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SYSTEM APPRAISAL—FUNCTIONING OF INVESTIGATION CIRCLES

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS COMMITTEE (1991-92)

SECOND REPORT

ELEVENTH LOK SABHA

SECOND REPORT

PUBLIC ACCOUNTS COMMITTEE (1996-97)

(ELEVENTH LOK SABHA)

SYSTEM APPRAISAL—FUNCTIONING OF INVESTIGATION CIRCLES

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

[Action Taken on 97th Report of Public Accounts Committee (10th Lok Sabha)]

Presented to Lok Sabha on 20-12-1996

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LOK SABHA SECRETARIAT
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CORRIGENDA TO SECOND REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (11TH LOK SABHA) ON SYSTEM APPRAISAL - FUNCTIONING OF INVESTIGATION CIRCLES

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INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to present the Report on their behalf, do present this Second Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 97th Report (10th Lok Sabha) on System Appraisal — Functioning of Investigation Circles.

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 17th December, 1996. Minutes of the sitting form Part II of the Report.

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

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

NEW DELHI;
18 December, 1996
27 Agrahayana, 1918 (Saka)

DR. MURLI MANOHAR JOSHI,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report of the Committee deals with the action taken by the Government on the Committee's recommendations and observations contained in their 97th Report (Tenth Lok Sabha) on Paragraph 2.1 of the Report of the Comptroller & Auditor General of India for the year ended 31st March, 1993 No. 5 of 1994 Union Government (Revenue Receipts — Direct Taxes) on System Appraisal — Functioning of Investigation Circles.

1.2 The 97th Report which was presented to Lok Sabha on 28 April, 1995 contained 21 recommendations/observations. Action taken notes have been received in respect of all the recommendations/observations and these have been categorised as follows:—

(i) Recommendations and Observations that have been accepted by the Government:
Sl. Nos. 1, 2, 6 to 11, 14 to 21

(ii) Recommendations and Observations which the Committee do not desire to pursue in the light of the replies received from the Government:
Sl. No. 13

(iii) Recommendations and Observations replies to which have not been accepted by the Committee and which require reiteration:
Sl. Nos. 3 to 5 and 12

(iv) Recommendations and Observations in respect of which the Government have furnished interim replies:

—NIL—

Functioning of Investigation Circles

1.3 The need to curb economic offences and combat tax evasion have engaged constant attention of the country. Government have from time to time introduced various measures including *inter alia* conferring of powers of survey, search and seizure on the Income Tax Authorities with this end in view. Search and seizure operations are planned and executed by the Investigation Wing of the Department. However, the assessment work of these cases is assigned to the Investigation Circles headed by Assistant Commissioners of Income Tax, except those which are assigned to Centre Circles or to Deputy Commissioners of Income Tax (Assessment). In their 97th Report (10th Lok Sabha) the Committee had examined the working

of the Investigation Circles based on the findings from test audit of records of 7960 cases in 165 Investigation Circles functioning in 75 Commissioners Charges in various parts of the country covering the period 1988-89 to 1992-93. The main findings of the Committee were as follows:—

(i) Delays in passing order under Section 132(5) of the Income Tax, 1961 by the Assessing Officers, mistakes and infirmity in the interim orders passed like under-estimation of income, omission to consider concealed income, non-imposition of penalty, interest etc.

(ii) Non-detection of concealed income in a large number of search cases where final assessment had been completed.

(iii) Declining trend in prosecutions launched and high rate of acquittals.

(iv) Inordinate delay in completion of regular assessments of search and seizure cases and shortfall in the targets assigned by the Board for completion of regular assessments.

(v) Delay in opening of assessments after search and seizure operations.

(vi) Under-assessment/non-assessment of income and wealth detected in the regular assessment orders passed under Section 143(3) of the Income Tax Act, 1961.

(vii) Large scale variations between the appraisal reports (containing details of seizure of assets, surrender made, outcome of the search, presentation and potential of the case etc. based on preliminary scrutiny of the assessed documents) and the interim/regular assessment orders and non-recording of reasons for the variations as was required under the Board's instructions.

(viii) Poor success rate in Appellate Proceedings.

(ix) Non-levy and short-levy of penalty.

(x) Non-collection of tax/penalty/interest levied in regular assessments of search and seizure cases.

(xi) Inadequate monitoring of functioning of Investigation Circles, improper maintenance of records in the circles, lack of coordination between Income Tax Department and other Departments/agencies like Revenue Intelligence, Enforcement Directorate, Customs and Central Excise Departments as well as Tax Department etc.

(xii) Non-production of records to C&AG and inadequate follow up on Audit objections.

1.4 In their Report, the Committee had also made several specific recommendations. Summing up the Report the Committee in Para 109 had recommended as follows:—

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

1.5 In their Action Taken Note, the Ministry of Finance (Department of Revenue) stated that they have taken note of the various shortcomings as pointed by the Public Accounts Committee and had taken appropriate measures to improve the post-search performance in the matter of asessments. The Ministry stated that in order to streamline the search and seizure operations and the Investigation Circles the Law has been amended w.e.f. 1.7.1995, introducing the concept of block period assessment for search and seizure cases. Under the new procedure the total undisclosed income of a person shall be assessed as the income of the block period consisting of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The order of assessment for the block period shall be passed by an assessing officer net below the rank of an Assistant Commissioner of Income-tax, within one year from the end of the month in which the last of the authorisation for search was executed. Further, the order of assessment for the block period shall be passed only with the prior approval of the Commissioner of Income-tax. Appeal against such order shall lie before the Income-tax Appellate Tribunal.

1.6 In their note dated 25 October 1996, the Ministry further added:—

> "In order to clear the backlog in assessment of search and seizure cases as per the old scheme applicable to searches conducted upto 30.6.1995, the time limit has been provided in the Action Plan for the current financial year. The Action Plan targets are monitored by the DCsIT/CsIT. Further, keeping the other observations of the PAC necessary instructions have been issued to the field authorities stating that the cases where demands are pending, should be examined properly and the reasons for pendency of the demand may be analysed. Concerted efforts should be made vigorously to pursue the demands and the taxes due should be realised on time. All the field formations have also been instructed to maintain properly all the registers relating to search and seizure and the DCsIT have been asked to monitor the same."

1.7 The various observations/recommendations made by the Committee and the Action Taken Note furnished by the Government thereon have been reproduced in the relevant subsequent Chapters of this Report. The Committee will, however, deal with the action taken by Government on some of their recommendations.

Non-detection of concealed income
(Sl. No. 3 — Paragraph 92)

1.8 The Committee had noted with concern that in the five years from 1988-89 to 1992-93, out of a total of 10348 search cases where final assessments had been completed, in 3712 cases (i.e. 35.87 per cent) no concealed income was detected. Considering the extraordinary and exceptional powers granted to the Department in conducting search and seizure operations, the Committee had recommended that there was an imperative need for a thorough groundwork before undertaking search and seizure operations in order to enhance the success rate.

1.9 Dealing with non-detection of concealed income, in their action taken reply the Ministry of Finance (Department of Revenue) stated as follows:—

> "The reasons for non-detection of concealment in 35.87% of the cases can be many. In the case of search, concealment may be noted only in the hands of a few members of the group. Besides when the return is filed—subsequent to search—the assessee may claim set offs against the disclosed income e.g. set-off of depreciation, loss etc. Even then penalty and prosecution would not lie if the assessee makes a valid disclosure u/s 132(4) of the I.T. Act and pays the tax. Where the declarations u/s 132(4) of the I.T. Act has been made and the income declared is also reflected in the return filed subsequent to the search there will be little or no scope for further addition or detection of concealment by the

Assessing Officer. As a result, the assessee would gain immunity in accordance with the provisions of the I.T. Act."

1.10 As regards, search and seizure operations, the Ministry *inter-alia* stated that a warrant in search action is normally issued by the Director of Income Tax (Investigation) or Commissioner of Income Tax. i.e. at very high level and since the authorisation of search was justiciable before the courts, adequate precautions were taken before issuance of warrant.

1.11 The Committee regret to point out that the Ministry of Finance have merely enumerated the possible reasons for the non-detection of concealed income in a large percentage of seizure cases where regular assessment had been completed in a general manner and the prevailing practice for issue of warrant in search cases. The action taken reply is completely silent of either the precise efforts made by the Ministry, in analysing the facts pointed out by the Committee or the steps proposed to be taken to enhance the success rate in search operations. Evidently, the Ministry of Finance have not taken any action on the recommendation and the Committee are unhappy over this. Since the power of search and seizure conferred on the Department are extraordinary and exceptional in nature, the Committee desire that in the light of non-detection of concealed income in a large number of cases, the Ministry of Finance should take specific steps and ensure that a thorough groundwork is done before undertaking search and seizure operations and also make a more detailed examination of each of the cases referred to above to find out whether any lapses had occurred due to connivance of departmental officers. In the opinion of the Committee this is absolutely necessary so as to enhance the success rate and improve the efficacy of search and seizure operations.

Declining trend in prosecutions launched
(Sl. No. 4 — Paragraph 93)

1.12 The Committee had expressed their deep concern that the prosecution proceedings initiated in the number of cases assigned to Investigation Circles during the period 1988-89 to 1992-93 had showed a declining trend. Their examination had revealed that out of a total number of 49648 search assessments completed during 1990—93, prosecutions were launched in 2729 cases only. The number of cases of prosecutions launched had, in fact, decreased from 1629 in 1990-91 to 775 in 1991-92 and 325 in 1992-93. The Committee had recommended that the Ministry of Finance should look into the reasons for the sharp decline in the prosecutions launched in search cases and take necessary steps in order to ensure that the prosecution provisions under the Direct Tax and other related laws were effectively applied to create an appropriate impact and to subserve as a deterrent against tax evasion.

1.13 The Ministry of Finance (Department of Revenue) in their action taken note have stated that the reasons for decline in the prosecutions was a realisation by the Department that the rate of disposal of complaints by

the court was too slow and the judicial process involved was too cumbersome which detracts from the efficacy of prosecution as a deterrent. According the Ministry, therefore, there had been a shift in the emphasis and the number of prosecution cases, specially those involving technical offences or small amount of concealment were compounded after charging the compounding fee. The Ministry further stated that instructions were issued by the Board as well as by the Chief Commissioner to the field authorities to launch prosecution in important and sustainable cases.

1.14 The Committee are unhappy to point out that the Ministry of Finance have merely cited the reasons for the declining trend in prosecution, in a general way and have simply referred to the available instructions in existence. Evidently, no effort has been made to analyse the reasons for the declining trend in prosecution cases and take appropriate follow-up-action as desired by the Committee in their original report. While the Committee do recognise the need for laying greater stress on bigger and relatively more important cases, they are not inclined to share the views of the Ministry on the efficacy of prosecution as a deterrent against tax evasion. The Committee, therefore, cannot but reiterate their earlier recommendation. They would also like to be informed of the data on prosecutions launched in "important and sustainable" cases in the years 1993-94 to 1995-96 with tax effect in each case.

Need for improvement in the quality of legal assistance in Direct Taxes cases

(Sl. No. 5 — Paragraph 94)

1.15 The Committee had in their earlier Report observed that the rate of convictions against the prosecutions launched in respect of search assessments was dismally low. Out of the 2729 prosecutions launched in respect of 49648 search assessments completed during 1990—93 the number of convictions were just 1664. In fact, the Committee's examination had revealed that the number of acquittals in respect of the prosecution complaints launched against the offences committed under Direct Tax Laws and related IPC sections as a whole itself was very high. The Committee were therefore, convinced that those disturbing trends had to be carefully analysed at the Board/Ministry level and necessary corrective action taken with a view to ensuring that offences committed was sternly and effectively dealt with. In this connection they had emphasised the need for improving the quality of legal assistance and had recommended that the Ministry of Finance in consultation with the Ministry of Law should seriously address this issue and attempt to remove the deficiencies arising therefrom.

1.16 In their action taken reply, the Ministry of Finance (Department of Revenue) has stated as follows:—

> "The reasons for high rate of acquittal are attributable to slow judicial process which permit the accused party to manipulate/ fabricate evidence in the meantime. Further some departmental witnesses have either retired or even expired and their evidence cannot be recorded in support of our complaints. Quite often the courts give weightage to the preponderance of evidence in favour of the accused rather than to the evidence filed by the department. In many instances it is felt that the trial judges are not well conversant with the taxation laws and are preoccupied with other crimanal cases under the IPC or Cr. P.C. exhibiting less interest in the cases involving tax offences. Added to this is doubtless the problem of having proper legal assistance. Given the rates of remuneration it is almost impossible to have the services of a good lawyer to represent the revenue."

1.17 The Committee are aware of the difficulties enumerated by the Ministry which might have contributed to the high rate of acquittals in the case of prosecution launched against search assessments and also the inadequate defence of cases related to Direct Taxes in the courts of law by the Department. In fact, it was in this context only that the Committee had emphasised the need for improving the quality of legal assistance and had specifically desired that the Ministry of Finance should seriously address this issue in consultation with the Ministry of Law. Unfortunately, the Ministry have not taken any action in the matter at all. Considering the seriousness of the matter and the need for securely safeguarding governmental revenues, the Committee desire that the Ministry of Finance should take concrete steps on the recommendations of the Committee and apprise them of the precise action taken in the matter.

Delay in completion of regular assessments

(Sl. No. 6 — Paragraph 95)

1.18 The Committee had expressed their deep concern that instructions issued by the Central Board of Direct Taxes for completion of regular assessments of search cases under Section 143(3) of the Income Tax Act, 1961 within a period of two years were being followed more in breach by the Assessing Officers. They had found from the test check conducted by the C&AG that in 69 cases in seven charges, regular assessments were not completed, in 25 cases in two charges even assessment proceedings had not commenced within the prescribed time, and in 364 cases in 10 charges, delay in completion of regular assessments ranged from 17 days to five years beyond the stipulated period. Emphasising the need for expeditious completion of assessments under search cases the Committee had recommended that the Central Board of Direct Taxes should not rest merely with issuing instructions in the course of administration of Direct Tax

Laws, but also ensure that they are faithfully implemented by all concerned.

1.19 In their action taken reply while noting the observations of the Committee, the Ministry of Finance (Department of Revenue) referred to the changes introduced through the Finance Act, 1995 in the new scheme of assessment of undisclosed income determined as a result of searches. They also stated that as per the new procedure for Block Scarch Assessments, the assessments in respect of searches initiated on or after 1 July, 1995 had to be completed within one year of the execution of the last authorisation and that the time limit was statutory and realistic. The Ministry also added in another note that in the Action Plan for financial year 1996-97, the Board have directed that all assessments where searches took place on or before 30 June, 1995 must be completed by 31 March, 1997.

1.20 As regard the period of limitation, it was, however, seen that in the Finance (No. 2) Act, 1996, the following explanation was inserted to the relevant section, i.e. 158 BE of the Income-tax Act, 1961, after sub-section (2) with retrospective effect from 1 July, 1995:—

"Explanation — In computing the period of limitation for the purposes of this section, the period —

(i) during which the assessment proceeding is stayed by an order or injunction of any court, or

(ii) commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section.

shall be excluded."

1.21 The Committee note that as per the new scheme of assessment of undisclosed income determined as a result of searches and seizures introduced through the Finance Act, 1995, the time limit for completion of block assessment period prescribed is within one year from the end of the month in which the last of the authorisations for search was executed. The Committee are, however, surprised that the further changes effected in the Law in this regard through the Finance (No. 2) Act, 1996 has now excluded certain situations like the period during which the assessment proceeding is stayed by an order or injunction of any court from the period of limitation. The Committee wonder whether these changes are in consonance with the earlier changes effected to reduce the delay in completion of such assessments. They, however, desire that assessments in those cases should invariably be completed within a reasonable period, say four months, after the stays are vacated or decisions given by Courts etc. as the case may be. The Ministry of Finance should also take necessary action to ensure that the assessment proceedings pending in Courts in such cases are vigorously pursued by the Department and not allowed to linger on. The Committee

may be informed of the number of cases where stay orders had been obtained in respect of assessment of search and seizure cases and the revenue involved thereon. They would also like to be apprised of the latest position in respect of the pendency and disposal of block assessment and the demands raised and collected thereagainst.

1.22 The Committee further desire that the Ministry of Finance should closely watch and ensure that all assessments where searches took place on or before 30 June, 1995 should be completed by 31 March, 1997 positively. The Committee would like to be kept informed of the progress in the clearance of the backlog assessments of search and seizure cases which took place before 30 June, 1995 as per the old scheme.

Success rate in appellate proceedings
(Sl. No. 12 — Paragraph 101)

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

1.24 In their action taken note, the Ministry of Finance (Department of Revenue) stated that a study of the top 184 search cases selected on the basis of disclosures during searches of 1988-89 to 1992-93 was conducted. According to the Ministry, the study *inter alia* revealed; 63.15% of the disclosures made in the course of the searches were included in the returns filed, on which taxes were paid, 56% of the demands raised had been collected, in 85% cases penalty for concealment had been initiated. As regards prosecution, it was seen that out of the 184 cases, proposals for launching prosecution had been sent in only two. Further, in 31% of the cases, there was a variation between the concealment quantified in the Appraisal reports and the additional income brought to tax in the regular assessments etc.

1.25 The Committee note that a study of a sample of 184 search cases pertaining to 1988-89 to 1992-93, i.e. the period covered under the C & AG appraisal, has more or less reinforced the findings of Audit regarding the

post-search performance of the department. The Committee are, however, constrained to point out that neither has the study provided any useful insight into the causes for the failure of the department in defending their action during appellate proceedings nor does the reply indicate the action taken by the Ministry or proposed to be taken to improve the departmental performance on this score. The Committee are, therefore, not satisfied with the action taken reply and they, therefore, reiterate their earlier recommendation and desire that the Ministry of Finance should take concrete action to enhance their degree of success in appellate proceedings.

Need for simplification of Direct Tax Laws

(Sl. No. 21 — Paragraph 110)

1.26 Emphasising the need for rationalisation and simplification of Direct Tax Laws, the Committee in Paragraph 110 of their 97th Report had recommended as follows:—

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

1.27 In their initial action taken note furnished, the Ministry of Finance (Department of Revenue) stated as follows:—

> "Four separate Study Groups comprising of five officers each, have been constituted to review the provisions of Income-tax Act in 4 specific areas.
>
> (i) provision relating to Charitable Trusts;
> (ii) provision relating to concessions and exemption contained in the Income-tax Act;
> (iii) provision relating to assessment procedures;
> (iv) provision relating to Capital Gains;
>
> Each Group consists of 5 members including the convener. It consists of 2 officers of the level of Commissioner of Income-tax, 2 officers of the level of Additional Commissioner/Deputy Commissioner of Income-tax and 1 officer of the level of Assistant Commissioner of Income-tax. The Study Groups have already started functioning and they are on the verge of finalising their reports. Final recommendation from these Study Groups are expected shortly. Necessary action on the recommendations of the Study Groups shall be taken on receipt of the reports."

1.28 In a further note furnished on 25 October, 1996 the Ministry stated as follows:—

> "The Four Study Groups, constituted to review the provisions of Income-tax Act in 4 specific areas have submitted their reports.

Now the Government has constituted an expert group for examining and re-writing of a new Direct Tax Law vide Order No. 153/82/86-IPL dated 6th August, 1996. The reports of the Study Groups have been referred to this newly constituted Expert Group for its consideration. The Expert Group is expected to submit its report by 31.12.1996.

1.29 The Committee desire that the process initiated for rationalisation and simplification of Direct Tax Law should be expeditiously completed and the Bill seeking to enact the new Direct Tax Law be brought before Parliament at the earliest. They would like to be informed of the progress in the matter.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation of the Committee

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

[Para 90 of the 97th Report of the PAC 1994-95—10th Lok Sabha]

Action Taken by the Government

The ATNs on all the succeeding paras except paras 91 and 99 have already been furnished separately. The Ministry has taken note of the various short-comings as pointed out by the PAC in the succeeding paras

and have taken appropriate measures to improve the post-search performance in the matter of assessments. Various measures taken by the Ministry are discussed below in brief:

(i) The concept of "block period" assessment of search and seizure cases has been brought into force by Finance Act, 1995 with effect from 1.7.95. Under the new procedure, the total undisclosed income of a person shall be assessed as the income of the block period consisting of 10 previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The order of assessment of the block period shall be passed by an officer not below the rank of an Asstt. Commissioner of Income-tax and the assessment order has to be passed within one year from the end of the month in which the last of the search warrants was executed. The order of the assessment for the block period shall be passed only with the prior approval of the Commissioner of Income-tax. Appeal against such order shall lie before the ITAT. The undisclosed income assessed shall be charged to tax @ 60% and no interest or penalty would be attracted.

Thus, the time limit for passing the search assessment is one year from the end of the month in which the last search warrant was executed and this time limit is statutory. Due to the change in law there would be no further 132(5) orders. The chances of long litigation would also be minimised since now the first appeal would lie before the ITAT and there is no provision for interest and penalty. The revenue realisation as a result of search is also expected to be more since there is a flat rate of 60% on the undisclosed assessed income.

(ii) The CBDT has issued instruction No. 1927 on 21.7.95, a copy of which has already been furnished as annexure to ATN on para 104. For effective implementation of the block assessment scheme, the following procedure shall be followed:

(a) Now, the ADIT concerned shall, within one week of the commencement of the search, intimate the CCIT and CIT concerned and where the jurisdiction over the assessee is with an ITO, the CIT shall transfer the case to an ACIT/DCIT (Spl. Range). Where the jurisdiction is with an ACIT/DCIT (Spl. Range), the block assessment shall be completed by them. In the cities of Delhi, Bombay, Calcutta, Madras, Ahmedabad and Bangalore, the jurisdiction shall be conferred as far as possible on a DCIT (Spl. Range). However, in suitable cases the DGIT would also recommend for immediate centralisation of the search cases and the assessment would then be completed in Central Circles.

As a result of these changes, the workload in Investigation Circles would be lessened.

(b) The ADIT concerned shall prepare and forward the appraisal report positively within 60 days of the commencement of the search. The appraisal report would also contain the broad but reasonable estimate of the undisclosed income and its correlation with the assets, investment and consumption expenditures. It would also contain the specific suggestions regarding follow-up of the investigation. Lastly, the DDIT/ DIT concerned would also offer their comments and observation in respect of the estimate of the undisclosed income and the specific suggestions regarding the line of further investigation.

(c) A separate register shall be maintained by the Assessing Officer handling block assessment regarding the pendency and disposal of block assessment and also the demand raised and collected in respect thereof.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II, Dated 15.2.1996]

Recommendation of the Committee

Under Section 132(5) of the Income-tax Act, 1961 the Assessing officer first passes an order within 120 days of the date of seizure in Search cases where any money, bullion, jewellery or other valuables are seized estimating undisclosed income/wealth in a summary manner after affording an opportunity to the person concerned for being heard. The Assessing Officer then calculates the amount of tax, determines the amount of interest payable and penalty imposable on the person with the prior approval of the Deputy Commissioner of Income-tax. A test check by Audit of interim orders passed, revealed mistakes and infirmities like underestimation of income, omision to consider concealed incomes, non-imposition of penalty, interests, etc. As regards the 13 cases mentioned, the Ministry of Finance on the basis of the reports received from the Charges concerned replied to 7 cases stated that there had been a "technical" delay in only one case, The Ministry, however, admitted that no record of the pendency charge-wise, was compiled and maintained. The Committee desire that the Ministry should thoroughly analyse the infirmities in the 3 of the 7 cases mentioned above in which their reply was considered as not relevant by Audit and also the position prevailing in all the charges and take suitable measures to avoid such eventualities which could be detrimental to the interests of revenue. The Ministry should also send their specific replies to the remaining 6 cases after due vetting by Audit.

[Para 91 of the 97th Report 1994-95 — 10th Lok Sabha]

Action Taken by the Government

The order passed u/s 132(5) of the IT Act is of a summary nature and it mainly deals with the retention/release of seized assets. A test check by 'Audit' revealed mistakes/infirmities in passing the orders u/s 132 (5) by the assessing officers. The PAC desired that looking at the position prevailing in all the charges suitable measures may be taken by the Ministry, so that such eventualities are avoided. Since the provisions of section 132 (5) ceases to exist in the cases where search operation is carried on or after 1st July, 1995, so no further exercise/corrective steps are required to be taken by the Ministry in this respect.

The position in respect of three illustrative cases, where the reply was considered not to be relevant by the Audit is discussed below in brief:

(i) Shri S.K. Tulsyan—CCIT, West Bengal

Gist of the Objection: Under-estimation of concealed income of Rs. 60,000/- in order u/s 132 (5) passed on 4.2.1993.

Reply: The Audit objection is accepted by the Ministry, however, there is no actual loss of revenue, since the entire seized jewellery/assets has been retained as per the said order. Care would be taken at the time of passing of the regular assessment in this case.

(ii) Shri Daya Shankar Gupta—CCIT, Kanpur

Gist of the Objection: Out of the total assets seized at Rs. 27.20 lakhs, assets worth Rs. 3.13 lakhs returned to the assessee and balance seized assets taken as Rs. 22.57 lakhs as against Rs. 24.07 lakhs in order u/s 132(5).

Reply: Since Rs. 1.50 lakhs seized cash was adjusted against the tax demand for AY 1992-93, so the difference between Rs. 24.07 lakhs and Rs. 22.57 lakhs stands re-conciled and there was no mistake in passing of order u/s 132(5) of the IT Act.

(iii) Maheshwari Group of Cases—CCIT, Kanpur

Gist of the Objection: In the order passed u/s 132(5) there was no mention of non-inclusion of seizure of an amount of Rs. 12000/- (other valuables). Farther, there was a difference of Rs. 41,490/- in the details found in the possession of various members of the family and value of jewellery found during search (as per appraisal report).

Reply: During the search operation jewellery worth Rs. 14,02,734/- was found but in the notice issued under rule 112A read with section 132(5), the jewellery amount was wrongly mentioned at Rs. 14,44,224/- otherwise there is no mistake in passing of order u/s 132(5) on account of this issue.

During the search, three FDs worth Rs. 12,000/- were also seized. However, no separate inventory was prepared and it was included in the

inventory dealing with the list of books and documents found, as a result, the same was not discussed in the order passed u/s 132(5). The objection on this account is accepted. However, there is no actual loss of revenue, since the entire seized assets have been retained in the order passed u/s 132(5). Moreover, this issue has been discussed at length at the time of passing of regular assessment in the relevant individual cases.

2. The position in respect of the remaining cases pertaining to Assam Charge is discussed below in brief—

(i) Shri Manoranjan Banik

Gist of the Objection: Infirmities in the order passed u/s 132(5).

Reply: In this case no cash-book was found and seized in the course of search operations. During 132(5) proceedings the assessee produced cash-book showing cash balance at Rs. 1.74 lakhs on the eve of search. Since some of the entries of this cash-book did not telly with the entries in the seized ledger, so the whole amount as reflected as cash balance was not accepted. Part of it was accepted as a probable cash balance and the remaining amount i.e. Rs. 74,073/- was treated as undisclosed income in the order u/s 132(5). This order has been passed with the approval and direction of the range DCIT. Thus, the objection is not accepted.

(ii) Shri Manoranjan Banik

Gist of the Objection: Under-estimation of undisclosed income in respect of undisclosed bank account.

Reply: During the course of proceedings u/s 132(5) it was found that the entries in the account spanned over 4 years reflecting deposits & withdrawals and without proper enquiries the quantum of concealed income passing through the account was not ascertainable. Further, the assessee also took the plea that the investment of Rs. 16.79 lakhs disclosed u/s 132(4) was acquired out of these withdrawals. Accordingly, only the closing balance of the bank account were taken into a/c for the purpose of the 132(5) order and the earlier entries were left for verification in the course of regular assessment. These findings did not in any way result in release of the seized assets belonging to the assessee. Thus, the audit objection is not accepted.

(iii) Shri Jitendra Lal Banik

Gist of the Objection: Release of seized jewellery.

Reply: The quantum of jewellery valued at Rs. 1.95 lakhs claimed to be belonging to four members of the family was considered reasonable possession looking at the financial status of the family and the explanation in this regard to the source of acquisition in each case was found reasonable and acceptable and accordingly seized jewellery was released rightly. This action is in conformity with the normal custom and practice of

owning gold jewellery by each female member of the family. Further, this order was passed with the prior approval of the Range DCIT. Thus, the audit objection is not accepted.

(iv) Shri Nandlal Banik

Gist of the Objection: Release of seized jewellery.

Reply: In this case also the seized jewelleries were claimed to be belonging to various members of the family. Considering the family background and the quantum of jewellery *vis-a-vis* the number of the family members, the claim was found reasonable and accordingly assets were released. This order was passed with the prior approval of the Range DCIT. Thus, the audit objection is not accepted.

(v) Shri Hem Raj Agarwal

Gist of the Objection: Infirmities in passing 132(5) order.

Reply: The Assessing Officer has relied on the finding in the case of Shri Bhagwan Das Narayan Dass *Vs.* CIT reported in 98 ITR 194 (GJ) and accordingly, the FDs, NSCs and UTI certificates were held not to be an asset within the meaning of Section 132(5), since these documents are neither negotiable nor transferable for valuable consideration. The subject issue is debatable but the entire seized assets are still in the custody of the Department. As a remedial measure proceedings u/s 263 have been initiated to remove the defect in the order u/s 132(5). Thus, the audit objection is partly accepted.

(vi) Shri Sanwar Mal Agarwal

Gist of the Objection: Infirmities in passing 132(5) order.

Reply: The consideration paid for acquiring the controlling interest in the company as per MOU dated 16.6.87 has been discussed in the order but since it related to earlier assessment year so, it was held that it should be looked into at the time of regular assessment for the relevant year. Proceedings u/s 148 have already been taken to consider this case. Moreover, the Assessing Officer has to restrict himself to the question of retention/release of money, bullion and other valuable assets seized in search for the purpose of order u/s 132(5). Thus, the audit objection is not accepted.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/95-A&PAC II dated 15.2.1996]

Recommendation of the Committee

The regular assessment of search and seizure cases are taken up by the Assessing Officers under section 143(3) of the Income Tax Act, 1961. In their instructions issued on 4 May 1985, the Central Board of Direct Taxes had-emphasised the need for expeditious completion of assessments in search and seizure cases. The Board, in their subsequent instructions issued on 18th July 1991 had directed that such assessments should be

completed within two years from the search. It is a matter of deep concern to the Committee that these instructions are being followed more in breach by the Assessing Officers. The Audit test check revealed that in 69 cases in seven Charges, regular assessments were not completed, in 25 cases in two Charges even assessment proceedings did not commence within the prescribed two years time, and in 364 cases in 10 Charges, delay in completion of regular-assessments ranged from 17 days to Five years beyond the stipulated period. Distressingly, instead of rectifying this undefying state of affairs, the Ministry of Finance have sought to justify this inordinate delay by seeking to draw an unjustifiable distinction between "statutory delay" and delay arising out of Executive instructions. According to them, these delays related to the time frame laid down in the Executive instructions and not in the Statute. This explanation of the Ministry is totally unacceptable and the Committee have no doubts, Whatsoever, that the instructions have been issued by the Board after assessing the exact position prevailing in the field formations. The Committee, therefore, desire that the Central Board of Direct Taxes should not rest merely with issuing executive instructions in the course of administration of Direct Tax laws, but also ensure that they are faithfully implemented by all concerned.

[Para No. 95 of the 97th Report of PAC (1994-95)-10th Lok Sabha]

Action Taken by the Government

The recommendations of the Committee have been noted. The Central Board of Direct Taxes has been issuing directions from time to time for expeditious disposal of search cases. For taking the searches to their logical end, the CBDT has issued instructions for monitoring of search and seizure cases by senior officers of the department such as DCIT and CIT.

In order to bring the search and seizure actions to their logical conclusions promptly and also to curb loss of valuable time in legal battles, a concept of "block period" assessment for search and seizure cases has been brought into force by Finance Act, 1995 w.e.f. 1.7.95. Under the new procedure the total undisclosed income of a person shall be assessed as the income of the block period consisting of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner of Income Tax, within one year from the end of the month in which the last of the search warrants was executed. Further the order of assessment for the block period shall be passed only with the prior approval of the Commissioner of Income Tax. Appeal against such order shall lie before the Income Tax Appellate Tribunal.

[Ministry of Finance (Deptt. of Revenue) F.NO. 24/1/95-A&PAC II F.No. 287/77/95-IT(INV.II) dated 1.11.1995]

Recommendation of the Committee

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

[Para 96 of the 97th Report of PAC(1994-95)-10th Lok Sabha]

Action Taken by the Government

In the Action Plan for 1995-96 the Board has directed that all assessments brought forwarded as on 1.4.95 should be completed by 31.3.96. Further as per the new procedure for Block Search Assessments, the assessments in respect of searches initiated on or after 1.7.95 have to be completed within one year of the execution of last authorisation. This time limit is statutory and realistic. As regards completion of search assessments which will be carried forward as on 1.4.96 and those in which searches were conducted before 30.6.95, the Directorate of Management and Statistics, Central Board of Direct Taxes, has been directed to conduct a study and make recommendations regarding realistic targets for completion of search assessments.

[Ministry of Finance (Deptt. of Revenue) F.No. 228/395-ITA.II/ F.No. 241/1/95-A&PAC II dated 22.1.1996]

Revised Action Taken by the Government

In the Action Plan for financial year 1996-97, the Board has directed that all assessments where searches took place on or before 30.6.95 must be completed by 31.3.97. Further, as per the new procedure for Block Search Assessments, the assessments in respect of searches initiated on or after 1.7.95, have to be completed within one year of the execution of last authorisation. This time limit is statutory and realistic.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 288/395-ITA-II, dated 26.9.96]

Recommendation of the Committee

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

[Para No. 97 of 97th Report of PAC (1994-95)-10th Lok Sabha]

Action Taken by the Government

In order to make the procedure of assessment of search cases simple, efficient and reasonable a new procedure for assessment of undisclosed income determined as a result of search u/s 132 or requisition u/s 132A, has been brought into the I.T. Act with effect from 1.7.1995. Under the new procedure, the undisclosed income detected as a result of any search initiated or requisition made, after 30.6.95 shall be assessed as the income of the Block period comprising of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The undisclosed income assessed shall be charged to tax at the rate of sixty per cent and no interest or penalty would be attracted.

The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner of Income-tax within one year from the end of the month in which the last of the search warrant was executed. Further the order of assessment for the block period shall be passed only with the prior approval of Commissioner of Income-tax. Appeal against such order shall lie before the ITAT.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/95-A&PAC II and F.No. 286/7/95-IT(INV.II) dated 1.11.1995]

Recommendation of the Committee

Another important area where the Committee found inordinate delay occurring related to the re-opening of assessments after search and seizure operations. Under the Income Tax Act, 1961, in cases where incriminating material or assets are seized, the department authorities are required to reopen the relevant assessment. Executive instructions require that the notices to the assesses for re-opening completed assessments should be issued within six months from the date of search. The Committee are

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

[Para No. 98 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

The observations of the Committee have been noted. A new procedure for assessment of undisclosed income determined as a result of search u/s 132 of requisition u/s 132A, has been brought into the I.T. Act with effect from 1.7.95. Under the new procedure, the undisclosed income detected as a result of any search initiated or requisition made, after 30.6.95 shall be assessed as the income of the block period comprising of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The undisclosed income assessed shall be charged to tax at the rate of sixty per cent and no interest or penalty would be attracted.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95-A&PAC II and F. No. 286/77/95-IT (INV. II) dated. 1.11.1995]

Recommendation of the Committee

The order passed under Section 135(5) is of an interim nature and as such, while finalising the regular assessment, the assessing officer is expected to make complete investigation and frame an assessment which can stand appellate scrutiny. In fact, one of the objectives for setting up the investigation Circles was to improve the quality of search assessments and ensure quick follow up action. The Committee are astonished to note from Audit test check, that in 42 assessments, mistakes/omissions were noticed which resulted in non-assessment/under assessment of income/ wealth of Rs. 3.34 crores with consequential non/short levy of tax of Rs. 1.05 crores. The Ministry of Finance stated that the mistakes or omissions in the illustrative cases had occurred due to incorrect appreciation of facts available before the assessing officer or due to the failure to take consequential action in the cases under assessment or in connected cases. According to the Ministry, wherever such mistakes had been noticed, steps had been taken to rectify the mistakes or remove the omissions and recover the tax dues. The Committee can not remain satisfied with the reply. They desire that all the cases mentioned above

should be thoroughly enquired, with a view to taking corrective action and also fixing responsibility. The Committee would like to be informed of the precise action thereon.

[Para 99 of PAC Report 1994-95—97th Report (10th Lok Sabha)]

Action Taken by the Government

It is a fact that the order passed u/s 132(5) is of an interim nature and the assessing officer makes relevant enquiries/investigations on the basis of the documents found and/or seized during the course of search. The assessing officer also takes into account the assets found/seized during the course of search, the various issues discussed in the appraisal report and other material relevant for passing the regular assessment order. It is relevant to mention that the proper opportunity is provided to the assessee to explain the issue/discrepancies raised by the assessing officer, and after considering all the relevant material, regular assessment is framed by the assessing officer after getting the due approval of DCIT. It, however, needs to be submitted that the order u/s 132(5) being of interim nature do not affect the final outcome of assessment proceedings. The primary object of the proceedings u/s 132(5) was to ensure retention of assets which were, prima facie, unaccounted/undisclosed. Since 1.7.1995, the law has been amended and the provisions of section 132(5) have been deleted.

In respect of all the 42 cases, as desired by the P.A.C., the CSIT concerned have been directed to look into these cases personally and issue appropriate instructions for future.

The present position in respect of the individual cases of mistakes is given below:—

(i) *M/s. D.K. Enterprises—AY 1990-91*

Gist of objection: The unaccounted money not included in the books but spent on work-in-progress totalling Rs. 44.08 lakhs should have been brought to tax. Estimating income at 15% resulted in short levy of tax of Rs. 29 lakhs.

Reply: The audit objection has been accepted. Remedial action u/s 147 has been taken to bring to tax the escaped income. The reassessment is expected to be completed shortly.

(ii) *M/s. Mandawat Group of cases—AY 1989-90*

Gist of the objection: The search assessment for AY 1989-90 was not completed by 31.3.1991 and no action was taken even subsequently by the Department to regularise the assessment.

Reply: The audit objection is accepted. Notice u/s 148 has been issued to the assessee in December, 1993. However, the Settlement Commission vide their order dated 7.2.1995 admitted the assessee's petition for AY 1989-90 also. The Settlement Commission vide their order dated 1.12.1995 passed the order u/s 245-D(4) for AY 1989-90 to 1991-92 and the income

for the AY 1989-90 has been determined at Rs. 4,10,500/-. The order giving effect to the order of Settlement Commission was passed on 20.12.1995 and a demand of Rs. 4.95 lakhs was raised.

(iii) *Smt. Sanjukta Devi—AYs 1983-84 to 1989-90*

Gist of the objection: The assessee was found to have taxable net wealth for the assessment years 1983-84 to 1989-90 but no wealth tax proceedings were initiated by the department which resulted in non levy of wealth tax of Rs. 2.35 lakhs (including interest).

Reply: The objection had been accepted. However, the Audit's attention was drawn to the fact that there was still time available for action u/s 17 of the Wealth Tax Act and acceptance about the length of delay depends on when the value investment crossed the wealth tax limit to attract section 17, moreover, the exact amount of tax effect would be known only after completion of the regular assessment.

In AY 1983-84 and 1984-85, the valuation of the shopping complex in the case of the Income Tax was set aside by the CIT (Appeals) for revaluation of the property and the case has been referred again to the Valuation Officer and his report is awaited. In assessment years 1985-86 to 1988-89, assessments were completed u/s 17/16(3) of the Wealth Tax Act but all these assessment orders were set aside on the point of the valuation of Shopping Complex by the CIT (Appeals). The matter is referred again to the Valuation Officer and his reports are awaited. After giving appeal effect the net wealth of the assessee becomes non-taxable.

[Ministry of Finance (Deptt. of Revenue)
F.No. 241/1/95-ARPAC II dated 15.2.1996]

Amendment to the ATN 99 of the 97th Report of PAC (1994-95)

Following reply may be read for the reply given in ATN on the recommendation contained in para 99 of the 97th Report of PAC (1994-95), relating to M/s D.K. Enterprises—AY 1990-91:—

(i) *M/s D.K. Enterprises—AY 1990-91*

Reply: The audit objection has been accepted. As a remedial measure, order u/s 263, setting aside the assessment for AY 1990-91 was passed by the C.I.T. on 24.3.1995. Fresh Assessment is expected to be completed shortly, in which the audit objection would be taken care of.

Revised Action Taken by the Government

In continuation of the ATN on para 99 furnished vide Board's O.M. of even number dated 15.2.96 and 13.3.96, the present position of the individual case of mistakes referred to in paragraph 99 is as given below. There is no change in the position of the other two cases:

(i) *M/s. D.K. Enterprises—AY 1990-91*

Gist of Audit objection: The unaccounted money not included in the books, but spent on work-in-progress totalling Rs. 44.68 lakhs should have been brought to tax. Estimating income at 15% resulted in short levy of tax of Rs. 29 lakhs.

Action Taken: The audit objection has been accepted. The assessment for AY 1990-91 has been revised u/s 263/143 (3) of the Income-tax Act on 25.3.96 on income of Rs. 82,51,550/- which includes addition of Rs. 44,07,747/- representing on money and unrecorded expenditure. Tax and interest demand raised comes to Rs. 37,30,404/-. The Tax Recovery Officer has already attached all the assets of the assessee for recovering the outstanding tax demand.

Note: With the above revision, the ATN of para 99 may be treated as complete and up-to-date.

Recommendation of the Committee

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

[Para No. 100 of the 97th Report of PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

The appraisal report as well as order passed u/s 132(5) are only interim measures. The appraisal report evaluates the evidence found in the research and indicates the line of investigation to be taken up by the Assessing Officer. The order u/s 132(5) is a summary order passed within 120 days from the date of seizure, estimating the undisclosed income and tax liability of the person-searched on the basis of prima-facie examination of the seized materials. This order is passed mainly to ensure that the seized assets are retained only to the extent required for collection of taxes and the surplus may not remain with the I.T. Department beyond 120 days of the seizure. In contrast, an assessment order determines the total income of the assessee on the basis of the return of income, the material found in the course of search, and any explanation and further evidence furnished by the assessee. The assessment order is passed after detailed investigation and after giving due opportunity to the assessee to explain his position. Thus, this order is in the nature of a quasi-judicial order, fastening a fixed tax liability on the assessee. Hence, there may be variations between the income determined in the regular assessment *vis-a-vis* the income summarily estimated in the appraisal report and in order u/s 132(5).

With effect from 1.7.95, the law has been amended and now no order for search assessment with regard to searches conducted on or after 1.7.95, can be passed without the approval of the Commissioner of Income-tax.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95-A&PAC II and F. No. 286/77/95-AI (INV. II) dated 1.11.1995]

Recommendation of the Committee

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

reasons therefor and ensure that concerted efforts are made to vigorously pursue the demands issued and realise the governmental dues in time.

[Para No. 103 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

The reasons for non-realisation of revenue could be that the assessments are locked up in appeal or retention of assets has been challenged before the Court which may not result in appropriation of seized assets, etc. However, instructions are being issued to the CCsIT and DsGIT to ensure that demand is vigorously pursued and governmental dues are realised in time. The CCs/DGs are also being instructed to closely follow up with the GIT (Appeal), ITAT, Settlement Commission etc. in case the demands are locked up in pending proceedings before such authorities.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95-A&PAC II dated 1.11.1995]

Recommendation of the Committee

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

[Para No. 104 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

The Committee's comments have been noted and keeping in view the recommendations of the Committee, instructions have been issued to the field authorities. Besides under the new procedure for Block search assessment, the approval by the Commissioner in all search cases is necessary.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95-A&PAC II and F. No. 286/77/95-IT (INV. II) dated 1.11.1995]

Recommendation of the Committee

The Search and Seizure Manual as well as the departmental instructions require the Assessing Officers to keep in close touch with other officers concerned of the Department and also maintain co-ordination/liaison with outside departments/agencies like Revenue Intelligence, Enforcement

Directorate, Customs and Central Excise Department, Sales Tax Department, etc. for effective follow up of search and seizures. Audit scrutiny has, however, found several deficiencies on this score particularly in West Bengal and Gujarat charges. In the light of the above, the Committee desire that the Ministry of Finance should ascertain the manner in which co-ordination is actually put into practice presently and review the efficacy of the present instructions/arrangements in this regard with a view to ensuring better co-ordination and thereby achieving better results in combating tax evasion.

[Para No. 105 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

The co-ordination meetings with other agencies such as Revenue Intelligence, Enforcement Directorate, Customs and Central Excise department, etc. are being held on regular basis and these are being attended by the senior officers of the level of Directors General of Income-tax (Inv.)/Directors of Income-tax (Investigation).

The Income-tax department has also been trying to develop a proper information system for preparing adequate data bank. The department is also working on computerisation of its information system.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 286/77/95-IT(INV.II) dated 1.11.1995]

Recommendation of the Committee

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

[Para 106 of the 97th Report of the PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

The CBDT had instructed in April, 1991 to all the CCsIT/CsIT for making available all records including appraisal reports to Audit. These instructions were modified in March 1993 resulting in withholding of appraisal reports from Audit. The instructions dated March 1993 have

since been withdrawn making appraisal reports and other seized material available for Audit. All the seized material alongwith the appraisal reports is being made available to the Audit for the Review.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II dated 25.1.1996]

Recommendation of the Committee

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

[Para No. 107 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action Taken by the Government

It is true that the data regarding year-wise break-up of concealed income brought to light by search operations and gain to revenue from search and seizure operations is not maintained separately. This may not be feasible in the present manual system as the cases go through various stages of assessment and appeal over a long period of time. This can be done if the whole data is kept on computers & updated from time to time. The Ministry of Finance is working on a large scale programme of computerisation in the Income-tax Department. This would include management of data regarding search and seizure, consequential assessments and actual gains to revenue due to search and seizure operations. However, guidelines have been issued to the field formations for maintaining separate Blue book and the Demand and collection register in respect of Block search assessments. Quarterly reports on the search assessments have also been introduced. This would ensure availability of appropriate data and evaluation system.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 286/77/95-IT (INV.II) dated 1.11.1995]

Recommendation of the Committee

The Audit review under examination is based on the findings from test check of records of 7,960 cases in 165 Investigation Circles, functioning in 75 Commissioners charges in various parts of the country. The review had brought to light several cases of irregularities, omissions, mistakes etc. having an important bearing on revenue collection. The Ministry of

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

[Para 108 of the 97th Report of the PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

As a matter of practice, all the illustrative cases involving large tax effect are responded by the Ministry in detail. The mistakes pointed out by the Audit are similar in nature. These objections are accepted in principle. The Ministry by issuing relevant instructions from time to time ensures that there is no loss of revenue to the Government. Instruction No. 1928 was issued on 7.8.95 by the CBDT, which clearly states that remedial action invariably has to be initiated in respect of all audit objections, even if the objection is not accepted by the assessing officer concerned. Further, whenever an audit objection is raised, the CIT calls for the explanation of the officer concerned in the relevant cases and if the mistake committed by the officer is not found bonafide then the appropriate action is initiated by the CIT against the erring officer. In these cases also, the same procedure is being followed.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95—A&PAC II dated 25.1.1996]

INSTRUCTION NO. 1928

F. No. 246/10/95—A&PAC II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated: 7th August, 1995.

To

All Chief Commissioners of Income-Tax/
Directors General of Income-Tax.

SUBJECT: Remedical action in respect of Revenue Audit objections.

Sir,

It has come to the notice of the Board that despite existing instructions making it mandatory for taking remedial action in case of Revenue Audit

objections, steps are not taken by the Assessing Officers to initiate remedial actions. The proforma reports, sent on the draft paras proposed to be included in the Annual Report of the C&AG, contain tentative remarks such as "being initiated", "instructions are being issued for taking remedial action" etc. Sometimes it is stated that no remedial action is being taken as the "objection is not accepted", which clearly violates the instructions presently holding the field, *viz.*, remedial action should invariably be initiated in all cases of Revenue Audit objections. In order to reiterate the importance of taking prompt remedial action in the interest of revenue and in supersession of all earlier instructions of the Board on taking remedial action, following guidelines are being laid down.

1. Remedial action should invariably be initiated as a precautionary measure in respect of all Audit objections, even if the objection is not accepted by the CIT. Where an objection is accepted, suitable remedial action should be initiated and completed expeditiously.

2. Once the remedial action is initiated, it can be dropped with the approval of the CIT if the objection raised is one of facts and the facts stated by the audit are found to be incorrect.

3. If, however, the issue raised by Audit pertains to interpretation of statute or involves conficting High Court decisions, the remedial action should be dropped only with the prior approval of the Board. For this purpose, a reference should be sent to the Board (A&PAC Section) soon after the receipt of 'Statement of Facts' (SOF) stating cogently the reasons for propsoed dropping of remedial action. Where there is a decision of the jurisdictional High Court against the view of the Audit, but not accepted by the Department, the High Court or the Supreme Court should be moved for staying the operation of the judgement.

4. Remedial action need not be initiated in Audit objection where the Assessing Officers has acted in conformity with Board's Instruction/ Circular. Such matters should immediately be referred to the concerned sections of the Board for examination and decision indicating clearly the date of expiry of limitation of taking remedial action.

5. While processing draft paras received from the Office of the C&AG, it has been noticed that the mistakes pointed out by Audit, though outside the scope of *prima facie* adjustments as per the first Proviso to Section 143 (1) (a) do need to be rectified in the interest of revenue. For instance, in cases where, Audit-points out excess set-off of loss or carry forward of loss, records should be linked and remedial action should invariably be taken even though the objection is not accepted. There can be similar instances under sections 32, 32A, 43B or deductions under Chapter VI-A such as 80-HHA, 80HHG, 80-I 80-O etc.

6. Remedial action should be initiated and completed where the Board specifically instructs the CIT to do so and the compliance report sent to the Board within three months.

These guidelines for taking remedial action may please be brought to the notice of all the officers working in your charge.

Yours faithfully,

Sd/-
(P.S. TOMAR)
Under Secretary (A&PAC)

Recommedation of the Committee

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

[Para No. 109 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

The Committee's directions are noted and appropriate action is being taken.

[Ministry of Finance (Deptt. of Revenue F. No. 241/1/95—A&PAC II and —F.No. 286/77/95—II(INV. II) dated 1.11.1995]

Revised Action taken by the Government

In order to streamline the search and seizure operations and the Investigation Circles, that Law has been amended w.e.f. 1.7.1995, introducing the concept of block period assessment for search and seizure cases. Under the new procedure the total undisclosed income of a person shall be assessed as the income of the block period consisting of 10

previous years prior to the previous year. The total undisclosed income shall be assessed as the income of the block period consisting of the previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The order of assessment for the block period shall be passed by an assessing officer not below the rank of an Assistant Commissioner of Income-tax, within one year from the end of the month in which the last of the authorisation for search was executed. Further, the order of assessment for the block period shall be passed only with the prior approval of the Commissioner of Income-tax. Appeal against such order shall lie before the Income-tax Appellate Tribunal.

In order to clear the backlog in assessment of search and seizure cases as per the old scheme applicable to searches conducted upto 30.6.1995, the time-limit has been provided in the Action Plan for the current financial year. The Action Plan targets are monitored by the DCsIT/CsIT. Further, keeping the other observations of the PAC necessary instructions have been issued to the field authorities stating that the cases where demands are pending, should be examined properly and the reasons for pendency of the demand may be analysed. Concerted efforts should be made vigorously to pursue the demands and the taxes due should be realised on time. All the field formations have also been instructed to maintain properly all the registers relating to search and seizure and the DCsIT have been asked to monitor the same.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95—A&PAC. II and F. No. 286/77/95—II (INV. II) dt. 15.10.96.]

INSTRUCTION No. 1927

F. No. 286/61/95—IT(Inv. II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 21st July, 1995

To

All Chief Commissioners of Income-Tax/
All Directors General of Income-Tax.

SUBJECT: Procedure for block assessment in Search Cases.

Sir,

A special procedure for assessment of search cases has been provided in Chapter XIVB of the Income-tax Act, 1961. A concept of 'block period' assessment has been introduced which is applicable for searches initiated/

requisitions issued on or after 1st July, 1995. For effective implementation of the block assessment scheme, it has been decided that the following procedure shall be followed:—

(i) Where the jurisdiction over an assessee is with an Assistant Commissioner or Deputy Commissioner (Special Range), the block assessment shall be completed by him.

(ii) Where the jurisdiction over the assessee is with an-Income-tax-Officer, the CIT shall transfer the case to an Assistant Commissioner or Deputy Commissioner (Special Range) u/s 127 of the I.T. Act.

(iii) In the cities of Delhi, Bombay, Calcutta, Madras, Ahmedabad and Bangalore—the jurisdiction over the block assessment shall be conferred, as far as possible, on a DC (Special Range) working under the respective Commissioner.

(iv) The ADIT concerned shall, within one week of the commencement of the search, intimate the CCIT and CIT having territorial jurisdiction over the assessee and the DGIT/DIT shall, where necessary also send suggestions for conferring jurisdiction over the block assessments to an Assistant Commissioner or Deputy Commissioner (Special Range).

(v) The ADIT concerned shall prepare and forward the appraisal report positively within 60 days of the commencement of the search. If this period is to be exceeded, written permission of the DG shall be obtained.

(vi) The seized material shall be handed over to the Assessing Officer at the earliest.

(vii) The appraisal report shall contain information/analysis on the following points:—

(a) Date of commencement and conclusion of the search and date of limitation for completing the assessment for block period.

(b) Identification of all assessees ward/circle-wise in whose cases block assessments have to be made.

(c) Gist of information leading to search.

(d) Reasons, break-up and analysis of tax-evaded income admitted during and/or after the search.

(e) Identification of the incriminating entries in books of account—and documents alongwith analysis thereof.

(f) Broad but reasonable estimate of the undisclosed income and its co-relation with the assets, investments and consumption expenditure.

(g) Specific suggestions regarding follow-up of the investigations.

(h) Comments and observations of DD/DIT especially in regard to (f) and (g) above.

(viii) Cases where the D.G. is of the view that immediate centralisation would be in the interest of proper investigation, shall be centralised and the assessments got completed in Central Circles.

2. The above procedure shall operate with immediate effect and shall apply to all-searches initiated on or after July 1, 1995. Old cases would continue to be governed by earlier instructions on the subject.

3. A separate register shall be maintained by the assessing officer handling block assessment regarding pendency and disposal of block assessments as also the tax demands raised and collected in respect thereof. A quarterly statement shall be obtained by the CIT from the respective Assessing Officers, consolidated and sent to CCs. In turn CCs would send such information to the Board.

4. These instructions may be brought to the notice of all the officers working in your region.

Yours faithfully,
Sd/-
(M.S. KAUSHIK)
Deputy Secretary to the Govt. of India

Recommendation of the Committee

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

[Para 110 of the 97th Report of PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

Four separate Study Groups comprising of five officer each, have been constituted to review the provisions of Income-tax Act in 4 specific areas:—

(i) provision relating to Charitable Trusts;

(ii) provision relating to concessions and exemption contained in the Income-tax Act;

(iii) provisions relating to assessment procedures;

(iv) provisions relating to Capital Gains;

2. Each Group consists of 5 members including the convenor. It consists of 2 officers of the level of Commissioner of Income-tax, 2 officer

of the level of Additional Commissioner/Deputy Commissioner of Income-tax and 1 officer of the level of Assistant Commissioner of Income-tax. The study Groups have already started functioning and they are on the verge of finalizing their reports. Final recommendations from these study Groups are expected shortly. Necessary action on the recommendations of the study Groups shall be taken on receipt of the reports.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 149/99/95-IPL dated 4.12.1995]

Revised Action Taken by the Government

The Four Study Groups, constituted to review the provisions of Income-tax Act in 4 specific areas have submitted their reports. Now the Government has constituted an expert group for examining and re-writing of a new Direct Tax Law vide Order No. 153/82/86-IPL dated 6th August, 1996 (copy enclosed). The reports of the Study Groups have been referred to this newly constituted Expert Group for its consideration. The Expert Group is expected to submit its report by 31-12-1996.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 149/99/95-IPL dated 11.10.1996]

F.No. 153/82/96-TPL
Government of India
Ministry of Finance
Department of Revenue

New Delhi,
August 6, 1996

OFFICE ORDER

The Income Tax Act which was codified in 1961 needs to be brought in line with the changes in the economic policy which have taken place since then, particularly the tax reform initiatives initiated from 1991. While the Central Board of Direct Taxes have set up internal Committees to consider changes in certain areas of tax with a view to codifying a new law, it is necessary to integrate all these efforts and rewrite a new Direct Tax law. The new law would rationalise and simplify the existing Act in a manner where they are easily comprehensible, understandable and capable of unambiguous interpretation.

2. Towards the desired end, Government have decided to set up an Expert Group with the following composition:

S/Shri

1. Amaresh Bagchi, retired Director, NIPFF
2. V.U. Eradi, retired Member (TPL), CBDT
3. S.D. Kapila, Commissioner of Income Tax, Delhi

4. S. Ramaiah, retired Secretary (Legislative), Govt. of India
5. H.P. Ranina, Advocate
6. P.K. Sahu, Deputy Commissioner of Income Tax
7. K. Subramaniam, Member, CBDT—Convenor

3. In addition to the above Members, the Expert Group would have the option to co-opt any other Member or Expert whose advice would be useful in rewriting the Act.

4. The Expert Group will submit its Draft Report on the new Income Tax Act, 1997 by 31st December, 1996.

CHAPTER III

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

Recommendation of the Committee

Under the Income-tax Act 1961, penalty is leviable where, in the course of a search, the assessee is found to be the owner of any unexplained or undisclosed money, bullion, jewellery or other jewellery or other valuable article or thing. The Committee find from the Audit paragraph that in nine cases under various charges, penalty amounting to Rs. 30.24 lakhs leviable for concealment of income of Rs. 55.40 lakhs was not levied or short levied. The Ministry of Finance contended that there had been no short non-levy of penalty in six out of the nine cases pointed out by Audit owing to the proceedings being pending or the penalties levied were dropped on merits by the assessing Officer. The Committee are not convinced by this. They desire that the Ministry should thoroughly examine the circumstances in which the penalties leviable were not actually enforced in all the cases mentioned above. Efforts should also be made to pursue and expedite the proceedings where the assessments are pending so as to ensure collection of the legitimate dues of the Government at the earliest.

[Para 102 of the 97th Report of the PAC(1994-95)—10th Lok Sabha]

Action taken by the Government

PAC has identified six cases, *Viz.* CIT-Delhi (one case) CIT IN-V (four cases) and CIT WB-IX (one case). The reply with regard to these cases has already been furnished to the C&AG. The case-wise details are given below.

CIT-Delhi—S.K. Rastogi

Replied that the penalties are kept pending as the addition of Rs. 3.25 lakhs of cash credit was disputed in first appeal. Later the assessment is set aside on 9.11.92 and subsequently re-assessment was done on 28.2.94 wherein cash credit of Rs. 9.25 lakhs has not been added back. Hence, no penalties were initiated in this case.

CIT—Tamilnadu-V

i) *Rangaswami Associates:*

Replied that the objection cannot be accepted as the penalty was not levied, awaiting ITAT's order.

ii) *C. Michael Ahmed:*

Replied that the penalty has been dropped as per CIT's directions read with Explanation 5 to section 271 (i) (c), read with section 132(4).

iii) *R. Thiagarajan:*

Replied that the penalty levied u/s 271(i)(c), for assessment years 1984-85 to 1987-88 and the orders are in appeal before ITAT.

iv) Kalyani Thevar:

Replied that the penalty proceedings were dropped with the approval of DCIT after considering the case on merits by the Assessing Officer.

CII-West Bengal-IX—C.M. Halwasia

Replied that the non quantification of penalties while passing order u/s 132(5) did not result in loss of revenue as the entire seized assets were retained in the order u/s 132(5). The quantification and imposition of penalties will be taken up at the time of making regular assessments.

Thus, in none of the six cases the facts stated by Audit are correct and objections are, therefore, not acceptable. There has been no short levy/ non-levy of penalties in these cases. The proceedings are either pending, penalties levied or dropped on merits which is the discretionary quasi-judicial function of the Assessing Officer.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95—A&PAC II dated 25.1.1996]

CHAPTER IV

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

Recommendation of the Committee

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

[Para No. 92 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

The reasons for non-detection of concealment in 35.87% of the cases can be many. In the case of search, concealment may be noted only in the hands of a few members of the group. Besides when the return is file—subsequent to search—the assessee may claim set offs against the disclosed income *e.g.* set-off of depreciation, loss etc. Even then penalty and prosecution would not lie if the assessee makes a valid disclosure u/s 132 (4) of the I.T. Act and pays the tax. Where the declarations u/s 132(4) of the I.T. Act has been made and the income declared is also reflected in the return filed subsequent to the search there will be little or no scope for further addition or detection of concealment by the Assessing Officer. As a result, the assessee would gain immunity in accordance with the provisions of the I.T. Act.

According to the provisions of the I.T. Act, a warrnt for search action is normally issued by the Director of Income-tax (Inv.) or Commissioner of Income-tax, *i.e.* at a very high level. The warrant can be issued only when the department has reason to believe that a person has not or would not produce books or documents if notice/summons is issued to him or that he is in possession of cash, jewellery or other valuable article or things which

have not been or would not be wholly or partly disclosed for the purposes of the Act. The authorisation of search is justiciable before the courts and therefore, adequate precautions are taken before issuance of warrant.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 286/77/95-IT (INV. II) dated 1.11.1995]

Recommendation of the Committee

The Income-tax Act, 1961 provides for prosecutions for certain defaults such as wilful attempt to evade tax, false statement in verification etc. The Committee are deeply concerned to note that the prosecution proceedings initiated in the number of cases assigned to Investigation Circles during the period 1988-89 to 1992-93 showed a declining trend. In fact, the Committee's examination revealed out of a total number of 49,648 search assessments completed during 1990—93, prosecutions were launched in 2729 cases only. Curiously enough, the cases of prosecutions launched sharply declined from 1629 in 1990-91 to 775 in 1991-92 and 325 in 1992-93. Evidently, the low number of prosecutions launched is a pointer to the fact that even after considering incriminating material in search cases, the Department were unable to establish many cases of tax evasion. The Ministry of Finance attributed the sharp decline in the prosecution proceedings launched to the immunity provided for in this regard under certain provisions of Income Tax Law, the decision of Government to launch prosecution in important cases only, other factors like necessity to await completion of assessment proceedings fulfilling of criteria laid down in various instructions of the Central Board of Direct Taxes etc. While the Committee do recognise the need for laying greater stress on bigger and relatively more important cases, they are not fully convinced of some of the other causes put forth by the Ministry. For example, since search cases are taken up on the basis of the incriminating materials collected by the department, the Committee feel that it is not necessary to await decision of the first appellate authority for launching prosecution particularly when such cases unfortunately tend to linger on at various appellate stages. The Committee would, therefore recommend that the Ministry of Finance should look into the reasons for the sharp decline in the prosecutions launched in search cases and take necessary steps in order to ensure that the prosecution provisions under the Direct Tax and other related Laws are effectively applied to create an appropriate impact and to subserve as a deterrent against tax evasion.

[Para No. 93 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

It is stated that the prosecutions are launched at the instance of CIT/CC and they ever see the prosecution complaints from time to time. The assessing officers keep on briefing the prosecution counsels so that they argue the case before the trial court properly and adequately. Instructions are issued by the Board as well as by the CCs to the field authorities to

launch prosecution in important and sustainable cases. The reasons for declining trend in the prosecutions is the realisation by the department that the rate of disposal of complaints by the court is too slow and the judicial process involved is too cumbersome which deteracts from the efficiency of the prosecution as a deterrant. Accordingly there has been a shift in emphasis and a number of prosecution cases, specially those involving technical offences or small amount of concealment are compounded after charging the compounding fee. The compounding is done either before launching the prosecution or even after launching the prosecution in the trial courts. It is hoped that this approach will reduce the burden on court and they can concentrate on really big cases of tax evasion.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/95-A&PAC II and F.No. 285/84/94-IT (Inv. II) dated 24.11.1995]

Recommendation of the Committee

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

[Para No. 94 of the 97th Report of PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

The reasons for high rate of acquittal are attributable to slow judicial process which permit the accused party to manipulate/fabricate evidence in the meantime. Futher some departmental witnesses have either retired or even expired and their evidence cannot be recorded in support of our complaints. Quite often the courts give weightage to the preponderance of evidence in favour of the accused rather than to the evidence filed by the department. In many instances it is felt that the trial judges are not well conversant with the taxation laws and are preoccupied with other criminal case under the IPC or Cr. P.C. exhibiting less interest in the cases involving tax offences. Added to this is doubtless the problem of

having proper legal assistance. Given the rates of remuneration it is almost impossible to have the services of a good lawyer to represent the revenue.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95—A&PAC II and F. No. 285/94-94-IT (Inv.) Dated 24.11.1995]

Recommendation of the Committee

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

[Para No. 101 of 97th Report of PAC (1994-95)—10th Lok Sabha]

Action taken by the Government

A study of top-184 search cases selected on the basis of disclosure during searches of 88-89 to 92-93 was conducted. The main findings in the study are as under:—

(i) 63.15% of the disclosures made in course of the searches were included in the returns filed, on which taxes were paid.

(ii) In the remaining cases, additions totalling Rs. 209.01 crores have been made. Of these, additions involving only Rs. 33.69 crores (16.07%) have been decided in first appeal, out of which only Rs. 6.86 crores (20.36%) have been up-held.

It is noticed that in many cases the amounts deleted by the CII (Appeals) are these which represent disallowance under various sections of the Act.

(iii) 56% of the demands raised have been collected. The rest of the demand is locked up in appeals.

(iv) In accordance with Instruction No. 1886 dated 18th July, 1991, the search cases were to be centralised with the recommendation of the DIT and the top search cases were to be monitored by the DCsIT and CsIT.

The study shows that 78% of the cases searched were centralised and 63% were monitored by the DCsIT and CsIT.

(v) In 85% cases penalty for concealment has been initiated. In the remaining cases, either immunity has been granted under explanation 5 of section 271(1) (o) read with section 132(4), or the assessees have gone to the settlement Commission.

(vi) Regarding prosecution, out of 184 cases for which such information has been furnished, it is seen that proposals for launching prosecution has been sent in only two cases. It is possible that no action has been taken in the remaining cases so far because the penalty proceedings are yet to be finalised.

(vii) Only in 31% of the cases was there a variation (−ve) between the concealment quantified in the appraisal reports and the additional income brought to tax in the regular assessments.

In 12.1% of the cases, the variation was +ve in the sense that the additional income assessed was more that what was quantified in the appraisal reports.

The reason for variation between the Income-tax quantified in the Appraisal Report and the income assessed may exist as various claims of set off in the Return of Income may not be before the ADI. The ADI may also not have all evidences while quantifying the concealed income which in any case is a summary and estimated quantification.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/95—A&PAC II and F. No. 286/77-95-IT (INV.II) dated 1.11.1995]

CHAPTER V

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

- NIL -

NEW DELHI;
18 *December*, 1996

27 *Agrahayana*, 1918 *(Saka)*

DR. MURLI MANOHAR JOSHI,
Chairman,
Public Accounts Committee.

APPENDIX

CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	*Para No.*	*Ministry/ Deptt.*	*Conclusions/Recommendations*
1	2	3	4
1.	1.11	Ministry of Finance (Deptt. of Revenue)	The Committee regret to point out that the Ministry of Finance have merely enumerated the possible reasons for the non-detection of concealed income in a large percentage of seizure cases where regular assessment had been completed in a general manner and the prevailing practice for issue of warrant in search cases. The action taken reply is completely silent on either the precise efforts made by the Ministry, in analysing the facts pointed out by the Committee or the steps proposed to be taken to enhance the success rate in search operations. Evidently, the Ministry of Finance have not taken any action on the recommendation and the Committee are unhappy over this. Since the power of search and seizure conferred on the Department are extraordinary and exceptional in nature, the Committee desire that in the light of non-detection of concealed income in a large number of cases, the Ministry of Finance should take specific steps and ensure that a thorough groundwork is done before undertaking search and seizure operations and also make a more detailed examination of each of the cases referred to above to find out whether any lapses had occurred due to connivance of departmental officers. In the opinion of the Committee this is absolutely necessary so as to enhance

1	2	3	4
			the the success rate and improve the efficacy of search and seizure operations.
2.	1.14	Ministry of Finance (Deptt. of Revenue)	The Committee are unhappy to point out that the Ministry of Finance have merely cited the reasons for the declining trend in prosecution, in a general way and have simply referred to the available instructions in existence. Evidently, no effort has been made to analyse the reasons for the declining trend in prosecution cases and take appropriate follow-up-action as desired by the Committee in their original report. While the Committee do recognise the need for laying greater stress on bigger and relatively more important cases, they are not inclined to share the views of the Ministry on the efficacy of prosecution as a deterrent against tax evasion. The Committee, therefore, cannot but reiterate their earlier recommendation. They would also like to be informed of the data on prosecutions launched in "important and sustainable" cases in the years 1993-94 to 1995-96 with tax effect in each case.
3.	1.17	-do-	The Committee are aware of the difficulties enumerated by the Ministry which might have contributed to the high rate of acquittals in the case of prosecution launched against search assessments and also the inadequate defence of cases related to Direct Taxes in the courts of law by the Department. In fact, it was in this context only that the Committee had emphasised the need for improving the quality of legal assistance and had specifically desired that the Ministry of Finance should seriously address this issue in consultation with the Ministry of Law. Unfortunately, the Ministry have not taken any action in the matter at all.

1	2	3	4
			Considering the seriousness of the matter and the need for securely safeguarding governmental revenues, the Committee desire that the Ministry of Finance should take concrete steps on the recommendations of the Committee and apprise them of the precise action taken in the matter.
4.	1.21	Ministry of Finance (Deptt. of Revenue)	The Committee note that as per the new scheme of assessment of undisclosed income determined as a result of searches and seizures introduced through the Finance Act, 1995, the time limit for completion of block assessment period prescribed is within one year from the end of the month in which the last of the authorisations for search was executed. The Committee are, however, surprised that the further changes effected in the Law in this regard through the Finance (No. 2) Act, 1996 has now excluded certain situations like the period during which the assessment proceeding is stayed by an order or injunction of any court from the period of limitation. The Committee wonder whether these changes are in consonance with the earlier changes effected to reduce the delay in completion of such assessments. They, however, desire that assessments in those cases should invariably be completed within a reasonable period, say four months, after the stays are vacated or decisions given by Courts etc., as the case may be. The Ministry of Finance should also take necessary action to ensure that the assessment proceedings pending in Courts in such cases are vigorously pursued by the Department and not allowed to linger on. The Committee may be informed of the number of cases where stay orders had been obtained in respect of assessment of

1	2	3	4
			search and seizure cases and the revenue involved thereon. They would also like to be apprised of the latest position in respect of the pendency and disposal of block assessment and the demands raised and collected thereagainst.
5.	1.22	Ministry of Finance (Deptt. of Revenue)	**The Committee further desire that the Ministry of Finance should closely watch and ensure that all assessments where searches took place on or before 30 June, 1995 should be completed by 31 March, 1997 positively. The Committee would like to be kept informed of the progress in the clearance of the backlog assessments of search and seizure cases which took place before 30 June, 1995 as per the old scheme.**
6.	1.25	Ministry of Finance (Deptt. of Revenue)	The Committee note that a study of a sample of 184 search cases pertaining to 1988-89 to 1992-93, i.e. the period covered under the C&AG appraisal, has more or less reinforced the findings of Audit regarding the post-search performance of the department. The Committee are, however, constrained to point out that neither has the study provided any useful insight into the causes for the failure of the department in defending their action during appellate proceedings nor does the reply indicate the action taken by the Ministry or proposed to be taken to improve the departmental performance on this score. The Committee are, therefore, not satisfied with the action taken reply and they, therefore, reiterate their earlier recommendation and desire that the Ministry of Finance should take concrete action to enhance their degree of success in appellate proceedings.

1	2	3	4
7.	1.29	Ministry of Finance (Deptt. of Revenue)	The Committee desire that the process initiated for rationalisation and simplification of Direct Tax Law should be expeditiously completed and the Bill seeking to enact the new Direct Tax Law be brought before Parliament at the earliest. They would like to be informed of the progress in the matter.

PART II

MINUTES OF THE TENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 17 DECEMBER, 1996

The Committee sat from 1500 hrs. to 1600 hrs. on 17 December, 1996 in Committee Room "D", Parliament House Annexe.

PRESENT

Dr. Murli Manohar Joshi—*Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Shri Nirmal Kanti Chatterjee
4. Smt. Sumitra Mahajan
5. Shri Suresh Prabhu
6. Shri V.V. Raghavan
7. Dr. T. Subbarami Reddy
8. Shri Ishwar Dayal Swami

Rajya Sabha

9. Shri Rajubhai A. Parmar

LOK SABHA SECRETARIAT

1. Shri J.P. Ratnesh — *Joint Secretary*
2. Smt. P.K. Sandhu — *Director*
3. Shri P. Sreedharan — *Under Secretary*

OFFICERS OF THE OFFICE OF C&AG OF INDIA

1. Shri Vijay Kumar *DGA, P&T*
2. Shri B.M. Oza *DGACR*
3. Shri Samar Ray *Pr. Director (DT)*
4. Shri A.K. Thakur *Pr. Director (Report Central)*
5. Shri S.C.S. Gopalkrishnan *Director (Railway) Director (DT)*
6. Smt. Sangeeta Chore *Dy. Director (DT)*
7. Shri Ashim Sharma

2. *The Committee took up for consideration the following draft Reports:*

(i) ××× ××× ×××

(ii) Action Taken on 97th Report of PAC (10th Lok Sabha) on Systems Appraisal — Functioning of Investigation Circles.

(iii) ××× ××× ×××

The Committee adopted the draft Report at serial No. (ii) above with certain modifications and amendments as shown in Annexure-II.

3. The Committee also authorised the Chairman to finalise these draft Reports in the light of verbal and consequential changes arising out of factual verification by Audit and present these Reports to the House in the current Session of Parliament. ×××××××× ××× ×××× ×× ×× ××

4. ×××× ×××× ×××× ××××

5. ×××× ×××× ×××× ××××

6. ××xx ×××× ×××× ××××

7. ×××× ×××× ×××× ××××

8. ×××× ×××× ×××× ××××

The Committee then adjourned.

Annexure-II

Amendments/Modifications made by the Public Accounts Committee in their Draft Report on Action Taken on 97th Report (10th Lok Sabha) Relating to system Appraisal — Functioning of Investigation Circles.

Page	Para	Line	Amendments/Modifications
7.	1.11	2 from bottom	*Add* "and also make a more detailed examination of each of the cases referred to above to find out whether any lapses had occurred due to connivance of departmental officers. In the opinion of the Committee this is absolutely necessary so as to enhance the success rate and improve the efficacy of search and seizure operations." *after* "search and seizure operations" *Delete* "so as to enhance the success rate and improve its efficacy"
13.	1.21	4 from bottom	*Delete* "They would, however, await the impact of the changes and would like" *Add* "They, however, desire that assessments in those cases should invariably be completed within a reasonable period, say four months, after the stays are vacated or decisions given by Courts etc. as the case may be. The Ministry of Finance should also take necessary action to ensure that the assessment proceedings pending in Courts in such cases are vigorously pursued by the Department and not allowed to linger on. The Committee may be informed of the number of cases where stay orders had been obtained in respect of assessment of search and seizure cases and the revenue involved thereon. They would also like"

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	BIHAR
2.	M/s. Crown Book Depot, Upper Bazar, Ranchi (Bihar).
	GUJARAT
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380 006. (T.No. 79065)
	MADHYA PRADESH
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5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400 002.
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7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400 001.
8.	M/s. Usha Book Depot, Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-400 002.
9.	M & J Services, Publishers, Representative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor, 68, Jyotiba Fule Road Nalgaum, Dadar, Bombay-400 014.
10.	Subscribers Subscription Service India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400 001.
	TAMIL NADU
11.	M/s. M.M. Subscription Agencies, 14th Murali Street, (1st Floor), Mahalingapuram, Nungambakkam, Madras-600 034. (T. No. 476558)
	UTTAR PRADESH
12.	Law Publishers, Sardar Patel Marg, P.B. No. 77, Allahabad, U.P.
	WEST BENGAL
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21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus, New Delhi-110 001. (T.No. 344448, 322705, 344478 & 344508).
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23.	M/s. Books India Corporation Publishers, Importers & Exporters, L-27, Shastri Nagar, Delhi-110 052. (T.No. 269631 & 714465).
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