

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

(FIFTH LOK SABHA)

HUNDRED AND SEVENTY-SIXTH REPORT

CORPORATION TAX

NATIONAL AND GRINDLAYS BANK LIMITED



**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1975/Vaisakha, 1897 (Saka)

Price Rs. 2.45

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Corrigenda to Hundred and Seventy Sixth
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(5th Lok Sabha) presented to Lok Sabha
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PUBLIC ACCOUNTS COMMITTEE
(1974-75)

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Shri Jyotirmoy Bosu

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4. Shri Pampan Gowda
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6. Shrimati Parvathi Krishnan
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9. Shri Paripoorananand Painuli
10. Shri Narain Chand Parashar
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12. Shri P. Antony Reddi
13. Shri Shibban Lal Saksena
14. Shri Biswanarayan Shastri
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19. Shri Mohammed Usman Arif
20. Shri T. N. Singh
21. Shri Sasankasekhar Sanyal
22. Shri A. K. A. Abdul Samad

SECRETARIAT

Shri B.K. Mukherjee - Chief Legislative Committee Officer
Shri N. Sundar Rajan - Senior Financial Committee Officer.

INTRODUCTION

I, the Chairman of Public Accounts Committee, as authorised by the Committee do present on their behalf this Hundred and Seventy Sixth Report of the Committee (Fifth Lok Sabha) on Chapter II of the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil) Revenue Receipts, Volume II. Direct Taxes—Corporation Tax, relating to National and Grindlays Bank Limited.

2. The Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes was laid on the Table of the House on the 8th May, 1974. The Committee examined the paragraph relating to National and Grindlays Bank Limited at their sittings held on the 23rd and 24th December, 1974 and 26th April 1975. This Report was considered and finalised by the Committee at their sittings held on the 30th April, 1975. Minutes of the sittings form Part II* of the Report.

3. A statement showing the summary of the main conclusions| recommendations of the Committee is appended to the Report (Appendix V). For facility of reference, these have been printed in thick type in the body of the Report.

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

5. The Committee would also like to express their thanks to the Officers of the Ministry of Finance and Reserve Bank of India for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
30th April, 1975.
10th Vaisakha, 1897 (Saka).

JYOTIRMOY BOSU,
Chairman,
Public Accounts Committee.

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library.

CHAPTER I

INTRODUCTION

Audit Paragraph

1.1. In the assessment of a non-resident banking company, the Department allowed sums of Rs. 2,81,132 and Rs. 680 being proportionate expenses and interest payments to earn dividend income and income from interest on securities. But while computing the business income the Department did not add these back. Failure to do this resulted in under-assessment of tax of Rs. 1,97,750 for the assessment year 1969-70.

1.2. The Ministry have replied (January, 1974) that the assessment in question has been rectified and an additional demand of Rs. 1,97,750 raised. Report regarding recovery of the demand is awaited (March, 1974).

[Paragraph 17 (c) of the Report of the C&AG for 1972-73 Union Government (Civil) Revenue Receipt, Vol. II—Direct Taxes.]

1.3. The Committee were informed by Audit that objection related to the assessment of National and Grindlays Bank Ltd. In Connection with the examination of the Audit Paragraph, The Committee also considered a Memorandum dated 28th June, 1973. received from Shri R. P. Gupta, a former employee of the National and Grindlays Bank Limited containing certain allegations of evasion of income-tax by the National and Grindlays Bank Limited. In his representation, he had *inter-alia* stated:

“Despite the appointment of several ‘Direct Taxes Enquiry Committees’ headed by renowned personalities like Prof. Kaldor, Shri Mahavir Tyagi, and Shri K. N. Wanchoo, much has not been achieved as their reports and recommendations could not be put through by the reaction and counter-action of the opposite groups with the result that till this day, the Government has not been able to lay down ways and means to un-earth black-money and curb tax-evasion. The Income Tax law in India has remained a subject of sharp criticism and as the former Chief Justice of India, Shri S. M. Sikri, pointed out, it remains and continuous to be a complex and complicated affair: It has always been twisted to suit the tax-evaders and the worst is that under the garb of compliance with legal requirements, new avenues of tax-

evasion are created, and in every sphere of public life including the unbridled private business men, the scope and the extent of black-money operations is always on the increase.

Even after 25 years of our independence, we have yet set up a 'tax-machinery' which may look after the national interests: What we find is that "FOREIGN INFLUENCE" is still dominating the "INDIAN ADMINISTRATION"; the foreigners who, are providing a large scale of economic explanation are still treated as Superiors; the Government of India, knowingly or unknowingly, willingly or as silent spectators, has also become the part of this game resulting in huge losses to the country. The various "USQ" vis. 4269 dt. 1-9-72, 2740/42, 44 dt. 1-12-72 and the subsequent correspondence regarding the inaccuracy in the answers, 5385 dt. 30-3-73 and 8490 dt. 27-4-73 tabled in the Lok Sabha speak for themselves in support.

I had the occasion of making a detailed study of the working of the foreign concerns in India with special reference to the working of one of the foreign banks operating namely, THE NATIONAL AND GRINDLAYS BANK LIMITED. The study was mainly, concentrated on the question of 'wilful' evasion of income-tax and 'Illegal' flow of foreign exchange. I had stated in the 9 memoranda consisting of 41 pages with 8 annexures, and submitted during the period 15-7-72 to 26-9-72, that the working of this bank was resulting in a loss to the Indian Exchequer; the loss was put by me at a minimum figures of Rs. 70 crores besides the levy of interest penalty and fines. The USQ 6310 dt. 6-4-73 tabled in the Lok Sabha speaks for itself.

Despite the various illustrations, examples and evidences supporting the 9 memoranda, I do not know to what extent investigations have been completed by this date and I very fear and apprehend, that these memoranda may also be conveniently laid to rest on the simple hypothesis that what is true of all the other reports should be true of these memoranda as well. I am all the more concerned about this fact as the various figures, statistics, data, examples and evidence used by me cannot be rebutted by any one since these have been taken from the published records.

I am writing this letter to you to request Your Honour, to very kindly look into the matter and to order such immediate enquiries as are deemed necessary and appropriate so that the public may not have a belief that the Government is silent, and shall remain silent.

despite the fraud, forgeries, leakages and other losses that the "PUBLIC SERVANTS" may be causing the Government Exchequer by providing mis-interpretations and their using Government machinery to meet their unscrupulous needs. I also sincerely hope that this wilful evasion of income-tax and the illegal flow of foreign exchange by this bank or by any other vested interests however, powerful the same may be, shall not be permitted and that the law shall have its own course in bringing the culprits to task and for justice being done to one and all."

1.4. The Unstarred Question No. 6310 dated 6th April, 1973 tabled in the Lok Sabha, together with the answer given by the Minister of Finance is reproduced below:

"Will the Minister of Finance be pleased to state:

- (a) the details of the Indian Taxes paid by the National and Grindlays Bank year-wise, during the last three years;
- (b) whether there are arrears;
- (c) whether his Ministry has received letters from a former officer of the National and Grindlays Bank containing allegations of tax evasion against it and if so, the nature of such allegations; and
- (d) what action if any, has been taken on these allegations?

ANSWER

THE MINISTER OF REVENUE AND EXPENDITURE (SHRI K. R. GANESH): (a) The details of income-tax paid by the ational and Grindlays Bank year-wise during the last three years are as under:—

| Year | Regular tax | Advance tax | U/s 140A | Total |
|---------|-------------|-------------|----------|-------------|
| 1969-70 | 2,53,000 | 37,57,000 | 3,99,000 | 44,09,000 |
| 1970-71 | 7,26,000 | 22,19,000 | Nil | 29,45,000 |
| 1971-72 | 7,36,000 | 1,64,62,000 | 3,36,000 | 1,75,24,000 |

(b) There are no arrears as on 23-3-1973.

(c) Yes, Sir. The Ministry has received letters from a former official of the Bank containing certain allegations against the Bank. Some of the allegations made against the bank are as follows:

- (a) Improper valuation of perquisites provided to top officials of the bank.

- (b) Improper claims of depreciation in regard to bank's buildings/other assets.
- (c) Evasion of Income-tax by the pensioners of the bank settled in U.K.
- (d) Non-deduction of tax at source from interest paid to non-residents.
- (e) Improper claims of certain expenses.

(d) Investigations in regard to these and other allegations are in progress."

1.5. The Memorandum was referred to the Ministry of Finance who were requested to furnish a detailed note on the subject *inter-alia* indicating the details of the allegations made by Shri Gupta, a former official of the National and Grindlays Bank, against the Bank. factual position of each of the allegations and the action taken by Government thereon. The Ministry of Finance, in their reply dated 10th August, 1973 stated:

"The allegations made by the former official of the National and Grindlays Bank are against the bank and its top officials. The investigations in these cases are conducted under the supervision of the Director of Inspection (Investigation), New Delhi in consultation with the Commissioners of Income Tax, West Bengal II & III.

As regards the present stage of investigations the position is as under:—

- (a) Allegations against the National & Grindlays Bank Limited.

The allegations against the Bank can be broadly classified into 7 categories:—

- (i) Huge claims of payments to First National City Bank as technical fees for training personnel of National and Grindlays Bank with a view to evade taxes.
- (ii) Wrongful claims towards bad and doubtful debts.
- (iii) Improper valuation of perquisites in the cases of top officials of the bank.
- (iv) Disproportionate claims towards head office expenses.
- (v) Failure or deduct tax at source in regard to certain payments made.

(vi) Need for withdrawal of recognition to Bank's Provident Fund due to non-compliance of statutory requirements.

(vii) Payments to widows of deceased British employees as pension out of the Bank's pension and superannuation funds without deduction of tax at source.

The allegation relating to payments made to First National City Bank has been looked into. The following payments have been made so far:

| <i>Period</i> | <i>Amount</i> |
|------------------------------|---------------|
| | Rs. |
| 1-4-69 to 31-12-69 | 21,60,000 |
| Calendar year 1970 | 38,15,000 |
| Calendar year 1971 | 52,29,000 |
| 1-4-72 to 30-11-72 | 27,94,752 |

This point has been examined while completing the assessment for the assessment year 1970-71. In this year, the bank claims to have made payments to M/s. First National City Bank to the extent of Rs. 21,60,000/-. Out of this sum, a sum of Rs. 4 lakhs has been considered to be reasonable payment for the services rendered by the First National City Bank and the balance has been disallowed in the assessment. The entire payment made to the First National City Bank has been brought to tax by the Income Tax Officer assessing the First National City Bank. This point in relation to assessment years subsequent to assessment year 70-71 will be considered at the time of completion of the assessments. The assessments for 71-72 and onwards are pending. The questions of non-deduction of tax at source at the time of payment made to the First National City Bank as also of disproportionate claim of head office expenses, are still under examination.

(2) As regards provision for bad and doubtful debts, a sum of Rs. 75 lakhs claimed as bad debts has already been disallowed while making the assessment for assessment year 70-71. As regards all other allegations, investigation is not complete. Investigations are likely to take some more time since some of the information required by the Department is to be furnished by the Bank from the records maintained by its head office in London and also by referring to Lloyds Bank, London whose Eastern Branches got merged with National and Grindlays Bank some time ago. Investigations are being vigorously pursued.

(3) As regards the allegation pertaining to need for withdrawal of recognition to Provident Fund of the employees of National and Grindlays Bank, the position is explained in a note attached to this reply. (Appendix I).

(b) *Allegations against the official of the Bank.*

(i) The main allegations relate to Mr. W. M. Bennett, General Manager, National and Grindlays Bank, Calcutta. Broadly the allegations are that Mr. W. M. Bennett had claimed his 'status' for Income-tax purposes wrongly as 'resident but not ordinarily resident' instead of his correct 'status' as 'resident' which helped him in escaping the tax on foreign income and that the valuation of certain perquisites provided to him was not correctly made. Besides, there are allegations relating to certain allowances/other payments given to him which were not brought to tax.

Enquiries made so far have revealed that Mr. Bennett has been claiming the 'status' as 'resident but not ordinarily resident' even though it appears that as per details of his stay in India he has to be treated as 'resident'. For the assessment year 72-73, Mr. Bennett has been assessed in the status of 'resident' and his foreign income has been estimated at Rs. 4000/- in the absence of any particulars and the same has been included in his assessment. Mr. Bennett has disputed this and has gone in appeal. Assessments for the assessment years 67-68 to 71-72 have been reopened to bring to tax the foreign income of the assessee. As regards improper valuation of perquisites, certain additions have been made for the assessment year 1972-73, which have been partially upheld by the Appellate Assistant Commissioner. Re-valuation of perquisites relating to assessment years 67-68 to 71-72 will be considered while finalising the re-assessments.

(ii) Information is also being gathered about certain allegations against other officials of the bank and the Department is in correspondence with the Bank for this purpose. Here again, investigations are bound to take some time in view of the fact that the bank is in correspondence with its Head Office at London which in its turn is getting some information from the Lloyds Bank, London whose Eastern Branches got merged with National and Grindlays Bank some time back."

1.6. The brief history of the Case relating to the National and Grindlays Bank Ltd., arising out of the points raised by Shri R. P. Gupta, in his memoranda, furnished by the Ministry, at the instance of the Committee was as follows:

"Regarding the allegations of tax evasion, Shri Gupta has sent copious communications, most of which are general in nature, alleging evasion/avoidance practised by the bank, its former General Manager, other top officials of the bank and in the maintenance and operation of the Indian Provident Fund account of the Bank. The allegations are being investigated under the direct supervision of Shri C. R. Krishnamurthy, C.I.T. West Bengal in consultation with the Director of Inspection (Investigation).

The broad and general allegations against the bank are in regard to payments to the First National City Bank of technical fees for training of personnel; improper provision and false claim of bad and doubtful debts, excessive allowance, benefits and perquisites, evasion through "passage account" maintained in head office in London; payment of huge interest and remittance of huge Head office expenses to head office; over remittance of funds to Head office; huge remittances abroad towards technical services; failure to deduct tax in respect of payment of technical services and perquisites to employees, and improper claim of depreciation in respect of the bank's assets.

All the above allegations against the bank were borne in mind by the I.T.O. in the course of the assessment for 1970-71 and substantial additions were made. The I.T.O. disallowed expenditure of Rs. 17,60,000 paid as technical fees to the First National City Bank Rs. 75 lakhs out of the bad debts and over Rs. 6 lakhs u/s 40(a)(v) of the Income-tax Act. The A.A.C. allowed the bank's appeal in respect of the first two items and on the third item granted relief to the extent of Rs. 3,69,604. In regard to these points, the Commissioner is taking the A.A.C.'s orders in appeal before the Income-tax Appellate Tribunal. In regard to the other allegations against the Bank, information furnished by the bank has been examined and the averments of the bank are being put to the strict test of proof. The allegation that the bank did not use ICT tabulators and yet claimed depreciation has turned out to be true. It is, however, the bank's plea that depreciation is due under Board's circular regarding grant of depreciation in regard to machinery not used due to strike or lock-out. This point is being examined. On the question of excessive allowance of head office expenses the I.T.O. disallowed about Rs. 10 lakhs in the assessment for 1970-71. Detailed questionnaire has been prepared and the bank have since agreed to furnish full and complete information in the course of this month. This matter will be examined in depth thereafter.

The broad and general allegations relating to the assessment of the former General Manager and other top officials of the bank per-

tain to wrong claim of status claimed by the former General Manager and evasion of tax as a result of failure to tax the perquisites in respect of all items of benefits and to their full extent. In the assessment year 1972-73 the 'status' of the former General Manager, was properly determined for tax purposes and the foreign income of the assessee brought to tax to the extent of Rs. 4,000/-. This has been sustained in appeal. Details in regard to the various perquisites alleged as received by the employees are being gathered from the bank. In fact, by the end of October, 1973 the bank have furnished practically all the necessary information and certificates have been given both by local offices and head office at London in regard to the nature and extent of perquisites received by the employees. The information furnished by the bank will be examined with care and alacrity and taken to its logical conclusion.

Allegation against National and Grindlays Bank—Indian Provident Fund.

The information had pointed out certain irregularities and contraventions of the statutory provisions and Trust-deed relating to P.F. and had, therefore, alleged withdrawal of recognition of the P.F. under the Income Tax Act. The irregularities and contraventions pointed out are still under scrutiny and the Company has been requested to file a copy of the up-to-date Rule of the Fund as well as Annual accounts of the Fund. Proposed amendment of the Rules has been filed and the same is under scrutiny. Regarding special allowance paid to employees which have not been taken into account for contribution to the P.F. the Trustees of the fund have intimated that the tiffin allowance and the transport allowance were meant to cover additional cost incurred by the recipient to meet expenses which are required for working longer hours and in view of Rule 2(h) Part A of the 4th Schedule of the Income tax Act, 1961, such allowance cannot be considered for contribution to a recognised Provident Fund. As regards the allegation that the bank had misappropriated their contributions made in respect of "Staff on Special Rates of Pay", full particulars are being obtained.

The third allegation relates to failure to deduct P.F. contribution from the salary of Shri Gupta for the period from 4-11-71 to 13-2-71 i.e. salary in lieu of notice and that it was deducted only on 15-12-71. It has been pointed out that there was no inordinate delay in deducting tax and as such no further action need be taken. The next allegation of Shri Gupta is that the Trustees of the Fund failed to supply statements of account after 1969 as required in Rule 14(2) of the Fund. This is denied by the Bank and it is claimed that the accounts are furnished in accordance with the Fund Rules. Shri Gupta has alleged further that the Trustees of the Fund violated Rule 22

of the Fund by delaying payment of his P.F. accumulation and that no interest was paid for such delayed payment. The Trustees of the P.F. have stated that Shri Gupta's services were terminated suddenly as he had committed serious financial irregularities and thereafter Shri Gupta had been making several representations both to the local management in Delhi and to the General Manager of the Bank praying reinstatement and that the final representation was disposed on 17.1.72 on his P.F. accumulation was in accordance with a resolution passed by the Trustees of the fund under the Rules. Another allegation made by Shri Gupta is that his dispute with the bank and the Trustees was referred to legal adviser of the Bank in contravention of the provision of Rule 28 of the Fund Rules. This allegation appears to be without any basis. There is nothing in law which prevents the employer reform seeking advice from its legal advisor relating to any dispute. No further action is called for in this regard."

CHAPTER II

ACTION TAKEN BY CBDT ON SHRI GUPTA'S MEMORANDUM

2.1 The Committee desired to know the number of representations/Memoranda received by the Ministry of Finance (Department of Revenue & Insurance) and the Central Board of Direct Taxes from Shri R. P. Gupta, a former employee of the National and Grindlays Bank Limited containing allegations of evasion of tax by (National and Grindlays Bank Limited) the above bank, the dates on which they were received and the action taken thereon by the Ministry or the Board. The Member, Central Board of Direct Taxes stated during evidence:

"Memoranda came from Shri Gupta from May 1972 onwards.

In all 9 Memoranda came. Then two letters came which were addressed to the Chairman, Public Accounts Committee. We have here a number of allegations contained in the Memoranda. We have made a list of inventory. In the first memorandum there were twenty allegations in the second, three, then seven, eight; four; ten; seven; five and eight. We have got examined allegations in each memo. Some of them were overlapping. Then we have considered them. In our assessment so far made and still to be made suppose 20 allegations were there in the first memorandum, we have considered all the twenty. We have found that twelve of them have not been substantiated. The other eight are substantiated. We have utilised them in the assessment made and they will be utilised in the further assessments. In the second memorandum there are three. One is overlapping. Salary and allowances of Mr. Bennett as Inspecting Officer; furlough passage, educational allowance, contribution to provident fund, entertainment allowance etc. We found on verification that it is not that these incomes had escaped assessment. They had not."

2.2 He added: "There are 20 allegations in all. The first one is regarding status of Bennett. We examine that. His returns were filed as a resident and not ordinarily resident. So his foreign income was not taxable. His complaint was that his status should be full resident. When we determined his status as resident and ordinarily

resident, we added in the assessment of 1972-73 two items of income—they were (i) interest (ii) his property in Scotland.”

He continued “There was also a complaint made by Shri Gupta that property income and interest was not assessed. Then, in these twenty complaints that tiffin allowance was not taxed; there was no such allowance; the entertainment allowance was not taxed; there was no such allowance; that servants’ allowance was not fully taxed; that we have been able to tax. To put it shortly, in the case of Mr. Bennett, we found that some of the allegations were substantiated and as a result thereof we have been able to make two types of additions. One is in regard to his Indian income. The value of his perquisites has been stepped up—may be the servant’s pay, or some gas and electricity charges or something else. The other thing is having made him a resident and ordinarily resident, we have been able to tax his foreign income. These are the only things so far as Mr. Bennett is concerned.”

2.3 The Committee enquired whether it was a fact that Shri Bennett had since left India. If so, they desired to know whether tax clearance certificate was issued to him and whether any guarantee or bond for the tax due from him, had been obtained either from him or the National and Grindlays Bank.

2.4 The Ministry, in a note submitted to the Committee stated:

“Shri W. M. Bennett has left the country. A tax clearance certificate was issued to him on 15.9.1972. At the time of the issue of the Tax Clearance Certificate there was no un-discharged liability of Mr. Bennett towards income-tax.

A guarantee bond, however, was obtained from the National and Grindlays Bank Limited in respect of the future liability of Shri W. M. Bennett. A copy of the guarantee bond is enclosed.”

2.5 The Committee asked whether the Department had checked the income-tax returns filed by the other foreign nationals of the National and Grindlays Bank who it had been alleged had also evaded tax by wrongly declaring their status.

The Ministry, in a note, stated:

“The cases of other expatriate officers of the National & Grindlays Bank Limited are still under investigation.”

2.6. Since the Memoranda, also contained allegations of foreign exchange violations of a very serious nature, the Committee desired

to know whether, after receipt of the memoranda, the Board had considered sending them to the persons dealing with foreign exchange irregularities like Enforcement Directorate, Reserve Bank and the Department of Banking. The witness stated: "My understanding is that this memorandum relating to Mr. Barnett was already found addressed to these agencies and it was not forwarded to anybody else. Even the other memoranda which related to the Bank were found to have been addressed to other agencies like the Reserve Bank, Foreign Exchange etc."

2.7. The Committee asked when the memoranda had been forwarded by the Board to other agencies, the witness replied: "There was a letter received from Shri R. P. Gupta on 30th April 1974, addressed to the Finance Minister, a copy of which was sent to the Director, Ministry of Finance, Deptt. of Banking."

2.8. Pointing out that this letter was received in 1974 and that the Central Board of Direct Taxes had been receiving memoranda from Shri Gupta since 1972, the Committee enquired whether the Committee could take it for granted that although the Board had received memoranda from Shri Gupta which alleged very serious things involving foreign exchange and taxes, none in the Board or Income-tax Department had moved for nearly three years to ensure that the Enforcement Directorate, the Reserve Bank and the Department of Banking could move with full vigour and if possible in a coordinated and purposeful manner. There was no reply from the representatives of the Central Board of Direct Taxes.

2.9. The Committee desired to be furnished, in a chronological order, the number of representations received by the Central Board of Direct Taxes, from Shri Gupta, the dates on which they were received, brief account of the allegations made therein and the action taken thereon by the Board.

2.10. The Department of Revenue and Insurance furnished the requisite information in a detailed statement which is reproduced in Appendix I.

2.11. The Committee enquired whether it was true that as alleged by Shri Gupta the evasion of tax by the National and Grindlays Bank was to the extent of Rs. 70 crores. The Member, Central Board of Direct Taxes (Shri R. S. Chadda) stated during evidence: "We found at one place that the totality came to Rs. 70 crores. How exactly it was computed was not very clear but the amount of Rs. 70 crores is shown as tax evaded. There are some extra re-

mittances and something else. Now we try to find out what is the tax part of it.

2.12. In a note furnished to the Committee, the Department of Revenue & Insurance state:

"The complainant has alleged huge loss of revenue of over Rs. 70 crores in his letter dated 29th August 1973 addressed to the Chairman, P.A.C. In the letter he has not indicated how he had arrived at the figure. Hence an analysis has been made with reference to the figures in individual Memorandum. The allegations pertain to sometimes evasion of income, and sometimes the word used 'loss of revenue' and it is not clear whether it is of income or tax."

The analysis referred to above is as under:

| Sl. No. | Evasion alleged (in crores of Rs.) | Nature of evasion | Remarks |
|---------|------------------------------------|---|---|
| 1 | 1.00 | Evasion of India Income-tax by the Bank of its income of about Rs. 1 crore from the commission earned on their passage booking. | Alleged amount of Rs. 1 crore is that of income and not for tax. The computation of evasion of income is based on series of assumption viz., (a) at the rate of Family unit of two per officer; (b) ten officers were away every month; (c) for a period of 11 years. |
| 2 | 1.43 | Evasion of income-tax by the individual officers on their saving of passage money of about Rs. 1.43 crores for 15 years. | Alleged amount of Rs. 1.43 crores seem to represent income and not tax. |
| 3 | 0.55 | Amount debited to and claimed by the Bank in London as proportion of Head Office expenditure, over and above the passage money. | Alleged evasion of income and not tax based on an estimate at Rs. 5 lakhs per annum for 11 years. |
| 4 | 20.00 | Payment from provident fund maintained in London. | Alleged evasion to the Indian revenue on a series of assumptions. Loss of tax. |
| 5 | 12.00 | Payments on a pension and super-annuation funds. | Loss to the Indian revenue. Not clear whether it was loss for income or tax. Assumption seem to indicate loss of |

| Sl. No. | Evasion alleged (in crores of Rs.) | Nature of evasion | Remarks |
|---------|--|--|---|
| | | | income. Nor is the basis of computation of Rs. 12 crores indicated in his Memorandum. |
| 6 | 7.00 | Contributions to the funds included under Head Office expenses (for 16 years). | Alleged loss of tax. Figure assumed from salary & allowances paid and Provident Fund contributions. |
| 7 | 0.07 | Tiffin allowance paid to officers not offered to tax for 11 years. | Alleged evasion of tax. |
| 8 | 1.00 | Tax on furlough pay of expatriate officers paid in London. Remained untaxed for 11 years. | Alleged evasion of tax. |
| 9 | 0.30 | Proportion of Head Office expenses relating to furlough pay. | Alleged evasion of tax. |
| 10 | 0.05 | Local leave salary to the British—Officers remained un taxed for 11 years. | Alleged evasion of tax. |
| 11 | 0.11 | Annual leave concession to the Indian covenanted officers remained untaxed for 11 years. | Alleged evasion of tax. |
| 12 | 0.24 | Entertainment allowance paid to the officers for 11 years. | Alleged evasion of tax. |
| 13 | 0.30 | Payments from unrecognised Provident Fund maintained in India for Indians remained untaxed. | Alleged evasion of tax. |
| 14 | 10.00 | Escapement of income due to claim of Provision for bad & doubtful deb'ts against profits for 16 years. | Alleged evasion of income and not tax. |

CHAPTER III

ASSESSMENTS RELATING TO NATIONAL AND GRINDLAYS BANK

3.1. The Committee desired to know the income returned by the National and Grindlays Bank and the income assessed for the assessment years 1968-69 to 1974-75. They also desired to know the position of the recovery of taxes for the above years. The Chairman, Central Board of Direct Taxes stated: "The assessments of this Bank upto the assessment year 1971-72 have been completed. Assessments for the years 1972-73, 1973-74 and 1974-75 are still pending."

3.2. He added: "We have reopened assessments for the years 1967-68, 1968-69 and 1969-70 and 1970-71 under section 147 of the Income-tax Act."

3.3. The Commissioner of Income-tax, West Bengal stated: "In the assessment year 1971-72 we came across two main items of tax avoidance. One was Head Office Expenses and the other was excess claimed towards depreciation in respect of certain machinery which had not been brought to use. For those two items we could reopen the assessment from 1967-68 onwards. For earlier years, the machinery had not been brought. The provision of Section 147 do not apply in that cases."

3.4. In a note submitted to the Committee, the Ministry have furnished the following information:

| Assessment years | Income as finally returned | Income assessed by tax officer. | Income as modified. |
|-------------------|----------------------------|---------------------------------|----------------------------|
| | Rs. | Rs. | Rs. |
| 1963-69 | 2,65,04,780 | 2,98,45,050 | 2,66,23,100 |
| 1969-70 | 2,50,67,560 | 2,68,04,670 | 2,53,99,200 |
| 1970-71 | 2,14,25,210 | 3,24,80,400 | 2,22,35,220 |
| 1971-72 | 3,22,85,660 | 4,13,00,050 | Appeal before AAC pending. |
| 1972-73 | 5,44,51,670 | Assessment pending | |
| 1973-74 | 6,24,24,430 | Do. | |
| 1974-75 | 6,02,15,060 | Do. | |

3.5. The Ministry have added: "Income-tax for the aforesaid assessment years as levied/payable under the Income-tax Act have been paid in full."

3.6. In reply to a question as to when the assessments for 1969 and 1970 had been completed, the Chairman, Central Board of Direct Taxes stated: that the assessment of the National and Grindlays Bank for the assessment year 1970-71 (Previous year 1969) was completed on 31-3-1973 and the assessment for the assessment year 1971-72 (previous year 1970) was completed on 28-2-1974.

3.7. The Commission of Income-tax West Bengal added: "The assessment for the year 1971-72 is already completed. They showed about Rs. 3,22,85,660. This was the income returned. The income assessed was Rs. 4,13,00,056, by making several additions. Rs. 36.20 lakhs were added towards the claim for head office expenses. They have gone in appeal contesting only a part of it. Rs. 34.92 lakhs is not disputed. Only the balance of Rs. 1.28 lakhs is being disputed. The other addition was Rs. 34.35 lakhs on account of payment made to the first National City Bank. They had claimed Rs. 38.35 lakhs. Rs. 4 lakhs were allowed and Rs. 34.35 lakhs were disallowed. Then claim for depreciation was Rs. 4.03 lakhs. Bad debts disallowed were Rs. 4.01 lakhs. Interest added on over remittances of profits to head office was Rs. 3.79 lakhs. Entertainment Expenses were Rs. 2.30 lakhs."

3.8. The Committee asked for the total entertainment expenditure claimed by the Bank. The witness stated: "The expenditure was Rs. 2,35,264. The whole amount excepting Rs. 5,000/- relating to January and February 1970, has been disallowed. This is excess over the amount permitted in the statute. The Committee asked who had certified the balance sheet. The witness replied: "M/s. Lone-lock and Lewes were the chartered accountants who signed the balance sheet in India. M/s. Cooper Brothers and Co. is for the global return."

3.9. In this connection, the Ministry of Finance in their office Memorandum dated 11th September, 1974 have stated.

"The assessment for 1971-72 was completed by the Income-tax Officer on 28th Feb., 1974. On the basis of the investigations made by the Department, the following important additions have been made:—

- | | |
|--|------------------|
| (a) Excessive head office expenditure is allowed (with the concurrent of the Bank) | Rs. 36,20,676 |
| (b) Technical assistance fees paid to First National City Bank disallowed | 34,35,000 |
| (c) Bad debt claim (against claim of Rs. 7,65,066/-) | 4,01,410 |

| | |
|---|-----------------------|
| (i) Excessive perquisites to employees in the shape of depreciation of buildings in the occupation of such employees. | 4,03,140 |
| (e) Interest on over remittance of H. O. expenses repatriated subsequently. | 3,79,447 |
| (f) Excessive perquisites in the shape of medical aid to employees | 2,11,275 |
| (g) Maintenance and repairs in respect of house property let out in respect of which income is computed u/s 23. | 1,30,000 |
| (i) Depreciation on I.C.T. Tabulator not used. | 56,001 |
| (ii) Depreciation of buildings let out (in addition to depreciation a reserve debited to P & L a/c and added back by the assessee in the return. | 44,142 |
| | <hr/> 86,81,051 <hr/> |

These additions are disputed before the Appellate Assistant Commissioner. Instructions have been issued to expedite the completion of all pending assessments.

The assessments of the bank for the assessment years 1967-68 to 1970-71 have also been reopened by the Income-tax Officer to bring to tax escaped income arising out of:

- (a) depreciation claimed and allowed in respect of machines not put to use, and
- (b) excessive claim of head office expenditure."

3.10. The Committee asked when Shri Gupta's letter had been received in the Commissioner's office, the witness replied: "We had received 9 memoranda and two letters. The first memorandum was received on the 22nd July 1972. The assessment was completed in February, 1974."

3.11. The witness added: "For the assessment year 1972-73, they have declared an income of Rs. 5,44,51,670. for the assessment year 1973-74, they have shown an income of Rs. 6,24,24,430."

3.12. The Committee enquired whether the return in regard to self-assessment tax was given within the due date, by the National and Grindlays Bank. The witness stated. "The self-assessment tax paid for 1972-73 is Rs. 13,74,568. The due date was 30th June 1972 for 1972-73 and that for 1973-74 is 30th June, 1973. They have been paid for both the years, the amounts are Rs. 1,64,62,300 and Rs. 2,03,08,388 respectively."

3.13. In reply to another question as to whether the income tax officer had sent for the books of accounts and papers of the Head

Office to facilitate a detailed probe, the witness stated: "We have not sent for the books of account but we have asked for a very detailed break-up."

3.14. When asked as to how the Income tax Department would verify whether the break-up given by the Bank was correct, the witness replied: "That is our handicap in dealing with the multinational Corporations. Either we have to accept their auditors' statement or go over to their place."

3.15. The Committee desired to know the latest position of the assessments relating to National and Grindlays Bank for the assessment years 1972-73 to 1974-75 and whether the returns of these three years had been filed on the due dates by the Bank. The Committee also wanted to know the particulars of income and expenditure returned by the Bank in regard to:

- (a) know-how fees paid to the First National City Bank, M/s. Mackinsey and Company and Urwick Orr;
- (b) head office expenses claimed and allowed; and
- (c) whether self assessment tax has been paid within the time limit.

The Ministry in a note stated:

"(i) Pursuant to investigations in depth, the production of Head office books in support of the proportionate head office expenses claimed was required under Section 142(1) of the Income-tax Act, 1961. The Bank have filed a Writ Petition before the Calcutta High Court in response to which the Hon'ble High Court have granted an ad-interim order of injunction restraining the Department from giving any effect to the requisition made by the notice dated 4-3-1975 under Section 142(I) of the Income-tax Act, 1961 for the assessment year 1972-73 and from proceeding with the assessment on the basis of the said requisition till the disposal of the Rule. For the assessment years 1973-74 and 1974-75, returns of income been filed by the Bank and investigations will be taken up forthwith.

(ii) The Income-tax returns for the assessment years 1972-73, 1973-74 and 1974-75 were filed within the extended time as under:

On 6-12-1972 for 1972-73; on 24-11-1973 for 1973-74; and on 30-9-1974 for 1974-75

(a) Technical services fees claimed to have been paid by the Bank are given below:

| Name of the payee | Assessment year | | |
|--|-----------------|-----------|---------------|
| | 1972-73 | 1973-74 | 1974-75 |
| | Rs. | Rs. | Rs. |
| (1) First National City Bank | 52,29,000 | 67,14,685 | Not available |
| (2) Mackinsay & Co. | *39,698 | @1,18,108 | „ |
| (3) Urwick Orr. | *43,928 | Nil | „ |

NOTE : *The total amounts paid to Mackinsay & Co. and Urwick Orr were £ 19837 & 5489 respectively. The amounts relatable to India are Rs. 39698 and Rs. 43928.

@The total amount paid is £ 55000. The amount relatable to India is Rs. 1,18,108.

(b) The Head Office expenses claimed during the assessment years 1972-73, 1973-74 and 1974-75 are Rs. 85,65,282, Rs. 83,78,300 and Rs. 74,16,014 respectively. The relevant assessments are still pending. As such, the amounts allowable for these years under this head have been determined as yet.

(c) Tax on self assessment for the assessment years 1972-73, 1973-74 and 1974-75 has been paid within the time-limit.

CHAPTER IV

PAYMENTS FOR TECHNICAL SERVICES

4.1. It was represented by Shri R. P. Gupta that huge payments were being made to the First National City Bank for providing technical services to the National and Grindlays Bank Limited.. The Committee desired to know the details of the amounts paid by the National and Grindlays Bank to the First National City Bank for technical services, rendered. The Commissioner of Income Tax, West Bengal III, stated: "The National and Grindlays Bank entered into a five year agreement in 1969 with the First National City Bank of New York, according to which the National and Grindlays Bank gets technical services in respect of training programmes, operational practices, credit policy and administration, development and expansion of National and Grindlays Bank's offices and business. They paid the following amounts to the First National City Bank:

| | | | | | | | | |
|---------------|------|---|---|---|---|---|-----|--------------------------|
| Calendar Year | 1969 | . | . | . | . | . | Rs. | 21,60,000 (A.Y. 1970-71) |
| | 1970 | . | . | . | . | . | Rs. | 38,35,000 (A.Y. 1971-72) |
| | 1971 | . | . | . | . | . | Rs. | 59,29,000 (A.Y. 1972-73) |
| | 1972 | . | . | . | . | . | Rs. | 27,94,752 (A.Y. 1973-74) |

(1-4-72 to)

4.2. Para 3.1 of the Technical Services Agreement between National and Brindlays Bank Ltd. and First National City Bank and executed on 1-4-1969, reads as under:

- 3.1. "FNCB will nominate an individual whom N&G will appoint to serve as Deputy Chief General Manager of N&G who shall be responsible to the Chief General Manager of N&G for furthering the Indian and Pakistan business of N&G and for such other function over the whole range of N&G operations including advice on business methods and systems as may be agreed between them and also will nominate such additional executive and administrative personnel as the said Chief General Manager and the said Deputy Chief General Manager shall consider necessary to provide technical assistance was here in described is

furtherance of the business of N&G in and with India and Pakistan. Personnel nominated and made available by FNCB to serve N&G positions (herein after called 'Loaned Personnel' which terms shall include the said Deputy Chief General Manager) shall be and shall remain FNCB employees who shall possess the requisite background, education, training and experience to enable them effectively to perform the duties of the respect positions to which they shall be assigned by N&G. Loaned Personnel shall be seconded to N&G and while so seconded shall, unless otherwise agreed by FNCB and N&G, devote themselves solely to the business and conduct of the affairs of N&G and shall at all times while so seconded be subject to the control of the Board of Directors and, as appropriate the management of N&G."

4.3. As regards payments made to first National City Bank by National and Grindlays Bank, the Reserve Bank in a note furnished to the Committee stated:

"In terms of clause 4 of the technical services agreement between First National City Bank (FNCB) and National and Grindlays Bank Ltd. (N&G Bank) the latter was to reimburse FNCB monthly in U.S. dollars or such other currency as might be agreed upon, the cost incurred by FNCB in providing its own personnel to N&G Bank as well as the cost of training N&G Bank personnel in its own offices. In pursuance of another clause (clause 5) of the agreement, N&G Bank's principal office in India was to pay a monthly fee in Indian rupees to FNCB's principal office in India equivalent to £ 13,333/- converted at the rate of exchange ruling on the date of payment, as technical knowhow fee; in addition, N&G Bank was to pay FNCB in respect of each of its accounting years 1969, 1970, 1971, 1972 and 1973 an amount in Indian rupees equivalent to 10 per cent of the amount by which the actual earnings of the Indian business of the former exceeded the projected earnings of its Indian business for the respective years.

The amounts received by FNCB in Indian rupees in terms of clause 5 of the agreement from N&G Bank in India were reported by FNCB as under:—

| Year | Amount received |
|--|-----------------|
| | Rs. |
| 1969 (April-December only) | 18,99,000* |
| 1970 | 29,01,000 |
| 1971 | 38,12,021 |
| 1972 | 55,19,717 |
| 1973 | 7,58,698 |
| January to March 1974 (the agreement expired on 31st March, 1974 and has not been renewed) | |

*An amount of Rs. 21,60,00 is stated in item No. 6 as paid by N&G Bank during 1970-71; this relates to assessment year 1970-71, corresponding to that bank's accounting year 1969. Of this amount of Rs. 21.60 lakhs, FNCB accounted for Rs. 18,99,000 in its books during its own accounting year 1969 (which is slightly different from N&G Bank's accounting year) and the balance Rs. 2,61,000 was booked in its accounts during its (next) accounting year 1970.

These payments were from one resident to another resident, and as such did not require the Reserve Bank's prior approval."

4.4. The Committee enquired whether the services namely training programme, operating practices, credit policy and administration, development and expansion of the National and Grindlays Bank's offices and business could be treated as technical know-how in its true sense. The Committee also wanted to know whether the above services were related to the Indian business of the Bank. The Commissioner of Income-tax, West Bengal III stated: "In a sense it is technical know-how. In fact, they could not give us the details to establish that it was related to the Indian business. Some amounts has been disallowed in the assessment of the National and Grindlays Bank both in the year 1970-71 and 1971-72. In the assessment year 1970-71, the Income-tax Officer allowed a sum of Rs. 4 lakhs and disallowed a sum of Rs. 17.60 lakhs. The Appellate Assistant Commissioner had allowed the entire amount. We have gone in appeal to the Tribunal." The Joint Secretary, Foreign Tax Division added: "As far as payments of this kind evade by National and Grindlays City Bank are concerned, they have been fully taxed in the case of the recipient Bank, that is the first National City Bank. They claimed certain expenses against this income, but later on when the Income-tax officer examined the matter in detail, the first National City Bank withdrew their claim; so that the net effect is that the full payment of Rs. 21.60 lakhs for the first year has been taxed in the

hands of the first National City Bank. Similar practice will be followed in the subsequent assessment year."

4.5. The Committee asked as to the rate at which the above payment was taxed, the Commissioner of Income-tax stated: "That is also a foreign company and it pays tax at the same rate (which is now 73.5 per cent including surcharge). The paying company as also the recipient company are being assessed at the same rate."

4.6. The Committee desired to know the basis on which a sum of Rs. 4 lakhs was allowed by the Income-tax Officer. The witness read out the relevant portion of the assessment order of the Income-tax officer.

4.7. The Income-tax officer in his assessment order dated 31-3-1973 has stated as under:—

"TECHNICAL SERVICES AGREEMENT: The assessee bank (N&G) entered into an agreement on 1-4-69 with the First National City Bank (FNGB) for obtaining technical assistance for a period of five years from the date of agreement. A certified true copy of the agreement has been furnished on request.

The First-National City Bank, on the same day also acquired 40 per cent of shares of the bank and so had substantial interest during the tenure of the agreement.

Two types of payments apart from re-imbursement of expenses were stipulated in the agreement. One was a monthly payment of £ 13,333 p.m., rupee-equivalent being Rs. 2,40,000/- per month. The payment during the year was for nine months from 1-4-60 to 31-12-69, totalling to Rs. 21,60,000/-. The other type of payment was lump-sum being 10 per cent of the excess of actual earning over projected earning. As there was no projected earning, no payment under this category was made this year.

The assessee claimed the deduction of Rs. 21,60,000 against business income.

The bank was called upon to furnish proof of technical services received in fulfilment of the agreement. In reply the assessee furnished the names of some of its officers who received training in the FNGB for a period varying from three weeks to nine months. The bank also produced for examination Sri K. S. Karant, Manager in the office of the Vice President of FNGB in India. The statement of Sri. Karant was recorded. He stated that FNGB provided technical

assistance to N&G Bank and named some of the employees of National & Grindlays Bank who received training from FNCB. Mr. Karant also said that suggestions and recommendations for operational improvement were made through conferences, telephones and exchanges of letters. The assessee and also the FNCB (through Sri. Karant) were asked to give written proof of services rendered. Mr. Karant had sent a list of officers who received training during the term of the agreement and also sent three copies of recommendations, in which suggestions were made for improvement in the mode of working in the "Toller system", "Local correspondence system" with regard to drafts drawn on State Bank of India and in the "Interbranch Accounting System." It has been stated that there are more written recommendations which can be produced if demanded.

It was confirmed that an officer from FNCB was nominated to be the Dy. Chief General Manager of National & Grindlays Bank, in terms of para 3.1 of the agreement.

Both Sri. Kasbekar and Sri. Karant stated that records about training of officers or about teams etc. not readily available as they were lying in various office files of various branches, though these should have been readily available because in terms of para 3.4 and 3.5 identifications of training personnel were to be made in written instruments.

From the replies of the assessee to several queries raised in this connection, and also from the statement of Sri. B. S. Karant of FNCB, it is clear that the following parts of the agreement were not implemented upon:—

1. Identification of training personnel were not made in any written instrument (3.4 and 3.5)
2. There was no re-imbusement of expenses to FNCB by N&G Bank (vide para 2)
3. Personnel with requisite background, education, training and experience were not nominated and made available by FNCB to serve N&G Bank. None of FNCB personnel (except one deputed Dy. Chief General Manager) devoted themselves solely to the business and conduct of the affairs of N&G Bank (3.2).
4. FNCB did not assist N&G Bank in the recruitment of personnel. The assistance was not sought for either (3.3).
5. Paras 3.6, 3.7 and 4.2 remained in operative.

It may also be noted that the National & Grindlays Bank Ltd. is itself a bank of long standing and repute and has many branches throughout the world. It is not, therefore, understood why it should approach another bank for getting its staff trained. It is seen that First National City Bank has acquired 40 per cent shares of National & Grindlays Bank as on 1-4-69 and the training has also started from that date. It is also seen that the First National City Bank nominated its representative as Deputy Chief General Manager for the Indian & Pakistan branches of National & Grindlays Ltd. It, therefore, appears that the training scheme was launched with a view to exercising control over National & Grindlays Bank so that the holding of 40 per cent shares could be effectively exercised. It is also significant that training was given to Indian and Pakistan branches only and that each of these branches was required to pay certain sums to the branches of First National City Bank. If the expertise at the disposal of First National City Bank given was so great as to benefit another bank of long standing, National & Grindlays Bank would have liked to get all its branches trained by First National City Bank. If operational improvement could be effected in the comparatively smaller branches there would be much more scope for such improvement in the Head Office and other branches. The fact that only Indian and Pakistan branches were chosen for training clearly shows that the expertise available with the First National City Bank was not overwhelmingly superior to the expertise of National & Grindlays Bank Ltd. The main object appears to have been to exercise control. The benefit by training was only an indirect result of the scheme launched by First National City Bank. By exercising such control the First National City Bank has, under the guise of service agreements, been given a substantial amount out of the profits of Indian and Pakistan branches.

As noted above, it is difficult to agree that the full amount claimed was an expense wholly and necessarily incurred for the purpose of the business. The full amount cannot, therefore, be allowed u/s. 37. Even assuming for a moment without admitting that Sec. 37 will not apply, the payment is clearly hit by Sec. 40A(2). Only a small portion of the amount can be allowed and the rest is to be treated as excessive and unreasonable u/s. 40A(2).

In view of above, and considering the legitimate needs of the assessee, I am of opinion that a sum of Rs. 4.00/- can be allowed and the balance of Rs: 17:60:000/- is allowed."

4.8. The Appellant Assistant Commissioner in his order dated 29-8-73, has stated the following reasons for allowing Rs. 21.60 lakhs:—

“Ground No. 5 is against the action of the I.T.O. in limiting the payment to First National City Bank at Rs. 40,00,000/- as against Rs. 21,60,000/- claimed by the appellant. Such payment was in consequence to Technical Services Agreement. The I.T.O. has applied the provisions of section 40A(2) of the Income-tax Act, 1961.”

First National City Bank acquired 40 per cent shares of National & Grindlays Bank as on 1-4-69. The Technical Services Agreement also came into force from this date. By this agreement First National City Bank sought to advise and assist the appellant company in various aspects of service. Such agreement was limited to operations in India and Pakistan only. By the terms of the Agreement the Officers of the appellant Bank were to undertake training in the First National City Bank for operational improvement. Such training was extended to large area of services. It is the I.T.O.'s contention that because all the clauses of the Agreement were not brought into operation, that because the appellant company was itself a Bank of long standing and considerable reputation and because the area of operation was limited to India and Pakistan, the appellant could not be said to have benefited from this Agreement. The payment to First National City Bank accordingly came under the purview of section 40A(2).

A copy of the Agreement has been filed before me. It is the totality of this Agreement which has to be considered. The spirit of the Agreement is explicit. For that there will be an area of assistance and cooperation between First National City Bank and the appellant company. Such assistance would be in various forms for which mode of payment for securing such assistance was stipulated in the Agreement itself. Section 40A(2), would in my opinion come into play only in case where there could be possible evasion of tax through excessive or unreasonable payments to related and associated concerns. However, where the nature of payment as such has to be for services rendered it is difficult under these circumstances to question the reasonableness of the payment made. The I.T.O. has applied certain criteria and came to the conclusion that Rs. 4 lakhs would be reasonable: It is not known what criteria has been applied to come to this conclusion. The extent of the services rendered by First National City Bank to the appellant company must be deemed as a composite whole and not piecemeal, under the circumstances it will be almost impossible to visualise the results

of the services rendered in the year under review. Such results will necessarily be projected over a long period of time."

4.9. To a question regarding the amount refunded, the Chairman, Central Board of Direct Taxes stated: "The refund was adjusted against the tax which was outstanding."

4.10. Referring to the payment of Rs. 21.60 lakhs to the First National City Bank, the Committee enquired whether tax was deducted at source by the National and Grindlays Bank. The witness stated: "In 1970-71, National and Grindlays Bank paid a sum of Rs. 21.60 lakhs to the First National City Bank on which tax was not deducted from source. We are going into the question. As a matter of fact, we are contemplating prosecution action against the Bank. We have not started it as yet. I am told by the Commissioner that they have had four or five consultations with the counsel. We will try to expedite it. Actually the First National City Bank has already paid tax on this amount in their assessment."

4.11. In a Subsequent note furnished to the Committee, the Ministry stated:

"The matter has been under discussion with the Special Counsel for prosecution proceedings. He desired a detailed self-contained note which was prepared and given to the Counsel. As soon as his final opinion is received, necessary action will be taken. It may be added that the Income-tax officer was extremely busy with the investigations pertaining to the assessment for 1972-73, reopening of assessments for earlier years and also compliance with the various questionnaires issued by the Public Accounts Committee in recent months."

4.12. The Committee desired to know the details of the amounts paid by the National and Grindlays Bank (in India) to M/s. Mackinsey and company and M/s. Urwick and Orr through remittances on account of Head Office expresses and whether the amounts were assessed to tax. The Chairman, Central Board of Direct Taxes stated: "This question arose in the course of assessment of 1972-73. It has yet to be decided."

4.13. The Commissioner of Income-tax, West Bengal III added: "The assessment relating to the year 1972-73 is still pending and we are in the course of our investigations. In the course of our investigations, it has come to light that during the accounting year 1971, which is relevant to the assessment year 1972-73, a sum of pound

sterling 19,837 was paid by the National and Grindlays Bank to M/s. Mackinsey and company by debiting to read office expenses and a sum of pound sterling 5489 was paid to M/s. Urwick and Orr again by debiting to head office expenses. We are in the process of looking into the position and the basis of allocation to the Indian Branch. We will do the needful while completing the assessment."

4.14. The Committee enquired about the method adopted by the Bank for allocation of head office expenses to their Branch in India, the witness stated: "The head office expenses are allocated to India like this. There is a denominator, a numerator and a multiplier. There are two parts viz. Composition of the head office expenses and the proportion allocated to India. While examining these we ask for the details in respect of expenses exceeding the equivalent of Rs. 50,000/-. When specifically asked for, they gave these figures of payments to M/s. Mackinsey and company and M/s. Urwick and Orr and these are being looked into."

4.15. When asked whether the Income-tax Department was precluded from examining the genuineness of these payments under the Income-tax Act, the Chairman, CBDT replied in the negative. He added: "As a matter of fact it is the duty of the Income-tax officer to examine the genuineness of any expenditure claimed by an assessee."

4.16. The Committee enquired whether the National and Grindlays Bank was a public limited company or not. They also wanted to know the status in which the Bank was treated for Income-tax purposes. The Ministry of Finance (Revenue and Insurance) in a note submitted to the Committee stated:

"The Bank have stated that National and Grindlays Bank Limited is incorporated in the United Kingdom as a public limited company and functioning in India as a foreign banking company registered under section 592 of the Companies Act, 1956.

For income-tax purposes, the National Grindlays Bank Ltd. is being assessed in the status of a non-resident company."

4.17. The Committee desired to know the details of the share holdings of the National and Grindlays Bank Ltd. The Commissioner of Income tax stated: "First National City Bank hold 40 per cent, the other 60 per cent is being hold by the National and Grindlays Holding Limied."

4.18. The Committee enquired whether the balance of 60 per cent of the shares was owned by a single unit or different units. If they were different units, the Committee wanted to know the full particulars of the share holders. The Reserve Bank in a note submitted to the Committee furnished the information as under:

“As on the 7th January 1975 there were 6,132 shareholders of National and Grindlays Holdings Ltd. The larger share-holdings were as under:—

| Name of the shareholders | No. of shares | % to total |
|--|---------------|------------|
| 1. Iloyds Bank Ltd. | 14,680,000 | 41.4 |
| 2. Royal Bank Scobits Securities Nominees Ltd. 'S' A c | 1,207,200 | 3.6 |
| 3. Bank of Scotland (Starlife) London Nominees Ltd. | 520,000 | 1.5 |
| 4. Barings Nominees Ltd. | 228,000 | 0.7 |
| 5. Glyn Nominees Ltd. | 320,000 | 0.9 |
| 6. Scottish Amicable Life Assurance Society | 245,000 | 0.7 |
| 7. United Kingdom Temperance and General Provident Institution | 280,000 | 0.8 |
| 8. Bank of Scotland London Nominees Ltd. No. A c | 309,000 | 0.9 |
| 9. Bank of Scotland Edinburgh Nominees Ltd. No. 2 A c | 278,200 | 0.8 |
| 10. Prudential Assurance Co. Ltd. | 333,548 | 1.0 |
| 11. Royal Exchange Trustee Nominees Ltd. M.U. A c | 250,000 | 0.7 |
| 12. Royal Exchange Trustee Nominees Ltd. M. C. A c | 200,000 | 0.6 |

4.19. The Committee desired to know the income returned by the First National City Bank and that assessed by the Income Tax Department from the year 1970-71 onwards. The Joint Secretary, Foreign Tax Division stated: “For assessment year 1970-71, the income returned is Rs. 2,19,98,576 and the Income assessed is Rs. 2,35,14,192, for 1971-72, the figures respectively are Rs. 2,35,38,822 and 2,56,00,970/-, for 1972-73, the income returned is Rs. 3,60,70,930. The assessment is pending. For 1973-74 the income returned is Rs. 4,47,66,790 and the assessment is pending. For the assessment year 1974-75, the income returned is Rs. 4,70,05,250 and the assessment is pending.

4.20. The Committee wanted to know the deductions on account of royalties, know-how and head office expenses, claimed by the Bank and allowed by the Income-tax authorities. The witness

stated: "For 1970-71, head office expenses claimed were Rs. 15,16,771. They also claimed an expenditure of Rs. 14,24,250 against technical services rendered. This is in respect of facts received from the National and Grindlays Bank and they said that in rendering these services they incurred this expenditure. This is a part of expenditure claimed by the Head office for rendering these services. The claim was that they had rendered some service to the National and Grindlays Bank. The amount allowed by the Income-tax officer was Rs. 15,16,771 i.e. the whole of the head office expenditure claimed by them. But no deduction was allowed in respect of expenditure claimed for rendering technical services. For 1971-72, the head office expenditure claimed were Rs. 26,57,751. The Income-tax officer disallowed Rs. 18.84 lakhs. They have gone in appeal against this. Against technical services they again claimed an expenditure of Rs. 21.6 lakhs, the whole of which was disallowed and there is no appeal against that.

For 1972-73 they claimed head office expenses of Rs. 32,71,401. This assessment is pending and the point regarding head office expenses is being gone into detail. We will ask them to produce the books of accounts of the Head Office. For 1973-74, the head office expenses claimed are Rs. 34,64,328. This assessment is also pending."

4.21. To a question regarding technical services claimed, the witness stated: "I am told that no expenses have been claimed."

4.22. The Ministry, in a note, furnished the following position in respect of amendments of National and Grindlays Bank.

| Assessment Year | Income returned Income assessed | |
|-------------------|------------------------------------|-------------------|
| | Rs. | Rs. |
| 1968-69 | 1,87,25,419 | 1,87,25,770 |
| 1969-70 | 2,05,41,723 | 2,05,44,190 |
| 1970-71 | 2,19,98,576 | 2,35,14,192 |
| 1971-72 | 2,35,38,822 | 2,56,69,970 |
| 1972-73 | 3,60,70,930 | Not yet completed |
| 1973-74 | 4,47,66,790 | Do. |
| 1974-75 | 4,70,05,250 | Do. |

(b) The details of expenses claimed/allowed are given below.

| Head office expenses etc. | | | | |
|---------------------------|----------------------|--------------------|--------------------------|--------------------|
| Assessment year | Claimed by Bank | | Allowed by I. T. Deptt. | |
| | Head Office expenses | Tech. Service fees | H.O. expenses | Tech. Service fees |
| | Rs. | Rs. | Rs. | Rs. |
| 1968-69 | 15,74,988 | .. | 15,74,988 | .. |
| 1969-70 | 12,73,722 | .. | 12,73,722 | .. |
| 1970-71 | 15,16,711 | 14,24,250 | 15,16,771 | Nil |
| 1971-72 | 25,57,751 | 21,60,000 | 18,84,937 | Nil |
| 1972-73 | 32,71,01 | .. | Assessment not completed | |
| 1973-74 | 34,64,328 | .. | Do | Do |
| 1974-75 | 34,07,833 | .. | Do | Do |

(c) Tax levied and tax collected is given below in respect of the years in which assessments have been completed:

| Assessment year | Tax levied | Tax collected |
|-------------------|-------------|---------------|
| | Rs. | Rs. |
| 1968-69 | 1,31,08,039 | 1,31,08,039 |
| 1969-70 | 1,43,80,933 | 1,43,80,933 |
| 1970-71 | 1,64,59,933 | 1,64,59,933 |
| 1971-72 | 1,79,68,979 | 1,79,68,979 |

(ii) The returns for the assessments 1968-69 to 1971-72 are filed within the time extended by the department and those for the years 1972-73 to 1974-75 were filed within time. The self assessment tax was paid in time for the assessment years 1968-69, 1969-70, 1971-72, 1972-73 and 1974-75. The self assessment tax was paid late by 4 days for the assessment year 1970-71. For the assessment year 1973-74, no such tax has been paid as refund is due as per income-tax return."

CHAPTER V

HEAD OFFICE EXPENSES

5.1. The Committee desired to know the method adopted by the Income-tax Department in determining the head office expenses against the profits of the Indian Branches of the foreign firms/Banks. The Chairman, Central Board of Direct Taxes stated during evidence: "We ask for the details of the expenses from the assessee after going through each big item, we try to find out whether that expenditure is allocable or was incurred wholly or partly towards the running of the Indian Branch. We go through those various items of expenditure, and where an assessee is unable to give complete details of the expenditure, there also we disallow. For instance, in the assessment year 1971-72 we have disallowed a sum of Rs. 36 lakhs. So various criteria are adopted to see whether the expenditure is rightly incurred for the Indian Branch by the head office or not. The figures are there in the books of accounts and they have got to give a description of the item of expenditure."

5.2. In a note, submitted to the Committee, the Department of Revenue and Insurance stated:

"The methodology adopted by the Income-tax Department in determining the Head Office expenses is as below:

The claims on account of Head Office expenses are generally made by the foreign enterprises on one or more of the following basis:

- (a) expenses incurred by Head Office and indented with the Indian branch;
- (b) expenses incurred by Head Office for several branches and proportionate amount being allowed to the Indian branch;
- (c) expenses incurred by Head Office which are not identifiable with any one or more branches and are allocated proportionately to all the branches including the Indian branch.

2. The general criterion applied in determining the admissibility of Head Office expenses is the one laid down in section 37(1) of the Income-tax Act, 1961, viz., whether the expenditure is laid out or expended wholly and exclusively for the purpose of the business and is not in the nature of capital expenditure."

5.3. The Committee asked whether any machinery existed in the Income-tax Department for checking the expenditure in India as well as abroad, the witness stated: "we do not do any checking abroad at all. Checking is only here in India. We do not have any machinery abroad for checking expenditure there."

5.4. The Joint Secretary, Foreign Tax Division added: "We took up a study of this subject of head office expenses allowability against the profits of Indian Branches of foreign firm. We obtained the figures of remittances from the Department of Economic Affairs."

5.5. He further stated: "In the assessment of foreign companies, there are generally two methods which are adopted for determining their income which is taxable in India. Either we take their world profit and take a certain percentage of that as attributable to operations in India. We get their global balance sheet and profit and loss ascertained and we scrutinise them. We are not able to get the physical accounts from outside.

5.6. We asked for certain details certified by their auditors or the chartered accountants and depending upon the facts of each case, the Income-tax officer can go into the matter and examine it."

5.7. When asked whether there was any machinery in the Income-tax Department to probe into the details which were certified by the foreign auditors, the witness replied: "We are handicapped in this regard. In most of the cases or in a large number of cases it will not be possible for us to get the foreign accounts from their foreign Head Offices."

5.8. He added: "If we adopt the global methods, then we determine the global profits and apportion a part thereof to their activity in India. In that process the amount of the Head Office Expenses automatically gets taken into account for computing the Indian income.

The other methods of assessing foreign companies where they have Indian Branches, is that they prepare a separate profit and

loss account and balance sheet of the Indian activity. There they show the income earned in India and expenditure incurred in India and then they claim a suitable proportion of the Head Office General Administration and Management Expenses as allocable to the Indian activity, the argument being that a part of the management expenses which the Head Office incurs for managing its various world branches is allocable and is to be regarded as expenses of each of the foreign branches."

5.9. The Committee enquired whether any guidelines for the treatment of Head Office Expenses for purposes of assessments had been issued by the Central Board of Direct Taxes. The witness stated "there were no definite guidelines laid down by the Board so far. We collected statistical data as to what sort of practice has been followed upto now. We made some case studies and we have now evolved the guidelines. We have prepared a draft recently and these instructions have been sent on 16th December 1974 to a few commissioners for their comments. After this we will finalise them."

5.10. When the Committee pointed out that, in the absence of uniform guidelines, the extent to which head office expenses could be allowed was largely determined by the individual discretion of the Income-tax officer and asked whether this discretion was not dangerous, the witness stated: "Guidelines should have been there. It would have helped the Income-tax officers."

5.11. The Chairman, Central Board of Direct Taxes added: "Quite sometime ago, we carried out some cases studies to see what was actually happening and we discovered that each Income-tax officer was using his own discretion and there was no uniform practice. We have got to see that a uniform practice is followed in determining the Head Office expenses of Indian Branches of foreign companies. After doing that case study we found that uniform practice was not being followed and some Income-tax officers were not doing the job really properly." As a result of case studies we came to the conclusion that full justice was not being done to the job by some Income-tax officers. We thought that it would be better if we issue guidelines so that a uniform procedure is adopted and they are alert about the types of mistakes that are generally being noticed."

5.12. A study not on "Head office expenses" prepared in August 1973 by the Ministry of Finance in sequel to which draft instructions are now proposed to be issued for the guidance of assessing officer, is reproduced in Appendix II.

5.13. Drawing the attention of witness to the study note prepared by the Ministry of Finance, the Committee pointed out that the deductions claimed by the Companies, worked out a percentage to the book profits to the charge of these payments, covered a very wide spectrum ranging from 78 per cent and 70 per cent in the case of 1 BM world trade Corporation (Assessment Year 1969-70) and chartered Bank (A. Y. 1970-71) to 4.6 per cent and 'nil' in the case of Ludlow Jute Co. Ltd. for the assessment years 1969-70 and 1970-71.

5.14. The Committee desired to know the reasons for such varied variations. The Chairman, Central Board of Direct Taxes, stated: "We are going into them. Instructions are being issued. We will be more vigilant in this regard. The position in regard to head office expenses varies from case to case and it is not possible to say that this much amount or this percentage of amount should be allowed in any particular case. One has to go into the facts of each case to see that expenses are wholly or exclusively incurred for the purpose of business of the assessee in India. Since we carried out the study, we propose to go into the facts to see as to why the percentages vary to such an extent in different cases. After carrying out the study, we shall see whether any effort has been made by an assessee to inflate these funds. The information we have collected very recently and now we will carry out the study why there is such a wide margin of percentages by various companies."

5.15. When the Committee suggested, in this context, that the Income-tax Department should insist upon the foreign companies to furnish all statistics to them and that the Department should scrutinise each item of expenditure with the greatest care, the witness stated: "We will certainly do that I think the general criteria should be with reference to the gross income of the assessee. We can think of some other criteria also. The watch will be continuous and it will be very wide."

5.16. The Committee found that even though this study note had been prepared in August 1973, the Board had still not issued any instructions regarding head office expenses. The Committee, therefore, desired to know the reasons for the delay in issuing instructions. The Joint Secretary, Foreign Tax Division stated that they would try to improve. He added: "No study group as such was set up. We were conducting a departmental study. Some notes were recorded by the officers in the foreign exchange division. Meanwhile we are also watching about the National and Grindlays Bank case. We were also having inter departmental discussions with the Department of Economic Affairs and R. B. I. for example, one of the procedural decisions arrived at a few months ago was that in any case where the head office expenses claimed are more than Rs. 1 lakh, the R.B.I. will

refer the case to the Department of Economic Affairs which will consult us in turn, whether the whole amount should be allowed or not."

5.17. At the instance of the Committee, the Department of Revenue and Insurance, furnished a copy of the draft instructions on scrutiny of claims towards head office expenses by foreign concerns, which are reproduced in Appendix III.

5.18. The Draft instructions in so far as they relate to the basis of apportionment of head office expenses provide as follows:—

**Basis of apportionment*

After the composition of the head-office expenses has been scrutinised as above, the Income-tax Officer has to select a suitable basis of apportionment for determining the part thereof which is appropriately debitable as a charge against the profits of the Indian branch. Various criteria are possible for this purpose, *e.g.*, gross income/receipts/turnover/working capital/expenses/assets.

The criterion to be adopted in a particular case will depend upon the nature of the business/activities/sources of income in India. This should be done carefully after taking into account all the relevant facts. The Income-tax Officer should consult this Inspecting Assistant Commissioner before taking the decision on this point. Once a particular criterion of apportionment is selected, it should be followed from year to year. If at any time, a change in the criterion adopted for apportionment is considered necessary owing to a change, in the relevant factors or circumstances or because such a change is claimed by the assessee, the prior approval of the Inspecting Assistant Commissioner should be taken for the purpose.

After the criterion has been selected, the amount actually admissible as a deduction from the profits of the Indian branch will be computed by applying the fraction constituted by the Indian figure of the selected criterion as the numerator and the corresponding global figure as the denominator, to the total admissible head office expenses. Care should be taken to see that the numerator of the fraction is not artificially increased nor is the denominator reduced because otherwise it would result in inflating the amount allocable to the Indian branch.

In order to satisfy himself about the admissible composition of the head-office expenses and apportionment thereof to the Indian branch, the Income-tax Officer should ask the assessee concerned (i) to furnish copies of the global Profit & Loss Account and Balance Sheet and (ii) to indicate the basis of apportionment adopted in respect of the branches in countries outside India."

5.19. The above instructions have been circulated to all Commissioners of Income Tax for their comment.

5.20. Extracts from the comments received from the commissioners of Income-tax, West Bengal I, West Bengal III and Tamil Nadu, furnished to the Committee, are reproduced below:

Cit, West Bengal I

The draft that you have enclosed is very comprehensive. It is, however, for the Board's consideration whether it is necessary to go into details of computation of income, since the activities of foreign companies may not be identical. Our object is to ensure that a foreign company does not load Indian income with expenditure which is not relevant to it or which is disproportionately heavy. This can be achieved by prescribing a general formula on the following lines:—

| | | |
|---|---|--|
| Expenses of the Head office to be attributed to or deducted from the assessable Indian income | *Income of the Indian Branch Global income | Total of the expenses of head office excluding expenses which are inadmissible or are irrelevant to the activities in India. |
|---|---|--|

*Excluding Head Office expenses.

Cit, West Bengal III

In the above note, I am afraid the problem has been oversimplified. In the formula suggested, there is a numerator, there is a denominator and a multiplier. It is all right to suggest that "income, Indian as well global, will have to be worked out as if the provisions of the Indian Income Tax Act will be applicable to both of them" and "if any company fails to furnish the details necessary for working out the global income in accordance with the Indian Income Tax Act, the Income Tax Officer can reasonably decline to deduct any Head Office expenses from the Indian income." In actual

practice, it is not easy in the case of multi-national corporations to work out the global income as if the provisions of the Indian Income Tax Act apply and by refusing to deduct any head office expenses we will only be making the task of attracting foreign capital more difficult. The rationale behind the claim for deduction of proportionate Head office expenses is that the activities in India require supervision and control by the Head Office. The claim for reimbursement of expenses incurred by the Head Office on behalf of the Branch is unexceptionable. At the same time it is well known that multinational companies allocate an unduly large portion of their Head Office expenses to highly taxed countries like India and allocate only a comparatively minor portion of such expenses to less highly taxed countries. This is what we should guard against. The guidelines contained in the draft circular and those proposed in Shri Srinivasan's formula would mean making an assessment on the Head Office, which is time-consuming and which may not be practicable in all cases. Again, the authenticity of the expenses under the various heads can be accepted only after examining the books of accounts, which obviously is not possible in most cases. Any attempt to restrict the Head Office expenses by executive instructions, in my opinion, is not likely to be effective, as experience has shown that appellate authorities are inclined to give relief on the basis of certificates furnished by foreign auditors. A surer way of stopping the drain of foreign exchange on this score is by means of suitable legislation. In my view, the feasibility of fixing a ceiling on Head Office expenses should be explored. What is suggested is a ceiling and, if on the basis of the usual formula, what is allocable to India is less than the ceiling, only the lesser figure will be allowed. It appears necessary to have ceiling (as in the case of Insurance companies) because a pro-rata allocation may often work to the advantage of the assessee with scope for manipulation. For instance, deduction of development and research expenses on a pro-rata basis may not be advantageous, because it is common knowledge that the impact of new and advanced improvisations and inventions cannot be fully absorbed by a developing country like India.

Cit, Tamil Nadu

It is not very clear, as to how far, in the absence of statutory provisions, the Income tax Officer will be justified in

asking for the details contemplated in paragraph 6.1, 6.3, 8.1(ii), 8.2 and 8.3. In the absence of statutory provisions that those particulars must be furnished by a non-resident claiming deduction for proportionate head office expenses in India it would appear to me that even in the particulars set down in the paragraphs of the circular referred to are called for, not furnished by the assessee, and adverse inference drawn as directed in para 5 of the circular, the appellate authorities will have the discretion to consider whether the particulars called for were necessary for deciding the applicability of sections 29 to 37 of the Income-tax Act, the claim of expenditure and come to their own conclusions as to whether the Income-tax Officer was justified in going beyond the certificate produced by the Indian branch from an authorised or competent professional accountant of the home country. While, no doubt, from the departmental point of view the manner of allocation of the expenses to other overseas branches or the manner of treatment given to the repatriation of the expenses from the Indian branch to the head office may be material, there is scope for contending that these are not really material particularly in established cases where assessments for the past 20 years or more have been completed without insisting on these details but accepting an accountant's certificate. I am, therefore, of the view that with a view to avoid (a) multiplicity of appeals and (b) locking up of substantial demands on disputed points and consequential inflation of arrears, the Board may consider the advisability of amending the Act providing for the claims of the Indian branches of non-resident towards deduction of proportionate expenses outside India to be regulated according to rules to be framed and making provisions in the Income-tax Rules for compulsory production of the various data required in paragraphs 6 to 8 of the circular. Once this is done, the appellate authorities will have to merely examine whether the rules have been complied with and they cannot interpret the sufficiency of the particulars given by the foreign company which fall short of the requirements enumerated in the circular. Even the Courts will have competence to only decide on the legality of the rules in a writ and not in a reference application. If the intention is to ensure that foreign companies do not siphon off substantial amounts derived from the Indian operations to their own country through mal-practices, such object can be achieved only by the amendment of the Act and not by the issue of instructions as contemplated."

CHAPTER IV

TREATMENT OF BAD DEBTS

6.1. The Committee desired to know the amounts, other than head office expenses, that had been disallowed by the Income-tax Department for the assessment year 1970-71 (accounting year 1969) in the case of National and Grindlays Bank. The Chairman, Central Board of Direct Taxes stated: "Bad Debt—Rs. 75 lakhs—disallowed on the ground that the debtor company was in existence and carrying on business."

6.2. He added: "The assessee filed an appeal against the assessment order for the year 1970-71 and Appellate Assistant Commissioner of Income-tax had deleted some additions and he has confirmed others partly or wholly. We have gone against the order of the Appellate Assistant Commissioner of Income-tax to the Tribunal. So far as this sum of Rs. 15 lakhs is concerned the Appellate Assistant Commissioner of Income-tax has deleted this addition on the ground that the write off was justifiable."

6.3. The witness then read out the relevant portion of AAC's order as follows:—

"3. Ground number 3 is concerned with the disallowance of bad debts amounting to Rs. 75,00,000¹-. The I.T.O. has disallowed the debt on the reasoning that it could not be considered as irrecoverable and that there was chance of recovery. The debit in question has arisen in respect of Hoare Miller & Company Ltd. This company had overdraft facilities with the bank for over half a century. During the first half of 1968 the affairs of the company gave rise to certain concern in the banking services. It became known that the said company was on the verge of insolvency. It was then decided from 31-7-68 that no further credit facility would be permitted to this company as on that date the total indebtedness to the appellant was Rs. 98,57,755¹-. Almost all of the shares which had been pledged with the appellant company were found to be of no value at all. The appellant then took steps to effect closure of the company and to vacate the office premises which was occupied by the staff of this company. Efforts

were made to find parties who might take over the working of the company, with a view to reviving it and making it a pliable unit. In view of the general insolvency of this company it was considered improper to institute court proceedings. After protracted correspondence with the head office it was decided in December 1969 to write off the sum of Rs. 75,00,000/- and to leave the balance of Rs. 17.7 lacs as outstanding. The write off of Rs. 75,00,000/- was determined on the basis of realisable value of the assets of M/s Hoare Miller & Company Ltd. It was decided that the maximum realisation would be of the order of Rs. 20 lacs from the valuable assets of the company.

4. It is relevant that there is no recovery to date of any portion of the amount of total outstanding. M/s Hoare Miller & Company Ltd. continued to function even today but have no assets of any value which the appellant might seek to recover towards its debts outstanding. In any case, no credit facility has since been advanced by the appellant to this company.
5. The accounts of the company are under the strict supervisory control of the Reserve Bank of India. This is *vide* section 35 of the Banking Regulation Act, 1949. This being the case the appellant was placed in a position to evaluate the extent of the possibility of realising the outstanding debt. It was only after it had explored such possibility to the fullest extent that the Company sought to write off this amount as bad debt. Such write off in turn was approved and permitted by the Reserve Bank of India. In the case of a banking Company it is relevant that it is best placed in a position to judge the point of time at which the debt is said to have become bad. Cash is in the nature of stock-in-trade to such a company. Where cash is not forthcoming it is necessary that a banking company realised what it is capable of realising and writing off what is incapable of realising as the company might determine. In my opinion, the I.T.O. has not applied his mind to the debt as claimed by the appellant. The fact that the debtor company is still existing and still carrying on business appears to have been the only motivating factor in deciding that the debt in question was irrecoverable. It is not necessary for a company to go into liquidation in order to establish the nature of a debt to another company. In view of this position the claim of the appellant for the bad debt written off in its books amounting to

Rs. 75,00,000/- appears to be reasonable and justified. Such debt, in my opinion, is attributable to the instant year and the I.T.O. is directed to allow the appellant the claim accordingly. Relief on this ground will be of the amount of Rs. 75,00,000/-.

6.4. The Income-tax Officer's order which was read out by the witness, at the instance of the Committee, was as under:

"BAD DEBTS: The assessee claimed a bad debt of Rs. 75,00,000 advanced to Hoare Miller & Co. Ltd. It was argued that the Company suffered loss to the extent of about Rs. 33 lakhs in 1967 and that there was no chance of recovery. It was also stated that the value of investments of the company had depreciated and so it was not worthwhile for them to file a suit for recovery. It appears that the Hoare Miller & Co. Ltd. is still existing and still carrying on business. The loss in the value of investments of the company was not proved. As the company is still existing and has not gone into liquidation it cannot be said that there is no chance of recovery. The debt in the circumstances, is not considered irrecoverable and hence the claim is disallowed."

6.5. When the Committee enquired whether the Company had become insolvent, the witness replies in the negative.

6.6. The Committee desired to know the justification for the arbitrary judgement of the AAC that the company could not pay its debts. The witness replied: "We have not accepted the judgement of the AAC. We have gone in appeal to the Tribunal and the ground of appeal is "That on the facts and in the circumstances of the case, the Appellate Assistant Commissioner is not justified in directing the Income-tax Officer to allow the assessee's claim of bad debt of Rs. 75 lakhs in respect of M/s Hoare Miller and Company Limited."

6.7. Referring to the order of the Appellate Assistant Commissioner, wherein he had *inter-alia* stated that 'such write off in turn was approved and permitted by the Reserve Bank of India, the Committee enquired whether it was a fact that such a clearance certificate was given by the Reserve Bank. The Deputy Governor, Reserve Bank of India stated that no clearance had been given by the Reserve Bank. He added: "In fact any write off does not require our permission."

6.8. The Chairman, Central Board of Direct Taxes added in this connection: "but later information is that such a certificate has not been given. That is why we are encouraged to go to the Tribunal. The assessee filed a copy of the Inspection Report of the Reserve Bank. It was not given by the Reserve Bank, it was given by the assessee."

6.9. He continued "We have an extract from the Report of the Reserve Bank on Inspection of books of accounts of the National and Grindlays Bank Limited carried out under section 35 of the Banking Companies (Regulation) Act 1949. The head of the tax department of the Bank authenticated this extract as true copy. He filed this document before the Appellate Assistant Commissioner of Income-tax who accepted it as a true document."

6.10. The Committee desired to know who was the Head of the Tax Department of the assessee Bank. The witness stated: "Shri Kasbekar is the Head of Tax Department of the National and Grindlays Bank. He was an Income-tax Officer in the Income-tax Department. He resigned in 1966 from the Department and joined the Bank."

6.11. When the Committee enquired whether Shri Kasbekar had ever assessed the National and Grindlays Bank, as Income-tax Officer, the witness replied in the affirmative.

6.12. Pointing out that the extract of the Inspection Report was a document of the Reserve Bank and that it had to be authenticated only by the Reserve Bank and not by anybody else, the Committee desired to know the circumstances in which the assessee himself was allowed to authenticate a document of the Reserve Bank to get exemption of tax to the tune of Rs. 75 lakhs and the same had been accepted as a true copy by the AAC. The witness stated: "I do not know the mind of the AAC, but I can say that he must have reasonable belief that there was no room for taking the view that documents would not be the real documents as found in the books of accounts of the assessee or the document representing the correct inspection report of the Bank. This is an individual case. It is true that his mind to a considerable extent was conditioned by the observations made by him in the order that the Reserve Bank had accepted this as a correct thing. But apart from that he had given some other grounds."

6.13. When the Committee asked whether the Certificate of the Reserve Bank was necessary for the AAC to hear an appeal of this kind and give his award, the witness replied: "So far as the AAC of Income-tax is concerned nothing is necessary. It is for the

appellant to decide what evidence he wants to produce and in support of his contention, in this particular case, he has also produced a copy of the Inspection Report It would appear that the AAC of Income-tax has completely misdirected himself in understanding the real merit of this document. The extract of the inspection note reads as follows:—

“Subsequent to the date of the last inspection, that is 12th May 1969, the balance of account was transferred to the Account No. 1.”

The Bank wrote that letter in December, 1969 showing an advance aggregating to Rs. 75 lakhs, Rs. 33.50 lakhs in account No. 1, Rs. 1.01 lakhs in account No. 2 and Rs. 0.49 lakh in account No. 3. The outstanding balance have however subsequently been increased to the present level mainly due to the application of interest. This noting is a statement of fact. The inspection note contains this statement of fact and unfortunately the AAC of Income-tax took this as a certificate from the Bank that they have agreed to this action having been taken by the Bank.”

6.14. The Committee wanted to know the name of the Appellate Assistant Commissioner and whether he was a senior officer. The witness stated that the AAC was Mr. Franklin and he had about two years' experience as AAC.

6.15. The Commissioner of Income-tax added: “He has been an Assistant Commissioner for about a year.”

6.16. When asked about the action taken against the AAC, the Chairman, Central Board of Direct Taxes stated: “We have not taken any action against Appellate Assistant Commissioner of Income-tax because he could take the plea that from the inspection report he mistakenly got the idea that this particular aspect had been approved. In any case, we will ask for his explanation.”

6.17. In a note furnished to the Committee, the Department of Revenue and Insurance stated:

“The observation of the Committee has been communicated to the Appellate Assistant Commissioner of Income-tax concerned for his comments, which are still awaited.”

6.18. The Ministry forwarded a copy of the A.A.C.'s letter dated 14/19th March, 1975. In his letter the A.A.C. *inter-alia* has stated:

“I must honestly admit that my observation that the Reserve Bank approved of the write-off was merely a passing one.

The Reserve Bank had carried out an inspection of the bank's accounts as they were required to do so u/s 35 of the Banking Regulations Act, 1949. On going through the records afresh, I feel I was led to the inference that the action of writing off the amount had the Reserve Bank's approval since the Reserve Bank had not commented adversely on such action in the course of their inspection carried out under statute. It might be argued that my observation, notwithstanding a passing one, was hasty. However, I must reiterate that the matter was considered in all its *pros and cons* and my finding was arrived at after exhaustively studying the facts. It will be viewing my decision from within a very narrow periphery to suggest that only because I felt the write-off apparently had the Reserve Bank's approval that I allowed the Bank's claim.

Section 41(1) of the Income-tax Act, 1961, is a specific safeguard which the Department might avail of should the bank subsequently recover any portion of the bad debt. There cannot be any loss to revenue on this account.

Finally it may be stated that the Departmental appeal before the Tribunal is pending and the decision of the Tribunal in this matter should be awaited."

6.19. The Committee pointed out that under the provisions of Section 28 and 35(5) of the Banking Companies (Regulation) Act 1949, the Inspection Reports of the Reserve Bank could not be published or made available to people outside the Reserve Bank and Government and that it had been noticed that in the case of National and Grindlays Bank, a sum of Rs. 75 lakhs, disallowed by the Income-tax Officer, was allowed on appeal by the Appellate Assistant Commissioner of Income-tax apparently on the basis of an extract of the Inspection Report of the Reserve Bank of India which was filed by the bank (National & Grindlays). The Committee enquired whether it was a practice to make available a copy of the Inspection Report to the bank or banks inspected and whether there was any prohibition restricting the use of these reports by the banks concerned. If there was such a restriction, the Committee asked as to how the National and Grindlays Bank was able to obtain a copy of the Inspection Report and produce it before tax authorities. The Deputy Governor, Reserve Bank of India stated: "We would like to be legally protected, that is to say., we should not be open to legal action. In this case the party itself produced it, so there is no question of any legal action by them."

6.20. In a note furnished to the Committee, the Reserve Bank of India stated:

"Section 35(1) of the Banking Regulation Act, 1949, *inter alia*, provides that "the Reserve Bank shall supply to the banking company a copy of its report on such inspection". It is, therefore, obligatory on the part of the Reserve Bank to furnish to the bank a copy of the report on the inspection carried out by it under section 35 of the Act.

The Reserve Bank's report on the inspection of any bank is marked confidential and is intended for the use of the management of the bank. The Reserve Bank of India is bound by the provisions of the Banking Regulation Act as regards production|publication of the report by itself. So far as a bank is concerned there are no statutory provisions restraining it from disclosing|publishing the contents of our report. Normally it is left to the bank to decide the question of producing the report to third parties or of treating the report or any part of it as confidential; but in deciding this matter, the bank has to take into account the liability, if any, to third parties, which it might incur under the law, as a result of its disclosure of the whole or parts of the report."

6.21. The Committee wanted to know the name of the guarantor of this overdraft or loan in this case and the action taken to recover the money from the guarantor. The Finance Secretary stated: "From certain papers submitted by the Reserve Bank it appears that Shri Rampuria was the guarantor. It appears that the bank did not invoke the guarantee of Shri Rampuria."

6.22. When asked the reasons for not invoking the guarantee, the Chairman, Central Board of Direct Taxes stated: "So far as the Income-tax Department is concerned it cannot compel Mr. Rampuria to make the payment. AAC allowed it on his own reasoning. We have gone to the Appellate Tribunal. That is all we can do. We have not accepted the reasoning and the judgement of the AAC. So far as the Department is concerned, it has done its best."

6.23. The witness added: "That will be one of the most important arguments before the Tribunal that the bank did not enforce the recovery. It can get it from the guarantor. It did not. That means it is a voluntary write off of bad debt. We will urge this point very vigorously before the Tribunal."

6.24. The Committee wanted to know the action taken by the Reserve Bank to invoke the guarantee. The Deputy Governor,

stated: "Reserve Bank would not come in. It is for the bank to force the guarantee. We do not do it at all. They do not have to come to us for write off nor we can we force them to recover."

6.25. Pointing out that the company had taken overdrafts to the tune of Rs. 75 lakhs and that no action was taken to enforce the recovery from the guarantor, the Committee asked for the purpose of Reserve Bank's inspections, if they could not detect it. The Chief Officer, Inspections stated: "As far as the Reserve Bank inspection reports are concerned we have an appendix where advances, which are showing major undesirable feature, are given. In this appendix, we list all the accounts which are showing a sticky nature and are not operated satisfactorily. We do not tell the bank what is the bad debt in the advance or what they should do to release the advance like taking legal action against the borrower. It is left to the borrower and the bank to sort out matters and we are not in any case giving any advice to the bank on the recovery of such advances."

6.26. The Committee wanted to know whether M/s. Hoare Miller and Company was a private company or public company and also the names of the Directors of the Company. The Committee also desired to know the position of Shri Rampuria in the company and the shares held by him. The Deputy Governor, Reserve Bank stated: "The word 'private' is not used. So they may be a public limited company; if it is a 'private' one, they have to use the word 'private' in the name."

6.27. The Reserve Bank in a note furnished to the Committee stated.

"According to the information available with us, Messrs. Hoare Miller & Co., is a public limited company established in 1920, with authorised capital of Rs. 1 crore in 10 lakhs ordinary shares of Rs. 10/- each. The issued and subscribed capital as on the 31st December, 1967 was re. 35,20,000/- in 3,52,000 ordinary shares of Rs. 10/- each fully paid up.

According to the information available with the Registrar of Companies, Calcutta, the directors of the company as on the 21st August, 1974 were (1) Rai Chand Baid, (2) Ratan Lal Chopra and (3) Raghunath Dey.

As per the latest return showing the list of share-holders as at 30th June, 1971 available with the Registrar of Companies Shri R. L. Rampuria held 7,050 equity shares as on that date.

It is primarily for the management of the banks to decide the steps to be taken for the recovery of its dues in respect of

individual advances, having regard to the prospects of recovery, the expenses likely to be incurred etc."

6.28. The Committee enquired whether the Bank (National and Grindlays) had written off other amounts as bad debts in the past and whether such write-off had been allowed by the Tax Authorities. If so, the committee wanted to know the full particulars of the amount written off and claimed as bad debts and those allowed in the tax assessments.

The Ministry of Finance (Revenue and Insurance) in a note submitted to the Committee stated:

| Accounting year Asstt. year | Amount of bad debt written off & claimed | Particulars | Amount allowed in the assessment |
|--------------------------------|---|---|---|
| (1) | (2) | (3) | (4) |
| | Rs. | | Rs. |
| 1965 | 3,35,388.00 | Morarjee | 57,075.590 57,075.56 |
| 1966-67 | Laxmidas (Exporters) | | |
| | Permmand Dhera Shah (Exporters B. Mookerjee & Co. 20th Cen ray Printing Industries Chantibali Streame Service Co. Ltd. (In liquidation) Gopinath Chagan-mill Syndicate Delhi Merchants K. Abdul Azzem & Co Sundries | 66,00.000 52,604.00 23,718.17 27,442.00 61,885.00 8,401.00 32,791.00 5,471.00 | 66,000.00 52,604.00 6,8000.17 27,442.00 61,885.00 8,401.00 32,971.00 5,471.24 |
| | | 3,35,388.00 | 3,18,470.00 |
| 1966 | Rs. 9,208.37 | Abdul Rahim Khan Mohanlal & Sons Sundries | 3,450.00 2,722.00 2,855.37 |
| 1967-68 | | | 9,028.37 9,028.37 |
| 1967 | Rs. 4,60,264.00 | M's Bombay Cutting Tools Ltd. | 2,53,142.00 2,53,152.00 |
| 1968-69 | | M's Science M/s Macks Hard (P) Ltd. Radha Kanto Das and sons Jatindra Kumardes Shyam Sunder Agrawal Other small items | 1,49,610.00 14,453.00 11,184.00 8,830.00 17,500.00 5,545.00 1,49,610.00 Nil 11,184.00 8,830.00 Nil 5,545.00 |
| | | 4,60,264.00 | 4,28,311.00 |

| 1 | 2 | 3 | 4 | |
|---------|-------------|--|-------------|-------------|
| | | | Rs. | Rs. |
| 1968 | 5,47,272.00 | V. O. Vakkan & Sons | 2,33,143.00 | 2,33,143.00 |
| | | Mookjee Sikha & Co. | 1,79,707.00 | 1,79,707.00 |
| 1969-70 | | K. Kutty & Co. | 90,052.00 | 90,052.00 |
| | | H. M. Hazi Syed Abdul Rahman Saheb & Co. | 18,261.00 | 18,261.00 |
| | | Dharam Singh & Co (P) Ltd. | 8,325.00 | 8,325.00 |
| | | M. B. Dubash | 6,580.00 | 6,580.00 |
| | | G. L. Malhotra | 5,470.00 | 5,470.00 |
| | | Other small items | 5,734.00 | 5,734.00 |
| | | | | |
| | | | 5,47,272.00 | 5,47,272.00 |

6.29. The Committee enquired whether there was any qualifying limit prescribing the authority of a particular officer to hear the appeal. The Chairman, Central Board of Direct Taxes stated: "Any Income-tax Officer who has worked for not less than eight years as Income-tax Officer becomes Assistant Commissioner of Income-tax. An Appellate Assistant Commissioner of Income-tax can hear any appeal whatever may be the quantum of total income of the assessee."

6.30. Pointing out that in various Departments of the Government of India, a qualifying limit was prescribed for giving sanction etc. by a particular officer, whereas in the Income-tax Department which was also a Government Department, such a huge amount was allowed by their officers, the Committee asked whether this particular case was examined well. The witness stated: "We did not think it necessary to examine it. As a matter of fact an Assistant Commissioner of Income-tax, with three years' service as Assistant Commissioner of Income-tax is eligible to become a member of the Income-tax Tribunal according to the hierarchy of the Income-tax Law."

6.31. When asked whether that much of experience was sufficient, the witness replied "It has never been considered necessary to examine those aspects."

6.32. The Committee desired to know the limit upto which a single member bench of the Income-tax Appellate Tribunal could hear an appeal. The witness stated that the limit was upto Rs. 40,000.

6.33. Pointing out that a member of the Income-tax Appellate Tribunal could not hear cases beyond Rs. 40,000 but an Appellant Assistant Commissioner could dispose of cases upto Rs. 75 lakhs, the Committee asked how it was justified. The witness stated: "Probably there is some misunderstanding about the powers of the Assistant

Commissioner and that of the Appellate Tribunal. So far as the Appellate Tribunal is concerned, the appeals are generally heard by two members. Probably because of lot of arrears have been accumulated, I think, they have decided that in small cases even one member may decide an appeal. The difference between the two is that in the case of a single Member bench, the decision of the Tribunal is the last word so far as facts are concerned. There is no appeal against the facts. It is only against the legal issue involved that an appeal lies to the High Court and the Supreme Court. So far as the Assistant Commissioner is concerned, the position is in the reverse. So there is a difference between the powers and the responsibilities of the two."

6.34. Section 4(c) of the Gift Tax Act 1958 reads as under:

"(c) whether there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which, it has not been found to the satisfaction of the gift tax officer to have been bonafied, shall be deemed to be gift made by the person responsible for the release, discharge, surrender, forfeiture, or abandonment."

6.35. Pointing out that the National and Grindlays Bank by writing off the amount of Rs. 75/- lakhs as bad debt, had forfeited its right with regard to the recovery of Rs. 75 lakhs from M/s. Hoare Miller and company or from Shri Rampuria, the guarantor, the Committee enquired whether this did not amount to a gift and attract section 4(c) of the Gift tax Act, 1958 for levy of gift-tax on this amount of Rs. 75 lakhs. The Chairman, Central Board of Direct Taxes stated: "The debtor owed this amount to the National and Grindlays Bank and the National and Grindlays Bank wrote off the amount in their books of accounts as had debt on the ground it is irrecoverable. But the Income-tax officer felt that the amount was recoverable."

6.36. The Committee further pointed out that by writing off this debt, the National and Grindlays Bank had released the company from debt obligation, had surrendered their claim, and they had also abandoned the debt. The Committee asked as to how it was that the gift tax provisions had not been applied in this case. The witness stated: "The National and Grindlays Bank is a public limited company. The provisions referred to in Section 4(c) do not refer to such companies. I will now read out Section 45 of the Gift Tax Act.

"The provisions of this Act shall not apply to gifts made by—

- (a) a Government company as defined in Section 617 of the Companies Act, 1956.
- (b) a Corporation established by a Central, State or Provincial Act.
- (c) any company (other than a private company as defined in Section 3 of the Companies Act 1956).

Provided that the affairs of the Company or the shares in the Company carrying more than fifty percent of the total voting power were at no time during the previous year controlled or held by less than six persons.

- (d) a company which is a subsidiary of and in which more than half the nominal value of equity share capital is held by a company referred to in clause (c).
- (da) any company (other than a company to which clause (c) or clause (d) applies) to an Indian company in a scheme of amalgamation.
- (e) any institution or fund the income whereof is exempt from income-tax under Section 11 of the Income-tax, Act."

The National and Grindlays Bank is not a private Limited Company. It is a public limited company. The provisions of the Gift Tax Act do not apply to it."

6.37. Pointing out that under the proviso to Section 45(c), which exempted only such companies the shares of which carrying more than fifty percent of the total voting power were at no time during the previous year controlled or held by less than six persons, the Committee wanted to know the number of persons including companies, who were holding the shares of National and Grindlays Bank and in that context whether Section 45 would apply in this case. The Chairman, Central Board of Direct Taxes stated: "The share holdings of National and Grindlays Bank as under:

| | | |
|--|----|---------------|
| First National City Bank | .. | 40 per cent |
| National and Grindlays holding Limited | .. | 60 per cent |
| { i.e. Llyods Bank Ltd. | .. | 41.4 per cent |
| { other public holdings | .. | 18.6 per cent |

With this information I am not in a position to categorically state whether it is a public limited company or it is a private limited company for the purposes of Gift tax Act because these share holdings are outside India I will have to seek legal advice on this whether we can treat this a public limited company or private limited company."

6.38. He added:

"Under Section 4(c) of the Gift Tax Act, we might be able to take action against the assessee. I am grateful to the Committee for giving us this idea and I assure the Committee that we will pursue it and examine it thoroughly."

6.39. In a subsequent note furnished to the Committee, the Department of Revenue and Insurance stated:

"The Bank have stated that National and Grindlays Bank Limited is incorporated in the United Kingdom as a public limited company and functioning in India as a foreign banking company registered under section 592 of the Companies Act, 1956.

For income-tax purposes, the National Grindlays Bank Ltd. is being assessed in the status of a non-resident company."

6.40. The Committee drew the attention of the witness to Section 5(i) (xiv) of the Gift Tax Act, wherein it is laid down that "Gift Tax shall not be charged under this Act in respect of gifts made by any person: In the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the gift-tax officer to have been made *bona-fide* for the purpose of such business, profession or location.

6.41. The Committee enquired whether this was a transaction made bonafide for the purpose of business. The Department of Revenue and Insurance in a note furnished to the Committee stated:

"In the opinion of the Solicitor to the Central Government at Calcutta vide his letter No. 178/75-Adl. (Cal.) dated 28th January, 1975, Section 4(I)(c) of the Gift-tax Act will not be applicable to the facts of Shri Rampuria's case. He is of the view that on the facts of the case it cannot be said that the transaction in question was not *bona fide*. The matter is under further examination by the Ministry."

6.42. Referring to the overdraft of Rs. 75 lakhs obtained by M/s. Hoare Miller and company, the Committee enquired whether it was

an secured over draft. The Commissioner of Income-tax, West Bengal III, stated: "M/s. Hoare Miller and company limited had account with the National and Grindlays Bank for over half a century and had overdraft facilities. The overdraft is secured against hypothecation of stocks, book debts and investments and a letter of guarantee signed by ~~Shri R. L. Rampuria~~. M/s. Hoare Miller and company temporarily closed their business on 1st August, 1968. They were incurring loss year after year."

6.43. When the Committee asked whether the company was assessed to tax, the witness stated that the company was assessed to tax by the Income Tax Department. He further stated: "As I mentioned earlier they temporarily closed their business on 1st August, 1968. Figure of loss returned for 1967-68 is Rs. 4,45,879 and the loss returned for 1968-69 was Rs. 21,73,105. The Income tax assessment was for loss of Rs. 9,01, 736 for 1968-69."

6.44. The Committee desired to know the amount of wealth shown by Shri Rampuria in his wealth tax return for the relevant year and for the past two years. The witness stated: "In wealth tax return as on 26th March, 1969 it has been shown as Rs. 2,80,826."

6.45. The Committee enquired whether Shri Rampuria could give a guarantee for Rs. 75 lakhs. The Governor, RBI stated: "The advance is not entirely unsecured. It was drawn in excess of the securities hypothecated to the bank". The Deputy Governor, R.B.I. added: "This was a supplemental security, one may describe it that way."

6.46. The Committee desired to know the wealth returned by Shri Rampuria and his associates in wealth tax returns for the last five years and wealth assessed by the wealth tax authorities. The Committee also wanted to know the income returned by the above assesses for the last five years and the income assessed by the I.T. Deptt.

The Ministry, in a note, furnished the requisite information which is reproduced in appendix IV.

6.47. The Committee wanted to know the liabilities of Shri Rampuria and his associates. The Ministry, in a note stated: "Further details regarding excess of assets over liabilities in respect of each case is being collected as also the reasons for the pendency of assessments etc. are being ascertained."

CHAPTER VII

COORDINATION BETWEEN THE VARIOUS DEPARTMENTS OF THE MINISTRY OF FINANCE

7.1. The Regional Offices of the Department of Banking Operations and Development, Reserve Bank of India undertake periodical inspection of all aspects of the functioning of both Indian Banks and branches of foreign banks operating in India under the provisions of the Banking Companies (Regulation) Act 1949. These inspections cover the conduct of foreign exchange business of those banks which have been licensed as authorised dealers. Apart from this, there are ad-hoc inspections conducted by the Exchange Control Department. These inspection units are also entrusted with special investigation of any peculiar features of the foreign exchange business of any bank that might come to the notice of the Reserve Bank in the course of the day to day work or through complaints received by the Reserve Bank. The irregularities brought to light in the course of ad-hoc inspection carried out by the inspection units are conveyed to the banks concerned who are directed to rectify the same or refrain from committing such irregularities in future as the case may be.

7.2. The Committee enquired whether the Income-tax Department were taking advantage of these Inspection Reports of the Reserve Bank while assessing the foreign banks. The Chairman, Central Board of Direct Taxes stated: "My information is that we are not getting inspection reports from the Reserve Bank. As a matter of routine, I do not think the Income-tax Officers are examining the Inspection Reports while making the assessments."

7.3. He added: "I do not think the Income-tax Officers are aware that the Inspection Reports are being taken by the Reserve Bank. Now we came to know of that and we recently requested the Reserve Bank to make these reports available to them. After the Public Accounts Committee seized of the matter, we thought of this and in a meeting which was held last month, we had proposed to the Reserve Bank for this. They are willing to help us."

7.4. The Commissioner of Income-tax West Bengal I added: "The fact is that we are aware of the fact that inspection reports are avail-

able. It is true that in the past whenever called for it. After the National and Grindlays Bank case, we have decided as a policy in future to get in touch with the Reserve Bank and ask for the reports."

7.5. When the Committee pointed out that there was no coordination between the various Departments of the Ministry of Finance and that the Income-tax Department apparently did not even know that the Reserve Bank were conducting some sort of inspection frequently and they had not taken advantage of these reports, the Joint Secretary, Department of Banking stated: "So far as this particular issue of taxation by the Income-tax Officers is concerned, I must confess that there is no coordination as such in respect of a particular assessment regarding documents which the I.T.O. needs. As we see it, in the Department, the assessment is done by the I.T.O. under the provisions of the I.T. Act and under powers vested in him under that act, it is open to him to call for information from any Department or autonomous corporation. If he feels that under the Law he needs to have certain information from the Reserve Bank of India and if the R.B.I. feels that under the existing law it has an obligation to furnish it, it is a matter purely between the two authorities. We do not come into the picture."

7.6. The Committee enquired whether the Reserve Bank of India had ever thought of (having) advising the Chairman, Central Board of Direct Taxes that the Bank had the inspection reports covering various aspects of functioning of banks both Indian and branches of foreign banks, which could be made use of by the I.T. Department while assessing the banks. The Governor, Reserve Bank of India stated: "We have not thought of asking or advising the I.T. Department."

7.7. He added: "The subject of head office expenses was a subject of discussion between the Finance Ministry and Shri Shiralkar, (the Deputy Governor) and he has promised that he would give all help in this matter."

7.8. When the Committee enquired whether there had been any instance where the Income-tax Officer called for inspection reports from the Reserve Bank and it was refused by the Bank, the Chairman, Central Board of Direct Taxes replied in the negative.

7.9. The Committee asked whether the Reserve Bank was agreeable to make available the inspection reports to the Income-tax Department in case they asked for them. The Deputy Governor stated: "This involves an interpretation of the statute. So far as we understand, and we have been advised, we are neither authorised nor ob-

liged to produce the inspection report which is based on an inspection done *suo motu* under the Act by the Reserve Bank. We had sought the opinion of the Attorney General."

7.10. He added: "Section 28 of the Banking Regulation Act reads:

"The Reserve Bank of India, if it considers it in the public interest so to do, may publish any information obtained by it under this Act in such consolidated form as it thinks fit."

To our mind 'consolidated form' and 'under this Act' are the two vital provisions of this Section; we can only do such things as we are authorised to."

7.11. The Committee asked as to what public interests would be disturbed by not giving the inspection report to the Income Tax Department. The Deputy Governor stated: "I would again submit this would depend on the interpretation of the law and also a full and complete appreciation of the position of banking generally and of the individual bank. I would like to be guided by such advice as is given by the Attorney General."

7.12. The Committee further pointed out that the Reserve Bank of India were forbidden to make this document available if it was against public interest and if the Bank apprehended it would be published. The Committee asked what public interest would be disturbed if the inspection report was made available to the I. T. Department.

The Governor, Reserve Bank of India stated: "I seek your indulgence. We will get knowledge of lots of transactions between private individuals, their financial standing etc. I do feel we need the advice of the Attorney General because there is a doubt whether even within Government disclosure will mean publication."

7.13. He added: "I consider it our duty to cooperate with the Chairman, CBDT in the performance of his duties. The only difficulty is, the law does not say that we may not publish what is against public interest. It puts it differently. We have offered and will continue to offer all cooperation to the Central Board of Direct Taxes. There is no information regarding tax liability which we shall withhold from the CBDT. But on the question of inspection report which is a document concerning the overall transaction of the bank, we are advised we have no authority. We have consulted our legal adviser. He is subject to the overall ruling of the Attorney General."

7.14. When the Committee pointed out that section 28 was an enabling provision, the witness stated: "The Law is directly applicable to the Reserve Bank. I would again seek legal advice as to whether sharing the inspection report with the Central Board of Direct Taxes will amount to publication."

7.15. As there was a conflict between the statements made by the witness of Central Board of Direct Taxes and the Reserve Bank of India regarding the certificates alleged to have been given declaring the debt of Rs. 75 lakhs as a bad debt, the Committee wanted to verify the correctness of the position and to this purpose requested the Reserve Bank of India to furnish copies of the inspection conducted in respect of National & Grindlays Bank. The representative of the Reserve Bank of India stated that he felt that under the provisions of the Banking Companies (Regulations) Act and the Reserve Bank of India Act, the said documents are treated as confidential. The Committee pointed out that the sections referred to by the Reserve Bank of India were enabling provisions and no section appears in any of these two acts expressly prohibiting supply of information. The Reserve Bank of India took time for considering the position pointed out by the Committee and on the 28th Feb., 1975, the Governor Reserve Bank of India wrote a letter to the Committee that he had been advised by the Attorney General that the reports could not be furnished to any third party including the Committee. The Committee thereupon felt that it was necessary to seek a direct clarification from the Attorney General of India and accordingly invited the Attorney General to clarify the legal position.

7.16. The Attorney General appeared before the Committee on 26th April, 1975 and stated (i) the fact whether he gave advice to the Reserve Bank of India and what the nature of such advice was confidential (ii) that under the provisions of the Banking Companies (Regulations) Act and the Reserve Bank of India Act, the Reserve Bank of India which is a statutory body cannot do what it is not permitted to do (iii) the Reserve Bank of India is not permitted to furnish its inspection reports to anyone except the Bank inspected and the Central Government (iv) Rule 270 of the Rules of Procedure and Conduct of Business of Lok Sabha being framed under Article 118 of the Constitution is not a law by Parliament and cannot override an act of Parliament (v) the Parliament itself has no power to call for such a report and accordingly cannot delegate such a non-existent power to the Committee.

CHAPTER VIII

EMPLOYMENT OF EX-INCOME TAX OFFICERS BY PRIVATE COMPANIES

8.1. The Committee had been informed earlier that Shri A. V. Kasbekar, an Income Tax Officer had resigned his job in 1966 and joined the National and Grindlays Bank Limited as Income Tax Advisor and that he had assessed the Bank when he was an I.T.O.

8.2. The Committee desired to know whether such instances were not causing any serious concern in the minds of the Revenue Department of the Government of India, the Finance Secretary, stated: "Once a man resigns, he has the right to earn his living. Government has got no hold on him after that. When he resigns he forfeits his pension."

8.3. To a question regarding the salary of Shri Kasbekar, the Commissioner of Income tax stated: "He was a Class I Income Tax Officer getting around a thousand rupees. His salary in the Bank must be four to five thousand rupees I am not sure."

8.4. The Committee enquired whether any review of the assessments completed by Shri Kasbekar had been conducted to see any undue favours had been shown by him to the National and Grindlays Bank thereby resulting in loss to the Exchequer. The Department of Revenue and Insurance in a note submitted to the Committee stated:

"Shri A. V. Kasbekar completed two assessments (for the assessment years 1960-61 and 1961-62) in the case of M/s. National & Grindlays Bank Limited.

A review of the assessments completed by Shri Kasbekar in the case of M/s. National & Grindlays Bank Limited has been made. It does not show any undue favour shown by him to the assessee. However, it is found that a sum of Rs. 14,829/- representing Municipal taxes in respect of let out property, whose income is assessed under the head "Income from house property", which should have been disallowed while computing the total income was not disallowed. The assessments for the years prior to the as-

assessment year 1960-61 were also done in the same way (without making such disallowance). There is, therefore, no reason to believe that there was any *mala-fides* on the part of Shri Kasbekar. Such expenditure was disallowed in the assessment for the year 1962-63."

8.5 The Committee desired to know the names of the Income-tax advisors of the National and Grindlays Bank and those who appeared before the Income-tax authorities during the 10 years prior to Shri Kasbekar joining the Bank and whether any of them had earlier served in the Income-tax Departments. The Department of Revenue and Insurance, in a note furnished to the Committee, stated:

"The names of the Income-tax Advisors of the National & Grindlays Bank Limited who appeared before the Income-tax authorities during the 10 years prior to Mr. Kasbekar joining the Bank are furnished below:

1. Mr. V. Levy of M/s. Lovelock Lewes
2. Mr. Harris
3. Mr. Rozario of M/s. Lovelock Lewis
4. Mr. Tibbetes
5. Mr. F. W. Hindmarsh
6. Mr. G. P. Higham
7. Mr. J. N. Roy
8. Mr. S. Mitra, Bar-at-Law
9. Mr. Declay, Chief Accountant
10. Mr. A. G. Banerjee
11. Mr. K. N. Banerjee
12. Mr. S. G. Spence
13. Mr. R. P. Gupta
14. Mr. A. K. Basu
15. Mr. W. M. Bennett

Of the persons mentioned above Mr. K. N. Banerjee, Mr. V. Levy and Mr. Rozario had earlier served in the Income-tax Department.

Shri K. N. Banerjee, who was an Inspecting Assistant Commissioner of Income-tax, had resigned and joined the National Bank of India Limited. No assessment of the National Bank of India Limited was completed by him."

8.6. The Committee asked as to what precautions had been taken or were proposed to be taken by the Ministry to ensure that tax evasion or avoidance on technical grounds was not practised by such banks or companies with the assistance of erstwhile income-tax officials who knew the inside working of the department and might also retain contacts with the Department. The Chairman, C.B.D.T. stated: "If somebody resigns and takes a job, we have no control over it."

8.7. In a note furnished to the Committee, the Ministry further stated :

"The existing position regarding acceptance of commercial employment by a pensioner who, immediately before his retirement, was a member of Central Service, Class I, before the expiry of two years from the date of his retirement, is governed by rule 10 of the Central Civil Services (Pension) Rules, 1972.

The position regarding setting up of practice by a pensioner who, while in service, belonged to the Indian Revenue Service or who, having been a member of any other Central Service, Class I, retired from a post under the Department of Revenue and Insurance in the Ministry of Finance, before the expiry of two years from the date of his retirement, is governed by rule 11 of the Pension Rules.

It would be observed from the rules quoted above that while it is permissible for the Government to withhold permission to acceptance by a pensioner of commercial employment or setting up of practice in matters relating to Income-tax, Wealth-tax, and Estate Duty, within 2 years from the date of his retirement, there is no restriction on a pensioner wishing to accept commercial employment or put up such practice after the expiry of that period.

2. Apart from the provisions referred to above, Section 288(3) of the Income-tax Act imposes a two year restriction on an officer of the Income-tax Department, who has retired or resigned, to represent any assessee before the Tax authorities.
3. In regard to a Government officer who resigns from Service, the position is that he can engage himself in any lawful activity after his resignation is accepted. In view of this, it may not be possible to place any curb on a Government Servant belonging to the Income-tax Service in the matter of acceptance of commercial employment after his

resignation. Nevertheless, the matter will be referred to the Department of Personnel and Administrative Reforms seeking their advice in the matter."

8.8. When the Committee suggested that in such cases, the assessment of the Company of Bank concerned should be made by a special cell, the witness stated:

"We will take precautions as to how and by whom the assessment should be made. We have noted the suggestions of the (honourable) Committee."

RECOMMENDATIONS/CONCLUSIONS

9.1. From the evidence that has been placed before the Committee relating to the income-tax assessments of National and Grindlays Bank Ltd., the impression gained by the Committee is that adequate attention is not being paid by the assessing officers even in large income cases and that assessments are often completed in a routine fashion. That this is so would be evident from the fact that it was only after the receipt of nine memoranda from an ex-official of National and Grindlays Bank, alleging evasion of tax by the bank and after the Public Accounts Committee referred a representation on this subject to the Ministry that the Central Board of Direct Taxes was galvanised into action to re-examine the assessments relating to National and Grindlays Bank. The Committee find that as a result of investigations arising out of the memoranda an amount of Rs. 86.81 lakhs has been added to the taxable income of the bank for the assessment year 1971-72. Assessments for the years prior to 1971-72 have also been reopened under Section 147 of the Income-tax Act.

9.2. The Committee have been informed that while the income returned by National & Grindlays Bank for the assessment year 1971-72 was Rs. 3.23 crores, the income assessed was Rs. 4.13 crores after several additions to the taxable income. This would indicate the inadequacy of the scrutiny hitherto made of the bank's income. The Committee are distressed that the assessment of a foreign banking company that has built up a large business out of the deposits of Indian customers should be scrutinised so superficially. This is a very serious matter that compels immediate attention. The Committee desire that the assessments of the bank for as many previous years as are considered advisable should be reopened and scrutinised immediately on a top priority basis and income that may have escaped tax duty brought to tax. .

9.3. It has been alleged that National and Grindlays Bank has evaded tax running into tens of crores. The Committee have been informed by the Central Board of Direct Taxes that these allegations pertain sometimes to evasion of income, sometimes to evasion of income-tax and sometimes the allegations refer to loss of revenue. An analysis of the various allegations is also stated to have been made by the Income-tax authorities. The Committee desire that these allegations should be examined in depth to determine the actual quantum of tax avoided or evaded by the Bank in all these years. From the facts brought out in the assessment for 1971-72, it would appear that the Bank's Returns of Income had not been reflecting a true picture of its finances for the purposes of tax. Since this is a serious matter, the Committee desire that appropriate steps to recover the tax underassessed should be taken and consequential penal and prosecution proceedings should be considered.

9.4. The Committee find that one of the allegations related to the status of Mr. Bennett—then Chief Executive of the Bank in India for income-tax purposes. The Committee have been informed that as a result of the information furnished in the Memorandum, the status of Mr. Bennett has been determined as 'resident and ordinarily resident' instead of as 'resident and not ordinarily resident'. Accordingly, his income-tax assessments for the years 1967-68 to 1971-72 have been reopened to bring to tax Mr. Bennett's income abroad. The reopened assessments are stated to be pending. The Committee would like to be informed of the progress of completion of the reopened assessments of Mr. Bennett, which should be done expeditiously.

9.5. The Committee also find that no tax had been deducted at source in respect of some of the perquisites provided by the Bank to Mr. Bennett. The Committee have been informed that the bank, when called upon to explain why tax was not deducted at source in respect of these items, had stated that there was no obligation on their part to deduct tax at source in respect of the perquisites in question. The Committee desire to know whether the Board agree with the reply of the bank and the legal provisions in this regard. This should be examined in detail immediately and appropriate action should be taken in the light of the results of the examination.

9.6 While the memorandum had alleged that payments made in respect of eight items provided as perquisites to Mr. Bennett had escaped assessment to tax, the Income-tax Officer has taken action only in respect of four items and that too only for the assessment year 1972-73. The reasons for the non-inclusion of the other four items as well as the position relating to the earlier assessment years in this regard should be intimated to the Committee.

9.7. The Committee have been informed that the third memorandum dated 20th July, 1972 from Shri Gupta had been received by the Commissioner of Income-tax, West Bengal-III on 29th August, 1972 through the Director of Inspection (Investigation) New Delhi. Strangely enough while intimating the action taken on this memorandum, the Central Board of Direct Taxes had stated that the Income-tax Officer was directed on 25th July, 1972 to investigate the allegations contained in this memorandum. The Committee desire that this discrepancy should be reconciled immediately.

9.8. One of the memoranda had also alleged that similar perquisites allowed to other covenanted officers of the bank were neither taxed in the hands of the officers nor was any tax deducted at source. The Committee have been informed that this is under investigation. The Committee desire that this investigation should be completed expeditiously and amounts which have escaped assessment to tax should be brought to tax forthwith.

9.9. It had also been alleged that payments from the unrecognised Provident Fund maintained in London in respect of British officers, to the extent of bank's contributions and interest, was not subjected to deduction of tax at source.

9.10. The Committee find from the reply of the Ministry that the bank and trustees of the fund have denied any obligation to deduct tax at source from sterling payment effected in the U.K. The Committee would like to be informed whether the legal position in this regard had been examined by the Board and the liability of the bank determined in case these payments are chargeable to the Indian accounts of the bank.

9.11. The Committee have also been informed that the Income-tax Department has investigated in depth the claim of Rs. 105 lakhs on account of Head Office Expenses made by the bank for the assessment year 1971-72 and disallowed Rs. 36.20 lakhs. Though the bank has gone in appeal against the assessment for the 1971-72 it is seen that the bank has not disputed the disallowance of Head Office Expenses to the tune of Rs. 34.92 lakhs. Admittedly, while scrutinising the claims towards Head Office Expenses the Income-tax Officer had not called for the books of accounts of the bank and no machinery also exists to check the veracity of expenditure stated to have been incurred outside India related to the business of the bank in India. The Committee also find that as regards computation of Head Office Expenses an unfettered discretion has been given at present to Income-tax Officers.

9.12. That an amount of Rs. 36.20 lakhs should have been disallowed for one year alone on the basis of complaints would, perhaps, indicate that claims of the bank towards Head Office Expenses had been allowed without proper scrutiny by the Income-tax Officers. The Committee desire that the Head Office Expenses claimed during the assessment years prior to 1971-72 for 16 years should also be reviewed immediately with a view to ensuring that no inadmissible expenditure has been allowed to escape tax and repatriated in foreign exchange to the bank's headquarters. The Committee desire that this should be examined forthwith and a further report on the extent to which Head Office Expenses which are inadmissible have been allowed without assessment to tax, furnished to the Committee as possible.

9.13. What causes greater concern to the Committee is the absence of any uniform guidelines for the assessing officers on the treatment of Head Office Expenses of foreign companies for purposes of income-tax. The Committee have been informed that no definite guidelines have been laid down by the Board so far. Some case studies have however, been conducted and guidelines have now been evolved which are under finalisation in consultation with a few Commissioners of Income-tax. Since this is a very important aspect which has been ignored so far, the Committee desire that the guidelines should be finalised without further loss of time and necessary instructions to the assessing officers issued which would assist them in their assessments.

9.14. The Committee find that this issue, which is vital both from the taxation and foreign exchange angles, has been already considerably delayed and it is most likely that as a result of the lack of uniformity considerable amounts would have escaped tax and been repatriated by various foreign companies abroad. It is regrettable that even though a note on the basis of case studies had been prepared in August, 1973, there has been no finality as yet in the matter of issuing guidelines. The Committee view such delays seriously and desire that responsibility for the delay should be fixed for appropriate action. It would also be necessary to comprehensively review the working of the Foreign Tax Division in the Ministry of Finance.

9.15. The Committee also find that in accordance with a technical services agreement entered into between National & Grindlays Bank and the First National City Bank, which controls 40 per cent of the shares of the former bank, the assessee bank was to reimburse to First National City Bnkn monthly in US dollars or such other currency as might be agreed upon, the cost incurred by the First National City Bank in providing its own personnel to the National & Grindlays Bank as well as the cost of training to National and

Grindlays Bank personnel in its own offices. In pursuance of another clause of the agreement the principal office of the National & Grindlays Bank in India was to pay a monthly fee in Indian rupees to First National City Bank's principal office in India equivalent to £ 13,333 converted at the rate of exchange ruling on the date of payment as technical know-how fee. In addition, the National & Grindlays Bank was to pay First National City Bank in respect of each of its accounting years 1969, 1970, 1971, 1972 and 1973 an amount in Indian rupees equivalent to 10 per cent of the amount by which the actual earnings of the Indian business of the former exceeded the projected earnings of its Indian business for the respective years.

9.16. The Committee find that Rs. 21.60 lakhs in 1969, Rs. 38.35 lakhs in 1970, Rs. 59.29 lakhs in 1971, Rs. 27.95 lakhs in 1972 have been paid by the National and Grindlays Bank to the First National City Bank under this agreement. Considering the fact that the services rendered by First National City Bank related only to training programmes, operating practices, credit policy administration, development and expansion of the National and Grindlays Bank's office and business, the Committee are not satisfied whether such services can be treated as technical know-how. Banking practices and banking traditions have been long established in this country. It is also not clear whether the services rendered by First National City Bank were in fact related to the Indian business of National and Grindlays Bank. The Bank has also not been in a position to furnish details to establish that this expenditure was related to its Indian business. The Committee, therefore, desire that the agreement between the two banks should be examined in detail, in all its aspects immediately with a view to ensuring that this has not been resorted to as a means of evading tax. Such an examination is, in the opinion of the Committee, important in view of the substantial financial interest of the First National City Bank in the affairs of the National and Grindlays Bank. In case it is found after the proposed examination that the agreement is only a 'facade' to facilitate tax evasion, appropriate action should be taken against both the banks.

9.17. In respect of the amount of Rs. 21.60 lakhs paid by National & Grindlays Bank to the First National City Bank relating to the assessment year 1970-71, the Committee have been informed that tax was not deducted at source by the bank and that prosecution against the bank is under contemplation. The Committee cannot view with equanimity such delays in taking action against what is clearly a violation of the fiscal laws of the country. The Committee are inclined to feel that while the Income-tax Department does not hesitate to harass small income assesses, the same enthusiasm is lacking where

large income assessee are concerned. The Committee desire that this should be examined immediately and action taken against the bank which, in turn, would serve as a deterrent to other tax evaders. A further report on the action taken in this regard should be furnished to the Committee as early as possible.

9.18. In respect of the assessment year 1970-71, while a sum of Rs. 4 lakhs had been allowed by the Income-tax Officer as relating to expenditure wholly and necessarily incurred for the purpose of the business of the bank in India in consequence of the technical services agreement with First National City Bank, the Appellate Assistant Commissioner had, however, allowed the entire amount of Rs. 21.60 lakhs. The Committee have been informed that the Department has gone on appeal to the Tribunal against the orders of the Appellate Assistant Commissioner. The Committee desire that the Income-tax Appellate Tribunal should complete the hearing of this case early and pass orders expeditiously. The Committee are inclined to make this recommendation in view of the fact that instances have come to their notice wherein considerable time has been taken by the Tribunal to dispose of cases.

9.19. The Committee find that in addition to the payment made to First National City Bank, a sum of £ 19,837 has been paid by the National & Grindlays Bank during the accounting year 1971, relevant to the assessment year 1972-73, to M/s. Mackinsey and Co. and a further sum of £ 5,489 has been paid to M/s. Urwick and Orr by debiting head office expenses. The Committee have been informed that these payments are being looked into by the Income-tax Department. The Committee trust that this will be finalised expeditiously. The Committee would await a further report in this regard.

9.20. The Committee are also surprised to find that a large sum of Rs. 75 lakhs due to the bank from M/s. Hoare Miller & Co. Ltd. had been treated as irrecoverable by the bank and claimed as a bad debt. This has been disallowed by the Income-tax Officer on the ground that the debtor company was in existence and carrying on business. This addition of the Income-tax Officer had, however, been deleted on appeal by the Appellate Assistant Commissioner on the ground that the write-off was justifiable. What is more surprising is the fact that while allowing the bad debt claimed by the bank, the Appellate Assistant Commissioner had stated in his order that "such write-off in turn was approved and permitted by the Reserve Bank of India." This conclusion has been arrived at on the basis of an extract of a Report of Inspection of National & Grindlays Bank conducted by the Reserve Bank of India, which had been furnished to the Appellate

Assistant Commissioner by Shri Kasbekar, head of the Tax Department in National & Grindlays Bank. Shri Kasbekar, before joining the National & Grindlays Bank, had worked as an Income-tax Officer and had also assessed the National & Grindlays Bank. The Reserve Bank of India have, however, disputed that the write-off of the bad debt had been approved and permitted by them and had stated that such write off of bad debts does not require the permission of the Reserve Bank of India. Under the circumstances, it is not clear to the Committee how the Appellate Assistant Commissioner could have laid such reliance on a document which had been furnished by the assessee himself and had not been authenticated or confirmed by the Reserve Bank. No doubt the Appellate Assistant Commissioner has attempted to justify the claim of the bank on various grounds.

9.21. The Committee have been informed that the explanation of the concerned Appellate Assistant Commissioner has been obtained by the Central Board of Direct Taxes. The Committee would like to be informed of the action taken by the Board on the explanation furnished.

9.22. The Committee have also been informed that the Income-tax Department has gone in appeal to the Income-tax Appellate Tribunal against the decision of the Appellate Assistant Commissioner. The Committee would await the outcome of the Tribunal proceedings which should be expedited.

9.23. It is not clear to the Committee how far the debt of Rs. 75 lakhs due from M/s. Hoare Miller & Co. could be treated as irrecoverable in view of the fact that the debt had been guaranteed by Shri Rampuria. Apparently the bank had chosen not to enforce the recovery of the debt from the guarantor. The Committee find that as on 30th June 1971, Shri Rampuria, who was the guarantor for the debt also held 7050 equity shares of M/s. Hoare Miller & Co. It is also surprising that while Shri Rampuria had stood guarantee for the large sum of Rs. 75 lakhs, his own wealth had been returned as only Rs. 2.81 lakhs. Besides, Shri Rampuria and his associates are also assessed to wealth-tax and income-tax. Under the circumstances, the Committee are unable to understand the reluctance on the part of the National & Grindlays Bank to take positive steps for the recovery of the debt from M/s. Hoare Miller & Co. from the guarantor.

9.24. Since by writing off the debt of Rs. 75 lakhs due from M/s. Hoare Miller & Co., National & Grindlays Bank had released the

company from its debt obligation, the Committee would like the Income Tax Department to examine whether the provisions of the Gift-tax Act would be applicable in this case and if so appropriate action taken.

9.25. An interesting question that arises out of the manner in which the bad debt claimed by the bank has been treated is whether the Appellate Assistant Commissioners of Income-tax should have unlimited powers to hear any appeal irrespective of the quantum of the total income of the assessee. For instance, in this case, the Committee find that the Appellate Assistant Commissioner had allowed a claim as large as Rs. 75 lakhs. The Committee desire that the feasibility of prescribing suitable monetary limits upto which Appellate Assistant Commissioners can hear appeals should be examined by Government. If necessary, appeals in cases where the income exceeds the prescribed monetary limit can be heard by a Board of Appeal consisting of more than one Appellate Assistant Commissioner.

NEW DELHI

30th April 1975

10th Vaisakha 1897 (SAKA)

JYOTIRMOY BOSU,

Chairman,

Public Accounts Committee

APPENDIX I

Statement showing the Action taken by Central Board of Direct Taxes on the Nine Memoranda of Shri R. P. Gupta

(Para 2.10)

| No. of Memorandum/representation received from Shri R. P. Gupta | Date of receipt | Brief account of allegation (repetitions excluded) | Action taken with dates |
|---|---|---|--|
| (1) | (2) | (3) | (4) |
| One Memorandum (No. 1) (date not indicated on the copy of the Memorandum received). | Received by the Income-tax Officer, Special Investigation Branch, West Bengal-I, Calcutta on 22-7-1972 from the Directorate-General of Revenue Intelligence and Investigation <i>vide</i> their letter dated 5-7-1972 through the Director of Inspection (Investigation) Income-tax, New Delhi. | <p>(I) Proper status is not declared before the Income-tax Department in respect of Mr. W. M. Bennett, former General Manager, resulting in evasion of tax.</p> <p>(II) The following payments made in London to Mr. W. M. Bennett were not subject to Indian Income-tax.</p> <p>(a) Salary & allowances as Inspecting Accountant ;</p> <p>(b) Educational allowances.</p> <p>(c) Furlough passage in excess of actual expenditure ;</p> <p>(d) Entertainment allowance ;</p> <p>(e) Bank's contribution to Provident Fund/Superannuation Fund.</p> | <p>The Income-tax Officer assessing Mr. Bennett was directed by Commissioner of Income-tax on 25-7-1972 to make proper enquiries and take appropriate action.</p> <p>(I & II) enquiries revealed that the status claimed by Mr. Bennett as "Resident but not ordinarily resident" was incorrect. The particulars of his stay in India showed that he was "resident" for tax purposes from the assessment year 1967-68. Accordingly, his assessments for the years 1967-68 to 1971-72 which had been completed earlier were reopened by the Income-tax Officer on 2-8-1973 to bring to tax Mr. Bennett's income abroad. The reopened assessments are pending.</p> |

(f) Income from property abroad ;

(g) Income from dividend/interest etc. received abroad ;

(h) Furlough pay and tax thereon (on grossing up basis).

In the assessment for the year 1972-73, Mr. Bennett was assessed as a "Resident" and his income abroad were viz. income from house property at Scotland and interest income from his bank account in U. K. amounting in all to Rs. 4,000 was brought to tax and upheld in appeal by Appellate Assistant Commissioner. Enquiries made so far have not warranted any addition to the income of Mr. Bennett for the assessment year on the basis of the other allegations in Items I & II of the previous column.

(III) The following payments made, perquisites provided in India by the Bank to Mr. W. M. Bennett were not subjected to tax nor was reduction of tax at source made properly.

(III) as per sheet enclosed. (Annexure)

(a) Tiffin allowance ;

(b) Entertainment allowance.

(c) Servants allowance ;

(d) Club Subscription ;

(e) Local Leave expenses ;

(f) Daily Subsistence allowance ;

(g) Rent-free furnished accommodation ;

(h) Cost of electricity charges ;

(i) Expenditure for cleaning materials.

ANNEXURE

(A) Requisites assessed in the hands of Mr. W. M. Bennett.

| Assessment year | Details of Income | Additional amount assessed by the I.T.O. vide order for 1972-73 dated 28-2-1973 | Additional finally upheld in appeal by the Income Tax Appellate Tribunal |
|-----------------|---|---|--|
| 1 | 2 | 3 | 4 |
| 1972-73 | (1) Perquisite in respect of rent-free furnished accommodation. | Rs. 17,638 | Rs. 3,472 |
| | (2) Perquisite on account of Gas & Electricity. | Rs. 1,831 | Rs. 248 |
| | (3) Perquisite on account of reimbursement of servants' wages. | Rs. 7,083 | Rs. 3,592 |
| | (4) Club subscriptions | Rs. 576 | .. |

(B) Deduction of tax at source : The Bank were called upon to explain vide letter dated 16-10-1973 why tax was not deducted at source in respect of these items. In their reply dated 31-10-1973 they have elucidated that although there was no obligation on their part to deduct tax at source in respect of the perquisites in question they did, in fact, deduct tax at source on the amount considered by them as taxable perquisites. Tax was thus deducted at source in respect of (i) Education allowance (ii) Servants wages reimbursed; (iii) Perquisite on account of gas and electricity; (iv) Perquisite in respect of rent-free accommodation and (v) Salary as Inspecting Accountant. Mr. Bennett had not availed himself of his local leave allowance.

One Memorandum
(No. 2) (Date not
indicated on the copy of
Memorandum received).

Received by the Income-tax Officer Special Investigation Branch, West Bengal-I Calcutta on 22-7-1972 from the Directorate General of Revenue Intelligence and Investigation vide the letter dated 5-7-1972 through the Director of Inspection (Investigation) Income-tax, New Delhi.

(I) Commission earned on the booking of passages made in the U.K. did not suffer Indian income-tax.

(ii) The amount of passage money credited to individual officers' passage accounts (including the passage of the family, irrespective of whether the family is travelling or not) is claimed in the Head Office expenses.

(iii) Savings by individual officers on account of furlough passage in excess of actual expenditure did not suffer tax.

Copy of the Memorandum was forwarded to the Income-tax Officer by the Commissioner of Income-tax on 25-7-1972 with a direction to make proper enquiries and take appropriate action.

(i), (ii), & (iii) : The enquiries made by the Income-tax Officer have revealed that the Bank have followed different procedures for booking of passages of the officers of the Bank. For expatriate staff, barring a few instances, passages were booked in the U.K. If these passages had been booked in India Foreign Exchange to the extent of profit earned by way of commission might have been saved. So far as Income-tax is concerned, the position is (i) that no passage money as such is paid to officers and expatriate officers are given only travelling tickets booked through the Bank's travelling agents and (ii) the travelling account has been debited only to the extent of the net amount after deducting the commission on the tickets issued to such staff and no cash has been received by such staff according to Bank. Hence no evasion has come to light in regard to these allegations.

One Memorandum (No. 3) dated
20-7-1972

Received by the Commissioner
of Income-tax, West Bengal-
III on 29-8-1972 through the
Director of Inspection (Investi-
gation), New Delhi.

(I) For income-tax purposes the
value of the Bank's 'premises'
and 'Furniture & Fixtures' was
shown at an inflated figure.

The Income-tax Officer was directed
25-7-1972 to investigate & report.

The Bank got its immovable properties re-
valued and the extent of increased value is
discernible from the Balance-sheet of the
Bank as at 31-12-1967. For Income-tax
purposes, however, depreciation has been
allowed only on the written down value as
per the tax records and depreciation has
not been allowed on the increased value.

(II) Large sums towards the pay-
ments to foreign Architect
were paid and for this purpose
and for furniture and fixture
Rs 3.08 crores were spent
during the 10 years and this was
conveniently allowed by the
Income-tax authorities.

The Bank have categorically denied an
expenditure on architects from outside
India. The expenditure on furniture and
fixtures which ensure for a longer period
has been duly capitalised and depreciation
allowed according to law.

(III) Rent in respect of prop-
erties owned by the Head
Office of the Bank is remit-
ted to London and expenses
incurred for these properties
were debited to India. When-
ever any such property is sold,
the sale proceeds are remitted
without deduction of expenses
In respect of these properties.

The properties of the Bank in India are
held in the Indian books with effect from
1-1-1968; earlier, the rent paid in respect
of the properties held in the London books
were duly added back by the Bank them-
selves and assessed to tax in India. The
capital gains arising out of the properties
sold have been duly brought to tax in the
assessment year 1966-67 and the Bank has
also offered for assessment capital gain
arising in the assessment year 1972-73
which is pending.

(IV) Over remittances to the
extent of Rs. 27.07 and

Interest has been computed and added to the
income of the Bank in respect of the ex-

Rs. 62.61 lakhs in 1969 and 1970 require examination.

remittances relevant to the 1971-72 assessment (previous year 1970) The assessment for 1970-71 (Previous year 1969) has been reopened and is pending.

(V) In addition to depreciation claimed in the Profit & Loss account, the Bank is charging depreciation held in reserve in the Balance-sheet.

Depreciation held in Reserve has always been added while computing the Bank's business income.

One Memorandum (No. 4) dated 27-7-1972. Received by the Commissioner of Income-tax, West Bengal III on 29-6-1972 through the Director of Inspection (Investigation), New Delhi.

(I) Payments from the unrecognised Provident Fund maintained in London in respect of British Officers, to the extent of Bank's contribution and interest, did not suffer deduction of tax at source Particular reference has been made to the Provident Fund maintained in India for British Officers of the Lloyds Branch in India and the Fund was allowed to be remitted on an undertaking that Indian tax would be deducted from the payment of the fund to such officers. The undertaking is not being honoured.

The Income-tax officer was directed on 25-7-72 to investigate & report

(I) The Bank and trustees of the fund have denied in their letter dated 25-10-1973 any obligation to deduct tax at source from Sterling payments effected in the U K. It has not so far been possible to fasten such obligation on the Bank.

(II) Overseas allowance, Additional overseas allowance or Dearness and Exchange allowance payable to the Chief Executive at the prescribed rate amount to Rs. 49,314/- as against Rs. 36,282/- shown to have been paid to the officer in 1970.

(II) Total of such allowances at the prescribed rate had the official been in India would have been Rs 50,100/- (not Rs 49,314/-). But as Mr. W. M. Bennett, the then Chief Manager, was on furlough during 1-7-1970 to 4-8-1970 and again from 4-10-70 to 9-10-1970 he was paid such allowances amounting to Rs 36,228/- for the duty period in India.

(1)

(2)

(3)

(4)

(III) Salary figure shown was incorrect for certain years inasmuch as Bonus was paid @20% upto 1965 and @10% from 1966.

(III) Bonus payment to officers has been discontinued since 1-4-1969 and the amounts received by the Officers earlier have been found to have been duly taxed.

(IV) Reason for low salary of the Chief Executive in India in 1969 and 1970 requires examination

(IV) This point has been examined by the Income-tax Officer and it is found that the previous Chief Executive was receiving Rs 6,000/- per month as salary whereas Mr. Bennett was receiving only Rs 5,000/- per month during 1969 (from 9-2-1969) and 1970.

One Memorandum (No. 5) dated 16-8-1972

Received by the Commissioner of Income-tax, West Bengal-III on 19-8-1972 through the Director of Inspection Investigation), New Delhi.

Copy of the Memorandum was forwarded to the Income-tax Officer on 7-9-1972 for necessary investigation and report.

(I) Indian tax has not been deducted from payment to British Officers from Pension/ Super annuation Fund maintained in London or from retiring allowances to such officers. Such individual officers also do not pay Indian income-tax in respect of such receipts deemed to accrue or arise for services rendered in India.

(I) The Trustees of the fund, in their letter dated 25-10-1973 have denied any such obligation to deduct tax at source from sterling payments affected in the U. K. We have not been able to fasten such obligation on the Bank or on the Trustees of the fund.

(II) Lloyds Bank was previously paying tax on Pensions paid in London to the expatriate Officers paid from the Pension Fund. Now it is no longer done.

(II) The Bank have stated in their letter dated 16-1-1975 "Lloyds had given an undertaking that tax on the proportionate amount of pension paid from these funds would be remitted to India from the U.K. and such remittances were received and paid to Government until the Board's decision communicated in their letter No 21/4/69-ITA 2 dt. 2-4-1969 stating that it was no more necessary to pay the taxes".

(III) Contributions to the unrecognised Provident Fund/ Super-annuation Fund maintained in the U.K. from part of Head Office expenses and a proportion is claimed against Indian profit.

(III) The Bank's assessments stand duly modified in respect of the assessment year 1949-50 to 1965-66. During the subsequent period the Bank have stated that such amounts have not been included in the Head Office expenditure, a proportion of which is charged against Indian Profit.

One Memorandum (No. 6) dated 28-2-1972 Received by the Commissioner of Income-tax, West Bengal I direct from the Informant by post on 26-8-1972.

The Income-tax Officer was directed on 26-8-1972 to investigate and take appropriate action.

(I) Following payments/expenditure incurred for the convenanted Officers did not suffer tax in the hands of the officers and the Bank also did not deduct tax at source.

(I) The Bank have contended that although there is no obligation cast on them to deduct tax at source in respect of the perquisites of their employees, they have in fact deducted tax at source and paid it to Government account on the following.

(a) Education allowance paid in London ;

(a) education allowance ;

| (1) | (2) | (3) | (4) |
|-----|-----|--|--|
| | | <p>(b) Furlough pay paid in London (on grossed up basis) ;</p> <p>(c) Local Leave/annual leave and subsistence allowance;</p> <p>(d) Tiffin allowance ;</p> <p>(e) Servants' allowance ;</p> <p>(f) Value of perquisite on account of rent free furnished quarters (not properly taken) ;</p> <p>(g) Gas, Fuel. Water and Electricity Bill.</p> | <p>(b) servants wages reimbursed;</p> <p>(c) perquisite on account of Gas and electricity;</p> <p>(d) perquisite in respect of rent-free accommodation ;</p> <p>(e) amount paid in respect of local leave of the expatriate Officers.</p> |
| | | <p>(II) There is a reference by the informant in this petition that in his representation dated 23-5-1972 he has alleged that there are certain irregularities and contravention of the provision of the Income Tax Act in not complying with the requisite Rules in respect of the National and Grindlays Bank Ltd. Indian Provident Fund as such the recognition accorded with the fund should be withdrawn.</p> | <p>(II) On going through the Bank's reply in this regard, it is found that there was delay in the payment of the Provident Fund balance to the complainant and that the Bank had not filed returns under Rule 74 of the Income-tax Rules. In regard to the former the delay is attributable partly to the informant himself and as regards the latter the Fund has since furnished the return under Rule 74 of the Income-tax Rules in respect of the year 1973.</p> |

One Memorandum (No. 7) dated 28-8-1972. Received by the Commissioner of Income-tax, West Bengal-I on 2-9-1972.

The Income-tax Officer was directed on 29-9-1972 to investigate and take appropriate action.

(I) Salary and allowances of British Officers selected to carry out inspection of the Bank's Branches in India did not suffer tax.

(II) Indian economy is exploited by the Bank's claim in the guise of "proportion of Head Office Expenses" which include the following items :

- (a) Salary & allowance of Inspection duty ;
- (b) Education allowance paid in London ;
- (c) Furlough Pay ;
- (d) Bank's contribution to Provident Fund in London;
- (e) Bank's contribution to Pension/Superannuation Fund, in London ;
- (f) Bank's establishment expenses and charges.

(I) The Bank have replied in their letter dt. 25-10-1973 that there have been no circumstances in which salary and allowances for inspection duties rendered in India have been paid in London. The Inspection allowance for the period from 21-6-1960 to 31-12-1960 paid to Mr. W.M. Bennett in India has, however, suffered tax.

(II) As a result of preliminary investigations in the course of the 1970-71 assessment, the Income-tax Officer, disallowed 9.73 lakhs out of a claim of Rs. 78.41 lakhs against Head Office expenditure. In appeal, the Appellate Asstt. Commissioner has sustained addition to the tune of Rs. 5.61 lakhs and the balance is sought to be sustained by an appeal before the Tribunal.

As a result of investigation in depth Rs. 36.20 lakhs were disallowed out of a claim of Rs. 105 lakhs towards Head Office expenditure in the course of the assessment for 1971-72. It is observed from the grounds of appeal before the appellate Assistant Commissioner that the Bank have not disputed the disallowance to the tune of Rs. 34.92 lakhs.

| (1) | (2) | (3) | (4) |
|--|--|---|---|
| <p>One Memorandum (No: 8) dated 8-9-1972</p> | <p>Received by the Commissioner of Income-tax West Bengal-I on 12-9-72</p> | <p>(I) The Bank has not shown in the Annual Return the tax paid on the payment from the un-recognised Local Staff Provident Fund of the Lloyds Branch maintained for Indians in India, and the employees also did not show it in their individual returns.</p> <p>(II) Improper claim has been made on depreciation on unused items of machinery.</p> <p>(III) Bad and doubtful debts claimed are allowed without scrutiny.</p> | <p>The appeal in respect of the balance is pending before the Appellate Assistant Commissioner.</p> <p>The Income-tax Officer was directed on 10-10-72 to investigate and take appropriate action</p> <p>(I) The Bank in their letter dt. 21-10-73 have denied obligation to pay "tax on tax" basis by grossing up for the purpose of deduction of tax at source. The liability will be, however, that of the employee at the time of assessment.</p> <p>(II) In the assessment for 1971-72 Rs. 0.63 lakhs have been disallowed out of depreciation claimed on the ground that the I.C.T. Tabulators and Accounting machines were not brought into use in the previous year. For the same reason, the earlier 4 assessments from 1967-68 to 1970-71 have been reopened and are pending before the Income-tax Officer.</p> <p>(III) In, the assessment for 1970-71 made on 31-3-1973, bad debt of Rs. 75 lakhs was disallowed on the ground that the debtor company was still in existence and carrying on business. In appeal, the Appellate Assistant Commissioner by his order dt. 28-8-1973, deleted the disallowance on the ground that the write</p> |

off was reasonable. This order has not been accepted by the Deptt. and has been disputed in appeal before the Tribunal, which is pending.

In the assessment for 1971-72 dt. 28-2-1974 out of the bad debt claimed, a sum to the extent of Rs. 4.01 lakhs was disallowed by the Income-tax Officer. The Bank have disputed the disallowance in appeal and the same is pending before the Appellate Assistant Commissioner.

(iv) The Bank did not deposit the tax deducted from the interest to non-resident customers, particularly in respect of its 10, Parliament Street Branch.

(iv) The Bank had not paid to the credit of the Government the Income-tax deducted from the interest allowed to non-resident customers. Instead they had retained this in an account called the "Margin Account". After the Department started enquiry into the matter, the Bank deposited the following amounts deducted at source in respect of the non-resident accounts maintained at 10, Parliament Street, New Delhi. .

| Date of payment | Amount |
|-----------------|-----------------|
| | Rs. |
| 17-10-1973 . . | 2,87,572 |
| 19-10-1973 . . | 1,20,986 |
| 30-11-1973 . . | 45,310 |
| 10-12-1973 . . | 1,110 |
| | <u>4,54,978</u> |

| (1) | (2) | (3) | (4) |
|---|--|---|--|
| O 10 Memorandum (No. 9) dated 26-9-72. | Received by the Commissioner of Income-tax, West Bengal-II on 19-9-72 by post from the informant. | <p>(i) Expenses claimed by the Bank on account of Rent, Insurance, Salary & Allowances, Repairs, Land charges, Stationery, Printing, Advertisement and other expenditures are disproportionately high and they require examination and payments require cross checking.</p> <p>(ii) Insurance Premia paid on account of properties not subjected to Indian Income-tax in the hands of recipients.</p> | <p>The Income-tax Officer was directed on 20-12-1972 to investigate and take appropriate action.</p> <p>(i) & (ii) During the investigations pertaining to the assessment for the year 1971-72 for which year order was passed on 28-2-1974, the Income-tax Officer obtained details of various payments made by the Bank in excess of Rs. 25,000. On cross checking at random no discrepancy has been noticed.</p> |
| O 11 Representation dated 27-3-1973 addressed to the Chairman, P.C.A. | Received by the Commissioner of Income-tax, West Bengal-I on 10-10-1973 through the Central Board of Direct Taxes. | <p>(i) Head Office expenses claimed are excessive.</p> <p>(ii) Whether interest paid/credited by the Indian Branch to foreign Head Office was disallowed in the assessment of Indian Branches.</p> | <p>Investigation was carried out by the Income-tax Officer under the direct supervision of the Commission.</p> <p>(i) Dealt with against item No. II of Memorandum 7 at page 18 ante.</p> <p>(ii) This point has been examined and an addition of Rs. 3.79 lakhs was made by the Income-tax Officer in the assessment order dated 28-2-1974 for 1971-72. The Bank have appealed against this. Appeal is pending. The reasonableness of the expenditure during 1971 relevant to the assessment for 1972-73 is under scrutiny.</p> |

(iii) No tax was deducted at source from salary of the trained officers accompanied by their wives, paid in London.

(iii) Although the Bank in their letter dated 25-10-73 have denied any liability to deduct tax from the salary of the trainee Officers paid in the U.K. it is seen that in the cases of Officers posted temporarily from Indian Branches tax on such salary was deducted at source.

(iv) Huge amounts are being paid to the First National City Bank for providing Technical service to the National and Grindlays Bank Ltd. In addition to these, remittances are being made for payments to M/s. Mackinsey & Co. and M/s. Urwick and Orr for their services.

(iv) In the assessment for 1970-71 dated 31-3-73, Rs. 17.60 lakhs was disallowed out of a claim of Rs. 21.60 lakhs in respect of the First National City Bank. The disallowance has been deleted by the Appellate Assistant Commissioner in his order dated 28-8-1973. Appeal against this deletion is pending before the Tribunal. The recipient company viz. the First National City Bank has, however, been assessed on its receipts in this regard and such assessment has not been disputed by the said company.

In the assessment of 1971-72 dated 28-2-1974. Rs. 34.35 lakhs was disallowed. The disallowance has been disputed before the Appellate Assistant Commissioner which is pending. The recipient company has, however, been taxed and the matter is not in dispute there.

Regarding payments of £ 19887 and £ 5489 to M/s. Mackinsay & Co. and M/s. Urwick & Orr respectively, scrutiny is in progress in the course of assessment for 1972-73 which is pending before the Income-tax Officer.

| (1) | (2) | (3) | (4) |
|--|---|--|---|
| <p>One representation dated 30-4-1974 addressed by the informant to the Chairman, P.A.C.</p> | <p>Received by the Commissioner of Income-tax, West Bengal—III on 28-5-1974 from the Lok Sabha Sectt. through the Director of Inspection (INV) Income-tax, New Delhi.</p> | <p>(v) There was a loss of Rs. 70 crores (without any details).</p> | <p>(v) Investigation on his point is covered by the investigation and action taken on specific items discussed in the various replies to the questionnaire. This is also separately dealt with in reply to Item 20 of the Questionnaire.</p> |
| | | <p>(i) Records of the Bank's Officers have been destroyed and burnt to ashes.</p> | <p>(i) The Income-tax records of the Senior Officers of the Bank are in tact and investigation are in progress. Only the records of some of the lesser employees of the Bank were destroyed in the fire and they have since been re-constructed.</p> |
| | | <p>(ii) Changed in the Inscription of the Bank's Letter Head.</p> | <p>(ii) The change is alleged to be from "Amalgamating National Bank of India Limited; Grindlays Bank Limited, the Eastern Branches of Lloyds Bank Ltd. and Branches of the Ottaman Bank outside Turkey and Western Europe" to "Registered in England ; No. 2945 registered address : 23, French Church Street, London 3 DD". No tax angle.</p> |
| | | <p>(iii) The General Manager moved to Bombay.</p> | <p>(iii) This is the Bank's administrative convenience and has no tax angle.</p> |
| | | <p>(iv) M/s. National and Grindlays Holdings Ltd. have not filed its Articles and Memorandum of Association with the Registrar of Joint Stock Companies.</p> | <p>(iv) No tax angle.</p> |
| | | <p>(v) The Bank has decided to "Sell Out" and "Go out".</p> | <p>(v) With effect from 2-1-1975 the name of the Bank has been changed to Grindlays Bank Ltd. in place of</p> |

"National and Grindlays Bank Ltd."
Department of Banking, Reserve Bank,
Enforcement Directorate, Department
of Economic Affairs and the Company
Law Board have been alerted by the
Central Board of Direct Taxes to insist
on production by the Bank of Income-
tax Clearance Certificate if this signifies
any change in ownership. The Reserve
Bank of India have stated that they have
agreed to the change of name on the
understanding that there is no change in
ownership.

APPENDIX II

Copy of a study note on 'Head Office Expenses' prepared by the Ministry of Finance in sequel to which draft instructions are now proposed to be issued for guidance of assessing officers. (Para 5.12).

This study note deals with certain problems relating to the claim of the head office expenses made by foreign companies, and the payments made by the Indian subsidiaries to their foreign parent companies. For the purposes of this study, we had collected certain basic information from various Commissioners in respect of 28 companies. The deductions claimed by the companies worked out as a percentage to the book profits prior to the charge of these payments, cover a very wide spectrum ranging from 78 per cent and 70 per cent as in the case of IBM World Trade Corporation (A.Y. 1969-70) and Chartered Bank (A.Y. 1970-71) to 4.6 per cent and 'Nil' in the case of Ludlow Jute Co. Ltd. for the assessment years 1969-70 and 1970-71. One possible reason for these expenses looming large in the computation could be the high exchange rate at which the expenses incurred in foreign currency have to be converted into Indian Rupees. Typically a sum of \$ 70,000/- would not be regarded as a large item of business expenditure in terms of Dollars; if this is to be claimed as head office expenses allocated to the Indian branch, the figure swells to a sum of approximately Rs. 6 lakhs. There has also been a general impression that these payments have made a substantial erosion into the Indian income leading to a result which is incompatible with the conclusions made in certain studies that the earning ration of foreign enterprises in developing countries like India is among the highest in the world. Such payments also constitute a heavy drain on our foreign exchange reserves, and the Department of Economic Affairs is examining the question as to whether such remittances are justified, and whether the services which these companies claim to have been receiving from their principals or head offices could not be obtained indigenously. So far the remittance of these amounts was being allowed on the basis of their admissibility in the computation of income-tax purposes. During my discussions with Shri R. M. Bhandari, Joint Secretary, Department of Economic Affairs, he desired to know whether it

would be possible to regulate such remittances through the medium of our tax laws.

2. The proper allocation of the head office expenses to the Indian branch has been a bone of contention in a number of cases and no satisfactory solution has emerged so far. By and large, the Department's attempts to disturb the basis of allocation have not been successful before the appellate authorities. Some foreign enterprises have successfully claimed that the head office overheads should be allocated to the Indian branch on the following basis:—

- (a) Expenses incurred by the head office specifically on behalf of the branch;
- (b) Over-head expenses incurred by the head office in respect of different branches allocated proportionately to the Indian branch;
- (c) Other expenses incurred by the head office which cannot be identified with any particular branch but which require to be apportioned amongst the different branches since these expenses cannot be regarded as having been incurred for the head office alone.

The appellate authorities generally point out that while the company rests its claims on some rational basis, the Department's allocation is based on an arbitrary estimate. Verification of these expenses and identifying them as having been incurred specifically for the purpose of the branch business, poses formidable practical difficulties. Since only a very broad break-up of the expenses incurred by the head office is furnished on request, it is also not possible to know whether expenses which have really nothing to do with the branch activity have found a place in the over-heads allocated to the branch. There have been instances where advertisement expenses incurred abroad have been allocated to the branch on the ground that some of the foreign magazines in which these advertisements have been inserted have circulation in India. A difficult question also arises as to whether there would be any justification for allocating to the branch, expenses the head office has to incur irrespective of whether the Indian branch is in existence, such as the rent of the head office.

3. Research and development expenses incurred by the head office and allocated to the branch also pose serious difficulties of identification with the branch activity. Not infrequently, the products that are manufactured in a developing country like India may

no longer be in use in the advanced countries, and this would raise a question as to what further research is being done on these items which would justify the deduction. There is always an answer that research has to be carried on to manufacture the products from indigenous inputs, and to adapt to the products to the Indian conditions. There is also the argument that both administratively and economically, it is convenient to have a central research organisation for a group of companies whereby the benefit of research carried on in the said organisation can be passed on to all the companies in the group. The total expenses incurred by the central research organisation are then apportioned to the companies of the group in different parts of the world irrespective of whether all the products on which research is being carried on are being manufactured by each of the companies of the group. Some time the contributions towards technical services and research work done by the parent company outside India are at a specific percentage of the sale price as in the wellknown case of CIBA (69 ITR 692).

4. The principle of allocation of head office expenses to the branch is so well established that it would be difficult to resist the claim unless drastic amendments are made in our tax laws. The entity that is brought to tax is the foreign company and not the branch; the taxable income is determined in respect of the branch since the activity of the foreign company through its branch constitutes operations carried out in India. If expenses are incurred outside India in connection with the branch business, whether the expenses are incurred by the head office or otherwise, such expenses have to be allowed as a deduction, if they are laid out wholly and exclusively for the purpose of the Indian business. Conceptually the expenses allocated to the branch are identified as expenses incurred on behalf of the branch business, and hence the deduction is claimed. Payments made by a subsidiary to a parent company are more difficult to resist since the payments are claimed to have been made for actual services rendered. The Department is seldom in a position to establish that either no services have been rendered or that the payment made is inordinately excessive having regard to the value of services rendered. The Tribunal's order in the case of J. H. Fenner & Co. (India Ltd.) (a copy of which has been taken from one of the files in Calcutta) bears eloquent testimony to the point in question. The company is a Sterling company engaged primarily in selling in India imported mechanical power transmission equipments manufactured by the parent company and claimed certain amounts by way of management fees paid to its parent company in U.K. The payments were claimed to have been made towards tech-

nical advice, laboratory work, drawings, accountancy and administrative work. The Department's stand that as the company was not engaged in any manufacturing activity, there was no need for the first three types of services and even if any services were rendered, their value must have been included in the price of the article supplied by the parent company, was not accepted by the Tribunal. The Tribunal observed that they were satisfied that on a perusal of the material placed before them the London company did render valuable services to the assessee company, and no material has been placed to show that the fees were paid for extra commercial considerations. The payments were accordingly allowed.

5. It is, therefore, of utmost importance that strong evidence has to be collected before any attempt is made to disallow any portion of the payments on the ground that no services have been rendered or the payment made is excessive having regard to the services rendered. At Calcutta, I had discussions with some of the ITOs and also examined 13 files including five files relating to Banking companies. These files were examined with specific reference to the following points:—

- (a) *Whether Auditor's statement of world accounts was filed.*—It was seen that in most of the cases only profit and loss accounts of the branch had been filed and the auditor's statement of the world accounts had not been called for.
- (b) *Whether a break-up of the total amount by way of payment to the head office or the parent company had been furnished indicating the various types of expenses.*—In some cases a broad break-up classifying the expenses under Directors' fees and remuneration, rent, telegram and postage, travelling expenses etc. had been furnished but no detailed analysis beyond this had been called for. In the case of bank of Tokyo, the head office expenses allocated to the branch had been given under 45 sub-heads.
- (c) *Whether it had been ensured that no allowance is made in respect of expenses not admissible according to the provisions of the Income-tax Act.*—In the absence of detailed analysis of the expenses, it is difficult to say whether this point has been specifically considered at the time of assessment, although the officers assured me that this point is borne in mind. At any rate, in most of the

cases, no specific query seems to have been put in this regard. In the case of Bank of Tokyo, some disallowance has been made relating to property taxes and entertainment expenses. The question whether certain monetary limits prescribed by our Statute can be applied in determining the over-heads allocable will be considered later with specific reference to certain countries with whom we have D.T.A. Agreements.

- (d) *How is each type of expenses apportioned to the Indian branch/subsidiary? What is the basis adopted for apportioning each class of expenditure?*—The records (current volumes) did not throw any light on the basis of apportionment in certain cases. Presumably this has been settled in some of the past assessments as it was generally found that whenever information on this point was called for, the companies have been furnishing the basis of apportionment. Some of the basis adopted are the percentage of operating revenue in India to the world operating revenue, allocation on the basis of prime cost, and the ratio of the Indian receipts to the gross receipts.
- (e) *The nature of the evidence placed before the ITO to prove the expenses and the basis of apportionment, and whether sufficiency of the evidence has been examined.*—Mostly it is the company's own calculations that have been accepted. In some cases, Auditor's certificates have also been filed. The question whether this evidence was adequate has not been specifically examined.
- (f) *Whether there were large scale variations in the amount of expenses claimed from year to year and whether the reasons for such variations have been examined.*—There have been substantial variations in certain cases like the Chartered Bank and Ludlow Jute Co. Ltd. No specific query relating to the reasons for variation has been put.
- (g) *Whether any tax clearance certificate was obtained by the companies concerned for remitting the payments.*—In some of the cases, there is no information available in the records and some of the ITOs mentioned that this might possibly be available with the I.T.O. (Collection). In one case that is Ludlow Jute Co. Ltd., it was noticed that the break-up of the expenses relating to two years was made available when the company wanted a certifi-

cate for production before the Reserve Bank showing the head office expenses included in the accounts.

6. Verification of the expenses allocated to the branch account is one of the multitudeness functions that devolve on the Income-tax Officer. The foregoing study indicates that verification is only of a routine nature except in cases where some specific allegations have to be inquired into. By and large the companies made of apportionment has been accepted. In view of the foreign exchange angle involved, a detailed scrutiny covering the types of expenses allocated, the basis of allocation and whether the expenses can be completely identified with the branch activity, is necessary. Detailed instructions in this regard will, therefore, have to be issued to the Income-tax Officers listing the points for verification. Before this, however, certain other important questions require to be resolved.

7. The question whether expenses not permitted under the Income-tax Act required to be disallowed in computing the head office expenses that are allocated to the branch raises some difficulties. The blanket ban imposed by section 37 (2B) on entertainment expenditure incurred after 28-1-1970 would apply only to such expenditure incurred within India. Entertainment expenditure incurred outside India will be subject to the monetary limits prescribed by Section 37 (2A). The disallowance will therefore, be not on the ground that the expenditure is not incurred in connection with the business, but because a monetary limit has been prescribed by the Statute. This assumes significance in computing the income of the business enterprises belonging to certain countries with whom we have Tax Treaties. Likewise, the disallowance for payments to a Director of an employee beyond the monetary limits prescribed by Sections 40(C) and 40A(5) will be necessary not because the payments are not regarded as business expenses but because the Statute has laid down a ceiling. The monetary limit prescribed by Section 40(C) as remuneration to a Director is Rs. 6,000/- per month and this can be regarded a very decent emolument in India. If, however, a disallowance in excess of an equivalent amount expressed in foreign currency is made in considering the over-head expenses allocable to the branch office, there are bound to be representations to the Board pointing out that the monetary limit permitted by Section 40(c) is totally inadequate having regard to the standards of living in the foreign countries. We have, therefore, to decide whether these monetary limits are to be applied to the emoluments paid outside India since Section 40(c) unlike Sections 37(2B) and 40A(5) would apply to such expenditure incurred outside India also.

8. The provisions of some of our Tax Treaties add a new dimension to the problem. Article 7.3 of our Agreement with the U.A.R. enjoins that in the determination of the profits of a permanent establishment, expenses incurred outside India are also to be allowed. Article III(3) of our Agreement with Japan is more specific and lays down that in determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deduction *all expenses wherever incurred* reasonably allocable to such permanent establishment including executive and general administrative expenses so allocable (emphasis supplied). The test of allowability is whether the expenses can be reasonably allocated to the permanent establishment and no monetary limit has been imposed. Similar provisions occur in our Agreements with Finland and France also. These agreements also provide that the laws in force in either of the contracting States will continue to govern the taxation of income in the respective contracting States except where provisions to the contrary are made in the present agreement. Since all the expenses wherever incurred and reasonably allocable to the permanent establishment are to be allowed as a deduction, the monetary limits prescribed under our laws must be regarded as having been modified by the Tax Treaty, since in a situation like this where there is a conflict between the tax laws of our country and the Tax Treaty, the provisions of the tax laws must be regarded as having been modified. *Ostime V Australia Mutual Provident Society* (39 ITR 210) deals with a situation where there was a clear conflict between the Double Taxation Relief (Taxes on Income) (Australia) Order, 1947 and the provisions of the U.K. Tax Laws, and the House of Lords held that the material provisions of the O. K. Tax Laws must be regarded as having been superseded by the terms of the Double Taxation Relief Order. Any attempt on our part to apply the monetary limits imposed by our Statute may result in countries like Japan making a grievance in international forums that the terms of the Tax Treaty are not being observed. We should therefore, have this point examined carefully by the Ministry of Law. This is also a point which we shall have to bear in mind while negotiating future tax treaties.

9. The provisions of section 482 of the U.S. Internal Revenue Code enables the U.S. Tax authorities to reallocate the income in the case of two or more organisations controlled or owned by the same interests if such an allocation is necessary to prevent evasion of taxes or to clearly reflect the income of such organisations. The power to reallocate income would also extend to a case in which either by inadvertence or design the taxable income in whole or in

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part is understated. The main thrust of the enquiry is to see whether income reflected by dealings at arm's length is shown. If an upward adjustment is made in the income of a member of the group, a corresponding decrease has to be made in the income of the other member of the group if such an adjustment would have an effect on the U.S. Income-tax liability for any pending taxable year. The procedure is involved, and it is doubtful whether an amendment along these lines would be useful. Section 92 of our own Act takes care of situations where there is avoidance of tax due to close connection between a resident and a non-resident.

10. As indicated earlier, the Department of Economic Affairs is examining the question as to where the remittance on account of head office expenses etc. are justified and whether these services cannot be obtained indigenously. We cannot embark on a step of disallowing over-head expenses or expenses towards engineering and technical services on these grounds as such considerations are not germane to the question of allowance of expenses under the Income-Tax Act. Whether the remittance of these amounts should be permitted or not, should be a policy decision and should not be made to depend on their allowability in the Income-tax assessments, with unpredictable results in appeal.

11. My conclusions are accordingly:—

- (a) The allowance of head office expenses allocated to the branches and other payments made by Indian subsidiaries to their foreign parent companies should be examined thoroughly and in great detail; this will be pursued by our Department and should not be linked to the question of remittance of these amounts, which question has to be decided as a matter of policy and having regard to the interests of our foreign exchange.
- (b) We should inform the Director of Economic Affairs that we would be subjecting these expenses to a detailed scrutiny, but the question of permitting the remittance should not be linked to the Income-tax assessments, and as the law stands, it will be difficult to regulate the permissibility of such expenses on the ground that the services for which these payments are being made can be obtained indigenously.

(M. S. Unninayar)

18-8-1973

APPENDIX III

*Draft Instructions on Scrutiny of claims towards Head-office
Expenses
(Para 5.17)*

Instruction No.

F. No. 491/8/74-FTD

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Claims towards head-office expenses by foreign
concerns—Scrutiny of:*

1.1. In the computation of Income of foreign concerns carrying on business in India through branches, expenditure incurred by the head-office on general administration and management (hereinafter referred to as 'head-office expenses') allocable to the Indian branch is admissible as a deduction under section 37 of the Income-tax Act, 1961. The Reserve Bank of India permits the remittance of such head-office expenses to the extent these have been allowed as a deduction in the relevant income-tax assessments of the foreign concerns. Thus, any excessive claim on account of such expenses not only results in less of tax revenues but also constitutes a drain on our foreign exchange resources.

1.2. As the rates of tax in India are relatively high, there is a likelihood of such expenses allocable to the Indian branch being inflated so as to artificially reduce the income taxable in India. A few cases of this type, which have come to the notice of the Board, show that the scrutiny of the composition of such expenses done by the Income-tax Officers has been elementary and at times perfunctory. Generally, no enquiries are made at the time of assessment or a certificate from an auditor in the home country giving insufficient details is accepted in support of the claim. Where disallowances are made in a few cases, they are not upheld in appeal because these disallowances are not well based. Similarly, adequate atten-

tion is not paid at times to the selection of the appropriate *method for the allocation* of the head-office expenses to the Indian branch. The Board would, therefore, like to impress upon the Income-tax Officers the need for a proper and careful scrutiny of such claims made by foreign concerns. Some of the points which the Income-tax Officers should keep in mind in this regard are set out in the following paragraphs.

2. It should be clearly understood that the assessee in such cases is the foreign concern and not the Indian branch. The head-office along with its branches constitute one single entity which cannot make a profit (or loss) out of itself. Hence, any payment made by the Indian branch to the head-office or any of its other offices by way of royalty in return for the use of patents, trade-mark or other rights, or by way of fees for services performed would not be admissible as a deduction in the computation of income of the Indian branch. Only the actual expenses, if any, incurred by the head-office in procuring such technical know-how, or services, from third parties for supply the same to the Indian branch may be allowed in the same way and to the same extent as if those expenses had been incurred by the Indian branch. Similarly, any interest paid by the branch to the head-office is not to be allowed as a deduction on the ground that a person cannot pay interest to himself but the cost (including interest paid), if any, to the head-office of obtaining the funds to be lent to the branch in India may be allowed in the same way and to the same extent as if that cost had been incurred by the Indian branch direct.

3. Closely linked with the question of head-office expenses is the question of "transfer pricing" of goods/services, if any, supplied by the head-office to the Indian branch (i.e., the price at which such goods/services, are charged to the Indian branch). Such transfer prices comprise of (i) direct costs, manufacturing/production costs; (ii) indirect costs, e.g., the cost of general administration and management and (iii) profit mark-up. In transactions between a head-office and its branches, there is obviously no question of including any element relating to profit mark-up. Where the transfer price includes an element of indirect costs, there will be no justification for a separate charge to the Indian branch on account of head-office expenses. It is, therefore, necessary to ensure before allowing any claim for head-office expenses that the debit to the branch accounts for the goods/services supplied by the head-office is restricted to the bare manufacturing/production, transport and allied costs incurred by the head-office. Breakdown details of the various elements of costs, etc; included in the amount debited to the Indian branch for supply of goods/services should be obtained and scruti-

nised for this purpose. It will also be relevant in this connection to compare the basis of billing such costs to the Indian branch as compared to the basis adopted for billing similar goods/services supplied to the other branches of the foreign concern.

4. The head-office expenses claimed as a deduction in such cases fall into three broad categories:—

- (i) Expenses incurred by the head-office which are *directly identifiable* with the activities of the Indian branch, e.g., travelling expenses of employees in the Indian branch going on official work to the head-office where such expenses are met by the head-office.
- (ii) Expenses incurred by the head-office *not specifically for the Indian branch alone* but co-jointly for the Indian branch and some other foreign branches.
- (iii) Expenses incurred by the head-office which are *not directly identifiable with any one or more branches* but which are incurred for the over-all management and administration of the head-office.

Expenses falling in the first category will be deductible in full provided the usual conditions under the Income-tax Act are satisfied. In respect of the expenses falling in the second and third categories, only a suitable proportion of the otherwise admissible expenses will be allowable as a deduction in the computation of income taxable in India.

5. It is true that the verification of these expenses presents some difficulties in actual practice but this only underlines the importance of devoting adequate attention to this matter. There is no reason, however, why the claims should not be put to strict proof and the assessee asked to furnish all the necessary information. If any assessee does not produce the relevant information, the Income-tax Officer will be justified in drawing suitable adverse inferences.

6. Composition of Expenses

6.1. First, it is necessary to examine the nature of the various items comprised in the head-office expenses to ascertain their admissibility under the provisions of the Income-tax Act, 1961. For this purpose, full details of the expenses should be obtained and items of expenditure not admissible under the provisions of the Income-tax law should be excluded.

6.2. Further, such part of the head-office expenses as can reasonably be held as *not related* to the activities of the Indian branch should also be excluded, e.g., any bad debts, legal expenses or other expenditure incurred exclusively for the business carried on in the home country or in the countries where other branches are situated.

6.3. The nature of business/activities carried on or the sources of income in India should be compared with the nature of business/activities carried on of the sources or income in the home country and in the other foreign branches. It may be that the business in India is carried on only along restricted lines as compared to the business in the home country or in other foreign branches, or certain sources of income do not exist at all in India (e.g., where a foreign concern derives investment income from dividends or interest outside India whereas the activity in India is limited to carrying on business). In such cases, a suitable part of the over-all expenses incurred by the head-office allocable to such additional business/activities/sources of income should be excluded from the total head-office expenses as not being relevant to the business/activities/sources of income of the Indian branch. The rationale is that the overheads must be pro-rated over all the gross income of the foreign concern.*

6.4. Where the percentage of head-office expenses to the expenditure incurred in India by the branch is unduly high, there will be all the more reason for greater care being exercised by the Income-tax Officers in the scrutiny of these claims.

7. Basis of apportionment

7.1. After the composition of the head-office expenses has been scrutinised as above, the Income-tax Officer has to select a suitable basis of apportionment for determining the part thereof which is appropriately debitable as a charge against the profits of the Indian branch. Various criteria are possible for this purpose, e.g., gross income/receipts/turnover/working capital/expenses/assets.

7.2. The criterion to be adopted in a particular case will depend upon the nature of the business/activities/sources of income in India. This should be done carefully after taking into account all the relevant facts. The Income-tax Officer should consult his Inspecting Assistant Commissioner before taking the decision on this point. Once a particular criterion of apportionment is selected, it should be followed from year to year. If at any time, a change in the criterion adopted for apportionment is considered necessary owing to a change in the relevant factors or circumstances or because such a change is claimed by the assessee, the prior approval of the Inspecting Assistant Commissioner should be taken for the purpose.

7.3. After the criterion has been selected, the amount actually admissible as a deduction from the profits of the Indian branch will be computed by applying the fraction constituted by the Indian figure of the selected criterion as the numerator and the corresponding global figure as the denominator, to the total admissible head-

*This consideration is also very pertinent in cases where a deduction is claimed on account of 'research and development' expenses incurred by the head-office.

office expenses. Care should be taken to see that numerator of the fraction is not artificially increased nor is the denominator reduced because otherwise it would result in inflating the amount allocable to the Indian branch.

8.1. In order to satisfy himself about the admissible composition of the head-office expenses and apportionment thereof to the Indian branch, the Income-tax Officer should ask the assessee concerned (i) to furnish copies of the global Profit & Loss Account and Balance-Sheet and (ii) to indicate the basis of apportionment adopted in respect of the other branches in countries outside India.

8.2. Further, the assessee may also be asked to explain as to how this matter has been dealt with for the purpose of the income-tax assessment in the home country. The quantum of income arising in a foreign country (such as India) is material in the assessment in the home country for the purpose of determining the income on which double taxation relief may be admissible in the home country or for determining the amount of foreign income which is not taxable in the home country if, under the law of that country, the income arising abroad is not subjected to tax. In all these cases, it will thus be relevant to find out (i) how the head-office expenses have been apportioned between the head-office and the various branches in the foreign countries, for the purpose of the income-tax assessment in the home country, and (ii) how the reimbursement of such expenses by the Indian branch has been accounted for in the books of the head-office.

8.3. The assessee may be requested to furnish relevant information on these points as also, a copy each of the account of the branch in the books of the head-office and the account of the head-office in the books of the branch. If any variations are noticed in the claim made in India and the basis adopted in this behalf for the apportionment of head-office expenses to other branches or for the purpose of the assessment in the home country, or any discrepancy is noticed in the branch/head-office accounts, the matter may be examined further in depth.

9. The general administration and management expenses may be styled variously as home office expenses, area office expenses, regional office expenses or service charges, etc. Whatever the nomenclature, the approach to be adopted will be the same as indicated above as regards the admissible composition of the expenses as well as the basis of apportionment.

10. In some cases, the Profit & Loss Account of the Indian branch may include some expenditure which is connected not merely with

the Indian branch but the benefit of which goes also to the business carried on by the head-office or the other foreign branches. In such cases, it will be necessary to disallow that part of the expenditure which is attributable to the services rendered or benefits accruing to either the head-office or the other branches.

11. The Board desire that all cases where the claim towards head-office expenses in a year exceeds Rs. 50,000 should be finalised with the approval of the Inspecting Assistant Commissioner, who will in appropriate cases take the advice of the Commissioner of income-tax.

12. Where it is desired to obtain some information or material (regarding activities of the foreign concern in India or the need for any supervisory role by the head-office in any particular case) from other Ministries/Departments of the Government of India which could assist the Income-tax Officers in properly determining the amount of expenditure appropriately debitable to the Indian branch, such cases may be referred to the Board which in turn will try to obtain the requisite information from the Ministries/Departments concerned and then pass it on to the Income-tax Officers.

13. A distinction has to be made in the case of head-office expenses paid by an Indian subsidiary to a foreign company. According to our law, a foreign parent and a domestic subsidiary are two distinct and separate legal entities. All *inter se* transactions are subject to the test of arm's length standard. In view of this position, there is no justification for allowing head-office expenses in the case of an Indian subsidiary and as such the question of proportionate allocation of general and administrative expenses to the Indian subsidiary does not arise. Any expenditure incurred by a parent company towards supervision of its investments in a subsidiary is not admissible as deduction in the computation of income of the subsidiary.

14. These instructions may kindly be brought to the notice of the Income-tax Officers in your Charge for careful compliance. The detailed scrutiny of head-office expenses may be taken up in pending assessments. If in any case, it is found that excessive claims have been made, suitable action in respect of the past assessments may also be taken.

Yours faithfully,
(M. L. CHOUDHRY)

Secretary, Central Board of Direct Taxes.

APPENDIX IV

Particulars of Income returned, income assessed wealth returned, wealth assessed in respect of Shri Rampuria and his Associates

PARTICULARS OF WEALTH RETURNED AND ASSESSED IN RAMPURIA GROUP IN WEST BENGAL CHARGES

| | <i>Net wealth assessed</i> |
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66

ANNEXURE—'B'

*Particulars of Income & Wealth from the Assessment years 1966-67 to 1974-75—
Bikar Range, Rajasthan Charge.*

| Name: | | | | Income declared | Income assessed | Wealth declared | Wealth assessed. |
|-----------------------------------|---|---|---|--------------------|--------------------|--------------------|---------------------|
| 1. Sh. Abhaykumar Rampuria | | | | | | | |
| 1966-67 | . | . | . | 21,257 | 21,257 | No return | .. |
| 1967-68 | . | . | . | 9,753 | 9,372 | Do. | .. |
| 1968-69 | . | . | . | 6,158 | 5,150 | Do. | .. |
| 1969-70 | . | . | . | (—)73,667 | (+)8,032 | Do. | .. |
| 1970-71 | . | . | . | 7,738 | 7,738 | Do. | .. |
| 1971-72 | . | . | . | 740 | 740 | 53,250 | 53,250 |
| 1972-73 | . | . | . | 8,594 | 8,580 | 56,616 | 56,616 |
| 1973-74 | . | . | . | No return | .. | No return | .. |
| 1974-75 | . | . | . | Do. | .. | Do. | .. |
| 2. Smt. Amraodevi Rampuria | | | | | | | |
| 1966-67 | . | . | . | 1,882 | 6,020 | 6,66,906 | 7,23,260 |
| 1967-68 | . | . | . | 4,867 | 6,600 | 5,80,919 | 6,57,270 |
| 1968-69 | . | . | . | 11,824 | 37,180 | 6,66,054 | 6,66,054 |
| 1969-70 | . | . | . | 4,037 | 4,038 | 3,70,918 | 3,69,570 |
| 1970-71 | . | . | . | 13,905 | 14,356 | 3,64,561 | 3,74,561 |
| 1971-72 | . | . | . | 36,362 | 36,360 | 4,91,155 | 5,17,268 |
| 1972-73 | . | . | . | 23,828 | 23,828 | 2,55,401 | 5,54,600 |
| 1973-74 | . | . | . | 29,748 | 29,748 | 5,15,572 | 5,84,976 |
| 1974-75 | . | . | . | 33,630 | 33,630 | 5,80,200 | 6,87,000 |
| 3. Smt. Gulabdevi Rampuria | | | | | | | |
| 1966-67 | . | . | . | 23,574 | 24,930 | 6,94,078 | 7,55,540 |
| 1967-68 | . | . | . | 57,758 | 53,752 | 7,27,860 | 7,83,510 |
| 1968-69 | . | . | . | 67,745 | 26,173 | 8,32,726 | 8,39,241 |
| 1969-70 | . | . | . | (—) 30,604 | (+)8,870 | 8,08,759 | 8,94,800 |

| | | | | Income declared | Income assessed | Wealth declared | Wealth assessed. |
|---------|---|---|---|--------------------|--------------------|--------------------|---------------------|
| 1970-71 | . | . | . | 15,521 | 17,259 | 5,21,062 | 8,81,546 |
| 1971-72 | . | . | . | 24,534 | 22,025 | 5,94,454 | 7,10,659 |
| 1972-73 | . | . | . | 24,547 | 24,550 | 6,04,473 | 7,10,300 |
| 1973-74 | . | . | . | 27,609 | 27,610 | 7,24,392 | 8,89,720 |
| 1974-75 | . | . | . | 25,702 | 25,700 | 9,08,000 | 10,05,024 |

4. *Smt. Mohinidevi Rampuria*

| | | | | | | | |
|---------|---|---|---|--------|--------|----------|----------|
| 1966-67 | . | . | . | 34,678 | 34,710 | 8,40,426 | 8,99,780 |
| 1967-68 | . | . | . | 8,621 | 12,180 | 7,59,196 | 8,18,540 |
| 1968-69 | . | . | . | 18,814 | 20,590 | 7,41,205 | 7,41,205 |
| 1969-70 | . | . | . | 9,227 | 9,227 | 3,72,459 | 6,49,442 |
| 1970-71 | . | . | . | 21,735 | 21,735 | 2,79,180 | 3,92,881 |
| 1971-72 | . | . | . | 33,529 | 31,039 | 4,47,202 | 5,80,259 |
| 1972-73 | . | . | . | 19,851 | 23,695 | 4,65,455 | 5,71,100 |
| 1973-74 | . | . | . | 19,176 | 19,180 | 4,60,564 | 6,57,187 |
| 1974-75 | . | . | . | 17,714 | 17,714 | 5,62,995 | 7,61,000 |

5. *Sh. Pushpiram Kumar Rampuria*

| | | | | | | | |
|---------|---|---|---|--------|--------|----------|----------|
| 1966-67 | . | . | . | 6,930 | 6,930 | 1,10,304 | 1,16,630 |
| 1967-68 | . | . | . | 8,383 | 8,380 | 1,19,643 | 1,25,970 |
| 1968-69 | . | . | . | 8,322 | 8,320 | 1,61,587 | 1,61,587 |
| 1969-70 | . | . | . | 4,403 | 4,411 | 1,26,282 | 1,61,223 |
| 1970-71 | . | . | . | 15,145 | 15,150 | 1,40,502 | 1,76,092 |
| 1971-72 | . | . | . | 26,097 | 26,100 | 1,98,810 | 1,98,810 |
| 1972-73 | . | . | . | 21,949 | 18,130 | 1,98,381 | 1,98,200 |
| 1973-74 | . | . | . | 22,625 | 22,630 | 1,97,350 | 2,32,129 |
| 1974-75 | . | . | . | 22,977 | 22,980 | 2,45,852 | 2,68,665 |

6. *Smt. Pushpidevi Rampuria*
(assessed by ITO, A-Ward, Bikaner).

| | | | | | | | |
|---------|---|---|---|--------|--------|----------|----------|
| 1966-67 | . | . | . | 21,867 | 24,210 | 2,30,180 | 2,61,100 |
| 1967-68 | . | . | . | 7,433 | 7,330 | 2,24,767 | 2,68,020 |
| 1968-69 | . | . | . | 7,069 | 8,630 | 2,88,370 | 2,89,960 |
| 1969-70 | . | . | . | 7,307 | 9,024 | 1,30,577 | 1,50,578 |
| 1970-71 | . | . | . | 13,939 | 14,413 | 1,58,445 | 1,58,277 |
| 1971-72 | . | . | . | 22,539 | 23,260 | 2,86,069 | 2,87,217 |
| 1972-73 | . | . | . | 22,633 | 22,630 | 3,18,000 | 3,20,619 |
| 1973-74 | . | . | . | 18,800 | 18,800 | 3,22,688 | 3,71,805 |
| 1974-75 | . | . | . | 21,146 | 21,146 | 3,76,628 | 4,34,034 |

ANNEXURE—'C'

Particulars of income returned and assessed in Rampuria Group in West Bengal Charges

| Name of assessee | ASSESSMENT YEAR | | | | | | ASSESSMENT YEAR | | | |
|---------------------------------|----------------------|------------------|-------------------|-------------------------|-------------------------|------------------|--|---|---------|---------|
| | Income/loss returned | | | | | | Income assessed/loss determine in the asstt. | | | |
| | 1969-70 | 1970-71 | 1971-72 | 1972-73 | 1973-74 | 1974-75 | 1969-70 | 1970-71 | 1971-72 | 1972-73 |
| 1 Rampuria Brothers Pvt. Ltd. | 95,501 (Loss) | 75,687 | 43,150 | 56,557 (Loss) | 14,020 (Loss) | 15,303 (Loss) | 54,619 | 1,87,480 | 65,300 | 90,370 |
| 2 Hiralal Sobhagmul R.F. | 282,398 (Loss) | 49,504 (Loss) | 427,528 (Loss) | 420,502 (Loss) | Proceedings are pending | | Nil u/s 144 | Assessment made u/s 144 Re- opened u/s 146 Fresh asse- sment pending | 250,000 | 94,661 |
| 3 Ratanlal Rampuria Individual | 23,003 | 3,900 | 3,837 | Proceedings are pending | | | 23,753 | 3,900 | 4,200 | .. |
| 4 Ratanlal Rampuria HUF | 10,501 (Loss) | 24,597 (Loss) | 1,994 | 7,537 (Loss) | Proceedings are pending | | 5,323 | 156 | 1,924 | 7,540 |
| 5 Manekchand Rampuria HUF | 33,933 | 33,226 | 23,930 | 52,127 | Proceedings are pending | | 36,260 | 33,466 | 24,647 | 52,127 |
| 6 Jaichandmul Rampuria (HUF) | 5,873 | 22,385 (Loss) | 15,105 | 1,462 | Proceedings are pending | | 7,356 | 2,367 | 15,105 | 1,460 |
| 7 Smt. Pepa Devi Rampuria | 55,996 (Loss) | 28,845 | 153,417 (Loss) | 110,625 (Loss) | 22,522 (Loss) | 23,223 | 32,592 | 35,092 | 30,597 | 50,956 |

APPENDIX V

Summary of main Conclusions|Recommendations

| Sl. No. | Para No. | Ministry/Department concerned | Recommendations |
|---------|----------|-------------------------------|--|
| 1 | 2 | 3 | 4 |
| 1 | 9.1 | Finance (Rev. & Ins.) | From the evidence that has been placed before the Committee relating to the income-tax assessments of National & Grindlays Bank Ltd., the impression gained by the Committee is that adequate attention is not being paid by the assessing officers even in large income cases and that assessments are often completed in a routine fashion. That this is so would be evident from the fact that it was only after the receipt of nine memoranda from an ex-official of National & Grindlays Bank, alleging evasion of tax by the bank and after the Public Accounts Committee referred a representation on this subject to the Ministry, that the Central Board of Direct Taxes was galvanised into action to re-examine the assessments relating to National & Grindlays Bank. The Committee find that as a result of investigations arising out of the memoranda an amount of Rs. 86.81 lakhs has been added to the taxable income of the bank for the assessment year 1971-72. Assessments for the year prior to 1971-72 have also been reopened under Section 147 of the Income-tax Act. |

2 9.2

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The Committee have been informed that while the income returned by National & Grindlays Bank for the assessment year 1971-72 was Rs. 3.23 crores, the income assessed was Rs. 4.13 crores after several additions to the taxable income. This would indicate the inadequacy of the scrutiny hitherto made of the bank's income. The Committee are distressed that the assessment of a foreign banking company that has built up a large business out of the deposits of Indian customers should be scrutinised so superficially. This is a very serious matter that compels immediate attention. The Committee desire that the assessments of the bank for as many previous years as are considered advisable should be reopened and scrutinised immediately on a top priority basis and income that may have escaped tax duty brought to tax.

3 9.3

-do-

It has been alleged that National and Grindlays Bank has evaded tax running into tons of crores. The Committee have been informed by the Central Board of Direct Taxes that these allegations pertain sometimes to evasion of income, sometimes to evasion of income-tax and sometimes the allegations refer to loss of revenue. An analysis of the various allegations is also stated to have been made by the Income-tax authorities. The Committee desire that these allegations should be examined in depth to determine the actual quantum of tax avoided or evaded by the Bank in all these years. From the facts brought out in the assessment for 1971-72, it would appear that the Bank's Returns of Income had not been reflecting a true picture of its finances for the purposes of tax. Since this is a serious matter the Committee desire that appropriate steps to

for

| 1 | 2 | 3 | 4 |
|---|-----|--------------------------|---|
| | | | recover the tax underassessed should be taken and consequential penal and prosecution proceedings should be considered. |
| 4 | 9.4 | Finance (Rev. & Ins.) | <p>The Committee find that one of the allegations related to the status of Mr. Bennett—then Chief Executive of the Bank in India for income-tax purposes. The Committee have been informed that as a result of the information furnished in the Memorandum, the status of Mr. Bennett has been determined as 'resident and ordinarily resiednt' instead of as 'resident and not ordinarily resident'. Accordingly, his income-tax assessments for the years 1967-68 to 1971-72 have been reopened to bring to tax Mr. Bennett's income abroad. The reopened assessments are stated to be pending. The Committee would like to be informed of the progress of completion of the reopened assessments of Mr. Bennett, which should be done expeditiously.</p> |
| 5 | 9.5 | -do- | <p>The Committee also find that no tax had been deducted at source in respect of some of the perquisites provided by the Bank to Mr. Bennett. The Committee have been informed that the bank, when called upon to explain why tax was not deducted at source in respect of these items, had stated that there was no obligation on their part to deduct tax at source in respect of the perquisites in question. The Committee desire to know whether the Board agree with the reply of the bank and the legal provisions in this regard. This should be examined in detail immediately and appropriate action should be taken in the light of the results of the examination.</p> |

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| | 9.6 | -do- | While the memorandum had alleged that payments made in respect of eight items provided as perquisites to Mr. Bennett had escaped assessment to tax, the Income-tax Officer has taken action only in respect of four items and that too only for the assessment year 1972-73. The reasons for the non-inclusion of the other four items as well as the position relating to the earlier assessment years in this regard should be intimated to the Committee. |
| 7 | 9.7 | -do- | The Committee have been informed that the third memorandum dated 20th July, 1972 from Shri Gupta had been received by the Commissioner of Income-tax West Bengal—III on 29th August, 1972 through the Director of Inspection (Investigation) New Delhi. Strangely enough, while intimating the action taken on this memorandum, the Central Board of Direct Taxes had stated that the Income-tax Officer was directed on 25th July, 1972 to investigate the allegations contained in this memorandum. The Committee desire that this discrepancy should be reconciled immediately. |
| 8 | 9.8 | -do- | One of the memoranda had also alleged that similar perquisites allowed to other covenanted officers of the bank were neither taxed in the hands of the officers nor was any tax deducted at source. The Committee have been informed that this is under investigation. The Committee desire that this investigation should be completed expeditiously and amounts which have escaped assessment to tax should be brought to tax forthwith. |
| 9 | 9.9 | -do- | It had also been alleged that payments from the unrecognised Provident Fund maintained in London in respect of British officers, |

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| | | | to the extent of bank's contributions and interest, was not subjected to deduction of tax at source. |
| 10 | 9.10 | Finance (Rev. & Ins.) | The Committee find from the reply of the Ministry that the bank and trustees of the fund have denied any obligation to deduct tax at source from sterling payment effected in the U. K. The Committee would like to be informed whether the legal position in this regard had been examined by the Board and the liability of the bank determined in case these payments are chargeable to the Indian accounts of the bank. |
| 11 | 9.11 | -do- | The Committee have also been informed that the Income-tax Department has investigated in depth the claim of Rs. 105 lakhs on account of Head Office Expenses made by the bank for the assessment year 1971-72 and disallowed Rs. 36.20 lakhs. Though the bank has gone in appeal against the assessment for the year 1971-72 it is seen that the bank has not disputed the disallowance of Head Office Expenses to the tune of Rs. 34.92 lakhs. Admittedly, while scrutinising the claims towards Head Office Expenses the Income-tax Officer had not called for the books of accounts of the bank and no machinery also exists to check the veracity of expenditure stated to have been incurred outside India related to the business of the bank in India. The Committee also find that as regards computation of Head Office Expenses an unfettered discretion has been given at present to Income-tax Officers. |

12 9.12

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That an amount of Rs. 36.20 lakhs should have been disallowed for one year alone on the basis of complaints would, perhaps, indicate that claims of the bank towards Head Office Expenses had been allowed without proper scrutiny by the Income-tax Officers. The Committee desire that the Head Office Expenses claimed during the assessment years prior to 1971-72 for 16 years should also be reviewed immediately with a view to ensuring that no inadmissible expenditure has been allowed to escape tax and repatriated in foreign exchange to the bank's headquarters. The Committee desire that this should be examined forthwith and a further report on the extent to which Head Office Expenses which are inadmissible have been allowed without assessment to tax, furnished to the Committee as early as possible.

13 9.13

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What causes greater concern to the Committee is the absence of any uniform guidelines for the assessing officers on the treatment of Head Office Expenses of foreign companies for purposes of income-tax. The Committee have been informed that no definite guidelines have been laid down by the Board so far. Some case studies have however, been conducted and guidelines have now been evolved which are under finalisation in consultation with a few Commissioners of Income-tax. Since this is a very important aspect which has been ignored so far, the Committee desire that the guidelines should be finalised without further loss of time and necessary instructions to the assessing officers issued which would assist them in their assessments.

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| 14 | 9.14 | Finance (Rev. & Ins.) | The Committee find that this issue, which is vital both from the taxation and foreign exchange angles, has been already considerably delayed and it is most likely that as a result of the lack of uniformity considerable amounts would have escaped tax and been repatriated by various foreign companies abroad. It is regrettable that even though a note on the basis of case studies had been prepared in August, 1973, there has been no finality as yet in the matter of issuing guidelines. The Committee view such delays seriously and desire that responsibility for the delay should be fixed for appropriate action. It would also be necessary to comprehensively review the working of the Foreign tax Division in the Ministry of Finance. |
| 15 | 9.15 | -do- | The Committee also find that in accordance with a technical services agreement entered into between National & Grindlays Bank and the First National City Bank, which controls 40 per cent of the shares of the former bank, the assessee bank was to reimburse to First National City Bank monthly in US dollars or such other currency as might be agreed upon, the cost incurred by the First National City Bank in providing its own personnel to the National & Grindlays Bank as well as the cost of training to National and Grindlays Bank personnel in its own offices. In pursuance of another clause of the agreement the principal office of the National & Grindlays Bank India was to pay a monthly fee in Indian rupees to First National City Bank's principal office in India equivalent to |

£ 13,333 converted at the rate of exchange ruling on the date of payment as technical know-how fee. In addition, the National, & Grindlays Bank was to pay First National City Bank in respect of each of its accounting years 1969, 1970, 1971, 1972 and 1973 an amount in Indian rupees equivalent to 10 per cent of the amount by which the actual earnings of the Indian business of the former exceeded the projected earnings of its Indian business for the respective years.

16 9.16

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The Committee find that Rs. 21.60 lakhs in 1969, Rs. 23.35 lakhs in 1970, Rs. 59.29 lakhs in 1971, Rs. 27.95 lakhs in 1972 have been paid by the National and Grindlays Bank to the First National City Bank under this agreement. Considering the fact that the services rendered by First National City Bank related only to training programmes, operating practices, credit policy administration, development and expansion of the National and Grindlays Bank's offices and business, the Committee are not satisfied whether such services can be treated as technical know-how. Banking practices and banking traditions have been long established in this country. It is also not clear whether the services rendered by First National City Bank were in fact related to the Indian business of National and Grindlays Bank. The Bank has also not been in a position to furnish details to establish that this expenditure was related to its Indian business. The Committee, therefore, desire that the agreement between the two banks should be examined in detail, in all its aspects immediately with a view to ensuring that this has not been resorted to as a means of evading tax. Such an examination is, in

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the opinion of the Committee, important in view of the substantial financial interest of the First National City Bank in the affairs of the National and Grindlays Bank. In case it is found after the proposed examination that the agreement is only a 'facade' to facilitate tax evasion, appropriate action should be taken against both the banks.

17 9.17 Finance
(Rev. & Ins.)

In respect of the amount of Rs. 21.60 lakhs paid by National & Grindlays Bank to the First National City Bank relating to the assessment year 1970-71, the Committee have been informed that tax was not deducted at source by the bank and that prosecution against the bank is under contemplation. The Committee cannot view with equanimity such delays in taking action against what is clearly a violation of the fiscal laws of the country. The Committee are inclined to feel that while the Income-tax Department does not hesitate to harass small income assesseees, the same enthusiasm is lacking where large income assesseees are concerned. The Committee desire that this should be examined immediately and action taken against the bank which, in turn, would serve as a deterrent to other tax evaders. A further report on the action taken in this regard should be furnished to the Committee as early as possible.

III

18 9.18 -do-

In respect of the assessment year 1970-71, while a sum of Rs. 4 lakhs had been allowed by the Income-tax Officer as relating to expenditure wholly and necessarily incurred for the purpose of the

business of the bank in India in consequence of the technical services agreement with First National City Bank, the Appellate Assistant Commissioner had, however, allowed the entire amount of Rs. 21.60 lakhs. The Committee have been informed that the Department has gone on appeal to the Tribunal against the orders of the Appellate Assistant Commissioner. The Committee desire that the Income-tax Appellate Tribunal should complete the hearing of this case early and pass orders expeditiously. The Committee are inclined to make this recommendation in view of the fact that instances have come to their notice wherein considerable time has been taken by the Tribunal to dispose of cases.

19 9.19

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The Committee find that in addition to the payment made to First National City Bank, a sum of £ 19,837 has been paid by the National & Grindlays Bank during the accounting year 1971, relevant to the assessment year 1972-73, to M/s. Mackinsey and Co. and a further sum of £ 5,489 has been paid to M/s. Urwick and Orr by debiting head office expenses. The Committee have been informed that these payments are being looked into by the Income-tax Department. The Committee trust that this will be finalised expeditiously. The Committee would await a further report in this regard.

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20 9.20

-do-

The Committee are also surprised to find that a large sum of Rs. 75 lakhs due to the bank from M/s. Hoare Miller & Co. Ltd. had been treated as irrecoverable by the bank and claimed as a bad debt. This has been disallowed by the Income-tax Officer on the ground that the debtor company was in existence and carrying on business. This

addition of the Income-tax Officer had, however, been deleted on appeal by the Appellate Assistant Commissioner on the ground that the write-off was justifiable. What is more surprising is the fact that while allowing the bad debt claimed by the bank, the Appellate Assistant Commissioner had stated in his order that "such write-off in turn was approved and permitted by the Reserve Bank of India." This conclusion has been arrived at on the basis of an extract of a Report of Inspection of National & Grindlays Bank conducted by the Reserve Bank of India, which had been furnished to the Appellate Assistant Commissioner by Shri Kasbekar, head of the Tax Department in National & Grindlays Bank. Shri Kasbekar, before joining the National & Grindlays Bank, had worked as an Income-tax Officer and had also assessed the National & Grindlays Bank. The Reserve Bank of India have, however, disputed that the write-off of the bad debt had been approved and permitted by them and had stated that such write off of bad debts does not require the permission of the Reserve Bank of India. Under the circumstances, it is not clear to the Committee how he Appellate Assistant Commissioner could have laid such reliance on a document which had been furnished by the assessee himself and had not been authenticated or confirmed by the Reserve Bank. No doubt the Appellate Assistant Commissioner has attempted to justify the claim of the bank on various grounds.

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| 21 | 9.21 | Finance (Rev. & Ins.) | The Committee have been informed that the explanation of the concerned Appellate Assistant Commissioner has been obtained by the Central Board of Direct Taxes. The Committee would like to be informed of the action taken by the Board on the explanation furnished. |
| 22 | 9.22 | -do- | The Committee have also been informed that the Income-tax Department has gone in appeal to the Income-tax Appellate Tribunal against the decision of the Appellate Assistant Commissioner. The Committee would await the outcome of the Tribunal proceedings which should be expedited. |
| 23 | 9.23 | -do- | It is not clear to the Committee how far the debt of Rs. 75 lakhs due from M/s. Hoare Miller & Co. could be treated as irrecoverable in view of the fact that the debt had been guaranteed by Shri Rampuria. Apparently the bank had chosen not to enforce the recovery of the debt from the guarantor. The Committee find that as on 30th June 1971, Shri Rampuria, who was the guarantor for the debt also held 7050 equity shares of M/s. Hoare Miller & Co. It is also surprising that while Shri Rampuria had stood guarantee for the large sum of Rs. 75 lakhs, his own wealth had been returned as only Rs. 2.81 lakhs. Besides, Shri Rampuria and his associates are also assessed to wealth-tax and income-tax. Under the circumstances, the Committee are unable to understand the reluctance on the part of the National & Grindlays Bank to take positive steps for the recovery of the debt due from M/s. Hoare Miller & Co. from the guarantor. |

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| 24 | 9.24 | Finance (Rev. & Ins.) | Since by writing off the debt of Rs. 75 lakhs due from M/s. Hoare Miller & Co., National & Grindlays Bank had released the company from its debt obligation, the Committee would like the Income Tax Department to examine whether the provisions of the Gift-tax Act would be applicable in this case and if so appropriate action taken. |
| 25 | 9.25 | -do- | An interesting question that arises out of the manner in which the bad debt claimed by the bank has been treated is whether the Appellate Assistant Commissioners of Income-tax should have unlimited powers to hear any appeal irrespective of the quantum of the total income of the assessee. For instance, in this case, the Committee find that the Appellate Assistant Commissioner had allowed a claim as large as Rs. 75 lakhs. The Committee desire that the feasibility of prescribing suitable monetary limits upto which Appellate Assistant Commissioners can hear appeals should be examined by Government. If necessary, appeals in cases where the income exceeds the prescribed monetary limit can be heard by a Board of Appeal consisting of more than one Appellate Assistant Commissioner. |

