

PUBLIC ACCOUNTS COMMITTEE
(1976-77)

FIFTH LOK SABHA

TWO HUNDRED AND THIRTY-EIGHTH REPORT

ESTATE DUTY

DEPARTMENT OF REVENUE & BANKING

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 211th Report (Fifth Lok Sabha)]



LOK SABHA SECRETARIAT
NEW DELHI

October 1976/Kartika 1898 (S)

Price : Re. 1.00

**LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA
SECRETARIAT PUBLICATIONS**

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH		MAHARASHTRA	
1.	Andhra University General Co-operative Stores Ltd., Waltair (Visakhapatnam).	10.	M/s. Sunderdas Gianchand 601, Girgaum Road, New Princess Street, Bombay-2.
2.	G. R. Lakshmiapaty Chetty and Sons, General Merchants and News Agents, Newpet, Chandragiri, Chittoor District.	11.	The International Book House (Private) Limited, 6, Ash Lane, Mahatma Gandhi Road, Bombay-1.
ASSAM		12.	The International Book Service, Deccan Gymkhana, Poona-4.
3.	Western Book Depot, Pan Bazar, Gauhati.	13.	Charles Lambert & Company, 10, Mahatma Gandhi Road Opposite Clock Tower, Fort, Bombay.
BIHAR		14.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-1.
4.	Amar Kitab Ghar, Post Box 78, Diagonal Road, Jamshedpur	15.	Deccan Book Stall, Fergusson College Road, Poona-4.
5.	M/s. Crown Book Depot, Upper Bazar, Ranchi.	16.	M. & J. Services, Publishers, Representatives, Accounts & Law Book Sellers, Bahri Road, Bombay-1A.
GUJARAT		MYSORE	
6.	Vijay Stores, Station Road, Anand.	17.	People Book House, Opp. Jaganmohan Palace, Mysore.
7.	The New Order Book Company, Ellis Bridge, Ahmedabad-6.	RAJASTHAN	
HARYANA		18.	Information Centre, Government of Rajasthan, Tripolia, Jaipur City.
8.	M/s. Prabhu Book Service, Nai Subzi Mandi, Gurgaon.	19.	M/s. Usha Book Depot, 585 A, Chitra Bazar, Tripolia, Jaipur.
MADHYA PRADESH		UTTAR PRADESH	
9.	Modern Book House, Shiv Vilas Palace, Indore City.	20.	Law Book Company, Sardar Patel Marg, Allahabad-1.

CORRIGENDA

TWO HUNDRED AND THIRTY-EIGHTH REPORT OF THE
PUBLIC ACCOUNTS COMMITTEE (FIFTH LOK SABHA),
ON ESTATE DUTY.

...

<u>Page</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
(vi)	4	After the word 'also', add the word 'been'.	
4	21	After the word 'used' add the word 'by'.	
6	14	like-interest	life-inter- est
6	31	After the word 'aggregate', add the words 'amount of the company's net income in the relevant period, is deemed.'	
6	31-32	<u>Delete</u> the portion "value..... company".	
6	33	Estate	Estate Duty.
6	34-36	<u>Delete</u> the existing lines and add 'Under Rules 9 and 10 of the Estate Duty (Controlled Companies) Rules 1953 in working out the aggregate income'	
8	22	laps	lease
12	27	correlate	correlate
13	2 (from bottom)	Appaidix	Appendix
14	12 (from bottom)	31st August	29th Septem- ber
16	2	was	has
25	Table (col. 1)	200 shares	2000 shares
27	17 (from bottom)	dinf	find
30	1 (below the heading Action taken)	For the existing line, substitute 'The revised demand of Rs.3991.46 plus interest of Rs. 19.62 could not'.	
31	2 (from bottom)	here	there
40	15	anemalous	anomalous

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
CHAPTER I . . . Report	I
CHAPTER II . . . Recommendations/Observations that have been accepted by Government	II
CHAPTER III . . . Recommendations/Observations which the Committee do not desire to pursue in view of the replies of Government	30
CHAPTER IV . . . Recommendations/Observations replies to which have not been accepted by the Committee and which require reiteration	33
CHAPTER V . . . Recommendations/Observations in respect of which Government have furnished interim replies	37
APPENDIX . . . Conclusions, Recommendations,	41

PARLIAMENT LIBRARY
Library & Reference Service
Central Govt Publications
Acc. No. B... 45.8176-17
Date 8/11/26

PUBLIC ACCOUNTS COMMITTEE

(1976-77)

CHAIRMAN

Shri H. N. Mukerjee

MEMBERS

2. Shri T. Balakrishniah
3. Shri Dinen Bhattacharya
4. Shri Chandulal Chandrakar
5. Shri Chandrika Prasad
6. Shri S. R. Damani
7. Shri C. C. Gohain
8. Shri Ramachandran Kadannappalli
9. Shri Raja Kulkarni
10. Shri K. Mayathevar
11. Shri V. Mayavan
12. Shri Shyam Sunder Mohapatra
13. Shri Priya Ranjan Das Munsi
14. Shri Bhaljibhai Ravjibhai Parmar
15. Shri N. K. Sanghi
16. Smt. Sushila Shankar Adivarekar
17. Shri Sardar Amjad Ali
18. Shri Piare Lall Kureel urf Piare Lall Talib
19. Shri H. S. Narasiah
20. Shri Indradeep Sinha
21. Shri Omprakash Tyagi
22. Shri Zawar Husain

SECRETARIAT

Shri N. Sunder Rajan—*Officer on Special Duty.*

INTRODUCTION

1, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Two-Hundred and Thirty-Eighth Report on the action taken by Government on the recommendations of the Public Accounts Committee contained in their Two Hundred and Eleventh Report (Fifth Lok Sabha) on Paragraphs relating to Estate Duty included in Chapter IV of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.

2. On 5 June, 1976, 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:

Chairman

Shri H. N. Mukerjee—

Convener

2. Shri N. K. Sanghi—

3. Shri Dinen Bhattacharya
4. Shri Chandulal Chandrakar
5. Shri Raja Kulkarni
6. Shri Shyam Sunder Mohapatra
7. Shri Priya Ranjan Das Munsii
8. Shri Sardar Amjad Ali
9. Shri Indradeep Sinha
10. Shri Omprakash Tyagi

} *Members*

3. The Action Taken Sub-Committee of the Public Accounts Committee (1976-77) considered and adopted the Report at their sitting held on 14 October, 1976. The Report was finally adopted by the Public Accounts Committee on 25 October, 1976.

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 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 and Auditor General of India.

NEW DELHI;
October 26, 1976

Kartika 4, 1898 (Saka).

H. N. MUKERJEE,

Chairman,
Public Accounts Committee.

CHAPTER—I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations/observations contained in their 211th Report (Fifth Lok Sabha) on paragraphs relating to Estate Duty included in Chapter IV of the Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.

1.2. The 211th Report of the Committee was presented to the Lok Sabha on 26 April 1976 and contained 33 recommendations/observations. According to the time schedule, prescribed in the Committee's 5th Report (Fourth Lok Sabha), for the submission of Action Taken Notes on the Committee's recommendations/observations, the Notes indicating the action taken by Government on the recommendations/observations contained in the 211th Report were required to be furnished by 25 October 1976. The Department of Revenue and Banking had, however, been requested, on 24 June 1976, to furnish the relevant Notes latest by 31 August 1976. This had been complied with by the Department and all the Action Taken Notes were made available to the Committee in accordance with the revised schedule.

1.3. The Action Taken Notes received from Government have been broadly categorised as follows:

- (i) *Recommendations/observations that have been accepted by Government:*
Sl. Nos. 1, 2, 4, 5, 6, 7, 8, 9, 14, 15, 16,
17, 18, 19, 20, 26, 27, 28, 32 and 33.
- (ii) *Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from Government:*
Sl. Nos. 3, 10 and 25.
- (iii) *Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration:*
Sl. Nos. 21, 22 and 31.
- (iv) *Recommendations/observations in respect of which Government have furnished interim replies:*
Sl. Nos. 11, 12, 13, 23, 24, 29 and 30.

1.4. **The Committee expect that final replies to those recommendations/ observations in respect of which only interim replies have been furnished so far will, after vetting by Audit, be made available to them without delay.**

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

Incorrect computation of the principal value of the Estate. (Paragraphs 1.50 to 1.52—Sl. Nos. 11 to 13).

1.6. Dealing with a case of incorrect computation of the value of a house property for Estate Duty purposes, the Committee, in paragraphs 1.50 to 1.52 of the Report, had recommended, *inter alia*, as follows:

“1.50. The Committee learn from Audit that the gross annual value of the entire property was adopted as Rs. 49,997 even for the assessment year 1968-69. However, according to the District Valuation Officer’s Report, the actual rent realised from the rented portion of the property was Rs. 54,191. Since a lower value has apparently been adopted in the income-tax assessment, the Committee would like to know whether any steps have been taken by the Department to revise the relevant income-tax assessments.”

“1.51. Under Section 33(1)(n) of the Estate Duty Act, 1953, one house or part thereof exclusively used by the deceased for his residence is not to be included in the principal value of the estate to the extent of Rs. 1 lakh. In the original Estate Duty assessment in this case, the entire value of the 6th floor had been exempted as its value as then estimated (Rs. 78,432) was below the exemption limit of Rs. 1 lakh. Since the 6th floor has subsequently been valued by the District Valuation Officer at Rs. 1,49,876, which is above the exemption limit, the value of this portion in excess of Rs. 1 lakh, in any case, have to be added to the estate. The Committee would, therefore, like to be informed whether the earlier assessment has at least been revised to levy duty on the value of the self-occupied portion in excess of the exemption limit.”

“1.52. From the foregoing paragraphs, it is evident that the property in question has been valued differently for the purposes of the different Direct Taxes, and that there has been little or no coordination between the different assessing officers. The Committee desire that action should be taken to revise the

direct tax assessments, wherever necessary, and to realise the additional taxes due alongwith whatever consequential action may ensue."

1.7. With reference to the recommendations contained in paragraphs 1.50 and 1.52, the Department of Revenue and Banking, in their Action Taken Note dated 30 August 1976, have stated:

"The Income-tax Officer concerned has been asked to reopen the assessments. Further report may kindly be awaited."

1.8. As regards the Committee's recommendation contained in paragraph 1.51, the Department, in their Action Taken Note dated 19 August 1976, have informed the Committee as follows:

"The assessment in this case has been reopened and the Accountable Person has filed the account under protest."

1.9. The Committee note that action has been initiated to reopen the assessments in this case and desire that the reassessment proceedings should be completed without undue loss of time and conclusive steps taken to realise early the additional taxes, wherever due. They would await a further report in this regard.

Estate escaping assessment. (Paragraph 2.32—Sl. No. 19).

1.10. Under the Estate Duty Act, 1953, property in which the deceased or any other person had an interest on death, is deemed to pass on death to the extent to which a benefit accrues or arises by the cessation of such interest. A case of omission to include in the principal value of the estate of a deceased the life interest which she had in the income from the estate of her pre-deceased husband, resulting in short-levy of duty of Rs. 1,85,888, had been reported in paragraph 71(i) of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. Dealing with this case, the Committee, in paragraph 2.32 of the Report, had, *inter alia*, recommended:

"It is significant that the accountable person in this case had stated, in reply to a questionnaire issued by the Assistant Controller of Estate Duty, that the source of income was 'not known'. The Committee desire that the case should be re-examined with a view to ascertaining if this statement made by the accountable person was bonafide or was intended to suppress the relevant facts before the assessing officer. In case the accountable person is found to have made a false declaration with a view

to concealing the value of the estate and thereby evading tax, penal action, in accordance with the law, should be initiated.”

1.11. In their Action Taken Note dated 19 August 1976, the Department of Revenue and Banking have stated:

“Penalty proceedings under Section 60(1)(a)/60(1)(c) have been initiated against the Accountable Person.”

1.12. Now that penalty proceedings under Section 60(1)(a)/60(1)(c) of the Estate Duty Act are stated to have been initiated against the Accountable Person for not disclosing the source of income in this case, the Committee trust that these will be finalised early and all consequential action be communicated to them.

Incorrect allowance of exemption in respect of house property transferred to a trust. (Paragraphs 3.9 and 3.10—Sl Nos. 21 and 22).

1.13. Commenting on a case of incorrect allowance of exemption, under Section 33(1)(n) of the Estate Duty Act, 1953, in respect of a house property belonging to a Trust and not to the deceased who had only a life interest therein, the Committee, in paragraphs 3.9 and 3.10 of the Report, had recommended:

“3.9. Under Section 33(1)(n) of the Estate Duty Act, exemption from Estate Duty in respect of a house or part thereof exclusively used the deceased for his residence is admissible only in respect of properties belonging to the deceased and passing on his death. In the present case the house property in question belonged to a Trust and the deceased had only a life interest therein. In the light of an opinion given earlier by the Law Ministry (with reference to two similar cases commented upon in the Audit Report for the year 1970-71) that the provision of Section 33(1)(n) does not speak of ‘interest in property’ but property itself, the Committee had felt in paragraph 4.27 of their 88th Report (Fifth Lok Sabha) that the inclusion of life interest for exemption under this Section did not appear to be legally valid. In paragraph 4.28 of the Report, the Committee had accordingly desired that the position in law should be clarified for the guidance of the Estate Duty Officers, in addition to conducting a test check in other charges to see whether similar mistakes had taken place.”

“3.10. The Committee have been informed that the legal position in this regard is not entirely free from doubt and that different Tribunals have expressed different views on the subject. A

deeper examination of the legalities thus becomes necessary. Much time, however, has elapsed and the Committee urge that the final opinion of the Ministry of Law should be obtained, if it has not already been done, and the correct legal position intimated to the assessing officers. The latest position in this regard should be communicated forthwith to the Committee. It should also be examined whether any amendment to the law is necessary to make it clear whether the expression 'property' in Section 33(1)(n) of the Act means only property or includes also interest in property."

1.14. In their Action Taken Note dated 10 June, 1976 on the above recommendations, the Department of Revenue and Banking have replied:

"Advice of the Ministry of Law at the level of Law Secretary was obtained in regard to the question whether exemption under Section 33(1)(n) of the Estate Duty Act is available in cases where the deceased had only life interest in the property. The Law Ministry advised that the exemption would be allowable in such cases.

The question whether the expression 'property' in Section 33(1)(n) of the Estate Duty Act means only property or also includes interest in property was examined by the Ministry of Law. The advice was given after examination of the question.

Advice of the Solicitor General was also sought in regard to the question whether the exemption under Section 33(1)(n) was available in respect of property included under Sections 9 and 10 of the Estate Duty Act. The Solicitor General advised that the exemption would be permissible in such cases.

On the basis of the advice received, the Board issued Instruction No. 939 dated 22nd March, 1976 (F. No. 309/5/73-ED) (Reproduced in Chapter IV).

In view of the position explained above, the test check to see whether any mistakes have taken place is not considered necessary."

1.15. The Committee learnt from Audit in this connection that the 'properties' belonging to a deceased which could be exempted under various clauses of Section 33(1) of the Estate Duty Act, 1953 are physical properties and tangible assets while the inclusion which is made on the death of a life-estate holder is only the value of the 'benefit' which ceases on his death and that such 'benefit' does not appear to fall under any of the clauses of Section 33(1). The Committee were also informed that in respect of house property belonging to a Trust, it was doubtful how far the exemption

under Section 33(1)(n) could be allowed to a deceased who enjoys only a life interest in and does not own any portion of the property or any interest therein.

1.16. The Committee note that on the advice of the Law Ministry and the Solicitor General, it has now been clarified for the guidance of the assessing officers that exemption under Section 33(1)(n) of the Estate Duty Act, 1953 would also be available in respect of a house or part thereof used by the deceased for his residence though the deceased had only a life interest in the property. However, since different Tribunals appear to have expressed divergent views on this question and the issue does not also appear to be entirely free from doubt, the Committee would like Government to re-examine the entire question in depth, in consultation with Audit and Attorney General.

1.17. The Committee also understand that not infrequently, like-interest holders in property are beneficiaries in private family trusts which are known to be extensively employed as a device for reduction of incidence of direct taxes. The Committee would, therefore, urge Government to examine urgently whether it was intended that life-interest holders would also be allowed the exemption admissible under Section 33(1)(n). In case this was not Government's intention, it should be examined whether any amendment to the law in this regard is necessary.

Liability to Estate Duty in respect of interest in properties transferred to controlled companies. (Paragraphs 4.14 and 4.15—Sl. Nos. 23 and 24).

1.18. Dealing with a case of incorrect computation of the value of benefits accruing to a deceased from a controlled company, the Committee, in paragraphs 4.14 and 4.15 of the Report, and recommended:

“4.14. Under Section 17 of the Estate Duty Act, if deceased had transferred any property to a controlled company and a benefit had accrued to him from that company in the three years preceding his death, a proportion of the net assets of the company, which is determined by comparing the aggregate value of the ceding his death, a proportion of the net assets of the company, to be property passing on death and is assessable to Estate stated that this was ‘a very complex case’ and the legal position and that the law in this regard might have to be changed. The Committee would, therefore, recommend that this entire question of the company for this purpose, no deduction is admissible in respect of payment of interest on debentures in the company and correspondingly no deduction is to be made for liabilities in respect of these debentures while computing the net assets

of the company. In the present case, the Appellate Tribunal had held that certain payments of interest should be treated as 'interest on debentures' and added to assessed income. However, while giving effect to the Appellate order, the amount to which this interest related had not been treated as 'debentures' and deducted from the liabilities. An interest of Rs. 1,06,817 had also been erroneously added twice to the income. As a result of these mistakes, the principal value of the estate was under-assessed by Rs. 8.15 lakhs and an amount of Rs. 1.82 lakhs short-levied as duty."

"4.15. While admitting the mistakes, the Ministry has, however, stated that this was 'a very complex case' and the legal position complicated. The Committee have also been informed that the legal provisions relating to interest in controlled companies are broadly based on similar provisions in the Estate Duty Act of the United Kingdom with variations to suit Indian conditions and that the law in this regard might have to be changed. The Committee would, therefore, recommend that this entire question should be reviewed and necessary changes brought about soon in the Act and the rules framed carefully so as to remove all ambiguities. The Committee would also await a report on the recovery of the additional duty due in the present case."

1.19. The Action Taken Note dated 19 August, 1976 furnished by the Department of Revenue & Banking on the Committee's observations contained in paragraph 4.14 is reproduced below:

"The mistakes were rectified by the Asstt. Controller of Estate Duty under Section 61 of the Estate Duty Act, 1953 on 20-6-1973, creating an additional demand of Rs. 1,89,118 as against Rs. 1,81,615 reported by Audit. The variation is due to difference found in actual calculations. The second appeal filed by the accountable persons was allowed by ITAT by their order dated 30-9-1974. Reference application filed by the Department under Section 64(1) of the Estate Duty Act, 1953 on 8-1-1975 was rejected by the ITAT on 29-3-1975. Reference application filed by the Department is pending before the High Court."

1.20. As regards the Committee's suggestion that the legal position relating to interest in controlled companies should be reviewed and necessary changes brought about soon in the Act and the rules framed there-

under, the Department, in their Action Taken Note dated 19 August, 1976, have stated as follows:

“The question of amending the law and the rules is under consideration.

The net duty payable after giving effect to the ITAT's orders dated 30-9-74 was Rs. 1,403 which has been realised on 4-12-74.”

1.21. The Committee note that though the mistakes pointed out by Audit in this case were rectified by the Assistant Controller of Estate Duty, under Section 61 of the Estate Duty Act, 1953, and an additional demand of Rs. 1.89 lakhs created, the net duty payable had been reduced to Rs. 1403 by the Income-tax Appellate Tribunal, on a second appeal filed by the accountable persons and that a reference application filed in this regard by the Department is pending before the High Court. The Committee would urge the Department to take all possible steps to expedite the court proceedings.

1.22. What causes greater concern to the Committee is the delay in amending the law and the rules relating to interest in controlled companies. As early as in 1973, the Committee were informed that their suggestion, that the legal provisions in this regard, which had been borrowed from the English Act, should be reviewed with a view to modifying them to suit Indian conditions and making them more effective, was being further examined. It is disconcerting that even after the laps of nearly three years, this important question is stated to be still ‘under consideration’. Such delay, which is unfortunately common though entirely avoidable, affects the country's revenue adversely, and the Committee wish that the entire question is examined on a top priority basis and urgent steps taken to amend the law and the rules in this regard.

Valuation of shares of a private company for levy of Estate Duty—Irregular extension of Rule framed under Wealth-tax Act for purposes of Estate Duty. (Paragraphs 5.50 to 5.52—Sl. Nos. 29 to 31).

1.23. Reviewing the extension, by executive instructions, of the Rule framed under the Wealth Tax Act for the valuation of shares of a private company, to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act, the Committee, in paragraphs 5.50 and 5.51 of the Report, had recommended:

“5.50. The Committee are surprised to note that the provisions relating to the valuation of shares of a private company in the Estate Duty and Wealth Tax Acts are not in pari materia and despite the clear difference in the relevant phraseology

of the two Acts, the Central Board of Direct Taxes had, in March, 1968, extended by executive instructions, the application of the Rule framed in this regard under the Wealth-tax Act to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act. While the Committee can understand the need for securing uniformity and simplicity in the valuation of assets for the purpose of Wealth-tax and Estate Duty, they would emphasise that these objectives should not have been achieved in a manner that apparently ignored the difference in language, pattern and context of the statutory provisions governing the methods of valuation under two Acts. *Prima facie*, it would seem that the Central Board of Direct Taxes had adopted a simplistic approach in dealing with the issue and the Committee are doubtful how far executive instructions issued in this regard could be considered legal. The Committee note that perhaps on more careful thought these instructions have now been modified and the Rule framed under the Wealth-tax Act will no longer apply to the valuation of shares covered by Section 37 of the Estate Duty Act. The Committee trust that in future such decisions would be arrived at only after a comprehensive considerations of all legal and other aspects."

"5.51. Since it has been pointed out by Audit that the computation of value on the basis of the book value of the assets, instead of the market value thereof, could lead to anomalous results leading sometimes to under valuation and consequential loss of revenue, the Committee would like to be assured that there has been no loss of revenue in the cases in which the value of shares of a private company had been assessed, for purposes of levy of Estate Duty, on the basis of the executive instructions issued in March 1968. The Committee, therefore, desire that such cases decided and settled on this basis between 1968 and 1974 should be reviewed and the tax incorrectly foregone recovered, and the Committee informed."

1.24. In their Action Taken Note dated 19 August, 1976, the Department of Revenue & Banking have stated:

"The observations made by the Committee have been noted. The matter is still under examination. A further report will be submitted."

1.25. The Committee are unable to appreciate the delay in acting upon a simple recommendation of theirs, namely, that cases in which the value of shares of a private company had been assessed, for purposes of levy of Estate Duty, on the basis of the executive instructions of March 1968, should be reviewed and the tax, if any, incorrectly foregone duly recovered. Delay in such cases is unwarranted and the Committee would like to know what action in this regard is being taken.

1.26. In paragraph 5.52 of the Report, the Committee had further observed as follows :

“Incidentally, the Committee have been informed that ‘a specific decision’ was taken that in applying the break-up value method, the book value and not the market value of the assets would be taken. It is, however, understood from Audit that according to the final orders passed by the then Finance Minister on the relevant file, the market value of the assets was to be adopted. The Committee would, therefore, like this discrepancy to be reconciled and the correct factual position intimated early.”

1.27. The Action Taken Note dated 11 August, 1976 furnished in this regard by the Department of Revenue & Banking is reproduced below :

“It is respectfully submitted that the notes on p. 25/n of the relevant file were only the interim notes recorded by the then Member after preliminary discussions with the Finance Minister.

A note was put up to the then Finance Minister suggesting, *inter alia*, that the value of unquoted equity shares of other companies should be based on the break-up value on the basis of the book figures of assets and liabilities. The note appears on pages 32—37/n of the relevant file. The then Finance Minister saw this note on 26-3-1966.

Final orders of the Minister for Revenue & Expenditure were obtained on 16-6-1967 and are contained on pages 117—120/n of the relevant file.

It is, therefore, not correct to say that according to the final orders passed by the then Finance Minister on the relevant file, the market value of the assets was to be adopted for working out break-up value of unquoted equity shares.”

1.28. The Committee find that the reply now furnished by the Department of Revenue & Banking to their observation contained in paragraph 5.52 of the 211th Report (Fifth Lok Sabha) does not clearly indicate whether the final approval of the then Finance Minister himself was obtained before the issue of instructions of 26 March, 1968 and would seek a more specific clarification in this regard.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee regret that, in this case, although the assessing officer had followed correctly the instructions of the Central Board of Direct Taxes for determining the value of goodwill, he committed a mistake in striking the total of the profits of five years, which resulted in the under-valuation of the interest of the deceased in the goodwill of the firm by Rs. 26,750 and consequential short levy of estate duty of Rs. 6,711. 'A large number of mistakes' are stated to have been made by the officer in other cases also, some of which have been referred to elsewhere in this Report, necessitating the enquiry by the Special Police Establishment into his bonafides. The Committee desire that the enquiry should be completed soon, in case this has not already been done. If malafides are established, appropriate action should be taken against the concerned officer. The Committee would await a further report in this regard.

[S. No. 1 (para 1.15) of Appendix II to 211th Report of PAC (1975-76)

(Fifth Lok Sabha)]

Action taken

Disciplinary action is being taken against the officer for all the mistakes committed by him.

[Department of Revenue and Banking (Revenue Wing)
O.M. No. 236/553/72-A&PAC-I dated the 6th August, 1976]

Recommendations

The Committee are unable to accept the plea that this case could not be scrutinised by the internal Audit on account of paucity of staff. The Committee emphasise the importance of strengthening the Internal Audit Department and urge that its machinery be adequately geared up so that such lapses do not go undetected.

It is distressing that though two of the cases reported by Audit were checked in Internal Audit, the mistakes had gone undetected. In respect of the other three cases, the now-too-familiar plea of 'paucity of trained staff' has been offered. This is very unsatisfactory state of affairs. Now

that a review has taken place and the work of internal audit has been transferred from the staff of the Deputy Controller of Estate Duty to regular Internal Audit Parties, the Committee expect more effective and meaningful results.

[S. Nos. 2 & 6 (Paras 1.16 & 1.29) of Appendix II to 211th Report of PAC (1975-76) (Fifth Lok Sabha)]

Action taken

All cases of Estate duty where the gross demand exceeds Rs. 10,000 are checked by Internal Audit Parties. Thus (all substantial cases of Estate Duty where the principal value of the estate is Rs. 1,80,000 or more are now being checked by Internal Audit Parties.

To assist Internal Audit Parties in doing more effective and efficient audit of Estate Duty assessments, the existing check sheet for estate duty cases was thoroughly revised by the Directorate in June, 1974 to cover all important aspects of assessments in which mistakes are likely to be committed.

2. Attention of the Committee is also invited to our reply to para 12.15 of the 186th Report of the Committee where the Committee has been apprised of the steps taken by the Department to strengthen the Internal Audit Organisation of the Department and make it more effective.

[Department of Revenue & Insurance OM No. 236/553/72-A & PAC-I dated the 23rd July, 1976]

Recommendations

This Audit paragraph refers to instances where deductions admissible, under Section 44 of the Estate Duty Act, on account of tax liabilities of the assessee, had not been correctly worked out. While in two cases, the Assistant Controller of Estate Duty had failed to correlate the information available in the relevant Income-tax records with the Estate Duty records, in a third case, the assessing officer had allowed a deduction of Rs. 16,175 towards tax liabilities against the actual liability of Rs. 8,855. The total tax liability of Rs. 8,855 in this case included Rs. 7,320 towards the Income-tax and the balance towards other taxes. The assessing officer, however, thought erroneously that Rs. 7,320 represented the Income-tax liability and Rs. 8,855 the liability on account of other taxes, and then aggregated the two amounts. In a fourth case, a deduction of Rs. 3,217 had been allowed by the assessing officer against an ultimate refund of Rs. 2,410 while in a fifth case, the tax liability was deducted twice in determining the principal value of HUF estate. These mistakes resulted

in under-assessment of the principal value of the estates to the extent of Rs. 1.15 lakhs and consequential short-levy of Estate Duty of Rs. 19,575.

Admittedly, these mistakes had occurred on account of non-coordination and lack of application on the part of the officers concerned. The Committee have been repeatedly emphasising the need for effective coordination and correlation between the assessments relating to the different direct taxes and for greater vigilance in the finalisation of assessments. That such mistakes should continue to recur despite the Committee's concern and the plethora of instructions issued from time to time is highly regrettable. The Committee hope that at least after the issue of further instructions in this regard on 8 May, 1973, such mistakes would become a thing of the past. The Committee would like to know whether any action has been taken against the assessing officers involved in these lapses.

[S. No. 4&5 (paras 1.27 & 1.28) of Appendix II to 211th Report of PAC (1975-76) (Fifth Lok Sabha)].

Action taken

The Deptt. of Revenue & Banking share the concern of the Committee and are devising ways and means for ensuring compliance with the various instructions issued from time to time to the field formations.

The demand raised as a result of audit objections has been collected.

The CED responsible for the mistakes in the cases of Mrs. Goolbai K. Ookerjee, Vasanji Hemraj and T. P. Desai has been warned to be more careful in future. Disciplinary action has been initiated against the ACED responsible for the mistakes in the case of G. I. Patel and Smt. Indirabai Madhavadas.

[Department of Revenue and Banking (Revenue wing) O.M. No. 236/728/72-A&PAC-I, dated the 19th August, 1976]

Recommendation

The Committee learn that the tax liabilities had been correctly deducted in the relevant wealth-tax assessment of one of the assessees. Since it is likely that similar mistakes, as noticed in the Estate Duty assessments, might have occurred also in the wealth-tax of the other four assessees, the Committee would like to know whether the relevant assessments have been thoroughly scrutinised.

[S. No. 7 (para 1.30) of Appeidix II to 211th Report of PAC (1975-76) (Fifth Lok Sabha)].

Action taken

The wealth-tax assessments in all these cases excepting the case of Smt. Indrabai Madhav Dass, were completed without allowing the tax liabilities as these were not claimed. Further report in the case of Smt. Indrabai Madhav Dass may kindly be awaited.

[Department of Revenue and Banking (Revenue wing) O.M. No. 236/728/72-A&PAC-I, dated the 31st August, 1976].

Further Action taken

Kind attention of the Public Accounts Committee is invited to this Department's action taken note of even number dated the 28th August, 1976 on the above recommendation.

2. The tax liabilities allowable and allowed in the wealth-tax assessment in the case of Smt. Indrabai Madhavdas are as under:

Asst. Year	Allowable		Allowed	
	I.T.	W.T.	I.T.	W.T.
1966-67	..	741	Nil	Not claimed
1967-68	..	877	Nil	Do.
1968-69	..	980	..	980
1969-70	1,856	1,044	1,936	1,044
1970-71	16,927	1,200	16,927	1,138
1971-72	Nil	Nil	Nil	Nil

There are only slight variations between the liabilities allowable and actually allowed, with insignificant tax effect.

[Department of Revenue and Banking (Revenue wing) O.M. No. 236/728/A&PAC-I, dated the 31st August, 1976].

Recommendation

This is a case where the value of house property estimated by the 'capitalisation of yield method' had been incorrectly computed for Estate Duty purposes, resulting in an under-assessment of the principal value of the estate by Re. 97,941 and consequent short levy of duty of Rs. 29,383. The house property had been assessed by the Assistant Controller of Estate Duty on the basis of the valuation certificate furnished by the assessee's valuer on 5 March, 1968, according to which the rent 'realised' was Rs. 59,364 which obviously would include the notional annual value of the portion occupied by the deceased. The assessing officer, however, after capitalising the annual rental value less admissible deductions on account

of taxes, repairs, collections charges, etc. at 16-2/3 years purchase, deducted therefrom an amount of Rs. 78,432 as representing the exemption admissible for self-occupation. According to Audit, this deduction was not in order as the capitalised value computed on the basis of the annual rental income related only to the portion actually let out in view of the fact that the valuer had taken account only the gross rent actually 'realised'.

[S. No. 8 (Para 1.47) of Appendix II to 211th Report of PAC (1975-76)
(Fifth Lok Sabha)].

Action taken

Regarding the letter of March, 1972 referred to in para 1.48, it may be stated that as the Assistant Controller had completed the assessment much earlier, there was no occasion for him to seek a clarification until the Revenue Audit raised this objection. It is further submitted that the letter from the Accountable Person was not obtained with a view to support the assessment order but to get at the truth of the matter.

[Department of Revenue and Banking O.M. No. 236/711/72-
A & PAC-I, dated the 19th August, 1976]

Recommendation

The Audit objection has, however, not been accepted by the Ministry on the ground that according to subsequent clarification by the valuer in March 1972, there was a typing error in his original valuation report of 5 March, 1968 and that the gross rent of Rs. 59,364 represented the rent 'realisable' (and not rent 'realised') and appertained, therefore, to the entire building including the self-occupied portion. This letter, strangely, was obtained four years after the original valuation report, (on the basis of which the assessment was completed); had been furnished by the valuer and that too after the mistake was pointed out by the Revenue Audit in January 1972. It is also not clear from the assessment records whether the assessing officer had independently verified the rents received. Besides, the deceased does not appear to have claimed deduction for the self-occupied portion for the purposes of income-tax, and if any such deduction had been claimed on this account, it had not been correlated either by the Assistant Controller of Estate Duty or the Inspector concerned. In the circumstances and also in view of the fact that the bonafides of the officer who had assessed this case are suspect and an enquiry by the Special Police Establishment is pending, the Committee cannot accept the explanation now offered, which can at best be considered to be an after-thought. The Committee would await the outcome of the enquiry which, they presume, should have been completed by now.

[S. No. 9 (Para 1.48) of Appendix II to 211th Report of PAC]

Action taken

A charge sheet as for major penalty was since been issued to the officer concerned.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/711/72-A & PAC-I, dated the 12th July, 1976]

Further Action taken

Disciplinary proceedings have since been initiated against the officer concerned.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/711/72-A & PAC-I, dated the 19th August, 1976]

Recommendation

The Committee take a serious view of the number of avoidable mistakes in the computation of the value of the estate that have come to notice in this case, resulting in the under-assessment of the principal value of the estate by Rs. 5,85,973 and consequential short-levy of duty of Rs. 4,27,413. The Officer who handled the case was an experienced officer with about 16 years service at the relevant time. Prima-facie, therefore, it would appear that either the officer was grossly negligent in the discharge of his duties or that the mistakes were deliberate and malafide. What is distressing is that the same officer has been responsible for the mistakes and omissions in as many as 8 cases commented upon in this Audit Report and four other cases included in the Audit Report for the year 1970-71. A review of all the Estate Duty assessments completed by this particular officer had disclosed that out of 297 assessments completed by him, mistakes were detected in 26 cases out of which 19 had been reported by the Revenue Audit, involving an aggregate tax effect of Rs. 5.32 lakhs. All this has necessitated a probe into the bona fides of the officer by the Special Police Establishment. The performance of the officer, thus, makes truly distressing reading. The Committee have no doubt that action would be taken against the delinquent officer for the lapses detected and established so as to serve as a deterrent to others.

[S. No. 14 (Para 2.12) of Appendix II to 211th Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

A charge sheet as for major penalty on certain allegations, including the one relating to the case under reference, has since been issued to the officer concerned.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/734/72-A & PAC-I, dated the 16th July, 1976]

Recommendation

The Committee presume that the assessment in this particular case would have been revised by now and the duty under-assessed recovered. This needs to be confirmed.

[S. No. 15 (Para 2.13) of Appendix II to the 211th Report of PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

The assessment in this case has been revised and the additional duty levied amounting to Rs. 4.27 lakhs has been recovered.

[Department of Revenue and Banking (Revenue Wing) O.M. No.
236/734/72-A & PAC-I, dated the 19th July, 1976]

Recommendations

The Committee are concerned to note that while computing the principal value of an estate, the value of 720 shares held by the deceased in a company had been omitted to be included in the estate by the Estate Duty Officer, resulting in under-assessment of the value of the estate by Rs. 17,381 and consequential short-levy of duty of Rs. 14,398. With a little more care, a simple mistake like this could well have been avoided.

What causes greater concern to the Committee is that the value of these shares had not been returned by the deceased in his wealth-tax assessments and since the time-limit for initiating action under Section 17(1) (a) expired on 31 March, 1972, no action is possible now to revise the relevant wealth-tax assessment. Apparently, there has been a failure to correlate the assessments under the various direct tax laws. That this should be so despite repeated exhortations of the Committee in the past is regrettable. However, since these shares had been held by the deceased jointly with his daughter, the Committee would like to know whether they have at least been assessed in the hands of the joint holder. The Committee would also like to be informed whether any wealth-tax assessment was made on the executors/administrators of the estate of the deceased till the estate was completely distributed and, if so, whether the shares have been assessed to tax in their hands.

[S. No. 16 & 17 (para Nos. 2.20 & 2.21) of Appendix II to 211th
Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The required information is not readily available on record. It is, therefore, necessary to contact the Accountable Person, who is stated to

be residing at Kathmandu, for certain clarifications. As soon as the clarifications are received and verified, the Committee will be apprised of the position.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/596/72-A & PAC-I, dated the 30th August, 1976].

Further Action taken

A reference is invited to this Department's action taken note of even number dated the 25th August, 1976.

2. The value of 720 shares of the Indian Iron & Steel Co. Ltd. in the joint names Rani Nayapala Rajya Laxmi Shah and the deceased was not included in the principal value of the estate of the deceased as the shares did not belong to the deceased. The dividend from these shares and the value of the shares have been duly accounted for in the Income-tax and Wealth-tax assessments of Rani Nayapala Rajya Laxmi Shah, who was the owner of these shares.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/596/72-A & PAC-I, dated the 23rd September, 1976]

Recommendation

2.31. The Committee are concerned to note in this case that failure to include the life interest of the deceased in the income of her predeceased husband, valued at Rs. 6.12 lakhs, in the principal value of the estate had resulted in a short-levy of Rs. 1.86 lakhs. It appears that no attempt had been made by the assessing officer to ascertain independently the source of income of the deceased apart from merely relying on the statement made by the accountable person. Since the deceased was admittedly also an income-tax assessee, it should have been possible for the assessing officer to trace the source of income by a scrutiny and correlation of the relevant income-tax assessment. That this was not done would indicate that the assessment had been completed in a perfunctory manner. The Committee take a serious view of the lapse and desire fixation of responsibility for taking suitable action.

[S. No. 18 (para 2.31) of Appendix II to 211th Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

In this case, the assessment proceedings were all attended to by the same Assistant Controller of Estate Duty. Although the Officer did not consult the I.T. records of late Edward Esmond, he had made normal queries and followed the normal procedure. The explanation submitted

by the Officer was accepted by the Controller of Estate Duty. The officer has, however, been asked to be vigilant in future.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/844/73-A&PAC-I, dated the 19th August, 1976]

Recommendation

It is significant that the accountable person in this case had stated, in reply to a questionnaire issued by the Assistant Controller of Estate Duty, that the source of income was 'not known'. The Committee desire that the case should be re-examined with a view to ascertaining if this statement made by the accountable person was *bonafide* or was intended to suppress the relevant facts before the assessing officer. In case the accountable person is found to have made a false declaration with a view to concealing the value of the estate and thereby evading tax, penal action, in accordance with the law, should be initiated.

[S. No. 19 (Para 2.32) of Appendix II to 211th Report of the PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

Penalty proceedings under Section 60(1)(a)/60(1)(c) have been initiated against the Accountable person.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/844/73-A&PAC-I, dated the 19th August, 1976]

Recommendation

2.33. The Committee note that the principal value of the estate has been re-assessed by including the value of the life interest of the deceased in the estate left by the pre-deceased husband. The Committee would like to be informed of the value of the demand raised as a result of the re-assessment and the position of recovery of the tax due.

[S. No. 20 (paras 2.31, 2.32 & 2.33) of Appendix II to 211th Report of
PAC (1975-76) (Fifth Lok Sabha)]

Action taken

2.33. The under-assessment has been worked out at Rs. 9,48,477/- in the re-assessment as against the under-assessment of Rs. 6,11,845/- pointed out by Audit. The entire demand of additional duty of Rs. 3,20,924.95 has been collected.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/844/73-A&PAC-I, dated the 19th August, 1976]

Recommendation

The Committee are concerned that in several cases, the assessing officers do not record their reasons for taking a particular point of view, as a result of which it becomes difficult subsequently to determine the rationale for the adoption of such a view, especially if it happens to differ from the ordinarily accepted view on a subject. The Committee would, therefore, urge the Central Board of Direct Taxes to issue necessary instructions to the assessing officers and ensure that adequate reasons for arriving at a particular conclusion are invariably recorded by them.

[S. No. 26 (Para 5.22) of Appendix II to 211th Report of PAC(1975-76)
(Fifth Lok Sabha)]

Action taken

Necessary instructions have been issued as desired by the Committee *vide* Instruction No. 978 dated the 14th July, 1976 (F. No. 236/719/72-A&PAC-I) (copy enclosed).

[Department of Revenue and Insurance O.M. No. 236/719/72-A&PAC,
dated the 6th August, 1976]

INSTRUCTION NO. 978

F. No. 236/719/72-A&PAC-I

BHARAT SARKAR

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 14th July, 1976.

To

All Commissioners of Income-tax.

Sir,

SUB: *Recording adequate reasons for arriving at a particular conclusion—
Instructions regarding—*

In their 211th Report, the Public Accounts Committee have expressed deep concern on under-assessment in a case arising out of failure to correlate the assessments under the different direct taxes laws. The Committee have expressed their surprise that two valuation reports had been issued in respect of the same house property, both purporting to have been prepared and signed by the same valuer on the same day, one showing the fair rent at Rs. 1850 p.m. and the other at Rs. 1550 p.m. While

the lower rent of Rs. 1550/- had been adopted in the estate duty assessments, the higher rent of Rs. 1850/- p.m. had been adopted for purposes of wealth-tax. The adoption of the lower rent in the Estate Duty assessment had resulted in under-valuation of the estate by Rs. 48,900/-. The Committee were not fully satisfied with the Department's contention that the higher rent was as on 31.3.1968 and the lower as on 10-10-1968 and that as rents in Calcutta might have fallen considerably during the intervening period of time on account of disturbed conditions then prevailing in the city, the estate duty officer had perhaps considered that the unrented units would be of lesser value and had taken the lesser rental for those un-rented units.

2. In the absence of any recorded reasons, it was not clear from the assessment order whether the officer had applied his mind at all and satisfied himself that there was justification for reducing the rent in this case. There are several instances where the assessing officers do not record their reasons for taking a particular point of view, as a result of which it becomes difficult subsequently to determine the rationale for the adoption of such a view, especially if it happens to differ from the ordinarily accepted view on the issue. You are, therefore, requested to ensure that in future, the assessing officers invariably record adequate reasons for arriving at a particular conclusion in their assessment orders.

Yours faithfully,

(Sd.) A. S. THAKUR,

UNDER SECRETARY, C.B.D.T.

Recommendation

The Committee are given to understand that in the assessee's case Income-tax assessment for the assessment year 1969-70, completed on 30th November, 1971, the annual value of the house had been adopted as Rs. 3,493 for the rented portion and Rs. 3,493 for the self-occupied portion even though the valuer had certified the rent at Rs. 1,850 p.m. for wealth-tax purposes on 14th December, 1968, on the basis of which the annual rental value would work out to Rs. 22,200. Since this implies that the assessee's income has also been under-assessed, the committee desire that the entire assessment of taxes (Income-tax wealth-tax, Estate Duty etc.) payable by the assessee should be reviewed and necessary rectificatory action taken and the Committee informed.

[S. No. 27 (Para 5.23) of Appendix II to 211th Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

Action u/s 17 of the Wealth-tax Act, 1957, has been taken in respect of the A.Y. 1968-69 to 1973-74. The Income-tax Officer has also been directed to take action u/s 147 to reopen the Income-tax assessments for years 1968-69 to 1973-74.

2. The value of the property taken in ED assessment was more than that determined by the Departmental Valuation Cell and therefore no revision is called for.

[Department of Revenue and Banking (Revenue Wing) O.M.
No.236/719/72-A&PAC I dated the 30th August, 1976]

Recommendation

This is a case of over-assessment, of the principal value of an estate, to the extent of Rs. 50,000, by the inclusion of gifts made by the deceased more than two years prior to his death. The Committee are distressed that such a patent mistake should have been committed by the assessing officer. What is more surprising is that in another case, the same officer should have omitted to include in the estate the value of a gift made within two years preceding the death of the deceased, while, under Section 9 of the Estate Duty Act, 1953, it should have been included in the estate. The Committee are perturbed by the intriguing series of mistakes committed by this particular officer, mistakes which have been referred to elsewhere in this Report. This appears to be a case where, disciplinary action, apart from whatever inquiry might be going on is called for without delay.

[S. No. 28 (Para 5.32) of Appendix II to 211th Report of PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

Disciplinary action has since been initiated against the officer concerned.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/566/72-A&PAC-I dated the 12th July, 1976]

Recommendation

The Committee have been informed that detailed instructions have been drawn up regarding method of computation of the value of shares in a case where two or more companies hold shares in each other and the principle of market value of assets is to be adopted and that these

instructions are under consideration. Since an important question of principle is involved here, the Committee desire that the instructions should be finalised carefully and the implications clearly explained to the assessing officers. The Committee would await a further report in this regard.

[S. No. 32 (Para 5.53) of Appendix II to 211th Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

Kind attention of the Committee is drawn to the fact that the Board have already issued Instruction No. 835 (F. No. 313/88/74-ED) dated the 24th May, 1975 (copy enclosed), as desired by the Committee.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/860/73-A&PAC-I dated the 16th July, 1976].

INSTRUCTION NO. 835

F. No. 313/88/74-ED

GOVERNMENT OF INDIA/BHARAT SARKAR CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 24th May, 1975.

To

All Commissioners of Income-tax/
Controllers of Estate Duty.

Sir,

Sub : Valuation of shares under section 37 of the E.D. Act—
Instruction regarding—

Section 37 of the Estate Duty Act deals with valuation of shares in a private company where alienation of shares is restricted. The Section reads as under:—

“Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holders subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded”.

The Board in their letters dated 3rd May, 1965 and 5th July, 1965 issued from F. No. 25A/3/65-ED clarified the scope of this Section. Briefly, the clarification runs as follows:

Section 37 of the Estate Duty Act which governs the mode of valuation of shares in a private limited company whose Articles of Association contain restrictive provisions as to the alienation of its shares, contemplates:—

- (a) firstly, it should be seen whether the value of shares is ascertainable, by reference to the value of the total assets of the company; and
- (b) if it is not so ascertainable, then it shall be estimated to be what it would fetch if sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, disregarding any special price that might be paid by a special buyer.

If clause (a) applies, the value of shares should be determined by break-up method taking the market value of the assets of the company and not the book value, if that does not happen to be their market value. If clause (b) applies then the assessing officer need not necessarily adopt the break up method but may also adopt some other method of valuation based on the yield or profits etc.

2. These instructions appeared to have been impliedly modified by circular No. 1-D/ED of 1968 which extended the method of valuation prescribed by Wealth-tax Rules to valuation of shares for purposes of Estate Duty Act. On a reference from the Revenue Audit, the Board, after consultation with Ministry of Law on the scope of Section 37 of the Estate Duty Act, issued instruction No. 771, dated 29th October, 1974 directing that contents of circular No. 1-D/ED of 1968 dated the 26th March, 1968 will not apply to valuation of shares covered by Section 37 of the Estate Duty Act but that the valuation of such shares will be governed by Board's earlier letters dated 3rd May, 1965 and 5th July, 1965 issued from F. No. 25A/3/65-ED. Thus, the expression "value of the total assets of the company" in section 37 of the Estate Duty Act would mean market value of the assets and not the book value of the assets; further, the expression "total assets of the company" would include goodwill also, whether or not shown as such in the balance-sheet.

3. An allied issue is valuation of shares in a case where two or more private companies hold shares of each other and valuation of such shares, to be made by the break-up method. The Board are of the view that in such cases the value of the shares can be determined by framing and

solving simple algebraic equations. Illustrations which fully explain the position are given below:

Suppose there are two companies 'A' & 'B' and 'A' holds shares in 'B' and 'B' holds shares in 'A'. Let the balance sheets of the two companies 'A' and 'B' as at the relevant date be as under:

Balance sheet of 'A' as at.....

<i>Liabilities</i>	Rs.	<i>Assets</i>	Rs.
Shares capital : 200 shares of Rs. 80 each fully paid	1,60,000	All assets other than shares in 'B'	2,00,000
Reserves and Surplus [.	40,000	Shares in 'B' 500 of Rs. 100 each	50,000
Liabilities	50,000		
	<u>2,50,000</u>		<u>2,50,000</u>

Balance sheet of 'B' as at.....

Share capital : 1000 shares of Rs. 100 each fully paid	1,00,000	All assets other than shares in 'A'	1,00,000
Liabilities	40,000	Shares in 'A' 500 of Rs. 80 each	40,000
	<u>1,40,000</u>		<u>1,40,000</u>

To find out the break-up value of the shares of 'A' & 'B' with reference to the market value of the assets of the two companies :

Let the market value of.....

"all assets of 'A' other than shares in 'B' be Rs. 3,50,000

Let the market value of.....

"all assets of 'B' other than shares in 'A' be Rs. 1,40,000

Let 'a' be the break-up value of a share in 'A'

and 'b' be the break-up value of a share in 'B'

Then from the Balance-sheet of 'A'

$$2000 a - 3,00,000 + 500 b$$

- (1) (The figure of Rs. 3,00,000 is arrived at by deducting the liabilities of Rs. 50,000 from the market value of the assets, namely, Rs. 3,50,000.
- (2) It has been assumed that all the assets shown are to be included on & liability shown to be excluded while working out the break-up value. If any assets is to be omitted or any liability is to be excluded it may be done first before forming the equation).

$$\text{i. e. } 4a - 600 + b$$

$$\text{i. e. } 4a - b = 600 \dots\dots\dots(1)$$

from the Balance-sheet of 'B'

$1000b = 1,00,000 + 500a$ (the figure of Rs. 1,00,000 has been arrived at by deducting the liabilities of Rs. 40,000 from the market value of the assets, namely, Rs. 1,40,000.)

i. e. $2b = 200 + a$

i. e. $2b = a = 200$(2)

We have now to solve equations (1) & (2)

(1)x(2) gives, $8a - 24 = 1200$(3)

Adding equations

(2) & (3) we get, $7a = 1400$
 $\therefore a = 200$

Substituting the value of 'a' in equation (2)

$2b - 200 = 200$
 $\therefore 2b = 400 \therefore b = 200$

The break-up value of shares of 'a' by taking into account the market value of assets is.....Rs. 200/-

The break-up value of shares of 'B' by taking into account the market value of assets is.....Rs. 200/-

Verification :

Market value of all assets of 'A' other than shares of 'B'	Rs. 3,50,000
Add value of shares 'B' 500XRs. 200:	Rs. 1,00,000

Total	Rs. 4,50,000
Less liabilities	50,000
Value of each share of 'A' is 4,00,000	
-----	=Rs. 200/-
2000	

It is also possible to determine the value of shares without framing two equations. Let 'a' be the value of shares of 'A'

Then let us first compute the value of share of 'B'
 Value of shares of 'B' = $1,00,000 + 500a$

$$= 100 + \frac{a}{2}$$

substituting this value in the Balance-sheet of 'A'

$$\text{Value of 'A' share} = 3,00,000 + 500\left(100 + \frac{a}{2}\right)$$

$$= 150 + 25 + \frac{1}{8}$$

But this is equal to 'a'
 $\therefore a = 175 + \frac{a}{8}$

i.e. $\frac{7a}{8} = 175 \therefore a = 175 \times \frac{8}{7} = 200$

\therefore Value of 'A' 's share is Rs. 200
 Now 'B' 's share value can also be found out

From the balance sheet of 'B'

$$1000b = 1,00,000 + 300a + 400c$$

i.e. $10b - 1,000 + 3a + 4c$

i.e. $10b - 3a - 4c = 1000$(2)

From the balance sheet of 'C'

$$2000c = 1,60,000 + 100a + 200b$$

i.e. $20c = 1,600 + a + 2b$

i.e. $20c - a - 2b = 1600$(3)

We have to solve the equations

(1), (2) and (3) for finding out the value of a, b and c

$$10a - 2b - c = 1250$$
.....(1)

$$10b - 3a - 4c = 1000$$
.....(2)

$$20c - a - 2b = 1600$$
.....(3)

$$(3) - (1) \text{ gives, } 21c - 11a = 350$$
 (4)

$$(1) \times 5 \text{ gives, } 50a - 10b = 5c - 6250$$
 (5)

$$(2) + (5) \text{ gives, } 47a - 9c = 7250$$
 (6)

$$(4) \times 3 \text{ gives, } 63c - 33a = 1050$$
 (7)

$$(6) \times 7 \text{ gives, } 329a - 63c = 50750$$
 (8)

$$(7) + (8) \text{ gives, } 296a = 51800 \therefore a = 175$$

Substituting this value of 'a' in (4)

$$21c = 350 + 1925 = 2275$$

$$c = \frac{2275}{21} = 108.33$$

Substituting the values of 'a' & 'c' in (1)

$$1750 - 2b - 108.33 = 1250$$

$$2b = 500 - 108.33 = 391.67$$

$$\therefore b = 195.83$$

\therefore The value of a share of 'A' is Rs. 175

The value of a share of 'B' is Rs. 195.83

The value of a share of 'C' is Rs. 108.33

In general if there are n companies

$A_1, A_2, A_3, \dots, A_n$

and if each of these companies holds shares in the other $(n-1)$ companies, then we can frame n equations and determine the value of shares of these companies.

4. As the language of Rule 10(2) of Gift-tax Rules is identical to Section 37 of the Estate Duty Act, the above guidelines would apply to valuation of shares under Rule 10(2) of the Gift-tax Rules, 1958.

5. Contents of these instructions may please be brought to the notice of all assessing officers in your charge.

Yours faithfully,

(Sd.)

(S. BAPU)

Under Secretary,

Central Board of Direct Taxes.

Recommendation

For lack of time, the Committee have not been able to examine some of the paragraphs relating to Estate Duty included in Chapter IV of the Reports of the Comptroller and Auditor-General of India for the years 1971-72 and 1972-73, Union Government (Civil) Revenue Receipts, Volume II, Direct Taxes. The Committee expect, however, that the Department of Revenue and Insurance and the Central Board of Direct Taxes will take remedial action in these cases, in consultation with the Statutory Audit.

[S. No. 33 (Item No. 5.54) of Appendix II to 211th Report of the PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

It is the general practice that every audit objection is settled in consultation with the Comptroller and Auditor General of India and any recommendation/observation made by the Comptroller and Auditor General is examined and the results intimated to the Comptroller and Auditor General of India.

[Department of Revenue and Insurance OM No. 241|34|76-A&PACI
dated the 30th July, 1976]

CHAPTER III

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

Recommendation

The Committee note that an additional demand has been raised for the duty short-levied and would like to be informed whether the demand has since been recovered.

[S. No. 3 (paras 1.15 & 1.17) of Appendix II to 211th Report of PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

The Committee note that an additional demand has been raised for the be collected as the Accountable Persons went in appeal to the Tribunal and got further reduction. The Accountable Person has also put in his claim for allowing relief under Section 50 of the State Duty Act, to the extent of Rs. 4,550 due on additional probate fees paid amounting to Rs. 9,100. It is reported that under the circumstances the revision will ultimately result in a small refund.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/553/
72—A & PAC I dated the 6th August, 1976]

Recommendation

No doubt, at the Committee's instance, a fresh valuation of the property in question has been done by the District Valuation Officer and the difference between his valuation and that of the assessee's valuer is seen to be nominal. The Committee, however, find that the assessee's valuer had adopted the capitalisation rate at 6 per cent (16.66 times) whereas the District Valuation Officer has adopted a rate of 7 per cent (14.3 times). The Committee would like to be informed of the reasons for the District Valuation Officer adopting the lower multiple and whether the Ministry concur therewith. Further, according to the District Valuation Officer's report the value of the self-occupied portion alone (6th floor) is Rs. 1.49,876, by adopting the 'cost of construction method' for valuation. It would be worthwhile to examine whether the Valuation Officer had estimated the value of the entire building by this method, for it is not likely that the value computed on

this basis would be much more than the value actually assessed by adopting the capitalisation of yield method.

[S. No. 10 (Para 1.49) of Appendix II to 211th Report of the PAC (5th Lok Sabha)]

Action taken

The valuation of properties is generally based on practical experience and prevailing market conditions. The rates of capitalisation differ from time to time and from property to property depending upon several factors. No precise reasons can be adduced for the adoption of different rates for capitalisation of yield since judgements of two persons can differ depending upon how they view the several factors involved in the process.

The self-occupied portion alone was valued on the basis of the land and building method. The rest of the structure was occupied by tenants protected under the Rent Act. There was no possibility of a prospective purchaser paying for the rented portion on the basis of land and building method.

[Department of Banking and Revenue (Revenue Wing) O.M. No. 236/711/72—A&PAC-I dated the 19th August, 1976]

Recommendation

This is yet another instance of under-assessment arising out of failure to correlate the assessments under the different direct tax laws. The Committee are surprised that two valuation reports had been issued in respect of the same house property, both purporting to have been prepared and signed by the same valuer on the same day, one showing the fair rent at Rs. 1,850 p.m. and the other at Rs. 1,550 p.m. While the lower rent of Rs. 1,550 has been adopted in the estate duty assessment, the higher rent of Rs. 1,850 p.m. had been adopted for the purpose of wealth-tax. The adoption of the lower rent had resulted in an under-valuation of the estate by Rs. 48,900. It was, however, contended by the Department that the higher rent was as on 31st March, 1968, and the lower one was as on 10th October, 1968, and that as rents in Calcutta might have fallen considerably during the intervening period of time on account of disturbed conditions then prevailing in the city, the Estate Duty Officer had, perhaps, considered that the unrented units would be of a lesser value and had taken the lesser rental for those unrented units. It is clear from the evidence that the alleged fall in rents in Calcutta was little more than a hypothetical deduction based only on a 'surmise'. Besides, in the absence of any recorded reasons, it is not clear from the assessment order whether the officer had at all applied his mind and satisfied himself that there was justification for reducing the rent. The Committee have been informed that since the lower value had been inadvertently adopted by the assessing officer, there was also no occasion to verify the value's estimate. The Committee, therefore, desire that the matter

should be gone into thoroughly in order to determine the precise factual position and take corrective action as may be necessary.

[S. No. 25 (Para 5.21) of Appendix II to 211th Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The matter has been gone into thoroughly as desired by the Committee. There has been no undervaluation of the house property at 222/2, Rash Behari Avenue, Calcutta included in the estate of Late Hrisikesh Sen. Even though there were certain mistakes of a *bonafide* nature in the computation of the value of the property made by the Assistant Controller, there had not been undervaluation due to compensating errors in the computation. Even if the value of the property was computed on the basis of the higher rental adopted by the Valuer in one of the reports, its value would be lower than that adopted by the Assistant Controller. The Assistant Controller's explanation was obtained and he was warned by the Controller to be extremely careful in matter of computation in future. The objection has since been settled with Audit and no corrective action is now considered necessary.

[Department of Revenue and Banking O.M. 236/719/72—A & PAC I dated the 12th August, 1976]

CHAPTER IV

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

Recommendations

Under Section 33(1)(n) of the Estate Duty Act, exemption from Estate Duty in respect of a house or part thereof exclusively used by the deceased for his residence is admissible only in respect of properties belonging to the deceased and passing on his death. In the present case the house property in question belonged to a Trust and the deceased had only a life interest therein. In the light of an opinion given earlier by the Law Ministry (with reference to two similar cases commented upon in the Audit Report for the year 1970-71) that the provision of Section 33(1)(n) does not speak of "interest in property" but property itself, the Committee had felt in paragraph 4.27 of their 88th Report (Fifth Lok Sabha) that the inclusion of life interest for exemption under this Section did not appear to be legally valid. In paragraph 4.28 of the Report, the Committee had accordingly desired that the position in law should be clarified for the guidance of the Estate Duty Officers, in addition to conducting a test check in other charges to see whether similar mistakes had taken place.

The Committee have been informed that the legal position in this regard is not entirely free from doubt and that different Tribunals have expressed different views on the subject. A deeper examination of the legalities thus becomes necessary. Much time, however, has elapsed and the Committee urge that the final opinion of the Ministry of Law should be obtained, if it has not already been done, and the correct legal position intimated to the assessing officers. The latest position in this regard should be communicated forthwith to the Committee. It should also be examined whether any amendment to the law is necessary to make it clear whether the expression 'property' in Section 33(1)(n) of the Act means only property or includes also interest in property.

[S. No. 21 and 22 (paras 3.9 and 3.10) of Appendix II to 211th Report of the PAC (1975-76) Fifth Lok Sabha]

Action Taken

Advice of the Ministry of Law at the level of Law Secretary was obtained in regard to the question whether exemption under Section 33(1)(n) of the Estate Duty Act is available in cases where the deceased had only life interest in the property. The Law Ministry advised that the exemption would be allowable in such cases.

2. The question whether the expression 'property' in Section 33 (1) (n) of the Estate Duty Act means only property or also includes interest in property was examined by the Ministry of Law. The advice was given after examination of the question.

3. Advice of the Solicitor General was also sought in regard to the question whether the exemption under Section 33(1)(n) was available in respect of property included under Section 9 and 10 of the Estate Duty Act. The Solicitor General advised that the exemption would be permissible in such cases.

4. On the basis of the advice received, the Board issued instruction No. 939 dated 22nd March, 1976 (F. No. 309/5/73-ED) [Reproduced in Chapter IV]

5. In view of the position explained above, the test check to see whether any mistakes have taken place is not considered necessary.

[Department of Revenue and Banking O.M. No. 236/580/72-A & PAC-I,
dated the 16th June, 1976.]

INSTRUCTION NO. 939

F. No. 309/5/73-E.D.

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 22nd March, 1976.

To

All Controllors of Estate Duty.

Str,

SUBJECT:—*Scope of exemption u/s 33(1)(n) of the Estate Duty Act, 1953—*

Under Section 33(1)(n) of the Estate Duty Act, 1953, no Estate Duty is payable on the value of one house or part thereof exclusively used by the deceased for his residence to the extent the principal value

thereof does not exceed Rs. 1 lakh, if such house is situated in a place with a population exceeding ten thousand and the full principal value thereof in any other case.

2. A question had arisen whether exemption u/s 33(1)(n) could be granted in respect of a house or part thereof which was used exclusively by the deceased for his residence, if:

- (i) the deceased had only life-interest in the house or part thereof; and
- (ii) the house or part thereof had been gifted away by the deceased and was deemed to pass under section 9 or 10 of the Act.

3. The Board considered the above question and issued instructions *vide* their letter or even number dated 29th November, 1973. The instructions stated that pending receipt of the final advice of the Ministry of Law, the Assistant Controllers should proceed on the footing that exemption u/s 33(1)(n) is not available in the types of cases mentioned above. Final advice of the Ministry of Law has now been received. The Board are advised that exemption u/s 33(1)(n) would be available in both the types of cases mentioned above.

4. These instructions may please be brought to the notice of all the assessing officers. All cases which had been decided in the light of Board's letter F. No. 309/5/73-ED dated 29-11-73 may be re-viewed in the light of the present Instruction and necessary relief may be allowed u/s 61 of the E.D. Act. In cases where requests had been made to the AACs or to the Appellate Tribunal for keeping the appeals pending requests may now be made for the disposal of those appeals in the light of the present Instruction. The appeals or reference applications which may have been filed against adverse appellate decisions in this regard, may be withdrawn.

Yours faithfully,

(Sd/-)

(BALBIR SINGH)

Director, Central Board of Direct Taxes.

Recommendation

Incidentally, the Committee have been informed that 'a specific decision' was taken that in applying the break-up value method, the book value and not the market value of the assets would be taken. It is, however, understood from Audit that according to the final orders passed by the then

Finance Minister on the relevant file, the market value of the assets was to be adopted. The Committee would, therefore, like this discrepancy to be reconciled and the correct factual position intimated early.

[S. No. 31 (para 52) of Appendix II to the 211th Report of PAC(1975-76)
(Fifth lok Sabha.)]

Action taken

It is respectfully submitted that the notes on p25/n of the relevant file were only the interim notes recorded by the then Member after preliminary discussions with the Finance Minister.

2. A note was put up to the then Finance Minister suggesting *inter alia* that the value of unquoted equity shares of other companies should be based on the break-up value on the basis of the book figures of assets and liabilities. The note appears on pages 32-37/n of the relevant file. The then Finance Minister saw this note on 26-3-1966.

3. Final orders of the Minister for Revenue & Expenditure were obtained on 16-6-1967 and are contained on pages 117-120/n of the relevant file.

4. It is, therefore, not correct to say that according to the final orders passed by the then Finance Minister on the relevant file, the market value of the assets was to be adopted for working out break-up value of unquoted equity shares.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/
860/72-AOPACI dated the 19th August, 1976]

CHAPTER V

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

Recommendation

The Committee learn from Audit that the gross annual value of the entire property was adopted as Rs. 49,997 even for the assessment year 1968-69. However, according to the District Valuation Officer's Report, the actual rent realised from the rented portion of the property was Rs. 54,191. Since a lower value has apparently been adopted in the Income-tax assessment, the Committee would like to know whether any steps have been taken by the Department to revise the relevant Income-tax assessments.

From the foregoing paragraphs, it is evident that the property in question has been valued differently for the purposes of the different Direct Taxes, and that there has been little or no coordination between the different assessing officers. The Committee desire that action should be taken to revise the direct tax assessments, wherever necessary, and to realise the additional taxes due alongwith whatever consequential action may ensure.

[Sl. Nos. 11 & 13 (Paras 1.50 and 1.52) of Appendix II to 211th Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The Income-tax Officer concerned has been asked to reopen the assessments. Further report may kindly be awaited.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/711/72-A&PAC-I, dated the 30th August, 1976]

Recommendation

Under Section 33(1)(n) of the Estate Duty Act, 1953, one house or part thereof exclusively used by the deceased for his residence is not to be included in the principal value of the estate to the extent of Rs. 1 lakh. In the original Estate Duty assessment in this case, the entire value of the 6th floor had been exempted as its value as then estimated (Rs. 78,432) was below the exemption limit of Rs. 1 lakh. Since the 6th floor has subsequently be valued by the District Valuation Officer at Rs. 1,49,876,

which is above the exemption limit, the value of this portion in excess of Rs. 1 lakh, in any case, have to be added to the estate. The Committee would, therefore, like to be informed whether the earlier assessment has at least been revised to levy duty on the value of the self-occupied portion in excess of the exemption limit.

[S. No. 12 (Para 1.51) of Appendix II to 211th Report of PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

The assessment in this case has been reopened and the Accountable Person has filed the account under protest.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/711/72-A&PAC-I, dated the 19th August, 1976]

Recommendation

Under Section 17 of the Estate Duty Act, if a deceased had transferred any property to a controlled company and a benefit had accrued to him from that company in the three years preceding his death, a proportion of the net assets of the company, which is determined by comparing the aggregate amount of the company's net income in the relevant period, is deemed to be property passing on death and is assessable to Estate Duty. Under Rules 9 & 10 of the Estate Duty (Controlled Companies) Rules, 1953, in working out the aggregate income of the company for this purpose, no deduction is admissible in respect of payment of interest on debentures in the company and correspondingly no deduction is to be made for liabilities in respect of these debentures while computing the net assets of the company. In the present case, the Appellate Tribunal had held that certain payments of interest should be treated as 'interest on debentures' and added to assessed income. However, while giving effect to the Appellate order, the amount to which this interest related had not been treated as 'debentures' and deducted from the liabilities. An interest of Rs. 1,06,817 had also been erroneously added twice to the income. As a result of these mistakes, the principal value of the estate was under-assessed by Rs. 8.15 lakhs and an amount of Rs. 1.82 lakhs short-levied as duty.

[S. No. 23 (Para 4.14) of Appendix II to 211th Report of PAC
(1975-76) (Fifth Lok Sabha)]

Action taken

The mistakes were rectified by the Asstt. Controller of Estate Duty u/s 61 of the Estate Duty Act, 1953 on 20-6-73, creating an additional demand of Rs. 1,89,118 as against Rs. 1,81,615 reported by Audit. The

variation is due to difference found in actual calculations. The second appeal filed by the accountable persons was allowed by ITAT by their order dated 30-9-74. Reference application filed by the Deptt. u/s 64(1) of the ED Act, 1953 on 8-1-75 was rejected by the ITAT on 29-3-75. Reference application filed by the Deptt. is pending before the High Court.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/729/72-A&PAC-I, dated the 19th August, 1976]

Recommendation

While admitting the mistakes, the Ministry has, however, stated that this was 'a very complex case' and the legal position complicated. The Committee have also been informed that the legal provisions relating to interest in controlled companies are broadly based on similar provisions in the Estate Duty Act of the United Kingdom with variations to suit Indian conditions and that the law in this regard might have to be changed. The Committee would, therefore, recommend that this entire question should be reviewed and necessary changes brought about soon in the Act and the rules framed carefully so as to remove all ambiguities. The Committee would also await a report on the recovery of the additional duty due in the present case.

[S. No. 24 (Para 4.15) of Appendix II to 211th Report of the
PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The question of amending the law and the rules is under consideration.

2. The net duty payable after giving effect to the ITAT's order dated 30-9-74 was Rs. 1403 which has been realised on 4-12-74.

[Department of Revenue and Banking (Revenue Wing) O.M.
No. 236/729/72-A&PAC-I, dated the 19th August, 1976]

Recommendation

The Committee are surprised to note that the provisions relating to the valuation of shares of a private company in the Estate Duty and Wealth Tax Acts are not in *pari materia* and despite the clear difference in the relevant phraseology of the two Acts, the Central Board of Direct Taxes had, in March 1968, extended by executive instructions, the application of the Rule framed in this regard under the Wealth-tax Act to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act. While the Committee can understand the need for securing uniformity and simplicity in the valuation of assets for the purpose of Wealth-tax and Estate Duty, they would emphasise that these objectives

should not have been achieved in a manner that apparently ignored the difference in language, pattern and context of the statutory provisions governing the methods of valuation under two Acts. *Prima facie*, it would seem that the Central Board of Direct Taxes had adopted a simplistic approach in dealing with the issue and the Committee are doubtful how far executive instructions issued in this regard could be considered legal. The Committee note that perhaps on more careful thought these instructions have now been modified and the Rule framed under the Wealth-tax Act will no longer apply to the valuation of shares covered by Section 37 of the Estate Duty Act. The Committee trust that in future such decisions would be arrived at only after a comprehensive considerations of all legal and other aspects.

Since it has been pointed out by Audit that the computation of value on the basis of the book value of the assets, instead of the market value thereof, could lead to anomalous results leading sometimes to undervaluation and consequential loss of revenue, the Committee would like to be assured that there has been no loss of revenue in the cases in which the value of shares of a private company had been assessed, for purposes of levy of Estate Duty, on the basis of the executive instructions issued in March 1968. The Committee, therefore, desire that such cases decided and settled on this basis between 1968 and 1974 should be reviewed and the tax incorrectly foregone recovered, and the Committee informed.

[S. Nos. 29 & 30, paras 5.50 & 5.51 of 211th Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action taken

The observations made by the Committee have been noted. The matter is still under examination. A further report will be submitted.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/860/73-A&PAC-I, dated the 23rd August, 1976]

NEW DELHI;
October 26, 1976

Kartika 4, 1898

H. N. MUKERJEE,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions/Recommendations

Sl. No.	Para No. of the Report	Ministry/Department	Conclusions/Recommendations
1	2	3	4
1	1.4	Ministry of Finance (Dept. of Revenue & Banking)	The Committee expect that final replies to those recommendations/ observations in respect of which only interim replies have been furnished so far will, after vetting by Audit, be made available to them without delay.
2	1.9	Do.	The Committee note that action has been initiated to reopen the assessments in this case and desire that the reassessment proceedings should be completed without undue loss of time and conclusive steps taken to realise early the additional taxes, wherever due. They would await a further report in this regard.
3	1.12	Do.	Now that penalty proceedings under Section 60(1)(a)/60(1)(c) of the Estate Duty Act are stated to have been initiated against the Accountable Person for not disclosing the source of income in this case, the Committee trust that these will be finalised early and all consequential action be communicated to them.
4	1.16	Do.	The Committee note that on the advice of the Law Ministry and the Solicitor General, it has now been clarified for the guidance of the assessing officers that exemption under Section 33(1)(n) of the Estate Duty Act,

1

2

3

4

1953 would also be available in respect of a house or part thereof used by the deceased for his residence though the deceased had only a life interest in the property. However, since different Tribunals appear to have expressed divergent views on this question and the issue does not also appear to be entirely free from doubt, the Committee would like Government to re-examine the entire question in depth, in consultation with Audit and the Attorney General.

5

1.17

Do.

The Committee also understand that not infrequently, life-interest holders in property are beneficiaries in private family trusts which are known to be extensively employed as device for reduction of incidence of direct taxes. The Committee would, therefore, urge Government to examine urgently whether it was intended that life-interest holders would also be allowed the exemption admissible under Section 33(1)(n). In case this was not Government's intention, it should be examined whether any amendment to the law in this regard is necessary.

42

6

1.21

Do.

The Committee note that though the mistakes pointed out by Audit in this case were rectified by the Assistant Controller of Estate Duty, under Section 61 of the Estate Duty Act, 1953, and an additional demand of Rs. 1.89 lakhs created, the net duty payable had been reduced to Rs. 1403 by the Income-tax Appellate Tribunal, on a second appeal filed by the accountable persons and that a reference application filed in this regard by the Department is pending before the High Court. The Committee would

urge the Department to take all possible steps to expedite the court proceedings.

7 I.22

Do.

What causes greater concern to the Committee is the delay in amending the law and the rules relating to interest in controlled companies. As early as in 1973, the Committee were informed that their suggestion that the legal provisions in this regard, which had been borrowed from the English Act, should be reviewed with a view to modifying them to suit Indian conditions and making them more effective, was being further examined. It is disconcerting that even after the lapse of nearly three years, this important question is stated to be still 'under consideration'. Such delay which is unfortunately common though entirely avoidable, affects the country's revenue adversely, and the Committee wish that the entire question is examined on a top priority basis and urgent steps taken to amend the law and the rules in this regard.

43

8 I.25

Do

The Committee are unable to appreciate the delay in acting upon a simple recommendation of theirs, namely, that cases in which the value of shares of a private company had been assessed, for purposes of levy of Estate Duty, on the basis of the executive instructions of March 1968, should be reviewed and the tax, if any, incorrectly foregone duly recovered. Delay in such cases is unwarranted and the Committee would like to know what action in this regard is being taken.

9 I.28

Do.

The Committee find that the reply now furnished by the Department of Revenue & Banking to their observation contained in paragraph

1

2

3

4

5.52 of the 211th Report (Fifth Lok Sabha) does not clearly indicate whether the final approval of the then Finance Minister himself was obtained before the issue of instructions of 26 March 1968 and would seek a more specific clarification in this regard.

44

