Chapter IV: Income Tax and Wealth Tax

4.1 Introduction

4.1.1 This chapter discusses 131 income tax and six wealth tax cases, of which 121 cases involving undercharge of ₹ 314.73 crore and 16 cases involving overcharge of ₹ 21.26 crore were issued to the Ministry during April 2017 to July 2017. These cases of incorrect assessment point towards weaknesses in the internal controls on the assessment process being exercised by the Income Tax Department.

4.1.2 The categories of mistakes have been broadly classified as follows:

- Quality of assessments
- Administration of tax concessions/exemptions/deductions
- Income escaping assessments due to omissions
- Others-Overcharge of tax/interest etc

4.1.3 ITD has completed remedial action in 90 cases involving tax effect of ₹ 215.01 crore. The Ministry has conveyed its acceptance in 47 cases involving tax effect (TE) of ₹ 48.89 crore while not accepting two cases involving tax effect of ₹ 7.17 crore.

Table 2.9 (para 2.4.4) of this report shows the details of broad categories of mistakes and their tax effect (refer *Appendix* 2.3).

4.2 Quality of assessments

4.2.1 AOs committed errors in the assessments despite clear provisions in the Act. These cases of incorrect assessments point to continuing weaknesses in the internal controls on the part of ITD which need to be addressed on priority.

Table 4.1 shows the sub-categories of mistakes which impacted the quality of assessments.

Table 4.1: Details of errors in quality of assessment			**(₹ in crore)**
Sub-categories	**Cases**	**TE**	**States**
a. Arithmetical errors in computation of income and tax	26	75.89	Andhra Pradesh, Delhi, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Odisha, Punjab and Tamil Nadu
b. Incorrect application of rates of tax, surcharge etc.	06	11.92	Delhi, Goa, Jharkhand, Maharashtra and Punjab
c. Mistakes in levy of interest	37	130.12	Andhra Pradesh, Assam, Bihar, Delhi, Goa, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, UT Chandigarh, Uttar Pradesh and West Bengal
Total	**69**	**217.93**	

4.2.2 Arithmetical errors in computation of income and tax

We give below four such illustrative cases:

The Act provides that AO is required to make a correct assessment of the total income or loss of the assessee and determine correct amount of tax or refund, as the case may be.

4.2.2.1 In Maharashtra, CIT Exemption Mumbai charge, AO completed the assessment of an Association of Persons (Trust), **Mumbai Cricket Association**, for AY 2010-11 after scrutiny in March 2013 at an income of ₹ 20.53 crore. The AO had considered the assessee as a non-charitable organization having no valid registration under section 12A and hence, the entire income of the assessee was required to be taxed. However, an amount of ₹ 39.67 crore received by the assessee on account of infrastructure subsidy was not added back while computing assessed income. The mistake had resulted in underassessment of income of ₹ 39.67 crore involving short levy of tax of ₹ 16.67 crore including interest. *ITD initiated remedial action under section 147 of the Act (January 2017).*

4.2.2.2 In Odisha, Pr. CIT-1 Bhubaneswar charge, AO completed the assessment of a co-operative society **M/s Neelachal Gramya Bank** for AY 2013-14 after scrutiny in January 2016 at 'nil' income as declared by assessee in its returned income. The assessee had claimed ₹ 0.6 crore and ₹ 4.07 crore on account of 'printing & stationary' and 'other expenditure' respectively, however, while computing aggregate of both expenses in the return of income, adopted the aggregate figure at ₹ 34.62 crore instead of ₹ 4.13 crore. As a result, profit before taxes was arrived at 'nil' instead of ₹ 30.49 crore which was also considered by AO while computing taxable income of the assessee. The mistake had resulted in underassessment of income of ₹ 30.49 crore involving short levy of tax of ₹ 12.61 crore including

interest. *ITD initiated remedial action under section 147 of the Act (March 2017).*

4.2.2.3 In Tamil Nadu, CIT Central-1, Chennai charge, AO completed the assessment of a trust **M/s Jaya Educational Trust** for AY 2012-13 after scrutiny in March 2015 at an income of ₹ 10.77 crore. In the Income and Expenditure Account, the assessee had shown total receipts of ₹ 68.06 crore and arrived at 'Excess of Income over Expenditure' of ₹ 13.92 crore. However, while computing the taxable income of the assessee, AO took the net Income as per Income and Expenditure Account at 'nil' instead of ₹ 13.92 crore. The mistake had resulted in under assessment of income by ₹ 13.92 crore involving short levy of tax of ₹ 4.30 crore. *Reply from the ITD was awaited (September 2017).*

4.2.2.4 In Gujarat, Pr. CIT-1, Surat Charge, AO completed the scrutiny assessment of an individual **Anil Satyanarayan Roongta** for AY 2013-14 after scrutiny in March 2016 at an income of ₹ 9.63 crore. While computing the taxable income of the assessee, the assessed income was incorrectly adopted as ₹ 5.06 crore instead of the correct figure of ₹ 9.63 crore by AO. The mistake had resulted in underassessment of income of ₹ 4.57 crore with consequent short levy of tax of ₹ 1.28 crore including interest. *Reply from the ITD was awaited (September 2017).*

4.2.3 Incorrect application of rates of tax, surcharge etc.

We give below three such illustrative cases:

Section 4(1) of the Income Tax Act, 1961 provides that income tax is chargeable for every assessment year in respect of the total income of the previous year of an assessee, according to the rates prescribed under the relevant Finance Act. The Finance Act relevant to assessment year 2009-10 provides for levy of surcharge at the rate of ten per cent of income-tax in the case of a firm, if net income exceeds rupees one crore.

4.2.3.1 In Delhi, Pr. CIT(C)-2 charge, assessment of a firm, **M/s Shiva Mint Industries** for the assessment year 2009-10 was completed in March 2016 at an income of ₹ 159.67 crore and a tax of ₹ 47.90 crore thereon. While computing tax in the Income Tax Computation Form, AO did not levy the surcharge applicable at the rate of ten *per cent* of income-tax. The mistake had resulted in short levy of tax of ₹ 9.08 crore including interest. *ITD rectified the mistake under section 154 (March 2017).*

4.2.3.2 In Goa, CIT-Panji charge, AO completed the scrutiny assessment of the assessee, **M/s Vassudeva Dempo Family Pvt. Trust** for AY 2013-14 in February 2016 at an income at ₹ 5.09 crore. While computing tax liability of the assessee, AO computed tax on short term capital gains on the sale of debt funds at 15 *per cent* instead of 30 *per cent*, although the assessee had offered the same at 30 *per cent* in its return of income/statement of computation of income and tax.

The mistake had resulted in short levy of tax to the tune of ₹ 0.67 crore. *The Ministry accepted the audit observation and rectified the mistake under section 154 (January 2017).*

4.2.3.3 In Punjab, Pr.CIT (Central) Ludhiana charge, AO completed the assessment of an individual **Suman Aggarwal** for AY 2009-10 under section 147 read with section 143(3) in March 2016 at income of ₹ 3.99 crore. While calculating tax liability of the assessee, AO did not levy the surcharge even though the same was leviable at the rate of 10 *per cent*. The omission had resulted in short levy of tax of ₹ 23.13 lakh including interest. *ITD rectified the mistake under section 154 (July 2016).*

4.2.4 Mistakes in levy of Interest

We give below three such illustrative cases:

Section 234B(3) of the Income Tax Act, 1961 provides that, where, as a result of an order of re-assessment under section 153A, the amount on which interest was payable is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment, on the amount by which the tax on the total income determined on the basis of the reassessment exceeds the tax on total income determined under sub section(1) of section 143 or on the basis of the regular assessment.

4.2.4.1 In Delhi, Pr. CIT-(C)-2 charge, AO completed the assessment of a firm, **M/s Ambika International**, for AYs 2008-09, 2009-10 & 2010-11 under section 153A in March 2016 determining incomes of ₹ 238.64 crore, ₹ 338.06 crore and ₹ 346.31 crore respectively. While computing interest under section 234B(3) in the said assessment years, AO levied interest at ₹ 32.45 crore, ₹ 74.69 crore and ₹ 63.00 crore instead of ₹ 77.87 crore[82], ₹ 96.52 crore[83] and ₹ 76.89 crore[84] respectively. The mistake had resulted in short levy of interest of ₹ 81.14 crore. *ITD rectified the mistakes under section 154 (March 2017).*

4.2.4.2 In Haryana, Pr. CIT (Central), Gurgaon charge, AO completed the assessments of an individual **Jitendra Singh** for AYs 2009-10 to 2013-14 under section 153A(1)(b) read with sections 143(3) and 144 in March 2016 determining income of ₹ 43.29 crore. While computing tax liability for AYs 2009-10 to 2013-14, AO erroneously charged interest under section 234B at ₹ 5.78 crore instead of leviable amount of interest of ₹ 7.74 crore. The mistakes had resulted in short levy of interest of ₹ 1.96 crore. *ITD rectified the mistake under section 154 (September 2016).*

82 for 96 months
83 for 84 months
84 for 72 months

Section 234A of Income Tax Act 1961 provided that if a return of income is furnished after the due date, the assessee is liable to pay interest at the rate of one per cent per month commencing on the date immediately following the due date for filing the return of income and ending on the date of furnishing the return.

4.2.4.3 In Pr.CIT-Central, Kanpur charge, AO completed the assessment of an individual **Manoj Kumar** for AYs 2012-13, 2013-14 & 2014-15 under section 144/153C in March 2016 at income of ₹ 35.51 crore, ₹ 38.41 crore and ₹ 7.83 crore respectively. While computing tax liability of the assessee, AO did not levy interest under section 234A despite the fact that assessee had neither filed return of income in response to notice under section 153C nor under section 139(1) of Income Tax Act 1961. The mistake had resulted in short levy of interest of ₹ 9.26 crore. *Reply from the ITD was awaited (September 2017).*

4.3 Administration of tax concessions/exemptions/deductions

4.3.1 The Act allows concessions/exemptions/deductions to the assessee in computing total income under Chapter VI-A and for certain categories of expenditure under its relevant provisions. We observed that the AOs have irregularly extended benefits of tax concessions/exemptions/deductions to ineligible beneficiaries. These cases point out weaknesses in the administration of tax concessions/deductions/exemptions on the part of ITD which need to be addressed. Table 4.2 shows the sub-categories which have impacted the administration of tax concessions/exemptions/deductions.

Table 4.2: Sub-categories of mistakes under Administration of tax concessions/exemptions/deductions **(₹ in crore)**

	Sub-categories	Nos.	TE	States
a.	Irregular exemptions/ deductions/relief given to individuals	07	4.17	Gujarat, Kerala, Maharashtra, Rajasthan and UT-Chandigarh
b.	Irregular exemptions/ deductions/relief given to Trusts/Firms/Societies/AOPs	09	17.92	Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Maharashtra, Tamil Nadu and Uttrakhand
c.	Incorrect allowance of Business Expenditure	10	31.69	Assam, Bihar, Gujarat, Maharashtra, UT Chandigarh, Uttrakhand and West Bengal
d.	Irregularities in allowing depreciation/business losses/ capital losses	09	24.41	Bihar, Jharkhand, Kerala, Maharashtra, Odisha and Rajasthan
	Total	**35**	**78.19**	

4.3.2 Irregular exemptions/deductions/relief given to Individuals

We give below two such illustrative cases:

Section 54F of the Income Tax Act provides that to claim the exemption under this section, the assessee should not own more than one residential house, other than the new asset, on the date of transfer of the original asset.

4.3.2.1 In Rajasthan, CIT-III Jaipur Charge, AO completed the scrutiny assessment of an Individual **Bharat Mohan Raturi** for AY 2013-14 in February 2016 at income of ₹ 18.22 lakh. The assessee had earned long term capital gain (LTCG) of ₹ 94.39 lakh on sale of a plot of land at sale consideration of ₹ one crore. On LTCG being investment in another house property of ₹ one crore, the assessee had claimed exemption and the same was allowed. However, other than new house, the assessee owned two residential houses on the date of transfer. Therefore, assessee was not eligible to avail the exemption as per provisions ibid and tax was to be charged on LTCG of ₹ 94.39 lakh. The omission had resulted in under computation of income by like amount involving tax effect of ₹ 26.25 lakh including interest.

Section 54B of Income Tax Act, 1961, provides that, any capital gain arising to an individual assessee from transfer of any agricultural land which has been used by the assessee or his parents for at least a period of two years immediately preceding the date of transfer, for agricultural purposes, shall be exempt to the extent such capital gain is invested in the purchase of another agricultural land within a period of two years after the date of transfer to be used for agricultural purpose. Further, section 54F ibid provides for exemption of any long-term capital gain in full, arising to an individual from the transfer of any capital asset other than residential house property, if the entire net sales consideration is invested in purchase of one residential house within one year before or two years after the date of transfer of such an asset or in the construction of one residential house within three years after the date of such transfer. Where part of the net sales consideration is invested, it will be exempt proportionately.

4.3.2.2 In Kerala, Pr.CIT Thiruvananthapuram charge, AO completed the assessment of an individual, **Sanjith Sadasivan**, for AY 2012-13 after scrutiny in June 2014 determining the total income at ₹ 1.19 crore and agricultural income of ₹ 0.12 lakh. The total income assessed included long term capital gain of ₹ 1.12 crore arising from transfer of agricultural land. In computing the long term capital gain at ₹ 1.12 crore, exemption under section 54B amounting to ₹ 3.59 crore towards investment in purchase of new agricultural land and exemption under section 54F amounting to ₹ 61.40 lakh towards purchase of residential house were allowed. The cost of improvement to the new agricultural land purchased amounting to ₹ 1.56 crore was also considered while arriving at the amount of exemption under section 54B, which was not allowable under the section. This has resulted in excess exemption of ₹ 69.68 lakh under section 54B. Further, verification of the documents in

respect of the purchase of residential house and land appurtenant thereto (3.85 Are) furnished by the assessee in support of claiming exemption under section 54F revealed that the building on the said land had been demolished before the date of purchase of the same by the assessee. As the assessee did not invest capital gain on residential house, allowance of exemption under section 54F was irregular. The total inadmissible exemption under sections 54B and 54F works out to ₹ 1.31 crore with a tax effect of ₹ 34.29 lakh including interest. *The Ministry accepted the audit observation and initiated action under section 263 (March 2017).*

4.3.3 Irregular exemptions/deductions/relief given to Trusts/Firms/ Societies/AOPs

We give below two such illustrative cases:

Section 80(P)(1) provides that in case of an assessee being a co-operative society, while computing total taxable income of the assessee, a deduction in respect of the specified income under sub-section (2) is to be allowed. Further, section 80P(2)(d) allows deduction of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society. This deduction cannot be extended to the interest income earned from the investment in a bank other than a co-operative society.

4.3.3.1 In Gujarat, Pr. CIT-V Ahmedabad charge, AO completed the assessment of a co-operative society, **The Gujarat State Co Op. Agri & Rural Development Bank Ltd**. for AYs 2010-11 and 2012-13 after scrutiny in December 2012 and October 2014 at income of ₹ 2.94 lakh and nil after allowing deductions under section 80(P) of ₹ 42.81 crore and ₹ 41.31 crore respectively. The assessee had taxable receipts of ₹ 10.39 crore and ₹ 10.51 crore for AYs 2010-11 and 2012-13 which were required to be disallowed after relatable expenses of ₹ 5.56 crore and ₹ 6.11 crore respectively. Omission to do so had resulted in excess allowances of deduction of ₹ 4.80 crore for AY 2010-11 and ₹ 4.40 crore fro AY 2012-13 aggregating to ₹ 9.20 crore with consequent short levy of tax of ₹ 3.75 crore including interest. *ITD rectified the mistakes for both the AYs under section 147 and 263 in November 2016 and March 2017 respectively.*

Section 80IC of the Income Tax Act, 1961 provides for deduction of one hundred percent of the profit and gains for five assessment years commencing with the initial assessment year and thereafter twenty five per cent of the profit and gains from an industrial undertaking or enterprise which begins to manufacture or produce any article or thing specified in the Fourteenth Schedule or commences any operation specified in that Schedule, inter alia, in the State of Uttarakhand.

4.3.3.2 In Uttrakhand, Pr. CIT-Dehradun charge, AO completed the assessment of a firm**, M/s KBG Industries** for AY 2012-13 after scrutiny in March 2015 at an income of ₹ 0.69 lakh after allowing deduction of ₹ 1.31 crore at 100 *per cent* under section 80IC, considering that the AY 2012-13 was the fifth year of the claim of deduction. As per audit report in Form no. 10CCB, date of

commencement of the operation was 12 June 2006, indicating that the AY 2012-13 beginning from initial assessment year 2007-08 was the sixth year of commencement of operation. Consequently, the firm was eligible for deduction at 25 percent as against hundred percent of the profits allowed by the ITD. Excess allowance of deduction had resulted in under assessment of income of ₹ 98.57 lakh involving tax effect of ₹ 41.42 lakh including interest. *The Pr. CIT-Dehradun had cancelled the assessment order under section 143(3) by passing order under section 263 (March 2017) with the direction to pass the fresh assessment order. Further developments were awaited (September 2017).*

4.3.4 Incorrect allowance of Business Expenditure

We give below two such illustrative cases:

Section 37 of the Income Tax Act 1961, provides that any expenditure, not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession, shall be allowed in computing the income chargeable under the head: Profits and gains of business or profession. Further, under the Income Tax Act, a provision made in the accounts for an accrued or known liability is an admissible deduction, while other provisions do not qualify for deduction.

4.3.4.1 In Maharashtra, Pr.CIT-I Kolhapur charge, AO completed the assessment of an association of persons (Co-operative society), **M/s Sangli District Central Co-operative Bank Ltd**. for AY 2012-13 after scrutiny in March 2015 at an income at ₹ 14.65 crore. The assessee bank had claimed and was allowed deduction towards provisions debited to the profit and loss account amounting to ₹ 3.47 crore and ₹ 7.25 crore for strengthening and development of primary institutions respectively which were not allowable deductions under section 37 of the Act. The mistake had resulted in underassessment of income by ₹ 10.72 crore, involving short levy of tax of ₹ 4.50 crore including interest under section 234B.

ITD accepted the audit observation and rectified the mistake under section 143(3) read with section 263 (August 2016).

4.3.4.2 In West Bengal, Pr. CIT-12, Kolkata charge, AO completed the assessment of a firm, **M/s Calcutta Export Company** for AY 2013-14 after scrutiny in January 2016 at an income of ₹ 2.01 crore. While completing the assessment, AO allowed deduction of ₹ 83.20 lakh claimed by the assessee. The said amount pertaining to the assessment year 2010-11 was added back under section 40(a)(i) in the assessment by the AO, but the addition was deleted by the CIT(Appeal) and its effect was already given vide order passed under section 251/143(3) in December 2014. Therefore the deduction of ₹ 83.20 lakh was not in order. The mistake had resulted in underassessment of income by ₹ 83.20 lakh involving tax effect of ₹ 25.71 lakh. *Reply from the ITD was awaited (September 2017).*

4.3.5 Irregularities in allowing depreciation/business losses/capital losses

We give below two such illustrative cases:

Under section 72 of the Income Tax Act, 1961, where the net result of computation under the head 'Profits & Gains of Business or Profession' is a loss to the assessee and such loss cannot be wholly set off against income under any other head of the relevant year, so much of the loss as had not been set off shall be carried forward to the following assessment year/years, to be set off against the profits and gains of business or profession of those years.

4.3.5.1 In Kerala, Pr. CIT-Thrissur charge, AO completed the scrutiny assessment of a Co-operative Society engaged in banking business, **The Kodungallur Town Co-operative bank Ltd. No. 102**, for AY 2012 in February 2015 at an income at ₹ 10.13 crore. This was set-off against the claimed brought forward losses pertaining to AYs 2007-08, 2008-09 and 2009-10, and the remaining loss of ₹ 12.93 crore pertaining to AY 2009-10 onwards was allowed to be carried forward. The AO had started the computation of income by adopting returned income as NIL instead of a loss of ₹ 3.99 crore computed by the assessee. Thus the total income was erroneously arrived at ₹ 10.13 crore in the assessment order instead of the correct figure of ₹ 6.14 crore. Audit further noticed that the assessee had no losses for the AYs 2008-09, 2009-10, 2010-11 and 2011-12 to be carried forward as per the assessment orders for these AYs completed in December 2010, December 2011, March 2013 and February 2014 respectively. As the assessment records pertaining to the AY 2007-08 was not made available to audit, the admissibility of the brought forward loss of ₹ 2.90 crore pertaining to the AY 2007-08 allowed could not be ascertained. The tax effect involved in adopting the returned income as NIL and the incorrect allowance of carry forward losses for the AYs 2008-09 to 2011-12 works out to ₹ 5.18 crore. *The ITD accepted the audit observation and rectified the mistake under section 154 (February 2017).*

As per section 139(3) of the Income Tax Act, 1961, if the assessee does not file the return of loss before the expiration of the due date of filing of return mentioned under section 139(1), the assessee will not be entitled to carry forward losses incurred to the subsequent years.

4.3.5.2 In Bihar, CIT-Bhagalpur charge, assessment of a co-operative society, **The Khagaria District Central Co-operative Bank Ltd.** for AY 2012-13 was completed after scrutiny in February 2015 determining loss of ₹ 5.47 crore including unabsorbed depreciation of ₹ 0.72 lakh. Return of income for the AY 2012-13 was filed on 16 February 2013 as against the due date of filing viz. 30 September 2012. As such, the income of the assessee should have been determined at nil and the business loss of ₹ 5.47 crore should not have been allowed to be carried forward. However, during scrutiny assessment income was determined at nil and loss of ₹ 5.47 crore was allowed to be carried forward. The mistake resulted in incorrect allowance of carry forward of

business loss of ₹ 5.47 crore with consequent potential tax effect of ₹ 1.69 crore. *The ITD did not accept the audit observation stating that the assessee has already filed online audit report for the AY 2012-13 on 15 September 2012 which was well within time as prescribed in the law.* The ITD's reply is not acceptable as it is clearly specified in section 139(3) of the Act that if the assessee has business losses to be carried forward, the return of income is required to be filed within the due date as prescribed under section 139(1) of the Act. Further, as per section 80 of Income Tax Act, if the return is not filed in accordance with the provision under section 139(1), the loss under the provisions of section 72, 73, 74 and 74A shall not be allowed to be carried forward.

4.4 Income escaping assessments due to omissions

4.4.1 The Act provides that the total income of a person for any previous year shall include all incomes from whatever source derived, actually received or accrued or deemed to be received or accrued. We observed that the AOs did not assess/under assess total income that was required to be offered to tax. There were also omissions in implementing TDS/TCS provisions which led to escapement of tax. Table 4.3 shows the sub-categories which have resulted in income escaping assessments.

Table 4.3: Sub-categories of mistakes under income escaping assessments due to omissions (**₹ in crore**)

Sub-categories	Nos.	TE	States
a. Incorrect classification and computation of capital gains	03	2.14	Gujarat, Haryana and Rajasthan
b. Incorrect computation of income	05	13.58	Gujarat, Maharashtra and West Bengal
c. Omissions in implementing provisions of TDS/TCS	03	2.43	Bihar and Jharkhand
d. Non-levy/short levy of Wealth Tax	06	0.46	Karnataka and West Bengal
Total	**17**	**18.61**	

4.4.2 Incorrect classification and computation of Capital Gains

We give below two such illustrative cases:

Section 10(37) of the Act provides that any income chargeable under the head "Capital gains" arising from the transfer of agricultural land is exempt from tax in the case of an assessee, being an individual or a Hindu Undivided family, if the agricultural land was used by the assessee for agricultural purposes during the period of two years immediately prior to the date of transfer.

4.4.2.1 In Gujarat, Pr. CIT-Central, Baroda Charge, assessment of an individual **Bharat D. Patel** for AY 2011-12 was completed under section 143(3) read with section 153A at returned income of ₹ 4.01 lakh in February 2014. The assessee had claimed exemption of ₹ 3.73 crore under section 10(37) for AY 2011-12 on account of profit on sale of land. The land was purchased by the assessee in November 2009 and sold in February 2011, hence the condition of eligibility for exemption, that use of land by the assessee for agricultural purposes during the two years immediately prior to the date of transfer, was not satisfied. Thus, the exemption so claimed was irregular and was required to be disallowed. The omission had resulted into underassessment of short term capital gains of ₹ 3.73 crore with consequent short levy of tax of ₹ 1.55 crore including interest. *The ITD rectified the mistake under section 143(3) read with section 263 (December 2016).*

Section 54B of the Income Tax Act, 1961, provides that where the capital gain arises from the transfer of agriculture land, if the assessee purchases any other agriculture land within a period of two years after the date of transfer of such land, the amount of capital gain so arising shall not be charged to tax subject to certain conditions.

4.4.2.2 In Rajasthan, CIT-II Jaipur charge, the scrutiny assessment of an individual **Rahul Kapur** for AY 2012-13 was completed at returned income of ₹ 88.12 lakh in March 2015. The assessee had an agriculture land which was converted for residential-purpose in October 2005 by Jaipur Development Authority. The said land was sold to M/s Mangalam Build Developers Pvt. Ltd., Jaipur, at a sale consideration of ₹ 1.53 crore in May 2011. The assessee had claimed and was allowed exemption of ₹ 1.40 crore under section 54B for purchase of another agriculture land of ₹ 1.41 crore. As the sold land was already converted into a residential-purpose land from being an agriculture land, the exemption so allowed was irregular and tax on capital gain should have been charged. The omission had resulted in under computation of capital gain by like amount involving tax of ₹ 41.06 lakh including interest. *The ITD accepted (April 2017) the audit observation and initiated the remedial action by issuing notice under section 143(2).*

4.4.3 Incorrect computation of income

We give below two such illustrative cases:

The Act provides that AO is required to make a correct assessment of the total income or loss of the assessee and determine correct amount of tax or refund, as the case may be.

4.4.3.1 In Maharashtra, Pr. CIT 3 Pune charge, AO completed the assessment of an association of persons (co-operative society) **Shriram Jawahar Shetkari Sahakari Sakhar Udyog** for AY 2011-12 after scrutiny in January 2014 determining income at 'nil' after allowing set off of brought forward losses. The assessee had made payments on the purchase of sugarcane during AYs 2009-10 to 2010-11 against Fair Remunerative Price (FRP) which entailed excess payment of ₹ 9.70 crore as shown in Table 4.4 below:

Table 4.4: Details of excess payment of sugare cane

AY	Weight of sugarcane (in Metric ton)	Rate of sugarcane per metric ton	FRP per metric ton	Excess sugarcane price per metric ton	Amount paid in excess (₹ in crore)
2009-10	52,027.900	₹ 2,251	₹ 1,558.70	₹ 692.30	3.60
2009-10	17,766.697	₹ 2,151	₹ 1,558.70	₹ 592.30	1.05
2010-11	2,17,427.797	₹ 1,900	₹ 1,668.00	₹ 232.00	5.05
		Total			**9.70**

The excess payment of sugar cane price of ₹ 9.70 crore had resulted in underassessment of income to that extent involving short levy of tax of ₹ 3.35 crore including interest. *The Ministry accepted the audit observation and rectified the mistake under section 143(3) read with section 263 (December 2016).*

As per section 2(22) (e) of the Income Tax Act, 1961, a loan by a company, in which the public are not substantially interested, to a shareholder beneficially holding more than 10 per cent of the voting power of the company, or to a concern in which he is substantially interested, is deemed to be a dividend paid by the company, to the extent that the company possesses accumulated profits. Such dividend is not subject to dividend distribution tax under section 115-O of the Act, and is a taxable income.

4.4.3.2 In West Bengal, Pr. CIT Central-2, Kolkata charge, the assessment of an individual, **Kanika Maiti**, for AY 2012-13 was completed after scrutiny in March 2014 at income of ₹ 6 crore. The assessee had received unsecured loan of ₹ 29.95 crore from a company, M/s I-Core E-Services Ltd., during the previous year 2011-12. It was found that the assessee was holding 27.36 *per cent* of shares of the said company. The company was a closely held company and had accumulated profit of ₹ 2.97 crore at the beginning of the year. The company was a retailer as per the Tax Audit Report and was not in the business of lending. Thus, the loan accepted by the assessee from the said closely held company should have been treated as deemed dividend to the extent of accumulated profit of the company at the beginning of the year.

Therefore, the amount of ₹ 2.97 crore was required to be taxed as income from other sources in the hands of the assessee. The omission had resulted in underassessment of income by ₹ 2.97 crore involving tax effect of ₹ 1.14 crore including interest. *The ITD rectified the mistake under section 144/263/ 154/143(3) (July 2016).*

4.4.4 Omissions in implementing provisions of TDS/TCS

We give below two such illustrative cases:

Section 40(a)(ia) provides that deduction of expenditure towards payments where TDS has not been deducted or after deduction, has not been paid on or before due date, shall not be allowed.

4.4.4.1 In Bihar, Pr. CIT-2 Patna charge, the scrutiny assessment of a firm, **M/s Nandlal & Company**, Patna, for the AY 2012-13 was completed in February 2015 determining income of ₹ 1.02 crore. The payment of ₹ 2.69 crore towards 'contract works' was allowed on which tax of ₹ 4.20 lakhs was deducted but the same was not deposited within the due date of filing return of income for the relevant assessment year. As tax had not been deposited on or before the due date of filing of return, the expenditure of ₹ 2.69 crore was required to be disallowed and added back to the taxable income. The omission had resulted in underassessment of income of ₹ 2.69 crore with consequent short levy of tax of ₹ 1.19 crore including interest. *Reply from the ITD was awaited (September 2017).*

4.4.4.2 In Jharkhand, CIT (Central), Patna charge, the assessment of **Sachidanand Prasad** was completed after scrutiny in March 2014 for the AY 2012-13 at ₹ 11.84 lakh. The assessee had claimed and was allowed ₹ 2.22 crore on account of payment made to 15 transporters during the financial year 2011-12, each individual payment being more than ₹ 0.75 lakh, on which no tax had been deducted at source. As tax had not been deducted at source, the sum of ₹ 2.22 crore was required to be disallowed and added back to taxable income. The mistake had resulted in underassessment of income by ₹ 2.22 crore and short levy of tax of ₹ 84.90 lakh including interest. *The ITD accepted the audit observation and rectified the mistake under section 143(3) read with section 263 (September 2016).*

4.4.5 Non-levy/short levy of Wealth Tax

Six cases of Wealth Tax involving tax effect of ₹ 0.46 crore were reported to the Ministry during April 2017 to July 2017. We found that AO did not comply with CBDT's instructions[85] in these cases in Karnataka and West Bengal.

We give below two such illustrative cases:

As per section 14 of the Wealth Tax Act, 1957, every person having net wealth for which he is assessable on the valuation date shall furnish a return of his net wealth on or before the due date as prescribed in the Act.

4.4.5.1 In Karnataka, DCIT, Central Circle-2(1), Bangalore charge, the assessment of an individual, **K. Nagesh Reddy,** for the AYs 2009-10 to 2013-14 was completed under section 143(3) read with section 153A in March 2015. Audit scrutiny revealed that the assessee had a net taxable wealth of ₹ 2.13 crore, ₹ 1.61 crore, ₹ 3.36 crore, ₹ 4.57 crore and ₹ 4.03 crore for AYs 2009-10 to 2013-14 respectively. However, neither had the assessee filed the return nor had the ITD initiated any wealth tax assessment proceedings. The omission had resulted in wealth of ₹ 15.70 crore escaping assessment with a consequential tax effect of ₹ 24.80 lakh including interest under section 17B of the Act. *The Ministry accepted the audit observation and rectified the mistake under section 16(5) read with section 17(1) of the Wealth Tax Act (September 2016).*

Section 3 of Wealth Tax Act, 1957 provides that the Wealth-Tax shall be charged for every assessment year in respect of the net wealth on the corresponding valuation date. Further as per section 2(ea) of the Wealth Tax Act, the assets in relation to the assessment year means any building, motor cars, jewellery, yachts, urban land and cash in hand in excess of rupees fifty thousand.

4.4.5.2 In West Bengal, Pr. CIT Central-5, Kolkata charge, the income tax assessment of an individual, **Sarif Hossain**, for AY 2013-14 was completed after scrutiny in March 2016 at an income of ₹ 5.13 crore. Audit observed from the balance sheet of the relevant assessment year that the assessee was in possession of assets (building, land and cash in hand) worth ₹ 10.04 crore which attracted the provision of Wealth Tax Act making the assesse liable to pay wealth tax. But neither had the assesse filed any return of wealth, nor had the ITD initiated any action for the same. The omission had resulted in non-assessment of wealth of ₹ 10.04 crore involving non-levy of wealth tax of ₹ 9.74 lakh. *The Ministry accepted the audit observation and initiated the remedial action by issuing notice under section 17 of the Wealth Tax Act (April 2017).*

85 CBDT's instructions issued to the AOs in November 1973, April 1979 and September 1984.

4.5 Over Charge of Tax/Interest

4.5.1 We noticed over assessment of income in 16 cases involving overcharge of tax/interest of ₹ 21.26 crore in Andhra Pradesh, Delhi, Madhya Pradesh, Tamil Nadu and Uttar Pradesh. We give below two such illustrative cases.

4.5.1.1 In Delhi, CIT (Intl. Taxn.)-2 Charge, the assessment of individual, **Karamjit S. Jaiswal,** Legal Heir Late Sh. Ladli Pershad Jaiswal for the assessment years 2006-07 and 2007-08 was completed[86] in November 2014 at income of ₹ 13.77 crore and ₹ 2.06 crore respectively. Audit noticed that in both the assessment years, tax was computed by applying incorrect rates of tax and surcharge. This resulted in overcharge of tax of ₹ 2.28 crore including interest. *The ITD rectified the mistake under section 154 (September 2016).*

4.5.1.2 In Madhya Pradesh, Pr. CIT(Central) Bhopal charge, the scrutiny assessment of an Individual, **Nitin Agrawal,** for AY 2014-15 was completed in March 2016 at income of ₹ 8.21 crore. Audit examination revealed that though the assessee had paid Self Assessment Tax (SAT) of ₹ 1.61 crore, AO allowed credit of SAT of ₹ 10 lakh only while computing the tax liability of assessee. The mistake had resulted in raising of excess demand of tax of ₹ 1.80 crore including interest. *The Ministry accepted the audit observation and rectified the mistake under section 154 (June 2016).*

86 Under section 147/143(3)