

**HUNDRED AND SEVENTY-EIGHTH
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1983-84)**

(SEVENTH LOK SABHA)

**DIRECT TAXES—INCORRECT VALUATION OF
UNQUOTED EQUITY SHARES.**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

Presented in Lok Sabha on..... १९८४
Laid in Rajya Sabha on.....

**LOK SABHA SECRETARIAT
NEW DELHI**

January, 1984/ Magha, 1905 (Saka)

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* Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

PUBLIC ACCOUNTS COMMITTEE

(1983-84)

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Shri Sunil Maitra

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Seventy-eighth Report of the Committee on paragraph 4.35 (i) of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes relating to Incorrect Valuation of Unquoted Equity Shares.

2. The Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes was laid on the Table of the House on 31 March, 1982.

3. In regard to unquoted shares of private companies, a special provision exists in Section 37 of the Estate Duty Act which provides for two alternative modes of valuation viz., (i) by reference to the value of the total assets of the company; and (ii) the price which the shares "would fetch if they could be sold in the open market." The second mode of valuation has to be resorted to only in cases where the value of shares is not ascertainable under the first mode of valuation.

The Central Board of Direct Taxes, in their instructions dated 26 March, 1962, extended the method of valuation prescribed under the wealth-tax law based on book value of assets to Estate Duty assessments. It was pointed out in para 72 of the Audit Report, 1972-73 that this was not correct, because of the special provisions of Section 37 of the Estate Duty Act. The matter was referred to the Ministry of Law who gave their opinion in July, 1974 and the same was accepted by the Ministry of Finance with the approval of the Finance Minister. In the wake of this and in pursuance of the recommendations of the Public Accounts Committee contained in para 5.51 of their 211th Report (Fifth Lok Sabha) the Board cancelled the instruction of 26 March, 1962 and directed the Estate Duty Officers to review the estate duty assessments completed during the period from 1 November, 1973 to 29 October, 1974 and rectify the same under Section 59(b) of the Estate Duty Act. One of the assessments re-opened pursuant to the afore-mentioned instructions relates

to the estate duty case of Shri Hemant B. Mafat Lal who died on 16-8-1971. In this case, even according to the company's own balance sheet as on 31-3-1971, the market value of the assets was Rs. 18.17 crores against its book value of Rs. 4.43 crores. A short levy of Rs. 175.43 lakhs was pointed out in this case. When a notice for re-opening the assessment was issued in 1976, the accountable person made a representation to the Assistant Controller of Estate Duty as well as to the Board saying that the re-opening was not valid.

4. In March 1978, the Ministry of Finance referred the case to the Ministry of Law with two legal opinions. The Ministry of Law were requested to advise whether in the instant case 'it would be possible to say that the value of the shares could not be ascertainable by a reference to the value of the total assets of the company'. In May 1978, the Ministry of Law gave a detailed opinion as to the meaning of the expression 'if not ascertainable by reference to the value of the total assets of the company'. In June 1979 and in March 1980, the case was referred again by the Ministry of Finance to the Ministry of Law with the same two legal opinions. On both these occasions, the Ministry of Law reiterated their earlier views. Although there were no fresh cases and no new evidence, the Ministry of Finance referred the case again to the Ministry of Law in July 1980. On this occasion, the Deputy Legal Adviser with the concurrence of the Joint Secretary expressed an opinion which was totally inconsistent with all earlier opinions. This opinion was subsequently reversed by the Ministry of Law who reiterated their earlier opinion held by them all along. It is not clear to the Committee when in May 1978, the Ministry of Law after considering all the relevant factors, had given their considered opinion as to the meaning of the expression 'if not ascertainable by reference to the value of the total assets of the company', why the Ministry of Finance should have persisted in referring the same matter again and again to the Ministry of Law for the next 3½ years without adducing any new facts or evidence till the notice for reopening the assessment was quashed by the Bombay High Court.

The Committee have also observed that although the Assistant Controller had issued a notice for reopening the assessment of Shri Hemant B. Mafat Lal under Section 59(b) prompt action was not taken to complete the reassessment nor were later timely efforts made to get the stay order issued by the Bombay High Court vacated. The Committee have expressed a doubt if Government's case was properly represented before the High Court.

The Committee have desired the Ministry of Finance to investigate:

- (i) whether there was any deliberate move in the Ministry/ Board to delay the finalisation of the re-assessment in the instant case with a view to benefit the accountable person;
- (ii) whether there was any slackness/laxity in the Ministry/ Board to safeguard the interest of revenue in this case; and
- (iii) If so, to fix responsibility therefor.

5. The Committee have also expressed concern over the heavy pendency of estate duty assessment cases. The number of such cases as on 31-3-1982 was 37578. The Committee have observed that while in absolute terms there is a heavy pendency of estate duty assessments taken as a whole, the pendency relating to the assessments made in a year is very high in the case of bigger assessments. For each case of assessment of over Rs. 20 lakhs disposed of during 1981-82, as many as 3 cases were pending and for each case of assessment in the range between Rs. 10 lakhs and Rs. 20 lakhs disposed of during 1981-82 as many as 5 were pending. The Committee have desired the Ministry to give a serious thought as how to quicken the pace of disposal of bigger assessment cases. They have also desired that the special cell which has been created with the specific purpose of looking after bigger cases should play a more effective and meaningful role than hithertofore.

6. The Public Accounts Committee (1982-83) examined this paragraph at their sitting held on 16 December, 1982. The Committee (1983-84) considered and finalised this Report at their sitting held on 31 December, 1983. Minutes of the sittings form Part II* of the Report.

7. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix VI). For facility of reference these have been printed in thick type in the body of the Report.

8. The Committee place on record their appreciation of the assistance rendered to them in the examination of this paragraph by the office of the Comptroller and Auditor General of India.

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

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9. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
January 31, 1984

Magha 11, 1905 (Saka).

SUNIL MAITRA
Chairman,
Public Accounts Committee.

REPORT

Incorrect Valuation of Unquoted Equity Shares

Audit Paragraph:

According to the provisions of the Estate Duty Act, 1953 and the executive instructions issued by the Central Board of Direct Taxes (No. 774 of 29 October, 1974 and 835 dated 23 May, 1975) the unquoted shares in a private limited company should be valued for the purpose of levy of estate duty by reference to the market value of the assets of the company, including goodwill, as on the date of death. Where the market value of the various assets cannot be readily ascertained, the value of the assets as shown in the balance sheet of the company as on the date nearest to the date of death is to be taken allowing suitable appreciation to provide for the increase in value of the assets. The valuation of shares for estate duty purposes is to be done independently as per the provisions of the Estate Duty Act, 1953 and the Rules framed thereunder; the provisions relating to the valuation of shares under the Wealth-tax Act, 1957 and Rules thereunder are not applicable to estate duty assessments.

1.2. (i) While computing the value of the estate of a deceased person, who died on 2 August, 1978, the value of such equity shares held by the deceased was determined as per instructions issued by the Board, taking goodwill also into account. However a deduction of 15 per cent was allowed on the basis of a provision in the Wealth-tax Rules 1957, in arriving at the market value. Such deduction was not admissible under the Estate Duty Act and the Rules. The erroneous abatement resulted in under-assessment of the principal value of the estate by Rs. 1,10,000 and short levy of estate duty by Rs. 44,000.

1.3 The Ministry of Finance have accepted the objection.

[Paragraph 4.35(i) of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Vol. II—Direct Taxes (pp. 235-236)]

1.4 In the present case the assessee late Shri Jairambhai D. Chauhan died on 2-8-1978. The date of filing of Estate Duty return was 21-4-1979 and the date of assessment 1-1-1980. The principal

value of the estate as returned is Rs. 3,32,619|- and the assessed value under Section 58(3) of the Estate Duty Act, is Rs. 12,59,720|-. While computing the principal value of the Estate of the deceased the value of 1,000 unquoted equity shares of M/s. J. D. Bytco Cosmetics Pvt. Ltd. held by the deceased was arrived at by the Assistant Controller of Estate Duty, Nasik as per the instructions issued by the Board, taking goodwill also into account. However, a deduction of 15 per cent was allowed for arriving at the market value of these shares. The Audit raised the objection on 6-12-1980 that such deduction was not admissible under the Estate Duty Act and the Rules and that the wrong deduction resulted in under-assessment of principal value of the Estate by Rs. 1,10,000|- and short levy of Estate Duty by Rs. 44,000|-.

1.5 The Audit objection was accepted by the Ministry of Finance in February 1982.

1.6 As to the remedial action taken in pursuance of audit objection, the Ministry of Finance (Department of Revenue) has stated (in September 1982):

“The accountable person has filed an appeal to the CIT (Appeal), Nasik on the ground of valuation of shares. The ACED has requested *vide* his letter dated 5 November, 1981 to CIT (Appeals) for enhancement of the assessment by withdrawing 15 per cent deduction allowed following Rule 1D of the Wealth-tax Rules. Remedial action is yet to be taken.

The CIT (Appeals) Nasik has also served a notice of enhancement in this behalf on the accountable persons. The order of CIT (Appeals) is pending.”

1.7 The basic rule of valuation of property contained in the direct tax laws is the principle of market value *i.e.*, the value that the property will fetch if sold in the open market on the relevant date. This rule is embodied in Section 36 of the Estate Duty Act, 1953 which reads:

“The principal value of any property, shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death.

In estimating the principal value under this Section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time; provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased the depreciation shall be taken into account in fixing the price."

For purposes of Estate Duty the valuation of unquoted equity shares in a private company where the articles of association contain restrictive provisions as to the alienation of shares, is governed by Section 37 of the Estate Duty Act, which reads as under:

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

No rules have been framed under this section for valuation of such shares.

1.8 The language of Rule 10(2) of Gift Tax Rules is identical to the language of Section 37 of the Estate Duty Act.

1.9 The provisions relating to the valuation of similar shares under the Wealth-tax Act, 1957 and Rules thereunder are not applicable to estate duty assessments. For the valuation of unquoted equity shares of companies other than investment companies and managing agency companies the method is laid down in Rule 1D of Wealth-tax Rules. As per this rule the break-up value method is adopted and for this purpose the value of the assets of the company is taken as per its balance sheet. This rule further provides

that the market value of the shares shall be 85 per cent of the break-up value as determined under Rule 1D. This rule also provides for a further discount in those cases where dividend has not been paid and a sliding scale has been prescribed for discount in such cases depending upon the number of years for which dividend has not been declared.

As per the existing instructions of the Board the provisions of Rules 1D of the Wealth Tax Rules differ from the provisions of Section 37 of the Estate Duty Act in two respects:

- (i) for the purpose of determining the value of such shares under the Estate Duty Act the market value of the assets shown in the balance sheet of the company has to be taken into account except in cases where the value of shares is not ascertainable by reference to the value of the total assets of the company. While taking the market value of the assets goodwill whether shown in the balance sheet or not is also taken into account.

Under Rule 1D of Wealth Tax Rules it is only the value as shown in the balance sheet which has to be taken into account while determining the value of the unquoted shares under the break-up value method.

- (ii) Rule 1D of the Wealth Tax Rules prescribes a discount which has to be given from the break-up value in cases where dividend has not been paid and a sliding scale has been prescribed depending upon the number of years for which such dividend has not been declared by the company.

Under Section 37 of the Estate Duty Act no discount is to be given in such cases where the shares have been valued according to break-up value method except in cases where the value of these shares is not ascertainable by reference to the value of the total assets of the company.

1.10 The Central Board of Direct Taxes, in their Instructions No. 25A/3/65-ED dated 3 May, 1965 and 5 July, 1965 reproduced in full as Appendices I & II had clarified that in applying the break-up value method for calculation of unquoted shares under Section 37 of the Estate Duty Act, 1953, the market value, and not the book

value of the assets was to be taken into account. In a note, the Ministry of Finance (Department of Revenue) has explained the provisions of these instructions as follows:

“As per Board’s Instructions No. 25A/3/65 dated 3-5-65 it was laid down that for the purpose of valuation of unquoted shares u/s 37 of the Estate Duty Act the value to be taken into consideration should be based on the break-up value taking the market value of the assets of the company and not the book value if that does not happen to be their market value.

Vide Board’s Instruction No. 25A/3/65 dated 5-7-65 it was laid down that, for the purpose of Section 37 of the ED Act, while valuing unquoted shares of private limited company whose Articles of Association contain restrictive provisions as to the alienation of its shares the following procedure is to be followed:

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

It was therefore clarified in these instructions that earlier Instructions dated 3-5-1965 were only with regard to the first part as at (a) above and intended to restrict the application of the second part at (b) above.”

1.11 In a subsequent Circular No. 1-D/ED of 1968 issued on 26 March, 1968, the Central Board of Direct Taxes, however, extended the method of valuation prescribed under the Wealth-tax Law based on book value of assets, to estate duty assessments. These instructions *inter alia* read as under:

“In the ninth meeting of the Direct Tax Advisory Committee, it was suggested that suitable rules should be made under the E. D. Act for applying the Wealth-tax Rules relating to the valuation of unquoted shares of companies

Suggestions have also been received from various sources that the value of the assets forming part of the dutiable estate of a deceased individual should, for the purpose of Estate Duty, be taken at the same value as was determined for the purpose of Wealth-tax.

* * * *

The valuation of assets for the purposes of Wealth-tax is made on the valuation date i.e. that last date of financial year or any other corresponding accounting year for which the tax payer maintains his account. The value of assets for the purpose of Estate Duty is determined on the date of death of the individual. The maximum interval between the two dates can be one year, except in regard to assets which were gifted by the deceased within two years before the date of death. There is little likelihood of any substantial variation in the value of the assets within an interval of one year. It has, therefore, been decided that the basis of valuing an asset for Estate Duty should be the same as the basis adopted for the Wealth-tax assessment in respect of the year immediately preceding the death of an individual provided the accountable persons agree to it.

* * *

The above procedure may be followed in all pending cases and necessary instructions be issued to the Assistant Controllers of Estate Duty working in your charge."

1.12 Extension of the method of valuation prescribed under the Wealth-tax law to estate duty assessments was not correct because these were governed by special provisions of Section 37 of the Estate Duty Act. This fact was pointed out in para 72 of the Audit Report, 1972-73. The Ministry of Law had also supported the views of Audit. In their advice dated 23/24 July, 1974 the Ministry of Law *inter alia* stated as under:

Section 37 provides for the valuation of shares whose alienation is restricted on the basis of an estimate of what they would fetch if they could be sold in the open market subject to certain other qualifications. But this method is to be applied, as the Section itself makes it clear only if the value of the shares is not ascertainable by a reference to the value of the total assets of the company. The

value of the total assets of the company can only mean the actual value and not a notional value. The book value cannot necessarily be regarded as representing the value of the total assets of the company."

* * *

The Law Ministry also advised that the appropriate course would appear to be to frame rules which would give the necessary guidance to the Controllers and that such a step would be in accordance with the suggestions made by the Audit.

The above advice of the Ministry of Law was accepted by the Ministry of Finance with the approval of the Finance Minister. Accordingly, the Central Board of Direct Taxes issued further instructions dated 29-10-1974 cancelling their Instruction of 26-3-1968 and restoring the earlier instructions of 1965.

1.13 The Committee desired to know the circumstances under which the extension of the application of Rule 1D of the Wealth-tax Rules, 1957, made in March, 1968 to valuation of unquoted equity shares in companies for levy of estate duty and gift tax, was cancelled.

1.14 The Ministry of Finance (Department of Revenue) have explained:

"Board's Instructions No. 771 and 722 dated 29-10-1974 modifying Board's circular No. 10 of 1968 were issued in the light of paragraph 72 of the audit report for 1972-73 which stated *inter alia* as under:

"It was pointed out in audit in April, 1972 that the relevant language of the Estate Duty Act being altogether different from that of the Wealth-tax Act, the extension of the Rule framed under the Wealth-tax Act, by executive instructions, to the Estate Duty Act would not appear to be legal. The value on the basis of the book value of the assets instead the market value thereof, can lead to anomalous results leading some times to undervaluation and hence loss of revenue."

Under these instructions it was laid down that valuation of unquoted equity shares of companies where alienation is restricted would not be governed by Board's circular

10 of 1968 for the purposes of estate duty and gift tax respectively, but would be governed by earlier instructions 25A/3-65-ED dated 3-5-65."

1.15 On the effect of restoration of earlier instructions issued in 1965, the Ministry of Finance (Department of Revenue) have stated:

"The effect of restoration of these earlier instructions is that valuation of unquoted equity shares of private limited companies for the purposes of gift tax and estate duty would not be governed by Board's circular No. 10 of 1968."

1.16 In their further instructions dated 24-5-1975 (Reproduced as Appendix III) the Central Board of Direct Taxes clarified that the special rule of valuation of unquoted shares of private companies contained in the first part of Section 37, and discussed above, has to be applied in all cases in the first instance, it is only in cases where the value cannot be ascertained by the application of the special rule that, under the second part of Section 37, recourse could be had to the normal market value principle contain in Section 36.

1.17 The Public Accounts Committee had, in paragraphs 5.50 and 5.51 of their 211th Report (Fifth Lok Sabha) commented as under:

The Committee are surprised to note that though the provisions relating to the valuation of a private company in the Estate Duty and Wealth Tax Acts are not in *pari materia* and despite the clear difference in the relevant phraseology of the two Acts, the Central Board of Direct Taxes had, in March 1968, extended by executive instructions, the application of the Rule framed in this regard under the Wealth-tax Act to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act. While the Committee can understand the need for securing uniformity and simplicity in the valuation of assets for the purpose of Wealth-tax and Estate Duty, they would emphasise that these objectives should not have been achieved in a manner that apparently ignored the difference in language, matter and context of the statutory provisions governing the methods of valuation under the two Acts. *Prima Facie*, it would seem that the Central Board of Direct Taxes had adopted a simplistic approach in dealing with the issue and the Committee are doubtful how far execu-

tive instructions issued in this regard could be considered legal. The Committee note that perhaps on more careful thought these instruction have now been modified and the Rule framed under the Wealth-tax Act will no longer apply to the valuation of shares covered by Section 37 of the Estate Duty Act. The Committee trust that in future such decisions would be arrived at only after a comprehensive consideration of all legal and other aspects."

1.18 In pursuance of the above recommendations of the Public Accounts Committee (1975-76), the Central Board of Direct Taxes, in their instructions No. 309|16|76-ED dated 5-11-1976, directed the Estate Duty officers to review the estate duty assessments completed during the period from 1-11-1973 to 29-10-1974, and rectify the same under Section 59(b) of the Estate Duty Act, treating the Boards instruction No. 771 of 29-10-1974 as "information" with Estate Duty Officer.

1.19 In their action taken note dated 23 August, 1976, in reply to recommendations contained in 211th Report (5th Lok Sabha) the Ministry of Finance had informed the Committee as under:

"The observations made by the Committee have been noted. A further report will be submitted."

1.20 Again, in paragraph 4.32 of their 77th Report (Sixth Lok Sabha), the Public Accounts Committee (1977-78) had observed as follows:

"According to a review conducted by the Central Board of Direct Taxes, it has been found that out of 16,945 estate duty assessments completed during the period 1 November, 1973 to the date of receipt of Board's instructions of 29 October, 1974, there were 91 cases where Board's Circular of 26 March, 1968 was applied. Of these 91 cases, assessments are stated to have been re-opened under Section 59(b) of the Estate Duty Act in 80 cases. As regards the balance of 11 cases, the Committee have been informed that no action is contemplated because the value of shares included in the assessments were very small. The Committee would like to know in due course the total amount of additional duty realised in the aforesaid 80 cases."

1.21 The Ministry of Finance (Department of Revenue) informed the Committee (1978-79) in January, 1978 that:

“Total amount of additional duty realised in 80 cases where assessments had been reopened under Section 59(b) of the Estate Duty Act would be intimated in due course. The Cs.E.D. were requested in January, 1978 to get the assessments under review completed expeditiously and to report the additional duty. They have also been reminded.”

1.22 During evidence, the Committee enquired whether any review of the estate duty assessments completed during the period from 1-11-1973 to 29-10-74 for rectification under Section 59(b) of the Estate Duty Act has been undertaken. In reply, the Member, CBDT stated:

“Subsequent the earlier instructions given by PAC, we have undertaken a review of cases between 1968 and 1974. We have given some statistics. We have found about 95 cases, out of which 45 have been completed and 33 are pending at different stages.”

1.23 Subsequently, the Committee enquired whether the review as envisaged in Board's instruction No. 309/16/76 ED dated 5-11-1976 had been completed and what was the duty effect of completed cases. The Ministry of Finance (Department of Revenue) while affirming that 'the review has been completed' stated:

“The total number of cases liable for action as a result of the review has been reported to be 91 out of which reopening was not considered necessary in 10 cases on account of very small value of the shares. In 1 case the enhancement was made by the Appellate Controller of Estate Duty.”

1.24 The number of cases re-opened pursuant to the review,

assessments completed and the duty effect of completed cases, as given out by the Ministry is as follows:

STATEMENT SHOWING THE LATEST POSITION OF THE CASES RE-OPENED PURSUANT TO THE REVIEW ORDERED *VIDE* BOARD'S LETTER DATED 6-11-1976.

On the basis of reports received from the Commissioners of Income Tax upto 31st October, 1982, the position is as under :

(a) Number of assessments re-opened under Section 59 of the Estate Duty Act	30
(b) Out of (a) above, the number of estate duty assessments completed	17
(c) The amount of additional demand raised from the assessments mentioned at (b) above	Rs. 1,23,705 33
(d) The amount of additional demand realised out of (c) above	Rs. 27,199 58

1.25 To a pointed question whether any of the assessments had become time-barred, the Ministry of Finance replied:

"The Board have not come across any instance of reopening of any liable assessment completed during the period having become time-barred."

1.26 Incorrect valuation of unquoted equity shares in private companies or companies which restrict the transfer of their shares has been pointed out in several Audit Reports. Two such instances have been highlighted in the Audit Report for the year 1980-81. The Committee, therefore, enquired if the Central Board of Direct Taxes had looked into the reasons for repeated mistakes in the application of Section 37 of the Estate Duty Act despite instructions of the Board holding the field (after restoration of *status quo*) since at least October, 1974 for taking effective steps to avoid recurrence thereof. In a note, the Ministry of Finance (Department of Revenue) has stated:

"In the Audit reports for the years 1976-77 to 1980-81 cases of such under-assessment have been pointed out in respect of assessments done after the issue of instructions dated 29-10-74. A reference was made to Audit in F.No.241/8/A&P AC-I dated 12-3-82 to inform us the number of cases

of this type audited and the number in which mistakes were found. Their reply is awaited. From the number of such mistakes pointed out in the Audit Reports it cannot be said that Board's instructions of October 1974 are not being generally followed.

In view of what has been stated above, no further steps are considered necessary."

1.27 The Committee enquired whether all cases continued to be governed by Board's instructions dated 3-5-65 and 5-7-65, restored *vide* Board's Instructions Nos. 771 and 772 of 29-10-1974. The Member, CBDT stated in reply:

".....We made a general reference in 1978."

1.28 He added:

"Out of 90 cases, in 47 cases the assessments have been completed. But the revenue effect is not much (it is) about Rs. 1,25,000. The assessee probably might have accepted them because of less amount involved."

1.29 The Estate Duty case of late Hemant B. Mafatlal was reported in paragraph 112(i) of the Audit Report, 1975-76. It was pointed out that the valuation of unquoted equity shares of private limited companies in this case was made on the basis of the Board's Instructions of March, 1968 and that this valuation was not revised on the basis of the subsequent instructions of October 1974 and May 1975. A short levy of Estate Duty of Rs. 1,80,90,526 was reported on account of that omission.

1.30 After their examination of the above Audit para the Public Accounts Committee, in para 4.30 of their 77th Report (Sixth Lok Sabha) recommended as under:—

"The Committee view with serious concern the fact that despite the issue of executive instructions in October, 1974 and May, 1975, which indicated clearly the correct manner of valuation of unquoted equity shares under the Estate Duty Act, the original assessment in this case of two Companies had not been re-opened upto April, 1976, so as to recompute the value of the shares by taking assets at market value which even according to Company's own balance sheet as on 31-3-1971 was Rs. 18.17 crores against its book value of Rs. 4.43 crores. The

Department informed Audit that the objection raised by Audit was accepted in principle, but not the tax effect. The Department have stated that assessment had been reopened under Section 59(b) of the Estate Duty Act and that the actual quantum of under-assessment can be determined only after re-assessment proceedings were completed. The Committee recommend that the circumstances in which this inordinate delay in re-opening the original assessment occurred should be investigated. The Committee would also like that suitable steps may be taken to ensure that such delays do not recur in future."

1.31 In 1977, the Ministry of Finance, with the approval of the Member, CBDT, made a reference to the Ministry of Law seeking advice on a general question "as to what are the types of cases or the circumstances under which we can say that the shares cannot be valued by reference to the total value of the assets of the company as laid down in Section 37 of the Estate Duty Act, 1953."

1.32 The Ministry of Law returned the file on 5 August, 1977 with a note that "the question raised on this file is hypothetical one.....if the Department feels any difficulty in any particular estate duty case regarding the valuation in terms of Section 37 of the Estate Duty Act 1953 the same may be referred to us for advice."

1.33 On 22 December, 1977 the Ministry of Finance specifically referred the estate duty case of late Shri Hemant B. Mafatlal (who died on 16-8-1971) to the Ministry of Law, seeking an advice as to whether in the instant case.....it would be possible to say that the value of the shares could not be ascertained by reference to the value of the total assets of the company." The file was later withdrawn on 16-1-1978 as the same was required in connection with the PAC meeting scheduled in the first week of February, 1978.

1.34 Since the withdrawal of the said file, two legal opinions filed on behalf of the accountable person had also been received and made available to the Ministry of Law on 9-3-1978. The two legal opinions were to the effect that the special rule of valuation contained in the first part of Section 37 of the Estate Duty Act would apply not to all private companies but only to controlled companies.

1.35 One of the two legal opinions filed by on behalf of the accountable person on 9 March, 1978 contended *inter alia* as follows:

"In my opinion, the expression "if not ascertainable by reference to the value of the total assets of the company" means "not liable to be ascertained by reference to the value of the total assets of the company." To give any other meaning to this clause will render the method prescribed under Section 37 meaningless, for there can be no conceivable case of shares held in a private trading company in which valuation of shares cannot be made by reference to the total assets of the company. The expression "if not ascertainable by reference to the total value of assets"; and in such a case the method prescribed by determining the value of shares if sold in open market subject to ignoring the conditions of non-transferability shall apply."

1.36 After considering the said two legal opinions the Ministry of Law reiterated their original views about the application of the special rule in the first part of Section 37. In their opinion dated 31-5-1978 they stated, *inter alia*, as under:

"We feel that the meaning of the words 'if not ascertainable by reference to the value of the total assets of the company' means that effort should be made in the first instance, to ascertain the value of the shares by reference to the value of the total assets of the company. In determining the value of the assets it would be necessary to determine the market value of the assets of the company. This could be done in accordance with the procedure or the rules prescribed, if any. It is only after that the value of the shares could not be ascertained by reference to the value of the total assets of the company that their market value may have to be determined in accordance with the later part of Section 37."

1.37 Once again the Ministry of Finance referred the case to the Ministry of Law on 21-6-1979 with the following concluding note:

"In the light of the opinions of the two (legal authorities) we may request the Ministry of Law to advise on the meaning of the words 'if not ascertainable by reference to the value of the total assets of the company' as also

the situation where the shares of private limited companies cannot be valued with reference to the value of the total assets of the company."

1.38 On 4-7-1979 the Ministry of Law returned the file with the remarks that:

"This Ministry has given a detailed and elaborate opinion on the question involved. 'If the Department was still not satisfied, the matter might be discussed personally on a mutually convenient date and time to be fixed on telephone."

1.39 On 5 July, 1980 the Ministry of Law reiterated their earlier opinion as under:

"This Ministry has already examined this matter and detailed opinion has been given. It may, however, further be added that Section 37 of the Estate Duty Act, 1953 provides two alternative modes of valuation. The first is by reference to the total assets of the company. The other method is open market price. One method is not the substitute of the other. In all cases initially the valuation of shares of a private company should be done by reference to the total assets of the company. The words used in this clause art 'if not ascertainable' thus, the second method has to be adopted only when the first method is not applicable. If in all cases the valuation can be done by following the first method, the second method need not be followed. The second method has been provided only as an alternative to first method. It may be possible that in any rare case for some reasons, the first method cannot be applied. Hence in all cases, the valuation of the shares of a private company where alienation is restricted may have to be done by reference to the total assets of the company.

2. It would not be correct to say that if valuation cannot be done in accordance with Rule 15, the other method of valuation will apply. The reason is that the rules cannot override the statutory provision. Rule 15 only supplements the first method of valuation. It could by no means be exhaustive..... The test should be that if in any case it is not possible to apply the first method, then only the second method will apply.

3. In this respect we understand that some cases are also pending in the Supreme Court. It would be advisable to await the decision of the Court."

1.40 The Under Secretary (E.D.) in the Ministry of Finance minuted the following note on 21 July, 1980 in the background of the earlier reference:

"From this it is once again not clear as to what would be the circumstances where first method would not be applicable. We are, therefore, back at the stage on which the original reference was made on 16 July, 1977."

1.41 Thus with the approval of the Director (E.D.), the Under Secretary in the Ministry of Finance once again referred the case to the Ministry of Law seeking the latter's advice specifically on the circumstances under which first part of Section 37 would not be applicable and whether in the case of Hemant B. Mafat Lal it could be said that the first part of Section 37 was not applicable.

1.42 The subject of all these references to the Ministry of Finance was the scope of the exclusion clause starting with the words "if not ascertainable" in Section 37 of the Estate Duty Act. In their advice dated 5-8-1977 (para 1.30 above) the Ministry of Law had interpreted this clause to exclude from the application of the special rule contained in Section 37 only individual cases where on the facts and circumstances of a case it was found that the special rule was not workable. In the two legal opinions filed before the C.B.D.T. (para 1.31 above) the exclusion clause was interpreted to exclude all non-controlled private companies as a class. In other words, according to these opinions the special rule of valuation contained in Section 37 was of application not to all private companies but only to such of them as are controlled companies. (A 'controlled company' is separately and specifically defined in Section 17 of the Estate Duty Act). In all the three opinions of 31-5-1978 (para 1.36 above), 4-7-1979 (para 1.38 above) and 5-7-1980 (para 1.39 above), the Ministry of Law reiterated their view that the exclusion clause in Section 37 would exclude only rare individual cases where on the facts and circumstances of the case the special rule of valuation was not found workable and but for that the special rule of valuation in Section 37 would apply to all private companies. The Ministry of Finance were, however, still not satisfied and the file was referred back to the Ministry of Law again on 23-7-1980 with the same query about the exact scope

of the exclusion clause. There were no fresh cases or new evidence or further legal opinions before the Ministry of Finance.

1.43 The Ministry of Law this time suggested a reference being made to the Department of Company Affairs. The Department of Company Affairs stated that 'they were not directly dealing with the valuation of shares as such'. Finally, the Ministry of Law gave a fresh opinion on 29-12-1981/1-1-1982 changing their earlier views and agreeing to the proposition that the exclusion clause in Section 37 had the effect of excluding non-controlled companies as a class so that the special rule of valuation contained in that Section was of application only to controlled private companies and not to all private companies. (The private companies in Mafat Lal's case were not controlled companies).

1.44 On the basis of the above revised opinion of the Ministry of Law the Central Board of Direct Taxes considered the question of revising their instructions of 29-10-1974 and 24-5-1975 so as to revert to the 1968 instructions in respect of non-controlled private companies. Before actually doing so the Board made a reference to Audit on 4-3-1982 to invite their comments, if any.

1.45 In reply to the Board's reference the Director of Receipt Audit, in his letter dated 29-3-1982 (Reproduced as Appendix IV) pointed out that the revised opinion of the Ministry of Law had the effect of subordinating Section 37 to the rules framed under the Act and suggested that considering the revenue implications involved, the case may be referred to the Ministry of Law again for reconsideration at the level of the Law Secretary and/or the Attorney General of India.

1.46 The comments made by Audit were sent by the Ministry of Finance to the Ministry of Law on 18-6-1982. A tripartite meeting was finally fixed in November 1982.

1.47 After the tripartite meeting the Ministry of Law recorded a further opinion on 1-12-1982 reversing their opinion of 29-12-1981/1-1-1982, reiterating their earlier views and pointing out that in their reference made in 1980 the C.B.D.T. had not brought to their notice the earlier views of the Ministry of Law or the instructions issued on the basis thereof. The Ministry of Law stated, *inter alia*:

"The matter has been considered further. While interpreting Section 37 of the Estate Duty Act, the concept of the controlled company does not come into the picture. The reason is that special provisions regarding the valuation

of controlled companies have been made in Sections 17 to 20 of the Estate Duty Act. Section 37 requires that the value of the total assets of the company should be ascertained in the first instance, failing which the value has to be estimated on the open market method.

In view of the above, it is felt that reference to the valuation in the case of controlled companies is not relevant in the context of interpretation of Section 37 of the Estate Duty Act. It appears that on the basis of the advice given by his Ministry in 1974, the Department had issued general instructions on 29-10-1974 and 24-5-1976. Our earlier advice and aforesaid instructions issued were not brought to our notice when the Department made a reference to us in 1980, pursuant to which we gave our opinion on 29-12-1981. We have gone through these instructions again and there is no warrant to cancel these instructions in the light of what is stated above."

1.48 Asked whether it was a fact that the Ministry of Law had given opinion on 24-7-1974 with regard to this applicability of Section 37 of the Estate Duty Act, the Law Secretary replied:

"That is correct."

1.49 In reply to another question whether it was a fact that the opinion given by the Law Ministry on 24-7-1974 was accepted by the Finance Ministry with the approval of the then Finance Finance Minister. The Member CBDT stated:

"Probably it was accepted..... Instructions were issued in October, 1974 and May, 1975....."

1.50 The Committee enquired whether in the referral notes of 9-3-1978 and 21-6-1979 which were conclusively replied to by the Ministry of Finance *vide* their note of 5-7-1980, a reference to the two legal opinions filed on behalf of the accountable person in Estate Duty case of late Hemant B. Mafatlal, had been made. The Member, CBDT replied:

"We had already referred it."

1.51 The Committee desired to know about the need for referring the case to the Law Ministry for fresh opinion when their earlier

opinion of 24-4-1974 was accepted with the approval of the then Finance Minister. The Member CBDT stated:

"The matter was referred to the Law Ministry not on the application of Section 37 but if it applied, what was the total value of the assets of the company. The Law Ministry gave an advice that it applied to the real value of the assets. So, that was the context in which the earlier 74 reference was made. In this case the first reference to the Law Ministry was made on 16th July, 1977, because there was an audit objection in the Bombay case. Before accepting the audit objection, we referred the matter to the Law Ministry on 16th July, 1977. Then the reply of the Law Ministry was received on 5th August, 1977 containing general observations that the question was hypothetical. They said, "We will not give you the answer since the question is hypothetical." Then, there is a letter to the Law Ministry dated 22nd December, 1977 making specific reference. Then there is a referral note. Meanwhile the audit objection was accepted and the Assistant Controller issued a notice to the assesseees for reopening the cases. They made a representation to the Board as well as to the Assistant Controller opposing the issue of the notice. Then there is another referral note dated 9th March, 1978 to the Law Ministry drawing their specific attention to the Board's circulars issued in 1965, 1968 and 1974. It also asked for clarification of certain words. Then there was an advice by the Deputy Legal Adviser which did not meet with our point. Therefore, we made another reference to the Law Ministry. The opinion of the Law Ministry was examined. But we accepted it in 1976 asking for the Commissioners to review cases; because of audit objection, we had directed the Commissioners to review cases and issued notices under Section 59. Then another referral note dated 18th June, 1979, was made to the Law Ministry.

In this note, we raised specific instances. When we issued a notice to the assesseees, they said that the notice was invalid. So, all these questions we referred to the Law Ministry for advice. I will also send to you copies of these notes, if you want. This is the opinion by two (legal authorities). This reply is dated 6-7-1979; it is a letter from the Law Ministry asking for personal discus-

sion and referring to their earlier note of 31-5-1978. The advice dated 5-7-1980 given by them was non-committal."

1.52 The Committee enquired as to when the matter was again referred to the Ministry of Law. The Member, CBDT replied:

"On the 23rd July (1980). The question was whether the first limb or second limb of Section 37 will apply. Specific attention was drawn to the Bombay case. The advice was dated 28th March, 1981 and it was by the Assistant Legal Adviser. This agreed with the opinion of one of the (legal authority) and also the opinion of Nanavati, who has published a book on Estate Duty, that the second limb of Section 37 will apply. It was also mentioned about the specific instance that for the application of the first limb of Section 37, a reference may be made to the Department of Company Affairs. This is signed by the Assistant Legal Officer."

1.53 He added:

"Then we made a reference to the Department of Company Affairs on the 18th April. The Department of Company Affairs replied on the 29th May, 1981. Without giving any specific advice in the matter, it was stated that the question of giving interpretation on estate duty was within the competence of the Board."

1.54 Since the advice given by the Law Ministry in 1974 was accepted with the approval of the Finance Minister, the Committee enquired how the lower functionaries in the Ministry of Finance continued to entertain doubts on the question and why did these doubts persist even after the Law Ministry had taken note of the two legal opinions filed in 1978. In a note, furnished in January, 1983 the Ministry of Finance (Department of Revenue) stated that the "advice given by the Ministry of Law in 1974 has not been at any stage doubted or questioned in the Ministry of Finance. This advice given on 23/24 July, 1974 was neither sought nor did it finalise the issue on which the advice of the Law Ministry was sought in our references from July 1977 onwards..... The purpose of these references was to have a clear exposition of the provisions of Section 37 with reference to the two alternative modes of valuation provided in Section 37".

1.55 In this context, when asked to elucidate the reason for referring the case again and again to the Law Ministry, although

other cases were being decided according to the Board's instructions, the Member, CBDT stated:

"Whether there are substantial investments, the procedure cannot be the same where the investment is only 5 or 10 shares, where it may have one value. But if it is going to be substantial, the market value cannot be computed by just taking the market report. These are matters of controversy."

In this context, the Finance Secretary stated:

"The Board cannot take such a stand on a point which has been dealt with in the Audit Report."

1.56 The Committee desired to have the views of the Law Secretary on the opinion rendered by that Ministry on 1-12-1982. The Law Secretary stated:

"My predecessor, the Secretary, who was then the Joint Secretary in the Ministry of Law had given interpretation of Section 37 of this Act and that has been reiterated here. We feel that the evaluations which were made were wrong. That is to say, we do not accept the principle that a private company will be able to take advantage of the provisions of Sections 17 and 20 (controlled companies) respectively."

1.57 Asked whether differing views were expressed earlier, the Law Secretary replied:

"It was a different opinion earlier."

1.58 The Committee desired to know if there was any material change in the opinion rendered by the Ministry of Law on the first occasion on 23-24 July, 1974 and the one expressed on 1st December, 1982. The Law Secretary replied:

"While interpreting Section 37 of the Estate Duty Act, the concept of "Controlled Company" does not come into the picture. The reason is that there are special provisions regarding controlled companies in Sections 17 and 20 of the Estate Duty Act. Section 37 requires that the value of the total assets of the company should be ascertained in the first instance, failing which the value has to be estimated on the open market rate."

1.59 Asked whether in substance, the Law Ministry's opinion reiterated the opinion given in 1974, the Law Secretary stated:

"One lapse on the part of the Deputy Legal Adviser was there."

1.60 Asked if the two legal opinion filed on behalf of the assessee were rejected by the Law Ministry, the Law Secretary replied:

"On one occasion we were bamboozled in some way. Therefore, we did say that."

1.61 The Committee enquired whether in a case in which the earlier opinion (24-7-1974) of Joint Secretary (who had since become Law Secretary) was sought to be reversed, as was done by the Deputy Legal Adviser in the advice rendered on 29-12-1981, the Law Secretary should have been consulted, the Law Secretary stated:

"You are absolutely right that whenever the Law Secretary or any senior officer has given opinion on the subject, it is brought to the notice of the juniors. Then the method is that when a reference about it comes later on, they should consult the officer concerned. In this particular case the Deputy Legal Adviser did not know the previous opinions on this subject."

1.62 Subsequently the Committee desired to know how the opinion recorded by a junior officer on 29 December, 1981/1 January, 1982 over-ruled the opinion rendered on 24 July, 1974 by an officer who was Law Secretary on 1 January, 1982. In a written note, the Ministry of Finance has stated:

"The opinion in 1974 was recorded by the then Joint Secretary and Legal Adviser in the Ministry of Law. Subsequently, the opinion was recorded by the Deputy Legal Adviser on 29 December, 1981. Vide note dated 1 January, 1982 the Joint Secretary and Legal Adviser in the Ministry of Law had minuted:

"I agree with the above conclusions."

Thus in both instances the opinion was finalised at the level of Joint Secretary.

Vide this opinion. Ministry of Law had opined that the first method indicated in Section 37 was to be applied only in:

those cases where valuation is to be done under Rule 15 of the Controlled Company Rules. Since no opinion was expressed in 1974 on the question when the first method given in Section 37 is to be made applicable, there is no question of over-ruling of an earlier opinion."

1.63 In reply to another pointed question if the earlier opinions of the Law Ministry were not linked when the two legal opinions were discussed, the Law Secretary stated:

"It was not linked up. In the reference note, there was no mention of that opinion, i.e. 1974 opinion."

1.64 On being asked about the propriety of making a reference without linking the connected papers, the Finance Secretary, stated:

"I will check it up. . . I do not want to elaborate but I gathered that it was felt that the point was different. This is something which, as I said, I will consult. Otherwise, if the Ministry of Law have sent an opinion to the Administrative Ministry six months ago, the same point. . . (need not) go back. We would refer to the last point. I will inform the Committee on this matter later."

1.65 In a further note on the subject the Ministry of Finance have explained:

"It would not be correct to say that all the relevant papers were not linked. The reference was made to the Ministry of Law in June 1981 in the same file (i.e. F.No. 309 8 77-ED) in which the original reference was made in 1977. This file contained all the previous notings of the Ministry of Law as well as the notings of the Ministry of Finance on this issue right from April 1977 till June 1981. It may further be stated that six relevant files were linked with this file at the time of making the reference in June 1981, *vide* acknowledgement of the Ministry of Law dated 8 June, 1981. These files include, *inter alia* file No. 313/88/74-ED in which Board's instruction No. 771 was issued after obtaining the approval of the then Finance Minister. This file also included all the other relevant files dealing with the case of late Hemant B. Mafatlal from the audit point of view in the Ministry of Finance."

1.66 The Committee desired to have a detailed note containing Finance Secretary's assessment of the facts of the case as promised to the Committee during evidence. The note furnished in January, 1983 concludes by saying:

“Secretary (Revenue) feels that in June, 1978 it would have been appropriate, viewing the matter in retrospect, for the Under Secretary and the Director (ED) to have taken the matter upto the Member concerned. This would probably have facilitated a much quicker and tidier disposal of the matter, by ensuring attention at a sufficiently high level in the CBDT as well as in the Law Ministry.”

1.67. The Committee enquired if the question of valuation of shares of private limited companies had been examined a fresh by the Ministry of Finance and Ministry of Law. In reply, the Ministry of Finance (Department of Revenue) have *inter alia* stated as follows:

“Ministry of Law's opinion dated 1-1-82 above was sent to the C&AG for their comments, stating that in the light of the opinion, Instruction No. 771 dated 29 October, 1974 and Instruction No. 835 dated 24 May, 1975 shall have to be revised and that necessary steps were being taken accordingly. The C&AG *vide* their letter dated 29 March, 1982 commented *inter alia*, that the Ministry of Law be requested to have another look at this case and place this matter before the Law Secretary/or the Attorney General of India.

Accordingly another reference has been made to the Ministry of Law requesting them to re-examine their opinion given *vide* their note dated 1-1-82. Ministry of Law's reaction on the point is still awaited. In another case *viz.* F. No. 309/16/ED (Vol. II) wherein in pursuance to the recommendations contained in Para 5.51 of the 211th Report of the PAC (relating to Estate Duty included in Chapter IV of the Reports of the C&AG for the year 1971-72 and 1972-73 Union Government (Civil) Revenue Receipt, Volume-II, Direct Taxes. The Board *vide* its instructions F. No. 309/16/76 dated 5 November, 1976 had asked all the Commissioners of Income-tax|controllers of Estate Duty to re-open and review under Section 59(b) of the Estate Duty Act,

all the estate duty assessments which were completed during the period from 1st November, 1973 to the date of receipt of instruction No. 771 dated 29 October, 1974. The Controller of Estate Duty, Bombay *vide* his letter No. ED|PAC|76-77 dated 25 November, 1981 brought to the notice of the Board that the re-opening could not be held valid in the light of the decision of the Supreme Court in the case of Indian and Eastern Newspapers Society (119 ITR 996). The matter was accordingly referred to the Ministry of Law for their advice. In this respect the Ministry of Law *vide* their note dated 24-6-1982 advised the Board that Boards instructions of 5th November, 1976 directing the re-opening of the assessments already concluded, were counter to the decision of the Supreme Court.

In view of the opinion of the Ministry of Law, the Board wrote to the C&AG for their information and comments that it proposed to issue instructions to drop the proceedings for re-assessment in those cases where assessments have been re-opened or are proposed to be re-opened. C&AG's reply to this communication is still awaited."

1.68 During evidence, the Member, CBDT stated in this connection:

"On the 31 December 1981, 1 January 1982 the final opinion of the Ministry of Law was rendered. This was at the level of the Jt. Secretary. It was clarified that the first limb of Section 37 refers only to 'controlled companies' and in other cases the second limb will apply. We were not happy. On the 4 March, 1982 this opinion of the Law Ministry was forwarded to the Comptroller & Auditor General with a request for reconsideration. The C&AG on 30 March, 1982 asked for a further reference to the Law Ministry, to be put up to the Law Secretary or the Attorney-General, and also asking for a tripartite meeting. A reference was made to the Law Ministry on the 5 March, 1982 whether in view of the advice given in December 1981, the earlier circulars issued by the Board call for a modification and whether the advice of the Ministry of Law regarding the provisions of Section 37 also apply to gift tax proceedings, because in the Gift Tax Act we have an identical provision as Section 37. The suggestion of

the C&AG was also forwarded to the Ministry of Law on the 13 June 1982. The reply of the Ministry of Law came on 22 September, asking for personal discussion. It was also clarified that the earlier advice will apply to the provisions of the Estate Duty Act but will not apply to the Gift Tax Act. Then steps were taken for tripartite discussion, which took place on the 29 November, 1982, following which the opinion of 2 December was obtained."

1.69 In a note on the subject, the Ministry of Finance have stated:

"A tripartite meeting is held between the administrative Ministry, Ministry of Law and the audit on such cases where is a dispute or difference on the interpretation of law between the audit and the administrative ministry. In the present case there was no difference of opinion between the Ministry of Finance and Audit for the simple reason that Ministry of Finance had not formed any opinion at all but only sought the advice and opinion of the Ministry of Law so as to formulate its own stand in respect of the provisions of Section 37. Moreover, in the present case the question that was referred to the Ministry of Law had not been the subject matter of any dispute between the administrative ministry and the audit. It was an entirely new issue which had not been examined either in any earlier instructions of the Board or in any matter raised by the Audit. The reference to the Ministry of Law was with a view to identify the various circumstances in which the two different methods of valuation provided in Section 37 would be respectively applicable. The earlier instructions of the Board were on the question as to how the first method of valuation provided in Section 37 was to be interpreted. The Audit objection in the case of Hemant B. Mafatlal was on a still different issue. The audit objection was that the assessment in that case had not been re-opened in the light of Board's Instruction of 1976. The Board had already accepted this objection in principle. If on receipt of the advice of the Ministry of Law, any change in this position would have been necessitated, then only could there be a difference of opinion which would have required consideration in a tripartite meeting.

We may emphasise here that in none of our references made to the Ministry of Law from 1976 onwards the Board expressed any opinion or endorse any legal proposition.

It would be appreciated that the advice of the Ministry of Law dated 29 December, 1981/1st January, 1982 was forwarded to receipt Audit. The Board did not form any final opinion on receipt of this advice. Beyond indicating to the Audit that in the light of this advice the Board's earlier Instructions may have to be revised, the Board also did not take any steps whatsoever to change the existing position in the case of Shri H. B. Mafatlal.

In the present case the views received by Ministry of Law on 29 December, 1981/1st January, 1982 were forwarded to the Receipt Audit before any further action thereon was taken by the Administrative Ministry."

1.70 The language of Rule 10(2) of the Gift Tax Rules is identical to the language of Section 37 of the Estate Duty Act, but there is no concept of controlled companies under the Gift Tax Act. So far as case law on the subject is concerned, in *Gift Tax Officer Vs. Kastur Chand Jain* (53 I. T. R. 411), the Calcutta High Court had held that "if the value of shares is ascertainable by reference to the value of the total assets of the company, the value must be so ascertained." The aforesaid judgment was pronounced on 16 March, 1964. The Department had, however, pointed out only on 5 March, 1982 that the Law Ministry's opinion of 1 January, 1982 was likely to create problems in Gift Tax cases. In this context, when asked for reasons why this was not pointed out earlier to the Law Ministry, the Department of Revenue has, in a note stated:

"This is not the correct position. The Board had already made a reference to the Ministry of Law on 5th March 1982 in regard to the difficulty in applying the Ministry of Law's advice dated 29th December, 1981/1st January, 1982 to the provisions of gift tax. This was done simultaneously with the forwarding of Ministry of Law's opinion to audit for their comments. It can be said that the reconsideration of the opinion had already been initiated by the Board even before Receipt Audit suggested it."

1.71 A gist of references made by the Ministry of Finance (Department of Revenue) to the Ministry of Law as to the interpre-

tation of Section 37 of the Estate Duty Act, 1953 together with the opinions of the Ministry of Law thereon is given in Appendix V.

1.72 In the case of under-assessment of estate duty of Rs. 1.81 crores pointed out in paragraph 112(i) of the Audit Report, 1975-76, (Hemant B. Mafat Lal's case) as stated earlier the audit objection was accepted in principle and assessments were re-opened under Section 59(b) of the Estate Duty Act, 1953. In reply to a question if the re-assessment had since been completed, the Ministry of Finance (Department of Revenue) stated (September, 1982) in a note:

"The re-assessment has not yet been completed (September, 1982) as a writ has been filed in the High Court against the re-assessment proceedings. The High Court have granted a stay of proceedings initiated under Section 59. As per the letter dated 4-8-1982 from the Controller of Estate Duty, Bombay the stay has been vacated."

1.73 During evidence, the Committee enquired about the position on rectification of the assessments. The Member CBDT stated:

"When we issued the notice in 1976, they made a representation to the Assistant Controller as well as to the Board saying that the action is not warranted on the facts of the case. Regarding that point we were consulting the Ministry and the proceedings were pending. They have filed a petition in the Bombay High Court."

He added:

"...He (the Assistant Controller) referred the matter to us. And in April, 1979, assessee filed a writ petition in the Bombay High Court. The Court gave a stay but recently they quashed it."

1.74 He further added:

"The assessee filed a petition before the Assistant Controller saying that the re-opening is invalid. He has made detailed statements and representations to the Board also saying that the re-opening is not valid. We were consulting the Law Ministry and proceeding accordingly."

1.75 Asked to indicate the respective stands of the assessee and the Department on the question of re-assessment in this case, the Department has stated:

“According to the assessee the re-opening was not in accordance with the provisions of Section 59(b) of the Estate Duty Act, while according to the Department the re-assessment was validly initiated.”

1.76 Asked if the Department had filed a petition for vacation of the stay orders the witness replied in the negative, and added:

“When we issued the notice, the assessee approached the Bombay High Court and the High Court gave a stay of operation. Recently on 8-10-1982, they quashed the notice under Section 59. The notice was issued on 5-11-1976.”

1.77 Subsequently the Committee desired to know about the action initiated to get the stay vacated as soon as the stay proceedings initiated under Section 59 of the Estate Duty Act 53 was granted by the High Court. The Ministry of Finance has in a written note furnished in January, 1983 stated:

“The progress of the case was being closely monitored on a periodical basis in the Board. Reports were regularly called for from the Commissioner of Income-tax. A report has also been called for from the Commissioner of Income-tax to let the Board know the various steps taken by him to expedite the disposal of the writ petition. The reply of the Commissioner of Income-tax is awaited.”

1.78 The Law Secretary read out the following relevant paragraph from the aforesaid High Court judgement:

“The re-opening of the assessment is sought to be done on two grounds. The first ground is that the provisions of Section 37 of the Act should have been applied in valuing the shares of the two private limited companies. The Supreme Court has in its judgement in the case of *Indian and Eastern Newspaper Society Vs. Commissioner of Income-tax, New Delhi, 119 I.T.R. 996*, held that the opinion of an internal audit party of the income-tax department on a point of law would not be regarded as “information” within the meaning of Section 147(b) of the Income-tax Act, 1961. The part which embodied the opinion of the audit party in regard to the application or

interpretation of the law could not be taken into account by the I.T.O. The true evaluation of the law in its bearing on the assessment had to be made directly and solely by the I.T.O....

The judgement of the Supreme Court was considered by this court in *Commissioner of Income-tax, Bombay City III Vs. H.D. Donnia and others*, 135 I.T.R.I. The court set out the law in the form of propositions. The last proposition stated that an opinion expressed by the tax department or by the Central Board of Revenue was not law, the law was that which was laid down either by the legislature or judicial decisions and it was a change in such law which constituted fresh or subsequent information.

The provisions of Section 59 of the Act are similar to those of Section 147(b) of the Income-tax Act."

1.79 The member, C.B.D.T. informed during evidence:

"We will challenge this (order). We will not accept it. (December 1982). It was decided on 8 October, (1982). Now, we have to see whether the appeal should be made before the Division Bench or to the higher court. The certified copy of the order is not yet available. I just got it un-officially from the appellant. We have to get a certified copy and then decide the course of action."

1.80 The advice given on 24 June, 1982 by the Deputy Legal Adviser in the Ministry of Law was to the following effect:

"The Supreme Court held in *Indian and Eastern Newspaper Society V.C.I.T.* that the opinion of the Internal Audit Party of Income Tax Department on a point of law cannot be regarded as 'information' within the meaning of Section 147(b) of the Income Tax Act. It was further held that the view taken by the Delhi High Court and the Kerala High Court in the case of *C.I.T. v. H.H. Smt. C.K.* (84 ITR p. 584), *C.I.T. v. Kelukutty* (85 ITR p. 102). *Vishist Bhargava v. I.T.O.* (99 ITR p. 148) is wrong. As regards the decisions of the Delhi High Court in *C.I.T. v. H.H. Smt. C.K.* and *C.I.T. v. Kelukutty* both the High Courts took the view that the note put up by the audit is 'information' within the meaning of Section 147(b) of the Act. As regards the decision in *Vishist Bhargava* the Delhi High Court held that the note of the Revenue Audit and the Ministry of Law is information within the meaning of Section 147(b).

In view of the decision of the Supreme Court now the audit objection as well as the note of the Ministry of Law cannot be the basis for the re-opening of the assessments under Section 59 of the Estate Duty Act. Therefore, the instructions referred to by the Department in para (a) of their note based on the audit objection directing the re-opening of the assessments already concluded runs counter to the decision of the Supreme Court referred to above."

1.81 When this opinion was referred by the CBDT to Audit in July 1982, the Revenue Audit suggested reconsideration on this point also. The views of the Revenue Audit on the subject are reproduced below:

"A point has also been made that the assessment cannot be re-opened because of the Supreme Court decision in the *Indian and Eastern Newspaper Society* case (119 I.T.R. 996) according to which an opinion given by Revenue Audit on a point of law is not 'information on a point of Law'. The ratio of that decision is that it is the content and not the source of the communication that matters: the content should be 'law' in the sense that it should have its origin in a formal source of law, such as a statute or a judicial determination. An opinion given by an administrative authority like the Central Board of Direct Taxes or the Ministry of Law or Revenue Audit is not 'law' in that sense and hence not 'information'. If however the content is law, a communication does not cease to be information merely because it comes from any of these authorities. In the present case Revenue Audit had merely pointed out that the Estate Duty Act contained a special provision in Section 37 for the valuation of unquoted shares of private companies and that provision had been overlooked, the department having gone on the basis merely of the general principle of valuation contained in Section 36 of the Estate Duty Act analogous to Section 7 of the Wealth Tax Act. A communication pointing out a statutory provision which had been overlooked, would constitute 'information on a point of law', from wheresoever it comes in accordance with the decision in the *Indian and Eastern Newspapers Society*.

The assessment could be re-opened on the basis of this information, the question of true interpretation of the provisions of Section 37 would arise only thereafter."

1.82 As a result of the tripartite meeting between the Audit and the representatives of Ministry of Law and Finance, the Ministry of Law again recorded their considered views *inter alia* on the point as to the circumstances in which an assessment could be re-opened in the light of the observations made by the Supreme Court in the case of *Indian and Eastern Newspaper Society* (119 ITR 996). The Law Ministry's views on these points are reproduced below:

"Another point which has been raised is as to the circumstances in which an assessment can be re-opened in the light of the observations of the Supreme Court in *Indian and Eastern Newspaper Society vs. CIT* (119 ITR 996 at 1004 and 1007). In that case, the Supreme Court held that the opinion of an internal audit party of the Income Tax Department on a point of law cannot be regarded as information within the meaning of Section 147(b) of the Income Tax Act. However, the Court had observed that "That part alone of the note of an audit party which mentions the law which escaped the notice of the I.T.O. constitutes 'information' within the meaning of Section 147(b)". In the instant case, the Revenue Audit had merely pointed out that the Estate Duty Act contains a special provision in Section 37 for the valuation of unquoted shares of private companies and that provision had been overlooked by the Department, having gone on the basis of merely the general principles of valuation contained in Section 36 of the Estate Duty Act analogous to Section 7 of the Wealth Tax Act. A communication pointing out a statutory provision which has been overlooked might constitute 'information' on a point of law and the fact that the communication has emanated from the Revenue Audit would not make any difference."

1.83 The Committee enquired (December 1982) about the views of the Department after the pronouncement of the judgement of Bombay High Court in case No. 941 of 1979 on 8-10-82. The Member, CBDT stated:

"We have not yet decided. We received the opinion of the Law Ministry on 1st December after that we have got

the High Court judgement though it was delivered earlier. We have to consider all the implications and take action if necessary."

1.84 The Law Secretary concluded thus:

"That is the point on which we lost before a single judge."

1.85 The Finance Secretary supplemented by saying:

"On this basis, the Law Secretary is saying that it is a fit case for going up in challenge."

1.86 Subsequently, the Ministry of Finance (Department of Revenue) indicated (January 1983) the latest position of the case as follows:

"The re-assessment notice in the case of Hemant B. Mafatlal (commented upon in paragraph 112(i) has been quashed *vide* Bombay High Court order dated 8th October, 1982 (copy enclosed).* The Controller of Estate Duty has been asked to send a copy of the opinion of the Standing Counsel regarding appeal to the Division Bench, along with his comments."

1.87 On another reference dated 18-6-1982 from the Ministry of Finance, the Ministry of Law had also advised on 24-6-1982 that Mafat Lal's assessment could not be re-opened on technical grounds. This advice was also rendered by the same officer who had given opinion on 29-12-81 1-1-1982. In this context, when asked if this matter was not *sub-judice* in Bombay High Court, the Ministry of Finance, in a note stated:

"It may be mentioned that our reference to the Ministry of Law was not specifically in respect of the estate duty assessment of late Shri Hemant B. Mafatlal. The Board had earlier on the advice of Ministry of Law issued instructions on 5th November, 1976 directing the review of the estate duty assessments completed on the basis of 1968 instructions and advising re-opening of the proceedings *u/s* 59 of the Estate Duty Act. In the meantime there was a legal development of considerable importance having a direct bearing on the matter. Supreme Court *vide* its judgement dated 31st August, 1979 in the case of Indian

*Not reproduced.

and *Eastern Newspapers Society vs. C.I.T.* (119 ITR 996) changed the legal position in respect of re-opening of assessments as was then prevailing in view of the earlier decisions of Supreme Court in the case of *Kalyanji Mavji and Company* (102 ITR 287) and *R. K. Malhotra vs. Kasturbhai Lalbhai* (109 ITR 537). The Controller of Estate Duty, Bombay accordingly made a reference to the Board pointing out that in view of the latest decision of the Supreme Court the assessments which had been re-opened under Board's Instructions dated 5th November, 1976 did not appear to have been validly reopened. The Controller of Estate Duty, Bombay requested that an opinion may be obtained from the Ministry of Law on this aspect. Hence a reference was made to the Ministry of Law in February, 1982 to give their advice. It would thus be seen that the opinion of the Ministry of Law was not sought specifically on the case of late Shri Hemant B. Mafatlal. It was sought with a view to examine the applicability of the Board's Instructions dated 5th November, 1976 after the Supreme Court judgement in *Indian and Eastern Newspapers Society's* case.

It is true that at the time of making of the reference in February, 1982, the accountable person's writ petition against re-opening of assessment in Mafatlal's case was pending before Bombay High Court. But the reference to the Ministry of Law arose on account of a Supreme Court judgement.

It may be emphasised that Board did not take any steps on receipt of this advice in June, 1982 in so far as the case of Mafatlal was concerned."

1.88 The Committee enquired about the latest position in regard to applicability of Section 37 of the Estate Duty Act to the valuation of unquoted equity shares in private companies. In reply, the Member, CBDT stated:

"The Law Ministry gave advice on 1 December, 1982. This has to be considered in the Board's meeting. Whatever action is necessary, we have to take. We have to consider the implications, whether it is practicable to be implemented and how it is to be implemented."

Arrears of Assessments|Demands

1.89 The total number of estate duty assessments completed during the years 1979-80 and 1980-81 was as under:

1979-80	32,607
1980-81	32,428

1.90 The break-up of the estate duty assessments completed during the year 1980-81 according to certain slabs of principal value of estate is given below:

Principal value of property	Number of assessments completed
(i) Exceeding Rs. 20 lakhs	12
(ii) Between Rs. 10 lakhs and Rs. 20 lakhs	64
(iii) Between Rs. 5 lakh and Rs. 10 lakhs	317
(iv) Between Rs. 1 lakh and Rs. 5 lakhs	5,728
(v) Between Rs. 50,000 and Rs. 1 lakh	6,016
Total	12,137

1.91 Assessment year-wise details of estate duty assessments pending as on 31 March, 1981 are given below:

	Number of assessments pending <i>Estate Duty</i>
1976-77 & earlier years	7,005
1977-78	4,256
1978-79	5,628
1979-80	7,726
1980-81	11,247
Total	35,862

1.92 According to the Ministry of Finance, the number of estate duty assessments pending as on 31-3-1982 was 37,578.

(ii) *Other Direct Taxes (Estate Duty)*

1.93 The following table gives the year-wise arrears of demands outstanding and the number of cases relating thereto under estate duty as on 31 March, 1981:

(In crores of rupees)

	<i>Estate Duty</i>	
	Number of cases	Amount
1976-77 and earlier years	6,981	5.85
1977-78	2,340	1.78
1978-79	2,649	3.12
1979-80	3,818	6.03
1980-81	9,482	10.67
Total	25,270	27.45

[Audit paras 1.08 (ii) (c) (d) and 1.09 (ii) of the Report of C&AG of India for the year 1980-81]

1.94 The Committee desired to know the reasons in regard to increasing pendency of assessments of arrears of demands in estate duty cases. Conceding that it was so, the Member, CBDT stated:

“We are seized of the matter and we are reviewing the position as to what are the causes for the increase in pendency of assessment and demand cases.”

1.95 He added:

“We will examine the matter and give you a note on that. We are making review and in another months' time, we will complete the review. We will give you a note on that.”

1.96 In the same context, the Finance Secretary supplemented the statement stating:

“We are concerned about the collections. From the point of view of collection drives, there are action plans which would coincide with the objective of reducing the number

of cases of arrears in terms of percentage and all that. Naturally, the stress will be on high value cases. I want to submit to the Committee that it is not that this is taken up in fits and starts. There is an annual action plan on an all India basis. As I mentioned, the stress is on the revenue intake and, therefore, much more attention is paid to the heavy revenue items of income tax and corporate tax than to estate duty and gift tax which are much smaller items."

1.97 The Member, CBDT added:

"Most of the cases are covered by provisional payment of duty. Not much of revenue is involved in the pending assessments. Where there is a much variation, it will have an effect on revenue. Otherwise, it is not much."

1.98 Asked to indicate the estimates of estate duty collections during the current year, the Member, CBDT replied:

"This year, we expect about Rs. 18 crores as against Rs. 13 crores to Rs. 14 crores in earlier years."

1.99 On the basis of arriving at the above estimate, the Finance Secretary stated:

"The cost of everything is going up. Our estimate is that it will be about Rs. 19 crores."

1.10 Subsequently, the Ministry of Finance has outlined the steps taken from time to time to reduce the arrears of Estate Duty assessment in a written statement as reproduced below:

(i) The comments of the Public Accounts Committee in para 6.11 of their 50th Report were communicated to the Commissioners and they were requested to look into the pendency personally and draw up a time bound programme for the liquidation of the Wealth tax, Gift-tax and Estate Duty arrears of assessments. [Member (WT)'s DO FNo. 326/13/72-WT dated 12-1-73]. The Commissioners of Income-tax were instructed in the same letter to ensure completion of all Wealth tax assessments for and up to the assessment years 1969-70 by the end of the 31st March, 1973.

(ii) The Board again requested the Commissioners of Income-tax by their letter F.No. 305/57/72-ED dated 9-4-73 to

draw up a time bound programme for the liquidation of pendency of Wealth-tax, Gift-tax and Estate Duty assessments.

- (iii) The Board also issued Instruction DO F. No. 305|54|75-ED dated 30-6-76 to the effect that a time bound programme should be drawn up for the disposal of Estate Duty cases which had been pending on 1-1-1976 for more than four years.
- (iv) Board's D.O. letter F.No. 305|13|77-ED dated 7-5-77 to all Controllers of Estate Duty for disposal of old Estate Duty cases pending on 1-4-77 (i.e. cases registered before 1-4-74) by 30-9-77 and requesting them to draw up a time bound programme.
- (v) *Vide* Board's letter F. No. 305|38|80-ED dated 24-9-1980 Controllers of Estate Duty were requested to draw up time bound programme for disposal of Estate Duty assessments relating to 1974-75 and earlier years.
- (vi) *Vide* Board's letter F. No. 305|17|82-ED dated 10-5-1982 the Controller of Estate Duty have been asked to draw up a detailed time bound programme for disposal of Estate Duty assessments pending as on 1-4-1978 and furnish reports showing the progress achieved during the half year ending 30-9-1982 and 31-3-1983. Emphasis has also been placed by the Department in its annual action plans for disposal of assessments relating to Estate Duty from year to year."

1.101 The following is the statement furnished by the Ministry of Finance (January 1983) showing the details of 16 Estate Duty

cases where outstanding demand was over Rs. 10 lakhs as on 31-3-82, out of top 50 assessments:

Statement showing the details of Estate Duty cases where outstanding demand was over Rs. 10 lakhs as on 31-3-1982

Sl. No.	CIT Charge	Name of the assessee	Status	Asstt. years for which the demand is outstanding	Amount	
					Gross arrears	Net arrears
					(Rs. in lakhs)	
1	2	3	4	5	₹ 6(i)	6(ii)
1.	B.C. XII	Edulji F. Dinshaw	Indl.	1979-80	12.28	12.28
2.	Do.	Morarji P.R.	Indl.	1979-80	16.56	Nil
3.	Do.	Nawab of Bhopal (Ex-ruler)	Indl.	1974-75	41.73	11.61
4.	Do.	Vimladevi Sighania A.P. Amarapali Singhania.	Indl.	1979-80	67.06	67.06
5.	Cochin	K.C. Manavikraman alias Ettan Thampuram.	Indl.	N.A.	13.99	Nil
6.	Do.	K.P. Moldeenkutty	Indl.	N.A.	12.03	Nil
7.	Do.	Kavalappara Kechunny Mopil Nair	Indl.	N.A.	35.84	Nil
8.	Del (C) I	Mansingh A/P Bhawani Singh (Ex-ruler)	Indl.	1970-71	14.47	14.47
9.	Kar (C)	Late Mir Osman Alikhan A/P Mir Barkat Ali Khan (Ex-ruler of Hyderabad)	Indl.	1967-68	90.88	90.88
10.	M.P.I. Bhopal	Anand Rao Pawar (Ex-ruler)	Indl.	N.A.	35.00	35.00
11.	Rajkot	Digvijayasinghji (Ex-ruler)	Indl.	1967-68	13.62	13.62
12.	Do.	Mayurdhwaj singhji (Ex-ruler)	Indl.	1981-82	15.35	5.22
13.	W.B. XII	Buller D.W. (Mrs.) (alias H.W. Buller)	Indl.	1975-76	20.84	Nil
14.	Do.	B.C. Law	Indl.	N.A.	17.94	17.94
15.	Do.	Mazda S.F.	Indl.	1974-75	10.95	10.95
16.	Do.	Bhup Bahadur J.N.	Indl.	N.A.	43.15	Nil

1.102 The Ministry has also stated:

“The information in respect of remaining 34 cases where arrear demand up to Rs. 10 lakhs is outstanding is being called for from the field (January, 1982) and will take sometime before it is compiled.”

1.102A In a further note furnished on 27 September, 1983 by the Ministry of Finance (Department of Finance), the details of the remaining 34 cases which are covered in the top 50 estate duty assessment wherein arrears of demands were outstanding as on 1-4-1982 have been given are reproduced below:

Statement showing the details of the remaining 34 Estate Duty cases out of top 50 cases where the demand was outstanding as on 1-4-1982

Sl. No.	CIT's Charge	Name of the assessee	Status	Assessment Year for which the demand is outstanding	Amount	
					Gross arrears	Net arrears
					(Rs. in lakhs)	
1.	Ernakulam	Late Ramavarma Parikshit Thampuram.	Indl.	1972-73	9.58	9.58
2.	Madurai	A.M. Abdul Rahman	Do.	1980-81	4.05	4.05
3.	Patiala	Baba Daulta Nandji Vill Mahant Jogi Pangra, Distt. Una.	Do.	1981-82	4.01	4.01
4.	Nasik	Late Karansingh Swarupsingh Walvi A/P Smt. Rani Nanda devi, Raisinghpur Estate, Akkalkuwa, Distt. Dhule.	Do.		5.88	5.88
5.	Delhi-III	Late Sh. V.K. Gujral	Do.	1975-76	3.62	3.62
6.	Do	V.R. Grover	Do.	1979-80	11.88	11.88
7.	Do	Smt. P. Deshpande	Do.	1981-82	4.97	4.97
8.	Hyderabad	Late Sh. Awad Bin Saleh, Hyderabad	Do.	1977-78	3.45	3.45
9.	Rajkot	Late H.H. Maharaj Natwarsinghji of Porbandar.	Do.		3.22	
10.	Bombay	A.K. Kilachand A/P R.A. Kilachand	Do.	1980-81	5.58	5.68
11.	Bangalore Karnataka-I	V. Jayaram	Indl.	1980-81	6.37	6.37
12.	Do	F.V. Ambaram	Do.	1980-81	5.69	5.69

Sl. No.	CIT's Charge	Name of the assessee	Status	Asstt. Years for which the demand is outstanding	Amount	
					Gross arrears (Rs. in lakhs)	Net arrears
13.	Do.	K.H. Srinivasan	Indl.	1979-80	3.71	3.71
14.	Do.	Late Damodar Pai A/P Smt. Lalitha D. Pai	Do.	1981-82	4.05	4.05
15.	Do.	Smt. Navalben S. Gosalia	Do.	1979-80	4.26	4.26
16.	Madras	Estate of J.M. Abdul Azeez.	Do.	1970-71	7.71	7.71
17.	Do.	Estate of Late R.M. King	Indl.	Provisional Demand	4.67	3.02
18.	Do.	Estate of Late V.P. Kasim Hajee	Do.	Do.	3.73	3.22
19.	Do.	Estate of F.D. Batliwala	Do.	Do.	4.05	3.15
20.	Do.	Estate of Late, Gowri Balran	Do.	Do.	3.78	3.03
21.	Do.	Estate of Late M.O. Mathai	Do.	Do.	3.42	3.42
22.	Do.	Estate of Late K. Seetharama Rao	Do.	Do.	4.84	4.84
23.	Do.	T.S. Srinivasan	Do.	1981-82	4.10	3.79
24.	Calcutta (W.B. XII)	G.M. Taher	Do.	1979-80	5.08	5.08
25.	Do.	H.K. Suraya	Do.	1981-82	3.53	1.23
26.	Do.	Moni Mohan Khan	Do.	1976-77	3.52	3.52
27.	Do.	Jagabandhu Roy Chowdhury	Do.	1966-67	3.77	3.77
28.	Do.	K.C. Thapa	Do.	1980-81	5.50	5.50
29.	Do.	P.C. Bhanjdeo	Indl.	1975-76	5.22	5.22
30.	Do.	Ram Ch. Sur	Do.	1980-81	7.64	7.64
31.	Do.	Shibal	Do.	1981-82	7.00	7.00
32.	Do.	Mukta Ahmed	Do.	1981-82	15.99	—
33.	Bhopal	Late Nawabjada Rashid Jaffar Khan, Bhopal.	Do.	1969-70	5.61	5.61
34.	Do.	Late H.H. Tokoji rao Holkar, Indore	Do.	1969-70	11.30	11.30

1.103 The Committee desired to have a statement showing the break-up of the Estate Duty assessments completed during the year 1981-82 according to the slabs of principal value of the estate duty exceeding Rs. 20 lakhs, between Rs. 10 lakhs and Rs. 20 lakhs etc. The number of estate duty assessment appeal cases and revision petition pending in Courts or before various Appellate authorities together with the total duty effect involved in such pending cases was also called for from the Ministry. In a written note (January 1983), the Ministry has stated:

“This information is not readily available and is being compiled from the records in office of various Controllers and Assistant Controllers of Estate Duty all over the country. It will, therefore, take some time to collect and compile and will be furnished to the Hon'ble Committee as soon as it is received from the field officers.”

1.103A Information the above lines was furnished subsequently (27 September, 1983) by the Ministry of Finance (Department of Revenue). The same is reproduced below:

A statement showing the break-up of the Estate duty assessments completed during the year 1981-82 according to the slabs of principal value of the estate duty exceeding Rs. 20 lakhs, between Rs. 10 lakhs and Rs. 20 lakhs etc. and the number of assessments pending as on 31-3-1982 as appended below:

(i) *Break-up of the Estate Duty assessments complete during the year 1981-82 according to the slabs of the principal value of estate duty :*

Above Rs. 20 lakhs	Between Rs. 10 and Rs. 20 lakhs	Between Rs. 5 and Rs. 10 lakhs	Upto Rs. 5 lakhs	Total
25	67	534	25663	26289

(ii) *Break-up of Estate Duty assessments pending as on 31-3-1982*

Above Rs. 20 lakhs	Between Rs. 10 and Rs. 20 lakhs	Between Rs. 5 and Rs. 10 lakhs	Upto Rs. 5 lakhs	Total
74	335	1162	31517	33088

1.103B The Ministry of Finance has also furnished (September, 1983), figures of estate duty assessment appeal cases and revision petitions pending in courts and before various appellate authorities, which are appended below:

No. of Estate Duty appeal cases and revision petitions pending in Courts and before various Appellate Authorities	Total estate duty involved in such pending cases (Amount in lakhs of Rs.)
4963	610.51

1.104 The Committee enquired if the ratio of cost of collection and actual collections justified the continuance of this piece of legislation on the statute book. The Finance Secretary stated:

“So long as we have the Act, we will have that.”

1.105 He added:

“I do not think that the estate duty is a piece of legislation which we need to continue and it hangs together with the direct tax laws. . . . It is possible to simplify it. Different people have different views.”

1.106 In regard to unquoted shares of private companies, a special provision has been made in Section 37 of the Estate Duty Act which provides for two alternative modes of valuation viz. (i) by reference to the value of the total assets of the company; and (ii) the price which the shares “would fetch if they could be sold in the open market.” The second mode of valuation has to be resorted to only in cases where the value of the share is not ascertainable under the first mode of valuation.

In the case cited in Audit paragraph, the deceased held 1000 unquoted equity shares in a private limited company named M/s. J. D. Bytoo Cosmetics Pvt. Ltd. The Estate Duty Officer, while valuing these shares under Section 37 of the Estate Duty Act, 1953, made an incorrect allowance of 15 per cent from the break up value arrived at by him at Rs. 732 per share following the principle enunciated under Wealth Tax Rules which were not applicable to Estate Duty. This incorrect allowance resulted in under-assessment of the estate duty by Rs. 44,000. The Committee have informed that the Audit objection had been accepted by the Ministry (February 1982). The Assistant Controller of Estate Duty had requested the Commissioner of Income-tax (Appeals) for enhancement of the assessment by with-

drawing 15 per cent deduction allowed. The Commissioner of Income-tax (Appeals) has also served a notice of enhancement in this behalf on the accountable person(s). The accountable person has filed an appeal to the Commissioner of Income-tax (Appeals), Nasik. The order of C.I.T. (Appeals) is pending (January, 1983). The Committee would like to be informed of the latest position in the matter.

1.107 The Committee find that the Board, in their instruction No. 25A/3/65-ED dated 3 May, 1965 and 5 July, 1965 had clarified that in applying the break-up value method under Section 37 of the Estate Duty Act the market value, and not book value, of assets were to be taken. In a subsequent instruction dated 26 March 1968 the Board, however, extended the method of valuation prescribed under the Wealth-tax law based on book value of assets to estate duty assessments. It was pointed out in para 72 of the Audit Report 1972-73 that this was not correct, because of the special provisions of Section 37 of the Estate Duty Act. The matter was referred to the Ministry of Law who gave their opinion in July 1974 supporting the views of Audit. The advice of the Ministry of Law was accepted by the Ministry of Finance with the approval of the Finance Minister. In the wake of this and in pursuance of the recommendations of the Public Accounts Committee contained in para 5.51 of their 211th Report (Fifth Lok Sabha), the Board, in their instructions dated 29 October, 1974, cancelled the instructions of 26 March, 1968 and restored those of May, 1965 and July, 1965. In their further instruction No. 309/16/76-ED dated 5 November, 1976 the Board directed the Estate Duty Officers to review the estate duty assessments completed during the period from 1 November, 1973 to 29 October, 1974, and rectify the same under Section 59(b) of the Estate Duty Act, treating the Board's instruction No. 771 of 29 October, 1974 as "information" with Estate Duty Officer.

1.108 One of the assessments re-opened pursuant to the instructions issued by the Central Board of Direct Taxes on 29-10-1974 relates to the case of Shri Hemant B. Mafatlal who died on 16-8-1971. In this case, which was the subject-matter of an Audit para of 1975-76 Report, even according to the company's own balance sheet as on 31-3-1971, the market value of the assets was Rs. 18.17 crores against its book value of Rs. 4.43 crores. In the estate duty assessment (28-3-74), the shares were valued on yield basis. One of the companies in which the deceased held shares was M/s. Mafatlal Gagalbhai & Co. Private Ltd. The face value of a share of this company was Rs. 100/-. The Assistant Controller of Estate Duty adopted the value as returned at Rs. 161/- per share on the yield basis. On the basis of the value of the total assets of the company, the valuation came to

Rs. 1033 per share. Audit pointed out that under Section 37 of the Estate Duty Act, these shares had to be valued on the basis of market value of the total assets of the company. On that basis, a short levy of Rs. 175.43 lakhs was pointed out. The Audit objection was accepted by the Ministry in principle and they issued a notice for re-opening the assessment under Section 59(b) of the Act on 5-11-1976. Thereupon, the accountable person made a representation to the Assistant Controller (as well as to the Board) saying that the re-opening was not valid. Later, the assessee filed two legal opinions before the Central Board of Direct Taxes to the effect that the special rule of valuation in Section 37 of the Estate Duty Act was applicable only to such private companies as are controlled companies and not to non-controlled private companies of the type involved in the instant case.

1.109 In March 1978, the Ministry of Finance referred the case to the Ministry of Law. In the reference, with which the two aforesaid legal opinions were forwarded, the Ministry of Finance expressed a doubt as to the applicability of the first method laid down in Section 37 of the Estate Duty Act to the instant case as M/s. Mafatlal Gagalbbai & Co Private Ltd. was an investment company and as such it would be holding shares in other private companies which in turn would be holding shares of other companies; and thus it was virtually impossible to work out the value of the shares of the deceased in the said company 'by reference to the value of the total assets of the company'. The Ministry of Law were requested to advise whether in the instant case 'it would be possible to say that the value of the shares could not be ascertainable by a reference to the value of the total assets of the company'. In May 1978 the Ministry of Law gave a detailed opinion as to the meaning of the expression 'if not ascertainable by reference to the value of the total assets of the company'. In their opinion, which they recorded after taking into account the aforesaid two legal opinions, the Ministry of Law in effect reiterated their earlier view that an effort should be made in the first instance to ascertain the value of shares by reference to the value of the total assets of the company. It is only after that the value of the shares could not be ascertained by reference to the value of the total assets of the company that their market value may have to be determined in accordance with the later part of Section 37.

In June 1979 and in March 1980 the case was referred again by the Ministry of Finance to the Ministry of Law with the same two legal opinions. On both these occasions again the Ministry of Law reiterated their earlier views.

1.110 Although there were no fresh cases and no new evidence or further legal opinion before the Ministry of Finance, they nevertheless referred the case again to the Ministry of Law in July 1980. On this occasion, a Deputy Legal Adviser with the concurrence of a Joint Secretary, expressed an opinion which was totally inconsistent with all earlier opinions. According to this opinion, Section 37 applied only to controlled companies and not to all private companies. The Ministry of Finance then considered the question of revising their instruction of October 1974 so as to revert to the 1968 instruction in respect of non-controlled private companies. The Board asked for the comments, if any, of Revenue Audit before actually doing so. Audit suggested a reconsideration of the last opinion of the Law Ministry (29-12-81/1-1-82) at a more senior level. The views of Audit were considered in a tripartite meeting among the Ministry of Finance, Ministry of Law and Audit on 29-11-82. The Ministry of Law thereafter recorded a further opinion on 1-12-82 reversing their opinion of 29-12-81/1-1-82 and reiterating the view held by them all along from 1974 to 1980. The opinion expressed by the Deputy Legal Adviser (29-12-81/1-1-82) was reversed on the ground that while interpreting Section 37 of the Estate Duty Act the concept of the controlled companies did not come into the picture as special provisions regarding the valuation of controlled companies had been made in Sections 17 to 20 of the Estate Duty Act.

While testifying before the Committee in evidence the Secretary, Ministry of Law stated that the Ministry of Law had been uniform in their opinion except only on one occasion (1-1-82) when they were 'bamboozled in some way'.

1.111 It is not clear to the Committee when in May 1978 the Ministry of Law, after considering all the relevant factors, had given their considered opinion as to the meaning of the expression 'if not ascertainable by reference to the value of the total assets of the company', why the Department should have persisted in referring the same matter again and again to the Ministry of Law over the next 3½ years without adducing any new facts or evidence. The Committee feel that if the Department still continued to have any doubts, which in the opinion of the Committee they had no valid reasons to have, even after the Ministry of Law had given their considered opinion in May 1978, the proper course for them was to request for a tripartite meeting between the Board, Audit (who had raised the point) and the Ministry of Law. Unfortunately, however, the Department did not adopt this course and went on making references to the Ministry of Law till the notice for re-opening the assessment of Shri Hemant B. Mafatlal was quashed. The reason given by the Board

for not holding the tripartite meeting to resolve their doubts, viz., there were no difference between the Ministry and Audit as the Department of Revenue had formed no opinion at all, is totally unconvincing to the Committee.

1.112 Another point which has surprised the Committee is that while the reference in March 1977 was made with the approval of a Member of the Board, subsequent references were made at a fairly junior level—level of an Under Secretary with the approval of a Director. The Committee in this connection note the view expressed by the Secretary, Department of Revenue, "It would have been appropriate, viewing the matter in retrospect, for the Under Secretary and the Director, to have taken up the matter to the Member concerned. This would probably have facilitated a much quicker and tidier disposal of the matter by ensuring attention at a sufficiently higher level in the Central Board of Direct Taxes as well as in the Law Ministry". The Committee trust that in future such cases would be dealt with in a manner that would carry conviction with all concerned and not generate a cloud of suspicion.

1.113 The Committee also note that although the Assistant Controller had issued a notice for re-opening the assessment of Shri Hemant B. Mafatlal under Section 59(b), prompt action was not taken to complete the revised assessment nor were later timely efforts made to get the stay order issued by the Bombay High Court vacated. The Committee further note that the notice for re-opening of the assessment has been quashed by the Bombay High Court in October 1982. It is doubtful if Government's case was properly represented before the High Court.

1.114 In the opinion of the Committee, the Deputy Legal Adviser, who had given the opinion on 29-12-81 1-1-82 and the Joint Secretary, Ministry of Law who had concurred with the Deputy Legal Adviser had also not acquitted themselves creditably. Apart from the fact that the legal opinion given by her was totally inconsistent with the opinion expressed by the Ministry of Law all along, she had failed to see that in the interpretation of Section 37 the concept of controlled companies did not come into the picture as there were special provisions regarding the valuation of shares of controlled companies in Sections 17 to 20 of the Estate Duty Act. Also, the language of Rule 10(2) of the Gift Tax Rules was identical to the language of Section 37 of the Estate Duty Act. However, there was no concept of controlled companies under the Gift Tax Act. The least which could have been done in this case was that as the opinion expressed on 1-1-82 was at total variance with all earlier opinions, it should

have been put up to the Secretary of the Ministry who incidentally had given the original opinion in 1974 as the then Joint Secretary. But, unfortunately, this was not done.

1.115 In view of what has been stated above, the Committee would like the Ministry to investigate—

- (i) whether there was any deliberate move in the Ministry/ Board to delay the finalisation of the re-assessment in the instant case with a view to benefit the accountable person;
- (ii) whether there was any slackness/laxity in the Ministry/ Board to safeguard the interest of revenue in this case; and
- (iii) if so, to fix responsibility thereof.

1.116 During evidence, the Finance Secretary stated that according to the view of the Law Secretary "it is a fit case for going up in challenge". The Committee would like to be informed of the further action taken in the matter.

1.117 The Committee also note that while giving their opinion as to the meaning of the expression 'by reference to the value of the total assets of the company' as far back as July 1974, the Ministry of Law had suggested to the Ministry of Finance to frame rules on matters coming within the purview of Section 37. The Ministry of Law had also pointed out that such action would be in accordance with the suggestions made by Audit. The Committee regret to observe that although 9 years have elapsed, rules relating to valuation of shares of the companies coming within the purview of Section 37 of the Estate Duty Act have not yet been framed. The Committee desire that rules in the matter should be framed without any further loss of time.

1.118 Under Section 59(b) of the Estate Duty Act, an assessment can be reopened if the Controller of Estate Duty has, in consequence of any information in his possession, reason to believe that there has been some escapement of Estate Duty. This provision is analogous to the provision contained in Section 147(b) of the Income Tax Act. It has been held that 'information' may be as to a fact or as to the state of the law (35 ITR.1.SC). In the context of the Board's instructions of November 1976 about the reopening of the Estate Duty assessments a plea was also raised that the assessments could not be reopened because the Supreme Court had held in the Indian and Eastern Newspaper Society's case (119 ITR.996) that opinion of an

audit party would not be 'information' on a point of law. Actually, in that case the Supreme Court had drawn a distinction between the source of the communication and the content of the communication and held "for a communication to be 'information' on a point of law its content must be law", which means a legislative enactment or a determination by a judicial or a quasi-judicial body. In other words communications from non-judicial bodies like the Ministry of Law, the C.B.D.T. or the Revenue Audit, would be 'information' on a point of law only if the content was Law. The Ministry of Law to whom this point was referred also drew attention to the Supreme Court's observation in that case that "that part of the note of an audit party which mentions the law which escaped the notice of the I.T.O. constitutes 'information' within the meaning of Section 147(b)". A communication pointing out a statutory provision which has been overlooked might constitute 'information' on a point of law and the fact that the communication has emanated from the Revenue Audit would not make any difference.

1.119 The Committee understand that a large number of cases reopened on the basis of audit objections are being set aside palpably on the authority of the Indian and Eastern Newspaper Society's case without really undertaking the enquiry called for by that case as to whether the content of the audit objection is fact or law, in which case it would be 'information'. The distinction drawn by the Supreme Court is very important, and it would save a lot of litigation to Revenue as well as the taxpayers if the relevant provisions of the law were suitably amended to make the position clear beyond doubt. The Committee recommend that action may be taken accordingly.

1.120 The Committee find that in pursuance of the earlier recommendations of the Committee contained in their 211th Report (5th Lok Sabha) and 77th Report (6th Lok Sabha), the Ministry of Finance had conducted a review of 16,945 estate duty assessments completed during the period 1-11-1973 to 29-10-1974. The total number of cases liable for action as a result of the review having been assessed by extension of Rule 1D of the Wealth Tax Act, was reported to be 91 out of which reopening was not considered necessary in 10 cases on account of very small value of the shares. In one case, the enhancement was made by the Appellate Controller of Estate Duty. The Committee have been informed (January 1983) that out of the balance 80 cases, assessments have been completed in 47 cases and an additional demand of Rs. 1,23,765 has been raised. However, the additional demand realised is only Rs. 27,199. The Committee are concerned over the abnormal delay in completing the re-assessments. The Committee desire that the remaining 33 cases should be

finalised early. They further desire that the outstanding demand in completed cases— amounting to Rs. 96,566 should be realised without delay.

1.121 The Committee find that the number of cases of estate duty assessments pending was 35,862 as at the end of 1980-81 and 37,578 as on 31 March, 1982 as against 32,607 and 32,428 assessments completed in the respective years. The arrears of demand locked up in 25,270 assessments as on 31 March 1981 aggregates to Rs. 27.65 crores. The Committee have been informed that apart from issuing circulars to the Controllers of Estate Duty, emphasis has also been placed by the Department in its annual action plans on disposal of assessments from year to year. In spite of this the number of pending assessments (35,862 Nos.) exceeds the assessments completed (32,428 Nos.) during the year 1980-81. The Committee had expressed concern at this phenomenon in the past also.* The Committee cannot emphasise too strongly the urgent need for clearing the backlog of assessments under a time-bound programme.

1.122 From the data of completed and pending Estate Duty assessments furnished by the Ministry, the Committee find that in respect of estate duty exceeding Rs. 20 lakhs as against 25 assessments completed during 1981-82, 74 assessments were pending as on 31-3-1982. Likewise, as against 67 assessments between Rs. 10 lakhs and Rs. 20 lakhs completed during 1981-82, 335 assessments were pending as on 31-3-1982. The corresponding figure for the assessments between Rs. 5 lakhs and Rs. 10 lakhs were 534 and 1162 and for the assessments upto Rs. 5 lakhs 25663 and 31517 respectively. The Committee observe that while in absolute terms there is heavy pendency of Estate Duty assessments taken as a whole, the pendency relative to the assessments made in a year is very high in the case of bigger assessments. For each case of assessment of over Rs. 20 lakhs disposed of during 1981-82, as many as 3 cases were pending and for each case of assessment in the range between Rs. 10 lakhs and Rs. 20 lakhs disposed of during 1981-82, as many as 5 were pending. The Committee desire the Ministry to give a serious thought as how to quicken the pace of disposal of bigger assessment cases. They also desire that while chalking out a time-bound programme for clearing the backlog of Estate Duty assessments, as suggested in the preceding paragraph, particular attention should be paid to bigger cases. They also desire that the Special Cell, which has been created with the specific purpose of looking after bigger cases, should play a more effective and meaningful role than hitherto.

*34th Report (7th Lok Sabha) (Paras 1.32 to 1.39).
101st Report (7th Lok Sabha) (Paras 2.58—2.59).

1.123 Similarly, from the data of Estate Duty appeal and revision petition cases, the Committee find that as many as 4,963 cases with a total estate duty effect of Rs. 810.51 lakhs are pending. The Committee desire that effective steps should be taken to reduce the number of such cases so that large amounts of revenue do not remain locked up in appeal and revision petition cases for unduly long periods. They will also like the Ministry to make an indepth study of such heavy pendency of appeal and revision petition cases and take such measures, administrative as well as legal, as may be necessary, with a view to reducing the pendency of such cases to the barest minimum.

NEW DELHI,
January 31, 1984

Magha 11, 1905 (Saka)

SUNIL MAITRA,
Chairman,
Public Accounts Committee.

APPENDIX I

(Vide paragraph 1.10)

Copy of Instruction No. 25A/3/65-ED dated 3 May, 1965 from the Secretary, Central Board of Direct Taxes to all Controllers of Estate Duty

SUBJECT: Estate Duty Act, 1953—Section 37—Valuation of unquoted shares—Instructions regarding.

Attention is invited to the instructions on the valuation of shares, not quoted on the stock exchange, detailed in paragraph 1(c) of the Board's Circular No. 3-W.T. of 1957 dated the 28th September, 1957. According to these instructions, the value of such shares is to be determined on the basis of the value of assets, i.e. break-up value. The method of valuation of shares in the cases of investment companies for the purposes of Wealth-tax Act has been explained in Board's Circular No. 6-D(WT) of 1960 dated the 8th August, 1960.

2. Under the Estate Duty Act, Section 37 governs the mode of valuation of shares in a private limited company where alienation is restricted. The Board desire that no uniform practice is being followed by the officers on the Estate Duty side in this matter. In this connection, the Board would like to point out that for purposes of valuation of unquoted shares under Section 37 of the Estate Duty Act, 1953, the value to be taken into consideration should be based on the break-up value by taking the market value of the assets of the company and not the book value if that does not happen to be their market value.

APPENDIX II

(Vide paragraph 1.10)

Copy of Instruction No. F. 25A/3/65-ED dated 5 July, 1965 from the Secretary, Central Board of Direct Taxes.

SUBJECT: Estate Duty Act, 1953—Section 37—Valuation of unquoted shares—Clarification regarding.

A reference is invited to your d.o. letter No. 6 217/(16)/65 dated the 5th June, 1965 seeking Board's clarification regarding para 2 of their Circular letter of even number dated the 3rd May, 1965 (addressed to all Controllers of Estate Duty) on the above subject.

Section 37 of the Estate Duty Act, 1953, which governs the mode of valuation of shares in a private limited company whose Articles of Association contain restrictive provisions as to the alienation of its shares, contemplates:

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

3. The instructions issued by the Board in their Circular letter referred to in para 1 above were only with regard to the first part contemplated by Section 37 of the Act. They do not and were not intended to restrict the application of the second part of Section 37 for which purpose it would be open to the assessing officer to adopt some other method of valuation based on the yield of profits etc.

APPENDIX III

(Vide paragraph 1.16)

Copy of Instruction No. 835 (F. No. 313/88/74-ED) dated 24 May, 1975 from the Central Board of Direct Taxes to all Commissioners of Income Tax/Controllers of Estate Duty.

SUBJECT: Valuation of Shares under Section 37 of the E.D. Act—
Instruction regarding.

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

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

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

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

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

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

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

3. An allied issue is valuation of shares in a case where two or more private companies hold shares of each other and valuation of such shares to be made by the break-up method. The Board are of the view that in such cases the value of the shares can be determined by framing and solving simple equations. Illustrations which fully explain the position are given below*.

*Not reproduced.

APPENDIX IV

(Vide paragraph 1.45)

Copy of D.O. No. 508-Rec. A. III/205-76 Vol. II dated 29th March, 1982 from Shri R. S. Gupta, Director of Receipt Audit, C/o the Comptroller and Auditor General of India, New Delhi to Shri Jagdish Chand, Chairman, Central Board of Direct Taxes, Government of India, Ministry of Finance, New Delhi.

Kindly refer to the Board's letter No. F. 309/8/77-ED dated 4th March 1982, regarding para 112(1) of the Audit Report 1975-76, in connection with the valuation of the shares of a private company for purposes of Estate Duty.

2. The above Audit Para was examined by the Public Accounts Committee and their recommendations thereon are contained in paragraphs 4.27 to 4.33 of the Public Accounts Committee's 77th Report (6th Lok Sabha). The objection was accepted by the Ministry of Finance and paragraphs 1.7 to 1.10 of the Public Accounts Committee's 133rd Report (6th Lok Sabha) contain further observations of the Committee on the Action Taken Notes submitted by the Ministry of Finance to the Committee.

3. The Board's letter of the 4th March 1982 is now accompanied by a copy of the opinion recorded by the Ministry of Law to the effect that Section 37 of the Estate Duty Act applies only to the shares of controlled companies and not to the shares of other private companies where alienation is restricted. The action so far taken by the Board is proposed to be reversed on the basis of this opinion of the Ministry of Law.

4. In para 2 of the Law Ministry's opinion the provisions of Section 37 have been analysed. This analysis brings out clearly the fact that Section 37 contains a special provision in respect of the valuation of shares of private companies in which alienation is restricted, and this provision is to the effect that such shares are to be valued on the general open market principle only where their value is not ascertainable with reference to "the total assets of the company". There is no ambiguity about this provision and there is no qualification either. Subsequently, however, the Ministry of Law have analysed the provision of Rule 15(1) of the Controlled Company Rules and come to the conclusion that the said Rule 15(1)

would have the effect of restricting application of Section 37 to the shares of controlled companies only. It is clearly difficult for us to understand the proposition that a rule framed under the Act could control or curtail the clear and unambiguous provisions of the Act itself. Since the revenue implications of this as well as similar other cases are of very big magnitude I would suggest that the Ministry of Law may kindly be requested to have another look at this case and the matter may be placed before the Law Secretary and/or the Attorney General of India.

5. Incidentally, although this is a case which is subject to not only an Audit Para, but also of the Reports of the Public Accounts Committee the usual procedure of holding a tripartite discussion has not been followed in this case.

6. Considering the revenue implications and the importance of the subject, which the Public Accounts Committee have already dealt with, we may have to report the further developments of this case to the Public Accounts Committee for their further consideration and examination.

APPENDIX V

(Vide paragraph 1.71)

Gist of references made by the Ministry of Finance (Department of Revenue) to the Ministry of Law as to the interpretation of Section 37 of the Estate Duty Act, 1953 together with the opinions of the Ministry of Law thereon.

Date of reference	Gist of reference made by the Department of Revenue	Gist of opinion of the Ministry of Law and date on which given
1	2	3
16-7-1977	Advice on the general question "as to the types of cases or the circumstances under which" it can be said that the shares cannot be valued by reference to the total value of the assets of the company as laid down in Section 37 of the Estate Duty Act, 1953.	The Ministry of Law returned the file on 5 August, 1977 with a note that "the question raised on this file is hypothetical one. Further, it is also not practically possible to give an exhaustive list of the types of cases or the circumstances under which it can be said that the shares cannot be valued by reference to the total value of the assets of the company". Also, the question of value of shares is a mixed question of law and fact. Under the circumstances no general or special cases can be indicated and each case has to be decided on its own facts. Hence if the Department feels any difficulty in any particular case regarding the valuation in terms of Section 37 of the Estate Duty Act, 1953, the same may be referred to us for advice."
22 December 1977	The Ministry of Finance specifically referred the Estate Duty case of late Shri Hemant B. Mafatlal (who died on 16-8-71) seeking advice as to whether in the instant case... it would be possible to say that the value of shares could not be ascertained by reference to the value of the total assets of the company.	The file was withdrawn on 16-1-78 as the same was required in connection with the PAC meeting scheduled in the first week of February 1978.
9 March 1978	Since the withdrawal of the said file, two legal opinions filled on behalf of the accountable person had also been received and made available to the Ministry of Law. The two legal opinions were to the effect that the special rule of valuation	On 31-5-1978 the Ministry of Law gave the following opinion : "We feel that the meaning of the words 'if not ascertainable by reference to the value of the total assets of the company' means that efforts should be made in the first instance to

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contained in the first part of Section 37 of the Estate Duty Act would apply not to all private companies but only to controlled companies. In the context of the instant case and the two legal opinions filed on behalf of the accountable person, the Ministry of Finance sought to know the interpretation of the expression "if not ascertainable by reference to the value of the total assets of the company" appearing in Section 37 of the Estate Duty Act and whether it could be said that in the instant case it would be possible to say that the value of the shares could not be ascertainable by reference to the value of the total assets of the company.

ascertain the value of the shares by reference to the value of the total assets of the company. In determining the value of the assets it would be necessary to determine the market value of the assets of the company. This could be done in accordance with the procedure or the rules prescribed, if any. It is only after that the value of the shares could not be ascertained by reference to the value of the total assets of the company that their market value may have to be determined in accordance with the latter part of Section 37."

21 June 1979

The Ministry of Finance referred the case once again to the Ministry of Law with the following concluding note :

"In the light of the opinion of two legal authorities, we may request the Ministry of Law to advise on the meaning of the words 'if not ascertainable by reference to the value of the total assets of the company' as also the situations where the shares of private limited companies cannot be valued with reference to the value of the total assets of the company."

On 4-7-79 the Ministry of Law returned the file with the remarks that "this Ministry has given a detailed and elaborate opinion on the question involved". If the department was still not satisfied, "the matter might be discussed personally on a mutually convenient date and time to be fixed on telephone."

On 5 July, 1980 the Ministry of Law reiterated their earlier opinion with the following note:

"This Ministry has already examined this matter and detailed opinion has been given. It may, however, further be added that Section 37 of the Estate Duty Act 1953 provides two modes of valuation. The first is by reference to the total assets of the company. The other method is open market price. One method is not the substitute of the other. In all cases initially the valuation of shares by private company should be done by reference to the total assets of the company, the second method has to be adopted only when the first method is not applicable."

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If in all cases the valuation can be done by following the first method, the second method need not be followed. The second method has been provided only as an alternative to first method. It may be possible that in any rare case for some reasons, the first method cannot be applied, in such cases alone, the second method may have to be applied. Hence, in all cases, the valuation of the shares of a private company where alienation is restricted may have to be done by reference to the total assets of the company.

It would not be correct to say that if valuation cannot be done in accordance with rule 15, the other method of valuation will apply. The reason is that the rules cannot override the statutory provisions. Rule 15 only supplements the first method of valuation. It could by no means be exhaustive. The test should be that if in any case it is not possible to apply the first method, then only the second method will apply.

In this respect we understand that some cases are also pending in the Supreme Court. It would also be advisable to await the decision of the Court."

21 July 1980

The Ministry of Law's advice was sought specifically on the circumstances under which first part of Section 37 would not be applicable and whether in the case of Hemand B. Mafatlal, it could be said that the first part of Section 37 was not applicable.

The Ministry of Law suggested that a reference be made to the Department of Company Affairs.

The Department of Company Affairs observed that "they were not directly dealing with the valuation of shares as such."

The Ministry of Law gave a fresh opinion on 29 December, 1981/1 January, 1982 changing their earlier views. This opinion was ".....The valuation of property by open market method is provided by the Act itself. Therefore, we have to see whether the other alternative method i.e. the valuation by reference to the value

of the total assets of the company is also provided by the Act itself. The Act does not provide for the valuation of shares by reference to the assets of the company. However, Rule 15(1) of the Controlled Company Rules provide for the valuation of shares by reference to the net assets of the company....

From a reading of Rule 15 it is clear that in the case of a controlled company the principal value of the shares or debentures are to be estimated on the basis of net value of the assets in lieu of being estimated in accordance with the provisions of sub-section 1 of section 36 of the Act. The expression used under Rule 15 is 'in lieu of being estimated in accordance with the provisions of sub-section (1) of Section 36 of the Act'. Therefore, it is clear that the intention of the legislature is that in the case of a controlled company the shares should be valued by reference to the total assets of the company and not in accordance with Section 36, and it is only in cases where it is not a controlled company, the assets have to be valued on the basis of market value method. Except Rule 15(1) there is no other provision either in the rules in the Act providing for the valuation of shares by reference to the total assets of the company. Therefore, the Act contemplates the determination of the principal value of the property on the basis of open market method and in the case of shares held by a private limited company the shares have to be valued by a reference to the total assets of the company provided the company is a controlled company, in accordance with the Rule (15)1 of the Act, and if it is not a controlled company, the shares have to be valued according to the market method. Therefore, we are of the view that the expression 'ascertainable by reference to the value of the total assets of the company' refers to the valuation of shares in accordance with Rule 15 of the controlled company rules relating to controlled company....."

1	2	3
5 March 1982	The Board made a reference to the Ministry of Law in regard to the difficulty in applying the Ministry of Law's advise dated 29 December, 1981/ 1 January 1982 to the provisions of Rule 10(2) of Gift Tax, since its language is identical to the language of Section 37 of the Estate Duty Act. There is no concept of controlled companies under the Gift Tax Act.	
13 June 1982	The comments made by Audit were sent by the Ministry of Finance to the Ministry of Law. A tripartite meeting was fixed in November 1982.	On 1-12-1982 the Ministry of Law reversed their opinion of 29 December 1981/1 January, 1982. The opinion given on 1-12-1982 was. ".....The matter has been considered further. While interpreting Section 37 of the Estate Duty Act, the concept of the controlled company does not come into the picture. The reasons is that special provisions regarding the valuation of controlled companies have been made in sections 17 to 20 of the Estate Duty Act. Section 37 requires that the value of the total assets of the company should be ascertained in the first instance, failing which the value has to be estimated on the open market method. In view of the above, it is felt that reference to the valuation in the case of controlled companies is not relevant in the context of interpretation of Section 37 of the Estate Duty Act. on the basis of the advice given by this Ministry in 1974, the Department had issued general instructions on 29-10-1974 and 24-5-1976..... We have gone through these instructions again and there is no warrant to cancel these instructions in the light of what is stated above....."

APPENDIX VI

(Vide Introduction)

Statement of conclusions and/or Recommendations

Sl. No.	Para No.	Ministry/Department	Recommendations
1	1-106	Finance (Revenue)	<p>In regard to unquoted shares of private companies, a special provision has been made in Section 37 of the Estate Duty Act which provides for two alternative modes of valuation viz. (i) by reference to the value of the total assets of the company; and (ii) the price which the shares "would fetch if they could be sold in the open market." The second mode of valuation has to be resorted to only in cases where the value of the share is not ascertainable under the first mode of valuation.</p> <p>In the case cited in Audit paragraph, the deceased held 1000 unquoted equity shares in a private limited company named M/s. J. D. Bytco Cosmetics Pvt. Ltd. The Estate Duty Officer, while valuing these shares under Section 37 of the Estate Duty Act, 1953, made an incorrect allowance of 15 per cent from the break up value arrived at by him at Rs. 732 per share following the principle enunciated under Wealth Tax Rules which were not applicable to Estate Duty. This incorrect allowance resulted in under-assessment of the estate duty by Rs. 44,000. The Committee have been informed that the Audit</p>

objection had been accepted by the Ministry (February 1982). The Assistant Controller of Estate Duty had requested the Commissioner of Income-tax (Appeals) for enhancement of the assessment by withdrawing 15 per cent deduction allowed. The Commissioner of Income-tax (Appeals) has also served a notice of enhancement in this behalf on the accountable person(s). The accountable person has filed an appeal to the Commissioner of Income-tax (Appeals), Nasik. The order of CIT (Appeals) is pending (January, 1983). The Committee would like to be informed of the latest position in the matter.

2 1-107 Finance (Revenue)

The Committee find that the Board, in their instruction No. 25A|3| 65-ED dated 3 May, 1965 and 5 July, 1965 had clarified that in applying the break-up value method under Section 37 of the Estate Duty Act the market value, and not book value, of assets were to be taken. In a subsequent instruction dated 26 March, 1968 the Board, however, extended the method of valuation prescribed under the Wealth-tax law based on book value of assets to estate duty assessments. It was pointed out in para 72 of the Audit Report 1972-73 that this was not correct, because of the special provisions of Section 37 of the Estate Duty Act. The matter was referred to the Ministry of Law who gave their opinion in July 1974 supporting the views of Audit. The advice of the Ministry of Law was accepted by the Ministry of Finance with the approval of the Finance Minister. In the wake of this and in pursuance of the recommendations of the Public Accounts Committee contained in para 5.51 of their 211th Report (Fifth Lok Sabha), the Board, in their instructions dated 29 October, 1974, cancelled the instructions of 26 March, 1968 and restored those of May, 1965 and

July, 1965. In their further instruction No. 309/16/76-ED dated 5 November, 1976 the Board directed the Estate Duty Officers to review the estate duty assessments completed during the period from 1 November, 1973 to 29 October, 1974, and rectify the same under Section 59(b) of the Estate Duty Act, treating the Board's instruction No. 771 of 29 October, 1974 as "information" with Estate Duty Officer.

3 1-108

Do.

One of the assessments re-opened pursuant to the instructions issued by the Central Board of Direct Taxes on 29-10-1974 relates to the case, of Shri Hemant B. Mafatlal who died on 16-8-1971. In this case, which was the subject-matter of an Audit para of 1975-76 Report, even according to the company's own balance sheet as on 31-3-1971, the market value of the assets was Rs. 18.17 crores against its book value of Rs. 4.43 crores. In the estate duty assessment (28-3-74), the shares were valued on yield basis. One of the companies in which the deceased held shares was M/s. Mafatlal Gagalbhai & Co. Private Ltd. The face value of a share of this company was Rs. 100/-. The Assistant Controller of Estate Duty adopted the value as returned at Rs. 161/- per share on the yield basis. On the basis of the value of the total assets of the company, the valuation came to Rs. 1033 per share. Audit pointed out that under Section 37 of the Estate Duty Act, these shares had to be valued on the basis of market value of the total assets of the company. On that basis, a short levy of Rs. 175.43 lakhs was pointed out. The Audit objection was accented by the Ministry in principle and they issued a notice for re-opening the assessment under Section 59(b) of the Act on 5-11-1976. Thereupon, the accountable person made a representation to the Assistant Controller (as well as to the Board) saying that

the re-opening was not valid. Later, the assessee filed two legal opinions before the Central Board of Direct Taxes to the effect that the special rule of valuation in Section 37 of the Estate Duty Act was applicable only to such private companies as are controlled companies and not to non-controlled private companies of the type involved in the instant case.

In March, 1978 the Ministry of Finance referred the case to the Ministry of Law. In the reference, with which the two aforesaid legal opinions were forwarded, the Ministry of Finance expressed a doubt as to the applicability of the first method laid down in Section 37 of the Estate Duty Act to the instant case as M s. Mafatlal Gaga'bhai & Co. Private Ltd. was an investment company and as such it would be holding shares in other private companies which in turn would be holding shares of other companies; and thus it was virtually impossible to work out the value of the shares of the deceased in the said company 'by reference to the value of the total assets of the company'. The Ministry of Law were requested to advise whether in the instant case 'it would be possible to say that the value of the shares could not be ascertainable by a reference to the value of the total assets of the company'. In May 1978 the Ministry of Law gave a detailed opinion as to the meaning of the expression 'if not ascertainable by reference to the value of the total assets of the company. In their opinion, which they recorded after taking into account the aforesaid two legal opinions, the Ministry of Law in effect reiterated their earlier view that an effort should be made in the first instance to ascertain the value of shares 'by reference to the value of the total assets of the company.' It

is only after that the value of the shares could not be ascertained by reference to the value of the total assets of the company that their market value may have to be determined in accordance with the later part of Section 37.

In June 1979 and in March 1980 the case was referred again by the Ministry of Finance to the Ministry of Law with the same two legal opinions. On both these occasions again the Ministry of Law reiterated their earlier views.

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1-110

Finance (Revenue)

Although there were no fresh cases and no new evidence or further legal opinion before the Ministry of Finance, they nevertheless referred the case again to the Ministry of Law in July 1980. On this occasion, a Deputy Legal Adviser with the concurrence of a Joint Secretary, expressed an opinion which was totally inconsistent with all earlier opinions. According to this opinion, Section 37 applied only to controlled companies and not to all private companies. The Ministry of Finance then considered the question of revising their instruction of October 1974 so as to revert to the 1968 instruction in respect of non-controlled private companies. The Board asked for the comments, if any, of Revenue Audit before actually doing so. Audit suggested a reconsideration of the last opinion of the Law Ministry (29-12-81/1-1-82) at a more senior level. The views of Audit were considered in a tripartite meeting among the Ministry of Finance, Ministry of Law and Audit on 29-11-82. The Ministry of Law thereafter recorded a further opinion on 1-12-82 reversing their opinion of 29-12-81/1-1-82 and reiterating the view held by them all along from 1974 to 1980. The opinion expressed by the Deputy Legal Adviser (29-12-81/1-1-82) was reversed on the ground that while interpreting

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Section 37 of the Estate Duty Act the concept of the controlled companies did not come into the picture as special provisions regarding the valuation of controlled companies had been made in Sections 17 to 20 of the Estate Duty Act.

While testifying before the Committee in evidence, the Secretary, Ministry of Law stated that the Ministry of Law had been uniform in their opinion except only on one occasion (1-1-82) when they were 'bamboozled in some way'.

It is not clear to the Committee when in May 1978 the Ministry of Law, after considering all the relevant factors, had given their considered opinion as to the meaning of the expression 'if not ascertainable by reference to the value of the total assets of the company', why the Department should have persisted in referring the same matter again and again to the Ministry of Law over the next 3-1/2 years without adducing any new facts or evidence. The Committee feel that if the Department still continued to have any doubts, which in the opinion of the Committee they had no valid reason to have, even after the Ministry of Law had given their considered opinion in May 1978, the proper course for them was to request for a tripartite meeting between the Board, Audit (who had raised the point) and the Ministry of Law. Unfortunately, however, the Department did not adopt this course and went on making references to the Ministry of Law till the notice for re-opening the assessment of Shri Hemant B. Mafatlal was quashed. The reason given by the Board for not holding the tripartite meeting to

resolve their doubts, viz., there were no differences between the Ministry and Audit as the Department of Revenue had formed no opinion at all, is totally un-convincing to the Committee.

7 1-112 Finance (Revenue)

Another point which has surprised the Committee is that while the reference in March 1977 was made with the approval of a Member of the Board, subsequent references were made at a fairly junior level—level of an Under Secretary with the approval of a Director. The Committee in this connection note the view expressed by the Secretary, Department of Revenue, "It would have been appropriate, viewing the matter in retrospect, for the Under Secretary and the Director, to have taken up the matter to the Member concerned. This would probably have facilitated a much quicker and tidier disposal of the matter by ensuring attention at a sufficiently higher level in the Central Board of Direct Taxes as well as in the Law Ministry." The Committee trust that in future such cases would be dealt with in a manner that would carry conviction with all concerned and not generate a cloud of suspicion.

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8 1-113 Do.

The Committee also note that although the Assistant Controller had issued a notice for re-opening the assessment of Shri Hemant B. Mafatlal under Section 59(b), prompt action was not taken to complete the revised assessment nor were later timely efforts made to get the stay order issued by the Bombay High Court vacated. The Committee further note that the notice for re-opening of the assessment has been quashed by the Bombay High Court in October 1982. It is doubtful if Government's case was properly represented before the High Court.

9 1-114 Do.

In the opinion of the Committee, the Deputy Legal Adviser, who had given the opinion on 29-12-81/1-1-82 and the Joint Secretary,

Ministry of Law who had concurred with the Deputy Legal Adviser had also not acquired themselves creditably. Apart from the fact that the legal opinion given by her was totally inconsistent with the opinion expressed by the Ministry of Law all along, she had failed to see that in the interpretation of Section 37 the concept of controlled companies did not come into the picture as there were special provisions regarding the valuation of shares of controlled companies in Sections 17 to 20 of the Estate Duty Act. Also, the language of Rule 10(2) of the Gift Tax Rules was identical to the language of Section 37 of the Estate Duty Act. However, there was no concept of controlled companies under the Gift Tax Act. The least which could have been done in this case was that as the opinion expressed on 1-1-82 was at total variance with all earlier opinions, it should have been put up to the Secretary of the Ministry who incidentally had given the original opinion in 1974 as the then Joint Secretary. But, unfortunately, this was not done.

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1-115

Finance (Revenue)

In view of what has been stated above, the Committee would like the Ministry to investigate:—

- (i) whether there was any deliberate move in the Ministry/ Board to delay the finalisation of the re-assessment in the instant case with a view to benefit the accountable person;
- (ii) whether there was any slackness/laxity in the Ministry/ Board to safeguard the interest of revenue in this case; and
- (iii) if so, to fix responsibility therefor.

- 11 1-116 Finance (Revenue) During evidence, the Finance Secretary stated that according to the view of the Law Secretary "it is a fit case for going up in challenge". The Committee would like to be informed of the further action taken in the matter.
- 12 1-117 Finance (Revenue) The Committee also note that while giving their opinion as to the meaning of the expression 'by reference to the value of the total assets of the company' as far back as July 1974, the Ministry of Law had suggested to the Ministry of Finance to frame rules on matters coming within the purview of Section 37. The Ministry of Law had also pointed out that such action would be in accordance with the suggestions made by Audit. The Committee regret to observe that although 9 years have elapsed, rules relating to valuation of shares of the companies coming within the purview of Section 37 of the Estate Duty Act have not yet been framed. The Committee desire that rules in the matter should be framed without any further loss of time.
- 13 1-118 Finance (Revenue) Under Section 59(b) of the Estate Duty Act, an assessment can be reopened if the Controller of Estate Duty has, in consequence of any information in his possession, reason to believe that there has been some escapement of Estate Duty. This provision is analogous to the provision contained in Section 147(b) of the Income Tax Act. It has been held that 'information' may be as to a fact or as to the state of the law (35. ITR. 1 SC). In the context of the Board's instructions of November 1976 about the reopening of the Estate Duty assessments a plea was also raised that the assessments could not be reopened because the Supreme Court had held in the Indian and Eastern Newspaper Society's case (119. ITR. 996) that opinion of an audit party would not be 'information' on a point of law. Actually, in that case the
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Supreme Court had drawn a distinction between the source of the communication and the content of the communication and held "for a communication to be 'information' on a point of law its content must be law," which means a legislative enactment or a determination by a judicial or a quasi-judicial body. In other words, communications from non-judicial bodies like the Ministry of Law, the CBDT or the Revenue Audit, would be 'information' on a point of law only if the content was Law. The Ministry of Law to whom this point was referred also drew attention to the Supreme Court's observation in that case that "that part of the note of an audit party which mentions the law which escaped the notice of the ITO constitutes 'information' within the meaning of Section 147(b)". A communication pointing out a statutory provision which has been overlooked might constitute 'information' on a point of law and the fact that the communication has emanated from the Revenue Audit would not make any difference.

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The Committee understand that a large number of cases reopened on the basis of audit objections are being set aside palpably on the authority of the Indian and Eastern Newspaper Society's case without really undertaking the enquiry called for by that case as to whether the content of the audit objection is fact or law, in which case it would be 'information'. The distinction drawn by the Supreme Court is very important, and it would save a lot of litigation to Revenue as well as the taxpayers if the relevant provisions of the law were suitably amended to make the position clear beyond doubt. The Committee recommend that action may be taken accordingly.

The Committee find that in pursuance of the earlier recommendations of the Committee contained in their 211th Report (5th Lok Sabha) and 77th Report (6th Lok Sabha), the Ministry of Finance had conducted a review of 16,945 estate duty assessments completed during the period 1-11-1973 to 29-10-1974. The total number of cases liable for action as a result of the review having been assessed by extension of Rule 1D of the Wealth Tax Act, was reported to be 91 out of which reopening was not considered necessary in 10 cases on account of very small value of the shares. In one case, the enhancement was made by the Appellate Controller of Estate Duty. The Committee have been informed (January 1975) that 47 cases have been completed in 47 cases and an additional demand of Rs. 1,23,765 has been raised. However, the additional demand realised is only Rs. 27,199. The Committee are concerned over the abnormal delay in completing the re-assessments. The Committee desire that the remaining 33 cases should be finalised early. They further desire that the outstanding demand in completed cases amounting to Rs. 96,566 should be realised without delay.

The Committee find that the number of cases of estate duty assessments pending was 35,862 as at the end of 1980-81 and 37,578 as on 31 March, 1982 as against 32,607 and 32,428 assessments completed in the respective years. The arrears of demand locked up in 25,270 assessments as on 31 March, 1981 aggregates to Rs. 27.65 crores. The Committee have been informed that apart from issuing circulars to the Controllers of Estate Duty, emphasis has also been placed by the Department in its annual action plans on disposal of assessments from year to year. In spite of this the number of pending assessments (358.62 nos.) exceeds the assessments completed (32,428 nos.) during the year 1980-81. The Committee had expressed concern at this

phenomenon in the past also. The Committee cannot emphasise too strongly the urgent need for clearing the backlog of assessments under a time-bound programme.

From the data of completed and pending Estate Duty assessments furnished by the Ministry, the Committee find that in respect of estate duty exceeding Rs. 20 lakhs as against 25 assessments completed during 1981-82, 74 assessments were pending as on 31-3-1982. Likewise, as against 67 assessments between Rs. 10 lakhs and Rs. 20 lakhs completed during 1981-82, 333 assessments were pending as on 31-3-1982. The corresponding figure for the assessments between Rs. 5 lakhs and Rs. 10 lakhs were 534 and 1162 and for the assessments upto Rs. 5 lakhs 25663 and 31517 respectively. The Committee observe that while in absolute terms there is heavy pendency of Estate Duty assessments taken as a whole, the pendency relative to the assessments made in a year is very high in the case of bigger assessments. For each case of assessment of over Rs. 20 lakhs disposed of during 1981-82, as many as 3 cases were pending and for each case of assessment in the range between Rs. 10 lakhs and Rs. 20 lakhs disposed of during 1981-82, as many as 5 were pending. The Committee desire the Ministry to give a serious thought as how to quicken the pace of disposal of bigger assessment cases. They also desire that while chalking out a time-bound programme for clearing the backlog of Estate duty assessments, as suggested in the preceding paragraph, particular attention should be paid to bigger cases. They also desire that the Special Cell, which has been created with the specific purpose of looking after bigger cases, should play a more effective and meaningful role than hitherto.

Similarly, from the data of Estate Duty appeal and revision petition cases, the Committee find that as many as 4,963 cases with a total estate duty effect of Rs. 810.51 lakhs are pending. The Committee desire that effective steps should be taken to reduce the number of such cases so that large amounts of revenue do not remain locked up in appeal and revision petition cases for unduly long periods. They will also like the Ministry to make an indepth study of such heavy pendency of appeal and revision petition cases and take such measures, administrative as well as legal, as may be necessary, with a view to reducing the pendency of such cases to the barest minimum.

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