

PUBLIC ACCOUNTS COMMITTEE (1974-75)

(FIFTH LOK SABHA)

HUNDRED AND FIFTIETH REPORT

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 51st Report (Fifth Lok Sabha) on Chapter IV of Audit Report (Civil), Revenue Receipts, 1970 and Report of the Comptroller and Auditor General of India for the year 1969-70, Central Government (Civil) Revenue Receipts relating to Income-Tax.]



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CORRIGENDA TO THE HUNDRED AND FIFTIETH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (1974-75) OF THE FIFTH LOK SABHA - PRESENTED ON 28.4.1975.

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**PUBLIC ACCOUNTS COMMITTEE
(1974-75)**

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Shri Jyotirmoy Bosu

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2. **Shri S. C. Besra**
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19. **Shri Mohammed Usman Arif**
20. **Shri T. N. Singh**
21. **Shri Sasankasekhar Sanyal**
22. **Shri A. K. A. Abdul Samad**

SECRETARIAT

Shri N. Sunder Rajan—Senior Financial Committee Officer.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, having been authorised by the Committee, do present on their behalf this Hundred and Fiftieth Report of the Public Accounts Committee on Action Taken by Government on the recommendations contained in 51st Report (Fifth Lok Sabha) on Chapter IV of the Audit Report (Civil) Revenue Receipts 1970 and the Report of the Comptroller and Auditor General of India for the year 1969-70, Central Government (Civil), Revenue Receipts, relating to Income Tax.

2. On the 31st May, 1974 an 'Action Taken Sub-Committee' was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports. The Sub-Committee was constituted with the following Members:—

Shri H. M. Patel—*Convener*

2. Sri Sasankasekhar Sanyal
3. Shri Jagannathrao Joshi
4. Shri S. C. Besra
5. Shri V. B. Raju
6. Shri Mohammed Usman Arif
7. Shri P. Anthony Reddi
8. Shri Narain Chand Parashar
9. Shri T. N. Singh

3. The Action Taken Sub-Committee of the Public Accounts Committee (1974-75) considered and adopted this Report at their sitting held on 9th April, 1975. The report was finally adopted by the Public Accounts Committee on 21st April, 1975.

4. For facility of reference the main conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. A statement showing the summary of the main recommendations/observations of the Committee is appended to the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in this matter by the Comptroller and Auditor General of India.

NEW DELHI;

21st April, 1975.

1st Vaisakha, 1897 (S).

JYOTIRMOY BOSU,

Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. The Report of the Committee deals with the action taken by Government on the recommendations contained in their 51st Report (Fifth Lok Sabha) on Chapter IV of Audit Report (Civil), Revenue Receipts—relating to Income-tax which was presented to the Lok Sabha on the 1st September, 1972.

1.2. Action Taken Notes have been received from Govt. in respect of all the 118 recommendations contained in the Report.

1.3. Action Taken Notes/Statements on the recommendations of the Committee contained in the Report have been categorised under the following heads:—

(i) *Recommendations/Observations that have been accepted by Government.*

Sr. Nos. 5,7—24, 27—29, 32, 34—37, 41—49, 53—54, 56—63, 67, 69, 70, 72, 75, 78, 80—83, 85, 87, 88, 94—107, 109—112 & 116—118.

(ii) *Recommendations/Observations which the Committee do not desire to pursue in the light of the replies received from Government.*

Sr. Nos. 33 and 40.

(iii) *Recommendations/Observations replies to which have not been accepted by the Committee and which require reiteration.*

NIL

(iv) *Recommendations/Observations in respect of which Govt. have furnished interim replies.*

Sr. Nos. 1—4, 6,25—26*, 30, 31, 38, 39, 50—52, 55, 64—66, 68, 71, 73, 74, 76—77, 79, 84, 86, 89—93, 108 and 113—115.

*This recommendation which was also reiterated in the 128th Report (Fifth Lok Sabha) of the Committee has been considered in the 153rd Report (Fifth Lok Sabha) on Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 128th Report (Fifth Lok Sabha).

1.4. The Committee desire that final replies in regard to those recommendations to which only interim replies have so far been furnished, should be submitted to them expeditiously after showing them to Audit.

1.5. The Committee will now deal with the Action Taken by Government on some of the recommendations.

Variation between the budget estimates and actual—need for a sound statistical base. (Sr. No. 1, 3 and 4—Paragraphs 1.23, 1.25 & 1.26).

1.6. Referring to the large variations between the budget estimates and actuals both under Corporate Tax and Income-Tax, the Committee in paragraphs 1.23, 1.25 and 1.26 of the Report observed as under:—

“The need for preparing accurate estimates of taxes on income has been engaging the attention of the Committee from time to time. In paragraph 4 of their very first Report on Revenue Receipts *viz.* Ninth Report (1962-63), the Committee had observed that an overall variation exceeding 3 to 4 per cent should be regarded as a matter of concern requiring special remedial measures. During the years 1965-66 to 1968-69 there was over-estimation in regard to Corporation Taxes to the extent of 18.00 per cent in 1965-66, 11.09 per cent in 1966-67, 11.28 per cent in 1967-68 and 3.42 per cent in 1968-69. In the case of income-tax there was under-estimation to the extent of 4.69 per cent in 1966-67, 12.38 per cent in 1967-68, 18.40 per cent in 1968-69 and 23.78 per cent in 1969-70. In paragraph 2 of their 27th Report (1964-65) the Committee had emphasised that effective steps should be taken to fill up the deficiency in collection of reliable statistics of economic growth so that estimates of revenue are prepared on a realistic basis. The Committee regret, however, that the Ministry of Finance have not been able to make much headway in this direction. They desire that the Ministry should build up a sound statistical base without further delay.”

“It is significant that at present the Central Board of Direct Taxes do not have up-to-date statistics which in the opinion of the Committee are an essential prerequisite for making reasonably accurate forecasts of tax receipts. For instance, the Board do not have latest figures of income-tax collected in respect of various income brackets. The Board do not also maintain separate statistics of taxes realised from individuals, Hindu undivided families, firms,

companies and others and of number of and taxes realised from various companies such as manufacturing concerns, trading companies and investment companies. The Committee desire that the Board should maintain up-to-date statistics pertaining to all the categories in order to assess the impact of taxation measures at the time of preparing the budget estimates."

"The Committee also desire that the Ministry should study the methods adopted for estimation of revenue receipts in U.K. and other countries where the variations between Budget Estimates and actuals is not significant in spite of fluctuations in economic conditions and growth. It is needless to point out that incorrect estimation may result sometimes in avoidable revision/imposition on tax levies."

1.7. In their reply dated the 5th March, 1973 the Ministry of Finance (Department of Revenue and Insurance) have stated:—

"The recommendations of the Committee have been noted for processing."

1.8. When asked to state the present position, the Ministry, in their subsequent note, dated the 13th November, 1973 have stated:—

"A Committee has been informally appointed under the Chairmanship of Dr. N. T. Mathew, Joint Secretary, Department of Statistics with senior officers of the Income-Tax Department as Members, to look into the statistics frame work of the Income-tax Department and to make suitable recommendations for streamlining and systematising it; their report is awaited. Better approximation of the budget estimates will also be covered by the Committee. The Ministry is also obtaining for study the particulars of methodology of budget estimates followed in U.K. and U.S.A., deputation for study to be considered later, if necessary."

1.9. The Committee would like to be apprised of the findings of the above informal Committee. It should be asked to complete its work expeditiously. Action should be taken urgently by Government on its recommendations and findings and the Committee kept informed of progress in this respect.

1.10. The Committee note that the Ministry is also obtaining for study the particulars of methodology of budget estimates followed in the United Kingdom and the United States of America and that the sending of a deputation for study, if necessary, will be considered

later. The stage at which the study is at present should be reported to the Committee. The Committee are of the opinion that the sending of a deputation for such study to the U.K. and U.S.A. is not necessary. The results of the study and the action taken thereon by Government should of course be reported to the Committee without undue delay.

Amalgamation of the Agencies now exist for collecting information and conducting research on tax problems. (Paragraph 1.24—Serial No. 2).

1.11. Commenting on the functions of the three agencies which now exist for collecting information and conducting research on tax problems, the Committee in paragraph 1.24 of the Report, observed as follows:—

“At present, there are three agencies collecting information and conducting research on tax problems viz., (i) Tax Research Unit attached to the Department of Economic Affairs, (ii) Tax Planning Section, functioning under the Central Board of Direct Taxes and (iii) Directorate of Statistics, Research and Publications functioning as an attached office under the Central Board of Direct Taxes. The working group of Administrative Reforms Commission observed that there was no coordination among these three agencies and that these should be amalgamated and brought under the direct control of the senior member of the Board in-charge of Tax Planning and Assessment. Ample time has elapsed for Government to have considered the Administrative Reforms Commission's recommendations in this respect in a comprehensive manner. The Committee feel that on grounds of efficiency and economy this suggestion is of sufficient importance to merit early action. As a first step in this direction the Units under the Central Board of Direct Taxes could be amalgamated forthwith.”

1.12. The Ministry of Finance (Department of Revenue and Insurance) in their reply dated the 5th March, 1973 have stated:—

“The recommendation of the Committee has been noted. The action taken by the Government will be intimated in due course.”

1.13. In their subsequent note, dated the 1st December, 1973, the Ministry have stated:—

“The main function of the Tax Planning and Legislation Section of the Board is to process proposals for amendment of

the direct tax laws and to sponsor necessary legislation in this behalf. The portion in the annual Finance Acts relating to direct taxes is also processed in this Section. All subordinate legislation relating to various direct tax laws is also processed and implemented by this Section.

2. The main functions of the Directorate of Research Statistics and Publication are (a) collection, compilation and publication of statistical data relating to direct taxes, (b) publication and distribution of departmental bulletins, brochures and books, (c) indenting, printing and distribution of forms, (d) guidance and supervision in the matter of recovery of arrears of taxes in cases where the arrear demand exceeds Rs. 1 lakh, and (e) undertaking studies required to be made by the Board on matters relating to tax laws, procedures and administration.
3. It will be observed from the foregoing that the Tax Planning and Legislation Section in the Board and the Directorate of Research, Statistics and Publication operate in entirely different spheres and there is no over-lapping in their respective spheres of functions. Even though the Tax Planning and Legislation Section in the Board and the Directorate of statistics, Research and Publication function separately, proper coordination has been maintained between the two agencies. For instance the statistical data collected and the studies made by the Directorate of Research, Statistics and Publication are utilised by the Tax Planning and Legislation Section of the Board to the extent considered necessary, in processing proposals for changes in the direct tax laws. If the Tax Planning and Legislation Section in the Board requires some statistical information which is not available in the publications issued by the Directorate of Research, Statistics and Publication, the Board may require the Directorate to compile the necessary information. Similarly, the Directorate can also be called upon to undertake studies on specific matters relating to tax laws, procedures and administration.
4. The Direct Taxes Enquiry Committee (Wanchoo Committee) have also recommended in paragraphs 6.23 and 6.25 of their Final Report that the Directorate of Inspection (Research, Statistics and Publication) should be split up into two distinct units, one a Directorate of Publications and Public Relations, and the other, Directorate of Research and Statistics. The Committee have further observed that the Directorate of Research and Statistics

should be organised and developed as a Tax Research Institute within the Department. The Recommendations made by the Wanchoo Committee in this behalf are still under consideration by the Government. In view of the position that the recommendation of the Public Accounts Committee for the merger of the Tax Planning and Legislation Section in the Board and the Directorate of Inspection (Research, Statistics and Publication) is intimately connected with the recommendation of the Wanchoo Committee for the reorganisation of the aforesaid Directorate, it is proposed to consider both these recommendations together."

1.14. The Committee have no objection to the decision to treat the two recommendations that of the Direct Taxes Enquiry Committee (Wanchoo Committee) and that made by the Committee together so long as this linking does not result in delay. The Committee would urge the Government to come to an early decision without any further loss of time and report the outcome to the Committee.

Working of the Internal Survey—Need for proper deployment and utilisation of staff (Paragraph 1.40—Sr. No. 6)

1.15. Commenting on the Working of Internal Survey of the Income-Tax Department, the Committee, in paragraph 1.40 of the Report, observed as follows:—

"The Committee are concerned to be informed that the "work of the internal survey leaves much to be desired." The Committee desire the Central Board of Direct Taxes to look into the matter with a view to ensuring proper deployment and utilisation of staff with clear directions and objectives."

1.16. In their note dated 23rd April, 1973 the Ministry of Finance (Department of Revenue and Insurance) have stated:—

"The observations of the Committee have been noted. Necessary instructions are being issued to the Director of Inspection (Income-Tax)."

1.17. When asked to state the present position, the Ministry, in their subsequent note, dated the 13th November, 1973 stated:—

"Director of Inspection (I.T.) has been asked to process the matter; the result will be intimated in due course."

1.18. As more than two years have elapsed since the presentation of the Report, the Committee consider that the completion of the examination of the working of the Internal Survey should not take any more time. The Director of Inspection, to whom the examination of the working of the Internal Survey had been entrusted in 1973, had more than ample time for completing the examination. He should be called upon to explain the reasons for the time he has taken under advice to the Committee and if he has not already completed the examination, he should be asked to do so without further loss of time.

Working of Small Income Scheme (Paragraph 1.48—Sr. No. 8).

1.19. Referring to the Working of the Small Income Scheme, the Committee in paragraph 1.48 of the Report observed as under:—

“The Committee desire that the working of small income scheme should be kept under watch. The objective of the scheme is that the Department should not waste its time and energy in disposal of cases which have no revenue potential. The Committee trust that the procedures evolved by Government help to achieve this objective. In particular, it should be ensured that on the one hand the scheme is not exploited by some unscrupulous high income assessees masquerading themselves as small income assessees and on the other hand genuine small income assessees are not subjected to harassment by being asked to appear before the Income-tax authorities. The Committee trust that Audit would conduct a review of the scheme and include their findings in their future Reports.”

1.20. In their reply dated 5th March, 1973 the Ministry of Finance (Department of Revenue and Insurance) have stated:—

“The observations of the Committee have been noted.”

1.21. The Committee had not expected the Ministry merely to rest content with taking note of the observations of the Committee. The Committee had looked forward to being apprised of the specific steps taken or proposed to be taken by the Government to ensure that the Small Income Scheme was not exploited by unscrupulous high income assessees masquerading as small income assessees and that the genuine small income assessees were not subjected to harassment by being asked to appear before the Income-tax authorities. The Committee would await a further report in this regard.

Internal Audit Organisation—Implementation of the instructions issued by the Board—Need for a review of the performance (Paragraph 2.28—Sr. No. 14).

1.22. Commenting on the Working of the Internal Audit Party of the Income-tax Department, the Committee in paragraph 2.28 of the Report observed as follows:—

“The Committee find that according to the instructions issued by the Board in August, 1968, the Internal Audit Parties are required to take up checking of assessments, particularly those involving large revenues, soon after the assessments had been completed. According to the instructions issued in December, 1969, the Internal Audit Parties are required to take all category I assessments completed in the rush period of February and March by the 30th June following and the assessments on total income of one lakh or more made in any other month are required to be checked within three months, of the date of the assessment. The Committee have been informed that no special review regarding the actual implementation of the instructions was conducted since the Director of Inspection undertakes a monthly review of the performance of Internal Audit Parties. The Committee suggest that an immediate review of the working of the Internal Audit should be undertaken by the Board to find out how far they are carrying out the prescribed checks and bringing to notice cases of under or over assessment requiring rectification. The Board should also ensure that the rectification of the lapses is done promptly.”

1.23. In their reply dated 28th February, 1973 the Ministry of Finance (Department of Revenue and Insurance) have stated:—

“The working of the internal audit organisation was generally reviewed recently. The strength of the Internal Audit Organisation was found to be inadequate and steps have been taken to supplement it. More IAPs have been sanctioned headed by Inspectors who are technically better equipped than the Supervisors who head the existing IAPs. Posts of ITOs (Internal Audit) have been created for exclusive attention to and supervision over IAPs work. More posts of IAGs (Audit) have been created for effective senior control. Lastly the DI (IT&Audit) has been given the assistance of a Dy. Director exclusively for attention to overall co-ordination and guidance of audit work in the Department. The procedures have also been streamlined.

According to these latest instructions, *inter alia* the IAPs have been asked to submit draft rectificatory memos along-with their audit objection, wherever feasible, so that the officer concerned may finalize the same promptly after show cause notice to the assessee. Observance of rectification fortnights twice in a year, and a system of giving credit in disposal output for the rectification work done by the Income-tax Officers have also been introduced."

1.24. When asked to state the year in which the working of the Internal Audit Organisation was generally reviewed the Ministry, in a further note dated 12th November, 1973 stated that the position was reviewed in the year 1972.

1.25. The Committee regret to note that no review has been undertaken by the Government on the lines suggested by the Committee. The Committee are of the view that a thorough review of the kind indicated in paragraph 2.28 of their 51st Report (Fifth Lok Sabha) would serve a very useful purpose. They, therefore, desire that such a review should be carried out forthwith. The Committee would await the results of the review and action taken thereon.

Scope and nature of checks to be exercised by the Internal Audit Parties (Paragraph 2.29—Sr. No. 15).

1.26. Referring to the checks exercised by the Internal Audit Parties, the Committee, in paragraph 2.29 of the Report, observed as under:—

"The Committee learn that the assessments checked by the Internal Audit Parties are not being stamped, with the result that it is difficult for Revenue Audit to know whether the assessments have been checked by the Internal Audit Parties. The monthly reports of the Internal Audit Parties are also not being made available to the Revenue Audit as a matter of course. The Committee consider that there should be proper co-ordination between the Internal Audit Parties and Revenue Audit so as to have maximum impact on revenue collecting organisation. This can be achieved by making the checks exercised by the Internal Audit more comprehensive and thorough and by making their Reports available contemporaneously to the Revenue Audit. The Committee would further suggest that the scope and nature of checks to be exercised by Internal Audit should be reviewed at least once in six months by the Board of Direct

Taxes in consultation with Revenue Audit so as to make the checking more effective and pointed."

1.27. In their reply dated 28th February, 1973 the Ministry of Finance (Department of Revenue and Insurance) have stated:—

"The IAPs have been instructed to rubber stamp all the files checked. Instructions have been issued that copies of the IAP's reports should be made available to the Revenue Audit when requisitioned; copies of Monthly Reviews of the Director of Inspection are also now being sent to the Director of Revenue Audit. The Board keeps close watch over the DI's coordination and control of audit work and necessary instructions are issued to him from time to time, besides frequent personal discussion and assessment."

1.28. When asked to state whether any action had been taken on the suggestion of the Committee that the scope and nature of checks to be exercised by Internal Audit should be reviewed at least once in 6 months by the Central Board of Direct Taxes, the Ministry, in a subsequent note dated 12th November, 1973 stated:—

"The D.I. (I.T. & Audit) on behalf of the Board keeps watch over the functioning of I.A.P. and issues monthly reviews, copies of which are now being sent to the C & A.G. Any suggestion from the C. & A.G. on the basis of these reviews will be considered; in view of this continuous arrangements which equally serves the purpose, formal half yearly consultations do not appear to be necessary."

1.29. The Committee are of the view that the monthly reviews which are carried out by the Director of Inspection (I.T. Audit) will not achieve the object the Committee had in mind in suggesting a more comprehensive review of the scope and nature of the checks carried out by the Internal Audit. The Committee consider that it is essential to have a comprehensive review by the Board at least once in six months with a view to improving the efficiency of the Internal Audit and desire accordingly that the first of such six monthly reviews be undertaken forthwith.

1.30. The Committee further reiterate that there should be close coordination between the Internal Audit and Revenue Audit which is rendering most invaluable service so as to have the maximum impact on the revenue collecting organisation.

*Incorrect determination of income from business and profession.
(Paragraph 2.105—Sr. No. 30).*

1.31. Commenting on the repetitive mistakes which occurred in the computation of income under the head "Business", the Committee in paragraph 2.105 of the Report observed as under:—

"It is disquieting that the number of cases in which mistakes were noticed by Audit in computation of income under the head "business" has increased three-fold during the last seven years. The under-assessment noticed in such cases during the year 1969-70 alone amounted to Rs. 129.31 lakhs. The deterioration of the position, despite the special attention having been drawn repeatedly to these types of mistakes does not speak well of the Department. The Committee accordingly trust that Government would analyse the nature of repetitive mistakes and take appropriate action to avoid recurrence."

1.32. In their reply dated the 30th April 1973 the Ministry of Finance (Department of Revenue and Insurance) have stated:—

"The amount of Rs. 129.31 lakhs mentioned in the Audit Report represents the total revenue effect involved in all the objections raised by the Audit and is not restricted to the mistakes admitted by the Department. Secondly the increase in the number of objections raised has to be viewed *vis-a-vis* the number of cases checked by the Audit. The number of cases reviewed during 1969-70 was about 2,74,000 as against about 1,41,000 cases reviewed in 1964-65 which is the earliest year for which this information is readily available with the Government. For repetitive mistakes noticed the Government takes appropriate action to minimise recurrence. Improved training arrangements sanctioned recently are expected to tone up the performance of assessing officers and the Department's internal audit organisation has also now been strengthened for checking up important assessments promptly with a view to remedying mistakes, if any, without loss of time."

1.33. When asked to state whether Government had analysed the nature of repetitive mistakes as suggested by the Committee, the Ministry, in a subsequent note dated the 17th November, 1973 have stated:—

"Necessary study has been entrusted to the Directorate of Income-Tax and Audit and further action will be taken on receipt of the results of the study."

1.34. More than two years have elapsed since the presentation of the Report, that much time was surely more than enough for completing the study suggested by the Committee. This is regrettable. The Committee require that the study should be completed without further loss of time and the results of the study and action taken or proposed to be taken thereon should be intimated to them within three months.

Relief from tax on newly established industrial undertaking—(Paragraph 2.180, 2.187 and 2.202—Sr. Nos. 50, 52 and 55).

1.35. Referring to the Controversy as to what exactly constituted "a newly established industrial undertaking" the Committee, in paragraphs 2.180, 2.187 and 2.202 of the Report, observed as under:—

"The Committee note that the Ministry have been experiencing difficulty in some marginal cases as to what exactly constitutes a 'new industrial undertaking' and that the matter has been referred to the Ministry of Law whose opinion is still awaited. The Committee desire that the matter should be got clarified without further loss of time and suitable instructions issued for the guidance of assessing officers.

The Committee have in the preceding recommendation referred to the controversy as to what constitutes 'a newly established undertaking' on which an opinion of the Ministry of Law has been sought. They trust that suitable action will be taken in the case on receipt of the opinion of the Ministry of Law.

The Committee note that in this case tax holiday relief was allowed for a further period of 5 years consequent on the expansion of the new industrial unit. It is unfortunate that this was based on the erstwhile Central Board of Revenue's circular issued in April, 1950, which according to the Ministry, could be interpreted in a way that may not be in conformity with the law. Although the Audit

objection has been accepted in principle, the Ministry have stated that 'it might well be argued that such substantial expansion can be construed as addition' and that they wished to have this view examined by the Ministry of Law in consultation with Audit. The Committee accordingly desire that the matter should be considered and clear instructions in conformity with law issued expeditiously, in consultation with Audit. The Committee consider that it is most undesirable to allow the prolongation virtual perpetuation of tax holiday in this indirect manner."

1.36. In their reply dated the 26th March, 1973 the Ministry have stated:—

"The matter was referred to the Ministry of Law on 24th July, 1971 for opinion as to what exactly constitutes new industrial undertaking and whether substantial additions to the existing plant and machinery would also amount to this. The case was to be discussed with the Ministry of Law in consultation with the Audit but at the suggestion of the Audit a consideration of the matter was put off till after the P.A.C. meeting scheduled to be held in October, 1971. The matter would be discussed with the Law Ministry and the Audit after a decision is taken by the Board whether:—

- (i) their instructions dated 1st April, 1950 relied on by the C.I.T. require any revision; and
- (ii) it is necessary to amend the provisions of Section 80J for removing the seeming anomalies and hardships, as in the present case.

The recommendations contained in the above paras would be complied with after the matter is examined and opinion of the Ministry of Law is received."

1.37. When asked to state whether any decision had been taken in the matter the Ministry, in a subsequent note dated the 19th November, 1973, stated:—

"The Ministry of Law tentatively agreed with the Audit's view and referred the matter back to this Ministry for

further comments. The Law Ministry's comments were examined in the context of the Calcutta High Court's decision in the case of 'Aluminium Co. Ltd. (88 ITR 267) and the file is being sent to the Ministry of Law for final advice. The resultant position will be intimated to the Committee."

1.38. The Committee find it difficult to understand why so much time should be necessary for arriving at a decision as to what exactly constitutes a new industrial undertaking. The Committee are somewhat surprised to note that in this case the Ministry was not able to give a definite opinion but expressed itself in tentative terms. The Committee was under the impression that the Ministry of Law invariably would express itself in clear and definite terms in a matter as simple as this. The Committee desire that this should be resolved without any further delay and necessary instructions issued for the guidance of the assessing officers under intimation to them.

Rebates and Concessions on the Structure of Corporate taxation to promote economic growth and to ensure social justice—Need for a study to know how far these twin objectives have been realised. (Paragraph 2.249—Sr. No. 65).

1.39. Referring to the various rebates and concessions on the structure of corporate taxation, the Committee, in paragraph 2.249 of the Report, observed as follows:—

"With the various rebates and concessions the structure of corporate taxation is expected to be designed in such a way as to promote economic growth and to ensure social justice. The Committee were informed that no study had been undertaken to know how far these twin objectives have been realised. The Committee would, therefore, commend such a study which would be helpful in formulating future taxation policy."

1.40. In their reply dated the 9th May, 1973 the Ministry have stated:—

"The Committee's suggestion have been noted for consideration."

1.41. When asked to state whether the study as suggested by the Committee had since been undertaken, the Ministry, in a further note dated 1st December, 1973 stated:—

"No such study has been made so far.

2. The Direct Taxes Enquiry Committee (Wanchoo Committee) have emphasized the importance of having dependable statistical data and research study report on various problems. In paragraphs 6.23 and 6.25 of their Final Report, the Committee have recommended that the present Directorate of Inspection (Research, Statistics and Publication) should be split up into two distinct units, one a Directorate of Publications and Public Relations and other a Directorate of Research and Statistics. They have further recommended that the Directorate of Research and Statistics should be organised and developed as a Tax Research Institute within the Department. The recommendations made by the Wanchoo Committee in this behalf are currently under consideration. After the Directorate of Research and Statistics is re-organised and strengthened on the lines suggested by the Wanchoo Committee, it would also be required to make a study of the extent to which the various rebates and concessions have contributed in promoting the twin objectives of economic growth and social justice as recommended by the Public Accounts Committee."

1.42. The Committee had suggested that a study of the extent to which the various rebates and concessions had contributed to promoting the twin objectives of economic growth and social justice, should be undertaken which would be helpful in formulating future taxation policy. The Committee have been informed that no such study has been made so far and that it would be undertaken as soon as the Directorate of Research and Statistics is re-organised and strengthened on the lines suggested by the Direct Taxes Enquiry Committee which is currently under consideration of the Ministry. This leaves the position completely vague and puts off the undertaking of a study of some considerable importance almost indefinitely. Having regard to its importance, the Committee desire that it should be taken in hand in anticipation of the reorganisation and necessary man-power provided.

Treatment of investments in shares as fixed assets (Paragraph 2.261—Sr. No. 66).

1.43. Referring to the difference of opinion between the Audit and the Ministry of Finance regarding the treatment of investment in shares as fixed assets, the Committee in paragraph 2.261 of the Report, observed as under:—

"The Committee note that there is a difference of opinion between the Audit and the Ministry of Finance regarding

the treatment of investment in shares as fixed assets and that the opinion of the Ministry of Law in the matter is awaited. The Committee may be informed of the opinion of the Ministry of Law."

1.44. The Ministry, in their reply dated 26th March, 1973, have stated:—

"Opinion of the Ministry of Law was earlier obtained in another case in which a similar point was involved. However, the case under consideration was again referred to them for opinion in view of the Audit stand. The Law Ministry stated that before the earlier opinion is applied straightway in this case it would be better to show that opinion to the Audit if they had any comments. Consequently, the case was referred to the Audit who with their note dated 26th September, 1972 stated that the earlier opinion of the Law Ministry did not apply to the present case. This view of the Audit is being conveyed to the Law Ministry for final opinion or discussion as may be feasible."

1.45. When asked to state whether the final opinion had since been obtained, the Ministry, in a further note dated 16th November, 1973, stated:—

"The view of the Audit was communicated to the Ministry of Law on 24th October, 1973 and their final opinion has been received on 2nd November, 1973 (copy attached as Annexure A). In view of the opinion expressed by the Ministry of Law, the Audit objection is acceptable; remedial action u/s 263 of I.T. Act, 1961 however became time barred long ago. The matter was controversial and not free from doubt, as would be seen from the opening paragraph of the Law Ministry's note. The Audit are being informed about the position."

1.46. From the reply furnished by the Government, the Committee note that the final opinion of the Law Ministry was received on 2nd November, 1973 and that in view of the opinion expressed by the Ministry of Law the audit objection is acceptable; remedial action under Section 263 of the Income-Tax Act, 1961, however, became time barred long ago. The Committee can only deplore the delay of more than a year in referring the case to the Ministry of Law for obtaining their final opinion. The Committee desire that

suitable instructions should be issued immediately in this regard, if this has not already been done, so that there is no recurrence of such lapses in future, under advice to the Committee.

Income escaping assessments (Paragraph 2.270—Sr. No. 68).

1.47. Commenting on the exclusion of the amounts received by lawyers for boarding and lodging expenses, from taxable income, the Committee in paragraph 2.270 of the Report observed as follows:—

“The question whether the amount received from the clients by lawyers towards personal expenses could be excluded from total income as non-taxable is stated to have been referred to the Ministry of Law. The Committee would like to be apprised of the opinion of the Ministry of Law.”

1.48. In their reply dated the 7th March, 1973, the Ministry have stated:—

“The opinion of the Ministry of Law is still awaited. The Committee will be apprised of its opinion immediately on its receipt.”

1.49. When asked to state the present position, the Ministry, in a subsequent note dated the 17th November, 1973, have stated:—

“It was decided to have a tripartite discussion in a meeting with the representatives of Ministry of Law, C&AG and this Ministry and the matter has been referred to the C&AG accordingly. The decision reached after proposed discussion will be intimated to the Committee.”

1.50. A decision on the exclusion of the amounts received by lawyers from clients towards personal expenses from the total taxable income has been considerably delayed for no apparently valid reasons. The Committee would urge that Government should come to a decision in this regard within three months and inform the Committee in due course.

Information regarding the total number of advocates practising in various High Courts and Supreme Court. (Paragraphs 2.271 & 2.272—Sr. Nos. 69-70).

1.51. Finding that the Income-tax Department had not taken effective steps to ensure that all the lawyers practising in various

High Courts and the Supreme Court were assessed to tax, the Committee, in paragraphs 2.271 & 2.272 of the Report observed as under:—

“Although the Committee desired to have the information regarding the total number of advocates practising in the various High Courts and Supreme Court and the number of persons who were borne on the books of the Income-tax Department as assessees, the information is still awaited. The Committee trust that on the basis of the information to be collected, the department would make a survey to ensure that there is no evasion of tax.”

“Further Government may consider the feasibility of asking the various courts to furnish to the Income-Tax Department periodically information regarding cases decided by them and the persons who appeared as solicitors or advocates for both sides so that the Department may be in possession of necessary information to verify the correctness of the returns filed by persons of these professions.”

1.52. In their reply dated 7th March, 1973 the Ministry have stated.—

“Relevant information is being collected and observations of the Committee have been noted for processing.”

1.53. In a subsequent note dated the 15th November, 1973 the Ministry added:—

Reference is invited to the Ministry's interim reply sent vide No. 20/219/69-IT(Audit) dated 7-3-1973 regarding the above noted para. Reference is also invited to the Ministry's reply to item No. 84 of the Lok Sabha Sectt. O.M. No. 2/7/III/2/71/PAC dated 10-2-1972 vide Ministry O.M. No. 240/2/72-A&PAC dated 22-2-1973.

2. The requisite information since collected is given below:

(i) No. of Advocates enrolled with the various Bar Associations	43,190
(ii) No. of such Advocates verified to be assessed to tax	7,404

3. The verification of above noted provisional figures is, however, still not complete. The Commissioners have addressed the persons concerned. The Commissioners are being asked to pursue the verification vigorously and take

appropriate action as may be indicated as a consequence of the information gathered.

4. Instructions have been issued for watchful survey of persons in professions.

1.54. In the Circular instructions dated the 20th June, 1972 issued by the Director of Inspection (IT-Audit) to all Commissioners of Income Tax *inter alia* read as follows:—

“With a view to watching the progress in the implementation of the instructions issued by the Chairman, it has been decided that the information regarding new cases discovered as a result of the survey of persons carrying on professions and having income by way of salaries should be incorporated in column 4 of the Statement of External Survey.

An amended copy of the proforma is enclosed herewith. As a Monthly Review is desired by the Chairman, the Statement of External Survey should be sent every month instead of every quarter. The Statement in the amended proforma may please be sent w.e.f. the month of June, 1972 so as to reach this Directorate by the 20th of the following month positively.”

1.55. From the reply furnished by the Government, the Committee distressed to note that out of 43190 advocates enrolled with the Bar Associations, only 7404 are verified to be assessed to tax and that the verification of the above provisional figures is however still not complete. The Committee have been informed that the Commissioners are being asked to pursue the verifications vigorously and take appropriate action. Further instructions have also been issued by the Director of Inspection (IT Audit) calling for a monthly review of external survey instead of the existing quarterly review. The Committee desire that Government should complete the verification early and report the position to them. The Committee would also like to know the results of the External Survey conducted during 1972 and 1973.

Omission to levy or incorrect levy of penalty—Application of the provisions of Section 297(2) (g) of the Income Tax Act (Paragraph 2.289—Sr. No. 72).

1.56. Commenting on the omission to levy or incorrect levy of penalty, in a case, the Committee in paragraph 2.289 of the Report, observed as follows:—

“As regards sub-para (iii) the Committee were informed that although Audit were told earlier that the Ministry had ac-

cepted the mistake, the question regarding the applicability of the provisions of Section 297(2)(g) of the new Income-tax Act to the cases of penalty proceedings initiated before 1st April, 1962, has been subsequently referred to the Ministry of Law. The Committee would like to be informed of the views of the Ministry of Law as also the action taken to rectify and recover the penalty, if required."

1.57. In their reply dated 7th March, 1973 the Ministry have stated:—

"The opinion of the Ministry of Law is still awaited. Necessary action will be taken on receipt of their opinion."

1.58. In a subsequent note dated the 2nd June, 1973 the Ministry have further stated:—

"This is in continuation of this Ministry's interim reply sent with O.M. No. 236/260/70-IT(Audit) dated 7-3-1973. The Ministry of Law has opined that penalty under the provisions of Income-tax Act, 1961 could be imposed in this case although the notice was issued under Income-tax Act, 1922. However, in the present case no action to rectify and recover further penalty is possible as such action was time-barred even before the receipt of the audit objection."

1.59. The Committee assume that the Central Board of Direct Taxes has issued suitable instructions in the light of the opinion of the Ministry of Law now given for the guidance of the assessing officers under intimation to them. This may be confirmed.

Omission to levy or incorrect levy of penalty—Effecting dated for the purpose of levy of penalty (Paragraphs 2.290 and 5.12—Sr. Nos. 73 and 113).

1.60. Referring to the crucial date for the purpose of levy of penalty, the Committee in paragraphs 2.290 and 5.12 of the Report, observed as under:—

"In regard to sub-para (v) the Committee understand that the question whether the date of filing of the return or the date of assessment was to be taken for the purpose of levy of penalty was under consideration of the Ministry of Law. The Committee may be apprised of the final decision taken in the matter after obtaining legal opinion as also the action to rectify and recover additional penalty if needed."

The Committee find that during the year 1969-70, the penalty imposed amounted to Rs. 15.03 crores which was much less than the concealed income of Rs. 60.50 crores, although according to the Income-tax Act the minimum penalty should be equal to the concealed income. The Committee were informed that this difference may be due to some of the assessments being for the period prior to 1st April, 1968 when the minimum was 20 per cent of the tax. The Committee, however, find that according to the judgement in Jain Brothers case the crucial date for the purpose of penalty is the date of completion of the assessment and not the assessment year. The Ministry of Finance have stated that according to the Law Ministry the crucial date for determining the quantum of penalty is the date of filing of the return and not the date of passing the assessment order. The Committee suggest that in view of judgement in the Jain Brothers case the matter should be further examined in consultation with the Attorney General. The Committee would like to know the outcome of the examination."

1.61. The Ministry, in their reply dated 7th March, 1973, have stated:—

"The opinion of the Ministry of Law is still awaited. Necessary action will be taken on receipt of Law Ministry's opinion."

In their note dated 2nd April, 1973 they added:

"The question of reference to Attorney General is under consideration by Law Ministry."

1.62. When asked to state whether the opinion of the Ministry of Law had since been received the Ministry, in a subsequent note dated 9th November, 1973 stated:—

"The Law Ministry had earlier agreed with the stand taken by the Board but at the instance of the Audit the matter was again referred to them in November, 1972 for obtaining the opinion of the Attorney General. However, the Law Ministry asked the Audit whether they would agree to the obtaining of Law Secretary's opinion instead of referring the matter to the Attorney General. This proposal is under consideration of the Audit who are being reminded."

1.63. The Committee are unhappy over the inordinate delay in arriving at a decision on the crucial date for the purpose of levy of

penalty. The matter should be pursued more vigorously so that a decision can be arrived at and necessary instructions issued to the lower formations. The Committee would like to be apprised of the final decision taken as also the action proposed to be taken thereafter.

Non-levy or incorrect levy of penal interest Rationalisation of rate of interest. Rules simplifying and streamlining the procedure.
(Paragraph 2.302—Sr. No. 77)

1.64. Commenting on the non-levy or incorrect levy of penal interest, the Committee in paragraph 2.302 of the Report, observed as under:—

“The Committee trust that with a rationalisation of rate of interest and the procedure for the levy, such large scale mistakes or omission as have been noticed in the past, should not occur. The Committee note in this connection that the Central Board of Direct Taxes have assumed powers with effect from 1st April, 1971 to frame rules for regulating the calculations of interest. They desire that necessary rules simplifying and streamlining the procedure should be framed without delay.”

1.65. In their reply dated 17th March, 1973 the Ministry have stated:—

“The Direct Taxes Enquiry Committee (Wanchoo Committee) have made certain recommendations in this behalf in paragraph 4.34 of their Report. These recommendations are currently under consideration by the Government. Necessary provisions for the calculation of interest payable by or to assessees will be made in the Income-tax Rules, 1962 in the light of the decision taken by Government on the aforesaid recommendations in due course.”

1.67. When asked to state whether any decision had since been taken by the Government in this regard, the Ministry, in a subsequent note dated the 29th November, 1973, have stated:—

“Action for framing the necessary Rules in the context of Wanchoo Committee's relevant recommendations is under active consideration.”

1.68. The Committee deplore the inordinate delay that has taken place in framing rules for regulating the calculations of interest. The

Committee need hardly stress that necessary rules simplifying and streamlining the procedure should be framed forthwith under intimation to them.

Steps to prevent double allowance of credit (Paragraph 2.313—Sr. No. 79).

1.69. Referring to the steps taken to prevent double allowance of credit, the Committee, in paragraph 2.312 of the Report, observed as under:—

“Various suggestions in regard to the steps to be taken to prevent double allowance of credit are stated to be under consideration of the Director of Inspection (I.T. and Audit). The Committee need hardly stress that a fool-proof procedure in this regard should be evolved expeditiously.”

1.70. In their reply dated 17th March, 1973 the Ministry have stated:—

“The suggestion of the Public Accounts Committee have been noted for processing.”

1.71. When asked to state the present position, the Ministry, in a subsequent note dated the 29th November, 1973, have stated:—

“The findings of the Commissioners are that the mistakes were attributable to lack of care on the part of the Income-tax Officials, who have been warned to be more careful.

The Government has informally appointed a Committee of senior officers under the auspices of the Directorate of O & M Services to review the accounting and collection procedures obtaining in the Department. The deliberations and sequential recommendations of the Committee will cover this point also and further action will be taken on receipt of their report.”

1.72. The Committee wish to reiterate that a fool-proof procedure to prevent double allowance of credit should be evolved without any further loss of time.

1.73. The Committee trust that the informal committee would complete its work at an early date. The Action Taken thereon by Government should be reported to the Committee.

Irregular grant of refunds—Need for review to ensure strict observance of or otherwise of long standing instruction. (Paragraph 2.314—Sr. No. 80).

1.74. Commenting on the irregular grant of refunds and non-observance of instructions issued in this regard, the Committee, in paragraph 2.314 of the Report, observed as under:—

“Incidentally the Committee note that the existing instructions that all refund cases involving a sum of Rs. 500/- and above should be checked by the Inspecting Assistant Commissioner have fallen into disuse and that the limit fixed for the check is considered to be “too low”. The Committee wish to point out that is undesirable to allow such important instructions to be ignored. The limit could have been suitably revised in order to ensure strict observance of the instructions. The Committee trust that the Board would review the observance or otherwise of such long standing instructions in the light of changed context and taken appropriate action.”

1.75. In their reply dated the 19th April, 1974 the Ministry have stated:—

“Necessary instructions are being issued by the Director of Inspection (Income-tax) modifying the existing ones in the Income-tax Office Manual Part II (page 169) about checking of refunds involving sum of Rs. 5000 and above should be checked by the Inspecting Assistant Commissioners of Income-tax. The revised instructions are to be strictly followed.”

1.76. When asked to state whether the Board reviewed the observance or otherwise of long standing instructions in the light of the changed context as suggested by the Committee, the Ministry, in a subsequent note dated the 29th November, 1973 have stated:

“In the light of Committee’s recommendation the Board have reviewed the matter and the limit of Rs. 500/- was raised to Rs. 5,000 vide instruction No. 562 F. No. 228/22/73-IT(A.II) dated 27th June, 1973 (copy enclosed); strict observance has been enjoined.”

1.77. The Committee find that revised instructions on checking of refunds have been issued and that as a practical measure, it has been decided that cases of refunds involving a sum of Rs. 5,000/- and above are now to be checked by the Inspecting Assistant Commissioner.

1.78. The Committee would however, like to emphasise the need for a review of the observance or otherwise of such instructions in the light of the changed context so that appropriate corrective action may be taken wherever necessary.

Need for fixing a suitable time limit for giving effect to appellate orders. (Paragraph 2.332—Sr. No. 83).

1.79. Commenting on the delay in giving effect to the appellate orders, the Committee, in paragraph 2.332 of the Report, observed as under:—

“The Committee further desire to suggest that the feasibility of fixing a suitable time limit for giving effect to appellate orders should be considered.”

1.80. In their reply dated the 17th January, 1973 the Ministry have stated:—

“In Board's Circular dated 18th July, 1962 it was emphasised that refunds falling due as a result of appeal or revision proceedings should be granted within a fortnight of the date of receipt by the I.T.O. of the relevant appeal or revision order. Further Section 244 of the Income-Tax Act, 1961 as amended by Taxation Laws (Amendment) Act, 1970 also provides that interest will be payable by the Government on delayed refunds (consequent on appellate orders) after a period of 3 months from the end of the month in which the relevant order is passed. Instructions to the field officers are being issued drawing their attention to the above noted earlier circular and directing that in all instances appellate orders should be given effect to within a fortnight of the receipt of the order concerned.”

1.81. The Committee desire that necessary instructions should be issued forthwith to the field officers directing that in all instances appellate orders must be given effect to within a fortnight of the date of passing of the order concerned.

1.82. In so far as appellate orders are concerned they should be passed within a fortnight from the date of hearing. The Committee would very much like the Revenue Audit to report whether this recommendation is being implemented. The Committee would strongly suggest that the Revenue Audit should conduct a test audit of the orders of the Appellate Assistant Commissioners in the same manner as they are auditing the Income-tax Officers' orders. The Committee have come across several instances where the Income-tax Officers knowingly highly inflate the assessments driving the assessees in this process to seek remedies on appeal which would certainly involve considerable cost for both the parties and severe mental anxiety, especially in the case of small assessees. The Committee would like that a review should be undertaken of all cases where reductions of more than Rs. 10,000 has been given on appeal to determine the extent of such over assessments.

Payment of Interest—Instructions to avoid any divergence in practice in regard to payment of interest under Section 214—Examination of difference in language between Sections 214 and 215 (Paragraphs 2.338 and 2.371—Sr. Nos. 84 and 89).

1.83. Referring to the provisions of Sections 214 and 215 of the Income Tax Act, 1961 regarding payment of interest, the Committee in paragraphs 2.338 and 2.371 of the Report, observed as under:—

"The Committee are of the opinion that on equity whether Government paid interest to the assessee or vice-versa the criterion should be the same. Section 215(3) of the Income-tax Act, 1961 provides for reduction of interest payable by an assessee as a result of variation of the amount on which the interest was payable on rectification or revision whereas Section 214 which provides for Government's paying interest to the assessee does not have a similar provision for reducing the quantum of interest as a result of rectification or revision. The Committee accordingly desire that the difference in language between Section 214 and 215 should be looked into. Further neither under Section 214 nor under Section 215 there is a provision for the enhancement of interest payable. The Committee note that the Ministry propose to have the entire question of payment of interest by Government to assessees and charging interest from assessees by Government to assessees and interest from assessees by Government in respect of excess advance tax paid or the shortfall of advance tax as the case

may be re-examined thoroughly in consultation with the Audit and the Ministry of Law. The Committee trust that this will be done expeditiously and appropriate amendments to the relevant sections of the Act made, as necessary.

Admittedly there is an apparent difference in the matter of treatment of tax deducted at source between the provisions of Sections 214 and 215 governing payment to and charging interest from assessee for the excess or deficiency in the advance tax paid. While Section 215(5) clearly stipulated that tax determined on the basis of regular assessment should be reduced by the amount of tax deductible at source, for the purpose of charging interest from the assessee, there is no corresponding provision in Section 214. However, the Committee learn that the Ministry of Law have opined that the expression "tax determined on regular assessment" used in Section 214 must necessarily be the tax after giving credit for the tax deducted at source."

"They further learn that advance tax is itself calculated after giving credit for the tax deducted at source. Government may consider the question of amending Section 214 suitably to place matters beyond doubt. In the meanwhile suitable instructions should be issued to avoid any divergence in practice in regard to payment of interest under Section 214."

1.84. In the replies dated 7th March, 1973 and 14th March, 1973 respectively the Ministry have stated:—

"The recommendation of the Committee has been noted for processing."

"The suggestion of the Committee for amending section 214 of the Income-tax Act has been noted for processing. Necessary instructions for calculation of interest payable by the government on excess advance tax paid stand issued with Board's Circular No. 12/12/68-IT.A.III dated 11th December, 1968."

1.85. When asked to state the present position, the Ministry, in a subsequent reply dated the 17th November, 1973, have stated:

"The matter is still under consideration."

1.86. The Committee urge that the matter should be examined expeditiously and without any further loss of time and the conclusions reached intimated to the Committee.

Lapses in observing procedure laid down by the Department—Non-deduction or short deduction of tax at source on interest payments, and delayed remittance of tax deducted (Paragraphs 2.383 and 2.384—Sr. Nos. 90-91).

1.87. Commenting on the non-deduction or short deduction of tax at source on interest payments and delayed remittance of tax deducted, the Committee in paragraphs 2.383 and 2.384 of the Report observed as under:—

“The Committee are distressed to note the non-deduction or short deduction of tax at source on interest payments and delayed remittance of tax deducted which also did not attract the penal provisions of the Act. It is strange that Income-tax Department itself is a defaulter in this regard. Such serious lapses noticed in test check of cases by Audit should have compelled the Department to undertake a review in all the charges to find out the extent of failure and to take appropriate action including rectification and recovery which, however, surprisingly enough were not done. The Committee expect that such review should be done without further delay and the results intimated to them.

Unless deterrent measures are taken to make such defaults unrewarding, the defaults are bound to recur. The Committee would therefore, like to know why penal provisions were not invoked in respect of cases pointed out by Audit and whether there were similar laxities in other cases.”

1.88. In their reply dated 14th March, 1973 the Ministry have stated:—

“The Committee's suggestion is being examined. The relevant information is being collected from the Commissioners and the result will be intimated in due course.”

1.89. When asked to state the present position, the Ministry in a subsequent note dated the 30th November, 1973 have stated:—

‘A review was ordered vide Board's Institution No. 537 (F. 277, 5/73-ITJ) dated 31st March, 1973; the results of the review

received from the Commissioners are being compiled, and will be furnished to the Committee soon."

1.90. The Committee note that a review has been ordered and the results of the review received from the Commissioners are being compiled. The Committee would like the Ministry to complete the compilation of the results early and report the position to them.

1.91. The Committee further note that their observation about the failure of the Income-tax Department to deduct tax at source from the interest paid by them to the assessees is under examination. The Committee desire that this should be examined expeditiously and final outcome reported to the Committee.

Escapement of tax liability on the Interest paid—Need to amend the Act (Paragraphs 2.385 and 2.386—Sr. Nos. 92-93).

1.92. Commenting on the delay in remittances of tax deducted at source and the necessity for providing adequate checks to ensure that assessees do not escape the tax liability on interest paid to them by the Department, the Committee, in paragraphs 2.385 and 2.386 of the Report, observed as under:—

"The Committee note that the Central Board of Direct Taxes are reviewing the whole matter of tax deductions at source including those made under Section 194A with a view to making certain changes. The Committee hope that expeditious steps would be taken to ensure correct and timely deduction of tax at source as well as its prompt remittance. The Committee would await the outcome of the review of the position by the Board.

According to the Ministry, although technically the department is also liable to deduct tax at source on interest paid by it to the assessee, it would involve a lot of avoidable accounting and administrative work. The Committee understand that an amendment to the Act in this regard is under consideration. They wish to observe that any change that is made should provide adequate check to see that the assessees do not escape the tax liability on the interest paid to them by the Department."

1.93. In their reply dated the 14th March, 1973 the Ministry have stated:—

"The matter is still under consideration."

1.94. When asked to state the present position, the Ministry, in a subsequent note dated the 29th November, 1973, have stated:—

"The whole question of deduction at source is being examined by an informal Committee appointed to consider the Department's tax accounting system, including tax deduction at source, and suitable measures will be taken on receipt of the Committee's recommendations. Amendment of law regarding the liability of I.T. Department to deduct tax at source is still under consideration."

1.95. The Committee would await the report of the informal Committee appointed by the Ministry inter-alia to examine the whole question of deduction at source, and the action taken thereon by Government in this regard.

1.96. The Committee note that amendment of the Law regarding the liability of the Income Tax Department to deduct tax at source is still under consideration of Government. The Committee desire that this matter should be decided quickly and the decision reported to the Committee.

Performance of Income-tax Officer—Decline in the average number of assessments disposed during 1970-71. Need for investigation—(Paragraph 3.23—Sr. No. 96).

1.97. Commenting on the decline in the average number assessments disposed particularly during 1970-71 the Committee in paragraph 3.23 of the Report observed as under:—

"The Committee find that the number of income tax officers attending to assessment duties has progressively increased from 1701 as on 1st April, 1968 to 1912 as on 1st April, 1969, 2056 as on 1st April, 1970 and 2234 as on 1st April, 1971. The effect of this appears to have been the reverse of what might have been expected. The average number of assessments disposed of per Income Tax Officer on assessment duty has decreased from 1855 in 1968-69 to 1842 in 1969-70 and 1669 in 1970-71. No satisfactory explanation for this phenomenon has been adduced by the Ministry. The Committee suggest that the reasons for decrease in the average number of assessments particularly during the year 1970-71 may be investigated by the department."

1.98. In their reply dated 26th March, 1973 the Ministry have stated:—

“Reasons for the decrease in the average number of assessments completed during 1970-71 are being investigated and a report will be submitted in due course.”

1.99. When asked to state whether the investigation in this regard had since been completed, the Ministry in a further note dated 1st December, 1973, have stated:—

“DI(RS&P) was requested to make a selective study in the matter. A copy of his report is attached herewith (page). Attention is invited to the Ministry's reply to para 1.30 of the 87th Report of the P.A.C. (1972-73), wherein the newly created Directorate of O & M SERVICES has been asked to make an overall study as suggested by the P.A.C.; their report is awaited for further necessary action.

This Director of Inspection (RSP) has stated in the concluding paragraph of his report as follows:—

“It will be observed from the above that there were good reasons for decline in the average disposal for Income-tax officer in respect of Income-tax assessments.”

1.100. The Committee note from the reply that a selective study of the reasons for the decline in the average number of assessments completed in five Commissioners' charges has been made by the Director of Inspection (RSP) and that this study has revealed that there were good reasons for the decline in the average disposal per Income-tax Officer in respect of Income-tax assessments. The Committee have also been informed that an overall study as suggested by them has been entrusted to the newly created Directorate of O&M Services and that their report is awaited, before further action is taken. The Committee would like to await the report of the Directorate of O&M Services and the action taken thereon by Government.

Tax deducted at source—System of reconciliation between the amount of tax deducted at source and the amount remitted to Government Acctt. (Paragraphs 4.57 and 7.12—Sr. Nos. 108—115).

1.101. Referring to the remittances of tax deducted at source to Government account, the Committee, in paragraphs 4.57 and 7.12 of

the Report, observed as under:—

“The Committee learnt from Audit that a system of reconciliation between the amount of tax deducted at source and the amount remitted to Government account was in vogue in Britain and that the same was brought to the notice of the Central Board of Direct Taxes by Audit in July, 1970. The Committee were informed that the Board had recently started the system of giving permanent account number to each assessee. The Committee desire that the system followed in Britain should be studied and a procedure devised to arrive at a satisfactory system of reconciliation.

The Committee note that for non-deduction or part-deduction of tax from dividends at source by companies, there were convictions in 237 cases in 1968-69, 135 cases in 1969-70 and 181 cases in 1970-71. The Committee learnt with satisfaction that as a result of prosecutions launched against defaulting companies, cases of defaults have declined. The Committee desire that the Department should devise a system whereby tax deducted by companies is remitted to Government within the prescribed period of one week. In 1969-70, there were 90 cases in which tax was remitted after one week of deduction or receipt of challan. The Committee suggest that the Department should take stringent action against the parties who failed to remit tax deducted within the prescribed time.”

1.102. In their replies dated 24th March, 1973 and 2nd April, 1973 respectively the Ministry have stated:—

“The question of devising a suitable procedure in the matter of deduction and collection of tax at source is under examination in the light of the recommendations of the Direct Taxes Enquiry Committee. The suggestion for introducing a Central Control/Account System as prevalent in the United Kingdom has been noted and will be considered while devising the new procedure.”

“The Wanchoo Committee also has made similar recommendations (vide paras 4.54 and 4.55 of their Report) regarding the deduction of tax at source and its collection. These recommendations are being examined.”

1.103. When asked to state the results of the examination, the Ministry, in a further note dated 9th November, 1973, have stated:—

“A Committee of officials has been appointed informally under the auspices of the Directorate of Q & M Services to consider the tax accounting system of the Income-tax Department and make necessary recommendations in this behalf; the papers regarding the U.K. System have been made available to the Committee for keeping in view. Their recommendations are awaited for suitable action.”

1.104. The Ministry in their note dated 17th November, 1973 stated:—

“The Board have appointed an informal Committee under the auspices of Directorate of O & M Services to examine our tax accounting system and make necessary recommendations for Board's action. The Committee will cover the subject of tax deduction at source and relevant procedures also. Their report is awaited.”

1.105. The Committee would like to be apprised of the findings of the Committee of Officials which need to be expedited. The Committee would, however, like to stress the need for a satisfactory system of reconciliation between the amount of tax deducted at source and the amount credited to Government Account in the Income-tax Department as is in vogue in the United Kingdom.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

1.39. The Committee find that the number of assessees has increased from 21,26,398 in 1964-65 to 29,10,341 in 1969-70. There was an increase of 36 per cent in 1965-66, 14 per cent in 1965-66, 11 per cent in 1966-67, 0.2 per cent in 1967-68 and 8.9 per cent in 1969-70, while there was a decrease of 1.3 per cent in 1968-69. The Committee were informed that the decrease in 1968-69 was due to removal of some 4 lakh assessees found not liable to income-tax out of 10 lakh new assessees added as a result of a special survey undertaken in 1964-65. The Committee were further informed that although there was overall reduction in 1968-69, there was continuous increase in the higher income cases. The number of business cases with income over Rs. 25,000 increased from 1,23,989 as on 31st March, 1968 to 1,37,324 as on 31st March, 1968 to 1,37,324 as on 31st March, 1969, 1,61,485 as on 13th March, 1970 and 1,77,553 as on 31st March, 1971. The Committee welcome the change in emphasis in enrolment of new assessees and hope that the surveys will concentrate on cases with revenue potential so that time and labour are not spent on cases which are subsequently to be removed from the registers.

1.41. The Committee need hardly point out that in evaluating the work of survey done by officers in the field, the tax potential of the cases detected should receive more importance than the total number of new assessees added.

[Item Nos. 5 & 7 of the Appendix to the PAC's Fifty-first Report (1972-73) Fifth Lok Sabha]

Action taken

1.39. The Committee's observations have been noted. The Government have already taken steps to intensify the survey on cases with revenue potential. This includes survey on professional persons and persons who have newly constructed properties or acquired immovable properties including ownership flats.

1.41. The effectiveness of survey work done by the officers is being included as one of the items for evaluating their performance.

[Ministry of Finance (Revenue and Insurance) O. M. No. 231/22-71-A & PAC dated 4th July, 1973].

Recommendation

1.48. The Committee desire that the working of small income scheme should be kept under watch. The objective of the scheme is that the Department should not waste its time and energy in disposal of cases which have no revenue potential. The Committee trust that the procedures evolved by Government help to achieve this objective. In particular, it should be ensured that on the one hand the scheme is not exploited by some unscrupulous high income assessees masquerading themselves as small income assessees and on the other hand genuine small income assessees are not subjected to harassment by being asked to appear before the Income-tax authorities. The Committee trust that Audit would conduct a review of the scheme and include their findings in their future Report.

1.49. The Committee were informed that there has been considerable simplification in procedure as far as individuals are concerned but the simplification might not have reached the same stage as far as other categories are concerned. The Committee desire that the question of simplification in procedures should be kept under constant review so that maximum possible simplification can be achieved as early as possible keeping in view the basic objective of avoiding harassment to parties without detriment to the interests of revenue.

[S. No. 8 & 9 and paras 1.48 and 1.49 of the Appendix to the Fifty-first Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

1.48. The observations of the Committee have been noted.

1.49. The recommendation of the Committee has been noted for processing.

Ministry of Finance (Revenue and Insurance) O.M. No. 231/22-71-A & PAC dated 5th March, 1973].

Further Information

Sr. No. 9 (Para 1.49).

A new Directorate of O. & M. Services has been created, *inter alia*, for making studies and devising ways of streamlining Departmental procedures for more efficient functioning. The observations of the P.A.C. have been communicated to that Directorate who will keep them in view in making studies and devising procedures.

Recommendation

The Committee note that the functional scheme of distribution of work which has been introduced in 104 ranges has resulted in not only increasing the disposal of assessments and collection of taxes but also paying adequate and timely attention to other important aspects of work like rectification of mistakes, disposal of audit objections, giving effect to appeal order etc. But there are also certain difficulties regarding non-availability of papers, delay in issue of demand notices and failure to give credit for prepaid taxes. The Committee desire that the procedural changes considered necessary for removing these defects should be made without delay.

[Item 10 and para 1.51 of the Appendix to the Fifty-first Report of the PAC (1972-73) Fifth Lok Sabha].

Action taken

Pursuant to the Wanchoo Committee's recommendations a Committee was set up by the Central Board of Direct Taxes for considering and suggesting necessary modifications to the functional scheme. The report of this Committee was discussed in the Commissioners' Conference held in May 1972 and the Board have issued a comprehensive circular (Instruction No. 451 dated 30th August, 1972) spelling out necessary modifications in procedure of work in functioning ranges, *vide* reply to item No. 134 of Lok Sabha Sectt. O.M. No. 2/7/III/2/72 dated 30th November 1972, with which a copy of the Instructions was attached.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/22/71-dated 5th March, 1973].

Recommendation

The Committee find that the pilot study carried out by the Central Board of Direct Taxes has revealed that in big income cases the percentage of cost of collection to demand raised worked out to 0.86 per cent and 0.78 per cent in 1968-69 and 1969-70 respectively while in small income cases the percentages were 5.57 and 5.41. The obvious conclusion is that cost of collection as percentage of the demand is much more in respect of small income cases as compared

with big income cases. The Ministry have pointed out that with the introduction of 'Summary Assessment Scheme' the results of the earlier study may no longer hold good. The expectation obviously is that the cost of collection on 'Small Income Cases' will register decline. The Committee desire that impact of the 'Summary Assessment Scheme' on the cost of collection may be watched through further studies with a view to taking additional measures towards reduction of cost of collection in small income cases.

[S. No. 11 and Para 1.54 of the Appendix to the Fifty-first Report of the PAC (1972-73) Fifth Lok Sabha].

Action taken

Steps for a further study as recommended by the Committee are being examined.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/22/71-A & PAC dated 5th March, 1973]

Further Information

(Sr. No. 11)

A pilot study was got conducted by the Director of Inspection (RS&P). The detailed results are shown in the annexure.

Annexure

A pilot study was made in representative changes in West Bengal, Bombay City, Gujarat, Delhi and Madras Charges having either both Scrutiny and Summary assessment cases or having only Summary or Scrutiny cases. A Study has also been made, of one Range in West Bengal Charge, having salary cases. The data collected in this pilot study for the years 1971-72 and 72-73 is given as under:—

Year	No. of assets.	Amount of demand raised	Cost of collection.	Cost per case.	Percentage of cost of collection to demand raised.
I	2	3	4	5	6
1971-72		(in '000s)	(in '000s)		
<i>(i) Scrutiny cases</i>					
(a) Cat. I	.	15749	48,58,80	36,70	Rs. 62.3 0.59%
(b) Cat. II	.	7820	4,30,31		
(c) Others	.	35332	9,21,61		
		58901	62,10,72		

1	2	3	4	5	6
(ii) Summary Assets.			21,32	20.7	2%
(a) Cat. I	7285	2,17,20			
(b) Cat. II	12225	2,04,38			
(c) Cat. III	24892	2,29,51			
(d) Cat. IV	58572	3,70,24			
	<hr/> 102974	<hr/> 10,21,33			
(iii) Salary Cases			4.99	5.64	4%
(a) 143(1)	79299	70,77			
(b) 143(3)	5572	56,63			
	<hr/> 84871	<hr/> 1,27,40			
1972-73					
(i) Scrutiny cases			36.15	118	6.4%
(a) Cat. I	13079	78,87,57			
(b) Cat. II	3651	3,54,16			
(c) Others	13899	7,28,58			
	<hr/> 30629	<hr/> 89,70,31			
(ii) Summary Assessments			2247	23	2.63%
(a) Cat. I	5245	1,88,41			
(b) Cat. II	8785	1,80,06			
(c) Cat. III	23406	1,87,05			
(d) Cat. IV	59523	2,97,67			
	<hr/> 96959	<hr/> 8,53,19			
(iii) Salary Assets.			515	6.63	7.73 %
(a) 143(1)	71779	34,30			
(b) 143(3)	5797	32,25			
	<hr/> 77576	<hr/> 66,55			

It is noticed that though the cost per case in summary and salary assessments as compared to scrutiny cases is less, but the percentage of cost of collection to demand raised is more. This is natural as the demand raised in summary and salary cases per case is lower. Coming to the cost of collection of 'Scrutiny cases' while in 1971-72 it came to Rs. 62.3, it went up to Rs. 118 in 1972-73. However, at the same time, the percentage of cost of collection in relation to

demand raised, registered a decline in as much as it came down to 0.4 per cent in 1972-73 as compared to 0.59 per cent in 1971-72. In 'Summary assessment' cases, the cost of collection also rose a little in 1972-73 as compared to 1971-72 when it came to Rs. 23 per case in the former year as compared to Rs. 20.7 in the earlier year. Similarly, the percentage of cost of collection in relation to demand raised during the year 1972-73 also rose to 2.63 per cent as compared to 2 per cent in the year 1971-72. In salary cases also, similar phenomenon of the increase in cost per case as well as the percentage of cost of collection in relation to demand raised, is noticed. It rose to Rs. 6.63 per case in 1972-73 as compared to 5.64 in 1971-72 and similarly the cost of collection in relation to demand raised rose to 7.73 per cent as compared to 4 per cent in 1971-72.

3. It can further be seen from the statistics that the demand raised in scrutiny cases during 1971-72 amounted to Rs. 62.11 crores as against Rs. 11.49 crores in 'summary assessment' and 'salary cases'. The demand raised in 'scrutiny' cases is, therefore, about 5.5 times the demand raised in 'summary' and 'salary' assessment cases. The cost per case in 'scrutiny cases' is Rs. 62.3 as against Rs. 13 in 'summary' and 'salary' assessments put together. The cost of a 'scrutiny case' is about 4.8 times of the cost of 'summary' and 'salary case.'

During 1972-73, the demand raised in 'scrutiny' cases is Rs. 89.70 crores while it is only 9.20 crores in 'summary' and 'salary' cases. The demand raised in 'scrutiny' cases is thus about 9.75 times of the demand raised in the two other groups of cases put together. The cost per case in 'scrutiny' and the other two groups of cases put together is Rs. 118 and Rs. 15.9 respectively i.e. the cost in 'scrutiny' cases is about 7.5 times the cost in other two groups of cases put together.

4. The cost of collection for the three types of assessment cases put together comes to Rs. 25.53 and Rs. 31 *per case* respectively for the year 1971-72 and 1972-73; the percentage of cost of collection in relation to revenue being .85 per cent and .64 per cent.

5. The above statistics, relating to pilot study, have been arrived at without taking into account expenditure incurred on office accommodation in some charges and proportionate supervision charges etc. in all the charges (due to practical difficulties) in which this pilot study has been undertaken. Similarly, it is presumed that tax deducted 'at source' from salary cases is not included in the demand raised in these cases. If that is included, the picture regarding the cost per case as well as the percentage of cost of collection to the demand raised may slightly change.

6. It may be pointed out that the 'summary assessment' scheme was introduced in the middle of 1971 and full impact of its working may not have been felt either in the year 1971-72 or 1972-73. Moreover, pilot study has been limited only to city charges. The picture may be a bit different in mofussil charges.

Recommendation

The Committee feel concerned over the increase in the number of cases of under-assessment and over assessment detected by Revenue Audit during the period 1st September, 1969 to 31st August, 1970. There were 16,997 cases of under-assessment of tax amounting to Rs. 858.92 lakhs and 6,004 cases involving an over-assessment of tax of Rs. 191.41 lakhs during the period 1st September, 1969 to 31st August, 1970, as against 12,418 cases of under-assessment involving tax of Rs. 687.19 lakhs and 3,496 cases of over-assessment involving tax of Rs. 100.92 lakhs detected during the period from 1st September, 1968 to 31st August, 1969. Of the total of 16,997 cases of under-assessment of tax detected during the period 1st September, 1969 to 31st August, 1970, there was short levy of tax of Rs. 644.80 lakhs in 1,096 cases alone, while there were 840 such cases involving short levy of Rs. 537.46 lakhs during the period 1st September, 1968 to 31st August, 1969.

The increasing number of cases of under-assessment and over-assessment detected by Revenue Audit points to the need of intensification of checks by Internal Audit. The Committee were informed that although the number of Internal Audit Parties was increased slightly during the year 1969-70, they were still in-sufficient to conduct more or less a concurrent audit of all cases. From the figures furnished to them, the Committee find that the total assessments checked by the Internal Audit Parties decreased from 2,77,332 in 1969-70 to 2,54,142 in 1970-71. However, the cases of under-assessment detected by the Internal Audit increased from 29,746 involving short levy of tax amounting to Rs. 607.79 lakhs to 40,106 cases involving tax of Rs. 1,230.71 lakhs in 1970-71. The number of cases of over-assessments increased from 11,123 involving tax of Rs. 173.02 lakhs to 17,120 involving tax of Rs. 397.43 lakhs. The Committee are not satisfied about the progress of rectification of the errors pointed out by the Internal Audit Parties. According to the review conducted by the Directorate of Income Tax Audit cases involving only 20 per cent of the aggregate tax realisable on rectification were rectified during 1970-71, while the corresponding percentage for 1971-72 was a little less than 30 per cent. The Ministry have also noticed that rectifications, in most of the cases have not

been done within the prescribed period of three months of the raising of objections by the Internal Audit. The Ministry are greatly concerned at the inadequacy of the rectification of errors pointed out by the Internal Audit and they propose to take some effective measures early. The Committee hope that effective measures will be taken by the Department to ensure that rectification of under-assessments and over-assessments detected by Internal Audit is made within the time of 3 months.

[Items 12 & 13 (Paras 2.26 and 2.27) of the Fifty First Report of the Public Accounts Committee (1972-73) Fifth Lok Sabha]

Action taken

The observation of the Committee have been noted. It may, however, be elucidated that the figures mentioned in Para 34 of the C&AS's Report, 1969-70 represent the total number of objections raised by the Audit and not those admitted by the Department which will be significantly less. Further, during the year 1960-70 the Audit scrutinised a much larger number of cases viz. 2,74,470 as against 2,59,269 cases scrutinised in the year 1968-69.

In this connection the Ministry's reply to para 2.28 may please be seen. The Director of Inspection (Income-tax has issued instructions in January, 1973 to ensure that the prescribed time limit for rectification on the basis of revenue and internal audit objections are enforced and the promptness in the matter achieved.

[Ministry of Finance (Revenue and Insurance) O. M. No. 246/41/71- A & PAC dated the 8th March, 1973].

Recommendation

The Committee find that according to the instructions issued by the Board in August, 1968, the Internal Audit Parties are required to take up checking of assessments, particularly those involving large revenues, soon after the assessments had been completed. According to the instructions issued in December, 1969 the Internal Audit Parties are required to take all category I assessments completed in rush period of February and March by the 30th June, following and the assessments on total income of one lakh or more made in any other month are required to be checked within three months of the date of the assessment. The Committee have been informed that no special review regarding the actual implementation of the instructions was conducted since the Director of Inspec-

tion undertakings a monthly review of the performance of Internal Audit Parties.

The Committee suggest that an immediate review of the working of the Internal Audit should be undertaken by the Board to find out how far they are carrying out the prescribed checks and bringing to notice cases of under or over assessment requiring rectification. The Board should also ensure that the rectification of the lapses is done promptly.

[Sl. No. 14 and Para 2.28 of Appendix to 51st Report of the P.A.C. 1972-73].

The Committee learn that the assessments checked by the Internal Audit Parties are not being stamped, with the result that it is difficult for the Revenue Audit to know whether the assessments have been checked by the Internal Audit Parties are not being made available to the Revenue Audit as a matter of course. The Committee consider that there should be proper coordination between the Internal Audit Parties and Revenue Audit so as to have maximum impact on revenue collecting organisation. This can be achieved by making the checks exercised by the Internal Audit more comprehensive and thorough and by making their Reports available contemporaneously to the Revenue Audit. The Committee would further suggest that the scope and nature of checks to be exercised by Internal Audit should be reviewed at least once in six months by the Board of Direct Taxes in consultation with Revenue Audit so as to make the checking more effective and pointed.

[Sl. No. 15 and Para 2.29 of the Appendix to 51st Report of the P.A.C., 1972-73].

The Committee in the various sections of this Report as well as of the 50th Report referred to inadequacies and lapses of Internal Audit and have also indicated the lines on which the Internal Audit check could be strengthened. They hope that Government would take due note of these and take appropriate action early.

[Sl. No. 16 and Para 2.30 of Appendix to 51st Report of the P.A.C. 1972-73].

Action taken

The working of the Internal Audit Organisation was generally reviewed recently. The strength of the Internal Audit Organisation was found to be inadequate and steps have been taken to supplement it. More IAPs have been sanctioned headed by

Inspectors who are technically better equipped than the Supervisors who head the existing IAPs. Posts of ITOs (Internal Audit) have been created for exclusive attention to and supervision over IAPs work. More posts of IAOs (Audit) have been created for effective senior control. Lastly the DI (IT & Audit) has been given the assistance of a Dy. Director exclusively for attention to overall coordination and guidance of audit work in the Department. The procedures have also been streamlined. According to these latest instructions, *inter alia* the IAPs have been asked to submit draft rectificatory memos alongwith their audit objection, wherever feasible, so that the officer concerned may finalize the same promptly after show cause notice to the assessee. Observance of rectification fortnights twice in a year, and a system of giving credit in disposal output for the rectification work done by the Income-Tax Officers have also been introduced.

The IAPs have been instructed to rubber stamp all the files checked. Instructions have been issued that copies of the IAPs reports should be made available to the Revenue Audit when requisitioned; copies of Monthly Reviews of the Director of Inspection are also now being sent to the Director of Revenue Audit. The Board keeps close watch over the DI's coordination and control of audit work and necessary instructions are issued to him from time to time, besides frequent personal discussions and assessment.

The observations of the Committee have been noted and various steps taken as detailed in comments against paras 2.28 and 2.29.

[Ministry of Finance (Revenue and Insurance) O.M. No. 241/5/72-A & PAC dated the 28th February, 1973].

Further Information (Sr. Nos. 14 & 15)

The position was reviewed in the year 1972.

The D.I. (I.T.&Audit) on behalf of the Board keeps watch over the functioning of I.A.P. and issues monthly reviews, copies of which are now being sent to the C&A.G. Any suggestions from the C&A.G. on the basis of these reviews will be considered; in view of this continuous arrangements which equally serves the purpose, formal half yearly consultations do not appear to be necessary.

COPY

DIRECTORATE OF INSPECTION (INCOME TAX)
'NIRIKSHAN NIDESHALYA (AAYAKAR)'

4th Floor, Mayur Bhavan, Con. Circus,

No. Audit|9|73|DIT|22672.

New Delhi—110001
Dated: the 8th March, 1973.

CIRCULAR No. 1/AUDIT OF 1973

Checking of assessments made under the Voluntary Disclosure Scheme as envisaged under Section 271(4A) of the I.T. Act and corresponding provisions of the Wealth-tax Act.

At present there are no specific instructions regarding checking of assessments pursuant to orders passed by Cs.I.T. u/s 271(4A) of the Income-tax Act, 1961 and the corresponding provisions of the Wealth-tax Act, 1957. The Board have decided that these assessments may also be checked by the IAC(Audit).

The item indicated below may be added to duties of IAC(Audit) in Part-B-Audit Functions, or Annexure-II to Board's Circular letter F. No. 5|4|69|IT(Audit) dated 26th May, 1969.

(6) Checking of assessments pursuant to orders by Cs. LT. u/s 271(4A) of the Income-tax Act and corresponding provisions of the Wealth-tax Act.

Sd/- R. L. MALHOTRA,
Director of Inspection (I.T. & Audit)

Recommendation

According to the provisions of Section 285(A) of the Income-tax Act, 1961, a person undertaking a contract for construction of a building or for supply of goods or services in connection with it for more than Rs. 50,000/- is required to furnish particulars of the contract to the Income-tax Officer concerned. The Committee were informed that during the year 1969-70, information was furnished by 1068 contractors. The Committee suggest that it should be examined whether the authority awarding the contract should also be required to send necessary information to the Income-tax Department so that necessary action can be taken against the contractors failing to send the particulars to the Income-tax Officer. [Sl. No. 17 and Para 2.31 of Appendix to the 51st Report of the P.A.C. (1972-73)].

Action Taken

A new provision vis. Section 194-C has been introduced in the Income-tax Act, 1961 by the Finance Act, 1972, as per which tax has to be deducted at source from payments for carrying out any work or for supply of labour in pursuance of a contract with the Central Government, State Govt., Local Authority, Statutory Corporation or a company. This provision is applicable to all cases where the value of the contract exceeds Rs. 5,000/-.

2. Provision has also been made in Rule 37(2C) of the Income-tax Rules, 1962, to the effect that the person making deduction of tax in accordance with section 194C should furnish to the Income-tax Officer concerned relevant particulars in Form No. 28C which includes information regarding the gross value of the contract.

[Ministry of Finance (Rev. & Ins.) OM No. 246/41/71-A&PAC dt. 17-1-73]

Recommendation

Further the Committee note that at present the provision of this Section is restricted to building contractors only. The Direct Taxes Enquiry Committee in paragraph 2.223 of their final report have recommended that the scope of this provision should be extended to apply to all contractors. The Committee desire that decision on this important recommendation should be taken without delay.

[Sl. No. 18 and Para 2.32 of the Appendix to 51st Report of the P.A.C. (1972-73)]

Action Taken

The Wanchoo Committee's recommendation contained in para 2.223 of its final Report is under consideration and a decision is likely to be taken soon.

[Ministry of Finance (Revenue & Insurance) OM No. 246/41/71-A&PAC dt. 17-1-73]

Further Information (Sr. No. 18)

Clause 77 of Taxation Laws (Amendment) Bill, 1973 meets the point by seeking to amend suitably Section 285A of the Income-tax Act, 1961.

Recommendation

Despite the concern expressed by the Committee in their successive Reports over the mistakes committed in the computation of tax which went undetected, the number of such cases has shown a steady rising trend in recent years. The number of cases which was 1,786 in 1965 went upto 2,719 in 1969-70. From the nature of the mistakes examined by the Committee there can be only one conclusion that either there was no effective check in the Department or the mistakes were not bona-fide. The Committee note that the Department had issued some instructions on 13th December, 1971 after the Committee took evidence. The Committee would content themselves with the observation that the effectiveness of performance depends on the implementation of instructions of which there was no dearth even earlier.

[Sl. No. 19 and Para 2.43 of Appendix to 51st Report of the P.A.C.
(1972-73)]

Action Taken

The observations of the Committee have been noted by the Government.

[Ministry of Finance (Rev. & Ins.) OM No. 20/125/69 I.T. Audit dt.
12-3-73]

Recommendation

The Committee regret the failure in this case which resulted in a short levy of Rs. 52,006. They expect that the persons found at fault will be suitably dealt with.

The rush of assessments in March, 1967 was partly responsible for this failure. The Committee wish to reiterate their often repeated suggestion that assessments in high income brackets should as far as possible be completed earlier in the year.

The Committee would like to be informed of the recovery effected in this case.

In a number of cases, the Committee have been informed that the Internal Audit could not audit them before they were taken up by the Statutory Audit. This in the opinion of the Committee is quite unsatisfactory. They wish to stress that the programme of Internal Audit should be so arranged as to cover all the circles without delay so that when Statutory Audit proceeds with their Audit

they would have an opportunity to review the work of the Internal Audit also.

[Item Nos. 20, 21, 22 and 23 (Paras 2.49, 2.50, 2.51 and 2.52) of the Appendix to the Fifty First Report (1972-73) Fifth Lok Sabha]

Action Taken

The Income-tax Officer concerned has been warned for the lapse.

The observations of the Committee have been noted: instructions stand issued in this behalf with Board's No. F. 385/99/70-ITB dated 3-11-1970 (copy attached).

The additional demand raised on giving effect to the audit objection has since been remitted fully as a result of the Income-tax Appellate Tribunal's order giving substantial reduction in the income assessed.

The Committee's observations have been noted. Suitable steps have already been taken vide the replies in respect of Para 2.20 of the PAC's 50th Report (1972-73) and Para 2.246 of their 51st Report (1972-73), also attached copy of reply to item No. 106 of Lok Sabha Sectt.'s O.M. No. 2/7/III/72/PAC dated 30-11-1972.

[Ministry of Finance (Revenue and Insurance) O.M. No. 20/86/69-II Audit, dated 20-3-73]

P. No. 385/99/70-ITB

CENTRAL BOARD OF DIRECT TAXES

North Block, New Delhi, the 3rd November, 1970

From

Shri R. D. Saxena,

Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

Sub: *Public Accounts Committee—Recommendations made by the Committee in paras 1.32 and 1.33 of its 117th Report.*

I am directed to say that the Public Accounts Committee have made the following observations in paras 1.32 and 1.33 of its 117th

report:—

Para 1.32:

"While the under-assessments have been caused by a multiplicity of reasons, an important contributory factor, in the opinion of the Committee has been the tendency on the part of many income tax Officers to delay and rush through assessments at the close of the financial year. During the course of discussions on individual audit paragraphs, the Committee noticed that quite a number of cases in which mistakes or irregularities occurred had been rushed through in the months of February-March. The representative of the Board also conceded that the Income-tax Department tended to work at a "snail's pace" in the initial months of the financial year. The Committee have already drawn attention to this matter in their previous reports and would like Government to take effective steps to curb this tendency so that the work is evenly spaced out over the year.

Para 1.32

In re-ordering the assessment works it is important to ensure that high income cases are taken up for assessment sufficiently in time during the course of the year. The efforts should be to finalise all such cases by the end of December. The Committee would like the Board to issue suitable instructions to diseffect, so that range Officers who are responsible for fixing the priorities for assessment take suitable action in the matter.

2. Regarding para 1.32, instruction have already been issued vide letter No. 3|3|68-II (Audit), dated 8th October, 1968 wherein you were requested to ensure that the Income-tax Officers plan their programme of work in such a way that assessments of cases involving large incomes are not crowded into the last month and the last week of the financial year. The Board desire that these instructions should be scrupulously followed while planning the programme for disposal of assessments.

3. Regarding para 1.33, efforts should be made to finalise all high income cases by the end of December as desired by the Committee.

Yours faithfully,

Sd/- R. D. SAXENA

Secretary, Central Board of Direct Taxes.

Copy of reply to item No. 106 of Lok Sabha Sectt.'s O.M. No.

27/III/72/PAC dated 30-11-1972.

Recently the IAPs have been further strengthened and immediate audit by the IAPs within one month of the completion of the assessment has been prescribed in respect of the following types of cases:

- (i) All company cases including SPT|ST.
- (ii) Other income-tax cases involving assessed income of Rs. 1 lakh and more.
- (iii) Cases relating to other direct taxes in which tax payable exceeds Rs. 20,000/-; and
- (iv) Refund cases involving an amount of Rs. 20,000/- and above.

Lastly, broad based and comprehensive training arrangements have now been provided for officers and staff at Commissioner's headquarters and the I.R.S. (D.T.) Staff College, Nagpur and its four Regional Institutes at Bombay, Calcutta, Bangalore and Kanpur. This should improve their performance.

Recommendation

That a mistake of this type leading to under-assessment of Rs. 1,29,786/- in this case, should have occurred in a Central Circle Causes some uneasiness. As admittedly there has been negligence in checking, the Committee hope that the Department will take due note of it against the persons found remiss in the discharge of their responsibilities. They would like to know the completion of the recovery in this case.

[Sl. No. 24 and Para 2.61 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action taken

Super-tax was correctly calculated by the clerk concerned but in carrying over the figure from one column to the other, the last digit, a zero was inadvertently omitted. The clerk concerned has been warned but no action could be taken against the supervising Head Clerk as he had since retired from service. The I.T.O. has also been warned to be more careful in future.

Additional demand as subsequently reduced in appeal has been fully collected.

[Ministry of Finance (Revenue & Insurance) O.M. No. 20/36/69 I.T.Audit. 26-3-73]

Recommendation

The Committee are concerned to find errors in a number of cases of assessments under the voluntary disclosure scheme. These assessments are at present not being checked by the Internal Audit Parties. The Committee note that Internal Audit Parties are neither properly equipped nor have they requisite status for checking these assessments. They would like Government to ensure that assessments in respect of voluntary disclosure scheme are thoroughly checked in internal audit to obviate any mistakes.

[Item 27 (Para 2.80) of the Appendix to the Fifty-first Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

The Director of Inspection (Income-tax and Audit) is being asked to instruct the Inspecting Assistant Commissioners (Audit) to check the assessments made under the Voluntary Disclosure Scheme.

[Ministry of Finance (Revenue & Insurance) O.M. No. 241/5/72 A&PAC dt. 28-2-73].

Further Information (Sr. No. 27)

Item No. 3: A copy of the circular issued by the D.I. (I.T.&Audit) issued vide No. Audit 9/73|DIT|22672 dated 8-8-1973 is attached.

COPY

DIRECTORATE OF INSPECTION (INCOME TAX) 'NIRIKSHAN NIDESHALYA (AAYAKAR)'

4th Floor, Mayur Bhavan, Con. Circus

No. Audit 9/73|DIT|22672

New Delhi-110001

Dated: the 8th March, 1973.

Circular No. 1|Audit of 1973

1

Checking of assessments made under the Voluntary Disclosure Scheme as envisaged under Section 271(4A) of the I.T. Act and corresponding provisions of the Wealth-tax Act.

At present there are no specific instructions regarding checking of assessments pursuant to orders passed by Cs. I.T. u/s 271(4A) of

the Income-tax Act, 1961 and the corresponding provisions of the Wealth-tax Act, 1957. The Board have decided that these assessments may also be checked by the IAC(Audit).

The item indicated below may be added to duties of IAC(Audit) in Part-B-Audit Functions, of Annexure-II to Board's Circular letter F. No. 5/4/69/IT(Audit) dated 26th May, 1969.

(6) Checking of assessments pursuant to orders by Cs. I.T. u/s 271(4A) of the Income-tax Act and corresponding provisions of the Wealth-tax Act.

Sd/-

R. L. MALHOTRA

Director of Inspection I.T. & Audit)

Recommendation

The Committee are glad to learn that after they took evidence of the Ministry in this case instructions have been issued for preventing lapses in the check of computation of income of assessees which had not been given in the past the care it deserved. They would like to watch the improvements through future Audit Reports.

[Sl. No. 28 and Para 2.86 of the Appendix of 51st Report of the P.A.C. (1972-73)]

Action taken

The observations of the Committee have been noted.

[Ministry of Finance (Revenue & Insurance) O.M. No. 236/176/70 I.T. Audit dated 26-3-73].

Recommendation

This is yet another case of mistake going unnoticed in the assessment belonging to high income group made in the month of March. The Committee are inclined to take a serious view of such mistakes especially in a group charge, the object in creation of which was to ensure greater accuracy in tax assessments. They hope that the persons responsible for failure will be suitably dealt with.

[S. No. 29 and Para 2.95 of Appendix to the 51st Report—Revenue Receipts, 1970-71 and Report of the C&AG for 1969-70]

Action taken

The Commissioner of Income-tax has verified that the mistake was in the nature of an arithmetical error. The Income-tax Officer had mentioned in the assessment order the correct rate to be applied, but error in the matter crept in at the time of calculations. The ITO and his staff concerned have been suitably warned to be more careful in future. General instructions have also been issued that the Income-tax Officers should personally check tax calculations in cases where assessed income stood at Rs. 1 lakh or more.

[Ministry of Finance (Revenue & Insurance) O.M. No. 236/159/70-II Audit dt. 8-12-74]

Recommendation

2.107. The Committee, note that Internal Audit Parties are not equipped for scrutinising the assessments of the Insurance Companies, which are stated to be complex nature. As the need for the check is all the more in complicated assessments, the Committee would urge Government to ensure that Internal Audit Parties are adequately equipped soon to take all types of assessments.

[Item No. 32 of the Appendix to the 51st Report of the PAC].

Action taken

2.107. Arrangements are being made by the Director of Inspection (I.T.), for giving special training to the IAPs checking insurance companies.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/210/70 I.T. Audit dated 30th April, 1973]

Further Information (Sr. No. 32)

Necessary instructions have been issued by the Director of Inspection (IT) vide No. Audit-4/73-74/3450 dated 26th May, 1973 (copy attached) to the Commissioners in whose charges insurance Companies cases are mainly assessed.

Copy of letter No. Audit-4/73-74/3450 dated 26th May, 1973 from Director of Inspection (I.T.) to Commissioner of Income-tax Bombay, City-I, Delhi-I, Calcutta-I and Madras-I.

Special Training to IAPs checking assessments of Insurance Companies.

The Public Accounts Committee in Para 2.107 of their 51st Report have observed as under:

"The Committee note that Internal Audit Parties are not equipped for scrutinising the assessments of the Insurance Companies, which are stated to be complex nature. As the need for the check is all the more in complicated assessments, the Committee would urge Government to ensure that Internal Audit Parties are adequately equipped soon to take all types of assessments."

Special training in checking insurance cases may please be given to one IAP at your headquarters in keeping with PAC's observations and a report sent to the Directorate giving name of the persons trained, duration of training, and also a copy of the training programme.

Recommendation

2.116. The instructions issued by the Board in October, 1969 allowed write off of the entire cost of a film in the year in which it was released. Though this was not in accordance with the judicial view on the subject given in 1957, the Department have expressed that the position has radically changed since then. However, an audit objection raised in May, 1970, the matter is stated to be taken for consideration 'de novo' on merits. The Committee would like to know the final decision taken in this regard early.

2.117. In this case the aggregate amortisation allowance granted in the two years 1966-67 and 1967-68 had exceeded the cost of production of the film. The Committee are unhappy to note that the Ministry have not issued any instructions so far regarding the maintenance of the continuous record, like the depreciation chart to enable the assessing officer to keep a watch that the total amortisation allowance does not exceed the cost of production. The Committee wish that this should be done early.

2.118. Although this case was checked by the Internal Audit, they failed to detect the errors for the reason that checking of amortisation was not covered in their check sheet than in vogue. The Committee hope that this lacuna has since been removed.

[Items 34 to 36 (Paras 2.116 to 2.118) of the Appendix to the 51st Report of the PAC (1972-73) Fifth Lok Sabha]

Action taken

2.116. Revised instructions have since been issued in consultation with Audit, *vide* circular No. 92 F. 201/5/71-ITA-II dated the 18th September, 1972 (copy enclosed).

2.117. Instructions have since been issued for maintenance of proper record of amortisation allowance *vide* Instruction No. 455 F. 201/5/71-ITA-II dated 18th September, 1972, copy attached.

2.118. Necessary changes in the internal audit check-sheet are being made.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/38/70 I.T. Audit dated 23rd April, 1973].

Circular No. 92

F. No. 201/5/71-ITA.II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 18th September, 1972

From:

Shri T. P. Jhunjhunwala
Secretary, Central Board of Direct Taxes.

To:

All Commissioners of Income-tax.

Sir,

SUBJECT: *Films—Cost of production and cost of acquiring distribution rights—Amortisation of—*

Attention is invited to Board's circular No. 4(XI-3)D of 1959 dated 9th April, 1959 as modified by Circular No. 30 dated 4th October, 1969 on the above subject.

2. The Board has reconsidered the question relating to the amortisation of the cost of production of a feature film. The effective life of a feature film depends on many factors, the most important among them being the market value of the stars acting in the films, which in turn is reflected in the cost of production. On the basis of cost of production, the feature films can be categorised into three classes:

Class	Cost of production including cost of positives and advertisement expenses incurred by the producer.
A	Rs. 35 lakhs and above.
B	Between Rs. 10 to 35 lakhs.
C	Below Rs. 10 lakhs.

3. Normally feature films are disposed of by a producer either under the minimum guarantee formula or by way of outright sale. Under the minimum guarantee system a minimum amount is guaranteed to be paid to the producer by the distributor. In addition, a right to participate in the over-flow is also retained by the producer. Overflow represents the amount which is arrived at after the distributor has recouped the minimum guaranteed amount and his commission. In the case of outright sale the producer transfers all his rights of exploitation of the feature film to the distributor for a lump-sum consideration.

4. An actual case study of the films in A class was undertaken. Feature films produced with the cost of production of Rs. 35 lakhs and above were found to have a run of more than 2 years. The Board has, therefore, decided to revive the amortisation formula for such films under which the value of the film will be depreciated by 60 per cent in the first year, 25 per cent in the second year and 15 per cent in the third year on time basis as elucidated in Board's circular dated 9th April, 1959 referred in para 1. These percentages are not to be deviated from and are to be followed in allowing cost of amortisation of A class feature films.

5. The effective life of feature films in B and C categories was found to be normally of one year. It has therefore been decided by the Board that the entire cost of production may be allowed in the very first year of production if the film was released in the first half of the accounting year, in case of the film was released in the later half of the accounting year the value of the film should be taken at 50 per cent of the cost of production at the end of that accounting year and the balance 50 per cent should be adjusted in the second year.

6. The Board has also decided that the cost of acquiring distribution rights should be treated in the hands of the distributor in the same way as the cost of production is treated in the hands of the film producer, the rates of the allowance and manner being as indicated in Paras 4 and 5 above.

7. If the producer sells the film outright for all the territories, the entire cost of production should be allowed as a deduction in the year of the sale irrespective of the category to which the film belongs. If the distributor after having acquired the film by way of outright purchase sells the film outright to another person in the first or subsequent years, he would be assessable on the profits made on that transaction by allowing the deduction for the price which he had paid to acquire the exploitation rights.

8. In cases where the producer or the distributor disposes of the exploitation rights of an A class film on mixed basis, i.e. some territories on minimum guarantee and others on outright sale, the deduction for the cost of production should be effected in the same proportion as the amount of outright sale bears to total receipts. The remaining balance of the cost of production should be amortised on lines indicated in para 4 above. If, for example, the cost of production of an A class film is Rs. 40 lakhs and the exploitation rights for three territories are disposed of for Rs. 20 lakhs on minimum guarantee basis. And the remaining territories for Rs. 25 lakhs by way of outright sale, the cost of production should be amortised on the following basis:—

Cost of Production	Rs. 40 lakhs
Minimum Guranteed amount	Rs. 20 lakhs
Outright sale	Rs. 25 lakhs
	<hr/>
25:45 = X: 40 =	Rs. 22,22,222

Therefore, the outright deduction from the cost of Rs. 40 lakhs would be Rs. 22,22,222. The balance amount i.e. Rs. 40 lakhs less Rs. 22,22,222, should be amortised on time basis as indicated in para 4.

9. Board's circulars referred to in para 1 above stand modified to the extent indicated above.

Yours faithfully,

Sd/- T. P. JHUNJHUNWALA,
Secretary, Central Board of Direct Taxes.

F. No. 201/5/71-ITA-II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 18th September, 1972.

From:

Shri T. P. Jhunjhunwala,
Secretary, Central Board of Direct Taxes.

To:

All Commissioners of Income-tax.

Sir.

SUBJECT: *Films—Cost of Production and cost of acquiring distribution rights—Amortisation of—*

Attention is invited to Board's Circular No. 92 of even date on the above subject.

2. In order to ensure that the full receipts are accounted for and the total Amortisation allowed does not exceed the cost of production, the details in the chart enclosed must invariably be maintained for *each film separately*. No case of film producer or distributor should be disposed of without completing this chart. Certificates of payments for three years from the persons who had acquired the exploitation rights of the film must be obtained by the Income-tax Officers so as to enable them to verify the correctness of the receipts disclosed. It shall be the responsibility of the Inspecting Assistant Commissioner to ensure that these instructions are being followed by the Income-tax Officers strictly.

Yours faithfully,

Sd/- T. P. JHUNJHUNWALA,
Secretary, Central Board of Direct Taxes.

Name and address _____
 Permanent Account Number _____
 Accounting year _____
 Producer /Distributor _____

Cost /Value of the film Date of first release. Name and address of the buyers of the exhibition rights. (a) Minimum guarantee received (to be shown separately.) (b) Outright sale amount received (to be shown separately.)

1	2	3	4	5	6	7
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First year . . .

Second year . . .

Third year . . .

Further Information (Sr. No. 36)

Necessary instructions have already been issued to the Internal Audit Parties for their guidance by the Director of Inspection (Income-tax & Audit) vide his Circular No. 5/Audit/73 dated 27-8-1973, copy annexed.

ANNEXURE

Extract taken from Circular No. 5/Audit/73, dated 27-8-1973 issued by the Director of Inspection (Income-tax & Audit), New Delhi.

Para 3 While checking cases of film producers/distributors, Internal Audit Parties should check whether amortisation chart has been properly maintained for each film separately (Board's Instruction No. 455 dated 8-9-1972), and further ensure that—

- (i) full receipts have been accounted for; and
- (ii) total amortisation allowance does not exceed the cost of production.

Recommendation

2.123. This is a sad case where although the Income tax Officer rightly treated the cost of replacement of certain items of depreciable assets as allowable deduction, he failed to add back the cost debited to the Profit and Loss Account While computing the assessments for the years 1960-61 and 1967-68. The effect of this failure was an under-charge of tax of Rs. 3,42,715/- . The mistake was not noticed before Audit pointed it out in March 1970 with the result that assessment for 1960-61 could not be rectified as it became time-barred. The Committee desire to be informed whether the case was looked into by Internal Audit and if so, how the mistake was not detected by them. The Committee would also like Government to examine whether similar mistakes were made in the assessments for the years 1961-62 to 1966-67 and take suitable action.

[Item 37 of the Appendix to the 51st Report of the PAC (1972-73)
Fifth Lok Sabha].

Action taken

The assessments in question were not checked by the Internal Audit due to heavy back-log of older cases.

On check up it was found that no similar mistake had been made in the assessments for the years 1961-62 to 1966-67.

[Ministry of Finance (Revenue & Insurance O.M. No. 236/162/70 IT Audit dated 23-4-73].

Amortisation Chart for Film

Name and address _____
 Permanent Account Number _____
 Accounting year _____
 Producer/Distributor _____

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Cost/Value of the film Date of first release Name and address of the buyers of the exhibition rights. (a) Minimum guarantee received (to be shown separately). (b) Outright sale amount received (to be shown separately).

1	2	3	4	5	6	7
Receipts disclosed year-wise						
First year	.	.				
Second year	.	.				
Third year	.	.				

Further Information (Sr. No. 36)

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- (i) full receipts have been accounted for; and
- (ii) total amortisation allowance does not exceed the cost of production.

Recommendation

2.123. This is a sad case where although the Income tax Officer rightly treated the cost of replacement of certain items of depreciable assets as allowable deduction, he failed to add back the cost debited to the Profit and Loss Account While computing the assessments for the years 1960-61 and 1967-68. The effect of this failure was an under-charge of tax of Rs. 3,42,715/- . The mistake was not noticed before Audit pointed it out in March 1970 with the result that assessment for 1960-61 could not be rectified as it became time-barred. The Committee desire to be informed whether the case was looked into by Internal Audit and if so, how the mistake was not detected by them. The Committee would also like Government to examine whether similar mistakes were made in the assessments for the years 1961-62 to 1966-67 and take suitable action.

[Item 37 of the Appendix to the 51st Report of the PAC (1972-73)
Fifth Lok Sabha].

Action taken

The assessments in question were not checked by the Internal Audit due to heavy back-log of older cases.

On check up it was found that no similar mistake had been made in the assessments for the years 1961-62 to 1966-67.

[Ministry of Finance (Revenue & Insurance O.M. No. 236/162/70 IT Audit dated 23-4-73].

Recommendation

2.147. The Committee note that the new rules brought into effect from the 1st April, 1970 do not provide for industry-wise rate of depreciation in respect of a large number of industries. The Ministry has explained in this connection that it may not be possible to fix industry-wise rates because the percentage of machinery entitled to different rates of depreciation may not be the same in the case of all the concerns running a particular type of industry. In a case examined by the Committee, they have noticed that there has been some controversy regarding determination of rate applicable to printing machinery. The Committee would, therefore, suggest that Government should examine as to how far the rules regarding depreciation allowance could be rationalised further to place matters beyond doubt.

2.148. The Committee have been reiterating that each inspecting Assistant Commissioner should check a certain number of cases of each Income-tax Officer under his charge at regular intervals. They note that although some instructions have issued in this regard it is not yet known as to what extent Inspecting Assistant Commissioner were able to pay attention to such a test check. The present position is quite unsatisfactory. The Committee hope that the Ministry will ensure that instructions are followed in letter and spirit.

[Items 41 and 42 of the Appendix to the Fifty-first Report, 1972-73
Fifth Lok Sabha].

Action taken

2.147. In the case referred by the Committee the assessment related to the period prior to 1-4-1970; the new depreciation rules were introduced with effect from 1-4-70. Instructions have been issued laying down guidelines for applying the rates applicable prior to 1-4-1970 *vide* attached copy of Board's Instruction No. 416 F. 202/11/72-IT AII dated 12-5-72.

2.148. The Director of Inspection (IT&A) has been asked to ensure compliance with the instructions issued by him on 10-11-1970 in this matter; for check up the Commissioner's have been asked to send half-yearly reports to the D.I.

[Ministry of Finance (Revenue & Insurance O.M. No. 236/229/70-IT Audit dt. 19-4-1973].

Recommendation

2.154. According to the Ministry mistakes noticed in these cases are due not to either carelessness or negligence but to the fact that there was some controversy about the correct rate of depreciation to be applied to the printing machinery. It is unfortunate that the controversy in this regard was not considered till June, 1971. As per the interpretation now given if there is no specific rate prescribed for the industry as a whole the rates prescribed for individual items of plant and machinery have to be applied to such individual items and if no specific rate has been prescribed for any individual item, then the general rate will apply to such individual items. The Committee trust that suitable instructions in the matter have been issued by the Central Board of Direct Taxes in consultation with Audit.

2.155. The Committee are unable to agree with the view of the Ministry that no general review was called for. They accordingly suggest that it should be undertaken now to find out whether there have been cases of incorrect application of rate of depreciation in the light of the interpretation referred to above so that the relevant assessments which have not become time-barred may be rectified.

[S. Nos. 43 & 44 (Paras 2.154 & 2.155) of appendix to 51st Report of the Public Accounts Committee (1972-73)].

Action taken

2.154. The Central Board of Direct Taxes have already issued on this subject Instruction No. 416 F. No. 202/11/72-IT(A-II) dated 12-5-1972, a copy of which has been supplied to the Committee in reply to their query at S. No. 24 of Lok Sabha Sectt's O.M. No. 2|7|IV|2|72|PAC, dated 20/21-9-1972.

2.155. As stated in reply to item No. 5 of the Lok Sabha Sectt's O.M. No. 2|7|III|2|71|PAC dated 4-2-1972, the Commissioners in whose charges the mistaken interpretation was adopted, have issued instructions for review and rectification of other such cases.

[Ministry of Finance (Revenue & Insurance O.M. No. 20/205/69-IT Audit dt. 2-5-73)].

Further Information (Sr. No. 44)

The review was ordered by the Commissioners of Income-tax, Madras *vide* Circular dated 9-3-1970 (copy furnished to the Lok Sabha Secretariat *vide* Ministry's F. No. 20/205/69-IT Audit dated 14-9-1972 in reply to item No. 5 of Lok Sabha Sectt. O.M. 2|7|III|2|71

dated 4-2-72); information regarding results of the review had not been called for by the Commissioners.

Recommendation

2.163. The Committee regret that incorrect allowance of development rebate totalling upto Rs. 1.05 crores for the assessment years 1962-63 to 1966-67 relating to a Public Sector Undertaking was not detected although all the assessments were checked by the Internal Audit. The Committee would like to know the action taken for the failure in this regard.

2.164. The Committee do not appreciate any relaxation in the standard of scrutiny of tax returns submitted by Public Sector Undertakings. They accordingly trust that the Ministry will issue suitable instructions to all the assessing authorities.

[Items 45 & 46 (Paras 2.163 & 2.164) of the Appendix to the Fifty-First Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

2.163. The Internal Audit Party official was warned for the lapse.

2.164. Necessary instructions were issued with No. 361 F. 20/151/69-IT(Audit) dated 22-12-71 (copy attached).

[Ministry of Finance (Revenue & Insurance O.M. No. 20/151/69 IT Audit dt. 8-3-73].

Instructions

New Delhi, the 22nd December, 1971.

To

All Commissioners/Addl. Commissioners of Income-tax

Sir,

SUB: Assessment of business income-Scrutiny of the returns and claims for deductions and allowances—Cases of Public Sector undertakings-Extent of check reg.—

In the course of the last meeting of the Public Accounts Committee held in October, 1971 for considering the C&AG's Revenue Audit Reports for 1970 and 1971 (for the year 1969-70) the assessments made in the case of a public sector undertaking came up for discussion. The Committee felt that the concerned Income-tax officer had not scrutinised the returns and claims for deductions and allowance made by the assessee, as thoroughly as one expects in other cases of comparable volume of business. They desired the Income-tax Offi-

cers and other Income-tax authorities to be instructed not to discriminate or appear to discriminate between the assessments of public sector undertakings and those of other assessees.

2. The Board would like to impress on the Income-tax Officers and other Income-tax authorities that they are anxious to have any misgivings in this respect dispelled by impartial and thorough scrutiny of the returns of income and claims for deductions and allowances of the public sector undertakings to the same extent as in the case of any other assessee with comparable turnover or income.

3. The instructions may please be brought to the notice of all officers assessing the case of public sector undertakings in your charge.

Sd/-

S. BHATTACHARYYA,

Secretary, Central Board of Direct Taxes.

Recommendation

The Committee note that an Appellate Tribunal had already held in a case that sale of goods on credit to its members by a cooperative society did not mean providing credit facilities, as contemplated under the Act. It is unfortunate that although the matter was brought to the notice of the Ministry in September, 1970 by Audit, the opinion of the Ministry of Law has not yet been taken with the result that no instructions clarifying the position have been issued to the lower formations of the Department. The Committee hope that it will be done without further delay.

[Sl. No. 47 and Para 2.173 of Appendix to 51st Report of the PAC (1972-73) Fifth Lok Sabha].

Action taken

The opinion of the Ministry of Law has since been obtained and on the basis of this opinion, the audit objection has been accepted and the audit informed. The Law Ministry's advice on the facts of this specific case has been conveyed to the Department for taking consequential action.

[Ministry of Finance (Revenue & Insurance O.M. No. 20/1/69-IT Audit dt. 2-5-73].

Recommendation

The Committee are unable to understand how the Income-tax Officer overlooked the fact that the tax relief on newly established Industrial undertakings is admissible only for a period of five years from the year in which production started and allowed the relief beyond the stipulated period for the assessment years 1963-64 and 1964-65 which resulted in under-assessment of tax to the tune of Rs. 13,53,971/- . They, however, wish to be informed of the outcome of the appeal preferred by the assessee in this case.

[Item 48 (Para 2.178) of the Appendix to the Fifty First Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action Taken

In allowing the assessees appeal against the re-assessment for assessment year 1963-64, the Appellate Assistant Commissioner held that manufacture of articles in EMU Coach began only in the previous year ending 31-10-1958 and that the relief under section 84 was admissible for the assessment year 1963-64. The A.A.C.'s decision has been accepted by the Department. The appeal for the assessment year 1964-65 was rejected by the A.A.C. and the relief accordingly stands withdrawn.

[Ministry of Finance (Rev. & Ins.) O.M. No. 20/96/69-IT Audit dated 5-3-73]

Recommendation

The Committee were informed by the Ministry that the Income-tax Officer had been instructed to take remedial action in the case of share-holder's assessments. The action taken in this regard may be reported to the Committee.

[Sl. No. 49 and Para 2.179 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

It was subsequently intimated by the Department that no exemption under sections 85 and 101 was allowed to the share-holders in respect of dividends received by them; as such, the action of withdrawal of relief did not arise. This was communicated to the Committee vide Ministry's O.M.F. No. 20/96/69-IT (Audit) dated 14-9-1972 in response to their O.M. No. 2/7/III/271, dated 4-2-1972.

[Ministry of Finance (Revenue and Insurance) O.M. No. 20/96/69 IT Audit dated 26-3-1973]

Recommendation

The tax holiday relief incorrectly allowed before deducting development rebate from the profits and gains of a Government owned company resulted in a short levy of over Rs. 6 lakhs. The Committee note that the additional demand has already been raised, but the assessee has gone in appeal. The Committee may be informed of the outcome.

[Sl. No. 53 and Para 2.193 of Appendix to 51st Report of the P.A.C. (1972-73)]

The Committee would also like to know the results of an independent review of the Department as to whether the tax relief was properly calculated for the assessment years 1963-64, 1964-65 and 1966-67 in respect of this company.

[Sl. No. 54 and Para 2.194 of Appendix to 51st Report of the P.A.C. (1972-73)]

Action Taken

Assessee's appeal for assessment year 1965-66 is pending before the Income Tax Appellate Tribunal whereas appeals before the Tribunal for assessment years 1962-63, 63-64 and 67-68 have been withdrawn by the assessee. Rupees three lakhs have been realised out of the additional demand raised and the assessee has been allowed to pay the balance demand at the rate of Rs. 10,000/- per month.

The tax holiday relief was correctly allowed in assessment years 1963-64 and 1964-65 whereas no relief was allowed for assessment year 1966-67.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/228/70-IT Audit dated 6-1-1973]

Further Information (Sl. No. 53-54)

The Tribunal vide order dated 23rd March, 1973 have confirmed ITO's order u/s. 154 dated 27-11-1970 for assessment year 1965-66.

Unabsorbed development rebate of Rs. 2,56,95 for 1962-63 and carried forward development rebate of Rs. 8,27,039 for assessment year 1961-62 were adjusted in assessment for 1963-64 by order u/s. 154 dated 17-11-70.

Recommendation

The Committee regret to find that there is no satisfactory arrangement to ensure timely revision of the partner's assessment, provisionally completed, after the final share income becomes known. Although the erstwhile Central Board of Revenue had prescribed a register called 'register of cases of provisional share incomes' to be maintained in each income-tax office, the register is not being maintained properly. Inordinate delays have occurred both in intimating the correct share of income by the officer assessing the firm's income and in taking timely action by the officer assessing the partner's income. The Committee, therefore, suggest that there should be a similar register through which the timely intimation of the correct share of income to the officer assessing partner's income can be ensured. This would also help to watch the action taken to revise the partner's assessment, which is already required to be intimated to the officer assessing the firm's income. Further it is desirable to have a time-limit both for such an intimation to be sent and for revising the partner's assessment on receipt thereof. The proper maintenance of the register already prescribed and the one now suggested by the Committee and adherence to the time-limit to be laid down, should be checked by the Inspecting Assistant Commissioners as also by the Internal Audit so as to ensure that the interests of revenue are properly safeguarded.

In the case referred to in sub-para (a) of the Audit Paragraph, the action of the Income-tax Officer in deciding at the request of the partner to wait till the Appellate Commissioner passed the order on the appeal of the firm, instead of raising the demand after rectifying the assessment of the partner, is admittedly unjustified. The Committee hope that suitable action will be taken against the officer responsible for this lapse. They would also like to know the circumstances leading to an inordinate delay of 2½ years on the part of the Officer assessing the firm's income, in communicating the partner's share.

In respect of the case mentioned in sub-para (b), although the firm's assessment was completed before the assessment of the partner's income was taken up, the share of the partner was not taken into account. It is, therefore, for the Department to consider how it could be ensured that such intimation received in advance of the assessment of the partner's income is not lost sight of.

The Committee, however, find that in this case the partner himself did not disclose his share of the firm's income in his return. As

prima facie non-disclosure of the share of the firm's income by the partner after it became known, appears to be a case of concealment of income, the Committee suggest that this aspect may be examined in consultation with the Ministry of Law and Audit and suitable instructions issued for the guidance of the Assessing Officers.

[Items 56 to 59 of the Appendix to the 51st Report of the P.A.C. (1972-73)-Fifth Lok Sabha]

Action Taken

The Director of Inspection (Income-tax and Audit) has been asked to prescribe effective procedure for watching intimation of share-income on one hand and consequential action on the other. Non-statutory time-limits for intimation of the share-income and for rectification of assessment are also proposed to be prescribed. Proper follow-up will be checked by the IACs and IAPs.

The I.T.O. responsible for the lapse has been cautioned.

The exact circumstances leading to the delay in intimation of the share-income are being ascertained and will be intimated in due course.

Instructions are being issued by the Director of Inspection, *vide* reply to para 2.224 above.

Instructions have been issued *vide* attached copy of Instruction No. 507, F. No. 284/62/72-IT (Inv.) dated 16-2-1973.

[Ministry of Finance (Revenue and Insurance) O.M. No. 20/ 210/69-IT Audit dated 30-4-1973]

Further Information (Sr. No. 56-58)

Necessary instructions in this regard have been issued by the Director of Inspection (I.T.) *vide* No. RA/10/3/73/DIT dated 28th March, 1973 (copy attached).

(COPY)

DIRECTORATE OF INSPECTION (INCOME TAX)
'Nirikshan Nideshalya (Aayakar)'

Mayur Bhavan

No. RA/10/3/73/DIT

New Delhi, March 28, 1973.

Circular No. 3/Audit of 1973 Measures to ensure assessment of correct shares of partners of firms

In its 51st Report, PAC have observed that "Inordinate delays have occurred both in intimating the correct share of income by the

officer assessing the firm's income and intaking timely action by the officer assessing the partner's income." (Para 2.224)

Instances have come to the notice of the Board where though the assessment of the firm had already been completed, the partner assessed in the same Ward did not show the share income in his return filed subsequently and the assessment of the partner was completed without including the share income. It has also been noticed that the Register of cases of provisional share income to be maintained in each Income-tax Office is not being maintained properly.

In order to avoid such omissions as well as duplication of work involved in revising assessments made on provisional share income, it is imperative that assessments of the firm and its partners, as far as possible, are taken up simultaneously. If, for any reason, there is delay in completing the firm's case, entries in the Provisional share Income Register prescribed *vide* Board's Circular No. F-53(6)/IT/58 dated 3-2-1959 and F. 36/31/63-IT. A-I dated 3-7-1964 should be made and follow-up action watched carefully. On the other hand, if there is delay in completion of the partner's assessment, the share determined should be noted in the partner's case immediately on completion of the firm's assessment.

The Register of Registered firms prescribed in paragraph 26 of Chapter XIII of Office Manual Volume-II Section-2 is now to be maintained by the Income-tax Officer assessing the firm in a new form which incorporates information pertaining to intimation of share income to the Income-tax Officer assessing the partner. The columns of this new form are given in the Annexure to this Circular. This new form of the Register of Registered Firms may be brought into use immediately.

If a partner is assessed in a ~~different~~ Ward an intimation in the form prescribed *vide* Directorate's Circular letter No. M-35/18/70-DIT dated 10.8.70 must be sent by the Officer assessing the firm within one month of completion of the firm's assessments. The ITO assessing the partner should keep this intimation on the partner's file and acknowledge its receipt.

Though the time limit u/s 15(1) of the I.T. Act for rectification of the provisional share assessed in the partner's case in 4 years from the date of assessment of the firm, the Board have directed that administratively the time limit for rectification in the partner's case shall be three months from the date of receipt of the intimation of

the share (except when the time limit available under the law is less than this period.)

It is for the Range IACs now to ensure that the above mentioned Registers are maintained properly and the prescribed time limits are adhered to by their officers. The Internal Audit Parties should check up these Registers and point out cases where the prescribed time limits have not been observed.

Sd./ R. L. Malhotra,
D.I. (IT & Audit)

REGISTER OF REGISTERED FIRMS
(Directorate's No. 31/Audit of 1973 Dated 28-3-

No.	Name of the Assessee	Name of the Partners	Date of partnership deed	The assessment year for which registration takes effect	Date of registration in I.T. Office	Date of Assessment	Designation of the ITO/ITOs assessing partners & their PA Nos.	No. & date of letter / letters intimating the shares of the partner to the ITO/ITOs	No. & date of letter / letters intimating the shares of the partner to the ITO/ITOs	Remarks (to be initialled after completion of share income assessing them)	1	2	3	4	5	6	7	8	9	10	11	12
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Further Information (Sr. No. 57)

The Officer assessing the Firms had intimated the share income in March, 1964 but the Officer assessing the partner does not appear to have received the same. The matter being old, further probe has not revealed any other circumstance.

Recommendation

The wrong application of concessional rate of tax applicable to companies mainly engaged in manufacture to the income of a company mainly derived from purchases and sale of goods and from royalties in this case resulted in a short-levy of Rs. 1.13 lakhs. The Committee understand that the assessing officer concerned has been associated with a number of audit objections. They would like to be apprised of the results of the review of all cases of mistakes committed by him and the action taken on the basis thereof.

[Sl. No. 60 and Para 2.233 of Appendix to 51st Report of the P.A.C.
(1972-73)]

Action taken

The assessing officer's work has been checked. He has committed mistakes in other cases also. In two cases simple warning has been issued by the C.I.T. concerned directing the I.T.O. to be careful in future. In the third case adverse comments of the C.I.T. are being placed on the C.C. Roll of the officer. The officer who was formerly posted in a Companies Circle at Calcutta has since been transferred to a Non-companies Circle at Bombay.

[Ministry of Finance (Rev. & Ins.) OM No. 20/237/69-IT Audit
dt. 20.3.751.

Recommendation

The Committee have been repeatedly stressing the need to exercise special care in assessing tax on companies. Notwithstanding the steps stated to have been taken in this regard, the mistakes in the levy of tax on companies have assumed alarming proportions inasmuch as the number of cases in which errors were noticed during 1969-70 was 135 involving under-assessment to the tune of Rs. 202.66 lakhs. That, this was so in spite of comparatively lesser number of assessments handled in Company Circles by senior and experienced officers, is disturbing. As admittedly there is need to impart adequate training to the officers in company assessments,

the Committee suggest that there should be regular refresher courses for these officers after the passage of each Finance Act and issue of detailed instructions thereon. The Committee would like such training courses to be held on a systematic basis and without delay.

The Committee need hardly emphasise in this connection that the Internal Audit should be suitably equipped and strengthened to take up effectively the big company assessments immediately after they are completed.

[Sl. Nos. 61 and 62 and Paras 2.245 & 2.246 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action Taken

The Ministry appreciates the need for imparting adequate training to the officers handling company assessments. A beginning was made in the matter when such refresher courses were arranged during the year 1972 in four centres *viz.* Bombay, Calcutta, Delhi and Madras. Refresher Courses in general will in future be attended to by the expanded set up approved recently for training of Departmental officials; the Indian Revenue Service (Direct Taxes) Staff College, Nagpur has been made the apex body responsible for such training with help provided from four Regional Training Institutes at Bombay, Calcutta, Kanpur and Bangalore.

The strength of the Internal Audit Parties has recently been increased and their procedures streamlined, *vide* the Ministry's reply to para 2.20 of the 50th Report of the Committee. Further, all the company cases including SPT/Sur-tax assessments have now been brought under the category of "Immediate Audit cases" which are to be checked by the Internal Audit Parties within one month of the completion of assessment.

[Ministry of Finance (Rev. & Ins.) O M No. 236/67/70-IT Audit dt. 2-5-73]

Recommendation

In pursuance of the Committee's earlier recommendation contained in their 73rd Report (Fourth Lok Sabha), the review of all assessments for the assessment years 1964-65 to 1967-68 in regard to incorrect levy of super tax on total income of Rs. 1 lakh and over, is in progress. The Committee would await a report in this regard.

[Sl. No. 63 and Para 2.247 of Appendix to 51st Report of the PAC (1972-73) Fifth Lok Sabha].

Action Taken

The desired review has been conducted, as further elucidated by Audit, in all Commissioners' Charges in respect of the assessments of all Companies for assessment years 1956-57 to 1959-69 completed during the period 1964-65 to 1967-68. Total tax involved in cases spotted in review would work out to Rs. 6.96 lakhs out of which cases involving tax of Rs. 1.10 lakhs are within time limit for rectificatory action which is being taken accordingly.

[Ministry of Finance (Rev. & Ins.) OM No. 17/23/69 IT Audit dt. 18-4-73].

Recommendation

It is regrettable that the opinion of the Ministry of Law was sought for belatedly. The Committee desire that in such cases the position should be got clarified expeditiously and instructions issued to ensure that uniformity is observed in all the charges.

[Sl. No. 67 and Para 2.262 of Appendix to 51st Report of P.A.C. (1972-73)].

Action Taken

The Observations of the Committee have been noted for further guidance.

[Ministry of Finance (Rev. & Ins.) OM No. 20/88/69 IT Audit dt. 26-3-73].

Recommendation

Although the Committee desired to have the information regarding the total number of Advocates practising in the various High Courts and Supreme Court and the number of persons who were borne on the books of the Income-tax Department as assessees, the information is still awaited. The Committee trust that on the basis of the information to be collected, the Department would make a survey to ensure that there is no evasion of tax.

Further Government may consider the feasibility of asking the various courts to furnish to the Income-tax Department periodically information regarding cases decided by them and the persons who appeared as solicitors or advocates for both sides so that the Department may be in possession of necessary information to verify the correctness of the returns filed by persons of these professions.

[Sl. Nos. 69 and 70 and Paras 2.271 and 2.272 of Appendix to 51st Report of the PAC (1972-73)].

Action Taken

Relevant information is being collected and observations of the Committee have been noted for processing.

[Ministry of Finance (Rev. & Ins.) O.M. 20/219/69-II Audit. dated 7-3-73].

Further Information (68, 69, 70)

29. It was decided to have a tripartite discussion in a meeting with the representatives of Ministry of Law, C&AG and this Ministry and the matter has been referred to the C & AG accordingly. The decision reached after proposed discussion will be intimated to the Committee.

30: In this connection a reference is invited to the Ministry's reply to para 2.271 of this (51st) Report sent with O.M. No. 240/2/72-A&PAC dated 15.11.1973.

Recommendation

As regards sub-para (iii) the Committee were informed that although Audit were told earlier that Ministry had accepted the mistake, the question regarding applicability of the provisions of Section 297(ii)(g) of the new Income-tax Act to the cases of penalty proceedings initiated before 1st April, 1962 has been subsequently referred to the Ministry of Law. The Committee would like to be informed of the view of the Ministry of Law as also the action taken to rectify and recover the penalty, if required.

[Sl. No. 72 and Para 2.289 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

This is in continuation of this Ministry's interim reply sent with O.M.No. 236/260/70-IT (Audit) dated 7.3.73. The Ministry of Law has opined that penalty under the provisions of Income-tax Act, 1961 could be imposed in this case although the notice was issued under Income-tax Act, 1922. However, in the present case no action to rectify and recover further penalty is possible as such action was time-barred even before the receipt of the audit objection.

[Ministry of Finance (Rev. & Ins.) OM No. 236/226/70-II Audit: dt. 2-6-73].

Recommendation

In view of the mistakes committed and the prevailing confusion in regard to levy of penalty the Committee wish to suggest that the Board should consider the feasibility of bringing out a compendium of instructions on penalty provisions in the Income-tax Act for the guidance of the Assessing Officers.

[Sr. No. 75 and Para 2.292 of Appendix to the 51st Report of the PAC (1972-73) Fifth Lok Sabha].

Action taken

2.292: The matter is under consideration of the Board.

[Ministry of Finance (Rev. & Ins.) OM No. 236/134/72 APAC dt. 30-4-73].

Further Information (Sr. No. 75)

2. 292: The Compendium on penalty provisions has since been prepared and will be made available to all the officers shortly.

Recommendation

The Committee are unhappy over the recurring cases of considerable excess refunds arising from double credit of advance tax paid due to some mistake or the other. They desire that bonafides or otherwise of such mistakes should be carefully gone into for stringent action wherever necessary.

[Sl. No. 78 and Para 2.312 of Appendix to 51st Report of the PAC (1972-73)].

Action taken

The Commissioners have looked into the circumstances of relevant cases and warned the assessing officers concerned to be more careful in future.

[Ministry of Finance (Rev. & Ins.) OM No. 236/213/70-II Audit dt. 7-3-1973].

Further Information (Sr. No. 78)

The findings of the Commissioners are that the mistakes were attributable to lack of care on the part of the Income-tax official, who have been warned to be more careful.

COPY

INSTRUCTION NO. 562

F. No. 228/22/73-ITA II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

*New Delhi, the 27th June, 1973.***From:****Secretary, Central Board of Direct Taxes.****To****All Commissioners of Income-tax.**

SUBJECT:—Checking of Refunds—Duties of Inspecting Officers—
Para 17, Chapter XVII, Office Manual Vol. II,
Section II.

Sir,

I am directed to say that para 17, Chapter XVII of Income-tax Department Office Manual Vol. II Section II, page 169 provides that: The staff of the IAC during inspection of an Income-tax Circle should adopt the following procedure in checking refunds granted:

- (i) All refund cases where the refund is Rs. 500 or above must be checked, refunds of below Rs. 500 must be 10 per cent test—checked.
- (ii) All vouchers exceeding Rs. 1,000 which have been issued during any year should also be checked and initialled by the IAC and he should comment on the delays in disposal of the refund applications and excess or short refunds in Inspection Reports.

The number of refund cases involved in (i) and (ii) above is often very large. It has, therefore, been decided that the limits prescribed in the above para may be raised to Rs. 5,000.

Para 17 therefore, stands modified accordingly.

As the cases now to be checked by IAC will be much smaller in number, the Board desires that instructions contained in para 17,

Chapter XVII of Income-tax Department Office Manual should be scrupulously followed.

Yours faithfully,

Sd/-

(T. P. JHUNJHUNWALA),
Secy., Central Board of Direct Taxes.

Copy forwarded to:—

As usual.

Recommendation

Incidentally the Committee note that the existing instructions that all refund cases involving a sum of Rs. 500 and above should be checked by the Inspecting Assistant Commissioner have fallen into disuse and that the limit fixed for the check is considered to be "too low". The Committee wish to point out that it is undesirable to allow such important instructions to be ignored. The limit could have been suitably revised in order to ensure strict observance of the instructions. The Committee trust that the Board would review the observance or otherwise of such long standing instructions in the light of changed context and take appropriate action.

[Sl. No. 80 and Para 2.314 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha]

Action taken

Necessary instructions are being issued by the Director of Inspection (Income-tax) modifying the existing ones in the Income-tax Office Manual Pt. II (page 169) about checking of refunds. It has been decided that as a practicable measure cases of refunds involving sum of Rs. 5,000 and above should be checked by the Inspecting Assistant Commissioners of Income-tax. The revised instructions are to be strictly followed.

[Ministry of Finance (Rev. & Inc.) O.M. No. 236/243/70-II Audit 19-4-1973].

Further Information (Sl. No. 80)

In the light of Committee's recommendation the Board have reviewed the matter and the limit of Rs. 500 was raised to Rs. 5,000

vide instruction No. 562 F. No. 228/22/73-IT (A. II) dated 27-6-73 (copy enclosed); strict observance has been enjoined.

COPY

INSTRUCTION NO. 562

F. No. 228/22/73-ITA. II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 27th June, 1973.

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Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

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Yours faithfully,
Sd/-

T. P. JHUNJHUNWALA,
Secy., Central Board of Direct Taxes.

Copy forwarded to:—
As usual.

Recommendation

The Committee, after going through the information furnished to them, find that the procedure for taking the action after receipt of the audit objections is anything but satisfactory. No specific time-limit has been prescribed for taking corrective action on the mistakes pointed out by the Audit. Although a register has been prescribed in February, 1966 for ensuring timely action, following an earlier recommendation of the Committee, the maintenance of the register has been admittedly 'of ten quite faulty'. According to the Ministry, the existing slackness can be remedied by a method of periodic reconciliation once every six months with the records maintained by Audit. The Committee further regret to learn from Audit that excluding the Commissioners' charges at Calcutta, Delhi, Madras and Bombay, the Department's replies to the mistakes pointed out by the Audit parties were due in 14,592 cases as on 31st May, 1971. The Committee would like to know the position in the remaining four charges also. It is obvious that the monthly review of audit objections conducted by the Director of Inspection has not been effective at all. The situation is quite alarming and serious. The Committee trust that such unsatisfactory state of affairs shall not be allowed to prevail and that effective and prompt action on audit objections will ensure to safeguard the interests of revenue. The manner in which the position can be remedied may be settled in consultation with Audit. In this connection, the Committee feel that it is desirable to fix a time-limit for taking corrective action on the mistakes reported Audit. In any case, all the pending objections should be settled within a period of three years. The progress made in this regard may be reported to Committee. The results of the overall review of the action taken on the mistakes reported in the successive Audit Reports may also be intimated to the Committee.

[Sl. No. 81 and Para 2.327 of the Appendix to the 51st Report of the P.A.C. (1972-73)].

Action taken

(i) The Ministry share the Committee's concern on the subject. After consulting the C.&A.G. the Board asked the Directorate of Inspection (Income-tax & Audit) to proceed on lines indicated and he has written to the Commissioners of Income-tax (vide No. M-35|18|70|DIT dated the 24th November, 1972, copy enclosed) asking them to ensure that the Board's instructions issued in 1966 about proper maintenance of record of audit objections, are scrupulously followed. A procedure for proper verification of the pendency and reconciliation with corresponding statistics of Audit was also outlined. Subsequently the Board with their Instruction No. 484 F. 246|76|72-A&PAC dated 12-12-1972 [vide extracts of Paras 1, 2 and 3, 3(a) enclosed] spelt out administrative and procedural steps for ensuring proper attention to audit objections, their statistics and follow up. It is hoped that the steps taken will considerably help in maintenance of correct statistics and prompt disposal of audit objections.

(ii) Information regarding pendency of audit objections in four charges is being collected and will be intimated shortly.

(iii) In Directorate's letter No. Add (Genl) (1) DIT|61 dated 11-9-1961 issued in pursuance of Board's letter F. No. 14/2/61-IT dated 26-4-1961, the need for expeditious settlement of audit objections was emphasised and it was desired that in no case should a settlement take more than four months. A time limit of three months has been specifically laid down for rectification of minor objections, as per Board's letter No. 5|6|69-IT (Audit) dated 16-4-1970. In order not to show pendency at unduly inflated figure, instructions have also been recently issued in consultation with the C&AG (No. 499 F. 246|17|72-A&PAC dated 20-1-1973—copy attached) that generally audit objections may be treated as settled as soon as rectifier action has been taken without waiting till the collection of relevant demand. Lastly, the D.I. is being asked to closely watch compliance with the time limits already laid down now that the Department's audit organisation has been strengthened. He is also being asked to ensure that audit objections pending as on 1-4-1971 should be disposed of by 31-3-1974 as far as possible.

(iv) As regards the monthly review conducted by the D.I., it is based on monthly statements furnished to him by the Commissioners of Income-tax.

Some time back the prescribed proforma for Commissioners monthly statements was revised to make it more detailed and infor-

native. D. I.'s reviews will be consequently more meaningful and copies of his reviews are now being sent to the Audit and any comments or suggestions received from them would be welcome.

(v) As a result of various steps taken by the Ministry there has been improvement in the position, vide details given below which show decline in pendency of important objections as on 1-4-1971 as compared to 1-4-1970:

	I-4-1969	I-4-1970	I-4-1971
No. of paras pending as on 1st April	954	1263	1501
Additions during the year	1839	2625	2132
TOTAL for disposal	2293	2888	3633
No. of paras disposed of during the year	1353	2394	2262
Balance	940	1494	1371
Increase due to revision of figures in some charges	95	8	..
Pendency as on 1-4-1970, 1-4-1971 and 1-4-1972	1035	1502	1371

(vi) As regards action on mistakes pointed out in successive Audit Reports, corrective action is taken in all cases where the audit objections are found to be acceptable and the time limit for remedial action had not expired. Instructions are also issued by the Board in cases involving wider implications arising out of audit objections.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/214/70 II Audit dt. 28-2-1973]

COPY

No. M-35/18/70-DIT

AAYAKAR NIRIKSHAN NIRDESHALAYA

Directorate of Inspection (Income-tax)

4th Floor, Mayur Bhavan, Con. Circus,

New Delhi, the 24th Nov., 1972.

From

The Director of Inspection (I.T. & Audit) New Delhi.

To

All Commissioners/Addl. Commissioners of Income-tax, concerned.

Sub: Machinery for dealing with pending audit objections and prompt rectifications on the basis of objections raised

ed by Revenue Audit—Proper maintenance of records for follow up.

In the Commissioners' Conference 1972, it was mentioned that there was no systematic record of revenue audit objections especially of the pending objections involving tax effect of less than Rs. 10,000/- in each case. It was suggested that a list of the audit objections should be prepared from the Accountant General's records and that to avoid discrepancies between the records of the department and the revenue audit common registers should be maintained by the two organisations.

2. The matter has been reconsidered in consultation with C & AG and it is felt that difficulties pointed out have arisen because of the failure to maintain properly the register in 3 parts as prescribed in Board's Circular No. 83/71-65-IT(B) dated 19-2-1966 (Vol. XII, Part-II, page 592). You are, therefore, requested to please ensure that the Board's instructions in this respect are followed scrupulously in future and a proper register is maintained in your charge.

3. As regards the question of record of pending objections involving under-assessment/over-assessment of tax of Rs. 10,000/- and above in each case and below Rs. 10,000/-, it has been pointed out by the Revenue Audit that they are sending to the Ministry a half-yearly list of pending objections in duplicate, one copy of which is sent by the Ministry to the Commissioners from which the pendency of revenue audit objections can be verified. Further, the mistakes are classified by Revenue Audit into two categories—(a) involving tax effect of Rs. 10,000/- and above and (b) involving tax effect of less than Rs. 10,000/- in each case, in the annual statement a copy of which is furnished to the Commissioners by the Accountant General direct every year. This statement could also be utilised for verification of pending audit objections.

4. It is requested that necessary action in the matter may please be taken accordingly.

Sd/-
Avtar Singh

Director of Inspection (Income-tax & Audit)

Copy forwarded to Shri S. K. Lall, Director, CBDT, New Delhi with reference to his D.O.F. No. 233/1/72-A&PAC dated the 18th October, 1972 for information.

Sd/-
Avtar Singh
Director of Inspection (Income-tax & Audit)
New Delhi.

Extract from Board's Instruction No. 484 issued *vide* letter F. No. 246/76/72—A&PAC dated the 12th December, 1972 to all Commissioners of Income-tax.

Sub: Revenue Audit by the C. & A. G.—Audit Objections and Paragraphs of the Audit Report—Handling of procedure thereof.

I am directed to invite a reference to the Board's letter No. F. 66/83/72-Ad. VII dated the 6th Dec., 1972 sanctioning additional strength for the Audit organisation of the I. T. Department with a view to improve its performance in the handling of matters connected with the C. & A. G.'s revenue audit and internal audit. The present functioning of the Department's audit organisation in both respects leaves much to be desired and with the utilisation of the augmented strength and the concerted effort at all levels, the Board expect the organisation to give good account of itself so that the achievements and the image of the Department stand out better. In this connection reference is invited to the observations relevant to audit in the Chairman's circular D. O. letter No. 8/ML/Ch. DT/72 dated 14-11-1972 to the Commissioners of Income-tax.

2. Administrative steps:

Detailed instructions about internal audit set-up and the procedure relevant thereto will follow separately. As regards revenue audit it will be seen from the Board's above noted letter No. F. 66/83/72-AD. VII dated 6-12-1972, that *inter-alia* the following important steps have been taken for strengthening the administrative machinery for handling this important item of work:—

- (a) The Charge Commissioners will hereafter have audit as one of their top important overall responsibilities even where the work is actually allotted for handling to additional Commissioners, the latter now being administratively under the Charge Commissioners. The C. & A. G.'s report and its discussion in the P.A.C. of the Parliament brings the Department's functioning to the notice of the Legislature and it is imperative, therefore, that utmost importance is attached to audit work of the Department as a sensitive show window of its general performance.
- (b) A Deputy Director with supporting staff has been allotted to the D.I. (I.T. & Audit) for exclusive attention, under the Directorate. The audit responsibility of the Directorate the D. I.'s supervision, to audit co-ordination functions of

has now to be discharged in a more dynamic and thorough going manner. The points on which the D.I.'s help would be particularly needed by the Board, are detailed at relevant places in these instructions.

- (c) With the added strength, the IACs (Audit) have manageable jurisdiction and even where an IAC (Audit) has to cover another Commissioner's charge there is a Chief Auditor, locally available in that charge. Further, regular staff is being provided to the IACs (Audit) for improving follow-up work on revenue audit objections. With this strengthening of the watching agency, the pace for rectification/revisionary action on accepted audit objections or as precautionary step must quicken and prompt action should be taken and report sent in time to Audit to avoid criticism for delay.
- (d) Chief Auditors have now been provided in all Commissioners charge and internal audit work has been shifted from them to the new ITO (Internal Audit); this leaves the Chief Auditors in all charges with the work of handling revenue audit matters as their main task and they should, therefore, be able to ensure proper functioning in this field.

3. Procedure:

As regards the procedure for handling revenue audit objections it may be pointed out that in the last PAC meeting there was severe criticism about the lack of promptness and care in dealing with such objections at various stages by the Department. This slackness and indifference in such a significant area has persisted inspite of repeated instructions from the Board detailing proper steps to be taken and emphasising the need for strict vigil in this behalf. In many cases, the information furnished by the Departmental officers to the Audit and the Board is not complete or not sent on time or there are delays in taking remedial action or the wider implications of the mistakes noticed are not realised for suitable preventive steps at the Commissioners level or, in the alternative, at the Board's level on Commissioner's recommendations. Having regard to the aforesaid circumstances and the provision of additional personnel the following broad outlines of procedure are prescribed for being followed hereafter for handling revenue audit objections, this superseding to the extent necessary; the earlier instructions on the subject:—

(a) Record of revenue audit objections:

Complete and accurate record of revenue audit objections should be maintained in registers following the form

prescribed on the basis of the PAC's recommendations (para 1.10 of 46th Report, 1965-66) in Board's letter F|83|71|ITB dated 19-2-1966, *vide* also DI(IT)'s recent circular No. M35|18|70-DIT|15089 dated 24-11-1972. There should be yearly tally with the AG's of the pendency, on the basis of the above mentioned register and the annual statements furnished by the AGs to the Cs. I.T. This tally should be completed within a month of the receipt of the AG's annual statement and the CIT should thereupon obtain a certificate to this effect from the Chief Auditor and send it to the DI(IT) who will keep watch over compliance.

* * *

INSTRUCTION No. 499

F. No. 246/17/72-A&PAC

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 20th January, 1973.

From:

P. K. SARMA, Under Secy., Central Board of Direct Taxes.

To:

All Commissioners of Income-tax.

Sir,

SUBJECT: Revenue Audit objections—Pendency of—Measures for reduction of.

I am directed to say that the large pendency of Revenue Audit objections has been causing concern and as a measure to reduce this to feasible extent, the Revenue Audit have been consulted whether an objection should be treated as settled as soon as rectificatory action has been taken, without waiting till the collection of the additional demand ascribable to the audit objection. A large number of Revenue Audit objection are shown as pending even after rectificatory action because the collection of consequential additional demand is delayed due to either time having been allowed to the assessee for the payment of additional demand or till the disposal of appeal or due to the fact that the assessment in question has been set aside on appeal and fresh assessment is pending. Sometime even if the appeal as been decided in favour of the Department, the assessees remain recalcitrant and refuse to pay the de-

mand which they may contest in further appeal. Moreover, the demand ascribable to an audit objection gets merged with the other outstanding arrears of the assessees and it becomes difficult to spot out whether the demand ascribable purely to the audit objection has been paid.

2. Having regard to the above-noted circumstances, the Revenue Audit have agreed that their audit objections may be treated as settled as soon as appropriate rectificatory/revisionary action has been taken and additional demand raised, but this is subject to the following conditions:

- (i) The P.A.C. (Fifth Lok Sabha) in para 2.79 of their 5th Report have recommended for issuing "suitable instructions to the Commissioners that where an audit objection has been accepted by the Department either at the Commissioner's level or at the Ministry's level, any order of Appellate Assistant Commissioner contrary to such acceptance should be examined carefully at a high level and appeals preferred, if such contrary findings of the Appellate Assistant Commissioner, are not justified either in law or facts." This may be kept in view.
- (ii) In cases of demands raised at the instance of Revenue Audit, it should be the responsibility of the Internal Audit to watch the recovery and the Internal Audit should include a special report on recoveries/refunds made in respect of Revenue Audit objections; since the Reports of the Internal Audit are to be scrutinised in Revenue Audit, there will be an additional safeguard. DI (IT & Audit) may take necessary steps in this behalf.
- (iii) "Settling" an audit objection after its acceptance, does not mean that it is "dropped". Thus the A.G. will be free to report the case to the C & A. G. for consideration of a draft para even in respect of such "settled" cases, where on account of any principle involved, or the magnitude of the amount or for any other reason he feels that the attention of the Board/or of the Government/or of the Parliament has to be drawn to the irregularity.

3. The Board desire that the position as agreed to by the Revenue Audit and detailed above may be carefully followed hereafter and the pendency of Revenue Audit objections revised/dealt with

accordingly; the above-noted three conditions stipulated by the Revenue Audit should be kept in view.

Yours faithfully

Sd/-

(P. K. SARMA)

Under Secretary, Central Board of Direct Taxes.

Copy forwarded to C&AG, New Delhi (25 copies). DRA's U.O. No. 438-Rev. A/54/72-II dated 15-1-1973 refers.

Copy also to:—

1. All Addl. Commissioners of Income-tax.
2. Bulletin Section (3 copies).
3. DI(IT&A)/(Inv)/(RS&P)/O&M, New Delhi/Director IRS (II) Staff College, Nagpur.
4. Shri P. B. Venkatasubramanian, Joint Secretary, Ministry of Law, New Delhi.
5. All Officers and Sections in the Technical Wing of C.B.D.T.

Sd/-

B. AHUJA,
Assistant Director of Inspection (RS&P).

No. CC/Audit/424/25/RSP/72—

Further Information (Sr. No. 81)

The total pendency of Revenue audit objections as on 31-8-1973 was 32720 and out of this 15537 objections were pending in Calcutta, Delhi, Madras and Bombay Charges.

Recommendation

It is regrettable that refunds arising out of appellate orders passed between January, 1953 and July, 1963 were made only in April, 1968 in this case. According to the Ministry, the principal reason for the unconscionable delay in giving effect to the appellate orders was "perhaps the frequent change of Income-tax Officers". The Committee note that between 1st April, 1962 and 1st July, 1965 on an average an Income-tax Officer held the charge concerned for a period of 4-1/3 months only. The Committee need hardly point

out that such frequent transfers are not conducive to efficiency; they would therefore like Government to review the position in all the charges and ensure reasonable tenure of officers in the interest of continuity and good work especially in view of heavy arrears of work accumulated in the Department. Further they desire that there should be a procedure in built in the system itself whereby it could be ensured that pending matters are not lost sight of notwithstanding the change in incumbency of the assessing authority.

[Sl. No. 82 and Para 2.331 of Appendix to 51st Report of the PAC (1972-73)].

Action Taken

Necessary instructions have been issued with letters No. F. 5/129/69-II(A-II), dated 5-11-1969 and F 226/18/70-II(A-11), dated 8-6-1970 that refund vouchers should invariably accompany the orders giving rise to refunds and action should be taken against the erring officials wherever cases of non-compliance with these instructions came to notice.

Regarding the second part of the above recommendations, the Commissioners of Income-tax have been asked to keep this in view while considering transfers of the Income-tax Officers.

[Ministry of Finance (Rev. & Ins. OM No. 236/109/70-A&PAC dt. 21-5-73].

Recommendation

The Committee further desire to suggest that the feasibility of fixing a suitable time limit for giving effect to appellate orders should be considered.

[Sl. No. 83 and Para 2.332 of Appendix to 51st Report of the PAC (1972-73)].

Action Taken

In Board's Circular dated 18-7-1962 it was emphasised that refunds falling due as a result of appeal or revision proceedings should be granted within a fortnight of the date of receipt by the I.T.O. of the relevant appeal or revision order. Further Section 244 of the Income Tax Act, 1961 as amended by Taxation Laws (Amendment) Act, 1970 also provides that interest will be payable by the Government on delayed refunds (consequent on appellate orders) after a period of 3 months from the end of the month in which the relevant order is passed. Instructions to the field officers are being

issued drawing their attention to the above noted earlier circular and directing that in all instances appellate orders should be given effect to within a fortnight of the receipt of the order concerned.

[Ministry of Finance (Rev. & Ins.) OM No. 236/109/70-II Audit dt. 26-3-1973].

Recommendation

The Committee note a persistent tendency to overpitch tax demands which has of late shown disconcerting increase despite the fact that Govt.'s attention has been repeatedly drawn to the seriousness of this problem in successive Reports on direct taxes. The number of cases and the amount involved which were 1408 and Rs. 36.88 lakhs respectively in 1966 have jumped to 6004 and Rs. 191.41 lakhs respectively in 1969-70. In terms of percentage of cases to the total number of cases checked by Audit, the details of which have been furnished by the Ministry, the increase during this period has been from 1.00 per cent to 2.19 per cent. Such an extremely undesirable trend has to be curbed. The Committee take a serious view of over-assessments as they invariably involve needless harassment to the assessees which should be scrupulously avoided. In this connection the Committee would like to know the results of the pilot studies in important ranges of Inspecting Assistant Commissioners of Income-tax and the concrete steps taken on the basis thereof.

[Sl. No. 85 and Para 2.347 of the Appendix to 51st Report of the PAC (1972-73)].

Action Taken

The Government share the concern expressed by the Committee over high pitched assessments. Having regard to the recommendations made by the PAC earlier, pilot studies of appellate orders passed by the Appellate Assistant Commissioners of Income-tax were conducted in certain Ranges to spotlight the typical points on which over-assessments were made but not sustained in appeal. As a result of these studies, the Board issued Instruction No. 21 F. 50/332/68-ITJ (2) dated 6-2-1969 and No. 158 F. 50/257/69-ITJ dated 17-4-70; copies of these instructions are attached herewith. With these instructions the Assessing Officers were cautioned against the typical omissions & commissions leading to unsustainable over-assessment; the Commissioners and Inspecting Assistant Commissioners were also advised to keep a close watch and take suitable action in cases of persisting tendency towards unsustainable over-assessments; it was emphasised that such tendency had to be cor-

rected with salutary advice and if necessary adverse notice should also be taken. The aforesaid instructions have had improving effect. Although in 1969-70, the Audit detected 6004 cases of over-assessments out of total 2.74 lakh cases audited which gave a percentage of 2.19, in the subsequent year 1970-71, this percentage declined considerably and stood at 1.9 (over-assessment cases detected 6227 out of total cases audited 3.25 lakhs). Subsequently as desired by the PAC in their later report, a pilot study of the appellate orders passed by the next higher appellate authority viz., the Income-tax Appellate Tribunal was also conducted in certain charges. As a result of this pilot study the Board have again issued Instruction No. 376 F. 277/2/70-ITJ dated 1-2-72; copy of this Instruction is also attached. It is hoped that as a result of these concerted measures, the incidence of over-assessment would further decline.

[Ministry of Finance Revenue and Insurance) OM No. 236/307/70
II Audit 29-3-73].

XVII/221-PAC's observations on over-assessments—Pilot study of the problem—Defence noticed—Instructions regarding.

The Action taken Sub-Committee of the P.A.C. having adversely commented on the problem of over-assessments, the Board constituted recently a Committee consisting of Shri S. Narayan, OSD and S/Shri W. A. Khan and P. N. Sewake, D. Ds. I. for conducting from this angle a pilot study of the orders passed during 1967-68 by 2 AACs each from the Punjab, U.P. and Delhi CIT charges. The Committee's report has been received; although the study was confined to only selected AACs' ranges from 3 Commissioners' charges, the result of the pilot study can generally be considered as applicable to all the charges.

2. Out of nearly 8,500 appellate orders studied by the Committee, it was found that only about 3,000 assessment orders (35.5 per cent) were confirmed, while about 5,000 orders (60 per cent) were subjected to relief (excluding assessments interfered with but not amounting to relief). A further analysis of the 5,000 odd assessments subjected to relief showed that in about 2,800 cases (56 per cent) more than 50 per cent of the relief sought for had been allowed by the AACs.

3. It is true that a percentage of interference reflected honest difference of opinion, maturer judgment of the AACs or availability of appellate decisions and evidence which were not before the ITOs but quite a considerable percentage of interference was due

to omissions and commissions on the part of the ITOs, which could well have been avoided. Some of these typical omissions and commissions listed by the Committee are indicated below:—

- (i) The ITOs seem to be in the habit of making comparatively petty additions without any reason or with utterly inadequate reasons.
- (ii) In cases of retailers where it was obviously not possible to keep quantitative stock tally, additions had been made to the trading accounts without giving justification or quoting parallel cases and no care was taken to see whether the additions fitted in logically with a proper arithmetically correct reconstruction of the trading account.
- (iii) The ITOs seem to be in the habit of making additions for supposedly inadequate drawings for household expenses without giving any reasons or without trying to analyse the expected normal household expenses under different heads, correlating them with the size and the needs of the family.
- (iv) Cash credits are sometimes added with only superficial enquiry and probe into their source and ownership without pursuing these enquiries to an extent which could ensure their being sustained in appeal.
- (v) The ITOs are sometimes not realistic and practical in their approach in the matter of allowing bad debts written off in the books mere absence of legal action against the debtors should not be over-emphasized, particularly when the amounts involved are small, making it not worthwhile for the assessee to incur legal expenditure, once he was satisfied that nothing further could be realized.
- (vi) The ITOs have sometimes a tendency to make additions in manufacturers cases, on account of shortages, wastages low yields, etc. without building up reasonably strong cases on these points and without giving adequate opportunity to the assessee for elucidating reasons and then meeting them.
- (vii) In the case of companies, the ITOs sometimes tinker unduly with the remuneration of the Directors even when they are apparently not large nor unreasonable.

(viii) The provisional share income from firms is sometimes taken by the ITOs not as returned by the assessee but on estimate which is not a correct course.

4. The Commissioners are requested to bring the above noted shortcomings to the notice of the ITOs so that these are avoided. The Commissioners and IACs should also constantly impress upon the ITOs the imperative need for making balanced, well-reasoned and realistic assessments. These aspects of assessment work should be particularly looked into during inspection of ITOs' work and the defaulting officers be pulled up and adversely commented wherever called for. This matter could also be borne in mind and necessary corrective action by way of advice or admonition taken, when the adverse appellate orders are scrutinised in the Commissioner's Office.

[F. No. 50/322/68-ITJ(2) dated the 6th February, 1969].

COPY

Instruction No. 158

F. No. 50/257/69-ITJ

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 17th April, 1970.

From

Shri S. K. Lall,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT: P.A.C.'s observations on over-assessments—Pilot studies of the problem—Defects noticed—Instructions regarding.

I have to invite a reference to the Board's Instruction No. 21 [F.50/322/68-ITJ(2)] dated 6th February, 1969, issued on the basis of pilot study or orders passed during 1967-68 by a few A.A.Cs. in certain Commissioners charges. These instructions were brought to the notice of the Public Accounts Committee and they have incorporated it in their 100th Report (1969-70), a news item about which appeared in the papers recently.

2. Since the issue of above-noted instructions one more pilot study, as further desired by the P.A.C., was conducted at the instance of the Board by a Committee comprising Shri S. Narayan, O.S.D., and S/s Wasiq Ali Khan and G. S. Basanti, D.Ds. I. This study was of the orders passed during 1968-69 by three A.A.Cs. each from Bombay and West Bengal charges. The position as emerging from this study of appellate orders in 1968-69 in comparatively important charges is generally the same as was found in the earlier study of orders passed in 1967-68 from other charges. It is hoped that a strict enforcement of the Board's above-noted instruction No. 21, dated 6th February, 1969 and vigilant watch will show improved position in 1969-70, when the effect of the Instruction and subsequent follow-up Instructions No. 71 [F. 91/47/69-ITJ(18)] dated 5th July, 1969 and No. 78 [F. 50/78/69-ITJ(21)] dated 11th July, 1969, should be felt. A constant and corrective watch may please be ensured as the P.A.C. has been repeatedly expressing itself against observed tendency on the part of the assessing officers to make over-assessments.

3. Besides typical omissions and commissions in assessments spot-lighted by the earlier pilot study and listed in the Board's Instruction No. 21 dated 6th February, 1969, the recent study has spotlighted a few more and emphasised the earlier ones, as detailed below:—

- (i) I.T.Os. make additions to sales or to gross profits or make disallowances out of expenses without giving any reasons or by giving utterly inadequate reasons; such additions are either almost entirely knocked off or substantially reduced.
- (ii) ITOs tinker with remuneration paid to the directors of the company, applying highly subjective and unrealistic standards of reasonableness.
- (iii) While imposing penalties for non-payment of tax, the ITOs. do not care to check up whether they had disposed of petitions moved by the assessee for stay of tax.
- (iv) ITOs levy penalties u/s 271(I)(o) without caring to make out a convincing case; the assessee's explanation is often not discussed and shown to be unbelievable or false nor is an attempt made to bring out clearly that the assessee has been guilty of concealment of income.

- (v) Claims for deduction on the L.I.P. are not allowed and that too without giving any reasons.
- (vi) While making additions for inadequate personal drawings, the ITOs do not care to give an analysis of what the personal expenses of the assessee should be, to justify addition on this score.
- (vii) In dealing with bad debts, the ITOs adopt unrealistic approach even when the amounts are comparatively small and do not appear to be suspicious or *mala-fide*.

3. The Commissioners are requested to bring the above-noted drawbacks to the notice of the assessing officers so that these are scrupulously guarded against. With regard to these drawbacks also, the Commissioners and I.A.Cs. may exercise supervision and take corrective steps as already advised in the Board's earlier instructions on the first pilot study; the assistance of A.A.Cs. may also be enlisted as suggested in those instructions. Further, in the refresher courses which are periodically organised by the C.I.Ts. there should always be at least one lecture on typical omissions and commissions on the part of the I.T.Os. leading to avoidable appellate interference.

Yours faithfully,
Sd/-

(S. K. LALL)

Secretary, Central Board of Direct Taxes.

Copy to:—

1. D.I.(IT), (Inv), (RS&P), New Delhi and Director IRS(DT) Staff College, Nagpur.
2. A.D.I. (RSP-Bulletin) (4 copies).
3. All Officers and Section in CBDT.
4. C&AG, New Delhi. (20 copies),
5. Shri Venkatasubramanian, Joint Secretary, Ministry of Law.

Sd/-

(Y. SINGH)

Under Secretary, Central Board of Direct Taxes.

(COPY)

Instruction No. 376

F. No. 277/2/70-II(J)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES*New Delhi, the 1st February, 1972.***From**

Shri S. K. Lall,

Secretary, Central Board of Direct Taxes.

To

All Commissioners and Additional Commissioners of Income-tax.

Sir,

SUBJECT: PAC'S observation on over-assessment—Pilot studies of the problem—Defects noticed—Instructions regarding—

I am directed to invite a reference to the Board's Instruction No. 21 F. No. 50/322/68-ITJ(2) dated the 6th February, 69 and Instruction No. 158 F. No. 50/257/69-ITJ dated the 17th April, 1970 and to say that in paragraph 4.26 of their Report (also para 1.23 of 76th Report and paras 1.54—56 of 100th Report), the Public Accounts Committee had desired that for gauging the problem of over-pitched assessments, a sample study may be made also of the orders of the appellate authorities higher than the Appellate Assistant Commissioners. Such a study was carried out in respect of two I.A.Cs. ranges in Delhi, for orders received during 1967-68 to 1969-70.

2. The report on the study shows that while the orders of the higher courts involved only questions of law, which are largely a matter of interpretation, the orders of the Tribunal also involved questions of fact which were disputed. While the relief allowed in the Tribunal's orders on account of factors like difference in interpretation of law, availability of subsequent devisions of higher appellate authorities, admission of fresh evidence and the like, is

unavoidable a number of orders showed certain remediable drawbacks as discussed below:

Drawbacks	Remedial safe guards
(1) Reduction in gross profit rate applied or <i>ad hoc</i> addition made to the trading results, because comparable cases were not quoted.	In the Board's Circular No. 26 of 1956 dated 26-7-56, it was pointed out that information regarding comparable cases in support of the G. P. rate applied or the trading results aimed at, should be given by the ITOs in a confidential note below the assessment order; in the Board's subsequent Circular No. 23 of the 1957 dated 4-6-57, it was also desired that a Register for recording reasonable gross profits shown by various trades and industries in the area should be maintained for reference. These instructions have to be carefully followed.
(2) Expensed disallowed wholly or partly with only general observations.	For disallowing expenses, the ITOs should make out a tenable case; instead of only making a general observation that the expenses under a particular head were unvouched/unproved/undetailed, a few instances should be cited and the size of disallowance cogently set out in this context.
(3) Disallowance of Directors remuneration as excessive with only general observations.	For any disallowance of Directors remuneration it is not enough to dub it as excessive but all the relevant factors of the situation should be examined and disallowance supported by proper facts and arguments.
(4) Addition of cash credits without due enquiry and consideration.	Attention is invited to earlier Circulars on the subject particularly D. I. (Inv.)'s No. 4 of 1960 dated 30th March, 1960 and the Board's Instruction No. 218 dated 18-9-1970. The questions of onus, proper opportunity, cross examination etc. should be carefully considered.
(5) Additions on account of inadequate drawings for personal and household expenses, without sufficient supporting data.	Where the amounts involved are small and sufficient justification is not forthcoming, no additions need be made and where the amounts are sufficiently large from the tax potential point of view, adequate enquiry should be made and sufficient facts and reasons given for making such additions.
(6) Concealment penalties under section 271(1) (c) and the Explanation thereunder, without making out a proper case.	For the Law as it stood before the insertion of Explanation from 1-4-1964 reference is invited to Board's Instruction No. 198 F. 284/33/70-II (Inv.) dated 14-8-70 issued on receipt of the Supreme Court Judgment in the case of CIT Vs. Anwer Ali 76 ITR 696. Concealment penalty under the pre-1-4-64 law can be levied where the charge of concealment is fairly established or in circumstances as for example, mentioned in the Delhi High Court Judgment in the case of M/s. Durga Timber Works Vs. CIT 79 ITR 63. For cases of penalty based on the Explanation inserted from 1-4-64, firstly the Explanation should be explicitly can-

Drawbacks

Remedial safeguards

vassed and relied upon *vide* Board's Instruction No. 325 F. No. 267/607/71-ITJ dated 22-9-71. Secondly, although the validity of the Explanation has been upheld in Allahabad High Court Judgment in the case of Sayeed Ahmed Vs. CIT 79 ITR 28 and the general principles of onus under the Explanation stated in the Kerala High Court Judgment in the case of CIT Vs. Sankar Sons & Co. (1971, 2 Income-tax Journal, page 586), the trend of the appellate authorities generally is to weight the factual circumstances of the case with a measure of strictness even under the Explanation. It is necessary therefore that for concealment penalty relying on the Explanation, a fairly cogent case should be made out that the assessee had failed to discharge its onus under Explanation. Favourable decisions from the Tribunal and may be later from High Courts, whenever available in a Commissioner's charge, should be circulated to officers in that charge and also to other Commissioners, for circulation in their charge, serving as helpful guidelines. Some Commissioners, on the request of the Board, have recently furnished to the Board copies of such favourable orders from the Tribunal Benches in their charges and they are requested to circulate those orders early as indicated above.

3. The Commissioners/Additional Commissioners of Income-tax are requested to apprise the Inspecting Assistant Commissioners, Authorised Representatives and Income-tax Officers in their charge accordingly; copies may be endorsed to AACs also.

Yours faithfully,

Sd/-

(S. K. LALL).

Recommendation

That the assessment procedures and the counter check of assessment need to be strengthened is clearly indicated from the foregoing. In this connection the Committee regret to learn that the Internal Audit failed to notice the mistakes in three out of four cases reviewed by them. The Committee hope that suitable action would be taken for their failure.

[SL No. 87 and Para 2.354 of Appendix to 51st Report of P.A.C. (1972-73).]

Action Taken

The Internal Audit Party Officials who failed to detect the mistakes have been warned to be more careful in future. General measures have also been taken for reinforcing the strength of internal audit organisation and streamlining its procedures and this is expected to improve the situation. Attention is invited in this connection to the reply sent to para 2.28 of this report.

[Ministry of Finance (Rev. & Insu.) O.M. No. 236/313/70-II (Audit) dated 7th March, 1973].

Recommendation

The Committee find that the Commissioner of Income-tax had not followed the provisions of Section 271(4A) of the Act as clarified by the Board in their circular dated 29th September, 1969, in waiving or reducing the minimum penalty in as many as 177 cases where the voluntary disclosures were not full. Admitting that the action of the Commissioner was wrong, the representative of the Central Board of Direct Taxes averred that he had acted to safeguard the interest of revenue. According to him it is one of the incentives to the assessees to come to a settlement by reducing the penalty or waiving it. He further pleaded that when an assessee disclosed his concealed assets the difference in valuation thereof did not reflect on the fulness of the disclosure. The Committee are unable to fully share this view especially as in these 177 cases the amount finally accepted/assessed was Rs. 4.79 crores as against the disclosed income of Rs. 3.12 crores only. In any case concession shown in the matter of levy of penalty in such cases is not in conformity with the law as it stands now. Any review of the position in order to provide for concession where there could be honest difference of opinion regarding valuation should be taken into account the need to deter effectively deliberate underestimation of assets disclosed.

[Sl. No. 88 and Para 2.366 of the Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

The observations of the Public Accounts Committee have been noted. The provisions of Section 271(4A) are being reviewed by the Ministry on the basis of the recommendations of the Wanchoo Committee.

[Ministry of Finance (Rev. & Insu.) O.M. No. 20/283/69-II (Audit) dated 24th February, 1973].

Further Information (Sr. No. 88)

Reference is invited to clauses 64 and 67 of the Taxation Laws (Amendment) Bill, 1973 which seek to replace Section 271(4A) of the Income-tax Act, 1961 by a new Section 273A; similarly clauses 99 and 100 seek to replace Section 18(2A) of the Wealth-tax Act by a new Section 18A. The Bill is now before the Select Committee.

Recommendation

3.21. The Committee note that the number of cases pending assessments come down from 23.30 lakhs as on 31.3.1968 to 15.85 lakhs as on 31.3.1969, 13.22 lakhs as on 31.3.1970 and 12.39 lakhs as on 31.3.1971. Although there is a progressive improvement in the position of pendency of assessment cases since 1968-69 the pendency in categories I and II (i.e. with income of Rs. 15,000 and above in each case) continues to be heavy. As on 31st March, 1970 out of the total pendency of 13.22 lakhs cases the number of categories I and II cases pending was 3.09 lakhs which worked out to 23 per cent. The percentage of such cases was 20 per cent as on 31st March, 1969. As against 23,310 company assessments pending as on 31st March, 1970 was 23,730. Another unsatisfactory feature is that there was rush of completion of assessments and raising of demand towards the end of the financial year. The number of assessments completed in March, 1970 was about 16 per cent of the total assessments but the demand raised however, was 35 per cent of the total demands for the year. The analysis of the demands showed that high income group assessments were continued to be taken up for completion in the last three months of the financial year and especially in the month of March. In paragraphs 1.42 and 1.43 of their 117th Report (Fourth Lok Sabha) the Committee, while expressing their dissatisfaction over the increase in pending assessments of bigger cases, urged the Central Board of Direct Taxes to draw up a suitable programme of priorities for disposal of assessments, so that those cases which had high revenue potentiality receive greater attention at the hands of the assessing officers. The Committee were informed that the Board have issued necessary instructions to the Assessing Officers that all big cases involving substantial revenue should be completed before 31st December and the smaller cases to be taken up in the last quarter of the financial year. The Committee have, however, been informed about the difficulties as explained by the representative of the Ministry is that usually big cases represented by eminent lawyer "just drag on." Another difficulty is that the assessees seek extension of time on payment of interest. The Committee are concerned over the plea of helplessness of the department in completing the assessment cases of bigger assessees before December. They, however,

find that the working Group of the Administrative Reform Commission have come to the conclusion on the basis of a case study that the total number of adjournments asked for by the assessees. The Committee, therefore, deside that government should seriously consider this matter in all its aspects and take effective measures to discourage dilatory tactics on both sides—assesseees and the Assessing authorities so that bigger assessment may be completed speedily.

[Sl. No. 94 and Para 3.21 of the Appendix to 51st Report of the P.A.C. (1972-73)]

Action Taken

The category-wise pendency of the assessments during the last five years is as under:

<u>As on</u>		<u>Cat. I</u>	<u>Cat. II</u>
31-3-1968	.	1,64,810	1,62,367
31-3-1969	.	1,62,683	1,49,159
31-3-1970	.	1,67,423	1,41,929
31-3-1971	.	1,67,183	1,31,221
31-3-1972	.	1,24,149	81,750

From the figures given above it would be seen that for the first time in five years the pendency of Category I assessments has been brought down considerably and there has been a progressive fall in the pendency of category II cases also. With the introduction of summary assessment scheme with effect from 1st April, 1971 comparatively unimportant cases get disposed of in bulk with summary procedure, by junior assessing officers, leaving the senior assessing officers more time and attention for important cases and this is expected to speed up the disposal of these important cases.

As regards the prompt disposal of big revenue yielding cases, it may be stated here that on the basis of P.A.C.'s recommendations contained in para 1.42 and 1.43 in their 117th Report, necessary instructions were issued to the Commissioners of Income-tax *vide* Instruction No. 189F. No. 385/57/70-ITB dated 6th July, 1970, copy furnished to the Committee alongwith action taken report on para 1.42 of Appendix to the 117th Report (1969-70). Keeping in view the observations of the Committee regarding the avoidance of unnecessary adjournments in big cases, Instructions are being issued (copy attached).

[Ministry of Finance (Rev. & Ins.) O.M. No. 231/4/71—AP&C dated 28-4-1973]

INSTRUCTION NO. 521

F. No. 231/4/71—A&PAC

VITTA MANTRALAYA

(Central Board of Direct Taxes)

New Delhi, the 12th March, 1973

From

Shri S. K. Lall,

Director, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SUB: Avoidance of unnecessary adjournments in assessment of important cases—Recommendations of the P.A.C. in para 3.21 of their 51st Report (1972-73).

Sir,

I am directed to say that the Public Accounts Committee in para 3.21 of their 51st Report (1972-73) have taken note of substantial pendency of Category I and II cases and observed: "The Committee, therefore, desire that Government should take effective measures to discourage dilatory tactics on both sides—assessees and the assessing authorities—so that bigger assessments may be completed speedily."

2. The Board share the Committee's concern about substantial pendency of important assessments *viz.*, Category I and II Income-tax assessments and the assessments under other direct taxes. It is important that these revenue yielding assessments are handled with maximum possible promptness. A notable contributing factor for delay in completion of these assessments is unnecessary adjournments given by the assessing officers on their own or on untenable requests from the assessee. The Board desire that the assessing officers should, unless for compelling reasons, not adjourn such cases on their own and the assessee's request for adjournment in such cases should be weighed by them very carefully and conceded only if the circumstances pleaded are convincingly genuine and unavoidable. The Inspecting Assistant Commissioners when inspecting the Income-tax Officer's work, should specifically look into this aspect and take note of avoidable and unnecessary adjournments.

3. All the officers in your charge may please be advised accordingly.

Yours faithfully,

Sd/-

(S. K. LALL)

Copy forwarded to:—

1. All Additional Commissioners of Income-tax.
2. Directors of Inspection (II&A)/(inv)/(RS&P)/Director O&M, New Delhi and Director, IRS (DT) Staff College, Nagpur.
3. Comptroller & Auditor General of India (25 copies).
4. A.D.I. (RS&P) (Bulletins) 4 copies.
5. All officers and Sections in the technical wing of C.B.D.T.
6. Shri B. B. Venkatasubramanian, Joint Secretary Ministry of Law, New Delhi.

Sd/-

(P. K. SARMA)

UNDER SECRETARY,
CENTRAL BOARD OF DIRECT TAXES.

Recommendation

The Committee suggest that it should also be examined whether in cases which are sought to be reopened by the assessee under section 146 of the Income-tax Act or before an appeal is made, the assessee should be required to deposit a certain portion of the tax which should not be less than that pertaining to the undisputed income. The Committee would further stress that in all cases of assessment/reassessment it would be desirable if the payment of tax on undisputed portion of income is made a condition precedent to filing appeals.

[Sl. No. 95 and Para 3.22 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha]

Action Taken

The above quoted paragraph contains two suggestions. One relates to the payment of undisputed tax by assessee making an application under section 146 for the cancellation of the assessment made by the Income-tax Officer under section 144 of the Income-tax Act and the second relates to the payment of undisputed tax as a condition precedent to filing appeals. The Direct Taxes Enquiry Committee (Wanchoo Committee) has also made a recommendation in paragraph 4.46 of its final Report which is somewhat similar to

the second suggestion mentioned above. Relevant extract from the Report of the Wanchoo Committee is reproduced below:

"The undisputed portion of the tax should be paid before an appeal to the Appellate Assistant Commissioner of Income-tax is filed. The Appellate Assistant Commissioner should have the power to waive this requirement in appropriate cases for reasons to be recorded in writing."

The above recommendation of the Wanchoo Committee is currently under examination by Government and, if accepted, would be implemented through a Bill to be introduced in the current Budget Session of the Parliament. If a provision is made in the Income-tax on the lines recommended by the Wanchoo Committee, it would also substantially meet the other suggestion also in the paragraph under reply.

[Ministry of Finance (Rev. & Ins.) O.M. No. 231/4/71-AP&C
dt. 7-6-1973]

Furter Information (Sr. 95)

Item No. 46.—Clause 60 of the Taxation Laws (Amendment) Bill meets this point by seeking to amend suitably section 249 of Income-tax Act, 1961.

Recommendation

The Committee find that the number of Income Tax Officers attending to assessment duties has progressively increased from 1701 as on 1st April, 1968 to 1912 as on 1st April, 1969, 2056 as on 1st April, 1970 and 2,234 as on 1st April, 1971. The effect of this appears to have been the reverse of what might have been expected. The average number of assessments disposed of per Income Tax Officer on assessment duty has decreased from 1855 in 1968-69 to 1,842 in 1969-70 and 1,669 in 1970-71. No satisfactory explanation for this phenomenon has been adduced by the Ministry. The Committee suggest that the reasons for decrease in average number of assessments particularly during the year 1970-71 may be investigated by the department.

[S. No. 96 and Para 3.23 of Appendix to 51st Report of the PAC (1972-73)]

Action Taken

Reasons for the decrease in the average number of assessments

completed during 1970-71 are being investigated and a report will be submitted in due course.

[Ministry of Finance (Rev. and Ins.) O.M. No. 231/4/71-APAC, dated 26-3-1973].

Further Information (Sr. No. 96)

DI(RS&P) was requested to make a selective study in the matter. A copy of his report is attached herewith. Attention is invited to the Ministry's reply to para 1.30 of the 87th Report of the PAC (1972-73), wherein the newly created Directorate of O & M. SERVICES has been asked to make an overall study as suggested by the PAC; their report is awaited for further necessary action.

Copy of D.I. (RS&P)'s Report

Five Commissioners' charges were selected for the required Study. These charges were Andhra Pradesh-I, Mysore, Gujarat-II, Patiala and West Bengal-II. In these charges, it was noticed that there had been a consistent decline in the number of assessments disposed of per Income-tax Officer in each year taking 1968-69 as the year as the following figures indicate:—

<i>Charges</i>	1968-69	1969-70	1970-71
Andhra Pradesh	1956	1908	1478
Mysore	2454	2176	1731
Gujarat-II	1928	1893	1662
Patiala	2550	2313	1870
West Bengal-II	2044	1895	1631

2. By and large the decline in disposal of Income-tax assessments per ITO has been due to the fact that more attention was paid in 1970-71 to the disposal of Wealth-tax, Category-I and Category II cases as also to collection work and reduction in arrears than in the earlier cases.

3. Charge-wise reasons for decline in average disposal of Income-tax cases in the year 1970-71 are given as under:—

Andhra Pradesh-I

(i) Out of 114 Income-tax Officers entrusted with assessment work during 1970-71 in Andhra Pradesh-I and II charges,

21 officers were available for this work only from August and September, 1970. Further, one probationer joined in October, 1970 and one promotee officer was posted in February, 1971.

- (ii) In the first half of the year, the Income-tax Officers concentrated on the survey of agricultural Wealth-tax assessees wherein 5,000 new assessees were brought on record.
- (iii) Number of Wealth-tax assessments and number of Category-I and II Income-tax assessments disposed of in this year were far more than in the earlier years.
- (iv) There was a drive to liquidate arrears and because of more emphasis on collection work, the Income-tax assessments disposed of were less this year.
- (v) Moreover, more penalties were disposed of in the year 1970-71 as compared to earlier years.

Mysore

- (i) The year 1968-69 was an unusual year in so far as nearly 24,000 assessments of Goa circle were disposed of in that year. These assessments had been pending for a number of years till a decision on the complicated question of status, peculiar to conditions obtained in Goa was taken in 1968-69. Thus, on the basis of this one decision such a large number of assessments could be disposed of in 1968-69. As the same conditions did not exist in the subsequent years, the same tempo in the disposal of assessments could not be maintained.
- (ii) More Category-I and II cases were disposed of in 1970-71 as compared to the earlier years.
- (iii) There had been the problem of diminishing carry over of arrear assessments. As a result of which, disposal in the first few months was very small and the tempo could not be gathered till current assessments had been added to the work-load. This will be clear from the fact that in 1968-69, the arrear assessments for disposal which stood at 53,851 came down to 8,645 only for 1970-71.

Gujarat-II

- (i) Though there has been a decline in the average disposal per ITO in this charge from 1968-69 to 1970-71, the aver-

age disposal per ITO in this charge over the years has been higher than all-India average.

- (ii) The reason for fall in average for the year, 1970-71 as compared to earlier years was due to the fact that Gujarat-III charge was created in the year and on account of change in jurisdiction, the Income-tax Officers were busy in transferring and receiving case files and hence, the same amount of time was not available with them as it was in 1968-69.

Punjab

- (i) There were a number of raids carried out at Ludhiana in September, 1970. As these raid cases were to be disposed of expeditiously, four officers were posted at Ludhiana to deal with such cases exclusively.
- (ii) As a result of these raids, disclosures of about Rs. 1.36 crores were received. These disclosures were dealt with on priority basis thus, resulting in lower disposal of other cases.
- (iii) A large number of officers and staff were posted on election duty in mid-term election to Lok Sabha in March, 1971.
- (iv) The arrear cases brought forward as on 1st April, 1970 were much less than the arrear cases in earlier years. As such, the work relating to disposal of assessments, could not pick up speed till August, 1970 when returns for that current year started coming in, thus, affecting the average output per Income-tax Officer.
- (v) Greater attention was paid in this year to the liquidation of arrear demand as a result of which, arrears of tax amounting to Rs. 13.14 crores as on 1st April, 1970 were reduced to Rs. 575 crores upto 31st March, 1971.

West Bengal-II

- (i) The main reasons for decline in the average disposal of the Income-tax Officers was due to the fact that more higher category cases were disposed of.
- (ii) The poor law and order conditions prevailing in West Bengal were also responsible for lesser disposal.

4. It will be observed from the above that there were good reasons for decline in the average disposal per Income-tax Officer in respect of Income-tax assessments.

Sd/-

(K. SINGH)

Deputy Director of Inspection (RS&P)

CBDT (Shri S. K. Lall, Director), New Delhi.

DIRSP, U.O. F. No. S(2) |28|RSP|72-73|58, dated 3-4-1973.

Recommendation

The Committee need hardly stress that the Department should also give adequate attention to the revenue collected and the accuracy displayed in assessment.

[Sl. No. 97 and Para 3.24 of Appendix to the 51st Report of the PAC (1972-73)].

Action Taken

(i) The following figures show that revenue collection is improving every year:—

Year	Corporation tax	Income- tax	Total
1967-68	310.51	325.89	636.40
1968-69	299.77	378.47	678.24
1969-70	353.39	448.45	801.84
1970-71	386.58	453.06	839.64
1971-72	488.72	513.85	1002.57

(ii) There has also been a steady reduction in the net arrears vide details below:

Gross demand outstanding as on.	Corpora- tion Tax	Income Tax	Interest	Total	Net Arrears
31-3-1970	255	534	52	841	507
31-3-1971	183	528	61	772	499
31-3-1972	177	543	5	805	439

(iii) Various steps taken for accelerating tax collection are detailed in the Annexure A.

(iv) As regards accuracy in assessments, Board have issued Instruction No. 355, F. 240/3/71-A(PAC) dated 13th December, 1971 (copy enclosed as Annexure B).

[Ministry of Finance (Rev. and Ins.) O.M. No. 231/4/71-A&PAC, dated 28-4-73].

'ANNEXURE 'A'

(Reply to para 3.24 of PAC's 51st Report, 1972-73)

Various steps have been taken in the past few years for prompt collection of taxes and prevention of taxes from falling into arrears. These are detailed below:—

I. Delays—Elimination of—

- (1) Vesting of power in the ITO enabling him to complete an assessment in the very same year in which a person was suspected of leaving India and curtailment of period of notice, etc.
- (2) Provision enabling the ITO to complete an assessment in the very same year in which a property is suspected to be transferred, sold etc., with a view to avoid tax payment.
- (3) Reduction of period for completion of Income-tax assessments from four years to two years.
- (4) Provision fixing responsibility on a tax payer to estimate and pay advance tax where the same is likely to exceed the amount demanded by 33-1/3 per cent.
- (5) Enlarging of the scope of tax deductible at source; in case of a certain types of interest, prizes on crossword puzzles and lotteries, payments to contractors and sub-contractors.
- (6) Special watch by the Commissioners and the Inspecting Assistant Commissioners on the speedy services of the notices of demand so that the taxes could be collected during the same year.

II. Tightening of Machinery

- (1) Requirement under the law for the production of a certificate before the ITO by a person going abroad, if he is of

non-Indian domicile or a person of Indian domicile not likely to return to India.

- (2) Directors of a private Ltd. company which goes into liquidation after 1st April, 1962 the date from the Act, 1961 came into force, are liable in certain circumstances for the tax payable by the company.
- (3) Certain transfers of property during the pendency of proceedings to defraud revenue are declared to be void.
- (4) Payment of interest for late payment of tax.
- (5) Requirement for the production of tax clearance certificate before documents for sale of property in excess of Rs. 50,000 are registered.
- (6) In order to ensure better collection of tax by deduction at source the penalties for failure to deduct and pay tax at source have been increased. Section 276B introduced in 1968, provides for rigorous imprisonment for failure to deduct and pay tax. A more vigorous prosecution policy was also launched resulting in better collection of tax by deduction at source.

III. Improvement in Organization

- (1) The introduction of the Scheme of Functional Distribution of work. Here the collection of taxes is made the specific function of one or more Income-tax Officers in the Range or District. There are 125 Income-tax Officers attending exclusively to the work of the collection of taxes.
- (2) As a result of the summary assessment scheme, some Income-tax officers were diverted from assessment to collection and recovery work.
- (3) Prior to 1961 recovery of tax arrears was done by State authorities who often failed to evince sufficient interest in the collection of the Central Revenues. The 1961 Act, therefore, incorporated a self-contained Revenue Code and made provision for the Recovery Officers who could be Departmental Officers. 84 Tax Recovery officers were sanctioned till 1971. 89 more posts status of Commissioner of Income-tax and a number of Additional Commissioners of Income-tax are working as Tax Recovery Commissioners. Tax Recovery work has been taken over in almost all the changes by the Department.

(4) The Commissioners have been direction to use more vigorously the powers to attach the debts, movable properties and to consider sending the defaulter assessees to jail.

ANNEXURE 'B'

(Reply to para 3.24 of PAC's 51st Report, 1972-73)

INSTRUCTION No. 355

F. No. 240/3/71-A&PAC

CENTRAL BOARD OF DIRECT TAXES

New Delhi, December 13, 1971

From

Shri S. Bhattacharya,

Secretary, Central Board of Direct Taxes

To

All Commissioners of Income-tax/Additional Commissioners of Income tax.

Sir,

SUBJECT: Computation of total income—Arithmetical mistakes regarding steps to be taken.

Arithmetical mistakes occurring in the computation of total income are being repeatedly brought to the notice of the Board of the C&AG's revenue audit parties.

2. Some typical mistakes are—

- (i) the failure to include in the computation of total income certain proposed additions to income discussed in the narrative portion of the assessment order;
- (ii) mistake in totalling the income determined under different heads;
- (iii) adding disallowable items of debit to loss shown or determined, instead of deducting these;
- (iv) omitting the last digit (mostly a zero) of a number running into several digits;
- (v) errors in addition, particularly of digits in the fourth or fifth place of numerals.

3. The Public Accounts Committee while considering the Audit Report for 1970 and 1971 in their last meeting held in October, 1971, expressed grave concern over the recurrence of the types of avoidable mistakes listed above. The Board share their concern and feel that the mistakes may well be avoided with proper care in securing arithmetical accuracy. With this end in view, they have taken the following decisions:

- (1) Before signing assessment orders, Income-tax officers must satisfy themselves about the arithmetical accuracy of the total income determined by them. When the total income exceeds Rs. 9,999/-, they must write in words, as well as figures, the amount of total income. Arithmetical mistakes in computation of total income detected later in such cases will be treated as instances of gross negligence on their part.
- (2) The clerks concerned with the calculation of tax must ensure that they take the correct total income as determined by the Income-tax officers. The Head Clerks/Supervisors, who are required to check such calculations, must also tally the total income taken for the purpose of calculating the tax with that shown in their relevant assessment order. If there is any error in transcribing the total income, the responsibility will be that of the concerned clerks, Head Clerks and Supervisors.

4. The Board desire you to intimate the above mentioned decisions to your officers and members of the staff.

Yours faithfully,

Sd/-

(S. BHATTACHARYA),
Secretary, Central Board of Direct Taxes.

Recommendation

Now that the number of Chartered Accountants has increased considerably, the Committee would suggest that suitable method should be devised to have all returns of income involving more than Rs. 1 lakh certified by Chartered Accountants subject to appropriate conditions and terms so that the Income-tax Officers may concentrate attention on broader aspects of determining correctly the tax liability. The Committee would like this matter to be examined early by Government in consultation with all concerned.

[Sl. No. 98 and Para 3.28 Appendix to 51st Report of the P.A.C.
(1972-73) Fifth Lok Sabha]

Action Taken

The Direct Taxes Enquiry Committee (Wanchoo Committee) has also made a somewhat similar recommendation in paragraph 2.148 of its final Report which reads as under:

"A provision may be introduced in the law making presentation of audited accounts mandatory in all cases of business or profession where the sale/turnover/receipts exceed Rs. 5 lakhs or the profit before tax exceeds Rs. 50,000. A form of audited report may be prescribed, taking due note of the manner in which documents, records and books are maintained in the non-corporate sector. Auditor's report should include, among other things, pertinent information like the following:

1. Scope of examination—whether full check, test-check or more reconciliation—in order to satisfy that purchases, sales, income and expenses are properly accounted for and balance-sheet is properly drawn up.
2. Nature of security offered for obtaining secured loans. Particulars of security not recorded or accounted for in the books to be stated.
3. Computation of admissible allowance by way of depreciation.
4. Brief particulars of expenditure on entertainment, advertisement, guest house, etc., and the amount, if any, disallowable under section 37 of the Income-tax Act, 1961.
5. Particulars of expenses in respect of which payments have been made to directors, partners or persons substantially interested in the concern and their relatives. The amount, if any, not deductible under sections 40 and 40A of the Income-tax Act, 1961.
6. Particulars of amounts, if any, chargeable as profits under section 41 of the Income-tax Act, 1961.
7. Particulars of payments in respect of which Income-tax has not been deducted at source and paid in accordance with the requirements of sections 192—200 of the Income-tax Act, 1961.

The Government may also, in due course, evolve a proforma of information to be furnished by the auditors which would facilitate completion of assessments." (Recmn. 94).

The above recommendation of the Wanchoo Committee is currently under examination by Government and, if accepted, would be implemented through a Bill to be introduced in the current Budget Session of the Parliament. If a provision is made in the Income-tax Act on the lines recommended by the Wanchoo Committee, it would also substantially meet the suggestion contained in paragraph 3.28 of the Fifty-first Report of the Public Accounts Committee quoted above.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/4/73-
A&PAC dated 7-6-1973].

Further Information (Sl. No. 98)

Item No. 48: Clause 39 of the Taxation Laws (Amendment) Bill meets this point by seeking to amend suitably section 139 of Income-tax Act, 1961.

Recommendation

The Committee note with some satisfaction that the effective arrears of tax demand (excluding the demands not fallen due) came down to Rs. 609.55 crores as on 31st March, 1971 from Rs. 682.56 crores as on 31st March, 1970. The Committee were informed that for the first time in 1970-71 the growth of arrears has been arrested. During the last three years collections from arrears demand has risen from Rs. 101 crores to Rs. 129 crores, while the total collection (both arrears and current) increased from 678 crores to Rs. 801 crores and Rs. 830 crores. The Committee stress that no efforts should be spared to recover the arrears.

[Sl. No. 99 and Para 4.48 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

The observations of the Committee have been noted.

[Ministry of Finance (Revenue and Insurance) OM No. 231/5/71-A & PAC, dated 2-3-1973].

Recommendation

It is significant that a sizable amount of arrears continued to be outstanding, inspite of introduction of systems of deductions at source, payment of advance tax and self assessment. The Finance Secretary agreed during evidence that these measures should have resulted in narrowing the difference between the demands and col-

lection and he promised to investigate the matter. The Committee desire that this question should be thoroughly examined with a view to taking effective measures without delay to obviate accumulation of current demands.

[Sl. No. 100 and Para 4.49 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

The Ministry are seized of the problem of arrear demands remaining outstanding for long. Studies were conducted by the Director of Inspection (RS&P) in arrear cases involving outstanding demands of Rs. 5 lakhs or more to spot light the causes for large arrears and possible remedies. The Wanchoo Committee has also gone into this matter at length and suggested remedial measures. These are under consideration of the Government.

Various steps taken for accelerating the collection are detailed in Annexure 'A' to the Ministry's reply to Para 3.24 of this report.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/5/71-A&PAC dated 6-5-1973].

Further Information (SL No. 100)

- (i) The sample study was conducted with results as per details given in the Annexure 'A'.
- (ii) The position is elucidated in Annexure 'B'.

ANNEXURE 'A'

A sample study of 50 cases with arrears demand exceeding Rs. 5 lakhs in each cases was conducted by the DI (RS&P). The results of this study are given below:—

- (a) 24 per cent of the total sample involving 52.9 per cent of the gross outstanding demand related to cases where assets had been attached but their disposal had been held up because of legal and other difficulties.
- (b) Since this category of cases accounted for more than 50 per cent of the gross demand outstanding, a further study was undertaken with a view to identifying the reasons for the legal and other difficulties. This study revealed that 57.99 per cent of 52.9 per cent of the gross demand i.e., 30.6 per cent of the gross demand was outstanding due to the revo-

very proceedings having been stayed by High Courts and the Supreme Court, consequent to the filing of writ petitions by the assessees.

- (c) In as many as 33.62 per cent of 52.9 per cent i.e. 17.8 per cent of the cases, the department had filed applications to become party to petitions already filed by the creditors for winding up the affairs of the assessees.
- (d) The net result was that in cases involving 48.4 per cent (30.6 per cent + 17.8 per cent) of the gross demand outstanding, there would be no progress till the cases pending in courts were decided.

The results achieved from these studies show that a substantial portion of our arrears are outstanding because our judicial system is no longer able or geared to cope with the huge arrears of tax cases that are pending before them. It is also a fact that with the advances in education, experience and wealth, the tax payers are becoming conscious of the financial advantages of going to a High Court or the Supreme Court and delaying Income-tax proceedings. Under the present judicial system, even simple cases of litigation can be prolonged for a decade. With this end in view, tax payers prefer to go to Court rather than adopt other means to settle their differences with the Income-tax Department. Action on the results of this study was deferred as the Wanchoo Committee was also going into this matter and their recommendations could be awaited. The Committee in their Report, since submitted, has suggested remedial measures which have been considered *vide* details in Annexure 'B'.

'ANNEXURE 'B'

The following provisions for reduction of tax arrears and preventing accumulation thereof have been included in the Taxation Laws (Amendment) Bill, 1973 on the basis of the Wanchoo Committee's recommendations which is now before the Select Committee.

(i) **Automatic lien:** Section 281 of the Income-tax Act is being amended so as to provide that if a person transfers any of his assets exceeding Rs. 10,000 in value during the pendency any proceedings or, without paying the tax makes any such transfer after the completion of any proceedings and before notice by the Tax Recovery Officer, such transfer shall be void unless made for adequate consideration and without notice of the pendency of the proceedings or of the tax payable.

Under section 281 of the Income-tax Act, as it exists at present, only transfer made during the pendency of any proceedings under the Act with the intention to defraud the revenue are to be treated as void. Under the proposed amendment, the intention to defraud revenue need not be established in order to render void the creation of any charge or transfer.

(ii) *Provisional attachment:* A provision is being made enabling the income-tax and wealth-tax authorities to levy provisional attachment on the assets of a tax-payer whose case is under investigation even before tax demand is actually raised against him.

(iii) *Transfer of assets to spouse or minor child etc.:* Under clause 55 of the Amendment Bill, an Explanation is sought to be introduced in section 222(1) to provide that the assessee movable or immovable properties shall include properties transferred to the spouse, minor child, son's minor child or son's wife, otherwise than for adequate consideration; and that such movable or immovable properties could be attached and sold for recovery of any arrears of tax due from the assessee.

(iv) *Simultaneous recovery by more than one Tax Recovery Officer:* The amendment proposed to be made to sub-section (2) under clause 56 of the Amendment Bill enables the Tax Recovery Officer to send the certificate, or a copy thereof to another Tax Recovery Officer within whose jurisdiction the assessee resides or has property, without first exhausting all the avenues available to him in respect of the property within his jurisdiction which he has to do at present.

(v) *Acquisition of property at cost below the reserve price:* Rule 59 of the Second Schedule is being amended so as to provide that where the sale of a property for which a reserve price has been specified in the first auction, has been postponed for want of a bid of an amount not less than such reserve price, the Income-tax Officer can, on any subsequent sale, when no reserve price has been specified, bid for the property and acquire it his bid is the highest, even though it may be below the earlier reserve price.

(vi) *Payment of undisputed tax before appeal:* Payment of tax on the basis of the return or the amount which he should have paid as advance tax is proposed to be made a condition precedent for filing an appeal before the Appellate Assistant Commissioner. However,

in appropriate cases, the Appellate Assistant Commissioner will be empowered to waive this requirement.

(vii) *Prosecution for wilful attempt to evade payment of tax:* Persons who wilfully attempt to evade payment of tax will be liable to prosecution.

(viii) *Pre-assessment instructions to Income-tax Officer:* The Inspecting Assistant Commissioners of Income-tax are being authorised to call for the records of any case on his own motion or on reference by the Income-tax Officer or on petition by the assessee before an assessment is finalised and to issue such directions as he considers fit for the completion of assessment.

(ix) *Issue of draft assessment orders etc. where large additions or disallowances are proposed:* The Income-tax Officers will be required to send draft assessment orders to tax payers in all cases in which additions disallowances proposed to be made exceed the limits prescribed by the Board. Such limits shall not be fixed at less than Rs. 25,000 for any area.

Recommendation

The effective arrears included irrecoverable dues amounting to Rs. 47.91 crores at the end of 1969-70 and Rs. 56.6 crores at the end of 1970-71. The Administrative Reforms Commission observed that "no useful purpose is secured by keeping these in the books as irrecoverable arrears" and that, "action should be taken for expediting writing off of outstanding demands if they are found clearly to be irrecoverable". The Committee were informed that the Zonal Committees were constituted in 1968 to go through such cases and they were required to meet once in two months to accelerate the pace of writing off. The Committee were not furnished with figures regarding number of cases reviewed by the Zonal Committees from 1968-69 onwards and recommended for write off. The Committee recommend that in order to watch the progress of work done by Zonal Committees, the Board should get necessary returns periodically which should be properly scrutinised in the interest of speeding up work.

[Sl. No. 101 and Para 4.50 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha]

Action Taken

The figures relating to the progress of work done by the Zonal Committee from 1968-69 onwards are given below:

Year	No. of cases reviewed	No. of cases recommended for write off
1968-69	63	50
1969-70	106	80
1970-71	91	70
1971-72	69	61

As regards the Committee's recommendation that the Board should watch the progress of work done by the Zonal Committee and get necessary returns periodically instructions have been issued on 1st March, 1973 *vide* Board's F. 385/9/73-IT(B) (Copy attached).

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/5/71 A&PAC dated 6-5-1973]

INSTRUCTION NO. 520

F. No. 385/9/73-II(B)

CENTRAL BOARD OF DIRECT TAXES

Dated, New Delhi, the 1st March, 1973.

From

The Director,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax and
Additional Commissioners of Income-tax.

Dear Sir,

SUBJECT: P.A.C. (1972-73)—51st Report Para 4.50—(Fifth Lok Sabha)—Progress of the work done by the Zonal Committees relating to write off—

The Public Accounts Committee while reviewing the work done

by the Department during the year 1971-72 have made the following recommendations in their 51st Report, para 4.50:—

"Para 4.50—The effective arrears included irrecoverable dues amounting to Rs. 47.91 crores at the end of 1969-70 and Rs. 56.6 crores at the end of 1970-71. The Administrative Reforms Commission observed that "no useful purpose is secured by keeping these in the books as irrecoverable arrears" and that, "action should be taken for expediting writing off of outstanding demands if they are found clearly to be irrecoverable." The Committee were informed that the Zonal Committees were constituted in 1968 to go through such cases and they were required to meet once in two months to accelerate the pace of writing off. The Committee were not furnished with the figures regarding number of cases reviewed by the Zonal Committees from 1968-69 onwards and recommended for write off. The Committee recommend that in order to watch the progress of work done by Zonal Committees, the Board should get necessary returns periodically which should be properly scrutinised in the interest of speeding up work."

2. Vide para of Board's circular letter F. No. 16c/59/68-IT(B) dated 16th October, 1968, the Zonal Committees are required to meet ordinarily once in three months for reviewing cases of arrear demands exceeding Rs. 1 lakh and make necessary recommendations for the write off/selling down of irrecoverable portions of such arrears. It appears that sufficient interest in this regard is not being taken as very few cases of write off processed through the Zonal Committee have been received in the Board during the year 1972-73. The Board, therefore, desire that the Commissioners should pay personal attention to this aspect of the work. An annual statement showing the progress of work done by the Zonal Committee should be sent by 15th April to the D.I. (RS&P), in the enclosed proforma.

Yours faithfully,
 Sd./- S. N. NAUTIAL,
 Director,
 Central Board of Direct Taxes.

1. Copy to the Directorate of Inspection (RS&P), New Delhi in continuation of Board's letter F. No. 16c/59/68-IT(B) dated 16th October, 1968 for information and necessary action. The annual state-

ment should be collected and sent to the Board alongwith their com-
ments by the 15th May, each year.

2. Bulletin Section of the D.I. (RS&P), New Delhi, 3 spare copies.

Sd/- S. N. NAUTIAL,
Director,

Central Board of Direct Taxes.

PRO FORMA

Total amount outstanding	Crops ripe for being placed before the Zonal Committee.		Cases placed before the Zonal Committee	
	No. of cases	Amount involved	No. of cases	Amount involved
(1)	(2)	(3)		
No. of meetings of the Zonal Committee held during the year	No. of cases considered by the Zonal Committee		Cases out of Col. (5) which were recommended by the Zonal Committee for write off	
	No. of cases	Amount involved	No. of cases	Amount involved
(4)	(5)	(6)		
Cases out of Col. (5) which were not recommended for write off	Cases which could not be considered by the Committee		Brief reasons as to why the Zonal Committee could not consider the cases mentioned in Col. 8	
No. of cases	No of cases	Amount involved		
(7)	(8)	(9)		

Recommendation

The Committee wish to reiterate the observations of the Administrative Reforms Commission that outstanding demands should be written off only if they are found clearly to be irrecoverable after exhausting all avenues open to the Department.

[Sl. No. 102 and Para 4.51 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

According to Schedule VII of the Compilation of the Delegation of Financial Power Rules 1958, Commissioners of Income-tax have full powers to write off irrecoverable balance of income-tax demands subject to a report to the next higher authority. Powers of write off

have also been delegated to the other authorities of the Department as under:—

1. Inspecting Assistt. Commissioner of Income-tax	Upto Rs. 2000/- in each case.
2. Income-tax Officer Class I	Upto Rs. 250/- in each case.
3. Income-tax Officer Class-II	Upto Rs. 100/- in each case.

Although the Income-tax authorities thus have powers of write off with a view to accelerating the pace of write off and to see that the write offs should be resorted to only in those cases where there are absolutely no chances of recovery and all the avenues of recovery have been exhausted, the system of scrutiny of such cases by specially constituted Committees has been introduced by the Government. So far as the case of write off of outstanding demands not exceeding Rs. 1 lakh in each case are concerned, these are to be considered by a local Committee constituted in each Commissioner's charge with effect from 1st January, 1970 and consisting of the Commissioner of Income-tax, the Inspecting Assistant Commissioner of Income-tax concerned and the Income-tax Officer concerned. All cases between Rs. 2000 and one lakh are required to be examined first by this Committee and on the basis of the recommendations made by it, necessary orders for write off are passed by the appropriate authority of the Income-tax Department. In cases where the demand involved is Rs. 1 lakh or more, the Commissioner is required to obtain the prior approval of the Board. Such cases are examined first by a Zonal Committee introduced in October, 1968 and consisting of three Commissioners in the Zone. One of the three can be an Additional Commissioner of Income-tax. The Commissioner concerned thereafter forwards the recommendations of the Zonal Committee to the Director of Inspection (RS&P), New Delhi in respect of cases recommended for write off. The Director of Inspection is required to examine the write off proposal and forward the same to the Board with his forwarding comments. The Committee's proposal and the D.I.'s forwarding comments alongwith the original records of the case are then examined by two Directors/Dy. Secretaries in Board's Office with reference to the case records. If the amount involved is less than Rs. 5 lakhs, the papers are placed before the Member of the Board, and if he approves, his instructions for write off are conveyed to the Commissioner of Income-tax. In cases the demand involved is more than Rs. 5 lakhs, the Committee's recommendations are considered by the full Board. Cases involving a demand of more than Rs. 25 lakhs for write off are submitted to the Finance Minister.

Recommendation

The Committee find that the number of cases under the appeal before the Appellate Assistant Commissioners in which tax was stayed increased from 6,667 (involving tax of 34.64 crores) to 7,130 cases as on 30th June, 1970 (involving tax of Rs. 53.86 crores). This is in spite of the fact that the Department has taken some steps for expediting the disposal of the appeals pending before the Appellate Assistant Commissioners such as increasing the number of Appellate Assistant Commissioners such as increasing the number of Appellate take up large demands cases for out of turn disposal etc. The cases in which tax was stayed by the Income-tax Tribunals increased from 908 (involving tax of Rs. 9.48 crores) as on 30th June, 1969, to 1,127 (involving tax of Rs. 16.35 crores) as on 30th June, 1970, in spite of certain measures taken by the Ministry of Law. The Committee desire that the number of pending appeals with the Appellate Assistant Commissioners and Tribunals should be kept under watch and further necessary steps taken to speed up disposal of the pending appeals.

[Sl. No. 104 and Para 4.53 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

The pendency of appeals before the Appellate Assistant Commissioner and the income-tax Appellate Tribunal is constantly under review. Various steps have been taken and are being taken from time to time for expediting disposal of appeals pending before them.

2. Apart from generally directing the Appellate Assistant Commissioners to dispose of "old appeals" and "appeals involving big demands" on priority basis, the Commissioners of Income-tax/Additional Commissioners of Income-tax have been requested to furnish lists of cases involving large demands to the Appellate Assistant Commissioners and to the Benches of the Income-tax Appellate Tribunal requesting them for early hearing of these appeals. The jurisdiction of the Appellate Assistant Commissioners have recently been reorganised into important and comparatively less important Ranges with the specific object of stepping up the disposal of large demand cases in one category of Ranges and to facilitate bulk disposal of comparatively small cases in the other category of Ranges. With these measures and the increase in the strength of the Appellate Assistant Commissioners as compared to the preceding years, the position is expected to improve.

3. Unfortunately, owing to litigation for seniority between two groups of officers, it has not been possible to fill in a fairly large number of posts of Appellate Assistant Commissioners by promotion, but matters are moving ahead and it is hoped to fill in these posts before long. The Ministry of Law is also being requested to take further appropriate action in the matter of accelerating the pace of disposal of the pending appeals before the various benches of the Tribunal. More recently, they have added 8 more benches for increasing output.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/5/71 APAC dated 24-3-1973].

Recommendation

The Committee note that in pursuance of their earlier recommendation, the Commissioners had informal discussion with the Chief Justices of many States regarding constitution of additional or special benches to dispose of Income-tax cases pending before the courts. The Committee have been informed that the response from some of the Chief Justices was quite favourable. The Committee desire that efforts should continue to be made in this direction. The Committee appreciate the Ministry's point that there is accumulation of work before the High Courts and Supreme Court and the Law Commission have recommended that the strength of High Courts may be increased wherever necessary. The Committee trust that Government will take suitable action on the recommendation of the Law Commission in the interest of more expeditious disposal of pending Income-tax cases.

[Sl. No. 105 and Para 4.54 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action Taken

The matter pertains to the Ministry of Law and the extracts on the recommendations contained in the above-noted para have been forwarded to that Ministry. Further action will be taken by them.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/5/71 APAC dated 24-3-1973].

Recommendation

The Committee find that as on 31st March, 1970 tax amounting to Rs. 23.55 crores had been stayed by the Departmental officers pending disposal of appeals. The Committee were informed that under

section 220(3) of the Income-tax Act, the Income-tax Officer has discretion to extend the time for payment of tax or allow payment by instalment. During evidence, the Finance Secretary agreed that there should be a review by another officer to see whether the discretion has been properly exercised by the Income-tax Officers. The Committee were informed that a random check of cases in which the stay of demand had been permitted by the Income-tax Officers was proposed to be undertaken early in the current financial year. Considering that a sizeable amount of tax has been stayed by the Income-tax Officers, the Committee desire that the review should be completed expeditiously, and the Committee informed of the result and action taken in pursuance thereof, if any.

The Committee find that an interest of Rs. 51.50 crores is included in the total gross arrears of Rs. 840.70 crores. The amount outstanding pertaining to the period 1959-60 and the earlier years as on 31st March, 1970 was Rs. 62.29 crores. Interest at 9 per cent under Section 220(3) on the outstanding of Rs. 62.29 crores for the period from 1959-60 to 1969-70 i.e. for the period of 11 years work out to Rs. 62 crores. Even without taking into account (i) the arrears of 1960-61 and for the subsequent years and (ii) interest leviable under various other Sections of the Act on arrears of Rs. 62.29 crores relating to 1959-60 and earlier years, interest of Rs. 62 crores was leviable. The Chairman, Central Board of Direct Taxes admitted that "some officers charge interest and some do not". They await till the whole tax is recovered. The Board have given instructions but they do not seem to be complied with. The Finance Secretary agreed to the suggestion that the calculation of interest on arrears of tax demands of over Rs. 1 lakh each could be checked to see whether it had been correctly done. The Ministry have intimated subsequently that this check would be undertaken in the beginning of the current financial year. The Committee desire that the review of the calculations of interest of tax demand of over 1 lakh should be completed expeditiously and the result intimated to them. The Committee also desire that the Board should ensure that the instructions issued by them from time to time regarding charging of interest are complied with by the Income-tax Officers and the Tax Recovery Officers.

[Sl. Nos. 103 & 106 and Paras 4.52 and 4.55 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action Taken

The Board have addressed the Commissioners of Income-tax asking them to undertake the reviews as desired by the Committee. The

results will be intimated in due course. The Commissioners' attention has been drawn to Board's Instructions about charging of interest.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/5/71-A&PAC dated 19-4-1973].

Further Information (Sr. No. 103)

In Ministry's earlier reply on this item regarding information for para 4.52, sent vide Office Memorandum dated 15th November, 1973, it was stated in the Annexure that with the exception of two cases, the Income-tax Officers exercised the discretion properly. On further scrutiny it has come to the light that one of the two cases as mentioned in Ministry's earlier reply does not fall under section 220(3) of Income-tax Act, 1961 and that it is a case where tax recovery certificate has been issued. The Annexure may, therefore, please be substituted by the Revised Annexure sent herewith. The inconvenience caused is very much regretted.

REVISED ANNEXURE

Para 4.52

The recommendations of the P.A.C. was that there should be a review by another officer in cases where the Income-tax Officer had either allowed payment of tax by instalments or had extended the time for payment of taxes.

"It is reported by all the Commissioners of Income-tax that the Inspecting Assistant Commissioners have made a random check of the cases in which the Income-tax Officers have granted facility under section 220(3) to the assessee for payment of taxes. With the exception of one case, the Income-tax Officers have exercised the discretion properly. In one case of Delhi (Central) Charge for assessment year 1968-69, the entire demand was stayed by the Income-tax Officer instead of staying the disputed demand only. The Income-tax Officer was directed by the Commissioner of Income-tax to review the stay order and collect the undisputed tax immediately. The order has since been reviewed by the Income-tax Officer and the assessee (Smt. Pushpinder Kaur of Delhi) has been directed to clear the undisputed demand of Rs. 40,000 out of a total demand of Rs. 1,12,000. The balance demand *viz.* Rs. 72,000 which is disputed has been stayed by the Income-tax Officer

pending decision of appeal by the Appellate Assistant Commissioner of Income-tax."

Further Information (Sr. Nos. 103 and 106)

Necessary reviews have been conducted in all the Commissioners' charges *vide* details given in the Annexure which shows the results of the review and action taken.

ANNEXURE

Para 4.52

The recommendation of the P.A.C. was that there should be a review by another officer in cases where the Income-tax Officer had either allowed payment of tax by instalments or had extended the time for payment of taxes.

It is reported by all the Commissioners of Income-tax that the IACs have made a random check of the cases in which the Income-tax Officers have granted facility under section 220(3) to the assessee for payment of taxes. With the exception of two cases, the ITOs have exercised the discretion properly. In one case of Delhi (Central) Charge for assessment year 1968-69, the entire demand was stayed by the Income-tax Officer instead of staying the disputed demand only. The Income-tax Officer was directed by the Commissioner of Income-tax to review the stay order and collect the undisputed tax immediately. The order has since been reviewed by the ITO and the assessee (Smt. Pushpinder Kaur of Delhi) has been directed to clear the undisputed demand of Rs. 40,000 out of a total demand of Rs. 1,12,000. The balance demand *viz.* Rs. 72,000 which is disputed has been stayed by the Income-tax Officer pending decision of appeal by the Appellate Assistant Commissioner of Income-tax. In another case of Madras (Central) Charge, an order passed by the Income-tax Officer for giving time for payment of tax due from a firm and its five partners was found to be irregular. It has since been revoked.

Para 4.55

It was pointed out by the P.A.C. that interest at 9 per cent under section 220(2) on the outstanding demand of Rs. 62.29 crores pertaining to the period 1959-60 to 1969-70 works out to Rs. 62 crores which was not levied.

In this connection it may be noted that the rate of interest was not uniform at 9 per cent from 1959-60 to 1969-70. For all demands which became due prior to 1st April, 1962, no interest was charge-

able. For the subsequent years, the rate of interest u/s 220(2) of the I.T. Act, 1961 for different period is as under:

- (a) From 1st April, 1962 to 31st March, 1965—4 per cent.
- (b) From 1st April, 1965 to 30th September, 1967—6 per cent.
- (c) From 1st October, 1967 to 31st March, 1972—9 per cent.

It was also suggested by the P.A.C. that there should be a review of calculation of interest u/s 220(2) on arrears of tax demand of over Rs. 1 lakh and the result intimated to them.

All the Commissioners of Income-tax have reported that a review on the above lines has been conducted and the total amount of additional interest levied as a result of review by different Commissioner's of Income-tax works out to Rs. 1,57,17,075. In addition to this, in one case of Rajasthan Charge, interest u/s 220(2) recoverable upto 31st March, 1973 was Rs. 51,726 out of which a sum of Rs. 7,457 only was included in the recovery certificates. The balance interest of Rs. 44,269 has not been levied so far and is recoverable by the Tax Recovery Officer while executing recovery proceedings. Necessary instructions in this regard have been issued to the Commissioner of Income-tax, Rajasthan.

Recommendation

The Committee note that the work regarding taking over of tax recovery work from the State Governments has been completed in all the Commissioner's charges except West Bengal, Madhya Pradesh, Uttar Pradesh, Orissa and Bihar where it has been taken over partly. The Committee trust that the work in the remaining charges would be taken over as early as possible. The Committee would like to know the progress made in this behalf. The Committee hope with the taking over of tax recovery work there would be proper co-ordination between the Tax Recovery Officers and the Assessing Officers. The Board should closely watch the impact of taking over this work on the arrears of tax demand and take necessary measures to improve the system.

[Sl. No. 107 and Para 4.56 of Appendix to 51st Report of P.A.C. (1972-73)].

Recovery work has been taken over by the Income-tax Department in all the Commissioners' charges in India except West Bengal.

where it has been taken over only in the District of 24-Parganas excluding such areas as fall within the Calcutta Municipal limits and in Calcutta Municipal Wards No. 1 to 100. Steps are, however, being taken to take over the recovery work in the rest of the West Bengal charges also. The other observations of the Committee have been noted.

[Ministry of Finance (Rev. & Ins.) O.M. No. 231/5/71
APAC dated 7th March, 1973].

Recommendation

The Committee suggest that the Department should consider the feasibility of proposing amendments to the law on the lines prevalent in the United States by which tax due including interest, penalty etc., could be given a lien on the property of the assessee so that he could not escape tax by transferring the property.

During evidence the Finance Secretary agreed with the Committee that there was a need to increase the present rate of interest of 9 per cent payable to Government by the assessees for delay in payment or short payment of advance tax, delay in filing returns etc., so that it may act as a real deterrent to the assessee who fail to comply with the statutory provisions. The Committee are glad to note that in the Finance Act, 1972 passed subsequently, this suggestion of the Committee had been carried out and the rate of interest raised to 12 per cent in the Income-tax, Wealth-tax and Gift-tax Acts.

[Sl. Nos. 109 and 110 and Paras 4.58 and 4.59 of the Appendix to
51st Report of the P.A.C. (1972-73)].

Action taken

The recommendations of the Committee are under the Ministry's consideration.

4.59. The Committee's observations have been noted.

[Ministry of Finance (Rev. & Ins.) O.M. No. 231/5/71-
APAC dated 6th May, 1973].

Further Information (Sr. No. 109)

Reference is invited to clause 75 of the Taxation Laws (Amendment) Bill, 1973 which seeks to amend section 281 of Income-tax

Act, 1961 suitably in this behalf; the Bill is now before the Select Committee.

Recommendation

The Committee note that the number of cases in which prosecution for concealment of income was launched was 23 in 1968-69, 40 in 1969-70 and 24 in 1970-71. The Committee are of the view that these figures of prosecutions are unimpressive when compared with the number of cases in which penalties were imposed. The Direct Tax Enquiry Committee have recommended that the Department should completely reorient itself to a more vigorous prosecution policy in order to instil wholesome respect for the tax laws in the minds of the tax payers. Where there is a reasonable chance of securing a conviction, the tax dodger should invariably be prosecuted. The Committee desire that effective measures should be taken by the Department to ensure that prosecutions are launched in all suitable cases so that this may act as deterrent to tax evasion.

The Committee find that convictions could be obtained only in four cases in 1968-69 and three cases in 1969-70. The punishments awarded in these cases were nominal, such as fines for imprisonment ranging from one day to six months. According to the Law amended from 1st April, 1964 the minimum imprisonment was six months and maximum two years. The Committee were informed that unless the maximum imprisonment was fixed as three years or more the provisions of the First Offender's Act can be invoked. The Committee desire that the question of enhancing the provision of imprisonment under the Income tax Act may be carefully examined and necessary amendment to the Act made.

[Sl. Nos. 111, 112 and Paras 5.10, 5.11 of Appendix to 51st Report of the P.A.C. (1972-73)—Fifth Lok Sabha]

Action taken

The Department has been making continuous efforts to see that prosecution is launched in all cases where there is sufficient evidence. The total number of cases approved during the current financial year is '50'. It is hoped that the number would increase in future. To achieve good results certain administrative measures are also under consideration.

The matter is under consideration of the Government.

[Ministry of Finance (Rev. and Ins.) O. M. No. 231/11/71-APAC dated 2nd April, 1973]

Further Information (Sr. No. 111)

Statistics of proposals for prosecution approved and prosecutions launched during the years 1971-72, 1972-73 and 1973-74 (upto 31-10-1973) are given below:—

	1971-72	1972-73	From 1-4-73 to 31-10-73
Proposals approved by the Board	15	50	27
Prosecutions launched	13	30	12

It will be seen that there is improvement in the proposals approved and prosecutions launched in 1972-73 and during the first 7 months in 1973-74. A number of proposals are still being processed.

The following measures have recently been taken by the Government to achieve better results in the matter of prosecution:—

- (1) A Joint Secretary's post has been created in the Department of Revenue & Insurance who will devote a good part of his time to prosecution cases;
- (2) A full time officer of the rank of Assistant Commissioner of Income-tax designated as O.S.D. (Legal) has been appointed in Directorate of Inspection (Investigation) for scrutinising prosecution proposals received from the Commissioners for administrative approval and also for expediting the cases which are now under process with the various Commissioners of Income-tax;
- (3) The question of strengthening the Intelligence wing of the Income-tax Department at Bombay, Calcutta and Madras is under consideration; and
- (4) Emphasis is now being given in the course of training of officers, both initially and while undergoing refresher courses, to the theory and practice of prosecution. For this purpose a training monograph has been brought out by the Director of Training.

COPY

F. No. 58/74/67-IT(Inv)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 5th September, 1967.

From

The Secretary,
 Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—Expeditious disposal of disclosure—cases under section 271(4A).

Complaints have been received that sometimes there is considerable delay in disposal of cases of voluntary disclosure under section 271(4A) of the Income-tax Act, 1961.

2. While it is appreciated that sometime is bound to be taken in cases, where prolonged enquiries are needed, there will be a number of other cases where, with prompt attention from the Commissioners, the cases would be disposed of expeditiously. You are, therefore, requested to scrutinise all Pending cases and dispose of as many as possible without delay. A proper watch should be kept in applications under Section 271(4A) sent to the Income-tax Officers for report and, except where prolonged enquiries are needed, the reports should be obtained from the Income-tax Officers and cases disposed of quickly.

3. A quarterly statement of voluntary disclosure of income under section 271(4A) is already being sent by you in response to Board's letter No. 16/15/65-IT(Inv) dated 16th March, 1965. For the quarter ending 30th September, 1967 onwards an annexure in the form given below be sent along with the quarterly statement.

Yours faithfully,
 Sd/- G. R. Hegde,

Secretary, Central Board of Direct Taxes.

P R O F O R M A

Statement for the quarter ending—

- (1) Number of voluntary disclosure cases pending with Commissioner of Income-tax at the commencement of the quarter.
- (2) Number of cases received during the quarter.
- (3) Total
- (4) Number disposed of during the quarter.
- (5) Balance at the end of the quarter.
- (6) List of cases, pending at the end of the quarter for more than six months, with brief reasons.

Further Information (Sr. No. 112)

Item No. 54—The Taxation Laws (Amendment) Bill, 1973 (clause 72) seeks to meet this point by suitably amending Section 277 of Income-tax Act, 1961.

Recommendation

The Committee also desire that the Department should enforce strictly the provisions in the existing law that the companies should submit statement of the tax deducted and tax remitted in time so that necessary check can be exercised. The Committee stress that no laxity should be shown in enforcing these provisions.

[Sl. No. 116 and Para 7.13 of Appendix to 51st Report of the P.A.C. (1972-73) (Fifth Lok Sabha,)].

Action taken

Instructions are being issued to the Commissioners of Income-tax drawing their attention to the provisions contained in Section 194 of the Income-tax Act, 1961 and Rule 37(2) of the Income-tax Rules, 1962 and asking them to strictly enforce the provisions.

[Ministry of Finance (Rev. & Ins.) O.M. No. 231/74/70-II
Audit dated 26th March, 1973].

Further Information (Sr. No. 116)

Item No. 58—The Board have issued necessary instructions (No. 531 F. No. 277/3/73-III dated 24th March, 1973—copy attached).

COPY

Instruction No. 531

F. No. 277/3/73-ITJ

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 24th March, 1973.

To

All Commissioners and Additional Commissioners of Income-tax.

Sir,

SUBJECT.—Deduction of tax at source—Strict enforcement of the provisions contained in section 194 and Rule 37(2) of the Income-tax Rules, 1962—Instructions regarding.

Attention is invited to the provisions contained in Rule 37(2) of the Income-tax Rules, 1962 as per which the person making deduction of tax in accordance with Section 194 of the Income-tax Act, 1961 from dividends has to send a statement in the prescribed form, viz., form No. 26, to the Income-tax Officer assessing the company. Such a statement is required to be furnished within fourteen days of the date of deduction of tax.

2. The Board desire that the above-noted provisions should be strictly enforced and no laxity should be shown in this regard. This may please be brought to the notice of all Income-tax Officers in your charge.

Yours faithfully,

Sd/-

(K. R. RAGHAVAN)

Secretary, Central Board of Direct Taxes.

Copy forwarded to:—

- (1) Director of Inspection, Income-tax (Audit)/(R.S. & P.)/
(Investigation) New Delhi.
(as usual)

Recommendation

8.10. The Committee are concerned to note the delay of several years in disposal of reopened and set aside cases. As on 31st March, 1971, there were 3,959 cases pending under Section 146; 8,984 cases under section 251; 503 cases under section 254 and 439 cases under section 263 of the Income-tax Act, 1962. Some of the cases pertain to the period 1964-65 and earlier years.

8.11. The Committee note that with effect from 1st April, 1971, a time-limit of two years has been fixed for finalisation of reopened assessments to be counted from the end of the financial year in which the order has been passed under section 146, 255(1), 254(1), 263(1) or 264(1) as the case may be. The Committee suggest that some time-limit should also be fixed for disposal of old cases which pertain to the period prior to 1st April, 1971. The Board should pay special attention to the disposal of the old cases. The Committee would like to be informed about the progress made in the finalisation of the old cases (year-wise).

[Sl. Nos. 117 and 118 and Paras 8.10 and 8.11 of Appendix to the 51st Report of the P.A.C. (1972-73)].

Action taken

Instructions have been issued (No. 511—F. No. 231/20/72-A & PAC, dated 22nd February, 1973 copy enclosed) to all the Commissioners of Income-tax asking them to ensure completion of all the pending set aside assessments for assessment year 1970-71 and earlier years by 30th July, 1973. The attention of the Committee is invited in this connection to the Ministry's reply to item No. 103 of the Lok Sabha Secretariat is O. M. No. 2/7/III/2/72-PAC dated 20th September, 1972.

[Ministry of Finance (Rev. and Ins.) O.M. No. 231/21/70-II Audit dated 6th March, 1973].

COPY

Instruction No. 511

F. No. 231/20/72-A&PAC

MINISTRY OF FINANCE

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

*New Delhi, the 22nd February 1973.***From:**

Shri S. K. LALL,

Director, Central Board of Direct Taxes,
New Delhi.**To**

All Commissioners of Income-tax.

Sir,

SUBJECT.—Reopened and set-aside cases—Sections 146, 251, 254 and 263 of Income-tax Act, 1961—Disposal of—.

Attention is invited to Board's Circular No. 10-P(V-68) of 1968 F. No. 22/15/68-IT(Inv.) dated 15th October, 1968, wherein it was desired that assessments which had either been reopened under section 146 or which had been set aside should normally be completed within a period of two years.

2. The pendency of set-aside cases under sections 146, 251, 254 and 263 for assessment year 1970-71 and earlier years as on 31st March, 1971 and 31st March, 1972 was 12,923 and 10,877 respectively. The progress of disposal of these cases has not been satisfactory. This has attracted adverse notice of the Public Accounts Committee. The Board, therefore, desire that the Commissioners should draw up and enforce a time bound programme to ensure that all pending set-aside assessments for assessment year 1970-71 and earlier years are finalized by 30th July, 1973. The Commissioners should call for reasons for non-finalization of any case after the due date and unless there are unavoidable circumstances to the satisfaction of Commissioners, they should take serious view for inaction on the part of

the Income-tax Officers. The statutory limit of two years in section 153(2A) applies from assessment year 1971-72 onwards.

3. Please acknowledge receipt.

Yours faithfully,

Sd/-

S. K. LALL

Central Board of Direct Taxes

Copy forwarded to:

1. Director of Inspection (Inv.)/(RS&P)/O&M Services, New Delhi and Director, IRS(DT) Staff College, Nagpur.
2. All Addl. Commissioners of Income-tax.
3. ADI (RS&P) (Bulletin Section), New Delhi (4 copies)
4. Shri P. B. Venkatasubramanian, Joint Secretary, Ministry of Law.
5. All Officers and Sections in the C.B.D.T.
6. C&AG, New Delhi (25 copies).

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES OF GOVERNMENT

Recommendation

The Committee find that on account of incorrect grant of amortisation allowance taking the life of a film to be 2 years resulted in a short levy of Rs. 1,63,650 in the hands of the firm and its partners. The additional demand raised as a result of audit objections in the case of the firm and one of the partners stands fully realised. The Committee would like to know the settlement in the case of the other partners.

[Sr. No. 33 (Para 2.115 of the Appendix to the 51st Report of the P.A.C. (1972-73) (Fifth Lok Sabha)].

Action taken

The additional demand in the case of the second partner has also been realised in full.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/38/70-II
Audit dated 23rd April, 1973].

Further Information (Sr. No. 33)

The objection raised by audit was about an arithmetical mistake. The Appellate Assistant Commissioner went on a different point and allowed the entire cost in one year. The Commissioner of Income-tax accepted it. The Board laid down in their Instructions of 1969 a fair and just method of determining the profits and there was no objection in applying it to an assessment completed prior to the issue of the instructions particularly as it would not be possible to persuade the Tribunal to reverse the Appellate Assistant Commissioner's decision when he had quoted the Board's circular.

Recommendation

The two-fold increase in the number of cases in which mistakes in computing depreciation and development rebate noticed by Au-

dit clearly indicates that the steps taken by the Department in pursuance of the observations made by the Committee in the successive reports have not been effective enough. The Ministry has held that "the increase in the number of mistakes reported by Audit may have been due to only a larger coverage by them rather than increasing incidence of the mistakes.". The Committee regret their inability to accept this interpretation of the Ministry which displays an excessively complacent attitude. In this connection they would like to refer to the suggestion contained in the 3rd Report (Fourth Lok Sabha) that a special review should be conducted all the charges with a view to checking correctness of the calculations of the development rebate and depreciation allowances. The Ministry has plea that it had not been possible to follow up the reviews because of the inadequacy of man-power. This is a plea which Committee find it difficult to accept. In the opinion of the Committee only a complete review and proper follow up action would reveal the degree of efficiency of the Department in this regard. They accordingly hope that the Ministry will take adequate follow up action in all cases speedily.

[Sl. No. 40, of the Appendix to the Fifty-first Report, 1972-73—
(Fifth Lok Sabha)].

Action Taken

The Ministry share the concern of the Committee about the mistakes in computing depreciation and development rebate noticed by the Audit. Various steps have been taken for minimising these mistakes and taking corrective action promptly. These steps are outlined below:

- (a) Depreciation rates have been simplified with effect from 1-4-1970, so that it is easier now for the field officers to apply these rates with reduced chances of error.
- (b) With effect from 1-4-1971 summary assessment procedure has been applied to small income cases by modifying Section 143(1) of Income-tax Act, 1961 so that bulk of assessments get completed by comparatively junior officers on the basis of returns filed by the assessees. This leaves limited number of comparatively important cases, in which notable depreciation allowance and depreciation claims figure, to be handled by senior officers who should be able to devote more time and attention to such cases for proper scrutiny and assessment.

- (c) An adequate training organisation for the officials of various grades in the Department has recently been set up. The Indian Revenue Service (Direct Taxes) Staff College, Nagpur will be the co-ordinating centre with four Regional Institutes at Bombay, Calcutta, Bangalore and Kanpur. These Institutes will look after proper initial training of the fresh recruits to the executive cadres of Income-tax Officers, Class I and II and Inspectors and periodic refresher courses for them. The Central Institute will also co-ordinate the training arrangements in the Commissioners charges for the ministerial staff. It is hoped that these comprehensive training arrangements will improve the performance of the Department's officials.
- (d) A separate cadre of Additional Commissioners was created in 1970 for sharing the workload of Commissioners so that there was more effective supervision and guidance available from the Head of Department level for officials in lower echelons.
- (e) The internal audit organisation of the Department has also recently been strengthened so that important assessments get audited by our own staff soon after their completion and remedial measures taken. Cases of top importance are to be audited by our internal audit organisation within one month of the completion of the particular assessment; these are cases of limited companies and other cases with income exceeding Rs. 1 lakh. Even the next category of important cases are to be audited by them on priority basis viz. cases of income over Rs. 50,000; cases with income between Rs. 20,000 and Rs. 50,000 are to be audited to the extent of 10 per cent on selective basis. Most of the cases further down will be those covered by summary assessment procedure mentioned in sub-para (b) above with effect from 1-4-1971 and these summary assessments are made by accepting assessee's returns with only certain routine prescribed adjustments. It is hoped that with the above-noted internal audit checks the number of depreciation and development rebate mistakes coming to the notice of the C&AG's Audit Parties will get appreciably reduced.
- (f) In our internal audit organisation, detailed check list has been prescribed for guiding them in auditing of assessments. In this check list detailed questionnaires pertain-

ing to depreciation and development rebate have been provided so that these allowances get carefully checked up.

(g) As a further check, the Director of Inspection (Income-tax & Audit), at the instance of the Board, asked all the Commissioners of Income-tax with circular letter No. M-30/100/70/DIT dated 16-11-1970 to ensure that the inspecting Assistant Commissioners scrutinise about a dozen of the largest cases in each of the Income-tax Officer's charge every year to see that depreciation and development rebate allowances had been properly made. The Director of Inspection has also provided a half-yearly report from Commissioners to him for compliance with the aforesaid prescribed instructions.

2. Having regard to the aforesaid measures taken which mainly meet the objective of P.A.C.'s recommendation, a general review of all the assessments involving depreciation and development rebate does not appear to be necessary. Indeed, as pointed out above, our own internal audit organisation, as now strengthened, will be checking up all important cases on priority basis and this will account for most of the assessments involving notable depreciation and development rebate allowances. Further, rectification of depreciation and development rebate mistakes now noticed can cover a period going back to maximum 4 years and it is during these years that our preventive and corrective steps have been strengthened and streamlined. In all the above circumstances it does not, therefore, appear to be worthwhile to divert the Department's necessarily limited manpower for undertaking a general review of all assessments involving such claims; such a diversion will hamper their normal and much more fruitful work and the gain from any general review will be only marginal and incommensurate, particularly when other preventive and check up measures have already been taken.

3. This reply issues with the approval of the Finance Minister.

[Ministry of Finance (Rev. and Ins.) O. M. No. 236/229/70-I.T.-Audit dated 19-4-1973]

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

NIL

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendations

1.23. The need for preparing accurate estimates of taxes on income has been engaging the attention of the Committee from time to time. In paragraph 14 of their very first Report on Revenue Receipts, *viz.*, Ninth Report (1962-63), the Committee had observed that an overall variation exceeding 3 to 4 per cent should be regarded as a matter of concern requiring special remedial measures. During the year 1965-66 to 1968-69 there was over-estimation in regard to Corporation Taxes to the extent of 18.00 per cent in 1965-66, 11.9 per cent in 1966-67, 11.28 per cent in 1967-68 and 6.42 per cent in 1968-69. In the case of income-tax there was under-estimation to the extent of 4.69 per cent in 1966-67, 12.38 per cent in 1967-68, 18.40 per cent in 1968-69 and 23.78 per cent in 1969-70. In paragraph 2 of their 27th Report (1964-65) the Committee had emphasised that effective steps should be taken to fill up the deficiency in collection of reliable statistics of economic growth so that estimates of revenue are prepared on a realistic basis. The Committee regret, however, that the Ministry of Finance have not been able to make much headway in this direction. They desire that the Ministry should build up a sound statistical base without further delay.

1.24. At present, there are three agencies collecting information and conducting research on tax problems, *viz.*, (i) Tax Research Unit attached to the Department of Economic Affairs, (ii) Tax Planning Section, functioning under the Central Board of Direct Taxes and (iii) Directorate of Statistics, Research and Publication functioning as an attached office under the Central Board of Direct Taxes. The Working group of Administrative Reforms Commission observed that there was no co-ordination among these three agencies and that these should be amalgamated and brought under the direct control of the senior member of the Board in charge of Tax Planning and Assessment. Ample time has elapsed for Government to have considered the Administrative Reforms Commission's recommendations in this respect in a comprehensive manner. The Committee feel that on grounds of efficiency and economy this suggestion is of

sufficient importance to merit early action. As a first step in this direction the Units under the Central Board of Direct Taxes could be amalgamated forthwith.

1.25. It is significant that at present the Central Board of Direct Taxes do not have up-to-date statistics which in the opinion of the Committee are an essential pre-requisite for making reasonable accurate forecasts of tax-receipts. For instance, the Board do not have latest figures of income-tax collected in respect of various income brackets. The Board do not also maintain separate statistics of taxes realised from individuals, Hindu undivided families, firms, companies and others and of number of and taxes realised from various companies such as manufacturing concerns, trading companies and investment companies. The Committee desire that the Board should maintain up-to-date statistics pertaining to all the categories in order to assess the impact of taxation measures at the time of preparing the budget estimates.

1.26. The Committee also desire that the Ministry should study the methods adopted for estimation of revenue receipts in U.K. and other countries where the variation between budget estimates and actuals is not significant in spite of fluctuations in economic conditions and growth. It is needless to point out that incorrect estimation may result sometimes in avoidable revision/imposition of tax levies.

[Items No. 1 to 4 and Paras 1.23 to 1.26 of the Appendix to the Fifty-first Report (1972-73) Fifth Lok Sabha]

Action taken

The recommendation of the Committee has been noted for processing.

The recommendation of the Committee has been noted. The action taken by the Government will be intimated in due course.

The recommendations of the Committee have been noted for processing.

[Ministry of Finance (Rev. and Ins.) O.M. No. 231/22/71-A&PAC dated 5-3-1973]

Further Information Sr. No. 2 (Para 1.24)

The main function of the Tax Planning and Legislation Section of the Board is to process proposals for amendment of the direct tax laws and to sponsor necessary legislation in this behalf. The portion in the annual Finance Acts relating to direct taxes is also processed in this Section. Besides, all subordinate legislation relating to various direct tax laws is also processed and implemented by this Section.

2. The main functions of the Directorate of Research Statistics and Publication are (a) collection, compilation and publication of statistical data relating to direct taxes, (b) publication and distribution of departmental bulletins, brochures and books, (c) indenting, printing and distribution of forms, (d) guidance and supervision in the matter of recovery of arrears of taxes in cases where the arrear demand exceeds Rs. 1 lakh, and (e) undertaking studies required to be made by the Board on matters relating to tax laws, procedures and administration.

3. It will be observed from the foregoing that the Tax Planning and Legislation Section in the Board and the Directorate of Research, Statistics and Publication operate in entirely different spheres and there is no over-lapping in their respective spheres of functions. Even though the Tax Planning and Legislation Section in the Board and the Directorate of Statistics, Research and Publication function separately, proper co-ordination has been maintained between the two agencies. For instance the statistical data collected and the studies made by the Directorate of Research Statistics and Publication are utilised by the Tax Planning and Legislation Section of the Board to the extent considered necessary in processing proposals for changes in the direct tax laws. If the Tax Planning and Legislation Section in the Board requires some statistical information which is not available in the publications issued by the Directorate of Research, Statistics and Publication, the Board may require the Directorate to compile the necessary information. Similarly, the Directorate can also be called upon to undertake studies on specific matters relating to tax laws, procedures and administration.

4. The Direct Taxes Enquiry Committee (Wanchoo Committee) have also recommended in paragraphs 6.23 and 6.25 of their Final Report that the Directorate of Inspection (Research, Statistics and Publication) should be split up into two distinct units, one a Directo-

rate of Publications and Public Relations, and the other a Directorate of Research and Statistics. The Committee have further observed that the Directorate of Research and Statistics should be organised and developed as a Tax Research Institute within the Department. The Recommendations made by the Wanchoo Committee in this behalf are still under consideration by the Government. In view of the position that the recommendation of the Public Accounts Committee for the merger of the Tax Planning and Legislation Section in the Board and the Directorate of Inspection (Research, Statistics and Publication) is intimately connected with the recommendation of the Wanchoo Committee for the reorganisation of the aforesaid Directorate, it is proposed to consider both these recommendations together.

Sr. No. 1, 3 & 4 Further Information

A Committee has been informally appointed under the chairmanship of Dr. N. T. Mathew, Joint Secretary, Department of Statistics with senior officers of the Income-tax Department as Members, to look into the statistics framework of the Income-tax Department and to make suitable recommendations for streamlining and systematising it; their report is awaited. Better approximation of the budget estimates will also be covered by the Committee. The Ministry is also obtaining for study the particulars of methodology of budget estimates followed in U.K. and U.S.A., deputation for study to be considered later, if necessary.

Recommendation

1.40. The Committee are concerned to be informed that the "work of the internal survey leaves much to be desired." The Committee desire the Central Board of Direct Taxes to look into the matter with a view to ensuring proper deployment and utilisation of staff with clear directions and objectives.

[Item Nos. 6 of the Appendix to the PAC's Fifty-first Report (1972-73) Fifth Lok Sabha]

Action Taken

1.40. The observations of the Committee have been noted. Necessary instructions are being issued to the Director of Inspection (Income-tax).

[Ministry of Finance (Rev. & Ins.) O.M. No. 231/22/71 dt. 4-7-1973]

Further Information

Director of Inspection (I.T.) has been asked to process the matter; the result will be intimated in due course.

Recommendation

2.73. The Committee find that at the present the onus lies on the Department to determine whether a company is one in which public are substantially interested or not. It takes considerable effort and time to do it. The Committee, therefore, suggest that an additional column should be provided in the income-tax return to put a onus of the assessee to indicate the nature of the company.

2.74. The Committee feel that while a valid distinction could be made between a public company and a private company as defined in the Companies Act, the basis for differential treatment for taxation of profits of a closely held public company needs to be elucidated. They would like Government to examine the feasibility and economics of dispensing with the subtle distinction between a public company and a closely held public company for the purpose of taxation of profits, as promised during evidence. The outcome of the examination may be intimated to them.

[Items 25 and 26 (Paras 2.73 and 2.74) of the Appendix to the Fifty First Report of the P.A.C. (1972-73) Fifth Lok Sabha]

Action Taken

2.73. and 2.74. The recommendations of the Committee will be examined and the result intimated in due course.

[Ministry of Finance (Rev. & Ins.) O.M. No. 20/281/69-II
Audit dt. 5-3-73]

Further Information (Sr. No. 25 & 26)

Item 2(a) of Part I of Annexure G to Return Form No. 1 (i.e. the form of return of income applicable in the case of companies *vide* Appendix II and Rule 12 of the I.T. Rules, 1962) as presently prescribed, contains a specific provision requiring an Indian company or a foreign company which has made the prescribed arrangements for the declaration and payment of dividends within India, to state whether it is a company in which the public are substantially interested. If the company is a company in which the public are substantially interested, the aforesaid provision in the form of return

of income requires the company to attach a statement showing how various conditions specified in section 2(18) of the Income-tax Act are satisfied.

The Direct Taxes Enquiry Committee in para 5.58 of its Final Report had recommended that a uniform rate of income-tax of 55 per cent should be prescribed for all domestic companies, whether public or private, widely held or closely held and industrial or non-industrial. This recommendation has been considered and found unacceptable for the reason that differential rates of taxation have been introduced in the tax structure with certain specific objectives which provide a directional approach to the economy, besides being more equitable. Closely-held companies are mostly formed with a view to avoid higher incidence of personal taxation and formation of such companies tends to accentuate monopolistic tendencies. A provision for a uniform rate for all domestic companies will be inequitable as it will adversely affect widely-held companies with lower incomes while benefiting closely-held companies earning large profits which are usually controlled by big business interests.

Recommendation

2.105. It is disquieting that the number of cases in which mistakes were noticed by Audit in computation of income under the head "business" has increased three fold during the last seven years. The under-assessment noticed in such case during the year 1969-70 alone amounted to Rs. 129.31 lakhs. The deterioration of the position, despite the special attention having been drawn repeatedly to these types of mistakes does not speak well of the Department. The Committee accordingly trust that Government would analyse the nature of repetitive mistakes and take appropriate action to avoid recurrence.

2.106. The incorrect assessment of income arising out of the sale of house property by an Insurance Company which resulted in short levy of tax to the tune of Rs. 6,72,719 lakhs, reveals ignorance of the provisions of Income-tax Act applicable to General Insurance Companies. The Committee note that instructions were issued by the Board in August, 1967 clarifying the position in law. They however, desire that general review of all assessments of the Insurance Companies with a view to finding out whether there were similar mistakes, should be undertaken. The results of such a review and reassessment of the case referred to above may be reported to the Committee.

Action Taken

2.105. The amount of Rs. 129.31 lakhs mentioned in the Audit Report represents the total revenue effect involved in all the objections raised by the Audit and is not restricted to the mistakes admitted by the Department. Secondly the increase in the number of objections raised has to be viewed *vis-a-vis* the number of cases checked by the Audit. The number of cases reviewed during 1969-70 was about 2,74,000 as against about 1,41,000 cases reviewed in 1964-65 which is the earliest year for which this information is readily available with the Government. For repetitive mistakes noticed the Government takes appropriate action to minimise recurrence. Improved training arrangements sanctioned recently are expected to take up the performance of assessing officers and the Department's internal audit organisation has also now been strengthened for checking up important assessments promptly with a view to remedying mistakes, if any, without loss of time.

2.106. A review was carried out as suggested by the Committee; no such mistakes were noticed in other cases.

The re-assessment completed, in the specific case mentioned in the para, was cancelled by the Appellate Assistant Commissioner. The Department has, however, filed an appeal to the Tribunal.

[Ministry of Finance (Rev. & Ins.) O.M. No. 263/210/70
II Audit dt. 30-4-73]

Further Information (Sr. Nos. 30 and 31)

Necessary study has been entrusted to the Directorate of Income-tax and Audit and further action will be taken on receipt of the results of the study.

The appeal filed before the Tribunal is still pending.

Recommendation

2.129. The Committee note that although the accounts of solicitors firm were maintained on cash basis, payments representing the share of profits made to retired partners or legal heirs of the deceased partners were allowed as deduction in computing the total income of the firm for assessment years 1958-59 to 1967-68. The Committee understand that assessing officer had acted as per the orders of the Commissioners of Income-tax issued in September, 1965.

They would like to be informed whether the orders were being uniformly applied to all similar cases arising in the various circles in this charge and what was the position in this regard in other circles. They also desire that the opinion of the Ministry of Law regarding the validity of these orders should be obtained without delay and communicated to them.

2.130. The action taken on the basis of the opinion of the Ministry of Law, as may be necessary may also be reported to the Committee.

[Items 38 and 39 (Paras 2.129 and 2.130) of the Appendix to the Fifty First Report of the PAC (1972-73) Fifth Lok Sabha]

Action Taken

2.129 & 2.130. The procedure was being uniformly followed in various circles in the charge.

The legal aspect is still under examination in consultation with the Ministry of Law and the Audit.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/170/70-II
Audit dt. 31-3-73]

Further Information (Sr. No. 38)

(i) The Ministry had collected information for various circles in Bombay Charges. As regards the position in other charges, this is now being ascertained and the information will be furnished as soon as it is available.

(ii) The legal issue was recently discussed in a tripartite meeting between the representatives of the Law Ministry, Comptroller and Auditor General of India and Central Board of Direct Taxes; it was agreed that some further particulars may be obtained and thereafter the case may be discussed again. The requisite particulars have since been received and are being referred to the C&AG/Law Ministry so that a final discussion may take place. The outcome will be communicated to the Committee in due course.

Recommendation

The Committee note that the Ministry have been experiencing difficulty in some marginal cases as to what exactly constitutes a 'new industrial undertaking' and that the matter has been referred to the Ministry of Law whose opinion is still awaited. The Com-

mittee desire that the matter should be got clarified without further loss of time and suitable instructions issued for the guidance of the assessing officers.

[Sl. No. 50 and Para 2.180 of Appendix to 51st Report of the P.A.C. (1972-73)]

The Committee have in the preceding recommendation referred to the controversy as to what constitutes 'a newly established undertaking' on which an opinion of the Ministry of Law has been sought. They trust that suitable action will be taken in this case on receipt of the opinion of the Ministry of Law.

[Sl. No. 52 and Para 2.187 of Appendix to 51st Report of the P.A.C. (1972-73)]

The Committee note that in this case tax holiday relief was allowed for a further period of 5 years consequent on the expansion of the new industrial unit. It is unfortunate that this was based on the erstwhile Central Board of Revenue's circular issued in April, 1950, which according to the Ministry could be interpreted in a way that may not be in conformity with the law. Although the Audit objection has been accepted in principle, the Ministry have stated that 'it might well be argued that such substantial expansion can be construed as addition' and that they wished to have this view examined by the Ministry of Law in consultation with Audit. The Committee accordingly desire that the matter should be considered and clear instructions in conformity with law issued expeditiously, in consultation with Audit. The Committee consider that it is most undesirable to allow the prolongation/virtual perpetuation of tax holiday in this indirect manner.

[Sl. No. 55 and Para 2.202 of Appendix to 51st Report of the P.A.C. (1972-73)]

Action Taken

The matter was referred to the Ministry of Law on 24-7-1971 for opinion as to what exactly constitutes 'new industrial undertaking' and whether substantial additions to the existing plant and machinery would also amount to this. The case was to be discussed with the Ministry of Law in consultation with the Audit but at the suggestion of the Audit a consideration of the matter was put off till after the P.A.C. meeting scheduled to be held in October, 1971. The

matter would be discussed with the Law Ministry and the Audit after a decision is taken by the Board whether:—

- (i) their instructions dated 1-4-1950 relied on by the C.I.T. require any revision; and
- (ii) it is necessary to amend the provisions of Section 80J for removing the seeming anomalies and hardships, as in the present case.

The recommendations contained in the above paras would be complied with after the matter is examined and opinion of the Ministry of Law is received.

[Ministry of Finance (Rev. & Ins.) O.M. No. 20/96/69-IT
Audit 26-3-73]

Further Information (Sr. Nos. 50, 52 and 55)

The Ministry of Law tentatively agreed with the Audit's view and referred the matter back to this Ministry for further comments. The Law Ministry's comments were examined in the context of the Calcutta High Court's decision in the case 'Aluminium Co. Ltd.' (88 ITR 267) and the file is being sent to the Ministry of Law for final advise. The resultant position will be intimated to the Committee.

Recommendation

At the present a number of provisions in the Income-tax Act exclusively relate to companies and there is a separate Sur-tax Act for companies. To a suggestion of the Committee that in order to simplify matters and facilitate easy reference there could be two separate Acts, one for the corporate sector and the other for non-corporate sector, the Chairman, Central Board of Direct Taxes reacted saying that it seemed to be an 'excellent suggestion'. The Committee hope that this aspect will be examined and necessary follow-up action taken early. In this connection the Committee would like to mention that it is not necessary to load the Income-tax Act with the provisions relating to Companies as the number of company assessees is only 27,734 out of a total number of 29,10,341 assessees (as on 31st March, 1970).

With the various rebates and concessions the structure of corporate taxation is expected to be designed in such a way as to

promote economic growth and to ensure social justice. The Committee were informed that no study had been undertaken to know how far these twin objectives have been realised. The Committee would, therefore, commend such a study which would be helpful in formulating future taxation policy.

[Sl. Nos. 64 and 65 and Paras 2.248 & 2.249 of Appendix to 51st report of the P.A.C. (1972-73) Fifth Lok Sabha]

Action Taken

The Committee's suggestions have been noted for consideration.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/67/70-IT
Audit 9-5-73]

Further Information (Sr. No. 65)

No such study has been made so far.

2. The Direct Taxes Enquiry Committee (Wanchoo Committee) have emphasized the importance of having dependable statistical data and research study report on various problems. In paragraph 6.23 and 6.25 of their Final Report, the Committee have recommended that the present Directorate of Inspection (Research, Statistics and Publication) should be split up into two distinct units, one a Directorate of Publications and Public Relations and other a Directorate of Research & Statistics. They have further recommended that the Directorate of Research & Statistics should be organised and developed as a Tax Research Institute within the Department. The recommendations made by the Wanchoo Committee in this behalf are currently under consideration. After the Directorate of Research and Statistics is re-organised and strengthened on the lines suggested by the Wanchoo Committee, it would also be required to make a study of the extent to which the various rebates and concessions have contributed in promoting the twin objectives of economic growth and social justice as recommended by the Public Accounts Committee.

Recommendation

The Committee note that there is a difference of opinion between the Audit and the Ministry of Finance regarding the treatment of investment in shares as fixed assets and that the opinion of the Min-

istry of Law in the matter is awaited. The Committee may be informed of the opinion of the Ministry of Law.

[Sl. No. 66 and Para 2.261 of Appendix to 51st Report of P.A.C. (1972-73)].

Action Taken

Opinion of the Ministry of Law was earlier obtained in another case in which a similar point was involved. However, the case under consideration was again referred to them for opinion in view of the Audit stand. The Law Ministry stated that before the earlier opinion is applied straightaway in this case it would be better to show that opinion to the Audit if they had any comments. Consequently, the case was referred to the Audit who with their note dated 26-9-1972 stated that the earlier opinion of the Law Ministry did not apply to the present case. This view of the Audit is being conveyed to the Law Ministry for final opinion or discussion as may be feasible.

[Ministry of Finance (Rev. & Ins.) O.M. No. 20/88/69-IT
Audit dt. 26-3-73].

Further Information (Sr. No. 66)

The view of the Audit was communicated to the Ministry of Law on 24-10-1973 and their final opinion has been received on 2-11-1973 (copy attached as Annexure A). In view of the opinion expressed by the Ministry of Law, the Audit objection is acceptable; remedial action u/s 263 of I.T. Act, 1961 however became time barred long ago. The matter was controversial and not free from doubt, as would be seen from the opening paragraph of the Law Ministry's note. The Audit are being informed about the position.

ANNEXURE 'A'

*Copy of Notes in the Ministry of Law, Deptt. of Legal Affairs,
Advice (F) Section recorded in Ministry's F. No. 20/88/69-IT
(Audit).*

The case has been further considered in the light of the note of the Director of Revenue Audit which was not seen by us earlier and the other material now available.

2. The decision of the Bombay Bench of the Tribunal does indicate that in certain cases shares have been classified or recognised as fixed assets.

3. However, neither the order of the Tribunal nor the opinion of this Ministry recorded in the linked file would appear to be decisive on the present issue.

4. It may be that in the case of shares held by a company in a wholly owned subsidiary which has been set up for purposes of business convenience or the like, it might be appropriate to classify the said shares as fixed assets. But this is not a case of shares in a wholly owned subsidiary and as such it is not necessary to express any final opinion on this issue. In fact, the note of Shri R. M. Mehta of the 15th March, 1966 states that if the form prescribed under the Companies Act is any guide, it would seem as if investments in shares of companies, whether subsidiary or otherwise, would not come under the classification of fixed assets. The only opinion then expressed was that if the conclusion of the Tribunal was carried to its logical end, it would be reasonable to hold that if the investments are in shares of companies which are not subsidiaries of the assessee company, investments in those ought to be regarded as part of the company's liquid resources or current or floating assets and therefore not forming part of the fixed assets of the company. In the present case, the shares held are in companies which were managed by the assessee. No doubt, this holding might have facilitated the company in retaining the managing agency but, as already stated, there is nothing to indicate that it was essential to do so.

5. All that would emerge is that the character of an asset as a fixed asset or a floating asset would depend upon the person who holds it, the nature of his business and the character in which it is held.

6. If these tests are applied, and the question is also raised as to whether the shares in the managed company resulted in the production of goods or services, then it would appear that the shares held in the managed company did not constitute fixed assets. To that extent, the audit objection in the present case would appear to be correct.

7. If necessary, we may discuss.

Sd/- P. B. Venkatasubramanian
 Jt. Secy & Legal Advisor
 31-10-73.

[Ministry of Finance (CBDT—Shri S. K. Lall) Ministry of Law
 U.O.D. 24733/73/Adv. F dt. 31-10-73]

Recommendation

The question whether the amount received from the clients by lawyers towards personal expenses could be excluded from total income as non-taxable is stated to have been referred to the Ministry of Law. The Committee would like to be apprised of the opinion of the Ministry of Law.

[Sl. No. 68 and Para 2.270 of Appendix to 51st Report of the PAC (1972-73) Fifth Lok Sabha]

Action Taken

The opinion of the Ministry of Law is still awaited. The Committee will be apprised of its opinion immediately on its receipt.

[Ministry of Finance (Rev. & Ins.) O.M. No. 20/219/69-IT Audit dt. 7-3-73]

Further Information (Sr. No. 68)

It was decided to have a tripartite discussion in a meeting with the representatives of Ministry of Law, C&AG and this Ministry and the matter has been referred to the C&AG accordingly. The decision reached after proposed discussion will be intimated to the Committee.

In this connection a reference is invited to the Ministry's reply to para 2.271 of this (51st) Report sent with O.M. No. 240/2/72-A&PAC dated 15th November, 1973.

Recommendation

The Committee desire to be informed of the rectification and recovery of penalty imposed in one of the two cases mentioned in sub-para (a)(i) and in the case mentioned in sub-para (a)(ii) of Audit paragraph.

[Sl. No. 71 and Para 2.288 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action Taken

The position of the cases mentioned in sub-para 46(a)(i) and (a)(ii) stands as under:

Sub-para (a)(i)

The following information in respect of M/s. New Kaiser-i-Hind Spg. & Wvg. Co. Ltd. is furnished:

Assessment for the year 1963-64 was set aside by the Appellate Assistant Commissioner of Income-tax and consequently the order levying penalty was cancelled by Commissioner of Income-tax under Section 264. Fresh assessment for relevant assessment year has not yet been made since the Official Liquidator has not completed the perusal of the account books and made available necessary statements and other information required for the purpose. Fresh penalty order will be passed after the re-assessment is completed.

Sub-para (a)(ii)

The I.T.O.'s order under Section 271(1)(a) in this case of M/s. Calcutta Dyeing and Bleaching Works was cancelled by the Additional Commissioner of Income-tax under Section 263 on 8th November, 1970 for reframing. The assessment in the course of which the penalty proceedings were initiated was also subsequently set aside by the Appellate Assistant Commissioner of Income-tax. Fresh assessment in the case has not yet been completed. After the re-assessment has been made, fresh penalty order will be passed.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/127/71-IT
Audit dated 2nd April, 1973].

Further Information (Sr. No. 71)

(i) M/s. New Kaiser-I-Hind Spg. & Wvg. Co. Ltd.

Fresh penalty order for assessment year 1963-64 has not yet been passed as the set aside assessment could not be finalised for want of information from the Official Liquidator. The matter is being pursued.

(ii) M/s. Calcutta Dyeing & Bleaching Works

Fresh assessment for assessment year 1962-63 has not been completed as the disclosure petition of assessee under Section 271(4A) is pending for want of verification of certain havala transactions reported by the D.D.I. Bombay. After the re-assessment is made, levy of penalty will be considered. The matter is being pursued.

Recommendation

In regard to sub-para (v), the Committee understand that the question whether the date of filing of the return or the date of assessment was to be taken for the purpose of levy of penalty was

under consideration of the Ministry of Law. The Committee may be apprised of the final decision taken in the matter after obtaining legal opinion as also the action to rectify and recover additional penalty if needed.

[Sl. No. 73 Para 2.290 of Appendix to 51st Report of the
P.A.C. (1972-73)].

Action Taken

The opinion of the Ministry of Law is still awaited. Necessary action will be taken on receipt of Law Ministry's opinion.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/250/70-IT
Audit dated 7-3-1973].

Further Information (Sr. No. 73)

The Law Ministry had earlier agreed with the stand taken by the Board but at the instance of the Audit the matter was again referred to them in November, 1972 for obtaining the opinion of the Attorney General. However, the Law Ministry asked the Audit whether they would agree to the obtaining of Law Secretary's opinion instead of referring the matter to the Attorney General. This proposal is under consideration of the Audit who are being reminded.

Recommendation

The Committee find that there is some confusion as to what exactly constitutes concealed income.

[Sr. No. 74 and Para 2.291 of Appendix to the 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action Taken

In the light of the recommendations of the Direct Taxes Enquiry Committee (Wanchoo Committee) regarding penalty provisions, the Government expect to introduce a Taxation Laws Amendment Bill in the current session of Parliament. The Bill may be awaited.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/134/72-
A & PAC 30-4-1973].

Further Information (Sr. No. 34)

There is no provision in the Taxation Laws (Amendment) Bill, 1973 regarding definition of 'concealed income'; the suggestion for statutorily defining the term 'concealed income' is however under consideration of the Board.

Recommendation

There has been a steady increase in the number of cases of omission to levy or incorrect levy of penal interest reported in the successive Audit Reports. The number of such cases during the year 1969-70 was 3395 involving a sum of Rs. 91.12 lakhs. Of this 165 items involved Rs. 10,000 and above each and aggregate tax in these cases amounted to Rs. 49.28 lakhs. The recovery in these cases may be reported to the Committee.

[Sl. No. 76 and Para 2.301 of Appendix to 51st Report of the
P.A.C. (1972-73) Fifth Lok Sabha].

Action Taken

The position stands as under:

	No. of cases	Amount in lakhs
(i) No. of items accepted	78	15.83
(ii) Not accepted	37	14.60
(iii) No. of items under consideration.	50	18.85
	<hr/> 165	<hr/> 49.28

Progress in the 50 cases under consideration is being checked up; position regarding the recovery of demand raised is also being ascertained. The final position will be intimated to the Committee in due course.

[Ministry of Finance (Rev. & Ins.) O.M. No. 240/1/71-A & PAC dated 17-3-1973].

Further Information (Sr. No. 76)

The present position is as under:

	No. of items	Amount lakhs of Rs.
(i) Items where the objections have not been accepted.	44	15.92
(ii) Items where the objections have been accepted and :		
(a) the interest has been collected	30	4.60
(b) the interest is yet to be collected	50	14.26
(c) no interest is chargeable as the demand has since been reduced/cancelled on rectification, appeal etc.	26	4.70
(d) rectification was time barred	1	0.30
(iii) Where due to change in jurisdiction over the relevant cases the final reports from CsIT are awaited.	14	3.68
	165	43.46

Recommendation

The Committee trust that with a rationalisation of rate of interest and procedure for the levy, such large scale mistakes or omission as have been noticed in the past, should not occur. The Committee note in this connection that the Central Board of Direct Taxes have assumed powers with effect from 1-4-1971 to frame rules for regulating the calculation of interest. They desire that necessary rules simplifying and streamlining the procedure should be framed without delay.

[Sl. No. 77 and Para 2.302 of Appendix to 51st Report of the P.A.C. (1972-73)]

Action taken

The Direct Taxes Enquiry Committee (Wanchoo Committee) have made certain recommendations in this behalf in paragraph 4.34 of their Report. These recommendations are currently under consideration by the Government. Necessary provisions for the calculation of interest payable by or to assessees will be made in the Income-tax Rules, 1962 in the light of the decision taken by Government on the aforesaid recommendations in due course.

[Ministry of Finance (Rev. & Ins.) O.M. No. 240/1/71-APAC dated 17-3-1973].

Further Information (Sr. No. 77)

Action for framing the necessary Rules in the context of Wanchoo Committees relevant recommendations is under active consideration.

Recommendation

Various suggestions in regard to the steps to be taken to prevent double allowance of credit are stated to be under consideration of the Director of Inspection (I.T. and Audit). The Committee need hardly stress that a foolproof procedure in this regard should be evolved expeditiously.

[Sl. No. 79 and Para 2.313 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

The suggestions of the Public Accounts Committee have been noted for processing.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/213/70-II Audit 19-4-1973].

Further Information (Sr. No. 79)

The Government has informally appointed a Committee of senior officers under the auspices of the Directorate of O & M Services to review the accounting and collection procedures obtaining in the Department. The deliberations and consequential recommendations of the Committee will cover this point also and further action will be taken on receipt of their report.

INSTRUCTION NO. 562**COPY**

F. No. 228/22/73-ITA. II

Government of India

Central Board of Direct Taxes

New Delhi, the 27th June, 1973.

From:

Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Subject:—Checking of Refunds—Duties of Inspecting Officers
Para 17 Chapter XVII, Office Manual Vol. II
Section II.

Sir,

I am directed to say that para 17, Chapter XVII of Income-tax Department Office Manual Vol. II Section II, page 169 provides

that: The staff of the IAC during inspection of an Income-tax Circle should adopt the following procedure in checking refunds granted:

- (i) All refund cases where the refund is Rs. 500 or above must be checked, refunds of below Rs. 500 must be 10 per cent test—checked.
- (ii) All vouchers exceeding Rs. 1000 which have been issued during any year should also be checked and initialled by the IAC and he should comment on the delays in disposal of the refund applications and excess or short refunds in Inspection Reports.

The number of refund cases involved in (i) and (ii) above is often very large. It has, therefore, been decided that the limits prescribed in the above para may be raised to Rs. 5000.

Para 17 therefore, stands modified accordingly.

As the cases now to be checked by IAC will be much smaller in number, the Board desires that instructions contained in para 17, Chapter XVII of Income-tax Department Office Manual should be scrupulously followed.

Yours faithfully,

Sd/-

(T. P. Jhunjhunwala)

Secretary, Central Board of Direct Taxes.

Copy forwarded to:—

As usual.

Recommendation

The Committee are of the opinion that on equity whether Government paid interest to the assessee or vice versa the criterion should be the same. Section 215(3) of the Income-tax Act, 1961, provides for reduction of interest payable by an assessee as a result of variation of the amount on which the interest was payable on rectification or revision whereas section 214 which provides for revision whereas section 214 which provides for Government's paying interest to the assessee does not have a similar provision for reducing the quantum of interest as a result of rectification or revision. The Committee accordingly desire that the difference in language between section 214 and 215 should be looked into. Further neither under section 214 nor under section 215 there is a

provision for the enhancement of interest payable. The Committee note that the Ministry propose to have the entire question of payment of interest by Government to assessee and charging interest from assessee by Government in respect of excess advance tax paid or the short fall of advance tax as the case may be re-examined thoroughly in consultation with the Audit and the Ministry of Law. The Committee trust that this will be done expeditiously and appropriate amendments to the relevant sections of the Act made as necessary.

[Item 84 (Para 2.338) of the Appendix to the Fifty first Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

The recommendation of the Committee has been noted for processing.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/262/70-II Audit 7-3-73].

Further Information (Sr. No. 84)

The matter is still under consideration.

Recommendation

The Audit Paragraph has brought out 18 cases of over-assessments to the extent of Rs. 13.75 lakhs due to mistakes either in computing total income or in application of rates of tax and calculation of tax or in setting off losses carried forward from previous year against current year's income. While the Committee note that the Ministry have accepted the mistakes in 17 cases and that the assessments have been rectified in 16 cases, they would like action to be taken to rectify the assessment in the remaining case.

[Sl. No. 86 and Para 2.353 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

Rectificatory action in the remaining case has been taken and the overcharge is being refunded.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/351/70-II Audit dated 23-3-1973].

Further Information

As indicated in the interim reply sent earlier, for the remaining case the Commissioner had directed the Income-tax Officer for rec-

tification and refund but the Income-tax Officer has since reported that the relevant assessment itself has been set aside by the Additional Commissioner of Income-tax under section 263 of Income-tax Act in order to remedy certain other mistakes. The re-assessment is kept pending as one of the general points involved is pending adjudication before the Supreme Court. When the re-assessment is finally made, the mistakes pointed out by Audit will be kept in view and the resultant position will be intimated in due course.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/351/70-II
Audit dated 17-4-73]

Recommendation

Admittedly there is an apparent difference in the matter of treatment of tax deducted at source between the provisions of Sections 214 and 215 governing payment to and charging interest from assessee for the excess or deficiency in the advance tax paid. While Section 215(5) clearly stipulated that tax determined on the basis of regular assessment should be reduced by the amount of tax deductible at source, for the purpose of charging interest from the assessee, there is no corresponding provision in Section 214. However, the Committee learn that the Ministry of Law have opined that the expression "tax determined on regular assessment" used in Section 214 must necessarily be the tax after giving credit for the tax deducted at source. They further learn that advance tax is itself calculated after giving credit for the tax deducted at source. Government may consider the question of amending Section 214 suitably to place matters beyond doubt. In the meanwhile, suitable instructions should be issued to avoid any divergence in practice in regard to payment of interest under Section 214.

[Sl. No. 89 and Para 2.371 of Appendix to 51st Report of the P.A.C. (1972-73)].

Action taken

The suggestion of the Committee for amending section 214 of the Income-tax Act has been noted for processing. Necessary instructions for calculation of interest payable by the government on excess advance tax paid stand issued with Board's Circular No. 12/12/68-I.T.A. III dated 11th December, 1968 (Copy enclosed).

[Ministry of Finance (Rev. & Ins.) O.M. No. 20/284/69-II
Audit dated 9-5-1973].

Board's Circular No. 12/12/68-I.T.A. III dated 11-12-68.

Subject: Interest payable by Government on excess advance tax paid—Section 214 of the Income-tax Act, 1961.

A copy of letter F. No. 357/Fin./43(29) dated 10th January, 1968 from the Federation of Indian Chamber of Commerce & Industry, New Delhi, addressed to the Chairman, Central Board of Direct Taxes, New Delhi is printed below. The point raised by Federation of Indian Chambers of Commerce and Industry has been considered by the Board. Since advance tax is computed under Section 209 of the Act after reducing the tax deducted at source, the interest payable under Section 214 is to be determined with reference to the amount determined on regular assessment after reducing the tax deducted at source. Like has to be compared with the like and this is the intention of law. It will be incorrect to compare net amount of advance tax with gross amount of tax on regular assessment for purpose of interest payment under Section 214 of the Income-tax Act. Suitable instructions may, therefore, be issued to the officers working under you.

Copy of the letter No. F.357/Fin./43(29) dated the 10th January, 1968 from the Federation of Indian Chambers of Commerce & Industry addressed to the Chairman, Central Board of Direct Taxes, New Delhi.

Section 214(1) of the Income-tax Act, 1961 provides that the Central Government shall pay simple interest on the amount by which the aggregate sum of any instalment of advance tax paid exceeds the amount of tax determined on regular assessment. The facts of a case are as under:

Advance tax demanded by the Income-tax

Officer and paid by the assessee	..	Rs. 17,727.00
Tax deducted at source	..	Rs. 9,961.00

Total	Rs. 27,688.00
-------	---------------

Actual tax determined on regular assessment	20,416.00
Refund due	7,272.00

The Income-tax Officer granted the refund alongwith interest on the excess advance tax paid. He has, however, now served a notice under Section 154 of the Income-tax Act to withdraw the interest paid, on the ground that the aggregate of advance tax paid

by the assessee did not exceed the tax determined on regular assessment. This obviously is not fair; either the tax determined on regular assessment should be taken to be the amount of tax payable by the assessee after adjusting the tax deducted at source or the refund should be deemed to relate to the excess advance tax paid and not the tax deducted at source.

In such matters, you will kindly appreciate that a liberal interpretation of the provisions is called for. We shall be grateful if the matter is examined sympathetically.

A line in reply will oblige.

Thanking you.

Further Information (Sr. No. 89)

The matter is still under consideration.

Recommendation

The Committee are distressed to note the non-deduction or short deduction of tax at source on interest payments and delayed remittance of tax deducted which also did not attract the penal provisions of the Act. It is strange that Income-tax Department itself is a defaulter in this regard. Such serious lapses noticed in test check of cases by Audit should have compelled the Department to undertake a review in all the charges to find out the extent of failure and to take appropriate action including rectification and recovery which, however, surprisingly enough were not done. The Committee expect that such review should be done without further delay and the results intimated to them.

Unless deterrent measures are taken to make such defaults unrewarding, the defaults are bound to recur. The Committee would, therefore, like to know why penal provisions were not invoked in respect of cases pointed out by Audit and whether there were similar laxities in other cases.

The Committee note that the Central Board of Direct Taxes are reviewing the whole matter of tax deductions at source including those made under Section 194A with a view to making certain changes. The Committee hope that expeditious steps would be taken to ensure correct and timely deduction of tax at source as well as its prompt remittance. The Committee would await the outcome of the review of the position by the Board.

According to the Ministry, although technically the department is liable to deduct tax at source on interest paid by it to the assessee, it would involve a lot of avoidable accounting and administrative work. The Committee understand that an amendment to the Act in this regard is under consideration. They wish to observe that any change that is made should provide adequate check to see that the assessees do not escape the tax liability on the interest paid to them by the Department.

[Sl. Nos. 90 to 93 and Paras 2.383 to 2.386 of Appendix to 51st Report of the P.A.C. (1972-73) Fifth Lok Sabha].

Action taken

The Committee's suggestion is being examined.

The relevant information is being collected from the Commissioners and the result will be intimated in due course.

The matter is still under consideration.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/240/70-II Audit dated 14-3-1973].

Further Information (Sr. Nos. 90-91)

Items 43 & 44: A review was ordered vide Board's Instruction No. 537 (F. 277/5/73-ITJ) dated 31st March, 1973 (copy attached). the results of the review received from the Commissioners are being compiled, and will be furnished to the Committee soon.

Copy of Instruction No. 537 dated the 31st March, 1973 from F. No. 277/5/73-ITJ from the Secretary, CBDT to All CSIT and ACSIT.

Sub: PAC's 51st Report (1972-73)—Para 2.338 regarding Section 194A of the Income-tax Act, 1961.

The Public Accounts Committee in para 2.383 of their Report (1972-73) have observed as under:

"The Committee are distressed to note the non-deduction or short deduction of tax at source on interest payments and delayed remittance of tax deducted which also did not attract the penal provisions of the Act. Such serious lapses noticed in test check of cases by Audit should have compelled the Department to undertake a review in all the Charges to find out the extent of failure and to take appropriate action including rectification and recovery which however, surprisingly enough were not done. The Com-

mittee expect that such review should be done without further delay and the results intimated to me."

The context of the above noted concluding recommendations is provided by paras 2.372—82 of the Committee's Report *vide* copy attached.*

2. The Committee's observations about Income-tax Department's omission to deduct tax at source from the interest paid by them to the assessees is under Board's consideration. As regards the other recommendations about the checking up of failure of other agencies in complying with the provisions of section 194-A, the Board desire that an immediate review be carried out in all Charges to ascertain the extent of non-deduction/short deduction of tax at source on interest payments and delayed remittance of tax deducted at source. The review should cover (i) the arrangements for watching and enforcing compliance, (ii) cases of omission or failure noticed and remedial action taken and (iii) suggestions for improvement to ensure proper implementation of the provision.

3. The result of review suggested above may be intimated to the Board by 31st May, 1973.

Further Information (Sr. Nos. 92-93)

Attention is invited to the Ministry's reply to item 57 of the above O.M. relating to Para 7.12 of their 51st Report. The whole question of deduction at source is being examined by an informal Committee appointed to consider the Department's tax accounting system, including tax deduction at source, and suitable measures will be taken on receipt of the Committee's recommendations. Amendment of law regarding the liability of I.T. Department to deduct tax at source is still under consideration.

Recommendation

The Committee learnt from Audit that a system of reconciliation between the amount of tax deducted at source and the amount remitted to Government account was in vogue in Britain and that the same was brought to the notice of the Central Board of Direct Taxes by Audit in July, 1970. The Committee were informed that the Board had recently started the system of giving permanent account number to each assessee. The Committee desire that the system followed in Britain should be studied and a procedure devised to arrive at a satisfactory system of reconciliation.

[Sl. No. 108 and Para 4.57 of Appendix to the 51st Report of the P.A.C. (1972-73)].

* not attached.

Action Taken

The question of devising a suitable procedure in the matter of deduction and collection of tax at source is under examination in the light of the recommendations of the Direct Taxes Enquiry Committee. The suggestion for introducing a Central Control/Account System as prevalent in the United Kingdom has been noted and will be considered while devising the new procedure.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/ 5/71-A & PAC dated 24-3-1973].

Further Information (Sr. No. 108)

A Committee of officials has been appointed informally under the auspices of the Directorate of O & M Services to consider the tax accounting system of the Income-tax Department and make necessary recommendations in this behalf; the papers regarding the U.K. System have been made available to the Committee for keeping in view. Their recommendations are awaited for suitable action.

Recommendation

The Committee find that during the year 1969-70 the penalty imposed amounted to Rs. 15.03 crores which was much less than the concealed income of Rs. 60.50 crores, although according to the Income-tax Act the minimum penalty should be equal to the concealed income. The Committee were informed that this difference may be due to some of the assessments being for the period prior to 1st April, 1968 when the minimum was 20 per cent of the tax. The Committee, however, find that according to the judgement in Jain Brothers case the crucial date for the purpose of penalty is the date of completion of the assessment and not the assessment year. The Ministry of Finance have stated that according to the Law Ministry the crucial date for determining the quantum of penalty is the date of filing of the return and not the date of passing the assessment order. The Committee suggest that in view of judgement in Jain Brothers case the matter should be further examined in consultation with the Attorney General. The Committee would like to know the outcome of the examination.

[Sl. No. 113 and Para 5.12 of Appendix to 51st Report of the P.A.C. (1972-73)—Fifth Lok Sabha].

Action Taken

The question of reference to Attorney General is under consideration by Law Ministry.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/ 11/71-A & PAC dated 2-4-1973].

Further Information (Sr. No. 113)

Attention of the Committee is invited to the Ministry's reply to item No. 32 (of the above noted O.M. dated 2nd November, 1973) regarding para 2.290 of the 51st Report of the P.A.C. (1972-73).

In this connection attention is invited to the Ministry's reply to item No. 5 of Lok Sabha Secretariat O.M. No. 31281/72/PAC dated 26th October, 1973 regarding para 2.60 of 50th Report of P.A.C. (1972-73).

Recommendation

The Committee find that the voluntary disclosures of undisclosed income under Section 271(4A) of the Income Tax Act made during the years 1968-69 and 1969-70 were rather disappointing. During 1968-69 the number of declarants was 1348. Declaring an income of Rs. 12.95 crores and during 1969-70 the number of cases was 908 declaring an income of Rs. 6.30 crores. These cases included 127 cases in the year 1968-69 in which the disclosed income had already been detected, while there were 442 such cases in 1969-70. The Committee are not satisfied with the progress of completion of assessment cases of voluntary disclosures. The number of assessments completed in 1968-69 was 783 and those completed during 1969-70 was 442. As on 31st March, 1970, there were 1,555 outstanding cases without finalisation. This figure includes cases which relate to earlier years including 1965-66. The recovery of tax made in cases of completed assessments was also not satisfactory. During the year 1968-69 only an amount of Rs. 95 lakhs out of tax of Rs. 260 lakhs was recovered out of tax of Rs. 155 lakhs. The Committee were informed during evidence that in order to expedite the assessment and collection of taxes under the Voluntary Disclosure Provisions, a lot of flexibility should be left to the Department. Further there should be a vigorous enforcement machinery. The Committee find that the Direct Taxes Enquiry Committee (1971) have in their final report suggested that to ensure that the settlement is fair, prompt and independent, there should be a high-level machinery for administering the provisions, which would also incidentally relieve the field officer of onerous responsibility and the risk of having to face adverse criticism which has been responsible for the slow rate of disposal of disclosure petitions. The Direct Taxes Enquiry Committee have recommended that the settlement may be entrusted to a separate body within the Department, to be called the Direct Taxes Settlement Tribunal. The Committee desire that effective steps should be taken to finalise the cases pending under the Voluntary Disclosures Scheme. For this purpose,

the Department should seriously consider to what extent flexibility is needed to expedite settlement of the cases and also whether it is necessary to create another body to be entrusted with this work as recommended by the Direct Taxes Enquiry Committee. The Committee desire that the matter should be examined expeditiously. The Committee expect the Department to ensure that full recovery is effected without delay in cases which have already been finalised. The Committee would like to be informed of concrete steps taken to achieve this objective.

[S. No. 114 and Para 6.10 of Appendix to 51st Report of the PAC (1972-73)—Fifth Lok Sabha].

Action Taken

Instructions have been issued to all the Commissioners for expeditious disposal of voluntary disclosure cases and for effecting quick recovery of such demands vide attached copy of Board letter No. F. 281/114/73-III (Inv.), dated 14th March, 1973. As regards the suggestions for review of the statutory provisions and constitution of a special organisation for settlement cases, the matter has been under consideration in the context of Wanchoo Committee's Report and the position will be known when the proposed taxation laws (Amendment) Bill is introduced in the Parliament.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/11/71-A&PAC dated 30-4-1973].

IMMEDIATE

F. No. 281/14/73-II (Inv.)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 14th March, 1973.

To

Commissioner of Income-tax,

Sir,

SUBJECT: Voluntary disclosure petitions u/s 271(4A)—Disposal of—Instructions regarding—

In their 51st Report to the Fifth Lok Sabha, the Members of the Public Accounts Committee have expressed their dissatisfaction with the slow pace in the finalisation of cases of voluntary disclosures and also in the recovery of demands outstanding where the assessments have already been completed in these cases.

2. Board, therefore, desire that the Commissioners should personally review all these cases which are pending and work out a scheme to ensure that the cases are disposed of expeditiously. It should be the department's endeavour that except in really complicated cases, no petition u/s 271(4A) is kept pending for more than six months. In this connection, Board would like to have information in the following proforma from all the Commissioners by 31st May, 1973.

PART I

No. of disclosure petitions u/s 271 (4A) pending as on 1-4-1973	No. of petitions pending for more than 6 months as on 1-4-73 (out of Col. 1)	Brief reasons for pendency of the petitions shown in Col. 2 (with details where the total income disclosed is more than Rs. 1 lakh).	Action proposed to be taken for finalisation of petitions shown in Col. 2
I	2	3	4

PART-II

Total No. of cases settled u/s 271(4A) (Year-wise) where demands are outstanding as on 31-3-73	Total amount of demands outstanding in respect of cases in Col. 1	Brief reasons for not recovering the demand shown in Col. 2 in respect of cases where outstanding demand is more than Rs. 1 lakhs to be annexed
I	2	3
1965-66		
1966-67		
1967-68		
1968-69		
1969-70		
1970-71		
1971-72		
1972-73		
TOTAL		

3. Please acknowledge the receipt of this letter.

Yours faithfully,
Sd/- (J. RAMA IYER),
Secretary,
Central Board of Direct Taxes,

Further Information (Sr. No. 114)

Board had issued instructions to the Commissioners of Income-tax as far back as 5th September, 1967 [F. No. 58/74/67-IT(Inv.)] asking them to expedite the disposal of disclosure petitions u/s 271 (4A); copy attached. The Cs.I.T. were further addressed in this behalf for review *vide* Board's No. F.281/14/73-IT(Inv.) of 14th March, 1973, *vide* interim reply sent earlier on 30th April, 1973.

The comparative figures of disposal of petitions u/s 271(4A) during the years 1971-72 and 1972-73 as ascertained on review are given below:—

1971-72	..	1,199
1972-73		1,378

It will be observed from the above that there is an increase of about 15 per cent in the disposal of such petitions in 1972-73 as compared to 1971-72. Out of 5,029 petitions pending on 1st April, 1973, as many as 524 petitions were disposed of during the 5 months from 1st April, 1973 to 31st August, 1973. The Board feel that there is further scope for improvement. It is therefore, proposed to emphasise on the Commissioners once again to look into the petitions which are pending for more than 4 years and dispose them of before the end of this financial year.

As regards the delay in initiating review, sufficient number of printed copies of the 51st Report were not made available initially for circulation to Commissioners etc. in the field and Branch officers at headquarters; to start with only 4 copies of the Report were received with Lok Sabha Secretariat O.M. No. 2|7|III|6|72|PAC dated 1st September, 1972 as against larger number usually supplied and more copies had to be obtained later; secondly the Ministry had to process the large number of recommendations in the Report simultaneously within the prescribed period of six months and this resulted in phased programme over the period.

F. No. 58/74/67-IT(Inv.)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 5th September, 1967.

From

The Secretary,
Central Board of Direct Taxes,

To

All Commissioners of Income-tax,

Sir,

SUBJECT: *Expeditious disposal of disclosure—cases under section 271(4A)*

Complaints have been received that sometimes there is considerable delay in disposal of cases of voluntary disclosure under section 271(4A) of the Income-tax Act, 1961.

2. While it is appreciated that sometime is bound to be taken in cases, where prolonged enquiries are needed, there will be a number of other cases where, with prompt attention from the Commissioners, the cases would be disposed of expeditiously. You are, therefore, requested to scrutinise all pending cases and dispose of as many as possible without delay. A proper watch should be kept on applications under Section 271(4A) sent to the Income-tax Officers for report and, except where prolonged enquiries are needed, the reports should be obtained from the Income-tax Officers and cases disposed of quickly.

3. A quarterly statement of voluntary disclosure of income under section 271(4A) is already being sent by you in response to Board's letter No. 16/15/65-IT(Inv.) dated 16th March, 1965. For the quarter ending 30th September, 1967 onwards an annexure in the form given below should be sent along with the quarterly statement.

Yours faithfully,
Sd/- G. R. HEGDE,
Secretary,
Central Board of Direct Taxes.

PROFORMA

Statement for the quarter ending _____

- (1) Number of voluntary disclosure cases pending with Commissioner of Income-tax at the commencement of the quarter.
- (2) Number of cases received during the quarter.
- (3) Total.
- (4) Number disposed of during the quarter.
- (5) Balance at the end of the quarter.
- (6) List of cases, pending at the end of the quarter for more than six months, with brief reasons.

Recommendation

The Committee note that for non-deduction or part-deduction of tax from dividends at source by companies, there were convictions in 237 cases in 1968-69, 135 cases in 1969-70 and 181 cases in 1970-71. The Committee learnt with satisfaction that as a result of prosecutions launched against defaulting companies, cases of defaults have declined. The Committee desire that the Department should devise a system whereby tax deducted by companies is remitted to Government within the prescribed period of one week. In 1969-70 there were 90 cases in which tax was remitted after one week of deduction or receipt of chadlan. The Committee suggest that the Department should take stringent action against the parties who failed to remit tax deducted within the prescribed time.

[Sl. No. 115 and Para 7.12 of Appendix to the 51st Report of the P.A.C. (1972-73)].

Action Taken

The observations of the Committee have been noted for processing.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/24/70-IT-Audit dated 2-3-1973]

Further Information

The Waschoo Committee also has made similar recommendations (vide Paras 4.54 and 4.55 of the Report) regarding the deduction of

tax at source and its collection. These recommendations are being examined.

[Ministry of Finance (Revenue and Insurance) O.M. No. 231/
24/70-IT-Audit dated 26-3-1973].

Further Information (Sr. No. 115)

The Board have appointed an informal Committee under the auspices of Directorate of O & M Services to examine our tax accounting system and make necessary recommendations for Board's action. The Committee will cover the subject of tax deduction at source and relevant procedures also. Their report is awaited.

NEW DELHI;

21st April, 1975.

1st Vaisakha, 1897 (Saka).

JYOTIRMOY BOSU,
Chairman,
Public Accounts Committee.

Appendix

Summary of Main Conclusions/Recommendations

Sr. No.	Para No. of the Report	Ministry concerned	Conclusions/Recommendations
1	2	3	4
1.	1.4	Finance (Rev. and Inv.)	The Committee desire that final replies in regard to those recommendations to which only interim replies have so far been furnished, should be submitted to them expeditiously after showing them to Audit.
2.	1.9	Do.	The Committee would like to be apprised of the findings of the above informal Committee. It should be asked to complete its work expeditiously. Action should be taken urgent by Government on its recommendations and findings and the Committee, kept informed of progress in this respect.
3.	1.10	-	The Committee note that the Ministry is also obtaining for study the particulars of methodology of budget estimates followed in the United Kingdom and the United States of America and that the sending of a deputation for study, if necessary, will be considered later. The stage at which the study is at present should be reported to the Committee. The Committee are of the opinion

that the sending of a deputation for such study to the U. K. and U. S. A. is not necessary. The results of the study and the action taken thereon by Government should of course be reported to the Committee without undue delay.

4 1.14 Do The Committee have no objection to the decision to treat the two recommendations that of the Direct Taxes Enquiry Committee (Wanchoo Committee) and that made by the Committee together so long as this linking does not result in delay. The Committee would urge the Government to come to an early decision without any further loss of time and report the outcome to the Committee.

5 1.18 Do As more than two years have elapsed since the presentation of the Report, the Committee consider that the completion of the examination of the working of the Internal Survey should not take any more time. The Director of Inspection, to whom the examination of the working of the Internal Survey had been entrusted in 1973, had more than ample time for completing the examination. He should be called upon to explain the reasons for the time he has taken under advice to the Committee and if he has not already completed the examination, he should be asked to do so without further loss of time.

6 1.21 Do The Committee had not expected the Ministry merely to rest content with taking note of the observations of the Committee. The Committee had locked forward to being apprised of the specific steps taken or proposed to be taken by the Government to ensure that the small Income Scheme was not exploited by unscrup-

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1 2 3

pulous high income assessees masquerading as small income assessees and that the genuine small income assessees were not subjected to harassment by being asked to appear before the Income-tax authorities. The Committee would await a further report in this regard.

7 1.25 Finance (Rev. and Ins.)

The Committee regret to note that no review has been undertaken by the Government on the lines suggested by the Committee. The Committee are of the view that a thorough review of the kind indicated in paragraph 2.28 of their 51st Report (Fifth Lok Sabha) would serve a very useful purpose. They, therefore, desire that such a review should be carried out forthwith. The Committee would await the results of the review and action taken thereon.

8 1.29 Do

The Committee are of the view that the monthly reviews which are carried out by the Director of Inspection (I. T. Audit) will not achieve the object the Committee had in mind in suggesting a more comprehensive review of the scope and nature of the checks carried out by the Internal Audit. The Committee consider that it is essential to have a comprehensive review by the Board at least once in six months with a view to improving the efficiency of the Internal Audit and desire accordingly that the first of such six monthly reviews be undertaken forthwith.

9	1.30	Do	The Committee further reiterate that there should be close-coordination between the Internal Audit and Revenue Audit which is rendering most invaluable service so as to have the maximum impact on the revenue collecting organisation.
10	1.34	Do	<p>More than two years have elapsed since the presentation of the Report, That much time was surely more than enough for completing the study suggested by the Committee. This is regrettable.</p> <p>The Committee require that the study should be completed without further loss of time and the results of the study and action taken or proposed to be taken thereon should be intimated to them within three months.</p>
11	1.38	Do	The Committee find it difficult to understand why so much time should be necessary for arriving at a decision as to what exactly constitutes a new industrial undertaking. The Committee are somewhat surprised to note that in this case the Ministry was not able to give a definite opinion but expressed itself in tentative terms. The Committee was under the impression that the Ministry of Law invariably would express itself in clear and definite terms in a matter as simple as this. The Committee desire that this should be resolved without any further delay and necessary instructions issued for the guidance of the assessing officers under intimation to them.
12	1.42	Do	The Committee had suggested that a study of the extent to which the various rebates and concessions had contributed to promoting the twin objectives of economic growth and social justice,

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1 2 3

should be undertaken which would be helpful in formulating future taxation policy. The Committee have been informed that no such study has been made so far and that it would be undertaken as soon as the Directorate of Research and Statistics is re-organised and strengthened on the lines suggested by the Direct Taxes Enquiry Committee which is currently under consideration of the Ministry. This leaves the position completely vague and puts off the undertaking of a study of some considerable importance almost indefinitely. Having regard to its importance, the Committee desire that it should be taken in hand in anticipation of the reorganisation and necessary man-power provided.

13 1.46 Finance (Rev. and Ins.)

From the reply furnished by the Government, the Committee note that the final opinion of the Law Ministry was received on 2nd November, 1973 and that in view of the opinion expressed by the Ministry of Law the audit objection is acceptable; remedial action under section 263 of the Income-Tax Act, 1961, however, became time barred long ago. The Committee can only deplore the delay of more than a year in referring the case to the Ministry of Law for obtaining their final opinion. The Committee desire that suitable instructions should be issued immediately in this regard, if this has not already been done, so that there is no recurrence of such lapses in future under advice to the Committee.

1.50	Do	A decision on the exclusion of the amounts received by lawyers from clients towards personal expenses from the total taxable income has been considerably delayed for no apparently valid reasons. The Committee would urge that Government should come to a decision in this regard within three months and inform the Committee in due course.
1.55	Do	From the reply furnished by the Government, the Committee are distressed to note that out of 43190 advocates enrolled with the Bar Associations, only 7404 are verified to be assessed to tax and that the verification of the above provisional figures is however still not complete. The Committee have been informed that the Commissioners are being asked to pursue the verifications vigorously and take appropriate action.
15	Do	Further instructions have also been issued by the Director of Inspection (I.T. Audit) calling for a monthly review of external survey instead of the existing quarterly review. The Committee desire that Government should complete the verification early and report the position to them. The Committee would also like to know the results of the External Survey conducted during 1972 and 1973.
16	Do	The Committee assume that the Central Board of Direct Taxes has issued suitable instructions in the light of the opinion of the Ministry of Law now given for the guidance of the assessing officers under intimation to them. This may be confirmed.

1	2	3	4
17	1.63	Finance (Rev. and Ins.)	The Committee are unhappy over the inordinate delay in arriving at a decision on the crucial date for the purpose of levy of penalty. The matter should be pursued more vigorously so that a decision can be arrived at and necessary instructions issued to the lower formations. The Committee would like to be apprised of the final decision taken as also the action proposed to be taken thereafter.
18	1.68	Do	The Committee deplore the inordinate delay that has taken place in framing rules for regulating the calculations of interest. The Committee need hardly stress that necessary rules simplifying and streamlining the procedure should be framed forthwith under intimation to them.
19	1.72	Do	The Committee wish to reiterate that a fool-proof procedure to prevent double allowance of credit should be evolved without any further loss of time.
20	1.73	Do	The Committee trust that the informal committee would complete its work at an early date. The Action Taken thereon by Government should be reported to the Committee.
21	1.77	Do	The Committee find that revised instructions on checking of refunds have been issued and that as a practical measure, it has been decided that cases of refunds involving a sum of Rs. 5,000/- and above are now to be checked by the Inspecting Assistant Commissioner.

22	1.78	Do	The Committee would however, like to emphasise the need for a review of the observance or otherwise of such instructions in the light of the changed context so that appropriate corrective action may be taken, wherever necessary.
23	1.81	Do	The Committee desire that necessary instructions should be issued forthwith to the field officers directing that in all instances appellate orders must be given effect to within a fortnight of the date of passing of the order concerned.
24	1.82	Do	In so far as appellate orders are concerned they should be passed within a fortnight from the date of hearing. The Committee would very much like the Revenue Audit to report whether this recommendation is being implemented.

The Committee would strongly suggest that the Revenue Audit should conduct a test audit of the orders of the Appellate Assistant Commissioners in the same manner as they are auditing the Income-tax Officers' orders. The Committee have come across several instances where the Income-tax Officers knowingly highly inflate the assessments driving the assessees in this process to seek remedies on appeal which would certainly involve considerable cost for both the parties and severe mental anxiety, especially in the case of small assessees. The Committee would like that a review should be undertaken of all cases where reductions of more than Rs. 10,000 has been given on appeal to determine the extent of such overassessments.

4

1 2 3

25 1.86 (Finance Rev. & Ins.)

The Committee urge that the matter should be examined expeditiously and without any further loss of time and the conclusions reached intimated to the Committee.

26 1.90

Do

The Committee note that a review has been ordered and the results of the review received from the Commissioners are being compiled. The Committee would like the Ministry to complete the compilation of the results early and report the position to them.

27 1.91

Do

The Committee further note that their observation about the failure of the Income-tax Department to deduct tax at source from the interest paid by them to the assessee is under examination. The Committee desire that this should be examined expeditiously and final outcome reported to the Committee.

28 1.95

Do

The Committee would await the report of the informal Committee appointed by the Ministry inter-alia to examine the whole question of deduction at source, and the action taken thereon by Government in this regard.

29 1.96

Do

The Committee note that amendment of the Law regarding the liability of the Income Tax Department to deduct tax at source is still under consideration of Government. The Committee desire that this matter should be decided quickly and the decision out reported to the Committee.

30 1.100 Do The Committee note from the reply that a selective study of the reasons for the decline in the average number of assessments completed in five Commissioners' charges has been made by the Director of Inspection (RSP) and that this study has revealed that there were good reasons for the decline in the average disposal per Income-tax Officer in respect of Income-tax assessments. The Committee have also been informed that an overall study as suggested by them has been entrusted to the newly created Directorate of O&M Services and that their report is awaited, before further action is taken. The Committee would like to await the report of the Directorate of O&M Services and the action taken thereon by Government.

31 1.105 Do The Committee would like to be apprised of the findings of the Committee of Officials which need to be expedited. The Committee would, however, like to stress the need for a satisfactory system of reconciliation between the amount of tax deducted at source and the amount credited to Government Account in the Income-tax Department as is in vogue in the United Kingdom.

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