P.A.C. No. 632

PUBLIC ACCOUNTS COMMITTEE (1978-79)

(SIXTH LOK SABHA)

EIGHTY-FIFTH REPORT

INCOME-TAX

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 4th Report (Sixth Lok Sabha).]

Presented in Lok Sabha on
Laid in Rajya Sabha on

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NEW DELHI

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Corrigenda to 85th Report of the Public Accounts Committee presented to the Lok Sabha on 23 August, 1978.

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Eighty Fifth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Fourth Report (6th Lok Sabha) on Income Tax commented upon in paragraphs relating to Income Tax included in Chapter III of the Reports of the Comptroller and Auditor General of India for the years 1973-74 and 1974-75, Union Government (Civil) Revenue Receipts, Volume II, Direct Taxes.

2. On 31 May, 1978 an 'Action Taken Sub-Committee' consisting of the following Members was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports:

1. Shri P. V. Narasimha Rao—*Chairman.*
2. Shri Asoke Krishna Dutt—*Convener*

Members

3. Shri Gauri Shankar Rai
4. Shri M. Satyanarayan Rao
5. Shri Kanwar Lal Gupta
6. Shri Vasant Sathe

3. The Action Taken-Sub-Committee of the Public Accounts Committee (1978-79) considered and adopted the Report at their sitting held on 10 August, 1978. The Report was finally adopted by the Public Accounts Committee (1978-79) on 17 August, 1978.

4. For facility of reference the conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the conclusions/recommendations of the Committee have also been appended to the Report in a consolidated form.

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

NEW DELHI;
August 21, 1978.
Sravana 30, 1900 (*S*).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the recommendations/observations of the Committee contained in their 4th Report (Sixth Lok Sabha) on Income-tax which was presented to the Lok Sabha on 21-11-1977.

1.2. Action Taken Notes on all the recommendations contained in the Report have been received from the Government and these have been categorised as follows:—

(i) *Recommendations/observations that have been accepted by Government:*

Sl. Nos. 8, 9, 16, 17, 18, 19, 24, 25, 28, 29, 31 & 32.

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

Sl. Nos. 11, 12, 15, 21 and 22.

(iii) *Recommendations/observations replies to which have not be accepted by the Committee and which require reiteration:*

Sl. Nos. 1, 10, 13 and 14.

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

Sl. Nos. 2, 3, 4, 5, 6, 7, 20, 23, 26, 27 and 30.

1.3. After presentation of 4th Report (Sixth Lok Sabha) to the Lok Sabha on 21 November 1977, Government were requested to furnish Action Taken replies on all the recommendations contained in the above-mentioned Report by 20 May, 1978. The Department of Revenue furnished unvetted Action Taken replies in respect of all the recommendations by 28 June, 1978.

1.4. The Committee expect that final replies to those recommendations/observations in respect of which only interim replies have so

far been furnished will be submitted to them duly vetted by Audit, without delay.

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

Failure to observe the prescribed procedure (*Paragraph* 1.26—*Sl. No.* 1).

1.6. Expressing their disapproval of the manner in which penalty proceedings were initiated in the cases commented upon by Audit and also unwarranted and costly lapses on the part of assessing officer, the Committee, in para 1.26 of their 4th Report had observed:

> "Section 274(1) of the Income-tax Act, 1961, provides that no penalty shall be imposed unless the assessed has been heard or has been given a reasonable opportunity of being heard and it is a well-settled principle of law that if such opportunity to show cause is not given to the assessee, the imposition of the penalty would be invalid. The Committee are concerned to note that in these two cases commented upon by the Audit as well as in five other cases, a senior officer of the status of Inspecting Assistant Commissioner of Income-tax had, in utter disregard of the mandatory provisions of the law, rushed through the penalty proceedings ignoring the assessee's requests for adjournments with the result that the orders in three of the cases were quashed on appeal as being bad in law by the Income-tax Appellate Tribunal who had also passed strictures against the officer. The failure to observe the prescribed procedure resulted in loss of revenue of Rs. 65,896 in these three cases. Admittedly, adequate time was available for giving second hearings in these cases. Thus, in the first case referred to by Audit (M/s Mallikarjune Cloth Stores), the Inspecting Assistant Commissioner had waited for more than two weeks before passing the impugned order but had failed to intimate a fresh date of hearing to the assessee. Similarly, in the second case (Shri K. Ramachandra Rao), though the officer had waited for three days beyond the date fixed for hearing before passing the penalty order, he did not, however, verify before finalising the proceedings whether the notice had been served before the date of hearing. The Committee take serious view of these entirely unwarranted and costly lapses."

1.7. The Department of Revenue, *vide* their Action Taken reply dated 12 June, 1978, have replied:

> "Suitable instructions have been issued *vide* paragraph 4 of Board's Instruction No. 1160 [F. No. 284/13/78 IT(Inv.) dated the 31st March, 1978 (copy annexed)]*".

1.8. The Committee note that sitable instructions have since been issued to all the Commissioners of Income tax regarding initiation and disposal of penalties. However, the Committee would like to know the action taken against the erring officer for unwarranted and costly lapses on his part.

Scrutiny of Assessment (*Paragraph* 2.35—*Sl. No.* 10)

1.9. Commenting on the inadequate scrutiny by the Income-tax Officer while making assessment in the case of Indian Cotton Mills Federations and calling for an enquiry in the circumstances in which such a costly lapse had occurred and for taking appropriate action against Income-tax Officer, the Committee, in para 2.35 of their 4th Report, had observed as follows:

> "While conceding that to qualify for exemption from tax, the application of income should be tantamount to 'expenditure' and it would, therefore, be incorrect in this case to have treated the advance to the firm of contractors and architects as application of the accumulated income to the specified purpose the Central Board of Direct Taxes have nevertheless contended that the Income-tax Officer 'was satisfied that a sum of Rs. 80 lakhs had been properly utilised for acquiring the building for housing the activities of the Federation'. The Committee, however, find on the basis of the evidence and the fact that the assessment has been reopened that the assessing officer had not examined in detail whether the income accumulated had in fact been actually utilised for acquiring the building. Admittedly, the information that the amount was not utilised for the purchase of property but was only paid as an advance to the contractors was available only later. This is an aspect which should have correctly been gone into *ab initio* by the assessing officer, particularly in view of the fact that amount of Rs. 80 lakhs had been paid by the Federation only two days prior to the expiry of the period stipulated

*Please see Chapter IV for full text of the Board's instructions.

in the Act for utilisation of the accumulated income. It would appear, *prima facie* that the Federation's claim had been accepted by the assessing officer without any genuine scrutiny. The Committee take an extremely serious view of this costly failure and would like the circumstances in which the lapse had occurred to be gone into in details with a view to taking appropriate action against the officer concerned. It may also be examined whether any clarificatory instructions for the guidance of the assessing officers are necessary.'

1.10. The Department of Revenue, *vide* their Action Taken Note dated 28 June, 1978, have replied:

"The assessee's view was not accepted by the assessing officer without making any genuine scrutiny. The ITO came to above conclusion on the basis of his bonafide understanding of the term 'utilised' appearing in Section 11 of the Income-tax Act, 1961. No adverse inference need be drawn against the officer concerned. As regards the necessity for issue of clarificatory instructions for the guidance of officers, it may be stated that the facts obtaining in the present case are peculiar and are not of common occurrence. It would, therefore, not seem necessary to issue any general instructions based on the facts of this case alone."

1.11. The Committee are unable to share the views of the Department of Revenue that "the Income-tax Officer came to the conclusion on the basis of his bonafide understanding of the term 'utilised' appearing in Section 11 of the Income-tax Act, 1961" and that he accepted the views of the assessee after making genuine scrutiny. The Committee are of the view that if genuine scrutiny had been made, such a costly lapse would have been avoided. The very fact that the Indian Cotton Mills Federation advanced a huge sum of Rs. 80 lakhs to the firm of contractors only two days before the expiry of the period stipulated in the Act for utilisation of accumulated income should have been a sufficient warning to the ITO for being vigilant. The Committee reiterate that circumstances in which such a costly lapse occurred may be enquired into to fix responsibility therefor.

The Committee desire that the Board should, on the basis of a random sample survey of assessment cases in a few Commissioners' Charges, issue instructions to the Field Officers clarifying the full import of the term 'utilised' in Section 11 of the Income-tax Act so as to serve as a guide to the Income-tax Officers in avoiding the mis-

take of interim expenditures of the type commented upon in this paragraph being treated as qualifying for exemption from Income-tax.

Reopening of assessments (Paragraph 2.38—Sl. No. 13)

1.12. Calling for the expeditious review of the past assessments and examination of the question whether the violation of Act relating to accumulation of income by the Indian Cotton Mills Federation was deliberate and Malafide, the Committee, in para 2.38 of their 4th Report, had observed:

> "Though late than never, instructions have now been issued to the Income-tax Officer, on 28 October, 1976, to reopen the assessments of Indian Cotton Mills Federation and to review the case in the light of the Supreme Court judgements in the cases of Lok Shikshna Trust and the Indian Chamber of Commerce. In view of the large revenue implicataions of this case, the Committee would urge the Department to complete the review of past assessments expeditiously and to take conclusive action to realise the taxes due. While reopening the assessments it may also be examined whether the violation by the Federation of the provision of the Act relating to the application of the accumulated income was deliberate and malafide. The Committee were informed during evidence that the question of cancellation of the Indian Cotton Mills Federation as a Charitable Trust would be gone into. The Committee would like to know the result of the examination."

1.13. In reply, the Department of Revenue, in their Action Note dated 28 June, 1978, have stated:

> "The assessment for the assessment year 1972-73 has been completed after being reopened under Section 147(b) of the Income-tax Act, 1961 on a total income of Rs. 36,19,709 raising a demand of Rs. 20,41,000. The order passed has been taken up in appeal by the assessee and the recovery of demand has been stayed till the first appeal is disposed of."

1.14. The Committee note that reassessment for the assessment year 1972-73 has been completed and a tax demand of Rs. 20,41,000 has been raised against the Indian Cotton Mills Federation. The

Committee would ilke to know the results of the reviews of assessments for other years also.

1.15. The Committee reiterate that the fact of violation of the provisions of Act relating to application accumulated income by the Federation may be examined to find out whether it was deliberate and malafide. The Committee would also like to know the follow up action taken on the assurance given to them during evidence that the question of cancellation of the Indian Cotton Mills Federation as a Charitable trust would be gone into.

Review of cases (Paragraph 2.39—S. No. 14)

1.16. Urging the necessity to review the cases of charitable trusts in the light of Supreme Court pronouncements, the Committee in para 2.39 had observed:

> "The Committee have been informed that instructions have already been issued on 7 November, 1976 for reviewing all cases of charitable trusts in the light of the pronouncements of the Supreme Court so as to take remedial action wherever called for and feasible. As these judgements are likely to have wide repercussions on the entire question of charitable trusts, the Committee need hardly emphasize the importance of completing this review early. They would like to be apprised soon of the outcome of the review and the steps taken to realise the tax short-levied in each case and the amount of tax realised."

1.17. In their Action Taken Note dated 28 June, 1978 the Department of Revenue informed the Committee as under:—

> "As regards the review of the cases of charitable trusts in the light of pronouncements of Supreme Court, the number of regular assessments completed is 577 and the number of assessments reopened as a result of the Supreme Court decisions is 303. This figure does not include cases relating to the charge of CIT Jaipur. It may be mentioned that the Direct Taxes Laws Committee (Choksi Committee) have made a number of recommendations with regard to the scope of charitable purposes within the meaning of Income-tax Act, 1961. The recommendations of the Committee are under the active consideration of the Government."

1.18. Notwithstanding the fact that the Direct Taxes Law Committee (Choksi Committee) have made number of recommendations with regard to the scope of charitable purposes within the meaning of Income-tax Act, 1961 which are stated to be under the active consideration of the Government, the Committee would like to know the outcome of the review undertaken in pursuance of the recommendation of this Committee and the steps taken to realise the tax short-levied in each case and the amount of tax realised.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

It also appears that in these two cases cited by Audit, the Inspecting Assistant Commissioner had fixed the first hearing of the penalty proceedings only in the last month of the limitation period and then rushed through the proceedings disregarding the assessee's requests for adjournment even though the notices were actually served on the assessees after the date and time fixed for the hearings. That this should have been so despite the steps stated to have taken by the Department in response to the repeated concern expressed by the Public Accounts Committee over the tendency to postpone completion of the proceedings towards the end of the limitation period is regrettable. The Committee have been informed in this context that since the beginning of the financial year 1974-75, the Department has started the practice of formulating an 'Action Plan' which contains a time bound Programme of work required to be done in specified areas during each financial year and that while prescribing targets in various areas of work, a high priority is given to the early disposal of time-barring assessments. It has also been claimed by the Department that after the introduction of the 'Action Plan' the percentage of time-barring assessments completed upto December had gone up from 52.4 and 54.4 per cent respectively in 1972-73 and 1973-74 to 73.2 and 72.6 per cent respectively in 1974-75 and 1975-76 and that for the financial year 1976-77, a target to complete all time-barring assessments by December, 1976 has been laid down. While the Committee would like to be apprised of the extent to which the targets for 1976-77 have actually been achieved, they, however, find that the 'Action Plan' does not contain any programme for the expeditious completion of penalty proceedings. Besides, what the Committee had in mind while recommending that an order of priorities of work should be prescribed was that timely attention should be paid to the big income cases with a view to ensuring that these were not postponed till these were about to become time-barred. It is not clear to the Committee how the 'Action Plan' constitutes fixation of such priorities. Since, under this Plan, an Income Tax Officer could dispose of 75 per cent of company cases and 70 per cent of non-company cases as the case may be and still leave out the real

big income cases as part of the remaining 25 per cent or 30 per cent they would like the Central Board of Direct Taxes to re-examine this aspect and ensure proper planning of the work of Income-tax Officers so as to complete in time and on priority basis the high income group assessments expeditiously.

[Sl. No. 8 (para 1.33) of the 4th Report of PAC (1977-78) (Sixth Lok Sabha)]

Action Taken

After the introduction of the 'Action Plan' the percentage of the timely disposal of the time-barring cases has shown a marked improvement. With a view to further improving the performance, target of 100 per cent disposal of such cases by 31st December, 1976 was set in the Action Plan for the year 1976-77. This had very good effect as 88.7 per cent of such cases could be completed by 31st December, 1976.

2. The Action Plan target for completion of assessments in respect of company cases with income above Rs. 25,000/- for the financial year 1977-78 was fixed at 85 per cent of the work load. It has been further raised to 90 per cent for the financial year 1978-79, so far as non-company scrutiny cases are concerned, a target of 75 per cent has been fixed in cases where the returned/last assessed income exceeds Rs. 1 lakh. This will fairly ensure that high income group cases are completed in time.

3. In the Action Plan for 1978-79, the disposal of penalty proceedings have been included as an objective Target has been set to reduce the pendency to be carried over as on 1.4.1979 to 90 per cent of the brought forward as on 1.4.1978. This will check the upward trend of pendency of penalties.

[Department of Revenue F. No. 241|2|77-A & PAC-II F. No. 236|228|74-A & PAC-II F. No. 228|7|78-IT AII New Delhi, the 28th June, 1978.]

Recommendation

According to the provisions of Section 11(I) (a) of the Income-tax Act, 1961, as they stood prior to their amendment by the Taxation Laws Amendment) Act, 1975 income derived from property held under trust wholly for charitable purposes is exempt from tax to the extent such income is applied to such purposes in India. Section 11 (2) of the Act also permits Trusts to accumulate or set apart sums for future application to such purposes provided the Trust had given due notice, in writing, to the Income-tax Officer indicating the purpose for which the income is being accumulated or set apart

and the period for which it is to be accumulated which shall in no case exceed ten years, and the money so accumulated or set apart is also invested in specified securities within the time prescribed. The Committee note that in the present case relating to the Indian Cotton Mills Federation, treated as a charitable institution, the Federation had accumulated certain income (Rs. 1.10 crores) during the period 1962 to 1971 with the express object, *inter alia*, of acquiring a building to house the activities of the ICMF Research Association and the All India Federation of Cooperative Spinning Mills. Though the accumulated income had to be utilised for the specified purpose before 31 December, 1971, the assessee Federation had initiated action towards that and only on 29 December, 1971 and advanced an amount of Rs. 80 lakhs to a firm of contractors and architects, who kept the amount in their books as an interest-free advance from the Federation till they utilised it on the purchase of a building and on its renovation only in the subsequent years which clearly fell beyond the period allowed under the law. Yet, surprisingly enough, overlooking the fact that the Federation had not actually acquired the building but had merely advanced the amount to the contractors, the Income-tax Officer had incorrectly exempted from tax the amount so advanced treating it has having been utilised for the purpose for which it was accumulated, which resulted in a short-levy of tax of Rs. 78.20 lakhs for the assessment year 1972-73.

[Sl. No. 9 (Para 2.34) of 4th Report of the PAC (1977-78) (Sixth Lok Sabha)]

Action Taken

The re-opened assessment for the assessment year 1972-73 has since been completed raising an additional demand of Rs. 20,40,611. The assessee has gone in appeal against the order of re-assessment, which is pending.

Department of Revenue [F. No. 236|307|75-A&PAC-II New Delhi, the 2-6-1978.]

Recommendation

Incidentally, the Committee find that the Direct Taxes Enquiry Committee had also made a number of far-reaching recommendations in regard to the control and regulation of public trusts so as to ensure that trusts were not exploited to subserve private ends and to check misuse of charitable institutions. The Committee would like to be informed in some detail of the specific action taken in pursuance of these recommendations.

[S.No. 16 (Para 2.41) of 4th Report of PAC (6th Lok Sabha)]

Action Taken

The Direct Taxes Enquiry Committee (Wanchoo Committee) had made 14 recommendations (recommendations number 169 to 182) with regard to charitable and religious trusts.

Recommendation numbers 169 to 174 recommendation numbers 176—178 and recommendation number 180 have been accepted and implemented.

Recommendation number 175 was to the effect that all 'ghost' or anonymous donations to charitable trusts should be taxed at the rate of 65 per cent. This recommendation was accepted by the Government and a provision in this behalf was introduced in the Taxation Laws (Amendment) Bill, 1973. However the Select Committee of the Lok Sabha on the said Bill deleted the provision on the ground that it would cause great hardship to such trust.

Recommendation number 179 consists of the follwing three parts:—

(a) the term 'substantial portion' used in section 13 of the I.T. Act, 1961 should be so defined as to mean any property or income exceeding Rs. 1,000;

(b) The term 'substantial contribution' used in the said section should be defined as an amount exceeding 5 per cent of the corpus of the trust; and

(c) the persons mentioned in section 13 (3) of the I.T. Act, 1961 should also include a trustee and his relative and the term 'relative' should also include relatives through marriage.

The recommendations at (a) and (c) above have been accepted and implemented. The recommendation at (b) above was accepted in a modified form by providing a monetary unit of Rs. 5,000 instead of linking the 'substantial contribution' to the percentage of the corpus of the trust.

Recommendation No. 181 has not been accepted.

Recommendation No. 182 was accepted by this Ministry and the Ministry of Law, Justice and Company Affairs was requested to take necessary action in the matter. We have been informed by the Legislative Department that this recommendation had been brought to the notice of the Law Commission in November, 1972 for consideration along with a proposal for an all-India legislation

regarding public trusts referred to the Commissioner in April, 1970. The Law Commission does not appear to have presented a report in this regard so for.

[Department of Revenue F. No. 236/307/75-A&PAC-II/F.No. 181/1/78 -II (AI) dated the 28th June, 1978)]

Recommendation

This case relates to assessment of income of a cooperative society (*viz.*, M/s. Ambur Cooperative Sugar Mills Ltd., Vadapudupet) engaged in the manufacture of sugar. This Society had disclosed gross profits of Rs. 33 lakhs and 9.5 lakhs for the years ended 30th June, 1968 and 30th June, 1969, relevant to the assessment year 1969-70 and 1970-71 respectively, and the assessments for the two years were completed in March, 1971 (revised in October, 1972) and January, 1973 on the basis of these profits. The Committee find that based on a study made by the Directorate of investigation the Central Board of Direct Taxes had in their circular of 28th October, 1968 to the Commissioners of Income Tax circulated data which indicate that consequent on the introduction of the scheme of partial decontrol of sugar from 23rd November, 1967 which permitted the Sugar Mills to sell 40 per cent of their production anywhere in India at the free market price subject to releases from factories authorised by the Government of India Sugar Mills had made abnormal profits. Assuming the average free sale price of sugar after 15th June, 1968 to be Rs. 300/- per quintal, according to the terms of the Circular this Society should have made a profit of Rs. 67.94 lakhs for the period from 1st October, 1967 to 30th September, 1968. Assuming, on the basis of press reports, that the actual price of free sale sugar was basis of press reports, that the actual price of free sale sugar was Rs. 400/- per quintal or more, the quantum of profit, according to the Circular could be estimated to be at least 20 per cent more. On this basis the profit of the assessee society for the period from 1st October, 1967 to 30th September, 1968 should be around Rs. 80 lakhs and hence for the period ended 30th June, 1968, relevant for the assessment year 1969-70, the profits on proportionate basis, should be around Rs. 60 lakhs. It would thus appear that for the assessment year 1969-70, assessee society had not disclosed profits to the extent of Rs. 27 lakhs. If the same basis as given in the aforesaid Circular is adopted for the year ended 30th June, 1969, also relevant to the assessment year 1970-71, the profits disclosed by the society would also appear to fall short by over Rs. 28 lakhs for that assessment years 1969-70 and 1970-71, involving a tax revenue of Rs. 22 lakhs, apart from the penalty leviable for disclosure of Income.

The Government however, maintained that the assumptions contained in the Board's circular letter of 1968 were not true in the case of the assessee Society and there were no grounds for reopening the assessments already made for the years 1969-70 and 1970-71. The Government have based their contention on the following grounds:

(i) that the average sale price of Rs. 300/- per Q for free-sale sugar mentioned in the circular was not true in the case of the society in the assessment year 1970-71.

(ii) that the free-sale sugar actually sold by the society did not amount to 40 per cent of the total production as assumed in the circular, because the actual sale was subject to authorisation by the Directorate of Sugar and Vanaspati which were for far less quantity;

(iii) that the recovery of sugar from the cane purchased was less in 1970-71 which enhanced the cost of production and reduced the profitability;

(iv) that the availability of sugar-cane during the assessment year was comparatively less due to drought situation and, therefore, the society had to purchase cane at a price substantially higher than fixed by Government. This also enhanced the cost of production and reduced profitability.

Each of these grounds have been discussed in the following paragraphs.

[S. No. 17 (para 3.50) of 4th Report of PAC (6th Lok Sabha)]

Action Taken

No reply to recommendation No. 17 (Para 3.50) has been sent because no formal reply to this was considered necessary. The points contained in this para were discussed in the following paragraphs No. 3.51 to 3.58.

[Department of Revenue F. No. 236/297/75-A&PAC-II (Pt.) dated 25-7-1978]

Recommendation

The Committee note that the estimate of profit indicated in the Board's circular of October, 1968 was based on the assumption that the average sale price of free-sale sugar after 15th June, 1968 was Rs. 300/- per quintal Indicating the probable profits earned by each sugar mill, the circular advised the Assessing Officers that according to the press reports, the price of sugar had gone up to Rs. 400/- and above and, therefore, the quantum of profits should be at least 20 per cent more than that estimated in the circular. In this connection, the Department of Revenue and Banking have pointed out

that in the assessment year 1969-70, the Society sold free-sale sugar at Rs. 332.79 per quintal, but the profitability was less because—

(i) the quantity of free-sale sugar actually sold by the society was only 23 per cent of the total production as against 40 per cent assumed in the circular; and

(ii) the society purchased cane at a price higher than that assumed in the circular.

In the assessment year 1970-71, the Department have pointed out that the average rate of sale of free sugar was Rs. 276/- per quintal and that the cost of production had also gone up from Rs. 160 per quintal in 1969-70 to Rs. 165/- per quintal. Besides, during this year also the quantum of free-sale sugar actually sold is stated to have been only 27 per cent of the total production as against 40 per cent assumed in the circular. The Committee also find that in his communication dated 28th July, 1975 to Audit, the Income-tax Officer has contended that there has been no 'suspicious sale' and that the entire free-sale sugar was sold to the highest bidder in the sealed tender and to verifiable parties. The Committee would, however, like Government to satisfy themselves by way of abundant caution that all the sales were genuine and at the declared price and that no attempt was made by the assessee to cover up any part of the profits so as to evade tax.

[S. No. 18, (Para 3.51) the 4th Report of the PAC (1977-78) (Sixth Lok Sabha)]

Action Taken

The Society sold 27,333 and 44,393 quintals of free sugar during the assessment years 1969-70 and 1970-71, respectively. A test verification has since been made in respect of the sale of 3842 and 24208 quintals of such free sugar for the assessment years 1969-70 and 1970-71, respectively. It was found that in respect of all these transactions involving 16 purchasers, the quantum and the value of sales as admitted by the Society tallies with the quantum and the value as recorded in the books of the purchasers. No discrepancy was noticed in any case. There is, therefore, no evidence to indicate that any attempt was made by the Society to cover up any part of profits by under-statement of sales.

[Department of Revenue F. No. 236/297/75-A&PAC-II. F. No. 411/1/78-17 (INV) dated 31st July, 1978].

Recommendation

The Committee note that, in his reply dated 28th July, 1975, the Income-tax Officer had sought to defend the assessments of income made by him on the ground that the assumptions on the basis of

which profit of this Society for the period 10th October, 1967 to 30th September, 1968 was estimated, as per the Board's Circular of October 1968, to be Rs. 67.94 lakhs did not apply in this case. One of the assumptions made in the Circular was that 44 per cent of the production of sugar would be released or free sale. This Society is stated to have sold in the free market 27,333 quintals of sugar *i.e.*, 23 per cent of the production of 1,18,189 quintals in 1969-70. In 1970-71. The free sale sugar was said to be 44,393 quintals, i.e. 27 per cent of the production of 1,63,337 quintals. The Committee have been informed by the Department that the "figures of sale of free sugar were not checked up at the time of assessment with the actual releases made by the Directorate of "Sugar and Vanaspati". Even the figures of production were not checked up with the Directorate of Sugar before making the assessments In view of this, the Committee cannot accept as conclusive the assessment of the I.T.O., based as it was on data supplied by the Society itself. The Committee would like the Central Board of Direct Taxes to impress upon the assessing officers the need to scrutinise all the material facts with reference to official sources at the time of assessment itself.

[Sl. No. 19 (Para 3 52) of 4th Report of the Public Accounts Committee (1977-78)]

Action Taken

The need to scrutinise the material facts with reference to the information available from official sources while completing the assessments of sugar mills has been emphasised on the Income-tax Officers *vide* Board's Instruction No. 1183 [F. No. 411|1|78-IT(Inv.)] dated the 7th June, 1978 (copy enclosed).

[Deptt. of Revenue F. No. 236/297/75-A&PAC-II
F. No. 411/1/78-IT (INV), dated the 20-6-78]

ANNEXURE

INSTRUCTION NO. 1183

F. No. 411|1|78-IT (Inv.)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 7th June, 1978.

To

All Commissioners of Income-tax.

Sir,

SUBJECT.—Assessments of sugar mills—Instructions regarding—

The Directorate of Inspection (Investigation) in their F. No. Inv.-III|DL(13)|68 dated the 28th October, 1968 (CBDT Bulletin XV|11|194) dealt with the effect of partial decontrol of sugar on sugar industry and suggested the points to be looked into and scrutinised at the time of assessment of sugar mills. It was pointed out *inter alia* that particulars regarding stocks of sugar held by various sugar factories, their production of sugar and actual release by the Government for free sale could be obtained from the Directorate of Sugar and Vanaspati, Department of Food, Government of India.

2. The Public Accounts Committee (1977-78) in their Fourth Report have observed that an Income-tax Officer assessing a co-operative society engaged in manufacture of sugar had not checked up the figures of production and sale of free sugar as disclosed by the assessee with the figures available with the Directorate of Sugar & Vanaspati before he completed the assessments. The Committee have recommended that the Board should impress upon the assessing officers the need to scrutinise all the material facts with reference to official sources before the completion of any pending assessment.

3. In 1967, the Government introduced the scheme of partial decontrol of sugar under which a certain percentage of production was to be sold by the manufacturers to the authorised parties at controlled rates and the balance could be freely sold at the best prices it could fetch in the open market. The percentages of levy and free sugar are being prescribed from time to time by the Directorate of Sugar and Vanaspati, who maintain a record of the quantities of sugar produced, despatched and delivered by each sugar factory in respect of each "sugar Year" (October to September), as also of the periodical releases of levy and free sale quotas. The records of the Directorate of Sugar and Vanaspati, therefore, provide an important source of information for checking the figures disclosed by the sugar mills during the course of their assessment proceedings. Similarly, valuable information is also available with the Central Excise authorities.

In order to ensure adequate assessments being made, the Board would impress upon the assessing officers the need to scrutinise all

the material facts with reference to the information that can be gathered from various official sources.

4. Broad guidelines for dealing with cases of sugar mills and sugar dealers are given in Chapter XIX of the book "Investigation of Accounts". Income-tax Officers dealing with 'sugar' cases should make themselves thoroughly familiar with these guidelines.

5. The above instructions may be brought to the notice of all the officers working in your charge.

Yours faithfully,

Sd|-

(R. VENKATA RAMIAH)

Under Secretary, Central Board of Direct Taxes.

Copy forwarded to:—

1. Director of Inspection (Income-tax & Audit) | (Inv.)| (Research & Statistics/Publication & Public Relations).
2. Director, O&M Services, New Delhi.
3. Director of Training, IRS Staff College, Nagpur.
4. Bulletin Section of DI(P&PR)-5 copies.
5. All Officers and Sections in the Technical wing of Central Board of Direct Taxes.
6. The Comptroller & Auditor General of India—20 copies.

Sd/- (R. VENKATA RAMIAH)

Under Secretary, Central Board of Direct Taxes.

Recommendation

In view of the deficiencies and lacuna pointed out in the earlier paragraphs, the Committee feel that there is scope for an indepth inquiry into the profitability of the assessee society during the assessment years 1969-70 and 1970-71.

The Board's circular of 1968 gave a list of 35 factories in different zones of the country each of which had made an estimated profit of over Rs. 30 lakhs. The circular prescribed very specific inquiries to be made in the case of sugar factories such as strict proof of pay- by the Government, sample checks in respect of weighment of cane ment for purchases of cane at prices higher than those prescribed and laboratory analysis of sugar recovery from various samples of

sugar-cane, coordination of sales of free sale sugar with the quantities released or free sale by the Directorate of Sugar and Vanaspati, Government of India, verification of free market prices prevailing on the dates of release as ascertained from that Directorate, verification of stock and production particulars with the details obtained from the Directorate of Sugar etc. The need and the effectiveness of these inquiries are apparent from the fact that in the case of 6 sugar mills, according to the data furnished by the Department of Revenue and Banking, additions amounting to as much as Rs. 2.24 crores were made on the basis of investigations carried out in accordance with the guidelines prescribed in the Board's circular. The Committee cannot therefore but deplore the complacency with regard to the strict observance of these guidelines in the case of assessee society."

[S. No. 24-25 (Paras 3.57 & 3.58) of the 4th Report of the PAC (1977-78) Sixth Lok Sabha)]

Action Taken

The assessments for the assessment years 1969-70 and 1970-71 have been reopened to carry out an enquiry in depth as desired by the Committee.

[Department of Revenue F. No. 236/297/75-A&PAC-II, F. No. 411/1/78-II (Inv.), dated 31st July, 1978]

Recommendation

The Committee find that in this case the assessment for assessment years 1967-68 to 1969-70 was completed by the Income-tax Officer on 30 January, 1974 but demand notices specifying the sum payable were not served on the assessee till 10 June, 1975 The Department have explained that at the time these assessments were completed, functional scheme was in operation and it being the close of the month, the Calculation Cell was busy with a large number of assessments for calculation of taxes. It is further stated that the Calculation Cell "could attend only to the time barring assessments of 1971-72 leaving this case to be done later". It has also been stated that in the assessments made, tax payable was not determined and consequently the Income Tax Officer was in doubt whether such assessment orders could be treated as legal or not. In the meantime the Income Tax Officer who had made these assessments was stated to have been transferred and, according to the Department, the successor was not sure whether he could issue demand notices in respect of orders passed by his predecessor. The Committee are not satisfied with this explanation. The Board has already issued executive

instructions on 22 March, 1971 to the effect that every effort should be made to secure the service of demand notice within a fortnight and in the case of particularly obstructive assessees within a month of the passing of the assessment order. The instructions were reiterated by the Board on 22 September 1973. The existing procedure provides for noting down of the dates of assessments and service of demand notice in the "Demand and Collection Register". It appears that entries in this Register were not scrutinised periodically by the Income Tax Officers concerned otherwise such a delay would not have escaped their attention The Committee are perturbed to find that during the year 1975-76 alone, the Internal Audit were able to detect 249 cases of delay of more than 60 days in the issue of demand notices. The Committee are therefore, inclined to believe that executive instructions issued by the Board were honoured more in the breach than in observance. The Committee recommend that Government should review the existing control mechanism and try to bring about improvements so as to plug loopholes for possible malpractices resulting in loss to the national exchequer.

[S. No. 28 (Para 4.15) of the 4th Report of the PAC (Sixth Lok Sabha) (1977-78)]

Action Taken

The Board have considered the recommendations of the Committee and it has been decided that instructions would be issued to the following effect:

(1) The Income-tax Officer should simultaneously sign the assessment order, the assessment form, demand notice and the challen/refund voucher and thereafter make the requisite entries in the Demand and Collection Register.

(2) The demand notice should be got served as expeditiously as possible and in any case within a fortnight of the date of the order. The date of service should then be entered in the relevant column of the Demand and Collection Register.

(3) The Income-tax Officer should check the Demand and Collection Register every month to ensure that the date of service of demand notice has been noted against each entry in the Register. Reasons for omissions, if any; should then be ascertained and suitable steps taken to ensure the service of the demand notice without any further delay.

(4) IACs should inspect (and initial in token thereof) the Demand & Collection Registers of their ITOs every month

on the 7th of each month and ensure that all the relevant entries have been made and that totals of the various columns have been drawn.

[Department of Revenue, F. No. 236/127/75-A&PAC-II, dated the 23 June, 1978].

Recommendation

The Committee find that in the case of a firm engaged in the business of film production, in the assessment for 1965-66 completed on 27th September, 1969, the value of the closing stock of 3 films produced during the year was stated by the assessee firm at Rs. 4.80 lakhs but viewing it as an under statement, the Department increased it to Rs. 5.83 lakhs. Accordingly in the original assessment for 1966-67 made on 12th February, 1971 the figure of opening stock was taken as Rs. 5.83 lakhs. However, on an appeal of the assessee the assessment for 1965-66 was set aside by the Appellate Assistant Commissioner on 17th August, 1972. In the fresh assessment made on 30th July, 1973 for 1965-66 the figure of closing stock was taken at Rs. 2,39,750|- in accordance with executive guidelines issued by the Central Board of Direct Taxes on 18th September, 1972. Consequential action to revise the figure of opening stock in the assessment for 1966-67 was not taken by the Department. Admitting the resultant under-assessment of income of Rs. 3,43,250|- and short levy of tax of Rs. 2.00 lakhs, the Department has pleaded that follow up action to revise the figure of opening stock could not be taken in this case because "by the time the fresh assessment for 1965-66 was completed on 30th July, 1973 the appeal against the assessment for 1966-67 had already been dismissed by the Appellate Assistant Commissioner on 29th March, 1973." The Committee understand that consequent on cancellation of the assessment for 1966-67 by the Tribunal on 31st May, 1975, instructions have been issued to the ITO for early finalisation of this assessment. The Committee would like the case to be finalised without delay. The Committee regret that the Department had not been sufficiently alert in closely following up the case resulting in the mistake which would have caused a loss of Rs. 2.00 lakhs to the exchequer.

[Sl. No. 29 (Para No. 5.15) of the 4th Report of the Public Accounts Committee (1977-78)].

Action Taken

The fresh assessement for the assessment year 1966-67 after taking the necessary remedial action has since been completed on 13-1-1978.

[Department of Revenue, F. No. 236|292|75-A&PAC-II, New Delhi, the 18 May, 1978].

Recommendation

The Committee also find that assessments for six years from 1961-62 to 1966-67 were set aside in November, 1968 and January, 1972, but none of these were-remade, although tax of Rs. 8,17,670 and additional tax of Rs. 80,180 aggregating Rs. 8,97,850 was payable by the assessee in pursuance of the original assessments. The assessee had paid Rs. 4,22,680 only. Instead of taking action to recover the arrears due from the assessee, a refund of the aggregate amount of Rs. 1,94,551 representing the excess over advance tax paid by the assessee was allowed to the assessee for the assessment years 1962-63 to 1966-67 leaving revenue exceeding rupees seven lakhs as unassessed and unrealised. The Committee are unhappy at this action especially when no security covering the arrears due from the assessee was taken before hand and it was only later that the Assistant Commissioner was directed to obtain adequate security. The Committee have been informed that in January, 1977 assessments for assessment years 1959-60 to 1966-67 have all been set aside by the Appellate Assistant Commissioner and that the ITO has been directed to make fresh assessments. The Committee would like the reassessment for these years to be made on a priority basis so that this case which is hanging fire for well over 15 years is finalised. The Committee also recommend that suitable instructions should be issued to the field not to make refunds of tax deposits in cases where-reassessments are pending.

[Sl. No. 31(Para 6.14) of the 4th Report of Public Accounts Committee (1977-78) (Sixth Lok Sabha)].

Action Taken

The assessments set aside by theAppellate Assistant Commissioner of Income-tax in January, 1977 are still pending.

Necessary steps have been taken to ensure that these assessments are completed as early as possible.

2. A copy of Instruction No. 1157 datd 21-3-1978 issued in pursuance of the Committee's recommendation regarding issue of refunds in such cases, is annexed.

[Department of Revenue, F. No. 236|321|75-A&PAC-II, 228|5|78-ITA-II), dated the 2-6-78].

ANNEXURE

INSTRUCTION NO. 1157
F. No. 228/5/78-ITA. II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 21st March, 1978.

From:

Director, Central Board of Direct Taxes.

To:

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Refunds —Whether should be issued when re-assessment proceedings are pending—Regarding—*

Attention is drawn to para 6.14 of the 4th Report (1977-78) of the PAC (copy enclosed) in which action of the Department in granting refund of the amount of tax representing the excess over advance tax proceeding were pending, came in four criticism.

2. An assessment is normally set aside by an appellate authority when in its view an addition is made without giving a proper opportunity to the assessee or when the facts relied upon by the Income-tax Officer are disputed. The very fact that the addition made is not deleted by the appellate authority shows that but for the defects pointed out above, the same might have been sustained wholly or substantially. It is, therefore, reasonable to infer that subject to the information forthcoming as a result, of fresh opportunity given to the assessee, there is a likelihood of the addition or at least a substantial part thereof being added on re-assessment resulting in the creation of a sizeable tax demand. Issue of refund in such cases as a result of the original assessment being set aside may possibly jeopardise the recovery of tax demand created on re-assessment, particularly in cases involving large additions.

In such cases it is desirable that the Income-tax Officer before actually granting the refund, examines the question whether the grant of the refund is likely to adversely affect the revenue. In case he is of the opinion that the grant of refund is prejudicial to revenue he may refer the matter to the Commissioner of Income-tax seeking his approval to withhold the refund under section 241 of the Income-tax Act, 1961. In case refund is withheld, the re-

assessment should be completed without any undue delay so that such refund could be adjusted against the resultant tax demand and unnecessary payment of interest is avoided.

3. These instructions may be brought to the notice of all officers working in your charge.

Your faithfully,

Sd/-

(J. P. SHARMA)

Director, Central Board of Direct Taxes

Copy forwarded to:—

1. Director of Inspection (Income-tax & Audit)/Investigation/ Research and Statistics/Publication and Public Relations, New Delhi.
2. Comptroller and Auditor General of India. (25 copies).
3. Directorate of O&M Services (Income-tax), 1st Floor, Aiwan-e-Ghalib, Mata Sundri Lane, New Delhi. (5 copies).
4. All Officers/Sections of Central Board of Direct Taxes.
5. Bulletin Section of D.I. (RS&P), New Delhi. (5 copies).
6. Joint Secretary and Legal Adviser, Ministry of Law and Justice, New Delhi.

Sd/-

(J. P. SHARMA)

Director, Central Board of Direct Taxes.

Recommendation

For lack of time, the Committee have not been able to examine some of the paragraphs relating to Income Tax included in Chapter III of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect, however, that the Department of Revenue & Banking and the Central Board of Direct Taxes will take necessary remedial action in these cases, in consultation with the Statutory Audit.

[Sl. No. 32 (Para 6.15) of the 4th Report of Public Accounts Committee (1977-78) (Sixth Lok Sabha)]

Action taken

In all cases referred to in the paragraphs relating to Income-tax included in Chapter III of the Report of the C&AG for the year 1974-75, suitable remedial action, wherever necessary, has been/ is being taken in consultation with the Statutory Audit.

[Department of Revenue F. No. 236/321/75-A&PAC-II dated the 19th June, 1978].

.. CHAPTER III

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

Recommendation

2.36. A more important and basic issue arising out of this case is whether an institution like the Indian Cotton Mills Federation comprising only of business interests and primarily concerned with the promotion and protection of the cotton textile industry and whose activities evidently have no real connection at all with the idea of charity can be treated as a charitable organisation so as to qualify for tax concessions and exemptions. The Committee have been informed that the Indian Cotton Mills Federation has been exempted from Income-tax under Section 11 of the Act from the assessment year 1961-62 onwards on the basis of the judgement of the Supreme Court in the Andhra Chamber of Commerce case. In that case, the Supreme Court had held that the objects of the Chamber, *viz.* to promote and to protect trade, commerce and industries, to aid stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof, constituted 'objects of general public utility' and hence were covered by the definition of 'charitable purpose' in section 2(15) of the Act. It has been stated that since the main object of the Indian Cotton Mills Federation, *viz.* 'to promote and to protect trade, commerce and industries of India in general and more particularly in respect of the cotton textile industry and allied industries and trade' was also similar to the objects of the Andhra Chamber of Commerce, the Supreme Court decision had been applied to the Federation also and recognition accorded to it as a charitable institution with effect from 1st April, 1961. However, while doing so, the fact that the Supreme Court decision in the case of the Andhra Chamber of Commerce was with reference to the provisions of the Income-tax Act, 1922 and that the definition of 'charitable purpose' had been amended in the Income-tax Act, 1961, which is applicable in the present case to exclude activities carried on for profit though they might be of public utility, appears to have been lost sight of.

2.37. While the Chairman of the Central Board of Direct Taxes has been good enough to admit during evidence that "the provisions of law have been misapplied in this case" and that "the amendment made in law was not taken into account in applying the Andhra Chamber of Commerce case", it is not very clear to the Committee why the applicability of section 11 of the Income-tax Act, 1961, and the correctness of extending the benefits under the Section to the Indian Cotton Mills Federation were not examined at the time of registering the Federation as a charitable trust in 1973 as required under an amendment to the Act introduced with effect from 1st April 1973 by the Finance Act, 1972. It should have at least been possible to remedy the situation after the legal position in this regard had been placed beyond all doubt by the clear and unambiguous judgements of the Supreme Court in the case of Sole Trustee Lok Shikshna Trust Vs. CIT Mysore (101 ITR 234) and Indian Chamber of Commerce Vs. CIT West Bengal (101 ITR 797), which admittedly were well within the knowledge of the field officers and the Commissioners of Income-tax were also expected to review the cases in the light of court decisions and judgements on their own. Having due regard to the large sums of money incorrectly exempted from tax as having been applied to charitable purposes and the influence known to be wielded by the Indian Cotton Mills Federation, the Committee would like to be satisfied that the initial misapplication of the law in this case as well as the subsequent inaction on the part of the Department were *bona fide* errors and unavoidable. They accordingly recommend that a thorough probe should be conducted into the handling of this case from time to time and the circumstances in which the Federation was exempted from tax for a number of years to the detriment of revenue by incorrectly treating it as a charitable institution. The Committee would await a detailed report in this regard.

2.40. In pursuance of the Committee's recommendations relating to Charitable and Religious Trusts contained in their 121st Report (Fourth Lok Sabha) and the recommendations of the Direct Taxes Enquiry Committee, the legal provisions relating to the assessment of trusts have been amended from 1 April, 1973 to provide for the registration of trusts and a compulsory audit of such trusts with an income exceeding Rs. 25,000. The law has also been further amended from 1 April, 1977 to specify the manner in which the funds of such trusts should be invested. If, however, appears that the Central Board of Direct Taxes have not thought it fit so far to review how far the amended provisions of the law

have been actually implemented. In view of the fact that trusts are known to be used as a medium of tax avoidance and a number of individuals connected with large industrial and business houses have also set up religious and charitable trusts ostensibly for charitable purposes, the Committee feel that it would be worthwhile to undertake a review in this regard with a view to taking necessary remedial measures to tighten the procedure wherever found necessary. The adequacy of the existing machinery with the Department to enforce the amended provisions of the law also needs to be gone into so as to take timely corrective measures.

[Sl. Nos. 11, 12 and 15 (Paras 2.36, 237 and 2.40) of the 4th Report of PAC (1977-78) (Sixth Lok Sabha)]

Action Taken

2.36. Regarding the basic issue whether the institutions like the Indian Cotton Mills Federation comprising only of business institutions and primarily concerned with the promotion and protection of the Cotton Textile Industry can be treated as a charitable organisation, it may be stated that the promotion and protection of trade and industry would be an object of general public utility. However, if the institution is carrying on an activity for profit the institution will be hit by the mischief of section 2(15) of the I.T. Act, 1961 and cease to be charitable.

2.37. The evidence given during the oral hearings that the provisions of law have been misapplied in this case was with reference to the application of the income in the form of payment of Rs. 80 lakhs to the firm of architects for the aquisition of the building. The issue whether the sum of Rs. 80 lakhs could have been said to be properly applied for charitable purposes was the main point for consideration. The facts relating to the Indian Cotton Mills Federation had been gone into and it had been felt at that time that it would qualify to be held as a charitable institution. It may be stated that on a petition by the Indian Cotton Mills Federation on the 28th June, 1977 relating to assessment year 1972-73 which has been completed, a decision has been taken to keep the tax demand in abeyance till the first appeal filed by the assessee is disposed of. Regarding the examination of the applicability of section 11, at the time of registration under section 12A of the Income-tax Act, 1961, it may be stated that the assessment for assessment year 1972-73 was completed on 15th January, 1973 while section 12A came into operation *w.e.f.* 1st April, 1973. Under section 12A the assessee submits an application for registration of the trust. The CIT is not expected to apply his mind at that stage as to whether the trust is entitled to exemption.

So the mere fact that the trust is registered under section 12A, does not make the income of the trust exempt.

2.40. Regarding the recommendation of the Committee for a review of the registration of trusts and compulsory audit, the observations of the Committee have been noted and a review in this regard will be undertaken by the Department. Section 13(1) of the Income-tax Act, 1961 was inserted by the Taxation Laws (Amendment) Act, 1975. It provided that if any of the funds of charitable trusts or religious trusts or institution are invested or deposited or continue to remain invested or deposited other than in any of the modes or forms specified in section 13(5) at any time during any previous year commencing on or after 1st April, 1978, the income of the trust or institution will not be eligible for exemption under section 11 or section 12 of the Income-tax Act, 1961 for the assessment year 1979 or any subsequent years. In order to give more time to the trusts or institutions to bring their investments in line with the provisions of section 13(5) of the Income-tax Act, the date for change over to the specified modes or forms has been extended by three years, *i.e.* from 1st April, 1978 to 1st April, 1981. Therefore, if the funds of any such trust or institution are invested or deposited or continue to remain invested or deposited in any mode or form otherwise than those specified in section 13(5) at any time during the previous year commencing on or after 1st April, 1981 the trust will not be entitled to exemption under section 11 or section 12 of the Income-tax Act, 1961 for the assessment years 1982-83 and subsequent years. The observations of the Committee have been noted and the review desired will be conducted at a later stage since extension has been given to the trusts to change over their holdings.

Recommendation number 179 consists of the following three parts—

(a) the term 'substantial portion' used in section 13 of the I.T. Act, 1961 should be so defined as to mean any property or income exceeding Rs. 1,000;

(b) the term 'substantial contribution' used in the said section should be defined as an amount exceeding 5 per cent of the corpus of the trust; and

(c) the persons mentioned in section 13(3) of the I.T. Act, 1961 should also include a trustee and his relative and the term 'relative' should also include relatives through marriage.

The recommendations at (a) and (c) above have been accepted and implemented. The recommendation at (b) above was accepted in a modified form by providing a monetary unit of Rs. 5,000 instead of linking the 'substantial contribution' to the percentage of the corpus of the trust.

Recommendation No. 181 has not been accepted.

Recommendation No. 182 was accepted by this Ministry and the Ministry of Law, Justice and Company Affairs was requested to take necessary action in the matter. We have been informed by the Legislative Department that this recommendation had been brought to the notice of the Law Commission in November, 1972 for consideration along with a proposal for an all-India legislation regarding public trusts referred to the Commissioner in April, 1970. The Law Commission does not appear to have presented a report in this regard so far.

[Department of Revenue F. No. 181 1 78-IT (AI)
F. No. 236 307 75-A&PAC-II, dated the 28th June, 1978].

Recommendation

3.54. The Committee note the claim of the Society that during 1970-71, recovery of sugar was only 8.47 per cent as against 10.30 per cent in 1969-70. In this connection, the Committee would like to draw attention to the book "Investigation of Accounts" brought out by the Board in 1964 which had, while giving broad outlines for detecting tax evasion in the cases of sugar mills and sugar dealers, referred to the allegation of under-weighment of sugar-cane as also under-statement of recoveries from sugar-cane and had cautioned that "it is necessary to carry out sample checks in respect of weighment and laboratory analysis of sugar recovery from various samples of sugar-canes." The Committee understand that while auditing the manufacturing accounts of this Society, the Registrar of Cooperative Societies had felt that the alleged poor recovery required "further probing." The Committee are surprised that at the time of assessment of income-tax payable by the Society neither the ITO himself exercised any test-checks nor made any reference to the appropriate authorities to verify the contention of the Society.

3.55. The Board's circular of 1968 pointed out that "as the extra profits made by the sugar mills may not have gone to the coffers

of the companies concerned but to the Managing Directors or the persons in charge of the mills, it would be necessary to scrutinise their personal cases also with "great care" and suggested that "it may be appropriate to call for wealth statements in such cases and make independent enquiries regarding the assets acquired by them during the relevant years." The Committee are surprised at the interpretation placed on the Circular by the Department of Revenue and Banking who have contended that "in the circular of 1968 no instructions were issued to the field officers to report back the number of cases in which the investigations were carried out on the lines suggested therein." This shows a dismal lack of co-ordination between the Board and the field officers.

The Committee feel that it should be the concern of the Department to see that instructions are not only issued but are actually followed in the field for otherwise the very purpose of issuing such instruction would be defeated. The Committee would like to know whether the personal assessments of General Manager and the Managing Director of this assessee Society were investigated on the lines indicated by the Board in their Circular of 1968 and if not why this requirement was overlooked in this particular case.

[S. Nos. 21 & 22 (Paras 3.54 & 3.55 of the 4th Report of the PAC (1977-78) (Sixth Lok Sabha)]

Action Taken

3.54. Copies of the Final Manufacturing Reports for the two seasons submitted by the assessee-Society under Central Excise Rule 83 to the Central Excise Authorities, Directorate of Sugar & Vanaspati, National Institute Kanpur, and the Directorate of Economics and Statistics have since been examined by the Income-tax Officer. The recovery percentages mentioned in the Manufacturing Reports tally with the percentage shown in the Financial Statements accompanying the Income-tax Returns. No adverse comments have been made by the Central Excise Authorities and the Directorate of Sugar and Vanaspati on the Manufacturing Reports submitted by the assessee. The Income-tax Officer also went through the Monthly Reports furnished by the assessee in Form RT-7(C)/SM-2 submitted to the Central Excise Authorities, National Sugar Institute, Kanpur, and the Directorate of Sugar & Vanaspati and he was not able to find anything suspicious in these statements.

3.55. The assessee in this case is a Co-operative Society in which the share-holders on the relevant dates were as follows:—

Date	No. of Shareholders	Share capital held by cane growers	Share capital held by Govt. of Tamil Nadu
30-6-68	7462	50,23,000	30,00,000
30-6-69	7489	51,22,000	30,00,000

The Chief Executive of the Society during the relevant period (21st July, 1968 to 5th December, 1968) was Shri P. Sundram, Joint Registrar of Co-operative Societies, Madras, who was an officer of the Government. The accounts were audited by the Audit Officers, of the Registrar of Co-operative Societies, Madras and after discussion, were finalised and passed by the Registrar of Co-operative Societies, Madras. The Ambur Co-operative Sugar Mills Ltd. cannot, therefore, be compared with sugar mills in the private sector which operate without any close supervision or check of their day to day business activities by any Government agency.

[Department of Revenue F. No. 236/897/75-A&PAC-II F. No. 411/1/78-IT(Inv), dated 31st July, 1978].

CHAPTER IV

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

Recommendation

"Section 274(1) of the Inome-tax Act, 1961, provides that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard and it is a well-settled principle of law that if such opportunity to show cause is not given to the assessee, the imposition of the penalty would be invalid. The Committee are concerned to note that in these two cases commented upon by the Audit as well as in five other cases, a senior officer of the status of Inspecting Assistant Commissioner of Income-tax had, in utter disregard of the mandatory provisions of the law, rushed through the penalty proceedings ignoring the assessee's requests for adjournments with the result that the orders in three of the cases were quashed on appeal as being bad in law by the Income-tax Appellate Tribunal who had also passed strictures against the officer. The failure to observe the prescribed procedure resulted in loss of revenue of Rs. 65,896 in these three cases. Admittedly, adequate time was available for giving second hearings in these cases. Thus, in the first case referred to by Audit (M/s Mallikarjuna Cloth Stores), the Inspecting Assistant Commissioner had waited for more than two weeks before passing the impugned order but had failed to intimate a fresh date of hearing to the assessee. Similarly, in the second case (Shri K. Ramachandra Rao), though the officer had waited for three days beyond the date fixed for hearing before passing the penalty order, he did not, however, verify before finalising the proceedings whether the notice had been served before the date of hearing. The Committee take serious view of these entirely unwarranted and costly lapses."

[S. No. 1 (para 1.26) of 4th Report of PAC (Sixth Lok Sabha)]

Action Taken

"Suitable instructions have been issued *vide* paragraph 4 of Board's Instruction No. 1160 [F. No. 284/13/78-IT (Inv.) dated the 31st March, 1978 (copy annexed)]".

[Department of Revenue Nos. 236|228|74-A&PAC-II|241|21|78-A & PAC-II|No. 411|27|78-IT(Inv.)|54|27|75-Ad.W(A((PT) dated 12 June, 1978]

ANNEXURE

INSTRUCTION NO. 1160

F. No. 284/13/78-IT(Inv.)

GOVERNMENT OF INDIA

Central Board of Direct Taxes

New Delhi, the 31*st March*, 1978.

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Penalities—Initiation and disposal—Instructions regarding—*

The Board's concern at the increasing pendency of penalty proceedings was conveyed to the Commissioners of Income-tax during the Commissioners' Conference held in June, 1977. The Commissioners were advised to ensure that penalty proceedings were not initiated in a routine manner and the pendency was reduced to the minimum. It was emphasised that it is essential to have a practical approach in such matters. The Board regret to note that the number of penalty proceedings awaiting disposal continues to increase.

2. Before starting a penalty proceeding, the Income-tax Officer should make an enquiry from the assessee with a view to finding out whether he was prevented by any reasonable cause from complying with his statutory obligations. If the assessee has a genuine explanation which deserves acceptance without further detailed enquiry, the Income-tax Officer should not initiate penalty proceedings in respect of the default. He should keep the assessee's explanation, obtained in writing, in the file and also record his reasons for not initiating the penalty proceedings. Care should be taken to avoid initiation of penalty proceedings in a mechanical manner. The Board feel that if the I.T.O. applies his mind properly to the facts of each case and refrains from infructuous action, the number of penalty proceedings requiring disposal will go down considerably.

3. Board's order F. No. 284/64/77-IT(Inv.) dated 23rd January, 1978, made under section 119(2) (a) of the Income-tax Act directs the Income-tax Officers not to initiate any penalty proceeding for an offence under clause (a) or clause (b) of sub-section (1) of section 271 or under section 273 in respect of any assessment year in a case where the maximum penalty imposable under the relevant clause does not exceed on hundred rupees. This order is force from 1st February, 1978. So far as penalties in respect of concealment of income|furnishing inaccurate particulars thereof are concerned

[section 271(1)(c)], the Board's earlier order under section 119 [F. No. 284|4|75-I.T.(Inv.) dated 16th October, 1975] directs the Income-tax Officers not to initiate penalty proceedings where the income returned at a positive figure and income assessed are both below the exemption limit and no set-off of brought forward loss is involved. The Board hope that besides improving the public image of the Department amongst small assessee, the combined effect of these orders will be to reduce the comparatively infructuous work involved in petty penalty proceedings and give the officers more time to deal with the other penalty cases.

4. No penalty can be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. The Public Accounts Committee have observed that this mandatory provision of law was disregarded in a few cases resulting in loss of considerable revenue. The instances noted by the PAC arose because the penalty proceedings were kept pending till the very end of the limitation period and were then rushed through. The intructions contained in the Board's Circular No. 25-D (XDV-16) of 1963 dated 1st October, 1963 for proper maintenance of the penalty register, watching the progress of the cases entered therein and completion of the penalty proceedings within one year of passing of the assessment order were disregarded. Further, little use was made of monthly progress reports which show the agewise pendency as also of the six monthly control statement prescribed under the Board's Instruction No. 585 [F. No. 284|36|73-IT(Inv)] dated 13th August, 1973. These instructions were reiterated in the Board's Instruction No. 862 [F. No. 284|25|75-IT(Inv)] dated the 8th August, 1975 and should be carefully followed. While in exceptional cases a penalty proceeding may have to be kept pending till decision of the appeal against the assessment as provided in section 275, the penalty proceedings should ordinarily be completed soon after the assessment In actual practice, the Board consider that in the vast majority of cases, it should be possible to complete penalty proceedings within six months of the completion of the relevant assessments. Both in the interests of Revenue and good public relations, it is also essential that the back-log of pendency work is cleared as quickly as possible.

5. It has come to the Board's notice that occasionally orders levying penalties for defaults under sections 271(1)(a)|18(1)(a), 271-(1)(b)|18(1)(b) and 273 are passed in a routine manner using a set form. Such orders may not be reasoned and supported by adequate details and are, therefore, untenable in appeal. It is emphasised that an order levying a penalty should be a "speaking order" showing that the discretion vested in the authority imposing the penalty has been judiciously exercised.

6. The Board in their Instruction No. 819 [F. No. 285/495/74-IT-(Inv.)] dated 1st January, 1975 prescribed a check mechanism to ensure that each and every concealment case gets examined from the prosecution angle. They would reiterate that the new column '32' in the 'Register of Penalties' should be properly filled in, to show the result of scrutiny of the case from the prosecution view-point.

7. These instructions apply *mutatis mutandis* to penalty proceedings under the Wealth Tax, Gift Tax and Estate Duty Acts and may be brought to the notice of all the officers in your Charge.

Yours faithfully,

Sd/-

(H. K. SONDHI)
Director,
Central Board of Direct Taxes.

Copy forwarded to:— 8

1. Directors of Inspection (Investigation)/(Income-tax and Audit) | (Research & Statistics|P&PR|O&M Services (Income-tax)|Director of Training, Nagpur.
2. All Officers and Sections in the Technical Wing of Central Board of Direct Taxes.
3. Bulletin Section of D.I. (P&PR)—5 copies.
4. Shri M. B. Rao, Joint Secretary & Legal Adviser, Deptt. of Legal Affairs, Advice 'B' Section, Ministry of Law, Justice and Company Affairs.
5. Comptroller & Auditor General—20 copies.

Sd/-

(K. CHANDRA)
Under Secretary,
Central Board of Direct Taxes.

Recommendation

While conceding that to qualify for exemption from tax, the application of income should be tantamount to 'expenditure' and it would, therefore, be incorrect in this case to have treated the advance to the firm of contractors and architects as application of the accumulated income to the specified purpose, the Central Board

of Direct Taxes have nevertheless contended that the Income-tax Officer 'was satisfied that a sum of Rs. 80 lakhs had been properly utilised for acquiring the building for housing the activities of the Federation'. The Committee, however, find on the basis of the evidence and the fact that the assessment has been reopened that the assessing officer had not examined in detail whether the income accumulated had in fact been actually utilised for acquiring the building. Admittedly, the information that the amount was not utilised for the purchase of property but was only paid as an advance to the contractors was available only later. This is an aspect which should have correctly been gone into *ab initio* by the assessing officer, particularly in view of the fact that the amount of Rs. 80 lakhs had been paid by the Federation only two days prior to the expiry of the period stipulated in the Act for utilisation of the accumulated income. It would appear, *prima facie* that the Federation's claim had been accepted by the assessing officer without any genuine scrutiny. The Committee take an extremely serious view of this costly failure and would like the circumstances in which the lapse had occurred to be gone into the detail with a view to taking appropriate action against the officer concerned. It may also be examined whether any clarificatory instructions for the guidance of the assessing officers are necessary.

[S. No. 10, Para 2.35 of the 4th Report of P.A.C. (Sixth Lok Sabha)].

Action Taken

The assessee's view was not accepted by the assessing officer without making any genuine scrutiny. The ITO came to above conclusion on the basis of his bonafide understanding of the term 'utilised' appearing in Section 11 of the Income-tax Act, 1961. No adverse inference need be drawn against the officer concerned. As regards the necessity for issue of clarificatory instructions for the guidance of officers, it may be stated that the facts obtaining in the present case are peculiar and are not of common occurrence. It would, therefore, not seem necessary to issue any general instructions based on the facts of this case alone."

[Department of Revenue No. F. 236|307|75-A&PAC-II F. No. 181|1|78|II(AI), dated 28-6-1978]

Recommendation

Though late than never, instructions have now been issued to the Income-tax Officer, on 28 October, 1976, to reopen the assessments of Indian Cotton Mills Federation and to review the case in the light of the Supreme Court judgements in the cases of Lok Shikshna

Trust and the Indian Chamber of Commerce. In view of the large revenue implications of this case, the Committee would urge the Department to complete the review of past assessments expeditiously and to take conclusive action to realise the taxes due. While reopening the assessments it may also be examined whether the violation by the Federation of the provision of the Act relating to the application of the accumulated income was deliberate and malafide. The Committee were informed during evidence that the question of cancellation of the Indian Cotton Mills Federation as a Charitable trust would be gone into. The Committee would like to know the result of the examination."

[S. No. 13 (Para 2.38) of the 4th Report of PAC (Sixth Lok Sabha)]

Action Taken

"The assessment for the assessment year 1972-73 has been completed after being reopened under Section 147(b) of the Income-tax Act, 1961 on a total income of Rs. 36,19,709 raising a demand of Rs. 20,41,000. The order passed has been taken up in appeal by the assessee and the recovery of demand has been stayed till the first appeal is disposed of."

[Department of Revenue F. No. 236|307|75-A&PAC-II| F. No. 181|1|78-II(A1), dated 28 June, 1978]

Recommendation

"The Committee have been informed that instructions have already been issued on 7 November 1976 for reviewing all cases of charitable trusts in the light of the pronouncements of the Supreme Court so as to take remedial action wherever called for and feasible. As these judgements are likely to have wide repercussions on the entire question of charitable trusts, the Committee need hardly emphasize the importance of completing this review early. They would like to be apprised soon of the outcome of the review and the steps taken to realise the tax short-levied in each case and the amount of tax realised."

[S. No. 14 (Para 2.39) of the 4th Report of PAC (6th Lok Sabha)]

Action Taken

"As regards the review of the cases of charitable trusts in the light of pronouncements of the Supreme Court, the number of

regular assessments completed is 577 and the number of assessments reopened as a result of the Supreme Court decisions is 303. This figure does not include cases relating to the charge of CIT Jaipur. It may be mentioned that the Direct Taxes Laws Committee (Choksi Committee) have made a number of recommendations with regard to the scope of charitable purposes within the meaning of Income-tax Act, 1961. The recommendations of the Committee are under the active consideration of the Government."

[Department of Revenue F. No. 236|307|75-A&PAC-II|
F. No. 181|1|78-II(A1), dated 28 June, 1978]

CHAPTER V

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

Recommendation

1.27. Though the Chairman of the Central Board of Direct Taxes conceded that since the Appellate Tribunal had commented severly and adversely against the officer, there was no room for taking any view other than the one that "he was guilty of gross negligence", the Committee are distressed to find that principled and conclusive action is yet to be taken against the officer for these lapses even after the passage of more than two years since they were highlighted by Audit. On the other hand, the Committee learnt with concern that instead of penalising the officer for his negligence which besides costing the exchequer dearly must have also caused considerable hardship to the assessees, the Department have promoted him as Commissioner of Income-tax. This, in the Committee's view is not in keeping with canons of property. It has, however, been contended by the Department that the officer had been promoted by the Departmental Promotion Committee before a formal charge-sheet was issued to him and that these developments had not been brought to their notice when the selections took place by the section handling the case. It has also been stated that there was no entry in regard to these lapses in the Officer's character rolls which were 'very good' and that he was considered fit for promotion by the Departmental Promotion Committee on the basis of these facts and in the absence of any adverse observations about his integrity after obtaining vigilance clearance.

1.28. The Committee have carefully considered the explanation offered in this regard and find that while the Department Promotion Committee met only on 8th October, 1975, the report of the Commissioner of Income-tax holding the officer responsible for the lapses had been received in the Board's office as early as 23 December, 1974 itself. In fact, the Department have admitted that they themselves had found lapse in the officer's performance even before Audit pointed them out, and had also stated (February, 1975) in reply to the Audit paragraph that the Additional Commissioner of Income-tax had taken note" of the officer's lapse and that his explanation was "under consideration." It is also significant in this context that the Income-tax Appellate Tribunal had passed strictures against the officers as early

as on 31 May 1973, 28 September 1973 and 29 January 1974. These must have come to the notice of the Central Board of Direct Taxes, particularly since a senior officer of the Department was involved. Besides, the draft Audit paragraph and replies thereto would have resumably been processed at the level of the Chairman and Members of the Board. The Committee are, therefore, not very impressed with the arguments advanced before them by the Department and would like a thorough probe to be conducted into the circumstances in which the officer had been promoted as Commissioner even while investigations into the lapses committed by him were still in progress and all relevant material in regard to the performance of the officer were not made available to the Departmental Promotion Committee to enable them to arrive at a proper conclusion about his suitability. They would await a further detailed report in this regard.

1.29. "The Committee desire that there should be better coordination between the various sections within the Department so as to ensure that at the time of considering a person for promotion, the Departmental Promotion Committee has before it all the latest facts in regard to the conduct and efficiency of an officer."

1.30. The Committee have been informed that necessary memorandum alongwith the statement of imputations was despatched on 3 May 1976 to the officer who had denied the imputations in his representation received on 3 December 1976 and that the case had been referred to the Union Public Service Commission on 14 January 1977 for advice in accordance with the rules. While stressing the need for expediting the final action in this long-pending case, the Committee would also reiterate their recommendation contained in paragraph 4.31 of their 187th Report (Fifth Lok Sabha) that Government should ensure that the assessing officers in a sensitive area like the Income-tax Department have the confidence that conscientious and capable work would receive recognition and approbation merited by it and that deflection from the path of duty would not be countenanced.

[Sl. Nos. 2 to 5 (Paras 1.27 to 1.30) of 4th Report of Public Accounts Committee (1977-78) (Sixth Lok Sabha)].

Action Taken

1.27. to 1.30. The case is under consideration in consultation with the Department of Personnel and Administrative Reforms.

[Department of Revenue (F. No. 236/228/74-A&PAC-II; F. No. 241|21|78-A&PAC-II; F. No. 411|27|78-IT(Inv.) F. No. 54|27|75-Ad. VI(A)(pt.) dated the 12th June, 1978].

Recommendation

The Committee regard it, as an illustrative case of to say the least, gross negligence on the part of a responsible officer which not only led to loss of substantial revenue but also caused considerable harassment and hardship to the assessee. They would like the Government to undertake a survey in order to find out as to whether there have been any more cases of this type which may have resulted in loss of revenue and harassment to tax-payers. The Committee would like to be informed of the results of the survey at an early date.

[S. No. 6 (Para 1.31) of 4th Report of the Public Accounts Committee (1977-78) (Sixth Lok Sabha)]

Action taken

A survey has since been undertaken as recommended by the Committee. The Director of Inspection (Vigilance) has been requested to collate the reports of the Commissioners of Income-tax called for in the matter and furnish the same by the end of May, 1978. The Committee will be informed of the results as soon as these are available.

[F. No. 241|2|77-A&PAC-II; F. No. 284|8|78-IT(Inv.), dated the 5th May, 1978]

Recommendation

Incidentially, the Committee learn that while an officer whose integrity is suspect can be considered for promotion provisionally, pending completion of the investigations into his conduct, such a procedure is not in vogue in respect of enquiries not involving a charge of lack of integrity. Since an officer's efficiency is as important as his conduct, it would appear that investigations into failures or lapses which reflect on the efficiency of an officer which might be in progress at the time of selections by the Departmental Promotion Committee may be suitably taken into account. They would like this matter to be examined urgently, in consultation with the Deptt. of Personnel and the Union Public Service Commission. The Committee would like to be informed of the decision taken.

[Sl. No. 7 (Para 1.32) of Appendix V to the 4th Report of Public Accounts Committee (1977-78) (Sixth Lok Sabha)]

Action taken

The case is still under consideration in consultation with the Department of Personnel and Administrative Reforms.

[F. No. 241/21/78-A & PAC-II F. No. 54/27/75-Ad. VI(A) (Pt.)
Dated the 19 June, 1978]

Recommendation

The Committee note that during 1969-70 the Society paid, with the approval of Government, a subsidy to the cane-growers over and above the Government fixed price of Rs. 76.90 per M.T., at Rs. 33.10 per M.T. to the registered growers and Rs. 23.10 per M.T. to the unregistered growers. During 1970-71 the subsidy, over and above the Government fixed price of Rs. 79.60 per M.T., was Rs. 10.40 per M.T. for registered growers only. The Government have admitted that as additional price was paid only after getting the approval of the concerned authorities and also because full addresses of the cane suppliers were reported to be available, the supply prices paid by the mill to the suppliers were accepted as genuine. The Committee consider it unfortunate that the cane prices paid to the growers were accepted by the Income-tax Officer as genuine without even making a test-check with the growers to establish the veracity of the claim of the Society.

[S. No. 20 (Para 3.53 of the 4th Report of the PAC
(1977-78) (Sixth Lok Sabha)]

Action taken

The concerned Commissioner of Income-tax states that the entire cane supply was made by the members of the Society who are cane growers. However, the Income-tax Officer has been directed to scrutinise, on a test-check basis, the quantum of payment of the additional cane price to these growers. He has also been asked to examine the justification, if any, for drawing the inference that the Society might have deliberately reduced its profits by paying higher cost to its producer-members for the cane supplied by them.

[Department of Revenue, F. No. 236|297|75-A&PAC-II
F. No. 411|1|78-II(Inv), dated 31st July, 1978]

Recommendation

After considering the facts placed before them, the Committee are left with a feeling that the Income-tax Officer concerned did not attach to the circular of the Board indicating the lines on which assessment in respect of sugar mills should be made, the importance that it deserved. They are unable to share the view expressed by the Income-tax Officer that "the fact that it (circular) had been filed in the file itself would go to show that it had been taken into consideration while completing the assessment." This laconic approach has to be deprecated.

[S. No. 23 (Para 3.56) of the 4th Report of the PAC (1977-78) (Sixth Lok Sabha)]

Action Taken

The observations/recommendations of the Committee are still under consideration of the Ministry. A further reply may kindly be awaited.

[Department of Revenue, F. No. 230.297 75-A&PAC-II dated the 23rd June, 1978]

Recommendation

The Tariff Commission had, felt that 'corrective action' would have to be taken by Government if, 'taking advantage of pressure of demand, free market sugar tends to show a consistent unjustifiable spurt in 'prices', and that the aim should be to keep the industry under some discipline. In the case of Anakapalla Cooperative Agricultural and Industrial Society Ltd. and other Vs. Union of India the Supreme Court in its judgement delivered on 6th November, 1973, had observed that it had not been denied that the majority of producers had made profits on the whole and had not suffered losses. During the course of examination of the subject of Sugar Rebate Schemes, Government had themselves admitted before the Committee that the margin available to the sugar industry on free sale sugar would be "anybody's guess". In paragraph 4.58 of 155th Report (1974-75) on Sugar Rebate Scheme, the Committee had accordingly observed: "that the sugar industry has, on all accounts, enriched itself in an unlimited way by the scheme of levy and free sale sugar, introduced in 1967, is of common knowledge". The Committee understand that so far the Central Board of Direct Taxes have not attempted an analysis of the profits earned, returned and assessed to Income-tax by the Sugar Industry during the period 1968 to

1975. The Committee have been informed that the Board "does not have the manpower to undertake such task".

The Committee feel that such a study should be undertaken to dispel once for all the public misgivings about the state of the sugar industry which it has been alleged, has enriched one segment of the industry only. It is for the Government to devise the machinery as also the parameters of the inquiry.

[Sl. No. 26 (Para 3.59) of the 4th Report of the Public Accounts Committee (1977-78)]

Action Taken

The recommendation is under consideration.

[Department of Revenue. F. No. 236|297|75-A&PAC-II F. No. 411|1|78-IT (Inv), dated the 20th June, 1978]

Recommendation

The Committee regret to find that on the search of the premises of a Cine Artist on 1st November, 1970, while undisclosed assets in the form of jewellery valued at Rs. 2,33,730 were found, the assessing officer, while completing the assessment for the relevant year 1971-72 in December, 1973 included only a part of the undisclosed assets amounting to Rs. 1,15,430. The omission to include the balance amount of Rs. 1,18,300 resulted in short levy of tax to the extent of Rs. 1,10,370. According to the Department of Revenue and Banking, though the search was conducted in this case on 1st November, 1970, part of the jewellery (Rs. 1,18,300) was found to have been pledged on 3rd October, 1969 and was, therefore, includable in the assessment year 1970-71. The Committee have doubts if the action of the asessing officer in not including a part of the undisclosed assets was in keeping with the provisions of the Law. They feel that this was a fit case in which the Department should have sought the opinion of the Ministry of Law (which was not done) as to whether under section 69A of the Income Tax Act it was open not to include a part of the undisclosed assets in the assessment of the relevant financial year. The Committee recommend that Ministry of Law may be consulted even now in the matter so that there may be no ambiguity whatsoever about intention, scope and application of the law in the instant case and in the cases arising in future.

[S. No. 27 (Para 3.68) of the 4th Report of the Public Accounts Committee (1977-78)]

Action Taken

The Ministry of Law, Justice and Company Affairs were requested to advise in the matter but they have suggested that in view of the general importance of the question involved, the same may be discussed in a tripartite meeting with the representatives of that Ministry, the Audit and this Department before they express their opinion. A meeting is, therefore, being arranged in consultation with the Audit. On receipt of Law Ministry's opinion, necessary further action will be taken in the matter and the Committee will be informed of the same.

[Department of Revenue, F. No. 236/319/75-A&PAC-II dated the 20th June, 1978]

Recommendation

The Committee note that the income tax assessment case of an assessee for the assessment year 1960-61, determining in March, 1965 his taxable income at Rs. 5,04,914 (including an income of Rs. 4,60,000 from undisclosed sources) was remanded to the assessing officer in March 1966 with the direction to submit the remand report within six months and when, even after repeated reminders, a remand report was not received, the assessment was set aside by the Appellate Assistant Commissioner in March 1968. On Audit pointing out in July 1970 that the set aside assessment should have been completed within two years and that delay would cause erosion of evidence in regard to the income from undisclosed sources, the Commissioner of Income-tax is stated to have informed Audit in September 1970 that as huge hundi loans were raised by the assessee, their verification would take "quite a bit of time". Surprisingly enough, the set aside assessment was not completed even up to July, 1975 despite the fact that the executive instructions issued by the Central Board of Direct Taxes on 15th October, 1968 had clearly enjoined that set aside assessments should be completed within a period of two years. In fact, the Board had specifically directed the Commissioners of Income Tax on 22nd February, 1973 to get all set aside assessments for 1970-71 and earlier years completed by 30th July, 1973. The delay in this case was thus not only a clear disregard of executive instructions but was also in violation of Subsection (2A) of Section 153 (inserted by Act 42 of 1970 w.e.f. 1st April 1971) which had provided for set aside assessments being completed within two years. The Committee view this case of inordinate delay with serious concern and recommend that responsibility for this delay may be fixed. The Committee also recommend

that concrete measures be taken to tone up tax administration and put an end to such delays.

[S. No. 30 (Para 6.13) of the 4th Report of the Public Accounts Committee (1977-78) (Sixth Lok Sabha)]

Action Taken

The Commissioner of Income-tax, Madhya Pradesh is looking into the matter for fixing the responsibilities. As more than one ITO held charge of the case during the eight years during which the fresh asstt. was not completed, this is likely to take some time.

2. As regards the toning up of tax administration for ending such delays, Section 153 of the Act has already been amended fixing a time limit for completing assessments set aside on appeals, revisions, etc. However, in Madhya Pradesh Charges, the Commissioner of Income-tax has obtained information regarding such set aside assessments during the last 10 years from the Appellate Assistant Commissioners and passed it on to the respective Inspecting Assistant Commissioners to ensure that these are properly reflected in the register and completed as early as possible.

[Department of Revenue, F. No. 236/321/75-A&PAC-II

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

NEW DELHI;
August 21, 1978
Sravana 30, 1900 (S).

APPENDIX

Main Conclusions/Recommendations

S. No.	Para No.	Ministry Department Concerned	Recommendation
1	2	3	4
1	1.4	Department of Revenue	The Committee expect that final replies to those recommendations/observations in respect of which only interim replies have so far been furnished will be submitted to them duly vetted by Audit, without delay.
2	1.8	-do-	The Committee note that suitable instructions have since been issued to all the Commissioners of Income-tax regarding initiation and disposal of penalties. However, the Committee would like to know the action taken against the erring officer for unwarranted and costly lapses on his part.
3	1.11	-do-	The Committee are unable to share the views of the Department of Revenue that "the Income-tax Officer came to the conclusion on the basis of his *bonafide* understanding of the term 'utilised' appearing in Section 11 of the Income-tax Act, 1961" and that he accepted the views of the assessee after making genuine scrutiny. The Committee are of the view that if genuine scrutiny had been made, such

1	2	3	4
			a costly lapse would have been avoided. The very fact that the Indian Cotton Mills Federation advanced a huge sum of Rs. 80 lakhs to the firm of contractors only two days before the expiry of the period stipulated in the Act for utilisation of accumulated income should have been a sufficient warning to the ITO for being vigilant. The Committee reiterate that circumstances in which such a costly lapse occurred may be enquired into to fix responsibility therefor. The Committee desire that the Board should, on the basis of a random sample survey of assessment cases in a few Commissioners' Charges, issue instructions to the Field Officers clarifying the full import of the term 'utilised' in Section 11 of the Income-tax Act so as to serve as a guide to the Income-tax Officers in avoiding the mistake of interim expenditures of the type commented upon in this paragraph being treated as qualifying for exemption from Income-tax.
4	1.14	Department of Revenue	The Committee note that re-assessment for the assessment year 1972-73 has been completed and a tax demand of Rs. 20,41,000 has been raised against the Indian Cotton Mills Federation. The Committee would like to know the results of the reviews of assessments for other years also.
5	1.15	-do-	The Committee reiterate that the fact of violation of the provisions of Act relating to application of accumulated income by the Federa-

			tion may be examined to find out whether it was deliberate and malafide. The Committee would also like to know the follow up action taken on the assurance given to them during evidence that the question of cancellation of the Indian Cotton Mills Federation as a charitable trust would be gone into.
6	1.18	-do-	Notwithstanding the fact that the Direct Taxes Law Committee (Choksi Committee) have made a number of recommendations with regard to the scope of charitable purposes within the meaning of Income-tax Act, 1961 which are stated to be under the active consideration of the Government, the Committee would like to know the outcome of the review undertaken in pursuance of the recommendation of this Committee and the steps taken to realise the tax short-levied in each case and the amount of tax realised.

GMGIPMRND—LS II—2452 LS.—23-9-78—1050.

20. Atma Ram & Sons,
Kashmere Gate,
Delhi-6.

21. J. M. Jaina & Brothers,
Mori Gate, Delhi.

22. The English Book Store,
7-L, Connaught Circus,
New Delhi.

23. Bahree Brothers,
188, Lajpatrai Market,
Delhi-6.

24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.

25. Bookwell,
4, Sant Narankari Colony,
Kingsway Camp,
Delhi-9.

26. The Central News Agency,
23/90, Connaught Place,
New Delhi.

27. M/s. D. K. Book Organisations,
74-D, Anand Nagar (Inder Lok),
P.B. No. 2141,
Delhi-110035.

28. M/s. Rajendra Book Agency,
IV-D/50, Lajpat Nagar,
Old Double Storey,
Delhi-110024.

29. M/s. Ashoka Book Agency,
2/27, Roop Nagar,
Delhi.

30. Books India Corporation,
B-967, Shastri Nagar,
New Delhi.

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