P. A. C. No. 449

PUBLIC ACCOUNTS COMMITTEE
(1974-75)

(FIFTH LOK SABHA)

HUNDRED AND FIFTY THIRD REPORT

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 128th Report (Fifth Lok Sabha) on Chapter II of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts Vol. II, Direct Taxes, relating to Corporation Tax].

LOK SABHA SECRETARIAT
NEW DELHI

April 1975/Vaisakha 1897 (Saka)

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Page	Para	Line	For	Substitute
3	-	26	cary	carry
9	-	15	appear	appears
9	-	18	lose	loss
10	1.27	1	fact	facts
10	1.27	11	grower	grown
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14	1.35	4	require to the	require the
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24	2.14	4	involve	involving
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70	5.67	4	suitable	suitably
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72	5.97	16	them away	them keep away
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(1974-75)

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SECRETARIAT

Shri N. Sunder Rajan—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, having been authorised by the Committee, do present on their behalf this Hundred and Fifty Third Report of the Public Accounts Committee on Action Taken by Government on the recommendations contained in 128th Report (Fifth Lok Sabha) on Chapter II of the Report of the Comptroller & Audit or General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Vol. II, Direct Taxes, relating to Corporation Tax.

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

Shri H. M. Patel—*Convener*

MEMBERS

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

3. The Action Taken Sub-Committee of the Public Accounts Committee (1974-75) considered and adopted this Report at their sitting held on 10th April, 1975. The report was finally adopted by the Public Accounts Committee on 21st April, 1975.

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

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

— (JYOTIRMOY BOSU)
Chairman,
Public Accounts Committee.

NEW DELHI;
21st April, 1975.
1st Vaisakha, 1897 (*Saka*)

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the recommendations contained in their 128th Report (Fifth Lok Sabha) on Chapter II of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil) Revenue Receipts, Volume II, Direct Taxes relating to Corporation Tax, which was presented to Lok Sabha on the 29th April, 1974.

1.2. Action Taken Notes have been received from Government in respect of all the 56 recommendations contained in the Report.

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

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

Serial Nos. 1, 2, 3, 4, 8-9, 14, 15-16, 17, 18, 22, 23; 28, 31, 35, 40, 48, 49, 50, 52 and 54.

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

Serial Nos. 5, 21 and 51.

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

Serial No. 20.

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

Serial Nos. 6, 7, 10-12, 13, 19, 24-25, 26-27, 29-30, 32, 33, 34, 36-37, 38-39, 41-47, 53, 55 and 56.

1.4. The Committee desire that final replies in regard to those recommendations to which only interim replies have so far been furnished, should be submitted to them expeditiously after getting them vetted by Audit. The reason for the delay should be explained to the Committee.

1.5. The Committee will now deal with the action taken by Government on some of the recommendations.

Incorrect computation of Corporation Tax—Commission to include capital gains while calculating the average rate of tax on total income—(Paragraphs 1.28 *and* 1.29—*S. Nos.* 5-6).

1.6. Commenting on the omission to include capital gains while calculating the average rate of tax on total income, in a case, the Committee in paragraphs 1.28 and 1.29 of the Report observed as under:—

> "Although 'income' as defined under Section 2(24) includes capital gains chargeable under Section 45, in this case mysteriously enough capital gains were omitted while calculating the average rate of tax on total income, for the purpose of allowing rebate on inter-corporate dividents for the assessment year 1965-66. It creates suspicion that despite clear instructions from the Board that the ITO should personally recheck tax calculations of demands in cases with income over Rs. 1 lakh, no check had been carried out in this case which involved a total income of as high as Rs. 221 lakhs. In his explanation for the failure to carry out the checking, the ITO has stated that the IAC had given an assurance that the ITOs would not be held responsible for any mistakes in the calculation of tax. Although the explanation has not been accepted, the Committee consider it desirable to ascertain whether any assurance of this nature had been given by the IAC concerned and if so why he had done so. The Committee should be informed of the result of such an enquiry.
>
> The Committee find that the CIT has been asked to carry out a selective review with a view to finding out if similar mistakes have been committed. They stress that this review should also be extended to seeing whether the ITOs in this charge have been rechecking the tax calculations as per the Board's instruction. The review should be conducted by the IAC (Audit). The Committee should await the results of the review."

1.7. In their replies dated 16th October and 19th November 1974, the Ministry of Finance (Department of Revenue and Insurance) have stated:

> "The relevant assessment order in this case was passed on 27-2-1970 by the ITO concerned who had been there since 3-7-1967. During this period *i.e.*, 3-7-1967 to 27-2-1970, three Inspecting Assistant Commissioners sucessively held charge

of the relevant Range. There is nothing on record to show that any one of them had given any assurance that ITOs would not be held responsible for any mistake in tax calculation.

One of the IACs has since resigned and left the Department. Enquiries from the other two IACs reveal that neither of them had issued any such instructions or given any assurance, even verbally."

The Ministry further added:

"The Range IAC had made a selective scrutiny of cases and it has been reported that he did not come across similar mistakes in any other case. However, the C.I.T. has been asked to extend this review to other circles of his charge also and the results of this extended review will be intimated in due course."

1.8 The Committee had earlier suggested that the review ordered by the Board with a view to finding out if similar mistakes had been committed should also be extended to seeing whether the Income-tax Officers in the relevant commisioner's charge had been rechecking the tax calculations and that this review should be conducted by the IAC (Audit). The Committee, however, very much regret to note that their suggestion has apparently not been acted upon by the Ministry and no valid reasons have been given for not accepting this suggestion of the Committee. The Committee would, therefore, reiterate their earlier recommendation and trust that this would be completed expeditiously under advice to the Committee.

Failure to cary forward the deductions made from Super-Tax rebate. (Paragraph 1.48—S. No. 7).

1.9. Commenting on the failure to carry forward the deductions made from the Super-tax rebate in one case, the Committee, in paragraph 1.48 of the Report observed as under:

"Under the Finance Act, 1964 and 1965, certain deductions had to be made from the super-tax rebate and the deduction was limited to the extent of the rebate and the balance was to be carried forward. Failure to carry forward the deduction in this case resulted in short-levy of tax of Rs. 1.33 lakhs in the assessment year 1965-66. Similar provisions were there in the Finance Acts, 1956 to 1959. The Committee had called for a general review as early as 1964-65, in view of the fact that the lapses in computing super-tax were on the increase. This suggestion was reiterated by them subsequently during 1968-69 and 1972-73. Finally the Committee are

informed that as a result of a review of company assessment cases completed during the period 1964-65 to 1967-68, under-assessment of tax to the tune of Rs.6.96 lakhs has been noticed out of which Rs. 5.86 lakhs are to be treated as a loss of revenue as the cases are outside the time-limits for rectificatiory action. The Committee cannot but deplore the fact that the review ordered from time to time was not carried out effectively and expeditiously. The Committee desire that responsibility should be fixed for this failure, which has resulted in a substantial loss of revenue. They would await the result of the action taken."

1.10. In their reply, dated 21st September, 1974 the Ministry of Finance (Department of Revenue and Insurance) have stated:

"As desired by the Committee the concerned Commissioners of Income-tax have been directed to fix responsibility for the failure to carry out the review effectively and expeditiously and take necessary action against the concerned officers."

1.11. The Committee would like to be apprised of the final outcome of the investigations being conducted by the Commisioners of Income Tax to fix responsibility for the failure to carry out the review suggested by the Committee as early as 1964-65.

Classification of companies—(Paragraphs 1.73 *to* 1.75—*S. Nos.* 10—12).

1.12. Referring to the incorrect classification of a company as one in which public were substantially interested and failure to levy additional super-tax, the Committee in paragraphs 1.73 to 1.15 of the Report, observed as under:—

"1.73. Under the provisions of the Income-tax Act, if a company in which the public are not substantially interested fails to distribute the prescribed percentage of its distributable income as dividends such a company is liable to pay additional super-tax. For the assessment years prior to 1965-66, shares of a company held by another company in which public are substantially interested are not to be treated as held by public. In this case additional super-tax of Rs. 8.79 lakhs was not levied for the assessment year 1959-60 as the company was incorrectly classified as one in which the public were substantially interested. Mistakes of this type have been brought to the notice of the Committee earlier also. The Committee, would therefore, call for a review of all the completed assessments relating to the assessment years prior to 1965-66 for appropriate action. The results of the review should be intimated to the Committee.

1.74: The Committee note that the Chief Auditor of the Internal Audit is expected personally to audit certain important types of cases and one such category of cases related to cases involving 'liability to additional tax by companies in which the public are not substantially interested'. The Committee desire that the criteria for determining whether the public have or have not substantial interest in a company should be clearly laid down in the I.A. Manual. In this connection the Committee suggest that the question how far a foreign company could be treated as one in which public are substantially interested may also be examined in consultation with the Ministry of Law.

1.75: The Committee had, in paragraph 2.74 of their 51st Report (Fifth Lok Sabha) suggested an examination of the feasibility and economics of dispensing with the subtle distinction between a public company and a closely held public company for the purpose of taxation of profits. According to the Chairman, Central Board of Direct Taxes, the distinction is necessary because it is not difficult for private companies to be registered as or to change themselves into public companies if they want to escape the rigours of taxation. The Committee understand that there is an attempt to meet this situation in the new Company Law (Amendment) Bill. They accordingly wish to reiterate that the question of doing away with the distinction between a public company and a closely held public company should be considered expeditiously as a step towards simplification."

1.13. In their reply dated 18th December, 1974 the Ministry of Finance (Revenue & Insurance) have stated:

"1.73: A review of all assessments for the assessment year 1965-66 and earlier assessment years is being undertaken. A further report will follow.

1.74: The matter is under consideration in consultation with the Ministry of Law.

1.75: The matter is under consideration in consultation with the Department of Company Affairs."

1.14. The Committee desire that the proposed review of all the completed assessments for the assessment year 1965-66 and earlier assessment years should be undertaken and completed expeditiously so that appropriate action for the recovery of additional tax, wherever due, may be taken without loss of time.

1.15. The Committee find that the question how far a foreign company can be treated as one in which public are substantially interested is still under consideration of the Ministry in consultation with the Ministry of Law. The Committee would urge the Government to come to an early decision in this regard. The Committee further stress that the criteria for determining whether the public have substantial interest in a company or not should also be clearly laid down in the I.A. Manual so as to avoid any ambiguity.

1.16. The Committee have also been informed that the question of doing away with the subtle distinction between a public company and a closely held public company is still under consideration of the Government.

1.17. The Committee cannot but deplore the inordinate delay in arriving at a decision in respect of a relatively simple issue. The Committee trust that Government will come to a decision without further loss of time.

Incorrect inclusion of capital expenditure under "misc. Expenditure"

(Paragraphs 2.13 and 2.14—Serial Nos. 13-14)

1.18. Commenting on the failure on the part of an Income-tax Officer to notice that a capital expenditure of Rs. 3.98 lakhs was included under 'miscellaneous expenditure' in an assessee's claim of deductions, which resulted in short-levy of tax to the extent of Rs. 2.19 lakhs, the Committee in paragraphs 2.13 and 2.14 of the Report observed as under :—

> "The Committee are distressed to note the sheer carelessness if not something else on the part of the ITO resulted in short-levy of tax to the extent of Rs. 2.19 lakhs in this case. The ITO failed to notice that a capital expenditure of Rs. 3.98 lakhs was included under 'miscellaneous expenditure' in the assessee's claim of deductions. He did not make a proper study of the company's balance sheet. What is worse was that even after the receipt of Audit Objection he did not care to rectify the mistake for 15 long months. The Committee have been informed that as the officer was responsible for a few more lapses a thorough enquiry has been ordered. The Committee stress that the cases should be thoroughly investigated and the result of investigation and action taken against official found to be at fault intimated to them within six months.
>
> Another distressing feature of this case is the failure of the Internal Audit to highlight the mistake. The Committee understand that an Upper Division Clerk has been warned in this connection. They wonder how the case involving a total income of Rs. 1.87 crores could be entrusted to a UDC only for check. It is clear that higher officers should also share

the blame and their responsibility should be fixed. This arrangement for Internal Audit seems to be wholly unsatisfactory. This reveals serious weakness and unsuitability of the present system. The Central Board of Direct Taxes should look into this aspect immediately and ensure that high income cases are invariably checked thoroughly at appropriate level."

1.19. In their replies dated 23rd September and 16th December, 1974, the Ministry of Finance (Revenue and Expenditure) have stated :

"The review of other cases completed by this ITO is still in progress. Results of review and action taken will be intimated to the Committee after the report of the C.B.I. is received. According to the existing instructions of the Board this case was to be checked personally by the Chief Auditor but as the Chief Auditor was busy in connection with other important work, he could not check all the cases personally. As regards unsuitability of the present system of Internal Audit Parties, their reorganisation is under consideration of the Board on the basis of the work study conducted by the Directorate of O & M Services in compliance with PAC's recommendation in Para 1.18 of their 118th Report."

1.20. The Committee regret the delay in initiating suitable action against the officer concerned even though the Committee had desired that the results of the investigation and the action taken against the officer should be intimated within six months. The Committee would like to impress upon the Government the need to complete the review expeditiously so that whatever deterrent action is subsequently taken is really effective. The Committee would await a further report in this regard.

1.21. The Committee also desire that the Government should arrive at an early decision in respect of the re-organisation of the Internal Audit Parties, essentially in consultation with the Revenue Audit. The Committee would like to be informed of the concrete steps proposed to be taken to strengthen the Internal Audit Organisation within 3 months.

Incorrect Computation of income from business—Amendment to the Act.
(Paragraph 2.30—Serial No. 18)

1.22. Referring to a writ petition filed by an assessee challenging the proceedings initiated under Section 154 to rectify the mistake, the Committee, in paragraph 2.30 of the Report, observed as under :—

"The Committee learn that the assessee has filed a writ petition challenging the proceedings initiated under Section 154 to

rectify the mistake, *inter alia* on the ground that "the alleged mistake, if any, is not a mistake apparent from the records". The Committee would await the outcome of the writ. In the meanwhile, they would like the Ministry to examine whether any amendment to the Act is necessary to ensure that rectification of patent mistakes is not frustrated by assessees seeking legal remedies on mere technical grounds."

1.23. In their reply dated 3rd December, 1974 the Ministry of Finance (Revenue and Insurance) have stated:

"The writ petition has since been dismissed by the High Court. But the assessee has filed appeals before the Division Bench.

2. The power of High Courts to issue writs emanates from Article 226 of the Constitution. The constitutional rights of a taxpayer to move the High Court to issue directions, orders or writs against the purported exercise of the power of rectification of mistakes by any Income-tax authority under Section 154 of the Income-tax Act, 1961 cannot, therefore, be taken away except by an amendment of the Constitution. It will be relevant in this connection to mention that the Direct Taxes Enquiry Committee (Wanchoo Committee) in paragraph 4.49 of their Final Report, had recommended that revenue matters, in respect of which adequate remedies are provided in respective statutes themselves, should be excluded from the purview of article 225 of the Constitution. This recommendation is being examined and the decision taken by Government in this regard would be intimated to the Committee in due course."

1.24. The Committee note that the Direct Taxes Enquiry Committee (Wanchoo Committee) have recommended that revenue matters in respect of which adequate remedies are provided in the respective statutes themselves should be excluded from the purview of Article 226 of the Constitution and that this recommendation is being examined in the Ministry. Considering the fact that the Report of the Direct Taxes Enquiry Committee had been presented as early as 1971, the Committee would urge the Government to come to an early decision in this regard.

Failure to scrutinise properly the Income-tax returns.

(Paragraphs 2.41 and 2.42—Serial Nos. 19-20)

1.25. Commenting on a deduction allowed twice by an Income Tax Officer in a case with a resultant tax effect of Rs. 2.9 lakhs, the Committee in paragraphs 2.41 and 2.42 of the Report observed as under:—

"In computing taxable income from the business of manufacture of sugar, the market value" of sugar-cane raised by the fac-

tory on its farm and used in the manufacture of sugar is deductible under the Rules as it relates to agricultural operations. Consequent on the retrospective increase of market price of sugarcane in the working seasons of 1958-59 and 1959-60 by an order dated 24th December, 1964, the assessee filed revised returns for the relevant assessment years *viz.*, 1960-61 and 1961-62, in which additional amount of Rs. 5,12,290/- was claimed as deduction. This was allowed in the revised assessments completed on 14th March, 1968. In the meanwhile, the assessee filed the return for the assessment year 1966-67 on 8th August, 1966 wherein the same amount of Rs. 5,12,290 was deducted from total income which was also allowed by the ITO. The deduction allowed twice had a tax effect of Rs. 2.9 lakhs. The ITO, who completed the assessment for the year 1966-67, appear to have been grossly negligent in that he failed to do something which was clearly his duty to do, namely to scrutinise properly the lose of Rs. 6.72 lakh returned by the assessee. As the assessee must have given the reasons for the deduction it should have been possible for the ITO to have linked it up with the revised assessments for the year 1960-61 and 1961-62. The Committee require that appropriate inquiry and action should be initiated. They further suggest that other assessments completed by this ITO should be audited.

According the Ministry, the correct legal position appears to be that the liability for the additional price arose on 22nd December, 1964 when the order of the Sugarcane (Additional) price Fixation Authority was passed. It would, therefore, seem to be not correct to have reopened the assessments for the assessment years 1960-61 and 1961-62, in this case. The Committee would like to know how the enhanced price stated to have been paid by the assessee in regard to purchases from open sources was dealt with in the relevant assessments. The Committee further desire that the correct position in law should be clarified for the guidance of the officers concerned."

1.26. In their reply dated 16th October, 1974 the Ministry of Finance, (Department of Revenue and Insurance) have stated :—

"The IAC concerned has been directed to enquire into the matter and inspect other cases completed by this ITO.

No revised returns were filed by the assessee for the assessment years 1960-61 and 1961-62 as observed by the Committee. On 14th March, 1968 the ITO only gave effect to the order of the AAC who had allowed the additional price to the

assessee for the sugar-cane grown on his own farm on the ground that it was an ascertained liability and hence deduction was admissible.

Necessary instructions clarifying the correct position in law, have been issued *vide* Instruction No. 745 [F. No. 228/28/74-IA (A-II)], dated the 30th August, 1974."

1.27. As intimated by Audit, the fact of the case are as under :

1. The orders raising the price of Sugar-cane retrospectively, were issued in December, 1974.

2. The assessee had already filed the returns for 1960-61 and 1961-62.

3. On the issue of these orders the assessee filed revised returns on 14th January 1965 (1960-61) and 12th March 1965 (1961-62) and claimed higher deduction. This was disallowed by the I.T.C.

4. The assessee went in appeal.

5. The A.A.C. decided that :

(i) enhanced deduction may be allowed in these years' assessments in respect of the cane grower by the assessee himself.

(ii) enhanced amount payable to other growers is to be allowed as deduction in the year in which the order was issued in the year in which December, 1964 falls.

6. The appellate order is dated 5th February, 1968 and effect was given to it on 14th March, 1968.

1.28. In their letter dated the 9th April, 1975, the Ministry have stated :

"Your kind attention is invited to the Ministry's reply to item No. 2.42 of the 128th Report of the P.A.C. forwarded under F. No. 236/16/72-A&PAC. II, dated 16th October, 1974. The Ministry's reply that no revised return was filed by the assessee for the assessment years 1960-61 and 1961-62 has not been found to be incorrect. As already stated in the Ministry's earlier reply forwarded under F. No. 236/16/72-A&PAC. II, dated 18th January, 1974 revised returns were filed for the assessment years 1960-61 and 1961-62 by the assessee claiming the additional price of sugarcane. This claim was disallowed by the I.T.O. in the original assessments made on 20th February, 1965 and 4th March, 1966. The assessee's claim was, however, allowed by the A.A.C. on appeal. On 14th March 1968 the I.T.O. only gave effect to the order of the A.A.C.".

1.29. The Committee have been informed that the fact brought out by Audit regarding filing of revised returns for Assessment Years 1960-61 and 1961-62 are correct and that the Income-tax Officer disallowed the claim but allowed it only for giving effect to the appellate orders passed by the Appellate Assistant Commissioner. If so, the Committee would like to be informed whether the Government have gone in appeal against the orders of the P.A.C.

1.30. The Committee would further like to know whether any follow up procedure has been devised by Government with a view to ensure proper implementation of their instructions No. 745, dated 30th August, 1974.

Mistakes in Computing Depreciation and Development rebate-Non-fulfilment of Conditions laid down in Income-tax Act.

(Paragraphs 3.32 and 3.33—Serial Nos. 26-27)

1.31. Referring to the Development Rebate allowed in the case of a company without fulfilling the conditions laid down for such rebates in the Income-tax Act, the Committee in paragraphs 3.32 and 3.33 of the Report observed as under :—

'3.32. M/s. Oil India Ltd., a joint venture of Government of India and Burmah Oil Company incorporated on 18th February, 1959, took over the assets of Assam Oil Company Ltd., a subsidiary of Burmah Oil Company. The Company are not happy over the manner in which tax concessions have been granted purported to be in accordance with an agreement dated 27th July, 1961, to M/s. Oil India Ltd., the benefit of which partly went to a foreign multinational Corporation which is against national interest. It is evident that the implications of the various provisions of this agreement in relation to taxation had not been carefully and properly scrutinised before they were finalised. The following points arise out of the Committee's examination of the matter.

(i) The agreement provided that in respect of the expenditure of Rs. 916.56 lakhs on certain assets taken over by M/s. Oil India Ltd., amortisation over a period of 15 years at the rate of Rs. 61 lakhs per annum would be allowed from the assessment year 1963-64 onwards. This was purported to be done under Section 42 of the Income-tax Act, 1961. Under this Section a provision for amortisation of expenditure on drilling or exploration activities could be made by agreement only if such expenditure were "expenditure incurred by the assessee"

It was, however, not the case here and therefore the allowance would constitute an extra legal concession resulting in huge loss of revenue.

(ii) In terms of the agreement, in respect of the expenditure (Rs. 161.04 lakhs) on building, plant and machinery "usual depreciation/development rebate" should be allowed each year as per the Income-tax Act. Under this provision the company was allowed development rebate on the pre-incorporation expenditure on building and machinery to the extent of Rs. 33.04 lakhs for the assessment year 1960-61 by the I.T.C. under instructions from the Commissioner. Under the Income-tax Act, however, the grant of development rebate is subject to the condition that the plant and machinery should be new and that it is admissible only in respect of the year of installation. The Committee were informed that there was no intention of giving any development rebate in relaxation of the basic provision of the Law. The plant and machinery taken over from the Assam Oil Co., were not new and were also not installed in the relevant previous year 1959-60. It seems that substantial portion thereof must have been installed even prior to 1954 when the provision for development rebate became effective in the Income-tax Act. Further, it remains to be confirmed whether in respect of assets installed between 1954-58, the Assam Oil Co., itself was allowed development rebate in its assessment. Although the Board was associated with the drafting of the relevant clauses of the agreement, relating to taxation, it was not pointed out that this concession was outside the scope of the Act which, as felt by the Finance Secretary, should have been done. Further, it is unfortunate that even when the Commissioner made a reference to the Board, the Board did not examine the matter properly and find out whether development rebate on these assets were admissible to M/s. Oil India Ltd. Only now it is proposed to consult the Ministry of Law in the matter, there does not appear to have been any justification for allowing such extraordinary and extra legal concessions.

(iii) In addition to the development rebate on plant and machinery, a sum of Rs. 26.80 lakhs was also allowed as development rebate on "casing and tubing", costing Rs. 107.20 lakhs in the assessment year 1960-61. This cost was, however, included in the expenditure of Rs. 916.56 lakhs which was allowed to be amortised

over a period of 15 years. Although a view was initially held that "casing and tubing" was not plant and machinery and hence no development rebate would, in any case, be admissible thereon, it was allowed under the instructions of the Board without making any reduction in the amortisation allowance. Even if it is regarded as plant and machinery it is doubtful whether development rebate would be admissible in view of what is stated in item (ii) above. The Ministry of Finance have promised to take up the matter again with the Ministry of Law.

(iv) An indirect consideration was passed on to Assam Oil Co., for a period of 20 years by Oil India Ltd., by way of supply of oil and associated natural gas at a concessional rate ranging between 50 per cent to 60 per cent of the normal sale price. The Committee understand that the benefit of this concession is estimated at Rs. 9 crores. It is not clear whether the entire assets of Assam Oil Company had been taken over on the basis of the market value. It should, therefore, be examined from the angle of capital gains tax, in consultation with the Ministry of Petroleum and Chemicals and Ministry of Law, whether in view of the substantial concession there was under-valuation of the assets.

3.33. In view of the fact that the quantum of concessions is very large and it is not free from doubt to what extent they were given by Government as a matter of policy or to what extent they are in accordance with the Law, the Committee consider it essential that there should be a thorough enquiry into the matter immediately for appropriate action including revision of the relevant assessments of the company to the extent that is legally permissible. Responsibility for the failure/lapse of the C.B.D.T. as brought out in items (ii) and (iii) should also be fixed for such action as may be called for.'

1.32. In their reply dated 18th December, 1974 the Ministry of Finance (Revenue and Insurance) have stated:

"The matter is under consideration in consultation with the Ministry of Law. Inspite of our best efforts it has not been possible so far to arrange a tripartite meeting with the representatives of the C. & A. G. and the Law Ministry to examine the various issues raised by the P. A. C. The Audit and the Law Ministry are again being approached to indicate suitable dates for a tripartite meeting and the final outcome of such meeting will be intimated to the Committee."

1.33. The Committee cannot but express their concern over the undue delay in arriving at a decision on issues which are of vital importance to national revenue.

1.34. The Committee would urge the Government to come to an immediate decision in this regard so that appropriate action including the revision of the relevant assessments of the company, to the extent it is legally permissible, are not unduly delayed and result in further loss to the exchequer. The Committee desire that this should be finalised immediately and in any case not later than three months.

1.35. The Committee would reiterate that responsibility for the failure or lapse on the part of the Board should be fixed and appropriate action taken. The reply of the Ministry is surprisingly silent on this recommendation of the Committee. The Committee require to the Ministry to explain this immediately.

Mistakes in Computing Depreciation and Development Rebate—non-observance of provisions of the Income tax Act.

(Paragraphs 3.48 & 3.49, Sr. Nos. 29-39)

1.36. Commenting on the lapse on the part of Income Tax Officers in not taking any notice of the fact that the development rebate reserve had been utilised for declaration of dividend and the failure to take necessary action open to them, the Committee, in paragraphs 3.48 and 3.49 of the Report had observed as under:—

> "Under the Income-tax Act, an assessee who avails himself of the concession of development rebate should keep 75 per cent of the development rebate in a separate reserve account and should not utilise the same for distribution as dividends or for remittance outside India as profits for a period of 8 years. If this direction is not followed the development rebate already granted, is liable to be withdrawn. The Committee note with concern that in the case of a number of assessments relating to two companies the ITO did not take any notice of the fact that the development rebate reserve had been utilised for declaration of dividend or having noticed the fact, failed to take necessary action open to him. This failure resulted in a short levy of tax to the extent of Rs. 8.81 lakhs, and excess computation of business loss of Rs. 6.31 lakhs. The Committee find that in these companies the non-resident share-holding is substantial. They further find with concern that a recovery of under-charge of Rs. 5.04 lakhs from one of the companies has become time-barred. They cannot but take a serious view of the substantial loss to Government. Surprisingly, no action seems to have

been taken against the ITOs concerned excepting that they were informed that their explanations were found to be not acceptable.

As no extemuating circumstances appear to exist, the Committee consider that appropriate disciplinary action should be taken against them and the Committee informed."

1.37. In their reply dated the 1st November, 1974 the Ministry of Finance (Revenue and Insurance) have stated:

"The C.I.T. has been asked to carry out a general review of the work of three Income-tax Officers to assess their overall performance and initiate disciplinary proceedings."

1.38. The Committee would like that the review by the Commissioner of Income tax in these cases should be completed expeditiously and the results thereof communicated to the Committee.

Incorrect Computation of extra shift allowance

(Paragraphs 3.73 & 3.74, Sr. Nos. 36-37)

1.39. Referring to the incorrect computation of the extra-shift allowance for double and triple shift working of plant and machinery in the cases of two companies, the Committee in paragraphs 3.73 and 3.74 of the Report observed as under:—

"The Audit paragraph brings out incorrect computation of the extra shift allowance for double and triple shift working of plant and machinery in the cases of two companies. Under the Rules 50 per cent of the normal depreciation is allowed for each of the double and triple shifts. Very strangely, however in the case of one company extra shift allowance at 100 per cent of the normal depreciation was allowed for the triple shift working of the machinery in addition to extra shift allowance @ 50 per cent for the double shift. In the case of another company, extra shift allowance for the double shift working was allowed at 100 per cent of the normal depreciation instead of at 50 per cent. These serious lapses accounted for an under-charge of tax of Rs. 1.71 lakhs. The Committee are unable to understand how, when the Income-tax Rules are abundantly clear, the assessee company could claim extra shift allowance of more than 100 per cent of normal allowance and how the ITOs could allow such claims. The facts are such as to indicate that the mistakes are not bona fide. The matter requires through investigation by the Board and the Committee trust that strict disciplinary action will be taken thereafter.

The Committee find that review conducted by the Department revealed similar lapses in as many as 4 other assessments relating to one of the companies. A review of all company assessments made by the ITOs concerned is called for. And if it shows that similar mistakes have been committed in other cases also, the matter should be referred to the CBI for further investigation."

1.40. In their reply dated 18th December, 1974, the Ministry of Finance (Department of Revenue and Insurance) have stated:

"Necessary review of the other cases completed by these ITOs is in progress. Results thereof with action taken will be intimated on completion of the review."

1.41. The Committee note that a review of other cases completed by the Income Tax Officers is in progress. The Committee would reiterate their earlier recommendation that if the review reveals that similar mistakes have been committed in other cases also, these cases should be referred to the CBI for further investigation.

Irregular exemptions or excess reliefs given—Treatment of Companies as Priority Industries

(Paragraph 4.9, Sr. No. 39)

1.42. Referring to the delay in ascertaining the correct position in regard to treatment of two companies who derived income from the manufacture of (a) resins and fabrication of water treatment equipment and (b) radio receivers respectively as priority industries, even though the relevant schedule in the Act did not mention them, the Committee in paragraph 4.9 of the Report observed as under:—

"The Committee regret the delay in ascertaining the correct position in regard to these cases. They desire that such question should be examined very expeditiously with a view to the officers in the field being apprised of the correct position at the earliest possible date. This was emphasised earlier in paragraph 2.171 of the 87th Report (Fifth Lok Sabha), which, it seems, has not been given enough attention to. After ascertaining the correct position in the cases in question, it is also necessary to undertake a general review to see whether assesssments involving such industries were properly made."

1.43. In their reply dated 18th December, 1974, the Ministry of Finance (Department of Revenue and Insurance) have stated:

"The matter is under consideration of the Board and a further communication will follow."

1.44. The Committee are not at all satisfied with the undue delay in ascertaining the correct position in these cases and in issuing necessary instructions to the field officers in this regard. This should be done immediately and necessary instructions issued without any further loss of time for the guidance of the field officers.

1.45. The Committee would reiterate that after ascertaining the correct position, a general review, as already recommended should be undertaken to see whether assessments involving such industries have been properly made. This should be confirmed at the earliest.

Definition of know-how fees

(Paragraph 5.68, Sr. No. 46)

1.46. Referring tot he payment of royalties and know-how fees by Indian companies having collaboration agreements with foreign companies and their assessments to tax, the Committee in paragraph 5.68 of the Report observed as under:—

> "The total amount of royalty payment assessed to tax upto the assessment year 1971-72 in respect of Indian companies having collaboration agreements with foreign companies was Rs. 19.23 crores whereas the total amount of know-how fees was only Rs. 3.24 crores. As know-how fees attract a higher rate of tax (65 per cent) it is necessary to lay down clear guidelines as to how the payments should be identified as relating to royalties or now-how. In this connection the committee find that the word know-how has not been defined as such in the Income-tax laws or rules. The Committee, therefore, stress that the opinion of the Attorney General should be obtained and suitable instructions issued to the assessing officers forthwith for guidance.'

1.47. In their reply dated 16th December, 1974 the Ministry of Finance (Department of Revenue and Insurance) have stated:

> "The matter is under consideration in consultation with the Ministry of Law. The Law Ministry had earlier indicated that it would be desirable to associate the representative of the C. & A. G. also during the course of discussions so that the Audit views are also taken into consideration while formulating their final conclusions. In spite of our best efforts, we could not fix suitable dates convenient to Audit and the Law Ministry for such a tripartite discussion. The Audit and the Ministry of Law are again being approached to indicate a mutually convenient date for a tripartite meeting, and the final outcome will be intimated to the Committee as early as possible."

1.48. The Committee urge that Government should come to an early decision as to how the payments to foreign companies by Indian companies under collaboration agreements should be identified separately as to royalty and as to know-how. The final outcome in this regard should be reported to the Committee as early as possible.

Collaboration agreements involving tax matters—Consultation with the Central Board of Direct Taxes.

(Paragraph 5.69—Sr. No. 47)

1.49. Commenting on the fact that the Central Board of Direct Taxes were not consulted at the stage when collaboration agreements involving tax matters were approved, the Committee in paragraph 5.69 of the Report observed as under:—

> "The Committee regret to find that at present it is not being ensured that the Central Board of Direct Taxes are consulted at the stage when collaboration agreements involving tax matters are approved. The Government should explain and examine how such a serious lacuna has been allowed to continue for so long. The Committee are not at all satisfied with the extent of scrutiny conducted by the Ministry of Finance in regard to the agreements entered into under the advice and with the approval of the various administrative Ministries particularly by the public sector undertakings. They accordingly emphasise that the Ministry should work out a fool-proof arrangement so that our limited resources are not frittered away in the way, it appears, has happened in the above mentioned cases."

1.50. In their reply dated 16th December, 1974 the Ministry of Finance (Department of Revenue and Insurance) have stated:

> "The matter is still under consideration of the Ministry and a further reply will follow."

1.51. The Committee would like to await the decision taken in this regard which needs to be expedited.

Treatment of dividend accrued in respect of vacant chits subscribed by the company engaged in chit fund business, as income for income-tax purposes.

(Paragraph 5.97—Sr. No. 53)

1.52. Referring to the treatment of dividend accrued in respect of vacant chits subscribed to by a company engaged in chit fund business, as

real income for the purpose of income-tax, the Committee in paragraph 5.97 of the Report observed as under:—

> "In Audit's view the dividend accrued in respect of vacant chits subscribed to by the company engaged in chit fund business are to be treated as income for the purpose of income-tax assessment of chit funds as it is not notional but real income. The Committee have been informed by the Ministry that the point raised by Audit would be studied in greater detail and suitable instructions issued, if necessary, in consultation with the Ministry of Law. It is well-known that in the past few years many chit funds companies have sprung up in almost all the States in the country. The number of such entities in the Union Territory of Delhi alone was 121 at the end of 1972. It is, therefore, necessary that the Central Board of Direct Taxes should complete their study of the accounting of these chit funds very expeditiously and issue instructions for proper computation of income of the funds so that the levy of income-tax is made uniformly and in the best interest of Government. The working of the chit funds should also be studied in depth because there is good reason to suspect that not all of them keep away from malpractices which go against the interests of those who invest their funds in them."

1.53. In their reply dated 16th December, 1974 the Ministry of Finance (Department of Revenue and Insurance) have stated:

> "The matter is under active consideration of the Board and a further report will follow."

1.54. The Committee desire that the Government should complete the study quickly, on the lines suggested, and issue suitable instructions to the assessing officers for a proper and uniform computation of tax under advice to the Committee.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The omission to levy additional tax at the rate of 7.5 per cent on equity dividend declared or distributed by the companies for the assessment year 1968-69 in the two cases mentioned in the Audit paragraph resulted in short-levy of tax amounting to Rs. 1.85 lakhs. This looks to be a 'tip of an iceberg'. Year after year a number of such cases have been brought to the notice of the Committee through Audit Reports. The Audit Report, 1970-71, mentioned eight such cases involving under-assessment to the extent of Rs. 10.17 lakhs. The Committee take a very serious view of repetitive failures of this kind in the Company Circles particularly as they are manned by senior and experienced officers. The Committee are of the view that disciplinary action is called for against officers including the supervisory officers who are found to have been negligent in the discharge of their duties.

The Committee learn that the Ministry have ordered a review of the assessment of the companies for the assessment years 1964-65 to 1968-69 and that the results so far available indicate omissions to levy additional tax in 15 cases. It would have been more satisfactory had this review been conducted by the IAC (Audit). The Committee await the final outcome of the review which they trust would be followed up immediately by action to recover additional tax due to in respect of under-assessments that are detected.

[Sl. Nos. 1-2 (Paras 1.7 and 1.8) of Appendix to 128th Report of the Public Accounts Committee (1973-74) (Fifth Lok Sabha)].

Action Taken

1.7. Two Income-tax Officers are responsible for the mistakes as observed by the Committee. Explanation of one of them has been obtained. The mistake was found to be *bona fide*. However, keeping in view the other mistakes committed by this Income-tax Officer in the past, a Character Roll warning has been issued to him.

The case was not checked by the Internal Audit Party due to rush of work. They have been warned to be more careful in future in ensuring that important cases are checked in time.

As regards the other Income-tax Officer, matter is under consideration of the Board and a further report will be sent.

1.8. Final results of the review have been received. It has been reported that mistakes in four more cases have been detected in addition to the fifteen cases reported earlier. Necessary follow-up action for collecting the additional demand raised is being taken.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/9/72-A&PAC II, dated 14/16-10-74.]

Recommendation

In this case, rebate of super-tax was allowed at the rate of 30 per cent instead of 20 per cent admissible under the Finance Act, 1964, in the original assessment made on 9th October, 1968. Strangely enough the mistake was repeated while giving effect to an appellate order on 18th January, 1971. When a mistake of this kind is repeated in a case which was specifically assigned to the Central Circle owing suspected tax evasion it cannot but cause concern and arose suspicion in the mind of the Committee. A proper inquiry should, therefore, be carried out and appropriate action taken against officers found to be responsible.

The internal Audit had pointed out the mistake in this case on 17th December, 1970 and had there been the intention it could have been easily rectified while giving effect to the appellate order on 18th January, 1971. Regrettably no action was taken to rectify the mistake till 27th November, 1971 when the case was taken up by the Revenue Audit. The Committee had taken note of the very unsatisfactory position in regard to rectification of mistakes pointed out by Internal Audit Parties in paragraph 2.27 of their 51st Report (Fifth Lok Sabha). The explanation given by the Ministry for the delay in taking action to rectify the mistake pointed out by the internal Audit in this case brings out another unsatisfactory feature of the working of the Department. There have been as many as five changes of ITOs in relation to this case during a period of less than 8 months (1-4-1971 to 27-11-1971). Such frequent changes are obviously undesirable; as they cannot but result in inefficiency, they should be avoided in future. In this connection the Committee would recall their observation contained in para 2.331 of their 51st Report.

[Sl. Nos. 3-4 (Paras 1.15 and 1.16) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

The mistake had occurred at the time of original order passed under Section 143(1) of the I.T. Act on 9-10-1968. The I.T.O. responsible for the mistake is at present on deputation with the Indian Air

Lines. His explanation has been obtained. The mistake is in calculation of tax for which the I.T.O. is technically responsible. The mistake was bonafide, and the I.T.O. has been warned for this lapse.

As regards non detection of this mistake at the time of giving effect to the AAC's order, the jurisdiction over this case was with another I.T.O. The reasons for not detecting the mistake at this stage are that the IAP's objection was received on 17-12-1970 and immediately after that on 22-12-1970 he received the AAC's order deleting certain additions made in the total income of the assessee company and he was busy in recommending a Second appeal to the Tribunal against the order of the AAC. By the time the scrutiny of this case was over, the file was transferred to the ITO Company Circle-III(7). The mistake is bonafide as the assessment records remained in constant movement in connection with more urgent appeal matters, from the date on which the audit objection in this case was received, and the date from which the jurisdiction over the case was transferred to ITO Company Circle. However, the ITO has been warned to be more careful in future.

1.16. A drive was launched during the year 1973-74 to liquidate the pendency of audit objections and results were communicated to the PAC in reply to Item No. 39 of the LSS O.M. No. 2/7/III/2/73/PAC dated 11-1-1974 which shows satisfactory progress of rectification of mistakes pointed out by the Internal Audit Parties. However, further efforts are being made to bring down the pendency.

Necessary instructions on the subject already exist. However, these have been re-iterated *vide* Board's letter F. No. 15/11/72-Ad. VI dated 4-1-1973 (copy annexed).

[Ministry of Finance (Rev. and Insurance) O.M. No. 236/6/72-A&PAC II dated 14-10-74]

F. No. 15/II/72-Ad. VI

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 4th January, 1973

To

All Commissioners of Income-tax.

SUBJECT:—*Frequent transfers of Income-tax Officers—PAC* (1972-73)-51*st Report (Fifth Lok Sabha)*.

Sir,

I am directed to forward herewith an extract of para 2.331 of P.A.C. (1972-73)-51st Report (Fifth Lok Sabha) and to say that the Board

desire that frequent transfers of Income-tax officers within the charge may be avoided and transfers of officers earlier than the normal tenure may be resorted to only for special reasons.

Yours faithfully,

Sd./- P. S. MEHRA,

Under Secretary.

Recommendation

1.49. In view of what has happened, the Committee stress that every company assessment should be checked immediately by the Internal Audit after the ITO's assessment so that mistake can be rectified within the limitation period.

1.50. The Committee have been informed that in the present case, the ITO did not have before him the folder for the preceding year where the carry forward of the rebate which was to be withdrawn had been recorded. There was also no note on this point. The Committee stress that suitable instructions should be issued to the assessing officers so as to ensure that mistake of this kind do not recur in future.

[Sr. Nos. 8-9 & Paras 1.49 to 1.50 of Appendix to 128th Report of the Public Accounts Committee (1973-74) (Fifth Lok Sabha)].

Action Taken

1.49. Necessary instructions were issued vide No. M-6/7/72-DIT dated 26th June, 1972 wherein all company cases were brought under 'Immediate Audit' with the directions to submit these cases for checking to the Internal Audit within one month of the completion of the assessment.

1.50. All the C's I.T. were asked vide circular letter F. No. 14/4/66-O&M dated 14th March, 1966 to direct the Income-tax officers to leave notes in all cases which could not be disposed of by an Officer before transfer. In this connection Ministry's reply to Item No. 31 of the Lok Sabha Sectt. O.M. 2/7/III/2/73/PAC dated 1st January, 1974 may kindly be referred.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/101/72-A&PAC II dated 21st September, 1974].

Recommendation

2.14. Another distressing feature of this case is the failure of the Internal Audit to highlight the mistake. The Committee understand that an Upper Division Clerk has been warned in this connection. They wonder how the case involve a total income of Rs. 1.87 crores could be entrusted to a UDC only for check. It is clear that higher officers should also share the blame and their responsibility should be fixed. This arrangement for Internal Audit seems to be wholly unsatisfactory. This reveals serious weakness and unsuitability of the present system. The Central Board of Direct Taxes should look into this aspect immediately and ensure that high income cases are invariably checked thoroughly at appropriate level.

[Sl. No. 14 (Para No. 2.14) of Appendix to 128th Report of the P.A.C. (1973-74) (Fifth Lok Sabha)].

Action Taken

According to the existing instructions of the Board this case was to be checked personally by the Chief Auditor but as the Chief Auditor was busy in connection with other important work, he could not check all the cases personally. As regards unsuitability of the present system of Internal Audit Parties, their reorganisation is under consideration of the Board on the basis of the work study conducted by the Directorate of O & M Services in compliance with PAC's recommendation in Para 1.18 of their 118th Report.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/88/72-A&PAC-II 23rd September, 1974].

Recommendation

2.19. The Committee are concerned to note that the ITO failed to add back to the net profits disclosed in Profit and Loss Accounts of the company the losses relating to certain contracts which were not accepted by him. This failure resulted in under-assessment of tax to the extent of Rs. 6.32 lakhs and short levy of penal interest u/s. 215 to the extent of Rs. 1.21 lakhs. The committee desire that the officer should be suitably taken to task for this costly lapse. They would await a report regarding recovery of the additional tax. They would further suggest that other assessments completed by this ITO should be audited.

2.20. Although the assessment was checked by the Internal Audit Party, the mistake was not pointed out by them. The failure to detect even this simple mistake is indeed deplorable. This is indicative of lack of thoroughness on the part of the Internal Audit in exercising check. The Committee have time and again pointed out instances of this type which ought to be taken serious note of by the Ministry. Besides bringing to book the official found negligent, the Ministry should undertake a com-

prehensive review of the entire working of the Internal Audit in consultation with Revenue Audit to bring about qualitative improvement. In this connection, they would refer to their observations contained in paragraph 2.30 of their 51st Report (Fifth Lok Sabha). In view of the urgency of the matter, the Committee emphasise that necessary action should be taken with utmost speed and reported to them.

[Sl. Nos. 15 and 16 (Paras 2.19 and 2.20) of Appendix to 128th Report (1973-74) (Fifth Lok Sabha]

Action Taken

The mistake had occurred through oversight. The work of the ITO has been reported to be very satisfactory in the past, and no *mala fide* intentions can be attributed to the Income-tax Officer in this particular case. He has been warned to be careful in future. The Range I.A.C. has been directed to inspect all other cases dealt with by this ITO and the Inspection Report is awaited. Regarding the recovery of additional demand raised, it is reported that the company has been ordered to be wound up by the Bombay High Court and the Official Liquidator has been appointed as the Liquidator of the company. The Department's claim has been filed before the Official Liquidator.

2.20. Necessary study has been conducted by the Directorate of O&M Services to improve the quality and calibre of the personnel of the Internal Audit organisation. This report is under examination. This Ministry's reply to para 1.18 of 118th Report of the P.A.C. (1973-74) refers. The official of the Internal Audit Party responsible for not detecting the mistake has been warned.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/229/72-A&PAC-II dated 23rd September, 1974].

Recommendation

2.29. The Committee regret that in this case the assessee's computation of income claiming relief for priority industry without deduction of the development rebate was accepted for three assessment years which resulted in a short-levy of tax of Rs. 3.01 lakhs. The non-inclusion of development rebate was not noticed by two ITOs who dealt with the assessments. The Committee desire that apart from taking suitable action against the ITOs, a test check should be conducted to see if similar mistakes were committed. The Committee consider a test check is very necessary because they have come across mistake of this type earlier also vide para 2.193 of the 51st Report (Fifth Lok Sabha).

[Sl. No 17 (Para 2.29) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

2.29. A selective review of some cases made by the Range IAC did not reveal any such mistake in the computation of profits from priority industry without deduction of development rebate, for the purposes of allowing relief under section 80E/80-I

The Committee's recommendation regarding taking suitable action against the Officers is being considered separately.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/237/72-A&PAC-II dated the 13th December, 1974].

Recommendation

2.30. The Committee learn that the assessee has filed a writ petition challenging the proceedings initiated under Section 154 to rectify the mistake, *inter alia*, on the ground that "the alleged mistake, if any, is not a mistake apparent from the records". The Committee would await the outcome of the writ. In the meanwhile, they would like the Ministry to examine whether any amendment to the Act is necessary to ensure that rectification of patent mistakes is not frustrated by assessees seeking legal remedies on mere technical grounds.

[Sr. No. 18 (Para 2.30) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

The writ petition has since been dismissed by the High Court. But the assessee has filed appeals before the Division Bench.

2. The power of High Courts to issue writs emanates from Article 226 of the Constitution. The constitutional rights of a taxpayer to move the High Court to issue directions, orders or writs against the purported exercise of the power of rectification of mistakes by any Income-tax authority under Section 154 of the Income-tax Act, 1961 cannot, therefore, be taken away except by an amendment of the Constitution. It will be relevant in this connection to mention that the Direct Taxes Enquiry Committee (Wanchoo Committee) in paragraph 4.49 of their Final Report, had recommended that revenue matters, in respect of which adequate remedies are provided in respective statutes themselves, should be excluded from the purview of article 226 of the Constitution. This recommendation is being examined and the decision taken by Government in this regard would be intimated to the Committee in due course.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/237/72-A&PAC-II dated 3rd December, 1974].

Recommendation

Incidentally the Committee find that in this c se the assessment for the year 1966-67 was completed on 23-3-1971 when it was abo:t to become time-barred. The rush of assessment at the end of the limitation period may often lead to mistakes of a costly nature as in this case being committed. It is regrettable that frequent changes in the ITOs continue to take place. The Committee have earlier in this Report expressed their dissatisfaction over such frequent changes which must necessarily affect the work of the Department adversely.

[S. No. 22 (Para 2.44) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)]

Action Taken

2.44. The observations of the Committee have been noted.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/16/72-A&PAC II dated 16-10-74]

Recommendation

2.58. In this case the assessee submitted a revised return in December, 1963 reducing the income by taking into account the debit of Rs. 1.43 lakhs representing the cost of bonus shares received from another company, purporting to follow High Court Judgement. This judgement was delivered by the High Court on 28th November, 1960. The decision of the Board in not accepting the High Court judgement was contained in the bulletin for the quarter ending 30th September, 1961, which was circulated to all the officers. The ITO must have, therefore, been aware of the position. Yet he did not ascertain as to what happened to the further appeal preferred against the High Court judgement nor did he keep a note to facilitate revision of the relevant assessment. In the meantime, the High Court judgement was reversed by the Supreme Court in March, 1964. Unfortunately by the time Supreme Court judgement was communicated, the ITO had left on deputation and his successor was not aware that he had completed the assessment in question following the judgement of the High Court. To say the least, all this indicates a very unsatisfactory system of working. The Committee desire that the lapses on the part of the I.T.O. should be carefully gone into for appropriate action under advice to them and suitable instructions should be issued promptly to all the assessing officers with a view to preventing lapses of this kind.

[Sl. No. 23 (Para 2.58) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)]

Action Taken

2.58. The assessment in this case was completed on 28th March, 1964, and the Supreme Court's judgement dated 13th March, 1964 was not within the knowledge of the I.T.O. at that time. The action of the I.T.O.

in following the decision of the High Court in that very case (M/s. Dalmia Investment Co. having been subsequently changed to M/s. Rishav Investment Co.) appears to be in order. However, the Committee's recommendations have been noted and issue of suitable instructions is under consideration of the Board.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/70/72—A&PAC II dated 18-12-1974].

Recommendation

The Board should also have an effective machinery for proper scrutiny of the taxation aspects of such agreements before they are finally entered into by the Government of India.

[Sl. No. 28 (Para 3.34) of Appendix of 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action taken

The taxation clauses in such agreements are generally referred to the Board for examination. However, in view of the specific observations of the Public Accounts Committee, an Office Memorandum has been issued to the Ministry of Petroleum and Chemicals to ensure that the taxation clauses in such agreements are referred to the Board for examination/comments before they are finally entered into by the Government. A copy of this Ministry's Office Memorandum No. 500/3/74-FTD II dated the 5th August, 1974 is enclosed.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/70/72—A&PAC II dated 18-12-1974].

COPY

F. No. 500/3/74-FTD. II

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPTT. OF REVENUE & INSURANCE

FOREIGN TAX DIVISION

NEW DELHI, *the 5th August*, 1974.

OFFICE MEMORANDUM

SUBJECT:—*128th Report of the Public Accounts Committee—Scrutiny of the taxation aspects of the agreements before they are finally entered into by the Government of India.*

The undersigned is directed to invite attention to para 3.84 (Sic) at page 58 (printed copy) of the 128th Report of the Public Accounts Committee where the following observations occur:—

"The Board should also have an effective machinery for proper scrutiny of the taxation aspects of such agreements before they are finally entered into by the Government of India."

2. These observations have been made while dealing with an Audit objection in the case of Oil India Ltd. which had been granted tax concessions under section 10(2AA) of the Income Tax Act, 1922 corresponding to Section 42 of the Income Tax Act, 1961.

3. It is this Department's understanding that taxation clauses in agreements granting such tax concessions are generally referred to this Department by the Ministry of Petroleum and Chemicals before the agreements are finalised. In view of the observations of the Public Accounts Committee, Ministry of Petroleum and Chemicals may please ensure that the taxation clauses of every agreement proposed to be entered into by the Central Government, containing special provisions for tax concessions in the case of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government proposes to enter into an agreement with any person for the association or participation in such business, are referred to this Department for our examination/comments, before such agreements are finalised and are entered into by the Government.

Sd/-

S. CHAUDHURI,

Under Secy. to the Government of India.

To

Ministry of Petroleum and Chemicals, New Delhi.

Recommendation

It is most distressing that the assessments for 8 years in the case of one company and for two years in the case of another company were not checked by Internal Audit despite instructions issued by the Board in 1965 that all company assessments should be checked cent-per-cent. The check of the only assessment carried out by them did not bring to light the mistake. This is yet another instance of the inefficiency and inadequacy of the Internal Audit. The Committee are unable to accept the plea that the strength of the Internal Audit Parties was not adequate to complete the volume of work within a reasonable time. What is necessary is the manning of Internal Audit Parties with competent and trained personnel at a fairly high level. The Committee would like this aspect to be examined urgently and suitable action taken thereafter without loss of time. Meantime, the Committee note that recently the Board have laid down priorities for the work of the Internal Audit so that cases with considerable revenue effect get foremost attention and trust that the Board will ensure that at least these instructions are strictly adhered to by the Internal Audit.

[Sl. No. 31 (Para 3.50) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action taken

In compliance to the recommendations of the Public Accounts Committee in Para 1.18 of their 118th Report, necessary study on the organisation and working of the Internal Audit Parties has been conducted by the Directorate of O. & M. Services. The report on the study is under examination of the Board. The Committee's observations for checking of important cases by the Internal Audit Parties on priority basis have been noted.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/217/72—APAC II dated 24-9-1974]

Recommendation

The Committee have received an impression that the cases of depreciation and development rebate allowed by the ITOs are not being checked properly despite the instructions issued by the Board from time to time. In this connection, they would refer to their observation contained in paragraph 2.148 of their 51st Report regarding carrying out a check of such cases by the IACs. Further although the instructions to the Internal Audit Party were in cases of depreciation and development rebate of over Rs. 25.000, calculations would be checked by an ITO posted as Officer On Special Duty, the cases mentioned in the Audit Paragraph had not been checked by him. The plea of heavy workload is totally unacceptable as it was upto the Government to see that proper arrangements are made so as to ensure effective compliance of their instructions. The Government should carefully assess the workload keeping in mind the quality aspect of the workload and take steps to have adequate staff. The Committee expect Government to see to it that their instructions are enforced efficiently and expeditiously.

[Sl. No. 35 (Para 3.63) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action taken

The Commissioners of Income-tax are required to submit half-yearly progress report regarding the number of cases planned for checking and the cases checked by the Inspecting Assistant Commissioners of Income-tax. Whenever there is deficiency in disposal, the concerned Commissioner of Income-tax is asked to make good the deficiency during the ensuing half year. Steps arealso being taken to strengthen the Internal Audit both qualitatively and quantitatively with a view to ensure that similar mistakes do not escape detection.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/217/72—A&PAC. II dt. 25-11-1974]

Recommendation

Arising out of this case is the general question how the Income-tax Department can find out the quantum of cash assistance and duty drawbacks paid to the exporters with a view to ensuring that the payments received did not escape taxation. The scheme of cash assistance as an export incentive was introduced from 6th June, 1966. The grant of duty drawback was in vogue even earlier. It is surprising that it was only after three years that the Board issued instructions on 13th June, 1969 indicating how the information relating to cash assistance should be obtained for utilisation in the income-tax assessments and what is worse is no procedure has so far been laid down in regard to duty drawbacks. The Committee would like to have an explanation why this question was not taken up by the Board earlier and what action was taken against the officers concerned for the lapse. The procedure for getting information in regard to the duty drawbacks must be laid down without further delay. If this instance were typical, it is obvious that the tax collection machinery is in no way geared to function efficiently.

[Sl. No. 40 (Para 4.20) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action taken

Necessary instructions for collection of information regarding Central Excise and Customs Duty drawback and rebate of Central Excise duty on exports have been issued *vide* Instructions No. 794 [F. No. 414/73/74-IT (Inv.)] dated 20th November, 1974 (copy annexed).

Regarding the delay in issue of instructions relating to cash assistance, it is stated that the fact of Cash Assistance as an export incentive was brought to the notice of Board on 31st October, 1968 by the Deputy Chief Controller of Exports and Imports. In consultation with the Ministry of Commerce, the Board was considering how the existing departmental machinery could be utilised to collect the information regarding cash assistance on exports, from the Regional Offices of the Joint Chief Controller of Imports and Exports. After considering various suggestions and assessing the work-load involved instructions were finally issued on 13th June, 1969 for extraction and utilisation of information regarding cash assistance right from the beginning of the introduction of the Scheme *i.e.* 6th June, 1966.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/116/72-A & PAC-II, dt. 13-12-1974].

Instruction No. 794

F. No. 414/73/74-IT(Inv.)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 20th November, 1974.

From

Secretary,

Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SUBJECT:—*Coordination with sister enforcement agencies—Central Excise and Customs Duty Drawbacks and rebate of Central Excise Duty on exports—Utilisation of information available with the Central Excise and Customs Departments.*

Sir,

Under the Customs Act, 1962 and the Central Excise and Salt Act, 1944, exporters are entitled to get drawback of excise/customs duties and rebate of excise duties in respect of goods exported. In this connection, the Customs and Central Excise Duties Drawback Rules, 1971 and Rules 12 and 12A of the Central Excise Rules, 1944 are relevant.

2. Whereas drawback is the repayment of duty chargeable on any imported materials or exciseable materials used in the manufacture of goods exported, a rebate of excise duty is the repayment of the excise duty initially charged (if charged) on the manufactured product.

3. The Central Excise and Customs authorities already have instructions to furnish to the Income-tax Department particulars of (i) adjudication cases involving imposition of fine and/or penalty aggregating over Rs. 10,000/-; (ii) refunds exceeding Rs. 1 lakh granted to the Central Excise assessees; and (iii) refunds of customs duty of over Rs. 10,000/-. The Board are advised that items (ii) and (iii) cover only refunds arising out of erroneous assessments or unauthorised realisations, etc. and do not cover drawbacks/rebate. As the latter are admissible in respect of a large number of goods exported, forwarding of information in respect thereof to the Income-tax Officers on the lines on which information regarding refunds is forwarded, would entail enormous work for the Custom Houses and Central Excise Collectorates and, as such, it would not be feasible to do so.

4. While dealing with the income-tax case of an exporter it is necessary to find out the amount of excise and customs duty drawbacks/excise duty

rebate allowed to him in order to verify that these are duly accounted for. All the Income-tax Officers assessing exporters may, therefore, be advised to call from the assessees full particulars thereof.

Where considered necessary, the particulars thus obtained may be test-checked by collecting information directly from the concerned officers under the Collectors of Central Excise and Customs.

The Special Investigation Branches should also be instructed to cover this source of information. Every year, in a few selected cases of exporters, the Special Investigation Branches should on their own collect complete information regarding duty drawbacks etc. received during a specified period and pass it on to the Income tax Officers concerned for verification; a record being kept in the Special Investigation Branches of the items of information extracted, transmitted and results of verifications.

5. The Collectors of Central Excise and Customs are being advised to render the necessary co-operation and assistance to the Income-tax Department in this regard.

Yours faithfully,

Sd./- (H. K. SONDHI)

Secretary,

Central Board of Direct Taxes.

Copy forwarded to:—

1. The Directors of Inspection (IT) Inv. RS & P/O & M/P & PR.

2. All Directors, Secretaries and Sections of the Central Board of Direct Taxes.

3. The Comptroller and Auditor General of India (25 copies).

4. Bulletin Section (3 copies).

5. Ministry of Law (Adv. F. Section) (2 copies).

Sd./- T. S. KRISHNA MURTHY,

Under Secretary to the Government of India.

Recommendation

A ruling given by the Ministry in May 1973 in regard to the tax liability of a foreign company under a collaboration agreement with an Indian company in which the Government of India have 51 per cent of shares and L.I.C. 23 per cent of shares came to the notice of the Committee. The facts narrated by the Committee in the foregoing paragraphs

would indicate how the Ministry went out of the way on the suggestion of the Ministry of Law and sought modification in the terms of the agreement if certain paymen's to be made to the foreign company for socalled know-how were to be exempted from tax. The Finance Secretary clearly agreed with the view that the advice should not be in a specific instance. According to him if the basic premise is accepted that the tax determination in a particular case has to be made by ITO in a quasi-judicial proceeding, then only would the Board express a view in general terms. The matter therefore, requires thorough inquiry in depth so as to set out clearly the scope of advice which may be given by the Ministry of Finance (Foreign Tax Division) in such matters.

5.89. The question of the Board's giving advance ruling had been raised before the various Committees and Commissions which inquired into direct tax administration. In this connection the Committee would refer to paragraph 6.179 of Direct Taxes Enquiry Committee's final report (December, 1971). It appears that unless the Board is authorised by law to give advance rulings the Board should not give advance ruling. The Committee, therefore, desire that in order to place the matter on a legal footing necessary amendment to the law should be considered early.

5.91. The advice (not ruling) should be not for avoidance or for finding loopholes but it should be in the nature of a general analysis of law as it stands and no more. The Board should not have powers to render regular consultancy service.

[Sl. Nos. 48, 50 and 52 (Paras 5.87, 5.89 and 5.91) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

5.87. The matter has been considered in detail and, in the light of clause (a) of the proviso to Section 119(1) of the Income-tax Act, 1961, it has been decided that the Board will not issue any advance rulings/directions/instructions in individual cases.

The advice to be given to the taxpayers will be in the nature of a general analysis of law as it stands.

5.89. In view of the decision that the Board will not issue any advance rulings, it is not considered necessary to amend the law for taking a power enabling the Board to issue advance rulings.

5.91. The Public Accounts Committee's observations in this para have been noted for guidance.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/248/72-A&PAC-II dated 10-12-1974]

Recommendation

Incidentally, the Committee find that the collaboration agreement had already been finalised in November, 1972 incorporating the relevant terms as originally proposed by the undertaking. The determination of tax liability is stated to be pending. The Committee would like to know the final decision, if any, taken in the matter keeping in view the above observations as well as in the earlier case concerning collaboration agreement of Hindustan Steel with a foreign company.

[Sl. No. 49 (Para 5.88) of Appendix to 128th Report of the P.A.C. (1973-74) (Fifth Lok Sabha)].

Action Taken

In terms of the collaboration agreement, three types of payments were payable to the foreign collaborator:—

(i) A sum of $ 600,000 payable as consideration for transfer to Jessops, know-how, designs, technical information etc.

(ii) A technical assistance fee payable at 2½ per cent of the net sales price of all licensed paper machinery manufactured or sold by Jessops.

(iii) Royalty at the rate of 2½ per cent calculated on the net ex-factory selling price of all licensed paper machinery manufactured or sold by Jessops.

2. As regards the payment referred to in para 1(i) above, a suitable part of this payment would be taxable in India as relating to the obligation of the foreign collaborator of making the technical personnel available in India as this would amount to carrying on an activity service in India. A further question whether the whole of this amount can be regarded as accruing or arising in India is still under consideration in consultation with the Ministry of Law.

3. It has been decided that the technical assistance fee referred to in para 1(ii) above is taxable in India. The payment by way of royalty referred to in para 1(iii) above is taxable in India and this position has been accepted by the company.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/248/72-A & PAC-II. dt. 20-12-74].

Recommendation

6.7. In this case neither the assessee filed voluntarily a sur-tax return nor the Income-tax Officer called for it and no action was taken to assess the company for two years till Audit pointed it out. The explanation for this lapse on the part of the ITO is admittedly unsatisfactory. The Committee had already pointed out in paragraph 6.7 of their 88th Report (Fifth Lok Sabha) that the ITOs had tended to give sur-tax assessments a low priority. They had also stressed that sur-tax assessments should be taken up alongwith the connected assessments of Income-tax of the companies. Government should ensure that this recommendation is implemented in letter and spirit.

[Sl. No. 54 (Para 6.7) of Appendix of 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

6.7. Necessary instructions have been issued *vide* Instruction No. 773 (F. No. 229/10A/74-IT (A-II) dated 22nd October, 1974 (copy annexed).

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/33/72—A&PAC-II dated 20th November, 1974].

COPY

Instruction No. 773

F. No. 229/10A/74-IT (A.II)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 22nd October, 1974.

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Delay in finalisation of Surtax assessment—particularly in those cases where corresponding income-tax assessments have been completed—Instructions regarding.*

I am directed to say that despite Board's repeated instructions to complete the Surtax Assessments immediately after the completion of the corresponding Income-tax assessments, the pendency of such assessments has not shown any appreciable reduction, so much so that such pendency was taken note of by the Public Accounts Committee and it has very

adversely commented upon this aspect of the working of the Income-tax Department. Para 6.7 of the 128th Report of the Public Accounts Committee dealing with the incordinate delay in the disposal of Surtax assessments is given below:—

> "In this case neither the assessee filed voluntarily a Surtax return nor the Income-tax Officer called for it and no action was taken to assessee the company for two years till Audit pointed out. The explanations for this lapse on the part of the ITO is admittedly unsatisfactory. The Committee had already pointed out in paragraph 6.7 of their 88th Report (Fifth Lok Sabha) that the ITOs had tended to give sur-tax assessments a low priority. They had also stressed that sur-tax assessments should be taken up along with the connected assessments of income-tax of the companies. Government should ensure that this recommendation is implemented in letter and spirit."

2. With a view to implementing the recommendation of the PAC in letter and spirit as desired by it, it would be necessary for the Commissioners of Income-tax to take steps to curb the wide spread tendency amongst the Income-tax Officers to give low priority to initiation and completion of Surtax proceedings. As on 1st April, 1974, 3283 Surtax assessments were pending and the disposal during the period April to June has been only 114 thereby leaving a balance of 3169 cases as on 1st July, 1974. Out of the pendency of 3169 cases, in 449 cases the corresponding income-tax assessments had already been completed. Commissioners of Income-tax must personally discuss the reasons for the overall pendency of Surtax assessments with particular emphasis to the cases where corresponding income-tax assessments have been completed with the Inspecting Assistant Commissioners of Income-tax who in turn should have discussions with the concerned Income-tax Officers for chalking out a programme for speedy disposal of such pendencies.

3. While formulating the programme for reduction of pendency and avoidance of laxity in this regard on the part of the ITOs, following directions may kindly be given :—

(i) As a matter of practice the Income-tax Officers incharge of company circles must examine the applicability of the provisions of Surtax Act as soon as the returns of Income are received. Wherever found necessary notices under section 5(2) of the Surtax Act must be issued within one month of the receipt of the returns of income.

(ii) Applicability of provisions of Surtax Act should be once again examined in those cases where notices under section 5(2) of the Surtax Act had not been issued at the time of receipt of

the returns of income but in which substantial additions are made to income disclosed in the return of income. Notices under section 5(2) should be issued immediately if the provisions are found applicable on the basis of the assessed income.

(iii) Proceedings for completion of regular Surtax assessments should be taken up along with the income-tax proceedings so that the Surtax assessments are also finalised immediately after the Income-tax assessments are completed. The fact that additions made in the income-tax assessments are being disputed in appeal should not be a ground for not finalising the Surtax assessments. The time lag between the date of completion of Surtax assessments should ordinarily not exceed a month unless there are special reasons justifying the delay.

(iv) Applicability of the provisions relating to the imposition of penalty under the Surtax Act should be examined carefully while finalising the Surtax assessments. If any defaults are noticed in the course of assessment proceedings, the penalty notices must be issued along with the assessment order.

Yours faithfully,
Sd/-

T. P. JHUNJHUNWALA,
Secretary, CBDT

Copy forwarded to :—

Instruction No. 773.

1. The Comptroller and Auditor General of India (25 copies).

2. Bulletin Section (3 copies).

3. All Officers/Sections in Technical Wing of Central Board of Direct Taxes.

4. Director of Inspection (Income-tax and Audit)/Investigation/Research and Statistics/Publication and Public Relations, New Delhi.

5. Director (O&M).

Sd/-
T. P. JHUNJHUNWALA,
Secretary, CBDT

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES FROM GOVERNMENT

Recommendation

1.28. Although 'income' as defined under Section 2(24) includes capital gains chargeable under Section 45, in this case mysteriously enough capital gains were omitted while calculating the average rate of tax on total income, for the purpose of allowing rebate on inter-corporate dividends for the assessment year 1965-66. It creates suspicion that despite clear instructions from the Board that the ITO should personally recheck tax calculations of demands in cases with income over Rs. 1 lakh, no check had been carried out in this case which involved a total income of as high as Rs. 221 lakhs. In his explanation for the failure to carry out the checking, the ITO has stated that the IAC had given an assurance that the ITOs would not be held responsible for any mistakes in the calculation of tax. Although the explanation has not been accepted, the Committee consider it desirable to ascertain whether any assurance of this nature had been given by the IAC concened and if so why he had done so. The Committee should be informed of the result of such an enquiry.

[Sl. No. 5 (Para 1.28) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha).]

Action Taken

The relevant assessment order in this case was passed on 27-2-1970 by the ITO concerned who had been there since 3-7-1967. During this period *i.e.*, 3-7-1967 to 27-2-1970, three Inspecting Assistant Commissioners successively held charge of the relevant Range. There is nothing on record to show that any one of them had given any assurance that ITOs would not be held responsible for any mistake in tax calculation.

One of the IACs has since resigned and left the Department. Enquiries from the other two IACs reveal that neither of them had issued any such instrucions or given any assurance, even verbally.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/95/72-A&PAC-II, dated 19-11-1974.]

Recommendation

2.43. The Committee find it somewhat difficult to understand the circumstances which could have led Government to come to the conclusion that it was necessary to revise the price of sugarcane retrospectively after a period of nearly 6 years and how such a revision could possibly have subserved the interests of the producers of sugarcane and the general public.

[S. No. 21 (Para 2.43) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha).]

Action Taken

2.43. A copy of letter No. SV-101(5)/54, dated the 2nd December, 1964, issued by the Ministry of Food and Agriculture, New Delhi to all the Sugar Producing States, detailing the formula for linking cane price with the price of sugar is also enclosed.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/16/72-A&PACII, dated 16-10-1974.]

Copy of letter No. SV-101(5)/54 dated the 2nd December, 1964 from Shri P. L. Gupta, Under Secretary to the Government of India, Ministry of Food and Agriculture, New Delhi, to all the Sugar Producing States.

Formula for linking cane price with the price of sugar.

I am directed to say that during the period of control sugar prices used to be fixed with reference to the minimum prices fixed for sugarcane. The minimum sugarcane prices are now fixed a season in advance. The bulk of the production is released to factories for free sale and factories are allowed to sell such sugar at the best obtainable prices. The market price of sugar in 1963-64 season ruled such higher than the level warranted by the minimum cane price fixed for that season. The cane growers in U.P. and Bihar therefore launched an agitation for a minimum price for cane. A strike of cane growers was threatened and was averted only by the timely announcement made by the Government, that they would introduce a scheme for passing on legitimate share of the extra prices realised by the factories to the growers of cane. Since then, the question of introducing a profit sharing formula on an All India basis has been engaging the attention of the Central Government.

2. At the instance of this Government, the South Indian Sugar Mills Association has evolved a formula in 1952-53 called SISMA formula with the consent of the cane growers for sharing the extra price charged by the factories for their sugar particularly in view of the freight advantage

enjoyed by them over factories in North India. The SISMA formula has been found to be wanting in certain respects. In the first instance, it made no allowance for the duration of crushing season. Secondary a uniform sliding percentage share of the net price of sugar allowed to cane growers under the SISMA formula cannot be applied to all regions as the structure of the cost of production of sugar varies from region to region. A new formula was therefore evolved free from these defects. The new formula details of which are contained on the enclosed note, was discussed at a conference convened by this Ministry on the 29th October, 1954 which was attended by representatives of the sugar Industry Cane Growers, State Governments and other interests from all over India. The formula was generally approved at the Conference and has since been accepted by the Government of India.

3. The new formula is intended for application in the first instance for 1953-54 season. The formula, as has been explained in the enclosed note, is based on the principle that the cane growers should get the same percentage of the net price of sugar as in the percentage of the cost of cane to the cost of production of sugar excluding taxes. In working out the cost of production of sugar the SRIVASTAVA formula has been used but certain items of additional expenditure such as increased cost of replacement of plant and machinery, have been taken into account.

4. The formula is capable of application to all factories in the country but the Government of India would have no objection if the South Indian Sugar Mills and the cane growers of that area decide mutually to adhere to the SISMA formula.

5. The percentage share of cane growers in regions other than these mentioned in the enclosed note will be communicated shortly. The factory (d) used in the formula is also being worked out for various factories to different regions and will be intimated as soon as possible.

6. I am to request that the contents of the new formula may kindly be made known to sugarcane growers and sugar factories in your State. As sugar produced in 1953-54 season has already been sold and despatched by almost all factories and it is expected that here should be no undue delay on the part of the factories to make payment of the extra price for cane crushed by them, in that season which may become due to cane growers under the new formula.

Recommendation

5.90. At present the advance ruling in regard to foreign collaboration agreement seems to be given by the Foreign Tax Division of the Ministry of Finance. As this Division is not a part of the Board, it would appear

that it may not be competent to give advance rulings even if the Board is authorised by law. This aspect also requires examination.

[Sl. No. 51 (Para 5.90) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha).]

Action Taken

5.90. The Foreign Tax Division is a part of the Central Board of Direct Taxes, as is clear from Office Order No. 362 of 1971 dated the 17th December, 1971 as amended from time to time. The functions allotted to the Foreign Tax Division are placed under the charge of the Chairman of the Board (Copies of Office Orders No. 362 of 1971 dated the 17-12-1971 and No. 269 of 1974 dated 3-7-1974 are enclosed).

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/248/72-A&PACII dated 10-12-1974.]

Copy

F. No. 34/7 71-Ad.I.

BHARAT SARKAR

VITTA MANTRALAYA

(RAJASWA AUR BIMA VIBHAG)

New Delhi, the 17th December, 1971

OFFICE ORDER NO. 362 OF 1971

SUBJECT:—*Redistribution of work in the Central Board of Direct Taxes.*

In exercise of the powers conferred by Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules 1964 and in supersession of the Office Order No. 181 of 1971 dated 29-6-1971, as amended from time to time, the Chairman of the Central Board of Direct Taxes with the previous approval of the Central Government, hereby orders the following distribution of work in the said Board:—

I—*Chairman*

1. Co-ordination of the work of the Board as a whole.

2. All matters relating to Budget, Finance Bills and other legislation relating to direct taxes (including subordinate legislation) and issue of instructions thereon.

3. Interpretation and issue of instructions on the provisions of the Annuity Deposit Schemes/Compulsory Deposit Scheme and any other new schemes; interpretation and issue of instructions on the Taxation Laws

(Extension to Union Territoires) Regulation, 1963, and the Taxation Concessions Orders in respect of Dadra Nagar Haveli, Goa, Daman and Diu and Pondicherry; and interpretation and issue of instructions on the various Tax Credit Certificate Schemes under Chapter XXIIB of the Income-tax Act, 1961, including issue of orders under section 119 relating to these subjects.

4. All matters relating to the Direct Taxes Advisory Committees (both Central and Regional) and Consultative Committee.

5. All matters relating to the policy on all taxes and tax administration through the Members concerned.

6. Administration-VI and VI-A Sections—All Gazetted establishment administration, other than vigilance, disciplinary proceedings and complaints.

7. Unions and Associations of Income-tax Department employees.

8. Administration VII Section—The following items:

(i) All organisational matters of the Income-tax Department including creation and extension of the posts and conversion of temporary posts into permanent ones (both gazetted and non-gazetted), re-scheming and re-organisation of the Income-tax Department, including the Directorate of Inspection.

(ii) Expenditure Budget of the Income-tax Department, including that of the Directorate of Inspection—Control of expenditure statement.

9. Functional Distribution Scheme.

10. Administrative Planning of the Income-tax Department, including India Revenue Service (Direct Taxes) Staff College.

11. Control over the work of the Foreign Tax Division, Tax Planning and Legislation Section and Organisation and Planning Unit.

12. Other matters specified in the Schedule to this Order.

In addition, the Chairman will see, through the Members concerned:—

(a) Parliament work and Parliament question.

(b) Settlement cases.

(c) Orders under Section 119 of the Income-tax Act, 1961.

(d) Income-tax (Budget) Section-Revenue Budget-Progress of collections.

(e) Administration-IX Section-Appointment of Standing Counsels.

II—Member (Wealth-Tax and Audit)

1. All matters (other than legislation and negotiation of agreements with other countries for avoidance of double taxation) relating to wealth-tax, Gift-tax, Estate-Duty, Expenditure-tax, Excess Profits Tax. Business Profits Tax Super Profits Tax and Surtax.

2. Public Accounts Committee and all matters relating thereto.

3. All matters relating to provisions of Chapter XIV of the Income-tax Act, 1961, other than Sections 147 to 153.

4. Control over the work of the Directorate of Inspection (Income-tax) relating to Revenue Audit and Examinations.

5. Internal Audit.

6. Over-all responsibility for the following Commissioners' charges including the charges of Tax Recovery Commissioners and Additional Commissioners' functioning in respect of these Commissioners' charges:—

(a) Bombay City I, II, III, IV and V.

(b) Poona

(c) Bangalore

(d) Madras I and II

(e) Kerala

in respect of all direct taxes, on matters relating to.

(i) disposal of assessments, including planning programmes watching performances, etc.

(ii) reduction of arrears of taxes and matters connected therewith; and write-off and scaling down of arrears;

(iii) inspection of the offices of the Commissioners of Income-tax, Tax Recovery Commissioners and Additional Commissioners of Income-tax and sample inspection of subordinate offices in these charges.

7. Control over the work of Audit and PAC Section and Estate Duty, Gift-tax, Wealth-tax and Expenditure Sections.

8. All parliament questions relating to the above subjects.

9. Orders under section 119 of the Income-tax Act, 1961, relating to the above subjects.

II—Member (Income-tax)

1. Control over the work of the Directorate of Inspection (Research, Statistics and Publications).

2. Non-gazetted administration of the Income-tax Department-Administration IX Section.

3. All matters relating to provisions dealt with in Chapter I, II, III, IV, V, VI, VIA, VII VIII, X, XI, XII Section 127 of Chapter XIII—B, Chapters XV, XVI, XVIII, XIX and the First, Fourth, Sixth and Seventh Schedules to the Income-tax Act, 1961, except those dealt with-in the provision of that Act specified in the Schedule to this Order.

4. Over-all responsibility for the following Commissioners' charges including the charges of Tax Recovery Commissioners' and Additional Commissioners functioning in respect of these Commissioners' charges:

(a) West Bengal, I, II, III, IV and V.

(b) Bihar

(c) Assam

(d) Orissa

(e) Andhra Pradesh I and II

(f) Gujarat I, II and III

in respect of all direct taxes, on matters relating to:—

(i) Disposal of assessments, including planning programmes, watching performances, etc..

(ii) Reduction of arrears of taxes and matters connected therewith; and write-off and scaling down of arrears.

(iii) Inspection of the offices of Commissioners and Additional Commissioners of Income-tax and Tax Recovery Commissioners and sample inspection of subordinate offices in those charges.

Jurisdiction of Commissioners of Income-tax under section 121 of the Income-tax Act, 1961, and opening of new Income-tax Offices.

6. Control of work of Income-tax (Assessment I) and Income-tax (Assessment II) Sections.

7. All Parliament Questions relating to the above subjects.

8. Orders under section 119 of the Income-tax, Act, 1961. relating to the above subjects.

IV—Member (Budget)

1. General policy instructions for clearance of arrears of assessments and arrears of taxes.

2. All matters relating to the provisions of Chapter XIII-A (excluding section 119). Section 122, Chapter XIII-D, Chapter XVII (excluding sections 195 and 230) Chapter XX and Chapter XXIII (excluding sections 294-A, 295, 296 and 298) and the Second and Third Schedules to the Income-tax Act, 1961.

3. Control over the work of Income-tax (Budget), Income-tax (Coordination) and Income-tax (Judicial) Sections.

4. Control over the work of Administration-VII Section (excluding vigilance matters) and Administration VIII Section (Accommodation for Income-tax Department only).

5. Over-all responsibility for the following Commissioners' charges including the charges of Tax Recovery Commissioners and Additional Commissioners functioning in respect of these Commissioners' charges:—

(a) Delhi I, II, III and IV

(b) Lucknow and Kanpur

(c) Rajasthan

(d) Punjab, Jammu and Kashmir, and Chandigarh

(e) Madhya Pradesh, Bhopal

(f) Vidarbha and Marathwada, Nagpur.

in respect of all direct taxes, on matters relating to:—

(i) disposal of assessments including planning programmes watching performances, etc.

(ii) reduction of arrears of taxes and matters connected therewith; and write-off and scaling down of arrears;

(iii) inspection of the offices of the Commissioners and Additional Commissioners of Income-tax on Tax Recovery Commissioners and sample inspection of subordinate offices in these charges.

6. All Parliament Questions relating to the above subjects.

7. Orders under section 119 of the Income-tax Act, relating to the above subjects.

V. Member (Investigation)

1. All investigation work, including control over the work of Directorate of Inspection (Investigation) and all Commissioners of Income-tax (Central).

2. All matters relating to the provisions in Chapter XIII-B (excluding sections 147 to 153) Chapter XXI and Chapter XXII of the Income-tax Act, 1961.

3. Settlement cases under section 34(IB) of the Indian Income-tax Act, 1922.

4. Searches, seizures and reward cases including appeals under section 132.

5. Vigilance disciplinary proceedings and complaints (gazetted) and vigilance work of Administration VII Section (Non-gazetted).

6. Survey.

7. Over all responsibility for the following Commissioners' charges including the charges of Tax Recovery Commissioners and Additional Commissioners functioning in respect of these Commissioners' charges:—

(a) Commissioner of Income-tax (Central), Bombay.

(b) Commissioner of Income-tax (Central), Delhi.

(c) Commissioner of Income-tax (Central), Calcutta.

(d) Commissioner of Income-tax (Central), Madras.

in respect of all direct taxes, on matters relating to:—

(i) Disposal of assessments, including planning programmes watching performances etc.

(ii) Reduction of arrears of taxes and matters connected therewith; and write off and scaling down of arrears.

(iii) Inspection of the offices of the Commissioner and Additional Commissioners of Income-tax and Tax Recovery Commissioners and sample inspection of subordinate offices in these charges.

8. Control over the work of Income-tax (Investigation) Section.

9. All Parliament Questions relating to the above subjects.

10. Orders under section 119 of the Income-tax Act, 1961 relating to the above subjects.

VI—*Cases of the following type shall be considered jointly by the Board:*—

1. Write-off of duty or tax or abandonment of a claim exceeding Rs. 5 lakhs.

2. Scaling down of tax arrears of Rs. 5 lakhs or more.

3. Matters concerning recruitment, promotion and training policy as such and any amendment of existing orders relating thereto.

4. Awards and Appreciation Certificates.

5. Service Rules and Policy regarding staff matters.

6. Any other matter which, either the Chairman or with his approval, the Members, may suggest for joint discussion/decision.

VII—*The following Members in the Central Board of Direct Taxes have been designated as indicated against their names:*—

1. Shri K. E. Johnson—Member (Wealth-tax and Audit).

2. Shri M. B. Palekar—Member (Income-tax).

3. Shri H. A. Shah—Member (Budget).

4. Shri R. N. Limaya—Member (Investigation).

In the absence of a Member or when a Member is not available by reasons of his being on leave or on tour, the functions of such Member shall be performed and the duties discharged by such other Member or Members or the Chairman as the Chairman may direct in writing on such occasions.

Sd./-

(R. D. SHAH),

Chairman, Central Board of Direct Taxes.

Copy to:—

1. All Officers and Sections in the Central Board of Direct Taxes.

2. P.S. to F.M./MRE/Finance Secretary/Chairman (E&C).

3. All heads of department under the CBDT.

4. GAD (I to IV)|SO(P)Ad.VIII|Coord.|O&M|Ad.I-A|Tech. Coord.|Ad.I-B|R&I(R&D).

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Sd./-

(SARASWATHI R. RAO),

Deputy Secretary to the Government of India.

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F. No. 34/6/74-Ad.I

GOVERNMENT OF INDIA/BHARAT SARKAR

MINISTRY OF FINANCE/VITTA MANTRALAYA

(DEPTT. OF REVENUE & INSURANCE/RAJASWA AUR BIMA VIBHAG)

New Delhi, the 3rd July, 1974.

OFFICE ORDER NO. 269 OF 1974

SUBJECT:—*Re-distribution of work in the Central Board of Direct Taxes.*

In exercise of the powers conferred by Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 and in supersession of the Office Order No. 239 of 1974 dated the 14th June, 1974, the Chairman of the Central Board of Direct Taxes with the previous approval of the Central Government hereby orders the following distribution of work in the said Board:—

I. *Matters to be considered by the Board as a whole*

(1) Policy regarding discharge of statutory functions of the Board and of the Central Government under the various direct taxes laws.

(2) General policy relating to—

(a) Organisation and re-organisation of the Departmental set up and structure.

(b) Methods and procedures of work.

(c) Measures for disposal of assessments, collection of taxes, prevention and direction of tax evasion/avoidance, etc.

(d) Recruitment, training, promotion, placements and other conditions of service of personnel.

(3) Matters concerning tax policy and legislation except secret matters which will be dealt with directly by Chairman, C.B.D.T. and Finance Secretary.

(4) Laying down of targets and fixing priorities for disposal of assessment and collection of taxes and other related matters, both long range as well as short range.

(5) Write off of tax demands of Rs. 25 lakhs or above in each case.

(6) Settlement of tax liability under section 34(IB) of Income-tax Act, 1922 in cases involving tax liability of Rs. 25 lakhs and above.

(7) Policy regarding grant of awards and appreciation certificates etc.

(8) Any other matter which the Chairman or any Member of the Board, with Chairman's approval, may refer for joint consideration of the Board.

II. *Distribution of work between the Chairman and the Members individually.*

[They will dispose of the work within the framework of the general policy decision taken by the Board as a whole].

A. *Chairman*

(1) Tax policy and legislation (including Finance Bills, Budget matters and subordinate legislation).

(2) Research in the field of direct taxes.

(3) Issue of instruction on Finance Acts and other legislative measures.

(4) Administrative Planning and Programming (including organisation) and matters concerning gazetted establishment.

(5) Matters dealt with in the Foreign Tax Division and other matters specified in the Schedule.

(6) All matters relating to Direct Taxes Advisory Committees (Central as well as Regional) and Consultative Committee.

(7) Matters relating to the Indian Revenue Service (Direct Taxes) Staff College and the Regional Training Institutes.

(8) Coordination and overall supervision of the work of the Board.

(9) Control over the work of the Directorate of O & M Services.

B. *Member (Income-tax)*

(1) All technical (including judicial and administrative matters relating to Income-tax Excess Profits Tax, Business Profits Tax, Super Profits Tax and Surtax, other than those specifically allotted to the Chairman and other Members.

(2) All technical matters (including interpretation and issue of instructions) relating to the Compulsory Deposit Scheme/Annuity Deposit Scheme and any other new Scheme, Taxation Laws (Extension to Union Territories) Regulations, 1963, Taxation Concession orders in respect of Dadra & Nagar Haveli, Goa, Daman & Diu and Pondicherry, and various Tax Credit Certificate Schemes under Chapter XXII-B of the Income-tax Act, 1961. (These matters will continue to be handled in the TPL Branch).

(3) Inspection and supervision of the Commissioners' charges in the States of Maharashtra (excluding Vidarbha and Marathwada areas), Tamil Nadu, Kerala, Karnataka, Andhra Pradesh and in the Union Territories of Pondicherry, Goa, Daman and Diu, Dadra and Nagar Haveli.

C. *Member (Wealth Tax)*

(1) All technical (including judicial) and administrative matters concerning the Wealth Tax (including such tax on agricultural wealth), Gift-tax, Expenditure Tax and Estate Duty Acts, excluding those relating to collection and recovery of taxes and relating to prevention and detection of tax evasion/avoidance.

(2) All technical (including judicial) and administrative matters under Chapter XXA of the Income-tax Act, 1961 relating to acquisition of immovable properties.

(3) Inspection of and supervision over the Commissioners' charges in the States of Gujarat, Uttar Pradesh, Rajasthan, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh, and the Union Territory of Delhi.

D. *Member (Investigation)*

(1) Technical and administrative matters relating to prevention and detection of tax evasion/avoidance, particularly those falling under Chapter XIII-B, in so far as these are relevant to the functioning of Directorate of Inspection (Investigation) and the charges of Commissions (Central), Chapter XIII-C (excluding those specifically allotted to Joint Secretary (Inv.), Chapter XIII-D, Section 147 to 153 (both included) of Chapter XIV, Chapter XXI, and XXII, Section 281A, 285 to 287, 291 and 292 of Chapter XXIII of Income-tax Act, 1961 and corresponding provisions of other Direct Taxes Acts.

(2) Processing of complaints regarding evasion of tax received from Members of Parliament and Members of State Legislatures and also complaints received from others where the suspected tax evasion exceeds Rs. 5 lacs.

(3) Residuary work connected with the late Income-tax Investigation Commission and Directorate of Inspection (Special Investigation).

(4) Voluntary Disclosures.

(5) Survey.

(6) Settlement cases under section 34(1B) of the Income-tax Act, 1922 where the suspected tax evasion is below Rs. 25 lakhs.

(7) Vigilance, disciplinary proceedings and complaints against officers and staff (both gazetted and non-gazetted).

(8) Inspection, Control and supervision over the work of the Directorate of Investigation including its special cell and all charges of Commissioners (Central).

E. *Member (Budget and Audit)*

(1) All technical and administrative matters relating to collection and recovery of taxes, specifically those covered by Chapter XVII and XIX and the Second and Third Schedules of the Income-tax Act, 1961 and corresponding provisions of other Direct Taxes Acts.

(2) Write off of tax demands between Rs. 10 lakhs and Rs. 25 lakhs in each case.

(3) All matters relating to Revenue and Expenditure Budget.

(4) All matters concerning non-gazetted establishment, Office equipment, accommodation etc.

(5) Matters relating to compilation and publication of all statistics.

(6) Matters relating to publication and issue of all departmental publications, and Public Relations.

(7) General coordination in the disposal of Board's work.

(8) Control over the work of the Directorate of Inspection (Research, Statistics & Publications).

(9) All matters relating to Audit—Internal Audit as well as Revenue Audit and all P.A.C. matters.

(10) Control over the work of the Directorate of Inspection (Income-tax & Audit).

(11) Inspection and supervision of the Commissioners' charges in the States of West Bengal, Bihar, Orissa, Madhya Pradesh, Vidarbha & Marathwada areas f Maharashtra, Assam and other States and Union Territories in the North Eastern region.

III. The following Members in the Central Board of Direct Taxes have been designated as indicated against their names:—

Shri C. C. Ganapathy	..	Member (Income-tax)
Shri B. K. Bagchi	..	Member (Wealth tax)
Shri S. Narayan	..	Member (Investigation)
Shri R. S. Chadda	..	Member (Budget & Audit)

In the absence of a Member or when Member is not available by reason of his being on leave or on tour, the functions of such Member shall

be performed and the duties discharged by such other Member or Members or the Chairman as the Chairman may direct in writing on such occasions.

Sd./

(S. R. MEHTA)

Chairman,

Central Board of Direct Taxes &
Ex-Officio Additional Secretary.

Copy to:—

1. All Officers and Sections in the C.B.D.T.

2. P.S. to F.M./MRE/F.Secy./Chairman (E&C).

3. All Heads of Department under C.B.D.T.

4. GAD.I-IV|SO(P)|Ad.I-A|Ad.I-B|Ad.VIII|Coord|O&M Tech. Coord| R&I R&D|Parl. Unit.

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Sd./-

(SARASWATHI R. RAO).

Deputy Secretary to the Govt. of India.

SCHEDULE [*Vide* IIA(5) of the Office Order]

1. All matters and references relating to agreements with other countries for the avoidance of double taxation in respect of Income-tax and grant of unilateral relief.

2. All matters and references relating to agreements with other countries for the avoidance of double taxation in respect of estate duty, gift-tax, sur-tax and wealth-tax, and grant of unilateral relief.

3. All matters and references regarding liability to Income-tax on Indian income of non-residents or other foreigners or foreign enterprices arising out of any technical, financial or business collaboration agreement between non-residents, and residents or between non-residents and the Government.

4. All matters and references regarding assessment problems in the case of residents in respect of technical, financial or business collaboration agreements with non-residents.

5. All matters relating to the following provisions of the Income-tax Act, 1961, namely:—

Section 2(17)(iv), 2(30), 5(2), 9, 10(4), 10(4A), 10(6), 10(7), 10(8), 10(9), 10(15)(iv), 21, 25, 40(a)(i) and (iii), 42, 54A, 58(1)(ii) and (iii), 80F, 80M(1)(a), 80N, 80-O, 80R, 90, 91, 92, 93, 160(1)(i), 163, 172, 173, 174, 182(3), 195, 230, rule 6 of the First Schedule to the Income-tax Act, 1961 and rule 10 of the Income-tax Rules, 1962.

6. All matters and references regarding tax exemption of the U.N.O., its affiliated bodies and their employees.

7. Orders under section 119 of the Income-tax Act, 1961, relating to the above subjects.

8. All Parliament Questions relating to the above subjects.

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

According to the Ministry, the correct legal position appears to be that the liability for the additional price arose on 22nd December, 1964 when the order of the Sugarcane (Additional) price Fixation Authority was passed. It would, therefore, seem to be not correct to have reopened the assessments for the assessment years 1960-61 and 1961-62, in this case. The Committee would like to know how the enhanced price stated to have been paid by the assessee in regard to purchases from open sources was dealt with in the relevant assessments. The Committee further desire that the correct position in law should be clarified for the guidance of the officers concerned.

[S. No. 20 (Para 2.42) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha]

Action Taken

2.41. The IAC concerned has been directed to enquire into the matter and inspect other cases completed by this ITO.

2.42. No revised returns were filed by the assessee for the assessment years 1960-61 and 1961-62 as observed by the Committee. On 14-3-1968 the ITO only gave effect to the order of the AAC who had allowed the additional price to the assessee for the sugar-cane grown on his own farm on the ground that it was an ascertained liability and hence deduction was admissible.

Necessary instructions clarifying the correct position in law, have been issued *vide* Instruction No. 745 [F. No. 228/28/74-IT(A-II))], dated the 30th August, 1974, copy enclosed.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/16/72-A.I. PAC-II (dated 16-10-74)].

Instruction No. 745

F. No. 228/28/74-ATA.II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 30th August, 1974

From

Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SUBJECT:—*Rule 7 of Income-tax Rules, 1962—Raising of sale price of agricultural produce with retrospective effect—Mercantile system of accounting—date when liability arises—Clarification regarding—*

Sir,

Rule 7 of Income-tax Rules, 1962 provides that in case of income which is partially agricultural income as defined in Section 2 of the Indian Income-tax Act, 1961, and partially income chargeable to income-tax under the head "profits and gains of business", in determining that part which is chargeable to income-tax, the market price of any agricultural produce which has been raised by the assessee or received by him as rent in kind and which has been utilised as a raw material in such business or sale proceeds of which are included in the accounts of the business, shall be deducted and no further deduction shall be made in respect of any expenditure incurred by the assessee as cultivator or receiver of rent-in-kind. The application of this provision is made usually in the case of sugar factories who have their own agricultural farm.

2. Occasionally the dispute regarding the price to be paid to sugar cane growers for the sugarcane is referred to the Ministry of Food and Agriculture (Department of Food). The Ministry after considering the facts and circumstances revise the price of the sugarcane with retrospective effect thereby creating an additional liability on the buyers of the sugarcane for payment of enhanced price to the sugarcane growers.

3. Additional price payable to the cultivators is to be allowed as a deduction in the year in which the additional liability arose and not in the year to which it relates as it was ascertained only on the date of the order of the price fixation authority.

Necessary instructions may please be issued to all the Income-tax Officer working in your charge on the above lines for their information and guidance.

Yours faithfully,

(Sd.) T. P. JHUNJHUNWALA,

Secretary, Central Board of Direct Taxes.

Copy forwarded to :—

1. **Director of Inspection** (Income-tax and Audit)—15 copies.
2. Director of Inspection (Investigation)—2 copies.
3. Director of Inspection (Research and Statistics)—2 copies.
4. Director of Inspection (P & P).
5. Assistant Director of Inspection (Bulletin)—3 copies.
6. Deputy Director of Inspection (Research and Statistics).
7. Comptroller and Auditor General of India—25 copies.
8. Director of O. & M. Services, 1st Floor, Aiwan-o-Ghalib, Mata Sundari Lane, New Delhi.
9. All Officers and Sections in the Technical Wing of Central Board of Direct Taxes.

(Sd.) T. P. JHUNJHUNWALA,

Secretary, Central Board of Direct Taxes.

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

The Committee find that the CIT has been asked to carry out a selective review with a view to finding out if similar mistakes have been committed. They stress that this review should also be extended to seeing whether the ITOs in this charge have been rechecking the tax calculations as per the Board's instruction. The review should be conducted by the IAC (Audit). The Committee would await the results of the review.

[Sl. No. 6 (Para 1.29) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)]

Action Taken

The Range IAC had made a selective scrutiny of cases and it has been reported that he did not come across similar mistakes in any other case. However, the C.I.T. has been asked to extend this review to other circles of his charge also and the results of this extended review will be intimated in due course.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/95/72-A&PACII, dated the 16th October, 1974].

Recommendation

Under the Finance Act, 1964 and 1965, certain deductions had to be made from the super-tax rebate and the deduction was limited to the extent of the rebate and the balance was to be carried forward. Failure to carry forward the deduction in this case resulted in short-levy of tax of Rs. 1.33 lakhs in the assessment year 1965-66. Similar provisions were there in the Finance Acts, 1956 to 1959. The Committee had called for a general review as early as 1964-65, in view of the fact that the lapses in computing super-tax were on the increase. This suggestion was reiterated by them subsequently during 1968-69 and 1972-73. Finally the Committee are informed that as a result of a review of company assessment cases completed during the period 1964-65 to 1967-68, under-assessment of tax to the tune of Rs. 6.96 lakhs has been noticed out of which Rs. 5.86 lakhs are to be treated as a loss of revenue as the cases are outside the time-limits for rectificatory action. The Committee cannot but deplore the fact

that the review ordered from time to time was not carried out effectively and expeditiously. The Committee desire that responsibility should be fixed for this failure, which has resulted in a substantial loss of revenue. They would await the result of the action taken.

[Sl. No. 7 Para 1.48 of Appendix to 128th Report of the PAC, (1973-74) (Fifth Lok Sabha)]

Action Taken

As desired by the Committee the concerned Commissioners of Income tax have been directed to fix responsibility for the failure to carry out the review effectively and expeditiously and take necessary action against the concerned officers.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/101/72-A&PACII, dated 21st September, 1974].

Recommendation

Under the provisions of the Income-tax Act, if a company in which the public are not substantially interested fails to distribute the prescribed percentage of its distributable income as dividends such a company is liable to pay additional super-tax. For the assessment years prior to 1965-66, shares of a company held by another company in which public are substantially interested are not to be treated as held by public. In this case additional super-tax of 8.79 lakhs was not levied for the assessment year 1959-60 as the company was incorrectly classified as one in which the public were substantially interested. Mistakes of this type have been brought to the notice of the Committee earlier also. The Committee, would therefore, call for a review of all the completed assessment relating to the assessment years prior to 1965-66 for appropriate action. The results of the review should be intimated to the Committee.

The Committee note that the Chief Auditor of the Internal Audit is expected personally to audit certain important types of cases and one such category of cases related to cases involving 'liability to additional tax by companies in which the public are not substantially interested'. The Committee desire that the criteria for determining whether the public have or have not substantial interest in a company should be clearly laid down in the I.A. Manual. In this connection the committee suggest that the question how far a foreign company could be treated as one in which public are substantially interested may also be examined in consultation with the Ministry of Law.

The Committee had, in paragraph 2.74 of their 51st Report (Fifth Lok Sabha), suggested an examination of the feasibility and economics of dispensing with the subtle distinction between a public company and a closely

held public company for the purpose of taxation of profits. According to the Chairman, Central Board of Direct Taxes, the distinction is necessary because it is not difficult for private companies to be registered as or to change themselves into public companies if they want to escape the rigours of taxation. The Committee understand that there is an attempt to meet this situation in the new company Law (Amendment) Bill. They accordingly wish to reiterate that the question of doing away with the distinction between a public company and a closely held public company should be considered expeditiously as a step towards simplification.

[Sl. Nos. 10—12 (Paras 1.73 to 1.75) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)]

Action Taken

A review of all assessments for the assessment year 1965-66 and earlier assessment years is being undertaken. A further report will follow.

The matter is under consideration in consultation with the Ministry of Law.

The matter is under consideration in consultation with the Department of Company Affairs.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/293/72-A&PAC, dated 18th December, 1974].

Recommendation

The Committee are distressed to note the sheer carelessness if not something else on the part of the ITO resulted in short-levy of tax to the extent of Rs. 2.19 lakhs in this case. The ITO failed to notice that a capital expenditure of Rs. 3.98 lakhs was included under 'miscellaneous expenditure' in the assessee's claim of deductions. He did not make a proper study of the company's balance sheet. What is worse was that even after the receipt of Audit objection he did not care to rectify the mistake for 15 long months. The Committee have been informed that as the officer was responsible for a few more lapses a thorough enquiry has been ordered. The Committee stress that the cases should be thoroughly investigated and the result of investigation and action taken against official found to be at fault intimated to them within six months.

[Sl. No. 13 (Para 2.13) of Appendix to 128th Report of the PAC, (1973-74) (Fifth Lok Sabha)]

Action Taken

The review of other cases completed by this ITO is still in progress. Results of review and action taken will be intimated to the Committee after the report of the C.B.I. is received.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/88/72-A&PACII, dated 16th December, 1974]

Recommendation

In computing taxable income from the business of manufacture of sugar, the market value of sugarcane raised by the factory on its farm and used in the manufacture of sugar is deductible under the Rules as it relates to agricultural operations. Consequent on the retrospective increase of market price of sugarcane in the working seasons of 1958-59 and 1959-60 by an order dated 24th December, 1964, the assessee filed revised returns for the relevant assessment years viz. 1960-61 and 1961-62, in which additional amount of Rs. 5,12,290 was claimed as deduction. This was allowed in the revised assessments completed on 14th March, 1968. In the meanwhile, the assessee filed the return for the assessment year 1966-67 on 8th August, 1966 wherein the same amount of Rs. 5,12,290 was deducted from total income which was also allowed by the ITO. The deduction allowed twice had a tax effect of Rs. 2.9 lakhs. The ITO, who completed the assessment for the year 1966-67, appears to have been grossly negligent in that he failed to do something which was clearly his duty to do, namely to scrutinise properly the loss of Rs. 6.72 lakhs returned by the assessee. As the assessee must have given the reasons for the deduction it should have been possible for the ITO to have linked it up with the revised assessments for the years 1960-61 and 1961-62. The Committee require that appropriate inquiry and action should be initiated. They further suggest that other assessments completed by this ITO should be audited.

[Sl. No. 19 (Para No. 2.41) of Appendix to 128th Report of the PAC, (1973-74) (Fifth Lok Sabha)]

Action Taken

The IAC concerned has been directed to enquire into the matter and inspect other cases completed by this ITO.

[Ministry of Finance (Revenue and Insurance), O.M. No. 236/16/72-A&PACII, dated 16th October, 1974]

Recommendation

Under the Income-tax Act, exemption is admissible to the profits and gains derived from a newly established industrial undertaking to the extent of 6 per cent of the capital employed in such undertaking. Where they fall short of 6 per cent carry forward of deficiency was admissible only from the assessment year 1967-68. However, in this case a deficiency of Rs. 2.58 lakhs for 1966-67 was allowed to be carried forward which resulted in a total undercharge of tax of Rs. 1.42 lakhs for the assessment years 1967-68 to 1969-70. The Committee learn that the CIT has been asked to direct the IAC to carry out an inspection of the concerned ITOs work. The Committee would await a report in this regard.

The Committee incidentally note that during the financial year 1971-72 in all 337 new undertakings were granted 'tax-holiday' relief under Section 80J. Unfortunately the Department is not in a position to indicate the number of such undertakings which fall in small scale sector. It would be of interest and value to know the number of undertakings in the small scale Sector, which benefited from this concession and the Committee trust that the Ministry will take suitable steps to ensure that this information is readily available. In this connection the Committee would recall their suggestion contained in paragraph 7.15 of their 87th Report (Fifth Lok Sabha).

[Sl. Nos. 24-25 (Paras 2.67 and 2.68) of Appendix to 128th Report of the PAC, (1973-74) (Fifth Lok Sabha)]

Action Taken

Review of the work of the concerned ITO is in progress as stated in reply to Para 2.13 of this Report. Results thereof and action taken will be intimated in due course.

Necessary instructions have been issued to all the Commissioners to furnish this information. Results of the review will follow.

[Ministry of Finance (Revenue & Insurance) O.M. No. 236/148/72-A&PACII, dated 18th December, 1974]

Recommendation

M/s. Oil India Ltd., a joint venture of Government of India and Burmah Oil Company incorporated on 18th February, 1959, took over the assets of Assam Oil Company Ltd., a subsidiary of Burmah Oil Company. The Company are not happy over the manner in which tax concessions have been granted purported to be in accordance with an agreement dated 27th July, 1961, to M/s. Oil India Ltd., the benefit of which partly went to a foreign multinational Corporation which is against national interest. It is evident that the implications of the various provisions of this agreement in relation to taxation had not been carefully and properly scrutinised

before they were finalised. The following points arise out of the Committee's examination of the matter.

(i) The agreement provided that in respect of the expenditure of Rs. 916.56 lakhs on certain assets taken over by M/s. Oil India Ltd., amortisation over a period of 15 years at the rate of Rs. 61 lakhs per annum would be allowed from the assessment year 1963-64 onwards. This was purported to be done under Section 42 of the Income-tax Act, 1961. Under this Section a provision for amortisation of expenditure on drilling or exploration activities could be made by agreement only if such expenditure were "expenditure incurred by the assessee."

It was, however, not the case here and therefore the allowance would constitute an extra legal concession resulting in huge loss of revenue.

(ii) In terms of the agreement, in respect of the expenditure (Rs. 161.04 lakhs) on building, plant and machinery "usual depreciation/development rebate" should be allowed each year as per the Income-tax Act. Under this provision the company was allowed development rebate on the pre-incorporation expenditure on building and machinery to the extent of Rs. 33.04 lakhs for the assessment year 1960-61 by the I.T.O. under instructions from the Commissioner. Under the Income-tax Act, however, the grant of development rebate is subject to the condition that the plant and machinery should be new and that it is admissible only in respect of the year of installation. The Committee were informed that there was no intention of giving any development rebate in relaxation of the basic provision of the Law. The plant and machinery taken over from the Assam Oil Co. were not new and were also not installed in the relevant previous year 1959-60. It seems that substantial portion thereof must have been installed even prior to 1954 when the provision for development rebate became effective in the Income-tax Act. Further, it remains to be confirmed whether in respect of assets installed between 1954—58 the Assam Oil Co. itself was allowed development rebate in its assessment. Although the Board was associated with the drafting of the relevant clauses of the agreement relating to taxation, it was not pointed out that this concession was outside the scope of the Act which, as felt by the Finance Secretary, should have been done. Further, it is unfortunate that even when the Commissioner made a reference to the Board, the Board did not examine the matter properly and find out whether development rebate on these assets were admissible to

M/s. Oil India Ltd. Only now it is proposed to consult the Ministry of Law in the matter. There does not appear to have been any justification for allowing such extraordinary and extra legal concessions.

(iii) In addition to the development rebate on plant and machinery, a sum of Rs. 26.80 lakhs was also allowed as development rebate on "casing and tubing", costing Rs. 107.20 lakhs in the assessment year 1960-61. This cost was, however, included in the expenditure of Rs. 916.56 lakhs which was allowed to be amortised over a period of 15 years. Although a view was initially held that "casing and tubing" was not plant and machinery and hence no development rebate would, in any case, be admissible thereon, it was allowed under the instructions of the Board without making any reduction in the amortisation allowance. Even if it is regarded as plant and machinery it is doubtful whether development rebate would be admissible in view of what is stated in item (ii) above. The Ministry of Finance have promised to take up the matter again with the Ministry of Law.

(iv) An indirect consideration was passed on to Assam Oil Co. for a period of 20 years by Oil India Ltd., by way of supply of oil and associated natural gas at a concessional rate ranging between 50 per cent to 60 per cent of the normal sale price. The Committee understand that the benefit of this concession is estimated at Rs. 9 crores. It is not clear whether the entire assets of Assam Oil Company had been taken over on the basis of the market value. It should, therefore, be examined from the angle of capital gains tax, in consultation with the Ministry of Petroleum and Chemicals and Ministry of Law, whether in view of the substantial concession there was undervaluation of the assets.

In view of the fact that the quantum of concessions is very large and it is not free from doubt to what extent they were given by Government as a matter of policy or to what extent they are in accordance with the Law, the Committee consider it essential that there should be a thorough enquiry into the matter immediately for appropriate action including revision of the relevant assessments of the company to the extent that is legally permissible. Responsibility for the failure/lapse of the C.B.D.T. as brought out in items (ii) and (iii) should also be fixed for such action as may be called for.

[Sl. Nos. 26-27 (Paras 3.32 & 3.33) of Appendix to 128th Report of the PAC, (1973-74) (Fifth Lok Sabha)]

Action Taken

The matter is under consideration in consultation with the Ministry of Law. Inspite of our best efforts it has not been possible so far to arrange a tripartite meeting with the representatives of the C&AG and the Law Ministry to examine the various issues raised by the P.A.C. The Audit and the Law Ministry are again being approached to indicate suitable dates for a tripartite meeting and the final outcome of such meeting will be intimated to the Committee.

[Ministry of Finance (Revenue and Insurance) O.M. No. 236/30/72-A&PACII, dated 18th December, 1974].

Recommendation

Under the Income-tax Act, an assessee who avails himself of the concession of development rebate should keep 75 per cent of the development rebate in a separate reserve account and should not utilise the same for distribution as dividends or for remittance outside India as profits for a period of 8 years. If this direction is not followed the development rebate already granted, is liable to be withdrawn. The Committee note with concern that in the case of a number of assessments relating to two companies the ITO did not take any notice of the fact that the development rebate reserve had been utilised for declaration of dividend or having noticed the fact, failed to take necessary action open to him. This failure resulted in a short levy of tax to the extent of Rs. 8.81 lakhs, and excess computation of business loss of Rs. 6.31 lakh. The Committee find that in these companies the non-resident share-holding is substantial. They further find with concern that a recovery of under-charge of Rs 5.04 lakhs from one of the companies has become time-barred. They cannot but take a serious view of the substantial loss to Government. Surprisingly, no action seems to have been taken against the ITOs concerned excepting that they were informed that their explanations were found to be not acceptable.

As no extenuating circumstances appear to exist, the Committee consider that appropriate disciplinary action should be taken against them and the Committee informed.

[Sl. Nos. 29-30 (Paras 3.48 and 3.49) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

The C.I.T. has been asked to carry out a general review of the work of the three Income-tax Officers to assess their overall performance and initiate disciplinary proceedings.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/217/72-A&PACII dated 1st November, 1974].

Recommendation

The Committee would await the outcome of the departmental appeal before the Tribunal in the case of one of the companies.

[Sl. No. 32 (Para 3.51) of Appendix to 128th Report of the P.A.C. (1973-74) (Fifth Lok Sabha)].

Action Taken

The appeal was fixed for hearing on 23rd July, 1974 but the order of the Income-tax Appellate Tribunal has not been received so far.

[Ministry of Finance (Rev. & Ins.) O. M. No. 236/217/72-A&PACII dated 24th September, 1974].

Recommendation

Sub-Section (1) of Section 43A of the Income-tax Act provides that where a part of payment towards the cost of assets purchased in foreign countries is yet to be made and the liability on account of such outstanding payments goes up due to devaluation of the Indian currency, the assessee can write up the cost on such assets in his books for purposes of claiming depreciation etc. However, sub-section (2) specifically prohibits allowance of development rebate on the increase in cost of assets on account of devaluation. Nevertheless, in the cases of no less than three companies excess development rebate was allowed due to non-observance of this provision. The Committee regret that mistakes (if they were mistakes at all) of this type should have occurred in a Company Circle where the ITOs handled assessments of a few important companies only. The Committee learn that the cases of the two officers who handled these assessments have been referred to the C.B.I. for investigation. They desire that the investigation should be carried out with all speed and the results as well as the action taken against the officers reported to them.

[Sl. No. 33 (Para 3.61) of Appendix to 128th Report of the P.A.C. (1973-74) (Fifth Lok Sabha)].

Action Taken

Investigation by the C.B.I. is still in progress. Results of the investigation and action taken thereon will be intimated in due course.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/211/72-A&PACII dated 25th November, 1974].

Recommendation

The Committee further find that the two companies had claimed development rebate on the increased cost of machinery due to devaluation and that as the revision of the assessment was done under Section 154 no penalty proceedings were initiated. The Committee desire that the question of prosecution should be examined expeditiously and the action taken intimated to them.

[Sl. No. 34 (Para 3.62) of Appendix to 128th Report (1973-74) (Fifth Lok Sabha)].

Action Taken

The relevant assessment records are now with the C.B.I. The question of prosecution will be examined after receipt of the file and the Committee will be informed of the results.

[*Ministry of Finance (Rev. & Ins.) O.M. No. 236/211/72-A&PACII* dated 13th December, 1974].

Recommendation

The Audit paragraph brings out incorrect computation of the extra shift allowance for double and triple shift working of plant and machinery in the cases of two companies. Under the Rules 50 per cent of the normal depreciation is allowed for each of the double and triple shifts. Very strangely, however, in the case of one company extra shift allowance at 100 per cent of the normal depreciation was allowed for the triple shift working of the machinery in addition to extra shift allowance @50 per cent for the double shift. In the case of another company, extra shift allowance for the double shift working was allowed at 100 per cent of the normal depreciation instead of at 50 per cent. These serious lapses accounted for an under-charge of tax of Rs. 1.71 lakhs. The Committee are unable to understand how, when the Income-tax Rules are abundantly clear, the assessee company could claim extra shift allowance of more than 100 per cent of normal allowance and how the ITOs could allow such claims. The facts are such as to indicate that the mistakes are not bonafide. The matter requires thorough investigation by the Board and the Committee trust that strict disciplinary action will be taken thereafter.

The Committee find that review conducted by the Department revealed similar lapses in as many as 4 other assessments relating to one of the companies. A review of all company assessments made by the ITOs concerned is called for. And if it shows that similar mistakes have been

committed in other cases also, the matter should be referred to the CBI for further investigation.

[Sl. Nos. 36 and 37 (Paras 3.73 and 3.74) of Appendix to 128th Report of the P.A.C. (1973-74) (Fifth Lok Sabha)].

Action Taken

Necessary review of the other cases completed by these ITOs is in progress. Results thereof with action taken will be intimated on completion of the review.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/287/72-A&PAC II, dated 18th December, 1974].

Recommendation

According to the Audit paragraph two companies derived income from the manufacture of (a) resins and fabrication of water-treatment equipment and (b) radio-receivers respectively. These were treated as priority industries, even though the relevant schedule in the Act did not mention them. According to Audit such treatment was irregular and resulted in short-levy of tax to the extent of Rs. 3.10 lakhs. The Committee, however, find that as regards (a) although the Audit objection was initially accepted on the opinion given by the Ministry of Industrial Development, the issue had been re-examined. Accordingly it is felt that profits derived by the company from manufacture of the mechanical portion of the water treatment plant is entitled to tax concessions applicable to priority industries but the profits from the manufacture of resin is not entitled to such concession and that the matter has been referred to Audit. As regards (b) although the Department of Electronics had earlier advised the Board that radio-receivers are to be classified as 'telecommunication equipment', they had later mentioned that communication equipments are becoming increasingly electronic in nature. In the meanwhile, the lapses pointed out by Audit had been rectified and the assessees had gone in appeal. The Committee would await the outcome of the appeals.

The Committee regret the delay in ascertaining the correct position in regard to these cases. They desire that such question should be examined very expeditiously with a view to the officers in the field being apprised of the correct position at the earliest possible date. This was emphasised earlier in paragraph 2.171 of the 87th Report (Fifth Lok Sabha), which it seems, has not been given enough attention to. After ascertaining the correct position in the cases in question, it is also necessary to undertake

a general review to see whether assessments involving such industries were properly made.

[Sl. Nos. 38-39 (Paras 4.8 and 4.9) of Appendix to 128th Report of the P.A.C. (1973-74) (Fifth Lok Sabha)].

Action Taken

In one of the two company cases, second appeal is still pending before the Appellate Tribunal. Position in respect of the other case will be intimated shortly.

The matter is under consideration of the Board and a further communication will follow.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/82/238/72-A&PACII, dated 18th December, 1974].

Recommendation

The Audit paragraph brings out a case where under an agreement with a foreign company to purchase 'know-how' considerable income is remitted in foreign currency without subjecting the income to appropriate tax under Income-tax Act. Under the agreement the foreign company's Indian tax liability was to be borne by the Indian company. The agreement provided for payment of a total of 3.2 million Canadian dollars for the supply of know-how. Although several payments were made, no tax had been deducted at source. A payment of 5 lakh dollars was made in 1961 and another payment of 8 lakhs dollars was made in 1963. In the assessment years 1962-63 and 1964-65, it was claimed that the payments were not subject to income-tax in India as these were received by the foreign company abroad. The assessment for 1962-63 is still pending which would involve undercharge of tax/interest to the extent of Rs. 29.17 lakhs if the claim is accepted. For the assessment year 1964-65, only 60 per cent of the income was treated as taxable and it was charged to tax @50 per cent as royalty instead of as business income @65 per cent. Further, the income was not grossed up for purposes of tax. All these involved short-levy of tax/interest to the extent of Rs. 22.42 lakhs which is a substantial amount.

It was held that the delivery of know-how took place partly outside India and partly in India and accordingly the income was apportioned for the purpose of taxation. The Committee find that there was no provision in the agreement executed in 1961 about the place of delivery of know-how. There was, however, some discussion between the representatives of the Indian and foreign companies on 13th June, 1964 regarding the place of delivery. The Committee do not consider that the minutes of the meeting could be regarded as modification of the original agreement.

5.65. The agreement did not describe the amount received by the foreign company as royalty. As the payment is for 'know-how' which is the subject matter of business agreement between the two companies, it can only be regarded as business income and not royalty.

5.66. Strangely enough, after protracted consultation between the Ministry of Finance and Ministry of Law it has been finally held that the payment is for technical know-how, that the technical know-how represented by 6 sets of processing standards only had been delivered from abroad and that no part of the payment could be apportioned as relating to the operations carried out in India. It is inconceivable that the transfer of know-how is limited to the delivery of merely 6 sets of processing standards for which the country had to pay through its nose. The payment received by the foreign company has to be viewed in the context of the agreement as a whole. There is admittedly a business connection in terms of Section 9 of the Act and the income, has, therefore, to be essentially considered as income deemed to accrue or arise in India. The Committee find that the point has also been examined in a recent decision of the Madras High Court in Commissioner of Income-tax Madras Vs. Carborundum Company (92 ITR 411). The Committee were told that it is proposed to examine the matter again in consultation with the Ministry of Law associating the Audit representative. The Committee would urge that this should be done immediately. The Committee further desire that it should also be examined as to what should be the income that should be brought to tax when an agreement stipulates that a certain amount to be paid net of tax, if that is really permissible.

5.67. The Committee would like to know the action taken to revise the relevant assessments of the company and collect the appropriate revenue in the light of the above. They suggest that the Board's instructions of 17th April, 1969 should also be suitable modified.

5.68. The total amount of royalty payment assessed to tax upto the assessment year 1971-72 in respect of Indian companies having collaboration agreements with foreign companies was Rs. 19.23 crores whereas the total amount of know-how fees was only Rs. 3.24 crores. As know-how fees attract a higher rate of tax (65 per cent) it is necessary to lay down clear guidelines as to how the payments should be identified as relating to royalties or know-how. In this connection the Committee find that the word 'know-how' has not been defined as such in the Income-tax laws or rules. The Committee, therefore, stress that the opinion of the Attorney General should be obtained and suitable instructions issued to the assessing officers forthwith for guidance.

The Committee regret to find that at present it is not being ensured that the Central Board of Direct Taxes are consulted at the stage when

collaboration agreements involving tax matters are approved. The Government should explain and examine how such a serious lacuna has been allowed to continue for so long. The Committee are not at all satisfied with the extent of scrutiny conducted by the Ministry of Finance in regard to the agreements entered into under the advice and with the approval of the various administrative Ministries particularly by the public sector undertakings. They accordingly emphasise that the Ministry should work out a foul proof arrangement so that our limited resources are not frittered away in the way, it appears, has happened in the above mentioned cases.

[Sl. Nos. 41 to 47 (Paras 5.63 to 5.69) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

5.63 to 5.65 & 5.67 to 5.68. The matter is under consideration in consultation with the Ministry of Law. The Law Ministry had earlier indicated that it would be desirable to associate the representative of the C&AG also during the course of discussions so that the Audit view are also taken into consideration while formulating their final conclusions. In spite of our best efforts, we could not fix suitable dates convenient to Audit and the Law Ministry for such a tripartite discussion. The Audit and the Ministry of Law are again being approached to indicate a mutually convenient date for a tripartite meeting, and the final outcome will be intimated to the Committee as early as possible.

5.66. Advice of the Ministry of Law in respect of the first part of the recommendation is still awaited. As regards the second part, the legal position is well established. Where an assessee receives a certain amount which is stipulated to be paid to him net of tax, the income chargeable to tax in the hands of the recipient is grossed upto such an amount as would after deducting the tax on such gross amount, leave the stipulated net amount of income. Reference is invited, in this connection, to the case of Tokyo Shibaura Electric Co. Ltd., (52 ITR 283).

From the Income-tax angle, there is no objection if in an agreement entered into by an Indian party with a foreign collaborator, the Indian party agrees to bear the tax burden of the foreign collaborator. This is essentially a matter of financial arrangement between the two contracting parties.

The Department of Economic Affairs has advised that generally while granting the approval of the Foreign Investment Board, it is stated that the payments of lump sum fees for technical know-how and payments for

royalties will be made to the foreign collaborator subject to the taxes applicable. In exceptional cases, however, where due to special circumstances of the case, the foreign collaborator insists that the Indian party should bear the tax liability beyond a certain limit, permission is granted for such an arrangement on the merits of each case. This would happen in cases where the foreign collaborator is keen to have a specified net amount of remittance in respect of lump sum etc. payments which usually are paid abroad and are almost wholly earned there.

5.69. The matter is still under consideration of the Ministry and a further reply will follow.

[Ministry of Finance (Revenue and Insurance) OM. No. 236 16 72-A&PAC-II, dt. 16th December, 1974].

Recommendation

5.97. In Audit's view the dividend accrued in respect of vacant chits subscribed to by the company engaged in chit fund business are to be treated as income for the purpose of income-tax assessment of chit funds as it is not notional but real income. The Committee have been informed by the Ministry that the point raised by Audit would be studied in greater detail and suitable instructions issued, if necessary, in consultation with the Ministry of Law. It is well-known that in the past few years many chit funds companies have sprung up in almost all the States in the country. The number of such entities in the Union Territory of Delhi alone was 121 at the end of 1972. It is, therefore, necessary that the Central Board of Direct Taxes should complete their study of the accounting of these chit funds very expeditiously and issue instructions for proper computation of income of the funds so that the levy of income-tax is made uniformly and in the best interest of Government. The working of the chit funds should also be studied in depth because there is good reason to suspect that not all of them away from malpractices which go against the interests of those who invest their funds in them.

[Sl. No. 53 (Para 5.97) of Appendix to 128th Report of the PAC (1973-74) (Fifth Lok Sabha)]

Action Taken

5.97. The matter is under active consideration of the Board and further report will follow.

[Ministry of Finance (Rev. & Ins.) O.M. No. 236/205/72-A&PAC-II, dated the 16th December, 1974].

Recommendation

6.8. Another unsatisfactory feature of this case is that the ITO did not initiate penalty proceedings against the assessee for his failure to file the surtax return until as late as 16th March, 1972. The Committee cannot but deprecate such laxities. They trust that the Board will issue strict instructions to the assessing officers in this regard. They would await a report regarding the number of cases wherein the assessees had not filed surtax returns voluntarily, the number of cases where penal proceedings were not initiated and the present position of each of these cases.

[Sl. No. 55 (Para 6.8) of Appendix of 128th Report of the PAC (1973-74) (Fifth Lok Sabha)].

Action Taken

6.8. The report is as under:—

Number of cases in which assessees did not file surtax returns voluntarily	181
Number of cases in which penal proceedings have been initiated.	13

Reasons for non-initiation of penalty proceedings in the remaining cases are being ascertained and a further report will be submitted.

[Ministry of Finance (Rev. & Ins.) OM No. 236/38/72 of A&PAC-II, dt. 20-11-74.]

Recommendation

7.15. According to Audit the concessional rate of tax for inter-corporate dividend is not admissible to the insurance companies. The computation of insurance business income is governed by special provisions of the Income-tax Act, 1961. The provisions of the Act relating to the computation of income chargeable under heads "interest on securities", "income from other sources" etc. shall not apply to the computation of profits on insurance. The Ministry are of the view that for the purpose of concessional rate it is not necessary that the dividend received by the company should be chargeable under the head "income from other sources". The Committee find that even though Section 80(M) does not deal directly with computation of income "under other sources" it deals with deduction in respect of certain inter-corporate dividends from gross total income. The rules in the First Schedule are quite comprehensive and where it is intended to give a specific deduction, such deduction is mentioned notwithstanding that the same deduction is separately provided for in the general computation sections. It appears that in the absence of a specific provision in the First

Schedule itself, the inter-corporate deduction was not intended to be permitted. However, as the matter is not free from doubt, the Committee desire that a competent legal opinion should be obtained in view of considerable tax effect involved.

[Sl. No. 56 (Para 7.15) of Appendix to 128th Report of the PAC (1973-74), (Fifth Lok Sabha)].

Action Taken

The matter has been referred to the Ministry of Law and their opinion is awaited.

[Ministry of Finance (Rev. & Ins.) Copy No. 236|277|72-A&PAC II, dt. 2-11-74.]

NEW DELHI;

21st April, 1975

1st Vaisakha, 1897 (*Saka*).

JYOTIRMOY BASU,
Chairman,
Public Accounts Committee.

APPENDIX

Summary of Main conclusions/Recommendations

Sl. No.	Para No. of the Report	Ministry concerned	Conclusions/Recommendations
1	2	3	4
1.	1.4	Finance (Rev. & Ins.)	The Committee desire that final replies in regard to those recommendations to which only interim replies have so far been furnished, should be submitted to them expeditiously after getting them vetted by Audit. The reason for the delay should be explained to the Committee.
2.	1.8	-do-	The Committee had earlier suggested that the review ordered by the Board with a view to finding out if similar mistakes had been committed should also be extended to seeing whether the Income-tax Officers in the relevant commissioner's charge had been rechecking the tax calculations and that this review should be conducted by the IAC (Audit). The Committee, however, very much regret to note that their suggestion has apparently not been acted upon by the Ministry and no valid reasons have been given for not accepting this suggestion of the Committee. The Committee would, therefore, reiterate their earlier recommendation and trust that this would be completed expeditiously under advice to the Committee.
3.	1.11	-do-	The Committee would like to be apprised of the final outcome of the investigations being conducted by the Commissioners of Income Tax to fix responsibility for the failure to carry out the review suggested by the Committee as early as 1964-65.

1	2	3	4
4.	1.14	Finance (Rev. & Ins.)	The Committee desire that the proposed review of all the completed assessments for the assessment year 1965-66 and earlier assessment years should be undertaken and completed expeditiously so that appropriate action for the recovery of additional tax, wherever due, may be taken without loss of time.
5.	1.15	-do-	The Committee find that the question how far a foreign company can be treated as one in which public are substantially interested is still under consideration of the Ministry in consultation with the Ministry of Law The Committee would urge the Government to come to an early decision in this regard. The Committee further stress that the criteria for determining whether the public have substantial interest in a company or not should also be clearly laid down in the I.A. Manual so as to avoid any ambiguity.
6.	1.16	-do-	The Committee have also been informed that the question of doing away with the subtle distinction between a public company and a closely held public company is still under consideration of the Government.
7.	1.17	-do-	The Committee cannot but deplore the inordinate delay in arriving at a decision in respect of a relatively simple issue. The Committee trust that Government will come to a decision without further loss of time.
8.	1.20	-do-	The Committee regret the delay in initiating suitable action against the officer concerned even though the Committee had desired that the results

			of the investigation and the action taken against the officer should be intimated within six months. The Committee would like to impress upon the Government the need to complete the review expeditiously so that whatever deterrent action is subsequently taken is really effective. The Committee would await a further report in this regard.
9.	1·21	-do-	The Committee also desire that the Government should arrive at an early decision in respect of the re-organisation of the Internal Audit Parties, essentially in consultation with the Revenue Audit. The Committee would like to be informed of the concrete steps proposed to be taken to strengthen the Internal Audit Organisation within 3 months.
10.	1.24	-do-	The Committee note that the Direct Taxes Enquiry Committee (Wanchoo Committee) have recommended that revenue matters in respect of which adequate remedies are provided in the respective statutes themselves should be excluded from the purview of Article 226 of the Constitution and that this recommendation is being examined in the Ministry. Considering the fact that the Report of the Direct Taxes Enquiry Committee had been presented as early as 1971, the Committee would urge the Government to come to an early decision in this regard.
11.	1.29	-do-	The Committee have been informed that the facts brought out by Audit regarding filing of revised returns for Assessment Years 1960-61 and 1961-62 are correct and that the Income-tax Officer disallowed the claim but allowed it only for giving effect to the appellate orders passed by the Appellate Assistant Commissioner. If so, the Committee would like to be informed whether the Government have gone in appeal against the orders of the P.A.C.

1	2	3	4
12.	1.30	Finance (Rev. & Ins.)	The Committee would further like to know whether any follow up procedure has been devised by Government with a view to ensure proper implementation of their instructions No. 745 dated 30th August, 1974.
13.	1.33	-do-	The Committee cannot but express their concern over the undue delay in arriving at a decision on issues which are of vital importance to national revenue.
14.	1.34	-do-	The Committee would urge the Government to come to an immediate decision in this regard so that appropriate action including the revision of the relevant assessments of the company, to the extent it is legally permissible, are not unduly delayed and result in further loss to the exchequer. The Committee desire that this should be finalised immediately and in any case not later than three months.
15.	1.35	-do-	The Committee would reiterate that responsibility for the failure or lapse on the part of the Board should be fixed and appropriate action taken. The reply of the Ministry is surprisingly silent on this recommendation of the Committee. The Committee require to the Ministry to explain this immediately.
16.	1.38	-do-	The Committee would like that the review by the Commissioner of Income-tax in these cases should be completed expeditiously and the results thereof communicated to the Committee.

APPENDIX

Summary of Main conclusions/Recommendations

Sl. No.	Para No. of the Report	Ministry concerned	Conclusions/Recommendations
1	2	3	4
1.	1.4	Finance (Rev. & Ins.)	The Committee desire that final replies in regard to those recommendations to which only interim replies have so far been furnished, should be submitted to them expeditiously after getting them vetted by Audit. The reason for the delay should be explained to the Committee.
2.	1.8	-do-	The Committee had earlier suggested that the review ordered by the Board with a view to finding out if similar mistakes had been committed should also be extended to seeing whether the Income-tax Officers in the relevant commissioner's charge had been rechecking the tax calculations and that this review should be conducted by the IAC (Audit). The Committee, however, very much regret to note that their suggestion has apparently not been acted upon by the Ministry and no valid reasons have been given for not accepting this suggestion of the Committee. The Committee would, therefore, reiterate their earlier recommendation and trust that this would be completed expeditiously under advice to the Committee.
3.	1.11	-do-	The Committee would like to be apprised of the final outcome of the investigations being conducted by the Commissioners of Income Tax to fix responsibility for the failure to carry out the review suggested by the Committee as early as 1964-65.

1	2	3	4
4.	1.14	Finance (Rev. & Ins.)	The Committee desire that the proposed review of all the completed assessments for the assessment year 1965-66 and earlier assessment years should be undertaken and completed expeditiously so that appropriate action for the recovery of additional tax, wherever due, may be taken without loss of time.
5.	1.15	-do-	The Committee find that the question how far a foreign company can be treated as one in which public are substantially interested is still under consideration of the Ministry in consultation with the Ministry of Law The Committee would urge the Government to come to an early decision in this regard. The Committee further stress that the criteria for determining whether the public have substantial interest in a company or not should also be clearly laid down in the I.A. Manual so as to avoid any ambiguity.
6.	1.16	-do-	The Committee have also been informed that the question of doing away with the subtle distinction between a public company and a closely held public company is still under consideration of the Government.
7.	1.17	-do-	The Committee cannot but deplore the inordinate delay in arriving at a decision in respect of a relatively simple issue. The Committee trust that Government will come to a decision without further loss of time.
8.	1.20	-do-	The Committee regret the delay in initiating suitable action against the officer concerned even though the Committee had desired that the results

			of the investigation and the action taken against the officer should be intimated within six months. The Committee would like to impress upon the Government the need to complete the review expeditiously so that whatever deterrent action is subsequently taken is really effective. The Committee would await a further report in this regard.
9.	1·21	-do-	The Committee also desire that the Government should arrive at an early decision in respect of the re-organisation of the Internal Audit Parties, essentially in consultation with the Revenue Audit. The Committee would like to be informed of the concrete steps proposed to be taken to strengthen the Internal Audit Organisation within 3 months.
10.	1.24	-do-	The Committee note that the Direct Taxes Enquiry Committee (Wanchoo Committee) have recommended that revenue matters in respect of which adequate remedies are provided in the respective statutes themselves should be excluded from the purview of Article 226 of the Constitution and that this recommendation is being examined in the Ministry. Considering the fact that the Report of the Direct Taxes Enquiry Committee had been presented as early as 1971, the Committee would urge the Government to come to an early decision in this regard.
11.	1.29	-do-	The Committee have been informed that the facts brought out by Audit regarding filing of revised returns for Assessment Years 1960-61 and 1961-62 are correct and that the Income-tax Officer disallowed the claim but allowed it only for giving effect to the appellate orders passed by the Appellate Assistant Commissioner. If so, the Committee would like to be informed whether the Government have gone in appeal against the orders of the P.A.C.

1	2	3	4
12.	1.30	Finance (Rev. & Ins.)	The Committee would further like to know whether any follow up procedure has been devised by Government with a view to ensure proper implementation of their instructions No. 745 dated 30th August, 1974.
13.	1.33	-do-	The Committee cannot but express their concern over the undue delay in arriving at a decision on issues which are of vital importance to national revenue.
14.	1.34	-do-	The Committee would urge the Government to come to an immediate decision in this regard so that appropriate action including the revision of the relevant assessments of the company, to the extent it is legally permissible, are not unduly delayed and result in further loss to the exchequer. The Committee desire that this should be finalised immediately and in any case not later than three months.
15.	1.35	-do-	The Committee would reiterate that responsibility for the failure or lapse on the part of the Board should be fixed and appropriate action taken. The reply of the Ministry is surprisingly silent on this recommendation of the Committee. The Committee require to the Ministry to explain this immediately.
16.	1.38	-do-	The Committee would like that the review by the Commissioner of Income-tax in these cases should be completed expeditiously and the results thereof communicated to the Committee.

17.	1.41	-do-	The Committee note that a review of other cases completed by the Income Tax Officers is in progress. The Committee would reiterate their earlier recommendation that if the review reveals that similar mistakes have been committed in other cases also, these cases should be referred to the CBI for further investigation.
18.	1.44	-do-	The Committee are not at all satisfied with the undue delay in ascertaining the correct position in these cases and in issuing necessary instructions to the field officers in this regard. This should be done immediately and necessary instructions issued without any further loss of time for the guidance of the field officers.
19.	1.45	-do-	The Committee would reiterate that after ascertaining the correct position, a general review, as already recommended should be undertaken to see whether assessments involving such industries have been properly made. This should be confirmed at the earliest.
20.	1.48	-do-	The Committee urge that Government should come to an early decision as to how the payments to foreign companies by Indian companies under collaboration agreements should be identified separately as to royalty and as to know-how. The final outcome in this regard should be reported to the Committee as early as possible.
21.	1.51	-do-	The Committee would like to await the decision taken in this regard which needs to be expedited.

1	2	3	4
22.	1.54	Finance (Rev. & Ins.)	The Committee desire that the Government should complete the study quickly, on the lines suggested, and issue suitable instructions to the assessing officers for a proper and uniform computation of tax under advice to the Committee.

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