of the second schedule of the Income-tax Act, provides for the participation of the Central Government in a subsequent auction for the sale of the attached property in the event of the first auction having been postponed for want of a bid equal to or more than the reserve price. For the reasons indicated above and taking into account the views of the Public Accounts Committee, it is proposed to issue instructions to the field formations to actively participate, wherever practicable, in second or subsequent auctions under the provisions of Rule 59. This, it is felt, would substantially meet the objective that the committee had in mind while making the recommendation under consideration.

The recommendation of the Public Accounts Committee regarding taking possession of the title deeds in respect of the attached immovable properties is likely to present difficulties in its implementation. Firstly, the code of Civil Procedure does not prescribe taking possession of the title deeds of the immovable properties by the Government or any other party at the time of the attachment of the property. The Ministry of Law has suggested an alternative that the order of attachment can be registered with the Registrar of Properties. However, even Registration of the order will have effect only for a limited period. Further, in the event of the release of the property, the order thereof will have to be registered again. There are also likely to be a number of cases where title deeds of the property may not be readily available or may not be in the name of the defaulter assessee. The real impediment standing in the way of implementation of such a provision is the difficulty in making a defaulter surrender the title deed. Therefore, while this suggestion is acceptable in principle, it would not be expedient on considerations of practicability to amend the law in this regard. However, in view of the concern expressed by the Committee, the field formations will be instructed that wherever possible, all efforts should be made to obtain the title deeds of the attached property from the assessee. This would also tantamount, in many cases, to 'Mortgage by deposit of title deeds' as contemplated under section 96 of the transfer of Property Act, 1982."

56. As regards arrest and detention of the defaulter, such an action according to the Ministry, interferes with the civil liberties of the defaulters. Mere inability of the defaulter to pay the tax is not considered as appropriate (even though legally it may be otherwise), to send him to prison. This mode of recovery is generally not resorted to. Rule 73 of the Second Schedule of the Income-tax Act has prescribed certain conditions for arrest and detention. These conditions are as under :—

(a) The defaulter, with the object of obstructing the execution of the certificate has after the drawing up of the certificate by the Tax Recovery Officer dishonestly transferred, concealed or removed any part of his property, or

(b) The defaulter has, or has had, since the drawing up of the certificate by the TRO, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(c) A warrant for the arrest of the defaulter can also be issued by the TRO if the TRO is satisfied by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the TRO.

57. According to the Ministry of Finance (Department of Revenue), in most of the cases, it is difficult for the TRO to record satisfaction about the fulfilment of the above conditions and that is why there have been few cases only of arrest and detention. The Ministry feel that threat of arrest and detention by TRO sometimes proves effective in the recovery of tax arrears.

58. During evidence, explaining the arrest and detention of assessee as modes of tax recovery, the Chairman, CBDT stated:

> "..... Provision is there in regard to arrest and detention. But, it has been used very comprehensively because of certain difficulties in the law. Mere inability of the defaulter to pay is not considered sufficient. TRO cannot arrest a person merely because he is a defaulter. He may think of arresting him only after the recall of certificate i.e. drawing up the statement now. Prior to that, the defaulter can be arrested. The defaulter is released only after the statement is drawn up. There is no arrest. ..... It has to be proved by the TRO that after the certificate was issued by him, the defaulter disposed of his property in a dishonest manner and fraudulently transferred his assets. I hope you will agree that it is a very difficult question."
>
> On further enquiry, he added:
>
> "The defaulter has, since the drawing up of the statement, that means. He has the money to pay. But, he is refusing to pay. In that connection, he is arrested. But if he is a pauper, there is no

point in arresting. Government has to spend money to keep him in jail.

You wanted the figures in regard to detention.

— During the year, 1988-89 rent and bank accounts were attached in 6,531 cases.

— Movable properties attached were 1,080.

— Movable properties sold were 23.

— Receivers appointed were nil. Here again we have difficulty. Qualified persons are not available.

— Immovable properties attached were 323.

— Proclamation for sale of immovable property issued was 3.

— Proceedings for arrest commenced in 16 cases."

59. The Ministry have informed that appointment of receiver for managing business or other properties of the defaulter is beset with many practical difficulties. The properties attached may be subject matter of dispute or litigation where the court receivers are appointed or may be mortgaged to banks. In many cases such properties are occupied by tenants. If the attached immovable properties are already in the possession of the court receiver, the TRO cannot appoint a receiver because such action would amount to contempt of court. In respect of tenanted properties, the rentals fixed are generally too low to allow for cost of maintenance through a receiver. The appointment of a receiver is a lengthy process and the Department has to defray the expenses of management, which in turn, adversely affects the receipts of taxes. Besides, the prime purpose behind attachment of a property is not to sell it or to appoint a receiver to manage it, but it is to secure the interest of revenue and to coerce the assessee to pay up the tax arrears in lumpsum or in suitable instalments. Hence, this mode of recovery also is not generally resorted to.

Settlement Commission

60. An assessee may at any stage of his case (relating to him) make an application to the settlement commission disclosing his income which he had not disclosed before the Assessing Officer and the source of such income alongwith tax payable thereon, to have his case settled, subject to the conditions that:

(i) he has furnished the return of income under the provisions of Income tax Act, 1961; and

(ii) the additional amount of income tax payable on the income disclosed in the application exceeds Rs. 50,000/-.

61. The position regarding the number of settlement applications received, disposed of and pending as on 1.4.1990 was as follows:

	Income tax	Wealth tax	Total
No. of settlement applications received during the period from 1.4.1976 to 31.3.1990	4617	1474	6091
No. of applications disposed of during the period from 1.4.1976 to 31.3.1990	3009	999	4008
Balance pendancy with all benches of the settlement commission as on 1.4.1990	1608	475	2083

62. According to the Ministry of Finance (Deptt. of Revenue) the main reasons for the delay in the disposal of the settlement applications are as follows:—

(i) On receipt of a Settlement Application, the Settlement Commission has first to decide whether the application should be allowed to be proceeded with or rejected. For this purpose, it is required to call for a report from the Commissioner. The Commissioner can object to an application being proceeded with on the ground that concealment of particulars of income (or of net wealth, in the cases of settlement applications under the Wealth-tax Act) on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Income-tax Act (or as the case may be Wealth-tax Act) has been established by any income-tax authority (or as the case may be, wealth tax authority) in relation of the case. The Settlement Commission can allow the application to be proceeded with despite Commissioner's objections if it is not satisfied with their correctness. But this cannot be done without allowing an opportunity of being heard to the Commissioner. No settlement application can be rejected unless an opportunity has been given to the applicant of being heard. Thus, the admission stage itself consumes a considerable amount of time.

(ii) After an application has been allowed to be proceeded with by the Settlement Commission, the Statement of facts filed by the applicant, which is initially retained with the settlement commission to maintain its confidentiality, is forwarded to the Commissioner for his comments. This also takes time.

(iii) In case where the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it can direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case. This also takes time.

(iv) Before making a final Settlement order, the Settlement Commission is required to give an opportunity to both the Commissioner and the applicant to be heard, either in person or through a representative duly authorised in this behalf. This takes time.

(v) The existing strength of ten DDIS is not adequate to examine large number of cases pending before the Settlement Commissioner.

63. On being asked about the steps taken to ensure expeditious disposal of settlement cases, the Ministry have informed as follows:

(i) Three additional benches of the Settlement Commission have been created at Bombay, Calcutta and Madras. The Bombay Bench started functioning in November, 1987 and the Calcutta and Madras Bench became functional in June, 1990.

(ii) A Conference of Secretary, Directors of Income-Tax (Inv.), Chairman, Vice-Chairman and Members of Settlement Commission was held last year and another such conference was held this year to evolve a common approach to the complicated legal and administrative issues.

(iii) The Principal Bench of the Commission has gone in for computerisation which is expected to help in monitoring progress of pending cases. The computer facility is also likely to be extended to the Additional Benches of the Commission in due course of time.

(iv) The strength of Departmental Representatives has been augmented from one Commissioner of Income-tax (Departmental Representative) to two before the Principal Bench.

(v) The Commission has been taking up the matter regarding creation of additional 22 posts of Deputy Directors of Investigation with the Department of Revenue. There is expected to be a substantial increase in the disposal of cases by all the benches if the additional posts of Deputy Directors alongwith supporting staff are sanctioned.

(vi) The Commission has been taking up the matter with the Commissioners of Income-tax to impress that the required reports are sent to the Commission without delay to facilitate early disposal of cases.

(vii) It was experienced by the Commission that frequent requests for adjournment from the tax payers as well as by the Income-tax authorities tend to delay the finalisation of cases substantially. A procedure has been evolved by the Commission to minimise the grant of adjournments to the maximum extent and to allow adjournments only in very special circumstances.

(viii) Greater involvement of the Directors and Deputy Directors in the Settlement Commission in scrutiny of the cases during the hearing

of the cases has been ensured with a view to finalise the cases expeditiously.

Appointment of lawyers and special Advocates / Counsels

64. During evidence, in reply to a query by the Committee regarding appointment of lawyers to plead cases on behalf of the Department of Revenue in courts, the Revenue Secretary stated that there was a panel of advocates but their appointment was entirely done by the Ministry of Law which was a time consuming exercise. He was of the opinion that the Department of Revenue should have some freedom in the appointment of lawyers.

65. Subsequently, the Ministry of Finance (Department of Revenue) informed in a note that the Standing Counsels are engaged at different High Courts to represent the Department in cases relating to Direct Taxes. For this purpose, the Chief Commissioner of Income-tax in consultation with the Chief Justice of the High Court, sends to the Central Board of Direct Taxes a panel of names of advocates alongwith their bio-data. The panel is considered in the Ministry of Finance and the selection for appointment is finally made with the concurrence of the Ministry of Law. The first appointment of counsels is normally made for a period of one year. The renewal of the term of the Counsel is normally made for a period of three years if his performance for the earlier period is good.

66. The same procedure for appointment and renewal is followed in the case of Prosecution Counsels. Unlike the Standing Counsels, the fees and allowances are not uniform in the case of Prosecution Counsels. Generally, the rates of fees and allowances of the Prosecution Counsels are compared with the rates of fees being paid by the State Governments to their public prosecutors at District Courts and Lower Courts. No retainership is paid in the case of prosecution counsels.

67. Special Counsels are appointed only in very rare cases where large stakes of revenue are involved or where complex issues are involved or where the other side has appointed an eminent lawyer. The procedure for the appointment is the same. However, no standard fee for Special Counsels are prescribed and the same differ from case to case. It is generally the special counsel who sets out the schedule of fees and allowances payable to him for a particular case. These are also required to be approved by the Ministry of Law.

68. Summing up the difficulties being faced in the appointment of lawyers, the Department of Revenue have stated as follows:—

(i) Ministry of Law generally takes a very long time to clear the proposals for appointment/renewal of Standing Counsels/Prosecution Counsels.

(ii) Previously, the Chief Commissioners Bombay and Calcutta could engage Special Counsels of their own choice on high fees in

important High Revenue cases before High Courts in Bombay and Calcutta vide letter No. F. No. 279/5 87-IIJ dated 14.7.1987. However, this facility has been withdrawn vide MOL's O.M. No. F. 37(2)/89-Judl. dated 6.8.90 in which the Ministry of Law directed that the engagement of all private counsels for Govt. litigation be dispensed with immediate effect. However, if in special cirsumstances the continued engagement of private counsels for Govt. litigation is considered necessary, such cases be referred to MOL for review. This has thrown matters totally out of gear and cases now cannot be pursued till the matters are reviewed by the Law Ministry."

69. In order to overcome the above difficulties, the following suggestions were made by the Department of Revenue in regard to conduct of its litigation:—

"The Ministry of Finance, Dapartment of Revenue should be delgated the power to conduct its own litigation in the Supreme Court, High Courts and subordinate Courts in India outside the control of the Ministry of Law and Justice. The Department will have its own panel of counsels on the term and conditions approved by the Minister incharge of Finance.

Salient Features:—

(i) The panel of counsel for the Supreme Court will be constituted by a Committee consisting of the Attorney General of India, Secretary (Law), Secretary (Rev.), Chairman (CBEC), Chairman (CBDT). The panel of counsels will be headed by the Attorney General of India with other Law Officers, Senior and Junior Counsels. The legal cell or an appropriate officer in the Department of Revenue will be incharge of all litigation in the Supreme Court of India. It will coordinate between the Department (including the two Boards) and the Counsel. The fee of counsel will be paid by the concerned Collectors on certification by legal cell, Department of Revenue.

(ii) The panel of counsel for the High Courts for will be selected by the same committees. The principal Collectors of Customs and Central Excise in the setting of the High Court, will be incharge of the Customs/Excise cases and will conduct the litigation through the panel of counsels. Similarly, the Chief Commissioners of Income-tax will conduct the Income-tax cases through the panel of counsel.

(iii) The counsel for the Tribunals will be selected by Secretary (Rev.), Chairman (CBEC) or Chairman (CBDT) depending on the subject of indirect taxes and direct taxes.

(iv) The counsel for the prosecution cases or the special Public Prosecutors will be appointed with the approval of Secretary

(Rev.)/Minister-incharge of Finance. In all cases for engagement of Counsel, the approval of the Finance Minister will be obtained.

(v) There may be three officers of the Law Ministry at the level of Joint Secretary, Deputy Legal Advisor and Assistant Legal Advisor (Encadre) posted in the Department of Revenue to advise the Department of Revenue regarding the filing of SLP/Review petition/Statutory Appeals which cut down the delays in filing SLPs/Appeals and Legal advice in general.

(vi) Department of Revenue will issue suitable orders from time to time in the matter of fixation of fees."

According to the Department of Revenue, the Law Ministry was not in favour of such a proposal.

70. The mounting arrears of tax demands have repeatedly invited adverse comments against the Income tax Department from various quarters including the Parliament, Press, Audit, various Committees and Commissions etc. set up from time to time by the Government on matters pertaining to direct taxes. A number of recommendations made in the past by the Wanchoo Committee, the Chokshi Committee and the Economic Administration Reforms Commission as also the Public Accounts Committee led to issuance of a plethora of instructions by the CBDT and also frequent amendments to provisions of the Income tax Act. However, these have not produced any tangible results. The total arrears of demands (i.e. current +arrears) at the beginning of the year 1990-91 i.e. as on 1.4.1990 were Rs. 6560.71 crores (provisional figures) as against Rs. 2625.81 crores as on 1.4.1986. Arrears at the end of March, 1989 were of the order of Rs. 5291.66 crores involving 37,71,232 cases. The maximum arrear demand was registered by cases involving demand exceeding Rs. 25 lakhs. The total amount involved in these cases (numbering 2256) was Rs. 3012.24 crores which represented about 57% of the total arrears whereas the number of cases involved was only .06% of the total cases.

71. The Action Plan Targets fixed for recovery of tax demands every year have not been achieved even once as is evident from the following chart.

	Arrears Demand		Current Demand	
	Target	Achievements	Target	Achievements
1	2	3	4	
1985-86	55%	54.09%	85%	76.66%
1986-87	85% of demand raised in 1985-86 and 55% of old arrears	58.18% of arrears of 85-86 and 33.47% of old arrears	85%	70.49%

1	2	3	4	5
1987-88	60%	48.58%	85%	70.49%
1988-89	Demand carried forward on 1.4.1989 should be 10% less than the demand brought forward on 1.4.1989.		Demand carried forward on 1.4.1989 was 29.29% more than the demand brought forward on 1.4.1988.	
1989-90	60%	50.72%	85%	68.81%

72. The plea put forth by the Ministry is that the targets are kept slightly higher in order to have an element of challenge for the tax recovery machinery. The Committee, however, take serious note of the following findings made by the Director of Income tax (Recovery) Delhi during a sample study of some of the Commissioner's charges, conducted in 1987 which reflect the state of affairs in the income tax Charges:—

> "The most shocking aspect that has emerged from this study relates to apathy of higher functionaries in the matter of collection of outstanding demand. In the charges that have been inspected, it has been found that there has been practically no involvement of the IACs or the Commissioners of Income tax and almost no action has been taken from their side to ensure that outstanding demand is expeditiously collected. Even stay petitions filed before them have not been disposed of for long periods."

Obviously the study, apart from pinpointing the neglect of duty on the part of assessing officers and the supervisory staff of the Department, highlighted a number of disquieting reasons for pendency of arrear demands.

73. From this, the Committee are led to the inevitable conclusion that the targets remained unachieved not because these were kept higher but primarily because the supervisory officers had not taken requisite interest in this work besides other administrative deficiencies. The Committee desire that the studies of the kind made by the Director of Income tax (Recovery) should be conducted periodically in various charges and action taken against the persons for deriliction of duty besides taking remedial measures to improve the efficiency.

74. The Committee are surprised to find that a sizable portion of the demand remained in arrears merely because of non-verification or non-adjustment of the payments claimed to have been made by the assessees. As on 1.4.1990, demand amounting to Rs. 100.89 crores was outstanding on that account. The Committee are of the view that the procedure for verification/adjustment of claims should be simplified so that such claims do not unnecessarily inflate the already large outstandings. Prompt adjustments will also remove an avoidable irritant often complained of by the assessees. The Committee desire that the field formations of the Department should be suitably alerted in this regard.

75. Another reason that contributed to the pendency of tax demand is the stay granted by the Courts, Settlement Commission, Income tax Tribunals and the Income tax Authorities. As on 1.4.1990, the demand stayed involved Rs. 1607.24 crores. While the Committee expect the Department of Revenue to have close liaison with the Courts, Settlement Commission and Tribunal to ensure expeditious disposal of the stay petitions, they view with concern the heavy amount involved in the stays granted by their own departmental officers. The stays granted by the Income tax authorities as per the Ministry's own information accounted for arrears to the tune of Rs. 1352.31 crores as on 1.4.1990. The Committee, therefore, recommend that a study be conducted to go into the reasons for the pendency with the Income tax authorities and they be apprised of the findings of such a study alongwith action taken thereon by the Department within a period of six months.

76. The position regarding clearance, both quantitatively and in terms of amounts involved, of dossier cases is equally bad. The percentage-wise clearance of cases during the years 1985-86 to 1989-90 ranged between 23.19% to 32.6% while the recovery of arrears was between 51% to 56% (arrear demand) and between 14% to 26.21% (current demand). The Committee note that monitoring of these high demand cases is done at sufficiently high levels and Director General of Income-tax (Recovery) also monitors the compliance of instructions issued by the Board from time to time. But unfortunately, with this seemingly well organised system there is no marked improvement in the situation. The Committee desire that a review Committee consisting of members of the Central Board of Direct Taxes may be set up to go into the pendency of the dossier cases and to suggest ways and means of early recovery of demands involved therein. The action taken in this behalf may be reported to them at the earliest.

77. The Income tax Department being one of the revenue raising departments of the Government, recovery and collection of tax is its prime function. A very efficient tax recovery machinery is, therefore, needed to back it. Unfortunately, the Department is lacking the same. The tax recovery Wing has been functioning with depleted strength and most of the existing staff is stated to be not sufficiently experienced in the recovery work. The disposal of tax recovery certificates by TROs has been much below the norms fixed therefor during the years 1985-89. The actual strength of TROs during the years 1985-86 to 1988-89 has been between 187 and 202 against the sanctioned strength of 223. During evidence, Revenue Secretary conceded that though high level posts had been created, sub-ordinate staff had not been provided on account of economic reasons. The Committee cannot but express their concern over the apathetic attitude of the Ministry towards such a vital area as the tax recovery and recommend that urgent steps be taken to assess the staff requirements of the Wing and provide adequate staff so that the recovery work does not suffer on that account. The Committee suggest that the Central Board of Direct Taxes undertake a detailed exercise of the overall manpower requirements applying the yardstick of marginal cost to marginal revenue and apprise

them of the findings alongwith follow up action. Suitable arrangements should also be made to impart training to the personnel deployed in the field of tax recovery with a view to optimise their level of efficiency.

78. The Committee are distressed to find that out of 22.25 lakhs tax recovery certificates involving an amount of Rs. 1508.41 crores, the disposal during the year 1988-89 was nearly 2.56 lakhs certificates involving demand of Rs. 398.13 crores. The figures of certificates which were locked in appeals, was 39,650 involving an amount of Rs. 305 crores. During evidence, the Revenue Secretary while conceding that the disposal of tax recovery certificates had been going down, apprised the Committee of the decision taken by the Ministry to have an in-depth study made of the working of the Tax Recovery Officers by the Director General (O&Ms). The Committee hope that the in-depth study might have, by now, been completed. They would like to be informed of the outcome of the study and the action taken thereon.

79. One of the reasons advanced for pendency of tax recovery certificates is that most of the pending cases related to habitual tax defaulters where recovery was very difficult. According to the Committee this only demonstrates the weakness of the Department. The Income-tax Act, 1961 has conferred adequate powers in the hands of the Department, including some stringent and deterrent measures to discipline the tax defaulters. The Committee desire that appropriate measures may be resorted to wherever required.

80. With effect from 1.4.1989, certain amendments have been incorporated in the provisions of Income-tax Act, 1961 relating to tax recovery procedures and these are in operation now for over two years. The Committee would like to be apprised of the impact of these provisions on the tax recovery work.

81. The Committee note that the main reason for the sharp increase in arrears during the last few years is the increase in unrealised current demand most of which is disputed in appeals. The Ministry of Finance have stated that the information regarding the number of cases which are in tax arrears for the last five years and the number out of them pending in High Courts/Supreme Court or with the Income-tax authorities are not available with them. The pendency with the first appellate authorities was 2.97 lakhs as on 1.4.1986, 2.14 lakhs as on 1.4.89 and 2.74 lakhs on 1.4.1990. The Committee find that the declining trend of pendency of appeals witnessed in the years 1985-86 to 1988-89 was reversed in the year 1989-90. The pendency with the High Courts and Supreme Court was 50,544. No figures have been furnished about the pendency with the Appellate Tribunals, the magnitude of which cannot be anything small.

82. The Committee consider that the reasons advanced for the increase in arrears are all normal incidents and could well have been foreseen and a viable strategy planned to meet the challenges. The Committee recommend

that the Ministry may augment the strength of the first appellate authorities and also take steps to set up additional benches of the Appellate Tribunal to cope with the increasing workload.

83. The Committee observe that despite the assurances held out to the Committee by the Ministry from time to time and the several administrative and legal measures taken by the Board to tackle the problem of mounting arrears under a time-bound programme including making requests to the President/Vice President of the Income-Tax Appellate Tribunal for out of turn disposals of appeals involving large amounts, there is no let up in the overall pendency. Instead, the pendency with the first appellate authorities as on 1.4.1990 had gone up by 22 per cent while the average clearance during 1988-89 was 10 per cent. Reacting to a time limit for disposal of appeals, the Ministry of Finance (Department of Revenue) have advanced the same arguments advanced while replying to the Committees' recommendations for a time-limit in their 217th Report (Seventh Lok Sabha) (1985-86), of consequences of non-disposal of appeals, which would be viewed as avoidable irritant. The Ministry of Finance further stated that they are not aware of any law where such a time limit is prescribed for disposal of appeals by appellate authorities. The Committee are not convinced in respect of the misgivings expressed by the Ministry about non-disposal of appeals within the time limit resulting in either hardship of tax payers or frivolous appeals, as these could be safeguarded by systematic planning and strict implementation. Considering the fact that the law provides for a time limit for completion of assessments which at one time was four years and which was later smoothly brought down to two years, the Committee do not consider that the prescription of a definite time limit for disposal of appeals would lead to any operational or practical problems. The Committee are, therefore, constrained to reiterate their earlier recommendation that a time limit may be incorporated in the law for disposal of appeals upto the Appellate Tribunal, if necessary in consultation with the Ministry of Law.

84. Under Section 249(4), of the Income-tax Act, 1961, the tax payer has to pay the tax due on the income returned by him before an appeal is admitted. The Ministry of Finance (Department of Revenue) have admitted that under the section the assessee is not obliged to pay the entire undisputed demand before the appeal is admitted and he is required to pay the tax due on the income returned by him or the amount equal to advance tax where no return has been filed. During evidence, to a suggestion that the law be made clear to provide for payment of that part of the undisputed demand remaining unpaid, the Chairman agreed to consider the suggestion for amendment. The Committee consider that this deficiency in law should be plugged by suitable amendment of law and the payment of the full undisputed demand should be made a pre-condition to the admission of appeal so that there is no avoidable accumulation of arrears.

85. Another reason which the Ministry have adduced for the huge pendency of appeals is the diverse decisions pronounced by various High Courts on identical issues. The Committee, however, note that such a situation was sought to be tackled through setting up of a National Court of Direct Taxes with same jurisdiction as enjoyed by the High Courts over direct taxes. The Ministry have stated that with the setting up of this Tribunal the number of pending appeals will reduce. The idea of setting up such a court was conceived as back as in 1986 when the Ministry of Finance (Department of Revenue) brought out a "Discussion Paper on Simplification and Rationalisation of Direct Tax Laws" which was also presented to the House. Though, the idea was worthwhile yet it has not so far received the deserved attention to get a concrete shape. Considering the large number of appeals pending disposal, and the amount of revenue locked up therein, the Committee desire the Ministry of Finance (Deptt. of Revenue) to take adequate measures to finalise the proposal for setting up a National Court of Direct Taxes/National Tribunal of Direct Taxes without any further delay.

86. One other reason for the large volume of appeals is stated to be the diversity of judicial opinions obtaining on a given point of law. The proliferation of appeals is largely due to the admission of such appeals without apparently any preliminary scrutiny. The Committee feel that there should be a specific stage of preliminary scrutiny of appeal cases before formal admission, where cases involving legal issues that stand settled by the Supreme Court or by the jurisdictional High Court would get weeded out.

87. From the information made available by the Ministry of Finance (Deptt. of Revenue) the Committee find that the Ministry have finally agreed in principle to lay down a time limit for disposal of immovable properties attached towards tax recovery and also to take steps, where practicable, to obtain the title deeds in respect of the attached properties to guard against surreptitious sale of such properties by the assessees. These are welcome steps initiated by the Ministry for dealing with tax evaders. The Committee hope that early action would be taken to give them a concrete shape. They may be informed of the outcome within six months.

88. The Committee further note that one of the modes available for recovery of tax is the arrest and detention of the defaulters. The tax evasion is no less an offence than any other under the law of the land and should be dealt with accordingly with the seriousness it calls for. The mode of arrest and detention is a very effective and deterrent instrument in the hands of the Department to instill fear in the minds of the habitual tax evaders and to bring down the arrears of tax. The Committee are of the view that the provision of law relating to the aforesaid modes of tax recovery should be invoked in deserving cases.

89. The Committee note that 2083 applications were pending with the Settlement Commission for disposal as on 1.4.1990. The reasons for the pendency have been attributed to the lengthy procedure involved in the

processing of the Settlement applications at various levels. The Ministry of Finance (Department of Revenue) have however, taken steps by setting up additional benches of the Settlement Commission at Bombay, Calcutta and Madras apart from augmenting the staff strength in the Commission. The Committee trust that these steps would go a long way in reducing the pendency of Settlement cases. The Committee would like to be apprised of the latest position of the pendency.

90. The Committee note that the Department of Revenue does not enjoy freedom in the matter of appointment of lawyers/counsels to defend their cases in Courts as selection of lawyers from the panel of advocates has to be made by the Department with the concurrence of the Ministry of Law which, it is stated, takes quite a long time to clear the proposals. The suggestions made by the Department of Revenue for delegation of powers to them to appoint lawyers has also not found favour with the Ministry of Law. The Committee desire that keeping in view the past experience of delay in the appointment of lawyers a fresh review be undertaken by both the Ministries of Finance and Law to mutually arrive at a satisfactory arrangement whereby suitable lawyers are available to the Department of Revenue expeditiously especially in the cases involving high stakes of revenue. The Committee would like to be apprised of the outcome of the review.

NEW DELHI;
9 December, 1991
18 Agranayana, 1913 (Saka)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee

APPENDIX I

(*Vide* para 1 of the Report)

PARA 2.01 OF THE REPORT (NO. 6 OF 1989) OF C & AG OF INDIA FOR THE YEAR ENDED 31 MARCH, 1988

Procedure of Collection and Recovery of Tax and Arrears of Demands

Introductory

2.01.1 According to the procedure prescribed under the Income-tax Act, in respect of any tax, interest, penalty, fine or any other sum as is payable in consequence of any order passed under the Act, a notice of demand shall be served upon the assessee. The amount specified as payable in the notice of demand has to be paid within 35 days, unless the time for payment is extended by the Income-tax Officer on an application made by the assessee. If the sum specified in the demand notice is not paid within 35 days, or such extended time as may be allowed, the assessee shall be deemed to be in default. On the default by the assessee in this respect, the Income-tax Officer may forward a certificate specifying the demand in arrears to the Tax Recovery Officer for the recovery of the demand.

Law and procedure

2.01.2 Under the Act, proceedings for recovery of any sum payable shall not be commenced after the expiry of three years (one year up to 30 September 1984) from the last day of the financial year in which the demand is made, or in which the assessee is deemed to be in default. The Act, besides the liability towards interest and penalty, also provides for several steps for enforcing collection and recovery of tax in arrears such as, attachment of movable property, appointment of receivers, attachment and sale of movable/immovable property, arrest and detention in prison, etc. With effect from 1 October 1975, no appeal against an assessment order is generally admitted unless the assessee has paid the tax on the income returned of the advance tax payable or the assessee is specifically exempted from the operation of these provisions for any good and sufficient reasons.

The procedure of recovery envisages:

i) timely issue and disposal of recovery certificates;

ii) regular reconciliation of the real arrears;

iii) maintenance of control register for assessment and collection;

iv) annual action plan targets of collection of taxes and disposal of appeals;

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v) adequate monitoring and feed back;

vi) identification of irrecoverable and ineffective arrears; and

vii) prompt recovery proceedings in deserving cases.

Public Accounts Committee's Recommendations

2.01.3 The Public Accounts Committee were concerned over the large arrears of tax demands and had stressed the need for adequate steps being taken to ensure speedy collection of arrears. In their 79th Report (Sixth Lok Sabha) (1977-78) (Para 1.11) the Committee observed as under:

> "The Committee are distressed to find that despite assurances held out to the committee in the past, special drives launched by the Central Board of Direct Taxes, the additional posts created at various levels, the scheme of incentives and rewards and working improvements made to the law, rules and procedure, there has been no perceptible effect on the growth of arrears of corporation and income tax.
>
> In their 217th Report (Seventh Lok Sabha) 1983-84, the Committee recommended that the Ministry should examine their achievement in regard to collection of income-tax arrears demand *vis-a-vis* the action plan targets and take effective steps to reduce tax arrears to the barest minimum. The Committee had also desired to be apprised of the precise action taken in this regard."

Administrative measures

2.01.4 Pursuant to the recommendations of the Public Accounts Committee, several administrative steps were taken by the Central Board of Direct Taxes in recent years to accelerate the pace of recovery. Some of these measures are:

i) Monthly progress of recovery of tax arrears in respect of cases of arrears of over Rs. 10 lakhs (dossier cases) should be monitored by the Board by obtaining the figures telegraphically from the Commissioners of Income-tax;

ii) Director of Inspection (Recovery) during his tours should conduct an on the spot study of the assessment records and hold discussions so as to accelerate efforts towards speedy recovery of tax arrears where large amounts are involved, particularly of dossier cases of over Rs. 10 lakhs, and the Board would supervise the work done;

iii) The Central Board of Direct Taxes impressed upon all Commissioners of Income-tax (Appeals) individually for quick disposal of all appeals involing tax arrears of Rs. 1 lakh and above and watch the progress of recovery of dues;

iv) The Board issued instruction to the Commissioners of Income-tax that they should watch each important event in the top 100 cases in their charge and that they should also see that those working under them are taking adequate steps on these top cases;

v) The tax recovery machinery was strengthened by creating posts of Commissioner of Income-tax (Recovery) in five places to closely watch the working of the tax recovery officers;

vi) Action plan targets were fixed every year in regard to collection of tax arrears, current as well as old and the achievements watched.

Highlights

2.01.5 A review of the arrears of income-tax demands, with particular reference to a few case studies of certain old and high value cases of demands, revealed that:

i) The disposal against annual targets was very much below the expected norms. The arrears at the end of 1986-87 (figures as per text check) stood at Rs. 2674.06 crores which was Rs. 1618.54 crores and Rs. 538.60 crores respectively more than the arrears at the end of 1982-83 and 1985-86. The arrears also progressively increased on an average by Rs. 405 crores every year, despite the recommendations of the Public Accounts Committee to reduce the tax arrears to the minimum. The arrears comprised substantial number of old and high value cases. This indicated that the collection machinery had not proved to be effective.

ii) An analysis of the clearance of demand outstanding after issue of tax recovery certificates showed that bulk of it arose by way of adjustment, remission and write off and the actual cash collection varied from 5.63 per cent to 8.60 per cent. There was no improvement in the recovery proceedings even after 10 years of the creation of the separate Commissioner of Income-tax (Recovery) in important charges.

iii) The disposal of tax recovery certificates was much below the expected norms. There was a perceptible decline in the disposals during the year 1986-87 even after the time for issue of tax recovery certificates was extended to 3 years. The test check has revealed that nearly 10 lakh certificates involving over Rs. 250 crores were awaiting clearance at the end of 1986-87. Of the four modes of recovery prescribed under the Act including arrest and detention, appointment of receivers, etc., attachment of properties alone was generally resorted to. The test-results, however, indicated that in only 2 out of 53 cases, the properties had actually been sold.

iv) There was little progress in the collection of tax arrears as compared to the increase in the demands (in terms of percentage)

raised each year. Outstandings were generally on the increase despite the recommendations of the Public Accounts Committee. This would suggest an urgent need to evolve a more systematic procedure and its effective implementation for prompt collection of tax arrears.

v) The Board had emphasised the need for better coordination between the departmental authorities with a view to avoiding large variations between the arrears as certified in the recovery certificates and the actual arrears as per books of the assessing officers. A test-check of the relevant records revealed that in a number of cases there were large differences suggesting the absence of adequate systematic reconciliation.

vi) Public Accounts Committee had viewed with concern the practice of indiscriminate issue of tax recovery certificates by Income tax Officers in the last month of financial year when the statutory period of limitation was about to expire. As per Board's instructions a detailed list of movable and immovable properties belonging to the defaulting assessees had to be furnished to the tax recovery officers by the assessing officer along with the tax recovery certificates to initiate coercive action to realise the arrears of tax.

Despite the issue of specific instructions to this effect the tax recovery certificates were found to have been issued at the fag end of the year and many cases were not accompanied by the details of movable and immovable properties of the defaulting assessees to ensure proper actions to initiate coercive proceedings.

vii) The Board had issued instructions in May 1973 for preparation of complete dossiers on individual cases with arrears of over Rs. 10 lakhs mentioning therein all possible material from the creation of demand to position after 31 March 1973 and to send requisite report at frequent intervals in respect of such cases to the Board. Test-check revealed that these instructions were not being followed for long periods. Besides, there were instances of lack of correlation of the demand raised and that shown in the dossiers.

viii) The total tax arrears locked in appeal at the end of March 1987 was Rs. 650.64 crores due to delay in disposal by the appellate authorities. In one case, though recovery tax certificate was issued in January 1974 for an amount of Rs. 20.33 lakh, the collection of arrears was pending till date awaiting appellate decision.

ix) The Settlement Commission was specifically set up with a view to ensure speedy and expeditious disposal of the applications made

to it. Nevertheless there were 223 applications pending as on 31 March 1988. This included a number of old and high value cases.

Detailed Review

Arrears of tax demand

2.01.6 The gross arrears of corporation tax, income-tax, interest and penalty at the end of each of the five years period 1983-84 to 1986-87 are as given below:

Year	Corporation Tax	Income Tax	Interest	penalty	Total
			(In crores of Rupees)		
1982-83 (and earlier years)	49.13	178.88	107.34	57.19	392.54
1983-84	49.04	44.19	38.23	11.38	142.84
1984-85	75.55	102.87	96.57	19.17	294.16
1985-86	193.70	212.46	206.63	34.53	647.32
1986-87	973.79	423.67	522.60	78.40	1,998.46

The total demand (corporation-tax and income-tax) raised and remaining uncollected as the end of the years 1982-83 to 1986-87 together with the figures of actual collections for these years (as per information available to audit) is given below:

Year	Tax arrears	Demand raised	Demand Collected	Net amount
			(In crores of rupees)	
1982-83 and earlier years	1,035.70	1,927.20	1,893.89	1,055.52
1983-84	1,162.96	2,687.01	2,484.78	1,410.63
1984-85	1,497.19	4,000.51	3,594.21	1,900.91
1985-86	1,979.17	4,691.00	4,531.72	2,135.46
1986-87	2,211.74	5,042.71	4,581.58	2,674.06

(The net amounts in Column 5 do not exactly tally with the net result of Columns 2, 3 and 4 due to the revision of figures of tax arrears, demands after verification/reconciliation and plus/minus adjustments)

There was steady increase in the tax arrears over the years and at the end of the year 1986-87, the increase in arrears was as high as 250 per cent as compared to the arrears at the end of 1982-83. Further, there was only marginal increase in collections during the years 1985-86 and 1986-87 as compared to the collections during the earlier years. During 1986-87 the Government has offered an amnesty scheme for voluntary payment of taxes with a view to augment the collections.

The break-up of arrears of taxes (excluding the charges relating to Gujarat, West Bengal, Karnataka and New Delhi for which the information was not made available to audit) as at the end of March 1987 is as under:

	Tax arrears		Over Rs. 10 lakhs		Over Rs. 50 lakhs	
	No. of cases	Amount (Rs. in crores)	No. of cases	Amount (Rs. in crores)	No. of cases	Amount (Rs. in crores)
1982-83 and earlier years	3,56,948	456.99	98	46.22	30	98.27
1983-84	3,48,214	538.99	115	54.51	21	79.30
1984-85	4,09,475	875.60	218	108.26	35	145.51
1985-86	3,70,273	994.60	321	152.43	35	235.41
1986-87	4,35,479	1,261.57	520	243.44	77	290.58

The above figures indicate that in 42 per cent of the total tax arrears at the end of 1986-87, the arrears exceeded Rs. 10 lakhs in each case. Arrears of cases exceeding Rs. 50 lakhs generally increased every year. The number of such old cases pertaining to 1982-83 and earlier years was 128. Statistics reveal that a large number of old and high value cases of arrears had been pending at the end of March 1987.

The break-up of the tax collected out of arrear demands during the last three years is as under:

	Collection by actual cash	Others (In crores of rupees)	Total
1984-85	199.21	1,389.02	1,588.30
1985-86	308-27	1,445.34	1,754.58
1986-87	314.65	1,442.89	1,829.67

In all the three years, the actual cash collection was very low as compared to the total collections during the year. For the year 1986-87 the cash collection was only 17 per cent of the total collections and the rest was by way of adjustments, remissions etc.

Review of performance

2.01.7 In the Audit Report for the year 1985-86, a review of the performance of the institution of the Commissioner of Income-tax (Recovery) (Para 1.09.03) was in corporated highlighting:

(a) lack of proper guidelines from the Central Borad of Direct Taxes regarding the functioning of the institution;

(b) inadequate disposal of tax recovery certificates and high pendency in recovery certificates;

(c) small collection of arrears in cash;

(d) inadequate control machinery and dent on the hardcore items.

A test check of the arrear demand cases, especially the old and high value

ones, conducted in audit during the years 1986-87 and 1987-88 particularly with reference to the causes for their pendency, the steps taken by the department to recover the arrear demands and to bring down the arrears and the control exercised at higher levels to enable prompt action and speedy collection again revealed the following deficiencies.

Tax recovery certificate—Receipts and disposals

2.01.8 The internal work study unit of the department had recommended in 1977, a composite disposal norm of 3300 certificates per annum per tax recovery officer's unit with the assistance of two inspectors. The norm was raised to 3700 certificates per annum per tax recovery officer's unit by the staff inspection unit in 1978 on the ground that 90 per cent of the certificates were disposed by adjustments, etc.

The Directorate of Organisation and Management Services (Income-tax) in its report (April 1985) on the working of tax recovery machinery made the followings observations:

> "To tackle the problem of mounting work load with the tax recovery officers, the amendment made to section 231 of the Income-tax Act by which the time for issuing the tax recovery certificates has been extended from one year to three years, is most welcome. In view of this amendment it is expected that the number of certificates to be received by the tax recovery officers in 1985-86 and 1986-87 will decrease. Since fresh tax recovery certificates are not expected to be received for 2 years, it should be possible for tax recovery officers to put in more efforts in tackling the pending tax recovery certificates. After the expiry of these two years, it should be possible for tax recovery officers to carry forward only manageable load".

The position in regard to the number of certificates received by the tax recovery officers for disposal, the number disposed of and the total demand recovered, etc., for the four years 1983-84 to 1986-87 was as under:

Year	Certificate for disposal		Certificate disposed of			Demand recovered by cash (In crores of rupees)	By adjustment write off (In crores of rupees)	By remission (In crores of rupees)
	No.	Amount (In crores of rupees)	No.	Percentage	Amount			
1983-84	14,59,634	460.44	3,52,538	24.20	236.06	25.97	127.45	79.50
1984-85	16,51,398	581.39	5,88,189	35.60	398.84	44.88	203.23	153.91
1985-86	14,22,513	584.30	3,98,130	28.00	306.69	46.22	158.19	101.74
1986-87	11,84,314	432.70	2,18,249	18.41	179.09	37.25	140.13	0.91

It may be seen from the above table that there was no appreciable improvement in the clearance during the years 1985-86 and 1986-87 and

that the clearance were mostly by adjustment, remission, write off, etc. The disposal of tax recovery certificates had recorded a decline from 24 per cent in 1983-84 to 18 per cent in 1986-87. The clearance by cash collections ranged from 5.63 per cent to 8.60 per cent of the demand in arrears during all these years.

The position in some of the major charges is indicated below:

Delhi

(i) With a sanctioned strength of 20 tax recovery officers, the average disposal per tax recovery officer came down significantly from 3056 in 1983-84 and 4003 in 1984-85 to 1984 in 1985-86 and 1771 in 1986-87 and the average disposal by the tax recovery officers was much below the expected norm of disposal.

Tamil Nadu

(ii) With a sanctioned strength of 13 tax recovery officers, the average disposal per tax recovery officer during the years 1983-84 to 1985-86 marked an increase from 337 to 519 but significantly dropped down to 267 in 1986-87. The total average number of certificates disposed by a tax recovery officer per annum (i.e. 384) was far below the minimum number of 3700 certificates per annum during the years 1983-84 to 1986-87 by ninety per cent.

An analysis of the certificates wholly disposed of in 1986-87 in Delhi and Tamil Nadu Circles revealed as under:—

Rent/Bank accounts attached	306
Movable property attached	80
Movable property sold	Nil
Receiver appointed	Nil
Immovable property attached	53
Proclamation of sale of immovable property made	9
Immovable property sold	2
Proceedings for arrest	3
Defaulter committed to prison	4

From the above, it would appear that of the four modes prescribed for effective recovery under the Act, only two modes namely, attachment of movable and immovable properties were generally resorted to. The movable/immovable properties attached had, however not been sold in 51 cases out of 53 cases.

Out of 40 cases, in Tamil Nadu Circle it was seen that in respect of three assesses demands of Rs. 45.66 lakhs pertaining to assessment years 1974-75 to 1979-80 were raised between 1980 to 1984 but no recovery certificates were found to have been issued to the tax recovery officer for realisation of arrears.

Lack of co-ordination between assessing officer and tax recovery officer

2.01.9 For effective functioning of the tax recovery system, the Board have issued instructions for proper and adequate co-ordination between the tax recovery officer and the assessing officer and have emphasised the need to avoid large variations between the arrears as certified in the recovery certificates and the actual arrears as per the records of the tax recovery officer. Despite the instructions, large variations between the arrears as per the records of the tax recovery officer and those of the assessing officer continued to exist. A few major cases are given below:—

Delhi

(i) (a) In one case a tax recovery certificate for an amount of Rs. 10.96 lakhs (tax plus interest) for the assessment year 1977-78 was issued by the Income-tax Officer in March 1982. Though the demand was modified thrice, the modified demand was not communicated to Tax Recovery Officer who continued with the enforcement of the original demand till the assessee informed him about the modification of the original demand. The tax recovery officer has called for the final demand in March 1987.

(b) In another case a perusal of the dossier file of an assessee (a registered firm) revealed that the certified copies of the thirteen tax recovery certificates for a total demand of Rs. 1,40,04,040 were received from the Tax Recovery Officer, Bombay in January 1979 (six recovery certificates) and November 1980 (seven recovery certificates). The notice of demand to the defaulter for a total demand of Rs. 78,36,353 in respect of the seven recovery certificates received in November 1980 were issued only on 8 February. 1982. Even these notices could not be served as the defaulter had been declared insolvent on 31 March, 1981.

Audit scrutiny revealed that a property at New Delhi belonging to the legal heir of the partner of the firm was attached on 27 September 1979 but the provisions in the Income-tax Act for the sale of the said property was not invoked and implemented promptly before 31 March 1981 by which time the defaulter had been declared for the tax demand of Rs. 61,67,687 for which the notice of demand to the defaulter had been served. The interests of the revenue were not safeguarded as the further demand of Rs. 78,36,353 for which the notice of demand of the defaulter (ITCP-I) had remained unserved.

The department lodged a claim with the Official Receiver in January 1983 for a sum of Rs. 1,95,41,043 towards outstanding demands including interest. This claim was also lodged short by Rs. 94,000 on account of a totalling mistake. Although the claim with the Official Receiver was lodged in January 1983, no further action had been taken (till April 1988) to recover the outstanding demand through the Official Receiver.

Uttar Pradesh

(ii) In one case, involving a total demand of Rs. 30.05 lakhs inclusive of tax demand of Rs. 23.92 lakhs under the Excess Profits Tax, recovery certificates covering a demand of Rs. 6.13 lakhs only were issued. Recovery certificates, against the demand of Rs. 23.92 lakhs relating to period October 1942 to March 1946 in respect of Excess Profits Tax were not sent at all. There was nothing on record to show as to what action was taken on the certificates received by the Tax Recovery Officers. However, from the records made available it transpired that two immovable properties were attached. The date on which the properties were attached could, however, not be collected as complete papers were not available. One property in which the defaulter had 50 per cent interest was sold on 28 September, 1981 by public auction. The property was not got valued by the authorised representatives of the department.

The reserve price of the other property was determined at Rs. 1,28,000 which was sold on 6 February 1986 by public auction on the reserve price. Whether this amount has been adjusted in the reduction of demand is not known from the records. There is also no indication in records as to what further action is being taken to realise the outstanding demand.

Bihar

(iii) In one case recovery certificates for an aggregate damand of Rs. 10.83 lakhs were issued during 1957-58 to 1966-67 after a delay of 3 to 8 years. In January 1963 objections were raised by the relations of the assessee on an attempt by Certificate Officer of the State Government to auction two of the properties belonging to the assessee. The case was transferred to the Tax Recovery Officer of the Income-tax department 10 years later in February 1973, without the case being disposed of. Between August 1973 and September 1976, due to non-coordination and insufficient enquiry into the ownership of properties, the properties were attached, freed and again reattached and action to auction of a property was stayed and later withdrawn by the Commissioner. Successive appeals by the defaulters to court between September, 1976 and May 1982 to stay recovery proceedings and sale of the property by auction failed and the Commissioner of Income-tax was authorised to proceed with the recovery proceedings through another Tax Recovery Officer. However, no proceedings were found to have been initiated in respect of the properties since then, although the jurisdiction of the case was again assigned to the same Tax Recovery Officer till January 1988. Recovery proceedings instituted against the other property in November 1982 were objected to but rejected by the Tax Recovery Officer and the Commissioner of Income-tax. A proclamation of sale in respect of this property was issued in March 1984 without filing the reserve price but the assessee appealed to higher authorities in April 1984 which was decided after a lapse of more than three and a half years in Novermber 1987.

Madhya Pradesh

(iv) In one case tax recovery certificates for Rs. 23.72 lakhs for the assessment years 1969-70 to 1977-78 were issued by the assessing officer to the Tax Recovery Officer between February and September 1983. Although the Karta of the Hindu un-divided family died in August 1983, the names of the family members and legal heirs were intimated to the Tax Recovery Officer in January 1984, which delayed the issue of notices of demand (ITCP-I) to the defaulters. Due to family disputes no member came forward with regard to taxation matters and the notices of demand could only be served in February. 1984 through the Inspector. After attachment of 20 houses and agricultural land in January 1984, a reference was made to the valuation cell to value the property in February 1984.

The valuation officer intimated in April 1984 to the assessing officer that due to non-cooperation of the inspector he could not inspect the property for valuation and requested the Tax Recovery Officer to accompany him as the defaulter might put some resistance at the time of inspection.

The properties were, however, valued at Rs. 6.14 lakhs in September 1984 after a delay of 7 months. Although the notice for setting a sale proclamation (ITC—17) was served on the defaulters in February 1985, the auction could not be fixed as the assessing officer did not fix the reserve price inspite of tax recovery officer's request (March 1985). The assessing officer insisted that necessary action to fix the reserve price was to be taken by the Tax Recovery Officer. In spite of the Commissioner of Income-tax's directions of November, 1985 to fix the reserve price, no action was taken by the assessing officer (June 1987). The Commissioner of Income-tax had intimated the assessing officer in March 1982 that the assessee had sold land for Rs. 10,000 (market value Rs. 6 lakhs) and had directed to take action to declare the sale as void (Section 281). The wealth-tax officer took no action till June 1985 when he insisted the Tax Recovery Officer to take necessary action. Even though the controversy between the Wealth-tax Officer and the Tax Recovery Officer as to who should take action in this respect was resolved in November 1985 by the Commissioner of Income-tax and the Wealth-tax Officer was directed to take action (as the Tax Recovery Officer was not empowered to take the required action). Suitable action was not taken till June 1987.

Non-furnishing of proforma of aid sheets and list of assets of defaulting assessees

2.01.10 According to the instructions issued by the Central Board of Direct Taxes, a detailed list of movable and immovable properties belonging to the defaulating assessees should be furnished to the Tax Recovery Officer to initiate coercive action, such as, attachments and sale of properties to realise the arrears of tax. Such list of properties have to be furnished along with the tax recovery certificates. Besides, the Board have expressed concern over the practice of indiscriminate issue of the tax

recovery certificates by Income-tax Officers in the last month of financial year when the statutory period of limitation was about to expire.

It was noticed in audit that despite the issue of specific instructions, the tax recovery certificates continued to be issued at the fag end of the year and they were not accompanied by the list of movable and immovable properties of the defaulting assessees to enable the Tax Recovery Officer to initiate the coercive proceedings. A few such cases are given below:—

Delhi

(i) In respect of an assessee, the total outstanding demand was Rs. 23,16,557 for the assessment years 1972-73 to 1979-80. A tax recovery certificate was issued for a demand of Rs. 17,93,859 for the assessment years 1972-73 to 1979-80 in March 1984 despite orders of the Board to issue separate certificates for different assessment years. The recovery certificate for the demand of Rs. 5,22,698 for the assessment year 1972-73 to 1976-77 created in March 1985 was not issued. The assessing officer informed the Tax Recovery Officer in January 1985 that the assessee had certain immovable properties (a hotel, cinema hall and factory) at Ranchi in Bihar. However, the lists of assets, if any, were not forwarded in February 1985. The Tax Recovery Officer, Delhi in turn sent, a certified copy of the certificate to the Tax Recovery Officer, Ranchi requesting for attachment of the properties in order to recover the certified demands followed by reminders in June 1985 and January 1986. These assets do not seem to have been attached by the Tax Recovery Officer, Ranchi (May 1987). As the whereabouts of the assessee was not known it was proposed to transfer the case to Ranchi. A proposal in this regard was sent to the Board in January 1986 and simultaneously the Commissioner of Income-tax, Ranchi was requested to give his concurrence for the case to Ranchi. No further progress in this regard seems to have been made (June 1988).

Madhya Pradesh

(ii) (a) In one case the assessing officer issued tax recovery certificates for Rs. 98.57 lakhs (inclusive of interest) to the Tax Recovery Officer in July 1979. The details of properties were furnished in January 1980 but the detailed addresses of these properties were furnished only in February 1981 when the matter was brought to the notice of the Range Inspecting Assistant Commissioner.

(b) In another case, the tax recovery certificates for Rs. 1.18 lakhs covering the demand for the assessment years 1965-66 to 1973-74 was issued in June 1978, but the list of properties owned by the assessee was furnished to the Tax Recovery Officer after a lapse of 26 months in September 1980, which led to delay in attachment of the property.

(c) In a third case, the tax recovery certificates for an amount of Rs. 10.58 lakhs (in respect of demands for assessment years 1962-63 to 1974-75 raised between March 1967 to August 1978) were issued between

December 1971 and March 1984, without details of assets. When the Tax Recovery Officer called for the details of assets on 7 September 1977, the Income-tax Officer furnished the requisite information in May 1978.

Tamil Nadu

(iii) A scrutiny of 93 tax recovery certificates relating to ten Tax Recovery Officers revealed that 72 certificates were not accompanied by the list of assets and in respect of all these cases, the assessing officers had not sent notes explaining the action already taken for the recovery and the action required to be taken for recovery by the Tax Recovery Officer as stipulated in the instructions.

Madhya Pradesh

(iv) In one case the tax recovery certificates for Rs. 47.38 lakhs (assessment years 1977-78 to 1983-84) were issued to the Tax Recovery Officer in March 1987 (demands raised in December 1985). The Tax Recovery Officer reported in June 1987 that no details of various assets were supplied to him. The Commissioner of Income-tax observed in November 1987 that heavy demands in this search case were created without verification and discovery of assets of the assessee and that even the bank accounts were not examined before completion of assessments.

Dossier Reports

2.01.11 The Board at the instance of the Government of India had issued instructions in May 1973 to all Commissioners of Income-tax to prepare under their charge complete dossiers on individual cases with arrears of over Rs. 10 lakhs each recording therein alll possible information from the creation of demand to position as on 31 March 1973. Monthly report (now it is quarterly) in respect of each case was to be submitted to the Board. First report indicating the position as on 31 March 1973 was to be sent to the Board by 20 June 1973. Audit scrutiny revealed that these instructions were generally not followed for long periods. A few major cases are mentioned below:—

Uttar Pradesh

(i) In 4 cases there was inordinate delay (2-3 years) in sending the quarterly arrear report in respect of outstanding tax arrears aggregating to Rs. 103.01 lakhs and were for the first time submitted in September / December 1985.

Tamil Nadu

(ii) In respect of 2 cases no report was sent to the Board though the arrears exceeded Rs. 10 lakhs in each case.

Madhya Pradesh

(iii) (a) In respect of the demands raised during financial year 1984-85, reports in respect of 3 dossier cases were not prepared as the names of defaulter assesses were not available with Commissioner of Income-tax in one case.

(b) In the same charge in another case the dossier report for the quarter ending 31 March 1986 did not include demands of Rs. 20.94 lakhs created in March 1985 and December 1985 for assessment years 1978-79, 1980-81, 1982-83 and 1983-84 and in another 10 cases the dossier reports were submitted after delays ranging from 6 to 27 months.

Incorrect and unverified demands shown in dossiers

2.01.12 A correlation of the demand raised through assessments with those shown in the dossiers in respect of 18 cases in 4 Commissioner's charges in Uttar Pradesh and Tamil Nadu revealed that the demands created as per assessment records did not tally with those shown in the dossiers. In Tamil Nadu circle the difference ranged from 0.37 lakhs to Rs. 49.02 lakhs.

In Uttar Pradesh circle, however, the following further deficiencies were noticed:—

(a) Certain demands created were not shown as outstanding in the dossier but there was no indication in the records, whether these were cancelled or collected;

(b) the demand created in provisional assessment was not reviewed even after the regular assessment was completed later on creating a higher demand;

(c) certain demands cancelled in appeal were still shown outstanding in the dossier;

(d) no demands had been created but these were shown outstanding;

(c) demands had been shown against a particular assessment which did not actually relate to that year.

Pendency/disposal of appeals by appellate authorities

2.01.13 Under the Income-tax Act, 1961, the assessee may go in appeal to the various appellate authorities (A.C.C./C.I.T.(A)/I.T.A.T.) if he is not satisfied with the orders of the assessing officer, within the prescribed time limit. It was noticed that many appeals remained pending with appellate authorities for long periods. Details of tax arrears as on

31 March 1987 locked in appeal cases due to delay in disposal by appellate authorities in some of the Commissioner's charges are as under:—

Sl. No.	Name of State	No. of Commissioners	No. of Assessees	Assessment years (age)	Amount (in crores of rupees)
1.	Madhya Pradesh	2	19	1982-83 to 1985-86	9.45
2.	Orissa	1	5	1967-68 to 1984-85	15.00
3.	Karnataka	4	94	1972-73 to 1986-87	46.05
4.	Haryana	1	1,283	1971-72 to 1987-88	4.04
5.	Assam	1	152	1971-72 to 1986-87	13.49
6.	Kerala	2	947	1971-72 to 1987-88	7.48
7.	Uttar Pradesh	5	220	1960-61 to 1985-86	25.35
8.	Delhi	10	15,661	1956-57 to 1986-87	295.65
9.	Tamil Nadu	6	1,467	1961-62 to 1984-85	61.17
10.	Andhra Pradesh	3	232	1961-62 to 1985-86	28.59
11.	Bombay	7	128	—	45.96
12.	Gujarat	7	4,459	—	48.27
13.	Rajasthan	2	8	1971-72 to 1983-84	1.22
14.	West Bengal	11	47	1970-71 to 1984-85	48.92

A few major cases have been analysed below:—

(i) (a) In one case arrears to the extent of Rs. 20.33 lakhs relating to assessment year 1970-71 was locked up in appeal with Commissioner of Income-tax (Appeals) since March 1947. The Commissioner of Income-tax Madras requested the Commissioner of Income-tax (Appeals) to take up the case on priority basis during February 1985 to July 1985 but the appeal is yet to be disposed of and collection of arrears is pending through tax recovery certificate was issued to the assessee as far back as in January 1974.

(b) A few other cases of delay in disposal of appeals by appellate authorities in this charge are:

Sl. No.	Name of assessees	Assessment	Arrears of tax Rs.	Date of appeal	Reasons for pendency
1.	Company	1980-81 1981-82	2.01 crores	April 1987 (for assessment year 1980-81)	Case listed for hearing in August 1987 and kept in abeyance by Commissioner of Income tax who issued order for reopening the assessment. No further development.

Sl. No.	Name of assessees	Assessment	Arrears of tax Rs.	Date of appeal	Reasons for pendency
2.	Individual	1983-84 to 1985-86	1.88 crores	April 1987 (for tax demand of Rs. 98.71 lakhs)	Appeal had not been taken for hearing and the petition of the assessee for waiver of interest of Rs. 95.80 lakhs was stated to be under consideration.
3.	Individual	1976-77 to 1979-80	87.22 lakhs	January 1987	Recovery stayed by CIT(A) pending disposal of appeal filed.
4.	Individual	1983-84	71.39 lakhs	June 1986	The assessment was pending in appeal with CIT(A).
5.	Individual	1982-83 to 1985-86	68.29 lakhs	April 1987 (1982-83 and 1983-84)	The appeal was pending while the demands of Rs. 22.74 lakhs were stayed by CIT(A) and petition for waiver of interest of Rs. 51.34 lakhs was stated to be under consideration.
6.	Individual	1975-76 to 1984-85	62.55 lakhs	April 1986	The recovery of demand stayed by Deputy Commissioner of Income-tax till disposal of appeals. Dossier report for March 1988 indicated the assessee having furnished bank guarantee to the extent of Rs. 24 lakhs.

Uttar Pradesh

(ii) (a) In one case under the charge of Commissioner of Income-tax, Kanpur, demand to the extent of Rs. 14.66 lakhs, relating to assessment year 1976-77 created in the financial year 1984-85 and being disputed by the assessee at the very outset was stayed by Inspecting Assistant Commissioner of Income-tax, Kanpur, till the decision of appeal. After adding interest of Rs. 4.93 lakhs, the arrear demand was raised to Rs. 19.59 lakhs. Thus, the arrear demand of Rs. 19.59 lakhs was locked up in appeal with Commissioner of Income-tax (Appeals) since 1984-85. Deputy

Director of Inspection (Recovery), New Delhi directed in December 1985, the Commissioner to request the Commissioner of Income-tax (Appeals) for early disposal of the appeal. The Commissioner requested the Commissioner of Income-tax (Appeals) to take up the case on priority basis from time to time but the appeal, is yet to be disposed of (April 1988).

(b) In another case under the same charge, the collection of demand of the extent of Rs. 76.50 lakhs relating to assessment years 1985-86 and being disputed by the assessee in appeal was stayed by Inspecting Assistant Commissioner of Income-tax till the decision of appeal. Thus, the arrear demand to the tune of Rs. 76.50 lakhs was locked up in appeal with Commissioner of Income-tax (Appeals) since March 1987. Despite the request of the Commissioner to take up the appeal on priority basis, the appeal has not yet been decided.

(c) In a third case, the demand to the tune of Rs. 33.83 lakhs in respect of assessment year 1972-73 was created in financial year 1982-83. Learned Commissioner of Income-tax (Appeals) confirmed the assessment made by the assessing officer. Against the order of Commissioner of Income-tax (Appeals) the assessee had filed an appeal before the I.T.A.T., Allahabad which is pending, despite the request to take up the hearing on priority basis. Thus, the demand of Rs. 33.83 lakhs was locked up in appeal since 1982-83.

West Bengal

(iv) (a) An assessee was in arrears to the extent of Rs. 59.54 lakhs as on 31 March 1986 relating to the assessment years 1962-63, 1975-76, 1979-80, 1981-82 to 1983-84 raised in financial year 1983-84, 1984-85 and 1985-86. The case was heard by the Settlement Commission in December, 1985 and orders issued. However, the assessee made fresh application before Commissioner of Income-tax for revision of orders apparently after issue of orders by the Settlement Commission. As per inspecting Assistant Commissioner's comments in dossier report for quarter ending 31 December 1983, most of the demands were on assessments made on best judgement basis on which petition for reopening the assessments were rejected and there was no special efforts on the part of the department in general and Commissioner of Income-tax in particular to move the Settlement Commission for finalising the case despite Director of Inspection (Recovery's) instructions. It was noticed that the concerned Inspecting Assistant Commissioner had commented that the case was before Settlement Commission for 8 years and that the assessee was non-cooperative.

As per records there were two letters from Director of Inspection (Recovery) who had asked the Commissioner of Income-Tax whether Settlement Commission had been moved or not.

(b) In another case, the outstanding demand as on 31 March 1986 was Rs. 475.60 lakhs comprising arrear demand (after recovery of Rs. 51.75 lakhs) and Rs. 226.02 lakhs, the current demand. The current demand of Rs. 226.02 lakhs was locked up in appeal before the Commissioner of Income-tax (Appeals). Of the arrear demand, Rs. 2.47 lakhs relating to assessment years 1965-66 to 1967-68 was pending before the Hon'ble High Court, and notice for demand for another Rs. 72.82 lakhs for assessment years 1968-69 and 1972-73 could not be served on the assessee due to injunction of the Calcutta High Court.

Records do not indicate any effective follow-up action for expeditious hearing of the appeals till date.

Gujarat

(v) In two cases demand for assessment years 1978-79 and 1979-80 aggregating to Rs. 469.44 lakhs raised between September 1981 and April 1983 were pending in appeals since May 1983 and July 1983. Meanwhile, the collection of demand of Rs. 404.67 lakhs has been stayed.

Cases pending with Settlement Commission

2.01.14 Under the provisions of the Income-tax Act, 1961, and the Wealth-tax Act, 1957, an assessee may at any stage of a case relating to him make an application to the Settlement Commission to have the case settled. The powers and procedures of the Settlement Commission are specified in the Act. Every order of settlement passed by the Settlement Commission is conclusive as to the matter stated therein.

The Taxation Laws (Amendment and Miscellaneous) Act, 1986 empowers the Government to constitute as many benches of the Commission as may be considered necessary to ensure expeditious disposal of settlement applications.

The broad particulars of the cases pending with the Settlement Commission are:

Sl. No.	Name of State	No. of charges	No. of assessees	Assessment years involved	Tax arrears (in crores of rupees)
1.	Madhya Pradesh	2	2	1977-78 to 1983-84	72.57
2.	Orissa	1	2	1985-86	N.A.
3.	Karnataka	4	10	1971-72 to 1984-85	2.14
4.	Haryana	1	25	1983-84 to 1986-87	N.A.
5.	Delhi	10	73	1963-64 to 1986-87	4.05
6.	Tamil Nadu	4	31	1967-68 to 1978-79	2.96
7.	Andhra Pradesh	4	61	1972-73 to 1987-88	N.A.
8.	Bombay	4	14	1948-49 to 1982-83	7.25
9.	Rajasthan	1	2	1972-73 to 1979-80	1.24
10.	West Bengal	3	3	1971-72 to 1982-83	236.93

A few illustrative cases are given below:

Delhi

(i) The settlement petition of an assessee for the assessment years 1972-73, 1975-76 to 1978-79 was admitted by the Settlement Commission in January 1982. Pending the decision of the Settlement Commission the tax demand of Rs. 39,45,397 for the assessment year 1977-78 was kept in abeyance.

Bombay

(ii) Six assessees belonging to a family group (including a registered firm and its 3 partners) and two more 'firms' belonging to the same family were in arrears to the tune of Rs. 223 lakhs (approximately) as per the dossier reports as on 31 March 1986. All the defaulters in these cases had filed (December 1977) applications to the Settlement Commission. These cases are still pending final settlement. The final outcome of these cases could not be ascertained.

Tamil Nadu

(iii) A private limited company and its two Managing Directors filed petitions before the Settlement Commission during the years 1978 and 1981 to stay recovery of arrears of Rs. 1.11 crores pertaining to the assessment years 1962-63 to 1978-79 till the disposal of their application. The cases are pending for over 6 to 9 years as reports called for by the Commission had not been furnished by the department.

Write off of demands of irrecoverable arrears

2.01.15 In some cases the demand due from an assessee may become irrecoverable for reasons, such as, the assessee having become insolvent or having died leaving behind no asset or remaining untraceable. The Income-tax Act provides for write off of such demands by the various income-tax authorities after following the prescribed procedure.

Uttar Pradesh

(i) (a) In one case involving tax demand of Rs. 29.64 lakhs created between May 1975 to August 1985 mostly under *ex parte* assessment recovery certificates covering demands amounting to Rs. 10.89 lakhs only were forthcoming. These too were prepared in the office of assessing officer as late as on 24 January 1980 to 13 March 1980 and were sent to the Tax Recovery Officer on 31 January 1981 i.e., after a lapse of 10 to 12 months.

On 31 March 1981 notices were served by Tax Recovery Officer upon the defaulters. There was nothing on record to indicate any further steps being taken. In the meantime, the case was transferred by the Tax Recovery Officer (Central) Kanpur to Tax Recovery Officer A ward Kanpur under the charge of C.I.T. Kanpur who again prepared notices on 25 February 1985 which were served by affixture. It was noticed that the

defaulter had income from 7 firms which were closed in 1975 before issue of recovery certificates, except one which existed during 1976 to 1978. A write off proposal was being processed on the basis of irrecoverability certificate issued by Tax Recovery Officer in January 1986. A scrutiny of the dossier report for the year 1986-87, however, revealed that after the issue of the above irrecoverability certificate the amounts of penalties pertaining to assessment years 1966-67, 1967-68 and 1975-76 aggregating to Rs. 1.47 lakhs were cancelled and outstanding tax demands were reduced accordingly. As the irrecoverability certificate issued by the Recovery Officer in January 1986 also included these demands, the recovery officer was asked (March 1988) to intimate whether the certificate so issued was modified. In reply the Recovery Officer stated that no change was made.

(b) In another case, involving tax demand of Rs. 23.03 lakhs created between 3 May 1975 to 2 August 1985, recovery certificate covers the demand of Rs. 4.20 lakhs created in December 1983 were sent to the Tax Recovery Officer on 28 March 1985 i.e. after the lapse of 15 months. Instead of taking prompt action the Recovery Officer gave an order in the order sheet in September 1985 to issue notice on this account which was not followed up. The recovery certificates in respect of balance demand does not appear to have been issued. The defaulter had interest in certain firms which were closed in 1975, i.e. 10 years before issue of recovery certificate. The case is being processed for write off.

Gujarat

(ii) In the case of a public limited company, the assessments foı assessment years 1973-74 and 1974-75 were completed *ex parte* in 1975. The liquidator filed the return of income for assessment year 1975-76 in February 1980 and the assessment was finalised in August 1982 alongwith the fresh assessments for assessment years 1973-74 and 1974-75 the original *ex parte* assessments having been set aside by the I.T.A.T. in the meantime. The tax demand of Rs. 103.13 lakhs was raised. Proceeding for penalty were initiated and penalty of Rs. 69.87 lakhs was levied in 1984-85. Demand for interest of Rs. 12.31 lakhs was raised in March 1986. A further demand of Rs. 57.06 lakhs was raised for assessment year 1984-85 in 1986-87. After considering taxes paid and adjustments made, Rs. 226.31 lakhs was in arrears as on 31 December 1987. The Zonal Committee met on 8 September 1986 and proposed to the Board, a partial write off of Rs. 90 lakhs. Board did not accept the proposal and directed in June 1987 to resubmit the case after receipt of the liquidator's report.

Scrutiny of records revealed that the assets of the company were auctioned by the liquidator in 1982 for a consideration of Rs. 384.50 lakhs

and according to schedule fixed for the payment of the price in instalments (25 per cent on execution of sale deed and balance in six yearly instalments of 48.06 lakhs with interest at 12.5 per cent), the assessee was entitled to receive a sum of Rs. 500.85 lakhs, including interest on unpaid purchase price. The Zonal Committee had proposed the write off considering the value of secured creditors of Rs. 585.00 lakhs. The records available in the dossier did not disclose that the value of other assets like debtors were considered. The case records further disclosed that there was delay in payment of first two instalments and the assessee had received payment in January 1986 of interest (23.00 lakhs) only against the third instalment due in April 1986, and the instalment of principal of Rs. 48.06 lakhs had not been paid. These delays have given rise to claim for interest of Rs. 15.02 lakhs upto October 1986 when this proposal for partial write off was sent. The interest acrued upto March 1987 amounted to Rs. 20.02 lakhs and that upto June 1987 worked out to Rs. 23.03 lakhs.

The liquidator had filed returns of income showing income of Rs. 5.72 lakhs for assessment year 1984-85 and Rs. 14.52 lakhs for assessment year 1985-86. The party to whom the assets had been sold had requested for a rescheduling of the instalments, thereby involving receipt of further amount of interest on unpaid purchase price by the liquidator. The amounts received were kept in fixed deposits with banks earning interest. These factors indicate possibility of recovery of the tax dues and the reconsideration of even the partial write off.

Madhya Pradesh

(iii) In one case as a result of searches made by the department in April 1975, concealed income to the extent of Rs. 44.71 lakhs was detected. While passing the orders under Section 132(5) of the Income-tax Act, 1961, the income spread over to the assessment years 1973-74 to 1976-77 was taken at Rs. 13.75 lakhs. The final assessments were, however, completed on a total income of Rs. 6.12 lakhs and a demand of Rs. 3.99 lakhs was raised between February 1976 and December 1976. The assessment for assessment year 1972-73 was also reopened and a revised demand of Rs. 3.93 lakhs was raised in September 1977. Penalties for concealment of income to the tune of Rs. 10.42 lakhs were also levied between August 1979 and March 1980. Tax recovery certificates for Rs. 20.32 lakhs including interest for non payment of demands were issued to the Tax Recovery Officer between July 1975 and August 1981. After issue of the notice of demands, soon after receipt of tax recovery certificates, the Tax Recovery Officer attached movable properties, worth Rs. 53.580 in February 1978 and seized cash of Rs. 68.400 in September

1981. Nothing could be realised out of movable properties as the 'Supraddar' absconded. Animals worth Rs. 34,000 died due to non supply of fodder by the department (loss was not reported to higher authorities) the cash was lying in the custody of the court and a suit regarding ownership was pending. The Tax Recovery Officer, therefore, issued irrecoverability certificate for Rs. 24.41 lakhs (out of Rs. 25.60 lakhs) on 22 January 1982. The Zonal Write Off Committee in its meeting in March 1983 approved the proposal of write off of demand to the extent of Rs. 19 lakhs (out of Rs. 20.32 lakhs) after reduction of wealth-tax demand and interest for non-payment of demand charged upto 22 January 1982. Thereafter, the proposal was submitted to the Board by the Commissioner of Income-tax after a lapse of one year in March 1984 which could not be approved by Board (August 1984) due to discrepancies in figures. A revised certificate of Rs. 20.32 lakhs was furnished to the Board on 25 November 1985. The Board in their letter dated 9 January 1986 again pointed out that the proposal of write off was not in accordance with the Central Board of Direct Taxes instructions of May 1984 and December 1985. The Tax Recovery Officer's certificate was defective as the amount of Rs. 20.32 lakhs shown outstanding did not include the Tax Recovery Officer's interest.

Although rule 23 of the Second Schedule to the Income-tax Act, 1961, contemplated that the movable property after seizure should be kept in the custody of Tax Recovery Officer or his subordinate, the attached properties were kept in the custody of a local person who absconded later on.

The Board in their instructions of 5 December, 1985 issued directions that recourse to committing the defaulter to civil prison should be pursued vigorously to the extent permissible under law before processing the case for write off. The Commissioner of Income-tax had directed in March 1987 the Income-tax Officer to take action. Further action was awaited.

According to the procedure for write off, it could be made only if there was no chance of recovery of more than 25 per cent of total outstanding demand. In this case, partial write off was considered by the committee to the extent of Rs. 19 lakhs, whereas total demand including interest as per tax recovery officer's certificates was Rs. 25.61 lakhs.

Interest under the Act in respect of income-tax demands as per Board's instruction dated 29 December 1986 was calculated upto 20 June 1987 and out of total demands of Rs. 40.64 lakhs (Rs. 20.42 lakhs demand plus interest for non payment of demand) write off proposal for Rs. 38,44,393 was submitted to the Board on 24 September 1987. The proposal was again

sent back by the Director of Inspection (Recovery) on 4 November 1987 since Wealth tax arrears were not included in the proposal and there was a difference of Rs. 10,261 in the arrears as reported in the dossier (Rs. 20.42 lakhs) and arrears certified by Tax Recovery Officer (Rs. 20.32 lakhs). The correct demand was verified by the Income-tax Officer at Rs. 20,31,739 and the dossier report was accordingly modified in December 1987.

As per directions of Director of Inspection (Recovery) a composite proposal for partial write off for Rs. 40,05,363 including wealth-tax arrears and interest of Rs. 25,542 was submitted to the Zonal Write off Committee on 27 January 1988. The proposal duly approved by the Committee was submitted to Board on 24 February 1988. The administrative approval was still awaited (April 1988).

Tamil Nadu

(iv) In the case of an individual, the demand for the assessment year 1974-75 alone amounted to Rs. 62.74 lakhs on account of seizure of certain gold bars from the assessee which were treated as income. The assessee was later known to be only an accomplice of another individual who was found to be the real owner of the seized bars. The records relating to tax recovery proceedings were reported to be lost. Proposals for writing off the demands were submitted to Central Board of Direct Taxes in February 1985 with the approval of the Zonal Committee but returned to the Director of Inspection (Recovery) in May 1986 with the remarks that possibility of arrest and civil detention was not explored and that it was premature for the write off till the assessments of the real owner became final. The records did not indicate any further action on the Board's comments.

West Bengal

(v) An individual had income from salary, director's fees, commission, share of profit and income from dividend. On verification of assessment records in audit it transpired that the assessee never filed any statement of assets and liabilities alongwith the returns. The assessee died in June 1956 during the pendency of the certificate proceedings for the first assessment year 1944-45 and the names of his legal representatives were duly substituted. It was also noticed that the assessee during his life time, took overdraft from different banks and pledged almost all the shares of different companies to the banks as security. The overdraft with different banks amounted to Rs. 14,66,291. The banks sold the shares in order to reduce the debit balance in their account.

It appeared from the Tax Recovery Officer's letter dated 18 November 1978 (TRO-I Calcutta, and 24-Paraganas) that the legal heirs of the

deceased brought to the notice of the certificate officer that after the death of the assessee there was no source left to meet the tax dues. The Tax Recovery Officer attached all the shares held by the assessee prior to his death. Out of these shares quite a good number was pledged as security against overdraft from four nationalised banks who claimed priority to recover their dues out of secured shares. The banks were permitted by the certificate officer to send the balance money after meeting their outstanding dues from the sale of shares but nothing was available to the department from that source. In some other cases, it was reported to the certificate officer that certain shares had been transferred in the name of sundries just after the death of the deceased. The respective companies informed that these transfers were allowed on the ground that the death of the holders of shares was not intimated to them.

On receipt of Tax Recovery Officer's observations the department continued further enquiries as per Commissioner of Income-tax directions and on completion of enquiries reported the matter to Commissioners of Income-tax Office in their letter dated 12 September 1983 with a proposal for write off of the entire demand.

The Director of Inspection (Recovery) also opined vide his letter dated 29 October, 1980 that as the assessing officer had not so far been able to trace out any asset left by the assessee, write off proposal is at present lying with Commissioner of Income-tax, West Bengal-I for consideration. The Commissioner of Income-tax, West Bengal-II in the dossier for quarter ending 31 March 1987 commented that the proposal for write off would be sent to the Board shortly.

Records revealed that the banks on meeting their dues, had released the shares to the solicitors of the assessee at the instance of the legal heirs of the assessee or the legal heirs themselves.

The department, however, could not succeed in locating the names and addresses of the persons to whom the shares were returned though the legal heirs of the deceased were known to the department.

Besides, the legal heirs could have been proceeded against as they would have obtained probate to the will and must have got the shares released by the banks transferred in their names. Records also indicated that an estate duty return had been filed but the department had not kept liaison with the estate duty wing for any details and possible recovery.

Write off of demands simply because of age

2.01.16 The demands written off because of age upto March 1987. In some of the Commissioner's charges test checked in audit are as under:

Sl. No.	State	No. of charges	Assessment Years	Amount written off(In crores of rupees)	Year in which written off
1.	Madhya Pradesh	2	1959-60 to 1975-76	0.77	1984-85 to 1986-87
2.	Orissa	1	—	0.21	1982-83 to 1987-88
3.	Karnataka	2	–	0.30	1986-87
4.	Gujarat	—	Upto 31.3.1979	0.79	End of 3/1987
5.	Bombay	11	Upto 31.3.1979	12.72	1984-85 to 1986-87
6.	West Bengal	12	Upto 31.3.1979	3.90	1984-85 to 1986-87

Carry over of arrear demands

2.01.17 As per Board's instructions at the beginning of every financial Year (15 May) the arrear demands of last year are brought forward to the new year's Demand Collection Register. While carrying forward demands not paid last year interest for non payment of demand should be charged by the Income tax Officer upto 31 March of the financial year in all cases and shown in the new year's register as current year's demands even though it is in respect of arrear demand.

Rule 118 (cases where recovery certificates are not issued) and Rule 119 (cases where recovery certificates are issued) of the Income-tax Rules, 1962 lay down the manner in which the interest for non-payment of demand is to be charged.

A review of the Demand Collection Register of three units in Madhya Pradesh revealed the following defects:

(a) The required certificate to the effect that all the entries of arrear demand have been duly carried over from the Demand and Collection Register of last year (1985-86) was not found recorded.

(b) No. verification/reconciliation of arrear demand was done and required certificate of authenticity and reconciliation appended in the Demand and Collection Register.

(c) Interest in terms of rules 118 and 119 was not charged and demands raised in the current year invariably in all outstanding demand cases as on 31 March 1986 and 31 March 1987.

(d) In seven cases a total demand of Rs 144.73 lakhs outstanding as on 1 April 1985 could not be realised till March 1986. But demand for interest of Rs 20.2 lakhs chargeable under section 220(2) of the Act for non-payment of tax was not raised in the current year 1986-87.

(e) Similarly, in fourteen cases, although a demand of Rs 454.01 lakhs remained unpaid till March 1987, interest demand under section 220(2) of the Act to the tune of Rs 68.3 lakhs was not raised in financial year 1987-88.

Case Studies of heavy arrear cases

2.01.18 Details of some of the hard core cases of arrears of tax demands are given below:

Tamil Nadu

(i) (a) An individual was in arrears of tax of Rs 103.89 lakhs pertaining to the assessment years 1971-72 and 1974-75. The Income-tax Officer who completed the reassessments relating to the above assessment years on the basis of the seized gold bars, issued in March 1984 tax recovery certificates for Rs 44.84 lakhs to the Tax Recovery Officer who served the notice (ITCP—I) on the wife of the assessee the assessee being untraceable in August 1984. In reply to this notice the assessee stated that as no demand notices were served on him he was not aware of the reassessments. The Commissioner of Income-tax ordered the Income-tax Officer to investigate the complaint of the assessee about non-service of the demands but the Income-tax Officer had not submitted any report so far (April 1988) even after 3 years. When the assessee was found to be in Madras, the Tax Recovery Officer transferred the tax recovery certificate to the Tax Recovery Officer, Madras in November 1984. The Tax Recovery Officer, Madras after having come to know that the assessee was not residing in Madras but in a place under the jurisdiction of the Tax Recovery Officer from whom the transfer recovery certificates were received sought permission of the Commissioner of Income tax (Recovery) in March 1988 to return the certificates. Thus, for over three years no effective action was taken by either of the Two Tax Recovery Officers to ascertain the correct whereabouts of the assessee and enforce coercive steps against the tax demand. In the meanwhile the concerned Income-tax Officer issued a tax recovery certificate for an additional demand of penalty of Rs 59.03 lakhs to the former Tax Recovery Officer in respect of the assessment year 1971-72.

(b) An individual was in arrears of tax of Rs 74.03 lakhs pertaining to the assessment years 1963-64 to 1975-76. After the death of the assessee a

survey operation was conducted on his premises in 1974 and antique articles valued at Rs 12.75 lakhs were found. The articles were kept there it self under a prohibitory order by the department. For nearly 11 years reconciliation and identification of the above articles with those in the list prepared during the survey operation was not completed and hence these articles were not disposed of in public auction till November 1986. After the receipt of the tax recovery certificate between August 1978 and February 1983 the Tax Recovery Officer came to know of the existence of the Board's instructions in regard to the procedure to be followed for disposal of the articles of antiques and art treasures. In October 1986, the Tax Recovery Officer addressed a few archeological departments to state whether they were interested in acquiring the antique articles for their museums. When there was no adequate response from them the Tax Recovery Officer had decided to dispose of the articles of antiques in public auction for which he sought permission of the Director of Inspection, New Delhi in March 1988. Further orders for the disposal of the articles have not been received yet (April 1988).

Bombay

(ii) (a) In the cases of an assessee firm, the assesments for assessment years 1976-77 to 1981-82 were completed by the Income-tax Officer, Central Circle in August 1984 In all these assessments huge additions were made of account of cash credits not explained fully and accordingly demands of Rs 196 lakhs were raised (August 1984). The show cause notice under section 221 was issued on 14 August 1985 in response to which the assessee firm filed a letter on 21 August 1985 requesting for stay of demand till disposal of appeal. This was rejected (26 August 1985). Recovery Certificate was issued to Tax Recovery Officer on 10 September 1985.

The assessments were subjected to appeals before Commissioner of Income-tax (Appeals), Central Range-I who confirmed (March 1986) the orders passed by the Income-tax Officer for assessment years 1976-77, 1977-78 1979-80, 1980-81, 1981-82 and partly allowed the assesse's appeal for assessment year 1978-79. After giving effect to the appeal order, the amount of tax and interest payable by the assessee worked out to Rs 1,34,53,512 for the assessment years 1976-77 to 1981-82. In view of this, the Inspecting Assistant Commissioner issued a letter on 12 May 1986, calling upon the assessee to make payment of entire arrears by 20 May 1986 and wrote to Tax Recovery Officer, Company Circle VI to take coercive steps for recovery. The Tax Recovery Officer wrote to the Inspecting Assistant Commissioner (Assessment Range VI-D) on 23 June 1986 quoting assessee's contentions that various rectifications were pending and if the rectifications were carried out, he will be entitled to refund. The Tax Recovery Officer had also proposed to hold aucton sale of immovable properties of the partners attached in the first week of August 1986. The

Inspecting Assistant Commissioner immedicately replied (11 July 1986) to Tax Recovery Officer rebutting assessee's claim and stating that no rectifications were pending and consequently no refund was due. The assessee was informed accordingly (11 December 1986) also stating that by claiming refunds and rectifications here and there involving a few hundreds only, his obvious intention was not to pay the outstanding demands of lakhs of rupees.

Subsequently, notices under section 226(3) were served (February 1987) on 42 parties attaching debts due to the assessee from them. There are no immovable properties of the assessee but immovable properties of three partners are available. Incidentally, it may be mentioned that the partners are also in heavy arrears of Rs 41.38 lakhs, Rs 35.98 lakhs and Rs 13.64 lakhs respectively. The penalties levied in March 1987 of Rs 480.96 lakhs have also been contested in appeal. No recovery has so far been effected.

(b) The business of a company in arrears to the extent of Rs. 49.12 lakhs as at the end of March 1986 pertaining to the assessment years 1970-71, 1971-72, 1973-74 to 1975-76 and 1977-78 was taken over by a Receiver appointed by the department in January 1974. The business was handed over back to the company in June 1977. At that time the arrears of tax dues from the defaulter company was Rs. 20.48 lakhs. In October 1977 when the company was yet to resume its business, the Inspecting Assistant Commissioner allowed the company to clear the arrears in instalments of Rs. 50,000 per month from April 1978. As no payment was made till July 1978, the plant and machinery of the defaulter's factory was attached by the Tax Recovery Officer concerned in August 1978. There was no progress even after a lapse of 2 years. An effort was made by the concerned Tax Recovery Officer in September 1980 to proceed further with the sale of the attached property. Between August 1982 to March 1984 an amount of Rs. 29.50 lakhs was recovered towards tax arrears. The Commissioner of Income-tax (Recovery), however, gave the defaulter a further opportunity in September 1984 asking the company to pay the balance amount of Rs. 30.41 lakhs by October 1984. As there was no response, the prohibitory orders on banks operated by the company were issued in November 1984. The attached property (plant and machinery in the factory) was valued at Rs. 2.24 crores as on January 1985. A copy of the valuation report was sent to another Tax Recovery Officer in April 1985.

The Tax Recovery Officer, Bombay in whose jurisdiction the company was previously assessed informed his counterpart in August 1985 about the existence of 18,000 quintals of sugar (as on 4 June 1985) in the factory for sale and asked him to attach the stock.

However, the Chief Minister of Maharashtra in a meeting in July 1985 attended to by the Commissioner of Income-tax (Recovery) Directors of the Company, representatives of the bank, etc. directed that the entire

stock of sugar (18000 quintals) would be sold in the open market and the proceeds distributed in the ratio of 50:50 between the bank on one side and the cane growers and workers on the other side. He also directed that the purchase tax, income-tax etc., would be stayed for the time being and be settled after the factory starts functioning in the next season. The Commissioner of Income-tax (Recovery) conveyed his disapproval to the proposal of the Chief Minister in the meeting itself to the Chief Minister. However, despite the disapproval by the Commissioner of Income-tax (Recovery) no action was taken by the Income-tax Officer to attach and sell the stock of sugar and the plant and machinery.

(c) In the case of a financing partner of two theatres in arrears to the extent of Rs. 40.29 lakhs for the assessment years 1969-70 to 1975-76 and 1977-78, the competent authority under the Smugglers and Foreign Exchange Manipulation Act (SAFEMA), 1976 ordered in December 1977, forefeiture of certain properties owned by the defaulter who, however, obtained a stay order from the Bombay High Court restraining the competent authority from taking any action under the said order. In February 1978, the defaulter was allowed to pay the arrears demand in instalments of Rs. 5,000 per month and the Tax Recovery Officer was asked not to proceed against the defaulter. The Kerala High Court allowed an interim stay on the attachment of some properties of the defaulter in Kerala. The details of these properties and their value etc., were, however, not available on the records. The defaulter paid instalments of Rs. 5,000 per month (though not regularly) from October 1977 to December 1985 amounting to Rs. 4,77,196 (income-tax Rs. 4,68,839 + Wealth tax Rs. 8,357). In March 1985, the concerned Commissioner of Income-tax (Recovery) ordered that recovery be effected in instalments of Rs. 7,500 per month. It was, however, noticed from the department's letter of January 1986 that the Commissioner of Income-tax (recovery)'s orders to enforce recovery at Rs. 7,500 could not be enforced owing to the pressing financial constraints of the defaulter. Further, the defaulter's assets in her native place were under prohibitory orders issued by 'SAFEMA' Bombay. The writ petition filed by the defaulter against this order was also pending though the demands were neither under appeal nor stayed by Courts. During the period of 8 years from October 1977 to March 1985, barely ten per cent of total arrears had been recovered due to the fixing of the instalments of repayment at a very low figure as compared to the arrears. Action taken, if any, by the department to get the stay of Kerala High Court vacated is not readily available in the records shown to audit. An amount of Rs. 0.79 lakhs has been further recovered from the assessee.

(d) A defaulter company was in tax arrears of Rs. 21.06 lakhs for the assessment year 1968-69 to 1975-76. The company owned immovable and movable properties at Baroda. The Tax Recovery Officer at Bombay issued four recovery certificates for the assessment years 1970-71 to 1972-73 for Rs. 16.22 lakhs to the Tax Recovery Officer, Baroda in March 1976

for recovery proceedings initiated in March 1974. In May 1976, the Tax Recovery Officer Baroda attached three immovable properties of the defaulter company. The date of sale was intimated as October 1976 vide notice issued to the defaulter company. In October 1976 the defaulter company requested the department to keep the sale pending as the matter was reportedly under consideration of the authorities in Delhi. Recovery proceedings were stayed by the Board till March 1978. Further stay was granted by the Commissioner of Income-tax, Bombay till December, 1978.

In the meanwhile, the landed property at another place was converted by the defaulter company into 'stock-in-trade' in a partnership firm after revaluation of the said property at Rs. 7,15,000. In September 1979, the Tax Recovery Officer Baroda informed the Tax Recover Officer, Bombay that one of the landed properties attached being under 'Land Ceiling Act'. Additional Deputy Collector, Baroda had been approached to ascertain the exact procedure to be followed in respect of auction sale of such property and that further action would be taken on hearing from the said authority. Since then no concrete measures to realise the tax arrears had been taken. The dossier reports upto period ending on 31 March 1986 showed only the attachment of the immovable property valued at Rs. 35 lakhs by the Tax Recovery Officer, Baroda but not any further action for sale.

Punjab

(iii) In the case of an individual, wealth-tax demands for the assessment years 1970-71 to 1981-82 raised between March 1984 and March 1986 accumulated to Rs. 31.27 lakhs. Besides, income-tax demands for the assessment years 1975-76 and 1977-78 to 1984-85 raised between March 1978 and January 1987 accumulated to Rs. 15.33 lakhs. Assessment of wealth-tax for the assessment years 1970-71 to 1975-76 and 1980-81 were made on a single day i.e. on 19 March 1985 and those for assessment years 1976-77 to 1979-80 on 30 March 1984. Likewise, assessments of income-tax for the assessment years 1977-78 to 1980-81 were made on 21 March 1986 and those for assessment years 1982-83 to 1984-85 on 7 January 1987. While demand notices in respect of income-tax assessments for the assessment years 1977-78 to 1980-81 were issued on 19 December 1986, recovery certificates had been issued to the Tax Recovery Officer on 30 October 1986 i.e. before the issue of the demand notices. Details of properties (movable-immovable) owned by the assessee were not indicated in the tax recovery certificates. The Tax Recovery Officer came to know that the defaulter owned a residential building in New Delhi, but could not attach it on the plea that it was sold for Rs. 14 lakhs *vide,* sale agreement dated 8 April 1981. This agreement was not registered with the concerned Registrar. The defaulter had executed another agreement for the sale of the said building to another person through his power of attorney. This agreement was also not registered with the concerned Registrar. The

contention of Tax Recovery Officer that the property had been sold was not correct as sale against an agreement not registered with the Registrar is not a sale at all. Although, the recovery of huge arrears was involved, non-attachment of the property resulted in non-recovery of huge arrears.

Uttar Pradesh

(iv) (a) In the case of a firm and its two partners tax demand aggregating to Rs. 79.98 lakhs was outstanding. These demands related to assessment year 1953-54 to 1966-67 and were created between the period from August 1966 to July 1973. After a lapse of more than 33 months i.e., in January/February 1970 notices were issued to several parties. No amount could be recovered as those parties denied any liability to the defaulter. Subsequent attempts made to realise the outstanding demands proved futile for reasons, such as insolvency of the partners and debts due to the firm from others becoming barred by limitation of time, etc. There was nothing on record to show that conscious efforts were made for recovery for outstanding dues during the period from January/February 1971 to March 1980.

(b) A defaulting company in tax arrears of Rs. 32.39 lakhs went into liquidation under the orders of the court on 22 August 1972. The Mill was acquired under the Uttar Pradesh sugar Undertaking (Acquisition) Act, 1971 for a compensation of Rs. 25 lakhs. The bank accounts of the defaulting assessee were attached but were subsequently lifted to facilitate payment of dues to labourers and cane growers under the orders of the Government of India. The department did make an attempt thereafter to recover the dues from sources such as, the directors of the company but did not succeed. After a long lapse of about 11 years, the department re-issued notices to the director which were, however, returned unserved. Besides, the department took a period of 13 years to file the claim with the official liquidator in prescribed form. However, the information about the registration of the claim has not yet been received by the department (June 1987).

(c) In two cases involving demands of Rs. 14.68 lakhs and Rs. 18.20 lakhs relating to assessment years 1944-45 to 1978-79, it was noticed that they had five immovable properties each, having 50 per cent interest. Out of these, 4 properties were attached on 15 November 1967 whereas the 5th one was attached on 23 July 1970. Out of 5 Properties, 2 properties each attached on 15 November 1967 and 23 July 1970 could be sold only after a lapse of 16 years/19 years of their attachment in open auction held on 27 February 1987 and 25 November 1986 for Rs. 3,61,000 and Rs. 10,07,000. After disbursing Government auctioner's commission and making reserves for payment of bills for house tax and water tax from one property sold, net sale preceeds to the tune of Rs. 12.99 lakhs was received. Record indicated that the above net proceeds had been adjusted against the outstanding tax demand of Hindu undivided family equally. But

from the dossiers it is noticed that only Rs. 5.47 lakhs had been shown adjusted against the arrear demands of the two defaulters. The balance of Rs. 7.52 lakhs had been accounted for by adjustment against the interest charged by Recovery Officer on outstanding income tax/wealth tax demands and against the demands enhanced as a result of appeal effect in the dossier report. Although the period of 19 years had elapsed, the remaining three properties had not been sold by the department as yet. Absence of bidders at the time of auction, filing of the writ by the purchaser against the order of the Commissioner, setting aside the sale of land to the department in lieu of tax arrears, are some of the reasons stated for non-finalisation of sale.

The records indicated that the department put the properties to auction for the first time in 1982-83 i.e. 12 to 15 years after attachment. The circumstances under which the department could not take action earlier could not be ascertained from the incomplete records furnished to audit.

Gujarat

(v) (a) In the case of an ex-ruler, demand of Rs. 241.83 lakhs (income-tax Rs. 110.90 lakhs, wealth-tax Rs. 130.50 lakhs and gift-tax Rs. 0.43 lakhs) was pending recovery as on 31 March 1986. The demands pertained to assessment years 1972-73 to 1983-84. Similarly, in the case of an 'estate' of which the assessee mentioned above was the executor, a demand of Rs. 44.16 lakhs was outstanding, pertaining to assessment year 1976-77 to 1985-86 over and above the estate duty of Rs. 48.62 lakhs, recoverable from the said estate. The Tax Recovery Officer had issued notice of warrant of attachment in respect of movable and immovable properties in these cases on 7 August 1978 (value of immovable not ascertainable from records, movables value Rs. 79.13 lakhs in the case of individual and Rs. 24.73 lakhs in the case of the estate). However, the party brought an injunction from the court at Bombay against the recovery proceedings. The assessee had also filed appeals before the Commissioner of Income-tax (Appeals) in April 1980 in respect of some of the assessments (Demand involved Rs. 89.49 lakhs). Though the Commissioner of Income-tax (Appeals) was requested to take up the case on priority basis, the cases were not heard. With a view to expedite the recovery of the outstanding demand, the Commissioner of Income-tax, entered into an agreement of 16 October 1980 with the assessee on a plain paper, in the presence of the assessee's lawyer. The terms agreed to were:

(1) the assessee would withdraw the case filed in the Court at Bombay and thus cause the injunction obtained on 4 August 1978, to be vacated;

(2) the Tax Recovery Officer would release the attachment on the bank accounts of the individual and the estate. He would also remove the attachment on other movable, like ornaments, jewellery, arms, ammunitions etc.;

(3) the assessee would sell the jewellery attached and utilise the proceeds for development of land (10 lakhs square feet forming part of a bungalow);

(4) the Recovery Officer will proceed for the sale of land in accordance with the provisions of the Act and apply 60 per cent of the proceeds towards the dues and release 40 per cent of the proceeds towards payment of wealth-tax, capital gains tax, etc.;

(5) the land would be divided into plots within two months of release of attachment of jewellery;

(6) likewise, the assessee would develop further lands for sale by auction till the recovery in full is effected.

According to the terms of agreement mentioned above the assessee withdrew the suit (December 1980) and the Tax Recovery Officer withdrew the attachments. The assessee proceeded to plot the land and offered it for sale (March 1983). The auction, however, could not be held since the assessee brought an injunction from the Civil Court, Jamnagar. On an appeal by the department the Gujarat High Court directed the District Court to finalise the case early. The Civil Court allowed the Tax Recovery Officer to proceed with the auction. Since the lands fell within the Land Ceiling Act, the Concerned municipal authorities did not approve of the plan since the said land was reserved for public purposes (January 1985). The Commissioner of Income-tax's request to the State Government to vacate the reservation did not succeed (January 1986). The assessee was asked to offer some of land for sale and realisation in satisfaction of the dues. While the assessee did not agree to it, he challenged the validity of the agreement entered into with him by the Commissioner of Income-tax in the High Court of Gujarat and obtained a stay the proceedings on the ground that the Commissioner of Income-tax was not competent to enter into an agreement in the manner he did, since the agreement was not made in the name of the President of India. The Commissioner of Income-tax then directed the Tax Recovery Officer in October 1986, to attach the jewellery and ornaments (value Rs. 102.85 lakhs as on 31 March 1983 in the case of individual and Rs. 120.84 lakhs in the case of estate as on 31 March 1984). This has not become possible since the defaulter had failed to disclose the location of the property (October 1986). In pursuance of the Civil Court's order of March 1984 to proceed with the auctioning of the property, the department after consultation with the departmental solicitor finally decided in September 1987 to go ahead with the auctioning of land up to March 1988. The sale proceeds realised on auctioning of land upto March, 1988 was Rs. 155.34 lakhs. After meeting the expenditure on auctioning Rs. 84 lakhs being 60 per cent of the proceeds out of the confirmed sales of Rs. 140.66 lakhs had been credited to Government towards tax arrears, the balance 40 per cent having been deposited in the Civil Court.

(b) In the case of a Hindu undivided family, a demand of Rs. 25.78 lakhs relating to the assessment years 1957-58 to 1978-79 raised during the

years 1964-65 to 1982-83 was outstanding as on 31 December 1987. The assessee claimed that partition had taken place in October 1954 in the family and, therefore, the case should be discontinued from assessment year 1955-56. The department, on the other hand, did not accept the claim as there was no partition by metes and bounds. the department's contention was upheld by all the appellate authorities upto Supreme Court. Thus, the assessments become final. In the meanwhile disputes and differences of opinion arose amongst the coparceners which culminated in filling of civil suit and appointment of Court Receiver in November 1972.

The assessee family owned five properties (value not available on record). After obtaining legal advice from the solicitor in April 1970, these properties were attached. During the pendency of the civil suit the rent collected from the tenants totalling to Rs. 44,832 by the Receiver and deposited in the City Civil Court had also been attached by the department by issue of notice. The court had been requested to remit this amount to the Income-tax department and the matter was being pursued through the Government Pleader. Further, the Tax Recovery Officer collected rent of Rs. 0.23 lakhs during February-March 1983, by attaching the rent payable by 45 tenants in occupation of one of the properties. However, recovery of rents has not been continued.

The income-tax assessments for assessment years 1979-80 onwards were not made. The wealth-tax assessments for 1967-68 onwards had also not been made. In February 1985. The Government Pleader was asked to move the Court in the matter towards the disposal of the properties attached. There is no further progress (November 1988).

Andhra Pradesh

(vi) A recovery certificate was issued by Inspecting Assistant Commissioner (Assessment-I) on 6 November 1985 for Rs. 34,28,856 due from an assessee. Income-tax Certificate Proceedings notice was issued on 12 November 1985 to the assessee who acknowledged the receipt of the certificate. Prohibitory order in (ITCP 3) was issued on his Bankers but this did not yield any result as there was no credit balance with them. Land and factory buildings of the assessee were attached vide Income-tax Certificate Proceedings dated 4 December 1985, but they have not actually been attached so far (April, 1988). Though monthly instalment facility had been extended to the assessee, the defaulter had failed to avail of the same. The reserve price for property attached was also not got fixed so far. No further coercive steps were taken.

Orissa

(vii) Arrears of tax amounting to Rs. 24.19 lakhs relating to assessment years 1961-62 to 1968-69, 1970-71 and 1971-72 were outstanding against an assessee company as on 31 March 1988. The company went into liquidation in May 1975. After protracted correspondence the official liquidator

intimated the department that there was no hope of recovery of arrear demand before 31 March 1987. The department had initiated action against the directors of the company in February 1987 to recover the tax arrears. The Directors replied in March 1987 that since the company was under liquidation and was not finally wound up and dissolved and since recovery proceedings were still pending against the company, application against directors of the company was premature and unwarranted. No further action has been taken by the department.

2.01.19 The paragraph was referred to the Ministry of Finance for comments in September 1988; the reply from the Government has not so far been received. (November 1988).

APPENDIX—II

(*Vide* Para 1 of the Report)

PARA 1.07 OF THE REPORT (NO. 6 OF 1990) OF THE C & AG OF INDIA FOR THE YEAR ENDED 31 MARCH, 1989

Arrears of Tax Demands

1. The Income-tax Act, 1961, provides that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, a notice of demand shall be served upon the assessee. The amount specified as payable in the notice of demand has to be paid within 35 days unless the time for payment is extended by the Income-tax Officer on application made by the assessee. The Act has been amended with effect from 1 October 1975 to provide that an appeal against an assessment order would be barred unless the admitted portion of the tax has been paid before filing the appeal.

(i) Corporation-tax (including sur tax) and Income-tax

(a) *The total demand of tax raised and remaining uncollected as on 31 March 1989 was Rs. 5,291.66 crores, out of which arrears of Rs. 3,148.51 crores related to companies. The arrears included Rs. 1,630.02 crores in respect of which the permissible period of 35 days had not expired as on 31 March 1989. Rs. 12.63 crores claimed to have been paid but remaining to be verified/adjusted, Rs. 1,159.55 crores stayed/kept in abeyance and Rs. 77.98 crores for which instalments had been granted and instalments not fallen due.

(b) **The details of demands of Income-tax (including corporation-tax) stayed/kept in abeyance as on 31 March 1989 were as under:—

	(In crores of rupees)
(1) By courts	93.65
(2) Under Section 245(F) (2) (Applications to Settlement Commission)	98.34
(3) By Tribunal	37.02
(4) By Income-tax authorities due to	
(i) Appeals and revisions	700.77
(ii) Double Income-tax Claims	4.22
(iii) Restriction on remittances Section 220(7)	12.95
(iv) Other reasons	212.60
Total	1,159.55

* Figures furnished by the Ministry of Finance are provisional.

** Figures are under reconciliation by the Ministry of Finance.

(c) *The amounts of Corporation-tax, Income-tax, interest and penalty making up the gross arrears and the year-wise details thereof are given below:—

(In crores of Rupees)

	Corporation tax	Income-tax	Interest	Penalty	Total**
Arrears of 1984-85 and earlier years	109.28	209.06	170.79	65.57	554.70
1985-86	59.38	88.94	84.42	19.49	252.23
1986-87	147.77	129.91	177.52	38.94	494.14
1987-88	443.55	223.89	372.00	83.91	1123.35
1988-89	1396.17	511.51	749.24	169.24	2826.16
Total	2156.15	1163.31	1553.97	377.15	5250.58

Figures furnished by the Ministry of Finance are provisional.
Information from CIT Allahabad is awaited as stated by the Ministry of Finance.

(d) *The following table gives the break-up of the gross arrears of Rs.5,291.00 crores by certain slabs of in-come:

(In crores of rupees)

	Company cases			Non-company cases			Total		
	No. of cases	Gross arrears	Net arrears	No. of cases	Gross arrears	Net arrears	No. of cases	Gross arrears	Net arrears
Upto Rs. 1 lakh in each case	76,675	351.71	142.94	36,66,045	835.35	485.12	37,42,710	1187.06	628.06
Over Rs. 1 lakh upto Rs 5 lakhs in each case	5,657	118.66	67.49	14,090	260.34	156.21	19,747	379.00	223.70
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case	1,764	136.25	61.95	1,988	135.29	76.34	3,752	271.54	138.29
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case	1,361	247.94	109.19	1,396	193.88	101.31	2,757	441.82	210.50
Over Rs. 25 lakhs in each case	1,389	2,288.45	474.09	867	723.79	291.07	2,256	3012.24	765.16
Total	86,846	3,143.01	855.66	36,84,386	2148.65	1110.05	37,71,232	5291.66	1965.71

* Figures are under reconcilaition by the Ministry of Finance.

(e) Classification of tax in arrears (Gross)

Amount (Rs. in crores)

		Arrears	Current	Total
1.	(a) Amount due from companies in liquidation:			
	(i) Pending consideration of write-off/scaling down petitions	3.91	—	3.91
	(ii) Others	7.52	3.10	10.62
	(iii) Total	11.43	3.10	14.53
	(b) Amounts due from non-company assessees involved in solvency proceedings:			
	(i) Pending consideration of scaling down petitions/write off	10.62	—	10.62
	(ii) Others	1.87	5.91	7.78
	(iii) Total	12.49	5.91	18.40
	(c) Total of (a) (iii) and (b) (iii)	23.92	9.01	32.93
2.	(a) Amounts due from assessees who have left India and who have no known assets.	0.11	—	0.11
	(b) Amounts due from assessees who are not traceable and or who have no known assets.			
	(i) Pending consideration of write-off/scaling down petitions.	0.61	—	0.61
	(ii) Others	4.16	0.76	4.92
	(iii) Total.	4.77	0.76	5.53
	(c) Total of (a) and (b) (iii)	4.88	0.76	5.64
3.	Amounts due from undertakings which have been nationalised or taken over by the Govt., where the erstwhile owners do not have enough assets to pay the tax.			
	(i) Pending consideration of scaling down petition/write off.	—	—	—
	(ii) Others	0.82	—	0.82
	(iii) Total	0.82	—	0.82
4.	All other amounts in arrears			
	(i) Pending consideration of scaling down petition/write off.	1.24	139.83	141.07
	(ii) Which are not being realised for various reasons of genuine hardships	329.45	379.73	709.18
	(iii) Balance being realisable amount	2093.02	2308.85	4401.87
	(iv) Total	2423.71	2828.41	5252.12
	(v) Total of 1(c), 2(c), 2(iii) and 4(iv).	2453.33	2838.18	5291.51

* Figures furnished by the Ministry of Finance are provisional.

** Figures are under reconciliation by the Ministry of Finance.

(ii) *The amounts of Interest tax in arrears and the year-wise break-up thereof are given below:—

	No. of cases	Amount (in crores of rupees)
Arrears of 1984-85 and earlier years	—	—
1985-86	—	—
1986-87	—	—
1987-88	21	1.10
1988-89	36	5.79
Total	57	6.89

(iii) *Other Direct Taxes (Wealth-tax, Gift-tax and Estate duty)

The following table gives the year-wise arrears of demands outstanding and the number of cases relating thereto under the three other Direct-taxes, i.e. Wealth-tax, Gift-tax and Estate duty as on 31 March 1989.

(Amount in lakhs of Rs.)

	Wealth-tax		Gift-tax		Estate-duty	
	Number	Amount	Number	Amount	Number	Amount
1984-85 and earlier years	127503	9552.54	25684	650.98	13614	2694.70
1985-86	44995	3572.10	7429	206.20	3738	1077.06
1986-87	55952	4740.75	10389	318.83	3144	1024.79
1987-88	91142	7088.20	14412	392.88	4636	1068.72
1988-89	129839	15645.26	23514	877.62	2698	1445.77
Total	449431	40598.85	81428	2446.51	27830	7311.04

2. Under the provisions of the Income-tax Act, 1961 every demand of tax, interest, penalty or fine payable under the Act should be paid within thirty five days of the service of notice of demand. On the default of an assessee in this respect, the Income-tax officer may forward a certificate specifying the demand in arrears to the Tax Recovery Officer for recovery of the demand. The Tax Recovery Officer will serve a notice on the defaulter requiring him to pay the demand withing fifteen days. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion the Tax Recovery Officer shall proceed to realise the amount together with-interest at the rate of 12 per cent (15 per cent from 1 October 1984) on the outstandings till the date of recovery by one or more of the following modes:

(a) by attachment and sale of the defaulter's movable property;

(b) by attachment and sale of the defaulter's immovable property;

* Figures furnished by the Ministry of Finance are provisional.

(c) by arrest of the defaulter and his detention in prison;

(d) by appointing a receiver for the management of the defaulter's movable and immovable properties.

(i)* The number of officers engaged in tax recovery work during 1988-89 was as follows:—

Particulars	Sanctioned strength	Working strength
Commissioners (Recovery)	4	3
Tax Recovery Officers	151	137

(ii) The tax demands certified to the Tax Recovery Officers and the progress of recovery to end of 1988-89 are given in the following table:—

(In crores of rupees)

	Demand Certified		Total	Demand received during the year	Balance at the end of the year
	At the begining of the year	During the year			
1984-85	1,248.73	359.00	1,607.73	534.36	1,073.37
1985-86	1,073.37	305.54	1,378.91	403.80	975.11
1986-87	975.11	206.94	1,181.05	399.26	782.79
1987-88	826.77	436.52	1,263.29	359.89	903.40
1988-89*	720.99	473.56	1,194.55	305.85	888.70
Total	4,844.97	1,781.56	*6,626.83	2,003.16	4,623.37

(iii) Year-wise break-up of pending certificates and amount of demand:—

(Rs. in crores)

Year of receipts of recovery certificates	No. of certificates	Amount involved
1984-85	11,48,172	291.34
1985-86	1,03,599	56.41
1986-87	64,014	75.47
1987-88	63,300	140.51
1988-89	1,87,617	324.97
Total	15,66,702	888.70

* Figures furnished by the Ministry of Finance are provisional.

(iv)* Tax-wise and amount-wise analysis of pending certificates:—

(In crores of rupees)

Range of demand	Corporation-tax		Income-tax		Wealth-tax	
	No.	Amount	No.	Amount	No.	Amount
(i) upto Rs. 10000	14,289	3.48	11,93,161	207.98	1,52,154	38.80
(ii) Over Rs. 10000 and below Rs. 1 lakh	9,893	18.97	1,23,893	133.31	19,278	26.60
(iii) Over Rs. 1 lakh	1,729	41.00	17,888	369.39	829	35.38
Total	25,911	63.45	13,34,942	710.68	1,72,261	100.78

Range of demand	Gift-tax		Estate-duty		Interest-tax		Total-	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
(i) Upto Rs 10000	29,738	7.39	423	—	361	0.45	13,90,126	258.10
(ii) Over Rs 10000 & below Rs. 1 lakh	2,788	3.95	—	—	158	0.17	1,56,010	183.00
(iii) Over Rs. 1 lakh	118	1.82	—	—	2	0.01	20,566	447.60
Total	32644	13.16	423	—	521	0.63	15,66,702	888.70

(v)* Year-wise disposal and pendency:

Year	No. of cases at the beginning of the year		No. added during the year		Total		No. actually disposed		No. pending at the close of the year	
	Movable	Immovable	Movable	Immovable	Movable	Immovable	Movable	Immovable	Movable	Immovable
1984-85 and earlier years	3,970	3,251	842	1,509	4,812	4,760	2,124	1,576	2,688	3,184
1985-86	2,688	3,184	1,326	649	4,014	3,833	1,867	659	2,147	3,174
1986-87	2,147	3,174	1,855	693	4,002	3,867	1,216	286	2,786	3,581
1987-88	2,858	3,570	1,063	554	3,921	4,124	724	181	3,197	3,943
1988-89	2,584	3,664	871	1,320	3,455	4,984	528	281	2,927	4,703
Total	14,247	16,843	5,957	4,725	20,204	21,568	6,459	2,983	13,745	18,585

* Figures furnished by the Ministry of Finance are provisional.

3.* Disposal of attached property—Year-wise details of attached properties awaiting disposal at the end of 1988-89 as furnished by the Ministry of Finance were as under:—

(In Crores of Ruppes)

Year of attachment	Number of cases				Total		Appointment of Receivers for management of properties	
	Movable		Immovable					
	No.	Amount	No.	Amount	No.	Amount		
1984-85	763	2.14	1,316	30.36	2,079	32.50	—	—
1985-86	307	2.62	463	35.10	770	37.72	1	0.12
1986-87	442	2.37	654	23.38	1,096	25.75	—	—
1987-88	212	3.78	818	27.14	1,030	30.92	—	—
1988-89	1,203	23.15	1,452	55.87	2,655	79.02	—	—
Total	2,927	34.06	4,703	171.85	7,630	205.91	1	0.12

* Figures furnished by the Ministry of Finance are provisional.

APPENDIX III

(*vide* para 23 of the Report)

CENTRAL BOARD OF DIRECT TAXES

Instruction No. 1786

Action regarding arrear demand

The DI (Recovery), Delhi, carried out a sample study in six Commissioners charges at Delhi to find out whether proper and adequate attention is being paid to the collection of arrear demands. This study has revealed that this important aspect of work is being neglected by the assessing officers. The supervisory officers have also been found not to have taken requisite interest in this matter.

Some of the reasons for pendency of arrear demands noticed during the course of sample study are:

1. In many cases, there is no certification of the arrear demand brought forward in the arrear register.
2. Reconciliation of demand has not been done. No reconciliation statements have been found in any of the records maintained in the assessing officers offices.
3. In a number of cases, no action has been taken on rectification petitions filed by the assessees.
4. In some cases stay petitions filed by the assessees have not been attended to by the officers.
5. Even in cases where show cause notices have been issued, they have not been followed up for any further action. The files do not indicate whether, on the dates fixed for hearing of the show cause notices, there was any appearance by the assessees or his representative.
6. In quite a few cases, appeal effects have not been given promptly where appeals have resulted in large reduction of demand. In some cases, only part effect has been found to have been given to the appeal order.
7. In a large number of cases, no effort has been made for collection of the demand even after it has fallen due.
8. Adjustment on account of cash seized during search operations, even where requests have been made by the taxpayers have not been carried out because of lack of communication between different officers.

3. It is clarified that in the situations mentioned in para 2 above, the assessee will be treated as not in default only in respect of the amout attributable to such disputed points. Further, where it is subsequently found that the assessee has not cooperated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the situation referred to in para 2 above, the Assessing Officer will no longer be bound by these instructions and will exercise his discretion independently.

4. In respect of other cases, not covered by para 2 above, the Assessing Officer will take into account all the relevant factors and communicate his decision to the assessee in the form of a speaking order. While exercising discretion under this provision, the financial capacity of the assessee to pay the demand will not be relevant.

5. The Chief Commissioners and Directors General of Income-tax may please bring these guidelines to the notice of all officers in their regions. The guidelines will apply, *mutatis mutandis*, to the demands created under other Direct Tax Laws also.

Sd/-
(V.K. MANGOTRA)
Secretary, Central Board of Direct Taxes

Copy to:

1. All Chief Commissioners and Directors General of Income-tax.
2. All Commissioners and Directors of Income-tax (Inv.)
3. All Officers and Technical Sections of the CBDT.
4. Directors of Income-tax-IT/Audit/Systems/Vigilance/DOMS/ RSP&PR/Recovery/Special Inv.
5. Deputy Director of Inspection (P&PR) New Delhi.
6. Assistant Director of Inspection (Bulletin) New Delhi.
7. Competent Authority (SAFEMFOPA) Madras/Delhi/Bombay/ Culcatta/Ahmedabad.
8. Joint Secretary (Legal Adviser), Ministry of Law & Justice, New Delhi.
9. All Chambers of Commerce/Trade Associations.
10. Comptroller & Auditor General (50 copies).

Sd/-
(K. PADAMANABHACHAR)
OSD, Central Board of Direct Taxes.

APPENDIX V

(*vide* para 47 of the Report)

INSTRUCTION NO. 1819

F.No. 279/113/88-ITD
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 15th May, 1989

To

All Chief Commissioners of Income-tax/
All Director Generals of Income-tax/
All Commissioners of Income-tax/
All Commissioners of Income-tax (Appeals).

Sir,

Sub: *Disposal of appeals by Commissioners of Income-tax (Appeals)—Refixation of monthly quota with effect from 1.4.1989.*

The quota for disposal of appeals by Commissioners (Appeals) as fixed *vide* Board's Instruction No. 1689 dated 6th February, 1986 is 90 appeals per month with a system of weightage. The disposal of one appeal in Central Circles or in search and seizure cases was taken as equivalent to three appeals and disposal of one Company appeal was taken as equivalent to one and a half appeals.

The quota for disposal of appeals by Commissioner of Income-tax (Appeals) has now been reviewed by the Board. Keeping in view that there may now be a number of appeals by the assessees against the orders passed u/s 154 of the Act on adjustment made u/s 143(1), it has been decided that the existing quota of 90 appeals per month will continue. The quota for disposal of appeals in Central Circles would, however, be 60 appeals only in view of the complex nature of such appeals.

The system of weightage has also been reviewed. Existing system of weightage is withdrawn. With effect from 1.4.1989, a weightage of three units would be allowed in respect of appeals involving disputed demand of Rs. 2 lakhs and above. This weightage would be applicable to appeals (including Central Circle appeals) relating to assessments and penalties for concealment only. This weigthage will not apply in respect of appeals

against other miscellaneous order such as order u/s 154, adjustment made to income/loss u/s 143(1) penalties u/s 271(1) (a) etc. No weightage would be given in respect of appeals setting aside the orders. The Board desire that an order should be set aside only when it is absolutely necessary and not in a routine way.

These instructions would be applicable w.e.f. 1.4.89.

Yours faithfully,
Sd/- (S.K. ABROL)
Officer on Special Duty(J)
Central Board of Direct Taxes

APPENDIX VI

(*vide* para 47 of the Report)

INSTRUCTION NO. 1835

F.No. 279/113/88-ITO
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Central Board of Direct Taxes

New Delhi, the 18th Jan. 1990

To,

All Chief Commissioners of Income-tax/
All Director Generals of Income-tax/
All Commissioners of Income-tax/
All Commissioners of Income-tax (Appeals).

Sir,

Sub: Disposal of appeals by Commissioners of Income-tax (Appeals)—Revision of weightage in respect of cases involving demand between Rs. 1 lakh to 2 lakhs w.e.f. 1.1.1990.

The Board *vide* Instruction No. 1819 dated 15th May, 1989 prescribed a system of weightage in respect of High demand appeals. A weightage of 3 units was prescribed in respect of appeals involving disputed demand of Rs. 2 lakhs and above.

The question of giving weightage for disposal of High demand appeals involving disputed demand between Rs. 1 lakh and 2 lakhs has been considered by the Board and it has been decided that a weightage 1½ units shall be given in respect of appeals involving demand between Rs. 1 lakh to 2 lakhs. This weightage shall be available in respect of appeals decided after 1.1.1990 only and not have retrospective effect.

These instructions are being issued in partial modification of Instruction No. 1819 dated 15th May, 1989. There is no change in respect of other norms laid in Instruction No. 1819 dated 15th May, 1989.

Yours faithfully,

Sd/-
(AJAY MANKOTIA)
Officer on Special Duty(Judl)
Central Board of Direct Taxes

APPENDIX VII

(Para 53 of the Report)

STATEMENT SHOWING DISPOSAL OF ATTACHED PROPERTIES YEAR-WISE DISPOSALS AND PENDENCY

Year	No. of cases at the beginning of the year		No. added during the year		Total		No. actually disposed		No. pendency at the close of the year	
	Moveable	Immov-able	Moveable	Immov-able	Moveable	Immove-able	Moveable	Immove-able	Moveable	Immove-able
1984-85	3813	3069	492	336	4305	3405	1715	423	2590	2982
1985-86	2590	2982	1222	636	3812	3618	1777	584	2035	3034
1986-87	2035	3034	1837	644	3872	3678	1070	245	2794	3433
1987-88	2794	3433	977	577	3771	4010	731	154	3040	3056
1988-89	3040	3856	975	1362	4015	5218	989	323	3026	4895

II. YEAR-WISE DETAILS OF ATTACHED PROPERTIES AWAITING DISPOSAL AT THE CLOSE OF THE YEAR 1988-89

Year in which attached	No. of cases					(Rs. Crores)		
	Moveable		Immoveable		Total		Appointment of receivers of Management of properties.	
	No.	Amt	No.	Amt.	No.	Amt.		
1984-85	763	2.14	1328	31.18	2091	33.32		
1985-86	311	2.65	482	36.07	793	38.71	1	0.12
1986-87	442	2.37	675	24.26	1117	26.63		
1987-88	221	3.87	854	28.54	1075	32.41		
1988-89	1289	23.98	1556	57.09	2845	81.07		
TOTAL	3026	35.01	4895	177.10	7921	212.11	1	0.12

APPENDIX VIII

Statement of Conclusions/Recommendations

Sl. No.	*Para No.*	*Ministry/ Deptt.*	*Conclusion/Recommendations*
1	2	3	4
1	70	Revenue	The mounting arrears of tax demands have repeatedly invited adverse comments against the Income-tax Department from various quarters, including the Parliament, Press, Audit, various Committees and Commissions etc. set up from time to time by the Government on matters pertaining to direct taxes. A number of recommendations made in the past by the Wanchoo Committee, the Chokshi Committee and the Economic Administration Reforms Commission as also the Public Accounts Committee led to issuance of a plethora of instructions by the CBDT and also frequent amendments to provisions of the Income-tax Act. However, these have not produced any tangible results. The total arrears of demands (i.e. current + arrears) at the beginning of the year 1990-91 i.e. as on 1.4.1990 were Rs. 6560.71 crores (provisional figures) as against Rs. 2625.81 crores as on 1.4.1986. Arrears at the end of March, 1989 were of the order of Rs. 5291.66 crores involving 37,71,232 cases. The maximum arrear demand was registered by cases involving demand exceeding Rs. 25 lakhs. The total amount involved in these cases (numbering 2256) was Rs. 3012.24 crores which represented about 57% of the total arrears whereas the number of cases involved was only 06% of the total cases.
2	71	-Do-	The Action Plan Targets fixed for recovery of tax demands every year have not been achieved

1	2	3	4

even once as is evident from the following chart:

	Arrears Demand		Current Demand	
	Target	*Achievements*	*Target*	*Achievements*
1985-86	55%	54.09%	85%	76.66%
1986-87	85% of demand raised in 1985-86 and 55% of old arears	58.18% of arrears of 85-86 and 33.47% of old arrears	85%	70.49%
1987-88	60%	48.58%	85%	70.49
1988-89	Demand carried forward on 1.4.1989 should be 10% less than the demand brought forward on 1.4.1988.		Demand carried forward on 1.4.1989 was 29.29% more than the demand brought forward on on 1.4.1988.	
1989-90	60%	50.72%	85%	68.81%

3 72 Revenue

The plea put forth by the Ministry is that the targets are kept slightly higher in order to have an element of challenge for the tax recovery machinery. The Committee, however, take serious note of the following findings made by the Director of Income tax (Recovery) Delhi during a sample study of some of the Commissioner's charges, conducted in 1987 which reflect the state of affairs in the Income tax Charges:

"The most shocking aspect that has emerged from this study relates to apathy of higher functionaries in the matter of collection of outstanding demand. In the charges that have been inspected, it has been found that there has been practically no involvement of the IACs or the Commissioners of Income tax and almost no action has been taken from their side to ensure that outstanding demand is expeditiously collected. Even stay petitions filed before them have not been disposed of for long periods."

Obviously, the study, apart from pinpointing the neglect of duty on the part of assessing officers and the supervisory staff of the Department, highlighted a number of disquieting reasons for pendency of arrear demands.

1	2	3	4
4	73	Revenue	From this, the Committee are led to the inevitable conclusion that the targets remained unachieved not because these were kept higher but primarily because the supervisory officers have not taken requisite interest in this work besides other administrative deficiencies. The Committee desire that the studies of the kind made by the Director of Income-Tax (Recovery) should be conducted periodically in various charges and action taken against the persons for deriliction of duty besides taking remedial measures to improve the efficiency.
5	74	-Do-	The Committee are surprised to find that a sizable portion of the demand remained in arrears merely because of non-verification or non-adjustment of the payments claimed to have been made by the assessees. As on 1.4.1990, demand amounting to Rs. 100.89 crores was outstanding on that account. The Committee are of the view that the procedure for verification/adjustment of claims should be simplified so that such claims do not unnecessarily inflate the already large outstandings. Prompt adjustments will also remove an avoidable irritant often complained of by the assessees. The Committee desire that the field formations of the Department should be suitably alerted in this regard.
6	75	-Do-	Another reason that contributed to the pendency of tax demand is the stay granted by the Courts, Settlement Commission, Income tax Tribunals and the Income tax Authorities. As on 1.4.1990, the demand stayed involved Rs. 1607.24 crores. While the Committee expect the Department of Revenue to have close liaison with the Courts, Settlement Commission and Tribunal to ensure expeditious disposal of the stay petitions, they view with concern the heavy amount involved in the stays granted by their own departmental officers. The stays granted by the Income tax authorities as per the Ministry's own information accounted for arrears to the

1	2	3	4
			tune of Rs. 1352.31 crores as on 1.4.1990. The Committee, therefore, recommend that a study be conducted to go into the reasons for the pendency with Income tax authorities and they be apprised of the findings of such a study alongwith action taken thereon by the Department within a period of six months.
7	76	Revenue	The position regarding clearance, both quantitatively and in terms of amounts involved, of dossier cases is equally bad. The percentage-wise clearance of cases during the years 1985-86 to 1989-90 ranged between 23.19% to 32.6% while the recovery of arrears was between 51% to 56% (arrear demand) and between 14% to 26.21% (current demand). The Committee note that monitoring of these high demand cases is done at sufficiently high levels and Director General of Income-tax (Recovery) also monitors the compliance of instructions issued by the Board from time to time. But unfortunately, with this seemingly well organised system there is no marked improvement in the situation. The Committee desire that a review Committee consisting of members of the Central Board of Direct Taxes may be set up to go into the pendency of the dossier cases and to suggest ways and means of early recovery of demands involved therein. The action taken in this behalf may be reported to them at the earliest.
8	77	Revenue	The Income tax Department being one of the revenue raising departments of the Government, recovery and collection of tax is its prime function. A very efficient tax recovery machinery is, therefore, needed to back it. Unfortunately, the Department is lacking the same. The Tax Recovery Wing has been functioning with depleted strength and most of the existing staff is stated to be not sufficiently experienced in the recovery work. The disposal of tax recovery certificates by TROs has been much below the norms fixed therefor during the years 1985-89.

1	2	3	4
			The actual strength of TROs during the years 1985-86 to 1988-89 has been between 187 and 202 against the sanctioned strength of 223. During evidence Revenue Secretary conceded that though high level posts had been created, subordinate staff had not been provided on account of economic reasons. The Committee cannot but express their concern over the apathetic attitude of the Ministry towards such a vital area as the tax recovery and recommend that urgent steps be taken to assess the staff requirements of the Wing and provide adequate staff so that the recovery work does not suffer on that account. The Committee also suggest that the Central Board of Direct Taxes undertake a detailed exercise of the overall manpower requirements applying the yardstick of marginal cost to marginal revenue and apprise them of the findings alongwith follow up action. Suitable arrangements should also be made to impart training to the personnel deployed in the field of tax recovery with a view to optimise their level of efficiency.
9	78	Revenue	The Committee are distress to find that out of 22.25 lakhs tax recovery certificates involving an amount of Rs. 1508.41 crores, the disposal during the year 1988-89 was nearly 2.56 lakhs certificates involving demand of Rs. 398.13 crores. The figures of certificates which were locked in appeals, was 39,650 involving an amount of Rs. 305 crores. During evidence, the Revenue Secretary while conceding that the disposal of tax recovery certificates had been going down, apprised the Committee of the decision taken by the Ministry to have an in-depth study made of the working of the Tax Recovery Officers by the Director General (O & Ms). The Committee hope that the indepth study might have, by now, been completed. They would like to be informed of the outcome of the study and the action taken thereon.

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10	79	Revenue	One of the reasons advanced for pendency of tax recovery certificates is that most of the pending cases related to habitual tax defaulters where recovery was very difficult. According to the Committee this only demonstrates the weakness of the Department. The Income-tax Act, 1961 has conferred adequate powers in the hands of the Department, including some stringent and deterrent measures to discipline the tax defaulters. The Committee desire that appropriate measures may be resorted to wherever required.
11	80	-do-	With effect from 1.4.1989, certain amendments have been incorporated in the provisions of Income-tax Act, 1961 relating to tax recovery procedures and these are in operation now for over two years. The Committee would like to be apprised of the impact of these provisions on the tax recovery work.
12	81	-do-	The Committee note that the main reason for the sharp increase in arrears during the last few years is the increase in unrealised current demand most of which is disputed in appeals. The Ministry of Finance have stated that the information regarding the number of cases which are in tax arrears for the last five years and the number out of them pending in High Courts/Supreme Court or with the Income-tax authorities are not available with them. The pendency with the first appellate authorities was 2.97 lakhs as on 1.4.1986, 2.14 lakhs as on 1.4.89 and 2.74 lakhs on 1.4.1990. The Committee find that the declining trend of pendency of appeals witnessed in the years 1985-86 to 1988-89 was reversed in the year 1989-90. The pendency with the High Courts and Supreme Court was 50,544. No figures have been furnished about the pendency with the Appellate Tribunals, the magnitude of which cannot be anything small.
13	82	-do-	The Committee consider that the reasons advanced for the increase in arrears are all

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			normal incidents and could well have been foreseen and a viable strategy planned to meet the challenges. The Committee recommend that the Ministry may augment the strength of the first appellate authorities and also take steps to set up additional benches of the Appellate Tribunal to cope with the increasing workload.
14	83	Revenue	The Committee observe that despite the assurances held out to the Committee by the Ministry from time to time and the several administrative and legal measures taken by the Board to tackle the problem of mounting arrears under a time-bound programme including making requests to the President/Vice President of the Income-Tax Appellate Tribunal for out of turn disposals of appeals involving large amounts, there is no let up in the overall pendency. Instead, the pendency with the first appellate authorities as on 1.4.1990 had gone up by 22 per cent while the average clearance during 1988-89 was 10 per cent. Reacting to a time limit for disposal of appeals, the Ministry of Finance (Department of Revenue) have advanced the same arguments advanced while replying to the Committees' recommendations for a time-limit in their 217th Report (Seventh Lok Sabha) (1985-86), of consequences of non-disposal of appeals, which would be viewed as avoidable irritant. The Ministry of Finance further stated that they are not aware of any law where such a time limit is prescribed for disposal of appeals by appellate authorities. The Committee are not convinced in respect of the misgivings expressed by the Ministry about non-disposal of appeals within the time limit resulting in either hardship of tax payers or frivolous appeals, as these could be safeguarded by systematic planning and strict implementation. Considering the fact that the law provides for a time limit for completion of assessments which at one time was four years and which was later smoothly brought down to two years, the Committee do not consider that the prescription of a

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			definite time limit for disposal of appeals would lead to any operational or practical problems. The Committee are, therefore, constrained to reiterate their earlier recommendation that a time limit may be incorporated in the law for disposal of appeals upto the Appellate Tribunal, if necessary in consultation with the Ministry of Law.
15	84	Revenue	Under Section 249(4), of the Income-tax Act, 1961, the tax payer has to pay the tax due on the income returned by him before an appeal is admitted. The Ministry of Finance (Department of Revenue) have admitted that under the section the assessee is not obliged to pay the entire undisputed demand before the appeal is admitted and he is required to pay the tax due on the income returned by him or the amount equal to advance tax where no return has been filed. During evidence, to a suggestion that the law be made clear to provide for payment of that part of that undisputed demand remaining unpaid, the Chairman agreed to consider the suggestion for amendment. The Committee consider that this deficiency in law should be plugged by suitable amendment of law and the payment of the full undisputed demand should be made a pre-condition to the admission of appeal so that there is no avoidable accumulation of arrears.
16	85	-do-	Another reason which the Ministry have adduced for the huge pendency of appeals is the diverse decisions pronounced by various High Courts on identical issues. The Committee, however, note that such a situation was sought to be tackled through setting up of a National Court of Direct Taxes with same jurisdiction as enjoyed by the High Courts over direct taxes. The Ministry have stated that with the setting up of this Tribunal the number of pending appeals will reduce. The idea of setting up such a court was conceived as back as in 1986 when the Ministry of Finance (Department

1	2	3	4
			of Revenue) brought out a "Discussion paper on Simplification and Rationalisation of Direct Tax Laws" which was also presented to the House. Though, the idea was worthwhile yet it has not so far received the deserved attention to get a concrete shape. Considering the large number of appeals pending disposal, and the amount of revenue locked up therein, the Committee desire the Ministry of Finance (Deptt. of Revenue) to take adequate measures to finalise the proposal for setting up a National Court of Direct Taxes/National Tribunal of Direct Taxes without any further delay.
17	86	Revenue	One other reason for the large volume of appeals is stated to be the diversity of judicial opinions obtaining on a given point of law. The proliferation of appeals is largely due to the admission of such appeals without apparently any preliminary scrutiny. The Committee feel that there should be a specific stage of preliminary scrutiny of appeal cases before formal admission, where cases involving legal issues that stand settled by the Supreme Court or by the jurisdictional High Court would get weeded out.
18	87	—do—	From the information made available by the Ministry of Finance (Dept. of Revenue) the Committee find that the Ministry have finally agreed in principle to lay down a time limit for disposal of immovable properties attached toward tax recovery and also to take steps, where practicable, to obtain the title deeds in respect of the attached properties to guard against surreptitious sale of such properties by the assessees. These are welcome steps initiated by the Ministry for dealing with tax evaders. The Committee hope that early action would be taken to give them a concrete shape. They may be informed of the outcome within six months.
19	88	—do—	The Committee further note that one of the modes available for recovery of tax is the arrest and detention of the defaulters. The tax evasion is no less an offence than any other under the

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			law of the land and should be dealt with accordingly with the seriousness it calls for. The mode of arrest and detention is a very effective and deterrent instrument in the hands of the Department to instill fear in the minds of the habitual tax evaders and to bring down the arrears of tax. The Committee are of the view that the provision of law relating to the aforesaid modes of tax recovery should be invoked in deserving cases.
20	89	Revenue	The Committee note that 2083 applications were pending with the Settlement Commission for disposal as on 1.4.1990. The reasons for the pendency have been attributed to the lengthy procedure involved in the processing of the Settlement applications at various levals. The Ministry of Finance (Department of Revenue) have however, taken steps by setting up additional benches of the Settlement Commission at Bombay, Calcutta and Madras apart from augmenting the staff strength in the Commission. The Committee trust that these steps would go a long way in reducing the pendency of Settlement cases. The Committee would like to be apprised of the latest position of the pendency.
21	90	Revenue and M/O Law	The Committee note that the Department of Revenue does not enjoy freedom in the matter of appointment of lawyers/counsels to defend their cases in Courts as selection of lawyers from the panel of advocates has to be made by the Department with the concurrence of the Ministry of Law which, it is stated, takes quite a long time to clear the proposals. The suggestions made by the Department of Revenue for delegation of powers to them to appoint lawyers has also not found favour with the Ministry of Law. The Committee desire that keeping in view the past experience of delay in the appointment of lawyers a fresh review be undertaken by both the Ministries of Finance and Law to mutually arrive at a satisfactory arrangement whereby suitable lawyers are available to the

1	2	3	4
			Department of Revenue expeditiously especially in the cases involving high stakes of revenue. The Committee would like to the apprised of the outcome of the review.