

**NINETY-SEVENTH REPORT**  
**PUBLIC ACCOUNTS COMMITTEE**  
**(1994-95)**

**(TENTH LOK SABHA)**

**SYSTEM APPRAISAL—FUNCTIONING**  
**OF**  
**INVESTIGATION CIRCLES**

**MINISTRY OF FINANCE**  
**(DEPARTMENT OF REVENUE)**



*Presented to Lok Sabha on 28.4.1995*  
*Laid in Rajya Sabha on 27.4.1995*

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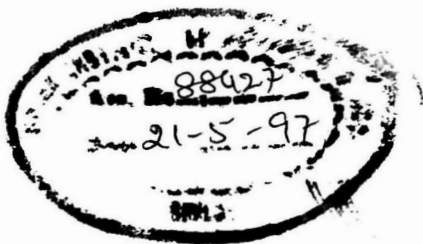


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## CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (1994-95) .....	(iii)
INTRODUCTION .....	(v)
REPORT .....	1
APPENDIX I     Audit Paragraph 2.1 of the Report of the Comptroller and Auditor General for the year ended 31 March, 1993 (No. 5 of 1994), Union Government (Revenue Receipts— Direct Taxes) .....	32
APPENDIX II     Conclusions and Recommendations .....	54

### PART II\*

Minutes of the sittings of Public Accounts  
Committee held on 29.11.1994 and 21.4.1995.

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\* Not printed (one cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).





**COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE  
(1994-95)**

**Shri Bhagwan Shankar Rawat— *Chairman***

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**SECRETARIAT**

- |                       |                          |
|-----------------------|--------------------------|
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| 2. Shri G.C. Malhotra | — <i>Joint Secretary</i> |
| 3. Smt. P.K. Sandhu   | — <i>Director</i>        |
| 4. Shri P. Sreedharan | — <i>Under Secretary</i> |



## INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Ninety-Seventh Report on Paragraph 2.1 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1993, No. 5 of 1994, Union Government (Revenue Receipts—Direct Taxes) relating to System appraisal—Functioning of Investigation Circles.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1993, No. 5 of 1994, Union Government (Revenue Receipts—Direct Taxes) was laid on the Table of the House on 10 May, 1994.

3. In this Report, the Committee have noted with concern that in the five years from 1988-89 to 1992-93, out of a total of 10,348 search cases where final assessments have been completed in 3712 cases, i.e. 35.87% no concealed income was detected. Considering the extraordinary and exceptional power granted to the Department in conducting search and seizure operations, the Committee have felt that there was an imperative need for a thorough groundwork before undertaking search and seizure operations in order to enhance the success rate.

4. The Committee have expressed their deep concern that the prosecution proceedings initiated in the number of cases assigned to Investigation Circles during the period 1988-89 to 1992-93 showed a declining trend. The Committee have recommended that the Ministry of Finance should look into the reasons for the sharp decline in the prosecutions launched in search cases and take necessary steps in order to ensure that the prosecution provisions under the Direct Tax and other related Laws are effectively applied to create an appropriate impact and to subserve as a deterrent against tax evasion. Another disquieting feature observed by the Committee was that the rate of convictions against the prosecutions launched in respect of search assessments was dismally low. Of the 2729 prosecutions launched in respect of 49,648 search assessments completed during 1990-93, the number of convictions was just 1664. The Committee are, therefore, convinced that those disturbing trends have to be carefully analysed at the Board/Ministry level and necessary corrective action taken with a view to ensuring that the offences committed are sternly and effectively dealt with. In this connection, they have emphasised the need for improving the quality of legal assistance and have desired, that the Ministry of Finance in consultation with the Ministry of Law should seriously address to this issue and attempt to remove the deficiencies arising therefrom.

5. The Committee have further expressed their deep concern that the instructions issued by the Ministry of Finance for completion of regular assessments u/s 143(3) within a period of two years were being followed more in breach by the Assessing Officers. The Audit test check revealed that in 69 cases in seven Charges, regular assessments were not completed, in 25 cases in two Charges even assessment proceedings did not commence within the prescribed time, and in 364 cases in 10 Charges, delay in completion of regular assessments ranged from 17 days to Five years beyond the stipulated period. The Committee have in this connection recommended that the Central Board of Direct Taxes should not rest merely with issuing executive instructions in the course of administration of Direct Taxes Laws, but also ensure that they are faithfully implemented by all concerned.

6. Another important area where the Committee found inordinate delay occurring related to the reopening of assessments after search and seizure operations. Under the Income Tax Act, 1961, in cases where incriminating material or assets are seized, the departmental authorities are required to reopen the relevant assessments. Executive instructions require that the notices to the assesseees for re-opening completed assessments should be issued within six months from the date of search. The Committee have noted with unhappiness that in 161 assessments in nine Charges, there were delays ranging from one month to 61 months in issue of notice for re-opening the assessments. While deprecating the lack of seriousness of the Ministry in the matter, the Committee have desired that the Board should ensure that the assessing officers follow the Board's instructions.

7. One of the objectives for setting up the Investigation Circles was to improve the quality of search assessments and ensure quick follow-up action. The Committee have noted with astonishment that in 42 assessments, mistakes/omissions were noticed which resulted in non-assessment/underassessment of income/wealth of Rs. 3.34 crores with consequential non/short levy of tax of Rs. 1.05 crores. Expressing their dissatisfaction over the matter, the Committee have recommended that all the cases mentioned above should be thoroughly enquired, with a view to taking corrective action and also fixing responsibility.

8. The Public Accounts Committee have time and again emphasised the need to tone up Direct Taxes administration to effectively meet the menace of black money and evasion of taxes. The Committee have in this Report underlined the fact that search and seizure are exceptional powers conferred in exceptional circumstances for the purpose and, therefore, it is highly imperative that they should be exercised efficiently in unearthing concealed income and wealth and also checking evasion of taxes. However, the deficiencies and irregularities discussed in this Report clearly indicate that there is a need for a critical review of the existing system of search and seizure in order to make it more effective. The Committee have desired that the shortcomings/deficiencies-irregularities discussed in this

Report should be dispassionately examined in all their ramifications and corrective action in the working/procedures or otherwise taken with a view to streamlining the search and seizure operations and the Investigation Circles and thereby achieving better results in unearthing black money and combating evasion of taxes.

9. The Committee examined Audit paragraph 2.1 at their sitting held on 29.11.1994. The Committee considered and finalised the report at their sitting held on 21.4.1995. Minutes of the sitting form Part-II\* of the Report.

10. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the report and have also been reproduced in a consolidated form in Appendix-II to the Report.

11. The Committee would like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) for the co-operation extended by them in giving information to the Committee.

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

NEW DELHI;  
24 April, 1995

BHAGWAN SHANKAR RAWAT,  
*Chairman,*  
*Public Accounts Committee.*

4 Vaisakha, 1917 (Saka)

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## REPORT

### FUNCTIONING OF INVESTIGATION CIRCLES

#### *Audit Paragraph*

This Report is based on paragraph 2.1 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1993 (No. 5 of 1994), Union Government (Revenue Receipts—Direct Taxes), which is reproduced as Appendix I.

#### *Relevance of Searches and Seizures*

2. The need to curb economic offences and combat tax evasion have engaged constant attention of the country. Government had from time to time introduced various measures including *inter-alia* conferring of powers of survey, search and seizure on the Income Tax authorities etc. with this end in view.

3. This efficacy of the measures to unearth black money and check evasion of taxes had been of immense concern to the Public Accounts Committee. The Committee had not favoured measures such as Voluntary Disclosure Schemes. Schemes like Voluntary Disclosure etc. were also not favoured by Wanchoo Committee (December 1971), National Institute of Public Finance and Policy etc. (March 1985). The Public Accounts Committee in their 17th Report (1967-68) had also concluded that these schemes (1951 and 1965 schemes) had not achieved their objectives and recommended suitable drastic measures to tone up the Direct Taxes Administration. The Public Accounts Committee in their 123rd Report (1978-79) had again expressed their dismay that the problem of black money had not been tackled effectively and recommended that the Government should take suitable drastic measures to tone up the direct taxes administration.

4. It is in this background, that the relevance of such extraordinary powers, like search and seizure, can be appreciated.

#### *Organisation and functions*

5. Search and seizure operations are conducted by the Investigation Wing of the Income Tax department. This wing is entrusted with the responsibility of planning executing search operations throughout the country. For this purpose, there are ten regional Directorates of Investigation, whose work is monitored by five Directors General of Income Tax (Investigation). The assessment work is, however, assigned to the Investigation circles under the administrative control of the respective Commissioners of Income Tax. After the reorganisation of the Income Tax Department in April 1988, the work of assessment of all search and seizure

cases was transferred to Investigation Circles headed by Assistant Commissioners, except those cases which are assigned to Central Circles or to Deputy Commissioners of Income Tax (Assessment).

6. The total number of officers deployed for search and seizure assessments and the total workload assigned to them as per the information made available to the Committee by the Ministry of Finance (Department of Revenue) is as under:

Financial Year	Total workload of search & seizure cases	No. of Officers deployed
1989-90	40504	189
1990-91	35014	248
1991-92	31284	257
1992-93	26545	249

#### *Legal Provisions*

7. The powers of search and seizure under the Income Tax Act, 1961 are vested in various Income Tax authorities. Sections 132 and 132A of the Act read with Rules 112, 112A, 112B, 112C and 112D of the Income Tax Rules prescribe the procedure for authorising and conducting a search, making seizures and dealing with the seized assets. Similar powers under the Wealth Tax Act, 1957, are conferred by section 37A and 37B read with Rules 10 and 10A of the Wealth Tax Rules.

#### *Procedure*

8. The work of the Assessing Officer begins with the receipt of the Appraisal Report from Investigation Wing, alongwith the seized material. In all search and seizure operations undertaken by the Investigation Wing, an Appraisal Report is required to be prepared, containing, *inter-alia*, details of seizure of assets, surrender made under section 132(4) of the Income Tax Act, outcome of the search, and it indicates the prosecution and concealment potential of the case, based on preliminary scrutiny of the seized documents. This is sent to the Assessing Officer within one month (45 days from July 1991) of the date of search. The seized material is also to be handed over to the Assessing Officer within the specified time limit.

9. The Assessing Officer first passes an order under Section 132(5) of the Act in cases where any money, bullion, jewellery or other valuables are seized, estimating undisclosed income/wealth in a summary manner, after affording an opportunity to the person concerned for being heard, and calculates the amount of tax, determines the amount of interest payable and penalty imposable on the person, with the previous approval of the Deputy Commissioner of Income Tax. The assessing officer can retain in his custody such assets as would be sufficient to satisfy the aggregate amount of taxes, interest and penalties stated in the order, and

is required to release the remaining assets, if any. After passing orders under Section 132(5), action for completion of regular assessment is taken up.

*Performance during 1988-89 to 1992-93*

10. The Audit review seeks to evaluate the post-search performance of the department, particularly the working of the Investigation circles, based on the findings from test check of the records of 7,960 cases in 165 Investigation circles, functioning in 75 Commissioners' Charges in various parts of the country during the period 1988-89 to 1992-93.

11. The following table appearing in the Audit para indicated the various facets of "search" and "post search" functioning of the departmental machinery for the years 1988-89 to 1992-93:—

Year	Opening Balance of search cases	Searches during the year	Total	Numbers of cases where interim orders were passed during the year (percentage)	Number of cases pending at the end of each year	Income determined in the orders passed	Tax involved
(in crores of rupees)							
1988-89	1,390	3,321	4,711	2,927 (62.13)	1,784 (37.87)	244.92	245.52
1989-90	1,786	1,900	3,686	2,717 (73.71)	969 (26.29)	246.71	225.31
1990-91	932	2,195	3,127	2,243 (71.73)	884 (28.27)	275.80	257.28
1991-92	884	1,356	2,240	1,455 (64.95)	785 (35.05)	329.64	238.96
1992-93*	785	1,960	2,745	2,016 (73.44)	729 (26.56)	590.68	564.87
Total:		10,732	16,509	11,358	5,151	1,687.75	1,531.94

\*Provisional

*Delays in infirmities in passing orders*

12. The Committee desired to know the reasons for the large pendency of assessment though interim orders were required to be passed within 120 days under Section 132(5) of the Income Tax the Act. The Ministry of Finance (Department of Revenue) in a note stated that the total searches requiring interim orders were only 12,122 as against 16509 mentioned in the Table, out of which 11,358 order under Section 132(5) had already been passed. Explaining the reasons for the delay, the Ministry stated that in some cases it was possible that the search of a group or an individual commenced at an earlier date but the actual seizure was effected at a later



date when the warrant is executed. They also stated that it was also likely that the balance 764 orders related to the last quarter. They, however, maintained that the orders have to be passed under Section 132(5) with 120 days.

13. In 13 interim orders passed, mistakes and infirmities, like under estimation of income, omission to consider concealed incomes, non-imposition of penalty, interest etc. were noticed. The Ministry have replied to 7 cases on the basis of the reports received from the concerned charges stating that there was a technical delay in one case in issuing notice under Rule 112A. While it has been decided not to pursue for out of the above cases, in respect of 3, it has been brought to the notice of the Ministry by Audit that there replies were not relevant to the issued under consideration. In respect of these cases the Ministry have started that as the issue had been discussed during oral evidence further reply was not necessary. The Ministry have not replied to Audit in 6 of 13 cases.

14. When asked about the number of cases pending passing of orders under Section 132(5) chargewise at the end of each year during 1988-89 to 1992-93, the Ministry stated that no record was maintained regarding the chargewise pendency of such orders.

15. On being asked about the consequences of the failure to make orders within the stipulated time, the Ministry in a note stated that in such cases, the seized assets cannot be retained by the Assessing Officer and will have to be released to the person from whom the seizure is effected.

16. Asked about the existing legal and administrative checks and the measures that the Ministry propose to take to avoid such eventualities which could be detrimental to the interest of revenue, the Ministry of Finance (Department of Revenue) in a post-evidence note stated that the orders under Section 132(5) were passed after approval of Deputy Commissioner of Income-tax of the Range and hence the existing legal and administrative checks were sufficient to ensure that there were no delays in passing of the orders.

#### *Non-detection of concealed income*

17. The Audit paragraph revealed that in the five years from 1988-89 to 1992-93, out of a total of 10,348 search cases where final assessments were completed, in 3712 cases, i.e. 35.87 per cent, no concealed income was detected. The Committee pointed out that the search and seizure operation was rather an exceptional than routine operation which was conducted after carefully considering information relating to likely concealment of income and also the extent thereof. In view of the above and also the fact that 35 per cent searches conducted resulted in non-detection of concealed income, the Committee asked whether the Ministry of Finance did not agree that there was need for more thorough groundwork before undertaking search and seizure operations. The Ministry of Finance (Department of Revenue) in a note *inter alia* stated that the success rate of

65 per cent can by no means be considered a matter for anxiety and described the same as "fairly high".

*Declining trend in prosecutions launched*

18. The Income Tax Act provides for prosecution for certain defaults such as wilful attempt to evade tax, false statement in verification etc. The Audit paragraph revealed that the prosecution proceedings initiated in the number of cases assigned to investigation circles during 1988-89 to 1992-93 showed a declining trend. The information gathered by the Committee in this regard revealed the following:

Year	Number of search assessments completed	Prosecutions launched	Convictions obtained
1990-91	19498	1629	1392
1991-92	16375	775	154
1992-93	13775	325	118

19. The Committee desired to know the reasons for the sharp decline in the cases where prosecution proceedings were launched during the five years between 1988-89 and 1992-93, the Ministry of Finance (Department of Revenue) in a note enumerated the following reasons:—

- “(i) The immunity from levy of penalties granted by the disclosure provisions in the form of Explanation 5 to Section 271(1) (c) read with Section 132(4) of the Income-tax Act, 1962, also grants automatic immunity from prosecution unless some other grounds of concealment, making of false statement etc. are found.
- (ii) There has been a conscious decision to launch prosecutions only in important cases in view of the mounting pendency of prosecution cases in the court and the inability of the judicial administration to speed up the disposal and concentrate on relatively important cases in filing prosecution complaints, Revised guidelines for prosecution under Direct Tax Laws were issued on 7.2.1991. Under these guidelines stress is laid on offences involving tax frauds, fabrication of evidence and major defaults relating to various other offences. It has been decided not to initiate prosecution proceedings in respect of smaller cases of defaults.
- (iii) Launching of prosecution depends on various factors such as establishment of concealment, sustaining of the addition by appellate authorities, levy of penalty u/s 271(1) (c) and fulfilling of criteria laid down in various Instructions of CBDT from time to time. For the period under review, i.e. Assessment Year 1988-89 to 1991-92 the relevant assessment proceedings may be in various stages of completion.”

20. Referring to the reason cited by the Ministry at (iii) above, the Committee asked whether it was necessary to await completion of assessment proceedings for launching of prosecution. In a note furnished after evidence, the Ministry stated that it would be prudent to wait atleast till the first appeal was decided and when penalty was initiated till the levy of penalty.

21. The Committee further enquired about the number of cases pending where prosecutions were yet to be launched and the steps initiated to expedite clearance of these cases, the Ministry of Finance (Department of Revenue), in a note stated that since it was not possible to anticipate launching of prosecution in pending assessment proceedings, no statistics with regard to the pendency of cases where prosecutions are to be launched was maintained.

22. Offering his comments on the manner in which prosecutions were presently being launched by the Income-tax administration the Secretary, Revenue stated in evidence:—

“Even under the existing procedure of law, the area of prosecution is one of the weakest links in the income tax administration. It is probably because we are not able to enforce the penal provisions of the law. This may be one of the reasons why people think that they can get away by evading taxes.”

23. During the course of examination, the Committee were informed that the latest position on prosecution complaints launched and disposed in respect of various offences under Direct Tax Laws and related IPC sections was as follows:—

Financial Year	Complaints	Conviction	Acquittal	Compounding	Total
1988-89	7428	130	207	444	781
1989-90	8929	181	234	223	638
1990-91	3786	174	1698	437	2309
1991-92	2448	165	169	153	487
1992-93	1491	102	808	391	1301
1993-94	941	57	570	507	1134

24. Considering the fact that acquittals were high in the years 1990-91, 1992-93 & 1993-94, the Committee asked whether any analysis had been made to know the reasons for the same and the steps taken in this regard. The Ministry of Finance (Department of Revenue) in a note after evidence *inter alia* stated that the figures included statistics of acquittal on technical offence cases and that they had not studied the same. They also added that

acquittals were a result of judicial pronouncements which cannot be interfered with.

25. The Committee wanted to know about the monitoring done by the Ministry to see that conviction goes up in the prosecutions cases launched, so that the deterrent effect was visible. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated that no analysis had been made of the rate of conviction. But important cases of prosecution were monitored by ensuring proper representation and by hiring special counsels in some cases. According to the Ministry, appointment of counsels were handled by Ministry of Law in places where there was Branch Secretariat and at other places it was bound by the fees fixed by Ministry of Law.

26. When asked about the nature of legal assistance and steps taken to improve the quality of legal assistance, the Chairman CBDT, stated in evidence:—

“As far as the legal counsel is concerned, we have to tie up with the Law Ministry. The problem is to get good and competent counsel within the scope of the financial terms that are offered by the Ministry of Law. We have a more significant problem in Delhi and Bombay where it is exclusively handled by the Ministry of Law. We have approached the Ministry of Law and we hope to arrive at a solution.”

27. The Committee desired to know whether any measures were considered to overcome the large pendency of complaints, the Ministry of Finance, stated in a post-evidence note that the problem was that there were no separate courts to try economic offences, let alone Income-tax offences in many States. According to the Ministry where the State had created benches for economic offences, they were too few to take care of all economic offences. “The Department is helpless in this matter”, stated the Ministry.

*Delay in Completion of regular assessments*

28. For completion of regular assessments in search and seizure cases, the Department had proposed Action Plan for each financial year, setting out the “Key Result Area” and targets. In the Action Plan for the year 1992-93, an annual target of disposal of a minimum of 50 core assessments was fixed and included as a Key Result Area. Similarly, targets were fixed for the years 1988-89 to 1991-92. On the basis of the statistics furnished by the various charges in the country (except Rajasthan, Gujarat, Delhi and Karnataka) Audit has pointed out that the shortfall of completion of regular assessments ranged between 1102 to 3113 assessments during the years 1988-89 to 1992-93. On the basis of the statistics furnished by the Department, Audit had pointed out that in 14 charges completion of regular assessments of search and seizure cases was not receiving due attention in the Investigation circles, created with upgraded charges.

29. The Committee wanted to know the procedure followed for the completion of regular assessment of search and seizure cases. Explaining the same, the Ministry of Finance (Department of Revenue) in a note stated that the regular assessment proceedings under section 143(3) are taken up by the Assessing Officer and are completed after providing the assessee due opportunities of being heard and taking into account the evidence produced by him in support of his claim. Detailed investigations are carried out, seized material sifted and the assessee is confronted with evidence of concealment collected. Full opportunity is given to the assessee to argue and rebut the presumptions of concealment and then the assessment orders finalized quantifying the taxable income, including concealed income, if any, established by the Assessing Officer. Every assessment under section 143(3) is to be completed within two years from the end of the assessment year in which the income was first assessable. In case of reopened assessments, the order u/s 147 is to be passed within two years from the end of the financial year in which the notice u/s 148 of the Income Tax Act was served on the assessee.

30. It has been pointed out by Audit that in 69 cases test checked in seven charges, regular assessments were not completed and in 25 cases in two charges even assessment proceedings did not commence within the two year period prescribed by executive instructions. In 364 cases, delay in completion of regular assessments ranged from 17 days to five years beyond the prescribed period of two years from the date of search in 10 charges. When enquired about the reasons for the delay in completion of these assessments, the Ministry in a note stated:

"The delay in completion of assessments, as observed by the audit, does not relate to the time frame for assessment/re-assessment prescribed in the statute but is with reference to the time-limit prescribed by Instruction No. 1886 issued on 18th July, 1991. The Revenue Audit has related this Instruction to the period 1988-89 to 1992-93 whereas the effect of Instruction No. 1886 will be known from Financial Year 1992-93 onwards. It may be mentioned that the said instruction was issued to expedite the search assessments and, by and large, the instruction has been adhered to".

31. In their note, the Ministry also stated that the targets prescribed per assessing officer had not only been achieved, but also exceeded.

32. In this connection the Secretary, Revenue stated in evidence:

"In recent time our Investigation Wing has been churning out large number of cases and the workload is piling up. So, we have taken a decision to control the number of cases so that we will be able to eliminate this backlog which has piled up."

33. He further stated:

"There is a steady fall in the searches carried out over a period of four years from 1988-89 to 1992-93. This is what we are aiming at.

In 1989, there was a big backlog. With the help of competent officers, we have been able to bring down the pendency. Our aim was to reduce searches and seizure assessment. In July 1991, a circular was issued in which we had mentioned laying down of clear cut time frame for each set of action to be taken. We were aware of the slippages and slowing down of the assessment process. We do find that there is a considerable improvement in the searches and seizures assessment."

34. The Committee pointed out that Audit's comment were based not only on Board's Instruction of July 1991, but also *vis-a-vis* specific annual targets laid down in Board's Action Plans for each of the financial year 1988-89 to 1992-93 wherein there was a shortfall in each year. It was also pointed out that even prior to July 1991, instructions had statedly been issued by the Board on 4 May 1995 (Instruction No. 1621) emphasising the need for expeditious completion of assessments in search and seizure cases. In spite of the concern expressed by the Board, the achievement as per norms laid down for assessing officer-wise, the overall pendency remained high. The Committee, therefore, desired to know the ways and means evolved for arresting the pendency of such assessments. The Ministry of Finance (Department of Revenue) in a note after evidence stated:

"The main problem is the lack of adequate manpower. The Board has been fixing very high and challenging target every year only to spur the officers to strive utmost. The very fact that the carry forward pending cases came down from 40,000 at the commencement of 1988-89 to less than 20,000 at the end of March, 1993, proves this assertion. The Ministry has not denied the fixing of high targets and the contents of Instruction No. 1621. But actual clearance in the field would depend on the complexity of the case, number of connected cases to be examined etc. So long as the officers achieve the target of 50 core cases that in itself is an achievement."

35. The Audit review also pointed out the following types of deficiencies in various charges:—

- (i) Non-achievement of the Action Plan stipulations that
  - (a) pending assessment to be carried forward to the next year should be less than those ending at the beginning of the year;
  - (b) after a search is carried out the relevant assessment should be completed within two years;
  - (c) Hundred percent disposal of cases relating to the year 1989-90 to 1991-92, which were more than two years old; and
- (ii) Non compliance of the Board's instructions of July 1991 stressing the need to expedite disposal of search and seizure cases, and

completion of search assessments within two years from the date of search.

36. The Committee desired to know whether the Ministry have initiated any action plans to overcome the various deficiencies pointed out by Audit as mentioned above during test check of records in various charges. The Ministry of Finance (Department of Revenue) in a note stated that in order to ensure better follow up action including investigation and assessment of search and seizure cases, instructions had been issued by CBDT on 18.7.1991.

*Delay in reopening of assessments after search and seizure operations*

37. Under the Income Tax Act, 1961, whenever a search is conducted in the premises of an assessee and incriminating assets are seized, the assessee is treated as one who had concealed income/wealth. Consequently, notices are issued for reopening completed assessments. Executive instructions require such notices to be issued within six months from the date of search. A test check by Audit in Tamil Nadu, Bihar, Karnataka, Assam, Delhi, Andhra Pradesh, Haryana and Orissa charges revealed that in 161 regular assessment cases, the delay in issue of such notices ranged between one month to 61 months leading to consequential delay in finalisation of the assessment proceedings. The Committee wanted to know the reasons for such delays. The Ministry of Finance (Department of Revenue) in a note stated:

"There has been no statutory delays in reopening of assessments. As per provisions of Section 149 of the Income Tax Act, 1961, a completed assessment could be reopened for reassessment;

- (i) within four years from the end of relevant Assessment Year; or
- (ii) beyond four years but within seven years of the relevant assessment year if the income believed to be escaping assessment exceeded Rs. 50,000; or
- (iii) beyond seven years but within 10 years of the relevant assessment year if the income escaping assessment exceeds Rs. 1,00,000.

The assessments in item (ii) and (iii) are reopened with the prior approval of Chief Commissioner/Commissioner of Income Tax.

Under Section 153, the Assessing Officer has been given time upto two years from the end of financial year in which notice under section 148, reopening the assessment, is issued to complete the reassessment.

These are the statutory limits which the Assessing Officer has to follow, failing which action would get barred by limitation of time. Hence, there is no delay on the part of Assessing Officers in complying with statutory requirements."

38. The Ministry in their note, however added:

"In order to expedite follow-up action and to ensure quick disposal of search and seizure cases, the CBDT issued Instruction No. 1886 dated July 18, 1991, requiring issue of notices under Section 148 wherever necessary within six months from the date of search. The Instruction was based on the CBDT's own appreciation of the need to take immediate remedial action in search cases. The delay referred to by the Revenue Audit pertains to the years 1988-89 to 1991-92 and is based on the time frame prescribed by this Instruction of July, 1991 effect of which would have been known only from the Financial Year 1992-93 onwards"

39. When asked about the steps taken to minimise mistakes in assessments, the Ministry in their note referred to the Instructions (of 18.7.1991) which according to the Ministry have reiterated the manner of monitoring search cases by Commissioners/Deputy Commissioners.

*Under-assessment of income and tax in regular assessments due to mistakes/omissions.*

40. One of the objectives for setting up the Investigation Circles was to improve the quality of search assessments and ensure quick follow up action. The Audit has pointed out that in 42 assessments, mistakes/omissions were noticed which resulted in non-assessment/under-assessment of income/wealth of Rs. 3.34 crores with consequent non/short levy of tax of Rs. 1.05 crores. The Committee enquired the reasons for mistakes/omissions resulting in under assessment of income and tax noticed in regular assessments and the amount of loss caused thereby in various charges during each of the year from 1988-89 to 1992-93. The Ministry of Finance in a note stated that the mistakes or omissions which has resulted in under assessment of income and under charge of tax noticed in the illustrative cases had occurred due to incorrect appreciation of facts available before the Assessing Officer or due to the failure to take consequential action in the case under assessment before the assessing officer or in connected cases. According to them, wherever such mistakes had been noticed, steps had been taken to rectify the mistakes or remove the omissions and recover the tax dues.

41. On being asked whether the Ministry had conducted any inquiry in this regard and fixed responsibility, the Ministry of Finance (Deptt. of Revenue) in a note stated:

"Wherever mistakes are noticed or brought to the attention of the Commissioner of Income-tax by the Audit, the C.I.T. satisfies himself about the bonafides of such mistakes, if necessary, by calling for the explanation of the Assessing Officer who committed the mistakes. Follow-up action, if and where necessary, is then taken by the Commissioners of Income-Tax. Similar procedure is being followed in the cases under consideration."



42. In this connection, the Secretary, Revenue stated in evidence:

"We admit that in a number of cases Audit has found faults with officers which were genuine. The Audit has helped us in finding out a number of cases of under assessment. We agree that just for the fear of Audit they need not over assess the cases, because they can very well explain to the Audit why they have taken a particular action. They can convince them that it was done not with any malafide intention."

*Variations between Appraisal Reports and Assessment Orders*

43. In their instructions issued in July 1991, the Central Board of Direct Taxes, had directed that the reasons for any variation between regular assessment order and Appraisal Reports as well as interim orders are required to be clearly recorded in regular assessment orders. During the course of audit it was noticed that in several cases there were substantial variation between income and tax determined in regular assessments and that worked out in Appraisal Reports and orders passed under section 132(5).

44. It has been pointed out by Audit that against an income of Rs. 13.54 crores determined initially in 15 cases, income of Rs. 93.02 lakhs only was determined in the regular assessments. Further, as against tax of Rs. 2.82 crores initially determined in 35 cases, the amount finally determined was only Rs. 42 lakhs. Similarly, the income shown in Appraisal Reports at Rs. 806.90 lakhs in 25 cases was finally assessed at Rs. 86.40 lakhs.

45. Drawing attention of the Ministry to the afore stated facts, the Committee desired to know whether the Ministry had reviewed/reassessed all the cases where huge loss of money has taken place due to large variations between concealed income/wealth as mentioned in appraisal reports and as assessed in orders passed under Section 132(5) and thereafter in regular assessments; and if so, the details of action taken in this regard, charge-wise, during the years 1988-89 to 1992-93. The Ministry of Finance (Deptt. of Revenue) in a note stated that the Appraisal Report prepared by the Assistant Director (Investigation) evaluates and indicates the lines of investigation. The order under section 132(5) by the Assessing Officer is also a summary order framed with the object of estimating the likely tax-liability of the person from whom seizure has been effected in order to retain or release the seized assets. The regular assessment order is, however, passed after detailed investigations and after giving due opportunity to the assessee. According to them, the variation between the concealed income/wealth mentioned in Appraisal Report and in orders U/s 132(5) and the final assessment order passed under Section 143(3) cannot be termed as "huge loss of money" and hence there was no need to review or reassess the cases where such variations occur.

46. In this connection, the Chairman, CBDT stated in evidence:

"The variation between these two papers is inevitable because these two papers are drawn for two different purposes".

47. The Committee drew attention of the Ministry to two specific cases mentioned in the Audit para 2.1.13(ii) & (iii) pointing out the extent of variations to the tune of Rs. 117 lakhs and Rs. 17.28 lakhs which did not stand to reason. When asked the reasons for such abnormal variations and the concrete measures proposed by the Ministry to minimise them, the Ministry of Finance in a note furnished after evidence *inter alia* stated:

"Such variations do not always reflect poorly either on the appraisal report or the final assessment order. It is not always true that final assessment results in downward variations *vis-a-vis* the appraisal reports. An in-house study revealed that at least in 15 big cases there was an upward revision at the time of regular assessment."

#### *Success rate in appellate proceedings*

48. One of the measures of ascertaining the quality of assessments in Investigation circles was the success rate in appellate proceedings. On the basis of the statistics furnished by 58 Commissioner's charges Audit has pointed out that out of tax of Rs. 467.47 crores determined in 2985 interim orders passed under section 132(5), tax of Rs. 125.95 crores (26.94 per cent) only, including interest and penalty was finally determined after appeal effect in regular assessments completed during the years 1988-89 to 1992-93. A test check in Madhya Pradesh and Tamil Nadu charges revealed that in 28 cases, out of assessed tax demand of Rs. 14.59 crores raised in interim orders and regular assessments, in appeal, tax demand of Rs. 6.15 crores (42.15 per cent), was deleted and tax demand of Rs. 6.90 crores (47.31 per cent) was set aside. Similarly, in Madhya Pradesh, Karnataka, Chandigarh and Haryana charges, against income of Rs. 448.41 lakhs estimated/assessed in 24 cases, amount of Rs. 125.76 lakhs was deleted and Rs. 256 lakhs was set aside in appeal.

49. The Committee wanted to know the reasons for the assessments not standing the test of appeals. The Ministry of Finance (Deptt. of Revenue) in a note stated:

"It is not correct to generalise that assessments in search cases do not stand the test of appeal. In a substantial number of cases, additions are sustained.

In individual cases, however, there may be some weakness in the assessment, arising mainly because of non-cooperation by the assessee during the assessment process. This might persuade the appellate authority to either set aside the assessment or on occasion, allow certain deductions in the additions made".

50. The Committee further enquired whether the appellate orders have been analysed to identify the infirmities resulting in failure of the

Department in defending their action, and the steps taken for improving the performance in appellate proceedings. The Ministry of Finance (Deptt. of Revenue) in a note stated:

"Appellate orders in individual cases are always analysed and examined in detail to determine whether the order has to be appealed against or accepted on merits. There can be several reasons for relief being granted by appellate authorities.

Supervisory officers have been instructed to closely monitor some of the more important assessments, especially search and seizure assessments, so that the degree of success in appellate proceedings is higher. Income-tax Department has consciously selected and appointed officers of proven ability to represent the department before the Income-tax Appellate Tribunal. For some of the more important cases, the department also appoints special counsels to represent the Department."

51. In this connection, Secretary, Revenue stated in evidence:

"Coming to the number of cases that have been acquitted or set aside, there has been a general complaint that income tax officers over assess the cases. This has been the general complaint and has been mentioned in Dr. Raja Chelliah's report also. He has mentioned that the number of assessment orders that have been set aside are quite substantial and this kind of assessment is not justified. Sir, I admit with a sense of trepidation that many of our officers do this kind of an assessment to a large extent, for fear of audit. And it have pointed out some mistakes and in a number of cases action had been initiated against the officers. So officers are on the side of caution, make a higher assessment and let the appellate authorities take the decision."

52. He further added:

"There is also pressure on the Government that in all these cases where orders have been set aside in appellate courts like High Court and Supreme Court, we should initiate action against the officers for causing inconvenience to the assessee. Various Committees which have gone into this issue also suggested that if there is a over assessment and if that assessment is set aside by the court then it should be taken as a deliberate attempt to harass the assessee. So, penal action should be taken against the officer concerned. Of course, we cannot act on this because the officers may become demoralised. But definitely the Audit has helped us in unearthing many cases where that has been evaded or avoided."

53. In reply to a question, the Committee were informed *inter alia* that the details regarding income and tax assessed during regular assessment relating to the interim orders and the outcome in appellate proceedings were not maintained separately. Asked whether it did not adversely affect

the department in obtaining the requisite feedback and initiating necessary corrective action, the Ministry of Finance (Department of Revenue) in a note furnished after evidence stated that it was not possible to keep all the particulars upto the date of disposal of final appeals segregated case wise and year wise. This was because some times the additions/demand become final after several years. According to the Ministry, the efficacy of a search has to necessarily be judge by seizure effected, surrenders u/s 132(4) and the addition made during the assessment by the AO.

54. The Committee further enquired as to how the cases of weak/ defective assessment orders continued to be reported, inspite of the priority accorded and attention supposedly bestowed on search cases and whether it did not reflect on the role of the supervisory authorities charged with monitoring and guidance of search assessments. The Ministry of Finance in a note stated:

"It would not be correct to generalise that all search and seizure assessments are either tardy or weak. A study by DOMS (Sample" size 164) revealed that out of Rs. 20 crores added, 47% of additions were sustained in appeal. Though search assessments constitute only 5% of total assessments, addition of over Rs. 1 lakh was made in over 30% cases of scrutiny."

*Non-levy and short-levy of penalty*

55. Under the Income Tax Act, 1961, penalty is leviable where, in the course of a search, the assessee is found to be owner of any unexplained or undisclosed money, bullion, jewellery or other valuable article or thing.

56. The Audit has pointed out that in nine cases under various Charges penalty leviable (Rs. 3024 lakhs) for concealment of income (Rs. 55.40 lakhs), was not levied/short-levied.

57. It was also been pointed out by Audit that in contravention of the instruction of the Central Board of Direct Taxes, in eight cases under two Charges penalty proceedings were dropped without approval of the competent authority, viz., the Deputy Commissioner of Income Tax.

58. The Committee wanted to know the reasons for non-levy/short-levy of penalty and the proceedings being dropped eventually. The Ministry of Finance (Deptt. of Revenue) in a note stated that there had been no short-levy/non-levy of penalty in six out of the nine cases pointed out by Audit. Proceedings were either pending, or penalties levied were dropped on merits which was a discretionary quasi-judicial function of the Assessing Officer.

59. Similarly, according to the Ministry penalty proceedings were dropped with the permission of DCIT in seven of the eight cases pointed out by the Audit.

60. When the Committee further enquired whether these cases/matter have been gone into and any preventive steps taken to check the

recurrence of such cases in future, the Ministry of Finance (Deptt. of Revenue) in a note stated that as the objections have been found not acceptable in most of these cases, no follow-up action was, therefore, necessary.

*Non-collection of revenue assessed*

61. The audit paragraph has revealed non-collection of tax/penalty/interest of Rs. 42.11 crores levied in regular assessments of search and seizure cases in West Bengal and Tamil Nadu charges during 1988-89 to 1992-93. The Committee enquired the reasons for the same and also the current status. The Ministry of Finance (Deptt. of Revenue) in a note stated that the arrear position in respect of search of Tamil Nadu charge referred to by the Audit had been examined and it was found that arrears could not be collected because search assessments had been subjected to appeal before various appellate authorities. Therefore, till the appeal was disposed off the demand was either kept in abeyance or instalments granted for payment of taxes. The Ministry added that in six cases there had been partial collection of arrear demand and efforts were still on to collect the balance amounts.

62. They further stated that arrears of Rs. 39 crores in respect of Search and seizure cases of West Bengal charge were mainly attributed to:

- (a) Demand raised in the assessment orders pertaining to search years being disputed and appealed against by the assessees; and
- (b) In some cases, time taken to carry out adjustment of the seized cash and other assets towards demand raised.

63. When the Committee asked to furnish a complete list of other States of the country showing, uncollected revenue after search & seizure operations, the Ministry of Finance (Deptt. of Revenue) in a note stated that no separate statistics of uncollected revenue, state-wise, is maintained in respect of search & seizure operations.

64. On being asked by the Committee regarding the steps taken to make adequate arrangements for timely collection of the assessed revenue in the country, the Ministry of Finance (Deptt. of Revenue) in note furnished to the Committee, stated:

"When an assessee is in default in making the payment of tax, the Tax Recovery Officer would proceed to recover the demand from such assessee by attachment and sale of the assessee's movable and immovable property, arrest of the assessee and detention in prison and appointing a receiver for the management of the assessee's movable and immovable properties.

The Assessing Officer also resorts to other modes of recovery like attachment of bank account/sundry debtors.

The work of the Assessing Officer is overseen by the higher officers, Deputy Commissioner, Commissioner and Chief Commissioner of income-Tax. For this purpose, the Assessing Officer submits dossier reports. The dossier reports, involving demand over Rs. 10 lakhs, are also forwarded to the Chief Commissioner of Income-tax. Dossiers, involving demand above Rs. 1 crore, are forwarded to the Director of Income-Tax (Recovery)."

65. In this context, the Secretary Revenue, stated in evidence:

"There is hardly and rapport established between the tax collecting machinery and the tax payer in India. World over the tax payer is considered a client. That kind of relationship has not been established in India."

*Monitoring of functioning of Investigation Circles*

66. With a view to ensuring adequate and proper follow-up action in search cases, the Board have issued instructions in July, 1991 requiring each Commissioner and Deputy Commissioner of Income Tax to monitor at least 5/10 of the search cases respectively, every year. Test check by audit in some charges revealed that monitoring was either not being done or was being done partly.

67. The Committee desired to know the checks exercised on the investigation circles to ensure effective monitoring action, the reasons for lack of regular effective monitoring by the concerned/authorised officers as per the instructions issued by CBDT and the concrete steps taken for effective monitoring, the Ministry of finance (Department of Revenue) in a note stated:

"Monitoring of assessments in important cases was first introduced in September 1988 through a Scheme of Control Mechanism. An in-house study had revealed slippages in the follow up action consequent to the completion of the search. Following this, Instruction No. 1886 was issued in July, 1991, laying down certain time frames for specific follow-up actions in search cases. Thereafter, the assessments follow the normal monitoring pattern laid down for all assessment proceedings.

Recently, in December 1993, it was decided to reinforce monitoring and control of assessments in search cases by transferring cases relating to searches conducted from 1.8.1993 in the metros of Bombay, Calcutta, Delhi, Madras and Ahmedabad to the Central Circles."

68. The Committee further asked about the role played by the supervisory officers in monitoring and guiding the search assessments, the Chairman, CBDT deposed in evidence:

"The instruction are that before an assessing officer completed a search assessment, he consults his superiors at every stage."

69. He further commented:

“Right through the enquiry, he consults his immediate superiors. Depending on the amount, the case is supposed to be monitored by the Deputy Commissioner, Commissioner, Chief Commissioner and the Board. We have a system to see that action is going on schedule. Some good results have come out of it. The overall view is not that bad.”

#### *Improper Maintenance of Records*

70. In order to facilitate control, quick transmission of relevant data to various supervisory authorities as well as for quicker follow-up action, atleast five registers are required to be maintained by Assessing Officers, dealing with search assessments.

71. According to the Audit review, these registers were either not maintained or wherever maintained, they were not in the prescribed proforma or were otherwise incomplete. The Audit test check revealed non-maintenance of registers of applications for relief against orders passed under Section 132(5), for granting extension of time for retention of seized records, for retention of books and documents under Section 132(8), of inspection of seized books and documents etc. Submission of these registers to the competent authorities, wherever required, was also not regularly done. Alongwith this the periodical reports, monthly as well as quarterly, which were prescribed and which were required to be submitted to the competent authorities, were not prepared at all and wherever prepared, these were not submitted to the concerned authorities in time.

72. In this context, the Committee wanted to know about the reasons for defective/improper maintenance of important basic registers and non-preparation/submission of report to higher authority in various charges and the action taken for streamlining the maintenance of basic records, the Ministry of finance (Department of Revenue) in a note stated:

“The instruction of the CBDT on maintenance of various registers are, by and large, adhered to in most charges. The non-maintenance or improper maintenance of registers and delayed submission of reports pointed out by the audit have been taken note of and the supervisory authorities like Commissioners and Deputy Commissioner of Income-tax are being asked to ensure that basic records are maintained properly.

The CBDT Instruction No. 1886 dated July 18, 1991 laid down various steps for effective monitoring of search and seizure cases. As part of this exercise, the CIT/DCIT will also ensure adequate maintenance of registers/reports.”



73. In this connection, the Secretary, Revenue, deposed in evidence:  
 "Under the administrative structure of today which has been built up over the last three to four decades we have been catering to a particular set of conditions maintaining manual registers. We have been grilled several times in this Committee as well as in the Standing Committee about the way in which some of the registers are being maintained. It is not physically possible to maintain proper registers for about 1.5 crores taxpayers. If the personnel are asked to do it they will only be writing registers entering all the papers that keep pouring in. But the fact of the matter is, people do not generally go through these papers in time due to the volume. Only the Audit comes and pick up some of the papers and can find faults. Excepting the scrutiny cases which they take up based on the guidelines issued by the Department they do not go through all the papers."

*Lack of coordination in Assessments*

74. The departmental 'Search & Seizure Manual 1989' as well as instructions require that in order to ensure that action is taken by all Assessing Officers on similar lines in respect of assessments of all assessees of a group, the Assessing Officer dealing with one assessee should keep in close touch with officers dealing with other assessees of the group. Similarly, as per the Manual as well as the departmental instructions, the investigating wing of the Department as well as the Assessing Officer should maintain coordination/liaison with other departments and enforcement agencies, like Revenue Intelligence, Enforcement Directorate, Customs and Central Excise Department, Sales Tax Department etc. Audit have, however, pointed out cases of violations of the manual and departmental instructions in West Bengal and Gujarat charges.

75. The Committee desired to know about the departmental machinery prescribed in this behalf and the steps taken to ensure effective co-ordination between various wings of the Department as also between other Departments/enforcement agencies, the Ministry of Finance (Department of Revenue) in a note stated:

"Co-ordination between various wings of the Department as well as with other Departments/agencies has always received considerable attention of the CBDT and has been duly reflected in various instructions issued from time to time, such as:

- (i) Instruction No. 794 dated 20.11.1974 regarding Co-ordination with sister Enforcement Agencies -Central Excise & Customs;
- (ii) Instruction No. 800 dated 25.11.1974 regarding Need for establishing proper liaison with Sales Tax Department;
- (iii) Instruction No. 1886 dated 18.7.1991 regarding coordination between Investigation Wing and the Assessment Units;



- (iv) Coordination Committee have been constituted at different levels to effect closer co-operation between the various agencies."

*Non-production of records/information to Audit*

76. It has been pointed out by Audit that the review was conducted in spite of extreme reluctance on the part of departmental authorities at various levels, to produce relevant records especially the Appraisal Reports, even after the Board had issued instructions in April, 1991 for making available all records, including appraisal reports to Audit. These instructions of the Board were later modified (March 1993) resulting in withholding of appraisal reports from Audit.

77. The Committee desired to know as to why the Department considered it necessary to withhold them from Audit. In a note furnished initially, the Ministry stated that Appraisal Reports were confidential documents and making them available to Audit might be prejudicial to investigation and taking up of follow-up action in other years or in case of other members of the group or in connected cases. The Ministry further stated that these reports are prepared in a summary manner only to assist the Assessing Officer by indicating the lines of investigation.

78. On being questioned further as to why, the instructions issued in March 1993 had not been withdrawn, the Secretary, Revenue stated in evidence, "we will issue such orders to-day itself". A copy of the instructions dated 29 November, 1994 issued by the Ministry in this behalf was later furnished to the Committee.

In this context, the Chairman, CBDT deposed:—

"It was supplied till about March 1993. There have been aberrations which should not have occurred. There was no intention to deny it."

80. As regards non-furnishing of information to Audit, the Ministry in a note stated that there were delays in compiling and furnishing information for the five years sought by Audit. They added that information was, however, furnished but after the desired date in March 1993.

*Need for streamlining the working of Investigation Circles*

81. The Committee desired to know the year-wise break-up of concealed income brought to light during 1988-93 by search and seizure operations, the tax that was assessed as payable and that was actually realised. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated that no separate data was being maintained on those lines.

82. Enquired as to how in the absence of the aforesaid data, they evaluated the extent of usefulness of the search and seizure operations, the Ministry replied that it was not possible to keep all the particulars upto the date of the disposal of the final appeals as they sometimes becomes final after several years. Therefore, according to the Ministry, the efficacy had

to be judged by the seizure effected, surrenders under Section 132(4) and the addition made during the assessment by the assessing officer.

83. Asked about the cost of administering the Investigation Circles during the period 1988-93, the Ministry in another note stated that the Investigation Circles were part of the overall set-up under the administrative control of various Chief Commissioners of Income-tax (CCIT) and hence, the cost for the same formed part of the CCIT and no separate budget was prepared for them. The overall cost of administering the Income-tax Department during the year 1992-93 was 1.63% of gross collections of direct taxes.

84. The Committee wanted to know the steps initiated by the Ministry to collect all requisite data by means of proper management information system. The Ministry of Finance in a note stated that the Department has gone for major computerisation of its working from January 1995. The computerisation process has started in Delhi, Bombay and Madras. It was hoped to network the entire country's income tax work soon. Among the softwares that are being developed, the interest of investigation work including maintaining search and seizure data for proper follow up were also being taken care of.

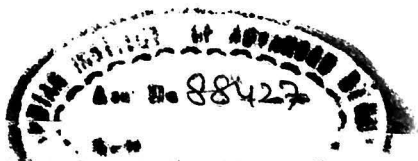
85. On being asked about other measures proposed to be taken in order to make the functioning of investigation circles more effective in unearthing black money and checking tax evasion, the Ministry in a further note stated:—

"In order to improve the functioning of Investigation Circles, the Ministry is evolving Management Information System on computers. The senior officers of the rank of D.C.I.T and C.I.T. are also required to carry out regular inspection of these circles and also to monitor search and seizure cases so that the entire material evidence gathered during the course of search is properly utilised to unearth tax evasion. This year greater emphasis is being laid on quality rather than quantity in respect of searches. We hope to make considerable achievements in this direction."

*Amendments proposed in the Finance Bill, 1995*

86. Under the present scheme, the undisclosed income unearthed as a result of the searches conducted, have to be related to the different years in which the income was earned. A new Scheme has been proposed in the Finance Bill, 1995 by which undisclosed income detected as a result of search shall be assessed separately at a flat rate of 60%. It has been stated that the proposed provision seeks to make the procedure of assessment of search cases cost-effective. The reasons for introduction of this scheme are stated to be as follows (Ref: Memorandum Explaining the Provisions in the Finance Bill, 1995):—

"Searches conducted by the Income-tax Department are important means of unearthing black money. However, under the



present scheme, valuable time is lost in trying to relate the undisclosed incomes to the different years. Tax evaders generally manage to divert the focus to procedural and legal issues and often invent new evidence to explain undisclosed income. By the time search-related assessments are completed, the effect of the search is considerably diluted. Legal battles continue for many years to decide which income is assessable in which assessment year. No finality is reached and the seized assets remain with the Department for a long time.

In order to make the procedure of assessment of search cases cost-effective, efficient and meaningful, it is proposed to introduce a new scheme of assessment of undisclosed income determined as a result of search u/s 132 or requisition u/s 132A. Under this scheme, the undisclosed income detected as a result of any search initiated, or requisition made, after 30.6.1995 shall be assessed separately as income of block of years. Where the previous year has not ended or the due date for filing a return of income for any previous year has not expired, the income recorded on or before the date of the search or requisition in the books of accounts or other documents, maintained in the normal course, relating to such previous year shall not be included in the block."

#### *Simplification of Direct Tax Laws*

87. During the course of examination, the Committee drew attention of the Ministry of Finance towards the complex nature of the existing Direct Taxes Laws and desired to be apprised of the steps contemplated so as to make it simpler for compliance and administration, the Secretary Revenue, deposed in evidence:

"The Income Tax Act was passed in 1961. It is now 33 years old. Originally it had 298 sections. But today, if I remember correctly, it contains over 500 sections. In addition to that, these Income tax laws bristles with exemptions, deductions, facilities, censure clauses and various types of other complications which have been introduced an account of the changing economic ambience and approach in this country. Now, the present thinking is that, to the extent possible, we should have a tax policy which is very simple, easy to administer and easy for the people to understand. Today, if anyone reads any section of the Income tax laws and tries to understand them, excepting few sections, may be ten per cent of the sections, he will only be frustrated. Section like 80 HHC and various other provisions of the law is written in such convoluted English that some sentences run to 10-20 lines and it is difficult to understand. As the Secretary of this Department I feel that this Act should be replaced by a simple Act which a common man can understand."

88. He further added:

"Simplification of the existing law will again be difficult. I have gone through it several times with my colleagues."

89. The Committee were further informed during evidence that a group had been constituted in the CBDT to recommend measures for simplification of Direct Tax Laws, They enquired about the time frame within which the task was expected to be completed. The Ministry of Finance (Deptt. of Revenue) in a note furnished subsequent to evidence stated:

"It is expected that the Group will be in a position to submit its recommendations by the end of September, 1995".

90. The need to curb economic offences and combat tax evasion have engaged constant attention of the country. Government have from time to time introduced various measures including *inter-alia* conferring of powers of survey, search and seizure on the Income tax authorities with this end in view. Search and seizure operations are planned and executed by the Investigation Wing of the Department. However, the assessment work of these cases is assigned to the Investigation Circles headed by Assistant Commissioners of Income Tax, except those which are assigned to Central Circles or to Deputy Commissioners of Income Tax (Assessment). The powers of search and seizure, dealing with seized assets etc. are governed by Sections 132 and 132 A of the Income Tax Act, 1961 read with Rules 112, 112A 112B, 112C and 112D of the Income Tax Rules. Similar powers are conferred by Section 37A and 37B of the Wealth Tax Act, 1957 read with Rules 10 and 10A of the Wealth Tax Rules. In all search and seizure operations undertaken by the Investigation Wing, an Appraisal Report is required to be prepared and sent to the Assessing Officer within 45 days. In *Inter-alia* contains details of seizure of assets, surrender made, outcome of the search presentation and potential of the case etc. based on preliminary scrutiny of the seized documents. The Assessing Officer initially passes an order within 120 days in terms of Section 132(5) of the Act in a summary manner towards the tax, interest and penalty imposable on the person. Thereafter, action for completion of regular assessment is taken up. The Audit review seeks an evaluation of the post search performance of the Department particularly the working of the Investigation Circles based on the findings from test audit of records of 7960 cases in 165 Investigation Circles, functioning in 75 Commissioners Charges in various parts of the country covering the period 1988-89 to 1992-93. The findings of the Committee emerging from the Audit review are summed up in the succeeding paragraphs.

91. Under Section 132(5) of the Income Tax, 1961 the Assessing Officer first passes an order within 120 days of the date of seizure in search cases where any money, bullion, jewellery or other valuables are seized, estimating undisclosed income/wealth in a summary manner after

affording an opportunity to the person concerned for being heard. The Assessing Officer then calculates the amount of tax, determines the amount of interest payable and penalty imposable on the person with the prior approval of the Deputy Commissioner of Income Tax. A test check by Audit of interim orders passed, revealed mistakes and infirmities like underestimation of income, omission to consider concealed incomes, non-imposition of penalty, interest etc.. As regards the 13 cases mentioned, the Ministry of Finance on the basis of the reports received from the Charges concerned replied to 7 cases stated that there had been a "technical" delay in only one case. The Ministry, however, admitted that no record of the pendency charge-wise, was compiled and maintained. The Committee desire that the Ministry should thoroughly analyse the infirmities in the 3 of the 7 cases mentioned above in which their reply was considered as not relevant by Audit and also the position prevailing in all the charges and take suitable measures to avoid such eventualities which could be detrimental to the interests of revenue. The Ministry should also send their specific replies to the remaining 6 cases after due vetting by Audit 92.

92. The Committee are concerned to note that in the five years from 1988-89 to 1992-93, out of a total of 10,348 search cases where final assessments have been completed, in 3712 cases *i.e.* 38.87% no concealed income was detected. The Committee are, however, surprised that the Ministry of Finance seem to be contented with the present rate of success. The Ministry stated that the success rate of only 65 percent can by no means be considered a matter of anxiety and described the same as fairly high. The Committee are not inclined to share this sense of complacency. Considering the extraordinary and exceptional power granted to the Department in conducting search and seizure operations, the Committee are of the view that there is an imperative need for a thorough groundwork before undertaking search and seizure operations in order to enhance the success rate.

93. The Income Tax Act, 1961 provides for prosecutions for certain defaults such as wilful attempt to evade tax, false statement in verification etc. The Committee are deeply concerned to note that the prosecution proceedings initiated in the number of cases assigned to Investigation Circles during the period 1988-89 to 1992-93 showed a declining trend. In fact, the Committee's examination revealed out of a total number of 49,648 search assessments completed during 1990-93, prosecutions were launched in 2729 cases only. Curiously enough, the cases of prosecutions launched sharply declined from 1629 in 1990-91 to 775 in 1991-92 and 325 in 1992-93. Evidently, the low number of prosecutions launched is a pointer to the fact that even after considering incriminating material in search cases, the Department were unable to establish many cases of tax evasion. The Ministry of Finance attributed the sharp decline in the prosecution proceedings launched to the immunity provided for in this regard under certain provisions of Income tax Law, the decision of Government to launch

prosecution in important cases only, other factors like necessity to await completion of assessment proceedings, fulfilling of criteria laid down in various instructions of the Central Board of Direct Taxes etc. While the Committee do recognise the need for laying greater stress on bigger and relatively more important cases, they are not fully convinced of some of the other causes put forth by the Ministry. For example, since the search cases are taken up on the basis of the incriminating materials collected by the Department, the Committee feel that it is not necessary to await decision of the first appellate authority for launching prosecution particularly when such cases unfortunately tend to linger on at various appellate stages. The Committee would, therefore, recommend that the Ministry of Finance should look into the reasons for the sharp decline in the prosecutions launched in search cases and take necessary steps in order to ensure that the prosecution provisions under the Direct Tax and other related Laws are effectively applied to create an appropriate impact and to subserve as a deterrent against tax evasion.

94. Another disquieting feature observed by the Committee was that the rate of convictions against the prosecutions launched in respect of search assessments was dismally low. Of the 2729 prosecutions launched in respect of 49,648 search assessments completed during 1990-93, the number of convictions was just 1664. In fact, the Committee's examination revealed that the number of acquittals in respect of the prosecutions complaints launched against the offences committed under Direct Tax Laws and related IPC sections as a whole itself was very high. Similarly, the prosecution complaints launched which were disposed of in a year had been substantially lower than those filed. The Committee are, therefore, convinced that those disturbing trends have to be carefully analysed at the Board/Ministry level and necessary corrective action taken with a view to ensuring that the offences committed are sternly and effectively dealt with. The Committee, in this connection, emphasise the need for improving the quality of legal assistance and would, therefore like the Ministry of Finance in consultation with the Ministry of Law to seriously address to this issue and attempt to remove the deficiencies arising therefrom.

95. The regular assessment of search and seizure cases are taken up by the Assessing Officers under Section 143(3) of the Income Tax Act, 1961. In their instructions issued on 4 May, 1985, the Central Board of Direct Taxes had emphasised the need for expeditious completion of assessments in search and seizure cases. The Board, in their subsequent instructions issued on 18 July, 1991 had directed that such assessments should be completed within two years from the search. It is a matter of deep concern to the Committee that these instructions are being followed more in breach by the Assessing Officers. The Audit test check revealed that in 69 cases in seven Charges, regular assessments were not completed, in 25 cases in two Charges even assessment proceedings did not commence within the prescribed two years time, and in 364 cases in 10 Charges, delay in completion of regular

assessments ranged from 17 days to Five years beyond the stipulated period. Distressingly, instead of rectifying this unedifying state of affairs, the Ministry of Finance have sought to justify this inordinate delay by seeking to draw an unjustifiable distinction between "statutory delay" and delay arising out of executive instructions. According to them, these delays related to the time frame laid down in the Executive instructions and not in the Statute. This explanation of the Ministry is totally unacceptable and the Committee have no doubts, whatsoever, that the instructions have been issued by the Board after assessing the exact position prevailing in the field formations. The Committee, therefore, desire that the Central Board of Direct Taxes should not rest merely with issuing executive instructions in the course of administration of Direct Tax Laws, but also ensure that they are faithfully implemented by all concerned.

96. For completion of regular assessments in search and seizure cases, the Board had also laid down Action plan for each financial year setting out the "Key Result Areas" and the targets to be achieved. The Committee regret to note that there had been substantial shortfalls ranging between 1102 to 3113 assessments *vis-a-vis* the specific annual targets laid down in the Boards' Action plans for each of the financial years 1988-89 to 1992-93. The Ministry of Finance attributed the pendency and the resultant shortfall to lack of adequate man-power, fixation of "very high and challenging" target by the Board etc.. The Committee are amazed over this explanation and cannot accept the fact that targets had been laid down by the Board without assessing the ground realities. The Committee are of the view that targets should be fixed realistically based on a proper O & M study. Targets if fixed *ab-initio* at levels which are unattainable cannot spur the personnel to higher level of performance. On the other hand they can be demotivated by unrealistic targets. They, therefore, desire the Ministry to examine the matter and ensure that the targets laid down by the Board are actually achieved.

97. The Committee's examination also revealed that the completion of regular assessments of search and seizure cases have regretfully not been receiving due attention in the Investigation Circles created with upgraded charges. Apart from non-completion of assessments within the prescribed period, various other deficiencies were also observed in different Charges particularly with regard to the stipulation laid down in the Action plan in respect of carrying forward pending assessments to the next year, non-compliance of Board's instructions dated 18 July, 1991 etc. What has, however, distressed the Committee is that instead of rectifying the situation, the Ministry have simply stated that the instructions issued earlier (*i.e.* July, 1991) would take care of such deficiencies. The Committee deplore this casual approach and desire the situation to be remedied forthwith.

98. Another important area where the Committee found inordinate delay occurring related to the reopening of assessments after search and seizure operations. Under the Income Tax Act, 1961, in cases where incriminating material or assets are seized, the departmental authorities are required to



reopen the relevant assessment. Executive instructions require that the notices to the assesseees for re-opening completed assessments should be issued within six months from the date of search. The Committee are unhappy to note from a test check by audit that in 161 assessments in nine Charges, there were delays ranging from one month to 61 months in issue of notice for re-opening the assessments. Unfortunately, instead of ascertaining the precise reasons for such delays, the Ministry in this case also sought to justify the lapses by stating that there had been no statutory delay in reopening the cases and that it was only in terms of Executive instructions. The Committee have no reason to believe that the time limits were laid down by the Board in the Executive instructions without taking care of the precise circumstances. While deprecating the lack of seriousness of the Ministry in the matter, the Committee desire that the Board should ensure that the assessing officers follow the Board's instructions.

99. The order passed under Section 132(5) is of an interim nature and as such, while finalising the regular assessment, the assessing officer is expected to make complete investigations and frame an assessment which can stand appellate scrutiny. In fact, one of the objectives for setting up the Investigation Circles was to improve the quality of search assessments and ensure quick follow-up action. The Committee are astonished to note from Audit test check, that in 42 assessments, mistakes/omissions were noticed which resulted in non-assessment/under-assessment of income/wealth of Rs. 3.34 crores with consequential non/short levy of tax of Rs. 1.05 crores. The Ministry of Finance stated that the mistakes or omissions in the illustrative cases had occurred due to incorrect appreciation of facts available before the assessing officer or due to the failure to take consequential action in the case under assessment or in connected cases. According to the Ministry, wherever such mistakes had been noticed, steps had been taken to rectify the mistakes or remove the omissions and recover the tax dues. The Committee cannot remain satisfied with the reply. They desire that all the cases mentioned above should be thoroughly enquired, with a view to taking corrective action and also fixing responsibility. The Committee would like to be informed of the precise action taken thereon.

100. In their instructions issued in July 1991, the Board had directed that the reasons for any variation between regular assessment order and Appraisal Reports as well as interim orders are required to be clearly recorded in regular assessment orders. The Committee are surprised to note that against an income of Rs. 13.54 crores determined initially in 15 cases, an income of Rs. 93.02 lakhs was only determined. Further, as against tax of Rs. 2.82 crores initially determined in 35 cases, the amount finally assessed was Rs. 42 lakhs only. Similarly, the income shown in the Appraisal Reports at Rs. 8.07 crores in 25 cases was finally assessed at Rs. 86.40 lakhs. Obviously, this indicated that either the estimates were wild or the assessments were not being carefully framed. The Ministry of Finance stated that the Appraisal Report prepared by the Assistant Director



(Investigation) evaluates and indicates the lines of investigation; the order issued under Section 132(5) by the Assessing Officer is also a summary order framed with the object of estimating the likely tax liability of the person from whom seizure has been effected in order to retain or release the seized assets whereas the regular assessment order was passed after detailed investigation and after giving due opportunities to the parties. Therefore, according to the Ministry the variations were inevitable. The Committee do agree that some differences between these documents are bound to occur; however, in their opinion, large scale variations such as those pointed out by Audit in the illustrative cases involving differential amounts of Rs. 1.17 crores, Rs. 17 lakhs etc. do not seem to stand to reason. The Committee, therefore, recommend that the Ministry of Finance should ensure that the reasons for the variations are invariably recorded by the assessing officers in the regular assessment orders and evolve a method whereby cases involving wide variations as the ones mentioned above are subjected to a meaningful review.

101. One of the measures of ascertaining the quality of assessments in Investigation Circles was the success rate in appellate proceedings. The Committee note with serious concern that the record of the Department on this score is not very inspiring. The statistics furnished by 58 Commissioner's charges revealed that out of tax of Rs. 467.47 crores determined in 2985 interim orders passed under Section 132(5), tax of Rs. 125.95 crores (29.94 per cent) only, including interest and penalty was finally determined after appeal effect in regular assessments completed during the year 1988-89 to 1992-93. In several Commissioner's charges, substantial portion of assessed tax demand was found to have been set aside in appeal. The Committee, therefore, recommend that a sample of the more important cases pointed out by Audit should be taken and a case study undertaken with a view to identifying the exact infirmities resulting in the failure of the Department in defending their action and for improving the performance in appellate proceedings. There is also a pronounced need for the supervisory officer to improve the quality of monitoring of the more important assessments relating to search and seizure cases so as to enhance the degree of success in appellate proceedings.

102. Under the Income Tax Act 1961, penalty is leviable where, in the course of a search, the assessee is found to be the owner of any unexplained or undisclosed money, bullion, jewellery or other valuable article or thing. The Committee find from the Audit paragraph that in nine cases under various charges, penalty amounting to Rs. 30.24 lakhs leviable for concealment of income of Rs. 55.40 lakhs was not levied or short levied. The Ministry of Finance contended that there had been no short/non-levy of penalty in six out of the nine cases pointed out by Audit owing to the proceedings being pending or the penalties levied were dropped on merits by the assessing officer. The Committee are not convinced by this. They

desire that the Ministry should thoroughly examine the circumstances in which the penalties leviable were not actually enforced in all the cases mentioned above. Efforts should also be made to pursue and expedite the proceedings where the assessments are pending so as to ensure collection of the legitimate dues of the Government at the earliest.

103. Yet another shortcoming observed by the Committee was that even in cases where demands were raised, recovery was not being vigorously pursued. Test audit checks revealed non-collection of tax/penalty/interest of Rs. 42.11 crores levied in regular assessments of search and seizure cases in West Bengal and Tamil Nadu charges during 1988-89 to 1992-93. The Ministry of Finance attributed this to the dispute by the assessee, or pendency in appeal, time taken to carry out adjustment of the seized cash and other assets towards demand raised etc. They also stated that in Tamil Nadu, there had been partial collection of arrear demand and that efforts were still on to collect the balance amounts. The fact that a sizeable amount of revenue assessed in searches and seizure assessments remains uncollected in just two Charges for a fairly long period would seem to indicate that the manner in which such cases are presently being pursued needs a critical examination. The Committee, therefore, desire the Ministry of Finance to analyse the reasons therefor and ensure that concerted efforts are made to vigorously pursue the demands issued and realise the governmental dues in time.

104. The Committee find that with a view to ensuring adequate and proper follow-up action in search cases, the Central Board of Direct Taxes in their instructions issued in July, 1991 had directed that each Commissioner and Deputy Commissioner of Income Tax should monitor atleast 5/10 of the top search cases respectively every year. The Committees' examination, however, revealed that monitoring was either not being done or was being done partly. What has further concerned the Committee is that the various registers and reports presented and which were, in fact, the basis for exercising effective monitoring and control of the functioning of the Investigation Circles, were either not maintained or improperly maintained. The Committee recommend that these shortcomings should be urgently addressed to by the Ministry of Finance for appropriate corrective action.

105. The Search and Seizure Manual as well as the departmental instructions require the Assessing Officers to keep in close touch with other officers concerned of the Department and also maintain co-ordination/liaison with outside departments/agencies like Revenue Intelligence, Enforcement Directorate, Customs and Central Excise Department, Sales Tax Department etc. for effective follow up of search and seizure. Audit scrutiny has, however, found several deficiencies on this score particularly in West Bengal and Gujarat charges. In the light of the above, the

Committee desire that the Ministry of Finance should ascertain the manner in which co-ordination is actually put into practice presently and review the efficacy of the present instructions/arrangements in this regard with a view to ensuring better co-ordination and thereby achieving better results in combating tax evasion.

106. The Committee note that the Central Board of Direct Taxes has issued instructions in April, 1991 to all the Chief Commissioners/Commissioners for making available all records, including Appraisal Reports. Unfortunately, these instructions were later modified in March, 1993 resulting in withholding of appraisal Reports from Audit in the course of undertaking the present review. Besides, the Committee were informed that in several Charges, other records and statistical information was also not produced to Audit or not submitted in time. The Committee take a serious view of this aberration. While they feel relieved that the instructions of March, 1993 have since been withdrawn in pursuance of the assurance given by the Revenue Secretary to the Committee during the course of oral evidence, the Committee desire that the Ministry of Finance should take necessary steps to ensure the records requisitioned by C&AG for Audit in all cases to enable the C&AG to discharging its constitutional functions.

107. The Committee note that in the present system of working, several vital data relevant to the search and seizure operations are not being maintained. This included, yearwise break-up of concealed income brought to light by search operations and the tax collected thereon, uncollected revenue in respect of search and seizure cases, data on the income sustained in appeals, charge-wise details regarding the number of cases pending passing of interim orders under Section 132(5) of the Income Tax Act, 1961, details of the number of cases pending launching of prosecution etc. The Committee are of the view that the Ministry of Finance should strive to evolve an appropriate data system so that a better evaluation of the extent of the usefulness of the search and seizure operations could be attempted.

108. The Audit review under examination is based on the findings from test check of records of 7,960 cases in 165 Investigation Circles, functioning in 75 Commissioners charges in various parts of the country. The review had brought to light several cases of irregularities, omissions, mistakes etc. having an important bearing on revenue collection. The Ministry of Finance had furnished details of such irregularities etc. to the Committee in respect of a few illustrative cases only. Evidently, the Ministry are yet to collect the entire details. While expressing their unhappiness over the same, the Committee, therefore, desire that the Ministry of Finance should obtain details of the irregularities, omissions etc. of all the cases pointed out in the review and pursue these cases to their logical conclusions and take necessary steps to recover the legitimate dues of the Government. Steps should also be taken to fix responsibility of the officials concerned for the various omissions/commissions.

109. The Public Accounts Committee have time and again emphasised the need to tone up Direct Taxes administration to effectively meet the menace of black money and evasion of taxes. The Committee would like to underline the fact that search and seizure are exceptional powers conferred in exceptional circumstances for the purpose and, therefore, it is highly imperative that they are exercised efficiently in unearthing concealed income and wealth and also checking evasion of taxes. However, the deficiencies and irregularities discussed above clearly indicate that there is a need for a critical review of the existing system of search and seizure in order to make it more effective. In this connection, the Committee note that in the Finance Bill, 1995 a new scheme has been introduced under which undisclosed income detected as a result of search shall be assessed separately at a flat rate of 60%. It has been stated that the proposed new procedures would reduce the delay in assessments and make the operations more effective. The Committee would await the enactment of the scheme, its actual implementation and efficacy. Meanwhile they desire that the shortcomings/deficiencies/irregularities discussed in the preceding paragraphs should be dispassionately examined in all their ramifications and corrective action in the working/procedures or otherwise taken with a view to streamlining the search and seizure operations and the Investigation Circles and thereby achieving better results in unearthing black money and combating evasion of taxes.

110. The complex nature of the Direct Tax Laws has been a matter of intense debate. During evidence, the Committee were informed that a group had been constituted in the Central Board of Direct Taxes to recommend measures for simplification of Direct Taxes Laws. The Committee have been informed that the Group was expected to submit its recommendations by the end of September, 1995. The Committee would like to be apprised of the progress made in the task.

New Delhi;  
24 April, 1995

4 Vaisakha, 1917 (Saka)

BHAGWAN SHANKAR RAWAT,  
Chairman,  
Public Accounts Committee.

## APPENDIX I

(Vide Para—I)

Audit Paragraph 2.1 the Report of the C&AG of India for the year ended 31 March, 1993, No. 5 of 1994, Union Government (Revenue Receipts—Direct Taxes) relating to System Appraisal—Functioning of Investigation Circles

### Introductory

2.1.1 Various measures including, *inter-alia*, conferring of powers of survey, search and seizure on the Income Tax authorities, have been introduced by the department, from time to time, to curb economic offences and combat tax evasion.

The efficacy of the measures to unearth black money and check evasion of taxes has been commented upon by various expert committees, as well as, the Public Accounts Committee. Measures such as, the voluntary disclosure schemes to combat tax evasion have not found favour with these committees. The Wanchoo Committee in their report on Black Money (December 1971) had strongly opposed the idea of introduction of any general scheme of disclosure of concealed income either now or in the future. A study conducted by the National Institute of Public Finance and Policy, in March 1985, had brought out that these schemes did not blunt the underlying causes of black money generation. All that they did was to provide a temporary fillip to revenue collections. The Public Accounts Committee in their 17th Report (1967-68) had also concluded that these schemes (1951 and 1965 schemes) had not achieved their objectives and recommended suitable drastic measures to tone up the Direct Taxes Administration. The Public Accounts Committee in their 123rd Report (1978-79) had again expressed their dismay that the problem of black money had not been tackled effectively and recommended that the Government should take suitable drastic measures to tone up the direct taxes administration. It is in this background, that the relevance of such extraordinary powers, like search and seizure, can be appreciated.

### Organisational set up

2.1.2 Search and seizure operations are conducted by the Investigation wing of the Income Tax department. This wing is entrusted with the responsibility of planning and executing search operations throughout the country. For this purpose, there are ten regional Directorates of Investigation, whose work is monitored by five Directors General of Income Tax (Investigation). The assessment work is, however, assigned to the Investigation circles under the administrative control of the respective

Commissioners of Income Tax. After the reorganisation of the Income Tax department in April 1988, the work of assessment of all search and seizure cases was transferred to Investigation circles headed by Assistant Commissioners, except those cases which are assigned to Central circles or to Deputy Commissioners of Income Tax (Assessment).

### Law and Procedure

2.1.3. The powers of search and seizure under the Income Tax Act are vested in various Income Tax authorities. Sections 132 and 132A of the Act read with Rules 112, 112A, 112B, 112C, and 112D of the Income Tax Rules prescribe the procedure for authorising and conducting a search, making seizures and dealing with the seized assets. Similar powers under the Wealth Tax Act, 1957, are conferred by section 37A and 37B read with Rules 10 and 10A of the Wealth Tax Rules.

Section 132 of Income Tax Act was intended to achieve two limited objectives:

- (i) to get hold of evidence bearing on the tax liability of a person, which the said person is seeking to withhold from the assessing authority; and
- (ii) to get hold of assets representing income believed to be undisclosed income and applying so much of them, as may be necessary, in discharge of the existing and anticipated tax liability of the person concerned.

The work of the assessing officer begins with the receipt of the appraisal report from the Investigation wing, alongwith the seized material. In all search and seizure operations undertaken by the Investigation wing, an appraisal report is required to be prepared, containing, *inter-alia*, details of seizure of assets, surrender made under section 132(4) of the Income Tax Act, outcome of the search, and it indicates the prosecution and concealment potential of the case, based on preliminary scrutiny of the seized documents. This is sent to the assessing officer within one month (45 days from July 1991) of the date of search. The seized material is also to be handed over to the assessing officer within the specified time limit.

The assessing officer first passes an order under Section 132(5) of the Act in cases where any money, bullion, jewellery or other valuables are seized, estimating undisclosed income/wealth in a summary manner, after affording an opportunity to the person concerned for being heard, and calculates the amount of tax, determines the amount of interest payable and penalty imposable on the person, with the previous approval of the Deputy Commissioner of Income Tax. The assessing officer can retain in his custody such assets as would be sufficient to satisfy the aggregate amount of taxes, interest and penalties stated in the order, and is required

to release the remaining assets, if any. After passing orders under Section 132(5), action for completion of regular assessment is taken up.

### **Scope of Audit Review**

2.1.4. This review seeks to evaluate the post-search performance of the department, particularly the working of the Investigation circles, and analyse the efficacy of the existing system. The audit observations incorporated in the subsequent paragraphs are based on the findings from test check of the records of 7,960 cases in 165 Investigation circles, functioning in 75 Commissioners charges in various parts of the country.

### **Constraints**

2.1.5. The review was conducted in spite of extreme reluctance on the part of departmental authorities at various levels, to produce relevant records especially the appraisal reports, even after the Board has issued instructions in April, 1991 for making available all records, including appraisal reports. These instructions of the Board were later modified (March 1993) resulting in withholding of appraisal reports from Audit. The appraisal reports were to be examined with a view to ascertaining whether Board's instructions of July 1991, requiring recording of reasons for variations in assessment orders and findings in the appraisal reports were followed. Some instances, in which the appraisal reports were produced and where there were substantial differences in the concealed income estimated therein and the assessments for which reasons were not recorded though required under the instructions of the Board, have been commented upon in paragraph 2.1.13 of this review.

### **Highlights**

2.1.6(a) With a view to collecting evidence in respect of tax evasion and to withhold assets for early liquidation of tax liability, Income Tax Law empowers the department to undertake searches and to seize unaccounted assets like cash, jewellery etc. The task is undertaken by the Investigation wing of the department which prepares an appraisal report after search and forwards it to the Investigation Circles where search assessments are made. The department had been reluctant to produce complete records in many of the charges. In Tamil Nadu (some circles and some Commissioners of Income Tax), Uttar Pradesh and Kerala charges, the investigation circles refused to supply records and statistical information, especially the appraisal reports in Tamil Nadu and Uttar Pradesh charges. As availability of records is the prime necessity for conducting a review on a selected topic, the department's reluctance to produce the entire record hampered efforts to make a comprehensive appraisal of the entire scheme.

(b) An evaluation of available data on searches and seizures, including the statistics furnished by the Ministry of Finance for the years 1988-89 to 1992-93 revealed the following:-

- (i) Out of a total number of 16,509 search cases during the five year

period 1988-89 to 1992-93, orders under section 132(5) were passed in only 11,358\* cases. The fate of the remaining 5,151 cases was not known.

(ii) The concealed income detected and assessed in 11,225\* cases where interim orders were passed, worked out to Rs. 1687.75 crores. There was no corresponding data on the income sustained in appeals.

(iii) Out of the total of 10,348 cases where final assessments were completed during the five-year period, 6,636 assessments (64.12 percent) were completed indicating some concealed income and in the rest of the 3,712 cases (35.88 per cent) no concealed income was detected or established.

(c) The Income Tax Act, provides for prosecution for certain defaults such as wilful attempt to evade tax, false statement in verification etc. As per statistical information furnished by 53 Commissioners' charges, prosecution proceedings were initiated in 173 cases as against 6,462 cases assigned to investigation circles during 1988-89 to 1992-93. Such a low number of prosecutions launched is a pointer to the fact that even after considering incriminating material in search cases, the department could not establish many cases of tax evasion.

(d) For completion of regular assessments in search and seizure cases, the department proposed Action Plan for each financial year, setting out the 'Key Result Areas' and targets. In the Action Plan for the year 1992-93, an annual target of disposal of a minimum of 50 core assessments was fixed and included as a Key Result Area. Similarly, targets were fixed for the years 1989-90 to 1991-92. The statistics furnished by the department revealed that in 14 charges completion of regular assessments of search and seizure cases was not receiving due attention in the Investigation circles, created with up-graded charges.

(e) A test check by Audit of the regular assessments has pointed out delays occurring at every stage of assessment. In cases where incriminating material or assets are seized, the departmental authorities are required to re-open the relevant assessment. In 161 assessments there were delays ranging from one month to 61 months in issue of notice for re-opening the assessments. In 69 cases test checked in seven charges, regular assessments were not completed and in 25 cases in 2 charges even assessment proceedings did not commence within the two year period prescribed by executive instructions. In 364 cases, delay in completion of regular assessments ranged from 17 days to 5 years beyond the prescribed period of 2 years from the date of search in ten charges.

(f) One of the objectives for setting up the Investigation circles was to improve the quality of search assessments and ensure quick follow-up action. A review of regular assessments revealed the following:—

(i) In 42 assessments, mistakes/omissions were noticed which resulted in

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\* Variation in the figures to be reconciled by the Ministry,



non-assessment/underassessment of income/wealth of Rs. 3.34 crores with consequent non/short levy of tax of Rs. 1.05 crores.

(ii) There were large scale variations in the income estimated in orders passed under section 132(5)/appraisal reports and income finally assessed. Against an income of Rs. 13.54 crores determined initially in 15 cases, income of Rs. 93.02 lakhs only was determined in the regular assessments. Further as against tax of Rs. 2.82 crores initially determined in 35 cases, the amount finally determined was only Rs. 42.00 lakhs. Similarly, the income shown in appraisal reports, at Rs. 806.90 lakhs in 25 cases was finally assessed at Rs. 86.40 lakhs.

(iii) Even in cases where demands were raised, recovery was not being vigorously pursued. In West Bengal charge alone, tax of Rs. 36.56 crores and penalty of Rs. 3.04 crores was pending collection in case of assessments completed during the years 1988-89 to 1991-92.

(g) One of the measures of ascertaining the quality of assessments in Investigation circles was the success rate in appellate proceedings. The statistics furnished by 58 Commissioner's charges revealed that out of tax of Rs. 467.47 crores determined in 2985 interim orders passed under section 132(5), tax of Rs. 125.95 crores (26.94 percent) only, including interest and penalty was finally determined after appeal effect in regular assessments completed during the years 1988-89 to 1992-93. A test check in Madhya Pradesh and Tamil Nadu charges revealed that in 28 cases, out of assessed tax demand of Rs. 14.59 crores raised in interim orders and regular assessments, in appeal, tax demand of Rs. 6.15 crores (42.15 per cent), was deleted and tax demand of Rs. 6.90 crores (47.31 per cent) was set aside. Similarly, in Madhya Pradesh, Karnataka, Chandigarh and Haryana charges, against income of Rs. 448.41 lakhs estimated/assessed in 24 cases, amount of Rs. 125.76 lakhs was deleted and Rs. 256 lakhs was set aside in appeal.

(h) The registers and reports which were the basis for monitoring of the functioning of the investigation circles, were either not maintained or improperly maintained. As these are important tools for close monitoring this areas requires special attention and care.

#### **Non-production of records/Information**

2.1.7 Besides the appraisal reports, in several charges, other records and statistical information was also not produced to Audit. For instance, in Andhra Pradesh Gujarat, Chandigarh and Uttar Pradesh, no information was given regarding the number of cases assigned to Investigation Circles, number of cases in which interim orders were passed and cases in which regular assessments were framed thereafter. In Delhi (except one Commissioner of Income Tax) and Kerala charges, no information was furnished regarding monitoring of search assessments at various supervisory levels. In Rajasthan, Delhi (except one CIT) and Gujarat charges, information regarding achievement of Action Plan targets was not

furnished. Similarly, in Delhi charge, the prescribed registers for search and seizure cases were not made available for audit scrutiny.

**Statistical data**

2.1.8 The following statistical information furnished by the Ministry indicates various facets of 'Search' and 'post search' functioning of the departmental machinery, for the years 1988-89 to 1992-93:

(i) the following are the particulars of the total number of cases where orders under section 132(5) were passed together with the tax involved:

Year	Opening balance of search cases	Searches during the year	Total	Number of case where interim orders were passed during the year (percentage)	Number of case pending in at the end of each year	Income determined in the orders passed	Tax involved
(in crores of rupees)							
1988-89	1,390	3,321	4,711	2,927 (62.13)	1,784 (37.87)	244.92	245.52
1989-90	1,786	1,900	3,686	2,717 (73.71)	969 (26.29)	246.71	225.31
1990-91	932	2,195	3,127	2,243 (71.73)	884 (28.27)	275.80	257.28
1991-92	884	1,356	2,240	1,455 (64.95)	785 (35.05)	329.64	238.96
1992-93*	785	1,960	2,745	2,016 (73.44)	729 (26.56)	590.68	564.87
Total	5777	10,732	16,509	11,358	5,151	1,687.75	1,531.94

Thus the pendency of assessments at the end of the respective years ranged from 26.29 to 37.87 per cent of the total number of cases to be assessed during that year.

(ii) Separate statistics furnished by the Ministry indicate that in the five years from 1988-89 to 1992-93\*, out of a total of 10,348 search cases where final assessments were completed, in 3,712 cases (35.87 per cent), no concealed income was detected.

(iii) Out of 10,732 searches conducted between the period 1988-89 and 1992-93, the number of prosecutions launched, cases compounded and the number in which convictions were obtained for these five years, is mentioned below:

**Number of prosecutions launched**

Year	Opening balance	During the year	Total	Number of cases compounded	Number in which convictions were obtained	Number of cases pending	Percentage of pending cases
1988-89	9,062	4,447	13,509	262	52	13,247	98.06
1989-90	12,883	4,421	17,304	214	19	17,090	98.76
1990-91	16,822	1,607	18,429	1,392	1561	17,037	92.44
1991-92	17,037	725	17,762	154	67	17,608	99.13
1992-93*	17,608	319	17,927	118	472	17,809	99.34

\* Provisional.

(iv) According to information furnished to audit by 53 Commissioners' charges, 6,462 cases were assigned to Investigation Circles. Of these, prosecution proceedings were launched in 173 cases only during 1988-89 to 1992-93. Information in respect of remaining charges was not made available (December 1993).

**Non-achievement of Action Plan targets especially with regard to completion of regular assessments in search cases.**

2.1.9(a) Consequent on re-organisation of the department from 1 April 1988, the Investigation Circles were to be manned by senior officers for speedy and quality disposal of search and seizure assessment. Towards this end, the department proposed Action Plan for each financial year setting out 'Key Result Areas' and targets. In the Action Plan for the year 1992-93, an annual target of a minimum of 50 core assessments was fixed and included in the Key Result Area. Core assessment means assessment of the year to which seized material relates. Similarly, targets were fixed for the earlier years from 1988-89 to 1991-92. According to the Departmental statistics furnished the statement below indicates the targets, achievements and shortfalls of various charges in the country.@

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@ Except Rajasthan, Gujarat and Delhi charges where from information was not available. Information received from Karnataka was not furnished in the prescribed form.

(Number of assessments)

Year	Targets Prescribed	Targets to be achieved	Achievements	Short-falls
1988-89	75 percent of the assessments to be completed by 31 March 1989, out of those brought forward as on 1 April 1988 which will get time barred after 1 April 1989 but on or before 31 March 1990.	6834	3923	2911
1989-90	Disposal of minimum 50 core assessments per annum per Asstt. Commissioner subject to the following: 1. Disposal of 100 percent assessments relating to searches conducted upto 31 March 1988. 2. Pendency to be carried forward as on 1 April 1990 should not be more than the pendency as on 1 April 1989.	8104	4991	3113
1990-91	Disposal of minimum 50 core assessments per annum per Asstt. Commissioner subject to the following:— 1. Disposal of 100 per cent assessments relating to searches conducted upto 31 March 1989. 2. Pendency to be carried forward as on 1 April 1991 should be less than the pendency as on 1 April 1990.	6081	3735	2346
1991-92	Disposal of minimum 50 core assessments per annum per Asstt. Commissioner subject to the following:— 1. Disposal of 100 per cent assessments relating to searches conducted upto 31 March 1990. 2. Pendency to be carried forward as on 1.4.1992 should be less than the pendency as on 1 April 1991.	6116	3811	2305
1992-93	1. Minimum 50 core assessments. 2. 100 per cent disposal of assessments relating to searches conducted upto 31 March 1991 to be achieved by 31 December 1992.	2589	1487	1102

A test check in Tamil Nadu, Madhya Pradesh, Bombay, Calcutta, Kerala and Orissa charges revealed that the completion of regular assessments of search and seizure cases was not receiving due attention in the Investigation circles, created with upgraded charges. Consequently, the desired objective underlying the formation of the circles, could hardly be achieved. The deficiencies noticed in achievement of various targets of Action Plan, are discussed in the succeeding paragraphs:—

(b) According to successive Action Plans, pending assessments at the end of the year, which are to be carried forward to the next year, should be less than those pending at the beginning of the year.

In Tamil Nadu charge, a test check of 4 Investigation circles under two Commissioners of Income Tax revealed non-achievement of these targets as illustrated below:—

CIT charge	Year	No. of assessments pending completion	
		At the beginning of the year	At the end of the year
A.	1988-89	8	16
	1989-90	16	29
	1990-91	29	38
B.	1991-92	158	206
	1992-93	206	289

(c) (1) Action Plan targets have also laid down that after a search is carried out the relevant assessment should be completed within two years. Thus for searches made up to 31 March 1990, assessments are required to be made up to 31 March 1992. A test check revealed that:

(i) In Calcutta charge, in 10 Investigation circles, the targetted disposal of 50 search and seizure assessment cases was not achieved by 5 circles and 7 circles could not attain the targetted disposal of the pending cases, for the years 1988-89 to 1992-93. the extent of shortfall noticed ranged from 4 per cent to 100 per cent. However, in most of the cases, the percentage ranged from 21 to 71.

(ii) In Bombay charge, the number of assessment cases which were more than 2 years old were 664 as on 31 March 1989, 2,484 as on 31 March 1991 and 2,098 as on 31 March 1992.

(2) Apart from Action Plan targets, the Board also issued instructions in July 1991, stressing the need to expedite disposal of search and seizure cases, and completion of search assessments within two years from the date of search.

In 12 charges test checked, audit scrutiny revealed that, in 69 cases, regular assessments had not been completed and in 25 cases assessments were not commenced within the prescribed period. In 364 cases, where



these assessments were completed, there was delay in completion beyond the prescribed period of 2 years ranging from 17 days to 5 years.

Sl. No.	Charge	No. of cases where delay occurred beyond prescribed period	Period of delay (in days)	No. of cases where assessments not	
				Completed	Commenced (Period of delay)
1.	Andhra Pradesh	38	17 to 1720	--	--
2.	Tamil Nadu	160	90 to 2070	04	--
3.	Karnataka	24	60 to 540	17	--
4.	Orissa	5	111 to 436	---	---
5.	Punjab	6	90 to 390	--	--
6.	Assam	23	210 to 1050	19	20 (14 to 740 days)
7.	Madhya Pradesh	--	---	6	5 (2 years 5 months)
8.	West Bengal	43	76 to 315	11	--
9.	Delhi	18	150 to 1440	---	---
10.	Chandigarh (UT)	40	270 to 1470	---	---
11.	Kerala	7	60 to 720	5	--
12.	Rajasthan	---	---	7	--
Total		364		69	25

(d) Action Plan targets also stipulated 100 per cent disposal of cases relating to the years 1989-90 to 1991-92, which were more than two years old.

A test-check revealed that in Kerala charge the targets fixed for 100 per cent disposal of search and seizure cases for the year 1991-92 could not be achieved in 4 Investigation circles. In 2 Investigation circles under a Commissioner's charge, only 30 per cent targets could be achieved whereas in two other circles only 65 per cent and 70 per cent targets could be achieved.

**Infirmities noticed in passing orders under section 132(5) of the Income Tax Act, 1961.**

2.1.10 In cases of search and seizure, where any money, bullion, jewellery or other valuable article or thing has been seized, the assessing officer must make an estimate of the undisclosed income in a summary manner and pass an order under section 132(5), within 120 days of the date of seizure.

Test check revealed that in Maharashtra, Tamil Nadu, Andhra Pradesh and Gujarat charges, in 27 cases, there were delays ranging between 3 days to 870 days in passing such an order. Further, in 13 such orders passed, mistakes and infirmities, like underestimation of income, omission to consider concealed incomes, non-imposition of penalty, interest etc. were noticed. Two cases of West Bengal charge are mentioned below, by way of illustrations:

(i) In a case, where search was made on 31 December 1991, the assessing officer, in his interim order passed on 20 May 1992, estimated Rs. 14.32 lakhs as the concealed income and worked out tax liability of Rs. 31.08 lakhs (including penalty). The Commissioner of Income Tax, in his orders dated 1 June 1992, held that the valuables seized should be returned to the assessee as the interim order passed suffered from legal infirmities and the notice issued in this connection, was also defective.

(ii) In another case, the assessee disclosed Rs. 50 lakhs as concealed income, consequent on search operations. In the order passed under section 132(5), the assessing officer held that as the assessee did not pay any tax on the said disclosure, immunity from penalty was not available to him. However, while framing the order, he omitted to levy the penalty of Rs. 26.03 lakhs.

**Delay in re-opening of assessments after search and seizure operations.**

2.1.11 Under the Income Tax Act, 1961, whenever a search is conducted in the premises of an assessee and incriminating assets are seized, the assessee is treated as one who had concealed income/wealth. Consequently, notices are issued for re-opening completed assessments. Executive instructions require such notices to be issued within six months from the date of search.

A test check in Tamil Nadu, Bihar, Karnataka, Assam, Delhi, Andhra Pradesh, Haryana and Orissa charges revealed that in 161 regular assessment cases, delay in issue of such notices ranged between one month to 61 months as shown in the statement below, leading to consequential delay in finalisation of the assessment proceedings:

Sl. No.	Charge	No. of assessments where delays were noticed	Period of delay
1.	Tamil Nadu	86	One month to 4 years
2.	Bihar	1	2 years
3.	Karnataka	12	2 months to over one year
4.	Assam	22	21 months to 42 months
5.	Delhi	3	22 months to 43 months
6.	Andhra Pradesh	2	25 months and 49 months
7.	Haryana	9	35 months to 61 months
8.	Chandigarh(UT)	14	28 months
9.	Orissa	12	4 years 7 months
	Total	161	

**Mistakes/omissions resulting in under assessment of income and tax noticed in regular assessments.**

2.1.12 The order passed under section 132(5) is of an interim nature and as such, while finalising the regular assessment, the assessing officer is expected to make complete investigations and frame an assessment which can stand appellate scrutiny. In the Action Plans formulated by the Board, the objective of improving the quality of search and seizure assessments has been repeatedly stressed. However, many of these assessments continue to be made in a perfunctory manner.

In 42 cases test-checked in 12 charges, mistakes/omissions were noticed which resulted in non-assessment/underassessment of income/wealth of Rs. 3.34 crores, with consequent non/short levy of tax of Rs. 1.05 crores. In addition, avoidable payment of interest of Rs. 20.59 lakhs was also noticed in one case.

A few cases are mentioned below, to illustrate the nature of these omissions:

**Maharashtra Charge**

(i) While completing the regular assessment of a firm for the assessment year 1990-91 in March 1993, the assessing officer determined that the assessee firm received 'unaccounted money' which was not spent on the project and not included in the books of accounts. However, he made an aggregate addition of Rs. 44.08 lakhs to 'work in progress' and only 15 per cent over this amount i.e. Rs. 6.61 lakhs was brought to tax. As the entire amount of unexplained money was required to be taxed in terms of section 69A of the Income Tax Act, 1961, the action of the assessing officer was not correct resulting in under-assessment of income of Rs. 44.08 lakhs with consequent short levy of tax of Rs. 29.06 lakhs.

**Bihar Charge**

(ii) In a search case, an assessee was found to have taxable net wealth for assessment years 1983-84 to 1989-90, but no wealth tax proceedings

were initiated by the Department. The omission resulted in wealth of Rs. 152 lakhs escaping wealth tax of Rs. 2.35 lakhs (including interest).

### *Gujarat Charge*

(iii) In the case of a private limited company, the return of income for assessment year 1989-90, was filed in March 1992. It was mentioned in the note attached with the computation of income filed along with the return that the return did not include the income of the assessee company disclosed during the search operation on 29 March 1989. The Director of the company declared, under section 132(4), an amount of Rs. 33 lakhs as unaccounted income of the company. However, it was seen during the course of scrutiny of the assessment records of the assessee that the assessment had not been completed for the assessment year 1989-90, though the regular assessment for subsequent year 1990-91 was done on 10 March 1993. The time limit for completion of assessment for the assessment year 1989-90 expired on 31 March 1992 according to the provisions of the Income Tax Act, 1961. The assessment has thus become time barred and the undisclosed income of Rs. 33 lakhs escaped assessment involving short levy of tax of Rs. 19.05 lakhs.

**Variations between the concealed income/wealth as mentioned in appraisal reports and as assessed in orders passed under Section 132(5) and thereafter in regular assessments.**

2.1.13 The Central Board of Direct Taxes issued instructions in July 1991 that the reasons for any variation between regular assessment order and appraisal reports as well as interim orders are required to be clearly recorded in regular assessment orders. During the course of audit it was noticed that in several cases there were substantial variations between income and tax determined in regular assessments and that worked out in appraisal reports and orders passed under Section 132(5).

In Maharashtra, Delhi, Gujarat, Tamil Nadu, Karnataka, Rajasthan, Haryana, Kerala, West Bengal, Assam, Punjab, Orissa and Andhra Pradesh charges, test check revealed that against income of Rs. 13.54 crores in 15 cases and tax of Rs. 2.82 crores in 35 cases estimated in interim orders passed, the income and tax were determined at Rs. 93.02 lakhs and Rs. 42.00 lakhs respectively in the regular assessments. Similarly, against the income of Rs. 806.90 lakhs estimated in appraisal reports in 25 cases, only Rs. 86.40 lakhs was determined in regular assessments. No reasons were, however, assigned/recorded for variations for not considering/partly considering the income/tax in the completed regular assessments. Such abnormally large variations between the basic records such as appraisal reports and interim orders passed and regular assessments would imply that either highpitched estimates were made in appraisal reports and orders passed under Section 132(5) or the regular assessments were highly defective.

A few illustrative cases are mentioned below:

*Gujarat Charge*

(i) In the case of a group of assessees, the group floated 3 investment companies. The total share capital of these companies was Rs. 1.50 crores. The appraisal report mentioned that the public issue of share capital of Rs. 1.50 crores by the three companies floated by the group, was benami and fictitious. According to the appraisal report in the cases of most of the shareholders, cash was first deposited in their accounts and subsequently the cheques were issued. Immediately after the search, statements of some of the shareholders were recorded. These persons filed an affidavit stating that they had not invested in the shares of the said companies. The amount was given to them by one of the members of this group. It was suggested in the appraisal report that the share-holding of the persons who filed an affidavit should be called for from the Registrar of companies and amount of such holdings was required to be added as unexplained investment to the total income of the person who gave them the money for investment. However, the assessing officer did not take any action in this regard and thus the potential tax liability on the benami and bogus investment of Rs. 1.50 crores was not included in the assessable income.

*Punjab Charge*

(ii) During a search conducted (July 1990) at the business and residential premises of two assessees, the investigation officers found evidence of undisclosed income of Rs. 130 lakhs including cash, gold jewellery and substantial investment in house property. This was indicated in the appraisal report. In the regular assessments for the assessment years 1989-90 to 1991-92 completed during February 1991 to March 1992, the total income of the two assessees was assessed at Rs. 13.19 lakhs only. Thus undisclosed income amounting to Rs. 116.81 lakhs remained unassessed resulting in loss of revenue of Rs. 163.69 lakhs (including interest and penalty).

*Kerala Charge*

(iii) A search was conducted at the business premises of an individual assessee in September 1989. In Interim order passed in January 1990, concealed income of Rs. 20.18 lakhs was estimated for assessment years 1985-86 to 1989-90. However, in regular assessments for these years, income of Rs. 2.90 lakhs only was assessed in the assessments completed in March 1991.

Department has stated that all the points in the appraisal report and order under section 132(5), have been examined while completing regular assessments. This was not borne out by the facts as per assessment records, obviously, either the assessment under section 143(3) or the order under section 132(5) was incorrect.

**Defective assessments made in search and seizure cases which did not stand the test of appeal.**

2.1.14 One measure of determining the effectiveness of search and seizure operations is the establishment of the fact of concealed income and to see whether additions made on this score, stand the test of appeal. Cases were noticed where orders passed under section 132(5) were wholly or substantially deleted at subsequent stages. As per statistics furnished by 58 Commissioners charges, out of tax of Rs. 467.47 crores demanded in 2985 interim orders passed under Section 132(5), tax of Rs. 125.95 crores (26.94 per cent) only including interest and penalty was finally demanded, after appeal effect, in regular assessments completed during the years 1988-89 to 1992-93. Test check in Madhya Pradesh and Tamil Nadu charges, revealed that out of 487 cases reviewed, in 28 cases, against the tax demand of Rs. 1458.61 lakhs in orders passed under regular assessments, tax demand of Rs. 614.82 lakhs (42.15 per cent) was deleted and tax demand of Rs. 690.09 lakhs (47.31 per cent) was set aside in appeals. Similarly, in Madhya Pradesh, Karnataka, Chandigarh and Haryana charges, against income of Rs. 448.41 lakhs estimated/assessed in 24 cases, amount of Rs. 125.76 lakhs was deleted and Rs. 256 lakhs was set aside in appeal. While deleting the additions, it was held by appellate authorities that either the seizure was fully and properly explained by the assessee or sufficient opportunity was not given by the assessing officers to them to explain discrepancies in accounts. Defects in framing the assessments were also pointed out.

Illustrative cases of this kind are mentioned below:

*Madhya Pradesh Charge*

(i) In the case of an assessee, as a result of search operations in August 1989, income for two assessment years 1987-88 and 1988-89 was assessed ex parte as under:

<i>Assessment Year</i>	<i>Income Assessed</i>	<i>Date of Assessment</i>
1987-88	Rs. 31.70 lakhs	28 March 1990
1988-89	Rs. 15.20 lakhs	27 March 1992

On assessee's appeal, the assessment for the assessment year 1987-88 was set aside by Income Tax Appellate Tribunal in May 1992 on the ground of denial of reasonable opportunity of being heard to the assessee. Assessment for assessment year 1988-89 was set aside by the Commissioner of Income Tax (Appeal) in July 1992, rejecting the contention of the assessing officer that non-attendance on the day of hearing, which was a Sunday, constituted non-compliance by the assessee. Thus in these two assessments, demand could not be raised, and these were still pending (January, 1993). According to the appraisal report (August, 1989) concealment was also noticed in respect of assessment year 1986-87. However, the assessing officer did not re-open the assessment for this year and thus concealed income for this year remained to be assessed.

### *Tamil Nadu Charge*

(ii) Similarly, a review of 78 cases revealed that in 17 cases, the assessments were fully/partially knocked down at the appellate stage. Tax and interest amounting to Rs. 873.92 lakhs levied by the department was reduced to Rs. 153.70 lakhs in appeal, indicating that the assessments made in these cases were not carefully made. In one such case, a search was conducted in June, 1988. The assessing officer completed *ex parte* assessments for assessment years 1984-85 to 1988-89 in March, 1991. In appeal, all these assessments involving tax and interest of Rs. 128.40 lakhs, were completed set aside by Commissioner of Income Tax (Appeal) in February, 1992 with the remarks that the assessments were done in a hurried manner.

### **Non-levy and short levy of penalty**

#### *2.1.15(a) Non-levy and short levy of penalty for concealment of income*

Under the Income Tax Act, 1961, penalty is leviable where, in the course of a search, the assessee is found to be the owner of any unexplained or undisclosed money, bullion, jewellery or other valuable article or thing.

In Assam, West Bengal, Delhi and Tamil Nadu charges, in 9 cases test checked, penalty of Rs. 30.24 lakhs leviable for concealment of income, was not levied/short levied on concealed income of Rs. 55.40 lakhs (in two cases of Assam charge, amount not quantified).

#### *(b) Penalty proceedings dropped without approval of Deputy Commissioner of Income Tax*

The Central Board of Direct Taxes issued instructions in July, 1991 that where penalty for concealment of income under section 271(1)(c) is not initiated or is to be dropped after its initiation, it will be done only with the approval of Deputy Commissioner of Income Tax.

In 7 cases (Tamil Nadu charge) and in one case (West Bengal charge), penalty proceedings initiated for the assessment years 1980-81 to 1991-92 (relating to Tamil Nadu cases) and for 1989-90 (West Bengal case), involving penalty of Rs. 28.22 lakhs, for concealed income, were dropped, without the approval of the competent authority.

### **Tax/Penalty/Interest levied in regular assessments lying uncollected**

2.1.16 In cases where search assessments have been framed, demands raised in several cases remained uncollected. For instance, in West Bengal charge, tax of Rs. 36.56 crores and penalty of Rs. 3.04 crores determined in regular assessments of search cases during the years 1988-89 to 1991-92 remained uncollected. Similarly, in Tamil Nadu charge, in 14 cases relating to assessment years 1983-84 to 1992-93 completed between February, 1989 and March, 1993, collection of tax and interest of Rs. 2.51 crores which was chargeable, was pending.

### **Lack of effective monitoring**

2.1.17 With a view to ensuring adequate and proper follow up action in search cases, the Board have issued an instruction in July, 1991 requiring each Commissioner and Deputy Commissioner of Income Tax to monitor at least 5/10 of the top search cases respectively, every year.

Test check by audit revealed that monitoring was either not being done or was being done partly.

For instance, in Tamil Nadu charge, one Commissioner of Income Tax monitored only 19 cases during the years 1991-92 and 1992-93. The other Commissioner of Income Tax did not furnish the details of monitoring and two Deputy Commissioners of Income Tax did not monitor any search cases. Similarly, in Bihar out of 2 Commissioners of Income Tax charges, in one charge no monitoring was done while in another charge only two cases were monitored during the 5 years period 1988-89 to 1992-93. In Calcutta charge, of the 52 search cases in one circle, only 3 cases were monitored by the Deputy Commissioner of Income Tax, during the year 1991-92. In Punjab charge out of 350 cases required to be monitored by seven Deputy Commissioners of Income Tax during 1988-89 to 1992-93, only 139 cases were monitored.

### **Defective/improper maintenance of records**

2.1.18(i) With a view to facilitating control, quick transmission of relevant data to various supervisory authorities as well as for quicker follow-up action, at least 5 registers are required to be maintained by assessing officers, dealing with search assessments.

A review of the maintenance of these registers revealed that most of the registers were either not maintained or wherever maintained, these were not in the prescribed proforma or were otherwise incomplete. Many important columns in the registers were left blanks. Submission of these registers to the competent authorities, wherever required, was also not regularly done.

The different types of deficiencies noticed in test check are mentioned below:

#### *(a) Register of application, for relief against orders passed under section 132(5)*

In Tamil Nadu charge, in one circle, the register was not maintained for four years and in 5 circles it was not maintained properly with many of the columns having been left blank. In Madhya Pradesh circle, the register was not submitted to the competent authority periodically. In Uttar Pradesh, its maintenance was not in the prescribed proforma.

#### *(b) Register for granting extension of time for retention of seized records*

In Tamil Nadu charge, the register was maintained in three circles but in one circle many columns were left blank. In Assam charge, it was not maintained in 3 circles and in 2 circles, it was not updated. In Uttar



Pradesh and Kerala charges, it was not maintained in the prescribed proforma.

*(c) Register for retention of books and documents under section 132(8)*

In Tamil Nadu, in four circles, its maintenance was not in the prescribed format. In Assam, Uttar Pradesh and Kerala charges, the register was not maintained in almost all the circles test checked. Wherever it was maintained, its maintenance was not in the prescribed proforma. The registers were also not posted upto date.

*(d) Register of inspection of seized books and documents*

In Assam and Uttar Pradesh charges, the register was not maintained at all in the circles test checked. In Tamil Nadu, Kerala and Calcutta charges, it was not maintained in the prescribed proforma.

*(ii) Non-preparation/submission of reports*

Test check revealed that the periodical reports, monthly as well as quarterly, which were prescribed and which were required to be submitted to the competent authorities, were not prepared at all and wherever prepared, these were not submitted to the concerned authorities in time. For instance, in Tamil Nadu circles a review of 306 monthly reports for the period April, 1988 to March, 1993, on the progress of assessments in cases having concealed income of Rs. 10 lakhs or more, received from 7 Commissioners of Income Tax charges, disclosed that the submission of these reports was delayed upto 45 days in 140 reports. Further, a review of 100 quarterly reports of search and seizure assessments in 5 Commissioners of Income Tax charges pertaining to the period April, 1988 to March, 1993, revealed similar delays ranging from 3 days to 75 days in 46 such reports in four commissioners' charges.

**Other topics of interest**

*2.1.19(a) Lack of co-ordination assessments*

The departmental 'Search & Seizure Manual 1989' mentions that in order to ensure that action is taken by all assessing officers on similar lines in respect of assessments of all assessees of a group, the assessing officer dealing with one assessee should keep in close touch with officers dealing with other assessees of the group.

(i) In West Bengal charge, in respect of one assessee of a group, the assessing officer, in the interim order passed, estimated income of Rs. 13.35 lakhs being the assessee's share of undisclosed profit declared by a firm as concealed income. However, in the case of another assessee of the same group assessed in another circle, the assessing officer omitted to add Rs. 26.71 lakhs being his share of profit in the said firm. Similarly, in another case, a sum of Rs. 4 lakhs being 20 per cent share of undisclosed profit (Rs. 20 lakhs) of a firm was added to the income of partners by one assessing officer, but during regular assessment the said disclosure of

Rs. 20 lakhs was not taken into account in the assessment of the firm. No reasons for exclusion were recorded in the assessment order.

(ii) in Gujarat charge, as per appraisal report in a case, land for a project was purchased in September, 1986 and the cost of land was shown as Rs. 38 lakhs in the accounts seized. In the audited accounts the cost of land was shown as Rs. 29.64 lakhs only, implying that the difference of Rs. 8.36 lakhs treated as undisclosed income was paid in cash outside the books of accounts to the land owners. This fact was also admitted by the assessee during the search. However, no action has been taken by the assessing officer to pass on this information to the assessing officer having jurisdiction over the owners of the land, so that the tax on capital gain could be levied on such amounts and penal action taken for not showing the amount in the books of accounts.

*(b) Failure to co-ordinate with other departments on valuable information established during search*

The Search and Seizure Manual, 1989, as well as departmental instructions; require the investigating wing of the department as well as the assessing officer to maintain co-ordination/liaison with other departments and enforcement agencies, like Revenue Intelligence, Enforcement Directorate, Customs and Central Excise department, Sales Tax department etc. Instances have come to notice where such other departments/agencies were not informed of violation of other laws. For example, in Gujarat charge, in case of an assessee who was found to have acquired gold ornaments worth Rs. 82.05 lakhs out of unaccounted business transactions, no information was passed on to the Sales Tax department of the State.

The review was referred to the Ministry for comments in September, 1993; their reply has not been received so far.

## APPENDIX II

### Conclusions and Recommendations

Sl No.	Para No.	Ministry/ Department concerned	Conclusion/Recommendation
1	2	3	4
1.	90	M/O Finance (Deptt. of Revenue)	<p>The need to curb economic offences and combat tax evasion have engaged constant attention of the country. Government have from time to time introduced various measures including <i>inter-alia</i> conferring of powers of survey, search and seizure on the Income tax authorities with this end in view. Search and seizure operations are planned and executed by the Investigation Wing of the Department. However, the assessment work of these cases is assigned to the Investigation Circles headed by Assistant Commissioners of Income Tax, except those which are assigned to Central Circles or to Deputy Commissioners of Income Tax (Assessment). The powers of search and seizure, dealing with seized assets etc. are governed by Sections 132 and 132A of the Income Tax Act, 1961 read with Rules 112, 112A, 112B, 112C and 112D of the Income Tax Rules. Similar powers are conferred by Section 37A and 37B of the Wealth Tax Act, 1957 read with Rules 10 and 10A of the the Wealth Tax Rules. In all search and seizure operations undertaken by the Investigation Wing, an Appraisal Report is required to be prepared and sent to the Assessing Officer within 45 days. It <i>inter-alia</i> contains details of seizure of assets, surrender made, outcome of the search, presentation and potential of the case etc. based on preliminary scrutiny of the seized documents. The Assessing Officer initially passes an order within 120 days in terms of Section 132(5) of the Act in a summary manner</p>

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towards the tax, interest and penalty imposable on the person. Thereafter, action for completion of regular assessment is taken up. The audit review seeks an evaluation of the post search performance of the Department particularly the working of the Investigation Circles based on the findings from test audit of records of 7960 cases in 165 Investigation Circles, functioning in 75 Commissioners Charges in various parts of the country covering the period 1988-89 to 1992-93. The findings of the Committee emerging from the Audit review are summed up in the succeeding paragraphs.

2. 91 -do-

Under Section 132(5) of the Income Tax Act, 1961, the Assessing Officer first passes an order within 120 days of the date of seizure in search cases where any money, bullion, jewellery or other valuables are seized, estimating undisclosed income/wealth in a summary manner after affording an opportunity to the person concerned for being heard. The Assessing Officer then calculates the amount of tax, determines the amount of interest payable and penalty imposable on the person with the prior approval of the Deputy Commissioner of Income Tax. A test check by Audit of interim orders passed, revealed mistakes and infirmities like underestimation of income, omission to consider concealed incomes, non-imposition of penalty, interest etc. As regards the 13 cases mentioned, the Ministry of Finance on the basis of the reports received from the Charges concerned replied to 7 cases stated that there had been a "technical" delay in only one case. The Ministry, however, admitted that no record of the pendency charge-wise, was compiled and maintained. The Committee desire that the Ministry should thoroughly analyse the

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infirmities in the 3 of the 7 cases mentioned above in which their reply was considered as not relevant by Audit and also the position prevailing in all the charges and take suitable measures to avoid such eventualities which could be detrimental to the interests of revenue. The Ministry should also send their specific replies to the remaining 6 cases after due vetting by Audit.

3. 92 -do-

The Committee are concerned to note that in the five years from 1988-89 to 1992-93, out of a total of 10,348 search cases where final assessments have been completed, in 3712 cases, i.e. 35.87% no concealed income was detected. The Committee are, however, surprised that the Ministry of Finance seem to be contented with the present rate of success. The Ministry stated that the success rate of only 65 percent can be no means be considered a matter of anxiety and described the same as fairly high. The Committee are not inclined to share this sense of complacency. Considering the extraordinary and exceptional power granted to the Department in conducting search and seizure operations, the Committee are of the view that there is an imperative need for a thorough groundwork before undertaking search and seizure operations in order to enhance the success rate.

4. 93 -do-

The Income Tax Act, 1961 provides for prosecutions for certain default such as wilful attempt to evade tax, false statement in verification etc. The Committee are deeply concerned to note that the prosecution proceedings initiated in the number of cases assigned to Investigation Circles during the period 1988-89 to 1992-93 showed a declining trend. In fact, the Committee's examination revealed out of a total number of 49,648 search assessments completed during 1990-93, prosecutions were launched in 2729 cases only. Curiously enough, the cases of prosecutions

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launched sharply declined from 1629 in 1990-91 to 775 in 1991-92 and 325 in 1992-93. Evidently, the low number of prosecutions launched is a pointer to the fact that even after considering incriminating material in search cases, the Department were unable to establish many cases of tax evasion. The Ministry of Finance attributed the sharp decline in the prosecution proceedings launched to the immunity provided for in this regard under certain provisions of Income tax Law, the decision of Government to launch prosecution in important cases only, other factors like necessity to await completion of assessment proceedings, fulfilling of criteria laid down in various instructions of the Central Board of Direct Taxes etc. While the Committee do recognise the need for laying greater stress on bigger and relatively more important cases, they are not fully convinced of some of the other causes put forth by the Ministry. For example, since the search cases are taken up on the basis of the incriminating materials collected by the department, the Committee feel that it is not necessary to await decision of the first appellate authority for launching prosecution particularly when such cases unfortunately tend to linger on at various appellate stages. The Committee would, therefore, recommend that the Ministry of Finance should look into the reasons for the sharp decline in the prosecutions launched in search cases and take necessary steps in order to ensure that the prosecution provisions under the Direct Tax and other related Laws are effectively applied to create an appropriate impact and to subserve as a deterrent against tax evasion.

5. 94 -do-

Another disquieting feature observed by the Committee was that the rate of convictions against the prosecutions launched in respect of search assessments was dismally low. Of the 2729 prosecutions launched in respect of 49,648

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search assessments completed during 1990-93, the number of convictions was just 1664. In fact, the Committee's examination revealed that the number of acquittals in respect of the prosecution complaints launched against the offences committed under Direct Tax Laws and related IPC sections as a whole itself was very high. Similarly, the prosecution complaints launched which were disposed of in a year had been substantially lower than those filed. The Committee are, therefore, convinced that those disturbing trends have to be carefully analysed at the Board/Ministry level and necessary corrective action taken with a view to ensuring that the offences committed are sternly and effectively dealt with. The Committee, in this connection, emphasise the need for improving the quality of legal assistance and would, therefore like the Ministry of Finance in consultation with the Ministry of Law to seriously address to this issue and attempt to remove the deficiencies arising therefrom.

6. 95 -do-

The regular assessment of search and seizure cases are taken up by the Assessing Officers under Section 143(3) of the Income Tax Act, 1961. In their instructions issued on 4 May 1985, the Central Board of Direct Taxes had emphasised the need for expeditious completion of assessments in search and seizure cases. the Board, in their subsequent instructions issued on 18 July, 1991 had directed that such assessments should be completed within two years from the search. It is a matter of deep concern to the Committee that these instructions are being followed more in breach by the Assessing Officers. The Audit test check revealed that in 69 cases in seven Charges, regular assessments were not completed, in 25 cases in two Charges even assessment proceedings did not commence within the prescribed two years time, and in 364 cases in 10 charges, delay in completion of regular

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assessments ranged from 17 days to five years beyond the stipulated period. Distressingly, instead of rectifying this unedifying state of affairs, the Ministry of Finance have sought to justify this inordinate delay by seeking to draw an unjustifiable distinction between "statutory delay" and delay arising out of executive instructions. According to them, these delays related to the time-frame laid down in the Executive instructions and not in the Statute. This explanation of the Ministry is totally unacceptable and the Committee have no doubts, whatsoever, that the instructions have been issued by the Board after assessing the exact position prevailing in the field formations. The Committee, therefore, desire that the Central Board of Direct Taxes should not rest merely with issuing executive instructions in the course of administration of Direct Tax Laws, but also ensure that they are faithfully implemented by all concerned.

7. 96 -do-

Fore completion of regular assessments in search and seizure cases, the Board had also laid down Action plan for each financial year setting out the "Key Result Areas" and the targets to be achieved. The Committee regret to note that there had been substantial shortfalls ranging between 1102 to 3113 assessments *vis-a-vis* the specific annual targets laid down in the Boards' Action plans for each of the financial years 1988-89 to 1992-93. The Ministry of Finance attributed the pendency and the resultant shortfall to lack of adequate manpower, fixation of "very high and challenging" target by the Board etc. The Committee are amazed over this explanation and cannot accept the fact that targets had been laid down by the Board without assessing the ground realities. The Committee are of the view that targets should be fixed realistically based on a proper O & M study. Targets if fixed *ab-initio* at levels which are unattainable cannot spur the



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			<p>personnel to higher level of performance. On the other hand they can be demotivated by unrealistic targets. They, therefore, desire the Ministry to examine the matter and ensure that the targets laid down by the Board are actually achieved.</p>
8.	97	-do-	<p>The Committee's examination also revealed that the completion of regular assessments of search and seizure cases have regretfully not been receiving due attention in the Investigation Circles created with up-graded charges. Apart from non-completion of assessments within the prescribed period, various other deficiencies were also observed in different Charges particularly with regard to the stipulation laid down in the Action plan in respect of carrying forward pending assessments to the next year, non-compliance of Board's instructions dated 18 July, 1991 etc. What has, however, distressed the Committee is that instead of rectifying the situation, the Ministry have simply stated that the instructions issued earlier (<i>i.e.</i> July, 1991) would take care of such deficiencies. The Committee deplore this casual approach and desire the situation to be remedied forthwith.</p>
9.	98	-do-	<p>Another important area where the Committee found inordinate delay occurring related to the reopening of assessments after search and seizure operations. Under the Income Tax Act, 1961, in cases where incriminating material or assets are seized, the departmental authorities are required to reopen the relevant assessment. Executive so instructions require that the notices to the assesseees for re-opening completed assessments should be issued within six months from the date of search. The Committee are unhappy to note from a test check by Audit that in 161 assessments in nine Charges, there were delays ranging from one Month to 61 months in issue of notice for re-opening the assessments. Unfortunately, instead of ascertaining the precise reasons for such delays,</p>

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the Ministry in this case also sought to justify the lapses by stating that there had been no statutory delay in reopening the cases and that it was only in terms of the Executive instructions. The Committee have no reason to believe that the time-limits were laid down by the Board in the Executive instructions without taking care of the precise circumstances. While deprecating the lack of seriousness of the Ministry in the matter, the Committee desire that the Board should ensure that the assessing officers follow the Board's instructions.

10. 99 -do-

The order passed under Section 132(5) is of an interim nature and as such, while finalising the regular assessment, the Assessing Officer is expected to make complete investigations and frame an assessment which can stand appellate scrutiny. In fact, one of the objectives for setting up the Investigation Circles was to improve the quality of search assessments and ensure quick follow-up action. The Committee are astonished to note from Audit test check, that in 42 assessments, mistakes/omissions were noticed which resulted in non-assessment/underassessment of income/wealth of Rs. 3.34 crores with consequential non/short levy of tax of Rs. 1.05 crores. The Ministry of Finance stated that the mistakes or omissions in the illustrative cases had occurred due to incorrect appreciation of facts available before the assessing officer or due to the failure to take consequential action in the case under assessment or in connected cases. According to the Ministry, wherever such mistakes had been noticed, steps had been taken to rectify the mistakes or remove the omissions and recover the tax dues. The Committee cannot remain satisfied with the reply. They desire that all the cases mentioned above should be thoroughly enquired, with a view to taking corrective action.

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and also fixing responsibility. The Committee would like to be informed of the precise action taken thereon.

11. 100 -do-

In their instructions issued in July 1991, the Board had directed that the reasons for any variation between regular assessment order and Appraisal Reports as well as interim orders are required to be clearly recorded in regular assessment orders. The Committee are surprised to note that against an income of Rs. 13.54 crores determined initially in 15 cases, an income of Rs. 93.02 lakhs was aonly determined. Further, as against tax of Rs. 2.82 crores initially determined in 35 cases, the amount finally assessed was Rs. 42 lakhs only. Similarly, the income shown in the Appraisal Reports at Rs. 8.07 crores in 25 cases was finally assessed at Rs. 86.40 lakhs. Obviously, this indicated that either the estimates were wild or the assessments were not being carefully framed. The Ministry of Finance stated that the Appraisal Report prepared by the Assistant Director (Investigation) evaluates and indicates the lines of investigation; the order issued under Section 132(5) by the Assessing Officer is also a summary order framed with the object of estimating the likely tax liability of the person from whom seizure has been effected in order to retain or release the seized assets whereas the regular assessment order was passed after detailed investigation and after giving due opportunities to the parties. Therefore, according to the Ministry the variations were inevitable. The Committee do agree that some differences between these documents are bound to occur; however, in their opinion, large scale variations such as those pointed out by Audit in the illustrative cases involving differential amounts of Rs. 1.17 crores, Rs. 17 lakhs etc. do not seem to stand to reason. The Committee, therefore, recommend that the Ministry of Finance should ensure that the reasons for the variations are

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			invariably recorded by the Assessing Officers in the regular assessment orders and evolve a method whereby cases involving wide variations as the ones mentioned above are subjected to a meaningful review.
12.	101	-do-	<p>One of the measures of ascertaining the quality of assessments in Investigation Circles was the success rate in appellate proceedings. The Committee note with serious concern that the record of the Department on this score is not very inspiring. The statistics furnished by 58 Commissioner's charges revealed that out of tax of Rs. 467.47 crores determined in 2985 interim orders passed under Section 132(5), tax of Rs. 125.95 crores (29.44 per cent) only, including interest and penalty was finally determined after appeal effect in regular assessments completed during the year 1988-89 to 1992-93. In several Commissioner's charges, substantial portion of assessed tax demand was found to have been set aside in appeal. The Committee, therefore, recommend that a sample of the more important cases pointed out by Audit should be taken and a case study undertaken with a view to identifying the exact infirmities resulting in the failure of the Department in defending their action and for improving the performance in appellate proceedings. There is also a pronounced need for the supervisory officer to improve the quality of monitoring of the more important assessments relating to search and seizure cases so as to enhance the degree of success in appellate proceedings.</p>
13.	102	-do-	<p>Under the Income Tax Act 1961, penalty is leviable where, in the course of a search, the assessee is found to be the owner of any unexplained or undisclosed money, bullion, jewellery or other valuable article or thing. The Committee find from the Audit paragraph that in nine cases under various charges, penalty amounting to Rs. 30.24 lakhs leviable for concealment of income of Rs. 55.40 lakhs was not levied or short levied. The Ministry of Finance contended that there had been no</p>

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short/non-levy of penalty in six out of the nine cases pointed out by Audit owing to the proceedings being pending or the penalties levied were dropped on merits by the assessing officer. The Committee are not convinced by this. They desire that the Ministry should thoroughly examine the circumstances in which the penalties leviable were not actually enforced in all the cases mentioned above. Efforts should also be made to pursue and expedite the proceedings where the assessments are pending so as to ensure collection of the legitimate dues of the Government at the earliest.

14. 103

-do-

Yet another shortcoming observed by the Committee was that even in cases where demands were raised, recovery was not being vigorously pursued. Test Audit checks revealed non-collection of tax/penalty/interest of Rs. 42.11 crores levied in regular assessments of search and seizure cases in West Bengal and Tamil Nadu charges during 1988-89 to 1992-93. The Ministry of Finance attributed this to the dispute by the assessee, or pendency in appeal, time taken to carry out adjustment of the seized cash and other assets towards demand raised etc. They also stated that in Tamil Nadu, there had been partial collection of arrear demand and that efforts were still on to collect the balance amounts. The fact that a sizeable amount of revenue assessed in searches and seizure assessments remains uncollected in just two Charges for a fairly long period would seem to indicate that the manner in which such cases are presently being pursued needs a critical examination. The Committee, therefore, desire the Ministry of Finance to analyse the reasons therefor and ensure that concerted efforts are made to vigorously pursue the demands issued and realise the Governmental dues in time.

15. 104

-do-

The Committee find that with a view to ensuring adequate and proper follow-up action in search cases, the Central Board of

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			<p>Direct Taxes in their instructions issued in July, 1991 had directed that each Commissioner and Deputy Commissioner of Income Tax should monitor atleast 5/10 of the top search cases respectively every year. The Committees' examination, however, revealed that monitoring was either not being done or was being done partly. What has further concerned the Committee is that the various registers and reports presented and which were, in fact, the basis for exercising effective monitoring and control of the functioning of the Investigation Circles, were either not maintained or improperly maintained. The Committee recommend that these shortcomings should be urgently addressed to by the Ministry of Finance for appropriate corrective action.</p>
16.	105	-do-	<p>The Search and Seizure Manual as well as the departmental instructions require the Assessing Officers to keep in close touch with other officers concerned of the Department and also maintain co-ordination/liaison with outside departments/agencies like Revenue Intelligence, Enforcement Directorate, Customs and Central Excise Department, Sales Tax Department etc. for effective follow-up of search and seizure. Audit scrutiny has, however, found several deficiencies on this score particularly in West Bengal and Gujarat charges. In the light of the above, the Committee desire that the Ministry of Finance should ascertain the manner in which co-ordination is actually put into practice presently and review the efficacy of the present instructions/arrangements in this regard with a view to ensuring better co-ordination and thereby achieving better results in combating tax evasion.</p>
17.	106	-do-	<p>The Committee note that the Central Board of Direct Taxes had issued instructions in April, 1991 to all the Chief Commissioners/Commissioners for making available all records, including Appraisal Reports. Unfortunately,</p>

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			<p>these instructions were later modified in March, 1993 resulting in withholding of Appraisal Reports from Audit in the course of undertaking the present review. Besides, the Committee were informed that in several Charges, other records and statistical information was also not produced to Audit or not submitted in time. The Committee take a serious view of this aberration. While they feel relieved that the instructions of March, 1993 have since been withdrawn in pursuance of the assurance given by the Revenue Secretary to the Committee during the course of oral evidence, the Committee desire that the Ministry of Finance should take necessary steps to ensure the records requisitioned by C&amp;AG for Audit in all cases to enable the C&amp;AG to discharging its constitutional functions.</p>
18.	107	-do-	<p>The Committee note that in the present system of working, several vital data relevant to the search and seizure operations are not being maintained. This included, year-wise break-up of concealed income brought to light by search operations and the tax collected thereon, uncollected revenue in respect of search and seizure cases, data on the income sustained in appeals, charge-wise details regarding the number of cases pending/passing of interim orders under Section 132(5) of the Income Tax Act, 1961, details of the number of cases pending/launching of prosecution etc. The Committee are of the view that the Ministry of Finance should strive to evolve an appropriate data system so that a better evaluation of the extent of the usefulness of the search and seizure operations could be attempted.</p>
19.	108	-do-	<p>The Audit review under examination is based on the findings from test check of records of 7,960 cases in 165 Investigation Circles, functioning in 75 Commissioners charges in various parts of the country. The review had brought to light several cases of irregularities,</p>

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commissions, mistakes etc. having an important bearing on revenue collection. The Ministry of Finance had furnished details of such irregularities etc. to the Committee in respect of a few illustrative cases only. Evidently, the Ministry are yet to collect the entire details. While expressing their unhappiness over the same, the Committee, therefore, desire that the Ministry of Finance should obtain details of the irregularities, omissions etc. of all the cases pointed out in the review and pursue these cases to their logical conclusions and take necessary steps to recover the legitimate dues of the Government. Steps should also be taken to fix responsibility of the officials concerned for the various omissions/commissions.

20. 109

-do-

The Public Accounts Committee have time and again emphasised the need to tone up Direct Taxes administration to effectively meet the menace of black money and evasion of taxes. The Committee would like to underline the fact that search and seizure are exceptional powers conferred in exceptional circumstances for the purpose and, therefore, it is highly imperative that they are exercised efficiently in unearthing concealed income and wealth and also checking evasion of taxes. However, the deficiencies and irregularities discussed above clearly indicate that there is a need for a critical review of the existing system of search and seizure in order to make it more effective. In this connection, the Committee note that in the Finance Bill, 1995 a new scheme has been introduced under which undisclosed income detected as a result of search shall be assessed separately at a flat rate of 60%. It has been stated that the proposed new procedures would reduce the delay in assessments and make the operations more effective. The Committee would await the enactment of the scheme, its actual implementation and efficacy. Meanwhile they desire that the shortcomings/deficiencies/



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			irregularities discussed in the preceding paragraphs should be dispassionately examined in all their ramifications and corrective action in the working/procedures or otherwise taken with a view to streamlining the search and seizure operations and the Investigation Circles and thereby achieving better results in unearthing black money and combating evasion of taxes.
21.	110	-do-	<p>The complex nature of the Direct Tax Laws has been a matter of intense debate. During evidence, the Committee were informed that a group had been constituted in the Central Board of Direct Taxes to recommend measures for simplification of Direct Taxes Laws. The Committee have been informed that the Group was expected to submit its recommendations by the end of September, 1995. The Committee would like to be apprised of the progress made in the task.</p>

