P. A. C. No. 490

PUBLIC ACCOUNTS COMMITTEE
(1975-1976)

(FIFTH LOK SABHA)

HUNDRED AND NINETY-THIRD REPORT

GIFT TAX

DEPARTMENT OF REVENUE & INSURANCE

[Paragraph relating to Gift-tax included in Chapter IV of the Report of the Comptroller and Auditor General of India for the years 1971-72, and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

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Page	Line	For	Read
v	33	add	and
7	14	on	no
9	29	no	so
11	37	uphold	upheld
22	35	add the word 'in' before the word 'non-levy'	
32	35	country-wise	country-wide
43	20	contasted	contested
50	8	Delete the word 'un-' after the word 'Rules'	
50	39	posiiton	position
52	5	if	it
	13	field	filed
54	33	demands	demand
62	37	assessment	assessments
63	10	H.N. MUKHERJEE	H.N. MUKERJEE
78	18	The	This
94	13	add the word 'and' after the word 'Gift Tax'	

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Minutes of the sittings of the PAC held on :

21-11-1973

28-2-1976

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(1975-76)

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Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

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

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Ninety-Third Report on Paragraphs relating to Gift Tax included in Chapter IV of the Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II Direct Taxes.

2. The relevant Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73 were laid on the Table of the House on 25th April, 1973 and 8th May, 1974 respectively. The Public Accounts Committee (1973-74) examined the paragraphs relating to Gift Tax included in the Report of the Comptroller and Auditor General for the year 1971-72 at their sitting held on the 21st November, 1973. In respect of Paragraph 64(i) of the Report of the Comptroller and Auditor General for the year 1972-73, discussed in Chapter II of this Report, relevant information had been obtained by the Public Accounts Committee (1974-75). The Public Accounts Committee (1975-76) considered and finalised this Report at the sitting held on 28th February, 1976. The minutes of these sittings form Part II* of the Report.

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

4. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1973-74) and (1974-75) in taking evidence and obtaining information for this Report.

5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of the Audit Reports by the Comptroller and Auditor General of India.

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6. The Committee would also like to express their thanks to the officers of the Ministry of Finance for the cooperation extended by them in giving information to the Committee.

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

NEW DELHI;
March 19, 1976.
Phalguna 29, 1897 (*S*).

CHAPTER I

GIFT ESCAPING TAX

Audit paragraph

1.1. For the purpose of Gift-tax Act, if a person releases, discharges, surrenders or abandons any interest in property, such release, discharge, surrender, etc. is deemed to be a gift to the extent to which it is not found to the satisfaction of the Gift-tax Officer to have been made bona fide.

1.2. An individual made a gift of Rs. 50,000 to each of his two minor sons in November, 1964 by transferring the amount from his capital account in the books of a firm in which he was a partner to separate capital accounts opened in their names. The Gift-tax Officer found that the amount thus gifted had not been really acted upon and, therefore, the amounts purported to have been gifted continued to be treated as belonging to the father. The father died intestate in June, 1966 and thereupon his net capital in the firm amounting to Rs. 1,86,300 was divided equally between the two sons, to the exclusion of their mother although the widow being one of the legal heirs of the deceased was entitled to one-third share in his capital in the firm amounting to Rs. 2,86,300. The omission to treat the relinquishment or surrender by the mother as gift resulted in a short levy of tax of Rs. 7,290.

1.3. While accepting the mistake, the Ministry have intimated that the tax has since been collected.

[Paragraph 48(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

1.4. According to Section 2(xii) of the Gift-tax Act, 1958, 'Gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth and includes the transfer of any property deemed to be a gift under Section 4'. Section 4 of the Act enumerates transfers, which though not strictly Gifts, are deemed

to be Gifts. Section 4(1) (c) of the Gift-tax reads as follows:

> "Where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract, or other actionable claim of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been *bona fide* shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment."

1.5. Thus, surrender of interest in property (*e.g.*, surrender of life interest so as to accelerate the claims of reversioners) is a deemed gift and is taxable. Under the Hindu Succession Act, when a person dies intestate, the sons, daughters and the widow take equal portion in the property of the deceased. This right which gets crystallised on death is property. Consequently, if any of the successors forgoes his right to which he is entitled under the law, or surrenders it in favour of others, it will be deemed to be a gift under the Gift-tax Act.

1.6. During evidence, the Committee asked whether there were any instructions from the Central Board of Direct Taxes clarifying the position of law on this issue. The Member of the Central Board of Direct Taxes replied:

> "There were no instructions from the Board. The law is quite clear on this point. There is no ambiguity in this Section 4(1) (c)."

1.7. The Committee desired to know whether the Department had any machinery for gathering information relating to such surrenders. The witness stated during evidence:

> "There is no special machinery. But as and when the officers are examining the cases either for Income-tax or Estate Duty whenever they come across any such case they take necessary action on the gifts.
>
> Succession certificate is necessary only when an actionable claim is there and litigation is involved. In the case of mutual surrenders and receipt of gifts, succession certificate is not necessary. We do not have any machinery."

He added:

> "The gift would not necessarily appear in the succession certificate."

The Finance Secretary stated in this connection:

> "Succession Certificate is issued by the Court and not by any office. It will mention successors to the property. It will mention that following are the legal heirs and I consider the surrender of the right of such and such a party."

1.8. To a question whether there was any other method of ascertaining such transfers which would be deemed to be gifts under the Gift-tax Act, the Finance Secretary replied:

> "So far as this particular right is concerned, this arose after the death of the property holder. In this case the Wealth Tax Officer should come to know about it next year because the assessee will not be there and he will be able to make enquiries and he will be able to pass on the information to the Gift-tax Officer, which he did not do. We have issued instructions clearly as to how this should be done."

1.9. A copy of the latest instructions dated 15th November, 1973 issued by the Directorate of O & M Services furnished to the Committee by the Department of Revenue and Insurance in this connection is reproduced in Appendix I.

1.10. As surrenders of property are also common at the time of issue of succession certificates, the Committee desired to know whether the Department maintained any liaison with the State authorities so as to subject such surrenders to tax as gifts. In a note furnished to the Committee in this regard, the Department of Revenue and Insurance stated:

> "As the surrender in this case was by book entries, the question of succession certificate did not arise. Further, it is not necessary to apply for succession certificate to establish right to property left by deceased, in the cases of intestacy of a Hindu, Mohammaden, Buddhist, Sikh, Jain or Indian Christian (*vide* S. 212 of the Indian Succession Act). However, where a suit has to be filed to recover debt, a succession certificate is necessary (*vide* S. 214 of the Indian Succession Act).

Hence surrenders of interest in property and especially movables by mutual agreement may not figure in succession certificate proceedings. The suggestion about a procedure for collecting information regarding issue of succession certificates for the levying of gift-tax is under consideration."

Subsequently, the Department of Revenue and Insurance informed the Committee that the question of evolving a procedure for collecting information about the issue of succession certificates for the levying of Gift-tax had been considered and necessary instructions issued on 6th April, 1974.

1.11. As regards the action taken in the case commented upon in the Audit paragraph, the Finance Secretary stated in evidence:

"The assessment was revised on the basis of the Audit para. Additional demand was raised and collected on 27th July, 1972*. Party has gone in appeal. This is a case of a mother relinquishing her right to her sons."

1.12. The Committee asked whether the assessee had accepted the view that her relinquishment or surrender of her share of the capital of the deceased in the firm, in which he was a partner, to her two sons was a gift. The Member of the Central Board of Direct Taxes replied:

"After the death, the mother was entitled to one-third, but the entire amount of the firm was distributed between the two sons. Naturally, it is deemed that her one-third share has been given as a gift to the sons.

She has gone in appeal and she has said that the order is unjust and bad in law, the Income-tax Officer has erred and that the Income-tax Officer did not consider that she has foregone her share."

1.13. The Committee desired to know the outcome of the appeal filed by the assessee in this case. In a note furnished to the Committee, the Department of Revenue and Insurance stated:

"Position is being ascertained from the C.I.T. and the Committee will be informed shortly."

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*The Committee were informed by Audit in this connection that the additional demand was collected on 27th May, 1972.

Subsequently, the Committee were informed by the Department that the appeal had been decided in favour of the assessee and that a second appeal had been filed by the Department.

1.14. The Committee find in this case that an omission on the part of the Gift Tax Officer had resulted in the non-levy of tax amounting to 7,290. The said officer had failed to treat relinquishment or surrender by a widow of her share of the capital of her deceased husband in a firm to her two sons as a deemed gift liable to gift tax. The Committee are informed that though the assessment was revised on the basis of the Audit objection and the additional demand collected on 27th May, 1972, an appeal field by the assessee against the order of the Gift Tax Officer has been decided in her favour. The Department has, however preferred a second appeal. The Committee would like to be apprised of the final outcome of this appeal filed by the Department which would, perhaps have been disposed of by now.

1.15. This omission had occurred on account of the failure of the Wealth Tax Officer to pass on to the Gift Tax Officer the information about the death of the individual, who was a Wealth Tax assessee, and his rights in the firm passing on to his legal heirs. Such instances of lack of proper coordination resulting in loss of revenue have been commented upon, year after year, in the reports of the Comptroller & Auditor General of India. The Committee have also been expressing concern over the apparent communication gap between different direct tax authorities. The instructions issued in this regard by the Central Board of Direct Taxes appear to have had little or no effect. The Committee note that fresh instructions on the subject have been issued by the Directorate of O & M Services on 15th November, 1973. The Committee would like to know if such instructions have been actually implemented.

1.16. A relevant point is the liaison between the taxation authorities and the State Governments in order to keep an eye on surrender of property at the time of issue of succession certificates and to secure taxation of such surrenders as gifts. It is not normally necessary, in view of Section 212 of the Indian Succession Act, to apply for a succession certificate to establish the right to property left by a deceased, in the cases of intestacy of a Hindu, Mohammaden, Buddhist, Sikh or Indian Christian. But such surrenders in favour of children or brothers are often made by widowed mothers or by sisters at the time of obtaining succession certificates. The Central Board of Direct Taxes may, therefore, ensure that coordination in this regard is maintained between the Income-tax Department and

the State authorities. The Committee note that the Commissioners of Income-tax have for some time now been instructed by the Board to arrange periodical collection of information from the courts on the issue of succession certificates, to see whether there were any surrenders of property at the time of issue of succession certificates and, if so, to subject such surrenders to Gift Tax. The Committee would like the Central Board of Direct Taxes to ascertain how far the objective has been achieved. The Committee would like to have a report in this regard.

Audit paragraph

1.17. Gifts of agricultural land have never been exempted from the levy of Gift-tax and this legal position was confirmed by Supreme Court in their decision of 2nd April, 1970. It was noticed from the wealth-tax assessment records of an assessee that she had gifted during the assessment year 1970-71, agricultural lands valued at Rs. 1,31,825 to her minor sons. No action was taken to bring the gift to tax, which resulted in non-levy of tax of Rs. 12,524.

1.18. The Ministry have accepted the omission.

[Paragraph 48(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

1.19. The Audit paragraph deals with a case where a gift of agricultural lands was omitted to be taxed by the Gift-tax Officer. Gift of agricultural land has never been exempt from tax and agricultural land, if gifted within the meaning of the Gift-tax Act attracts Gift-tax. The Committee were informed by Audit that the legal position in this regard had been confirmed by the Supreme Court, in its judgement pronounced on 2nd April, 1970, in the case of II Gift-tax Officer, Mangalore *Vs.* D. H. Nazareth (76 ITR 713).

1.20. Earlier too, the question of liability to Gift-tax of gifts of agricultural land had come up for consideration before the High Courts and its validity had been upheld by the Andhra Pradesh High Court, in its judgement dated the 15th September, 1959, in the case of Jupudi Sesharatnam *Vs.* Gift-tax Officer, Palacole (38 ITR 93), by the Kerala High Court judgement dated 29th August, 1961, in the case of Joseph *Vs.* Gift-tax Officer (45 ITR 66) and by the Madras High Court judgement dated 8th January, 1963 in the case of S. Dhandapani *Vs.* Additional Gift-tax Officer (49 ITR 712). As against these preponderantly favourable opinions, the only adverse decision was

that of the Mysore High Court, delivered on 22nd March, 1962 in the case of D. H. Nazareth *Vs.* Gift-tax Officer. This decision was, however, not accepted by the Department and an appeal was filed in the Supreme Court, which, as pointed out in paragraph 1.19 above, reversed the High Court decision.

1.21. During their examination of the Audit paragraph the Committee desired to know whether the departmental officials were under the impression that no gift-tax was leviable on gifts of agricultural land. The Member of the Central Board of Direct Taxes stated:

> "No, Sir. The Department has always held the view that there is no distinction between the gifts of agricultural land or any other property. This has been upheld by the authoritative decision of the Supreme Court in the case of D. H. Nazareth. There is on doubt about it."

1.22. The Committee desired to know whether the assessment in this case had since been revised and the tax recovered. In a note furnished to the Committee, the Department of Revenue & Insurance stated:

> "The matter is still under consideration and a further report will follow."

1.23. In paragraph 3.10 of their 50th Report (Fifth Lok Sabha), the Public Accounts Committee (1972-73) had, *inter alia,* observed that they had 'reasons to believe that the Board have not taken steps to ensure that all cases of gifts of agricultural land are brought to tax'. The Committee had, therefore, urged Government to 'issue strict instructions to lower formations and to devise measures' to ensure that there was no evasion of tax in this regard. A review of the position was also desired by the Committee with a view to ascertaining the extent of non-levy of tax on such gifts in the past and the results of such a review was to be reported to the Committee.

1.24. Reviewing the action taken by Government on the above recommendations, the Committee, in paragraphs 1.28 and 1.29 of their 103rd Report (Fifth Lok Sabha) had observed as follows:

> "1.28. The Committee note that the results of the review of all gifts of agricultural land exceeding value of Rs. 5,000 and registered during the months of September and October in the financial years 1969-70 and 1970-71, on the basis of the information collected from the registering authorities, except in West Bengal Charge, have revealed that out of

10,544 of such cases gift-tax proceedings have not been initiated in as many as 4,590 cases involving gifts of Rs. 3.15 crores and gift-tax of Rs. 16.90 lakhs. The sample survey restricted to two months only in two financial years has thus brought out that a large number of gifts of agricultural lands had not been subjected to gift tax which is indeed alarming. The Committee further note that the Board have subsequently ordered a complete review of cases registered during 1970-71 to 1972-73. As the time limit of 8 years is available under Section 16 (i) of the Gift Tax Act for assessing the escaped gifts, the Committee desire that the periods 1965-66 to 1969-70 should also be covered in the review. They further suggest that a target date should be fixed for the completion of the review which should not be beyond one year from now and action taken to finalise the assessments before they become time-barred, intimating the results to them."

"1.29. The Committee also note that after they examined the matter the Central Board of Direct Taxes had issued instructions in December 1971 emphasising the need for evolving a system for exchange of information with the State Government authorities which might be useful for gift tax in respect of agricultural lands. The Committee would like to know the system evolved in this respect."

1.25. Drawing attention to these recommendations, the Committee enquired into the results of review. The Member, Central Board of Direct Taxes replied in evidence:

"We carried out partial review of two months and the number of extracts taken in these months was 10,544. The number of cases where gift tax had already been paid was 5681; the number of cases where gift tax had not been paid was 4590 including some cases which were below the taxable limit. We found that the gift-tax paid was only Rs. 16.90 lakhs, whereas the total amount of gift was Rs. 3.15 crores. We have, therefore, ordered a full review in the charges for the years 1970-71, 1971-72 and 1972-73. We have had some indications that there are very large number of gifts, particularly in the mofussil. In fact, in Andhra Pradesh out of total number of 6140 gift tax returns, 4366 cases related to gifts of agricultural land."

1.26. Since the amounts involved were considerable, the Committee enquired whether the figure of Rs. 3.15 crores related to cases which were outstanding and in which no action had been initiated. The witness clarified that this amount related to 4,590 cases.

1.27. The Committee asked whether information in this regard had since been collected in respect of the West Bengal charge and how long this was expected to take. The witness replied:

> "This will involve taking extracts from the Registrar's office and that may take quite some time."

To another question whether any assessment of the time required for completing this work had been made by the Board, the witness replied:

> "We had asked for the reports to be sent every three months to keep us informed of what was happening."

1.28. The Committee were informed by Audit that in the instructions issued by the Central Board of Direct Taxes in circular No. GTI/58 (No. IV/1/2) dated 26th May, 1958, the Departmental Officers were required to gather information relating to transfer of immovable properties from registration offices, both in respect of agricultural and non-agricultural properties. This item of work was also to be repeated every year. Further, under the instructions of the Central Board of Direct Taxes dated 16th November 1964 (F. No. 9/4/64-GT), the Inspecting Assistant Commissioners were to ensure proper collection and utilisation of information from registration offices by exercising effective control over this work. Since these instructions already existed, even before the review was undertaken by the Central Board of Direct Taxes, at the instance of the Committee, the Committee desired to know the reasons for not putting this information to adequate use. The witness stated in evidence:

> "Perhaps there is no much work on the existing staff that they have not been able to give attention to it. So many surveys have to be carried out."

He added in this connection:

> "This is really a question of the workload of the staff. Some extracts have been taken, but as far as agricultural lands are concerned, these are in remote villages and places like that."

1.29. Since shortage of staff was not sufficient justification for not implementing important instructions of Government, the Committee enquired whether the Finance Ministry had been approached for the sanction of additional staff. The Finance Secretary replied:

"I don't think any specific request was made for staff."

1.30. Under Section 230A of the Income-tax Act, in respect of transfer of properties whose value exceeds Rs. 50,000, a certificate has to be obtained from the Income-tax Department. The Committee drew attention to this provision in the Act and pointed out that at least in respect of transfers of agricultural land valued at Rs. 50,000 and more, the information should be readily available with the Income-tax Department and that there would be no necessity to collect this information from the Registration Offices. The Member of the Central Board of Direct Taxes replied:

"The limit for gift tax was previously Rs. 10,000 but it has been reduced to Rs. 5,000. So, from Rs. 5,000 onwards the information has to be collected."

He added:

"As far as transfers of properties are concerned, if the value is over Rs. 50,000 they are supposed to get a certificate."

To another question whether the Department was readily in possession of information relating to transfers whose value exceeded Rs. 50,000, the witness replied.

"We have not got the information; we will try and get it."

He stated further:

"We have taken the powers on 1-10-1971 that gifts of agricultural land costing more than Rs. 50,000 should also be reported to the Income-tax Officers. Now, at least in respect of those cases we will see if the gift-tax has been levied."

1.31. A note subsequently furnished in this regard by the Department of Revenue & Insurance is reproduced below:

"The P.A.C. in the course of the meeting held last year in October 1972 made the following recommendations:

'A test check should be made of cases in which certificates under Section 230A have been issued and whether any transfers made as a result thereof were liable to gift-tax'.

Following this recommendation, the field officers were asked to undertake a sample study of the certificates issued under Section 230A to see how far the information was utilised for levy of gift-tax on some of the properties in respect of which the certificates were issued. The sample study brought to light about sixty cases of gift (including deemed gifts) in the charges of Lucknow, Andhra Pradesh, Madras, West Bengal, Bombay (Central) and Poona. This sample study covered certificates issued in respect of all properties.

Prior to 1-10-1971, a certificate under Section 230A was not required for registration of transfers of agricultural lands. If a specific review regarding the number of certificates issued under Section 230A relating to agricultural lands and how the information available in this regard was utilised by the Department for assessment of gift tax is required to be made it would have to be ordered afresh. If Public Accounts Committee so desire it will be done; this is for PAC's consideration in the context of their observations in the current meeting."

1.32. The Committee desired to know the machinery available with the Department for the valuation of agricultural lands. The Member of the Central Board of Direct Taxes stated:

"As far as agricultural land is concerned, it is not outside the Department. Where it comes under wealth-tax, we have set up a machinery of valuation of agricultural land also. These are based on yield and presumably on transfers also. There are so many factors which go into the question of valuation of agricultural land. There are also separate valuers for plantations, coffee plantations, tea gardens etc. There are two sets of valuers—Departmental valuers and authorised valuers."

1.33. To another question whether this machinery was in existence before the Supreme Court judgement, the witness replied:

"It is a comparatively recent one."

1.34. The Committee are concerned to note that despite the clear and unambiguous legal position uphold by the highest judiciary, regarding the liability to Gift Tax of gifts of agricultural land, action

had not been taken by the Gift Tax Officer in the present case where agricultural land valued at Rs. 1.32 lakhs was gifted by the assessee to her minor sons. This omission had resulted in the non-levy of Rs. 12,524. Though the error has been admitted, the question of recovering the tax is 'still under consideration'. The Committee cannot appreciate this delay in taking a decision in this straightforward case. Action to recover the tax due should be taken at once, if it has not been already done.

1.35. As early as August 1972, the Committee had, in paragraph 3.10 of their 50th Report (Fifth Lok Sabha), inter alia, recommended a review of the position relating to the levy of Gift Tax on gifts of agricultural land with a view to ascertaining the extent of non-levy of tax on such gifts in the past. A limited review of gifts of agricultural land exceeding the value of Rs. 5,000 registered during the months of September and October in 1969-70 and 1970-71, in all Commissioners' charges excluding West Bengal, had revealed that out of 10,544 cases of such gifts, Gift Tax proceedings had not been initiated in as many as 4,590 cases, involving gifts valued at Rs. 3.15 crores. This would indicate the extent to which the administration of the Gift Tax Act has been inadequate and defective. On the basis of this sample survey, the Central Board of Direct Taxes had also set in motion a complete review of such cases in all the Commissioners' charges for the years 1970-71 to 1972-73. As a time limit of 8 years was available under Section 16(i) of the Gift Tax Act for assessing gifts escaping tax, the Committee, in paragraph 1.28 of their 103rd Report (Fifth Lok Sabha) had wanted that the proposed review should also cover the period from 1965-66 to 1969-70, that the review should be completed within a period of one year and that action should be taken to finalise the assessments before they became time-barred.

1.36. The Committee regret that the results of the review and the action taken thereon have not yet been intimated. If the sample survey is any indication, the value of gifts of agricultural lands not subjected to tax may well run into crores of rupees. It is also likely that on account of the delay in completing the review, a large number of cases have become time-barred. The Committee disapprove of such indifference and desire that the review should be completed forthwith and immediate action taken thereon. Responsibility for the delays should also be fixed for appropriate action. The Committee would like an early report on these issues.

1.37. The Committee find that under the instructions issued as early as May 1958, the departmental officers were required to gather

information relating to the transfer of both agricultural and non-agricultural properties from the registration offices, and that this exercise was to be repeated annually. Further, in November 1964, the Inspecting Assistant Commissioners were also made specifically responsible for the proper collection and utilisation of this information. However, these instructions have been more honoured in the breach than in the observance. The Committee take a serious view of this lapse, particularly at the level of the Inspecting Assistant Commissioners who have apparently failed to do their duty. The Committee cannot accept the somewhat worn out plea that the officials operate under an excessive work-load. The responsibility of the Central Board of Direct Taxes does not end with issuing instructions without worrying over their honest implementation. The Committee would urge that the Central Board of Direct Taxes should evolve a system of periodical review of the implementation of the various instructions issued and evaluation of the impact of these instructions on tax administration.

1.38. The Committee also note that with effect from 1st October 1971, a certificate is required to be furnished from the Income-tax authorities, under Section 230A of the Income-tax Act. for registration of transfers of agricultural lands valued over Rs. 50.000. It is surprising that the Central Board of Direct Taxes does not even have information relating to such transfers which should be readily available with the Department. The Committee feel that it would be worthwhile to conduct a specific review of the certificates issued by the Income-tax Department relating to agricultural lands, under Section 230A of the Act so as to ascertain how the information available within the Department in this regard was utilised for the assessment and levy of Gift Tax. The Committee recommend that a detailed review in this regard should be undertaken forthwith and completed expeditiously and its outcome reported.

Audit paragraph

1.39. Under the Gift-tax Act, if a property is transferred otherwise than for adequate consideration the amount by which the market value of the property on the date of transfer exceeds the value of consideration shall be deemed to be a gift.

1.40. A private limited company transferred its holding of 500 shares to two individuals for a consideration of Rs 2.00.000 during the previous year corresponding to the assessment year 1970-71. The market value of the shares was determined in the income-tax assess-

ment of the assessee company at Rs. 3,52,000 and the difference of Rs. 1,52,000 was treated as capital gains. This difference which was a deemed gift under the Gift-tax Act, was however not subjected to Gift-tax which resulted in non-levy of tax of Rs. 15,600.

1.41. The Ministry have accepted the omission and have stated that action is being taken to tax the gift.

[Paragraph 48(iii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

1.42. Under the Income-tax Act when there is a transfer of capital asset for inadequate consideration with a view to avoiding or reducing capital gains tax, then the Income-tax Officer may adopt the fair market value of the asset as the value of consideration. Under the Gift-tax Act also, whenever a property is transferred for inadequate consideration, the difference between the market value of the property at the time of transfer and the actual consideration paid is to be treated as gift and subjected to tax. In cases where a transaction attracts both the Acts, both the capital gains tax and the gift tax are to be levied.

1.43. The Committee were informed by Audit that in this case, in the assessment year 1970-71, a company transferred 500 shares to two individuals for a consideration of Rs. 2 lakhs. The market value of the shares was determined in the income-tax assessment of the company at Rs. 3.52 lakhs and the difference subjected to capital gains tax. This difference of Rs. 1.52 lakhs should have also been treated as a gift and subjected to Gift-tax but that this was not done on the plea that because capital gains tax had been levied, no Gift-tax was leviable.

1.44. The Committee also learnt from Audit that in the circular (F. No. 9/4/64/GT), dated 16th November 1964, it was clarified that 'even if the excess of the fair market value over the value of consideration for the transfer of an asset is less than 15 per cent (so that it does not attract capital gains tax), such excess would nevertheless attract chargeability to gift tax'. In view of these clear instructions, the Committee desired to know how the Gift-tax Officer had held that since capital gains tax had been levied in this case, gift tax was not leviable. In a note furnished to the Committee, the Department of Revenue & Insurance stated:

> "Due to inadvertence, G.T. proceedings were not initiated immediately after the I.T. assessment was completed."

1.45. The Committee asked whether the correct legal position in this regard had been brought to the notice of the assessing officers. In a note, the Department of Revenue & Insurance replied:

> "Existing instructions cover the subject. However, the Board is considering the issue of general instructions that where provisions of Section 52 of the I.T. Act are involved, the Gift-tax must be levied on the deemed gift."

1.46. To another question whether the gift had now been assessed in this case and the tax due recovered, the Department replied:

> "The gift has now been assessed on 8-8-1973 raising a demand of Rs. 15,600. Regarding recovery of the additional demand intimation will be sent to the PAC Secretariat after report is received from the C.I.T. concerned."

1.47. This is a case of non-levy of Gift-tax amounting to Rs. 15,600 on the transfer, on inadequate consideration, of 500 shares by a company to two individuals. As against the consideration of Rs. 2 lakhs received for the transfer, the market value of the shares is found to have been determined at Rs. 3.52 lakhs in the income-tax assessment of the company. Though the difference between the market value and the actual consideration had been subjected to capital gains tax, proceedings had not been initiated to subject the difference to Gift Tax. This omission has taken place despite the clear legal position in this regard and the clarificatory instruction issued by the Central Board of Direct Taxes in November 1964. The Committee are unable to accept the plea of inadvertence put forth by the Central Board of Direct Taxes during evidence. The assessing officer appears to have taken a stand that no gift tax was leviable in this case because capital gains tax, under the Income-tax Act, had been levied. It is, therefore, evident that the assessing officer was unaware of the correct legal position in this regard. The Committee would like the Central Board of Direct Taxes to re-examine the circumstances in which this omission had taken place.

1.48. As it is not unlikely that similar mistakes in the levy of Gift Tax might have occurred in other cases, the Committee desire that a review of all such cases in which capital assets had been transferred for inadequate consideration during the past eight years should be conducted by the Central Board of Direct Taxes with a view to determining whether Gift Tax had been levied in these cases and taking all necessary action in the interest of revenue. The results of the review should be intimated to the Committee early.

1.49. The Committee note that the question of issuing instructions that where the provisions of Section 52 of the Income-tax Act are involved, Gift Tax must be levied on the deemed gift is under consideration of the Central Board of Direct Taxes. The Committee would like to know the decision in this regard.

1.50. The position relating to the recovery of the additional demand of Rs. 15,600 in the instant case should also be reported to the Committee early.

Audit paragraph

1.51. Under the Gift-tax Act 1958, grant of partner-ship or interest in property without adequate consideration amounts to gift.

1.52. An assessee converted his proprietary business into a partnership firm in April 1966 granting without adequate consideration 50 per cent of his interest in the firm to his children who were admitted as partners. Again, on 1st April 1968 the assessee made a further reduction in his share in the firm by 25 per cent in favour of the other partners. No action was, however, taken by the department to assess to tax the gifts involved in these transfers.

1.53. While accepting the omission the Ministry have intimated that the gift-tax of Rs. 8,221 has since been collected.

[Paragraph 48(iv) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

1.54. The Committee were informed by Audit that it had been subsequently reported by the Department of Revenue & Insurance that through the liability to gift Tax of the interest in the business foregone by the assessee in favour of his children had been upheld in appeal, the quantum of gifts had been reduced from Rs. 1,02,640 to Rs. 16,325, and that the Department had not accepted the appellate decision and had gone in for a second appeal.

1.55. The Committee desired to know whether the Department had brought the correct legal position in this regard to the notice of the assessing officers and whether any instructions had been issued that in cases where there was a conversion of proprietary business into partnership or where there was a realignment of shares, the assessing officers should examine whether the transaction amounted to gift. In a note furnished to the Committee, the Department of Revenue & Insurance stated:

"The Board's instruction No. 87 dated 29-7-1969 clarifies the correct position of law."

The instructions (No. 87 dated 29th July 1969) issued in this regard, a copy of which was furnished to the Committee by the Department of Revenue & Insurance, and the judgement of the Madras High Court dated 5th March 1969 in the case of the Commissioner of Gift-tax *Vs.* V.A.M. Ayya Nadar, Virudhunagar, referred to therein are reproduced in Appendices II & III.

1.56. Paragraph 3 of the instructions dated 29th July 1969, outlining the procedure for the valuation of the right to share in the profits of a firm, is reproduced below :

"The Board are taking necessary steps to frame rules for valuation of the right to share in the profits of a firm. Pending finalisation of such rules, the Gift-tax Officers should value the right on the same basis on which goodwill is at present being valued."

With reference to the valuation of this right on the same basis as the valuation of goodwill which in other words, means that the value of a gift of the interest in the firm would be the value of the donor partner's interest in the goodwill, the Committee were informed by Audit that the correct position in this regard had been explained by the Madras High Court in the case of Commissioner of Gift-tax *Vs.* K.P.S.V. Duraiswamy Nadar (91 ITR 473). According to the decision of the High Court in this case, the value of such interest has been explained to include, apart from goodwill, the interest of the partner in the properties of the firm after settling the debts, advances and capital.

1.57. The Committee were also informed by Audit that the Central Board of Direct Taxes were contemplating framing of rules for the valuation of such interests, even in 1969.

1.58. As regards the latest position of the second appeal filed by the Department in the case commented upon in the Audit paragraph, enquired into by the Committee, the Department of Revenue & Insuranee stated in a note :

"The second appeal filed by the Department is still pending before the Tribunal."

1.59. This is a case where the Gift Tax Officer omitted to treat as a gift the interest in the business foregone by the assessee in two transactions in favour of his children. This omission resulted in

the non-levy of Gift Tax of Rs. 8,221. The Committee note that though the liability to Gift Tax of the interest foregone by the assessee had been upheld in appeal, the value of the gifts has been reduced from Rs. 1.03 lakhs to Rs. 0.16 lakh and that the Department has preferred an appeal before the Tribunal against this reduction. The Committee would like to know the outcome of the appeal which ought to have been disposed of by now by the Tribunal.

1.60. The reduction of the value of the gifts, on appeal, in this case, raises the general question of the valuation of the right to share in the profits of a firm for purposes of levy of Gift Tax. The Committee note that according to the instructions issued in this behalf by the Central Board of Direct Taxes, in July 1969, pending the finalisation of rules for valuation of such a right, the Gift Tax Officers are required to value the right on the same basis on which goodwill is valued at present. However, the Committee find from a judgement of the Madras High Court in the case of Commissioner of Gift Tax Vs. K.P.S.V. Duraiswamy Nadar (91 ITR 473) that in the court's view the value of such interest should include, apart from goodwill, the interest of the partner in the properties of the firm after settling the debts, advances and capital. The Committee, therefore, desire that the instructions of July 1969 be re-examined and amended in the light of the decision of the Madras High Court.

1.61. The Committee would also like to be apprised of the progress made in framing rules for the valuation of the right to share in the profits of a firm, which was stated to be under consideration as early as 1969. This long pending exercise has, it is expected, reached finality.

Audit paragraph

1.62. For the purpose of Gift-tax Act, transfer of property includes creation of trust in property and if a trust is created otherwise than for adequate consideration, it attracts gift-tax. During the previous year relevant to assessment year 1970-71, a Registered Firm and its two partners transferred properties of the aggregate value of Rs. 1,47,900 to a trust created for the benefit of the partners' children and this gift was duly brought to tax. On appeal, however, the assessments were set aside on the ground that the status adopted for the purpose of gift-tax 'Hindu undivided family,' whereas the status adopted in the income-tax assessments was 'individual'. In the revised assessments the Gift-tax Officers held that the status of the donors was that of Hindu undivided family and as such no gift tax was leviable as the beneficiaries of the gifts

were only the members of the family. The gift made by the firm was also held to be not taxable on the ground that transfer of joint family property to the coparceners did not amount to a gift.

1.63. It was pointed out that as the transfer had been made not to the members of the joint family but to the trust which is a separate legal entity, it could not be treated as a case of transfer of property by Hindu undivided family to its coparceners.

1.64. The Ministry have accepted the omission and have intimated that a demand of Rs. 22,768 has been raised

[Paragraph 48(v) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

Background information

1.65. Gift tax is attracted whenever there is a transfer of property without consideration in money or money's worth. Under Section 2(xxiv) of the Gift Tax Act, 1958, 'Transfer of property' means 'any disposition, conveyance, assignment settlement, delivery, payment or other alienation of property' and without limiting the generality of the foregoing, includes "the creation of a trust in property.

1.66. Thus, a Gift may be made directly to the donee or indirectly through the medium of a trust. When trust is created and property is transferred to the trustee for the benefit of persons other than the donor himself, the value of the entire transferred property is a taxable gift. Even when the donor himself is the sole trustee, it is a case of transfer of property.

1.67. Hindu Law, however, permits reasonable gifts by the Kartha of a Hindu Undivided Family to members of the family. It was held by the Madras High Court in a case (49 ITR 817) that since the sons of the Kartha of a Hindu Undivided Family, being coparceners, are also the owners of property, the transfer of the property of a Hindu Undivided Family by the Kartha to his sons does not constitute a gift. In this case, the High Court had held that there could be no gift 'if a person purports to transfer property which in reality belongs to the transferee'. This judgement had been misapplied by the Gift-tax Officer in the present case reported in the Audit paragraph.

1.68. Explaining the circumstances in which Gift Tax had not been levied in this case, the Member of the Central Board of Direct Taxes stated during evidence :

"The point is that I do not think it is the question of beneficiaries, as this is not a transfer directly to the Members of the family, but to a separate Trust and therefore gift is there. Though the benefits are derived by the members of the same family, that does not make much difference. The view taken by the officer, concerned was of an erroneous interpretation of the law."

1.69. In reply to a question whether any other case of this nature had come to the notice of the Department, involving transfers of property by Hindu Undivided Families to trusts, which apparently was a handy device adopted to escape taxation, the witness stated:

"This is the only case of transfer by a HUF through the medium of a trust. There are plenty of cases of direct transfers."

The Finance Secretary stated in this connection:

"This is a peculiar case where the transferer and the beneficiary are the same. That is the point which is being contested—that the members of the family are the beneficiaries of the Trust."

1.70. Clarifying, at the instance of the Committee, the grounds on which the original assessment of the Gift Tax Officer was set aside, on appeal, the Member of the Central Board of Direct Taxes stated :

"I think the AAC has set aside the assessment and it was ordered that the correct status of the assessee should be found out, because he had shown the status as individual in the income-tax returns."

He added :

"It was found that this was an ancestral property and therefore the Assistant Commissioner had said that 'a very material issue which has to be decided is the status of partners. The assessments are therefore set aside'."

1.71. The Committee desired to know whether the demand in this case had since been collected. The witness stated:

> "The demand has partly been collected and the balance is about Rs. 16,000. This is being stayed by the Income-tax Tribunal; it is in appeal."

1.72. The Committee are concerned to note that because of an erroneous application of the law relating to the transfer of property by the Kartha of a Hindu Undivided Family to his sons who, as coparceners, are also the owners of the property, to a case of transfer of property to a trust, gifts aggregating Rs. 1.48 lakhs had escaped tax, resulting in a short-levy of Gift Tax of Rs. 22,768. Since the transfer of properties in the present case was made by the Hindu Undivided Family to a trust, which is a separate legal entity, and not directly to the members of the joint family, it is evident that it could not be treated as a case of transfer of property by a Hindu Undivided Family to its coparceners, and that the judgement of the Madras High Court, reported in 49 ITR 817, is not applicable in this case. Since the assessing officers appear to be unaware of the correct legal position in this regard, the Committee desire that this should be clarified correctly to the officers of the Department.

1.73. The Committee note that the tax demand in this case has been collected only partly and that recovery of about Rs. 16,000 has been stayed by the Appellate Tribunal. The Committee trust that the Tribunal proceedings have been completed by now and would like to be informed of its outcome and the action taken to recover the balance due.

CHAPTER II

NON-LEVY OF GIFT TAX

Audit paragraph

2.1. Gift-tax is leviable on transfer of property made without consideration in money or money's worth. The term 'transfer of property' includes any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person. As held by Supreme Court in 1963 (49 ITR 107) if two transfers are interconnected or are parts of the same transaction in such a way that it can be said that the circuitous method has been adopted as a device to evade tax, they can be regarded as a single transaction.

2.2. A non-resident individual entered into a collaboration agreement with a company in India in 1963. Under the agreement he was to supply imported machinery worth Rs. 5.50 lakhs to be provided out of his funds held abroad, and in consideration for this supply the Indian company was to issue shares worth Rs. 5.50 lakhs to his nominees who are permanently resident in India. An order for the machinery was placed by the non-resident individual with the manufacturers in West Germany. However, when the machinery was in transit on high seas, he gifted it on 23rd October, 1964 to his two sons and two nephews by executing a declaration of gift at Dar-Es-Salaam; the gift was made by delivery of the shipping documents to the constituted attorney of the donees and was accepted by the attorney on their behalf. The documents were then sent by post to the donees on 20th April, 1965. On the machinery having been supplied, the company issued shares worth Rs. 5.50 lakhs to the donees. Though the transaction which resulted in the acquisition of shares by the nominees without any consideration, was completed in India, it was not subjected to gift-tax on the ground that as the subject matter of gift (machinery) was situated outside India at the time of gift, no tax was leviable under Section 5(1) (ii) of the Gift-tax Act, 1958. The irregular exemption resulted non-levy of tax of Rs. 1,09,500.

2.3. The Ministry have stated that in their opinion the gift being of movable property situated outside India, and made by a non-resident person who was not a citizen of India, the exemption had been correctly allowed.

[Paragraph 64(i) of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government Revenue Receipts, Volume II-Direct Taxes]

2.4. The Committee desired to know the terms of the agreement relating to the supply of the machinery and issue of shares and by whom the machinery was to be supplied. The Department of Revenue and Insurance, in a note submitted to the Committee, stated:

"The terms regarding supply of machinery are contained in condition 3 of the agreement which reads as under:—

'The entire plant and machinery to be imported for the project which was originally estimated to cost Rs. 4,98,000/- c.i.f., Bombay, and which is now EXPECTED to cost Rs. 5,50,000/- c.i.f., Bombay, will be supplied by the said Murarji and foreign exchange required for the import of the said plant and machinery will be provided by the said Murarji out of his funds held abroad by him.'

The terms regarding issue of shares are contained in condition 5 of the agreement which reads as under:—

"The said company shall issue its shares to person or persons nominated by the said Murarji and in the name or names stated by him towards consideration of the said plant and machinery supplied by the said Murarji to the extent of the c.i.f., cost thereof. The said shares shall be issued by the company to the said nominees against the receipt of documents of each consignment of the said plant and machinery as fully paid.'

The machinery was to be supplied by Shri Murarji, the foreign supplier."

2.5. The Committee learnt from Audit that this was approved by the Government of India in their letters dated 25th April, 1963 and 1st August, 1964.

2.6. The Committee asked as to what was the *locus standi* of the original party, when the supply was made not by the party to the agreement but by another party. The Committee also enquired whether, the Company had paid any consideration to the original party to the contract or to the then owner of the machinery, when they issued shares on receipt of the machinery. The Committee also wanted to know the capacity in which the donees had received the shares, that is whether as the representatives of the foreign supplier or the then owners of the machinery. The Ministry, in a note, stated:

> "Shri Murarji had undertaken to supply the machinery. He fulfilled this contract through his nominees *viz.* sons and nephews to whom he had gifted the machinery. When the company issued shares they paid consideration to the then owners of the machinery. They also discharged their obligation under the agreement to issue shares to the nominees of Shri Murarji. The donees received the shares as suppliers of the machinery."

2.7. The Committee were given to understand by Audit that the Ministry, after consulting the Ministry of Law had not accepted the objection on the ground that as the machinery was gifted when it was abroad and the transaction was completed when it was still on high seas, it was exempt from tax and that it was also contended by the Ministry that the gift of the machinery and issue of the shares were separate transactions. The Ministry of Law, however, conceded that the transactions in this case were part of a design by which the donor intended the donees to get the shares in the Company without the liability to gift tax but stated that the 'trick adopted by the assessee was in fact not covered by the statute'.

2.8. According to Audit, the Ministry's contention that the gift of machinery and issue of shares are separate transactions was not acceptable, as the foreign supplier in his letter of 24th October, 1964, intimating that he was sending the documents through his nominees to whom he had gifted the same, had desired that the shares be issued to the nominees "in terms of the agreement". He had also directed that "the said shares are to be issued to the said four parties in equal proportion as absolute owners thereof. . . ." This, according to Audit, clearly indicated that he was himself treating the gift of the machinery, the supply of the machinery and the issue of shares as a single transaction.

2.9. Drawing attention to the letter dated 24th October, 1964 written by the foreign supplier, wherein he had asked the company to issue the shares to his nominees in terms of the agreement and the shares were to be issued to them as absolute owners thereof, the Committee enquired whether this did not indicate that the foreign supplier himself was treating the supply of machinery, the gift of machinery and the issue of shares as a single transaction. The Ministry, in a note stated:

> "The purport of the letter was to inform the company that Shri Murarji was performing his contract to supply machinery to the company through his nominees *viz.* sons and nephews to whom he had gifted the machinery."

2.10. In the absence of this letter, the Committee desired to know in what capacity the nominees would have received the shares. The Committee also enquired whether this letter had not vested the nominees with full ownership of shares instead of their being only holders in a representative capacity, if so, whether it did amount to a gift of shares by the foreign supplier. The Ministry, in a note, stated:

> "The purport of the letter appears to be only to apprise the company of the position regarding the gift of machinery to the sons and nephews. The letter did not vest the donees with ownership of shares. So, there was no question of gift of shares by the foreign supplier. The donees received the shares from the company towards consideration for the machinery supplied to the company."

2.11. The Committee were also informed by Audit that according to the Ministry of Law "the only possible aspect of the transaction which might be said to amount to transfer of property in India is the nomination of the donees as the persons entitled to the benefit. But it is doubtful whether this by itself is capable of having a value so as to attract liability to tax."

2.12. In view of the above, the Committee enquired whether it was implied that the donees were only entitled to the benefit of the dividends, the ownership of shares being that of the foreign supplier and if so, whether these shares had been included in the wealth of the foreign supplier. The Ministry, in a note, stated:

> "The advice of the Ministry of Law does not imply that the donees are only entitled to the benefit of the dividends,

the ownership of shares being that of the foreign supplier. Therefore, the question of inclusion of the value of the shares in the wealth of the foreign supplier does not arise."

2.13. In an Income Tax case, (M/s. Kothari and Sons, reported in 49 ITR-107), the Supreme Court had observed as follows:

> "A chain of transfers if not comprehended by the word 'indirectly' would easily defeat the object of the law, which is to tax the income of the wife in the hands of the husband, if the income of the wife arises to her from assets transferred by the husband....If the two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that a circuitous method has been adopted as a device to evade implications of this section, the case will fall within the section. In this case, the device is palpable and the two transactions are so intimately connected they cannot but be regarded as a single transaction.... An intimate connection between the two transactions, which were *prima facie* separate, is thus clearly established and they attract the words of the section, namely, "transferred directly or indirectly to wife."

Thus having found that it was a single transaction, the Supreme Court proceeded to observe:

> "It is reasonable to infer from the facts that before the respective husbands paid the amounts, they looked up the law and found that the income of the property would still be regarded as their own income if they transferred any assets to their wives. They hit upon the expedient that the son should transfer the assets to his mother, and the father-in-law, to the daughter-in-law, obviouly failing to appreciate that the word 'indirectly' is meant to cover such tricks".

2.14. The Ministry of Finance, at the instance of the Committee, furnished a note containing the facts of this case, which is reproduced below:

> "Messrs, Kothari and Sons is a firm of stock brokers. In 1947, the firm consisted of C. M. Kothari and his two sons, D. C. Kothari and H. C. Kothari. Their respective shares

were 6:5:5. On October 7, 1947, the firm entered into an agreement for the purchase of a house in Sterling Road, Madras, for Rs. 90,000 and the same day paid an advance of Rs. 5,000/-. This sum was debited in the books of the firm to the accounts of the three partners as follows:—

C. M. Kothari	Rs. 1800
D. C. Kothari	Rs. 1600
H. C. Kothari	Rs. 1600
TOTAL .	Rs. 5000

The transaction was completed on October 24, 1947. The sale deed, however, was taken in the names of Mrs. C. M. Kothari, Mrs. D. C. Kothari and H. C. Kothari. The balance of the consideration was paid to the vendors by the firm. Each of the two ladies paid to the firm a cheque of Rs. 28,333-5-4. Mrs. C. M. Kothari further paid a cheque of Rs. 1,800 and Mrs. D. C. Kothari paid another cheque of Rs. 1,600. Thus, the two ladies paid one-third share of Rs. 85,000 and the amounts which were respectively paid by their husbands as part of the earnest money. H. C. Kothari was debited with a further sum of Rs. 28,333-5-4. In this way, Mrs. C. M. Kothari paid Rs. 200 more than the other two, because her husband had previously paid Rs. 200 more than his sons. The share of the three vendees was, however, shown to be one-third each.

The ladies issued the cheques on their accounts into which were paid by the firm certain amounts by cheques. Into Mrs. C. M. Kothari's account was paid an amount of Rs. 27,000 which was debited on October 24, 1947 to D. C. Kothari. It was stated to be a birthday gift by him to his mother. On November 13, 1947, another amount of Rs. 3,000/- was paid into Mrs. C. M. Kothari's account which was debited to the account of D. C. Kothari as a gift by him to his mother for Diwali. Similarly, on November 13, 1947, Mrs. D. C. Kothari's account with the bank was credited with a sum of Rs. 30,000 by a cheque issued by the firm. This was debited to the account of C. M. Kothari and was shown as a gift by him to his father-in-law. In this way, both the ladies received from the firm Rs. 30,000 which was the exact one-third share of the consideration of Rs. 90,000 but the amount was not paid

by their respective husbands, but by the son in the one case, and the father-in-law, in the other."

The question was whether income arising to Mrs. C. and Mrs. D from the house arose out of assets transferred indirectly to them by C and D respectively and could, therefore, be included in the total incomes of C and D under Section 16(3)(a)(iii) of the Income-tax Act, 1922."

2.15. In this case, the Committee are concerned to note that the assessee, a non-resident citizen of India, had adopted an ingenious method to bestow on his nominees, who are permanently resident in India, the gift of shares worth Rs. 5.50 lakhs while, at the same time, avoiding the liability to Gift Tax. It is clear, as the Ministry of Law concedes, that the various transactions in this case were part of a well-planned design by which the donor intended the donees to acquire the shares in the company without any consideration and without liability to Gift Tax, which would have amounted to Rs. 1.10 lakhs. There can hardly be two opinions that there has been an indirect transfer of property. From the evidence available before the Committee, it would appear that after placing an order for the supply of machinery with the German manufacturers, the foreign supplier, the donor of the shares in this case, and his nominees looked up the law and found that the issue of shares to the nominees against the machinery supplied by the non-resident donor would amount to a taxable gift and they, therefore, hit upon the expedient that instead of the donor himself supplying the machinery, it should be supplied by the donees as their own property—the donees having become the owners by virtue of a gift completed on the high seas. In essence however, the transaction remained the same, namely, that the foreign donor would supply the machinery and his nominees would acquire the shares.

2.16. The Committee find that the Ministry of Law have held the view that, in the present case, 'the trick adopted by the assessee is not covered by the statute'. The contention of the Ministry that there were two transactions, one of gift of machinery on the high seas and the other of issue of shares, however, does not appear to be correct since the foreign donor himself, in his letter dated 24th October 1964, had treated the gift of machinery, the supply of machinery and the issue of shares as a single transaction. It would appear from this letter that despite the gift of machinery on the high seas, the shares in pursuance of the agreement would have been issued to the nominees only as nominees of the donor and it was this

letter which made them the absolute owners of the shares. If it is accepted that the entire transaction was a single, continuous one, then the rationale of the Supreme Court decision in Kothari's case would equally apply to this case also, since prima facie, the transactions are inter-connected as parts of the same transaction, and only a circuitous method has been adopted as a device to avoid tax. The legal niceties of the case notwithstanding, the Committee consider that it would be worthwhile to examine the entire case afresh in the light of the decision of the Supreme Court. The Committee would await the outcome of such review.

2.17. The device adopted by the assessee in this case should also serve as an eye-opener to Government. Since there has undoubtedly been an avoidance of tax liability, the Committee desire that the existing provisions of the Gift Tax Act are reviewed carefully and suitable remedial measures taken to ensure that such devious method of depriving Government of its dues are prevented. The Act should be amended suitably to safeguard against the exploitation of probable legal loopholes.

CHAPTER III

INCORRECT EXEMPTION OF DONATION MADE TO POLITICAL PARTIES

Audit paragraph

3.1. A case was reported in para 63(b)(ii)(4) of the Audit Report, 1969-70, where no tax was levied on a gift made to a political party. A similar case was noticed during the period under review.

3.2. In the case of a company for the assessment years 1962-63 and 1963-64 donations totalling Rs. 2,11,801 made to a political party were not subjected to gift-tax and were treated as donations made for bonafide business purposes. The omission resulted in non-levy of tax of Rs. 10,120.

[Paragraph 49 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

3.3. All transfers of property which are made otherwise than for adequate consideration attract the levy of gift-tax. However, under Section 5(1)(xiv) of Gift-tax Act, 1958 gift-tax is not leviable in respect of gifts made by a person in the course of carrying on a business, profession or vocation to the extent to which the gift is proved to the satisfaction of the Gift Tax Officer to have been made 'bona fide' for the purpose of such business, profession or vocation. The criterion for exemption from Gift-tax, therefore, is whether the gift was made "in the course of carrying on the business, profession or vocation" and was for the purpose of the business, profession, vocation etc.

3.4. Donations or contributions made by companies to political parties are taxable gifts as they are not made for the purpose of business and are merely voluntary payments without consideration in money or money's worth.

3.5. The Committee were informed by Audit that the Central Board of Direct Taxes had issued instructions in 1960 that such contributions, if made on the authority of a clause in the memoran-

dum/Articles of Association were not taxable because they are held to have been made in the course of carrying on the business . Explaining the circumstances in which these instructions were issued, when the Committee pointed out that contributions to political parties did not satisfy the conditions laid down in Section 5(i)(xiv) of the Gift Tax Act, 1958, the Finance Secretary stated in evidence:

> "It went to the High Court and they also held in one of such cases, *viz.* that of the Tata Iron and Steel Co. Ltd., which went up to the Bombay High Court (*vide* Company Cases Vol. XXVII, p. 609) that the alteration made by the company was an alteration aimed to enable the company to carry out its business more efficiently and economically. Therefore, this view was taken."

3.6. When the Committee pointed out that this decision of the Bombay High Court had been given under the Companies Act and not under the taxation law, the witness replied:

> "As I said, there was a mistaken view taken."

3.7. The Committee also learnt from Audit that the Board's instructions of 1960 were not revised, despite the fact that various High Courts had held that for a payment to be treated as being for the purpose of business, there must be a nexus between the payment and the business and that these instructions were withdrawn only on 9th June, 1972 after Audit brought a case of non-levy of Gift Tax on a donation made by a company to a political party to the notice of the Public Accounts Committee through the Audit Report for the year 1969-70.

3.8. As pointed out in the Audit paragraph under examination, paragraph 63(b)(ii)(4) of the Report of the Comptroller and Auditor General of India on Revenue Receipts 1969-70 had reported a case where no tax was levied on a gift made to a political party. Dealing with this case in their 50th Report (Fifth Lok Sabha), the Committee in paragraph 3.18 of the Report, had, *inter-alia*, recommended as follows:

> "Incidentally, the Committee find that the Board had issued instructions in January 1960 that in the cases where a

gift to a political party was made by a company under the authority of a specific clause in the Memorandum and Articles of Association of the company, the gift had to be held as having been made in the course of carrying on the business of the company and exempted from gift-tax. Section 293(A) of the Companies Act, 1956 inserted in 1969, however, prohibits contributions to political parties by a company. Only after the matter was taken up by the Committee with the Ministry in February 1972, revised instructions were issued in June 1972 taking into account the amendment to the Companies Act as well as the decisions of High Courts holding that donations paid to a political party are not allowable as a business expenditure. The Committee do not appreciate this delay. According to the revised instructions in all cases in which action was not taken to bring such donations to gift tax on the basis of earlier instructions, proceedings should be initiated under the Gift Tax Act. The Committee would await a report on the action taken in this regard."

3.9. In pursuance of this recommendation, the Central Board of Direct Taxes had ordered a review of all cases in which action was not taken to levy Gift Tax on donations to political parties on 1st January, 1973. Commenting on the action taken by Government in this regard, the Committee, in paragraph 1.33 of their 103rd Report (Fifth Lok Sabha), had observed:

"The Committee find that a review of the gift tax cases involving contributions to political parties by companies, as suggested by them, has disclosed that in 34 cases gift tax proceedings were not initiated. On the basis of the revised instructions issued in June 1972 after the Committee had taken up the matter, action had been taken in 23 cases involving contributions of Rs. 41.92 lakhs. This is a serious matter since the amount involved appears large and the perfunctory attitude of the administration even after the change in the law as a sequel to a country-wise debate, is deplorable. The Committee would like to know the action taken in the remaining 11 cases and the amount of contributions involved."

3.10. The Committee drew attention to this recommendation of theirs and desired to know how soon the action pending in the re-

maining 11 cases would be completed. The Member of the Central Board of Direct Taxes stated in evidence:

"I will not be able to say."

When the Committee pointed out that these cases were rather old, the witness replied:

"We will ask them to finish these cases early."

Subsequently, the Department of Revenue & Insurance in their D.O. letter dated 1st December 1973, informed the Committee that necessary instructions were being issued to the Commissioners for getting the gift-tax proceedings in respect of donations to political parties expedited.

3.11. The Committee enquired whether the donations made to the political party by the company referred to in the present case had since been assessed to tax and the tax collected. In a note furnished to the Committee in this regard, the Department of Revenue & Insurance replied:

> "Time for action u/s 16(1) for the assessment year 1962-63 had expired before the issue of revised instructions or even before the date of audit in this case. The demand of Rs. 2,672/- raised for the assessment year 1963-64 has since been collected."

3.12. In paragraph 63(b)(ii)(4) of the Report of the Comptroller & Auditor General of India for the year 1969-70, Central Government (Civil), Revenue Receipts, a case had been reported where no tax was levied on a gift made to a political party. This case had been dealt with by the Committee in paragraphs 3.17 tnd 3.19 of their 50th Report (Fifth Lok Sabha) wherein the Committee had, inter alia, **desired that in all cases in which action was not taken to bring such donations to political parties to gift-tax, on the basis of the earlier instructions of 1960 of the Central Board of Direct Taxes, proceedings should be initiated under the Gift Tax Act according to the revised instructions issued in this regard in June 1972. This case, brought to the notice of the Committee in the Audit Report for 1971-72, is one more instance of incorrect exemption from Gift Tax of donations made to political parties by a mistaken application, by way of executive instructions, of a provision in the Companies Act, 1956, which treated gifts made by a company to a political party, under the authority of a specific clause in the Memorandum and Articles of Association of the Company, as having been made in the course of carrying on the business of the company. The Com-**

mittee regret that this mistaken view should persist for over a decade, from 1960 to 1972, despite the fact that various High Courts had held, in the meantime, that for a payment to be treated as being for the purpose of business, there must be a nexus between the payment and the business. As early as April 1966, the Allahabad High Court held, in the case of J. K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Commissioner of Income-tax Uttar Pradesh (72 ITR 813), that 'when there is no direct nexus between the business of the company and the contribution, it appears to be impossible to hold that the assessee company discharged burden of proof to show that this expenditure was wholly and exclusively for the purpose of business'. Again, in the case of Indian Steel & Wire Products Ltd. (69 ITR 379) the Calcutta High Court, in its judgement dated 3rd July 1967, held that the payment of donation to a political party was not an expenditure incurred solely or exclusively for the purpose of the business and observed: 'We are not prepared to proceed on the assumption that all contributions to all political funds must always be presumed to be commercially expedient.' Besides, Section 293(A) of the Companies Act, 1956, which was inserted in 1969, also prohibits contributions to political parties by a company.

3.13. The Committee find it strange that the Central Board of Direct Taxes should have waited till June 1972 to revise their earlier instructions of 1960. As a result of this peculiar delay time for rectificatory action in the present case, under Section 16(1) of the Gift Tax Act, for the assessment year 1962-63 had expired and only a [illegible] of Rs. 2,672 for the assessment year 1963-64, out of the total demand of Rs. 10,120 for the two years, could be collected. It is not unlikely that other cases might have also become time-barred on account of such delay. The Committee would like to know the reasons for it and also how far officials in the higher echelons of the Administration have been found to be remiss in safeguarding the revenues of the State. The Central Board of Direct Taxes should, in any case, review periodically the correctness and legality of the various instructions issued by it from time to time, and devise a suitable machinery for this purpose.

3.14. The Committee are perturbed to learn that though a review of the gift-tax assessments involving contributions to political parties, as suggested by them in August 1972, had disclosed that Gift-tax proceedings had not been initiated in 3 cases, action so far has been taken only in 23 of them, involving gifts amounting to Rs. 41.92 lakhs, while action is still pending in the other 11 cases. In paragraph 1.33 of their 103rd Report, presented on 9th April 1974, the Committee had deplored the 'perfunctory attitude' of the ad-

ministration in this regard and had enquired into the action taken in these 11 cases and the quantum of contributions involved therein. The Committee still await the information which is somewhat overdue.

3.15. From the information furnished by the Department of Revenue & Insurance in November 1973, the Committee find that out of 8,973 cases reviewed, Gift tax proceedings had been initiated in all but a mere 34 cases. The Committee consider this rather strange since in an overwhelming majority of the cases, the Board's own instructions of 1960 appear to have not been followed by the assessing officers. That the Board's instructions were disregarded except only in a negligible percentage of the cases reviewed, is puzzling. The Committee would like to know the reasons for this state of affairs.

CHAPTER IV

UNDER-ASSESSMENT DUE TO INCORRECT VALUATION OF SHARES

Audit paragraph

4.1. In the previous year relevant to the assessment year 1963-64 an assessee transferred certain shares without adequate consideration. The Gift-tax Officer valued the gift on the basis of break-up value method but on appeal it was held that the shares should be valued on the same basis as was adopted for wealth-tax assessment. It was, however, noticed that the value of equity shares of two companies, which had not declared dividends for six years or more, was taken at 65 per cent of the break-up value as against 75 per cent prescribed under the Wealth-tax Rules, due to a printing error in the Wealth-tax Manual of the department. This resulted in undervaluation of gift to the extent of Rs. 6,57,233.

4.2. The Ministry have accepted the mistake and have intimated that additional demand of Rs. 2.44,716 has been raised. Report of recovery is awaited.

[Paragraph 50 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

Background Information

4.3. Under Section 6(1) of the Gift-tax Act, 1958, the value of any property, other than cash, transferred by way of gift shall be estimated to be the price which, in the opinion of the Gift-tax Officer, it would fetch if sold in the open market on the date on which the gift was made. Similar provisions for valuation exist in Section 36 of the Estate Duty Act and Section 7 of the Wealth Tax Act. The Gift Tax Officer would have no difficulty in determining the value of shares which are quoted in recognised stock exchanges as the market value of the shares on the day of the gift would be readily available. However, in respect of shares which are not quoted on the stock exchange, their value has to be estimated by the Department. The Committee were informed by Audit that, under executive instructions issued by the Central Board of Direct Taxes, the value of unquoted equity shares is to be deter-

mined on the basis of what is known as the 'break-up value method' and is arrived at as the surplus of the assets over liabilities divided by the paid up equity capital.

4.4. The Committee further learnt from Audit that this method of valuation was being adopted both for Gift Tax and Wealth Tax assessments. However, the Wealth Tax Act was amended from 1st April 1965 (assessment year 1965-66), empowering the Board to frame statutory rules for the valuation of assets. These Rules were promulgated on 6th October, 1967 and, being prospective in effect, were applicable to all assessments from assessment year 1965-66 onwards which were pending on 6th October 1967. This legal position was also clarified by the Central Board of Direct Taxes in their circular dated 2nd November, 1966 (No. CBDT 2/65-WT), with reference to a similar question of valuation of business assets, rules for which were framed on 3rd November, 1965. The circular, *inter alia,* reads as under:

> "The Board agree that the Wealth-tax (Second Amendment) Rules 1965 will apply only to those assessments for 1965-66 which are completed on or after 4-11-1965, the date on which the Rules were published in the Gazette of India."

4.5. The essential difference between the original break-up value method and the method as laid down in the Wealth-tax Rules is that whereas under the original method the full break-up value of the shares was to be adopted, under the statutory Rules, the value as arrived at by the usual break-up method is to be discounted generally by 15 per cent in all cases and by further discounts depending on the number of years for which the company had not declared dividends. The varying rates of discounts are as follows:

No. of accounting year ending on the valuation date for which no dividend has been declared	Market value	Effective discount
Three years	82½% of the break-up value	17½ %
Four years	80% of the break-up value	20%
Five years	77½% of the break-up value	22½%
Six years and above	75% of the break-up value	25%

4.6. No such discount was, however, admissible under executive instructions. Normally, the rules framed under one Act have no application while determining a similar question under another Act. The Committee were, however, informed by Audit that the Central

Board of Direct Taxes issued instructions on 26th March 1968 (Circular No. 1-D/GT of 1968) that for the purpose of Gift-tax also, the discounted break-up value method should be adopted and that the market value of an asset should be the same as determined for Wealth-tax.

4.7. The Committee also learnt from Audit that though the effective break-up values to be adopted, under the revised Rules, were correctly indicated in the notification issued in this regard and also in the departmental circulars, yet in the Manual published by the Department, the figure of 75 per cent came to be erroneously printed as 65 per cent which was not noticed by the departmental authorities. Thus, in cases where the departmental officers acted on the Manual, the discounted break-up value came to be under-assessed by 10 per cent, by taking the effective discount as 35 per cent instead of 25 per cent.

4.8. In the present case reported by Audit, the value originally adopted by the Gift Tax Officer was the full break-up value. The Appellate Assistant Commissioner, however, allowed relief and ordered that the discounted break-up value, as per the latest executive instructions, be adopted. While working out this discounted break-up value, the Gift Tax Officer took the incorrect figure of 65 per cent as printed in the Manual, instead of the correct figure of 75 per cent which resulted in the under-assessment of the value of the gift by Rs. 6,57,233 and consequential short-levy of tax of Rs. 2,44,716.

4.9. The Committee learnt from Audit that this case had been assessed in a Central Circle, which is normally manned by senior, experienced officers. In these circumstances, the Committee desired to know, during evidence, how the mistake had occurred. The Member of the Central Board of Direct Taxes stated:

> "In the Manual, under the prescribed rule, the break-up value was printed as 65 per cent instead of 75 per cent. In 1968, the Board issued a circular where the correct percentage was given and in the following year in the Manual, this printing error occurred. As a result of this, in a few cases, the Manual was faulty and the circular was overlooked. We had directed a review of the cases and found that out of 18,499 cases reviewed, the mistakes were found only in 57 cases. Out of 57 cases, 50 cases have been rectified. By and large, all the officers were applying the correct percentage, but those who consulted the Manual made mistakes."

4.10. Since manuals were very important for the assessing officers, the Committee asked whether these were not scrutinised for printing errors and errata issued. The witness replied:

> "Normally, the proofs do come to the Department. This was somehow overlooked."

He added:

> "A small number of mistakes were detected in a very large number of cases."

4.11. The Committee desired to know when this mistake in the Manual was noticed by the Department and necessary corrigendum issued. In a note, the Department of Revenue & Insurance stated:

> "The mistake was brought to the notice of Director of Inspection (RS&P) by Commissioner of Income-tax, Madras, *vide* his letter dated 30-9-1970 and was received by Director of Inspection on 6-10-1970. The corrigendum was issued by Director of Inspection (RS&P) on 2-12-1970 [F. No. p-5 (9)DI(RSP)/69/3125)]."

4.12. The Committee learnt from Audit that a similar case of under-assessment of wealth of Rs. 65.42 lakhs (tax effect Rs. 1.28 lakhs), on account of acting on incorrect figures in the Manual, was reported in the Audit Report for 1970-71 [paragraph 74(i)(a)]. While furnishing additional information to the Public Accounts Committee in this case, the Department of Revenue & Insurance had stated that after the issue of the corrigendum to the Manual, 'the question of ordering a review was taken up and a decision taken in May 1972'. As, under the executive instructions of 25th March 1968, the valuation of shares for gift-tax and estate duty assessments was also to be made on the same basis, the Committee asked whether the review ordered by the Board, in May 1972, embraced Gift-tax and Estate Duty assessments also or whether it was confined only to Wealth-tax assessments. In a note furnished to the Committee, the Department of Revenue & Insurance stated:

> "The review was initially limited to wealth-tax assessments. It has now been extended to cover the Gift-tax and Estate Duty assessments *vide* Board's letter F. No. 313/48/73-ED dated 14-9-1973. Reports are awaited from some of the Commissioners. The reports received from 22 Commissioners show that there were no assessments in

which mistakes in valuation were found due to printing error in the wealth-tax Manual."

4.13. The Committee desired to know when the Gift Tax assessment was made in this case. The Member of the Central Board of Direct Taxes stated that the assessment was made on 13th June 1969* on a revised return filed on 14th March 1969. As for the date of filing of the original return and the gift declared by the assessee, the witness informed the Committee:

"It was submitted on 3rd July 1967. The total amount of the gift was shown as Rs. one lakh. The return was signed on 29-6-1967 and the assessment was made on 18-7-1967."

When the Committee observed that the assessment in this case had been completed quickly, the witness replied:

"This was the cash payment made by the assessee to the Trust for the benefit of his minor daughter."

4.14. The Committee enquired into the reasons for the reopening of the case, under Section 16, and for filing of the revised return. The witness replied:

"Actually, some action was taken to reopen the case, because he had failed to disclose the transfer of his shares to a number of persons involved in this case."

To another question as to when the transfer of shares by the assessee had come to light, the witness replied:

"The original assessment was made in this case on 18-7-1963. This is recorded by the ITO in the order sheet that it has been found that he has transferred shares to a number of persons without adequate consideration, and the market value of the shares transferred exceeds the value at which they were transferred by Rs. 71,94,785. Vide IT assessment order dated 29-3-1968, the ITO had reasons to believe that the gifts have escaped assessment. Apparently, from this, it appears that at the time of making the Income-tax assessment, on 29-3-1968, this has been noticed."

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*The Committee were, however, informed by Audit in this connection that the assessment was made on the 30th June, 1969.

Another representative of the Central Board of Direct Taxes stated in this connection:

"Originally the assessee filed a return in which he has shown a gift of one lakh of rupees and that was subject to assessment. Later on, in the subsequent years, when income-tax assessments were taken up, it was found that the assessee had transferred a number of shares to companies in which he had controlling interest."

He stated further:

"The shares in these various companies were transferred by him—Shri R. Dalmia. We have got a complete list of the shareholding. He held shares in a number of companies and they were transferred to some other companies in which he had controlling interest. These shares were transferred at prices much below the market value. When this matter came to the notice of the Income-tax Officer, when he took up the assessments for the subsequent years, the gift-tax assessments for the earlier years were reopened."

4.15. The Committee asked when the transfer of shares had taken place. The witness replied:

"In the previous year to the assessment year 1963-64. For 1963-64, gift-tax assessments were reopened."

4.16. As regards the tax element involved in the transfer, enquired into by the Committee, the Member of the Central Board of Direct Taxes stated that the total value of the taxable gift was Rs. 72,86,258 and the tax effect Rs. 2,44,750.

4.17. The Committee desired to know whether this did not amount to concealment. The representative of the Central Board of Direct Taxes replied:

"I should think so."

4.18. To a question whether any penalty was imposed for the concealment, the Member, Central Board of Direct Taxes replied:

"The AAC's order was set aside by the Tribunal and the assessee had challenged the basis of the proceedings. Only

when the assessment is finalised, the question of penalty will arise."

4.19.The Committee enquired into the outcome of the appeal. The witness replied:

"The order was set aside by the Tribunal. So, the AAC will have to hear it again...... The matter is now pending before the AAC. He will then pass his order."

When the Committee asked whether the order of the Appellate Assistant Commissioner had been set aside by the Tribunal on technical grounds, the witness replied in the affirmative.

4.20. The Committee desired to know whether the Appellate Assistant Commissioner had not considered it necessary to initiate penalty proceedings for the concealment. The witness stated:

"That would be taken by the Income-tax Officer; not by the AAC."

To a question as to how the Income-tax Officer would come to know of this, the witness replied:

"He will get the appellate order; if it is confirmed."

4.21. The Committee asked whether, for the levy of penalty, the Department waited for the Tribunal's decision. The witness replied:

"We normally wait until the first appeal. We do not levy a penalty until the first appeal is settled."

4.22. Since in the present case, the first appeal was decided against the assessee who moved the Tribunal which had remitted the case back to the Appellate Assistant Commissioner, the Committee asked whether it had not been considered necessary to levy a penalty when the first appeal was decided. The witness replied:

"Apparently, he has not levied the penalty during the interim period."

4.23. The Committee desired to know whether, in accordance with the law, if the Appellate Assistant Commissioner was satisfied that a person had concealed his income or gifts, he could not initiate penalty

proceedings himself without remitting the case back to the Income-tax Officer. The witness stated:

"Yes, he can do it, but in this case, he has not done it."

4.24. The Committee asked when penalty proceedings had been initiated in the present case. In a note, the Department of Revenue and Insurance informed the Committee that proceedings for the assessment year 1963-64 were initiated on 30th June 1969. The Department of Revenue and Insurance also informed the Committee that on verification of the assessment records, it was found that, as a result of the penalty proceedings, a penalty of Rs. 2,54,872 was levied by the Inspecting Assistant Commissioner of Income-tax on 19th June, 1971.

4.25. Since the Appellate Assistant Commissioner had ordered the value of the shares transferred by the assessee should be computed, as per the latest executive instructions, by adopting the discounted break-up value, the Committee asked whether the Gift Tax Officer had pointed out to the Appellate Assistant Commissioner that the latest instructions were applicable only to the assessments from 1965-66 onwards, as clarified by the Board, and not to an assessment relating to 1963-64 and whether the Department had contasted this order. The Member, Central Board of Direct Taxes stated in evidence:

"We have considered it: when the break-up or the method of computing the value of the shares was brought into the rules, we applied it to all the pending assessments, because it appeared to be the reasonable method."

When the Committee asked whether this was a correct interpretation, the witness replied:

"We had come to the conclusion that this was the way in which the valuation should be made."

In a note furnished subsequently to the Committee in this regard, the Department of Revenue & Insurance stated:

"Board's circular No. 2|1|65-WT dated 2-11-1966 stated that the Wealth-tax (Second Amendment) Rules, 1965, would apply only to these assessments for 1965-66 which are completed on or after 4-11-1965. However, for gift-tax purposes, the market value is to be determined on the date

of the gift. Though technically, the Rules did not cover the assessment year 1963-64, the AAC (who is not strictly bound by Board's circulars) could take the view that the method laid down in the Wealth-tax Rules, 1965 was also a reasonable basis of valuation for the earlier years."

4.26. The Committee desired to know how these shares were valued in the Wealth-tax assessments of the donor in 1962-63 and of the donees in 1963-64 and whether their value was discounted as provided in the Wealth Tax Rules. In a note, the Department of Revenue & Insurance stated:

"The donor is Shri R. Dalmia. His wealth tax assessments are pending from 1958-59. He has shown a considerable negative figure of wealth for all these years, *i.e.* instead of having any wealth he is under heavy debts. In his income-tax assessments heavy additions have been made including additions on account of cash credits. These assessments are being contested in appeals. To avoid raising of infructuous demands, the wealth-tax assessments have been kept pending till a clear picture emerges in respect of the income-tax assessments. At present there is no time-limit for completion of the wealth-tax assessments.

The shares transferred by Shri R. Dalmia were of three companies mentioned below:

Sl. No.	Name of the company	No. of ordinary shares
1	Patiala Biscuit Mfg. Co. Ltd.	16,000
2	South Asia Industries (P) Ltd.	24,400
3	Bharat Insurance Co. Ltd.	5,260

The shares of the first two companies which constitute the bulk of the gift have been transferred to limited companies only which are not liable to wealth-tax. The shares of the third company, *viz.* Bharat Insurance Co. Ltd. which are comparatively small in number, have been sold to 17 different individuals. These shares were brought after obtaining loans from third parties. Even otherwise, the value of the shares taken by the single individual does not exceed Rs. 25,000 to Rs. 75,000 and none of these transferees possesses wealth above the taxable limit."

4.27. As regards the latest position of recovery of the demand of Rs. 2.45 lakhs, enquired into by the Committee, the Department of Revenue & Insurance stated:

"The additional demand has not been recovered so far. Against the assessment, the assessee went in appeal. The AAC granted relief to the extent of Rs 6,57,623 by allowing a reduction of 35 per cent from the break-up value of the unquoted shares instead of 25 per cent. This resulted in a short levy of gift-tax of Rs. 2,44,714. This mistake has been rectified and additional demand of Rs. 2,44.714 has been raised. The AAC's order has been set aside by the Tribunal to consider the basic issue as to whether Section 16 of the Gift-tax Act was at all applicable. In other words, validity of the Gift-tax Officer's action in reopening the assessment under Section 16 has not been considered by the AAC in appeal and he has been asked by the Tribunal to do so now in the set aside proceedings. In the circumstances, Commissioner of Income-tax has stated that it is premature to press the collection of either the entire gift-tax raised or the additional demand of Rs. 2,44,714, the assessments validity being under appellate scrutiny."

In paragraph 74(a) of the Audit Report (Civil), 1965 on Revenue Receipts, a case relating to the same group (Dalmia), in which preference shares belonging to two persons of the group had been transferred, under blank transfer, from time to time, to certain other companies belonging to the same group, had been reported. In this case, there was an escapement of income to the extent of Rs. 26.64 lakhs involving approximately a tax of Rs. 11.56 lakhs. Dealing with this case, the Public Accounts Committee (1965-66) had observed as follows, in paragraphs 1.170 to 1.173 of their 46th Report (Third Lok Sabha):

"1.170. The Committee feel that this was a deliberately devised and planned scheme to evade tax and defraud the Government. They also feel that special care is necessary in assessing the companies of this group and there should be proper coordination between the ITOs dealing with them.

1.171. The Committee regret to note that in this case there was failure on the part of the ITO who assesses the company declaring the dividend to verify that the company

had filed a statutory return to this effect as required under the law. The officer also failed to inform the ITO assessing the other companies to whom shares were transferred about the declaration of dividend. The result was that the ITO assessing company No. 3, in whose name the dividend stood credited on the crucial date and whose books were with the Special Police Establishment, was not aware of the declaration of the dividend while making the assessment on the basis of the previous year's income. It is also regrettable that the ITO assessing the third company made unnecessary hurry in completing the assessment without looking into the books of the company which were with the SPE. It is surprising that the SPE kept the books for seven years from September 1955 to September 1962. It is also surprising that the ITO made no efforts either to obtain copies of relevant entries or even to inspect the books while they are in the SPE's custody.

"1.172. The Committee note the remedial action taken by the Department to establish better coordination among ITOs in communicating the information about the declaration of dividends. Further, the companies controlled by the same group are concentrated in the same charge at various stations. The Committee desire that Government should consider what further measures are necessary to prevent recurrences of such cases. They would also like to know the outcome of the present case. The Committee suggest that necessary investigation should be made to discover the possibility of collusion between the assessee group of companies and the revenue officers.

"1.173. The Committee also suggest that cases pertaining to the other companies of this group referred to in this case should be reviewed."

4.28. Reviewing the action taken by Government on these recommendations, the Committee, in paragraphs 2.20 to 2.23 of their 7th Report (Fourth Lok Sabha), had observed:

"2.20. The Committee note that Government propose to assess the dividends in the hands of the company as well as in the hands of six nominees as a protective measure and that instructions have been issued to complete early investigations regarding the real ownership of the shares on which dividends have been distributed.

2.21. The Committee need hardly stress that Government should complete the investigations early and take every care to ensure that the taxes due on the dividend received by beneficiaries are collected.

2.22. The Committee would also like to stress that the review of other companies in the group should be completed early so as to ensure that large amounts of dividends declared have been accounted for by the shareholders in their income-tax returns and that taxes due on them have not been evaded.

2.23. The Committee would like Government to ensure that the instructions issued under the Central Board of Direct Taxes letters No. 64/163/66-IT-(Inv.) dated the 29th May, 1967 on the subjects of the failure to furnish returns under Section 286 of Income-tax Act, 1961 and evasion of Income-tax by blank transfer of shares by companies of the same group are strictly given effect to by the Income-tax Officers, so that cases of such a nature do not recur."

4.29. Dealing with the action taken by Government on these observations of the Committee, the Committee made the following recommendations in paragraphs 1.35 and 1.36 of the 36th Report (Fourth Lok Sabha):

"1.35. The Committee note with concern that the Income-tax Department have not yet succeeded in taxing the dividend income amounting to Rs. 26.64 lakhs which has escaped assessment since 1956-57. The Committee desire that early action should be taken by Government to get the injunction granted by the court against reopening of the assessment under Section 148 vacated. The assessment of the registered shareholder may also be expedited.

The Committee hope that the Central Board of Direct Taxes will keep a watch over the progress made in assessing the important shareholders who had received dividends of Rs. 25,000 and above from the year 1956-57 onwards from the companies in the group.

1.36. The Committee note that, in pursuance of the Board's instructions, prosecutions have been launched under Section 276 in two cases for failure to file returns regarding shareholders to whom dividends had been distributed. The Committee would like to emphasise the need for

launching such prosecutions in all cases of default involving large amounts with a view to obviating recurrence of similar cases of dividend income escaping tax."

4.30. While examining the present case, also relating to the Dalmia group, the Committee desired to know whether the investigations into the earlier case had been completed. The Member, Central Board of Direct Taxes stated in evidence:

"The cases were actually done under the Central charge. It means that the cases were transferred to the Central charge for thorough investigation."

He added:

"I have followed up all the recommendations made by the PAC in the Board. We will check up from the records as to what has happened and let you know."

4.31. Subsequently, in a note furnished to the Committee in this regard, the Department of Revenue & Insurance indicated the following position, with reference to the recommendations of the Committee contained in paragraphs 2.21 to 2.23 of their 7th Report (Fourth Lok Sabha):

"Dividends in the hands of the relevant company and of the registered shareholders have been assessed in their assessments respectively for 1956-57 and 1957-58. The assessment of the amount in the case of the company was upheld in the first appeal before the AAC; on further appeal to the Tribunal the case has been remanded back to the AAC for giving further finding on re-examination of certain points. In the case of the registered shareholders first appeal before the AAC is pending against the assessment of dividend; the appeal was filed in April 1973. Further, as a protective measure, it is understood that assessment proceedings have been taken in the hands of the 6 nominees in Central Circle, Calcutta. Assessment in the case of one of them *viz.* Shri S. P. Jain has also been completed assessing the dividends amount; on appeal the assessment is stated to have been set aside by the AAC for making afresh. In other cases the 5 assessees challenged the reassessment proceedings initiated against them in writ petition before the Calcutta High Court. It may be mentioned that Company Law Board seized books

of accounts and documents of the group of cases of Sahu Jain *i.e.* the 6 nominees referred to in the para, and these books of accounts are in the custody of Registrar of Calcutta High Court; High Court issued order of injunction against releasing or making the books of accounts available in examination. The interim injunction rule was later made absolute; the Single Judge finally decided the writ in favour of the assessee and the Department has filed an appeal before the Division Bench and it is pending. (A copy of the detailed report from D.I., Investigation on this issue. furnished to the Committee by the Department is reproduced in Appendix IV).

Demands against Shri R. Dalmia include the demand in respect of the assessment of dividend income as registered shareholder. These demands are secured against immovable and other properties taken in security from him.

Review of companies in R. Dalmia Group was made from the points of view referred to in para 2.22 of the 7th Report of the Public Accounts Committee. (Paragraph 4 of the Report of the D.I.—Investigation reproduced in Appendix IV deals with this aspect).

Instructions were issued on 24-5-1968."

4.32. The Committee were also informed by the Member, Central Board of Direct Taxes, during evidence that a Special Investigation Cell had been set up to investigate into leading cases of tax evasion. The Committee asked how many cases had been referred to this Cell so far for investigation. The Chairman. Central Board of Direct Taxes replied:

"We set up a Special Investigation Cell in August 1972 and we had referred two groups of companies to the Cell *viz.* Birla's and Bajoria. We have expanded the Cell by having 3 deputy directors; and the cases for intensive investigation taken up by the Cell very recently are the J.K. Group, J. Dalmia group, Shriyans Prasad Jain group and the Kapadia group."

To another question whether any case referred to the Special Cell had been withdrawn, the witness replied in the negative.

4.33. This is an instance where certain shares transferred, without adequate consideration, by an assessee were valued incorrectly for purposes of Gift-tax and an excess discount of Rs. 6.57 lakhs

was allowed, with consequential short-levy of tax by Rs. 2.45 lakhs. The Committee learn that prior to the assessment year 1965-66, the value of equity shares, not quoted in recognised stock exchanges, was to be determined, under executive instructions issued by the Central Board of Direct Taxes, on the basis of what was known as the 'break-up value method' and was arrived at as the surplus of the assets over liabilities of the company divided by its paid-up equity capital. Subsequently, with the promulgation of Rules un-under the Wealth-tax Act for the valuation of assets on 6th October 1967, the value of such shares, as arrived at by the usual break-up value method, was to be discounted generally by 15 per cent in all cases and by further discounts depending on the number of years for which the company had not declared dividends. Thus, in respect of a company which had not declared dividends for six years and more, the market value of its unquoted equity shares was to be taken as 75 per cent of their break-up value. While these Rules were applicable to Wealth-tax assessments, the Central Board of Direct Taxes issued instructions, on 26th March 1968, that for the purpose of Gift-tax also, the discounted break-up value method should be adopted and that the market value of an asset should be the same as determined for Wealth-Tax.

4.34. In the present case, the mistake is stated to have occurred on account of a printing error in the departmental Manual. The Committee find that though the effective break-up values to be adopted, under the revised Rules, for determining the market value were correctly indicated in the notification as well as in the departmental circulars issued in this regard, yet the figure of 75 per cent applicable to a company that had not declared dividends for six years and more came to be erroneously printed as 65 per cent which was not noticed by the departmental authorities for quite some time. Thus, in cases where the assessing officers acted on the Manual, the discounted break-up value came to be under-assessed to the extent of 10 per cent, the effective rate of discount being taken as 35 per cent instead of 25 per cent. The Committee take a serious view of this lapse. Since manuals serve as important reference books for the assessing officers, the Committee would ask the Central Board of Direct Taxes to take scrupulous care in eliminating printing errors and prompt action, whenever necessary, to rectify the posiiton.

4.35. The Committee are concerned to find that though the printing error in the Manual had been brought to the notice of the Director of Inspection by the Commissioner of Income Tax in October 1970 and necessary corrigendum to the Manual was also issued in

December 1970, it was only in May 1972 after a time lag of about 18 months, that the Central Board of Direct Taxes had considered it fit to order a review of all Wealth-tax assessments. The reasons for this delay, despite the fact that the error in the Manual was of a serious nature, is inexplicable. The Committee strongly stress the importance of prompt and precise review of past cases when patent errors of this nature come to notice.

4.36. The Committee learn that this review, which was initially confined only to Wealth-tax assessments, had also been extended, in September 1973, to cover Gift-tax and Estate Duty assessments, and that the reports received from 22 Commissioners showed that there were no assessments in which mistakes in valuation were found on account of the printing error in the Wealth-tax Manual. The Committee would like to know the results of the review from the remaining Commissioners and the steps taken, wherever called for, to revise the assessments.

4.37. An additional complication in this case is that the assessee (Shri R. Dalmia) had not disclosed the transfer of his shares to a number of persons initially in the Gift-tax return. It was only at the time of making his income-tax assessment for subsequent years in March 1968, that the gifts escaping assessment were noticed and the Gift-tax assessments reopened for the earlier years. The assessee also subsequently filed a revised return on 14th March 1969. Even though this clearly amounted to concealment of a gift, the Committee are distressed that considerable time elapsed before a penalty of Rs. 2.55 lakhs was levied by the Department on 19th June 1971. The Committee would like to know the reasons for this abnormal delay of over two years in levying penalty in a clear case of concealment and also whether the said penalty was recovered in full.

4.38. The Committee find that the assessee had challenged the reopening, under Section 16 of the Gift-tax Act, of the Gift-tax assessment for the year 1963-64 before the Appellate Tribunal who had remitted the case back to the Appellate Assistant Commissioner for a fresh examination. The Committee trust that this case, last stated to be pending with the Appellate Assistant Commissioner, has been finalised, and would like to know its outcome and the action taken thereafter.

4.39. This is one more instance which has come to the notice of the Committee where the rectification of a patent error has been frustrated by the assessee seeking legal remedies on a mere technical plea. In this connection, the Committee would invite the attention

of Government to an earlier recommendation contained in Paragraph 2.30. of their 128th Report (Fifth Lok Sabha) and reiterated in paragraphs 4.26 and 5.32 of their 187th Report (Fifth Lok Sabha) on the question of amending Article 226 of the Constitution, in so far as if relates to revenue matters, in respect of which adequate remedies are provided in the respective statutes themselves. Since such a step would have a salutary effect on the collection of revenue, the Committee urge Government to process this recommendation with the expedition that it rightly deserves.

4.40. Another relevant issue is whether the formula of discounted break-up value is at all applicable to this case relating to the assessment year 1963-64. The Committee find that the Appellate Assistant Commissioner, while disposing of the first appeal field by the assessee in this case, had ordered that the value of the shares transferred by the assessee should be computed, as per the latest executive instructions, by adopting the discounted break-up value. The Committee learn from Audit that since the relevant statutory rules for the valuation of assets, under the Wealth-tax Act, which was later made applicable to Gift-tax assessments also, had been promulgated only on 6th October 1967, and the amendment to the Act empowering the framing of rules was also effective only from assessment year 1965-66, these rules, being prospective in effect, were applicable only to the assessments from the assessment year 1965-66 onwards which were pending on 6th October 1967. The Committee also understand that this legal position had been clarified by the Central Board of Direct Taxes in their circular of 2nd November 1966, with reference to a similar question of valuation of business assets. Under the circumstances, it is surprising that neither the Gift-tax Officer had pointed out to the Appellate Assistant Commissioner that the latest instructions were not applicable in the instant case nor had the Department contested the order of the Appellate Assistant Commissioner. The Committee would, therefore, like Government to re-examine this aspect, in consultation with Audit.

4.41. It appears that this was not the first time this particular assessee had resorted to the transfer of his shares to different persons. In paragraph 74(a) of the Audit Report (Civil), 1965 on Revenue Receipts, the attention of the Committee had been drawn to the transfer of preference shares, belonging to two persons of the Dalmia Group, which had been transferred, under blank transfer, from time to time to certain other companies belonging to the same group, resulting in the escapement of income to the extent of Rs. 26.64 lakhs, with a tax effect of about Rs. 11.56 lakhs. Dealing with this case, the Committee, in paragraph 1.170 of their 46th Report

(Third Lok Sabha) had put their view sternly that this was 'a deliberately devised and planned scheme to evade tax and defraud the Government.' The Committee had also made a number of other recommendations in respect of this case in paragraphs 1.170 to 1.173 of their 46th Report (Third Lok Sabha), paragraphs 2.20 to 2.23 of their 7th Report (Fourth Lok Sabha) and paragraphs 1.35 and 1.36 of their 36th Report (Fourth Lok Sabha). It is distressing that even after the lapse of a considerable time, there is no finality yet in respect of the case, which continues to be pending before different appellate authorities and courts of law. The Committee would urge Government to take all possible steps to expedite the appeals/court cases. It is almost two years since the Committee last heard from Government on this case and they are keen to know the present position.

CHAPTER V

UNDER-ASSESSMENT DUE TO APPLICATION OF INCORRECT RATES

Audit paragraph

5.1. An assessee made taxable gifts of Rs. 7.29 lakhs and Rs. 8.09 lakhs in the assessment years 1968-69 and 1969-70 respectively. The tax leviable on the gifts was Rs. 1,63,200 and Rs. 1,87,410 against which the tax as calculated and demanded by the department was Rs. 1,18,000 and Rs. 1,34,139 resulting in total short-levy of Rs. 98,471.

5.2. The Ministry have accepted the mistake; a sum of Rs. 74,286 is stated to have been adjusted against the refund of income-tax. Report regarding the recovery of the balance amount of Rs. 24,185 is awaited.

[Paragraph 51 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.]

5.3. The Committee enquired into the checks prescribed by the Department to ensure that arithmetical mistakes in tax calculations did not go unnoticed. The Member of the Central Board of Direct Taxes replied:

"Volume II of the Manual says the arithmetical accuracy of the tax calculations should be checked by a UDC, Head Clerk and ITO in appropriate cases. These instructions are for Income Tax. But as the same people are doing Income-tax, Gift-tax and Wealth-tax the same instructions would apply."

In a note furnished subsequently to the Committee in this regard, the Department of Revenue & Insurance added:

"As per the existing instructions all gift-tax calculations have to be checked by Head Clerks and Supervisors (DI—II & Audit letter dated 15-10-1973 issued from F. No. M. 30/135/73-DIT/10835). The Gift-tax Officers have to check tax calcualtions in all cases where demands raised exceeds

Rs. 25,000 or refunds exceed Rs. 10,000 (Instruction No. 465 dated 11.10.1972, reiterated in Instruction No. 614 dated 11.9.1973). The matter is being further considered in consultation with Audit."

The Committee were subsequently informed by Audit that Instruction No. 614 dated 11th September, 1973 had been partially modified by Instruction No. 646 dated 10th January 1974, according to which the Gift Tax Officer has to personally recheck the tax calculation in all cases where the value of the taxable gift is Rs. 1 lakh or more or where the refunds due exceed Rs. 5,000.

5.4. To a question whether the calculations in the instant case had been checked by all these persons, the Member of the Central Board of Direct Taxes replied:

> "It was checked by the Head Clerk but he did not detect the mistake. The officer who was responsible and completed the assessment had already retired by the time this thing came to light."

5.5 The Committee asked whether any attempt had been made by the Board to determine how such a mistake, as pointed out in this case, had occurred. The witness replied:

> "I have not been able to find out any basis as to how this mistake was made. It does not appear to be by adopting the previous year's rate."

He added:

> "The clerk has said it was a mistake due to application of wrong rates. What those wrong rates are we are not able to find out. So, I am not able to say specifically why this mistake occurred."

When the Committee pointed out that there ought to be some rational explanation for the mistake, which should have been probed into, the wtiness stated:

> "In this case we could not know how he adopted all this."

The Finance Secretary added in this connection:

"We shall find out the bonafides."

5.6. A note subsequently furnished by the Department of Revenue & Insurance explaining, at the instance of the Committee, the circumstances in which the mistake had occurred, is reproduced below:

> "Explanation of the Gift-tax Officer has not been called for because he has already retired. Explanation of the UDC who calculated the tax and the Head Clerk who checked the same were called for. The mistake has occurred due to ignorance on the part of UDC and due to casual attitude on the part of the Head clerk who was new to the work. The officials have been warned by the Commissioner of Income-tax who has been asked to look into the bonafides aspect of the matter also."

5.7. To another question whether this assessment had been checked in Internal Audit, the Member of the Central Board of Direct Taxes replied in the negative.

5.8. Mistakes in the calculation of Gift Tax had also been commented upon earlier in the Audit Reports, *viz*. paragraph 72(ii) of the Audit Report, 1970, paragraph 63(a) of the Audit Report, 1969-70 and paragraph 70 of the Audit Report, 1970-71. While dealing with the mistake in calculation of tax commented upon in paragraph 79 of the Audit Report for 1970-71, the Committee had been informed by the Department of Revenue & Insurance as follows:

> "No quantum of audit was prescribed for the internal audit of gift-tax assessments. However, *vide* para 4 of Circular No. 19-D(LXXIX-1)/63, dated 1-8-1963 the erstwhile Central Board of Revenue had directed that while checking the Income-tax assessments, the IAPs will also check the arithmetical accuracy of the calculations made in gift-tax assessments in the same case. However, the Board have recently prescribed 'immediate audit' within one month from the date of completion of assessment in cases in which the gift-tax demand exceeds Rs. 10,000/-."

5.9. Commenting on this case, the Committee, in paragraph 3.4 of their 88th Report (Fifth Lok Sabha), had observed as follows:

> "The Committee are concerned to find that there is no effective Internal Audit check of Gift tax assessments. In

paragraph 2.28 of the 50th Report (Fifth Lok Sabha), the Committee had taken note of the enlargement of the scope of Internal Audit check of Wealth-tax assessments since June 1969. Similar action is called for in respect of Estate Duty and Gift Tax also. Further, the Committee desire that the quantum of check of various categories of assessments should also be laid down specifically in consultation with the Statutory Audit."

5.10. The Committee take a serious view of the mistake in the calculation of Gift Tax that had occurred in this case, resulting in a total short-levy of Rs. 98,471. It is rather surprising that the Central Board of Direct Taxes have not been able to find out how this mistake was committed. Calculation of tax by applying the rates laid down in the Schedule to the Gift Tax Act 1958 does not involve any subtlety and the rates of tax as they are applicable for and from the assessment year 1966-67 have also been simplified, not more than a single arithmetical calculation being involved. The mistake in this case cannot, perhaps, be described as an arithmetical error attributable to an Upper Division Clerk. At the instance of the Committee, the Commissioner of Income Tax was asked by the Central Board of Direct Taxes to examine the bonafides of the error. The Committee trust that the examination has been completed. Its outcome and the action taken against erring officials should be intimated forthwith.

5.11. The Committee learn that Gift Tax Officers had been specifically enjoined to check tax calculations in all cases where the demand raised exceeds Rs. 25,000 or refunds exceed Rs. 10,000 only with effect from October 1972. Prior to this date, there was apparently no clear provision for the arithmetical check of Gift Tax calculations, and the guidelines in Volume II of Income Tax Manual, according to which tax calculations are to be checked by an Upper Division Clerk, Head Clerk and the Income-tax Officer in appropriate cases, were expected to be followed in the case of Gift Tax and Wealth Tax assessments also. In the instant case, despite the fact that the value of the taxable gifts made in the assessment years 1968-69 and 1969-70 was respectively Rs. 7.29 lakhs and Rs. 8.09 lakhs, the check of arithmetical accuracy was carried out only by the Head Clerk who had also been admitted 'casual' in his attitude. Judging from the number of mistakes in the calculation of tax that have been brought to their notice by Audit every year, the Committee are not satisfied with the somewhat desultory checks hitherto prescribed by the Department. Now that it has been decided that the Gift Tax Officer should personally re-check the tax

calculation in all cases where the value of the taxable gift is Rs. 1 lakh or more or where the refunds due exceed Rs. 5,000, the Committee trust that mistakes in the calculation of tax would be minimised, if not altogether eliminated.

5.12. This assessment had also not been checked in Internal Audit, presumably because no quantum of audit had been specified earlier for the internal audit of Gift-tax assessments. The Committee, however, find that the erstwhile Central Board of Revenue had directed, in 1963, that while checking income-tax assessments, Internal Audit parties should also check the arithmetical accuracy of the calculations made in gift-tax assessments in the same cases. Since the assessee in this case would have been assessed to income-tax as well, the Committee would like to know the reasons for this assessment escaping the scrutiny of Internal Audit. Now that the Central Board of Direct Taxes have prescribed an 'immediate audit' within one month from the date of completion of the assessment in cases in which the gift-tax demand exceeds Rs. 10,000, the Committee expect that such mistakes as in the present case would be promptly detected and rectificatory action taken.

5.13. The Committee note from the Audit paragraph that out of the short-levy of Rs. 98,471, a sum of Rs. 74,286 has been adjusted against a refund of income-tax and would like to be informed of the position of recovery of the balance amount of Rs. 24,185.

CHAPTER VI

OVER-ASSESSMENT

Audit paragraph

6.1. An assessee made a gift of Rs. 77,685 during the previous year relevant to the assessment year 1970-71. While computing the gift tax in March 1971, the following mistakes were committed:

(a) The amount of Rs. 10,000 allowable as deduction from the total value of the gift was not reduced for arriving at the value of the taxable gift.

(b) The first slab chargeable to tax at 5 per cent was taken as Rs. 5,000 instead of Rs. 15,000.

(c) The gift tax chargeable on Rs. 5.000 at 5 per cent was taken as Rs. 2,500 instead of Rs. 250, while striking the totals.

(d) The tax on the second slab of Rs. 25,000 was charged at 16 per cent instead of the correct rate of 8 per cent.

6.2. Due to the above mistakes gift tax of Rs. 10,269 was charged instead of the correct amount of Rs. 5,518.

6.3. The Ministry have accepted the mistakes and have intimated that the demand has been reduced by Rs 4,751.

[Paragraph 52(ii) of the Report of the Comptroller and Auditor-General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

6.4. Under Section 5(2) of the Gift Tax Act, 1958, a basic exemption limit has been laid down for all gifts. This basic allowance was originally Rs. 10,000, which was reduced to Rs. 5,000 in the Finance Act, 1964. The Finance Act, 1966 restored the basic allowance to Rs. 10,000. However, in the Finance Act, 1970, the basic allowance was again reduced to Rs. 5,000 with effect from 1st April 1971.

6.5. The total value of the gift made by the assessee in the case reported in the Audit paragraph, during the previous year relevant

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to the assessment year 1970-71, was Rs. 77,685 and the Committee were informed by Audit that the gift tax chargeable was to be calculated as under:

	(Rs.)
Total value of gift	77,685
Deduct basic exemption	10,000
Taxable gift	67,685

Gift Tax is charged according to the rates prescribed in the Schedule to the Act. As laid down in the Schedule, a simple tax calculation was to be made as under:

(a) Where the value of taxable gifts does not exceed Rs. 15,000	5% of the value of such gifts.
(b) Where the value of all taxable gifts exceeds Rs. 15,000 but does not exceed Rs. 40,000.	Rs. 750 plus 8% of the amount by which the value exceeds Rs. 15,000.
(c) Where the value of all taxable gifts exceeds Rs. 40,000 but does not exceed Rs. 90,000.	Rs. 2,750 plus 10% of the amount by which the value of such gift exceeds Rs. 40,000.

The total taxable gift in the present case falls under caluse (c) above. Therefore, the amount of tax leviable is Rs. 2,750+10 per cent of (67,685—40,000), which is Rs. 2,750+Rs. 2,768+Rs. 5,518.

6.6. The Committee learnt from Audit that instead of following this simple method laid down in the Act and straightaway applying.

(c) above, the Department made incorrect calculations as under:

	(Rs.)
On the first Rs. 15,000 at 5% (Rs. 10,000 exempt and therefore Rs. 5,000 taxable)	250
On the next Rs. 25,000 at 16%	4,000
On balance of Rs. 37,685 at 10%	3,769
TOTAL	10,269

6.7. The following mistakes had, therefore, been committed in calculating the tax leviable:

(a) While totalling, Rs. 250 had been taken as Rs. 2,500.

(b) The rate applicable to the slab Rs. 15,000—Rs. 40,000 is 8 per cent and not 16 per cent.

(c) The basic exemption of Rs. 10,000 was to be allowed while computing the taxable gift and not while applying the rates on the slabs.

6.8. During evidence, the Committee asked how such a series of mistakes had occurred in this case. The Member of the Central Board of Direct Taxes replied:

"The schedule is perfectly clear and it is very easy to follow. If it is over a certain amount, it is certain thing plus addition over and above that amount and a percentage of that. He has worked out these things at every stage in a wrong way. I think it is purely out of ignorance. He has overcharged the assessee by Rs. 4751/- and there is no logical explanation. The rates that he has taken do not pertain to slabs."

6.9. The Committee desired to know whether the Department had gone into the history of the person responsible for the mistakes and the length of his service. The witness stated:

"I have not got these details."

The Finance Secretary stated in this context:

"In this case, the UDC was in service for 1½ years."

The Member of the Central Board of Direct Taxes added further:

"It is not the mistake committed by the Gift Tax Officer. He correctly computed the value. This does not appear to have been checked by the officer."

6.10. When the Committee pointed out in this connection that the computation of tax should be carefully checked and not in a slipshod manner, the Finance Secretary replied:

"I find that ITOs and GTOs are under the impression that it is not their duty to check up the calculations."

6.11. Since the assessing officers were finally responsible for all assessments made by them, the Committee asked whether they should not be held answerable for the correctness of all calculations and computation of tax. The Finance Secretary replied in evidence:

> "We shall make it their essential duty. The other thing which we have started doing is where such mistakes have been committed, we have asked for a review to be made and if the same person has committed the mistakes in other cases, we shall take action against him."

6.12. When the Schedule to the Gift Tax Act itself had been simplified to avoid numerous calculations, the Committee desired to know why the Schedule had not been followed in this case. In a note furnished to the Committee, the Department of Revenue & Insurance stated:

> "From the nature of the mistakes committed it appears that the UDC either did not see the Schedule or did not understand it. Had he applied his mind and used the Schedule, he would have got the correct tax. It is all due to negligence on the part of the UDC. He has been warned and a copy of the warning placed in his C.C. Roll."

6.13. The Committee consider that the mistakes committed in this case, by an Upper Division Clerk, while computing the gift-tax, which resulted in over-assessment, are inexcusable. Obviously the clerk had neither applied his mind nor used the Schedule for tax calculation which itself has been fairly simplified. The Committee note that the defaulting official has been warned and a copy of the warning placed in his confidential Character Roll.

6.14. What is more deplorable is that the Gift-tax Officer concerned had not checked the tax calculations in this case. The Committee view with consternation the statement made by the Finance Secretary during evidence that the assessing officers are 'under the impression that it is not their duty' to check the correctness of the tax calculations made by the subordinates. The Committee are of the view that the sooner this notion is dispelled from the minds of the assessing officers, the better it will be both for the revenue and for the assessees. Since the assessing officers are responsible for all assessment made by them, checking of tax calculations must be one of their essential functions. This responsibility cannot be foisted on the staff at the lower levels of the hierarchy. The Committee desire that suitable instructions should be issued in this regard.

6.15. The Committee have not made specific recommendations/ observations in respect of some of the paragraphs relating to Gift-tax included in Chapter IV of the Reports of the Comptroller & Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect however, that the Department of Revenue & Insurance and the Central Board of Direct Taxes will in consultation with Statutory Audit, take such remedial action as is called for.

NEW DELHI;
March 19, 1976.
Phalguna 29, 1897 (*Saka*).

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

APPENDIX I

(*Vide* paragraph 1.9)

(COPY)

F. No. 3/16/73/-DOMS
Directorate of O&M Service (Income-tax)
1st floor Aiwan-e-Ghalib, Mata Sundri Lane,
New Delhi, the 15*th November*, 1973

DOMS-CIRCULAR NO. 2

From

H. D. Bahl,

Director of O&M Service (Income-tax)

New Delhi

To

All Commissioners of Income-tax

Proper co-ordination between assessments

Under different direct tax Laws.

Sir,

The Board has been deeply concerned over the lack of proper co-ordination between assessments made under different direct tax Laws, resulting in loss of revenue, as revealed by the numerous instances which have been figuring year after year in the C&AG's Reports. This non-coordinated effort is glaringly reflected sometimes in the adoption of widely varying values for the same asset in the assessments under different direct tax Laws. There have also been cases where even though a person was being assessed under one Law, no proceedings were initiated under another Law, although these were clearly called for. Several other lapses of this nature have also come to light.

2. The Board have been issuing instructions from time to time on the subject but these have, apparently, not succeeded in achieving their objective and the impression is gaining ground that there is a communication gap between different income-tax authorities and that the proper inter-relationship of the various direct tax Laws is either not properly understood or not effectively implemented.

3. The problem has been examined afresh in this Directorate under the Chairman's instructions. It is felt that a major step which may help in the solution of the problem is to create greater awareness amongst the field officers, of situations/developments which call for co-ordinated action under two or more than two direct tax Laws. With this end in view, this Directorate has prepared three charts which spell out some of the common situations/developments occuring in, or coming to light during, proceedings under one direct tax Law and the necessary consequential action under others.

4. These charts are illustrative and do not cover all possible situations/developments. It is, however, hoped that the illustrations covered in these charts would provoke thought on the subject amongst the field officers so that even where a situation not envisaged in the charts occurs in proceedings under one direct tax Law, necessary consequential action under any other direct tax Law, readily suggests itself to them.

5. Whereas these charts are designed to intensify awareness of the situations calling for co-ordinated action under various direct tax Laws, such co-ordinated action can be ensured only if the field officers follow the procedures/lines of action indicated below:—

(i) Income-tax and corresponding assessments in other direct tax Laws relating to the same assessee should, as far as possible, be taken up and completed simultaneously. Where such simultaneous action is not possible, assessment under one direct tax Law should be completed only after perusing the assessee's records maintained under other direct laws, with a view to taking notes about the situations which may necessitate consequential action in the assessment under completion.

(ii) Where in the course of completion of an assessment under one direct tax Law, the officer comes across a situation/development which necessitates consequential action in

assessment under another direct tax Law, he should immediately take such consequential action. If it is not possible to do so due to some unavoidable reasons, he should invariably leave footnotes below the assessment order indicating what consequential action is needed under the other direct tax Laws.

(iii) Where the valuation of property is involved in an assessment in hand under one direct tax Law, the officer should invariably check up whether the same property has been valued on an earlier occasion, in any assessment under any other direct tax Law, and if so, the valuation made under that direct tax Law should be kept in mind while completing the assessment in hand.

(iv) Where an Income-tax officer/Gift-tax officer|Wealth tax officer, comes to know about the death of an assessee, principal value of whose estate is likely to exceed Rs. 50,000/-, he should immediately pass on the information about the death to the Assistant Controller of Estate Duty concerned, together with any other information which may be relevant to the Estate Duty assessment of the deceased.

(v) The Assistant Controllers of Estate Duty should not complete the Estate Duty assessment before examining the Income-tax, Wealth-tax and Gift-tax records of the deceased to ensure that all the assets disclosed in these records are covered in the Estate Duty Assessment and the valuation adopted is in accord with the relevant information available in those records.

(vi) The Assistant Controllers of Estate Duty should prepare a list of the assets devolving on various accountable persons incorporating the market value taken for the purpose of Estate Duty and communicate this information to the Income-tax officers/Wealth tax officers having jurisdiction over the accountable persons. He should also intimate to the officers concerned any information relevant to assessment under other direct tax Laws.

6. The Chairman desires that this circular should bear triple asteriks (***) marks in terms of Board's Instruction No. 527 dated

17th March, 1973 so that its contents and the enclosed charts are extensively discussed and explained in the conferences between a CIT and his IACs and between an IAC and his ITOs.

Yours faithfully,

Sd/-

(H. D. BAHL)

Director.

APPENDIX II

(*Vide* paragraph 1.55)

(COPY) Instruction No. 87

F. No. 6/17/64-G.T.
Government of India
Central Board of Direct Taxes

New Delhi, the 29th July, 1969.

From

The Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT: *Gift-Tax leviable on the surrender by a Partner of his share in the profits of the firm.*

I am directed to invite your attention to the instructions contained in Board's Circular No. 2-GT of 1965 dated 9-4-1965 regarding the chargeability to gift-tax of the transfer of goodwill.

2. The question of charging gift-tax on the transfer of partnership shares by a partner of a firm to another came up for consideration before the Madras High Court in the case of Commissioner of Gift-tax *Vs*. V. A. M. Ayya Naddar. While holding that there could be no transfer of goodwill in such cases, unless the firm was dissolved, the High Court decide that the right of a partner to share in the profits of a firm is a valuable right which is capable of transfer, at least as between partners, by common consent. It means that whenever a partner entitled to a certain share in the profits of a firm surrenders that right either partly or in full in favour of others, a transfer of property is involved. The Board have accepted the views of the High Court. The High Court did not approve of the contention that in such cases there is a transfer of goodwill and gift tax assessments in similar cases should be made on the ground that there was a sur-

render of the assessee's right to share in the profits which is a property. A copy of the High Court's decision is enclosed.

3. The Board are taking necessary steps to frame Rules for valuation of the right to share in the profits of a firm. Pending finalisation of such rules, the Gift-tax officers should value the right on the same basis on which goodwill is at present being valued.

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

Encl: As above.

Yours faithfully,
Sd/- BALBIR SINGH,
Secretary, Central Board of Direct Taxes.

APPENDIX III

(*Vide* paragraph 1.55)

COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the fifth day of March

One thousand nine hundred and sixty nine.

(14th day of Phalguna 1890 Saka)

PRESENT:

THE HONOURABLE MR. JUSTICE VEERASWAMI.

AND

THE HONOURABLE MR. JUSTICE RAMAPRASADA RAO.

TAX CASE NO. 212 of 1965

(Referred No. 106 of 1965)

The Commissioner of Gift Tax, Appellant

Madras.

Vs.

V. A. M. Ayya Nadar.

Virudhunagar. Respondent.

Case referred to the High Court by the Income-tax Appellate Tribunal, under section 26(1) of the Gift-tax Act, 1958 in R.A. No. 167 of 1964-65 on its file (G.T.A. No. 38 of 1963-64—Assessment year 1959-60) for decision on the following question of law ,*viz.*;

Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to pay gift tax. [G.T.A. No. 20/60-61 dated 26-3-63 Appellate Assistant Commissioner of Gift Tax Madurai (Camp Virudhu-

nagar) G. I. No. 15-a/59-60 dated 31-12-60 Gift Tax Officer, Virudhunagar].

This reference coming on for hearing upon perusing the letter of Reference of Income tax Appellate Tribunal dated 21-9-65. The Statement of the case dated 2-8-65 submitted by the Income tax Appellate Tribunal and the record in the case and upon hearing the arguments of Messrs. V. Balasubrahmanyam and J. Jayaraman. Standing Counsel for income tax for the Appellant and of Messrs. K. Srinivason, D. S. Meenakshisundaram and R. C. Rajappa Advocate for the respondent, the Court delivered the following judgement:

(JUDGEMENT OF THE COURT BY VEERASWAMI. J)

This reference involves rather a peculiar question. The assessee was a partner of a firm under the name and style of V. A. M. Rathinam Brothers, which carried on business at Virudhunagar. It had nine partners with four minors admitted to the benefits of the partnership. The assessee had a third share in the profits of the firm as well as its liabilities. By a deed dated March 31, 1958 the firm was reconstituted with effect from January 31 of that year. By that time, one of the minors, having become a major he was taken as a full-fledged partner, and the remaining minors continued to have the benefits of the partnership. One further change, which is important for the reference, was that the assessee was allotted a 1/9 share out of the 1/3 share, and the balance of 2/9 share was distributed as between two other partners. The Gift-tax Officer treated the distribution of the 2/9 share as a gift, which was valued at Rs 52,518/- and charged to gift tax. The appellate Assistant Commissioner did not share that view, and held that there was no transfer of any existing right in movable or immovable property. He took that view because the Gift Tax Officer had valued the distribution of 2/9 share as if it was a part of the goodwill, which he thought could be valued only as at a dissolution of the firm. The Tribunal sustained his conclusion. It view is that there was a reallocation of the share of the different partners, which did not involve any transfer or surrender of the 2/9 share in favour of the other two partners. The redistribution of the shares, if said, was the result of a mutual consent. It was also observed that not-withstanding the distribution of 2/9 share, the assessee's share capital remained as it was prior to January 31,1958, and that the transfer it at all was only of a 2/9 share in the future profits and losses of the business. At the

instance of the Commissioner of Gift Tax the following question comes up:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to pay gift-tax."

At first sight, it seemed as though the Tribunal was right, but on a reference to the relative statutory provisions and nature of the assessee's right to share the profits of the firm, we are unable eventually to sustain its conclusion. The Act defines a gift as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth. The concept includes any transfer of any property deemed to be a gift under Section 4. Property includes any interest in property movable or immovable. The definition of transfer of property gives a wider scope and content to that pharasealogy so as to include *inter alia* the grant of partnership or interest in property, and also "any transaction entered into by any person with intent there by to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person. "Property" be it movable or immovable, is a bundle, of rights, and a transfer can possibly be of that bundle or one or more right comprised in the bundle. If grant of partnership amounts to transfer of property, logically we do not see why the distribution of 2/9 share out of the 1/3 share of the assessee is any the less transfer of property. A grant of partnership may mean an individual getting into a partnership agreement with another implying by that process the creation, of new rights or distribution of rights between him and his partner. The term may also include an existing firm of partnership taking one or more partners and realigning the basis of sharing. What we have before us may be yet another instance of none being newly taken into the partnership but the sharing basis being realigned or redistributed among the partners. Quite apart from this reasoning, we are inclined to think that a right of a partner to share in the profits is as much property as a right of a partner to share in the assets of the firm. It is the right of partner which entitled him to a share in the profits of the firm and that as we think is a valuable right and capable of transfer at least as between the partners by common consent. When so much is clear, we encounter no difficulty in approving the next step that when share is distribution of quantum of the share of profits as bet-

ween its original holder and certain others who are all partners, it involves a transfer of the right which has the effect of diminishing the assessee's interest and correspondingly increasing the value or quantum of the shares earlier held by the other two partners. On that view we think that the distribution by way of realignment of the 1/3 shares of the assessee did involve transfer of property amounting to a gift chargeable to tax.

Mr. Rajappa, for the assessee, contends, that a right to share in future profits is not an existing right and that in fact even an interest of a partner in the firm is not a specific right or a right to specific property or asset of the firm and the right eventually of a partner is to share the profits of the firm at dissolution. He invited our attention to a A. NARAYANAPPA V. B. KRISHNAPPA (1966 II S.C.J. 490) COMMISSIONER OF GIFT TAX, MADRAS V. GETTI CHETTIAR (60 I.T.R. 454) and the judgement in TC. No. 52 of 1965. We do not think that Mr. Rajappa contention is really to the point. A. NARAYANAPPA V. B. KRISHNAPPA (1966 II S.C. J. 490) was concerned with the inadmissibility of a certain document for want of registration and it was in that connection the Supreme Court held that the right of a partner to share the profits of the firm was not a right to any immovable property and therefore, the transfer of such a right did not require registration. LIKE-WISE COMMISSIONER OF GIFT-TAX, MADRAS V. GETTI CHETTIAR (60 I.T.R. 454) also dealt with a different situation, not whether distribution by a partner of his right to share the profits among the partners including himself in a transfer of property within the meaning of the Gift-tax Act.

Reference was made to Rule 10(3) of the Gift Tax Rules, but it seems to us that this certainly will not cover the case of distribution such as involved in this reference. We are also not concerned with the question of the property and the manner of valuation. But we must observe on the view we have taken on the question under reference, that the transfer we have held to be here, cannot be regarded as of a share in the goodwill of the firm. It will follow that the Revenue will have to re-value the gift. But in that connection we do not propose to indicate our own view as to how it should be valued. It is, however, necessary to point out that Section 6(3) contemplates rules to be prescribed for valuing a property which cannot be estimated under sub-section (1) of that section. In the

absence of any rule framed, Section 6(3) may really serve no purpose. But as we are not in the present reference concerned with the valuation, we refrain from expressing any final opinion on the question.

We answer the question in the reference in favour of the Revenue. No cost.

Sd/- SOUNDARA PANDIAN,
Deputy Registrar, App. Side.
30-4-69

Sd/-
Sub Assistant Registrar
App. Side.

APPENDIX IV

(*Vide* paragraph 4.31)

REPORT OF D.I. (INVESTIGATION), NEW DELHI.

The action taken on the observations of the P.A.C. in their 7th Report (1967-68) is as under:—

Para 2.21. As reported earlier, the dividends of Rs. 26,63,710|- declared on 31st October, 1955 by M/s. Bennet Coleman & Co., Ltd. on its preference shares, was not accounted for either by the registered shareholders R. Dalmia and D. A. Patel or by any of the real or beneficial owners of the shares. Since it was not clear as to how, when and to whom the registered shareholders sold the shares under blank transfer, action u/s. 147 was taken in the hands of Sahu Jain Ltd. and *its nominees. The case of the registered shareholders viz.*, R. Dalmia and D. A. Patel along with the cases of the various companies viz., South Asia Industries Pvt. Ltd., Edward Keventers Pvt. Ltd., and Bharat Union Agencies Pvt. Ltd. were also reopened by I.T.O. CC-XI, New Delhi, for bringing to tax, the dividends of Rs. 26,63,710/- not accounted for.

2. The facts are that on 4-10-1955 M/s. Bharat Union Agencies Ltd. entered into an agreement with Sahu Jain Ltd. for the sale among other things of 37 'A' preference shares of Bennett Colleman & Co. and that out of these 22 shares were delivered to Sahu Jain Ltd. on 4-10-1955 and the balance 15 on 17-11-1955. As stated earlier, the dividend was declared by M/s. Bennett Coleman Ltd. on 31st October, 1955 and was adjusted against the sale price of Rs. 87,52,190/-. It also appears from the record that M/s. Bennett Coleman received mandatory letters from Sarvashri R. K. Dalmia and D.A. Patel both dated 15th October, 1955 authorising the company to pay M/s. Bharat Union Agencies Ltd. A resolution stating that dividends on 'A' and 'B' preference shares at 10 per cent per annum on paid up capital accrued and due upto 31st September, 1954 or their mandatees. Accordingly the dividends of Rs. 26,63,710/- in respect of Shri R. K. Dalmia and Shri D. A. Patel were credited to the account of Bharat Union Agencies Ltd. in December, 1955 as per mandatory letters from the registered shareholders.

2460 L.S.—6.

3. The books of M/s. Sahu Jain Ltd. were seized by the Company Law Board in July, 1964 and are lying sealed with the Registrar of Joint Stock Companies, Calcutta. The Calcutta High Court had issued an injunction against the examination of the books by the Department. This injunction rule has now been made absolute and the Department's further appeal is pending. In these circumstances it is not possible for the Department to examine the account-books and come to a definite conclusion about the real ownership of the shares and the dividend received. The assessments of Sahu Jain Ltd. and its nominees were, however, reopened u/s. 147 at the instance of the Directorate. M/s. Sahu Jain Ltd. and its 4 nominees filed writs in the Calcutta High Court against the reopening of their assessments. These writs have been decided in the first instance against the Department. Appeals to the Division Bench, Calcutta High Court against the orders are pending. In the case of Shri S.P. Jain, however, no writ was filed and the following amounts have been assessed in the reopened assessments:

1956-57	..	Rs. 1,40,000/-
1958-59 to 1963-64	..	Rs. 22,00,000/-

The assessments, however, were set aside in appeal by the A.A.C. against whose orders the Department have gone in appeal. The appeal is now pending before the I.T.A.T. As a precautionary measure, however, the amount of the dividends has already been assessed in respect of the assessment year 1956-57 in the hands of Bharat Union Agencies Ltd.

4. Regarding para 2.22 the review of other companies in the group has been done by the Directorate. The Income-tax Officers assessing the shareholders who had received dividends of Rs. 25,000 and above from the companies of Dalmia Jain Group were addressed. Most of the dividends declared by these companies have been verified and brought to tax in the respective assessment of the shareholders. This review was not confined to the year 1954-55 only, but also to the subsequent years. The verifications have been done from the year 1950 onwards.

There are 3 different files through which the Directorate has been making correspondence with the different Commissioners/ITOs. The file numbers are:—

AP/EC(151)DI/64-65
AP/EC(151)II/DI/64-65 and
AP/EC(151)III/DI/64-65.

APPENDIX V

Conclusions/Recommendations

S. No.	Para No.	Ministry/Department concerned	Conclusions/Recommendations
1	2	3	4
1.	1·14	Finance (Rev. & Ins.)	The Committee find in this case that an omission on the part of the Gift Tax Officer had resulted in the non-levy of tax amounting to Rs. 7,290. The said officer had failed to treat relinquishment or surrender by a vidow of her share of the capital of her deceased husband in a firm to her two sons as a deemed gift liable to gift tax. The Committee are informed that though the assessment was revised on the basis of the Audit objection and the additional demand collected on 27th May, 1972, an appeal filed by the assessee against the order of the Gift Tax Officer has been decided in her favour. The Department has, however preferred a second appeal. The Committee would like to be apprised of the final outcome of this appeal filed by the Department which would, perhaps have been disposed of by now.
2.	1.15	—do—	The omission had occurred on account of the failure of the Wealth Tax Officer to pass on to the Gift Tax Officer the information about the death of the individual, who was a Wealth Tax assessee, and his rights in the firm passing on to his legal heirs. Such instances of lack of proper coordination resulting in loss of revenue have been

			commented upon, year after year, in the reports of the Comptroller & Auditor General of India. The Committee have also been expressing concern over the apparent communication gap between different direct tax authorities. The instructions issued in this regard by the Central Board of Direct Taxes appear to have had little or no effect. The Committee note that fresh instructions on the subject have been issued by the Directorate of O & M Services on 15th November, 1973. The Committee would like to know if such instructions have been actually implemented.
[illegible].	1·16	—do—	A relevant point is the liaison between the taxation authorities and the State Governments in order to keep an eye on surrender of property at the time of issue of succession certificates and to secure taxation of such surrenders as gifts. It is not normally necessary, in view of Section 212 of the Indian Succession Act, to apply for a succession certificate to establish the right to property left by a deceased, in the cases of intestacy of a Hindu, Mohammaden, Buddhist, Sikh or Indian Christian. But such surrenders in favour of children or brothers are often made by widowed mothers or by sisters at the time of obtaining succession certificates. The Central Board of Direct Taxes may, therefore, ensure that coordination in this regard is maintained between the Income-tax Department and the State authorities. The Committee note that the Commissioners of Income-tax have for some time now been instructed by the Board to arrange periodical collection of information from the courts on the issue of succession certificates, to see whether there were any surrenders of property at the time of issue of succession certificates and,

1	2	3	4
			if so, to subject such surrenders to Gift Tax. The Committee would like the Central Board of Direct Taxes to ascertain how far the objective has been achieved. The Committee would like to have a report in this regard.
4.	1·34	Finance (Rev. & Ins.)	The Committee are concerned to note that despite the clear and unambiguous legal position upheld by the highest judiciary, regarding the liability to Gift Tax of gifts of agricultural land, action had not been taken by the Gift Tax Officer in the present case where agricultural land valued at Rs. 1.32 lakhs was gifted by the assessee to her minor sons. This omission had resulted in the non-levy of Rs. 12,524. Though the error has been admitted, the question of recovering the tax is 'still under consideration'. The Committee cannot appreciate this delay in taking a decision in this straightforward case. Action to recover the tax due should be taken at once, if it has not been already done.
5.	1·35	—do—	As early as August 1972, the Committee had, in paragraph 3.10 of their 50th Report (Fifth Lok Sabha), *inter alia*, recommended a review of the position relating to the levy of Gift Tax on gifts of agricultural land with a view to ascertaining the extent of non-levy of tax on such gifts in the past. A limited review of gifts of agricultural land exceeding the value of Rs. 5,000 registered during the months of September and October in 1969-70 and 1970-71, in all

			Commissioners' charges excluding West Bengal, had revealed that out of 10,544 cases of such gifts, Gift Tax proceedings had not been initiated in as many as 4,590 cases, involving gifts valued at Rs. 3.15 crores. This would indicate the extent to which the administration of the Gift Tax Act has been inadequate and defective. On the basis of this sample survey, the Central Board of Direct Taxes had also set in motion a complete review of such cases in all the Commissioners' charges for the years 1970-71 to 1972-73. As a time limit of 8 years was available under Section 16(i) of the Gift Tax Act for assessing gifts escaping tax, the Committee, in paragraph 1.28 of their 103rd Report (Fifth Lok Sabha) had wanted that the proposed review should also cover the period from 1965-66 to 1969-70, that the review should be completed within a period of one year and that action should be taken to finalise the assessments before they became time-barred.
6	1·36	—do—	The Committee regret that the results of the review and the action taken thereon have not yet been intimated. If the sample survey is any indication, the value of gifts of agricultural lands not subjected to tax may well run into crores of rupees. It is also likely that on account of the delay in completing the review, a large number of cases have become time-barred. The Committee disapprove of such indifference and desire that the review should be completed forthwith and immediate action taken thereon. Responsibility for the delays should also be fixed for appropriate action. The Committee would like an early report on these issues.

1	2	3	4
7.	1·37	Finance (Rev. & Ins.)	The Committee find that under the instructions issued, as early as May 1958, the departmental officers were required togather information relating to the transfer of both agricultural and non-agricultural properties from the registration offices, and that this exercise was to be repeated annually. Further, in November 1964, the Inspecting Assistant Commissioners were also made specifically responsible for the proper collection and utilisation of this information. However, these instructions have been more honoured in the breach than in the observance. The Committee take a serious view of this lapse, particularly at the level of the Inspecting Assistant Commissioners who have apparently failed to do their duty. The Committee cannot accept the somewhat worn out plea that the officials operate under an excessive work-load. The responsibility of the Central Board of Direct Taxes does not and with issuing instructions without worrying over their honest implementation. The Committee would urge that the Central Board of Direct Taxes should evolve a system of periodical review of the implementation of the various instructions issued and evaluation of the impact of these instructions on tax administration.
8.	1·38	—do—	The Committee also note that with effect from 1st October 1971, a certificate is required to be furnished from the Income-tax authorities, under Section 230A of the Income-tax Act, for registration of transfers of agricultural lands valued over Rs. 50,000. It is

			surprising that the Central Board of Direct Taxes does not even have information relating to such transfers which should be readily available with the Department. The Committee feel that it would be worthwhile to conduct a specific review of the certificates issued by the Income-tax Department relating to agricultural lands, under Section 230A of the Act so as to ascertain how the information available within the Department in this regard was utilised for the assessment and levy of Gift Tax. The Committee recommend that a detailed review in this regard should be undertaken forthwith and completed expeditiously and its outcome reported.
9.	1.47	—do—	This is a case of non-levy of Gift Tax amounting to Rs. 15,600 on the transfer, on inadequate consideration, of 500 shares by a company to two individuals. As against the consideration of Rs. 2 lakhs received for the transfer, the market value of the shares is found to have been determined at Rs. 3.52 lakhs in the income-tax assessment of the company. Though the difference between the market value and the actual consideration had been subjected to capital gains tax, proceedings had not been initiated to subject the difference to Gift Tax. This omission has taken place despite the clear legal position in this regard and the clarificatory instruction issued by the Central Board of Direct Taxes in November 1964. The Committee are unable to accept the plea of inadvertence put forth by the Central Board of Direct Taxes during evidence. The assessing officer appears to have taken a stand that no gift tax was leviable in this case because capital gains tax, under the Income-tax Act, had been levied. It is, therefore, evident that the assessing officer was

1	2	3	4
			unaware of the correct legal position in this regard. The Committee would like the Central Board of Direct Taxes to re-examine the circumstances in which this omission had taken place.
10.	1·48	Finance (Rev. & Ins.)	As it is not unlikely that similar mistakes in the levy of Gift Tax might have occurred in other cases, the Committee desire that a review of all such cases in which capital assets had been transferred for inadequate consideration during the past eight years should be conducted by the Central Board of Direct Taxes with a view to determining whether Gift Tax had been levied in these cases and taking all necessary action in the interest of revenue. The results of the review should be intimated to the Committee early.
11.	1·49	—do—	The Committee note that the question of issuing instructions that where the provisions of Section 52 of the Income-tax Act are involved, Gift Tax must be levied on the deemed gift is under consideration of the Central Board of Direct Taxes. The Committee would like to know the decision in this regard.
12.	1·50	—do—	The position relating to the recovery of the additional demand of Rs. 15,060 in the instant case should also be reported to the Committee early.
13.	1·59	—do—	This is a case where the Gift Tax Officer omitted to treat as a gift the interest in the business foregone by the assessee in two transactions in favour of his children. This omission resulted in

			the non-levy of Gift Tax of Rs. 8,221. The Committee note that though the liability to Gift Tax of the interest foregone by the assessee had been upheld in appeal, the value of the gifts has been reduced from Rs. 1.03 lakhs to Rs. 0.16 lakh and that the Department has preferred an appeal before the Tribunal against this reduction. The Committee would like to know the outcome of the appeal which ought to have been disposed of by now by the Tribunal.
14.	1·60	—do—	The reduction of the value of the gifts, on appeal, in this case, raises the general question of the evaluation of the right to share in the profits of a firm for purposes of levy of Gift Tax. The Committee note that according to the instructions issued in this behalf by the Central Board of Direct Taxes, in July 1969, pending the finalisation of rules for valuation of such a right, the Gift Tax Officers are required to value the right on the same basis on which goodwill is valued at present. However, the Committee find from a judgement of the Madras High Court in the case of Commissioner of Gift Tax *Vs.* K.P.S.V. Duraiswamy Nadar (91 ITR 473) that in the court's view the value of such interest should include, apart from goodwill, the interest of the partner in the properties of the firm after settling the debts, advances and capital. The Committee, therefore, desire that the instructions of July 1969 be re-examined and amended in the light of the decision of the Madras High Court.
15.	1.61	—do—	The Committee would also like to be apprised of the progress made in framing rules for the valuation of the right to share in the profits of a firm, which was stated to be under consideration

1	2	3	4
			as early as 1969. This long pending exercise has, it is expected, reached finality.
16.	1·72	Finance (Rev. & Ins.)	The Committee are concerned to note that because of an erroneous application of the law relating to the transfer of property by the Kartha of a Hindu Undivided Family to his sons who, as coparceners, are also the owners of the property, to a case of transfer of property to a trust, gifts aggregating Rs. 1.48 lakhs had escaped tax, resulting in a short-levy of Gift Tax of Rs. 22,768. Since the transfer of properties in the present case was made by the Hindu Undivided Family to a trust, which is a separate legal entity, and not directly to the members of the joint family, it is evident that it could not be treated as a case of transfer of property by a Hindu Undivided Family to its coparceners, and that the judgement of the Madras High Court, reported in 49 ITR 817, is not applicable in this case. Since the assessing officers appear to be unaware of the correct legal position in this regard, the Committee desire that this should be clarified correctly to the officers of the Department.
17.	1·73	—do—	The Committee note that the tax demand in this case has been collected only partly and that recovery of about Rs. 16,000 has been stayed by the Appellate Tribunal. The Committee trust that the Tribunal proceedings have been completed by now and would like to be informed of its outcome and the action taken to recover the balance due.

18.	2·15	—do—	In this case, the Committee are concerned to note that the assessee, a non-resident citizen of India, had adopted an ingenious method to bestow on his nominees, who are permanently resident in India, the gift of shares worth Rs. 5.50 lakhs while, at the same time, avoiding the liability to Gift Tax. It is clear, as the Ministry of Law concedes, that the various transactions in this case were part of a well-planned design by which the donor intended the donees to acquire the shares in the company without any consideration and without liability to Gift Tax, which would have amounted to Rs. 1.10 lakhs. There can hardly be two opinions that there has been an indirect transfer of property. From the evidence available before the Committee, it would appear that after placing an order for the supply of machinery with the German manufacturers, the foreign supplier, the donor of the shares in this case, and his nominees looked up the law and found that the issue of shares to the nominees against the machinery supplied by the non-resident donor would amount to a taxable gift and they, therefore, hit upon the expedient that instead of the donor himself supplying the machinery, it should be supplied by the donees as their own property—the donees having become the owners by virtue of a gift completed on the high seas. In essence, however, the transaction remained the same, namely, that the foreign donor would supply the machinery and his nominees would acquire the shares.
19.	2·16	—do—	The Committee find that the Ministry of Law have held the view that, in the present case, 'the trick adopted by the assessee is not covered by the statute'. The contention of the Ministry that

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			there were two transactions, one of gift of machinery on the high seas and the other of issue of shares, however, does not appear to be correct since the foreign donor himself, in his letter dated 24th October 1964, had treated the gift of machinery, the supply of machinery and the issue of shares as a single transaction. It would appear from this letter that despite the gift of machinery on the high seas, the shares in pursuance of the agreement would have been issued to the nominees only as nominees of the donor and it was this letter which made them the absolute owners of the shares. If it is accepted that the entire transaction was a single, continuous one, then the rationale of the Supreme Court decision in Kothari's case would equally, apply to this case also, since *prima facie,* the transactions are inter-connected as parts of the same transaction, and only a circuitous method has been adopted as a device to avoid tax. The legal notices of the case notwithstanding, the Committee consider that it would be worthwhile to examine the entire case afresh in the light of the decision of the Supreme Court. The Committee would await the outcome of such review.
20.	2·17	Finance (Rev. & Ins.)	The device adopted by the assessee in this case should also serve as an eye-opener to Government. Since there has undoubtedly been an avoidance of tax liability, the Committee desire that the existing provisions of the Gift Tax Act are reviewed carefully and suitable remedial measures taken to ensure that such devious

			method of depriving Government of its dues are prevented. The Act should be amended suitably to safeguard against the exploitation of probable legal loopholes.
21.	3·12	—do—	In paragraph 63(b) (ii) (4) of the Report of the Comptroller & Auditor General of India for the year 1969-70, Central Government (Civil), Revenue Receipts, a case had been reported where no tax was levied on a gift made to a political party. This case had been dealt with by the Committee in paragraphs 3.17 and 3.19 of their 50th Report (Fifth Lok Sabha) wherein the Committee had, *inter alia*, desired that in all cases in which action was not taken to bring such donations to political parties to gift-tax, on the basis of the earlier instructions of 1960 of the Central Board of Direct Taxes, proceedings should be initiated under the Gift Tax Act according to the revised instructions issued in this regard in June 1972. This case, brought to the notice of the Committee in the Audit Report for 1971-72, is one more instance of incorrect exemption from Gift Tax of donations made to political parties by a mistaken application, by way of executive instructions, of a provision in the Companies Act, 1956, which treated gifts made by a company to a political party, under the authority of a specific clause in the Memorandum and Articles of Association of the Company, as having been made in the course of carrying on the business of the company. The Committee regret that this mistaken view should persist for over a decade, from 1960 to 1972, despite the fact that various High Courts had held, in the meantime, that for a payment to be treated as being for the purpose of business, there must be a nexus between

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			the payment and the business. As early as April 1966, the Allahabad High Court held, in the case of J. K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Commissioner of Income-tax Uttar Pradesh (72 ITR 813), that 'when there is no direct nexus between the business of the company and the contribution, it appears to be impossible to hold that the assessee company discharged burden of proof to show that this expenditure was wholly and exclusively for the purpose of business'. Again, in the case of Indian Steel & Wire Products Ltd. (69 ITR 379) the Calcutta High Court, in its judgement dated 3rd July 1967, held that the payment of donation to a political party was not an expenditure incurred solely or exclusively for the purpose of the business and observed: 'We are not prepared to proceed on the assumption that all contributions to all political funds must always be presumed to be commercially expedient.' Besides, Section 293(A) of the Companies Act, 1956, which was inserted in 1969, also prohibits contributions to political parties by a company.
22.	3.13	Finance (Rev. & Ins.)	The Committee find it strange that the Central Board of Direct Taxes should have waited till June 1972 to revise their earlier instructions of 1960. As a result of this peculiar delay time for rectificatory action in the present case, under Section 16(1) of the Gift Tax Act, for the assessment year 1962-63 had expired and only a demand of Rs. 2,672 for the assessment year 1963-64, out of the total demand of Rs. 10,120 for the two years, could be collected. It is not unlikely that other cases might have also become time-barred

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			on account of such delay. The Committee would like to know the reasons for it and also how far officials in the higher echelons of the Administration have been found to be remiss in safeguarding the revenues of the State. The Central Board of Direct Taxes should, in any case, review periodically the correctness and legality of the various instructions issued by it from time to time, and devise a suitable machinery for this purpose.
23.	3·14	—do—	The Committee are perturbed to learn that though a review of the gift-tax assessments involving contributions to political parties, as suggested by them in August 1972, had disclosed that Gift-tax proceedings had not been initiated in 34 cases, action so far has been taken only in 23 of them, involving gifts amounting to Rs. 41.92 lakhs, while action is still pending in the other 11 cases. In paragraph 1.33 of their 103rd Report, presented on 9th April 1974, the Committee had deplored the 'perfunctory attitude' of the administration in this regard and had enquired into the action taken in these 11 cases and the quantum of contributions involved therein. The Committee still await the information which is somewhat overdue.
24.	3·15	—do—	From the information furnished by the Department of Revenue & Insurance in November 1973, the Committee find that out of 8,973 cases reviewed, Gift tax proceedings had been initiated in all but a mere 34 cases. The Committee consider this rather strange since in an overwhelming majority of the cases, the Board's own instructions of 1960 appear to have not been followed by the assess-

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			ing officers. That the Board's instructions were disregarded except only in a negligible percentage of the cases reviewed, is puzzling. The Committee would like to know the reasons for this state of affairs.
25.	4·33	Finance (Rev. & Ins.)	This is an instance where certain shares transferred, without adequate consideration, by an assessee were valued incorrectly for purposes of Gift-tax and an excess discount of Rs. 6.57 lakhs was allowed, with consequential short-levy of tax by Rs. 2.45 lakhs. The Committee learn that prior to the assessment year 1965-66, the value of equity shares, not quoted in recognised stock exchanges, was to be determined, under executive instructions issued by the Central Board of Direct Taxes, on the basis of what was known as the 'break-up value method' and was arrived at as the surplus of the assets over liabilities of the company divided by its paid-up equity capital. Subsequently, with the promulgation of Rules under the Wealth-tax Act for the valuation of assets on 6th October 1967, the value of such shares, as arrived at by the usual break-up value method, was to be discounted generally by 15 per cent in all cases and by further discounts depending on the number of years for which the company had not declared dividends. Thus, in respect of a company which had not declared dividends for six years and more, the market value of its unquoted equity shares was to be taken as 75 per cent of their break-up value. While these Rules

			were applicable to Wealth-tax assessments, the Central Board of Direct Taxes issued instructions, on 26th March 1968, that for the purpose of Gift-tax also, the discounted break-up value method should be adopted and that the market value of an asset should be the same as determined for Wealth-Tax.
26.	4·34	—do—	In the present case, the mistake is stated to have occurred on account of a printing error in the departmental Manual. The Committee find that though the effective break-up values to be adopted, under the revised Rules, for determining the market value were correctly indicated in the notification as well as in the departmental circulars issued in this regard, yet the figure of 75 per cent applicable to a company that had not declared dividends for six years and more came to be erroneously printed as 65 per cent which was not noticed by the departmental authorities for quite some time. Thus, in cases where the assessing officers acted on the Manual, the discounted break-up value came to be under-assessed to the extent of 10 per cent, the effective rate of discount being taken as 35 per cent instead of 25 per cent. The Committee take a serious view of this lapse. Since manuals serve as important reference books for the assessing officers, the Committee would ask the Central Board of Direct Taxes to take scrupulous care in eliminating printing errors and prompt action, whenever necessary, to rectify the position.
27.	4·35	—do—	The Committee are concerned to find that though the printing error in the Manual had been brought to the notice of the Di-

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			rector of Inspection by the Commissioner of Income Tax in October, 1970 and necessary corrigendum to the Manual was also issued in December 1970, it was only in May 1972 after a time lag of about 18 months, that the Central Board of Direct Taxes had considered it fit to order a review of all Wealth-tax assessments. The reasons for this delay, despite the fact that the error in the Manual was of a serious nature, is inexplicable. The Committee strongly stress the importance of prompt and precise review of past cases when patent errors of this nature come to notice.
28.	4.36	Finance (Rev. & Ins.)	The Committee learn that this review, which was initially confined only to Wealth-tax assessment, had also been extended, in September 1973, to cover Gift-tax Estate Duty assessments, and that the reports received from 22 Commissioners showed that there were no assessments in which mistakes in valuation were found on account of the printing error in the Wealth-tax Manual. The Committee would like to know the results of the review from the remaining Commissioners and the steps taken, wherever called for, to revise the assessments.
29.	4.37	—do—	An additional complication in this case is that the assessee (Shri R. Dalmia) has not disclosed the transfer of his shares to a number of persons initially in the Gift-tax return. It was only at the time of making his income-tax assessment for subsequent years in March 1968, that the gifts escaping assessment were notic-

			ed and the Gift-tax assessments reopened for the earlier years. The assessee also subsequently filed a revised return on 14th March 1969. Even though this clearly amounted to concealment of a gift, the Committee are distressed that considerable time elapsed before a penalty of Rs. 2.55 lakhs was levied by the Department on 19th June, 1971. The Committee would like to know the reasons for this abnormal delay of over two years in levying penalty in a clear case of concealment and also whether the said penalty was recovered in full.
30.	4·38	—do—	The Committee find that the assessee had challenged the reopening, under Section 16 of the Gift-tax Act, of the Gift-tax assessment for the year 1963-64 before the Appellate Tribunal who had remitted the case back to the Appellate Assistant Commissioner for a fresh examination. The Committee trust that this case, last stated to be pending with the Appellate Assistant Commissioner, has been finalised, and would like to know its outcome and the action taken thereafter.
31.	4·39	—do—	This is one more instance which has come to the notice of the Committee where the rectification of a patent error has been frustrated by the assessee seeking legal remedies on a more technical plea. In this connection, the Committee would invite the attention of Government to an earlier recommendation contained in paragraph 2.30 of their 120th Report (Fifth Lok Sabha) and reiterated in paragraphs 4.26 and 5.32 of their 187th Report (Fifth Lok Sabha) on the question of amending Article 226 of the Constitution, in so far as it relates to revenue matters, in respect of which adequate remedies

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			are provided in the respective statutes themselves. Since such a step would have a salutary effect on the collection of revenues, the Committee urge Government to process this recommendation with the expedition that it rightly deserves.
32.	4·40	Finance (Rev. & Ins).	Another relevant issue is whether the formula of discounted break-up value is at all applicable to this case relating to the assessment year 1963-64. The Committee find that the Appellate Assistant Commissioner, while disposing of the first appeal filed by the assessee in this case, had ordered that the value of the shares transferred by the assessee should be computed, as per the latest executive instructions, by adopting the discounted break-up value. The Committee learn from Audit that since the relevant statutory rules for the valuation of assets, under the Wealth-tax Act, which was later made applicable to Gift-tax assessments also, had been promulgated only on 6th October 1967, and the amendment to the Act empowering the framing of rules was also effective only from assessment year 1965-66, these rules, being prospective in effect, were applicable only to the assessments from the assessment year 1965-66 onwards which were pending on 6th October 1967. The Committee also understand that this legal position had been clarified by the Central Board of Direct Taxes in their circular of 2nd November 1966, with reference to a similar question of valuation of business assets. Under the circumstances, it is surprising that neither

			the Gift-tax Officer had pointed out to the Appellate Assistant Commissioner that the latest instructions were not applicable in the instant case nor had the Department contested the order of the Appellate Assistant Commissioner. The Committee would, therefore, like Government to re-examine this aspect, in consultation with Audit.
33.	4.41	—do—	It appears that this was not the first time this particular assessee had resorted to the transfer of his shares to different persons. In paragraph 74(a) of the Audit Report (Civil), 1965 on Revenue Receipts, the attention of the Committee had been drawn to the transfer of preference shares, belonging to two persons of the Dalmia Group, which had been transferred, under blank transfer, from time to time to certain other companies belonging to the same group, resulting in the escapement of income to the extent of Rs. 26.64 lakhs, with a tax effect of about Rs. 11.56 lakhs. Dealing with this case, the Committee, in paragraph 1.170 of their 46th Report (Third Lok Sabha) had put their view sternly that this was 'a deliberately devised and planned scheme to evade tax and defraud the Government.' The Committee had also made a number of other recommendations in respect of this case in paragraphs 1.170 to 1.173 of their 46th Report (Third Lok Sabha), paragraphs 2.20 to 2.23 of their 7th Report (Fourth Lok Sabha) and paragraphs 1.35 and 1.36 of their 36th Report (Fourth Lok Sabha). It is distressing that even after the lapse of a considerable time, there is no finality yet in respect of the case, which continues to be pending before different

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			appellate authorities and courts of law. The Committee would urge Government to take all possible steps to expedite the appeals/court cases. It is almost two years since the Committee last heard from Government on this case and they are keen to know the present position.
34.	5·10	Finance (Rev. & Ins.)	The Committee take a serious view of the mistake in the calculation of Gift Tax that had occurred in this case, resulting in a total short-levy of Rs. 98,471. It is rather surprising that the Central Board of Direct Taxes have not been able to find out how this mistake was committed. Calculation of tax by applying the rates laid down in the Schedule to the Gift Tax Act 1958 does not involve any subtlety and the rates of tax as they are applicable for and from the assessment year 1966-67 have also been simplified, not more than a single arithmetical calculation being involved. The mistake in this case cannot, perhaps, be described as an arithmetical error attributable to an Upper Division Clerk. At the instance of the Committee, the Commissioner of Income Tax was asked by the Central Board of Direct Taxes to examine the bonafides of the error. The Committee trust that the examination has been completed. Its outcome and the action taken against erring officials should be intimated forthwith.
35.	5·11	—do—	The Committee learn that Gift Tax Officers had been specifically enjoined to check tax calculations in all cases where the

			demand raised exceeds Rs. 25,000 or refunds exceed Rs. 10,000 only with effect from October 1972. Prior to this date, there was apparently no clear provision for the arithmetical check of Gift Tax calculations, and the guidelines in Volume II of Income Tax Manual, according to which tax calculations are to be checked by an Upper Division Clerk, Head Clerk and the Income-tax Officer in appropriate cases, were expected to be followed in the case of Gift Tax and Wealth Tax assessments also. In the instant case, despite the fact that the value of the taxable gifts made in the assessment years 1968-69 and 1969-70 was respectively Rs. 7.29 lakhs and Rs. 8.09 lakhs, the check of arithmetical accuracy was carried out only by the Head Clerk who had also been admitted 'casual' in his attitude. Judging from the number of mistakes in the calculation of tax that have been brought to their notice by Audit every year, the Committee are not satisfied with the somewhat desultory checks hitherto prescribed by the Department. Now that it has been decided that the Gift Tax Officer should personally re-check the tax calculation in all cases where the value of the taxable gift is Rs. 1 lakh or more or where the refunds due exceed Rs 5,000, the Committee trust that mistakes in the calculation of tax would be minimised, if not altogether eliminated.
36.	5·12	—do—	This assessment had also not been checked in Internal Audit, presumably because no quantum of audit had been specified earlier for the internal audit of Gift-tax assessments. The Committee, however, find that the erstwhile Central Board of Revenue had directed, in 1963, that while checking income-tax assessments, In-

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			ternal Audit parties should also check the arithmetical accuracy of the calculations made in gift-tax assessments in the same cases. Since the assessee in this case would have been assessed to income-tax as well, the Committee would like to know the reasons for this assessment escaping the scrutiny of Internal Audit. Now that the Central Board of Direct Taxes have prescribed an 'immediate audit' within one month from the date of completion of the assessment in cases in which the gift-tax demand exceeds Rs. 10,000, the Committee expect that such mistakes as in the present case would be promptly detected and rectificatory action taken.
37.	5·13	Finance (Rev. & Ins.)	The Committee note from the Audit paragraph that out of the short-levy of Rs. 98,471, a sum of Rs. 74,286 has been adjusted against a refund of income-tax and would like to be informed of the position of recovery of the balance amount of Rs. 24,185.
38.	6·13	—do—	The Committee consider that the mistakes committed in this case, by an Upper Division Clerk, while computing the gift-tax, which resulted in over-assessment, are inexcusable. Obviously the clerk had neither applied his mind nor used the Schedule for tax calculation which itself has been fairly simplified. The Committee note that the defaulting official has been warned and a copy of the warning placed in his confidential Character Roll.
39.	6.14	—do—	What is more deplorable is that the Gift-tax Officer concerned had not checked the tax calculations in this case. The Com-

			mittee view with consternation the statement made by the Finance Secretary during evidence that the assessing officers are 'under the impression that it is not their duty' to check the correctness of the tax calculations made by the subordinates. The Committee are of the view that the sooner this notion is dispelled from the minds of the assessing officers the better it will be both for the revenue and for the assessees. Since the assessing officers are responsible for all assessments made by them, checking of tax calculations must be one of their essential functions. This responsibility cannot be foisted on the staff at the lower levels of the hierarchy. The Committee desire that suitable instructions should be issued in this regard.
40.	6·15	—do—	The Committee have not made specific recommendations/observations in respect of some of the paragraphs relating to Gift-tax included in Chapter IV of the Reports of the Comptroller & Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect however, that the Department of Revenue & Insurance and the Central Board of Direct Taxes will in consultation with Statutory Audit, take such remedial action as is called for.

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