P. A. C. No. 190

PUBLIC ACCOUNTS COMMITTEE (1968-69)

(FOURTH LOK SABHA)

THIRTY-SIXTH REPORT

[Action Taken by Government on the Recommendations of the Public Accounts Committee contained in their 2nd, 3rd and 7th Reports (Fourth Lok Sabha) relating to Revenue Receipts.]

LOK SABHA SECRETARIAT
NEW DELHI

March, 1969/*Phalguna* 1890 (*Saka*)

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(1968-69)

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*Declared elected on 19th August 1968 *vice* Shri M. M. Dharia who resigned from the Committee.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Thirty-Sixth Report on the Action taken by Government on the recommendations of the Public Accounts Committee contained in their Second, Third and Seventh Reports (Fourth Lok Sabha) relating to Revenue Receipts.

2. On 12th June, 1968, an 'Action Taken' Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports. The Sub-Committee was constituted with the following Members:

1. Shri D. K. Kunte—*Convener*
2. Shri C. K. Bhattacharyya
3. Shri K. K. Nayar
4. Shri Narendra Kumar Salve
5. Shrimati Tarkeshwari Sinha
6. Shri N. R. M. Swamy

3. The draft Report was considered and adopted by the Sub-Committee at their sitting held on the 8th February 1969 and finally adopted by the Public Accounts Committee on 3rd March 1969.

4. For facility of reference the main conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. A statement showing the summary of the main recommendations/observations of the Committee is appended to the Report (Appendix III).

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

M. R. MASANI,
Chairman,
Public Accounts Committee.

NEW DELHI;
March 11, 1969
Phalguna 20, 1890 (*S*)

CHAPTER I

REPORT

1. This Report of the Committee deals with the action taken by Government on the recommendations/observations contained in their 2nd, 3rd and 7th Reports (Fourth Lok Sabha), relating to Revenue Receipts. The 2nd and 3rd Reports were presented to the House on 7th August, 1967 and 7th Report on 16th November, 1967.

1.1. The total number of recommendations of the Committee in their Reports and the number of recommendations to which no replies or interim replies have been received so far are as follows :

Report	Total No. of recommendations.	No. of recommendations to which no reply has been received.	No. of recommendations to which interim replies have been received
Second Report	41	3	7
Third Report	52	3	5
Seventh Report	5	—	—

1.2. A list of recommendations in respect of which the Action Taken notes are still awaited is given in Appendix I.

1.3. An analysis of the Action Taken notes furnished by Government is given in Appendix II.

1.4. The Action Taken notes on the recommendations of the Committee have been categorised under the following heads:

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

(ii) Recommendations/observations which the Committee do not desire to pursue in view of the replies of Government;

(iii) Recommendations/observations replies to which have not been accepted by the Committee and which required reiteration;

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

1.5. The Committee hope that replies to the outstanding recommendations and final replies in regard to those recommendations to which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.

1.6. The Committee will now deal with the recommendations in respect of which Government's replies have not been accepted by the Committee and which require reiteration.

Rationalisation of Customs & Central Excise Tariffs—Paras 2.26 and 2.27 (S. No. 9 of Appendix VIII) of 2nd Report (Fourth Lok Sabha).

1.7. In paras 2.18 to 2.27 of their 2nd Report, the Committee had referred to a case where a tractor, which had been treated as a vehicle for purpose of excise duty, had been classified as machinery for the purpose of customs duty. Commenting on this and other cases, where there had been lack of uniformity in classification of items for excise and customs purposes, the Committee had made the following observations in para 2.27 of their 2nd Report (Fourth Lok Sabha) :

"2.27. The Committee hope that the Report of the Tariff Revision Committee on customs would receive due consideration and changes introduced as a result of that Committee's recommendations would systematise the tariff and bring it in line with modern conditions. The Committee hope that now that the question of aligning of the Central Excise Tariff with the Customs Tariff has been referred to the Tariff Revision Committee, with the receipt of the report (of the Tariff Revision Committee), difficulties about the imposition of countervailing duties would be reduced considerably and the Central Excise Tariff would also be put on a more scientific basis."

1.8. In their reply dated 28-3-1968, the Department of Revenue have stated :

"The Reports of the Tariff Revision Committee, both regarding the customs tariff and the central excise tariff have been received and are under the active consideration of the Government of India. Attempts are being made to ensure that the revised tariffs, when introduced, reduce considerably the present difficulties in the imposition of countervailing duties."

1.9. The Committee hope that Government will take an early decision on the Reports of the Tariff Revision Committee regarding Customs Tariff and Central Excise Tariff. They would like to know the progress made in rationalising the tariff.

Loss of Revenue due to Fraudulent Alterations in Bills of Entry—Paras 2.55—2.57 (S. No. 13 of Appendix VIII) of 2nd Report (Fourth Lok Sabha).

1.10. In paras 2.55—2.57, the Committee had commented upon certain cases in which fraudulent alterations in the amount of duty had been made in a Custom House both in the duplicate and triplicate copies of the Bills of Entry to defraud Government Revenues. The Committee had made the following observations in this context :

Para 2.55 : The Committee note that the persons involved in the frauds have been or are being prosecuted. The Committee are, however, unhappy that frauds involving a total sum of Rs. 2,35,107 have been committed. They hope the authorities will take necessary safeguards against the possibility of such frauds.

Para 2.56 : The Committee hope that the improvement in the system which was proposed to be introduced and other measures which the Ministry intended to take would eliminate opportunities for fraudulent alterations in Bill of Entry. They desire that a proper watch should also be kept on the new system so that cases of frauds are altogether eliminated.

Para 2.57 : The Committee would like to be informed of the final action in cases where prosecution proceedings are in progress and of the recovery of amounts from the persons concerned.

In their reply dated 31st July, 1968, the Department of Revenue have stated :

"*Paras* 2.55 & 2.56 : The new system of perforation of Bills of Entry with Pin-Point Typewriters introduced at the ports of Bombay, Calcutta, Madras, Cochin and Vizag. has been working satisfactorily. Nevertheless fresh instructions have been issued to the Custom Houses to keep a strict watch on the new system with a view to eliminate altogether the chances of fraud *vide* Ministry of Finance (Department of Revenue and Insurance) letter F. No. 55/70/67-Cus. IV, dated the 1st April, 1968".

"*Para* 2.57 : The PAC in para 2.55 of its report has referred to the total sum of Rs. 2,35,107 (*i.e.*, Rs. 64,726—Rs. 1,70,381), which was reported earlier as defrauded by M/s. 'A' and M/s. 'B'. In the case of M/s. 'B', full extent of the fraud was not known initially. The amount involved in the fraud was subsequently recalculated with reference to the invoices and the relevant records and the amount of duty involved in the fraud comes to Rs. 1,75,080 instead of Rs. 1,70,381. The amounts of duty defrauded by the Clerk of M/s. 'A'—CHA/11/135 have since been recovered by the Customs House, Bombay. As regards the recoveries of the amounts totalling Rs. 1,75,080 defrauded by M/s. 'B', only a sum of Rs. 24,635 has since been recovered. A sum of Rs. 1,48,944 comprising less charge due in 29 cases and balance of Rs. 1,500 due in one case have not yet been recovered. The Ministry of Law, Branch Sectt. Bombay, have given their legal opinion in respect of the said 29 cases that it would be difficult to take recourse to law for effecting recovery on the basis of the time-barred demands under the Customs Act, 1962."

"As regards the final result of the prosecution proceedings against the persons involved in the fraud committed by M/s. 'B', four persons of the firm were convicted to rigorous imprisonment for varying terms. Regarding the fraud committed by M/s. 'A'—CHA-11/135, the clerk of the clearing agents, who was prosecuted in all the cases of fraud, have been convicted to R.I. for varying terms, but his accomplice, UDC, in the Bombay Custom House, who was also prosecuted for criminal conspiracy in the frauds in question, was acquitted by the Special Judge on benefit of doubt. The State has gone in appeal against the said acquittal."

1.11. The Committee desired to be furnished with the following information :

(i) latest position of the appeal case;

(ii) a copy of the legal opinion given by the Ministry of Law (Branch Secretariat, Bombay) that in respect of 29 cases, it would be difficult to take recourse of law for effecting recovery on the basis of the time-barred demands under the Customs Act, 1962;

(iii) whether Government have considered the question of making suitable provision in the Customs Act so that recoveries of

demands in such cases of funds can be made irrespective of the time-bar.

1.12. In the reply dated the 7th October, 1968, the Department of Revenue have stated as follows seriatim:

(i) The appeal filed against the order of acquittal of Shri ...., UDC, Bombay Custom House, passed by the Special Judge is still pending in the High Court. However, departmental action is being initiated against Shri ....simultaneously on the advice of the Ministry of Law. He is still under suspension.

(ii) A copy of the legal opinion given by the Ministry of Law (Branch Secretariat, Bombay) in respect of 29 cases of short payment of duty, is attached. This Ministry agrees with the Ministry of Law and since the recovery had become time-barred under Section 39 of the Sea Customs Act, 1878, recourse to Sections 28 and 142 of Customs Act, 1962 was not possible.

(iii) The question of recovering demands in cases of frauds without any time-bar has been considered by Government. The recovery of demands in the cases covered by the audit para had become time-barred under section 39 of the Sea Customs Act, 1878. The limitation under the Sea Customs Act, 1878 for recovery of amounts short levied or not levied was 3 months. However, under the Customs Act, 1962 the limitation for recovery of amounts short levied, or not levied, through fraud on the part of the importer/exporter or his agent has been specifically increased to 5 years.

In clause 28 of the Customs Bill 1962 it had been proposed that there should be no time limit for issuing notice of recovery where duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter. However, the Select Committee to which the Customs Bill, 1962, was referred commented on the proposed clause as follows:

"The Committee are of opinion that some time limit should be laid down within which a notice may be served upon an importer or an exporter, as the case may be, for payment of duty not levied, short-levied or erroneously refunded by reasons of collusion or wilful mis-statement or suppression of the facts on his part, and they feel that a period of five years would be adequate for this purpose".

1.13. Audit have expressed the following views in regard to the question of applicability of the extended time-bar of five years provided for in Section 28 of the Customs Act, 1962 to the 29 cases of frauds that were noticed in the Bombay Custom House:

"In reply to point (iii) of serial No. 13 it has been mentioned that the recovery of demands in the cases covered by the audit para had become time-barred under Section 39 of the Sea Customs Act, 1878 and that time limit has been extended to five years in respect of these

cases under the new Act [Customs Act, 1962—proviso to the Section 28(1) *ibid.*]

It would, however, appear from the note of the Ministry of Law, Department of Legal Affairs, Bombay that the cases of fraud of the type which occurred in Bombay Customs House were not affected by time-bar under the Sea Customs Act, 1878 as they were not cases of short levy or non-levy, the fraud having been committed after the assessing officer had levied the proper duty on the goods imported. The Ministry have observed in the note as follows :—

'The question, therefore, arises whether this is a case of non-levy or short-levy of duty. On the facts disclosed it appears that the instant case is a case of short-payment of duty and the duty was not short-levied although it may in effect be that case'.

In Audit's view the opinion expressed by Bombay Branch of the Law Ministry is not very clear whether the case is one of short levy or not and whether the proviso to Section 28(1) could cover such cases."

1.14. The Committee feel that the legal position in regard to the operation of the time-bar for recovery of duty in cases of frauds needs examination. The Department of Revenue have stated that the period of limitation operative for this purpose is 5 years under Section 28 of the Customs Act, 1962 and that this would hold good for "recovery of amounts short levied or not levied through frauds........" However, in the 29th cases of frauds in the Bombay Customs, the view of the Department of Legal Affairs, Bombay was that there had been "short payment" and not short-levy and that Section 28 of the 1962 Act was not applicable. If this is so, the question arises, whether the period of five years stipulated in Section 28 would at all be available to Government for enforcing recovery in cases of frauds of this type. The Committee would like the Department of Revenue to examine, in consultation with the Ministry of Law, the precise scope of Section 28 of the 1962 Act and its applicability to cases of frauds of this type and issue instructions in the subject for the guidance of all concerned.

Loss of Revenue due to losses of goods after landing at Ports, Paras 2.83—2.86 *of* 2*nd Report* (*Fourth Lok Sabha*) (*S. No.* 15)

1.15. In paras 2.83—2.86, the Public Accounts Committee had expressed concern over the loss of customs revenue on account of pilferage of goods after landing. The Committee made the following observations on this point:

Para 2.83 : The Committee feel that it is a most anomalous position that the goods lost after landing at a port are not liable to duty. The Customs Law does not provide for recovery of duty from the Port Trusts from whose custody the goods are lost. The responsibility of the Port Trusts extends to that of a bailee for a period of seven days after the goods are landed at the port. As a bailee, the Port Trusts were expected to take reasonable care and caution over the safe custody of property. The Port Trusts charge demurrage on the goods, delivery of which is not taken within seven days. The amount of the demurrage charged was Rs. 3 to 4 crores in 1964-65 and nearly

Rs. 5 crores in 1965-66 in Bombay Port alone. In these circumstances, the Committee are of the view that the Port Trusts cannot be completely absolved of the responsibility for the loss of goods held up by them, and it is reasonable that the Port Trust is held responsible at least partly for the loss of customs duty on packages pilfered from their (Port Trusts) custody. The Committee feel that this aspect needs further looking into especially in view of the fact that the value of missing stores has gone up in recent years. Moreover when the loss of goods after landing is assumed to be due to their being directed surreptitiously the Committee think that the entire position needs to be reviewed. Unless something drastic is done, the Committee are afraid imported goods will continue to be pilfered and surreptitiously removed and the public exchequer would be put to loss.

Para 2.84 : The Committee are sorry to note that the authorities do not possess a complete record of goods lost and their value. There is no system of keeping such a record and for that purpose the figures supplied by the police authorities alone can be relied upon. The Committee feel that a proper account of goods received and lost during and after the seven days period should be maintained by the Port Trusts and also by Customs authorities.

Para 2.85 : The Committee also feel that there is need to devise measures by which the Ports do not become warehouses for the importers, till they are able to find suitable accommodation outside. Such a tendency on the part of importers should be effectively discouraged.

Para 2.86 : The Committee were informed during the evidence that an expert study team had been appointed to look into the matter from all aspects. The Committee would like to be informed of the findings of the expert study team and the action taken.

[*Report of the Public Accounts Committee*, 1967-68.]

1.16. In the reply dated 23-8-1968, the Department of Revenue have stated :

"The problem of pilferage of goods from the docks has been engaging the attention of the Customs Department and the Port Trust Authorities for some time past. The Customs Study Team which has looked into the matter from all aspects, in their Report have held that

> "The public revenues should not suffer for unsatisfactory security arrangements in the port. We further think that agency which has custody of goods and which alone is responsible for their security should itself have a stake in the matter and not be immune from the consequences of a failure to ensure their safety. We, therefore, recommend that the Port administration should accept liability for payment of duty on goods landed in its custody and pilfered or lost therefrom."

1.17. The Empowered Committee has considered the above recommendation of the Customs Study Team and taken the following decision thereon :

"The Transport Ministry and the Department of Revenue should in consultation with the Ministry of Law, examine the existing procedures with a view to rationalising the 'prescribed period' for which

Ports should accept responsibility for custody, and also take a decision as to the Port's accepting liability to duty during that period. In respect of pilferages taking place beyond this 'prescribed period' the liability to duty cannot be put on the Port organisation and if the customs feel that somebody should be liable, amendment of the present law making the importer liable, might be considered."

An extract of the relevant portion of the Customs Study Team's Report along with a copy of the decision taken thereon by the Empowered Committee and the relevant extracts from the Second Report of Public Accounts Committee relating to pilferages and loss of goods after landing at the Ports have been forwarded to the Ministry of Transport for taking implemental action thereon.

The recommendations of the Public Accounts Committee contained in para 2.84 of their report has been noted for compliance and suitable instructions to the Custom Houses have issued.

1.18. In the reply dated 16th December, 1968, the Ministry of Transport and Shipping have stated:

"At present the different Port Trusts Acts or the Regulations framed thereunder provide for specified number of days after the landing of goods beyond which the port authorities shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which they have taken charge. This period varies at different major ports and is as under:

Bombay	7 days
Calcutta	5 days
Madras	30 days
Vishakhapatnam	5 days
Cochin	4 days
Kandla	4 days
Mormugao	5 days
Paradip	5 days

During the above period, the responsibility of a port authority for the loss, destruction or deterioration of goods of which it has taken charge, shall

(i) in the case of goods received for carriage by railways, be governed by the Indian Railways Act, 1890, and

(ii) in other cases be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in Section 152 of that Act.

The legal position, therefore, is that while the port authorities do not have any responsibility for pilferages etc. after the expiry of the days mentioned above, even during the said days their responsibility is only that of a bailee *i.e.* they are required to take as much care of the goods placed in their custody as a man of ordinary prudence would take of his own property.

Section 48 of the Customs Act, 1962 provides for the disposal of imported goods by the Custodian thereof, then such goods are not cleared within two months from the date of unloading thereof or such further time as the proper officer may allow. In practice, extension of time beyond two months is liberally allowed whenever the circumstances so warrant. So far as the importers are concerned, there is thus no time limit set for their obtaining clearance of the imported goods from Customs. However, the port authorities cannot be expected to accept responsibility for the safe custody of goods for an indefinite period, because, apart from other practical difficulties, this would defeat the objective to which a reference has been made in para 2.85 of the Committee's Report. If the importers know that they can hold the port authorities responsible for their goods till clearance, they will be encouraged to treat the port premises as warehouses. The risk of pilferage would also increase with prolonged storage. The possibility of an importer conniving in the surreptitious removal cannot also be ruled out if he knows that he would be able to claim the 'loss' from the port. The prescription of a time limit is, therefore, absolutely inescapable and serves as one of the means by which congestion in the ports is reduced and the ports are not allowed to be used as warehouses.

Apart from the above, the rates of demurrage have also been steeply increased to make it un-economical for the importers to use the port premises as warehouses for prolonged periods. Those rates are kept under review from time to time if there is any indication of the misuse of the port warehouses. Even then, the recommendation made in para 2.85 of the Committee's Report has been brought to the notice of all major port authorities for appropriate action.

The rates of demurrage have not been fixed for the sake of earning more revenue but has a disincentive to delay in clearance. For the reasons already explained in the preceding paragraphs, the fact of the port recovering demurrage charges cannot be linked with their responsibility for pilferage etc. The ports cannot, therefore, be made responsible for any loss, including loss of customs duty, beyond the days mentioned in paragraph 1 above. In case the responsibility for the loss of customs duty is to be fixed in such cases on the importers, the Finance Ministry may consider amending the Customs Act, 1962 to provide for this.

One of the recommendations made by the Customs Study Team set up by the Ministry of Finance was as follows:

> "Port Administration should accept liability for payment of duty on goods landed in its custody and pilfered or lost therefrom."

This recommendation was considered by the Empowered Committee set up by the Ministry of Finance to take decisions on the Study Team's recommendations. The Committee decided as under:

> "The Transport Ministry and the Department of Revenue should in consultation with the Ministry of Law, examine the existing procedure with a view to rationalising the "prescribed period" for which ports should accept responsibility for custody and also take a decision as to the ports' accepting liability to duty during that period. In respect of pilferages

taking place beyond this prescribed period the liability to duty cannot be put on the port organisation and if the Customs feel that someone should be liable, amendment of the present law-making importer liable might be considered".

As the issues raised are important this question has been referred to the Major Ports Commission which has been set up by Government to look into all aspects of the working of the major ports. (A copy of Government Resolution setting up the Commission is attached).

As regards a proper account being kept of goods received and lost during and after the liability period, the port authorities have informed Government that they can furnish information only in respect of such losses for which either claims are lodged with them or where the cases are reported to the police. In cases in which neither of this is done, the port authorities have no means to know about the losses. Information regarding the cases in which claims are lodged or reports are made to the police is available."

1.19. The Committee note that Government have referred to the Major Ports Commission the question of "rationalising" the "Prescribed period" for which ports should accept responsibility for custody of landed goods and liability to duty for the goods lost during that period. An allied question referred to the Commission is whether, beyond the "prescribed period", the importer should be made liable for loss of duty sustained by Government due to pilferage of goods left in the Port Trusts premises due to the failure of the importer to clear them. The Committee would like to know the final decision taken on both these questions.

Setting up Separate authorities for the exercise of appellate and executive functions in the Department of Central Excise Para 3.30 (*S. No.* 20) *of 2nd Report* (*Fourth Lok Sabha*) *and para* 2.8 (*S. No.* 4) *of 7th Report* (*Fourth Lok Sabha*).

1.20. The question of separating the executive and judicial functions in the Central Excise Department has been raised by the Committee in their Reports from time to time. In para 3.70 of their 44th Report (Third Lok Sabha), the Committee had drawn attention to the fact, that both in the Income-tax & Customs Departments, Appellate authorities had been separated from the executive and had suggested that, "the question of separating the executive and judicial functions of the Collectors of Excise Department should be seriously examined so that the parties do not have to go in appeal to the very same persons who had already passed executive orders in the same case."

1.21. In para 3.30 of their 2nd Report (Fourth Lok Sabha), the matter was again raised by the Committee in the following terms:

"3.30. The Committee note that the Board propose to take powers to review the orders of the Collector passed the appeal. The Committee also suggest that the question regarding referring appeals in cases involving amounts above a certain limit to an independent authority other than the Collector should also be seriously considered. This would create more confidence in the appellate authority, as under the present system the Collectors who hear the appeals are also the administrative heads of the Collectorates."

1.22. In their reply dated 6th December, 1967 to the foregoing recommendation, the Department of Revenue have stated :

"A comprehensive revision of the Central Excise law has been undertaken and in the draft Central Excises Bill suitable provision has been made for review of orders passed by Central Excise Officers on the lines contained in sections 130 and 131 of the Customs Act, 1962. For orders not being orders passed in appeal, the Board will be the reviewing authority and for orders passes-in-appeal by the Collectors *and* the Board, the Central Government will be the reviewing authority.

As regards the suggestion to refer appeals in cases involving amounts above a certain limit to an independent authority other than the collector, it may be recalled that in their 44th Report—Third Lok Sabha (Para 3.70 S. No. 37 of Appendix XXI), the Committee had desired that the question of separating the executive and judicial functions of the Collectors should be seriously examined and had pointed out that such a separation of functions has already been done in the Income-tax and Customs Departments. It was stated in the Ministry's reply (copy annexed), that similar suggestions had been considered by Government in the past but had not been found feasible and that the matter could be considered afresh when the new Central Excises Bill was taken up for discussion by Parliament. Recently, the Committee desired certain additional information. They also desired the Ministry to indicate reasons as to why it was not feasible to separate the execute and judicial functions of the Collector. A copy of the Ministry's reply is annexed; it explains the Government's present approach on the question of refering appeals to an independent authority other than the Collector."

1.23. In the above reply, a reference has been made to the note dated 15th September, 1967 (reproduced in para 2.7 of the 7th Report) (Fourth Lok Sabha) which is reproduced below :

"The Ministry of Finance in their reply dated the 15th September, 1967 have stated :—

At the outset it may be stated that even under the existing practice appeals do not have to go the very, same persons who passed the executive orders in the same case. Attention in this connection is invited to the provisions in rule 213 of the Central Excise Rules, 1944—

2. The question of setting up an appellate tribunal as in Income-tax was considered more than once in the past. It was felt that a purely judicial authority like the Income-tax tribunal might place undue emphasis on technical requirements which might be difficult of accomplishment. It would lead to delays in the settlement of disputes, encourage litigation in regard to classification of goods for duty purposes and ultimately hamper clearance of goods. The existing system was cheap and fairly quick and the volume of work was not likely to be sufficient to justify setting up of wholetime appellate tribunals. The analogy of income-tax is not applicable to customs or Central Excise appeals! income-tax is assessed with reference to the 'previous year' while customs or excise duties are assessed before the goods are about to pass into consumption.

3. In this connection, the proposal for constituting Appellate Collectors as the Customs was also considered. In Customs, such Appellate Collectors started functioning only in April, 1963. They hear

appeals against decisions of all officers other than those of the Collector of Customs. The Appeals against the decisions of the Collector of Customs still lie to the Board. No change was made in the procedure for dealing with revision applications. However, the experiment with Appellate Collectors was new and its working was to be watched for sometime before any firm conclusions could be drawn. In view of this, the draft Central Excises Bill contains provisions only to continue the existing procedure under the Central Excise and Salt Act, 1944 and the rules made thereunder."

4. Recently, the Customs Study Team has examined the working of the Appellate Collectors and have recommended as follows :—

"92. Appellate machinery somewhat on the lines of Income-tax appellate tribunals should be set up. They may deal with revisions applications against the oders of the Appellate Collector as also against the orders of the Collectors. (7.14)."

"94. In case of delay in sitting up of such machinery, at least the appellate and revisionary functions should be separated from the executive and administrative functions by suitable arrangements at the Board's and Government's level. (7.15)".

The above recommendations are still under consideration and it will take some time before Government's decision thereon is available. It is also understood that Administrative Reforms Commission are looking into this very question. The Board has, therefore, kept the question open for the time being.

5. The draft Central Excises Bill is still under scrutiny in Consultation with the Ministry of Law, in the light of the comments and suggestions received from the Collectors of Central Excise, Director of Inspection, Customs and Central Excise and the concerned Ministries.

"The above recommendations are still under consideration and it will take some time before Government's decision thereon is available. It is also understood that the Administrative Reforms Commission are looking into this very question. The Board has, therefore, kept the question open for the time being."

1.24. The Public Accounts Committee had after considering the Ministry's note dated 15/9/67 made following observations in paras 2.8 of their 7th Report (Fourth Lok Sabha) :

"2.8. The Committee would like to reiterate their observations contained in para 3.70 of their 44th Report. They desire that the question of setting up separate authorities for the exercise of judicial and executive functions in the Department of Central Excise should be examined seriously in all its aspects and an early decision taken."

1.25. In their reply dated 13/5/1968 to para 2.8 of 7th Report (Fourth Lok Sabha), the Department of Revenue have stated :

"The Committee's observations have been noted. The matter would be given full consideration in the light of the decision on the Report of the Customs Study Team and on receipt of the recommendations of the Administrative Reforms Commission in this behalf. This Ministry would also like to profit by the views of the Parliament as expressed in the Joint Select Committee and the two Houses during discussion on

the Central Excises Bill which is likely to be introduced in the Parliament during the next session."

1.26. The Committee note that Government have yet not come to a decision on the question of separating the executive and appellate functions in the Central Excise Department. They also note that the recommendations of the Administrative Reforms Commission in this respect are still awaited. The Committee would like Government to come to any early decision on this question.

Delay in introducing the Central Excises Bill—2.3 (*S. No.* 3) *of 7th Report* (*Fourth Lok Sabha*)

1.27. In para 2.1 of their 7th Report (Fourth Lok Sabha) the Committee examined the question of legal authority for giving retrospective effect to excise duty exemptions. Taking note of Government's reply that such authority was being provided for in the draft Central Excise Bill, the Committee made the following observations in para 2.3 about the delay on the part of Government in introducing the Central Excise Bill.

"The Committee regret to note that the Ministry of Finance have taken a considerably long time in scrutinizing the provisions of the Bill. They hope that the Bill in question will now be drafted in consultation with the Ministry of Law without any further delay and brought before Parliament as early as possible."

1.28. In their reply dated 13-5-1968, the Department of Revenue have stated as follows :—

"The Committee's observations have been noted. Delay in introducing the Central Excises Bill in the Parliament has been caused because of comprehensive nature of the legislation and a very large number of comments suggestions received from the Collectors of Central Excise on the draft Bill which are under examination in consultation with the Ministry of Law. This Ministry expects to introduce the Bill in the next Session."

1.29. The Committee understand that the proposed Central Excise Bill was not introduced during July-August and November-December sessions (1968) of Parliament. They hope that the Ministry of Finance will take steps to introduce the Bill without further delay.

Income Escaping Assessment—Paragraphs 2.13 *to* 2.15 (*Sr. No.* 6 *of 7th Report* (*Fourth Lok Sabha*)

1.30.—2.13. In paras 1.160, 1.161 and 1.162 of their 46th Report (Third Lok Sabha) the Committee had pointed out that income to the extent of Rs. 26.64 lakhs involving approximately a tax of Rs. 11.56 lakhs has escaped assessment in the hands of a company.

2.14. Briefly the facts are that a joint stock company had a paid-up capital of Rs. 38.79 lakhs. Rs. 38.74 lakhs of this share capital stood registered in the name of one person and the balance of Rs. 5,000 was held by another. Of the sum of Rs. 38.79 lakhs, Rs. 38.05 lakhs represented preference shares entitled to a fixed rate of dividend of 10 per cent. No dividend had been paid on these shares since 1948. Though the shares

stood registered in the name of he wo persons, hey were actually transferred under blank transfer from time to time to certain other companies belonging to the same group.

2.15. On 31st May, 1955, a block of these shares held by one of the companies was transferred by it to a second company within the group which, in turn, sold all these shares to a third company belonging to the same group. On 31st October, 1955, dividend for 7 years was declared and the third company which held the shares at the time became entitled to the entire dividend of Rs. 26.64 lakhs. The dividend income of Rs. 26.64 lakhs became assessable in the hands of the third company for the assessment year 1956-57 but that company did not submit its return of income for this year on the plea that its books had been seized by the Special Police Establishment. An *ex-parte* assessment was, therefore, made on 17th March, 1958 estimating the income of the company at Rs. 86,488. The dividend income of Rs. 26.64 lakhs in the hands of that company thus escaped assessment.

1.31. Commenting further on this case, the Committee made the following observations in paragraphs 2.20 to 2.23 of their 7th Report (Fourth Lok Sabha) :—

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 would 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 Committe 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.

1.32. In their reply dated the 28th September, 1968, the Department of Revenue have stated :

"The observations of the Committee in Paras 2.21 and 2.22 of their Seventh Report 1967-68 have been noted by the Government. The Committee will be informed of the final position. A copy of the instructions issued in compliance with the directions of the Committee in para 2.23 of their report is enclosed."

1.33. The Committee asked the Department to furnish the following information :—

(i) the present position of investigation of the case;

(ii) steps taken in pursuance of the recommendations of the PAC made in para 2.23 of the 7th Report to implement the instructions issued by the Board of Direct Taxes to check evasion of tax with particular reforms to :

(a) progress made in opening the registers prescribed for watching the filing of returns by companies;

(b) action taken in cases of the default and the number of prosecutions launched for failure to furnish returns.

1.34. In their reply dated the 4th December, 1968, the Department of Revenue have stated :

"Action has been taken in the case of M/s. 'A' Ltd. at Calcutta for taxing the dividends by reopening the assessment under Section 148. The assessee has filed a writ and the court has granted an injunction.... . The Commissioner of Income-tax has been asked to point out to the Standing Counsel that a huge amount of dividends which should obviously have been taxed at one of the places, has not been taxed by a clever dodge on the part of the assessee and the Counsel should at least make an effort to have the injunction vacated. Action has also been initiated to assess the registered shareholder Shri........ since there is some difficulty about whom the real beneficiary is. As far as M/s. 'B'.. is concerned, the Commissioner of Income-tax (Central) has informed that it has no assets and no useful purpose will be served by starting action against that company."

Re . 2.22. "Even before the letter was received letters had gone out to the officers assessing the important shareholders who had received dividends of Rs. 25,000 and above in the year 1954-55 from the companies of the group. Many of the dividends have already been reported to have been accounted for by the shareholders concerned. In respect of the remaining, reminders are being issued to have the verification completed.

Re : 2.23. (a) Registers have been prescribed for watching the filling of return by companies and all the Commissioners of Income-Tax have reported that such registers are being properly maintained.

(b) Two cases of prosecution so far been launched for failure to furnish returns."

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 Direct Taxes will keep a watch over the progress made in assessing the important shareholders who had received dividends on Rs. 25,000 and above from the year 1956-57 onwords 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.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

(i) SECOND REPORT (FOURTH LOK SABHA)

Recommendation

While the Committee are glad that the percentage of variation in Tax-Revenue has come down to 7.09% in 1964-65 from 18.24% in 1962-63 and 10.99% in 1963-64 they find that the revenue receipts of the Government of India for 1964-65 had exceeded the budget estimate by as much as Rs. 104.78 crores. Since the excesses in revenue receipts persist from year to year and as the variations are fairly wide and the percentage of variation in Tax Revenue is even now as high as 7%, the Committee would like to reiterate the recommendation made in para 1.10 of their 44th Report 1966 (Third Lok Sabha) and expect that the Ministry would try to frame the Budget estimates more realistically so as to ensure that variations between the estimates and the actuals are kept to the minimum.

[S. No. 1 Appendix VIII—Para No. 1.9 of Second Report—Fourth Lok Sabha]

Action taken

The observations of the Public Accounts Committee have been noted for necessary action.

[F. No. 2/20/67-Cus. (TU)]

Recommendation

The Committee hope that, with the various measures taken by the Ministry, it would be possible to make future Budget estimates more realistic and the variations between the estimate and the actuals would be substantially brought down.

S. No. 2 Appendix VIII—Para No. 1.15 of Second Report—Fourth Lok Sabha]

Action taken

The observations of the Committee have been noted for necessary action.

[M. of F. (Revenue and Insurance) F. No. 2/21/67-Cus.(TU) dated 29-1-1968]

Recommendation

While the overall variation between the Budget estimates and the actuals for Customs Revenue showed a downward trend in 1963-64 the Committee find that the percentage of variation had increased in 1964-65 and this was even higher than the figures for 1962-63. In many cases, the pattern of variation under different heads was such that the actuals varied widely from the estimates. They also find from evidence that the variations

were mainly due to mid-term measures taken by the Government. The Committee would like to urge upon the Ministry that when Government initiates any mid-term measures which tend to increase or decrease duties, the matter should be brought to the notice of Audit in time, so that the fact is taken due note of before the Audit para is finally included in the Report.

[S. No. 3 Appendix VIII—Para No. 1.23 of Second Report—Fourth Lok Sabha]

Action taken

The observations of the Committee have been noted for necessary action, mid-term measures undertaken *vide* Finance (No. 2) Act, 1965, were brought to the notice of the A.G.C.R. at the draft stage of the Audit Report (Civil), 1967.

[Min. of Fin. (Deptt. of Revenue & Insurance) F. No. 2/22/67-Cus.(TU) dated 27-2-1968]

Recommendation

The Committee hope that the Ministry will continue to make efforts to prepare their estimates more realistically so that the wide variation between the estimate and actual is reduced to the minimum.

[S. No. 5 Appendix VIII—Para No. 1.44 of the Second Report—Fourth Lok Sabha]

Action taken

The observations of the Committee have been noted for necessary action.

[F. No. 2/23/67-Cus.(TU)]

Further Reply

The recommendations of the Committee have been noted. (This has been vetted by audit *vide* Comptroller & Auditor General's of India letter No. 1775-Rev.A/397-67/IV, dated 15-4-1968).

[F. No. 83/20/68-ITB]

Recommendation

The Committee find that even though the cost of collection in terms of percentage had remained almost the same as in 1963-64, the actual expenditure for collection had gone up by Rs. 2.33 crores. The expenditure on the Department has increased by another Rs. 1.48 crores in 1965-66 as compared to 1964-65. From the evidence and the note they also find that the increase has been mainly due to (i) creation of additional posts (ii) accrual of increments (iii) revision of rate of allowances to the staff.

The Committee would like Government to keep a careful watch on the progress made with the clearance of arrears of assessment. They also expect that with the appointment of additional staff, there would be better collection of revenues. They would like to watch, through future Audit Reports (the results achieved by the Department in this connection).

[Serial No. 6 (Paras 1.55 and 1.56) of Appendix VIII of the Second Report (4th Lok Sabha)]

Action taken

All the Commissioners of Income-tax and Collectors of Central Excise/ Customs have been asked to keep a close watch on the progress made in the clearance of arrears of assessment and collection of revenues. A copy of the instructions issued to them is enclosed. The Boards also keep a careful watch by monthly and periodical reports and statistical statements from the field officers.

[F. No. 7/40/67-Coord.]

F. No. 7/40/67-Coord.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue & Insurance)
New Delhi, the 11th September, 1960/
20th Bhadra, 1890 (Saka)

From :

Shri ....
Under Secretary to the Government of India.

To :

All Collectors of Central Excise/Customs.
All Commissioners of Income-tax.
The Narcotics Commissioner, *Gwalior.*

Sir,

Public Accounts Committee—Second Report—
Para 1.55 *and* 1.56 *regarding 'Cost of Collections'—*
Action on observations/recommendations.

I am directed to enclose a copy each of para 1.55 and 1.56 of the Second Report of the Public Accounts Committee (Fourth Lok Sabha) and to state that you would no doubt be aware of Government's anxiety to reduce the cost of collection of revenue. The Public Accounts Committee attaches much importance to this issue.

2. There has been augmentation of staff in the recent past in some of the offices and it is expected that those charged with the collection of revenues, etc., will improve upon the records of previous years in this matter. I shall, therefore, request you to review quarterly the progress made in the clearance of assessments/and or collection of revenues having special regard to the augmentation of staff and consequential increase in cost of collection and report to the Board concerned.

Please acknowledge receipt of this letter.

Yours faithfully,
Sd/-
Under Secretary to the Government of India.

Copy to D.I. (Customs & Central Excise)/D.I. (Income-tax), New Delhi.

Copy also to Ad. IVA/VII/CX-I/Cus-III/IT(Audit) Section.

Sd/-
Under Secretary to the Government of India.

Recommendation

While the Committee are glad that the percentage of variation in Tax Revenue has come down to 7.09% in 1964-65 from 18.24% in 1962-63 and 10.99% in 1963-64, they find that the revenue receipts of the Government of India for 1964-65 had exceeded the budget estimate by as much as Rs. 104.78 crores. Since the excesses in revenue receipts persists from year to year and as the variations are fairly wide and the percentage of variation in Tax Revenue is even now as high as 7%, the Committee would like to reiterate the recommendation made in para 1.10 of their 44th Report 1966 (Third Lok Sabha) and expect that the Ministry would try to frame the Budget estimates more realistically so as to ensure that variations between the estimates and the actuals are kept to the minimum.

[S. No. 1 of Appendix VIII to the 2nd Report—4th Lok Sabha]

The Committee hope that, with the various measures taken by the Ministry, it would be possible to make future Budget estimates more realistic and the variations between the estimates and the actuals would be substantially brought down.

[S. No. 2 of Appendix VIII to the 2nd Report—4th Lok Sabha]

While the overall variation between the budget estimates and the actuals for Customs Revenue showed a downward trend in 1963-64 the Committee find that the percentage of variation had increased in 1964-65 and this was even higher than the figures for 1962-63. In many cases, the pattern of variation under different heads was such that the actuals varied widely from the estimates. They also find from evidence that the variations were mainly due to mid-term measures taken by the Government. The Committee would like to urge upon the Ministry that when Government initiates any mid-term measures which tend to increase or decrease duties, the matter should be brought to the notice of Audit in time, so that the fact is taken due note of before the Audit para is finally included in the Report.

[S. No. 3 of Appendix VIII to the 2nd Report—4th Lok Sabha]

Even though the percentage of variation between the actual receipts and the budget estimates for the year 1964-65 in respect of "Excise Duty" when compared with the earlier year was less, the Committee find that under some of the heads like 'Plastics' 'Sodium Silicate', 'Woollen Yarn' etc. the variations were fairly substantial. From the evidence the Committee find that the reasons for such variations were mainly:

(i) even when the coverage for plastics was changed, the Department failed to assess the financial implication properly;

(ii) proper statistics in respect of the production of Sodium Silicate was not available;

(iii) change in the production programme of motor cars and the import of the foreign parts therefor were not adequately taken note of at the time of preparing the budget estimates; and

(iv) the lack of proper liaison with the Ministry concerned resulted in the failure to take note of the big increase in the production of Sulphuric Acid.

In all these cases the Committee feel that the estimates could have been framed with greater accuracy if only the Ministry had taken more

initiative to keep itself informed of development. They, however, hope that the Ministry would benefit from their experience and would try to effect better co-ordination through measures such as are stated to have been introduced in other Ministries in collecting up-to-date information and frame the estimates more realistically.

[S. No. 4 of Appendix VIII to the 2nd Report—4th Lok Sabha]

The Committee hope that the Ministry will continue to make efforts to prepare their estimates more realistically so that the wide variation between the estimate and actual is reduced to the minimum.

[S. No. 5 of Appendix VIII to the 2nd Report—4th Lok Sabha]

Action taken

The observations of the Committee have been noted. In this connection a reference is also invited to this Ministry's Memorandum No. F. 8(15)-B/66 dated the 27th October, 1966 to the Public Accounts Committee which explains the steps taken for improving the budgetary techniques in respect of the receipts under the main heads of revenue. With reference to the concluding sentence of S. No. 3 it may be added that the mid-term measures undetraken in 1965-66 through Finance (No. 2) Act, 1965 were brought to the notice of the Accountant General, Central Revenue at the draft stage of the Audit Report (Civil) 1967.

2. With regard to the Committee's observations at S. Nos. 4 & 5 above it may further be added that it has been the constant endeavour in recent years to improve the budgeting technique. The concerned Ministries/Departments are now associated in the task of budgeting. Necessary data regarding expected production obtained from them and are judged in the light of actual performance revealed by the statistics available in the Ministry. Thereafter the estimates are finalised after discussion in an inter-Ministerial meeting.

3. As regards the estimation of additional revenue in respect of the budget proposals which extend the Central Excise levy to new commodities or extend the coverage of existing commodities already under excise, this Ministry has to work under certain limitations for reasons of secrecy. For these purposes, this Ministry has to rely largely on whatever published data are available which may not always be up-to-date.

Recommendation

The Committee find that even though the cost of collection in terms of percentage had remained almost the same as in 1963-64, the actual expenditure for collection had gone up by Rs. 2.33 crores. The expenditure on the Department has increased by another Rs. 1.48 crores in 1965-66 as compared to 1964-65. From the evidence and the note they also find that the increase has been mainly due to (i) creation of additional posts (ii) accrual of increments (iii) revision of rate of allowances to the staff.

The Committee would like Government to keep a careful watch on the progress made with the clearance of arrears of assessment. The also expect that with the appointment of additional staff, there would be better collection of revenues. They would like to watch, through further Audit Reports (the results achieved by the Department in this connection).

[S. No. 6 of Appendix VIII to the 2nd Report—4th Lok Sabha]

Action taken

Necessary reply in this regard will be furnished by the Department of Revenue and Insurance of this Ministry.

[Ministry of Finance (Deptt. of Economic Affairs) O.M. No. 8(28)-B/67 dated 6-6-68]

Recommendation

The Committee feel that it would be advisable to keep the existing pattern of import and indigenous elements in view while revising the rates of drawback.

[Serial No. 7 (Para No. 2.9) of Appendix VIII]

Action taken

All-Industry drawback rates are normally revised whenever there are major changes in the Customs and Central Excise duties and in making such revision, the existing pattern of import and indigenous element is taken into account wherever it is readily ascertainable. Where the existing pattern of import and indigenous element is not readily ascertainable, the rates are revised only on the basis of changes in the duties with the concurrence of the Revenue Audit and simultaneously action is taken to ascertain the pattern of imported and indigenous element in consultation with Directorate General of Technical Development and trade and thereafter the rates are revised. The Audit to whom the draft was shown have stated that they have no comments to offer.

[Ministry of Finance (Deptt. of Revenue & Insurance) O.M. No. Misc/47/67/—DBK dated 28-10-67]

Further Reply

In future Industry-wise drawback rates of commodities where the amount of drawback is substantial, will be reviewed periodically. The Audit to whom the draft was shown have stated that they have no comments to offer.

[Ministry of Finance (Deptt. of Rev. & Insurance) O.M. No. Misc./47/67—DBK dated 28-10-67]

Recommendation

The Committee regret to note that there was a loss of revenue to the extent of Rs. 89.796 on account of the disregarding of instructions existing in the matter. They hope that learning from this case, it would be enjoined upon all concerned to pay due regard to the procedure prescribed in such matters and the Board would also take serious view of similar deviations in future.

[S. No. 10, Appendix VIII to Second Report—Fourth Lok Sabha]

Action taken

The recommendations of the Committee have been noted by the Government. A copy of the latest instructions on the subject issued on the recommendations of the Customs Study Team is enclosed.

[F. No. 2/27/67-Cus.(T.U.)]

REGISTERED

F. No. 25/13/68-Cus. (T.U.)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue & Insurance)

New Delhi, the 18th March, 1968.

From

The Secretary,
Empowered Committee.

To

All Collectors of Customs
All Collectors of Central Excise
Deputy Collector of Customs, Visakhapatnam
Asstt. Collector of Customs, Kandla.

Sir,

SUB :—*Recommendation No.* 13 *of Part I of the report of the Customs Study Team—Implemental Instruction No.* 24.

Recommendation No. 13 of Part I of the report of the Customs Study Team and the decision of the Government of India thereon are reproduced below :—

Recommendation

"As far as possible assessments should be finalised before clearance; but where doubt persists provisional assessment procedure should be adopted (3.22)".

Decision

"Accepted."

2. An extract of para 3.22 of the Customs Study Team's report giving the background of the above recommendation is also enclosed.

3. The emphasis in this recommendation is on arriving at a final decision on assessments quickly. Provisional assessment procedure is to be adopted only when a final decision even at a high level cannot be taken quickly. In such a situation where doubt as to the correct classification and assessment persists, C.B.R. Customs Instruction No. 4 of 1924 laid down as follows in para (iii) :—

> "If he is unable to come to a conclusion, he will assess at the rate most favourable to Government, since Government have no appeal in the other case, whereas the assessee has a right of redress".

This was necessary then. But with the introduction of the provisional assessment procedure in the law, the position has changed and the extract of the Board's instruction, reproduced above is no longer valid. The following would be the alternatives and the order of preference among them :—

(i) Arriving at a final assessment quickly, if necessary by submission of case to senior officers;

(ii) Adopting the provisional assessment procedure, but when the trader prefers to pay the higher duty and claim refund later, assessing on the higher basis.

4. These instructions may be issued to the Assessing Officers and compliance reported to the Board for information.

Yours faithfully,
Sd/-
Secretary, Empowered Committee.

Encl : As above.
Copy to :—

1. D. I. (C&CE)/D.R.I./D.C. S&I Branch.
2. P. S. to Chairman (E&C)/M(CX-B)/M(CUS)/GCA/OSD (CX)/Commissioner (Rev. Applications).
3. All Officers (including I. Os.) and Sections in the Customs/Land Customs/Excise Wings.
4. Bulletin & Manual Section (with 4 spare copies).

Sd/—
Secretary, Empowered Committee.

EXTRACT OF PARA 3.22 OF PART I OF THE CUSTOMS STUDY TEAM REPORT

Besides speedy disposal, another feature, of equal if not greater importance, of a good system of scrutiny and assessment is "accuracy". A point was made before us by some sections of trade that the appraisers always chose to levy the higher duty. In deciding on the assessment of the very large variety of goods comprising our import trade by applying the customs tariff schedule designed to cover all goods and also the central excise schedule, which has greatly enlarged its scope in recent years, doubts as to which of two or more possible rates is the correct rate may well arise in the minds of the appraiser. With technological advances adding new items to international trade, the scope for such doubts widens; and yet prolonged consideration or consultation keeping the goods in detention is undesirable. In such a situation the solutions would be to assess at the higher rate and leave it to the importer to file a claim for refund after clearance of the goods or to assess provisionally and adjust the duty finally after clearance. But these methods also have drawbacks. As far as possible assessments should be finalised and not kept provisional or in doubt when the goods are cleared so that the importer may then deal with the goods in full knowledge of his costs. For the department also assessments which are provisional or may have to be reopened mean avoidable increase in work. The most suitable arrangement would, therefore, appear to be that every case of doubt is put up by the appraiser to the assistant collector and the assistant collector seriously endeavours to determine the final assessment. If he is also in doubt the case should be put up to the deputy collector, if there is one. If there is no deputy collector or if the deputy collector has also a doubt the provisional assessment procedure should be adopted unless the importer himself wishes to pay higher and claims refund subsequently.

Recommendation

The Committee hope that the authorities would go into this matter and find out how the particular officer was unaware of the revised rate of duty. If it was on account of certain lacuna in the procedure of intimating the changes to the concerned officers, the Committee desire that steps would be taken to rectify that.

[*Para* 2.46 *S. No.* 12, *Appendix VIII of the Report*]

Action taken

According to the existing procedure, the changes effected by the Finance Bills are communicated immediately to all the concerned officers. The Collector of Customs, Calcutta has reported that, in this case, the copies of notices reproducing traiff changes introduced by the Finance Bill, 1963, including Departmental instructions, and the list of vessels not entered till close of office on the Budget day, were distributed to the individual assessing officers on the 2nd March, 1963, as the 1st March, 1963 was a holiday. The concerned Appraiser, in this case, was, therefore, duly intimated of the changes brought about by the Finance Bill, 1963, but he failed to apply the correct rate. In this explanation, he has attributed the lapse to oversight. He has been ensured for this lapse. This appears to be a case of individual carelessness. There is thus no lacuna in the procedure for communicating promptly to the assessing officers the changes in the rates of duties brought about by the Finance Bills. However, instructions have already been issued to the Collectors that assessing officers should be asked to be more careful while making assessments.

Ministry of Finance (Deptt. of Rev. & Insurance) F. No. 20/76/67-*Cus. I. dated* 6-11-67]

Recommendation

The Committee are glad to note the decrease in the arrears of Customs duty. The total amount of Customs duty remaining unrealised as on 31st October, 1965 was Rs. 47.46 lakhs as against Rs. 112.08 lakhs for the corresponding period last year. The Committee feel concerned, however, over the arrears of duty which have been pending for the last several years. (As on 30th June, 1966, the outstanding for more than one year was Rs. 21,36,058). The ommittee note the measures taken by the Department to recover the arrears. They desire that necessary action should be taken to liquidate the old outstanding amounts.

The Committee also hope that the Department will take the necessary steps to ensure that the introduction of the new system of deferred payment of duty against bank guarantees does not result in an accumulation of arrears in future.

[*Paras* 2.94 *and* 2.95 (*S. No.* 16 *of Appendix VIII to the Second Report*, 1967-68).]

Action taken

The observations made by the Committee have been noted and suitable instructions have been issued to the officers concerned to take effective steps to recover the old outstanding amounts and to ensure that the new system of deferred payment of duty against bank guarantee does not result

in an accumulation of arrears of duty in future. In this connection a copy of the Ministry's orders F. No. 8/13/67-Cus. VI, dated the 29th September, 1967 is enclosed.

[This note has been seen and vetted by the Audit]

[*Ministry of Finance (Deptt. of Rev. & Insurance) F. No.* 8/13/67-*Cus. VI, dated* 18-11-67]

F. No. 8/13/67-Cus. VI

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(*Department of Revenue & Insurance*)

New Delhi, the 29*th September*, 1967.

From

The Under Secretary
to the Govt. of India.

To

The Collector of Customs,
Bombay/Calcutta/Madras.

The Collector of Central Excise,
Delhi/Baroda/Madras/West Bengal, Calcutta/Shillong.

The Collector of Customs and Central Excise, Cochin/Pondicherry.

The Deputy Collector of Customs,
Visakhapatnam.

SUB :—*Arrears of customs duty assessed upto* 31-3-65 *and pending realisation as on* 31-10-65—*Observations made by the Public Accounts Committee* (1967-68) *Second Report* (*Fourth Lok Sabha*) *re*:

Sir,

I am directed to enclose a copy of paras. 2.87 to 2.95 of Chapter II of the Public Accounts Committee (1967-68) Second Report (Fourth Lok Sabha) for your information. Your attention is, in this connection, particularly invited to paras. 2.94 and 2.95 in which the Committee have expressed concern over the arrears of duty which have been pending for the last several years. It is requested that effective steps may be taken to liquidate the old outstanding amounts and to ensure that the new system of deferred payments of duty against bank guarantees does not result in an accumulation of arrears of duty in future.

Yours faithfully,

Sd/-

Under Secretary.

Copy forwarded to the Cus. III Sec. for information. Their Note F. No. 23/18/67-Cus. III, dated 4-9-67 refers.

Sd/-

Under Secretary.

P.A.C. No. 155

PUBLIC ACCOUNT COMMITTEE

(1967-68)

Second Report

(Fourth Lok Sabha)

CHAPTER—II—Customs

Arrears—Para 20—Page 22

2.87. The total amount of customs duty remaining unrealised as on 31st October, 1965, was Rs. 47.46 lakhs as against Rs. 112.08 lakhs for the corresponding period last year. Out of the sum of Rs. 47.46 lakhs, Rs. 22.16 lakhs had been outstanding for more than one year.

2.88. The Committee desired to be furnished with the yearly break up of the arrears of Rs. 22.16 lakhs. In a note submitted to the Committee, the Ministry of Finance (Department of Revenue and Insurance) stated that while furnishing the break up of the total amount of Rs. 22.16 lakhs, some of the Collectors have given the uptodate position as on 30th June 1966. On that date the figure for such arrears works out to Rs. 31,36,058 as against the figure of Rs. 11.16 lakhs outstanding earlier.

2.89. An annual break up of this figure of Rs. 21.36 lakhs as furnished by the Ministry is as under :—

Year	Amount
1951-52	6,000 ·00
1952-53	Nil
1953-54	Nil
1954-55	Nil
1955-56	11,837 ·00
1956-57	2,99,200 ·00
1957-58	17,039 ·00
1958-59	19,338 ·00
1959-60	14,453 ·00
1960-61	23,367 ·00
1961-62	52,319 ·00
1962-63	8,22,738 ·00
1963-64	8,69,767 ·00
	21,36,058 ·00

2.90. Out of the total arrears of nearly Rs. 21.36 lakhs about Rs. 4 lakhs relate to cases which have been taken to the Courts of Law and no recovery is possible until the Courts' verdicts are received.

2.91. As regards the steps taken to recover the old arrears, the Ministry stated in their note that the following action is taken depending on the merits of each case after repeated reminder to these parties fail to make them pay up the duty in arrears.

(i) Any money owing to the party by the Customs Department is deducted for being adjusted against the outstanding demand..

(ii) Detention and sale of goods under the control of the Customs Deptt. is being resorted to, if the owner of the goods does not pay the duty.

(iii) Where the measures mentioned at (i) and (ii) above do not prove fruitful, certificates specifying the amounts due from the party concerned are sent to the Collector of the district in which the party owns any property or residence or carries on business and the said Collector on receipt of such certificates proceeds to recover the specified amount as if it were an arrear of land revenue. In some baggage cases the nearest Central Excise/Customs Officers are instructed to contract the parties concerned to expedite recovery.

2.92. The Committee asked about the reasons why the arrears for the years 1951-52, 1955-56 and 1956-57 were still pending. The representative of the Board stated that there was only one case pertaining to the year 1951-52 involving duty of Rs. 6,000 relating to the import of a car at the Attari Border under a particular system. Unfortunately, the full particulars of the person who had purchased the car were not mentioned in the register. The amount of duty had been shown as outstanding for a long time, as the Department were trying to locate the assessee concerned, otherwise the amount would have been written off long ago. As regards the arrears of Rs. 11,837 pertaining to the year 1956-57, the witness stated that the amount which related to the Calcutta Custom House had since been reduced to Rs. 1,981. With regard to the amount of Rs. 2,99,200 pertaining to the year 1956-57, the witness stated that out of this an amount of Rs. 2,92,818 was involved in cases pending in the courts and out of the balance an amount of Rs. 6,301 was pending recovery.

2.93. Asked if there was still any system of credit payment of duty, the representative of the Board stated that there existed a system of provisional payment of duty and after devaluation a system of deferred payment against a bank guarantee had been introduced.

2.94. The Committee are glad to note the decrease in the arears of customs duty. The total amount of customs duty remaining unrealised as on 31st October, 1965 was Rs. 47.46 lakhs as against Rs. 112.08 lakhs for the corresponding period last year. The Committee feel concerned however, over the arrears of duty which have been pending for the last several years. (As on 30th June, 1966, the outstanding for more than one year was Rs. 21,36,058). The Committee note the measures taken by the Department to recover the arrears. They desire that the necessary action should be taken to liquidate the old outstanding amounts.

2.95. The Committee also hope that the Department will take the necessary steps to ensure that the introduction of the new system of deferred payment of duty against bank guarantees does not result in an accumulation of arrears in future.

Recommendation

It is not clear to the Committee how **in the present case trade discount** was allowed at a certain percentage **of the declared price of footwear instead** of the ex-factory price (*i.e.* declared **price minus sales organisation charges)** as envisaged in the Board's orders **of November, 1957. The deduction of flat discount from the declared price results in lowering ex-factory price and thereby the assessable value.**

The Committee hope that after the proposed amendment of the relevant Section of the Act, such ambiguities will not arise.

[Sr. No. 178, Appendix VIII of 2nd Rept. (1967-68)]

Action taken

So far as the observation made by the Committee relating to the manner of arriving at the assessable value for the purpose of charging Central Excise duty on footwear manufactured by M/s. Bata Shoe Co. in this case, is concerned, it may be desirable to explain the position in details as in the short note enclosed.

Regarding the observation of the Committee that they hope that such ambiguities will not arise after the proposed amendment of the relevant Section of the Act, it may be stated that the revised definition of 'Value' proposed to be included in the amending Bill will enable regulations to be framed for assessment in cases where 'normal price' is not readily ascertainable.

[*F. No.* 1/36/67-*CXII*]

NOTE

M/s. Bata Shoe Co. manufacture footwear and market it under the brand names 'B.S.C.' and 'BATA'. The two brands of footwear are sold through two different channels—'B.S.C.' footwear through independent wholesale dealers and 'BATA' footwear through their own retail shops. For almost every 'BATA' footwear there is a corresponding 'B.S.C.' footwear and for B.S.C. footwear there is a published wholesale cash price.

2. By its appellate Order No. 6-CXMII of 1956 dated 2-5-56, the erstwhile Central Board of Revenue decided that the two brands of footwear were identical in all respects and therefore the 'BATA' brand of footwear should be assessed on the same basis as that for the 'B.S.C.' brand.

3. By another Appellate Order of 16-10-57, which was passed after careful examination of all the aspects of the matter—legal as well as factual, the Board decided that the trade discount given to the wholesaler should be allowed off the published wholesale price. The Board further found that the published wholesale price was ex-sale depot and not ex-factory as required under section 4 of the Central Excises and Salt Act, 1944 and it incorporated certain expenses which were clearly attributable to post-factory sales organisation. It was, therefore, decided to deduct these expenses from the published price in order to arrive at the wholesale cash price ex-factory. The actual quantum of these expenses and trade discount were left to be determined every year by the Collector after examinating the audited accounts of the company of previous year.

4. Accordingly the Collector has been determining every year the percentage of trade discount and the sales organisational expenses on the basis of the actual figures of previous year. The total percentage is thus being deducted from the published wholesale price for arriving at the assessable value under section 4 of the Central Excises and Salt Act.

5. For instance if Rs. 100/- is the published whole-sale price, Rs. 6/- is the trade discount allowed to the wholesaler, and Rs. 10/- is the sales organisational expenses, the assessable value as per the existing practice would be Rs. 84/-. If, however, as suggested by the audit the amount

of Rs. 10 is first deducted and then the trade discount @6% the assessable value be Rs. 84.60.

6. The reason for deducting the discount as percentage of declared wholesale price was that the firm was also allowing the discount on the same basis. Since the idea was to allow the amount of discount which was actually granted by the firm to the distributor, there was hardly any necessity of expressing the percentage in a way different from the one in which the firm expressed it.

Further, the audit have apparently sought to draw a line of distinction between organisational and distributional expenses on the one hand and trade discount on the other for the purpose of being deducted from the gross whole-sale price. Basically speaking trade discount is also a part of the organisational and distributional expenses. That being so, and so long as it is conceded that all such expenses are deductable from the gross whole-sale price, there is nothing wrong in both the elements being clubbed and then being deducted to arrive at the assessable value.

Recommendation

The Committee note that there had been confusion in allowing trade discount in the various collectorates till the matter was put on a uniform footing by the Board's notification issued in May, 1962. Somewhat conflicting instructions issued by the Board and the Secretary, Revenue Department, which resulted in different practices being followed by the Bombay Collectorate and other Collectorates. It appears that there has been a lack of Co-ordination between the Secretary, Department of Revenue and the Board in this matter resulting in citizens being taxed differently under the same law although for a short period. The argument that the degree of discriminal was marginal and the discriminatory treatment was confined to a short period (October, 1961 to 18th May, 1962) does not mitigate the violation of the healthy principle of taxing the citizens uniformly under the same tax law. The Committee hope that such situation will be avoided in future.

In the present case, the Board should have immediately applied its mind to the reference made by the Collector concerned in 9th October, 1961, after the visit of the Secretary in September, 1961 and issued the necessary notification much more promptly to ensure uniformity in the levy of the excise duty in all the Collectorates. The delay in the issue of the notification is regrettable. The Committee hope that suitable steps will be taken by the Ministry to avoid such delays in future.

[*S. No.* 18 *Paras* 3.19 & 3.20 *of 2nd Report (Fourth Lok Sabha) Appendix VIII*]

Action taken

The observations of the Committee have been noted for guidance and necessary action.

[*F. No.* 36/27/65-*CXI*]

Recommendation

The Committee suggest that in order to put the matter beyond any doubt and ensure uniformity in the levy of duty, the Board should issue revised

instructions clearly bringing out the principle contained in the judgment of the Mysore High Court.

[*S. No.* 19 (*para No.* 3.28) *of Appendix VII to the Second Report (Fourth Lok Sabha)*]

Action taken

In compliance with the recommendations of the Public Accounts Committee, this Ministry have issued revised instructions to all Collectors of Central Excise, explaining the meaning and intent of the provisions of Section 4 of the Central Excises and Salt Act, 1944. A copy of the instructions is enclosed.

[*F. No.* 36/45/68-*CX-I*]

CIRCULAR LETTER MISC. NO. 68/68-CXI

F. No. 36/45/68-CX-I

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue & Insurance)

New Delhi, the 14*th November*, 1968

23*rd Kartika*, 1890 (*Saka*)

From

Shri K. L. Rekhi,
Under Secretary to the Govt. of India.

To

All Collectors of Central Excise,
(including Pondicherry, Goa & Cochin).
All Dy. Collectors of Central Excise.

Sir,

SUBJECT : *Central Excise—Determination of assessable value under Section 4 in respect of articles chargeable to duty* ad valorem*—regarding—.*

I am directed to invite your attention to section 4 of the Central Excises & Salt Act, 1944 which provides for determination of value of excisable articles which are chargeable to duty *ad valorem* and for which no tariff value has been fixed by the Central Government. Section 4 consists of two separate sub-sections (a) and (b). In addition, there is an Explanation at the end of the section which is common to both the sub-sections. For the sake of convenience, the principles of valuation under section 4 are explained in four parts as follows :—

PART I—MEANING IN CERTAIN WORDS USED IN SECTION 4.

2.(i) **"Wholesale".** The price of an article can be said to be "wholesale" when the article is sold in wholesale lots and not in retail quantities. Central Excise Officers should be guided by trade practice and sales recognised in the trade as wholesale should ordinarily be treated as wholesale for purposes of valuation under section 4(a).

(ii) **"Cash price".** The price can be said to be cash price when the buyer is required to pay for the goods on delivery. However, ascertainment of a wholesale cash price from a wholesale credit price of the same goods by allowing for the normal rate of discount for the period of credit would be in order under section 4(a).

(iii) **"Of the like kind and quality".** This phrase means exactly similar goods or identical goods. Thus, the same class of goods manufactured by two different manufacturers are not goods of the like kind and quality. Where wholesale cash price is not ascertainable for any class or quality of an article, it is not permissible to deduce a wholesale cash price for it from transactions in other classes or qualities of the article.

(iv) **"Is capable of being sold".** This clause will cover those cases where either there is no sale or because of the nature of the transaction the sale price is not acceptable for purposes of assessment. For example.—

(a) cases where owing to special relationship between seller and buyer transactions between them do not take place in genuine "open market" conditions or in the ordinary course of business and cannot, therefore, be accepted for purposes of assessment to duty;

(b) cases where there is no sale of the goods and the goods are entirely consumed by the manufacturer himself in the manufacture of other goods;

(c) cases under section 4(a) where, although a substantial and reasonably continuous market for the goods is established, there are on the date of clearance from the factory no similar goods in the market so that the wholesale cash price has to be determined by reference not to actual sales on that date but to the price which buyers would be willing to offer and sellers to accept for the goods.

(v) **"Market".** Market, for purposes of valuation under section 4(a) means an "open" market in which dealings are conducted in the ordinary course of business and at known and generally recognised rates and it is open for any independent wholesale buyer to purchase the goods at such rates. If a manufacturer sells his goods from his factory to any independent wholesale buyer, the market can be said to exist at the factory gate. If, on the contrary, he consigns his goods to his own storage depot or sells them to a sole selling agent and such depot or sole selling agent at the place nearest to the factory sells the goods to independent wholesale buyers, the market can be said to exist at such nearest place provided the sales are substantial and reasonably continuous ones. Sporadic sales to independent wholesale buyers do not constitute a market.

PART II—VALUE UNDER SECTION 4(a)

3. The essential elements of value under section 4(a) for the purpose of assessment are :—

(i) it must be a wholesale price;

(ii) it must be a cash price (deduction of cash price from a credit price being permissible as already explained in para 2(ii) above);

(iii) it must be the price ruling in the market at the place of manufacture or if a wholesale market does not exist for a factory's product at the place of manufacture, the price ruling at a place nearest to the factory where such market exists;

(iv) it must be the price ruling on the date of actual removal of the goods from the factory or other premises of manufacture or production.

4. The wholesale cash price acceptable for assessment must represent transactions conducted in the ordinary course of business at known and generally recognised rates at or near the place of manufacture in a contemporary open market condition; that is to say, the price must be one at which any independent buyer of a normal wholesale lot can procure it for cash on delivery and must not be dependent on any special relationship between the seller and the buyer of such a nature as to vitiate the representative character of the transaction. Thus the price charged by the manufacturer from an associate firm, a sole selling agent/distributor or favoured dealers by itself is not acceptable under section 4(a).

5. In the case of proprietary articles which are sold at listed wholesale prices and are available to any independent wholesale buyer at such listed prices, assessment can be made under section 4(a) on the basis of such listed prices.

6. The words "independent wholesale purchaser" should be interpreted liberally. It is quite common for manufacturers or their agents/distributors to sell proprietary articles to authorised dealers only who are bound with them with some sort of trade agreement regarding purchase, stocking, display, sale and after-sale service of the articles. So long as it is open to *any* independent wholesale buyer to become an authorised dealer upon fulfilment of conditions uniformly applicable to all authorised dealers and to purchase the goods at prices available to all authorised dealers, the transaction should be treated as a transaction in the ordinary course of business and the non-discriminatory price available to all authorised dealers should be accepted as the basis for assessment. However, where the authorised dealership is not open to *any* independent wholesale dealer but is restricted to a limited number, as for example in a case where a specified area is assigned to each dealer and no other authorised dealer would be appointed in that area, the transactions are not an acceptable basis under section 4(a) as an "open" market for the goods does not exist. It would depend upon facts and circumstances of each case and terms and conditions of the agreement entered into between the manufacturer and the dealers whether the dealers are independent buyers or favoured buyers. For deciding this point the agreement should be read as a whole. The number of dealers to whom the manufacturer accords equal treatment is also a material factor. If the number is very large, it would point to independent character of the dealers. If on a perusal of a particular agreement or arrangement it can be said that they are favoured buyers, then the price at which the manufacturer sells to such dealers should be discarded and the price at which such dealers would sell in wholesale market should be taken into consideration.

7. If there is a market in existence for a manufacturer's products and it is possible to ascertain their wholesale cash price, all of his products of the like kind and quality should be assessed on the basis of such price, regardless of the fact that a portion of the said products is sold direct to consumers or is sold at reduced rates to a chosen few or is sold at rate

contract prices or is consumed by the manufacturer himself in the manufacture of other goods. A manufacturer may try to create a shadow 'market' for his goods by disposing of a small percentage of his out-put at lower prices to a few independent wholesale buyers at or near the place of manufacture. Officers should guard against such ruse. Unless a *substantial* portion of the manufacturer's output is sold at such lower price under open market conditions, such lower price should not be accepted for purposes of assessment.

PART III—VALUE UNDER SECTION 4(b)

8. Resort to section 4(b) can be had only if wholesale cash price under section 4(a) is not ascertainable. The essential test for a value acceptable under section 4(b) is that it should be a genuine price charged under ordinary course of business. Some of the cases which would involve valuation under section 4(b) are discussed below :—

(i) **Sale to a sole selling agent/distributor**

Where the manufacturer sells his entire output to a sole selling agent/distributor, such agent/distributor is clearly a favoured buyer and prices charged from him and discounts given to him are not admissible. Assessment should in such a case be made on the basis of the price at which such agent/distributor sells the product to others who are not favoured buyers provided a wholesale cash price under section 4(a) is not ascertainable.

(ii) **Sale to a number of distributors or dealers each of whom is sole selling agent for a specified area**

This pattern of sale is quite common in the case of many proprietary articles, particularly machinery articles. There are good and legitimate trade reasons why a manufacturer would not sell such articles to any number of independent wholesale purchasers. He is interested in proper show-room facilities, after-sale service and customer good will for his products. In return for these facilities, he assigns exclusive rights of sale of his products in a particular area to a particular dealer. The agreement entered into by the regional or zonal distributor or the dealer with the manufacturer should be examined. If on reading the agreement as a whole, it can be concluded that they are not favoured buyers but are independent parties having no special relationship with the manufacturer, prices uniformly charged from the discounts uniformly given to them should be accepted provided a wholesale cash price under section 4(a) is not ascertainable. Extra caution should, however, be exercised by Central Excise Officers in admitting such prices and discounts and the possibility of the manufacturer appointing a few associate firms or creating shadow concerns as a ruse to undervalue the goods should be carefully investigated. It should also be investigated whether the dealers/distributors are performing some of the functions (like advertising, warranty etc. in respect of the goods) which appropriately belong to the manufacturer. Any discounts or reduction in price in consideration of the distributors performing such functions are not admissible. If there is a large number of regional distributors or dealers

and all of them are charged a uniform price, the possibility of the price being a *bona fide* one is greater.

(iii) **Sales at rate contract prices**

Individual rate contract prices may be accepted for the purposes of assessment subject to the following conditions :—

(a) No wholesale market exists for the article for ascertaining the value under section 4(a).

(b) Rate contract prices are based on trade considerations alone and do not involve any special relationship between the buyer and the seller.

(c) The contract documents are produced for inspection.

(d) The contracts on critical examination are found to be genuine.

(iv) **Sales are mostly direct to consumers**

Price charged from and discount granted to all consumers uniformly by the manufacturer are acceptable provided no wholesale market is in existence for the goods.

(v) **No sale—goods are entirely consumed by the manufacturer himself in the manufacture of other goods**

(a) When there is no sale of an article, it is necessary to find out the price at which articles of the like kind and quality are capable of being sold. In such cases, assessable value should be arrived at on the basis of cost accounting. After determining the total cost incurred by the manufacturer in manufacturing that article—which will include cost of raw materials, components, manufacturing expenses and overheads—a suitable addition for margin of profit should also be made. A reasonable margin of profit is the addition which the manufacturer would have ordinarily made to his cost of production had he chosen to sell the article to others.

(b) As Central Excise Officers do not, by and large, know cost accounting techniques, the manufacturer should be asked in writing to furnish the information regarding his cost of production, with break-up details under various heads like the cost of raw material, manufacturing expenses, overheads, etc. duly certified by a Chartered Accountant or Cost Accountant. The manufacturer should also be called upon to declare the average profit (as a percentage of his cost of production) which he is at that time adding to fix the sale price of his finished products (made out of the excisable raw material or components in question) which he offers for sale. If the manufacturer does not cooperate by furnishing the requisite information on a written request being made to him, resort should be had to section 14 of the Central Excises and Salt Act, 1944. In the case of small scale units, certification by a Chartered Accountant need not be insisted upon. For purposes of checking, the margin of profit declared by the manufacturer should be compared with the gross profit disclosed in his latest

balance-sheet, where available, and the total price (including profit) declared by him should be compared with the price of articles of comparable quality sold by other manufacturers. If found reasonable, the declared price should be approved by the Superintendent. The price so approved should hold good for that calendar year unless major fluctuations in the price of raw materials or in the profit margin of the manufacture warrant a fresh determination of price during the same calendar year.

(c) Another method to determine the assessable value of an article which is not sold could be to deduce its value from the price of the finished product in the manufacture of which the said article has been used, after making due allowance for the cost of other materials added and the manufacturing expenses incurred between the manufacture of the said article and the finished product. This method would, however, be suitable only in those cases where further processes after the manufacture of the said article as well as the number of other materials etc. added are not very significant from the cost point of view.

PART IV—ABATEMENT OR DEDUCTION FROM PRICE

9. In determining the price of any article under section 4, no abatement or deduction should be allowed except in respect of trade discount and the duty assessable. Under section 4(a), the admissible trade discounts are those which are allowed uniformly to all independent wholesale dealers under open market conditions. Under section 4(b), the admissible trade discounts are those which are actually and uniformly allowed to all buyers satisfying the same conditions. Subject to these general principles, the following types of discounts are admissible for deduction :—

(i) **Quantity discounts**

Actual quantity discounts, that is to say, discounts granted in the ordinary course of business, which are based on the quantity of goods supplied, should be allowed, provided that such discounts—

(a) are uniformly admissible to all independent buyers of the same quantity, and

(b) are proved to have been granted outright at the time of removal of the goods from the factory.

It should be carefully noted that only the actual quantity discount appropriate to the size of the lot sold is admissible under section 4(a) as well as 4(b). However, where the higher discount is based on the size of the lot purchased, it may be pointed out that the law does not preclude grant of such discounts for the entire clearance of the goods in one or more lots, or spread over a period of time, whatever the size of the individual consignments cleared, provided that such a discount is not exceptional and it is allowed to all dealers in the normal course of business and such a discount is or would be open to all purchasers in similar situations.

However, if order is placed for a bigger lot but due to any reason it is not fully supplied, quantity discount appropriate to the quantity actually

supplied should be allowed and not the discount appropriate to the quantity for which the order was placed.

(ii) **Cash discounts**

Cash discounts, i.e., discounts for prompt payment of price of goods on delivery are admissible in arriving at the assessable value, if they are available to all buyers.

10. The following types of discounts are not admissible :—

(i) **Discounts allowed under a particular contract**
Any discount which has been allowed only under a particular contract, and is not generally available to all independent buyers is not admissible.

Example.—A discount allowed to a buyer in consideration of an arrangement by which he takes the whole output of a factory is inadmissible.

(ii) **Conditional discounts**

Any discount which is, in any sense, conditional at the time of delivery of the goods from the factory that is to say, any discount which can be earned only in consideration of the fulfilment of certain conditions either before or after such delivery is not admissible.

Example.—A discount is inadmissible if it is allowed in consideration of the payment of the sale price being made in advance of the actual delivery from the factory.

(iii) **Discount in kind**

If any discounts are given in kind, full duty should be charged on the extra quantity allowed as discount.

(iv) **Sample discount**

A sample discount, that is to say, a special discount given for a sample supply of goods if the samples are of the saleable kind or quality ordinarily offered for sale is not admissible.

(v) **Advertising discount**

Discount of the nature of remuneration for pushing or advertising a particular line of goods is not admissible.

II. **Other deductions**

(i) **Local taxes**

All local taxes such as sales-tax, octroi etc. should be excluded in determining the value of assessment.

(ii) **Cost of distribution**

No deduction from price on account of cost of distribution can be allowed on the ground that such prices are loaded with the average cost of distribution of the goods up-country from the place of removal.

(iii) **Freight charges**

No abatement on account of expenses incurred by the manufacturer on freight charges should be allowed.

(iv) **Packing charges**

Attention is invited to Ministry of Law's advice forwarded to all Collectors under Board's letter F. No. 2/11/67-CXI dated the 29th April, 1967. As advised therein, packing cannot be regarded as part of the process of manufacture if the article is such as could have been delivered to the customers without packing. Consequently, packing charges cannot be included in the assessable value of such an article. It can be said that an article could be delivered without packing if there are substantial actual sales of the article without packing. If packing is required before the article could be delivered to the customers, then packing is a process incidental to the completion of the manufactured article and the cost for such packing should be included in the assessable value. No distinction should be made between ordinary and special packing in such cases. Cost of the actual packing in which the article is delivered from the factory should be included in the assessable value.

Note :—The foregoing list of admissible and inadmissible discounts and deductions given in paras. 9 to 11 is not intended to be exhaustive.

12. **Whether discount should be calculated on cum-duty price or ex-duty price**

Under section 4, trade discount is what is actually given to the buyer. Calculation of discount, that is, whether it should be a percentage of cum-duty price or ex-duty price, should depend upon the practice which the seller actually adopts in giving the discount to the buyer. The important point is that the quantum of trade discount, in absolute terms, should not, if otherwise admissible, be more or less than the quantum which is actually allowed to the buyer.

13. Instructions laid down in Government of India's General Order (Central Excise) No. 4 of 1955 and Board's letter F. No. 9/31/56-CXMII dated the 14th November, 1957 and all other orders regarding valuation under section 4 issued so far are hereby cancelled.

14. These orders should be given effect to immediately. Past assessments which have already been closed should not be re-opened. Assessment practices in individual cases which are contrary to these instructions but which have arisen because of orders-in-appeal or orders-in-revision, under section 35 or 36 of the Central Excises and Salt Act, 1944, should, however, continue as there is no power of review under the Central Excise Law at present. There may also be individual cases in which valuation is being done at present in accordance with a court judgment. If the Collector feels that the existing practice *in such cases* is not in accordance with these instructions, he should make a detailed report to the Board and await Board's orders before changing the existing practice.

Yours faithfully,

Sd/-.

Under Secretary to the Govt. of India.

Copy to—

The Comptroller and Auditor General of India, with reference to their U.O. No. 4600-Rev. A-250-66 KW dated 28-10-1968. (120 copies).

Ministry of Law, with reference to their U.O. No. 23368/68-Adv.(F), dated 22-7-68.

Copy also to—

As usual.

Internal distribution—

As usual.

Sd/-

Under Secretary to the Govt. of India.

Recommendation

The Committee are unhappy over the inordinate delay in fixing the assessable value of the goods by the Superintendent concerned. The Committee hope that the Department will take necessary steps to ensure that in future transfers of staff do not interfere with the disposal of assessment work.

All the same, the Committee are doubtful whether in case such as this one where different rates of duty are not involved, it was proper to allow provisional assessment under section 9-B. This matter needs examination.

(*Para* 3.34 *and Serial No.* 21-*Appendix VIII-para Nos.* 3.35. & 3.37)

Action taken

3.35. The observations made by the Committee have been noted and instructions are being issued to ensure that in the event of transfer of staff of assessment work is not interfered with.

3.37. Necessary amendment has been made in Rule 9-B *vide* notification No. 75-D/67. dated 25-5-67 (copy enclosed) which meets the point.

(*F. No.* 24/66/65)

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

New Delhi, dated the 25th May, 1967

4th Jyaistha, 1889 (*Saka*)

NOTIFICATION

(Central Excise)

G.S.R.—In exercise of the powers conferred by section 37 of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely :—

(1) These rules may be called the Central Excise (Tenth Amendment) Rules, 1967.

(2) In the Central Excise Rules, 1944, in Chapter III in rule 9B—

(i) *for* sub-rule (1), the following sub-rule shall be *substituted*, namely :—

"(1) Notwithstanding anything contained in these rules,—

(a) Where the proper officer is satisfied that a manufacturer, surer or owner of excisable goods is unable to produce any document of furnish any information necessary for the assessment of duty on the goods; or

(b) where the proper officer deems it necessary to subject the excisable goods to any chemical or any other test for the purpose of assessment of duty thereon, or

(c) where a manufacturer, surer or owner of excisable goods has produced all the necessary documents and furnished full information for the assessment of duty, but the proper officer deems it necessary to make further inquiry (including the inquiry to satisfy himself about the due observance of the conditions imposed in respect of the goods after their removal) for assessing the duty;

the proper officer may, on presentation of the application for removal in the prescribed form direct that the duty due on such goods shall, pending the production of such documents or furnishing of such information or completion of such test or inquiry, be assessed provisionally.":

(ii) in sub-rule (3), *for* the word "warehoused", the word "excisable" shall be *substituted*.

Sd/-

Joint Secretary to the Government of India.

No. 75-D/67-C.E. F-No. 2/21/66-CX.I.

Recommendation

The Committee also suggest that, where the Excise Duty is collected from the Customers the desirability of showing it separately in the cash memo be examined.

[*Sr. No.* 23 (*Para* 3.52) *of Appendix VIII of the 2nd Report* (1967-68)]

Action taken

This Ministry accepts the Committee's suggestion and proposes to make a suitable provision in the Central Excises Bill requiring the manufacturers and warehouse licensees to show the excise duty separately in their cash memos. However, it is not possible for the Central Excise Department to enforce such a provision in respect of distributors, dealers and retailers on whom the Department has no control for the purpose of levy and collection of Central Excise duties.

(*F. No.* 36/28/67-*CX.I*)

Recommendation

This case illustrates the divergent practices in classifying the same article in different Collectorates and frequent change of classification by the Board through executive instructions. The Committee would like to stress that the Budget instructions should give the necessary details to ensure uniformity in the levy of duty.

The Committee also understand from Audit that there has been considerable flexibility in issuing executive instructions. In some cases the Board has chosen to term certain instructions as "tariff rulings" and in some other cases the some type of instructions have been taken as "guide-lines". It is also understood that there is no statutory authority for the Board to issue any ruling and it is only by way of established practice borrowed from Customs that tariff rulings are issued. The Committee desire that this aspect should be carefully examined and if necessary suitable provision be made in the Act authorising the Board under specified circumstances to issue tariff rulings.

[*S. No.* 25 *Paras* 3.65 *&* 3.66 *of* 2*nd Report* (*Fourth Lok Sabha*) (*Appendix VIII*)]

Action taken

The Public Accounts Committee's observations have been noted and every effort will be made to ensure that the budget instructions are as clear and comprehensive as possible.

2. The 'rulings' are nothing but executive instructions. There are administrative instructions for the guidance of the Central Excise Officers. These are not in the nature of statutory rules, regulations or notifications requiring statutory authority for their issue.

(*Vetted by Audit*)
[*F. No.* 22/30/66-*CXVI*]

Recommendation

The Committee regret to note that due to confusion in the Board's instructions, there was an under-assessment of duty to the extent of Rs. 1,49,409 in one case which has since been recovered. The Committee hope that the Board will take adequate steps to ensure that such confusing instructions are not issued by it in future.

[*S. No.* 26, (*Para* 3.70) *of Appendix VIII*]

Action taken

The Committee's observations have been noted for future guidance.

(*Vetted by Audit*)
[*F. No.* 22/26/67-*CX.VI*]

Recommendation

The Committee note that in effect an evasion of duty amounting to Rs. 23,925 occurred in this case through the lapse of the officers in wrongly applying the orders contained in the Notification. The Committee hope that suitable action would be taken against the officers concerned and steps taken to avoid recurrence of such cases in future.

[*S. No.* 28 *of App. VIII of* 2*nd Report* (1967-68)]

Action taken

The observations of the Committee have been noted.

The disciplinary action against the officers concerned has been finalised and seven Inspectors of Central Excise have been suitably warned.

Regarding the steps to be taken to avoid recurrence of such cases in future, enclosed herewith are extracts from the instructions that were issued to the Collectors of Central Excise on 16-12-64.

[*F. No.* 1/33/65-*CX.II*]

EXTRACTS OF PARAS 1 & 2 OF THE CENTRAL BOARD OF EXCISE AND CUSTOMS CIRCULAR LETTER F. NO. 1/7/64-CXII, DATED THE 16TH DECEMBER, 1964 ADDRESSED TO ALL COLLECTORS OF CENTRAL EXCISE

SUBJECT : *Tariff—Legal implications—Need for proper appreciation.*

Several instances have come to the notice of the Board in which the local Central Excise officers are found to have permitted assessment of excisable goods at concessional or exempted "nil" rate without carefully going into an appreciating the legal implications of the tariff definition or the language of the statutory notification or the spirit behind the executive orders, as the case may be. Instances of wrong assessments are more after budget changes as the assessing officers do not examine the impact of various Notifications issued in respect of excisable commodities and follow the classifications for assessment as was obtaining prior to the budget changes. The impact of the Budget changes, particularly the changes in the wording of the Tariff items on existing tariff rulings or executive orders has not been examined, resulting in wrong assessments. Such erroneous assessments have also been found to have gone unnoticed at all levels for considerably long periods with the result that the limitation imposed under rule 10 of the Central Excise Rules, 1944, became operative and the due amount of duty remained unrecovered, causing loss of revenue.

2. It is recognised that the Central Excise tariff is becoming more and more complicated. During budget time it also happens that the Notifications and executive orders issued are not fool proof and sometimes clash with the existing orders are even its application, may be impracticable. It is, therefore, necessary for the field-staff and particularly the senior officers to bring to the notice of the Board quickly the anomalies, if any. It is for that reason that it becomes incumbent upon the supervisory officers at higher level to be more vigilant to ensure that lapses of the above nature do not take place.

Recommendation

The Committee regret to observe that this is another case where an audit objection was frustrated by the issue of a notification extending a concession of duty retrospectively. If the intention was always that the exemption would apply even to cases where paints alone or enamels alone were produced, the Committee are surprised that, Government should have issued a clarification in February, 1964 in consultation with the Ministry of Law that this concession was applicable only to manufacturers who produced both paints

and enamels. The Committee hope that, the issue of incorrect clarification at variance with the intentions of Government will be avoided.

[*S. No.* 29, *Appendix VIII Para No.* 3.80 *of Report*]

Action taken

The recommendation of the Committee has been noted for future guidance.

(*Vetted by Audit*)
[*F. No.* 22/34/66-*CXVI*]

Recommendation

The Committee regret to note that the intention of Government was lost sight on while issuing the Notification of June 1962 in an attempt to simplify the wording. They would like to emphasise that due care should be taken in drafting notifications which have important financial implications.

[*S. No.* 30 *of Appendix VIII of the 2nd Report* (1967-68)]

Action taken

The observations of the Committee have been noted for compliance.

[*F. No.* 1/54/65-*CXII* (*Vetted by Audit*)]

Recommendation

The Committee regret to note, that in spite of the observation made in para 31 of their 21st Report (Third Lok Sabha) that the amendment made to item 9(1)(5) was not clear, no action has been taken by the Government to rectify the position although two Budgets have since been presented to the House. Nor has any notification been issued specifying the varieties of unmanufactured tobacco used in the manufacture of *biris* which would attract the higher rate of duty, as envisaged in the Explanation to the tariff item. The Committee feel that it is high time that the position is rectified with a view to putting it beyond any doubt.

[*S. No.* 31(*Para* 3.95) *of Appendix VIII to the Second Report* (*Fourth Lok Sabha*)]

Action taken

The 'Explanation' occurring below item 4I(5) [previously item 9I(5)] of the First Schedule to the Central Excises and Salt Act, 1944, has since been deleted by the Finance Act, 1968.

(*Vetted by Audit*)
[*F. No.* 15/39/66-*CXIV*]

Recommendation

The Committee note that this is a straight case of failure to levy special excise duty on paper Boards, and they hope that such cases will be avoided in future.

[*S. No.* 34 (*Para No.* 3.109) *Appendix VIII*]

Action taken

The observations of the Committee have been noted.

(*Vetted by Audit*)
[*F. No.* 22/25/67-*CX.VI*]

Recommendation

The Committee regret to observe that a loss of revenue amounting to Rs. 16,675 occurred in this case due to the failure of the departmental Officers to exercise sufficient care at the time of assessing tobacco when cleared from warehouses. The failure of the officers merits serious notice.

[*S. No.* 36 (*Para* 3.123) *of Appendix VIII to Second Report* (*Fourth Lok Sabha*)]

Action taken

Necessary action has been taken against three officers responsible for the lapse. Two increments have been stopped with cumulative effect of each of the two Inspectors involved and the Deputy Superintendent concerned has been censured. (*Vetted by Audit*)

[*F. No.* 15/29/67-*CXIV*]

Recommendation

The Committee are unhappy over the issue of executive instructions in February, 1960 and the notification in April, 1960 exempting cut pieces of cotton fabrics from levy of the handloom cess in contravention of the Section 5(e) of the Khadi and Other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953. The Committee are surprised that none of the Ministries concerned *viz.*, Commerce, Finance and Law was able to notice the illegality. The Committee hope that Government will take early remedial action.

[*S. No.* 38 *of Appendix VIII of the 2nd Report* (1967-68)]

Action taken

The observations of the Committee have been noted.

Necessary legislative action to amend suitably Section 5(8) of the Khadi and Other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953, is being taken by the Ministry of Commerce.

[*F. No.* 1/57/65-*CXII*]

F. No. 1/168-CXII

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue & Insurance)

New Delhi, the 26th October, 1968

OFFICE MEMORANDUM

SUBJECT :—*P.A.C.—2nd Report (Fourth Lok Sabha) Statements of action taken on the recommendations.*

The undersigned is directed to refer to the Lok Sabha Secretariat D.O. letter No. 15/4/67-PAC dated the 21st August, 1968, and to state that so far as the recommendations made under serial No. 38 of Appendix VIII to the above cited Report are concerned, the Khadi and Other Handloom Industries Development (Additional Excise Duty on Cloth) Amendment Bill, 1967, was introduced by the Ministry of Commerce in the Lok Sabha

on the 14th November, 1967, but it could not be taken into consideration in the Fifth Session of the Fourth Lok Sabha due to want of time. However, it is expected that the Bill will be taken into consideration in the sixth session of the Fourth Lok Sabha.

Sd/-
Under Secretary to the Govt. of India.

To

The Lok Sabha Secretariat,
Public Accounts Committee,
NEW DELHI.

Recommendation

The Committee feel concerned over the increase of the total arrears of union excise duties from Rs. 801.03 lakhs as on 1-4-1964 to Rs. 1109.84 lakhs as on 1-4-1965 (which includes Rs. 646.82 lakhs pending for more than one year). Out of this figure, arrears of duty on unmanufactured tobacco alone have increased from Rs. 284.25 lakhs to Rs. 312.54 lakhs (which includes Rs. 239.09 lakhs pending for more than one year). The Committee have in their previous Reports stressed that vigorous steps should be taken to liquidate the arrears. They regret that there is no perceptible improvement in the position, especially in the case of unmanufactured tobacco. They desire that the Board should take necessary action to arrest the upward trend of the arrears.

[*S. No.* 39 *para* 3.141 *of Appendix VIII of Second Report* (*4th Lok Sabha*)]

Action taken

The observations of the committee have been noted. The Collectors of Central Excise have again been instructed to pursue arrears cases energetically so that arrears could be effectively reduced. Copies of instructions issued from time to time are enclosed.

[*F. No.* 36/27/67-*CX-I*]

COPY OF BOARD'S LETTER F. NO. 36/11/66-CX-I DATED 20-4-1966 [CIRCULAR LETTER NO. MISC. (CE)-21/66] TO ALL COLLECTORS OF CENTRAL EXCISE

SUBJECT :—*Union Duties—Arrears of Revenue—Recommendations of the Public Accounts Committee Para* 265 *of* 44*th Report.*

I am directed to reproduce below the conclusions of the Public Accounts Committee in para 265 of their 44th Report 1965-66.

"265. The Committee feel concerned to note considerable increase in the arrears of excise duties from year to year. The Committee had *vide* para 62 of their 27th Report (Third Lak Sabha) desired that vigorous steps should be taken to liquidate the arrears. They regret to note that the position in this respect instead of improving has deteriorated further."

2. The Board desires that the above recommendations of the Public Accounts Committee should be kept in view and suitable measures taken to pursue recovery action in all pending cases energetically so that arrears are effectively reduced. In this connection your attention is also invited to Board's letter F. No. 36/8/64-CX-I dated the 5th December, 1964.

The Board may be furnished with analysis of the pending arrears with an indication of the steps taken to liquidate the same. Monthly progress reports should thereafter be sent to the Board regularly to enable the Board to appreciate the efforts made to reduce the arrears. Bad cases of arrears where there are no chances of recovery, and cases where the matter is pending because of Court cases should be indicated suitably. In regard to cases where there is no chance of recovery, it is better to write off the arrears after proper examination in conformity with the instructions on the subject, instead of carrying a dead load of arrears on record, year after year.

COPY OF BOARD'S D.O. LETTER F. NO. 36/11/66-CX-I DATED 23RD AUGUST, 1966, BY NAME TO ALL COLLECTORS OF CENTRAL EXCISE

SUBJECT :—*Union Excise Duties—Arrears of Revenue—Recommendations of the Public Accounts Committee—Para* 205 *of* 44*th Report.*

I am directed to invite your attention to the Board's letter of even number dated 20-4-1966 and to state that the Board is seriously perturbed to find that the arrears of revenue, particularly in manufactured products are showing an upward trend year after year. Adverse comments of the Public Accounts Committee in this connection and the Ministry's assurance to initiate energetic measure to liquidate the arrears have already been communicated to you. In view of the present economic situation of the country, it has become all the more necessary that all government dues should be realised without delay.

I am directed by the Board to request you to devote your personal attention to the matter and to ensure that the arrears, particularly those pertaining to cases which are not *sub judice*, are realised promptly. It is also desired that the monthly progress report called for under the Board's letter of even number dated 20-4-1966 should be critically examined by you before being despatched to the Board.

COPY OF BOARD'S LETTER F. NO. 36/8/67-CX-I(PT) DATED 31ST MARCH, 1967 (CIRCULAR LETTER NO. 16-MISC./67-C.E.) TO ALL COLLECTORS OF CENTRAL EXCISE

SUBJECT :—*Arrears of Central Excise Revenue—Liquidation of—*

I am directed to refer to the Board's D.O. F. No. 36/11/66-CXI dated the 23rd August, 1966 and to say that Chief Secretary or Revenue Secretary of the State Government concerned may be addressed by you demi-officially and if necessary contacted personally to request him to issue urgent instructions to District Collectors or other Recovery Officers for expediting recovery of arrears of Central Excise duty in cases where certificate action has been taken.

COPY OF BOARD'S LETTER F. NO. 36/8/67-CX-I DATED THE 27TH JULY, 1967 TO ALL COLLECTORS OF CENTRAL EXCISE

SUBJECT :—*Union Excise Duties Arrears of Revenue—Liquidation of—*

I am directed to refer to Board's letter F. No. 36/11/66 dated the 20th April, 1966 and the 23rd August, 1966. A copy of paras 1 to 3 of the

Director of Inspection Customs and Central Excise's U.O. note No. 503/2/67 dated the 11-7-1967 on the subject noted above is enclosed. The Board desires that suitable measures may please be taken to effectively reduce the arrears and to dispose of appeals as quickly as possible.

Para 1 to 3 from U.O. Note No. 503/2/67 dated 11-7-1967 of Director of Inspection Customs and Central Excise, New Delhi.

Reference is invited to the statement of arrears of revenue for the month ending March, 1967. It would be observed that the total amount of arrears in case of manufactured and un-manufactured products at the end of March, 1967 are more than the corresponding month of the last year except in case of West Bengal. Poona, Madhya Pradesh and Calcutta and Orissa Collectorates. An analysis of the statement of arrears of different Collectorates shows that hardly any efforts are being made to liquidate the arrears in right earnest. It has been observed in a large number of cases that the disputed assessments in case of manufactured products are under correspondence either between the assessees and the assessing officers or they are pending at the Collectorate Headquarters for one reason or the other. In a large number of appeals, the papers are reported to be under scrutiny in the Collectorate offices. In most of the cases, the Collectorate offices have taken more than two to three years to finalise the cases. By and large the officers taken their own time in finalising cases, with the result that the arrears are mounting up day by day.

2. In case of un-manufactured products, the position is far from satisfactory. Every year the arrears show an upward trend. Special teams to realise the arrears have not been formed in most of the Collectorates. In fact, the realisation of the arrears is not being given the attention, it deserves. In most of the Collectorates, the arrears in respect of tobacco pertain to the years as far back as 1956.

3. It is high time that all officers take up the work of liquidation of arrears and finalisation of appeals and other cases under disputes with all zeal and earnestness since the total amount involved is of the order of about Rs. 15,00,00,000.

COPY OF BOARD'S LETTER F. NO. 36/27/67-CX-I DATED 6-10-1967 (CIRCULAR LETTER MISC. NO. 69/67-CX-I) TO ALL COLLECTORS OF CENTRAL EXCISE

SUBJECT :—*Union Excise Duties—Arrears of Revenue—Recommendations of the Public Accounts Committee in the 2nd Report (4th Lok Sabha) S. No. 39 para 3.141 of Appendix VIII.*

I am directed to reproduce below the conclusion of the Public Accounts Committee in S. No. 39 para 3.141 of their 2nd Report (4th Lok Sabha).

"S. No. 39—Para 3.141.

The committee feel concerned over the increase of the total arrears of Union Excise duties from Rs. 801.03 lakhs on 1-4-1964 to Rs. 1109.84 lakhs as on 1-4-1965 (which includes 646.82 lakhs pending for more than one year). Out of this figure arrears of duty on unmanufactured tobacco alone have increased from Rs. 284.25 lakhs to Rs. 312.54 lakhs (which

includes 239.09 lakhs pending for more than one year). The Committee have in their previous reports stressed that vigorous steps should be taken to liquidate the arrears. They regret that there is no perceptible improvement in the position specially in the case of unmanufactured tobacco. They desire that the Board should take necessary action to arrest the upward trend of the arrears."

The Board desires that the above recommendations of the Public Accounts Committee should be kept in view and vigorous steps taken to pursue recovery action in all pending cases energetically so that arrears are effectively reduced. Perceptible improvement is possible only if Collectors take sustained personal interest to ensure that the causes for arrears are removed and organise drives. Monthly report of progress made in the matter may be submitted for Board's information regularly and after personal scrutiny by the Collector, as required in Shri Narasimhan's D.O. letter F. No. 36/11/66-CX-I dated 23-8-1966.

(ii) THIRD REPORT (FOURTH LOK SABHA)

Recommendation

(i) The Committee note that out of a total under-assessment of tax amounting to Rs. 1773 lakhs reported in the Audit Reports for the years 1962 to 1966, the Department has accepted objections involving under-assessment of Rs. 788 lakhs and further the admissibility or otherwise of the audit objections involving a sum of Rs. 106 lakhs was still to be decided. The Committee also note that out of a sum of Rs. 788 lakhs for which the Audit objections have been accepted, the demands have been raised for Rs. 718 lakhs and a sum of Rs. 487 lakhs has been collected as on 1st December, 1966.

(ii) The Committee desire that the Department should take effective measures to recover the remaining amount *viz.*, Rs. 301 lakhs, for which audit objections have been accepted. They also desire that the question of admissibility or otherwise of the audit objection involving a sum of Rs. 106 lakhs should also be decided early. Efforts should also be made to avoid such cases getting time-barred.

(iii) The Committee are far from happy to note that out of a total under assessment of tax amounting to Rs. 1,773 lakhs reported in the Audit Reports for the years, 1962 to 1966, only a sum of Rs. 487 lakhs have been recovered as on 1st December, 1966. Steps taken by the Board in the direction of liquidating the arrears of under assessment of tax do not seem to have produced any substantial results.

(S. No. 1 *Para* 1.22, 1.23 *and* 1.24 *of Appendix VII of Third Report* 1967-68).

Action taken

1.22 to 1.24 Instructions have been issued to the Commissioners of Income-tax to take immediate steps for recovery of the arrears. [F. No. 83/25/48-I.T.(B). dated 24-4-1968 (copy enclosed)].

[*F. No. F83/25/67-IT(Audit*)]

F. No. 83/25/68 IT(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 24th April, 1968

To

The Commissioner of Income-Tax,

Madhya Pradesh/Mysore/Kerala/Bombay City*. III/West Bengal I-III/U.P. I&II/Madras I-II & Central Calcutta/Central Gujarat I & II/ Poona/Bihar & Orissa/Madhya Pradesh Training/Assam/Rajasthan /Bombay Central.

Sir,

SUBJECT :—*P.A.C.—Recommendations of the P.A.C. made in the Third Report—Rectification of mistakes and recovery of under-assessments—Instructions regarding—*

I am directed to refer to Board's letter No. 83/94/66-I.T.(B) dated the 22nd December, 1967 and your replies thereto and to say that the position of rectifications and recovery out of the under-assessments pointed out in the Audit Reports 1962 to 1966 was furnished to the Public Accounts Committee. The Committee has made the following observations :—

Para 1.22 The Committee note that out of a total under assessment of tax amounting to Rs. 1.773 lakhs reported in the Audit Reports for the years 1962-1966, the Department has accepted objections involving under-assessment of Rs. 788 lakhs and further the admissibility or otherwise of the audit objections involving a sum of Rs. 106 lakhs was still to be decided. The Committee also note that out of a sum of Rs. 788 lakhs for which the Audit objections have been accepted, the demands have been raised for Rs. 718 lakhs and a sum of Rs. 487 lakhs has been collected as on 1st December, 1966.

Para 1.23 The Committee desire that the Department should take effective measures to recover the remaining amount *viz.*, Rs. 301 lakhs for which audit objections have been accepted. They also desire that the question of admissibility or otherwise of the audit objection involving a sum of Rs. 106 lakhs also be decided early. Efforts should also be made to avoid such cases getting time-barred.

Para 1.24 The Committee are far from happy to note that out of total under-assessment of tax amounting to Rs. 1,773 lakhs reported in the Audit Reports for the years, 1962 to 1966, only a sum of Rs. 487 lakhs have been recovered as on 1st December, 1966. Steps taken by the Board in the direction of liquidating the arrears of under assessment of tax do not seem to have produced any substantial results.

2. The amount involved in cases where the audit objection is yet to be decided as reported by you is given in the Annexure.

3. The Board is not at-all happy over the progress of the recoveries out of under-assessments pointed out in the Audit Reports 1962—1966. The

Board, therefore, desire that immediate steps be taken to ensure that the amounts are recovered promptly.

Yours faithfully,
Sd/-
Under Secretary, Central Board of Direct Taxes

ANNEXURE

Amounts involved in cases where the audit objections are still to be decided as on 1-12-1966

C.I.T's Charge	Audit Reports			
	1963	1964	1965	1966
1. Madhya Pradesh	2,802	1,141	33,123	37,326
		543	5,533	1,018
2. Mysore	6,540	817	6,924	2,05,125
3. Kerala	94	2,746	68,547	48,867
4. Bombay City III	2,23,734	15,26,410	8,75,869	10,85,361
5. West Bengal III	250	1,976	2,037	4,338
6. West Bengal II	7,735	1,41,016	—	16,484
7. Uttar Pradesh	210	—	22,720	21,920
8. Uttar Pradesh I	19,444	3,755	5,632	41,098
9. Madras I, II and Central	—	86,471	4,58,472	10,88,720
10. Calcutta Central	—	6,257	18,026	62,000
11. Gujrat	—	1,680	5,14,854	3,73,455
12. Poona	—	39	75,877	91,057
13. Bihar & Orissa	—	2,592	651	17,644
14. West Bengal I	—	16,000	80,423	17,23,167
15. Madhya Pradesh Trg.	—	—	6,875	1,71,717
16. Assam	—	—	399	31,275
17. Rajasthan	—	—	3,857	5,690
18. Bombay Central	—	—	—	4,32,570

Recommendation

The Committee note that the number of cases that were revised by Audit during the years 1961-62, 1962-63 and 1963-64 (up to August, 1964) were 42,243, 84,485 and 1,63,104 respectively and the number of cases in which mistakes were noticed were 8,604, 13,534 and 16,000 odd respectively. The percentage which had come down from 20 per cent to 10 per cent had gone up to 13 per cent in 1965-66. The under-assessment of tax has increased to Rs. 865 lakhs in 1966 as against Rs. 121 lakhs in 1962.

The Committee note that the following steps have been taken to improve the position regarding mistakes found in assessments :—

(i) The Commissioners have been asked to maintain a register in regard to the various objections pointed out by Audit and stages at which rectifications have been made;

(ii) It is now proposed to take stronger action against earing Officers;

(iii) The number of Internal Audit parties have been strengthened thereby reducing the work load of the parties;

(iv) The scope of Internal Audit has been made more comprehensive;

(v) The Commissioners have been asked to put more income-tax officers in company circles so that the work load is reduced;

(vi) Refresher courses and training courses have been introduced for officers and staff.

The Committee hope that the results of these steps will be reflected in the future Audit Reports.

[*S. No.* 1 *Paras* 1.25, 1.26 *and* 1.27 *Appendix VII of Third Report* 1967-68]

Action taken

The observations of the Committee have been noted.

[*Vetted by audit* vide *Shri R. Balasubramanian's D.O. No.* 2092-*Rev.A*/564-67-*I*, *dated* 30-4-1968].

[F. No. 83/32/68-ITB.]

Recommendation

The Committee regret that, due to the incorrect application of the provisions of the law, there was an under-assessment of tax in respect of 6 cases. These cases disclose lack of care in applying the provision of the Act, on the part of the Income-tax Officer who has been warned by the Commissioner of Income-tax.

[*S. No.* 2 *of Appendix VII para* 1.33 (*Third Report—4th Lok Sabha*)]

Action taken

The observations made by the Committee have been noted.

[*Duly vetted by Audit* vide *D.O. No.* 481-*A*/564-67-*I*, *dated the* 30*th January*, 1968.]

[M/F. (D.R. & I.) F. No. 36/9/65-IT(AI), dated 15-2-68.]

Recommendation

Another disturbing aspect in this case is that the explanation of the ITO concerned was called for by the Commissioner on 13th October, 1966, after a lapse of about 2 years from the date of the receipt of Audit objection. The Committee are surprised to be informed that there was a delay on the part of the Commissioner to the extent of a year in calling for the explanation after the audit objection was accepted in October, 1965, and that there was no promptness in a number of cases.

The Committee suggest that instructions laying down a time-limit within which the explanation should be called for and disposed of should

be issued immediately. It should also be ensured that these instructions are actually followed by the authorities concerned.

[*S. No.* 2 *and para* 1.34 *and para* 1.35 *of Appendix VII to Third Report,* 1967-68.]

Action taken

1.34. The observations made by the Committee have been noted.

1.35. As suggested by the Committee necessary instructions have been issued to all the Commissioners of Income-tax in the matter vide Circulars No. 10-D of 1968, F. No. 83/34/68-ITB, dated 26-4-68 and No. 15-D of 1968, F. No. 36/9/65-IT(AI), dated 4-7-68 (Copies enclosed).

[*Duly vetted by Audit* vide *DRA's D.O. No.* 3466-*Rev.A*/564-67-*II, dated* 5-8-1968.]

[*F. No.* 36/9/65-*IT*(*Audit*)]

For Department Use only

F. No. 83/34/68-ITB (Audit)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 26*th April,* 1968.

CIRCULAR NO. 10-D (LXXIX-7) OF 1968

SUB: *Audit of Central Revenues—Detection of mistakes—Explanation of officials concerned—Time-limit for calling for disposal of explanation.*

In para 1.35 of its 3rd Report, the Public Accounts Committee has made the following observation :—

"The Committee suggest that necessary instructions lying down a time-limit within which the explanation should be called for and disposed of should be issued immediately. It should also be ensured that these instructions are actually followed by the authorities concerned."

2. The instructions regarding calling for explanation are contained in Board's letter No. 83/103/66-ITB, dated 23rd June, 1967. The Board desire that the explanations referred to therein should be submitted by the officials concerned within a fortnight of the receipt of the records and the Commissioner of Income-tax should dispose of the explanation within a month of the receipt of the explanation. It may kindly be ensured that these time-limits are strictly adhered to.

Under Secretary, Central Board of Direct Taxes

Copy to :-

1. All Commissioners of Income-tax.
2. All Directorate of Inspections.
3. Bulletin Section with 3 spare copies.
4. All Officer & Section in Board's Office.
5. I.T.(A.I) Section. Further action regarding sending a reply to para 1.35 may please be taken.

Sd/-
Under Secretary

For *Department Use only*

F. No. 36/9/65-IT(AI)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 4th July, 1968.

CIRCULAR NO. 15-D (LXXIX-8) OF 1968.

SUB : *Audit of Central Revenues—Detection of mistakes—Explanation of officials concerned—Time-limit for calling for and disposal of explanations.*

In continuation of the Board's Circular No. 10-D (LXXIX-7) of 1968, dated 26-4-1968, on the above subject, the Board desire that the Commissioners should call for the explanation of the officers responsible for mistakes pointed out by the Revenue Audit, wherever such explanation is found necessary, within two months of the acceptance of the Audit objection.

Sd/-

Under Secretary, Central Board of Direct Taxes.

Copy to :-

1. All Commissioners of Income-tax.
2. D.I(IT)/DI(Inv)/DI(RS&P).
3. Bulletin Section (with 5 spare copies).
4. All officers and sections in the Income-tax Wing.

Sd/-

Under Secretary, Central Board of Direct Taxes.

Recommendation

The Committee regret to note that the mistake which occurred in this case was a purely arithmetical and clerical mistake 'due to negligence and carelessness'. Had the assessing officer been a little more careful, the mistake could have been avoided.

They note that the explanation of the officer concerned in the Internal Audit had been called for in September, 1966. The delay in calling for the explanation after the mistake had come to the notice of the authorities indicates laxity on the part of the Department. The Committee hope that with the steps proposed to be taken by the Board such inordinate delays would be avoided.

The Committee would like the Board to carefully investigate into this case so as to satisfy themselves that there were no *mala fides* involved.

[*Serial No.* 3 *of Appendix VII Paras* 1.40 *to* 1.42 (*3rd Report—4th Lok Sabha*)]

Action taken

1.40 and 1.41. The observations made by the Committee have been noted.

Instructions have been issued by the Board that prompt action should be taken by the Commissioners in calling for the explanation of the Officers concerned in all cases where having regard to the nature of the mistake and the circumstances in which the mistake was committed, there is any suspicion of the Officer's *bona fides,* or where there is clear prima facie impression that there has been material negligence or other impropriety on the part of the officers.

1.42. Pursuant to the observations of the Public Accounts Committee the case has been investigated from the vigilance angle. It has however been found that the mistake had occurred in adopting the share income on a provisional basis, which was to be substituted, later on, by the correct share income and that the mistake was *bona fide*.

The officer concerned has been warned to be careful in future.

[*Duly vetted by Audit* vide *DRA's D.O. No.* 481-*Rev.A/564-67/I, dated the* 30*th January,* 1968.]

[*Ministry of Finance (Department of Revenue and Insurance) F. No.* 36/15/66-*IT(AI)-III, dated the* 15*th February,* 1968.]

Recommendation

The mistake that occurred in this case cannot be justified even on the ground of heavy work load. The Committee would like the Board to satisfy itself, after investigation, whether the mistake was *bona fide* or deliberate.

The Committee hope that in future action would be initiated at the time of receipt of Audit objection itself by the Board as agreed to by the Chairman, Central Board of Direct Taxes, simultaneously for rectification and pursuing disciplinary aspect of the case to avoid delay.

[*S. No.* 4 *and paras* 1.46 *and* 1.47 *of Appendix VII to the Third Report* (4*th Lok Sabha*), 1967-68.]

Action taken

1.46. The matter has been examined from the vigilance angle and it has been found that the mistake was *bona fide* and not deliberate.

1.47. Necessary instructions have been issued to all the Commissioners of Income-tax that the observations made by the Public Accounts Committee should be brought to the notice of all officers under their respective charges. In this connection a copy of the Board's letter F. No. 36/1/67-IT(AI)-III, dated the 18th May, 1968, is enclosed.

[*Vetted by Audit vide D.O. No.* 2624/*Rev.Audit/564-67-I, dated* 5*th June,* 1968.]

[*MF(DR) File No.* 36/11/65-*IT(AI), dated* 10*th June,* 1968.]

F. No. 36/1/67-IT(AI)-III

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, dated the 18*th May,* 1968.

From

Shri N. Sriramamurty,
Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Public Accounts Committee—Irregularities noticed by the Audit Parties of the C. & A.G.—Observations made by the Committee in their Third Report* 1967-68.

A reference is invited to the Board's letter F. No. 7/56/67-Coord., dated the 23rd November, 1967, with which copies of the Public Accounts Committee's Third Report, 1967-68 were sent to all Commissioners of Income-tax.

2. The price of the Report is Rs. 1.45 P. and copies are available from General Manager, Government of India Press, Minto Road, New Delhi. It is necessary that all the Income-tax Officers should go through the Report. It may not be necessary to have as many copies as the number of Income-tax Officers, as one or two copies may be enough for circulation in a circle or District depending on the number of Income-tax Officers. In future, therefore, you may purchase adequate number of copies and supply to the Income-tax Officers.

3. In several paragraphs of their Report, the Public Accounts Committee had made observations regarding the irregularities which were noticed by the Audit Parties of the Comptroller and Auditor General. The Public Accounts Committee also recommended, in some of these cases, steps that should be taken to avoid recurrence of the mistakes. The Report of the Public Accounts Committee should, therefore, be carefully studied by you and necessary instructions issued to the officers in your charge. A copy of the instructions issued by you should be sent to the Board to enable the Board to report to the Public Accounts Committee on the action taken on their recommendations.

4. In particular, your instructions should cover the following :

(1) In the paragraphs noted below, the Public Accounts Committee had remarked on the delay in taking appropriate action after the receipt of the audit objections and the necessity to avoid these delays :

Para 1.47 Para 1.91
Para 1.82 Para 1.216
Para 1.90

The Board desire that the specific observations of the Public Accounts Committee in the above cases should be brought to the notice of the officers. In future, action for rectification of assessments should normally be

initiated as soon as the audit objection is received, unless the Commissioner of Income-tax feels that there are good grounds for not accepting the audit objection. In that case he should make a reference to the Board and stay the completion of rectification or revision proceedings till the Board's decision is received.

(2) In the following paragraphs, the Public Accounts Committee had made adverse comments on cases where the Income-tax Officers, in making the assessments, had overlooked important changes made in the law, or omitted to look into the previous records or failed to maintain proper depreciation charts in the files, as a result of which there was heavy loss to revenue :

Para 1.62 Para 1.111
Para 1.64 Para 1.114
Para 1.69 Para 1.142
Para 1.81

The observations made by the Public Accounts Committee in the above cases should be brought to the notice of the officers and they should be asked to be vigilance in applying the law and complying with the Departmental instructions. It should also be ensured that the standing instructions relating to the maintenance of a depreciation chart, in each case, are invariably complied with.

(3) The observations made by the Public Accounts Committee in the following paragraphs relate to cases, where, on account of careless and negligent handling by Income-tax Officers, gross mistakes occurred in the computation of total income and in the determination of tax, resulting in considerable under-assessment :

Para 1.48 Para 1.51
Para 1.49 Para 1.54

The Board desire that the observations of the Public Accounts Committee should be brought to the notice of all assessing officers under your control and they should be asked to avoid such mistakes.

(4) In the following paragraphs, the Public Accounts Committee had commented upon the inspection and supervision of assessments carried out by the Inspecting Assistant Commissioners :

Para 1.63 Para 1.76
Para 1.64 Para 1.126

The Public Accounts Committee's observations should be brought to the notice of all Inspecting Assistant Commissioners.

(5) In the following paragraphs, the Public Accounts Committee had commented upon the incorrect manner in which the assessments of contractors had been completed in some cases, only on the net payments received by them and not on the gross payments.

Para 1.93

Para 1.97

Public Accounts Committee's observations should be brought to the notice of all officers under your control.

5. Action taken by you may please be reported to the Board as desired in para 2 above, by 15-6-1968.

Yours faithfully,

Sd/-

Under Secretary, Central Board of Direct Taxes.

Copy forwarded to :-

1. D.I.(I.T.)/D.I.(Inv.)/D.I.(R.S.&P.), New Delhi.
2. All Officers and Section in I.T. Wing.

Sd/-

Under Secretary, Central Board of Direct Taxes.

Recommendation

The Committee regret to note the careless and negligent manner in which the assessment of a case in a high income group had been made. They suggest that special steps should be taken to avoid such costly mistakes in cases relating to high income groups.

The Committee also suggest that as agreed to by the Chairman, Central Board of Direct Taxes, such cases should be gone into to find out whether there was any collusion between the assessees and any of the officials of the Department.

[*S. No.* 5 *and Para* 1.54 *of Appendix VII to Third Report*, 1967-68]

Action taken

1.54. (a) Instructions have been issued to all the Commissioners of Income-tax *vide* Board's letter F. No. 36/1/67-IT(AI)-III, dated the 18th May 1968, that the observations made by the Committee should be brought to the notice of all the officers in their charges for guidance and necessary action.

(b) The cases referred to in this para have been examined from the vigilance angle and it has been found that there was no collusion between the assessees and any official of the Department.

[*Vetted by Audit* vide *C. & A.G.'s D.O. No.* 3714-*Rev.A*/567-67-*II*, *dated the* 28*th August*, 1968.]

[*F. No.* 36/10/65-*IT*(*AI*)-*IV*]

Recommendation

The Committee regret to note that the Income-tax Officer overlooked a very important change made in regard to the rates of tax applicable to "resident but not ordinarily resident" persons in as many as 96 cases. If this omission had not been reported by Audit there would have been a heavy loss of revenue.

The Committee are further surprised to learn that the Foreign Section was last inspected by Inspecting Assistant Commissioner in 1955 and only 12 and 8 circles were inspected by him during 1963-64 and 1965-65 respectively which did not include the Foreign Section.

The Committee desire that instructions should be issued to the Commissioners to chalk out a programme for inspection of all the Circles at regular intervals. They also suggest that the changes brought out in the law from time to time and the implications thereof should be brought to the notice of all the officers concerned immediately.

[*S. No.* 6 *and Paras* 1.62 *to* 1.64 *of Appendix VII to Third Report,* 1967-68]

Action taken

1.62 and 1.63. The observations made by the Committee have been noted for compliance.

1.64. As desired by the Committee, necessary instructions have been issued to all the Commissioners of Income-tax *vide* Board's letter F. No. 36/13/65-IT (Audit) III, dated 4-12-68 (copy enclosed).

[*Vetted by Audit* vide *DRA's D.O. No.* 5825-2916-*Rev. A/564-67-I dated* 31-12-68]

[*F. No.* 36/13/65-*IT (Audit) III*]

F. No. 36/13/65-IT (Audit) III

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 4th December, 1968.

From

Shri S. Bhattacharya,

Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT :—*Inspection of Income-tax Offices—Work by Inspecting Assistant Commissioners—Instructions regarding—.*

In their 3rd Report (1966-67), the Public Accounts Committee have referred to one charge where the Foreign Section had not been inspected by the Inspecting Assistant Commissioner for nearly ten years since 1955. The Board desire that instructions should be issued to all the Inspecting Assistant Commissioners in your charge that programmes of inspection are to be drawn up in such a manner that every Circle is inspected at least once in three years.

2. The Public Accounts Committee have also recommended that when changes are brought out in the laws from time to time, the implications thereof should be immediately brought to the notice of all the officers concerned. In pursuance of this recommendation, the Director of Inspection (R.S. & P.) has already published a compilation of the instructions on Finance Acts for the period 1962 to 1967. Besides, the Board also have issued instructions on the Finance Act, 1968 under their F. No. 1(234)/68-TPL, dated 6-7-1968. The Board desire that the

instructions regarding the Finance Acts should be circulated to all the officers in your charge immediately, if not already done so.

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

Copy forwarded to the Director of Inspection (Income-tax) with reference to U.O. No. 1/4/4/68-DIT/46/21, dated 24th August, 1968.

Sd./-
Secretary,
Central Board of Direct Taxes.

Recommendation

The Committee hope that the Board would take adequate steps to ensure that such big mistakes involving heavy financial loss to the exchequer are not overlooked by Internal Audit.

[*S. No. (Para* 1.66) *of Appendix VII of Third Report* 1967-68]

Action taken

The recommendations of the Public Accounts Committee are noted. The scope of Internal Audit was revised and enlarged *vide* instructions issued under Board's Circular F. No. 83/40/65-I.T.(B), dated the 17th March, 1966. It has already been prescribed that the Internal Audit Parties should check the totals and also check if the total income was computed in accordance with the return and accounts and other material available on the record. As a result of these instructions mistakes of the type mentioned in para 34(e) of the Audit Report, 1966 are not likely to occur again.

2. Instructions have also been issued under Director of Inspection (Income-tax) letter No. M(6)(1)/67-DIT/100 dated the 26th May, 1967 and item No. 8 of the Minutes of the Commissioners Conference held in August, 1967 that all company assessments irrespective of the Income and 100% of the other assessments involving an income of more than Rs. 50,000 should be checked by Internal audit parties soon after the assessments are completed.

In view of the existing instructions no further instructions are considered necessary.

[*Vetted by Audit* vide *C. & A.G.'s U.O. No.* 3682-*Rev.*/564-67-*II, dated the* 23rd *August,* 1968]

[*F. No.* 36/13/65-*IT(AI)(Audit)*]

Recommendation

(a) The Committee feel that the mistake had occurred in this case due to failure on the part of the Income-tax Officer to exercise proper vigilance because the computation in this case did not involve any complication.

(b) The Committee would like to be informed whether the amount has since been realised. They hope that such instances would not recur.

[*Serial No.* 8 *and Para* 1.69 *of Appendix VII to the* 3rd *Report,* 1967-68]

Action taken

(a) Necessary instructions have been issued to all the Commissioners of Income-tax *vide* para 4(2) of the Board's letter F. No. 36/1/67-IT(AI), dated 18-5-68 that the observations made by the Committee should be brought to the notice of all officers under their respective charges for guidance and necessary action.

(b) No further recovery in this case is possible. Reminders for early payment of the outstanding demands have been sent to Mr. J. C. Delmare O/O Eastern Bank Ltd., 2/3, Crossly Square, London, E.C. 3, but no response has yet been received from his end.

[*Vetted by Audit* vide *C.&A.G's U.O. No.* 5669-*Rev.A*/564-67-*III*, *dated* 17-12-68]

[*F. No.* 8/2/68-*IT(Audit)*]

Recommendation

From the facts placed below before them, it is difficult for the Committee to rule out the possibility of deliberate under-assessment on the part of the ITO to favour the assessee. The Central Board of Direct Taxes have themselves raised the question of *mala fides* and asked the Commissioner to see whether the explanation offered by the ITO was satisfactory. The Committee suggest that a thorough investigation should be conducted in this case by the Board and the result of the findings and the action taken against the officials found responsible communicated to them.

(i) The Committee find from the statement showing action taken against delinquent officers mentioned in cases in Chapter IV of the Audit Report that out of 53 cases no action has been considered necessary in 4 cases, which are of a controversial nature; in one case the explanation of the officer has been accepted and in all the remaining 48 cases action has been taken to issue a warning to the officers concerned.

(ii) In the opinion of the Committee, apart from the disciplinary action taken or proposed to be taken in these cases, a greater degree of vigilance, inspection and supervision of assessment cases is urgently called for with a view to preventing as far as possible, and early detection of costly mistakes.

[*S. No.* 9 *and paras* 1.75 *and* 1.76 *of Appendix VII to Third Report*]

Action taken

In this case the ITO adopted a lower income from Property for the assessment years 1958-59 and 1959-60, than for the two years immediately preceding. The Commissioner of Income-tax cancelled u/s 33B the assessment orders for 1958-59 and 1959-60, which were considered by him too low : His orders for these two years are "*sub judice*" before the Tribunal. Besides, the AAC's orders confirming the higher assessments for 1956-57 and 1957-58 are also being contested by the assessee before the Income Tax Appellate Tribunal. Till the pending four appeals are decided by the Tribunal and such decisions indicate that the ITO's action for the assessment years 1958-59 and 1959-60 were palpably unjustified, it will be impossible to establish his *mala fides*, if any. As it is the ITO's explanation has been found to be unsatisfactory and he has been warned. The matter will be pursued.

(i) The observations made by the Committee have been noted by Government.

(ii) Necessary instructions have been issued to all the Commissioners of Income-tax, *vide* para (4) of the Board's letter F. No. 36/1/67-IT(AI)-III, dated 18-5-68 that the observations made by the Committee be brought to the notice of all the officers under their respective charges.

[*Vetted by Audit* vide *C.&A.G's U.O. No.* 3591-*Rev.A*/564-67-*III*, *dated* 26-8-68]

[*F. No.* 36/12/65-*IT(AI)III*]

Recommendation

The Committee regret to note that the assessing officer did not carry out the basic function of scrutinising the previous assessments to find out whether the opening stock of a registered firm was the same as the closing stock of the proceeding year. Failure to exercise proper scrutiny of the accounts statements filed by the assessee alongwith the Income-tax return resulted in an under-assessment of tax amounting to Rs. 1,84,126 in the case of 6 partners of the firm.

The Committee are not happy to note the dilatory manner in which the audit objection in this case was dealt with. They hope that, as assured by the Chairman, Central Board of Direct Taxes, the audit paras would be dealt with more promptly and at a higher level in future.

[*S. No.* 10 *and paras* 1.81 *and* 1.82 *of Appendix VII to Third Report*, 167-68 (D*th Lok Sabha*)]

Action taken

The observations made by the Committee have been noted.

2. Instructions have been issued to all the Commissioners of Income-tax (*vide* Board's letter F. No. 36/1/67-IT(AI)III, dated 18-5-68) that the observations made by the Committee be brought to the notice of all the officers in their charges.

[*Vetted by Audit* vide *D.R.R.'s D.O. No.* 2917-*Rec.A*/564-67-*I*, *dated* 22-6-1968]

[*Min. of Fin. (DR&I) F. No.* 36/19/65-*IT(AI)*, *dated* 28-6-1968]

Recommendation

The Committee find that the Income-tax Officer failed to compute the income properly although the discrepancies were noticed in the accounts. The Committee find from the Note furnished by the Ministry that "there was no *mala fide* on the part of the Income-tax Officer" and that he has been warned to be careful.

[*S. No.* 11 *and para* 1.87 *of Appendix VII to Third Report*, 1967-68]

Action taken

The observations made by the Committee have been noted.

[*Vetted by Audit* vide *DRA's D.O. No.* 2091-*Rev.A*/564-67, *Vol. I*, *dated* 30-4-1968]

[*F. No.* 36/16/65-*IT(AI)*, *dated* 6*th May*, 1968]

Recommendation

The Committee regret to find in this case yet another instance of delay. Since delay in rectification and revision of assessments may affect the collection of public revenue, the Committee need hardly emphasize the urgent necessity of curtailing delays in such cases.

[*S. No.* 12 *and Para* 1.91 *of Appendix VII to P.A.C.'s Third Report*, 1967-68]

Action taken

The observations made by the Committee have been noted by the Government, for compliance.

Instructions have been issued (*vide* Paragraph 4 of the Board's letter F. No. 36/1/67-IT(AI)III, dated 18-5-68) to all the Commissioners of Income-tax that the observations made by the Committee should be brought to the notice of all the officers under their respective charges for taking necessary action.

[*Vetted by Audit* vide *C&AG's U.O. No.* 5765-*Rev.A*/564-67-*IV*, *dated* 24-12-1968]

[*F. No.* 36/9/65-*IT*(*AI*)*II*, *dated* 28-12-1968]

Recommendation

The Committee desire that suitable instructions should be issued urging upon the Income-tax Officers to follow the procedure correctly, so as to fulfil the requirements of law.

[*S. No.* 13 *and para* 1.97 *of Appendix VII to Third Report*, 1967-68]

Action taken

As desired by the Committee instructions have been issued (*vide* Board's letter F. No. 36/1/67-IT(AI)III, dated 18-5-68) to all the Commissioners of Income-tax that the observations recommendations made by the Committee should be brought to the notice of all the officers under their respective charges for guidance and necessary action.

[*Duly vetted by Audit* vide *DRA's D.O. No.* 3003-*Rev.A* 564-67-*I*, *dated* 2-7-1968

[*F. No.* 36/16/65-*IT*(*AI*), *dated* 8-7-1968]

Recommendation

The Committee regret that in the first case though the mistake occurred in four assessments for the years 1961-62 to 1964-65, it was not noticed at any stage. In view of the fact that the mistake had occurred in four assessments, the Committee desire that suitable instructions be issued clearly bringing out the provisions of the Act.

[*Serial No.* 14 *and Para* 1.102 *of Appendix VII to Third Report*, 1967-68]

Action taken

As desired by the Committee, necessary instructions have been issued to all the Commissioners of Income Tax *vide* Board's letter F. No. 36/19/65-IT(AI), dated the 25th November, 1968 (copy enclosed).

[*F. No.* 36/19/65-*IT*(*AI*)]

F. No. 36/19/65-IT(Audit)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 25th November, 1968.

From

Shri S. Bhattacharyya,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SUBJECT :—*Deduction for special reserve created by Financial Corporations engaged in long-term finance for development in India.*

Sir,

In supersession of the Board's instructions contained in their letter of even number dated the 26th June, 1968 on the subject, the following instructions may please be brought to the notice of all officers working in your charge :

(1) *Provisions relevant to the assessment years* 1961-62 *to* 1964-65 :

Under Section 36(1)(viii) of the Income-tax Act, 1961, prior to its amendment by the Finance Acts of 1965 and 1966, a deduction was to be allowed in respect of any special reserve created by a financial corporation engaged in providing long-term finance for industrial development in India, and such deduction was not to exceed "ten per cent of the total income". As the total income can be determined only after making deductions of this type, the relief allowable under this Section was to be equal to 1/11th of the gross income before making the allowance. In their Third Report for 1967-68 the P.A.C. had occasion to comment on certain cases where such an allowance was mistakenly allowed at 1/10th of the gross income, instead of 1/11th.

(2) *For the assessment year* 1965-66 :

The same provisions as for the assessment years 1961-62 to 1964-65 apply as to the limit of deductions. Besides, in view of the amendment introduced by the Finance Act of 1965, the total income is to be computed before making any deduction under Chapter VI-A.

(3) *For the assessment year* 1966-67 *onwards* :

(i) Total income for the purpose of this Section is to be computed before making any deduction under Chapter VI-A.

(ii) In the case of financial corporations, whose paid-up share capital does not exceed Rs. 3 crores, the limit of deduction is 25% of the total income or 1/5th of the gross income before making the allowance u/s 36(1)(viii) [Provision introduced by the Finance Act, 1966].

(iii) In the case of other financial corporations 10% of the total income or 1/11th of the gross income, as for earlier years.

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

Copy forwarded to :—

(1) The Director of Inspection (Income-tax).
The Director of Inspection (Investigation).
The Director of Inspection (R.S.&P.).

(2) All Officers and Sections in the Income-tax Wing.

(3) Shri R. D. Saxena, Deputy Secretary (Budget).

Recommendation

The Committee suggest that a chart showing the depreciation allowed from year to year should be maintained in respect of all such assets to avoid similar mistakes in future.

[*Serial No.* 16 *and Para* 1.114 *of Appendix VII to the* 3*rd Report,* 1967-68]

Action taken

As desired by the Committee, instructions have been issued [*vide* Board's letter F. No. 36/1/67-IT(AI)III, dated 18-5-68] to all the Commissioners of Income-tax that the observations/recommendations made by the Committee should be brought to the notice of all the officers under their respective charges for guidance and necessary action.

[*Vetted by Audit* vide *DRA's D.O. No.* 3003-*Rev.A* /564-67-1, dated 2-7-1968]

[*F. No.* 36/15/65-*IT(AI), dated* 8-7-1968.]

Recommendation

The Committee regret to note that the omission reported in this case clearly discloses the failure on the part of the I.T.O. to exercise elementary scrutiny to see whether the assessee had furnished the necessary particulars. The I.T.O. should have carefully scrutinised the particulars, specially when a large sum of Rs. 2,70,535 was admitted as a development rebate.

The Committee also suggest that, having regard to the large number of assessments, each Inspecting Assistant Commissioner should check a certain number of cases of each Income-tax Officer under his circle at regular intervals.

[*S. No.* 18 *and paras* 1.124 *and* 1.126 *of Appendix VII to Third Report,* 1967-68 (4*th Lok Sabha*)]

Action taken

The observations made by the Committee have been noted and brought to the notice of the Commissioners of Income-tax concerned.

1.126. Instructions have been issued to all the Commissioners of Income-tax [*vide* Board's letter F. No. 36/1/67-IT(AI)III, dated 18-5-1968] that the observations made by the Committee should be brought to the notice of all officers under their respective charges. A copy of the instructions is enclosed.

[*Vetted by Audit* vide *DRA's D.O. No.* 2917-*Rev.A* 564-67-*I*, *dated* 22-6-1968]

[*F. No.* 36/11/66-*IT(AI), dated* 26-6-1968]

F. No. 36/1/67-IT(AI)III

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, dated the 18th May 1968.

From

Shri N. Sriramamurty,

Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax,

SUBJECT :—*Public Accounts Committee—Irregularities noticed by the Audit Parties of the C.&A.G.—Observations made by the Committee in their Third Report,* 1967-68.

Sir,

A reference is invited to the Board's letter F. No. 7/56/67-Coord., dated the 23rd November, 1967, with which copies of the Public Accounts Committee's Third Report, 1967-68 were sent to all Commissioners of Income-tax.

2. The price of the Report is Rs. 1.45P. and copies are available from General Manager, Government of India Press, Minto Road, New Delhi. It is necessary that all the Income-tax Officers should go through the Report. It may not be necessary to have as many copies as the number of Income-tax Officers, as one or two copies may be enough for circulation in a circle or District depending on the number of Income-tax Officers. In future, therefore, you may purchase adequate number of copies and supply to the Income-tax Officers.

3. In several paragraphs of their Report, the Public Accounts Committee had made observations regarding the irregularities which were noticed by the Audit Parties of the Comptroller and Auditor General. The Public Accounts Committee also recommended, in some of these cases, steps that should be taken to avoid recurrence of the mistakes. The Report of the Public Accounts Committee should, therefore, be carefully studied by you and necessary instructions issued to the officers in your charge. A copy of the instructions issued by you should be sent to the Board to enable the Board to report to the Public Accounts Committee on the action taken on their recommendations.

4. In particular, your instructions should cover the following :

(1) In the paragraphs noted below, the Public Accounts Committee had remarked on the delay in taking appropriate action after the receipt of the audit objections and the necessity to avoid these delays.

Para 1.47

Para 1.82

Para 1.90

Para 1.91

Para 1.216

The Board desire that the specific observations of the Public Accounts Committee in the above cases should be brought to the notice of the officers. In future, action for rectification of assessments should normally be initiated as soon as the audit objection is received, unless the Commissioner of Income-tax feels that there are good grounds for not accepting the audit objection. In that case he should make a reference to the Board and stay the completion of rectification or revision proceedings till the Board's decision is received.

(2) In the following paragraphs, the Public Accounts Committee had made adverse comments on cases where the Income-tax Officers, in making the assessments, had overlooked important charges made in the law, or omitted to look into the previous records or failed to maintain proper depreciation charts in the files, as a result of which there was heavy loss to revenue :

Para 1.62 Para 1.81
Para 1.64 Para 1.111
Para 1.69 Para 1.114
Para 1.142

The observations made by the Public Accounts Committee in the above cases should be brought to the notice of the officers and they should be asked to be vigilant in applying the law and complying with the Departmental instructions. It should also be ensured that the standing instructions relating to the maintenance of a depreciation chart, in each case, are invariably complied with.

(3) The observations made by the Public Accounts Committee in the following paragraphs relate to cases, where, on account of careless and negligent handling by Income-tax Officers, gross mistakes occurred in the computation of total income and in the determination of tax, resulting in considerable under-assessment.

Para 1.48 Para 1.51
Para 1.49 Para 1.54

The Board desire that observations of the Public Accounts Committee should be brought to the notice of all assessing officers under your control and they should be asked to avoid such mistakes.

(4) In the following paragraphs, the Public Accounts Committee had commented upon the inspection and supervision of assessments carried out by the Inspecting Assistant Commissioners :

Para 1.63 Para 1.76
Para 1.64 Para 1.126

The Public Accounts Committee's observations should be brought to the notice of all Inspecting Assistant Commissioners.

(5) In the following paragraphs, the Public Accounts Committee had commented upon the incorrect manner in which the assessments of contractors had been completed in some cases, only on the net payments received by them and not on the gross payments.

Para 1.93
Para 1.97

Public Accounts Committee's observations should be brought to the notice of all officers under your control.

5. Action taken by you may please be reported to the Board as desired in para 2 above, by 15-6-1968.

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

Recommendation

The Committee are glad to be assured that a more serious view would be taken of such lapses and individual mistakes and that cases would be looked at from the point of view of vigilance also. The Committee suggest that the dossier of the Income-tax Officer should be maintained in greater detail, indicating various details of cases of wrong assessment and its subsequent rectification. This, in the opinion of the Committee, would help in toning up the administration.

[*Serial No.* 18 *and Para* 1.125 *of Appendix VII to Third Report,* 1967-68]

Action taken

Necessary instructions have been issued to all the Commissioners of Income-tax *vide* Board's letter F. No. 36/1/67-IT(AI)III, dated 18-7-68 (copy enclosed).

[*Vetted by Audit* vide *C.&A.G.'s U.O. No.* 3665-*Rev.A*/564-67-*II, dated* 13-8-1968]

[*F. No.* 36/11/65-*IT(AI)III*]

[F. No. 36/1/67-IT(AI)III]

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, dated the 18*th July*, 1968.

From

Shri S. Bhattacharyya,
Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax (by name).

SUBJECT :—*Audit of Central Revenues—Detection of mistakes—Explanation of officials concerned—*

Sir,

Please refer to the instructions contained in para (a) of Board's Circular F. No. 83(103)/66-IT(B), dated 23-6-67.

2. In para 1.125 of their Report, the Public Accounts Committee have observed as under :

"The Committee are glad to be assured that a more serious view would be taken of such lapses and individual mistakes and that cases

would be looked at from the point of view of vigilance also. The Committee suggest that the dossier of the Income-tax Officer should be maintained in greater detail, indicating various details of cases of wrong assessment and its subsequent rectification. This, in the opinion of the Committee, would help in toning up the administration."

Please, therefore, see that the dossier contains details of cases of wrong assessment and its subsequent rectifications.

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

Recommendation

The Committee regret that this mistake that occurred in this case was due to the application of the provision of the Income-tax Act, 1961, whereas the assessment was completed under the provision of Income-tax Act, 1922. They hope that such mistakes will not recur in future.

[*Serial No.* 20, *Para* 1.142 *of Appendix VII to Third Report,* 1967-68]

Action taken

Instructions have been issued to all the Commissioners of Income-tax that the recommendations made by the Committee be brought to the notice of all the officers under their respective charges [*vide* paragraph 4(2) of the Board's letter F. No. 36/1/67-IT(AI)III, dated 18-5-68].

[*Vetted by Audit* vide *DRA's D.O. No.* 2984-*Rev.A*/564-67-*I, dated* 28-6-68]

[*Ministry of Finance (Department of Revenue & Insurance) F. No.* 36/16/65-*IT(AI), dated* 5-7-1968]

Recommendation

The Committee are unable to understand how a mistake could occur in this case when the order of the High Court in a similar case under the charge of a different Commissioner was specially brought to the notice of the I.T.O. The I.T.O. had before him all the relevant facts about the nature of the business and the partners of the firms who were refused registration in another circle.

The Committee suggest that the Board should immediately go into the case from the point of vigilance and intimate to the Committee the findings and the action taken thereon.

[*Serial No.* 21 *and Paras* 1.148 *and* 1.149 *of Appendix V to Third Report,* 1967-68]

Action taken

1.148. The observations made by the Committee have been noted.

1.149. The case has been examined from the vigilance angle by the CIT. who is satisfied that no *mala fides* are involved. The Board has also examined the case from the vigilance angle and is satisfied that no *mala fides* are involved.

[*Vetted by Audit* vide *C.&A.G's U.O. No.* 3762*Rev.A*/564-67-*II, dated* 28-6-68]

[*F.* ***No.*** 36/14/65-*IT(AI), dated* 12-9-1968]

Recommendation

The Committee regret that the Board did not have complete information about the fifth case even though they received the audit para about two years ago. They expect the representatives of the Ministries and Departments to be fully prepared with facts and figures when appearing before the Committee.

[*S. No.* 23 *and para* 1.154 *of Appendix VII to the Third Report*]

Action taken

The observations made by the Committee have been noted by the Government.

[*Vetted by Audit* vide *C.&A.G's U.O. No.* 3697-*Rev.A*/564-67-*IV*, *dated* 28-8-68]

[*F. No.* 36/10/65-*IT*(*AI*)]

Recommendation

The Committee regret that the Board did not have complete information about the fifth case even though they received the audit para about two years ago. They expect the representatives of the Ministries and Departments to be fully prepared with facts and figures when appearing before the Committee.

[*S. No.* 23 *of Appendix VII of Third Report* (*Fourth Lok Sabha*)]

Action taken

The observations of the Committee have been noted and also brought to the notice of all the Ministries/Departments for compliance, *vide* Ministry of Finance O.M. No. F. 12(32)-E(Coord.)/67, dated 11-12-1967 (copy enclosed).

[*M.O.F. O.M. No. F.* 12(32)-*E*(*Coord.*)/67, *dated* 9-2-1968]

No. F. 12(32)-E(Coord)/67

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

Department of Expenditure

New Delhi, the 11*th December*, 1967.

SUBJECT . *Third Report of the PAC* (4*th Lok Sabha*)—*Recommendation No.* 23—*Need for properly briefing the representatives appearing before the P.A.C.*—

The Public Accounts Committee, while commenting on a case wherein complete information was not made available to them at the meetings have observed in para 1.154 of their 3rd Report (4th Lok Sabha) as under :—

"The Committee regret that the Board did not have complete information about the fifth case even though they received the audit para about two years ago. They expect the representatives of the Ministries and Departments to be fully prepared with facts and figures when appearing before the Committee".

2. The necessity for keeping the representatives of the Ministries/Departments appearing before the P.A.C., fully briefed on the subject

needs no special reiteration. The Committee had made similar observations in the past also, *vide para* 106 of their 19th Report (1955-56) and para 39 of the 14th Report (3rd Lok Sabha) which had been brought to the notice of all the Ministries/Departments. As the Ministries are aware, it is equally necessary to take prompt action on the irregularities and points mentioned in the Audit Report well in advance of their consideration by PAC, so that the Committee might be informed of the final position at the Meeting and not merely told that the matter would be looked into.

3. The Ministry of Commerce etc., are requested to issue suitable instructions to all concerned for ensuring timely action on audit paras and for keeping the Ministry's representatives appearing before the PAC, fully briefed with full and up-to-date fact.

Sd./-
Deputy Secretary to the Govt. of India.

To

All Ministries/Deptt. of the Govt. of India.
No. F. 12 (32)-E(Coord)/67

Copy forwarded for information to :—

(i) All Expenditure Branches.

(ii) Department of Revenue & Insurance (Coord. Section).

(iii) Lok Sabha Secretariat (PAC Branch).

(iv) A.G.C.R., New Delhi.

Sd/-
Deputy Secretary to the Govt. of India.

Recommendation

The Committee may be informed of the action taken on the explanation of the Income-tax Officer and the amount of tax recovered.

[*S. No.* 26 *and Para* 1.172 *of Appendix VII to Third Report.* 1967-68]

Action taken

The Income-tax Officers concerned have been warned to be more careful in future. The mistakes have ben rectified in the undermentioned cases and the additional demand raised, has since been recovered :—

Name of the assessee	*Amount recovered*
(i) M/s. Hukamchand Jute Mills	Rs. 2,18,950.
(ii) M/s. Maneklal Harilal Mills Ltd.	Rs. 42,300.
(iii) M/s. Ramanlal Lalubhai	Rs. 4,392.

An aggregate amount of Rs. 23,560 [Rs. 17,872 in the case of M/s. Ramanlal Lalubhai (P) Ltd. and Rs. 5,688 in the case of M/s. Naranalal Jivanlal (P) Ltd.] could not, however, be either demanded or collected as the action relating to these assessments was found to be barred by limitation.

[*Vetted by Audit* vide *D.R.A's D.O. No.* 3816-*Rev.A*/564-67-*IV*. *dated* 29-8-68]

[*F. No.* 36/9/65-*IT*(*Audit*), *dated* 12-12-1968]

Recommendation

The Committee understand from Audit that though the assessment was completed in December 1963, the case was not checked in Internal Audit

till the mistake was pointed out in January, 1965. The Committee suggest that in respect of cases relating to companies, particularly falling under higher income groups, the Board should take steps to get the assessments checked in Internal Audit within a reasonable time after the assessments are completed.

[*S. No.* 27 *Para* 1.177 *of Appendix VII of Third Report,* 1967-68]

Action taken

The recommendations of the Public Accounts Committee are noted. The scope of Internal Audit was revised and enlarged *vide* instructions issued under Board's Circular F. No. 83/40/65-I.T.(B), dated the 17th March, 1966. It has already been prescribed that the Internal Audit Parties should check the totals and also check if the total income was computed in accordance with the return and accounts and other material available on the record. As a result of these instructions mistakes of the type mentioned in Para 34(e) of the Audit Report, 1966 are not likely to occur again.

2. Instructions have also been issued under Director of Inspection (Income-tax) letter No. M(6)(1)/67-DIT/100, dated the 26th May, 1967 and item No. 8 of the Minutes of the Commissioners' Conference held in August, 1967 that all company assessments irrespective of the income and 100% of the other assessments involving an income of more than Rs. 50,000 should be checked by Internal audit parties soon after the assessments are completed.

In view of the existing instructions no further instructions are considered necessary.

[*Vetted by Audit* vide *C.&A.G.'s U.O. No.* 3682-*Rev.*/564-67-*II*, *dated* 23-8-1968]

[*F. No.* 36/13 65-*IT*(*AI*)(*Audit*)]

Recommendation

The statement has been furnished to the Committee. The Committee note that, out of a large number of cases included in the statement, there are 23 cases of companies where arrears of income-tax outstanding on 1st April, 1966, was Rs. 25 lakhs or more in each case. The arrears of Income-tax outstanding against these companies amounted to Rs. 13.96 crores (Approximate), out of which appeals have been preferred by the companies concerned to Appellate Assistant Commissioner/Commissioner of Income-tax/Tribunal in respect of Rs. 7.25 crores (Approximate) of income-tax while they have gone up in appeals to courts in respect of income-tax arrears amounting to Rs. 1.12 crores (Approximate). The Committee need hardly stress that every efforts should be made by Government to speed up the recovery of arrears from these big companies, specially in respect of amount of Rs. 5.59 crores which is not under appeal. The Committee would like to watch the progress made by Government in recovering these amounts through future Audit Reports.

[*S. No.* 28 *of Appendix VII, Para* 1.184 *of the Third Report of PAC,* 1967-68]

Action taken

The recommendations of the Committee have been noted. A copy of the instructions issued to the Commissioners of Income Tax in this regard is enclosed.

[*Vetted by Audit* vide *D.O.* 2092-*Rev.A*/564-67-*I*, *dated* 30-4-1968]
[*F. No.* 83/33/68-*I.T.*(*B*).]

F. No. 83/33/68-IT(B)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 4th July, 1968.

From

Shri A. R. Rao,
Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SUBJECT :—*P.A.C.—Third Report of the Committee—Recommendations made in para* 1.184—*Arrears outstanding against companies mentioned in the Monopoly Commission's Report.*

Sir,

I am directed to say that in Board's letter No. 83/97/66-I.T.(B), dated the 24th December, 1966, information regarding the arrears outstanding as on 1st April, 1966, against companies mentioned in the Monopoly Commission's Report was called for from you. The information furnished by you was supplied to the Public Accounts Committee. After examining the information furnished to the Committee, the Committee has made the following recommendations :—

"The statement has been furnished to the Committee. The Committee note that out of a large number of cases included in the statement there are 23 cases of companies where arrears of income-tax outstanding on 1st April, 1966 was Rs. 25 lakhs or more in each case. The arrears of Income-tax outstanding against these companies amounted to Rs. 13.96 crores (Approx.), out of which appeals have been preferred by the companies concerned to Appellate Assistant Commissioner/Commissioner of Income-tax/Tribunal in respect of Rs. 7.25 crores (Approx.) of income-tax, while they have gone up in appeals to courts in respect of Income-tax arrears amounting to Rs. 1.12 crores (Approx.). The Committee need hardly stress that every effort should be made by Government to speed the recovery of arrears from these big companies, specially in respect of amount of Rs. 5.59 crores which is not under appeal. The Committee would like to watch the progress made by Government in recovering these amounts through future Audit Reports."

The Board desire that immediate steps should be taken to recover the arrears from the companies mentioned in the Monopoly Commission's Report. Particular attention should be paid to cases where arrears of

Rs. 25 lakhs or more were reported to be outstanding and not covered by appeals.

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

Copy to :—

(1) D.I. (IT)/D.I. (R.S.& P.)/D.I. (Investigation).
(2) All Officers and sections in the I.T. Wing.
(3) Bulletin Section (with spare copies).

Recommendation

The Committee understand from Audit that for watching the raising of a demand, and payment in instalments of advance tax, a register of demand and collection under section 18A is prescribed. The detailed procedure for maintenance of the register and the adjustment to be made on completion of regular assessments are laid down in para 16 of Chapter XIV(a) of Office Manual, Vol. II, Section II. On completion of regular assessment payment under section 18A as per this register will have to be taken to the Demand and Collection Register and a note to that effect should be made in the remarked column of the 18A Demand and Collection Register. While making a demand for the payment of the balance of the tax from the gross demand, the advance tax paid and adjusted as shown in the Demand and Collection Register should be deducted.

It is apparent that the correct procedure was not followed by the Income-tax Officer, resulting in a costly error.

The Committee desire that suitable instructions bringing out the provision of the law in regard to the maintenance of the register etc. and its compliance may be issued.

They may be informed of the action taken against the I.T.O. involved in this case.

[*S. No.* 29 *and paras* 190—193 *of Appendix VII to 3rd Report,* 1967-68]

Action taken

As suggested by the Public Accounts Committee necessary instruction have been issued to all the Cs.I.T. *vide* Board's letter F. No. 83/27/68-IT(B), dated 20-4-68 (copy enclosed).

1.191. The observations made by the Committee have been noted.

1.193. The explanation of the officer concerned was obtained and examined. It was found to be not satisfactory. He has been warned to be more careful in future.

[*Duly vetted by Audit* vide *D.O. No.* 2780-*Rev.A*/564-67-*I, dated* 14-6-68]
[*Min. of Fin. (Deptt. of Rev.) F. No.* 36/12/65-*IT(AI)II, dated* 21-8-1968]

F. No. 83/27/68-ITB

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 20th April, 1968

From

The Under Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT :—*Recommendations of the Public Accounts Committee—Third Report* (1967-68).

Attenton is invited to para 46 of the Audit Report (Civil) on Revenue Receipts, dealing with irregular grant of refunds. The Revenue Audit had pointed out a few cases wherein excess refund of advance tax had been given on account of non-observance of the prescribed procedure for maintenance of the Demand and Collection Register for Advance Tax and adjustments of the same on completion of regular assessment. Although the excess refunds allowed were withdrawn, as a result of the pointing out of mistakes by the Revenue Audit, the Public Accounts Committee, in paras 1.190 and 1.192 of their Third Report (1967-68), have made the following observations :—

"1.190. The Committee understand from Audit that for watching the raising of a demand, and payment in instalments of advance tax, a register of demand and collection under section 18A is prescribed. The detailed procedure for maintenance of the register and the adjustment to be made on completion of regular assessments are laid down in para 16 of Chapter XIV(a) of Office Manual Vol. II Section II. On completion of regular assessment payment under section 18A, as per this register will have to be taken to the demand and Collection Register and a note of that effect should be made in the remark column of the 18(A) Demand and Collection Register. While making a demand for the payment of balance of the tax from the gross demand, the advance tax paid and adjusted as shown in the Demand and Collection Register should be deducted.

2. 1.192. The Committee, desire that suitable instructions bringing out the provision of the law in regard to the maintenance of the register etc. and its compliance may be issued."

2. In this connection, attention is invited to the instructions contained in Chapter XIV(a) of Office Manual Volume II Section II, wherein the procedure for issue of advance tax notices, maintenance of files and registers and watching of recovery of advance tax demands has been prescribed in detail. The Board desire that you may ensure that the prescribed procedure is strictly followed in your charge.

Recommendation

The Committee suggest that the Board should investigate into the lapse and ascertain the circumstances which led to the double payment. Suitable

instructions pointing out the correct procedure in regard to such cases should be issued immediately.

The Committee also desire to be informed whether the IAC who is responsible for checking refund orders in excess of Rs. 500 had looked into this case.

[*S. No.* 31 *and paras* 1.201 *and* 1.202 *of Appendix VII to Third Report* 1967-68]

Action taken

1.201. In this case, the original assessment for 1951-52 completed on 12-3-1965 resulted in a demand of Rs. 58,456. As a consequence of an Income-tax Appellate Tribunal's decision, this order was rectified on 22-6-1962 and the resultant refund of Rs. 45,749 was adjusted against the demands for 1956-57 and 1957-58.

While rectifying the order again on 24-9-1964 (for adopting the assessee's revised share income from a firm), the Income-tax Officer gave credit to the assessee for the full gross tax of Rs. 89,906 that had been paid and over-looked that an amount of Rs. 45,749 had already been refunded (by way of adjustment) to the assessee on 22-6-1962. The incorrect action is due to the lack of care on the part of the ITO to study the case properly and apprise himself of the correct position, for which an adverse entry has been made in his Character Roll. There is, however, no material to suggest, any *mala fide* on his part.

2. As suggested by the Committee, necessary instructions have been issued to all the Commissioners of Income-tax. A copy of the instructions is sent herewith.

1.202. This case was not looked into earlier by the Inspecting Assistant Commissioner.

[*Duly vetted by Audit* vide *U.O. No.* 3756-*Rev.A*/564-67-*II, dated* 23-8-68]
[*F. No.* 36/17/65-*IT*(*AI*)]

F. No. 36/17/65-IT(AI)
GOVERNMENT OF INDIA
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 31*st July*, 1968

From

The Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT :—*Public Accounts Committee—Irregularities noticed by the Comptroller & Auditor General regarding irregular grant of refund.*

A case of double credit for the same amount paid by an assessee has been brought to the notice of the Board wherein an Order under Section 35 of the Income-tax Act, 1922 granting a refund of Rs. 45,749 was passed

by an assessing Officer, in June, 1962 and the amount refundable adjusted against the demands of Rs. 16,993 and Rs. 28,756 due from the assessee for the assessment years 1956-57 and 1957-58 respectively. Again another rectification order was passed in September, 1964 in respect of the same assessment granting a refund of Rs. 49,882 ignoring the refund already granted by way of adjustment in June, 1962. This resulted in an excess refund of Rs. 45,749.

2. The refunds already allowed by adjustment could not have been missed, had the ITO concerned looked into the relevant records carefully. It was a case of gross negligence. The Board take a serious view of lapses of this type and desire that these be avoided in future.

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

Copy to :—

(1) DI(IT)/DI(INV)/DI (RS&P).
(2) Bulletin Section (with 5 spare copies).
(3) All Officers and Sections in the IT Wing.

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

Recommendation

From the note, it is seen that, a total amount of Rs. 39.95 lakhs have been recovered out of demands raised amounting to Rs. 93.61 lakhs.

It appears to the Committee that the omission to levy interest is widespread, which indicates that the steps taken by the Board have not been very effective. The Committee desire that steps should be taken to rectify the cases before they become time-barred.

[*S. No.* 32 *Paras* 1.208 *and* 1.209 *of Appendix VII to Third Report*]

Action taken

The observations of the Committee have been noted. Instructions have been issued again to all Commissioners of Income-tax to ensure that mistakes are rectified promptly and in no case the mistakes are allowed to become time barred (copy of circular enclosed).

[*Vetted by Audit* vide *C. & A.G.'s U.O. No.* 3464-*Rev. A*/564-67, *Vol. III*, *dated* 2-8-68]

F. No. 83/24/68-ITB.

F. No. 83/24/68-ITB
GOVERNMENT OF INDIA
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 4th July, 1968

From

The Under Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Advance tax—omission to levy interest—Instructions regarding.*

In para 1.209 of Appendix VII of the 3rd Report for 1967-68 the Public Accounts Committee have observed as under :—

"It appears to the Committee that the omission to levy interest is wide-spread, which indicates that the steps taken by the Board have not been very effective. The Committee desire that steps should be taken to rectify the cases before they become time barred."

Instructions have been issued by the Board from time to time regarding proper and timely action for rectification of mistakes of omission to levy interest under section 18A(6) 215 or 18A(8)/217. In Board's letters F. No. 83/3/65-IT(B) dated 16-8-1965 and F. No. 6/34/65-ITJ dated 26-3-1966 it was directed that Income-tax Officers may be instructed to ensure that penal interest is levied in all cases, wherever it was leviable, and if an Income-tax Officer had omitted to charge proper interest under section 18A(6)/215 or 18A(8)/217, the omission should be made good by the Commissioner of Income-tax by resorting to section 33B/263. In Board's circular letter F. No. 83/71/65-ITB dated 19-2-1966 a register, showing the progress of action taken regarding audit objection was, prescribed to ensure expeditious action in respect of mistakes pointed out by the Audit and to further ensure that no case is barred by limitation for want of action by the Department. The Board desire that these instructions should be strictly followed so that rectificatory action in respect of any mistake does not get barred by time.

Yours faithfully,

Sd./-

Under Secretary, Central Board of Direct Taxes.

Recommendation

The Committee regret to note that due to failure to give effect properly to the orders of the Appellate Tribunal, there was an under-assessment of tax amounting to Rs. 27,537.

(a) The Committee desire that suitable instructions should be issued indicating the action to be taken on the orders of the Appellate Tribunal.

(b) They also desire to be informed of the action taken against the Income-tax Officer and Internal Audit.

[*S. No.* 33 *and paras* 1.212 *and* 1.213 *of Appendix VII to the Third Report* (*4th Lok Sabha*), 1967-68]

Action taken

1.212. The observations made by the Committee have been noted.

1.213. (a) As suggested by the Public Accounts Committee, necessary instructions have been issued to all the Commissioners of Income-tax *vide* Board's letter F. No. 36/11/65-IT(AI)(IV)(97), dated 14-5-1968, a copy of which is enclosed.

(b) Explanations of the I.T.C. concerned and the Supervisor of the Internal Audit Party have been obtained. They have been warned to be more careful in future.

[*Vetted by Audit* vide *D.O. No.* 2625-*Rev. A*/564-67-*I, dated* 5-6-1968]
[*Min. of Fin.* (*DR*) *F. No.* 36/11/65-*IT*(*AI*)(*VI*), *dated* 10*th June*, 1968]

F. No. 36/11/65-IT(AI)(IV)(97)
GOVERNMENT OF INDIA
CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 14*th May*, 1968/24*th Vaisakha*, 1890 (*Saka*)

From

Shri P. G. Gandhi,
Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Mistakes committed while giving effect to Appellate Orders—PAC's Report*, 1967-68—*Action regarding paras* 1.212 *and* 1.213.

During the course of the revenue audit it came to light that the assessee, a limited company, had incurred expenditure of Rs. 1,94,552/- on repairs of a ship before its sale. The Appellate Assistant Commissioner of Income-tax held that the expenditure should be regarded as capital in nature and added to the cost of the ship. The result was that the income was increased by Rs. 1,94,552 and capital gains computed for that year was correspondingly reduced. The decision of the Appellate Assistant Commissioner was confirmed by the Tribunal. The Income-tax Officer failed to carry out the order of the Tribunal which resulted in a revenue loss of Rs. 27,537.

2. The Public Accounts Committee has taken a serious view of this lapse. The Board desire that utmost care should be taken while giving effect to the appellate orders. The Commissioners of Income-tax will please ensure that appellate orders are scrutinised properly and such lapses avoided in future. The I.A.Cs. may please be instructed to check the Appeal Register in the I.TO's office periodically to ensure that all appellate orders are being duly entered in the register and effect given to them promptly.

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

Recommendation

The Committee understand from Audit that the audit objection was raised in November, 1961, and till 31st March, 1964, the Department had not taken any action on the audit objection. The Board should investigate into the Circumstances in which no action was taken on the audit objection for over two years.

(b) The failure to take timely action resulted in a loss of revenue amounting to Rs. 20,316. The Committee are distressed to note that due attention was not paid to this audit objection. The Committee expect the

Department to set an example for others to follow. They hope that the Department will take necessary action to avoid the recurrence of such a lapse.

[*S. No.* 34 *and para* 1.216 *of Appendix VII to Third Report,* 1967-68 (*4th Lok Sabha*)]

Action taken

1.216(a) The circumstances under which action happened to get time-barred and the explanations offered by the officials who were in charge of the file have been examined. A warning has been issued to the Income-tax Officer concerned and a copy thereof has been kept in his Character Roll. The two Upper Division Clerks have been warned to be careful in future.

(b) As suggested by the Committee, necessary instructions have been issued to all the Commissioners of Income-tax *vide* para 4(1) of the Board's letter F. No. 36/1/67-IT(AI), dated 18-5-68, that the observations made by the Committee should be brought to the notice of all the officers under their charge for future guidance.

[*Vetted by Audit* vide *D.R.A's U.O. No.* 4450-*Rev.A*/564-67-*III, dated* 14-10-68]

[F. No. 36/10/65-IT(Audit)II]

Recommendation

The Committee feel that both under-assessment and over-assessment are not in accordance with the provisions of the law and should be guarded against. They hope that the Central Board of Direct Taxes would issue suitable instructions to the Income-tax Officers to adopt a correct assessment year so as to bring the whole position in accordance with the provisions of the Income-tax Act. Action to rectify the assessment with the provision of the Act should also be taken.

[*S. No.* 35 *and Para* 1.223 *of Appendix VII to Third Report,* 1967-68]

Action taken

(i) The Committee's recommendation that both under-assessment and over-assessment are not in accordance with the provisions of the Income Tax Act and should be guarded against, has been noted.

(ii) Instructions have already been issued in the matter by the Board vide letters F.No.83/24/66-IT(B), dated 23.6.66 and F.No.83/25/68-IT (B), dated 24-4-68 (copies enclosed). Recently further instructions have been issued *vide* letter F. No. 15/3/68-IT(Audit), dated 13-11-68, copies of which have been sent to the P.A.C. in reply to para 2.54 of their 29th Report, 1967-68.

(iii) Further in this case, the assessment for the assessment year 1962-63 has been completed including therein two years' share of profit. The penalty proceedings u/s 273 (a) are pending. The Income-tax Officer has been directed to complete the same early.

[*F. No.* 36/20/65-*IT(Audit), dated the* 12-2-68]

F. No. 83/24/66-IT(B)
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 23rd June 1966

From

Shri Wasiq Ali Khan,
Secretary, Central Board of Direct Taxex.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Recommendations of the P.A.C.—regarding tendency of Officers to inflate assessments—curbing of —Instructions regarding.*

In their 46th Report, the Public Accounts Committee referred to a case where a large amount was written off, as a substantial portion of the demand was due to over-assessment and overlapping additions. They have emphasized the need for curbing the tendency on the part of officers to inflate the assessments as such as tendency would result in undue hardship and harassment to the assessees.

2. The importance of making realistic assessments which may stand the test of appeals and may facilitate the recovery of taxes assessed need hardly be emphasized. It should, therefore, be impressed upon the Officer not to make inflated assessments which may only result in paper demand and expose the Department to adverse criticism.

Yours faithfully,
Sd/- WASIQ ALI KHAN,
Secretary, Central Board of Direct Taxes.

F. No. 83/25/68/I.T.(B)
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 24th April, 1968

To

The Commissioner of Income-Tax,
Madhya Pradesh/Mysore/Kerala/Bombay City* III/West Bengal I-III/U.P. I&II/ Madras I-II & Central/Calcutta Central/Gujarat I & II/Poona/Bihar & Orissa/Madhya Pradesh Training/Assam/ Rajasthan/Bombay Central.

Sir,

SUBJECT : *P.A.C.—Recommendations of the P.A.C. made in the Third Report—Rectification of mistakes and recovery of under-assessments—Instructions regarding—*

I am directed to refer to Board's letter No. 83/94/66-I.T.(B) dated the 22nd December, 1967 and your replies thereto and to-say that the position of rectifications and recovery out of the under-assessments pointed out in

the Audit Reports 1962 to 1966 was furnished to the Public Accounts Committee. The Committee has made the following observations :—

Para 1.22.—The Committee note that out of a total under assessment of tax amounting to Rs. 1,773 lakhs reported in the Audit Reports for the years 1962-1966, the Department has accepted objections involving under-assessment of Rs. 788 lakhs and further the admissibility or otherwise of the audit objections involving a sum of Rs. 106 lakhs was still to be decided. The Committee also note that out of a sum of Rs. 788 lakhs for which the Audit objections have been accepted, the demands have been raised for Rs. 718 lakhs and a sum of Rs. 487 lakhs has been collected as on 1st December, 1966.

Para 1.23.—The Committee desire that the Department should take effective measures to recover the remaining amount *viz.*, Rs. 301 lakhs for which audit objections have been accepted. They also desire that the question of admissibility or otherwise of the audit objection involving a sum of Rs. 106 lakhs also be decided early. Efforts should also be made to avoid such cases getting time-barred.

Para 1.24.—The Committee are far from happy to note that out of total under-assessment of tax amounting to Rs. 1,773 lakhs reported in the Audit Reports for the years, 1962 to 1966, only a sum of Rs. 487 lakhs have been recovered as on 1st December, 1966. Steps taken by the Board in the direction of liquidating the arrears of under assessment of tax do not seem to have produced any substantial results.

2. The amount involved in cases where the audit objection is yet to be decided as reported by you is given in the Annexure.

3. The Board is not at all happy over the progress of the recoveries out of under-assessments pointed out in the Audit Reports 1962-1966. The Board, therefore, desire that immediate steps be taken to ensure that the amounts are recovered promptly.

Yours faithfully,
Sd/-
Under Secretary, Central Board of Direct Taxes

ANNEXURE

Amounts involved in cases where the audit objections are still to be decided as on 1-12-1966.

C.I.T's Charge	Audit Report			
	1963	1964	1965	1966
1	2	3	4	5
1. Madhya Pradesh	2,802	1,141	33,123	37,326
		543	5,533	1,018
2. Mysore	6,540	817	6,924	2,05,125
3. Kerala	94	2,746	68,547	48,867
4. Bombay City III	2,23,734	15,26,410	8,75,869	10,85,361
5. West Bengal III	250	1,976	2,037	4,338
6. West Bengal II	7,735	1,41,016	—	16,484
7. Uttar Pradesh II	210	—	22,720	21,920
8. Uttar Pradesh I	19,444	3,755	5,632	41,098
9. Madras I, II and Central	—	86,471	4,58,472	10,88,720

1	2	3	4	5
10. Calcutta Central . . .	—	6,257	18,026	62,000
11. Gujrat	—	1,680	5,14,854	3,73,455
12. Poona	—	39	75,877	91,057
13. Bihar & Orissa . . .	—	2,592	651	17,644
14. West Bengal I . . .	—	16,000	80,423	17,23,167
15. Madhya Pradesh Trg. . .	—	—	6,875	1,71,717
16. Assam	—	—	399	31,275
17. Rajasthan	—	—	3,857	5,690
18. Bombay Central . . .	—	—	—	4,32,570

F. No. 15/3/68-IT(Audit)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 13th November, 1968

From

Shri S. Bhattacharyya,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Public Accounts Committee—29th Report—Para* 2.54 *—Over-assessments—.*

In para 2.53 of its 29th Report, 1967-68, the Public Accounts Committee have referred to the fact that the cases of over-assessment detected by Internal Audit rose from 7401 involving Rs. 16.43 lakhs in 1963-64 to Rs. 83.75 lakhs in 1966-67. In other words, the average amount of over-assessment was Rs. 223 in 1963-64 and Rs. 579 in 1966-67. This increase led the P.A.C. to observe in paragraph 2.54 of their report as follows :

"2.54. The Committee are perturbed that the amount involved in cases of over-assessment has greatly increased last year and suggest that the Department should make a detailed study to identify the causes of such over-assessments and take effective remedial measures to curb this vexatious tendency on the part of the Department to over-pitch assessments. The Committee would like to be informed of the remedial measures taken by Government in this behalf."

The observations made by the Committee may please be brought to the notice of all the Income-tax Officers and the IACs under your charges.

2. The Board desire that you should take action, wherever necessary, according to the instructions contained in paras (a) and (b) of the Board's letter F. No. 83/103/66-IT(B) dated 23-6-67 about the mistakes pointed out by Audit.

Yours faithfully,

Sd/-

Secretary, Central Board of Direct Taxes

Recommendations

The Committee regret to note that due to a lapse in the office of the Commissioner of Income-tax concerned, timely action could not be taken for rectification of the assessment at the appeal stage and that no instructions were issued to the Income-tax officer for asking the Appellate Commissioner to enhance the assessment in this case. It is all the more surprising that incorrect information was supplied to the Board in December, 1965, by the Commissioner of Income-tax and on the basis of the same information, the Board informed Audit that necessary action had been taken to request the Appellate Commissioner before whom the appeal was pending against the assessment, for a suitable enhancement of the assessment. The Committee take a serious view of this lapse on the part of the Commissioner of Income-tax as this has resulted in a loss of revenue to the extent of Rs. 1,20,396. They understand that the Commissioner concerned in this case had retired long ago. The fact that this mistake did not come to the notice of the department during its normal course is to say the least, most unsatisfactory. They desire that suitable measures should be devised to avoid repetition of such cases.

As the transferring of surplus loom-hours by one mill to another is not a new thing, the Committee feel that the Board of Direct Taxes should have examined in detail, if necessary, in consultation with the Ministry of Law, whether the purchase price of such looms was to be treated as capital expenditure or revenue expenditure. In the light of an authoritative decision by the Supreme Court that the sale price of loom-hours in the hands of seller is a capital receipt, the question whether in the case of buyers, it should be treated as capital expenditure needs to be carefully examined. The Committee find from the note furnished by the Ministry that a departmental appeal was filed in another case before the Appellate Tribunal and the same was still pending. The Committee would like to be informed of the result of the appeal and also the action taken by the Department to ensure that the practice followed is in conformity with the law.

[*Serial No.* 36 *and Paras No.* 1.230 *and* 1.231 *of Appendix VII to* 3*rd Report,* 1967-68]

Action taken

1.230. The assessing officers in all important cases are present at the time of the hearings fixed by the Appellate Authorities. Such mistakes may not occur in future.

1.231. The Departmental appeal in the case of M/s. Empire Jute Co. Ltd. was dismissed by the Tribunal by its order in the I.T.A. No. 3526 of 1965-66, dated the 15th April, 1967. A reference application u/s 66(1) was also filed and the tribunal has stated the case to the High Court u/s 66(1) of the I.T. Act, 1961 on the 15th April 1968 raising the following Question of law :—

> "whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 2,03,255 paid by the assessee for the purchase of loom hours was revenue expenditure and hence deductible u/s 10(2)(XV) of the I.T. Act, 1922".

The result of the reference application will be intimated to the Committee when the decision of the High Court is known.

[*F. No.* 36/19/65-*IT*(*Audit*)]

Recommendation

The Committee hope that the improvements made in the procedure as indicated by the representative of the Central Board of Direct Taxes, would help to clear the outstanding cases relating to tax returns and would also facilitate their regular and timely receipt in future. The Committee would also like the authorities to keep a watch on the working of the system and take quick remedial measure if the improvements do not come up to the expectation. The Committee also desire that delays in remittance or non-remittance of tax revenues deducted at source should be viewed seriously

[*S. No.* 37, *Para* 1.236 *of Appendix VII to Third Report,* 1967-68]

Action taken

The observations of the Committee have been noted.

Instructions have been issued again to all Commissioners of Income-tax to ensure that appropriate action including prosecution is taken regarding delays in remittance or non-remittance of tax deducted at source. A copy of the latest instructions issued in the matter is enclosed.

[*F. No.* 83/92/65-*IT*(*B*)]

COPY

F. No. 83/92/65-ITB

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 28*th March*, 1968

From

Shri M. M. Prasad,
Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Remittance of tax deducted at source—Submission of monthly and annual returns of tax deducted at source.*

In their Third Report, 1967-68 the Public Accounts Committee observed as under :—

"The Committee hope that the improvements made in the procedure, as indicated by the representative of the Central Board of Direct Taxes, would help to clear the outstanding cases relating to tax returns and would also facilitate their regular and timely receipt in future. The Committee would also like the authorities to keep a watch on the working of the system and taken quick remedial measures if the improvements do not come up to the expectation. The Committee also desire that delays in remittance or non-remittance of revenues deducted at source should be viewed seriously."

2. In this connection a reference is invited to the Instructions issued *vide* Board's letter F. No. 83/59/66-ITB dated 25-10-66, wherein it was stated that the Commissioners of Income-tax may take remedial measures as considered suitable by them to avoid recurrence of the defects and irregularities pointed out in para 52 of the Audit Report (Civil) on Revenue Receipts, 1966. These instructions were reiterated in Board's Circular of

even number dated 5th December, 1966 and further follow up action was also directed to be taken.

3. Instructions have now been issued to launch prosecution in all cases of wilful default in the matter of deduction/payment of tax deducted at source, *vide* Board's circular letter F. No. 58/35/67-IT(Inv), dated the 23rd March, 1967 (copy enclosed). It may be ensured that wilful defaults are severely dealt with in accordance with instructions issued on the subject.

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

Copy of letter No. F. No. 58/35/67-IT(Inv), dated the 23rd March, 1967 from Shri G. R. Hedge, Secretary, Central Board of Direct Taxes to all Commissioners of Income-tax.

SUBJECT : *Prosecution for non-deduction of tax at source on salary and for not crediting the tax on the salary to the Government—Provisions of Part B—Deduction at source in Chapter XVII.*

Cases have come to the notice of the Board where employers fail to deduct tax at source on salary paid to employees in accordance with the provisions of section 192 of the Income-tax Act, 1961. Sometimes, after properly deducting the tax, they fail to comply with the provisions of section 200 of the Act, by not paying the sum deducted, within the prescribed time, to the credit of the Central Government. For both the offences the employer is liable for prosecution under section 276(d) of the Act. If the employers have not filed the returns under section 206 of the Act, they are liable for prosecution under section 276(b) also.

2. In case the employer is a company, prosecution proceedings should be launched simultaneously against the Company and the principal officer of the Company. If the Company is under liquidation, the leave of the High Court has to be obtained before launching prosecution against the company, as this is necessary under the provisions of section 446 of the Companies Act. If there is difficulty in this matter the Principal Officer of the Company should in any case be prosecuted.

3. There may be instances, where the figures of tax deducted at source shown in the statements prepared by the employers are found to be incorrect, with the result that excess credit is given for tax in the assessments of the employees. As this involves offence of furnishing of a false statement, prosecution in such cases should be launched under section 277 of the Income-tax Act.

4. Prosecutions may also be launched for similar offences of non-deduction of tax at source, failure to make payment of the same to the credit of Central Government and furnishing false returns to Income-tax authorities in respect of payment of 'Interest on securities' 'Dividends' and 'other sums' under section 276(b), 276(d) and 277, as the case may be.

5. The Board would like to emphasise that offences of the type above referred to should not be lightly condoned. In order to ensure that persons responsible for deducting tax at source and crediting it to Government deve-

lop an awareness of their responsibilities and of the consequences of their failure to discharge these responsibilities, the Board desire that Commissioners should make full use of the provisions of sections 276(b), 276(d) and 277 in cases involving defaults of the above nature.

Recommendation

The Committee are disturned to note that out of 74 foreign missions in India, 70 missions have either not sent annual returns or have not deducted the tax at source. What surprises the Committee most is that the authorities did not look into this matter for nearly 12 years after 1947 and, when they did move in the matter in 1959, they have not been able to arrive at a conclusion even after considering it for more than seven years. The Committee cannot but take a serious view of the Government's apathy in the matter.

[*Serial No.* 38 *and Para* 1.241 *of Appendix VII to the* 3*rd Report,* 1967-68]

Action taken

1.241. Regarding the above observations of the Committee attention is invited to the detailed reply given in respect of Recommendation No. 1.242.

[*Vetted by Audit* vide *D.R.A's C. & A.G. U.O. No.* 5670-*Rev.A*/564-67-*IV, dated* 17-12-68]

[F. No. 8/6/68-IT(Audit)]

Recommendation

The Committee would like the authorities to examine the practice followed in other countries in this matter and take suitable measures. In the meantime they would desire the Ministry of External Affairs to pursue the matter at the diplomatic level and request foreign Missions to co-operate with the Indian authorities in the matter. The Committee also desire that after ascertaining the names of the Indian employees in foreign Missions, notices should be issued to them to file the return voluntarily, failing which action should be taken under the provisions of the Income-tax Act.

[*Serial No.* 38 *and Para* 1.242 *of Appendix VII to Third Report,* 1967-68]

Action taken

The tax laws of a foreign country being unenforceable in any State, the experience of other countries may not be of much help. As regards enlisting the co-operation of foreign Missions, the matter was taken up with the Ministry of External Affairs who have requested all foreign Missions in India to co-operate with the Indian Income-tax authorities in deducting Income-tax at source from such Indian employees working in the Missions who are subject to levy of Income-tax in India, on their emoluments drawn from them. The response is encouraging. It may, however, be mentioned that the foreign Diplomatic Missions cannot be compelled under the International Law to comply with the provisions of Section 192 of the Income-tax Act, 1961. *The names of Indian employees working in foreign Missions have been and are being collected and suitable action for assessment taken.*

Previously only 4 Foreign Missions were deducting income-tax at source and 29 Missions were supplying lists of the Indian employees working under them. The remaining Missions, 41 in number were previously neither deducting tax at source nor supplying the list of the Indian employees. 38 of them have also since supplied the necessary information. Two of them

have themselves started deducting tax at source from the salaries paid to the Indian employees working under them. The number of Indian employees working in the remaining 36 Missions is 266 and the number in whose cases notices under Section 139(2) of the *Income Tax Act are to be issued by the Income Tax Officer is* 125.

[*F. No.* 6(6)68-*TPL/IT*(*Audit*)]

Recommendation

It is surprising to note that the same item, *viz.*, optical bleaching agent was treated as Dye-Stuff by the Income-tax authorities, whereas the Central Excise Authorities treated it otherwise; with he result that the assessee got exemption both from the Income-tax (super-tax, on dividends) and the Central Excise Duty. The Committee understand from Audit that in the Finance Act, 1966, a new tariff item has been introduced "synthetic organic Excise Authorities treated it otherwise; with the result that the assessee got products of a kind used as organic luminophores products of the kind known as optical Bleaching Agents, substantive to the Fibre". The Committee feel that with a little more co-ordination between the Board of Central Excise and Custom and the Board of Direct Taxes, this case of the same product being treated differently by the two Boards could have been avoided. They hope that such cases would not recur.

[*S. No.* 39 *and para* 1.251 *of Appendix VII to the* 3*rd Report* (4*th Lok Sabha*), 1967-68]

Action taken

The observations made by the Committee have been noted.

[*Vetted by Audit* vide *DRA's D.O. No.* 3047-*Rev. A*/564-67-*I*, *dated* 5-7-68]

[*Min. of Fin.* (*Deptt. of Rev. & Ins.*) *F. No.* 36/21/65-*IT*(*AI*)*III*]

Recommendations

The Committee hope that, keeping in view the recent jugdment of the Supreme Court that the ownership could not vest in the hire purchase, the Central Board of Direct Taxes would review their instructions and would take an early decision whether or not the law itself required any amendment.

The Committee also hope that the provisions of Income-tax Act relating to the development rebate and depreciation would be examined with a view to simplifying it.

[*S. No.* 40 *and Paras* 1.257 *and* 1.258 *of Appendix VII* to 3*rd Report*, 1967-68(4*th Lok Sabha*)]

Action taken

1.257. The Central Board of Revenue had issued instructions in 1943 that in the case of depreciable assets acquired on hire-purchase basis, depreciation allowance should be allowed to the lessee and not the owner-lessor. These orders were later extended in 1959 to the grant of development rebate in such cases. The above instructions were again reiterated by the Board in 1963.

2. The C. & A.G. has objected to the allowance of depreciation and development rebate in the above cases on the ground that the lessee of the

depreciable assets was not their legal owner and, therefore, the allowances were not admissible. This was on the strength of the Supreme Court's decision in the case of K. L. Johar & Co. *vs.* Deputy Commercial Tax Officer, Coimbatore (1965) S.C.J. 541 (a case under the Madras General Sales Tax Act) in which it was held that under a hire-purchase agreement, the sale was completed only when all the conditions in the agreement were fulfilled and the last instalment had been paid.

3. Prior to this judgment of the Supreme Court, there were conflicting decisions of High Courts on the subject, under the Income-tax Act. While the Madhya Pradesh High Court held that the hirer under a hire-purchase agreement did not become the owner till all the instalments had been paid (47 ITR 756), the Andhra Pradesh High Court in the case reported in 58 ITR 95 reached a contrary conclusion which supported the view taken by the Board in the circulars mentioned above.

4. The question whether Board's instructions required any modification in view of the Supreme Court's decision under the Madras General Sales Tax Act, was examined by the Board in consultation with the Ministry of Law after the receipt of the audit objection. The Board were advised that although the decision related to sales tax, the ratio underlying it, is equally applicable to income-tax.

5. The matter was further examined and it has been decided to sponsor an amendment to the Income-tax Act to secure the grant of development rebate and depreciation allowance in respect of assets acquired on hire-purchase basis. However, this will have to await the passing of the Hire Purchase Bill, 1968, which is already before Parliament, into law.

1.258. The recommendation has been noted. Shri Bhoothalingam has, in his Final Report on Rationalisation & Simplification of the Tax Structure, recommended the discontinuance of the development rebate. He has also recommended that the rate schedule of depreciation should be simplified. These recommendations are presently being considered by Government *inter alia* in the light of the comments received from Chambers of Commerce and other public bodies.

[*Vetted by Audit* vide *C. & A.G's U.O. No.* 5668-*Rev. A*/564-67-*II, dated* 17-12-1968]

[*F. No.* 8/5/68-*IT(Audit) dated* 3-12-68]

Recommendations

The Committee regret to note that in as many as 39 cases of companies, an amount of about Rs. 8 lakhs could not be collected as the assessee companies went into liquidation.

The Committee desire that the Board of Direct Taxes should devise suitable measures to get income tax returns from the companies in time so as to avoid the repetition of such cases.

[*S. No.* 41, *Para.* 1.263 *of Appendix VII of Third Report,* 1967-68]

Action taken

The observations of the Committee have been noted and necessary instructions have been issued to the Commissioners of Income-tax, *vide* Board's letter F. No. 83/9/68-ITB dated the 13th March, 1968 (copy enclosed).

[*Vetted by Audit* vide *Shri R. Balasubramanian's D.O. No.* 1812-*Rev. A*/564-67/*Vol. I dated* 11-4-68]

[*F. No.* 83/9/68-*ITB*]

F. No. 83/9/68-ITB
GOVERNMENT OF INDIA
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 13th March, 1968

From

The Under Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT :—*Measures to get the income-tax returns of Companies in time—Recommendations of the P.A.C.—Instructions regarding.*

The Public Accounts Committee in para 1.263 of the Third Report, 1967-68 have observed as under :—

"The Committee regret to note that in as many as 39 cases of Companies, an amount of about Rs. 8 lakhs could not be collected as the assessee companies went into liquidation.

The Committee desire that the Board of Direct Taxes should devise suitable measures to get income-tax returns from the Companies in time so as to avoid the repetition of such cases."

2. In para 3 of Board's Circular No. 29-D of 1963 dated the 26th November, 1963, it has already been stressed that the Income-tax Officers should be strict in the matter of allowing time to companies for filing returns of income. While reiterating these instructions, the Board desire that the Income-tax Officers should particularly see that the returns of income in the case of companies are obtained in time. The applications containing request for extension of time for filing the return in such cases should be scrutinised carefully and extensions allowed only on valid and adequate grounds.

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

Copy to :

1. All Directorates of Inspection.
2. C.&A.G. with 20 spare copies.
3. O.S.D. (O&P) with 4 spare copies.
4. All Officers and Branches in I.T. Wing.
5. Bulletin Branches with 3 spare copies.

Recommendation

The Committee regret to note that the gross arrears of income-tax have been increasing progressively over the last 3 years. On 31st March, 1963, the amount outstanding was Rs. 270.43 crores; on 31st March, 1964 this figure rose to Rs. 282.37 crores. As on 31st March, 1965 the amount of arrears outstanding was Rs. 322.72 crores. Similarly, the amount of the effective arrears has gone up from Rs. 161.41 crores as on 31st March, 1964 to Rs. 194.85 crores as on 31st March, 1965. Keeping in view, this rising trend in the arrears of collection of revenue, the Committee would

like to impress upon the Board of Direct Taxes the necessity of special steps to expedite the collection of these arrears. The delay in the collection of arrears, the Committee feel, would make it more difficult for the Board to realise them.

[*S. No.* 42 *Para* 1.274 *of Appendix VII of Third Report,* 1967-68]

Action taken

The recommendations have been noted. The following special steps have recently been taken to expedite the collection of arrears :

(i) Targets have been fixed for the various Commissioners' charges for collections out of arrear demands.

(ii) Gradual taking over of recovery work from the State Governments. Recovery work has been taken over fully in the Commissioners' charges of Delhi, Andhra Pradesh, Gujarat and Rajasthan and partly in the Commissioners charge of West Bengal, Madras and Mysore.

(iii) A scheme of functional distribution of work has been introduced in 67 ranges of Inspecting Assistant Commissioners under which the work of collection of tax dues is entrusted to Income-tax Officers exclusively engaged on this work.

(iv) Responsibility for appropriate action in cases where arrears are outstanding has been fixed on particular officers as under :—

Income-tax Officer—Cases of arrears below Rs. one lakh.

Inspecting Assistant Commissioners—Cases of arrears over Rs. 1 lakh and below Rs. 5 lakhs.

Commissioners of Income-tax—Cases of arrears over Rs. 5 lakhs.

(v) Maintenance of arrear sheets in respect of all company cases and non-company cases if the assessed income is above Rs. 20,000.

(vi) Rate of interest in case of delayed payments has been raised from 6% to 9% with effect from 1st October, 1967.

This has been vetted by audit *vide* Shri Gaurishankar's D.O. No. 1659-Rev.A/564-37/I, dated 3rd April, 1968.

Recommendation

The Committee learnt from Audit that the Central Board of Direct Taxes instructed Income-tax Commissioners in August last to form special recovery units in multiward circles to reduce arrears of tax and for maximising collections. The Committee hope that the Board will keep a proper watch over the working of these units and ensure that the arrears of collections are liquidated as early as possible.

[*Serial No.* 42 *and Para* 1.275 *of Appendix VII to the* 3*rd Report,* 1967-68]

Action taken

The observations of the Committee have been noted for compliance.

At present, under the Fundamental Distribution of work collections and assessment work has been bifurcated.

The Income-tax Officer (Collection) performs the functions of the Special Recovery Units.

2. Recently Zonal Committees of the Commissioners of Income-tax have been formed to review the tax arrears of Rs. 1 lakh and above.

3. A proper watch is being kept by the Board to ensure that the arrears of collections are liquidated as quickly as possible.

[*F. No.* 83/26/68-*IT(Audit)*, *dated* 30-11-1968]

Recommendation

The Committee feel that the present number of appeals pending with the Appellate Assistant Commissioners is very large. The fact that there were 1,20,736 appeals pending with Appellate Assistant Commissioners as on 30th June, 1965 as against 84,736 as on 30th June, 1964 does not speak well about the adequacy of appellate machinery. The Committee hope that with the recent arrangements made for the disposal of appeals, their number would be reduced; they, however, feel that the new procedure prescribed needs to be watched carefully. They would like the Board to review the progress of disposal quarterly and if expected progress is not visible other augmenting corrective measures should be taken soon.

[*S. No.* 43(1.281) *of App. VII to the Third Report,* 1967-68]

Action taken

The observations of the Public Accounts Committee have been noted.

In oder to effectively bring down the pendency of appeals, the following steps have been taken :—

1. Instructions have recently been issued to the Income-tax Officers to accept the returned income in small income cases (*i.e.* Category IV & V cases). This will substantially reduce the filling of fresh appeals.

2. Proposals have been made for the sanction of :—

   (i) 15 additional posts of Appellate Assistant Commissioners.

   (ii) 53 Steno-Typists. These are intended to be given to the Appellate Assistant Commissioners who have undertaken to step up their disposals by 25% provided extra Stenographic assistance is provided.

3. The Director of Inspection (Income-tax) has been entrusted with the work of reviewing the institution, pendency and disposal of appeals with the Appellate Assistant Commissioners on quarterly and yearly basis. He also conducts the administrative inspection of the Offices of the Appellate Assistant Commissioners with a view to seeing that old appeals are disposed of expeditiously. The Board keeps an overall watch on this work. Disposal quotas of the Appellate Assistant Commissioners have been increased where considered necessary.

(Duly vetted by Audit)

[*Ministry of Finance (Deptt. of Revenue & Insurance), U.O. F. No.* 50/168/65-*ITJ, dated* 8-11-1967]

Recommendation

The Committee are glad to note that the Board has initiated measures to cut down the accumulation of arrears of assessment. They were given

to understand that out of about 26 lakhs assessees about 19 lakhs were salaried and small income assessees. The Committee feel that if the present form of income tax return for the salaried people, which consists of about 12 pages, is simplified and reduced to a form of one or two pages, it would expedite the submission of the returns of the assessees and also their assessment. It would also incidentally mean considerable saving of stationery. The Committee would like to watch the progress of the clearance of the arrears of assessments through future audit reports. The Committee also suggest that the question of tax reduction on a percentage basis in such cases to simplify the whole procedure may be examined.

[*Serial No.* 44 *and Para* 1.293 *of Appendix VII of Third Report,* 1967-68]

Action taken

The Income-tax Return forms have now been simplified. A specimen of Form No. 3, in which salaried assessees will have to file their returns for and from the Assessment Year 1968-69, is enclosed. The Finance Act, 1968 has made provision for straight deduction for coneyance expenses from salary income, and this would considerably simplify the procedure for assessment of salary cases.

(*Vetted by Audit* vide *D.O. No.* 3209-*Rev. A*/564-67-*I, dated* 19-7-68)
[*F. No.* 6(55)/68-*TPL*(*Audit*)]

RETURN OF INCOME

Form No. 3 | G.I.R. No.
Income-tax Act, 1961 | (to be filled in by Income-tax Office)
File 12 (1) (b)]

(*For persons other than companies, co-operatives societies and local authorities, whose* (*a*) *total income does not exceed Rs.* 15,000 *or* (*b*) *total income exceeds Rs.* 10,000 *but who have no income under the head "Profit and Gains of business or profession".*)

ASSESSMENT YEAR 19 19 Previous Year(s) ending................

Name ....

Address Office ....

Residence: ....

Status (individual, HUF, etc.) ....

Whether resident/resident but not ordinarily resident/non-resident.....................

FOR RESIDENT INDIVIDUAL ONLY		*FOR RESIDENT HU Fs ONLY*
Whether married: Yes/No.		No. of members entitled to claim. partition......
No. of dependent children		
Dependent parent/grand-parent: Yes/No.		No. of minor co-parceners supported by the family ....

PART I—STATEMENT OF TOTAL INCOME @

Head of Income	**Amount of Income or loss (if none, write "NONE") Rs.
1. Salaries (Annexure 1)	
2. Interest on Securities: Gross Rs. *Deduct*: Collection Charges: Rs. Interest on borrowings: Rs. Rs.	
3. Income from House Property (Annexure 2)	
4. Profits and Gains of Business or Profession: (a) Own business or profession (attach copy of Trading A/c, P & L A/c and Balance Sheet and Statement showing computation of income). *(b) Share in the profits of a registered firm. *(c) Share in the profits of an unregistered firm or association of persons or body of individuals [Any income or loss from speculation business should be stated separately against (a), (b) & (c)]	
*5. Capital Gains: (a) Relating to short-term capital assets (b) Relating to other capital assets	
*6 Income from other Sources: (a) Dividends: Gross Rs...................... *Deduct*: Collection Charges Rs. .... Interest on borrowing : Rs....... Balance Rs. .... (b) Annuity or Commuted value Rs. of Annuity (Sec 280-B) (c) Interest or other items Rs.	
7. Aggregate of items 1 to 6.	
Deduct: Brought forward loss of earlier year(s) (Sec. 72 to 78)	
BALANCE	
Less: (i) Amount deductible (See Part II) Rs. (ii) Amount of Annuity deposits (Sec. 280-0) Rs.	
TOTAL INCOME	

@ If the income of any other person is includible in your total income under Section 60, 61, 62, 63 or 64 of the income tax Act, 1961, such income should also be shown separately in this Return under the appropriate heads.

**In the case of a resident assessee, particulars of foreign income, if any, should be given separately under each head.

*Give details on a Separate Sheet.

PART II—DEDUCTIONS UNDER CHAPTER VI-A OF INCOME TAX ACT, 1961

	Gross Amount	Qualify ing amount	Rate% of deduction	Amount deduction
	(1)	(2)	(3)	(4)
*1. Life insurance premiums, contributions to provident funds etc. (Sec 80C)	....	....	....	....
*2. Donations (Sec. 80G)	....	....	....	....
3. Dividends from new industrial undertakings (Sec. 80K) .	....	....	....	....
4. Dividends from Indian Companies (Sec. 80L) .	....	....	....	....
*5. Other items, if any	....	....	....	....
6. Total deduction (carried to Part I)				

PART III—STATEMENT OF SUMS INCLUDED IN TOTAL INCOME IN RESPECT OF WHICH INCOME TAX IS NOT PAYABLE OR WHICH QUALIFY FOR REBATE OR DEDUCTION OF INCOME TAX.

Particulars	Amount
1. Interest on tax-free securities (Sec. 86A)	....
*2. Proportionate part of the tax payable by a registered firm [Sec. 86 (iv)]	....
*3. Share in the income of an unregistered firm or an association of persons or a body of individuals where tax has been paid or is payable by such firm, association or body [Sec. 86 (iii) & (v)]	....
*4. Other items, if any	....
Total of Part III	

PART IV—SUMS NOT INCLUDED IN PART I AND CLAIMED TO BE NOT TAXABLE

Particulars	Amount	Reason why not taxable
Total of Part IV		

IMPORTANT—Where the assessee is a firm seeking continuance of registration granted for an earlier assessment year, a declaration should be attached in form No. 12.

*Give details.

PART V—STATEMENT OF TAX DEDUCTED AT SOURCE AND ADVANCE TAX PAID

Tax deducted at source (Tax deduction certificate to be attached)		Advance tax paid	
Particulars	Amount of tax	Date of payment	Amount
Salaries	....	....	....
Interest on Securities . .	....	....	....
Other interest . . .	....	....	....
Dividends	....	....	....
Any other income . .	....	....	....
Total . . .			

PART VI—STATEMENT OF PARTICULARS REQUIRED UNDER SECTION 39 (6)

(To be completed where the assessee is firm/association of persons/body of individuals/ partner in a firm/member of association or body/minor admitted to benefits of partnership)

Name and address of the firm/association of persons/ body of individual	Name of each partner/minor/ member	States if any partner/ minor is spouse/child of any other partner	Address of the partner/minor/ member	Extent of share in the firm/ association of persons/body

IMPORTANT—Where the assessee is a firm seeking Continuance of registration granted for an earlier assessment year, a declaration should be attached in form No. 12.

VERIFICATION

I,————————————son/daughter/wife of
(Name in block letters)
Shri————————————solemnly declare that to the best of my
(Name of father/husband)
knowledge and belief the information given in this Return and the Annexures and Statements accompanying it is correct and complete, that the amount of total income and other particulars shown are truly stated and relate to all previous years relevant to the assessment year commencing on the first day of April, 19————.

I further solemnly declare that no other income accrued or arose to or was received by me/the family/the firm/the association of persons/the body of individuals/————————————during the said previous years and that I/the family/the firm/the association/the body of individuals ————————————had, during the said previous years, no other source of income.

I further declare that I am making this return in my capacity as————————————of————————————and that I am competent to make this return and verify it.

Date........................
Place ....

Signature

IMPORTANT.—**Before signing the verification the signatory should satisfy himself that the return is correct and complete in all respects.**

(Any person making a false statement in this Return, shall be liable to prosecution under Section 277 of the income-tax Act, 1961, and on conviction be punishable with rigorous imprisonment which shall not ordinarily be for less than six months and may extend to two years.)

ANNEXURE I—SALARIES]

1.	Name and address of the Employer	
2.	Total amount of salary, wages, etc., including cash to the extent these are not exempt from tax . . .	Rs.
3.	Value of accommodation provided by the employer free of rent or at a concessional rent	
4.	Perquisite value of motor car or other conveyance provided by the employer	
5.	Perquisite value of domestic or personal services etc., provided by the employer	
6.	Any other amount chargeable under 'Salaries' (Give details)	
	Gross Salary	

	Deduct expenditure on	Rs.	
*Details regarding conveyance			
Make........HP..........	(*a*) Book [Sec. 16 (1)]		
Date of purchase..........	(*b*) Entertainment [Sec. 16 (ii)]		
Actual Cost Rs			
Expenditure on Maintenance, Rs.	(*c*) Profession tax. [Sec. 16 (iii)]		
Amount representing Wear and Tear Rs.	(*d*) Conveyance* [Sec. 16 (iv)]		
Total . . Rs.	(*e*) Other Items, if any (give details) [Sec. 16(v)]		
Amount attributable to user for employment Rs.	Net income under 'Salaries' .		

*An employee receiving conveyance allowance is not entitled to this deduction.

ANNEXURE 2—INCOME FROM HOUSE PROPERTY

Serial No.	*Address of property	Gross annual value	Deduction from Annual value		Net Amount (Col.3 *minus* Cols. 4&5	Deduction					Net income loss (Col. 6 *minus* Col. 11)
			Local Taxes	Allowance for newly constructed property self occupied property		Repairs	Collection charges	Interest on borrowings	Other items (Give details)	Total (Col. 7 to 10)	
1	2	3	4	5	6	7	8	9	10	11	12

*Also state where relevant—

(*a*) Share, if co-owners:

(*b*) Proportion not used for own business or profession.

Aggregate Income/Loss . . . . Rs. ....

Less share of other co-owner (s) . . . . Rs ....

Balance carried to Part I of the return . . . . Rs. ....

Recommendation

The Committee hope that special steps taken for the expeditious disposal of cases would reveal satisfactory results and that the number of cases of surcharge and super profits tax pending disposal would be brought down. They would like to watch the results through future Audit Reports.

[*S. No.* 45 *and para* 1.296 *of Appendix VII to the Third Report* (*4th Lok Sabha*) 1967-68]

Action taken

The recommendations made by the Committee have been noted.

[*Vetted by Audit* vide *D.O. No.* 2538-*Rev.A*/564-67-*I*, *dated* 3rd *June*, 1968]

[*File No.* 83/31/68-*IT*(*B*), *dated* 10*th June*, 1968]

Recommendation

The Committee regret to note that the Excess Profit Tax cases of 1947-48 were still pending in year 1966-67. The Committee take a serious view of this abnormal delay in the settlement of these cases. The Committee also desire that a target date should be fixed for the disposal of E.P.T. cases. They would also like to watch the progress of settlement of these cases through future Audit Reports.

[*Serial No.* 46 *and Para* 1.302 *of Appendix VII to* 3*rd Report*, 1967-68]

Action taken

The E.P.T. and B.P.T. cases which were pending as on 31-3-65, are being disposed of steadily, as would be evident from the following figures :

Pendency as on	E.P.T.	B.P.T.
31-3-65	117	20
31-3-66	112	26
31-3-67	99	25
31-3-68	55	22
31-7-68	51	20

The rate of disposal being rather slow, the concerned Commissioners of Income-tax have recently been directed to see that all the pending E.P.T. and B.P.T. assessments which are disposable are completed by 1-2-1969.

[*Vetted by Audit* vide *D.R.A.'s U.O. No.* 5507-*Rev.A*/564-67, *dated* 9-12-68]

[*F. No.* 15/4/66—*IT*(*Audit*) *Dated* 16-12-68]

Recommendation

The Committee hope that Ministry will be able to liquidate the arrears of the pending cases of refund more expeditiously in view of the fact that the refund circles are going to be staffed adequately. They hardly need to emphasise that the disposal of such cases should be tackled with a sense of urgency as any delay in their disposal would involve a liability on the

Government to pay interest at 6 per cent per annum on refund claims outstanding for more than six months.

[*S. No.* 47 *and para* 1.308 *of Appendix VII to the Third Report* (*4th Lok Sabha*), 1967-68]

Action taken

The observations made by the Committee have been noted.

[*Duly Vetted by Audit* vide *D.D(Ta)'s D.O. No.* 2489-*Rev.A*/564-67/*I*, *dated* 27-5-1968]

[*File No.* 36/6/67-*IT*(*AI*), *dated* 30*th May*, 1968]

Recommendation

The Committee are not convinced by the explanation given for the delay in making a proper assessment of the firms in time, with the result that assessments for 1952-53 to 1955-56 in the case of one firm and for 1960-61 in the case of another firm became time-barred. They are also unhappy that, due to lack of proper co-ordination and administrative control the jurisdiction of various officers for assessment purposes was not precisely determined, leading to delay and the avoidable movement of files from one office to another, without any conclusive action being taken. They are also distressed to note that it took the Government nearly two years to dispose of an application for registration certificate and another two years to deliver it.

[*Para No.* 2.10 *Serial No.* 48, *Appendix VII, of* 3*rd Report,* (*Fourth Lok Sabha*)]

The Committee would like Government to examine thoroughly the procedure and administrative instructions to make sure that the applications for registration are disposed of expeditiously and that there is no delay in the delivery of the certificate of registration. The Committee would also like Government to lay down precisely the charge and responsibilities of various officers for making assessment so as to avoid confusion. The Committee would like Government to devise a proper system to ensure that assessments are made in time and that a strict watch is kept on the realisation of Government dues so that they do not become time-barred.

[*Para No.* 2.11, *Serial No.* 48, *Appendix VII, of* 3*rd Report* (*Fourth Lok Sabha*)]

Action taken

Disposal of applications for Registration and delivery of the Registration Certificates :

It has all along been the endeavour of the Sales Tax Department, Delhi, to issue the registration certificate as quickly as possible and instructions on the subject have been issued from time to time. The maximum time prescribed for the disposal of applications for registration is three weeks (copy of the instructions dated 22-10-1965 issued in this respect is enclosed marked Annexure 'A'). Further, every month, each Ward Officer furnishes a statement of applications for registration pending for over a month, to his inspecting Assistant Commissioner giving the reasons for pendency and the same is scrutinised and commented upon by the Assistant Commissioner.

As regards the delivery of the registration certificate, it has also been emphasised upon the officers from time to time that there should be virtually no gap between the passing of the registration order and the delivery of the registration certificate. It has been stressed that the Assessing Authority must fix up a date by which the certificate would be ready for delivery to the applicant dealer. The circular instructions were repeated *vide* memorandum dated 28-12-1966 (copy enclosed marked Annexure 'B').

Coordination amongst the Officers regarding jurisdiction :

With effect from 1st August, 1966, the Union Territory of Delhi has been re-demarcated into 29 Wards and the boundaries of each ward have been clearly defined leaving no room for confusion regarding the jurisdiction of individual officers for assessment purposes.

To ensure better coordination among the officers with a view to avoid delays and unnecessary movement of files from one ward to another, consequent on change in the business premises by a dealer from one ward to another, a detailed procedure has been prescribed according to which the record of the dealer, who shifts his place of business from one ward to another, will be transferred not only after ascertaining the closure of business by the dealer in the transferor ward but also after verifying the establishment of business in the transferee ward. These instructions have been repeated also. (Copy of both the instructions are enclosed marked Annexures 'C' & 'D'). In view of these instructions, there is now no room for any confusion in this regard.

Timely disposal of time-barring cases :

The following steps have been taken from time to time to ensure that no case becomes time-barred :—

(i) A register known as ODAR was prescribed in April, 1963, wherein *inter alia*, all the pendency of assessment cases including those, which are remanded in appeal and revision was required to be shown. This register is required to be prepared every year in the month of April, as a result of physical verification of the files. Day-to-day disposal of assessment cases is also shown in this register.

(ii) At the close of financial year each Assessing Authority certifies, after physical verification of files, that no case has become time-barred.

(iii) In January, 1966, Sales Tax Officers were directed to get all the files of the dealers physically check-up and to prepare an up-to-date list of cases in which any action was pending on account of an order having been set aside or remanded in appeal or revision. They were further directed to finalise all such pending cases by the 20th February, 1966. To eliminate all chances of any such case becoming time-barred in future, the Sales Tax Officers were directed to dispose of all such cases within one month from the receipt of appellate or revisional orders and intimate the particulars of such cases disposed of on the 5th of every month to appeals—section for making necessary entries in the Institution Register, so that the appeals Section may also be able to check up the follow up

action. (Copy of Circular No. 14 of 1965-66 is enclosed marked Annexure 'E').

(iv) At the time of re-demarcation of the wards with effect from 1-8-1966, all the files were again got physically verified and a Blue List was prescribed for bringing upto-date the pendency of assessment cases therein. This Blue List is required to be prepared in April every year, after physical verification of files. Again in April, 1967, detailed instructions were issued *vide* circular letter dated 5-4-1967. (Copy enclosed marked Annexure 'F') for superchecking of the entries made in the Blue List register in order to ensure their correctness.

(v) As a final measure to guard against the possibility of any case still remaining unnoticed, instructions are being issued to the ward officers for getting their files re-checked in December, 1967.

(vi) In the month of April, every year a plan of work to be followed by the Ward Officers is laid down in which particular mention is made of the time barring cases and a deadline is fixed for disposal of these cases. Also a strict watch is kept on the performance of assessing authorities by their respective Assistant. Commissioners. This year also, instructions were likewise issued fixing October, 1967, as the deadline. (Copy of instructions dated 7-4-1967 is enclosed marked Annexure 'G'). Such of the officers, as are not likely to complete their work up to the deadline fixed, are required personally to discuss the pending cases with their respective Assistant Commissioners, who in turn have to submit their report to the Commissioner every month. In short, the Commissioner and the Assistant Commissioners, are keeping a vigilant eye over the Assessing Authorities with a view to early disposal of these cases.

Realisation of Government Dues:

There is no limitation prescribed for the recovery of arrears. However, every case is being taken to effect recovery promptly.

The following steps are taken by the Sales Tax department for expeditious realisation of the Government dues :—

(i) Norms have been prescribed for recovery of dues by each Inspector every month and efforts made in this direction are commented upon by the respective Assistant Commissioners and Commissioner, Sales Tax, Delhi.

(ii) Each Assessing Authority is required to effect maximum collection of Government dues and this aspect is particularly kept in view while writing his character roll.

(iii) The Assistant Commissioner (Recovery) inspects the Demand and Collection Registers periodically to ensure that recovery certificates are issued in time and cases regarding recovery are properly pursued. The Assistant Commissioner (Recovery) also functions as Collector for realisation of tax as Arrears of

Land Revenue and thus there is better coordination between the Assessing Authorities and the Recovery staff.

(iv) Every year, a collection drive is organised under the direct supervision of Assistant Commissioner (Recovery).

Recommendation

The Committee note that, according to the Departmental inquiry reports of October, 1953, February, 1954, and February, 1956, the dealer had been shifting his business premises from time to time without informing the Department as required under Section 16 of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi. They feel that this fact should have made the Department vigilant.

[*Para* 2.23, *Serial No.* 49, *Appendix VII, of the* 3*rd Report, (Fourth Lok Sabha)*]

Action taken

The sales Tax Department is now vigilant. It is hoped that no such case will escape their notice.

Recommendation

The Committee would like to be apprised of the progress made in the completion of the survey work.

[*Para No.* 2.29, *Serial No.* 50, *Appendix VII, of the* 3*rd Report, (Fourth Lok Sabha)*]

Action taken

In the survey carried out in 1966-67, 16,181 dealers were covered. Out of these 7,030 were registered dealers and 9,151 were unregistered dealers, out of whom 1,138 were found registerable. During the current year, a comprehensive plan of survey has been drawn up; shop-to-shop survey will be organised in new and developing colonies, where new shops and industrial units are springing up. In the old established markets, monthly targets for the detection of the registrable dealers has been fixed for the inspectors.

Apart from the Sales Tax Officers and the Assistant Sales Tax Officers, Assistant Commissioner would also make surprise check of the work done by the Inspectors and the Sales Tax Commissioner would himself be moving out, especially in the areas where new markets are developing.

Recommendation

They understand from Audit that, under the Departmental rules, an Assistant Sales Tax Officer is required to verify at least 20 per cent of the Survey reports made by the Sales Tax Inspector. Similarly, a Sales Tax Officer is expected to check at least 10 per cent of such reports furnished by the Inspectors and Assistants Sales Tax Officers. The Committee would like to be informed whether the procedure laid down under the departmental rules is being actually followed by the Sales Tax Department.

[*Para No.* 2.30, *Serial No.* 50, *Appendix VII,* 3*rd Report, (Fourth Lok Sabha)*]

Action taken

Due supervision is being exercised on the Sales Tax Officers and Assistant Sales Tax Officers to ensure that they achieve the target of 10/20 per cent super-checking of surveys. Monthly returns are called for in this respect and these are carefully scrutinised and the defaulting Officers screened for suitable action.

Recommendation

The Committee regret to note that as many as 84,092 cases were outstanding on 1st April, 1965, with the Sales Tax Office pending assessments. Some of these cases relate to the year 1961-62.

[*Para No.* 2.33, *Serial No.* 51, *Appendix VII*, 3*rd Report,* (*Fourth Lok Sabha*)]

The Committee cannot too strongly stress the need for taking urgent action to clear the arrears of assessment relating to earlier years, so that the realisation of Government dues do not become time-barred. They would like to watch the progress made in this regard through the subsequent Audit-reports.

[*Para No.* 2.34, *Serial No.* 51, *Appendix VII*, 3*rd Report,* (*Fourth Lok Sabha*)]

Action taken

Urgent action is being taken in the matter, as desired by the Public Accounts Committee.

(Ministry of Home Affairs)

ANNEXURE A

OFFICE OF THE COMMISSIONER OF SALES TAX, DELHI

CIRCULAR NO. 9
(*Procedural*)

SUBJECT :—*Disposal of applications—Time limit for.*

It has been observed that the disposal of miscellaneous applications filed by the dealers is at times inordinately delayed by the officers of the Department. This results in avoidable harassment to the dealers. In order to exercise proper vigil in such matters, it has been decided to prescribe the following time-schedule for final disposal of applications :—

1.	Application for adjournment	Same day
2.	Application for registration	3 weeks
3.	Application for amendment of registration certificate	
4.	Application for cancellation of registration certificate	One month
5.	Application for grant of refund	One month
6.	Application for issue of 'C' forms	2 days
7.	Ordinary application for certified copy	7 days
8.	Urgent application for certified copy	7 days
9.	Disposal of review/rectification application	One month
10.	Disposal of remand cases	Two months
11.	Application for return of books	15 days
12.	Application for extension of time for filling returns	One week.
13.	Application for stay/instalment	15 days
14.	Application for inspection	One week.

The deadlines fixed above are being given wide publicity in the business circles, and the officers should observe these instructions scrupulously so that there is no chance of complaint from any quarter. Failure to do so on the part of any officers would be viewed seriously.

Sd/-
Commissioner of Sales Tax,
Delhi.

No. III-26/59-CST/14582 Dated the 22nd October, 1965
30-Asvin, 1887.

Copy to :—

1. The Vigilance Officer/All Asstt. Commissioners.
2. All Assessing Authorities. (It should be got noted by Inspectors and Ward Incharges also).
3. The Inspector (H. Qrs). I&A Section/Appeal Section/Copying Agency.
4. The Superintendent.

SURENDRA KUMAR
Assistant Sales Tax Officer.
SIB/I&A, Delhi.

ANNEXURE 'B'

OFFICE OF THE COMMISSIONER OF SALES TAX
'L' Block. Indraprastha Estate, N. Delhi.

No. XV-12/CST-65/I&A/19789 Dated 28-12-1966

To

All the Assessing Authorities,
Sales Tax, New Delhi.

SUBJECT :—*Issue of Registration Certificate.*

MEMORANDUM

Attention is invited to this Office Memorandum No. XV-12/CST-65/I&A/4213, dated the 20th March, 1965 forwarding thereunder a copy of the minutes of the meeting held in the room of the Commissioner of Sales Tax on the 10th of March, 1965. It was then instructed that in the matters relating to the issue of Registration Certificates to the dealers, the Assessing Authorities must *fix up* the date by which the certificates would be ready for delivery to the applicant dealers.

Complaints are still being received that no date is fixed for the delivery of the Registration Certificates and that the same are delivered with considerable delay even after the last date of hearing fixed for the purpose.

A serious view shall be taken for non compliance of instructions, if any complaints are received in future.

S. V. DEVA
Commissioner of Sales Tax,
New Delhi.

No. XV-12/CST-65/I&A/19790 Dated 28-12-1966

Copy forwarded for information to the :—

1. All Assistant Commissioner, Sales Tax, New Delhi.
2. All Sales Tax Officers in the Head Quarters.
3. Assistant Sales Tax Officers (Audit Cell).
4. All Inspectors Head Quarters.

Sd/-
Sales Tax Officer (H. Qrs.),
New Delhi.

ANNEXURE 'C'

OFFICE OF THE COMMISSIONER OF SALES TAX, DELHI

No. IX- CST-60 3890 Dated the 11th March, 1960
21-Phalguna, 1881.

To

All the Sales Tax Officers Assistant Sales Tax Officer,
Delhi/New Delhi.

From some of the cases which have been examined by me it has been noticed that when an application is made by a dealer to his Sales Tax Officer alleging that he has shifted his place of business to some other ward, the Ward Officer after making enquiries with regard to the closure of business in his own ward immediately transfers the file to the ward exercising jurisdiction over the area to which the dealer is alleged to have shifted his place of business without verifying the actual opening up of the business at the new place. As a result of this, it has later on transpired that the dealer has been evading scrutiny of his activities both in the old ward as well as in the new ward, because, the officials of the new ward could not trace his whereabouts in his own ward.

All the officers are, therefore, directed to transfer such files only when they have verified through their own Inspector or Assistant Sales Tax Officer not only the closure of the business in their own ward but also the establishment of the business in the other ward. For this purpose, the Inspector of the parent ward should personally visit the changed business premises as reported by the dealer in the other ward, check up the rent receipt and confirm that he has seen the dealer conducting business from his new place of business.

The file of the dealer should be transferred to the new ward only after all these formalities are completed.

Sd/-
Commissioner of Sales Tax,
Delhi.

Attested
Sd/-
(K. L. Bhatia)
Sales Tax Officer (H. Qrs.),
Delhi.

ANNEXURE 'D'

COPY

OFFICE OF THE COMMISSIONER OF SALES TAX, DELHI

No. 10465 Dated the 29-7-1966.

To

All Sales Tax Officers,
Delhi/New Delhi.

MEMORANDUM

Consequent upon the creation of 12 additional wards, the area comprising the Union Territory of Delhi has, with effect from 1-8-1966, been redemarcated into 29 wards (designated as Wards No. I to XXIX) for the purpose of the administration of Sales Tax Laws. Boundaries of the new wards have been defined in the schedule circulated separately.

The following instructions in this regard as issued for a strict compliance.

1. All the Officers should immediately acquaint themselves with the areas falling within their respective jurisdictions.

2. As a result of this re-demarcation, a large number of files shall have to be transferred to or received from various wards. Such files should be transferred only after the transferring officers has fully satisfied himself, after spot enquiries, where necessary, that the place of business of the dealer falls within the jurisdiction of transferee ward. In case of any doubt about the location of a dealer in a particular ward, the matter should be resolved by personal discussion amongst the officers concerned. In case any confusion still persists, the matter should be referred to the Assistant Commissioner I.

Before the files are transferred, it should be ensured that all the returns, treasury challans and lists of sales made to registered dealers, exports and 'C' Forms submitted by the dealers, are placed on the respective files.

3. Files of registered dealers and of dealers whose assessment for any period has been completed under Section 11(2) should be transferred

under cover of transfer memo. attached herewith as Annexure 'A'. Copies of this proforma may be obtained from:

(a) Shri Thakar Dass (for Wards situated in 'L' & 'M' Blocks of Indraprastha Estate); and

(b) Shri A. Kanwar (for Wards situated in Saraswati Bhavan).

An indication in red ink shall be given in cases of dealers whose assessments are likely to be time-barred.

4. The importance of giving correct and complete information in the transfer memos. cannot be over-emphasised as any inaccuracy or ommission can lead to serious consequences for which the transferring officer will be personally held responsible.

5. A proper record should be maintained of all files transferred to various wards.

6. All cancelled files, even where no action whatsoever is pending shall also be transferred. Such files shall, however, be transferred, under cover of transfer memo. as per annexure 'C'.

7. Files relating to unassessed 11(2) cases should be transferred under a single letter in which all pending actions in each case should be clearly indicated against the name of each dealer and such files should be transferred duly indexed.

8. Surety Bonds, seized and surrendered documents and other important papers *e.g.* complaints under enquiry etc. should be handed over personally to the officers concerned and their acknowledgements obtained for record and reference. A copy of the list of such transferred documents should be sent to the Assistant Commissioners concerned.

9. Pending applications for registration should be transferred under a separate letter in which actions pending in each case should be clearly indicated against the name of each dealer.

10. Permanent records *e.g.* Dealers' Ledgers, D.C.Rs., etc. shall be retained by the transferring officers.

11. On receipt of any file of document from another Ward the receipient officer shall immediately satisfy himself, after spot enquiries, where necessary, that the dealer concerned falls within his jurisdiction.

12. After the work of transfer of files to a particular Ward has been completed, the officer of the transferring Ward will also prepare a consolidated list of files transferred to the other Ward and obtain a consolidated acknowledgment from the officer of the transferee ward.

13. After the officer of the transferee Ward has satisfied himself that the files received by him pertain to his Ward, he shall after proper verification, start making entries in relevant records in his ward. Individual acknowledgment in the prescribed proforma (Annexure B) shall also be sent to the transferring ward so that it can complete entries in its chronological Register, Dealers Ledger, ODAR and DCR for the purpose of cross reference.

14. The process of transferring of files etc. should be completed by the 15th August 1966 positively and compliance reported to this by the 20th August, 1966.

15. After the process of transfer has been completed all the Wards (including the transferring Wards) shall prepare afresh all the relevant records in accordance with the existing instructions. This work should be completed by the 30th August 1966 positively and a compliance report sent to this office by the said date.

16. During the interim period the clerical staff of the transferee ward shall render such assistance to the transferring ward as may be required by the Sales Tax Officer of that Ward.

17. All the Assistant Commissioners shall personally supervise this work. For this purpose, they will please spend some time everyday in each ward under their charge and give guidance where necessary.

18. All the prescribed monthly statements for the month of July shall be sent as usual by the Sales Tax Officers of the old Ward.

19. Timely issue and service of the ST XIV shall however be the responsibility of the transferee officers. Needless to point out that action regarding issue and service of notices in ST. XIV in respect of dealer to whom monthly returns have been prescribed have to be completed before the end of September 1966.

20. The receipt of this circular should be acknowledged.

Sd/- S. V. DEVA

Commissioner of Sales Tax.

Dated 29-7-1966

No. 10466

Copy to :

1. All Assistant Commissioners, Sales Tax. They are requested to closely supervise the work relating to transfer of records and ensure compliance of instructions.
2. S.T.O. (H.Qrs.).
3. Superintendent.
4. Officer on Special Duty (H.O.).
5. Inspector (H.Qrs.).

Commissioner of Sales Tax,
Delhi.

ANNEXURE 'E'

OFFICE OF THE COMMISSIONER OF SALES TAX, DELHI

CIRCULAR NO. 14, 1965-66

(*Procedural*)

The Accountant General Central Revenues has pointed out that some of the remanded cases have become time barred. This is because the Assessing Authorities do not take prompt action in regard to cases set aside and remanded by the Appellate or Revisional Authorities and do not get the files properly checked up before furnishing certificates at the end of each financial year. With a view to eliminate all chances of any such case being time barred in future all the Sales Tax Officers are hereby directed to get all the files checked immediately and prepare an up-to-date list of cases where any action is pending as a result of an order having

been set or remanded. These cases should be finalised latest by 20th February, 1966 without fail. Any negligence in this behalf be seriously viewed. Compliance report should be sent to the respective Assistant Commissioners, latest by 22nd February.

In future all such cases should be disposed of within one month from the receipt of appellate or revisional orders. The Sales Tax Officers should also furnish the particulars of such cases disposed of on the 5th of every month to appeal section for making necessary entries in the institute register.

Sd/-

Commissioner of Sales Tax,
Delhi.

No. XV-30/CST-65/I&A/1591 Dated the 1st February, '66

Copy forwarded to :—

1. All Assistant Commissioners, Sales Tax, Delhi.
2. All the Sales Tax Officers, Delhi/New Delhi.
3. Asstt. Sales Tax Officer, S.I.B./Stamps/Audit.
4. Inspector (H.Qrs.) Appeal Section.

Commissioner of Sales Tax,
Delhi.

ANNEXURE 'F'

OFFICE OF THE COMMISSIONER OF SALES TAX

'L', Block, Indraprastha Estate, New Delhi

No. VIII-13/66-CST/I&A/5689 Dated the 5th April, '67.

To

The Sales Tax Officers/Asstt. Sales Tax Officers,
New Delhi.

MEMORANDUM

In July, 1966, the ward officers were directed to prepare Blue Lists of pending assessments after physical verification of all the files but inspite of the fact that more than sufficient time was taken in preparation of these lists, the same were not authentic. It has been brought to my notice that some time-barring cases were disposed of in the last week of March, 1967, in haste because their pendency had not been properly shown in the Blue Lists. This is a very serious lapse on the part of the ward officers. I want to again impress upon them that any such shortcoming will have to be seriously viewed in future. It is in the interest of the Assessing Authorities themselves that pendency of assessments and arrears is one for all correctly ascertained. Now that all the wards have fully settled, there should not be any reason for any such lapse in future.

2. Arrears as on 31-3-67, as per D.C.R. for the year 1966-67 should be correctly carried forward in the D.C.R. for the year 1967-68 by giving proper cross references. In case, there is some variation as a result of verification of files the Sales Tax Officer should himself, before making

any entry in the D.C.R. for the year 1967-68, make enquiries about the variations reported and take necessary action for their entry in the Demand and Collection Registers after fully satisfying that the variations are correct.

3. Similarly, a Blue List for the year 1967-68 showing pending assessments be prepared after physical verification of files and maintained properly as per instructions contained in this Office circular letter No. Misc.-66/CST/I&A/9744, dated 16-7-1966.

4. The Assessing Authorities are, therefore, directed to start physical verification of all the files forthwith. Instead of putting all the members of the staff on this work, I feel it should suffice if three members of each ward are put on this job. The Assistant Sales Tax Officers, Sales Tax Inspector(s), and Ward Incharge should thereafter super check the work done by the scrutiny team to the extent of 20% each. The Sales Tax Officer should supervise this work and keep a record of the physical checking done by the scrutiny team and the over-checking by the senior officials; so that in case of any negligence coming to notice later on, there may not be any difficulty in fixing responsibility. The progress of the work done be reported to me through the respective Assistant Commissioners by the 5th May, 1967 positively.

Commissioner of Sales Tax,
Delhi.

No. VIII-13/66-CST/I&A/5690 Dated 5-4-1967

Copy forwarded to :—

1. The Assistant Commissioners, Sales Tax, New Delhi.
2. The Sales Tax Officer (H.Qrs.).
3. The Assistant Sales Tax Officer (S.I.B.)/Audit.
4. All Inspectors (H.Qrs.).

Sd/- R. K. CHADHA
Assistant Commissioner, Sales Tax,
New Delhi.

ANNEXURE 'G'

OFFICE OF THE COMMISSIONER OF SALES TAX
'L' Block, Vikas Bhawan, New Delhi.

CIRCULAR NO. 2 OF 1967-68

Experience of the working during the past few years has shown that the time barring cases have not been given due attention inspite of repeated instructions. Some of the time-barring cases are understood to have lingered on till almost the fag end of the financial year.

All the Assessing Authorities are now instructed that all the time barring cases must be finished before the end of October, 1967. I shall not normally tolerate any pendency of such cases after this date.

In order to ensure compliance of these instructions, the Assessing Authorities and the respective Assistant Commissioners should see that a stock-taking of such cases is taken up expeditiously and they are posted for examination during the ensuing months. The Assistant Commissioners should scrutinize the *pro-rata* disposal of time-barring cases by each Assessing Authorities and the respective Assistant Commissioners should see that a stock-taking of such cases is taken up expeditiously and they are posted for examination during the ensuing months. The Assistant Commissioners should scrutinize the *pro-rata* disposal of time-barring cases by each Assessing Authority every month and send me a consolidated report in respect of their ward jurisdiction every two months.

It must be made clear that the aforesaid dead line in meant to be adhered to. An adverse view shall be taken which will be duly reflected in the Confidential Reports, if any time barring case is found to have lingered after the dead-line fixed, unless the concerned Assessing Authority has obtained my prior permission in writing to hold over the finalization of the case due to sufficient reasons.

Commissioner of Sales Tax,
Delhi.

No. XV-12A/CST-67/I&A/5806 Dated 7-4-1967

Copy to :—

1. All the Assistant Commissioners.
2. All the Assessing Authorities.
3. Sales Tax Officer (H.Qrs.).
4. Sales Tax Officer on Special Duty.
5. All the Inspector (H.Qrs.).

Sd/-
for *Commissioner of Sales Tax,*
Delhi.

Recommendation

The Committee have not made recommendations/observations in respect of some of the paragraphs of the Audit Report (Civil) on Revenue Receipts, 1966. They expect that the Department will nonetheless take note of the discussions in the Committee and take such action as is found necessary.

[*Serial No.* 52 *and Para* 3.1 *of Appendix VII to the* 3*rd Report*, 1967-68]

Action taken

3.1. The recommendation of the Committee has been noted for compliance.

[*Duly vetted by Audit* vide *C. & A.G's U.O. No.* 5835-*Rev.-A*/564-67-*IV*, *dated* 24-12-1968]

F. No. 8/10/68-*IT*(*Audit*),

(iii) SEVENTH REPORT (FOURTH LOK SABHA)

Recommendation

The Committee desire that Government's replies should be explicit and self contained. In particular, where remedial measures are called for the details of action taken or intended to be taken should be specifically spelt out.

[*Serial No.* 1 (*Para* 1.5) *of Appendix V of Seventh Report* (*4th Lok Sabha*)]

Action taken

A similar recommendation of the Public Accounts Committee made at Serial No. 8 of Appendix III of the Fifth Report (Fourth Lok Sabha) was brought to the notice of all concerned. In fact the present recommendation is already being acted upon.

[*F. No.* 7/71/67-*Coord*]

Recommendation

2.11. While the Committee do not desire to pursue the matter at this stage, they feel that, in determining the rate of excise duty, Government should have taken into account the market value of the end product, apart from technicalities involved. In the present case as there was a rise in the value of extruded tubular pieces the Committee feel that to charge the lowest rate of duty and treat them as crude aluminium was no less inaccurate than to treat them as pipes and tubes.

[*S. No.* 5—*para* 2.11—*Appendix V of 7th Report* (*4th Lok Sabha*)]

Action taken

2.11. In view of the observations of the Committee that they do not desire to pursue this issue further, we take it that the matter is closed. The views expressed by the Committee, have however, been noted.

(F. No. 18/5/66-CX.III)

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THEY DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES BY GOVERNMENT

(i) SECOND REPORT (FOURTH LOK SABHA)

Recommendation

From the note furnished by the Ministry the Committee regret to note that the same item was classified differently within a short period of 2 months. The Committee are glad to note that as a result of audit objection, short levy of countervailing duty to the extent of Rs. 35,689 was recovered by the Custom House. They, however, are left with the impression that this mistake took place primarily due to negligence. They hope that suitable action would now be taken against the persons responsible for the lapse.

[*Para* 2.39, *S. No.* 11, *Appendix VIII, of the Report*]

Action taken

The Public Accounts Committee had already been informed that the concerned Appraiser and Audit Clerk had been cautioned. As promised in the note furnished to the Committee, *vide* appendix V of their report, the explanation of the concerned Principal Appraiser was obtained by the Collector and he has been cautioned. The concerned Audit Clerk has also been cautioned in writing. Having regard to the fact that the imports were made by the Oil & Natural Gas Commission and that there was nothing to suspect *mala fide*, a lenient view was taken in this case.

[*M. of Fin. (Deptt. of Rev. & Insurance) F. No.* 20/47/66-*Cus.I, dated* 31-10-1967]

Recommendation

The Committee would also desire that the Central Board of Excise & Customs should devise suitable measures by which the classification of similar articles differently by different Appraisers is eliminated.

[*Para* 2.40, *Sr. No.* 11, *App. VIII of the 2nd Report* (1967-68)]

Action taken

The Board recognises the need for ensuring uniformity of practice in classification and assessment of similar goods imported in a particular port. Under the existing arrangements, tariff rulings issued by the Central Board of Excise and Customs and by the senior officers of the Custom Houses are circulated to all the assessing officers so that similar articles are classified under the appropriate item of the tariff. The Internal Audit Department also checks the bills of entry with a view to find out, among other things, whether there is divergence of practice in regard to classification of similar articles within the same Custom House. However, with a view to improving the position still further, the Customs Study Team, which was set up by the Government of India, has in its Report recommended (*vide* extract of recommendation No. 190 appended) that a unit called the Central Exchange for Assessment Data should be set up for achieving syste-

matic control over assessments for ensuring uniformity. The Central Exchange will receive assessment data from all the Custom Houses and process them with a view to ascertaining whether there is uniformity in approach and also with a view to detecting errors, discrepancies, lack of consistency in assessment, abnormalities in valuation etc. so that suitable instructions may be issued to the Collectors for rectifying the defects noticed. This would ensure that all instructions are correctly and uniformally observed—

(i) within the same Custom House; and

(ii) in the various Custom Houses.

The Empowered Committee, which examined the recommendations of the Customs Study Team, has accepted this recommendation and it has been decided to set up a Central Exchange in the Board's office on an experimental basis for 6 months; the details are being worked out.

[*F. No.* 20/47/66-*Cus.I, dated* 31-10-1967]

APPENDIX

EXTRACT FROM THE REPORT OF THE STUDY TEAM ON THE CUSTOMS DEPARTMENT, PART I—CLEARANCE OF CARGO

Chapter IX : *Miscellaneous* :

(190) For achieving systematic control over assessments, for ensuring uniformity and for equipping the department with useful data, a new unit called "Central Exchange for Assessment Data" should be set up.

Recommendation

When Committee suggested that an appeal should not be entertained unless the amount was paid by the party, the witness stated that there was much force in the point that in case of provisional assessments demand might be enforced before arguing the case with the party.

[*Para* 3.34 *and Serial No.* 21-*Appendix VIII to 2nd Report* (*Fourth Lok Sabha*)]

Action taken

The Government are unable to accept the suggestion made by the Committee in view of the decision of the Supreme Court in the Civil appeals No. 2..7 and 2..8 of 1966 in the case of Collector of Customs and Central Excise, Cochin *Vs.* M/s. A. S. Bawa pursuant to which instructions have been issued as in the Central Board of Excise and Customs letter No. 40/83/67.CX.I, dated 29-9-1967 (copy enclosed).

(F. *No.* 24/66/65)

*CIRCULAR LETTER NO. Misc.*65/67-*CXI*

F. No. 40/83/67-CXI

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, dated the 20*th September,* 1967.

FROM

Shri L. S. Marthandam,
Secretary, Central Board of Excise and Customs.

To

All Collectors of Central Excise,

All Deputy Collectors of Central Excise.

SUBJECT :—*Pre-deposit of duty before hearing appeals under Section 35 of the Central Excises and Salt Act,* 1944—*Supreme Court's Judgement in Civil appeals Nos.* 2007 *and* 2008 *of* 1966.

Messrs. A. S. Bava.

Sir,

I am directed to invite attention to the Board's letter F. No. 43/4/64-CXIV, dated the 5th September,1967 forwarding a copy of the Supreme Court's Judgement in the above-noted appeals relating to the pre-payment of dues as a condition precedent to the consideration of appeal under Section 35 of the Central Excises and Salt Act, 1944.

2. The salient point in the Supreme Court's judgement is that Section 35 of the Excise Act gives a right of appeal while Section 129 of the Customs Act (as applied to Central Excise) whittles down the substantive right of appeal and it could not be regarded as 'Procedure relating to appeal' within the meaning of Section 12 of the Central Excises and Salt Act.

3. The effect of the judgement is that the Central Excise appeals should be heard by the appellate authority without insisting on pre-payment of the dues. Under the circumstances the appellate authorities should ensure that the appeals are not, in future, rejected merely on the ground that the dues under dispute have not been deposited by the appellants before the appeals could be heard.

Yours faithfully,

Sd./-

Secretary Central Board of Excise and Customs.

Copy to :—

Usual endorsement.

Recommendation

The Committee are surprised how in these two cases standard rates of duty were allowed as deduction. Even after the Board issued the clarification in August, 1964 there was inordinate delay in one of the two cases in raising the demand which is indefensible.

In the second case although the demand of Rs. 2,11,619 was raised more than two years back the duty has not been realised pending the disposal of the appeal preferred by the party. The Committee suggest that in such obvious cases of mistakes where action by way of rectification has been taken the question whether the differential duty can be collected before hearing the appeals may be looked into as promised during evidence.

[*S. No.* 22 *of Appendix VIII of the 2nd Report* (1967-68)]

Action taken

The observations of the Committee with regard to inordinate delay in raising demand of duty in one of the cases have been noted.

Regarding the suggestion made by the Committee that the question of realising the due amount of duty in cases of obvious mistakes even before hearing the appeals may be looked into, a reference is invited to a recent judgment delivered by the Supreme Court in the case of M/s. A. S. Bava. The effect of this judgment is that the Central Excise appeals are to be heard by the appellate authorities without insisting on pre-payment of the dues.

[*F. No.* 1/42/65-*CXII*]

Recommendation

The Committee feel concerned to note that the duty for the period March, 1962 to November 19, 1964, has become time-barred. It would be a very unsatisfactory position, if the manufacturer has already collected the differential duty for this period from his customers. The committee desire that the position in this regard may be verified and, if the duty has already been collected, the assessee may be asked to make a voluntary payment as suggested by the representative of the Board during evidence.

[*S. No.* 23 (*Para* 3.51) *Appendix VIII to the Second Report* (*Fourth Lok Sabha*) 1967-68]

Action taken

It has not been possible to lay hands on any bills which would reveal that differential duty on account of addition of warranty and publicity charges had been realised by the manufacturers from their customers.

[*Approved by Joint Secretary and Vetted by Audit. F. No.* 31/27/65-*CXVII*]

Recommendation

The Committee feel concerned to learn that in this case the notification was interpreted and applied differently in different Collectorates. In para 1.229 of their 46th Report (Third Lok Sabha) the Committee suggested it would be better if such instructions are issued by the Department of Revenue in consultation with the Comptroller and Auditor-General, except in case of the Administrative instructions. The Committee desire that this suggestion should also be considered in relation to the instructions etc., on the Central Excise and Customs side. The Ministry should also consider appending a statement of Objects and Reasons to each notification to avoid ambiguities and to ensure uniform application.

[*Sr. No.* 35 *of App. VIII & 2nd Report* (1967-68)]

Action taken

Notifications issued by the Ministry such as the one which gave rise to the particular audit Para involve a change in the incidence of the duty. It may not be feasible to show it to any one outside the Administration other than those who are actually involved in the issue of such notifications, *viz.*, the concerned officials of the Ministry of Law or officers of any other Ministry with whom the matter may have to be consulted. The changes take effect immediately on the issue of the notifications and they have, therfore, to be kept secret. This is particularly so, at budget time. It will, therefore, be appreciated that it will not be possible for the Ministry to show such notifications to Audit prior to their issue. In the circumstances, Audit will, of course, be free to look into the notifications after

their issue and comment upon errors, if any, that might have crept into these notifications. It is because of this peculiarity relating to the Central Ecise (and Customs) notifications that it is difficult to accept and implement the recommendations of the Public Accounts Committee.

As regards the Committee's recommendations, that a Statement of Objects and Reasons should be appended to each notification to avoid ambiguities and to ensure their uniform application, there is already the practice of forwarding copies of notifications to the field formations with a covering letter or endorsement explaining the purpose of issue of notifications and its legal effect for the guidance of the officers concerned. It is now proposed to follow this practice invariably in all cases. Copies of these explanatory letters along with the concerned notifications will also be sent to the Comptroller and Auditor General.

[*F. No.* 36/41/68-*CX.I.*]

Recommendation

As regards the second case, the Committee find that the duty leviable according to Rule 9 of the Central Excise Rules is the duty in force the day the goods are cleared from the factory. During evidence the witness was doubtful whether in this case the copper rods converted from bars continued to be covered under the definition of crude copper. If the conversion into rods is regarded as a process of manufacture, differential duty should have been charged. The Committee feel that this matter needs further examination."

[*S. No.* 37—*para.* 3.130—*Appendix VIII* (1967-68) *Second Report*].

Action taken

The matter has been carefully considered in consultation with the Directorate General of Technical Development, and the Ministry of Law who have advised that the scope of sub-item (2) of Item No. 26A of the First Schedule to the Central Excise and Salt Act, 1944 (I of 1944) is restrictive in nature in that only the 'manufacturers' specified therein, namely, plates, sheets, circles and strips attract Central Excise duty under that sub-item, and, not all manufacture while sub-item (1) of Item No. 26A refers to the crude form only; by the word 'crude' is meant metal in the virgin form. In this case, the copper rods were produced by pre-heating and hot-rolling of duty-paid imported bars. This process constitutes 'manufacture'. Therefore, the copper rods in question do not fall either under the statutory Item No. 26A(1) or 26A(2). Since the said rods were not excisable, the question of recovery of duty thereon does not arise.

[*F. No.* 18/10/66-*CXII*]

(ii) THIRD REPORT (FOURTH LOK SABHA)

Recommendation

The Committee understand that a refund of Rs. 16,246 was made in July, 1963 and the mistake in this case was pointed out by Audit in September, 1964. According to the instructions of the Board all refund orders in excess of Rs. 500 should be checked by the Inspecting Assistant Commissioner.

The Committee suggest that it may be verified whether the refund orders were checked by the Inspecting Assistant Commissioner.

[*Serial No.* 30 *and Paras* 1.197 *and* 1.198 *of Appendix VII to the Third Report*, 1967-68]

Action taken

The assessment for 62-63 was completed on 5-6-1963. The income-tax refund was made in July, 1963. There was no inspection or audit by the I.A.C. or the I.A.P. during the 5-6-1963 to 19-11-1964. The refund order therefore was not checked by the Inspecting Assistant Commissioner till the time of Revenue Audit.

[*F. No.* 36/10/65-*IT* (*Audit*) *dated* 20-12-1968]

Recommendation

In regard to revision petitions pending with Commissioners of Income-tax, the Committee find that on 30th June, 1965, their number was 4,760. The number of cases in which tax was stayed was 252 on 30th June, 1964 and 623 on 30th June, 1965. The Committee would like the Board to look into reasons for this abrupt rise in the number of cases in which tax was stayed.

[*Serial No.* 43 *and Para* 1.282 *of Appendix VII to the 3rd Report,* 1967-68]

Action taken

The Board have examined the matters and following are the reasons for increase in the number of cases in which the tax was stayed in respect of revision petitions pending as on 30th June, 1965.

(i) On account of extensive survey, the number of assessments had increased and this has resulted in an increase in the number of applications during the period under review. The number of assessments completed upto June, 1965 was 2,67,062 and 1,91,202 during the corresponding period of 1964. Thus, the number of assessments completed upto June, 1965 had gone up by 75,860 as compared to those in June, 1964;

(ii) Some of the assessees having small incomes preferred to file revision petitions;

(iii) In some cases, involving disputed additions, appeal decisions at higher levels were awaited and as a precautionary step assessees filed revision petitions;

(iv) Some petitions were filed in the latter part of the previous year;

(v) On further verification, it has now been found that there was a mistake in the figures reported by the Commissioner of Income-tax, Nagpur. The correct number of revision petitions outstanding in which the tax was stayed was 38, whereas in the statement submitted earlier inadvertantly, the figure of 365 (this figure actually was the total number of revision petitions pending for disposal as on 30th June, 1966) was reported. This arithmatical error in the statement sent by the Commissioner of Income-tax, Nagpur, mainly accounts for the abrupt increase in the number of cases as on 30th June, 1965. Correct figure is 296 as on 30th June, 1965. It will be observed that the percentage of increase is not very abrupt as pendency of revision petitions in which tax was stayed was 252 as on 30th June, 1964. Taking into consideration the substantial increase of 75,860 in the number of assessments completed upto

June, 1965, the percentage of increase can be considered to be normal.

Commissioner of Income-tax, Nagpur, has been asked to be more careful in future while reporting figures which are to be furnished to the P.A.C. and displeasure of the Board has been conveyed to him.

Recommendation

The Committee also cannot escape the conclusion that the case had been dealt with in a most casual manner and no serious effort was made to trace the dealer. They hope that every effort would now be made to trace the dealer, as was promised by the Home Secretary in evidence so to recover the Government dues.

[*Para No.* 2.24 *Serial No.* 49, *Appendix VII, of 3rd Report Fourth Lok Sabha*)]

Action taken

The dealer has now been traced in Amritsar and further action is being taken. A further report regarding recovery of the dues will be sent to the Committee.

Further reply

The dealer who was traced in Amritsar was arrested there and was lodged in the civil prison for 30 days as he could not clear the Government dues. It was intimated by the Tehsildar, Amritsar that the dealer had no attachable property as verified from there. In view of this position the recovery could not be effected from the dealer. The arrears had already been written off by the Delhi Administration in the year 1964.

[*Ministry of Home Affairs*]

CHAPTER IV

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

(i) SECOND REPORT (FOURTH LOK SABHA)

Recommendation

The Committee note that one particular piece of machinery has been classified differently for the purpose of levying excise and customs duty. Certain items have also been classified differently by the different Custom Houses. The Committee feel that an effort should be made to avoid such anomalies as far as possible.

[*Serial No. 9—Appendix VIII—Para No. 2.26 of the Second Report—Fourth Lok Sabha*)]

Action taken

The observations of the Committee have been noted for further action. Suitable instructions have been issued to all the Collectors of Customs & Central Excise to avoid anomalies in matters of assessment as far as possible.

[*F. No. 2/25/67-CUS. (T.U.)* 29-1-68]

Recommendation

The Committee hope that the Report of the Tariff Revision Committee on customs would receive due consideration and changes introduced as a result of that Committee's recommendations would systematise the tariff and bring it in line with modern conditions. The Committee hope that now that the question of aligning of the Central Excise Tariff with the Customs Tariff has been referred to the Tariff Revision Committee, with the receipt of the report (of the Tariff Revision Committee), difficulties about the imposition of countervailing duties would be reduced considerably and the Central Excise Tariff would also be put on a more scientific basis.

[*Serial No. 9—Appendix VIII to the Second Report, Fourth Lok Sabha*]

Action taken

The reports of the Tariff Revision Committee, both regarding the customs tariff and the central excise tariff have been received and are under the active consideration of the Government of India. Attempts are being made to ensure that the revised tariffs, when introduced, reduce considerably the present difficulties in the imposition of countervailing duties.

[*F. No. 2/25/67-CUS.(T.U.), dated* 28-3-68]

Recommendation

The Committee note that the persons involved in the frauds have been or are being prosecuted. The Committee are, however, unhappy that

frauds involving a total sum of Rs. 2,35,107 have been committed. They hope the authorities will take necessary safeguards against the possibility of such frauds.

The Committee hope that the improvement in the system which was proposed to be introduced and other measures which the Ministry intended to take would eliminate opportunities for fraudulent alterations in Bill of Entry. They desire that proper watch should also be kept on the new system so that cases of frauds are altogether eliminated.

The Committee would like to be informed of the final action in cases where prosecution proceedings are in progress and of the recovery of amounts from the persons concerned.

[*S. No.* 13 (1967-68) *Second Report* (*Fourth Lok Sabha*)]

Action taken

The new system of perforation of Bills of Entry with Pin-point Typewriters introduced at the ports of Bombay, Calcutta, Madras, Cochin and Vizag : has been working satisfactorily. Nevertheless fresh instructions have been issued to the Custom Houses to keep a strict watch on the new system with a view to eliminate altogether the chances of fraud *vide* Ministry of Finance (Department of Revenue and Insurance) letter F. No. 55/70/67-Cus.IV, dated the 1st April, 1968—Annexure 'A'.

The PAC in para 2.55 of its report has referred to the total sum of Rs. 2,35,107 (i.e. Rs. 64,726+Rs. 1,70,381) which was reported earlier as defrauded by M/s Ashar Brothers and M/s R. Singh & Co. In the case of M/s R. Singh & Co. full extent of the fraud was not known initially. The amount involved in the fraud was subsequently recalculated with reference to the invoices and the relevant records and the amount of duty involved in the fraud comes to Rs. 1,75,080 instead of Rs. 1,70,381. The amounts of duty defrauded by the Clerk of M/s Ashar Brothers—CHA/11/135 have since been recovered by the Custom House Bombay. As regards the recoveries of the amounts totalling Rs. 1,75,080 defrauded by M/s. R. Singh & Co. only a sum of Rs. 24,635 has since been recovered. A sum of Rs. 1,48,944 comprising less charge due in 29 cases and balance of Rs. 1,500 due in one case have not yet been recovered. The Ministry of Law, Branch Sectt. Bombay, have given their legal opinion in respect of the said 29 cases that it would be difficult to take recourse to law for effecting recovery on the basis of the time—barred demands under the Customs Act, 1962.

As regards the final result of the prosecution proceedings against the persons involved in the fraud committed by M/s R. Singh & Co., four persons of the firm were convicted to regorous imprisonment for varying terms. Regarding the fraud committee by Ashar Brothers—CHA-11/135, Shri V. D. Khaira the Clerk of the clearing agents, who was prosecuted in all the cases of fraud, have been convicted to R.I. for varying terms, but his accomplice, Shri A. K. Sharma, UDC, in the Bombay Custom House, who was also prosecuted for criminal conspiracy in the frauds in question, was acquitted by the Special Judge on benefit of doubt. The State has gone in appeal against the said acquital.

ANNEXURE 'A'

Most immediate

F. No. 55/70/67-Cus.IV

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue & Insurance)

New Delhi, the 1st April, 1968

From

The Under Secretary to the Government of India

To

All Collectors of Customs.

SUBJECT : *Recommendations made by the Public Accounts Committee in their Second Report of* (1967-68) *on Para* 16 *of the Audit Report (Civil) on Revenue Receipts,* 1966 *regarding loss of Revenue due to fraudulent alterations in Bills of Entry—Implementation thereof.*

Sir,

I am directed to enclose an extract from the Second Report (1967-68) of the Public Accounts Committee on Audit Report (Civil) on Revenue Receipts, 1966, wherefrom it would be seen that the Committee in paras 2.55 and 2.56 have made general observations that the Customs authorities would take necessary safeguards against the possibility of the frauds similar to those committee by M/s R. Singh & Co. and M/s Ashar Bros. at Bombay and that a proper watch should be kept on the new system so that cases of frauds are altogether eliminated.

2. This Ministry, in this connection, feel that a strict watch should be kept on the new system of perforation of Bills of Entry with pin-point typewriters with a view to eliminate altogether the chances of occurrence of frauds similar to those referred to above.

3. I am to request that the receipt of these instructions may kindly to acknowledged.

Yours faithfully,

Sd./-

Under Secretary to the Government of India

Copy forwarded to DIC&CE, New Delhi

Sd./-

Under Secretary to the Government of India

Further Information

"Sl. No. 13 :—Please furnish the following information :—

(i) a note giving the latest position of the appeal case.

(ii) A copy of the legal opinion given by the Ministry of Law (Branch Secretariat, Bombay) that in respect of 29 cases it

would be difficult to take recourse of law for effecting recovery on the basis of the time-barred demands under the Customs Act, 1962.

(iii) Whether Government have considered the question of making a suitable provision in the Customs Act so that recoveries of demands in such cases of frauds can be made irrespective of time-bar".

The replies to the above points are given below seriatim :—

(i) The appeal filed against the order of acquittal of Shri A. K. Sharma, UDC, Bombay Custom House, passed by the Special Judge is still pending in the High Court. However, departmental action is being initiated against Shri Sharma simultaneously on the advice of the Ministry of Law. He is still under suspension.

(ii) A copy of the legal opinion given by the Ministry of Law (Branch Secretariat, Bombay) in respect of 29 cases of short payment of duty, is attached—Annexure 'A'. This Ministry agrees with the Ministry of Law that since the recovery had become time-barred under section 39 of the Sea Customs Act, 1878, recourse to sections 28 and 142 of Customs Act, 1962, was not possible.

(iii) The question of recovering demands in cases of frauds without any time-bar has been considered by Government. The recovery of demands in the cases covered by the audit para had become time-barred under section 39 of the Sea Customs Act, 1878. The limitation under the Sea Customs Act, 1878 for recovery of amounts short levied or not levied was 3 months. However, under the Customs Act, 1962 the limitation for recovery of amounts short levied, or not levied, through fraud on the part of the importer/exporter or his agent has been specifically increased to 5 years.

In clause 28 of the Customs Bill 1962 it had been proposed that there should be no time limit for issuing notice of recovery where duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter. However, the Select Committee to which the Customs Bill, 1962, was referred commented on the proposed clause as follows :—

"The Committee are of opinion that some time limit should be laid down within which a notice may be served upon an importer or an exporter, as the case may be, for payment of duty not levied, short-levied or erroneously refunded by reason of collusion or wilful mis-statement or suppression of the facts on his part, and they feel that a period of five years should be adequate for this purpose".

F. No. 55/70/67-Cus. IV

COPY

ANNEXURE 'A'

Notes in the Minitry of Law

CONFIDENTIAL

(Deptt. of Legal Affairs)

Bombay

In this case the Custom Department feels, on reconsideration of the matter, that it would be possible to invoke the provisions of Section 28 of the Customs Act, 1962 read with Section 142 of the said Act for the purpose of recovery of the duty short-paid and the file is submitted to this Ministry for confirmation of the said view. *It is not clear to me how the provisions of Section* 28 *and Section* 142 *are applicable.* From the previous notes recorded it appears that the duty has been correctly assessed but that after the assessment and before actual payment of duty, a fraud has been practised by altering figures of quantities in the bill of entries which has resulted in short-payment of duty. The question, therefore, arises whether this is a case of non-levy or short-levy of duty. *On the facts disclosed it appears that the instant case is a* case of *short-payment of duty and the duty was not short-levied* although it *may in effect be that* case. Further, before the recovery proceedings under the Act can be invoked it has to be established that a person has not paid any duty demanded from such person. Question, for consideration therefore is whether this is case where the correct duty payable was demanded from the person and that he has failed to do so. It is presumed that the Department seeks to rely on Section 142 because they have given notice calling upon the importers to pay the duty on 13th July 1964. Now the question arises whether these notices issued in July, 1964 are valid notices or they are notices which are time-barred, as contended by some of the importers. Even the *old Section* 39 *contemplates* payment of duties not *levied or short-levied and not to recovery duty* properly *assessed but payment not made in accordance therewith.* Even assuming however that Section 39 was applicable the notice of demand for short-levy should have been given within three months from the relevant date. That not having been given, no action could be taken under Section 39 of the Act and *if the right to* recover under *Section* 39 *of the Act was lost or time-barred it* cannot be said that *the same is revived under Section* 28 *of the Act.* Section 160 (7) of *the Act provides that any duty or penalty* payable under any *repealed enactment may be recovered in the manner* provided under *the* 1962 *Act. The question, therefore is whether* the *duty was payable under the Old Act.* A distinction must be drawn between the words 'payable' and 'liability to pay'. *There may be* or may *have been a liability to pay under the Act but the* liability to pay *is not the same as the amount having become payable* unless in *pursuance of that assessment there is a notice* of demand made *within the prescribed time for such* payment. In these circumstances, I feel *that it would be difficult to have* recourse to *recovery proceedings under the new Act.* However, as the suit will not be time-barred immediately if the Department wants to take a chance by resorting to these measures, perhaps this attempt may be tried but it is bound to be challenged in view of the letters which have already been addressed by some of the importers to the customs authorities challenging the validity of the notice issued in 1964.

Collector of Customs, Bombay

D.O. No. 4950-Rev.A/288-68

OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

S. Ramamurthy,
Administrative Officer (Revenues Audit).

Dear Shri Saldanha,

New Delhi............196..

Please refer to your D.O. F. No. 55/70/67-Cus. IV, dated 7-10-68 forwarding further information required by the Public Accounts Committee on the points arising out of the Government's REPLIES in respect of para 2.57 of the 2nd Report of the Public Accounts Committee.

In reply to point (iii) of serial No. 13 it has been mentioned that the recovery of demands in the cases covered by the audit para had become time-barred under Section 39 of the Sea Customs Act, 1878 and that time limit has been extended to five years in respect of these cases under the new Act (Customs Act, 1962—proviso the Section 28(1) (*ibid*).

It would, however, appear from the note of the Ministry of Law. Department of Legal Affairs, Bombay that the cases of fraud of the type which occurred in Bombay Custom House were not affected by time-bar under the Sea Customs Act, 1878, as they were not cases or short levy or non-levy, the fraud having seen committed after the assessing officer had levied the proper duty on the goods imported. The Ministry have observed in the note as follows :

> "The question, therefore, arises, whether this is a case of non-levy or short-levy of duty. On the facts disclosed it appears that the instant case is a case of short—payment of duty and the duty was not short-levied although it may in effect be that case."

In audit's view the opinion expressed by Bombay Branch of the Law Ministry is not very clear whether the case is one of short levy or not and whether the proviso to Section 28(1) could be brought in to rope in such cases.

The Ministry may, therefore, kindly get the position re-examined by the Ministry of Law, if necessary, before sending a final reply to the Public Accounts Committee.

Yours sincerely,
Sd.

Shri A. C. Saldanha,
Under Secretary,
Government of India,
Ministry of Finance,
Department of Revenue & Insurance,
NEW DELHI

No. 4951-Rev.A/288-68, dated

Copy to Shri K. Seshadri, Under Secretary, Lok Sabha Secretariat, Parliament House for information with reference to L.S.S. letter No. 2/

Sd.

1/53/67-PAC, dated 6-11-68. As regards the time limit of five years mentioned in the proviso to Section 28(1) of the Custom Act, 1962 it would appear from the draft reply of the Ministry under reference that the adequacy of time limit was examined by the Select Committee to which the Customs Bill, 1962 was referred and the limit was fixed on the basis of the Select Committee's recommendations.

Recommendations

The Committee feel that it is a most anomalous position that the goods lost after landing at a port are not liable to duty. The Customs Law does not provide for recovery of duty from the Port Trusts from whose custody the goods are lost. The responsibility of the Port Trusts extends to that of a bailee for a period of seven days after the goods are landed at the port. As a bailee the Port Trusts were expected to take reasonable care and caution over the safe custody of property. The Port Trusts charge demurrage on the goods, delivery of which is not taken within seven days. The amount of the demurrage charged was Rs. 3 to 4 crores in 1964-65 and nearly Rs. 5 crores in 1965-66 in Bombay Port alone. In these circumstances, the Committee are of the view that the Port Trusts cannot be completely absolved of the responsibility for the loss of goods held up by them, and it is reasonable that the Port Trust is held responsible at least partly for the loss of customs duty on packages pilfered from their (Port Trusts) custody. The Committee feel that this aspect needs further looking into especially in view of the fact that the value of missing stores has gone up in recent years. Moreover when the loss of goods after landing is assumed to be due to their being directed surreptitiously the Committee think that the entire position needs to be reviewed. Unless something drastic is done, the Committee are afraid imported goods will continue to be pilfered and surreptitiously removed and the public exchequer would be put to loss.

The Committee are sorry to note that the authorities do not possess a complete record of goods lost and their value. There is no system of keeping such a record and for that purpose the figures supplied by the police authorities alone can be relied upon. The Committee feel that a proper account of goods received and lost during and after the seven days period should be maintained by the Port Trusts and also by Customs authorities.

The Committee also feel that there is need to devise measures by which the Ports do not become warehouses for the importers, till they are able to find suitable accommodation outside. Such a tendency on the part of importers should be effectively discouraged.

The Committee were informed during the evidence that an expert study team had been appointed to look into the matter from all aspects. The Committee would like to be informed of the findings of the expert study team and the action taken.

[*S. No.* 15 (*Para* 2.83 *to* 2.86) *of App. VIII of 2nd Report* 1967-68]

Action taken

The problem of pilferage of goods from the docks has been engaging the attention of the Customs Department and the Port Trust Authorities

for some time past. The Customs Study Team, which has looked into the matter from all aspects, in their Report have held that—

> "the public revenues should not suffer for unsatisfactory security arrangements in the port. We further think that agency which has custody of goods and which alone is responsible for their security should itself have a stake in the matter and not be immune from the consequences of a failure to ensure their safety. We, therefore, recommend that the Port administration should accept liability for payment of duty on goods landed in its custody and pilfered or lost therefrom."

The Empowered Committee has considered the above recommendation of the Customs Study Team and taken the following decision thereon :

> "The Transport Ministry and the Department of Revenue should in consultation with the Ministry of Law, examine the existing procedures with a view to rationalising the 'prescribed period' for which Ports should accept responsibility for custody, and also take a decision as to the Port's accepting liability to duty during that period. In respect of pilferages taking place beyond this 'prescribed period' the liability to duty cannot be put on the port organisation and if the customs feel that somebody should be liable, amendment of the present law making the importer liable, might be considered."

An extract of the relevant portion of the Customs Study Team's Report alongwith a copy of the decision taken thereon by the Empowered Committee and the relevant extracts from the Second Report of Public Accounts Committee relating to pilferages and loss of goods after landing at the Ports have been forwarded to the Ministry of Transport for taking implemental action thereon.

3. The recommendations of the Public Accounts Committee contained in para 2.84 of their report has been noted for compliance and suitable instructions to the Custom Houses have issued.

4. As regards implemental action required to be taken by the Ministry of Transport & Shipping on the recommendations contained in paras 2.84 & 2.85, a reply is under issue from that Ministry.

F. No. 55/73/67-Cus.IV

Further Information

> Please intimate the action taken by Government on the proposal of the Empowered Committee to rationalise the period for which Port Trusts should accept responsibility for custody of goods and liability for duty arising therefrom, in the event of pilferage.

It is understood from the Ministry of Transport and Shipping that in view of the importance of the issues involved in the proposals of the Empowered Committee to rationalize the period for which Port Trusts should accept responsibility for custody of goods and liability for duty arising therefrom, that Ministry have referred the issues to the Commission on Major Ports which has been set up by Government to look into all aspects of the working of the major ports.

[*F. No. 55/73/67-Cus.IV*]

Recommendation

The Committee feel that it is a most anamalous position that the goods lost after landing at a Port are not liable to duty. The Customs Law does not provide for the recovery of duty from the Port Trusts from whose custody the goods are lost. The responsibility of the Port Trusts extends to that of a bailee for a period of seven days after the goods are landed at the port. As a bailee the Port Trusts were expected to take reasonable care and caution over the safe custody of property. The Port Trusts charge demurrage on the goods, delivery of which is not taken within seven days. The amount of the demurrage charged was Rs. 3 to Rs. 4 crores in 1964-65 and nearly Rs. 5 crores in 1965-66 in Bombay Port alone. In these circumstances, the Committee are of the view that the Port Trusts cannot be completely absolved of the responsibility for the loss of goods held by them, and it is reasonable that the Port Trust is held responsible at least partly for the loss of custom duty on package pilfered from their (Port Trusts) custody. The Committee feel that this aspect needs further looking into especially in view of the fact that the value of missing stores has gone up in recent years. Moreover, when the loss of goods after landing is assumed to be due to their being diverted surreptitiously, the Committee think that the entire position needs to be reviewed. Unless something drastic is done, the Committee are afraid imported goods will continue to be pilfered and surreptitiously removed and the public exchequer would be put to loss.

The Committee are sorry to note that the authorities do not possess a complete record of goods lost and their value. There is no system of keeping such record and for that purpose the figures supplied by the police authorities alone can be relied upon. The Committee feels that a proper account of goods received and lost during and after the seven days period should be maintained by the Port Trusts and also by Customs authorities.

The Committee also feel that there is need to devise measures by which the Ports do not become warehouses for the importers, till they are able to find suitable accommodation outside. Such a tendency on the part of importers should be effectively discouraged.

The Committe were informed during evidence that an expert study team had been appointed to look into the matter from all aspects. The Committee would like to be informed of the findings, of the expert study team and the action taken.

[Sr. No. 15 Paras 2.83 to 2.86 of App. VIII of 2nd Report (1967-68)]

Action taken

At present the different Port Trusts Acts or the Regulations framed thereunder provide for specified number of days after the landing of goods beyond which the port authorities shall not be in any way responsible for the loss, destruction or deterioration of or damage to, goods of which they have taken charge. This period varies at different major ports and is as under :—

Bombay	7 days
Calcutta	5 days
Madras	30 days

Vishakhapatnam	5 days
Cochin	4 days
Kandla	4 days
Mormugao	5 days
Paradip	5 days

During the above period, the responsibility of a port authority for the loss, destruction or deterioration of goods of which is has taken charge, shall—

(i) in the case of goods received for carriage by railways, be governed by the Indian Railways Act, 1890, and

(ii) in other cases be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in section 152 of that Act.

2. The legal position, therefore, is that while the port authorities do not have any responsibility for pilferages etc. after the expiry of the days mentioned above, even during the said days their responsibility is only that of a bailee *i.e.* they are required to take as much care of the goods placed in their custody as a man of ordinary prudence would take of his own property.

3. Section 48 of the Customs Act, 1962 provides for the disposal of imported goods by the Custodian thereof, when such goods are not cleared within two months from the date of unloading thereof or such further time as the proper officer may allow. In practice, extension of time beyond two months is liberally allowed whenever the circumstances so warrant. So far as the importers are concerned, there is thus no time limit set for their obtaining clearance of the imported goods from Customs. However, the port authorities cannot be expected to accept responsibility for the safe custody of goods for an indefinite period, because, apart from other practical difficulties, this would defeat the objective to which a reference has been made in para 2.85 of the Committee's Report. If the importers know that they can hold the port authorities responsible for their goods till clearance, they will be encouraged to treat the port premises as warehouses. The risk of pilferage would also increase with prolonged storage. The possibility of an importer conniving in the surreptitious removal cannot also be ruled out if he knows that he would be able to claim the 'loss' from the port. The prescription of a time limit is, therefore, absolutely inescapable and serves as one of the means by which congestion in the ports is reduced and the ports are not allowed to be used as warehouses.

4. Apart from the above, the rates of demurrage have also been steeply increased to make it un-economical for the importers to use the port premises as warehouses for prolonged periods. These rates are kept under review from time to time if there is any indication of the misuse of the port warehouses. Even then, the recommendation made in para 2.85 of the Committee's report has been brought to the notice of all major port authorities for appropriate action.

5. The rates of demurrage have not been fixed for the sake of earning more revenue but as a disincentive to delay in clearance. For the reasons already explained in the proceeding paragraphs, the fact of the port recover-

ing demurrage charges cannot be linked with their responsibility for pilferage etc. The ports cannot, therefore, be made responsible for any loss, including loss of customs duty, beyond the days mentioned in paragraph 1 above. In case the responsibility for the loss of customs duty is to be fixed in such cases on the importers, the Finance Ministry may consider amending the Customs Act, 1962 to provide for this.

6. One of the recommendations made by the Customs Study Team set up by the Ministry of Finance was as follows :—

> "Port Administration should accept liability for payment of duty on goods landed in its custody and pilferred or lost therefrom".

This recommendation was considered by the Empowered Committee set up by the Ministry of Finance to take decisions on the Study Team's recommendations. The Committee decided as under :—

> "The Transport Ministry and the Department of Revenue should in consultation with the Ministry of Law, examine the existing procedures with a view to rationalising the "prescribed period" for which ports should accept responsibility for custody and also take a decision as to the ports' accepting liability to duty during that period. In respect of pilferages taking place beyond this prescribed period the liability to duty cannot be put on the port organisation and if the Customs feel that someone should be liable, amendment of the present law making importer liable might be considered".

As the issues raised are important this question has been referred to the Major Ports Commission which has been set up by Government to look into all aspects of the working of the major ports. (A copy of Government Resolution setting up the Commission is attached).

7. As regards a proper account being kept of goods received and lost during and after the liability period, the port authorities have informed Government that they can furnish information only in respect of such losses for which either claims are lodged with them or where the cases are reported to the police. In cases in which neither of this is done, the port authorities have no means to know about the losses. Information regarding the cases in which claims are lodged or reports are made to the police is available.

This note has been seen and vetted by Audit.

(Z. S. Zhala)

Joint Secretary to the Govt. of India.

(Ministry of Transport & Shipping)

(TO BE PUBLISHED IN PART I, SECTION 1 OF THE GAZETTE OF INDIA

GOVERNMENT OF INDIA

MINISTRY OF TRANSPORT AND SHIPPING

New Delhi, the 14th February, 1968.

RESOLUTION

No. 19-*PG*(101)/68.—The Government of India have decide to set up a Commission on Major Ports consisting of the following:

Chairman

Shri R. Venkataraman.

Members

Shri N. Dandekar, M.P.
Shri M. P. Bhargava, M.P.
Shri M. N. Naghnoor, M.P.
Shri S. R. Kulkarni.
Shri B. B. Ghosh.
Prof. V. V. Ramanadham.
A representative of the Ministry of Finance.

2. The terms of reference of the Commission will be as follows:—

(i) To examine the methods of working of major ports with a view to improve their operational efficiency.

(ii) To consider broadly their development programmes in the context of present and future national needs with special reference to the changing shipping and port technology.

(iii) To examine specifically the following aspects of port working—

(a) Management,

(b) Financing, and

(c) Personnel.

(iv) To consider in the light of the above, the capacity of the ports to enhance the current rate of ex-gratia payment.

(v) To review the arrangements that exist for coordination among the different ports.

(vi) To make recommendations on the above and other ancillary matters.

3. The Commission will have a full time Secretary of the rank of a Deputy Secretary to the Government of India.

4. The Commission will be assisted by special consultants to be appointed in specific fields wherever necessary.

5. The Commission will submit its report within a period of six months.

6. The Commission will devise its own procedures. It may call for such information and take such evidence as it may consider necessary. The

Ministries/Departments of the Government of India will furnish such information and render such assistance as may be required by the Commission.

Sd.

Secretary to the Government of India.

ORDER

Ordered that the Resolution be published in the Gazette of India, Part I, Section 1.

Ordered also that a copy of the Resolution be communicated to all Ministries/Departments of the Government of India, Maritime State Governments/Administrations of Union Territories and all other concerned.

Sd.

Secretary to the Government of India.

The Manager,
Government of India Press,
Faridabad (Haryana)

Recommendation

The Committee note that the Board proposed to take powers to review the orders of the Collector passed in appeal. The Committee also suggest that the question regarding referring appeals in cases involving amounts above a certain limit to an independent authority other than the Collector should also be seriously considered. This would create more confidence in the appellate authority, as under the present system the Collectors who hear the appeals are also the administrative heads of the Collectorates.

[*S. No.* 20 *para* 3.30 *of Appendix VIII of* 2*nd Report* (*Fourth Lok Sabha*)]

Action taken

A comprehensive revision of the Central Excise law has been undertaken and in the draft Central Excises Bill suitable provision has been made for review of orders passed by Central Excise Officers on the lines contained in sections 130 and 131 of the Customs Act, 1962. For orders not being orders passed-in-appeal, the Board will be the reviewing authority and for orders passed-in-appeal by the Collectors *and* the Board, the Central Government will be the reviewing authority.

2. As regards the suggestion to refer appeals in cases involving amounts above a certain limit to an independent authority other than the Collector, it may be recalled that in their 44th Report—Third Lok Sabha (Para 3.70, S. No. 37 of Appendix XXI), the Committee had desired that the question of separating the executive and judicial functions of the Collectors should be seriously examined and had pointed out that such a separation of functions has already been done in the Income-tax and Customs Departments. It was stated in the Ministry's reply (copy annexed), that similar suggestions had been considered by Government in the past but had not been found feasible and that the matter could be considered afresh when the new Central Excises Bill was taken up for discussion by Parliament. Recently, the Committee desired certain additional information. They also desired the Ministry to indicate reasons as to why it was not feasible to separate the executive and judicial functions of the Collector. A copy of the Ministry's reply is annexed; it explains the Governments present approach on the

question of referring appeals to an independent authority other than the Collector.

(File No. 36/36/67-CXI)

Further Information

Please indicate reasons why it is not feasible to separate the executive and judicial functions of the Collector. It may also be stated whether the new Central Excise Bill has been drafted. If it has been drafted whether the recommendations of the Committee have been kept in view or not.

[L.S.S. O.M. No. 2/1/56/66-PAC, dated 2-9-61]

Reply

At the outset it may be stated that even under the existing practice, appeals do not have to go to the very same person who passed the executive orders in the same case. Attention in this connection is invited to the provisions in rule 213 of the Central Excise Rules, 1944 (copy annexed).

2. The question of setting up an appellate tribunal as in Income-tax was considered more than once in the past. It was felt that a purely judicial authority like the Income-tax tribunal might place undue emphasis on technical requirements which might be difficult of accomplishment. It would lead to delays in the settlement of disputes, encourage litigation in regard to classification of goods for duty purposes and ultimately hamper clearance of goods. The existing system was cheap and fairly quick and the volume of work was not likely to be sufficient to justify setting up of whole-time appellate tribunals. The analogy of income-tax is not applicable to customs or Central Excise appeals; income-tax is assessed with reference to the 'previous year' while customs or excise duties are assessed before the goods are about to pass into consumption.

3. In this connection, the proposal for constituting Appellate Collectors as in Customs was also considered. In Customs, such Appealate Collectors started functioning only in April 1963. They hear appeals against decisions of all officers other than those of the Collector of Customs. The appeals against the decisions of the Collector of Customs still lie to the Board. No change was made in the procedure for dealing with revision applications. However, the experiment with Appellate Collectors was new and its working was to be watched for sometime before any firm conclusion could be drawn. In view of this, the draft Central Excises Bill contains provisions only to continue the existing procedure under the Central Excises and Salt Act, 1944 and the rules made thereunder.

4. Recently, the Customs Study Team has examined the working of the Appellate Collectors and have recommended as follows—

"92. Appellate machinery somewhat on the lines of income-tax appellate tribunals should be set up. They may deal with revision applications against the orders of the appellate Collectors as also against the orders of the Collectors. (7.14)

93. In case of delay in setting up of such machinery, at least the appellate and revisionary functions should be separated from the executive and administrative functions by suitable arrangements at the Board's and Government's level. (7.15)".

The above recommendations are still under consideration and it will take some time before Government's decision thereon is available. It is also understood that the Administrative Reforms Commission are looking into this very question. The Board has, therefore, kept the question open for the time being.

5. The draft Central Excises Bill is still under scrutiny in consultation with the Ministry of Law, in the light of the comments and suggestions received from the Collectors of Central Excise, Director of Inspection, Customs and Central Excise and the concerned Ministries.

Copy of Rule 213 of Central Excise Rules, 1944

213. **Appeals.**—An appeal against an order or decision of an officer shall lie—

(i) if the appeal is against an order or decision of a Superintendent—

(a) Where there are Deputy Collectors, to the Deputy Collector to whom such Superintendent is subordinate; and

(b) Where there are no Deputy Collectors, to the Collector or Deputy Collector incharge of a Collectorate;

(ii) if the appeal is against the order or decision of an Assistant Collector—

(a) to the Collector to whom such Assistant Collector is subordinate; and

(b) Where there is no Collector, to the Deputy Collector-in-Charge of the Collectorate;

(iii) if the appeal is against the order or a decision of a Deputy Collector—

(a) to the Collector to whom such Deputy Collector is subordinate; and

(b) where there is no Collector, to the Central Board of Revenue;

(iv) if the appeal is against an original order or decision of a Collector or Deputy Collector-in-Charge of a Collectorate, to the Central Board of Revenue :

Provided that if, between the date of the order or decision appealed against and the date of the hearing of the appeal, the officer who passed the order or decision is appointed as Deputy Collector or Deputy Collector-in-Charge of a Collectorate or Collector, to whom the appeal lies under the foregoing provisions, the appeal shall be heard—

(a) if such officer is appointed as Deputy Collector, by the Collector;

(b) if such officer is appointed as Deputy Collector-in-Charge of a Collectorate or Collector, by the Central Board of Revenue.

Recommendation

The Committee would desire that the question of separating the executive and judicial functions of the Collectors should be seriously examined,

so that the parties do not have to go in appeal to the very same persons who have already passed executive orders in the same case. The Commitee would like to observe here that both in the Income-tax and Customs Department, Appellate Authorities have been separated from the executive. They would, therefore, suggest that Government should consider the question of extending the same principle to the Excise Department also.

[*S. No.* 37 (*para* 3.70) *Appendix XXI to Forty Fourth Report* 1965-66]

Action taken

Similar suggestions have been considered by Government earlier but have not been found feasible. Attention in this connection is invited to the reply (copy annexed) made in Lok Sabha to unstarred question No. 808 dated 24th February 1966. The matter could be considered afresh when the new Central Excise Bill, (to replace the existing enactments) is taken up for consideration by Parliament.

(F. No. 36/10/66-CXI)

(ii) SEVENTH REPORT (FOURTH LOK SABH)

Recommendation

The Committee regret to note that the Ministry of Finance have taken a considerably long time in scrutinizing the provisions of the Bill. They hope that the Bill in question will now be drafted in consultation with the Ministry of Law without any further delay and brought before Parliament as early as possible.

[S. No. 3 of Appendix V—Para No. 2.3 of 7th Report (4th Lok Sabha)]

Action taken

The Committee's observations have been noted. Delay in introducing the Central Excises Bill in the Parliament has been caused because of comprehensive nature of the legislation and a very large number of comments and suggestions received from the Collectors of Central Excise on the draft Bill which are under examination in consultation with the Ministry of Law. This Ministry expects to introduce the Bill in the next Session.

(*F. No.* 36/43/67-*CX.I*)

Recommendation

The Committee would like to reiterate the observations contained in para 3.70 of their 44th Report. They desire that the question of setting up separate authorities for the exercise of judicial and executive functions in the Department of Central Excise should be examined seriously in all its aspects and an early decision taken.

[*S. No.* 4 *of Appendix V—Para No.* 2.8 *of 7th Report* (*4th Lok Sabha*)]

Action taken

The Committee's observations have been noted. The matter would be given full consideration in the light of the decision on the Report of the Customs Study Team and on receipt of the recommendations of the Administrative Reforms Commission in this behalf. This Ministry would also like to profit by the views of the Parliament as expressed in the Joint Select

Committee and the two Houses during discussion on the Central Excises Bill which is likely to be introduced in the Parliament during the next Session.
(*F. No.* 36/43/67-*CX.I*)

Recommendation

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

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 share-holders in their income-tax returns and that taxes due on them have not been evaded.

The Committee would like Government to ensure that instructions issued under the Central Board of Direct Taxes letter No. 64/163/66-IT (Inv), dated the 29th May, 1967 on the subjects of the failure to furnish returns under section 286 of the 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.

[*S. No.* 6 *and Paras* 2.21 *to* 2.23 *of Appendix V to 7th Report, 4th Lok Sabha*]

Action taken

The observations of the Committee in Paras 2.21 and 2.22 of their Seventh Report 1967-68 have been noted by the Government. The Committee will be informed of the final position. A copy of the instructions issued in compliance with the directions of the Committee in para 2.23 of their report is enclosed.

(*Vetted by Audit Vide DRA's D.O. No.* 2623-*Rev.A*/408-68, *dated* 5-6-68)

F. No. 64/163/66-*IT*(*Inv*).

F. No. 64/163/66-IT(Inv)
GOVERNMENT OF INDIA
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 24th May 1968

From

The Secretary
Central Board of Direct Taxes

To

All Commissioners of Income-tax,

Sir,

SUBJECT : *Prosecution under section 276 for not furnishing information under section 286 regarding shareholders to whom dividends have been paid—Instructions regarding.*

Please refer to the Board's circular letter of even number, dated 29th May, 1967, on the above subject.

2. The Public Accounts Committee has observed, as under, in its seventh Report (Fourth Lok Sabha) :

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

In paragraphs 3 of the Board's circular referred to above, it was directed that, by 31st August, each year, the Income-tax Officer should report to the Commissioner of Income-tax all cases of default with proposal for action under section 276/279. The Commissioners of Income-tax were requested to apply their mind to these proposals and accord their sanction, wherever called for. The attention of all officers may once again be drawn to these instructions are adhered to.

3. A report may also be sent to the Board by 15-6-68 indicating whether the registers in questions have been properly maintained and further that the proposals for prosecution have been carefully considered and sanction accorded, wherever necessary. The number of prosecutions launched for failure to furnish returns under section 286 may also be stated.

Yours faithfully,

Sd,

Secretary, Central Board of Direct Taxes

CHAPTER V

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

(i) SECOND REPORT (FOURTH LOK SABH)

Recommendation

The Committee regret that in spite of their observations in the 21st Report and the 27th Report (Third Lok Sabha) no improvement is visible in the working of the Internal Audit Organisation. They hope that the question of re-organisation be given immediate consideration and all necessary steps taken to improve the working of the Internal Audit Organisation. They would like to be informed of the decision arrived at in this connection along with the progress made with their implementation.

[*S. No.* 8 *of App. VIII of* 2*nd Report* (1967-68)]

Action taken

A Study Team was set up in 1966 to go into the working of the Customs Department. That Team had submitted its final report in July, 1967. The recommendations made by the Study Team cover aspects relating to improvements in the working of the Internal Audit Department. In the light of the recommendations made by that Team, this matter is being re-examined and pursued. It is expected that decision of the Government on this will be reached soon.

(*Duly vetted by the Audit*)

F. No. 2/40/67-*Ad.IV*.

Recommendation

A more serious feature of this case is that the manufacturer has retained the differential duty amounting to Rs. 77,739 collected from the dealers. The Committee were informed that this was inherent in the system of provisional assessment of duty that the party in order to safe-guard itself might collect higher duty from the customers. If so, the committee consider it as a very unsatisfactory position which needs rectification. They desire that this aspect should be seriously considered so that pending the finalisation of the provisional assessment, the tax realised from the consumers is deposited with Government.

(*Serial No.* 21-*Appendix VIII-para No.* 3.36

Action taken

The suggestion made by the Committee is being examined in consultation with the Ministry of Law.

(*F. No.* 24/66/65)

Recommendation

The Committee take a serious view of the lapse of the officers in omitting to add warranty, packing, forwarding and other charges to the assessable value of refrigeration and air-conditioning machinery in this case which

resulted in under assessment of duty amounting to more than Rs. 4 lakhs. They would like to know about the action taken against the officers concerned.

[*S. No.* 23(3.50) *Appendix VIII to the Second Report* (*Fourth Lok Sabha*)]

Action taken

It was a case of short-assessment of duty due to omission to add warranty, packing, forwarding and publicity charges etc., which have now been taken into consideration for the revised assessment. The revised demand is for more than Rs. 17 lakhs and not merely for more than 4 lakhs). The party having gone up in appeal the correct amount can be determined only after the competent authority has taken a decision. The Collector, Delhi Collectorate, has been asked to fix responsibility for under-assessment. It will take some time before any action against the officers held responsible is taken. A further report will be submitted to the Committee.

Further Information

(2) S. No. 23—Please intimate the latest position regarding the outcome of the appeal filed by the party and the action taken to fix responsibility for under-assessment.

[*Lok Sabha Secretariat D.O. No.* 15/4/67/*PAC, dated the* 19*th September,* 1968]

Action taken

The appeal has since been decided by the Collector of Central Excise, Delhi, and has been partly allowed. The decisions taken by the Collector, in brief, are as follows :—

The original wholesale prices declared and approved during 1961 to 1966 have been confirmed as correct. The later upward revision effected in these prices by the subordinate authorities in October, 1966, has been held to be incorrect. So far as the specific question of inclusion of publicity, packing and warranty charges in the assessable value is concerned, the Collector has ordered that publicity and warranty charges should be added to original wholesale values for arriving at the assessable values. In regard to packing charges, the decision is that wooden packing represents special packing and as such, its inclusion in the assessable value is not warranted in law.

2. The Collector has also held that the original assessments were provisional and therefore, the question of the demands being time-barred does not arise. In this view the demands as modified by the Collector will be enforceable. The Collector, who is the competent disciplinary authority considers that in view of the circumstances stated the question of disciplinary action against the staff concerned does not arise. A copy of Collector's order-in-appeal is enclosed.

[*F. No.* 31/35/68-*CXVII*]

Finance (Department of Revenue and Insurance)

Recommendation

The Committee note that in this case there were three distinct stages in application of the tariff *viz.*,

(a) the introduction of the new definition of proprietory medicines from 24th April, 1962;

(b) the clarificatory orders issued by the Board on 27th December, 1962; and

(c) Issue of orders by the Board on 12th November, 1963 that revised levy should take effect from the date of communication of the orders to the manufacturers and that the earlier demands should be withdrawn.

The Committee find that instructions of November, 1963 that the revised levy should take effect from the date of communication of orders to the manufacturers were issued because of the special circumstances of this case that mistakes had been made by collectors in the past in classifying the various medicines and the orders of December, 1962, amounted to a change in the practice. It is, however, doubtful whether there is any legal authority to issue these instructions authorising the collectors to levy duty prospectively from the date of communicating the decision. According to the Ministry's own admission during evidence, the decision of the collectors "could have retrospective effect right from April, 1962 subject to the law of limitation."

Another draw-back in the instruction of November, 1963 was that the lower officers could benefit a licencee by delaying communication of the decision and the assessee could also lodge receiving the revised communication, which would result in loss of duty.

The Committee desire that, in order to avoid such confusion in the case of levy of a new excise duty the orders issued with the budget instructions should in future be more clear and specific and apply retrospectively.

[*S. No.* 24 *Paras* 3.58—3.61 *of* 2*nd Report* (4*th Lok Sabha*) *Appendix VIII*]

Action taken

The Public Accounts Committee's observations have been noted and every effort will be made to ensure that the budget instructions are as clear and comprehensive as possible.

2. So far as the apprehension expressed by the Committee in para 3.60 of their Second Report is concerned, remedial measure has already been taken as may be seen from this Ministry's letter F. No. 23/18/64-CXII, dated 15-4-1965 (copy enclosed). It has been made clear in this letter, that a tariff rulings (which is nothing but an executive instruction explaining what, in the Board's view, the interpretation of the law or tariff is), if in favour of the Government is to be given effect from the date of its issue and *not* from the date of its communication to the assessee. The date of issue being one clear and verifiable fact, there would be uniformity as to the date from which it should be effective.

3. As stated in para 3.59 of the Committee's Second Report, the legal position is quite clear. A tariff ruling, if in favour of the Government,

could have retrospective effect subject to the law of limitation. But on grounds of equity it has been the Ministry's long standing practice to give prospective effect to tariff rulings if they are in favour of the Government. It would cause avoidable hardship if the assessees are called upon to pay higher duty in respect of the goods already cleared and, in most cases, consumed, when there was an established practice to charge lower duty in accordance with the interpretation of the tariff then prevailing and later on it is discovered that the said interpretation was not the correct one. The question whether this long standing practice should be changed and steps should be taken to recover the duty discovered to have been short levied on the issue of a tariff ruling in the same way as refunds are allowed in respect of past clearances is separately under consideration of the Board. The Committee would be informed of the final decision of the Government in the matter.

(Approved by Joint Secretary)
(*F. No.* 36/48/65-*CXI*)

COPY OF [M. F (D.R.) F. No. 23/18/64-CXII, DATED 15-4-1965.]

(Circular letter Misc. 5/65).

Central Excise Tariff Rulings—Date of effect

Reference Ministry's letter F. No. 31/23/63-CXII, dated the 23rd October, 1963 in which it was desired that instructions contained in the Custom's Wing letter F. No. 25/12/62-Cus.III, dated the 4th March, 1963 might be adopted *mutatis mutandis* in respect of tariff rulings issued on the Central Excise side.

2. The Customs Wing letter referred to above has since been amended *vide* their letter F. No. 25/1/64-Cus.III, dated the 24th October, 1964, in the light of which, and further instructions that have been issued by that Wing, the matter has been reviewed. It has been decided that the effect of tariff rulings issued on the Central Excise side is intended to be as under :—

(1) Where a tariff ruling is in favour of the party—

(a) benefit may be allowed to the party if it has moved in the matter and its claim is live in any way at the time of the tariff ruling, whether as a result of the duty having been paid under protest, or a claim for refund having been put in, or an appeal or revision application having been preferred; and

(b) a *suo-motu* refund may be made to the party if the party has not put in any claim for refund, provided that the cause of this refund is discovered within the statutory time-limit of three months from the date of payment of duty; and

(2) Where a tariff ruling is in favour of the Government—it is to be given effect from the date of its issue; and

(3) Where assessment may have been made but duty has not been paid on the crucial date, higher rate of duty as a result of tariff ruling become attracted.

3. It is desired that steps may be taken for prompt circulation of tariff rulings direct to the Range Officers as these have revenue implications.

Recommendation

The Committee regret to note the lapse on the part of the field staff in not implementing the order of the Collector regarding classification of glass tubings till Audit pointed out the mistake. They would like to know the action taken against the field staff concerned.

[*S. No.* 27—*Appendix VIII—Para No.* 3.73 *of Report*]

Action taken

Disciplinary action against the departmental officers responsible for the lapse has been initiated and is in progress. A further report will be sent as soon as the action is finalised.

(*Vetted by audit*)
[*F. No.* 22/17/67-CXVI]

Recommendation

The Committee regret to note the delay on the part of the officer in drawing samples of the yarn. Even after drawing the samples and getting the report of the Deputy Chief Chemist, no action was taken to charge the yarn to duty. This resulted in a loss of revenue amounting to Rs. 2,71,122 for the period from 1st March, 1961 to 22nd June, 1962. The Committee would like to know the action taken against the officer concerned.

[*S. No.* 32 *of App. VIII of* 22*nd Report* (1967-68)]

Action taken

The observations of the Committee have been noted.

The disciplinary action which is being taken against the officer concerned has not yet been finalised. A further communication would follow.

[*F. No.* 1/53/65-*CXII*]

Recommendation

The Committee note that the total number of officers prosecuted in Courts was 11 out of which 3 cases resulted in acquittals and 2 were still pending.

The Committee hope that the cases which are pending will be finalised expeditiously.

[*S. No.* 40 *Appendix VIII of* 2*nd Report* (4*th Lok Sabha*)]

Action taken

The two cases in question are still pending in courts. One case is pending in the Court at Sitapur, while the other in the Court at Bijnor.

[*F. No.* 36/24/67-*CX-I*]

(ii) THIRD REPORT (FOURTH LOK SABHA)

Recommendation

The Committee regret to note that in as many as 11 cases there were under-assessments of tax for the assessment years 1956-57 and 1958-59 to 1964-65 amounting to Rs. 8.93 lakhs. They note, however, that in 9 cases assessments have been rectified and in one case a demand has yet

to be raised and collected. The under-assessment of tax amounting to Rs. 9,338 in another case has become time-barred.

The Committee have been informed in a Note by the Ministry that 'orders have been issued that a special review should be conducted in all the other charges with a view to check the correctness of the calculations of development rebate and appreciation allowance. The result of the review will be communicated to the Committee as early as possible."

The Committee would like to be informed of the result of the review and the action taken thereon.

[*S. No.* 15 *and paras* 1.108 *to* 1.110 *of Appendix VII to the Third Report,* 1967-68.]

Action taken

1.108. The Public Accounts Committee's remarks have been noted for compliance. Except in one case where revision has become time-barred (involving Rs. 9,338) in all the other cases, assessments have been rectified and the additional demand raised has been collected.

1.109 & 1.110. The result of the review of cases in the various charges (except the Commissioner of Income-tax, Shillong and Bangalore) was communicated to the Public Accounts Committee *vide* Ministry of Finance (Department of Revenue & Insurance) Notes F. No. 36/28/64-IT(AI). dated 7-10-67 and 8-12-67. The result of the review relating to the charges of Shillong and Bangalore is being communicated to the Committee separately.

[*Vetted by Audit* vide *A.O.s D.O. No.* 4991-*Rev.-A*/564-67-*IV, dated* 13-11-68.]

Recommendation

(a) The Committee regret to note that, in spite of the fact that the attention of the Ministry was drawn to the same type of irregularity on a previous occasion, a similar irregularity was noticed during test check of assessment of five companies involving underassessment of tax of Rs. 3.88 lakhs. The Committee suggest that immediate steps should be taken to review all the cases in the different charges so that mistakes, if any, could be found and action by way of rectification taken before the claims become time-barred.

(b) The Committee further desire that it should be investigated whether or not in this case the mistake was *mala fide*.

The Committee hope that with the strengthening of the Internal Audit and the enlargement of its scope such mistakes would be avoided.

[*S. No.* 17 *and paras* 1.117 *and* 1.118 *of Appendix VII to Third Report,* 1967-68.]

Action taken

1.117. (a) As desired by the PAC, instructions have been issued to all the Commissioners of Income-tax *vide* Board's letter F. No. 36/12/65-IT(AI), dated 1-5-1968, that a review should be undertaken of all the cases where additional depreciation was wrongly allowed in the assess-

ment year 1959-60, and remedial action should be taken before the expiry of the limitation period. A copy of the instructions issued is enclosed.

The result of the review will be communicated to the Committee as early as possible.

(b) All the cases referred to in this para have been examined from the vigilance angle by the Commissioners and it has been found that no *mala fide* was involved in any of the cases.

1.118. The observations made by the Committee have been noted.

[*Vetted by Audit* vide *C. & A.G.'s U.O. No.* 3683-*Rev.A*/564-67 *II, dated* 23-8-68.]

[*F. No.* 36/12/65-*IT*(*AI*)]

F. No. 36/12/65-*IT*(*AI*)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 1*st May*, 1968

From

Shri N. Sriramamurty,
Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUB. :—*Irregularities noticed by Audit—Under-assessment arising from computation of depreciation—Para* 1.117 *of P.A.C's. Report,* 1967-68.

As you are aware, under the provisions of the Income-tax. 1922, the special allowance by way of additional depreciation on plant and machinery installed after 1-4-1948, was admissible only upto the assessment year 1958-59. However, certain cases were noticed where additional depreciation was wrongly allowed in the assessment year 1959-60, involving substantial under-assessment of tax. The Public Accounts Committee have suggested that a review should be made of all such cases in the various charges so that mistakes, if any, are detected in time and action by way of rectification is taken before the limitation expires.

2. The Board accordingly desire that steps should be taken to undertake a review of all such cases. relating to the assessment year 1959-60. Necessary remedial action should also be taken before the expiry of the limitation period.

3. The result of review may please be communicated to the Board by 30-6-1968 in the following proforma :

(i) Number of cases covered by the review.

(ii) Number of cases where there has been a mistake in the allowance of depreciation.

(iii) Amount of tax involved.

(iv) (a) No. of cases in which mistakes have since been rectified . . . . Amount of additional tax raised. Amount of additional tax recovered

(b) No. of cases in which mistakes noticed are under rectification. . . . . Amount of additional tax involved.

4. The cases where action is likely to become time-barred by limitation should be reviewed in the first instance.

Yours faithfully,
Under Secretary, Central Board of Direct Taxes.

Recommendation

The Committee suggest that the feasibility of imposing a restriction that the development rebate should not be transferred to the general reserve may be examined.

[*Serial No.* 19 *and Para* 1.137 *of Appendix VII to Third Report* 1967-68 (*4th Lok Sabha*)]

Action taken

The question of making an amendment in the Income-tax Act is under consideration of this Ministry.

[*Vetted by Audit* vide *D.R.A's. U.O. No.* 4834-*Rev. A*/564-67 *Vol. IV, dated* 4-11-68]

[*F. No.* 36/12/65-*IT*(*Audit*) *II, dated the* 14*th November,* 1968.]

Recommendation

1.138. The Committee may be apprised of the final outcome of the case.

[*Serial No.* 19 *and Para* 1.38 *of Appendix VII to the Third Report,* 1967-68 (*4th Lok Sabha*)]

Action taken

1.138. The Tribunal have not yet passed any order in respect of the appeals filed before them against the Appellate Assistant Commissioner's order in this case.

[*Vetted by Audit* vide *D.R.A's. U.O. No.* 4834-*Rev. A*/564-67/*Vol. IV, dated* 4-11-68]

[*F. No.* 36/12/65-*IT*(*Audit*), *dated the* 14*th November,* 1968]

Recommendation

The Committee are unhappy to note that though the assessments were completed by different Income-tax Officers, the same kind of mistake was committed in all the cases. As the under-assessment of tax is considerable, due to this kind of mistake, the Committee suggest a review of all cases falling under the 'tax-holiday' scheme, so that the mistakes could be rectified before the cases became time-barred.

[*S. Nos.* 22 *and para.* 1.153 *of Appendix VII to the Third Report*]

Action taken

1.153. Orders have been issued to all the Commissioners of Income-tax *vide* Board's letter F. No. 36/10/65-IT (Audit) dated 1-5-68 and 8-7-68 (copies enclosed) that a review may be conducted of all such cases relating to the assessment year 1964-65, 1965-66 and 1966-67 in their charges in which the benefit of 'tax-holiday' has been allowed. They have also been instructed that, in addition to the cases relating to the above-mentioned years, in the following types of cases for earlier years also, review should be made to see whether excess relief under section 15-C/84 has been allowed and steps taken to rectify the mistake, if any :—

(1) Assessments which have been set aside or have been re-opened under section 146;

(2) Proceedings re-opened under section 147(a); and

(3) Cases pending before the AAC.

The result of the review will be communicated to the Committee as early as possible.

(*Vetted by Audit* vide *C. & A.G's. U.O. No.* 3697-*Rev. A*/564-67 *IV, dated* 28-8-68)

F. No. 36/10/65-*IT*(*AI*).

F. No. 36/10/65-IT(AI)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 1*st May,* 1968

From

The Secretary,
Central Board of Direct Taxes

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Irregularities noticed by the Audit—Scheme of 'tax-holiday'—Para* 1.153 *of PAC's Report,* 1967-68.

In terms of Section 15-C/84 exemption from income-tax is admissible on profits derived from a new industrial undertaking to a new industrial undertaking upto 6% of the capital employed thereon. The rules of computation of the capital employed provide that in the case of depreciable assets acquired by purchases prior to the computation period, their value for the purposes should be taken to be written down value of the assets, as per definition in the income-tax Act. The term 'written down value' has been defined as the actual cost of assets reduced by all depreciation actually allowed under the Act. It has been noticed by the Revenue Audit Parties that in some cases the initial depreciation allowed in the year of installation on the assets acquired prior to 1-4-1956, was not deducted while arriving at the 'Written down value' with the result that there was an under-assessment of tax.

2. As the under-assessment of tax on account of such mistakes is considerable, the Public Accounts Committee have recommended that a review may be made of all such cases relating to the Assessment Years 1965-66 and 1966-67. It is, therefore requested that all such cases in your charge in which the benefit of 'tax holiday' has been allowed should be carefully revised and necessary steps may be taken to rectify the mistakes if any.

3. The result of the review as well as steps taken in that connection may please be intimated to the Board by 30-6-1968 in the following proforma :

(i) Number of cases covered by the review.

(ii) Number of cases where there has been mistake in the computation of capital for the purpose of allowance of 'tax holiday' benefit, on account of initial depreciation not having been deducted.

(iii) Amount of tax involved.

(iv) (a) No. of cases in which mistakes noticed have since been rectified . . .	Amount of Addl. tax raised.	Amount of tax recovered.
(b) No. of cases in which mistakes noticed under rectification. . . .	Amount of addl. tax involved.	

4. The rectification should not be allowed to become time-barred by limitation in any case.

Yours faithfully,

Under Secretary,
Central Board of Direct Taxes.

F. No. 36/10/65-IT(AI)I

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 8th July, 1968

From

Shri S. Bhattacharyya,

Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT : *Irregularities noticed by the Audit—Scheme of 'tax-holiday'—Para* 1.153 *of P.A.C.'s Report,* 1967-68—.

Please refer to Para 2 of the Board's letter of even number, dated 1-5-68 on the subject.

2. The Board have decided that, in addition to the cases relating to the assessment years 1964-65, 1965-66 and 1966-67, in the following types of cases for earlier years also review should be made to see whether excess

relief under section 15(c)/84 has been allowed and steps taken to rectify the mistakes if any :—

(1) Assessments which have been set aside or have been reopened u/s 146;

(2) Proceedings reopened u/s 147(a); and

(3) Cases pending before the A.A.C.

Yours faithfully,

Secretary,

Central Board of Direct Taxes.

Recommendation

The Committee feel that, if the Board had taken prompt action on the audit objection loss of revenue amounting to Rs. 56,704 could have been avoided. In these circumstances, the Committee need hardly emphasise the necessity of prompt action by the Board on objections pointed out by the Audit. The Committee also suggest that a review should be conducted, in respect of cases involving large amounts of dividend income, under the charge of all the Commissioners in order to ensure prompt and timely action in regard to the rectification of errors.

[*S. No.* 25 *and para* 1.166 *of Appendix VII to Third Report,* 1967-68]

Action taken

Instructions have been issued to all the Commissioners of Income-tax [*vide* Board's letter F. No. 36/12/65-IT(AI)II, dated 8-8-68] that a review should be conducted in their respective charges in respect of the cases with total income of over Rs. 1,00,000 assessed for the assessment upto 1960-61 during the financial years 1964-65, 65-66 and 66-67.

2. The result of the review will be furnished to the Public Accounts Committee as early as possible.

[*Vetted by Audit* vide *DRA's D.O. No.* 4452-*Rev.A*/564-67-*II,* *dated* 17-10-68]

NEW DELHI,

March 11, 1969

Phalgune 20, 1890 (*Saka*)

M. R. MASANI,

Chairman,

Public Accounts Committee.

APPENDIX I

. . . . *Recommendations in respect of which replies are awaited :*

2nd Report (Fourth Lok Sabha)

S. No.	Para of Report
Appendix VIII	
14	2·64
33	3·105—3·106
41	4·1
Third Report (Fourth Lok Sabha)	
24	1·160—1·61
28	1·185—1·87

APPENDIX II

Analysis of Government's replies

I. Recommendations/observations that have been accepted by Government :

Second Report (Fourth Lok Sabha)

(i) S. Nos. 1, 2, 3, 4, 5, 6, 7, 10, 12, 16, 17, 18, 19, 21, (3.35 & 3.37), 23 (para 3.52), 25, 26, 28, 29, 30, 31, 34, 36, 38, 39.

Third Report (Fourth Lok Sabha)

(ii) S. Nos. 1 (paras 1.12, 1.24, 1.25, 1.26, 1.27), 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 20, 21, 23, 26, 27, 28 (1.184), 29, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 (1.274 & 2.75), 43 (para 1.281), 44, 45, 46, 47, 48, 49 (para 2.23), 50, 51, & 52.

Seventh Report (Fourth Lok Sabha)

(iii) S. Nos. 1 & 5.

II. Recommendations/observations which the Committee do not desire to pursue in view of the replies of Government :

Second Report (Fourth Lok Sabha)

(i) S. Nos. 11, 21(3.34), 22, 23(3.51), 35, 37.

Third Report (Fourth Lok Sabha)

(ii) S. Nos. 30, 43 (1.282), 49 (Para 2.24).

III. Recommendations/observations replies to which has not been accepted by the Committee and which require reiteration :

Second Report (Fourth Lok Sabha)

(i) S. Nos. 9, 13, 15, 20.

Seventh Report (Fourth Lok Sabha)

(ii) S. Nos. 3, 4 and 6.

IV. Recommendations/observations in respect of which Government have furnished interim replies.

Second Report (Fourth Lok Sabha)

(i) S. No. 8, 21 (3.36), 23 (Para 3.50), 24, 27, 32 and 40.

Third Report (Fourth Lok Sabha)

(ii) S. Nos. 15, 17, 19, 22 and 25.

APPENDIX III

Summary of main Conclusions/Recommendations.

Sr. No.	Para No. of the report	Ministry/ Deptt. concerned	Recommendations
1.	1·5	Ministry of Finance. Department of Revenue & Insurance	The Committee hope that replies to the outstanding recommendations and final replies in regard to those recommendations to which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.
2.	1·9	Do.	The Committee hope that Government will take an early decision on the reports of the Tariff Revision Committee regarding Customs Tariff and Central Excise Tariff. They would like to know the progress made in rationalising the tariff.
3.	1·14	Do.	The Committee feel that the legal position in regard to the operation of the time-bar for recovery of duty in cases of frauds needs examination. The Department of Revenue have stated that the period of limitation operative for this purpose is 5 years under Section 28 of the Customs Act, 1962 and that this would hold good for "recovery of amounts short levied or not levied through frauds........" However, in the 29 cases of frauds in the Bombay Customs, the view of the Department of Legal Affairs, Bombay was that there had been "short payment and not short-levy and that Section 28 of the 1962 Act was not applicable. If this is so, the question arises, whether the period of five years stipulated in Section 28 would at all be available to Government for enforcing recovery in cases of frauds of this type. The Committee would like the Department of Revenue to examine, in consultation with the Ministry of Law the precise scope of Section 28 of the 1962 Act and its applicability to cases of frauds of this type and issue that instructions in the subject for the guidance of all concerned.
4.	1·19	Do. Ministry of Transport/Shipping	The Committee note that Government have referred to the Major Ports Commission the question of "rationalising" the "Prescribed period" for which ports should accept responsibility for custody of landed goods and liability to duty for the goods lost during that period. An allied question referred to the Commission is whether, beyond the "prescribed period", the importer should be made liable for loss of duty sustained by Government due to pilferage of goods left in the Port Trusts premises due to the failure of the importer to clear them. The Committee would like to know the final decision taken on both these questions.

Sr. No.	Para No. of the Report	Ministry/Deptt. concerned	Recommendations
5.	1·26	Ministry of Finance Department of Revenue & Insurance	The Committee note that Government have yet not come to a decision on the question of separating the executive and appellate functions in the Central Excise Department. They also note that the recommendations of the Administrative Reforms Commission in this respect are still awaited. The Committee would like Government to come to an early decision on this question.
6.	1·29	Do.	The Committee understand that the proposed Central Excise Bill was not introduced during July-August and November-December sessions (1968) of Parliament. They hope that the Ministry of Finance will take steps to introduce the Bill without further delay.
7.	1·35	Do.	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.
8.	1·36	Do.	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.

L 67LSS/68—19-4-69—GIPF.

Sl. No.	Name of Agent	Agency No.	Sl. No.	Name of Agent	Agency No.
	DELHI		34.	People's Publishing House, Rani Jhansi Road, New Delhi.	76
24.	Jain Book Agency, Connaught Place, New Delhi.	11	35.	The United Book Agency, 48, Amrit Kaur Market, Pahar Ganj, New Delhi.	88
25.	Sat Narain & Sons, 3141, Mohd. Ali Bazar, Mori Gate, Delhi.	3	36.	Hind Book House, 82, Janpath, New Delhi.	95
26.	Atma Ram & Sons, Kashmere Gate, Delhi-6.	9	37.	Bookwell, 4, Sant Narankari Colony, Kingsway Camp, Delhi-9.	96
27.	J. M. Jaina & Brothers, Mori Gate, Delhi.	11		MANIPUR	
28.	The Central News Agency, 23/90, Connaught Place, New Delhi.	15	38.	Shri N. Chaoba Singh, News Agent, Ramlal Paul High School Annexe, Imphal.	77
29.	The English Book Store, 7-L, Connaught Circus, New Delhi.	20		AGENTS IN FOREIGN COUNTRIES	
30.	Lakshmi Book Store, 42, Municipal Market, Janpath, New Delhi.	23	39.	The Secretary, Establishment Department, The High Commission of India, India House, Aldwych, LONDON, W.C.-2.	59
31.	Bahree Brothers, 188 Lajpatrai Market, Delhi-6.	27			
32.	Jayana Book Depot, Chapparwala Kuan, Karol Bagh, New Delhi.	66			
33.	Oxford Book & Stationery Company, Scindia House, Connaught Place, New Delhi-1.	68			

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PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, FARIDABAD.