

**HUNDRED AND FIRST REPORT**  
**PUBLIC ACCOUNTS COMMITTEE**  
**(1986-87)**

**(EIGHTH LOK SABHA)**

**DIRECT TAXES—IRREGULAR EXEMPTIONS  
AND RELIEFS AND WEALTH ESCAPING  
ASSESSMENT**

**MINISTRY OF FINANCE**

**[Action taken on 144th Report (Seventh Lok Sabha)]**



*Presented in Lok Sabha on 30 April, 1987*  
*Laid in Rajya Sabha on 30 April, 1987*

**LOK SABHA SECRETARIAT**

**NEW DELHI**

**April, 1987 (Chaitra, 1909 (Saka))**

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CORRIGENDA TO 101ST REPORT (8TH L.S.)  
OF PUBLIC ACCOUNTS COMMITTEE

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## COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE (1986-87)

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(iv)

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1. **Shri K. H. Chhaya—*Joint Secretary***
2. **Shri C. L. Bhatia—*Senior Financial Committee Officer***

## INTRODUCTION

I, the Chairman of Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and First Report on Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 144th Report (7th Lok Sabha) on Direct Taxes—Irregular exemptions and reliefs and Wealth escaping assessment.

2. In their earlier Report, the Committee had pointed out that in spite of clear position of law, the entire amount of Rs. 4.25 lakhs of its income donated by the Garware Foundation Trust to Bombay Cricket Association [approved under Section 10(23)] was exempted in the hands of the donor involving a short levy of tax of Rs. 1,37,545. The Committee had also observed that the Bombay Cricket Association being only a deemed charitable association for purposes of Section 80 G of the Income-Tax Act and not a charitable institution as such, was assessable to Wealth Tax but proceedings under the Wealth Tax Act were not initiated against the Association. A reference was made to the Ministry of Law who have advised that an association or institution engaged in the promotion of sports and games can claim exemption under Section 11 of the Income Tax Act, 1961 even if it is approved under Section 10(23) for exemption from tax being a sports association or institution having as its objects—the promotion, control, regulation and encouragement of specified sports and games. The Committee observe that the Ministry of Law have advised specifically within the definition of charitable purpose given under the Income Tax Act but there is no mention about its applicability to the provisions of the Wealth Tax Act. The Board's Circular of 1984 is also silent on the point. The Committee have urged that the matter should be referred again to the Ministry of Law for an opinion on this specific aspect.

3. The Committee had earlier observed that by granting exemptions liberally and for indefinite periods to trusts and institutions established for charitable purposes, the Government had not only gone beyond the intention of Parliament but also clearly over stepped the limits of delegated legislation. The Committee had, further observed that all notifications issued in respect of trusts and institutions under Section

(vi)

10(23C) (iv) and (v) granting exemptions for indefinite periods were *ultra vires*, illegal and hence ineffective. The Ministry of Finance have replied that the cases of trusts which have come up for renewal on being served with notice that their exemptions would be valid upto the assessment year 1984-85 are being reviewed. The Committee have deplored the routine way in which this serious problem was being dealt with by the Ministry and have reiterated their earlier recommendation that all the trusts, to whom indefinite exemptions had been issued should be taken up for review *suo moto* and exemptions withdrawn where the trusts do not comply with the notices within reasonable time.

4. The Committee considered and adopted this report at their sitting held on 24 April, 1987. Minutes of the sitting form Part II of the Report.

5. For facility of reference and convenience, the recommendations/ observations has been reproduced in Appendix III to the Report.

6. 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 ;  
27 April, 1987

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7 Vaisakha, 1909 (Saka)

E. AYYAPU REDDY,  
Chairman,  
Public Accounts Committee.

## **CHAPTER I**

### **REPORT**

**1.1 This Report of the Committee deals with the action taken by Government on the recommendations and observations of the Public Accounts Committee contained in their 144th Report (Seventh Lok Sabha) on Paragraphs 3.12(B) and 4.04 (i) of the Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes regarding 'Irregular Exemption and reliefs and wealth escaping assessment'.**

**1.2 The 144th Report, which was presented to Lok Sabha on 22nd April, 1983, contained 38 recommendations. Action Taken Notes have been received in respect of all the 38 recommendations. The replies received so far have been broadly categorised as under :**

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

**Sr. Nos. 7, 8, 16, 31-33.**

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

**Sr. Nos. 10-15, 17, 27-30, 34-36, 37-38.**

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

**Sr. Nos. 1-6, 9, 18-26.**

**(iv) Recommendations and observations in respect of which Government have furnished interim or no replies :**

**Sr. Nos. NIL.**

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



*Incorrect exemption granted from the income of a charitable trust as having been applied as donation to another charitable trust (paragraphs 1.26 to 1.32—Sl. Nos. 1—8 and 6A).*

1.4 The Garware Foundation Trust made a donation of Rs 4,25,000 of its income to Bombay Cricket Association—a sports association having the purpose of promotion of cricket. The donation was deemed by the Department as income applied wholly for charitable purposes in India. Commenting on the Audit objection of treating such income as having been applied by a charitable trust as donation to another charitable trust, the Committee in paragraphs 1.26 to 1.32 of their 144th Report have stated :

“1.26 Section 11 of the Income-tax Act exempts from tax, income of a Charitable institution as defined in Section 2(15), in so far as it is applied to charitable purposes and fulfils the conditions laid down in Section 13. A donation made by a charitable institution to another charitable institution has been held to be application of income by the former for charitable purpose (133 ITR 494—Bombay and CBDT Instructions No. 1132 dated 5 January, 1978) It has, however, been held that mere promotion of practice of the game of cricket, in general, either for entertainment of the public or for advancement of the game itself is not a charitable purpose (37 ITR 277 Cal.). Therefore, income applied for such a purpose by a charitable Trust is not exempt from tax under Section 11. CBDT Circular instructions dated 23 August, 1973 and 28 November, 1973, affirmed that the promotion of any game or sports was not a charitable purpose.

1.27 Income tax Act, 1961 was amended by Finance Act, 1973 with effect from 1st April, 1974 allowing deduction of 50 per cent of donations made to sports associations approved by the government under Section 80-G. An explanation was added in that Section to clarify that such association would be deemed to be charitable institutions only for this purpose. In other words, even after amendment, the earlier position that for purposes of Section 2(15) and Section 11 such sports associations were not “charitable institutions” continued to prevail.

1.28 As pointed out in the Audit paragraph, in the previous year relevant to the assessment year 1975-76, the Garware Foundation Trust made a donation of Rs. 4,25,000 of its income to Bombay Cricket Association (Donee Association). In spite of the clear position of law aforementioned, the entire amount was exempted in the hand of the donor. The incorrect, exemption involved a short levy of tax of Rs. 1,37,545.

Initially, in May, 1982, the Ministry of Finance did not accept the audit objection treating the income as having been applied by a charitable trust as donation to another charitable trust. After the Audit paragraph was selected by the Public Accounts Committee for examination, the Ministry changed their view and indicated (September 1982) that since such institutions notified under Section 10 (23) have been held to be not charitable institutions, Bombay Cricket Association has not been treated as a charitable institution. Again in December, 1982, the Ministry stated that although it may *prima facie* appear that the Income-tax Officer had committed a mistake in this case, a fuller examination of the relevant facts and the law would show that the relief allowed by the Income-tax Officer is sustainable in law considering the facts that (a) under the Board's instructions dated 23 August, 1973 and 28 November, 1978 mere promotion of sports was not considered to be a charitable purpose; however, the objects of the donee association in this case are much wider; (b) the concept of charitable purpose has become considerably wider as a result of ruling by Courts since the issue of instructions by the Board in 1973. A reference has accordingly been made to the Ministry of Law on 13 December, 1982. It is obvious that but for the Committee's enquiries in the matter, the Board would have allowed the interests of revenue to go by default. The Committee would like to be apprised of the law Ministry's opinion in the matter and the action taken in pursuance thereof.

1.29 The Committee further observe that the Bombay Cricket Association (Assessee), being only a deemed charitable institution for purposes of Section 80 G of the Income tax

Act and not a charitable institution as such, was assessable to Wealth Tax. However, proceedings under the Wealth Tax Act were not initiated under the wrong premise that the assets of the donee association were exempt from wealth tax under Section 5(1) (i) of the Wealth Tax Act, 1957. Thus no wealth tax was levied on its wealth aggregating to Rs. 3.02 crores in respect of assessment year 1974-75 and 1975-76 resulting in non-realising of revenue to the extent of Rs. 33.10 lakhs. On realising that Institutions notified under Section 10(23) of the Income-tax Act have been held to be not charitable institutions, notices under Section 17 of the Wealth Tax Act, 1957 were issued in respect of assessment years 1973-74 to 1980-81. The Committee have been informed that the assessee has filed a writ in Bombay High Court. The same has been admitted and assessment proceedings have been stayed (December 1982). The Committee desire that action to get the stay vacated should be initiated forthwith, if not already done. The Committee would like to be apprised of the final position of the wealth tax demand raised and collected in this case.

1.30 The Committee find that in all, 103 institutions have been approved under Section 10(23) of the Income-Tax Act, 1961 for purposes of Section 80 G. Apart from the Bombay Cricket Association, the Ministry of Finance have furnished details of assessment to wealth-tax in respect of only 10 such institutions. Two of them, viz. Delhi District Cricket Association and Bombay Presidency Gold Club Ltd., hold the status of a company, 7 institutions do not seem to have been assessed to wealth-tax. The Committee would like to know for how long and for what reasons wealth-tax proceedings have not been initiated against these institutions.

1.31 Only in one case of Madras Motors Sports, Madras, notices were issued for assessment years 1971-72 to 1973-74 and 1976-77 on 31-3-1981 and for assessment year 1977-78 on 24-2-1982. Assessments have been completed for assessment years 1970-71, 1974-75 and 1975-76. It is not known whether the demand created has since been realised. The Committee

desire that these assessments should be completed expeditiously and the Committee apprised of the position.

1.32 The Committee recommend that the CBDT should immediately carry out a review in respect of the remaining 92 associations/institutions with a view to initiating action for levy of wealth tax, if not already levied, on assets held by them, wherever due. The Committee would like to be apprised of the results of the review together with reasons for default and the action taken to fix responsibility in the matter in six months' time."

1.5 In their reply dated 18.4.1985 the Ministry of Finance (Department of Revenue) have stated :

"1.26-1.27 Since these recommendations are commentative in nature, no action is needed."

"1.28 Advice of the Ministry of Law is awaited."

"1.29—1.32 The matter has been considered in consultation with the Ministry of Law and it has been advised that an association or institution engaged in the promotion of sports and games can claim exemption u/s 11 of the Income-tax Act, 1961, even if it is approved u/s 10 (23) for exemption from tax being a sports association or institution having as its objects, the promotion, control, regulation and encouragement of specified sports and games. Copies of the advice of the Ministry of Law and the Central Board of Direct Taxes circular No. 395 which has been issued on 24th September, 1984, are enclosed (Appendix I & II).

2. The provisions of sec. 5 (1) (i) of the Wealth tax Act, 1957, are even wider than the provisions of sec. 11. It would, therefore, appear that it is not necessary to initiate wealth-tax proceedings in the cases of 103 institutions which had been approved u/s 10 (23) of the Income-tax Act, 1961."

**1.6 The Ministry of Finance stated in reply that the matter was considered in consultation with the Ministry of Law who have advised that an association or institution engaged in the promotion of sports and games**

can claim exemption under Section 11 of the Income-tax Act, 1961 even if it is approved under Section 10 (23) for exemption from tax being a sports association or institution having as its objects, the promotion, control, regulation and encouragement of specified sports and games. The Committee find that the opinion given by the Ministry of Law was specifically within the definition of charitable purpose given under the Income-tax Act and there is no mention about its applicability to the provisions of the Wealth-tax Act. The Board's circular of 1984 is also silent on the point. The Committee considers it desirable that the matter should be referred again to the Ministry of Law for an opinion on the specific aspect.

1.7 In paragraph 1.29 of their 144th Report (7th Lok Sabha) the Committee had referred to the Bombay High Court stay order in the very case and had observed that they would like to be apprised of the final position. The Committee would like to be apprised of the decision of the Court in the case.

*Exemption under Section 10 (23C) (iv) and (v) of Taxation Laws (Amendment) Act, 1975 (SL No. 18-26 paragraphs 3.46 to 3.54.)*

1.8 Section 10 (23C) of Taxation Laws (Amendment) Act, 1975 empowers the Central Govt. to exempt any income received by a person on behalf of any other Fund or Institution established for charitable purposes having regard to its objects and importance throughout India and throughout any State. A proviso was added under sub-clauses (iv) and (v) stipulating that any notification issued by the Central Govt. under these sub-clauses shall have effect for such assessment year or years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification. In exercise of this power, the Central Government have, during the last few years, notified 576 trusts and institutions whose incomes stand totally exempt and who are subject to none of the restrictions and restraints prescribed under Sections 11 to 13 and 139 (4 A) of the Income Tax Act. Commenting on the improper use of this power by Govt. the Committee, in Paragraphs 3.46 to 3.54 of their 144th Report (Seventh Lok Sabha) have observed as under :

“3.46 The Committee find that the Taxation Laws (Amendment) Bill, 1973 which was enacted as the Taxation Laws (Amendment) Act, 1975, as introduced in the Lok Sabha on 9 May, 1973 did not contain Section 10 (23C). The Bill as it emerged from the Select Committee specifically exempted income recei-

ved by any person on behalf of three Funds of national importance viz. the Prime Minister's National Relief Fund, the Prime Minister's Fund (Promotion of Folk Art) and the Prime Minister's Aid to Students Fund. However, a proviso was added to the Bill empowering Government to exempt any income received by a person on behalf of any other Fund or institution, established for charitable purpose having regard to its objects and importance throughout India or throughout any State, by Notification in the official gazette. At the consideration stage of the Bill in Lok Sabha, a further Government amendment exempting from income-tax the income of any trust or institution being a trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes was added in the shape of sub-clause (v).

3.47 The Committee thus find that the object of introducing Section 10 (23C) basically was to exempt certain institutions of national or State importance, whose funds in any case remain under public control.

3.48 The scope of the Section was enlarged subsequently to take care of genuine cases of philanthropy/public charity and trusts/institutions set up for wholly religious purposes. A proviso was added under sub-clauses (iv) and (v) stipulating that any notification issued by the Central Government under these sub-clauses shall have effect for such assessment year or years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification.

3.49 The Committee note that in exercise of this power, the Central Government have, during the last few years, notified 576 trusts and institutions whose incomes stand totally exempt and who are subject to none of the restrictions and restraints prescribed under Sections 11 to 13 and 139 (4A) of the Income Tax Act. Till June, 1979 the Ministry of Finance had issued notifications in respect of 317 trusts and institutions exempting them for indefinite period although the language of the proviso was quite unambiguous when it laid down that such notifications shall have effect for such assessment year or

years "as may be specified." However, the Ministry of Finance issued the notifications "for and from the assessment year (such and such)". The Committee regret to observe that this formulation amounted to giving up even the opportunity of very limited scrutiny that could otherwise be exercised at the time when such trusts/institutions came up for renewal of exemption had the period of exemption been specified in the notification as required by the law. In all these cases, apart from the initial scrutiny that might have been exercised at the time of issuing exemption orders by a Gazette notification, there is no method to ascertain the actual utilisation of income of such trusts or institutions because they are not obliged even to file a return of income.

3.50 The Committee consider that by granting exemptions liberally and for indefinite period, Government have not only gone beyond the intention of Parliament but also clearly outstepped the limits of delegated legislation. Unconditional grant of exemption from tax is a legislative function, Government's action in issuing notifications "for and from the assessment year so and so" amounts to saying "for all future assessment years" i.e., virtually granting total permanent exemption, thus violating both the language and spirit of the law. The Committee consider that all notifications issued with this formulation are clearly *ultra vires*, illegal and hence ineffective.

35.1 The Committee were informed in evidence, that after obtaining the Law Ministry's notices are being served on 300 and odd trusts asking them why their exemption should not be curtailed from 31 March, 1984. The Committee desire that a thorough review should be carried out without delay in all cases where indefinite exemption has been given so as to ensure that they are either taxed according to the normal law or where justified covered by proper notification.

35.2 From a perusal of the evidence tendered before the Committee verbally and in writing it would appear that the draft notification granting exemption "for and from the assessment year(s)..." was not got vetted by the Ministry of Law.

Very belatedly, the Ministry realised that the legality of their action could be questioned and hence they stopped issuing exemptions for indefinite period in June 1979. The Committee recommended that responsibility for this persistent default in such an important matter should be fixed. The Committee further urge that in future all exemption notifications should be vetted by the Ministry of Law and placed on the Table of the House as required under Section 196 of the Income-Tax Act.

The Committee have been informed that Government have examined the continued eligibility of 70 Trusts (out of 576 notified so far) when they came up renewal under Section 10 (23C) (iv) & (v). The Government did not consider it necessary to deny renewal in any of these cases. From a random scrutiny of the files relating to renewal of exemptions made available to the Committee, it was seen that in quite a few cases the Commissioners of Income-tax concerned had not insisted upon production of latest balance sheets and only the available accounts were gone into to verify if the incomes were properly applied for the avowed objectives and that the investment of funds relevant to the assessment years was in conformity with the provisions of Section 13 (5) of the Act. In the absence of any guidelines issued by the Board, the field officers who conducted the initial enquiries, interpreted the provisions of the law to their best judgement on the merits and circumstances of each case. It was further observed that the practice of obtaining certificate of continued eligibility from the Commissioner of Income-tax concerned had been dispensed with in certain cases. The failure to issue guidelines and to obtain eligibility certificates in certain cases, are clearly indicative of lack of control on the part of the assessing officers/Commissioners and the Board.

3.54 The Committee are of the view that a delegation made in relaxation of the normal provision of Sections 11 and 13 of the Act and intended to be used in exceptional cases and with caution has been used in a routine fashion so as to lift all restraints of the income-tax law on a large number of institutions for indefinite periods. These institutions were freed



not only of the additional controls built into the income-tax law as anti-tax evasion measures on the recommendations of the Wanchoo Committee but also of all existing controls. In fact they were freed of all legislative, judicial and administrative controls of Income-tax law. The Chairman, C.B.D.T. admitted in evidence that "this section should not exist on the Statute book and all the trusts should come under the discipline and control of Sections 11 and 13 of the Income-tax Act." The Committee were, however, informed that the matter was under consideration of the Economic Administration Reforms Commission (E.A.R.C.) and that a decision would be taken in the light of its recommendations. The Committee recommend that the question of deleting sub-Sections (iv) & (v) of Section 10 (23C) of the Act should be considered forthwith without waiting for the final report of the Jha Commission. This is necessary to bring all trusts other than those of national importance, for which the provision was initially designed, within the discipline of the law contained in Sections 11—13 of the Act."

1.9 In their Action Taken Note dated 18 April, 1985, the Ministry of Finance (Department of Revenue) have stated :

"3.46.—3.50 Since these recommendations are commentative in nature, no action is needed.

3.51 The review is being carried out in the case of trusts which have come up for renewal of the notification under-section 10(23 C) (iv)/(v) after receiving a notice from the Department that their exemption stand valid only upto assessment year 1984-85.

3.52 The question whether the validity and format of the notification issued without specifying both the terminal points was referred to the Ministry of Law. The Ministry of Law has not sent a reply to this specific point and pointed out that the notifications issued earlier with indefinite period are contrary to the provisions of section 10(23 C) (iv) and (v) but had pointed out that such notification could be rectified by giving notified trusts proper notice. This has been done.

3.53 The provisions of sections 10(23C) (iv)/(v) and Section 13 of the Income tax Act, 1961 are mutually exclusive.

Guidelines to the field officers on the provisions of Sections 10(23 C) (iv)/(v) are not required since notifications under these provisions are issued by the Central Government.

3.54 The recommendations made by the Public Accounts Committee in the above paras are being considered in connection with simplification and rationalisation of direct tax laws. The recommendation as accepted by the Government will be incorporated in the Comprehensive Direct Taxes (Amendment) Bill, 1986 likely to be introduced in Parliament in June, 1986."

1.10 The Committee feel that the reply of the Government is evasive. In their recommendation at paragraph 3.50, the Committee observed that by granting exemptions liberally and for indefinite periods, Government had not only gone beyond the intention of Parliament but also clearly overstepped the limits of delegated legislation. The Committee had further observed that all notifications issued in respect of trusts and institutions under Section 10(23C) (iv) and (v) granting exemptions for indefinite periods were *ultra vires*, illegal and hence ineffective. In paragraph 3.52, the Committee had recommended that in future all notifications should be vetted by the Ministry of Law. While replying to the paragraph, the Ministry have conveyed the opinions of the Ministry of Law agreeing with the Committee that notifications issued for indefinite periods were contrary to the provisions of Section 10(23) (iv) and (v). Instead of admitting the lapse in the spirit in which it was pointed out by the Committee and taking remedial action thereon, the Ministry of Finance have merely stated that "since these recommendations are commentative in nature, no action is called for."

1.11 In paragraph 3.51, the Committee have desired that a thorough review of all the cases in which indefinite exemptions had been given should be carried out and exemptions denied wherever desired or proper notifications issued. The Ministry have replied that the cases of trusts which have come up for renewal on being served with notice that their exemptions would be valid only upto the assessment year 1984-85 are

being reviewed. As brought out in the Committee's recommendations at paragraph 3.52, the Ministry of Finance had themselves realised at a later stage that the legality of their actions could be questioned and had therefore, stopped issuing exemptions for indefinite period in June 1979. The Committee deplore the routine way in which this serious problem is being dealt with by the Ministry and reiterate their earlier recommendation that all the trusts, to whom indefinite exemptions had been issued, should be taken up for review *suo moto* and exemptions withdrawn where trusts do not comply with the notices within a reasonable time. The Committee would like to be apprised of the results of the review.

1.12 In their earlier recommendation the Committee had urged that in future all exemption notifications should be vetted by the Ministry of Law and placed on the table of the House as required under Section 196 of the Income-tax Act. The Committee had also recommended that responsibility for this persistent default in such an important matter should be fixed. Instead of taking prompt action and giving a positive reply to the recommendation of the Committee, the Ministry of Finance have taken shelter under the plea that the Ministry of Law had not furnished reply on the validity of the earlier notifications at that point of time. However, three years have elapsed and no reply has been forthcoming in the matter. The Committee are very unhappy on the inordinate delay on the part of the Ministry of Law to furnish their advice promptly and failure of the Central Board of Direct Taxes in pursuing the matter and express their displeasure at this lackadaisical approach. The Committee, therefore, reiterate that responsibility for this lapse should be fixed and action taken against erring officials.

1.13 The Committee would also like to be informed of progress made towards incorporation of their recommendations made in the above paragraphs in the proposed Direct Taxes (Amendment Bill) 1986.

*Private Trusts set up by Garware Group S. No. 9 – Para 1.54.)*

1.14 A Committee of Officers of the CBDT was appointed to go, *inter alia* into the affairs of the Garware Group in Depth. Since details of its findings were not made available, the Committee had made the following observation in para 1.54 of their 144th Report (7th Lok Sabha) :

“The Committee were informed in evidence that a Committee of

departmental officers was appointed to go *inter-lia* into the details of the Garware Trusts in depth. However, no details have been furnished regarding its findings with regard to affairs of the Garware Group, particularly the trusts set up by it. The Committee consider it very unfortunate that the data/information called for by them has not been furnished in spite of sufficient time having been given. This is indicative of lack of monitoring and coordination in the matter of overseeing the affairs of big industrial houses about which the Committee have lot more to say in the succeeding paragraphs. The Committee would nevertheless like to be apprised of the findings of the departmental committee and the action taken by the Government to recover the tax dues, if any, outstanding against this Group/Trusts set up by it within six months.”

1.15 In their Action Taken Note dated 31-10-1986, the Ministry of Finance (Department of Revenue) have stated :

“A Committee of Departmental officers was constituted to suggest steps for countering avoidance of tax through the medium of private trusts and investment companies. The report was submitted in October, 1979. The findings of the Departmental Committee were communicated to the Lok Sabha Secretariat on 11th March, 1983 in response to Item No. 3 of PAC’s Additional Questionnaire arising out of evidence on paragraph 3.12 (b) of the C&AG’s Report, 1980-81. The position regarding recovery of tax dues would be intimated shortly.”

1.16 From a scrutiny of the material made available by the Ministry of Finance (Department of Revenue) from time to time in connection with consideration of Paragraph 3.12 (h) of the Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil) Revenue Receipts, Vol II, Direct Taxes relating to ‘Irregular Exemptions and Reliefs’ dealt with in Chapter I of 144th Report (7th Lok Sabha), the Committee find that the findings of the Departmental Committee stated to have been furnished to the Lok Sabha Secretariat were general in nature pertaining to steps suggested for countering avoidance of tax through the medium of private trusts and investment companies. These were furnished in response to point 3 of Advance Questionnaire arising out of Audit

**Paragraph and not in reply to Additional Questionnaire as stated. Whereas the recommendations under reference are exclusively in relation to the findings of the Committee of Departmental Officers with regard to the affairs of Garware Group and the trusts set up by them. The Committee would like to reiterate that the Ministry of Finance should furnish expeditiously required information on the specific and exclusive issue raised in the earlier recommendation.**

## **CHAPTER II**

### **RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT**

#### **Recommendation**

The Garware Foundation Trust was created by a Trust deed on 16 March, 1972 with a corpus of Rs. 500 settled upon it. The Trust has been receiving substantial donations most of which have been made by the companies and trusts set up by the Garware Group itself. By March 31, 1981 this scanty corpus of Rs. 500 had swelled to Rs. 21.88 lakhs.

[Sl. No. 7 (Para 1.52) of Appendix V to 144th Report of the PAC (1982-83) (7th Lok Sabha)].

#### **Action Taken by the Ministry of Finance**

Since this recommendation is commentative in nature, no action is needed.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/2/83-(A&PAC-II and F. No. 181/10/83—(IT A1) dated 15-4-85].

#### **Recommendation**

The Ministry initially furnished a list of 47 public charitable trusts set up by the Garware Group. On further questioning, the Ministry furnished details of 72 such trusts assessed to income-tax. The Committee find that 65 of these 72 trusts were set up in 1972—1 in March, 1972, 41 in June, 1972, 21 in August, 1972 and 2 in December, 1972. Of the remaining 7, 1 was set up in 1962, 2 in 1969, 1 each in 1974, 1975, 1977 and 1978. Details of funds and the sources of contribution received by these trusts and their tax liability are not available with the Department. Information with regard to private trusts set up by

the Garware Group which the Ministry promised to furnish to the Committee, has also not been furnished as yet.

[Sl. No. 8 (Para 1.53) of the Appendix V of the 144th Report of the PAC (1982-83) (7th Lok Sabha)].

**Action Taken by the Ministry of Finance**

Information in respect of 72 Garware Trusts is annexed.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/2/83—A&PAC—II and DO F. No. 181/10/83—IT (A1) dated 11-3-86 dated 28-4-86].

*List of Trusts with Names of Trustees*

Sl. No.	Name of the Trust	Name of Trustees	Asstt. Years	Total Income
(1)	(2)	(3)	(4)	(5)
1.	Aba Garware Amrut Nidhi	1. Shri B.D. Garware	1977-78	Nil
		2. Smt. V.B. Garware	1978-79	Nil
		3. Shri S.M. Kuvalker	1979-80	Nil
			1980-81	Nil
		1981-82	4,163	
2.	Abasaheb Garware Charitable Trust	As above	1977-78	11,505
			1978-79	8,661
			1979-80	5,020
			1980-81	14,576
			1981-82	40,005
3.	Abhiruchi Charity Trust	1. Shri B.D. Garware	1977-78	8,074
		2. Smt. V.B. Garware	1978-79	8,455
		3. Shri S.M. Kuvalker	1979-80	8,197
		4. Smt. K.V. Gatne	1980-81	12,531
		5. Shri G.V. Mowhi	1981-82	13,842



(1)	(2)	(3)	(4)	(5)
4. Aditya Charity Trust	1.	Shri B.D. Garware	1977-78	7,857
	2.	Smt. V.B. Garware	1978-79	7,943
	3.	Shri S.M. Kuvalker	1979-80	7,869
	4.	Shri C.S. Bhirangi	1980 81	12,063
	5.	Shri G.V. Modhi	1981-82	13,002
5. Anita Charity Trust	1.	Shri B.D. Garware	1977-78	7,755
	2.	Smt. V.B. Garware	1978-79	7,917
	3.	Shri S.M. Kuvalker	1979-80	8,056
	4.	Shri C.S. Bhirangi	1980-81	12,324
	5.	Smt. K V. Gatne	1981-82	12,762
6. Arogya Wardhan Trust	1.	Shri B.D. Garware	1977-78	7,708
	2.	Smt. V.B. Garware	1978-79	7,889
	3.	Shri S.M. Kuvalker	1979-80	7,932
	4.	Shri C.S. Bhirangi	1980-81	12,218
	5.	Shri Kuppuswamy Sundarasan	1981-82	12,647
7. Ashok Charity Trust	1.	Shri B.D. Garware	1977-78	7,752
	2.	Smt. V.B. Garware	1978-79	7,974
	3.	Shri S.M. Kuvalker	1979-80	8,073
	4.	Shri G R. Bhide	1980-81	12,406
	5.	Smt. K V. Gatne	1981-82	12,733

8. Bhushan Charity Trust	1. Shri B.D. Garware	1977-78	8,071
	2. Smt. V.B. Garware	1978-79	8,416
	3. Shri S.M. Kuvalkar	1979-80	8,197
	4. Shri N.G. Deshpande	1980-81	12,513
	5. Shri Kuppuswamy Sunderasan	1981-82	13,838
9. Chandrakant Charity Trust	1. Shri B.D. Garware	1977-78	7,911
	2. Shri V.B. Garware	1978-79	8,043
	3. Shri S.M. Kuvalkar	1979-80	7,907
	4. Smt. M.G. Deshpande	1980-81	12,006
	5. Dr. (Smt.) D.R. Doongaji	1981-82	13,037
10. Deccan Charity Trust	1. Shri B.D. Garware	1977-78	7,837
	2. Smt. V.B. Garware	1978-79	8,066
	3. Shri S.M. Kuvalkar	1979-80	8,091
	4. Smt. M.C. Bhirangi	1980-81	12,150
	5. Shri V.G. Gatne	1981-82	12,724
11. Diya Charity Trust	1. Shri B.D. Garware	1977-78	7,793
	2. Smt. V.B. Garware	1978-79	8,032
	3. Shri S.M. Kuvalkar	1979-80	8,073
	4. Dr. (Smt.) D.R. Doongaji	1980-81	12,127
	5. Dr. (Smt.) A.A. Godbole	1981-82	12,749

(1)	(2)	(3)	(4)	(5)
12.	Ganga Charity Trust	1. Shri B.D. Garware	1977-78	5,862
		2. Smt. V.B. Garware	1978-79	7,875
		3. Shri S.M. Kuvelkar	1979-80	7,940
		4. Smt. M.G. Deshpande	1980-81	8,241
		5. Kum. Sulabha D. Joshi	1981-82	12,571
13.	Garware Brothers Charitable Trust	1. Shri B.D. Garware	1977-78	1,999
		2. Smt. V.B. Garware	1978-79	519
		3. Shri A.B. Garware	1979-80	16,282
		4. Shri S.M. Kuvalkar	1980-81	32,986
			1981-82	1,764
14.	Garware Charitable Trust	1. Shri B.D. Garware	1977-78	57,196
		2. Smt. V.B. Garware	1978-79	53,941
		3. Shri S.M. Kuvelkar	1979-80	48,692
			1980-81	54,541
			1981-82	71,779
15.	Garware Commerce College Trust	1. Shri B.D. Garware	1977-78	7,731
		2. Smt. V.B. Garware	1978-79	8,016
		3. Shri S.M. Kuvalkar	1979-80	7,960
		4. Dr. A.S. Godbole	1980-81	12,240
		5. Shri Kuppuswamy Sunderasan	1981-82	12,635

<b>16. Garware Educational Trust</b>	1. Shri B.D. Garware	1977-78	2,001
	2. Smt. V.B. Garware	1978-79	521
	3. Shri R.B. Garware	1979-80	16,277
	4. Shri S.M. Kuvalkar	1980-81	647
		1981-82	33,934
<b>17. Garware Foundation</b>	1. Shri B.D. Garware	1977-78	1,36,396
	2. Smt. V.B. Garware	1978-79	79,059
	3. Shri S.M. Kuvalkar	1979-80	1,18,639
		1980-81	1,16,196
		1981-82	1,13,877
<b>18. Garware Research Centre</b>	1. Shri B.D. Garware	1977-68	53
	2. Smt. V.B. Garware	1978-79	32,963
	3. Shri S.M. Kuvalkar	1979-80	69,082
		1980-81	85,277
		1981-82	
<b>19. Jaideep Charity Trust</b>	1. Shri B.D. Garware	1977-78	7,698
	2. Smt. V.B. Garware	1978-79	7,942
	3. Shri S.M. Kuvalkar	1979-80	7,949
	4. Smt. M.G. Modhi	1980-81	12,223
	5. Shri Kuppuswamy Sunderasan	1981-82	12,619

(1)	(2)	(3)	(4)	(5)
20. Kalavaibhav Charity Trust	1.	Shri B.D. Garware	1977-78	7,678
	2.	Smt. V.B. Garware	1978-79	7,938
	3.	Shri S.M. Kuvalkar	1979-80	8,011
	4.	Smt. M.G. Deshpande	1980-81	12,170
	5.	Dr. (Smt) D.R. Doongaji	1981-82	12,611
21. Kayna Charity Trust	1.	Shri B.D. Garware	1977-78	7,730
	2.	Smt. V.B. Garware	1978-79	7,998
	3.	Shri S.M. Kuvalkar	1979-80	8,050
	4.	Shri V.G. Gatne	1980-81	12,216
	5.	Dr. (Smt) A.A. Godbole	1981-82	12,665
22. Krishna Charity Trust	1.	Shri B.D. Garware	1977-78	7,778
	2.	Smt. V.B. Garware	1978-79	7,911
	3.	Shri S.M. Kuvalkar	1979-80	7,991
	4.	Shri V.G. Gatne	1980-81	8,256
	5.	Shri Kuppuswamy Sunderasan	1981-82	12,527
23. Mahalaxmi Charity Trust	1.	Shri B.D. Garware	1977-78	6,862
	2.	Smt. V.B. Garware	1978-79	7,885
	3.	Shri S.M. Kuvalkar	1979-80	8,035
	4.	Shri R.D. Doongaji	1980-81	8,348
	5.	Kum. Sulabha D. Joshi	1981-82	12,614

<b>24. Mamata Charity Trust</b>	<b>1.</b>
	<b>2.</b>
	<b>3.</b>
	<b>4.</b>
	<b>5.</b>
<b>25. Manav Seva Dharma Trust</b>	<b>1.</b>
	<b>2.</b>
	<b>3.</b>
	<b>4.</b>
	<b>5.</b>
<b>26. Maneesha Charity Trust</b>	<b>1.</b>
	<b>2.</b>
	<b>3.</b>
	<b>4.</b>
	<b>5.</b>
<b>27. Mangalmurti Charity Trust</b>	<b>1.</b>
	<b>2.</b>
	<b>3.</b>
	<b>4.</b>
	<b>5.</b>
<b>28. Smt. Mathubai Garware Charitable Trust</b>	<b>1.</b>
	<b>2.</b>

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Shri B.D. Garware	1977-78	7,779
Smt. V.B. Garware	1978-79	8,005
Shri S.M. Kuvalkar	1979-80	8,124
Shri N.G. Deshpande	1980-81	12,184
Shri R.D. Deongaji	1981-82	12,757

Shri B.D. Garware	1977-78	6,861
Smt. V.B. Garware	1978-79	7,876
Shri S.M. Kuvalkar	1979-80	7,983
Shri R.D. Deongaji	1980-81	8,298
Dr. A.S. Godbole	1981-82	12,558

Shri B.D. Garware	1977-78	7,874
Smt. V.B. Garware	1978-79	7,992
Shri S.M. Kuvalkar	1979-80	7,957
Shri V.G. Gatne	1980-81	12,109
Kum Sulabha D. Joshi	1981-82	13,076

Shri B D. Garware	1977-78	7,715.88
Smt. V.B. Garware	1978-79	7,974.74
Shri S.M. Kuvalkar	1979-80	8,067.97
Kum. Swati S. Dedgaonkar	1980-81	12,286.57
Smt. M.G. Deshpande	1981-82	12,633.82

Shri B.D. Garware	1977-78	1,999
Smt. V.B. Garware	1978-79	520

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(1)	(2)	(3)	(4)	(5)
		3. Shri C.B.Garware	1979-80	16,276
		4. Shri S.M. Kuvalkar	1980-81	646
			1981-82	33,933
29.	Monica Charity Trust	1. Shri B.D. Garware	1977-78	6,906.60
		2. Smt. V.B. Garware	1978-79	7,735.63
		3. Shri S.M. Kuvalkar	1979-80	8,175.48
		4. Shri C.S. Birangi	1980-81	8,301.10
		5. Kum. Sulabha D. Joshi	1981-82	12,578.01
30.	Nanasaheb Garware Charitable Trust	1. Shri B.D. Garware	1977-78	2,000
		2. Smt. V.B. Garware	1978-79	487
		3. Shri S.B.Garware	1979-80	16,247
		4. Shri S.M. Kuvalkar	1980-81	32,960
			1981-82	1,735
31.	Nihal Charity Trust	1. Shri B.D. Garware	1977-78	7,553
		2. Smt. V.B. Garware	1978-79	7,887
		3. Shri S.M. Kuvalkar	1979-80	8,00,4
		4. Shri G.V. Modhi	1980-81	8,229
		5. Smt. K.F. Soonawala	1981-82	12,470
32.	People Welfare Trust	1. Shri B.D. Garware	1977-78	6,865
		2. Smt. V.B. Garware	1978-79	7,926



	3.
	4.
	5.
<b>33. Prabha Charity Trust</b>	1.
	2.
	3.
	4.
	5.
<b>34. Protsahan Charity Trust</b>	1.
	2.
	3.
	4.
	5.
<b>35. Punyavaibhav Vishwasta Nidhi</b>	1.
	2.
	3.
	4.
	5.
<b>36. Ramesh Charity Trust</b>	1.
	2.
	3.
	4.
	5.

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<b>Shri S.M. Kuvalkar</b>	<b>1979-80</b>	<b>7,995</b>
<b>Smt. M.G. Deshpande</b>	<b>1980-81</b>	<b>8,259</b>
<b>Smt. K.V. Gatne</b>	<b>1981-82</b>	<b>12,558</b>
<b>Shri B.D. Garware</b>	<b>1977-78</b>	<b>7,870</b>
<b>Smt. V.B. Garware</b>	<b>1978-79</b>	<b>8,022</b>
<b>Shri S.M. Kuvalkar</b>	<b>1979-80</b>	<b>7,911</b>
<b>Kum. Swati S. Dedgaonkar</b>	<b>1980-81</b>	<b>12,079</b>
<b>Dr. Smt. A.A. Godbole</b>	<b>1981-82</b>	<b>13,114</b>
<b>Shri B.D. Garware</b>	<b>1977-78</b>	<b>7,856</b>
<b>Smt. V.B. Garware</b>	<b>1978-79</b>	<b>8,078</b>
<b>Shri S.M. Kuvalkar</b>	<b>1979-80</b>	<b>8,178</b>
<b>Shri N.G. Deshpande</b>	<b>1980-81</b>	<b>12,308</b>
<b>Shri V.G. Gatne</b>	<b>1981-82</b>	<b>12,924</b>
<b>Shri B.D. Garware</b>	<b>1977-78</b>	<b>7,856</b>
<b>Smt. V.B. Garware</b>	<b>1978-79</b>	<b>8,080</b>
<b>Shri S.M. Kuvalkar</b>	<b>1979-80</b>	<b>8,169</b>
<b>Shri R.D. Deongagaji</b>	<b>1980-81</b>	<b>12,237</b>
<b>Kum. Swati S. Dedgaonkar</b>	<b>1981-82</b>	<b>12,890</b>
<b>Shri B D. Garware</b>	<b>1977-78</b>	<b>6,860</b>
<b>Smt. V.B. Garware</b>	<b>1978-79</b>	<b>7,914</b>
<b>Shri S.M. Kuvalkar</b>	<b>1979-80</b>	<b>7,980</b>
<b>Kum. Swati S. Dedgaonkar</b>	<b>1980-81</b>	<b>8,318</b>
<b>Shri G.V. Modhi</b>	<b>1981-82</b>	<b>12,578</b>

(1)	(2)
37. <b>Sadhupayog Vishwasta Nidhi</b>	1. 2. 3. 4. 5.
38. <b>Sahyadri Education Trust</b>	1. 2. 3. 4. 5.
39. <b>Smata Charity Trust</b>	1. 2. 3. 4. 5.
40. <b>Sanmitra Charity Trust</b>	1. 2. 3. 4. 5.

(3)	(4)	(5)	
Shri B.D. Garware	1977-78	7,852	
Shri V.B. Garware	1978-79	8,066	
Shri S.M. Kuvalkar	1979-80	8,195	
Shri N.G. Deshpande	1980-81	12,259	
Shri G.V. Modhi	1981-82	12,873	
Shri B.D. Garware	1977-78	7,894	
Smt. V.B. Garware	1978-79	8,015	
Shri S.M. Kuvalkar	1979-80	7,929	
Smt. M.G. Modhi	1980-81	12,112	
Smt. K.F. Soonawala	1981-82	13,080	26
Shri B.D. Garware	1977-78	7,722.63	
Smt. V.B. Garware	1978-79	7,980.60	
Shri S.M. Kuvalkar	1979-80	8,044.86	
Dr. (Smt.) A.A. Godbole	1980-81	12,203.08	
Shri G.V. Modhi	1981-82	12,657.01	
Shri B.D. Garware	1977-78	7,728.53	
Smt. V.B. Garware	1978-79	7,980.28	
Shri S.M. Kuvalkar	1979-80	8,045.87	
Dr. (Smt.) D.R. Deongaji	1980-81	12,214.91	
Dr. A.S. Godbole	1981-82	12,648.51	

41. Saraswati Education Trust	1. 2. 3. 4. 5.
42. Sarita Charity Trust	1. 2. 3. 4. 5.
43. Shashikant Charity Trust	1. 2. 3. 4. 5.
44. Sheela Charity Trust	1. 2. 3. 4. 5.
45. Shorali Charity Trust	1. 2.

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Shri B.D. Garware	1977-78	6,176
Smt. V.B. Garware	1978-79	7,961
Shri S.M. Kuvelkar	1979-80	8,014
Kum. Swati S. Dedgaonkar	1980-81	8,351
Smt. M.G. Modhi	1981-82	12,624
Shri B.D. Garware	1977-78	7,894
Smt. V.B. Garware	1978-79	8,014
Shri S.M. Kuvelkar	1979-80	7,915
Kum. Jyoti S. Dedgaonkar	1980-81	12,107
Dr. (Smt.) D.R. Deongaji	1981-82	13,119
Shri B.D. Garware	1977-78	6,862
Smt. V.B. Garware	1978-79	7,925
Shri S.M. Kuvelkar	1979-80	7,998
Kum. Jyoti S. Dedgaonkar	1980-81	8,263
Shri R.D. Deongaji	1981-82	12,594
Shri B.D. Garware	1977-78	7,851
Smt. V.B. Garware	1978-79	8,088
Shri S.M. Kuvelkar	1979-80	8,124
Smt. M.G. Deshpande	1980-81	12,209
Dr. (Smt.) D.R. Deongaji	1981-82	13,127
Shri B.D. Garware	1977-78	7,811
Smt. V.B. Garware	1978-79	7,986

(1)	(2)
	3.
	4.
	5.
46. Shikshan Prasarak Trust	1.
	2.
	3.
	4.
	5.
47. Shraddha Vishwasta Nidhi	1.
	2.
	3.
	4.
	5.
48. Soniya Charity Trust	1.
	2.
	3.
	4.
	5.
49. Sunita Charity Trust	1.
	2.

(3)	(4)	(5)
Shri S.M. Kuvelkar	1979-80	8,045
Shri R.D. Deongaji	1980-81	12,257
Shri Kuppuswamy Sunderasan	1981-82	12,828
Shri B.D. Garware	1977-78	7,803
Smt. V.B. Garware	1978-79	8,052
Shri S.M. Kuvelkar	1979-80	8,096
Shri R.D. Deongaji	1980-81	12,201
Kum. Jyoti S. Dedgaonkar	1981-82	12,826
Shri B.D. Garware	1977-78	7,856.03
Smt. V B. Garware	1978-79	8,077.91
Shri S.M. Kuvelkar	1979-80	8,135.61
Smt. K.V. Gatne	1980-81	12,147.25
Shri Kuppuswamy Sunderasen	1981-82	12,922.87
Shri B.D. Garware	1977-78	7,877.53
Smt. V.B. Garware	1978-79	80,59.51
Shri S.M. Kuvelkar	1979-80	8,076.74
Kum. Jyoti S. Dedgaonkar	1980-81	12,283.09
Smt. M.G. Deshpande	1981-82	12 908.87
Shri B.D. Garware	1977-78	7 873
Smt. V.B. Garware	1978-79	7,963



	3. Shri S.M. Kuvelkar	1979-80	7,913
	4. Shri V.G. Gatne	1980-81	12,062
	5. Smt. M.C. Bhirangi	1981-82	13,025
<b>50. Sushma Charity Trust</b>	1. Shri B.D. Garware	1977-78	6,862
	2. Smt. V.B. Garware	1978-79	7,923
	3. Shri S.M. Kuvelkar	1979-80	7,991
	4. Kum. Jyoti S. Dedgaonkar	1980-81	8,253
	5. Smt. K.F. Soonawala	1981-82	12,615
<b>51. Venkatesh Charity Trust</b>	1. Shri B.D. Garware	1977-78	6,664
	2. Smt. V.B. Garware	1978-79	7,928
	3. Shri S.M. Kuvelkar	1979-80	8,033
	4. Shri C.S. Bhirangi	1980-81	8,331
	5. Smt. K.V. Gatne	1981-82	12,604
<b>52. Vayoo Charity Trust</b>	1. Shri B.D. Garware	1977-78	7,709
	2. Smt. V.B. Garware	1978-79	7,926
	3. Shri S.M. Kuvelkar	1979-80	8,032
	4. Ku. Sulabha D. Joshi	1980-81	12,280
	5. Shri R.D. Deongaji	1981-82	12,687
<b>53. Vijay Vishwasta Nidhi</b>	1. Shri B.D. Garware	1977-78	8,070
	2. Smt. V.B. Garware	1978-79	8,485
	3. Shri S.M. Kuvelkar	1979-80	8,221
	4. Shri C.S. Bhirangi	1980-81	12,557
	5. Kum. Sulabha D. Joshi	1981-82	13,889

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(1)

(2)

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54. **Vikas Charity Trust**

1.

2.

3.

4.

5.

55. **Smt. Vimlabai Garware  
Charitable Trust**

1.

2.

3.

56. **Vivek Charity Trust**

1.

2.

3.

4.

5.

57. **Garware High School Trust**

1.

2.

3.

4.

5.

6.

(3)	(4)	(5)
Shri B.D. Garware	1977-78	8,072
Smt. V.B. Garware	1978-79	8,492
Shri S.M. Kuvelkar	1979-80	8,411
Dr. (Smt.) D.R. Deongaji	1980-81	12,626
Dr. (Smt.) A.A. Godbole	1981-82	13,909
Shri B.D. Garware	1977-78	11,694
Smt. V.B. Garware	1978-79	8,615
Shri S.M. Kuvelkar	1979-80	5,430
	1980-81	15,046
	1981-82	40,504
Shri B.D. Garware	1977-78	8,077
Smt. V.B. Garware	1978-79	8,491
Shri S.M. Kuvelkar	1979-80	8,266
Kum. Swati S. Dedgaonkar	1980-81	12,575
Shri V.G. Gatne	1981-82	13,848
NS Jamadagri Garware College,	1982-83	12,070
Pune.	1983-84	1,430
Shri S.L. Gogate	1984-85	
Smt. S.S. Lokokare		
Smt. K.M. Godbole		
Shri B.D. Garware		
Smt. V.B. Garware		

<b>58. Abhinav Charity Trust</b>	1. 2. 3. 4. 5. 6.
<b>59. Sanjeevan Charity Trust</b>	1. 2. 3. 4. 5. 6.
<b>60. Adarsha Charity Trust</b>	1. 2. 3. 4. 5.
<b>61. Karmayog Charity Trust</b>	1. 2. 3. 4. 5.

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Smt. Malti D. Natu	1982-83	10,860
Smt. Pratibha D. Joshi	1983-84	2,130
Shri B.G. Lagu	1984-85	
Shri D.G. Natu		
Shri B.D. Garware		
Smt. V.B. Garware		

Dr. P.L. Gavada	1982-83	—
Shri S.M. Kuvelkar	1983-84	—
Shri D.V. Joshi	1984-85	—
Smt. P.D. Joshi		
Smt. M.G. Modhi		
J.S. Dedgaonkar		

Shri Dr. M.K. Godbole	1982-83	8,670
Shri B.D. Garware	1983-84	11,390
Smt. V.B. Garware	1984-85	370
Shri S.M. Kuvelkar		
Smt. P.D. Joshi		

Dr. P.L. Gavada	1982-83	9,610
Shri B.D. Garware	1983-84	11,820
Smt. V.B. Garware	1984-85	
Smt. S.D. Joshi		
Shri S.M. Kuvelkar		

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1)	(2)	(3)	(4)	(5)
62.	Vividh Kriya Charity Trust	1. Shri D.V. Joshi 2. Shri V.D. Garware 3. Smt. V.B. Garware 4. Shri S.M. Kuvelkar 5. Miss S.D. Joshi	1982-83 1983-84 1984-85	12,090 1,300
63.	Vineet Charity Trust	1. Smt. K.M. Godbole 2. Shri B.D. Garware 3. Smt. V.B. Garware 4. Shri S.M. Kuvelkar 5. Smt. J.S. Dodgaonkar	1982-83 1983-84 1984-85	11,310 640
64.	Om Charity Trust	1. Dr. S.K. Lohokare 2. Shri B.D. Garware 3. Smt. V.B. Garware 4. Shri S.M. Kuvelkar 5. Shri A.S. Sule	1982-83 1983-84 1984-85	Nil Nil 12,500
65.	Sadichha Charity Trust	1. Smt. S.B. Mulay 2. Shri B.D. Garware 3. Smt. V.B. Garware 4. Shri S.M. Kuvelkar 5. Smt. J.S. Dedgaonkar	1982-83 1983-84 1984-85	9,150 11,730

66. Shram Vabha Trust	1. 2. 3. 4. 5.
67. Sahyog Charity Trust	1. 2. 3. 4. 5.
68. Suvichar Vishwasta Nidhi	1. 2. 3. 4. 5.
69. Safalata Charity Trust	1. 2. 3. 4. 5.
70. Sahakar Charity Trust	1. 2.

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Smt. S.S. Lahokara	1982-83	8,990
Shri B.D. Garware	1983-84	11,610
Smt. V.B. Garware	1984-85	380
Shri S.M. Kuvelkar		
Miss J.S. Dadgaonkar		
Smt. S.P. Athawala	1982-83	10,990
Shri B.D. Garware	1983-84	2,070
Smt. V.B. Garware	1984-85	7,260
Shri S.M. Kuvelkar		
Smt. P.D. Joshi		
Smt. T.S. Gogate	1982-83	10,700
Shri B.D. Garware	1983-84	420
Shri S.M. Kuvelkar	1984-85	9,900
Smt. V.B. Garware		
Smt. J.S. Dodgaonkar		
Smt. Pushpa D. Joshi	1982-83	11,410
Shri B.D. Garware	1983-84	200
Smt. V.B. Garware	1984-85	9,600
Shri S.M. Kuvelkar		
Miss S.D. Joshi		
Dr. B.G. Mulay	1982-83	11,530
Shri B.D. Garware	1983-84	Nil



(1)	(2)	(3)	(4)	(5)
		3. Smt. V.B. Garware	1984-85	10,500
		4. Shri S.M. Kuvelkar		
		5. Dr. A.Y. Lonkar		
		6. Miss J.S. Dedgaonkar		
71.	Garware College Trust	1. Principal N.S. Damadagni		
		2. Dr. M.K. Godbole		
		3. Mrs. Leela B. Lagu		
		4. Shri B.D. Garware		
		5. Smt. V.B. Garware		
			The trust has not filed returns so far. The ITO is directed to issue notice u/s 139 (2) and 148 immediately.	
72.	Ramesh Charity Trust	1. Smt. V.J. Soonawalla	1977-78	6,570
		2. Shri N.P. Damle	1978-79	4,930
		3. Shri G.V. Modhi	1979-80	7,500
			1980-81	7,580
			1981-82	11,250

### **Recommendations**

The Committee cannot also understand why the provisions about investment pattern are not being extended to the Institutions notified under section 10 (23C) (iv) and (v). It is the Committee's considered view that this is a loophole which needs to be plugged immediately.

[Sl. No. 16 (Para 2.43) of Appendix V of the 144th Report of the PAC (1982-83) (7th Lok Sabha)].

#### **Action Taken by the Ministry of Finance**

The recommendation made by the Public Accounts Committee in the above para being considered in connection with simplification and rationalisation of direct tax laws. The recommendation as accepted by the Government will be incorporated in the Comprehensive Direct Taxes (Amendment) Bill, 1986 likely to be introduced in Parliament in June, 1986.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 241/2/83—A&PAC—II F. No. 155/161/83—TPL dated 12-5-86].

#### **Recommendation**

At this stage, the Committee suggest that till such time as a comprehensive legislation is enacted, the Department should have an thorough study carried out by the Directorate of Inspection (Investigation), to find out how far the amendments carried out since the amending Act of 1975, particularly as a sequel to the recommendations of the Wanchoo Committee have helped in curbing abuse of trust funds.

[Sl. No. 31 (Para 3.75) of the Appendix V to the 144th Report of the P.A.C. (1982-83) (7th Lok Sabha)].

#### **Action Taken by the Ministry of Finance**

Appropriate action in this regard has already been initiated, and the study is being conducted by the Directorate of Inspection (Special Investigation).

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 241/2/83—A&PAC—II and F. No. 411/14/83—IT (Inv.) dated 11-83].

### Recommendation

The Committee have in para 1.69 of their 143rd Report (1982-83) (on variations between Budget Estimates and Actuals) emphasised the need for strengthening the Directorate of Inspection (Investigation) with a view to enabling it to oversee the assessments of large industrial houses in a more effective manner. The Committee expect that this aspect of the matter would receive particular attention of the Directorate of Inspection.

[Sl. No. 32 (para 3.76) of the Appendix V of 144th Report of P.A.C (1982-83) (7th Lok Sabha)].

### Action Taken by the Ministry of Finance

Para 3.76 of the 144th Report of the P.A.C. 1982-83). is merely a repetition of Para 1.69 of the 143rd Report of the PAC(1982-83). Action Taken Note on Para 1.69 of the 143rd Report of the P.A.C. (1982-83) which has been renumbered as Para 1.74 in the printed Report read with Para 1.3 of the 224th Report of the PAC (1984-85) has already been sent to the Lok Sabha Secretariat *vide* this Ministry's O.M.F. No. 241/2/83—A&PAC—I dated 6-5-85. Vetted reply has also been sent to the Lok Sabha Secretariat *vide* this Ministry's O.M.F. No. 241/2/83—A&PAC-I dated 6-6-85.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 241/2/83—A&PAC—II and F. No. 241/2/83—A&PAC—I dated 4-9-85].

### Recommendation

The Committee were informed in evidence that as many as 15,000 trusts had asked for exemption under Section II during the year 1980-81. Their accounts are required to be examined every year. Considering the large number of trusts that have come up in recent years. Trust Circles have been set up in metropolitan towns like Bombay, Delhi and Madras in order to ensure that the income that accrues to these trusts is really spent for charitable purposes. Since admittedly these trusts have been used as a medium for avoiding tax liability, the Committee cannot too strongly stress the need of thorough scrutiny of the accounts of trusts set up by the big industrial houses so as to ensure that the trust funds are actually

applied towards the stated objects of these funds. The Committee, therefore, recommend that Trust Circles may be set up in all towns where sizeable number of such trusts have been registered so as to provide effective supervision over their activities. In respect of large houses whose assessments have been centralised, the trusts connected with them may also be assessed in the same Circle.

[Sl. No. 33 (Para 3.77) of Appendix V to 144th Report of P.A.C. (1982-83) (Seventh Lok Sabha)].

#### **Action Taken by the Ministry of Finance**

Trust Circles already exists in big metropolitan cities like Delhi, Bombay, Calcutta, Madras, Ahmedabad and Bangalore etc. Whenever centralisation of income-tax cases of large house is done the trusts connected with them are also considered for assigning to the same circle.

[Ministry of Finance (Deptt. of Revenue) OM No. F. No. 241/2/83—A&PAC—II and F. No. 181/10/83—ITA—I dated 12-10-83].

## CHAPTER III

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

#### Recommendations

2.26 : The assessee referred to in the Audit para is a building trust, Trustees namely, of Bengal National Chambers of Commerce and Industry Building, Calcutta. The Building trust was not treated as a charitable trust for the assessment years 1965-66 to 1968-69, 1970-71 to 1974-75 and 1977-78 within the meaning of Section 2(15) of the Income-tax Act, 1961, as it was held that in letting out its buildings the assessee was carrying on an activity for profit. The assessee's appeals for these years were turned down by the Income-tax Appellate Tribunal and for the assessment years 1965-66 to 1968-69 and also by the High Court of Calcutta. Following the Supreme Court decision in Surat Art Silk case (121 ITR 1), however, the assessee's appeals on the same point for the assessment year 1975-76 and 1976-77 were allowed by the High Court and that for the assessment year 1978-79 by the Income-tax Appellate Tribunal.

2.27 : In the Indian Chamber of Commerce case (101 ITR 796) it was held by the Supreme Court that a profit making activity would defeat the case for exemption ; "the advancement of charitable objects must not involve profit-making activities". This decision was reversed in the Supreme Court's letter decision in Surat Silk case (121 ITR 1) wherein it was held, "if the profits must necessarily feed a charitable purpose under the terms of the Trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust". The decision in Surat Art Silk case was delivered in November 1979. When asked if the Ministry of Finance had considered these judgements and taken their own view, the Board were content with saying merely that these were Supreme Court decision. Apparently, the Ministry of Finance had not, in the three years following the Surat Art Silk decision, applied their mind to the question whether profit-mak-

ing activities should continue to be permitted to come within the scope of 'charitable purpose' or the law should be suitably amended on that point. It is only after the examination of this question by the Committee that the Government have now sought to deny exemption in respect of profits or gains of business to such charitable institutions through the Finance Bill, 1983.

2.28. The Committee consider that in all such cases where important judgements involving matters of policy are handed down by the Courts the question whether the law as pronounced does really bring out the intention of Parliament and the Government should be considered immediately thereafter by the Ministry of Finance in consultation with other Ministries concerned so that amendments, if any, considered necessary are brought forward promptly. This would also obviate the need for too many retrospective amendments as already commented upon in para 1.99 and 1.100 of the Committee's 77th Report(7th Lok Sabha)."

2.40. The Committee note that as early as 1970, the Direct Taxes Enquiry Committee had recommended imposition of a total ban on trusts investing any of their funds in any business concern including limited company. In pursuance of this recommendation a provision was made in the Taxation Laws (Amendment) Bill 1973 that provided for certain specified modes of investment of funds of charitable institutions claiming exemptions from income-tax. The provision, was modified by the Select Committee on the Bill and later put on Statute Book in 1975 to be operative from 1978.

2.41 The new clause (d) inserted in Section 13(1) of the Act by Taxation Laws (Amendment) Act, 1975 provided that 'if any funds of a charitable or religious trust or institution are invested or deposited or remain invested or deposited in any mode or form other than those specified in Section 13 (5) at any time during any previous year commencing on or after 1.4.1978', the income of the said trust will lose exemption from income-tax. Apparently this condition was incorporated in the law so as to mop up for public good the accumulated funds of trusts that were invested in modes other than the specified ones and also to prevent such funds being invested for the benefit of the persons connected with the trusts or for the benefit of the business controlled by such persons. These trusts had been given adequate notice in 1975 to change their investment pattern by

1.4.1978. The Finance Act 1977 extended the date of operation of this provision from 1.4.1978 to 1.4.1981 on the ground that "lots of representation were received in this behalf". The Finance Act, 1982 further extended the date of its operation to 1.4.1982 on the plea that 'the whole gamut of the provisions relating to charitable and religious trusts was under consideration by the Economic Administration Reforms Commission'. It will thus be seen that the recommendations of the Wanchoo Committee, though accepted by the Government, continued to remain on paper for more than 12 years.

2.42 The Committee consider that three years' notice was quite adequate to enable the trusts to switch over to the new pattern of investment. Further extension beyond April 1978 has enabled the big industrial houses to siphon off large incomes and wealth using the media of trusts as a safe and honourable device to avoid tax liability. Proliferation of trusts on an unprecedented scale in recent years, particularly by large industrial houses is an eloquent testimony to this. While the Committee note with satisfaction that their examination of the subject has had some positive results and government have now come forward with amendments to the law through the Finance Bill 1983 to compel the Charitable and religious trusts to follow the prescribed investment pattern both for the corpus as well as accumulated incomes. The Committee must however, observe that the new provision carries within its fold a further extension of 20 months (April 1982 to November 1983) for compliance with earlier provision. This in the Committee's view was not at all justified.

2.44 Further the disability sought to be built into the Income-tax Act denying exemption in the case of trusts who fail to follow the prescribed investment pattern, is amazingly not being incorporated in the wealth tax law. This would mean that a trust whose income is not exempt under the Income-tax Act could still get away with exemption from wealth-tax. This is another loophole which needs to be plugged immediately.

3.71 : The misuse of tax exemptions or of trust funds by charitable and religious trusts has been confirmed by studies made from time to time. The Wanchoo Committee highlighted the dimensions of the following words :

'A recent study (1970) made by the Department of Company

**Affairs of 75 trusts, of which 62 were charitable, showed that the business houses creating the trust had mostly appropriated the trusts funds for their own businesses. Considering the problem of tax avoidance through formation of charitable and religious trusts, the Public Accounts Committee (1969-70-4th Lok Sabha) in its 121st Report observed that 'while trusts fulfill a laudable social objective, they have also been used as a device to avoid tax'. The Committee also took note of the fact that out of 45 trusts connected with industrial houses and having a corpus of Rs. 24.11 crores, the investment by 32 trusts in concerns connected with the industrial houses were 30 per cent or more of their funds. In some cases it was noticed that the investment in such concerns amounted to as much as 90 per cent of the funds of the trusts.'**

3.72: The Committee have been informed that 'the Chokshi Committee, in their interim Report submitted in December, 1977, also reviewed the amendments relating to charitable and religious trusts made in the Income-tax Act and the Wealth-tax Act in pursuance of the recommendations made by the Wanchoo Committee and made a number of recommendations for the modification of these provisions in certain respects'. The Committee have also been informed that "these recommendations were considered by the Government but before a final decision was taken in the matter, the Government constituted the Economic Administrative Reforms Commission" and that the Government contemplates to consider the matter further in the light of the recommendations of that commission.

[S. Nos 10, 11, 12, 13, 14, 15, 17, 27 and 28 (Paras 2.26, 2.27, 2.28, 2.40, 2.41, 2.42, 2.44, 3.71 and 3.72) of Appendix V of 144th Report of PAC (1982-83)(7th Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

2.26: These observations do not call for any specific action.

2.27. The Chokshi Committee had made certain recommendations on the relevant issues which were considered by the Central Board of Direct Taxes and the Ministry of Finance. However, before a final decision in the matter was taken by the Government, the Economic



**Administration Reforms Commission (EARC) was set up and the recommendations made by the Chokshi Committee were referred to that Commission. The EARC submitted its Report on "Charitable and religious trusts" on 10th August, 1982. Relevant amendments to the law were made by the Finance Act, 1983.**

2.28. The observations made by the Committee are acceptable and have been noted for future guidance. It would be observed that the recommendation made by the Committee has been kept in view in sponsoring certain amendments through the Taxation Laws(Amendment) Act, 1984.

2.40 to 2.42 : The reasons for the relevant amendments made by the Finance (No. 2) Act, 1977, the Finance Act, 1982 and the Finance Act, 1983 have been indicated in the respective Budget Speeches of the Finance Minister, as also in the Explanatory Memoranda circulated alongwith the Budget papers. The Finance Minister had in his Budget speech for 1982-83 announced that the whole gamut of the provisions relating to charitable and religious trust was under consideration of the Economic Administration Reforms Commission and that the Government would like to carefully consider the recommendations of the Commission in the matter. With a view to obviating hardship, the new investment pattern laid down by the Finance Act, 1983, was made applicable prospectively in relation to period falling after 30th November, 1983.

2.44 : The loophole has been plugged through the Finance Act, 1984 by amendment of Section 21A of the Wealth-tax Act, 1957.

3.71 : These observations do not call for any specific action.

3.72 : These observations do not call for any specific action.

[Ministry of Finance (Deptt. of Revenue) OM F. No. 241/2/83-A&PAC II and F. No. 155(161)/83-TPL dated 25.7.85]

#### **Recommendation**

The Committee's enquiry about the number of private trusts set up by big industrial houses, their beneficiaries and the pattern of investment of trust funds have elicited the reply that "the number of such trusts is expected to run into thousands... .. Collection of this infor-

mation will take considerable amount of time and labour and the Department finds it very difficult to undertake this exercise." The Chairman C.B.D.T. further admitted in evidence that no study has been carried out to find out to what extent the various amendments made in the Income Tax Act during the past decade as a result of the recommendations of the Wanchoo Committee or otherwise have had a salutary effect in curbing the misutilisation of trust funds.

[Sl. No. 29 (Para 3.73) of Appendix V of 144th Report of PAC (1982-83) (7th Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

No action is considered necessary as the recommendations contained in this para are mere observations made by the Public Accounts Committee.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/2/83-A & PAC-II and D.O.F. No. 181/10/83-IT (A1) dated 11.3.86.]

#### **Recommendations**

What causes concern to the Committee is the fact that while the law relating to charitable and religious trusts has remained unamended over since the Report of the Chokshi Committee was submitted to Government in December, 1977, tax avoidance through the medium of such trusts has assumed alarming proportions, as could be judged from the prolific growth in their numbers during the past decade and that these altruistic media have been abused with impurity for selfish personal ends." Although at last some restrictions have been sought to be made through the Finance Bill, 1983 on the investment of trust funds and denying the trusts of any profits and gains of business, the Committee ore positive that much more needs to be done to check misuse of trusts funds and properties held by trusts. The Committee have made specific suggestions in this behalf elsewhere in this Report.

In paras 1.30 and 1.36 of their 101st Report (7th Lok Sabha), the Committee had drawn attention to the findings of the study made in the recent past by the Directorate of Inspection (Investigation) to the

effect that one of the main tax avoidance methods resorting to by large Industrial houses was creation of private trusts and transfer of assets to those trusts. The ultimate beneficiaries in a large number of trusts were members of the same family. The trusts had been created in such a way that the applicability of Section 64 of the Income-tax Act on the transfer of assets was rendered impossible. It was admitted in evidence that generally such trusts are floated to avoid payment of tax and that the trusts are holding shares and controlling companies through their share holding.

The Committee observe in this connection that a number of important recommendations made by the Departmental Committee appointment in October, 1979 to suggest step for countering avoidance of tax through the medium of private trusts and investment companies are still under consideration of Government although this Report formed the basis of certain amendments to the Income-tax Act in 1980.

The Committee would urge that speedy decision on the outstanding recommendations of the Departmental Committee should be taken and the Committee apprised of the outcome.

[Sl. Nos. 30, 37 and 38 (Paras 3.74, 3.98 and 3.99) of Appendix V of 144th Report of PAC (1982-83) (7th Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

Subsequent to the above recommendations of the P.A.C. wide ranging amendments have been made particularly by the Finance Act, 1983 to the provisions relating mainly to taxation of charitable and religious trust by bringing to tax the business income of all charitable and religious trusts except those notified under section 10(23C) (iv) & (v). These amendments include the following :-

- (i) Any trust or institution which does not apply 75% of its income to charitable or religious purposes on the ground that it seeks to accumulate the income for application to such purposes in a later year has to fulfil the conditions as laid down in section 11(2) (b) of the income-tax Act ;

- (ii) Section 13(1) (d) was substituted to provide that exemption

under section 11 shall not operate for the assessment year 1983-84 or any subsequent year if any funds of the trust or institution are invested or deposited or continued to remain invested or deposited for any period otherwise than in the approved form as laid down in section 11(5) of the Income-tax Act.

- (iii) By inserting a new sub-section (4A) in section 11, it was provided that the provisions of sub-section (1) or (2) of that section or the connected provisions of sub-sections (3) and (3A) of the said section will not apply in relation to profits and gains of business excepting where the business is carried on by the trusts wholly for public religious purposes and the business consists of printing and publication of books or the business is carried on by an institution wholly for charitable purposes and the work in connection with the business was mainly carried on by the beneficiaries of the institution. These exceptions will not apply unless separate books of accounts are maintained by the trusts or institutions in respect of such business. In consequence of the new provisions made in sub-section (4A) of section 11 clause (bb) of section 13 (1) restricting the exemption of business income in the case of charitable trusts and institutions for the relief of the poor, education or medical relief, only in cases where the business is carried on in course of the actual carrying out of a primary purpose of the trusts or institution was omitted. A consequential amendment was the omission of the words "not involving the carrying on of any activity for profit" in section 2(15) of the Income-tax Act.
- (iv) Section 164 of the Income-tax Act was amended to clarify that profits and gains of business which are not exempt under section 11 of the Income-tax Act will be charged to income-tax as if such profits and gains were the income of an association of persons.
- (v) Clause 40 of the Finance Act revived the levy of Wealth tax on certain specified assets including jewellery and land and building owned by closely-held companies.

As regards the observation of PAC in para 3.99 of the Report

though a number of important recommendations made by the Departmental Committee appointed in October, 1979 to suggest steps for counter acting avoidance of tax through medium of private trusts and investment companies are still under the consideration of the Government though this report form the basis of certain amendments to the Income-tax Act in 1980, it may be recalled that the Finance Act, 1980 contains measures to plug loopholes for tax avoidance through the medium of private trusts. These measures included amendment of sections 224 and 164 of the Income-tax Act and amendment of section 21 of the Wealth-tax Act. In September, 1982 Directorate of Inspection (Special Investigation) was requested to carry out a selective study to ascertain the efficacy of the amendments made by the Finance Act, 1980. On the basis of this Report clause 40 of the Finance Act, 1983 was introduced to remedy the situation whereby persons were avoiding payment of wealth-tax at proper rates by transferring assets to closely held companies while retaining the control over these assets. Further the Finance Act, 1984 made the following amendments to obviate avoidance of tax through the medium of private trusts.

- (i) With a view to ensuring that the income or property of charitable or religious trusts is not used or applied directly or indirectly for the private benefit of the specified categories of persons and that the trusts funds are not invested in contravention of the investment pattern laid down in the Income-tax Act it was provided that where religious or charitable trust forfeits tax exemption the trust shall be charged to tax at the maximum marginal rate ;
- (ii) In order to counter-act attempts of tax avoidance by conducting business through the medium of private trusts it was provided that where any income in respect of which a person mentioned in section 160(1) (iv) & (v) of the Income-tax Act i.e. a trustee, is liable as a representative assessee consists of or include profit and gains of business, income-tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate.
- (ii) It was further provided that the provisions relating to the income received by trustee of the discretionary trust will not

apply in a case where the income consists of or includes profits and gains of business.

These remedial legislative measures have followed the recommendations made by the PAC in the above paras. Approved by the Joint Secretary to the Govt. of India.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 241/2/83-A&PAC-II F.No. 155/161/83-TPL dated 12-5-86]

### **Recommendation**

“3.84 : In the final report (December, 1971), the Direct Taxes Enquiry Committee (popularly known as Wanchoo Committee) had observed that ‘there is a strong case for having an all-India legislation for the purpose of controlling and regulating the working of various public charitable and religious trusts in India’. It further recommended that ‘apart from the provisions contained in the draft Bill, which was introduced in the Parliament in 1968 for the purpose (but which lapsed with the dissolution of the Lok Sabha in 1970), such legislation should contain some further provisions’ *inter alia* empowering the Government to nominate one or more trustees on the governing body of a trust. The need for early enactment of such a uniform central law was also recommended by the Choksi Committee in its interim report in December, 1977. The Committee observe that the only action taken by the Ministry of Finance in implementation of the above recommendation of the Wanchoo Committee was to forward the same to the Ministry of Law, Justice and Company Affairs (Legislative Department) for sponsoring an all-India legislation for regulating the functioning of charitable and religious trusts. The Law Ministry, in turn, brought the recommendation to the notice of the Law Commission in November, 1972, for consideration alongwith a proposal for all-India Legislation regarding public trusts. The matter appears to rest at that.”

[S. No. 34 (Para 3.84) of Appendix V of 144th Report (7th Lok Sabha)]

### **Action Taken**

The recommendation contained in this Paragraph had been considered in depth by this Ministry on earlier occasions. Recently, the Economic Administration Reforms Commission also made a similar recommendation for the enactment of an all-India Public Trusts Act and the transfer to Public Trustees of the voting rights in respect of shares held in any company by public charitable and religious trusts. This, in fact, was a reiteration of similar recommendations made by the Wanchoo Committee in Para 3.65 of its Report submitted to the Government in 1971 and Para 2.4 of Interim Report submitted to the Government by the Choksi Committee in 1977 and Para 1-4.34 of the Choksi Committee's Final Report submitted to Government in 1978.

2. The view that the Income Tax Act should be concerned with aspects closely connected with the entitlement to tax exemption on the income and the spending of that income on the charitable or other religious purposes of the trusts and that there is need to provide for control and regulation of public trusts so that they function efficiently in other respects, is unexceptionable. The only question is whether the enactment of such a law is permissible under the provisions of the Constitution and if so, whether it would be feasible to enact such a law.

3. Entry 10 of the Concurrent List in the Seventh Schedule to the Constitution deals with "Trusts and Trustees". Entry 28 deals with "Charities and Charitable institutions, charitable and religious endowments and religious institutions". Thus, from the legal and constitutional angles there can be no objection to such a law being enacted by Parliament.

4. There is, however, a convention established as early as 1950 that no legislation should be made in the Concurrent field without consultation with the State Government. A draft Bill, which had been prepared in 1968 on the subject, was circulated to the State Governments and Union Territory administrations for their views. While some of them were not in favour of Central legislation in the matter, some others had no objection to such a legislation. A draft Bill designed to secure uniform law relating to Public Trusts was prepared by the Legislative Department in 1970 and it was submitted for the approval of the Cabinet. The Cabinet at its meeting held on 7th March, 1970

decided that the matter may be referred to the Law Commission. Accordingly, the question was referred to the Law Commission on 10th April, 1970. The Commission has not yet been able to take up this matter in view of its pre-occupation with other more important and urgent topics referred for its study.

5. The State Governments which were not in favour of the enactment of central legislation on this matter are not likely to change their stand even if the Law Commission were to suggest a draft Bill for adoption by Parliament. The question whether or not Parliament should enact such a law notwithstanding the opposition of some State Governments is also one of policy. What the Law Commission can at best do is to draft a model Bill on the subject for the consideration of the State Governments. This will have only a limited utility and may not achieve the purpose.

#### **Recommendation**

3.85 The Committee view with concern that such an important matter as the enactment of a uniform Central Law, for controlling and regulating the working of various charitable and religious trusts has not been pursued with the promptitude it deserves, particularly in the context of wide spread realisation that the trusts are being used as a medium of tax evasion and concentration of wealth in a few industrial houses. The Committee desire that a comprehensive uniform Central legislation should be brought before Parliament without any further loss of time.

[Sl. No. 35 (Paras 3.85) of the Appendix V of 144th  
Report of the PAC].

#### **Action Taken by the Ministry of Finance**

Kind attention is invited to this Ministry's Office Memorandum of even number dated 6-7-1983 forwarding Action Taken Note received from the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) in respect of recommendation contained in Para 3.84 of the Report.

2 The question of enactment of an all India legislation on public trusts was referred to the Ministry of Law while processing the report



of Economic Administration Reforms Commission. The Ministry of Law pointed out that in pursuance of a convention established as early as in 1950, no Central legislation should be made relating to the items listed in the Concurrent List without consultation with the State Governments. Since "trust and trustees", "charity and charitable institutions", "charitable and religious endowments" and "religious institutions" fall in the Concurrent List in the Seventh Schedule of the Constitution, while there is no legal and constitutional objection to the enactment of an all India legislation on the public trust, in view of the convention established, a law cannot be enacted without consultation with the State Governments. Accordingly, a draft Bill on this subject was circulated to all State Governments and Union Territories for their comments. On the draft Bill, some of the State Governments mentioned that they were not in favour of the Central legislation in the matter. On receiving this comment, the draft Bill was finally prepared by the Legislative Department of the Ministry of Law in 1970 and submitted for the approval of the Cabinet. The Cabinet referred the matter to the Law Commission.

3. The Ministry of Law has pointed out further that in view of the opposition shown by some of the State Government who were not in favour of the enactment of a Central legislation and in view of the established convention, it does not appear to be feasible at present to enact an all India legislation covering the public trusts.

4. In view of the aforesaid opinion, it does not appear feasible to accept the recommendation of the PAC as per the above paras. At any rate no action is to be taken for such an enactment by the Central Board of Direct Taxes. However, the Central Board of Direct Taxes on its own, has taken certain measures to prevent the use of public trust as a means of avoidance of tax, particularly by large industrial houses, by introducing suitable amendment in section 11(2) and introducing a new section 11(4A) of the Income-tax Act.

5. The decision not to accept the recommendation of the PAC has been approved by the Finance Minister.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/2 83—  
A&PAC—II F. No. 155/161/83—TPL dated 12-5-86].

### **Recommendations**

3.86 In this connection, the Committee would like to recall the recommendation made by them in Paras 1.32 and 1.33 of their 121st Report (4th Lok Sabha) reproduced below :

“The Committee would like to make it clear that it is not their intention that the law should be made so draconian as to discourage the growth of genuine trusts or charities. The Committee therefore feel that the law should continue to provide a congenial climate for the growth of these institutions.”

The Committee would again urge that this aspect should be fully kept in view while formulating the proposed legislation. The Committee further recommend that a list of all trusts whose activities have come to adverse notice should be circulated to all the assessing officers for their guidance.

[Sl. No. 36 (para 3.86) of the Appendix—V of 144th Report of P.A.C. (1982-83) (Seventh Lok Sabha).]

### **Action Taken by the Ministry of Finance**

The observations of the Honourable Committee have been conveyed to the field formations for taking necessary action. List of all Trusts whose activities have come to adverse notice would be circulated to the assessing officers.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/2/83—A&PAC—II dated 30-10-86].

### **Recommendations**

3.98 In paras 1.30 and 1.36 of their 101st Report (7th Lok Sabha), the Committee had drawn attention to the findings of the study made in the recent past by the Directorate of Inspection (Investigation) to the effect that one of the main tax avoidance methods resorting to by large industrial houses was creation of private trusts and transfer of assets to those trusts. The ultimate beneficiaries in a large number of trusts were members of the same family. The trusts had been created in such a way that the applicability of Section 64 of the Income-tax Act on the transfer of assets was rendered impossible. It was admitted in

evidence that generally such trusts are floated to avoid payment of tax and that the trusts are holding shares and controlling companies through their share holding.

3.99 The Committee observe in this connection that a number of important recommendations made by the Departmental Committee appointed in October, 1979 to suggest step for countering avoidance of tax through the medium of private trusts and investment companies are still under consideration of Government although this Report formed the basis of certain amendments to the Income-tax Act in 1980.

The Committee would urge that speedy decision on the outstanding recommendations of the Departmental Committee should be taken and the Committee apprised of the outcome.

[Sl. Nos. 37 and 38 (Para 3.98 and 3.99) of Appendix V of 144th Report of the PAC (1982-83) (7th Lok Sabha.)]

#### **Action Taken by the Ministry of Finance**

Subsequent to the above recommendations of the P.A.C. wide ranging amendments have been made particularly by the Finance Act, 1983 to the provisions relating mainly to taxation of charitable and religious trusts by bringing to tax the business income of all charitable and religious trusts except those notified under section 10 (23C) (iv) & (v). These amendments include the following :—

- (i) Any trust of institution which does not apply 75% of its income to charitable or religious purposes on the ground that it seeks to accumulate the income for application to such purposes in a later year has to fulfil the conditions as laid down in section 11 (2) (b) of the Income-tax Act.
- (ii) Section 13 (1) (d) was substituted to provide that exemption under section 11 shall not operate for the assessment year 1983-84 or any subsequent year if any funds of the trust or institution are invested or deposited or continued to remain invested or deposited for any period otherwise than in the approved form as laid down in section 11 (5) of the Income-tax Act.
- (iii) By inserting a new sub-section (4A) in section 11, it was provided that the provisions of sub-section (1) or (2) of that section

or the connected provisions of sub-sections (3) and (3A) of the said section will not apply in relation to profits and gains of business excepting where the business is carried on by the trusts wholly for public religious purposes and the business consists of printing and publication of books or the business is carried on by an institution wholly for charitable purposes and the work in connection with the business was mainly carried on by the beneficiaries of the institution. These exceptions will not apply unless separate books of accounts are maintained by the trusts or institutions in respect of such business. In consequence of the new provisions made in sub-section (4A) of section 11 clause (bb) of section 13 (1) restricting the exemption of business income in the case of charitable trusts and institutions for the relief of the poor, education or medical relief, only in cases where the business is carried on in course of the actual carrying out of a primary purpose of the trusts or institution was omitted. A consequential amendment was the omission of the words "not involving the carrying on of any activity for profit" in section 2 (15) of the Income-tax Act.

- (iv) Section 164 of the Income-tax Act was amended to clarify that profits and gains of business which are not exempt under section 11 of the Income-tax Act will be charged to income-tax as if such profits and gains were the income of an association of persons.
- (v) Clause 40 of the Finance Act revived the levy of Wealth-tax on certain specified assets including jewellery and land and building owned by closely-held companies.

As regards the observation of PAC in para 3.99 of the Report though a number of important recommendations made by the Departmental Committee appointed in October, 1979 to suggest steps for counter acting avoidance of tax through medium of private trusts and investment companies are still under the consideration of the Government though this report form the basis of certain amendments to the Income-tax Act in 1980, it may be recalled that the Finance Act, 1980 contains measures to plug loopholes for tax avoidance through the medium of private trusts. These measures included amendment of sections 224 and 164 of the Income-tax Act and amendment of section

21 of the Wealth-tax Act. In September, 1982 Directorate of Inspection (Special Investigation) was requested to carry out a selective study to ascertain the efficacy of the amendments made by the Finance Act, 1980. On the basis of this Report clause 40 of the Finance Act, 1983 was introduced to remedy the situation whereby persons were avoiding payment of wealth-tax at proper rates by transferring assets to closely held companies while retaining the control over these assets. Further the Finance Act, 1984 made the following amendments to obviate avoidance of tax through the medium of private trusts.

- (i) With a view to ensuring that the income or property of charitable or religious trusts is not used or applied directly or indirectly for the private benefit of the specified categories of persons and that the trusts funds are not invested in contravention of the investment pattern laid down in the Income-tax Act it was provided that where religious or charitable trusts forfeits tax exemption the trusts shall be charged to tax at the maximum marginal rate.
- (ii) In order to counter-act attempts of tax avoidance by conducting business through the medium of private trusts it was provided that where any income in respect of which a person mentioned in section 160 (1) (iv) & (v) of the Income-tax Act i.e. a trustee, is liable as a representative assessee consists of or include profit and gains of business, income-tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate.
- (iii) It was further provided that the provisions relating to the income received by the trustee of the discretionary trust will not apply in a case where the income consists of or includes profits and gains of business.

These remedial legislative measures have followed the recommendations made by the PAC in the above paras. Approved by the Joint Secretary to the Govt. of India.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/2/83-A & PAC-II F. No. 155/161/83-TPL dated 12.5.86]

## CHAPTER IV

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

#### Recommendations

1.26 Section 11 of the Income-tax Act exempts from tax, income of a Charitable institution as defined in section 2 (15), in so far as it is applied to charitable purposes and fulfils the conditions laid down in Section 13. A donation made by a charitable institution to another charitable institution has been held to be application of income by the former for charitable purpose (133 ITR 494-Bombay and CBDT Instructions No. 1132 dated 5 January, 1978). It has, however, been held that mere promotion of practice of the game of cricket, in general either for entertainment of the public or for advancement of the game itself is not a charitable purpose (37 ITR 277 Cal.) Therefore, income applied for such a purpose by a charitable Trust is not exempt from tax under Section 11. CBDT Circular instructions dated 23 August, 1973 and 28 November, 1973, affirmed that the promotion of any game or sports was not a charitable purpose.

1.27 Income tax Act, 1961 was amended by Finance Act, 1973 with effect from 1 April, 1974 allowing deductions of 50 per cent of donations made to sports associations approved by the Government under Section 80-G. An explanation was added in that Section to clarify that such associations would be deemed to be charitable institutions only for this purpose. In other words, even after amendment, the earlier position that for purposes of Section 2 (15) and Section 11 such sports associations were not "charitable institutions" continued to prevail.

3.46 The Committee find that the Taxation Laws (Amendment) Bill, 1973 which was enacted as the Taxation Laws (Amendment) Act, 1975, as introduced in the Lok Sabha on 9 May 1973 did not contain Section 10 (230). The Bill as it emerged from the Select Committee specifically exempted income received by any person on behalf of three

Funds of national importance viz. the Prime Minister's National Relief Fund, the Prime Minister's Fund (Promotion of Folk Art) and the Prime Minister's Aid to Students Fund. However, a proviso was added to the Bill empowering Government to exempt any income received by a person on behalf of any other Fund or institution, established for charitable purpose having regard to its objects and importance throughout India or throughout any State, by notification in the official gazette. At the consideration Stage of the Bill in Lok Sabha, a further Government amendment exempting from income-tax the income of any trust or institutions being a trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes was added in the shape of sub-clause (v).

3.47 The Committee thus find that the object of introducing Section 10 (20) basically was to exempt certain institutions of national or State importance, whose funds in any case remain under public control.

3.48 The scope of the Section was enlarged subsequently to take care of genuine cases of philanthropy/public charity and trusts/institutions set up for wholly religious purposes. A proviso was added under sub-clause (iv) and (v) stipulating that any notification issued by the Central Government under these sub-clauses shall have effect for such assessment year or years (including an assessment year or years commencing before the date on which such notification is used) as may be specified in the notification.

3.49 The Committee note that in exercise of this power, the Central Government have, during the last few years notified 576 trusts and institutions whose incomes stand totally exempt and who are subject to none of the restrictions and restraints prescribed under Sections 11 to 13 and 139 (4A) of the Income Tax Act. Till June, 1979 the Ministry of Finance had issued notifications in respect of 317 trusts and institutions exempting them for indefinite period although the language of the proviso was quite unambiguous when it laid down that such notifications shall have effect for such assessment year or years "as may be specified." However, the Ministry of Finance issued the notifications "for and from the assessment year (such and such)". The Committee regret to observe that this formulation amounted to giving up even the opportunity of very limited scrutiny that could otherwise be exercised at the time when such trusts/institutions came up for renewal of exemption had the period

of exemption been specified in the notification as required by the law. In all these cases, apart from the initial scrutiny that might have been exercised at the time of issuing exemption orders by a Gazette notification, there is no method to ascertain the actual utilisation of income of such trusts or institutions because they are not obliged even to file a return of income.

3.50 The Committee consider that by granting exemptions liberally and for indefinite period, Government have not only gone beyond the intention of Parliament but also clearly outstepped the limits of delegated legislation. Unconditional grant of exemption from tax is a legislative function, Government's action in issuing notifications "for and from the assessment year so and so" amounts to saying "for all future assessment years" i.e., virtually granting total permanent exemption, thus violating both the language and spirit of the law. The Committee consider that all notifications issued with this formulation are clearly *ultra vires*, illegal and hence ineffective.

[Sl. Nos. 1, 2, 18 to 22 (Paras 1.26, 1.27, 3.46 to 3.50) of Appendix V to 144th Report of PAC (1982-83) (7th Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

Since these recommendations are commentative in nature, no action is needed.

[Ministry of Finance (Deptt of Revenue) F. No. 241/2/83-A & PAC-II and F. No. 181/10/83-(IT A1) dated 15.4.85]

#### **Recommendations**

1.28 As pointed out in the Audil paragraph, in the previous year relevant to the assessment year 1975-76, the Garware Foundation Trust made a donation of Rs. 4,25,000 of its income to Bombay Cricket Association (Donee Association). In spite of the clear position of law aforementioned, the entire amount was exempted in the hand of the donor. The incorrect exemption involved a short levy of tax of Rs. 1,37,545.

Initially, in May, 1982, the Ministry of Finance did not accept the audit objection treating the income as having been applied by a charit-



able trust as donation to another charitable trust. After the Audit paragraph was selected by the Public Accounts Committee for examination, the Ministry changed their view and indicated (September 1982) that since such institutions notified under Section 10(23) have been held to be not charitable institutions, Bombay Cricket Association has not been treated as a charitable institution. Again in December, 1982 the Ministry stated that although it may *prima facie* appear that the Income-tax Officer had committed a mistake in this case, a fuller examination of the relevant facts and the law would show that the relief allowed by the Income-tax Officer is sustainable in law considering the facts that (a) under the Board's instructions dated 23 August, 1973 and 28 November, 1978 mere promotion of sports was not considered to be a charitable purpose; however, the objects of the donee association in this case are much wider; (b) the concept of charitable purpose has become considerably wider as a result of ruling by Courts since the issue of instructions by the Board in 1973. A reference has accordingly been made to the Ministry of Law on 13 December, 1982. It is obvious that but for the Committee's enquiries in the matter, the Board would have allowed the interests of revenue to go by default. The Committee would like to be apprised of the Law Ministry's opinion in the matter and the action taken in pursuance thereof.

3.51 The Committee were informed in evidence, that after obtaining the Law Ministry's advice notices are being served on 300 and odd trusts asking them why their exemption should not be curtailed from 31 March, 1984. The Committee desire that a 'thorough review should be carried out without delay in all cases where indefinite exemption has been given so as to ensure that they are either taxed according to the normal law or where justified, covered by proper notifications.

3.52 From a perusal of the evidence tendered before the Committee verbally and in writing it would appear that the draft notification granting exemption "for and from the assessment year (s)." was not got vetted by the Ministry of Law. Very belatedly, the Ministry realised that the legality of their action could be questioned and hence they stopped issuing exemptions for indefinite period in June 1979. The Committee recommended that responsibility for this persistent default in such an important matter should be fixed. The

**Committee further urge that in future all exemption notifications should be vetted by the Ministry of Law and placed on the Table of the House as required under Section 196 of the Income-tax Act.**

[Sl. Nos. 3, 23, 24 (Paras 1.28, 3.51, 3.52) of Appendix V to 144th Report of the P.A.C. (1982-83) (Seventh Lok Sabha)].

#### **Action Taken by the Ministry of Finance**

- 1.28. Advice of the Ministry of Law is awaited.
- 3.51 The review is being carried out in the case of trusts which have come up for renewal of the notification under section 10(23C) (iv)/(v) after receiving a notice from the Department that their exemption stand valid only upto assessment year 1984-85.
- 3.52 The question whether the validity and format of the notification issued without specifying both the terminal points was referred to the Ministry of Law. The Ministry of Law has not sent a reply to this specific point and pointed out that the notification issued earlier with indefinite period are contrary to the provisions of section 10(23C) (iv) and (v) but had pointed out that such notification could be rectified by giving notified trusts proper notice. This has been done.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/2/83—A&PAC—II and F. No. 181/10/83—ITA—I dated 12-10-83].

#### **Recommendations**

1.29 The Committee further observe that the Bombay Cricket Association (Assessee), being only a deemed charitable institution for purposes of Section 80 G of the Income tax Act and not a charitable institution as such, was assessable to Wealth Tax. However, proceedings under the Wealth Tax Act were not initiated under the wrong premise that the assets of the donee association were exempt from wealth-tax under Section 5(1)(i) of the Wealth Tax Act, 1957. Thus, no wealth-tax

was levied on its wealth aggregating to Rs. 3.02 crores in respect of assessment year 1974-75 and 1975-76 resulting in non-realisation of revenue to the extent of Rs. 33.10 lakhs. On realising that Institutions notified under Section 10(23) of the Income-tax Act have been held to be not charitable institutions, notices under Section 17 of the Wealth Tax Act, 1957 were issued in respect of assessment years 1973-74 to 1980-81. The Committee have been informed that the assessee has filed a writ in Bombay High Court. The same has been admitted and assessment proceedings have been stayed (December 1982). The Committee desire that action to get the stay vacated should be initiated forthwith, if not already done. The Committee would like to be apprised of the final position of the wealth tax demand raised and collected in this case.

1.30 The Committee find that in all, 103 institutions have been approved under Section 10(23) of the Income-Tax Act, 1961 for purposes of Section 80 G. Apart from the Bombay Cricket Association, the Ministry of Finance have furnished details of assessment to wealth-tax in respect of only 10 such institutions. Two of them, viz., Delhi District Cricket Association and Bombay Presidency Golf Club Ltd., hold the status of a company, 7 institutions do not seem to have been assessed to wealth-tax. The Committee would like to know for how long and for what reasons wealth-tax proceedings have not been initiated against these institutions.

1.31 Only in one case of Madras Motors Sports, Madras, notices were issued for assessment year 1971-72 to 1973-74 and 1976-77 on 31-3-1981 and for assessment year 1977-78 on 24-2-1982. Assessments have been completed for assessment years 1970-71, 1974-75 and 1975-76. It is not known whether the demand created has since been realised. The Committee desire that these assessments should be completed expeditiously and the committee apprised of the position.

1.32 The Committee recommend that the CBDT should immediately carry out a review in respect of the remaining 92 associations/institutions with a view to initiating action for levy of wealth tax, if not already levied, on assets held by them, wherever due. The Committee would like to be apprised of the results of the review together

with reasons for default and the action taken to fix responsibility in the matter in six months' time.

[Sl. No. 4 to 6 (Paras 1.29 to 1.32) of the Appendix V of  
144th Report of the Public Accounts Committee(1982-83)  
(7th Lok Sabha)]

### **Action Taken by the Ministry of Finance**

The matter has been considered in consultation with the Ministry of Law and it has been advised that an association or institution engaged in the promotion of sports and games can claim exemption u/s 11 of the Income-tax Act, 1961, even if it is approved u/s 10(23) for exemption from tax being a sports association or institution having as its objects, the promotion, control, regulation and encouragement of specified sports and games. Copies of the advice of the Ministry of Law and the Central Board of Direct Taxes circular No. 395 which has been issued on 24th September, 1984, are enclosed. (Appendices I and II).

2. The provisions of sec. 5(1)(i) of the Wealth tax Act, 1957, are even wider than the provisions of sec. 11. It would, therefore, appear, that it is not necessary to initiate wealth-tax proceedings in the cases of 103 institutions which had been approved u/s 10(23) of the Income-tax Act, 1961.

[Ministry of Finance (Deptt of Revenue) F. No. 326/26/83—  
WT and F. No. 241/2/83—A&PAC—II dated 15-4-85].

### **Recommendation**

3.53 The Committee have been informed that Government have examined the continued eligibility of 70 Trusts (out of 576 notified so far) when they came up renewal under Section 10(23C) (iv) & (v). The Government did not consider it necessary to deny renewal in any of these cases. From a random scrutiny of the files relating to renewal of exemptions made available to the Committee, it was seen that in quite a few cases the Commissioners of Income-tax concerned had not insisted upon production of latest balance sheets and only the available accounts were gone into to verify if the incomes were properly applied for the avowed objectives and that the investment of funds relevant to

the assessment years was in conformity with the provisions of Section 13(5) of the Act. In the absence of any guidelines issued by the Board, the field officers who conducted the initial enquiries, interpreted the provisions of the law to their best judgement on the merits and circumstances of each case. It was further observed that the practice of obtaining certificate of continued eligibility from the Commissioner of Income-tax concerned had been dispensed with in certain cases. The failure to issued guidelines and to obtain eligibiliy certificates in certain cases, are clearly indicative of lack of control on the part of the assessing officers/Commissioners and the Board.

[S. No. 25(Para 3.53) of Appendix V to 144th Report of PAC (1982-83) (Seventh Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

The provisions of sections 10(23C)/(iv)/(v) and Section 13 of the Income-tax Act, 1961 are mutually exclusive.

Guidelines to the field officers on the provisions of Sections 10(23C)(iv)/(v) are not required since notifications under these provisions are issued by the Central Government.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 241/2/83—A&PAC—II and F. No. 181/10/83—IT (AI) dated 15-4-85]

#### **Recommendations**

The Committee are of the view that a delegation made in relaxation of the normal provisions of Sections 11 and 13 of the Act and intended to be used in exceptional cases and with caution has been used in a routine fashion so as to lift all restraints of the income-tax law on a large number of institutions for indefinite periods. These institutions were freed not only of the additional controls built into the income-tax law as anti-tax evasion measures on the recommendations of the Wanchoo Committee but also of all existing controls. In fact they were freed of all legislative judicial and administrative controls of Income-tax law. The Chairman, C.B.D.T. admitted in evidence that "this Section should not exist on the Statute book and all the trusts should come under the discipline and control of Section 11 and 13 of the Income-tax

Act". The Committee were, however, informed that the matter was under consideration of the Economic Administration Reforms Commission (E.A.R.C.) and that a decision would be taken in the light of its recommendations. The Committee recommend that the question of deleting sub-sections (iv) and (v) of Section 10(23C) of the Act should be considered forthwith without waiting for the final report of the Jha Commission. This is necessary to bring all trusts other than those of national importance, for which the provision was initially designed, within the discipline of the law contained in Section 11-13 of the Act.

[Sl. No. 26 (Paras 3.54) of the Appendix V of 144th Report of the PAC (1982-83) (7th Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

The recommendations made by the Public Accounts Committee in the above paras are being considered in connection with simplification and rationalisation of direct tax laws. The recommendation as accepted by the Government will be incorporated in the Comprehensive Direct Taxes (Amendment) Bill, 1986 likely to be introduced in Parliament in June, 1986.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F. No. 241/2/83—A&PAC-II and F. No. 155/161/83—TPL dated 12-5-86].

#### **Recommendations**

The Committee were informed in evidence that a Committee of departmental officers was appointed to go *inter alia* into the details of the Garware Trusts in depth. However, no details have been furnished regarding its findings with regard to affairs of the Garware Group, particularly the trusts set up by it. The Committee consider it very unfortunate that the data/information called for by them has not been furnished in spite of sufficient time having been given. This is indicative of lack of monitoring and coordination in the matter of overseeing the affairs of big industrial houses about which the Committee have lot more to say in the succeeding paragraphs. The Committee would nevertheless like to be apprised of the findings of the departmental committee and the action taken by the Government to recover

the tax dues, if any, outstanding against this Group/Trust set up by it within six months.

[Sl. No. 9 (para 1.54) of the Appendix-V of the 144th Report of the P.A.C. (1982-83) (Seventh Lok Sabha)]

#### **Action Taken by the Ministry of Finance**

A Committee of Departmental officers was constituted to suggest steps for countering avoidance of tax through the medium of private trusts and investment companies. The report was submitted in October, 1979. The findings of the Departmental Committee were communicated to the Lok Sabha Secretariat on 11th March 1983 in response to Item No. 3 of PAC's Additional Questionnaire arising out of evidence on paragraph 3.12 (b) of the C&AG's Report, 1980-81. The position regarding recovery of tax dues would be intimated shortly.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 241/2/83—A&PAC-II dated 31-10-86].

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

—NIL—

NEW DELHI ;  
27 April, 1987

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7 Vaisakha, 1909 (Saka)

**E. AYYAPU REDDY**  
*Chairman,*  
*Public Accounts Committee*



## APPENDIX I

### MINISTRY OF LAW, JUSTICE & CA

(Department of Legal Affairs)

Advice 'B' Section

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The Department has sought our advice on the following questions :—

- (i) Whether the activities of an association or institution engaged in the promotion of sports and games can, independently of the provision of section 10(23), be considered as enuring for charitable purposes within the meaning of section 2(15) of the Income Tax Act, 1961 ; and
- (ii) Whether donations made to such an association for construction of a stadium or pavilion could be regarded as an application of income for charitable purposes within the meaning of section 11(1)(a) of the Income Tax Act, 1961.

2. The above questions have been raised in the context of an audit para relating to the application of income of a charitable trust by way of donation to a sports association having the purpose of promotion of cricket.

3. As regards an association or institution having as its object the control, supervision, etc. of the games of cricket, hockey, foot-ball, tennis or such other games or sports as the Central Government may specify, any income derived by it will be exempt from income-tax if it is approved by the Central Government under section 10(23). An assessee who makes a donation to an association approved by the Central Government for the purposes of section 10(23) will also get the benefit of deduction under section 80G in view of Explanation 4. According to this Explanation, an association approved by the Central Government under section 10(23) shall be deemed to be an institution established in India for a charitable purpose.

4. It will be noticed that the deduction under section 80G has been permitted by introducing a legal fiction that a sports association or institution shall be deemed to be an institution for a charitable purpose.

5. The expression 'charitable purpose' has been defined in Section 2(15) of the Income Tax Act to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility (not involving the carrying on of any activity for profit). The words given in the brackets have been omitted by the Finance Act, 1983 with effect from 1-4-1984.

6. What is an object of general public utility has been considered by the Supreme Court in some recent decisions. The leading case is *Addl. C.I.T. vs. Surat Art Silk Cloth Manufacturers Association* (121 ITR 1). In that case, it was held that the predominant object of activity involved has to be looked into to see whether it subserves a charitable purpose or not. Where the predominant object of activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. This case dealt with an association which was incorporated as a company for the promotion of commerce and trade in cotton and silk yarn and cloth. The Supreme Court held that the objects of association subserve a charitable purpose within the meaning of section 2(15) of the Income Tax Act.

7. The above decision was delivered by a Bench of five judges. Subsequently, the Supreme Court has reiterated the same view in *C.I.T. vs. Bar Council of Maharashtra* (130 ITR 28), *C.I.T. vs. Andhra Chamber of Commerce* (130 ITR 184) and *C.I.T. vs. FICCI* (130 ITR 186).

8. In view of the aforesaid judicial pronouncements, it can be stated that the advancement of any object beneficial to the public or a section of the public, as distinguished from an individual or a group of individuals, would be a charitable purpose. That being so, it would appear that the activities of an association or institution engaged in the promotion of sports and games can be considered as enuring for charitable purposes within the meaning of section 2(15) of the Income Tax Act.

9. The further question whether an assessee, being an institution for charitable purpose, can claim relief under one or more provisions in section 10 and section 11 of the Income Tax Act simultaneously, incidentally came up for consideration before the Supreme Court in *C.I.T. vs. Bar Council of Maharashtra* (130 ITR 28). The Supreme Court referred to the detailed analysis made by the Tribunal of the provision of section 10 (23A) and Section 11 and the Tribunal's view that the two provisions were not mutually exclusive but operated under different circumstances and that there was nothing inherently improbable or inconceivable about the two provisions operating simultaneously and as such, the claim for exemption under section 11 was available to the assessee—Council provided it satisfied all the requirements of that provisions. By way of obiter, the Supreme Court observed that “there are other allied provisions like, for instance, sub-section (23-C) in section 10, which clearly indicate that the Legislature did not intend to rule out section 11 when exemption was claimable under such specific provisions of section 10.

10. Though the above observation was an obiter, it is entitled to great weight. In this context, we may also refer to the recent decision of the Allahabad High Court in *Bar Council of U.P. vs. C.I.T.* (143 ITR 584 at 589) where a similar question was considered. It was held that the provisions of section 10(23-A) and section 11 are not mutually exclusive and they can have simultaneous application if the necessary ingredients of the provisions are made out. Section 10 enumerates what types of income are not to be included in computing the total income of a previous year of any person. This section is a general provision. Section 11 provides that certain income is not to be included in the total income of the previous year of the person in receipt of income from property held for charitable or religious purposes. It was observed that there was nothing in section 10(23-A) and section 11 to suggest that they are inconsistent with each other and cannot operate simultaneously.

11. The above reasoning would equally apply to the application of section 10(23) and section 11 simultaneously if the ingredients of these provisions are present.

Sd/-

(P.K. KARTHA)

*Joint Secretary & Legal Adviser*

22-11-1983.

APPENDIX II

CIRCULAR No. 395

R. NO. 181/5/82—IT (AI)  
GOVERNMENT OF INDIA  
CENTRAL BOARD OF DIRECT TAXES  
NEW DELHI : DATED THE 24TH SEPT., 1984

**Subject :—Promotion of Sports—Whether a charitable purpose—  
Clarification Regarding—**

The expression 'charitable purpose' is defined in section 2(15) of the Income-tax Act, 1961 to include relief of the poor, education, medical relief and the advance of any other object of general public utility.

2. The question whether promotion of sports and games can be considered as being a charitable purpose has been examined. The Board are advised that the advancement of any object beneficial to the public or section of the public as distinguished from an individual or group of individuals would be an object of general public utility. In view thereof, promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15). Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 11 of the Act, even if it is *not* approved under section 10(23) relating to exemption from tax of sports associations and institutions having their objects as, the promotion, control, regulation and encouragement of specified sports and games.

Sd/-

(R.K. TEWARD)

*Under Secy. Central Board of Direct Taxes*

Copy to :—

1. All Chambers of Commerce
2. All Commissioners of Income-tax, with a request to bring the

contents of the circular to the notice of all the officers working in their charges. Instruction No. 594 dated 23-8-1973 stands withdrawn.

3. D.G. (Investigation)/D.G. (Spl. Investigation).
4. D.I (Inv.)/IT/Audit/Spl. Inv./Vigilance/Survey/Systems/RS&PR/P&P/Recovery/Intelligence.
5. Director, O&M Services, New Delhi.
6. C&AG, New Delhi (25 copies).
7. Ministry of Law, Justice & Co. Affairs (Adv. B Section) (5 copies).
8. Director, N.A.D.T., Nagpur.
9. ADI (P&P) (Bulletin Section) (5 copies).

Sd/-

(R.K. TEWARI)

*Under Secy. Central Board of Direct Taxes*

### APPENDIX III

#### *Statement of Conclusions/Recommendations*

Sl. No.	Para No.	Ministry/Deptt. Concerned	Conclusions/Recommendations
1	2	3	4
1	1.6 1.7	Ministry of Finance (Deptt. of Revenue)/ Ministry of Law.	<p>The Ministry of Finance stated in reply that the matter was considered in consultation with the Ministry of Law who have advised that an association or institution engaged in the promotion of sports and games can claim exemption under Section 11 of the Income-tax Act, 1961 even if it is approved under Section 10(23) for exemption from tax being a sports association or institution having as its objects, the promotion, control, regulation and encouragement of specified sports and games. The Committee find that the opinion given by the Ministry of law was specifically within the definition of charitable purpose given under the Income-tax Act and there is no mention about its applicability to the provisions of the Wealth-tax Act. The Board's circular of 1984 is also silent on the point. The Committee considers it desirable that the matter should be referred again to the Ministry of Law for an opinion on the specific aspect.</p>

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2	1.10 1.13	<b>Ministry of Finance</b> <b>(Deptt. of Revenue)</b>
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In paragraph 1.29 of their 144th Report (7th Lok Sabha) the Committee had referred to the Bombay High Court stay order in the very case and had observed that they would like to be apprised of the final position. The Committee would like to be apprised of the decision of the Court in the case.

The Committee feel that the reply of the Government is evasive. In their recommendation at paragraph 3.50, the Committee observed that by granting exemptions liberally and for indefinite periods, Government had not only gone beyond the intention of Parliament but also clearly overstepped the limits of delegated legislation. The Committee had further observed that all notifications issued in respect of trusts and institutions under Section 10(23C) (iv) and (v) granting exemptions for indefinite periods were ultra vires, illegal and hence ineffective. In paragraph 3.52, the Committee had recommended that in future all notifications should be vetted by the Ministry of law. While replying to the paragraph, the Ministry have conveyed the opinions of the Ministry of Law agreeing with the Committee that notifications issued for indefinite periods were contrary to the provisions of Section 10(23) (iv) and (v). Instead of admitting the lapse in the



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spirit in which it was pointed out by the Committee and taking remedial action thereon, the Ministry of Finance have merely stated that "since these recommendations are commentative in nature, no action is called for".

In paragraph 3.51, the Committee have desired that a thorough review of all the cases in which indefinite exemptions had been given should be carried out and exemptions denied wherever desired or proper notifications issued. The Ministry have replied that the cases of trusts which have come up for renewal on being served with notice that their exemptions would be valid only upto the assessment year 1984-85 are being reviewed. As brought out in the Committee's recommendations at paragraph 3.52, the Ministry of Finance had themselves realised at a later stage that the legality of their actions could be questioned and had therefore, stopped issuing exemptions for indefinite period in June 1979. The Committee deplore the routine way in which this serious problem is being dealt with by the Ministry and reiterate their earlier recommendation that all the trusts, to whom indefinite exemptions had been issued, should be taken up for review *suo moto* and exemptions withdrawn where the trusts do not comply with the notices within a reasonable time. The Committee would like to be apprised of the results of the review.

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In their earlier recommendation the Committee had urged that in future all exemption notifications should be vetted by the Ministry of Law and placed on the table of the House as required under Section 196 of the Income-tax Act. The Committee had also recommended that responsibility for this persistent default in such an important matter should be fixed. Instead of taking prompt action and giving a positive reply to the recommendation of the Committee, the Ministry of Finance have taken shelter under the plea that the Ministry of Law had not furnished reply on the validity of the earlier notifications at that point of time. However, three years have elapsed and no reply has been forthcoming in the matter. The Committee are very unhappy on the inordinate delay on the part of the Ministry of Law to furnish their advice promptly and failure of the Central Board of Direct Taxes in pursuing the matter and express their displeasure at this lackadaisical approach. The Committee, therefore, reiterate that responsibility for this lapse should be fixed and action taken against erring officials.

The Committee would also like to be informed of progress made towards incorporation of their recommendations

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1.16

**Ministry of Finance  
(Deptt. of Revenue)**

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made in the above paragraphs in the proposed Direct Taxes (Amendment Bill) 1986.

From a scrutiny of the material made available by the Ministry of Finance (Department of Revenue) from time to time in connection with consideration of Paragraph 3.12 (h) of the Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil) Revenue Receipts, Vol. II, Direct Taxes relating to 'Irregular Exemptions and Reliefs' dealt with in Chapter I of 144th Report (7th Lok Sabha), the Committee find that the findings of the Departmental Committee stated to have been furnished to the Lok Sabha Secretariat were general in nature pertaining to steps suggested for countering avoidance of tax through the medium of private trusts and investment companies. These were furnished in response to point 3 of Advance Questionnaire arising out of Audit Paragraph and not in reply to Additional Questionnaire as stated. Whereas the recommendations under reference are exclusively in relation to the findings of the Committee of Departmental Officers with regard to the affairs of Garware Group and the trusts set up by them. The Committee would like to reiterate that the Ministry of Finance should furnish expeditiously required information on the specific and exclusive issue raised in the earlier recommendation.

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## PART II

### MINUTES OF 60TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 24 APRIL 1987

The Committee sat from 1500 hrs. to 1730 hrs.

#### PRESENT

Shri E. Ayyapu Reddy—*Chairman*

#### MEMBERS

*Lok Sabha*

2. Shri Ranjit Singh Gaekwad
3. Shrimati Prabhawati Gupta
4. Shri G. Devaraya Naik
5. Shrimati Jayanti Patnaik
6. Shri Simon Tigga.
7. Shri Girdhari Lal Vyas
8. Shri M.S. Gurupadaswamy

#### SECRETARIAT

1. Shri Krishnapal Singh —*Senior Financial Committee Officer*
2. Shri S.M. Mehta —*Senior Financial Committee Officer*
3. Shri C.L. Bhatia —*Senior Financial Committee Officer*

#### REPRESENTATIVES OF AUDIT

1. Shri M. Parthasarthy —Addl. Dy. C&AG (Railways)
2. Shri D.K. Chakravarty —Addl. Dy. C&AG (R—C)
3. Shri S.B. Krishnan —Director (Report)
4. Shri Baldev Rai —Director of Audit (Air Force and Navy)
5. Shri P.K. Jena —Dy. Director of Audit, D.S.

6. Shri R.S. Gupta —D.R.A.I.
7. Shri S.K. Gupta —Joint Director
8. Shri S.M. Patnakar —D.A.C.R.—I
9. Shri A.K. Sitaram —J.D.C. (Rlys)
10. Shri A.K. Jain —DACR-II
11. Shri K. Krishnan —J.D (DT)

2. The Committee considered and adopted the following draft Reports :

(i) to (v)                   \*\*\*                   \*\*\*                   \*\*\*

- (iv) Draft Report on Action Taken on 144th Report (7th Lok Sabha) re : Irregular Exemption & Reliefs and Welath Escaping Assessments.

The amendments/modifications made by the Committee in respect of draft Reports at \*\* \*\* and (vi) above are shown in Annexures \*\* \*\* and (iv) respectively.

3. The Committee authorised the Chairman to finalise the draft Reports in the light of the above modifications and other verbal and consequential changes arising out of factual verification by Audit and present the same to both the Houses of Parliament.

*The Committee then adjourned.*



ANNEXURE IV

*Amendments/Modifications Made in Draft Report on Action  
Taken on 144th Report (7th Lok Sabha) Relating to  
Direct Taxes—Irregular Exemptions and  
Reliefs and Wealth Escaping Assessment.*

<i>Page</i>	<i>Para</i>	<i>Lines</i>	<i>Amendments/Modifications</i>
6	1.6 & 1.7	1-30	<p><i>For</i> the existing paragraphs :</p> <p>“1.6 After going through the reply ... .. not a ‘Charitable Purpose.</p> <p>1.7 The Committee would, therefore, like to..... ..presentation of this report.”</p> <p>“<i>Substitute the following :—</i></p> <p>“1.6 The Ministry of Finance stated in reply that the matter was considered in consultation with the Ministry of Law who have advised that an asso- ciation or institution engaged in the promotion of sports and games can claim exemption under Section 1.6 the Income-tax Act, 1961 even if it is approved under Section 10 (23) for exemption from tax being a sports association or institution having as its objects, the promotion, control, regu- lation and encouragement of specified sports and games. The Committee find that the opinion given by the Ministry of Law was specifically within the definition of charitable purpose given under the Income-tax</p>

Page	Para	Lines	Amendments/Modifications
			Act and there is no mention about its applicability to the provisions of the Wealth Tax Act. The Committee consider it desirable that the matter should be referred again to the Ministry of Law for an opinion on the specific aspect.
			1.7 In paragraph 1.29 of their 144th Report (7th Lok Sabha) the Committee had referred to the Bombay High Court stay order in the very case and had observed that they would like to be apprised of the final position. The Committee would like to be apprised of the decision of the Court in the case.
12-13	1.10 to 1.13	From beginning to end	<p><i>For</i> the existing paragraphs :</p> <p>“1.10 The Committee feel that the reply... ..... is called for.</p> <p>1.11 In paragraph 3.51, the .....in this regard.</p> <p>1.12 In their earlier recommendation ..... ..... erring officials.</p> <p>1.13 The Committee would.. ..... Direct Taxes (Amendment) Bill, 1986.”</p> <p><i>Substitute the following :</i></p> <p>“1.10 The Committee feel that the reply of the Government is evasive. In their recommendation at paragraph 3.50, the Committee had observed that by granting exemption liberally and for indefinite periods, Government had not only gone beyond the</p>

Page	Para	Lines	Amendments/Modifications
			<p>intention of Parliament but also clearly over stepped the limits of delegated legislation. The Committee had further observed that all notifications under Section 10 (23 C) (iv) and (v) granting exemptions for indefinite periods were <i>ultra vires</i>, illegal and hence ineffective. In paragraph 3.52, the Committee had recommended that in future all notifications should be vetted by the Ministry of law. While reply to the paragraph the Ministry have conveyed the opinion of the Ministry of Law with the Committee that notifications issued for indefinite periods were contrary to the provisions of Section 10 (23) (iv) and (v). Instead of admitting the lapse in the spirit in which it was pointed out by the Committee and taking remedial action thereon, the Ministry of Finance have merely stated that "since these recommendations are commentative in nature, no action is called for".</p>
			<p>1.11 In paragraph 3.51, the Committee have desired that a thorough review of all the cases in which indefinite exemptions had been given should be carried out and exemptions denied wherever desired or proper notifications issued. The Ministry have replied that the cases of trusts which have come up for renewal on being served with notice that their exemptions would be valid only upto</p>

Page	Para	Lines	Amendments/Modifications
			<p>the assessment year 1984-85, are being reviewed. As brought out in the Committee's recommendation at paragraph 3.5, the Ministry of Finance had themselves realised at a later stage that the legality of their action could be questioned and had therefore stopped issuing exemptions for indefinite period in June 1979. The Committee deplore the routine way in which this serious problem is being dealt with by the Ministry and reiterate their earlier recommendation that all the trusts, to whom indefinite exemptions had been issued, should be taken up for review <i>suo moto</i> and exemption withdrawn where the trusts do not comply with the notices within a reasonable time. The Committee would like to be apprised of the results of the review</p>
			<p>1.12 In their earlier recommendation; the Committee had urged that in future all exemption notifications should be vetted by the Ministry of Law and placed on the table of the House as required under Section 196 of the Income-tax Act. The Committee had also recommended that responsibility for this persistent default in such an important matter should be fixed. Instead of taking prompt action and giving a positive reply to the recommendation of the Committee the Ministry of Finance have taken shelter under the plea that</p>

<i>Page</i>	<i>Para</i>	<i>Lines</i>	<i>Amendments/Modifications</i>
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the Ministry of Law had not furnished reply on the validity of the earlier notifications at that point of time. However, three years have elapsed and no reply has been forthcoming in the matter. The Committee are very unhappy on the inordinate delay on the part of the Ministry of Law to furnish their advice promptly and failure of the Central Board of Direct Taxes in pursuing the matter and express their displeasure at this lackadaisical approach. The Committee, therefore, reiterate that responsibility for this lapse should be fixed and action taken against erring officials.

1.13 The Committee would also like to be informed of progress made towards incorporation of their recommendations made in the above paragraphs in the proposed Direct Taxes (Amendment) Bill 1986.”

