P. A. C. No. 531

PUBLIC ACCOUNTS COMMITTEE
(1976-77)

(FIFTH LOK SABHA)

TWO HUNDRED AND THIRTY-THIRD REPORT

GIFT TAX

DEPARTMENT OF REVENUE & BANKING

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 193rd Report (Fifth Lok Sabha)]

LOK SABHA SECRETARIAT
NEW DELHI

October, 1976/Kartika, 1898 (S)

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...

Page	Line	For	Read
14	30	After the words 'Gift-tax', add the words 'Act, of the Gift-tax'	
15	2	Delete the heading 'Paragraph 4.37'	
15	14	to	of
17	3 (from bottom)	together	to gather
18	3 (from bottom)	certificate	certificates
19	21	had	had been
25	4	After the words 'to be' add the words 'discounted generally by 15 percent in all cases and by further'	
25	29	case	care
27	6	first	first time
29	33	of examine	to examine
30	2 (from bottom)	Delete the word 'the' after the word 'with'.	
36	16	Assisting	Assistant
38	7	S.No.	S.No. 4
49	15	Report	Reports
49	22	After the word 'Act', add the words 'of the Gift-tax'	

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PUBLIC ACCOUNTS COMMITTEE
(1976-77)

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SECRETARIAT

Shri N. Sunder Rajan—*Officer on Special Duty.*

INTRODUCTION

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

2. On 5 June, 1976, an 'Action Taken Sub-Committee' consisting of the following Members, was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports:

Shri H. N. Mukerjee—*Chairman*
2. Shri N. K. Sanghi—*Convener*

3. Shri Dinen Bhattacharya
4. Shri Chandulal Chandrakar
5. Shri Raja Kulkarni
6. Shri Shyam Sunder Mohapatra
7. Shri Priya Ranjan Das Munsi
8. Shri Sardar Amjad Ali
9. Shri Indradeep Sinha
10. Shri Omprakash Tyagi

} *Members*

3. The Action Taken Sub-Committee of the Public Accounts Committee (1976-77) considered and adopted the Report at their sitting held on 14 October, 1976. The Report was finally adopted by the Public Accounts Committee on 25 October, 1976.

4. For facility of reference the conclusions|recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the conclusions|recommendations of the Committee have also been appended to the Report in a consolidated form.

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

NEW DELHI;
October 26, 1976.
Kartika 4, 1898 (*S*).

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

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations/observations contained in their 193rd Report (Fifth Lok Sabha) on the paragraphs relating to Gift Tax included in Chapter IV of the Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.

1.2. The Committee's 193rd Report was presented to the Lok Sabha on 2 April, 1976 and contained 40 recommendations/observations. Though in the normal course, in accordance with the time schedule prescribed in this regard in the Committee's 5th Report (Fourth Lok Sabha), the Action Taken Notes on the recommendations/observations contained in this Report were required to be furnished by 1 October, 1976, the Department of Revenue & Banking (erstwhile Department of Revenue & Insurance) had been requested on 24 June, 1976 to make available the relevant Notes by 31 August, 1976. This had been complied with by the Department with All the Action Taken Notes being made available to the Committee in accordance with the revised schedule.

1.3. The Action Taken Notes received from Government have been broadly categorised as follows:

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

Sl. Nos. 1, 7, 8, 9, 11. 13, 14, 17, 25, 26, 27, 28, 33, 34, 35, 36, 37, 38, 39 and 40.

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

Sl. Nos. 23 and 32.

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

Sl. Nos. 2, 4, 5, 6, 10, 21, 22 and 29.

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

Sl. Nos. 3, 12, 15, 16, 18, 19, 20, 24, 30 and 31.

1.4. The Committee expect that final replies to those recommendations|observations in respect of which only interim replies have so far been furnished would be submitted to them expeditiously after getting them vetted by Audit.

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

Evaluation of the impact of the instructions issued by the Central Board of Direct Taxes. (Paragraphs 1.15 *and* 1.37—*Sl. Nos.* 2 *and* 7).

1.6. Commenting on a case of omission to levy Gift Tax on the surrender by a widow of her share of the capital of her deceased husband in a firm to her two sons, which had occurred on account of the failure of the Wealth Tax Officer to pass on to the Gift Tax Officer relevant information in this regard, the Committee, in paragraph 1.15 of their Report had observed, *inter alia,* as follows:

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

1.7. In their Action Taken Note dated 12 July 1976 on the above observations, the Department of Revenue and Banking (Revenue Wing) have stated:

> "Information in the matter has been called for from the Directorate of O and M Services who have taken steps to

call and collate the information from the Commissioners of Income-tax. As soon as the information is collected and collated, the Committee would be informed."

1.8. Again, in paragraph 1.37 of the Report the Committee had recommended:

"The Committee find that under the instructions issued, as early as May 1958, the departmental officers were required to gather information relating to the transfer of both agricultural and non-agricultural properties from the registration offices, and that this exercise was to be repeated annually. Further, in November 1964 the Inspecting Assistant Commissioners were also made specifically responsible for the proper collection and utilisation of this information. However these instructions have been more honoured in the breach than in the observance. The Committee take a serious view of this lapse particularly at the level of the Inspecting Assistant Commissioners who have apparently failed to do their duty. The Committee cannot accept the somewhat worn out plea that the officials operate under an excessive workload. The responsibility of the Central Board of Direct Taxes does not end with issuing instructions without worrying over their honest implementation. The Committee would urge that the Central Board of Direct Taxes should evolve a system of periodical review of the implementation of the various instructions issued and evaluation of the impact of these instructions on tax administration."

1.9. The Action Taken Note dated 29 July 1976 furnished in this connection by the Department is reproduced below:

"The Central Board of Direct Taxes in consultation with the Director (O and MS) and Director of Inspection (R.S.) are devising an effective method to ensure implementation of the various instructions issued by the Board and evaluate the impact of these instructions on the tax administration."

1.10. The need for a regular review of the instructions issued by the Central Board of Direct Taxes had also been emphasised by the

Committee in paragraph 1.15 of their 187th Report (Fifth Lok Sabha) wherein they had observed as follows:

"The Committee are concerned at no review having been undertaken by the Central Board of Direct Taxes regarding the effect of the Board's Instruction No. 589 dated the 25th August 1973. The Board's responsibility does not end with merely issuing instructions based on the recommendations of the Committee. There should be regular review of such instructions to ensure that they were being implemented in the field. The Committee desire that the Central Board of Direct Taxes should undertake such a review and take all necessary remedial measures."

1.11. Intimating, on 21 April 1976, the action taken on this recommendation, the Department had, *inter alia* stated:

"The Director of Inspection (Income-tax and Audit) has been directed to carry out a review of the impact of the Board's instructions. The review has not yet been completed. In the meantime, a quarterly bulletin incorporating important Audit objections raised by both Internal as well as Receipt Audit is being issued for the guidance of assessing officers so that they may guard against mistakes of the nature pointed out therein. This is expected to serve as a constant reminder to be vigilant in completing the assessments."

1.12. **The Committee regret that it has not been possible so far for the Department of Revenue and Banking to intimate whether the instructions issued in November 1973 by the Directorate of O and M Services emphasising the need for better coordination between assessments made under different Direct Tax Laws have been actually implemented in the field. All that has happened since the Committee presented their Report in April 1976 is that relevant information in this regard has been called for from the Directorate of O and M Services who, in their turn, are stated to have taken steps to call for and collate the information from the Commissioners of Income-tax. Had there been a contemporaneous monitoring by the Department or the Central Board of Direct Taxes of the implementation and impact of the instructions periodically issued by them, there would not have been this kind of delay. As pointed out by the Committee in paragraph 1.15 of their 187th Report (Fifth Lok Sabha) and paragraph 1.37 of their 193rd Report (Fifth Lok Sabha) the responsibility of the Central Board of Direct Taxes does**

not end with merely issuing instructions without worrying over their honest implementation.

1.13. The Director of Inspection (Income-tax and Audit) has at long last been directed to carry out a review of the impact of the Board's instructions and the Central Board of Direct Taxes are stated to be devising, in consultation with the Director of O and M Services and the Director of Inspection (R.S.) an effective method to ensure implementation of the various instructions issued by the Board and to evaluate the impact of these instructions on the tax administration. The Committee trust that this exercise, which has been overdue will be completed speedily and all necessary steps taken.

Non-levy of tax on gifts of agricultural land. (Paragraphs 1.34 *to* 1.36—*Sl. Nos.* 4 *to* 6).

1.14. Dealing with a case of omission to levy Gift Tax amounting to Rs. 12.54 on a gift of agricultural land valued at Rs. 1.32 lakhs, the Committee, in paragraph 1.34 of the Report had recommended:

"The Committee are concerned to note that despite the clear and unambiguous legal position upheld by the highest judiciary, regarding the liability to Gift Tax on gifts of agricultural land, action had not been taken by the Gift Tax Officer in the present case where agricultural land valued at Rs. 1.32 lakhs was gifted by the assessee to her minor sons. The omission had resulted in the non-levy of Rs. 12.524. Though the error has been admitted, the question of recovering the tax is still under consideration. The Committee cannot appreciate this delay in taking a decision in this straight-forward case. Action to recover the tax due should be taken at once, if it has not been already done."

1.15. In their Action Taken Note dated 25 May 1976 furnished to the Committee in response to the above recommendation, the Department of Revenue and Banking (Revenue Wing) have stated as follows:

"The matter was further examined in consultation with Ministry of Law, who have opined as under:

'According to Section 123 of the Transfer of Property Act, a valid gift of immovable property can only be made by a registered instrument. In this case since

there is no registered instrument, *prima facie,* the gift appears to be invalid.

In view of the fact that there are no local laws or rules etc., rendering a gift of immovable property valid simply by mutation, we confirm the opinion given above that the gift is invalid in this case'.

In view of the opinion of the Ministry of Law tendered above, there is no question of recovery of gift-tax. However, the Wealth-tax Officer concerned has been directed to include the property alleged to have been gifted in the net wealth of the assessee for the purpose of wealth-tax assessment."

1.16. The Committee are of the view that in cases where transfers of immovable property could, in fact, be made to the donees by mutations having been passed by State Revenue authorities without reference to registered gift deeds, a possible motive for avoidance of Gift Tax as well as stamp duty cannot be entirely ruled out and it is not unlikely that a large number of transfers of agricultural holdings are resorted to by mutation which could contribute to considerable loss of revenue to the exchequer. The Committee would, therefore, like Government to re-examine the case from this angle and take necessary remedial measures. The Committee would await an early report in this regard.

1.17. In paragraphs 1.35 and 1.36 of the Report, the Committee had further recommended as follows:

"1.35. As early as August, 1972, the Committee had, in paragraph 3.10 of their 50th Report (Fifth Lok Sabha), *inter alia,* recommended a review of the position relating to the levy of Gift Tax on gifts of agricultural land with a view to ascertaining the extent of non-levy of tax on such gifts in the past. A limited review of gifts of agricultural land exceeding the value of Rs. 5,000 registered during the months of September and October in 1969-70 and 1970-71, in all Commissioners' charges excluding West Bengal, had revealed that out of 10,544 cases of such gifts, Gift Tax proceedings had not been initiated in as many as 4,590 cases, involving gifts valued at Rs. 3.15 crores. This would indicate the extent to which the administration of the Gift Tax Act has been inadequate and defective. On the basis of this sample survey, the Central Board of Direct Taxes had also set in motion a complete review of such cases in all the Commissioners' char-

ges for the years 1970-71 to 1972-73. As a time limit of 8 years was available under Section 16(i) of the Gift Tax Act for assessing gifts escaping tax, the Committee, in paragraph 1.28 of their 103rd Report (Fifth Lok Sabha) had wanted that the proposed review should also cover the period from 1965-66 to 1969-70, that the review should be completed within a period of one year and that action should be taken to finalise the assessments before they became time-barred."

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

1.18. The Action Taken Note dated 19 August, 1976 furnished in this regard by the Department is reproduced below:

"All efforts are being made to complete the review expeditiously. Clarifications are awaited from some of the Commissioners of Income-tax. The Committee will be informed as soon as the clarifications are received."

1.19. The Committee are perturbed that though they had specifically desired, in January, 1974, that a review of the position relating to the levy of Gift Tax on gifts of agricultural land during the period from 1965-66 to 1969-70 should be completed within a period of one year and necessary action taken to finalise the assessments before they became time-barred, the review is yet to be completed even after the lapse of more than 2½ years. Since such delays are detrimental the Committee insist on the review being completed forthwith and urgent steps taken to subject to taxation such gifts as might have escaped the Gift Tax. The Committee would like to be apprised of the results of the review within a month.

1.20. The Department's reply is silent in regard to another recommendation of the Committee that responsibility for the delay in

completing the review should be fixed for appropriate action. Delays which result in loss of revenue are a serious matter and unless dealt with sternly would further jeopardise the administration of taxation. The Committee would like to know the specific action taken on this recommendation.

Non-levy of Gift Tax on capital assets transferred for inadequate consideration (Paragraph 1.48—Sl. No. 10).

1.21. Commenting on a case of non-levy of Gift Tax amounting to Rs. 15,600, on the transfer of assets for inadequate consideration, the Committee, in paragraph 1.48 of the Report, had recommended, *inter alia, as follows:*

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

1.22. In their interim reply dated 23 August, 1976, the Department of Revenue & Banking (Revenue Wing) have stated:

> "The recommendation is under consideration of the Central Board of Direct Taxes."

In a subsequent reply dated 23 September, 1976 furnished in this regard, the Department have informed the Committee as follows:

> "In order to carry out a review of all cases in which the provisions of Section 52 of the Income-tax Act were applied with a view to initiate proceedings under the Act, it is necessary to identify such cases. No separate register or list of cases in which the provisions of Section 52 of the Income-tax Act were applied is available with the Department. Therefore, it will be necessary to scrutinise all income-tax assessments completed during the past eight years. This exercise is likely to cause serious dislocation in the normal functioning of the Department and thereby adversely affect the completion of assessments, collection of outstanding arrears as well as current demand etc.

The Board have already issued Instruction No. 965 dated the 2nd July, 1976 directing the Income-tax Officers to consider the applicability of the provisions of Gift Tax whenever the provisions of Section 52 of the Income-tax Act are applied. A copy of the instruction was annexed to the Action Taken Note of even number dated the 3rd August, 1976, on recommendation No. 1.49 of Public Accounts Committee's Report under reference.

In view of the foregoing, the Committee is requested not to press the above recommendation."

1.23. The Committee have carefully considered the reply furnished by the Department of Revenue & Banking to their recommendation contained in paragraph 1.48 of the 193rd Report (Fifth Lok Sabha). It is surprising that relevant information in regard to the cases in which Section 52 of the Income-tax Act was applied is stated to be not readily available. This only serves to reinforce the earlier impression of the Committee in regard to the absence of a sound statistical base within the organisation, which could provide upto-date and complete data on all aspects of the taxes administered by the Department. Since the total number of assessments in which Section 52 was applied are not likely to be large, it should not be beyond the capability of the Department to undertake a review of the cases in which capital assets had been transferred for inadequate consideration with a view to determining whether Gift Tax had been levied in all these cases and taking all necessary action in the interest of revenue. The Committee would, therefore, reiterate their earlier recommendation in this regard and would urge the Department to initiate necessary action without further loss of time.

Valuation of the right to share in the profits of a film. (Paragraph 1.61—Sl. No. 15).

1.24. In paragraph 1.61 of the Report the Committee had observed:

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

1.25. The Action Taken Note dated 30 August, 1976 furnished in this regard by the Department of Revenue & Banking (Revenue

Wing) is reproduced below:

> "The matter is under active consideration of the Board, and the final decision will be communicated to the Committee shortly."

1.26. It is disconcerting that even after the lapse of seven years, there has been no finality as yet in the matter of framing rules for the valuation of the right to share in the profits of a firm. The Committee take a serious view of this delay and would like responsibility to be fixed therefor. The rules in this regard should also be framed without further waste of time.

Non-levy of Gift-tax on donations to political parties. (Paragraphs 3.12 and 3.13—Sl. Nos. 21 and 22).

1 27. Dealing with a case of non-levy of Gift tax amounting to Rs. 10,120 on donations made by a company to a political party, the Committee, in paragraphs 3.12 and 3.13 of the Report, had recommended, *inter alia,* as follows:

> "3.12 In paragraph 63(b)(ii)(4) of the Report of the Comptroller & Auditor General of India for the year 1969-70, Central Government (Civil), Revenue Receipts, a case had been reported where no tax was levied on a gift made to a political party. This case had been dealt with by the Committee in paragraphs 3.17 and 3.18 of their 50th Report (Fifth Lok Sabha) wherein the Committee had, *inter alia,* desired that in all cases in which action was not taken to bring such donations to political parties to gift-tax, on the basis of the earlier instructions of 1960 of the Central Board of Direct Taxes, proceedings should be initiated under the Gift Tax Act according to the revised instructions issued in this regard in June, 1972. This case, brought to the notice of the Committee in the Audit Report for 1971-72, is one more instance of incorrect exemption from Gift Tax of donations made to political parties by a mistaken application, by way of executive instructions, of a provision in the Companies Act, 1956, which treated gifts made by a company to a political party, under the authority of a specific clause in the Memorandum and Articles of Association of the Company, as having been made in the course of carrying on the business of the company. The Committee regret that this mistaken view should persist for over a decade from 1960 to 1972 des-

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

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

1.28. In reply to the observations contained in paragraph 3.12, the Department of Revenue & Banking (Revenue Wing), in their

Action-Taken Note dated 30 August, 1976, have stated:

"The matter is still under examination."

1.29. The Action Taken Note dated 11 August, 1976 furnished by the Department with reference to the Committee's recommendation contained in paragraph 3.13 is reproduced below:

"The delay in collection of demand occurred in the circumstances where no one can be held responsible. As far as the suggestion of the Committee that it is not unlikely that other cases might have also become time-barred on account of such delay is concerned, kind attention of the Committee is invited to the Department's reply to para 1.33 of the 103rd Report of the Committee where the Committee was apprised of the action taken by the Department on a review of the gift-tax cases involving contributions to political parties by companies. Regarding periodical review of instructions, the Board is examining the question of setting up a machinery for reviewing instructions issued by it from time to time."

1.30. With reference to the Committee's observations contained in paragraph 1.33 of their 103rd Report (Fifth Lok Sabha), which has been cited by the Department, the Department of Revenue & Insurance had, on 11 October, 1974, informed the Committee as follows:

"It has since been ascertained that two of these 11 cases are non-company cases. In one of the cases an individual had donated Rs. 2,745 which was below taxable limit. The other case relates to a firm which had paid a donation of Rs. 25,000/- to a recognised charitable institution which was exempt u/s 5(1)(v). These were inadvertently included in the results of review earlier furnished to the Committee. The error is regretted.

In 6 cases, action has been taken to bring gifts to tax. The aggregate amount of contribution involved in these 6 cases is Rs. 4,17,091/-.

In the remaining three cases the action has been taken under the Gift Tax Act. However, all the three cases have been assessed in the status of Public Limited Company for income-tax purposes. In view of the provisions of section 45 of the Gift-tax Act, the contributions made by these

companies may be exempt from the Gift-tax. Further enquiries are being made."

Subsequently, on 27 November, 1974, the Department had furnished the following further information in this regard:

"Action has since been taken to bring to tax gift made in two out of three cases referred to in para 3 of this Ministry's reply of even number dated 11-10-1974 raising an additional demand of Rs. 21,547 and Rs. 9,199 respectively. In the third case, proceedings have been dropped as it was found that the affairs of the company or the shares in the company carrying more than 50 per cent of the voting power were at no time during the relevant previous year controlled or held by less than six persons."

1.31. **The Committee are far from satisfied with the somewhat laconic reply of the Department of Revenue and Banking to their pointed observations contained in paragraph 3.12 of their 193rd Report (Fifth Lok Sabha) regarding the legal validity of exempting from Gift Tax donations made by companies to political parties. It is distressing that in spite of the clear and unambiguous judicial pronouncements on the subject, the earliest of which was made more than a decade ago by the Allahabad High Court, this important matter is stated to be 'still under examination'. The Committee would very much like to know, in some detail, the scope of the present examination, particularly in view of the clarifications already issued in June, 1972, after taking into account the amendment to the Companies Act as well as the decisions of High Courts holding that donations paid to a political party are not allowable as a business expenditure.**

1.32. **The reasons for the peculiar delay on the part of the Central Board of Direct Taxes in revising its earlier instructions of 1960 on the subject have also not been satisfactorily explained and the reply now furnished by the Department is silent on the Committee's specific query in this regard. It is evident from the sequence of events that revised instructions were issued (June, 1972) by the Department only after the matter was taken up by the Committee in February, 1972, whereas the correct legal position in this regard had been clarified as early as in April, 1966. The relevant provisions of the Companies Act, 1956 had also been amended in 1969 itself as a sequel to a country-wide debate. It is, therefore, fairly obvious that there had been avoidable delay on the part of the Central Board of Direct Taxes in this regard and consequently there has been failure to safeguard the revenues of the State. The**

Committee would, therefore, seek a more specific clarification in this regard. They would, in particular, like to know how far the officials in the higher echelons of the Administration have failed to discharge their responsibilities.

Incorrect valuation of shares transferred without adequate consideration.

(Paragraphs 4.37 and 4.38—Sl. Nos. 29 and 30).

1.33. Commenting on a case of incorrect valuation, for purposes of Gift Tax, of shares transferred by an assessee without adequate consideration resulting in the short-levy of tax by Rs. 2.45 lakhs, the Committee, in paragraphs 4.37 and 4.38 of the Report had observed, *inter alia,* as follows:

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

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

1.34. In their Action Taken Note dated 11 August, 1976, the Department of Revenue & Banking (Revenue Wing) have informed the

Committee in this connection as follows:

***Paragraph* 4.37**

"4.37. The reasons for delay in levying penalty was the complicated nature of the case in which contentious issues were involved. The Inspecting Assistant Commissioner decided in his discretion to await the decision of the Appellate Assistant Commissioner on the assessee's appeal against the GTO's order dated 30-6-69. The decision of AAC was given on 30-4-70. The final hearing of the case was on 29-12-70, after a two months' adjournment on assessee's request. A chart showing the progress of the case in chronological order is annexed.

The Income-tax Appellate Tribunal has cancelled the gift-tax assessment as well as the penalty levied by IAC. The question of collection to the tax and penalty, therefore, do not arise."

"4.38 The ITAT remitted the case back to the AAC who by his order dated 30-1-74 held that the action of the G.T.O. in initiating proceedings u/s 16(1) (a) was fully justified. The ITAT by its order dated 28-8-75 have, however, cancelled the re-assessment proceedings on the ground that the value on which the shares were transferred was adequate and thus Section 4(a) of the GT Act did not apply in the instant case.

The Department has not accepted the above order of the ITAT and reference applications have been filed, which are pending and have not yet been decided by the ITAT."

The chronological progress of the Case, intimated to the Committee by the Department, is indicated below:

ASSESSMENT YEAR 1963-64

Event	Date
Date of filing voluntary return by assessee (Gift shown Rs. 1 lakh)	3-7-63
Date of completion of assessment on same amount	18-7-63
Date of service of notice u/s 16(1)(a)	5-2-69
Date of filing return by assessee (Under protest)	14-3-69
Date of completion of reassessment proceedings (Total gift Rs. 71,96,258)	30-6-69
Date of disposal of appeal by AAC	30-4-70
Date of report by ITO on the implication of the order of the AAC	30-8-70
Date of final bearing by IAC	29-12-70
Date of penalty order	19-6-71
Date of ITAT's order remitting back the case to AAC	1-2-72
Date of order of the AAC	30-1-74
Date of order of the ITAT cancelling the Gift-tax re-assessment and the penalty	28-8-75

1.35. The Committee are surprised to learn that though this was a clear case of concealment by an assessee with a known history of tax evasion and tax avoidance, the Gift-tax assessment subsequently made as well as the penalty levied by the Department have been cancelled by the Appellate Tribunal. The Committee would like to know, in greater detail, the grounds on which the Tribunal had cancelled the assessment and the penalty and whether the Department's case was fully and properly presented before the Tribunal by engaging counsel equal in standing to those representing the assessee. That the Department is equally concerned over the Tribunal's decision in this case is evident from the fact that reference applications, contesting the decision, have been filed. The Committee would urge Government to have these proceedings expedited and would also like to be apprised of their outcome early.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

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

[S. No. 1(para 1.14) of appendix V to 193rd Report of PAC (75-76) (Fifth Lok Sabha)]

Action Taken

The Income Tax Appellate Tribunal Nagpur Bench, Nagpur, GTA No. 1(NAG)/74-75 dated 24-10-75 dismissed the departmental appeal filed against the order of the Appellate Assistant Commissioner of Income-tax which was in favour of the assessee. The reference application filed by the department u|s 26(1) of the Gift-tax Act, 1958 in RA No. 127/NAG/75-76 was rejected by the ITAT on the 28th Feb., 1976.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|501|72-A & PACI, dated the 11th August, 1976]

Recommendation

The Committee find that under the Instructions issued, as early as May, 1958, the departmental efficers were required together information relating to the transfer of both agricultural and non-agricultural properties from the registration offices, and that this exercise

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

[S. No. 7(Para 1.37) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action Taken

The Central Board of Direct Taxes in consultation with the Director (O. & M.S.) and Director of Inspectios (R.S.) are devising an effective method to ensure implementation of the various instructions issued by the Board and evaluate the impact of these instructions on the tax administration.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|504|72-A & PAC-I dated the 6th August, 1976]

Recommendation

The Committee also note that with effect from 1st October, 1971, a certificate is required to be furnished from the Income-tax authorities, under Section 230A of the Income-tax Act, for registration of transfers of agricultural lands valued over Rs. 50,000|-. It is surprising that the Central Board of Direct Taxes does not even have information relating to such transfers which should be readily available with the Department. The Committee feel that it would be worthwhile to conduct a specific review of the certificate issued by the Income-tax Department relating to agricultural lands, under section 230A of the Act so as to ascertain how the information available

within the Department in this regard was utilised for the assessment and levy of Gift-Tax. The Committee recommend that a detailed review in this regard should be undertaken forthwith and completed expeditiously and its outcome reported.

[S. No. 8 (Para 1.38) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action Taken

The Commissioners of Income-tax, *vide* Board's letter F. No. 340|9|76-GT dated 11-5-1976, have been requested to carry out the review as desired by the Public Accounts Committee. Final results will be intimated to the Committee in due course.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|504|72-A & PAC-I, dated the 11|14th June, 1976]

Recommendation

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

[S. No. 9 (Para 1.47) of Appendix V to 193rd Report of the PAC (1975-76) (5th Lok Sabha)]

Action Taken

The matter has been re-examined. The Board is satisfied that it was a *bona fide* mistake.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|517|72-A & PAC-I dated the 19th July, 1976]

Recommendation

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

[S. No. 11 (Para No. 1.48) of Appendix V to 193rd Report of PAC (1975-76) (Fifth Lok Sabha)]

Action Taken

The Central Board of Direct Taxes have since issued Instruction No. 965, F. No. 340|22|76-GT dated 2-7-1976 on the subject. A copy thereof is enclosed.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|517|72-A & PAC I, dated the 11th August, 1976]

(COPY)

INSTRUCTION NO. 965

F. No. 340|22|76-GT

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 2nd July, 1976.

To

All Commissioners of Income-tax|Gift-tax.

Sir,

SUB: *Gift-tax—Liability in cases of transfers for less than adequate consideration—*

In terms of section 4(1)(a) of the Gift-tax Act, 1958, where property is transferred otherwise than adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor.

2. Section 52 of the Income-tax Act, 1961, contains provisions for computation of capital gains on the basis of the fair market value in cases where the consideration for transfer is less than such fair market value. As the cases which would attract the provisions of

section 52 would also attract the provisions of section 4(1)(a) of the Gift-tax Act, the Income-tax Officers should, while considering the applicability of section 52, also examine the applicability of section 4(1)(a) of the Gift-tax Act and initiate proceedings under the Gift-tax Act, wherever required.

3. These instructions may be brought to the notice of all the officers in your charge.

Your faithfully,

Sd|-

(V. D. WAKHARKAR)

Under Secretary, CBDT

Recommendation

This is a case where the Gift Tax Officer omitted to treat as a gift the interest in the business foregone by the assessee in two transactions in favour of his children. This omission resulted in the non-levy of Gift-tax of Rs. 8,221. The Committee note that though the liability to Gift Tax of the interest foregone by the assessee had been upheld in appeal, the value of the gifts has been reduced from Rs. 1.03 lakhs to Rs. 0.16 lakh and that the Department has preferred an appeal before the Tribunal against the reduction. The Committee would like to know the outcome of the appeal which ought to have been disposed of by now by the Tribunal.

[S. No. 13 (Para 1.59) of Appendix V to 193rd Report of the PAC (1975-76) (5th Lok Sabha)]

Action taken

The Tribunal, by its order dated 16-5-1974, dismissed the Departmental appeals for the assessment years 1967-68 and 1969-70, and in view of the cross objections filed by the assessee, gave further reduction in the value of the gifts. The Tribunal's order has been accepted by the Board. The Gift-tax payable as per the Tribunal's order for both the assessment years comes to Rs. 362/- and the same has been collected.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|502|72—A & PAC—I, dated 5th July, 1976]

Recommendation

The reduction of the value of gifts on appeal, in this case, raises the general question of the valuation of the right to share in the profits of a firm for purposes of levy of Gift-tax. The Committee note that according to the instructions issued in this behalf

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

[S. No. 14 (Para No. 1.60) of 193rd Report of PAC (1975-76) (5th Lok Sabha)]

Action taken

The Board have issued Instruction No. 942 dated 26th March, 1976 (copy enclosed) regarding levy of Gift-tax, on surrender or readjustment of partners' interest in the assets or profits of the firm.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|502|72—A & PAC-I dated the 25th May, 1976]

INSTRUCTION NO. 942

F. No. 331|2|73-GT

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 26th March, 1976.

To

All Commissioners of Income-tax/

All Commissioners of Gift-tax.

Sir,

SUB: *Levy of Gift-tax—Surrender or readjustment of partner's interest in the assets or profits of the firm—*

The provisions of the Gift-tax Act, 1958 may be attracted when there is a re-alignment of profit sharing ratio among the partners

of a firm. The question of levy of gift-tax may arise in the following circumstances:

(i) When new partners are admitted to an existing firm and consequent upon the allotment of a specified share to them in profit/loss of the firm, the shares of the existing partners are reduced and the shares given to the new partners are without adequate consideration in money or money's worth;

(ii) When there are changes in the profit sharing ratio of the existing partners of a firm and the allotment of higher shares to one or more partners is without adequate consideration in money or money's worth;

(iii) When a sole proprietary concern is converted into a partnership and the shares in income allotted to the partners other than the one who was the sole proprietor of the business prior to its conversion into partnership are without adequate consideration in money or money's worth;

(iv) When a firm is floated and the allotment of shares to one or more partners is without adequate consideration in money or money's worth.

2. Rule 10(3) of the Gift-tax Rules, 1958 prescribes the method of determination of the value of the interest in a firm or association of persons. While valuing the gift arising under the above-mentioned circumstances in the case of a partner who has a right to share in the assets of the firm the Gift-Tax Officer should in accordance with rule 10(3) of the Gift-tax Rules add the value of the other assets of the firm, in case it possessed goodwill, irrespective of the fact whether it was reflected in the balance-sheet or not. The Board are of the view that when the value of a partner's interest is determined in this manner, there is no need to add any amounts separately towards the value of the partner's right to share in the profits of the firm.

3. The Board are further of the view that the value of the interest of those partners who have no right to share in the assets of the firm but have only a right to share in the profits of the firm,

may be determined by following the method of capitalisation of income.

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

Yours faithfully,

Sd/-

(V. D. WAKHARKAR)
Under Secretary.
Central Board of Direct Taxes.

Recommendation

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

[S. No. 17 (Para 1.73) of Appendix V to 193rd Report of the PAC (1975-76) (5th Lok Sabha)]

Action taken

The Tribunal has confirmed the order under Section 24(2) of the Gift Tax Act, passed by the Commissioner of Gift Tax. The assessee has paid the balance demand of Rs. 16000/- on 14-3-1974. Interest under Section 32(2) of the Gift Tax Act amounting to Rs. 3550/- has also been collected.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/513/72-A&PAC-I dated the 12th July, 1976]

Recommendation

This is an instance where certain shares transferred, without adequate consideration, by an assessee were valued incorrectly for purposes of Gift-tax and an excess discount of Rs. 6.57 lakhs was allowed, with consequential short-levy of tax by Rs. 2.45 lakhs. The Committee learn that prior to the assessment year 1965-66, the value of equity shares, not quoted in recognised stock exchanges, was to be determined, under executive instructions issued by the Central Board of Direct Taxes, on the basis of what was known as the 'break-up value method' and was arrived at as the surplus of the assets over liabilities of the company divided by its paid-up

equity capital. Subsequently, with the promulgation of Rules under the Wealth-tax Act for the valuation of assets on 6th October 1967, the value of such shares, as arrived at by the usual break-up value method, was to be discounts depending on the number of years for which the company had not declared dividends. Thus, in respect of a company which had not declared dividends for six years and more, the market value of its unquoted equity shares was to be taken as 75 per cent of their break up value. While these Rules were applicable to Wealth-tax assessments, the Central Board of Direct Taxes issued instructions, on 26th March, 1968, that for the purpose of Gift-tax also, the discounted break-up value method should be adopted and that the market value of an asset should be the same as determined for Wealth Tax.

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

[S. Nos. 25 & 26 (Pages 4.33 and 4.34) of Appendix-V to 193rd Report of the PAC (1975-76) (5th Lok Sabha)]

Action taken

The Department of Revenue & Banking share the concern of the Committee. The Directorate of Inspection (P&PR) take every care to ensure that the printing errors are minimised. All possible attempts are made, in co-ordination with the Govt. of India presses, to have the various publications particularly the Direct Tax Manuals error-free. During the past few years, proofs of the manuscripts have been checked and corrected by the officials of the De-

partment even after the proofs have been checked by the press staff. After a manual is printed, expeditious action is taken to check its accuracy and issue corrigenda, wherever necessary.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/519/72-A&PAC-I dated the 1st July, 1976]

Recommendation

The Committee are concerned to find that though the printing error in the Manual had been brought to the notice of the Director of Inspection by the Commissioner of Income Tax in October, 1970 and necessary corrigendum to the Manual was also issued in December, 1970, it was only in May, 1972 after a time lag of about 18 months, that the Central Board of Direct Taxes had considered it fit to order a review of all Wealth-tax assessments. The reasons for this delay, despite the fact that the error in the Manual was of a serious nature, is inexplicable. The Committee strongly stress the importance of prompt and precise review of past cases when patent errors of this nature come to notice.

[S. No. 27 (Para 4.35) of Appendix V to 193rd Report of PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The Committee's views have been noted for future action and guidance.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|519|72-A & PAC-I, dated the 13th July, 1976]

Recommendation

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

[S. No. 28 (Para 4.36) of Appendix V to 193rd Report of PAC, 1975-76 (Fifth Lok Sabha)]

Action taken

The results of the review from the remaining Commissioners show that there were no assessments in which mistakes were

committed on account of the printed error in the Wealth-tax Manual.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|519|72-A & PAC-I, dated the 13th July, 1976]

Recommendation

It appears that this was not the first this particular assessee had resorted to the transfer of his shares to different persons. In paragraph 74(a) of the Audit Report (Civil), 1965 on Revenue Receipts, the attention of the Committee had been drawn to the transfer of preference shares, belonging to two persons of the Dalmia Group, which had been transferred, under blank transfer from time to time to certain other companies belonging to the same group, resulting in the escapement of income to the extent of Rs. 26.64 lakhs, with a tax effect of about Rs. 11.56 lakhs. Dealing with this case, the Committee, in paragraph 1.170 of their 46th Report (Third Lok Sabha) had put their view sternly that this was 'a deliberately devised and planned scheme to evade tax and defraud the Government'. The Committee had also made a number of other recommendations in respect of this case in paragraphs 1.170 to 1.173 of their 46th Report (Third Lok Sabha), paragraphs 2.20 to 2.23 of their 7th Report (Fourth Lok Sabha) and paragraphs 1.35 and 1.36 of their 36th Report (Fourth Lok Sabha). It is distressing that even after the lapse of a considerable time, there is no finality yet in respect of the case, which continues to be pending before different appellate authorities and courts of law. The Committee would urge Government to take all possible steps to expedite the appeals/court cases. It is almost two years since the Committee last heard from Government on this case and they are keen to know the present position.

[S. No. 33 (Para 4.41) of Appendix V to 193rd Report, (1975-76) (Fifth Lok Sabha)]

Action taken

The progress of assessments of dividends of Rs. 26.64 lakhs in the hands of Bharat Union Agencies (P) Ltd., members of M/s. Sahu Jain Ltd. Group and Shri R. Dalmia is as under:

Bharat Union Agencies (P) Ltd.

The assessment of Bharat Union Agencies (P) Ltd. for the A. Y. 1956-57 reopened: U/s 147 was completed on 25-3-69 and the sum of Rs. 26,63,710/- representing the disputed dividend was

assessed in the hands of the Company. The assessee claimed that this amount is a capital receipt because it arose out of distress sale of shares. The stand taken by the assessee was, however, not accepted by the I.T.O. The A.A.C. *vide* his order dated 20-10-70 upheld the order of the I.T.O. On further appeal by the assessee, the ITAT referred the case back on 28-8-72 to the A.A.C. for his decision on certain allied points. The A. A. C. gave his decision on these points in his order dated 24-6-74 supporting the stand taken by the Department on these points. The case was fixed for hearing by the Tribunal on 25-8-76. It is learnt that the case stands adjourned to 6-9-76. The delay has occurred only because of the nature and complexity of the issues involved.

Members of Sahu Jain Ltd.

Report on the latest position is awaited from the Commissioner of Income-tax.

Shri R. Dalmia

The assessment of Shri R. Dalmia the registered shareholder was reopened on 28-12-68 to include the dividend income of Rs. 26,60,210/- and the reassessment was completed on 12-3-73. (The balance of Rs. 3500/- was assessable in the hands of Shri D. A. Patel, another registered shareholder.) The assessment has since been set aside by the A. A. C. on 31-3-75 on the ground that the appellant was not given an adequate opportunity to explain his case in regard to the validity of proceedings started u/s 147(a), the assessability of dividend income in the hands of beneficial shareholders and the impact of the decision of the Punjab High Court, Delhi Bench delivered in the criminal case against Shri R. Dalmia. Necessary enquiries are being made to finalise the set-aside assessment. In the meantime, the assessee has gone in appeal to the Tribunal on the plea that the A.A.C. should have annulled the assessment instead of setting it aside.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|519|72-A & PAC-I, dated the 30th August, 1976]

Further Action taken

4.41. In continuation of the Department of Revenue and Banking's reply dated 28th August, 1976, the latest position in the cases of the Members of Sahu Jain Group is as under:

Action u|s 147(a) was taken to assess the dividend income in the hands of (1) Shri S. P. Jain, (2) Shri A. P. Jain, (3) Smt. Rama

Jain, (4) Smt. Rama Jain and Shri A. K. Jain on behalf of Shri Manoj Kumar Jain, (5) Ashok Viniyoga Ltd. and (6) Sahu Jain Ltd. All the above assessees excepting Shri S. P. Jain filed writ petitions against the Deptt. The writs filed by them excepting the one filed by Ashok Viniyoga Ltd. have been disposed of against the Department and the Department have preferred appeals before the Division Bench of the High Court against the Single Bench judgement and the same are pending. The writ petition filed by M|s. Ashok Viniyoga Ltd. is still pending before the High Court and the injunction continues.

Dividend of Rs. 1,40,000 was assessed in he hands of Shri S. P. Jain which was confirmed by the A.A.C. However, the I.T.A.T. set aside the order of the A.A.C. and restored the same to his file. The A.A.C. has since then decided the matter against the Deptt. The Department have filed an appeal before the I.T.A.T. which is pending.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|519|72-A&PAC-I, dated the 14th September, 1976]

Recommendation

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

[S. No. 34 (Para 5.10) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action Taken

Bonafide of the official responsible for the mistake committed in this case have been examined by the Commissioner of Income-tax.

The records do not show any material which would tend to reflect upon the bonafides of the officials. They were guilty of carelessness and negligence only for which they have been suitably warned.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|5|26|72-A&PAC-I, dated the 16th July, 1976]

Recommendations

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

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

What is more deplorable is that the Gift-tax Officer concerned had not checked the tax calculations in this case. The Committee view with the consternation the statement made by the Finance Secretary during evidence that the assessing officers are 'under the im-

pression that it is not their duty' to check the correctness of the tax calculations made by the subordinates. The Committee are of the view that sooner this notion is dispelled from the minds of the assessing officers, the better it will be both for the revenue and for the assessees. Since the assessing officers are responsible for all assessments made by them, checking of tax calculations must be one of their essential functions. This responsibility cannot be foisted on the staff at the lower levels of the hierarchy. The Committee desire that suitable instructions should be issued in this regard.

[S. No. 35, 38 & 39 (para No. 5.11, 6.13, 6.14) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

Comprehensive instructions have been issued in March, 1974 fixing responsibility at different levels of officials for checking the correctness of calculation under all direct taxes. As far as G.T. assessments are concerned the position is as under:—

IAC(Audit)

Checking of all refund cases involving a refund of more than Rs. 50,000.

ITO (IA)

Cases involving refunds below Rs. 50,000 but above Rs. 25,000.

G.T.O.

Cases of taxable gift of Rs. 1 lakh and over, and refunds exceeding Rs. 5,000.

Head Clerk

Cases of taxable gift of over Rs. 30,000, but below Rs. 1 lakh.

Ministerial Staff.

Determination of tax correctly on all gift tax assessments completed by G.T.O.

2. Necessary steps have been taken to monitor the effect of these instructions by the Directorate of Income-tax and Audit. It is hoped that the above steps will minimise, if not eliminate, costly mistakes in tax calculations in future.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|526|72-A&PAC-I, dated the 31st August, 1976].

Recommendation

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

[S. No. 36 (Para 5.12) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action Taken

An enquiry has been made in this respect by the Commissioner of Income-tax. The Inspector incharge of the Audit Party failed to issue a requisition memo in this case. Hence the party failed to check arithmetical accuracy of the calculations made in the Gift-tax assessments. However, the failure appears to be due to negligence and not deliberate and no vigilance angle is involved in this case.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|526|72-A&PAC-I, dated the 16th July, 1976]

Recommendation

The Committee note from the Audit paragraph that out of the short-levy of Rs. 98,471, a sum of Rs. 74,286 has been adjusted

against a refund of income-tax and would like to be informed of the position of recovery of the balance amount of Rs. 14,185.

[S. No. 37 (Para 5.13) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The balance of demand was collected on 28.3.73.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|526|72-A & PAC-I dated the 16th July, 1976]

Recommendation

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

[S. No. 40 (Para No. 6.15) of Appendix V to 193rd Report of PAC (1975-76) (Fifth Lok Sabha]

Action taken

It is general practice that every audit objection is settled in consultation with the Comptroller & Auditor General of India and any recommendation|observation made by C&AG is examined, and the results intimated to the C&AG of India.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 241|33|76-A & PAC-I, dated the 30th July, 1976]

CHAPTER III

RECOMMENDATIONS|OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES OF GOVERNMENT

Recommendation

The Committee are perturbed to learn that though a review of the gift-tax assessments involving contributions to political parties, as suggested by them in August 1972, had disclosed that Gift-tax proceedings had not been initiated in 34 cases, action so far has been taken only in 23 of them, involving gifts amounting to Rs. 41.92 lakhs, while action is still pending in the other 11 cases. In paragraph 1.33 of their 103rd Report, presented on 9th April, 1974, the Committee had deplored the 'perfunctory attitude' of the administration in this regard and had enquired into the action taken in these 11 cases and the quantum of contributions involved therein. The Committee still await the information which is somewhat overdue.

[S. No. 23 (Para 3.14) of Appendix V to 193rd Report of the P.A.C. (1975-76) (Fifth Lok Sabha)]

Action taken

The details of 11 cases, referred to in paragraph 1.33 of the 103rd Report of the Public Accounts Committee, and action taken by the Government thereon have already been furnished to the Public Accounts Committee on 11th October, 1974 and 27th November, 1974 *vide* this Department's Office Memoranda issued under file No. 340|2 (xvi)|70-GT|Audit. The Audit did not offer any comments on these replies and this fact was brought to the notice of the Committee on 31st December, 1974 *vide* this Department's Office Memorandum issued under file No. 340|2(xvi)|70-GT|Audit.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|503|72-A & PAC-I, dated the 25th June, 1976]

Recommendation

Another relevant issue is whether the formula of discounted break-up value is at all applicable to this case relating to the assessment year 1963-64. The Committee find that the Appellate Assist-

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

[S. No. 32 (Para 4.40) of Appendix V to 193rd Report of PAC (1975-76) (Fifth Lok Sabha)]

Action taken

1.1 Board received a representation in 1968 that in all pending assessments under the Gift-tax Act, the market value of unquoted shares should be determined in accordance with the rules framed for the purposes of Wealth-tax.

1.2 Further, the then Deputy Prime Minister in paragraph 42 of Part B of the Budget Speech 1968-69 stated as follows:

> "Further, I propose also to have administrative instructions issued to secure that, as far as possible, the same value is adopted for an asset for the purposes of Income-tax, Wealth-tax, Gift-tax and Estate Duty".

1.3 On consideration of this matter, the Board issued instructions in Circular No. 1-D|GT dated 26.3.1968 to the effect that as the maximum interval between the date on which a gift was made and the immediately preceding valuation date for the purpose of wealth-tax assessment could be only one year and there was little

likelihood of any substantial variation in the value of an asset within an interval of one year, the value of a gift for gift-tax assessment should normally be on the same basis as has been adopted for wealth-tax assessment for the valuation date immediately preceding the date of gift, subject to certain conditions.

2. When the Gift-tax assessment was made on 30.6.69 in this present case, the Board's Circular No. 1-D|GT of 1968 dated 16.3.1968 held the field. The said circular as stated above directed that, subject to certain conditions, normally the value of a gift for the gift tax assessment should be on the same basis as has been adopted for wealth-tax assessment for the valuation date immediately preceding the date of gift. Para 4 of the Circular further directed that the procedure specified therein was to be followed in all pending cases. The assessment in this case was made after the date of issue of the said circular. There was, therefore, no question of the Gift-tax Officer pointing out to the Appellate Assisting Commissioner that the Wealth-tax Rules should not be applied to the assessment in question.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|519|72-A & PAC-I, dated the 7th August, 1976)]

CHAPTER IV

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

Recommendation

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

[S. No. 2 (Para 1.15) of Appendix V to 193rd Report of PAC (1975-76) (Fifth Lok Sabha)]

Action taken

Information in the matter has been called for from the Directorate of O & M Services who have taken steps to call and collate the information from the Commissioners of Income-tax. As soon as the information is collected and collated, the Committee would be informed.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|501|72-A & PAC-I, dated the 16th July, 1976]

Recommendation

The Committee are concerned to note that despite the clear and unambiguous legal position upheld by the highest judiciary, regarding the liability to Gift-tax on gifts of agricultural land, action had not been taken by the Gift Tax Officer in the present case where agricultural land valued at Rs. 1.32 lakhs was gifted by the assessee

to her minor sons. The omission had resulted in the non-levy of Rs. 12,524. Though the error has been admitted, the question of recovering the tax is 'still under consideration'. The Committee can not appreciate this delay in taking a decision in this straight forward case. Action to recover the tax due should be taken at once, if it has not been already done.

[S. No. (Item No. 1.34) of 193rd Report of PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The matter was further examined in consultation with Ministry of Law, who have opined as under:

> "According to Section 123 of the Transfer of Property Act, a valid gift of immovable property can only be made by a registered instrument. In this case since there is no registered instrument, *prima facie*, the gift appears to be invalid.
>
> In view of the fact that there are no local laws or rules etc. rendering a gift of immovable property valid simply by mutation, we confirm the opinion given above that the gift is invalid in this case."

In view of the opinion of the Ministry of Law tendered above, there is no question of recovery of gift-tax. However, the Wealth-tax Officer concerned has been directed to include the property alleged to have been gifted in the net wealth of the assessee for the purpose of wealth-tax assessment.

[Department of Revenue and Banking (Revenue Wing), O.M. No. 236|504|72-A & PAC-I dated the 25th May, 1976]

Recommendations

As early as August 1972, the Committee had, in paragraph 3.10 of their 50th Report (Fifth Lok Sabha), *inter alia*, recommended a review of the position relating to the levy of Gift Tax on gifts of agricultural land with a view to ascertaining the extent of non-levy of tax on such gifts in the past. A limited review of gifts of agricultural land exceeding the value of Rs. 5,000 registered during the months of September and October in 1969-70 and 1970-71, in all Commissioners' charges excluding West Bengal, had revealed that out of 10,544 cases of such gifts, Gift Tax proceedings had not been initiated in as many as 4,590 cases, involving gifts valued at Rs. 3.15

crores. This would indicate the extent to which the administration of the Gift Tax Act has been inadequate and defective. On the basis of this sample survey, the Central Board of Direct Taxes had also set in motion a complete review of such cases in all the Commissioners' charges for the year 1970-71 to 1972-73. As a time limit of 8 years was available under Section 16(i) of the Gift Tax Act for assessing gifts escaping tax, the Committee, in paragraph 1.28 of their 103rd Report (Fifth Lok Sabha) had wanted that the proposed review should also cover the period from 1965-66 to 1969-70, that the review should be completed within a period of one year and that action should be taken to finalise the assessments before they became time-barred.

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

[S. No. 5 & 6 (para No. 1.35 & 1.36) of Annexure V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

All efforts are being made to complete the review expeditiously. Clarifications are awaited from some of the Commissioners of Income-tax. The Committee will be informed as soon as the clarifications are received.

[Department of Revenue and Banking (Revenue wing) O.M. No. 236|504|72-A & PAC-I dated the 25th August,1976]

Recommendation

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

all necessary action in the interest of revenue. The results of the review should be intimated to the Committee early.

[S. No. 10 (para 1.48) of Appendix V to 193rd Report of the Public Accounts Committee (1975-76) (Fifth Lok Sabha)]

Action taken

The recommendation is under consideration of the Central Board of Direct Taxes.

[Department of Revenue and Banking (Revenue wing) O.M. No. 236|517|72-A & PAC-I dated the 23rd August, 1976]

Further Action taken

In order to carry out a review of all cases in which the provisions of section 52 of the Income-tax Act were applied with a view to initiate proceedings under the Act, it is necessary to identify such cases. No separate register or list of cases in which the provisions of Section 52 of the Income-tax Act were applied is available with the Department. Therefore, it will be necessary to scrutinise all income-tax assessments completed during the past eight years. This exercise is likely to cause serious dislocation in the normal functioning of the Department and thereby adversely affect the completion of assessments, collection of outstanding arrears as well as current demand etc.

2. The Board have already issued Instruction No. 965 dated the 2nd July, 1976 directing the Income-tax Officers to consider the applicability of the provisions of Gift Tax whenever the provisions of Section 52 of the Income-tax Act are applied. A copy of the

instruction was annexed to the Action Taken note of even number dated the 3rd August, 1976, on recommendation No. 1.49 of Public Accounts Committee's Report under reference.

In view of the foregoing, the Committee is requested not to press the above recommendation.

[Department of Revenue and Banking (Revenue wing) O.M. No. 236|517|72-A & PAC-I dated the 23rd September, 1976]

Recommendation

In paragraph 63(b)(ii)(4) of the Report of the Comptroller & Auditor General of India for the year 1969-70, Central Government (Civil), Revenue Receipts, a case had been reported where no tax was levied on a gift made to a political party. This case had been dealt with by the Committee in paragraphs 3.17 & 3.19 of their 50th Report (Fifth Lok Sabha) wherein the Committee had, *inter alia*, desired that in all cases in which action was not taken to bring such donations to political parties to gift-tax, on the basis of the earlier instructions of 1960 of the Central Board of Direct Taxes proceedings should be initiated under the Gift Tax Act according to the revised instructions issued in this regard in June 1972. This case, brought to the notice of the Committee in the Audit Report for 1971-72, is one more instance of incorrect exemption from Gift Tax of donations made to political parties by a mistaken application, by way of executive instructions, of a provision in the Companies Act, 1956, which treated gifts made by a company to a political party, under the authority of a specific clause in the Memorandum and Articles of Association of the Company, as having been made in the course of carrying on the business of the company. The Committee regret that this mistaken view should persist for over a decade, from 1960 to 1972, despite the fact that various High Courts had held, in the meantime, that for a payment to be treated as being for the purpose of business, there must be a nexus between the payment and the business. As early as April 1966, the Allahabad High Court held, in the case of J. K. Cotton Spinning & Weaving Mills Co. Ltd. *Vs.* Commissioner of Income-tax Uttar Pradesh (72 ITR 813), that 'when there is no direct nexus between the business of the company and the contribution, it appears to be impossible to hold that the assessee company discharged burden of proof to show that this expenditure was wholly and exclusively for the purpose of business'. Again, in the case of Indian Steel & Wire Products Ltd. (69 ITR 379) the Calcutta High Court, in its judgement dated 3rd July, 1967, held that the payment of donation to a political party was not an expenditure

incurred solely or exclusively for the purpose of the business and observed: 'We are not prepared to proceed on the assumption that all contributions to all political funds must always be presumed to be commercially expedient' Besides, Section 293(A) of the Companies Act, 1956, which was inserted in 1969, also prohibits contributions to political parties by a company.

[S. No. 21 (para 3.12) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)]

Action taken

The matter is still under examination.

[Department of Revenue and Banking (Revenue wing) O. M. No. 236|518|A & PAC-I dated 30th August, 1976]

Recommendation

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

[S. No. 22 (para 3.13) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

The delay in collection of demand occurred in the circumstances where no one can be held responsible. As far as the suggestion of the Committee that it is not unlikely that other cases might have also become time-barred on account of such delay is concerned, kind attention of the Committee is invited to the Departments reply to para 1.33 of the 103rd Report of the Committee where the Committee was apprised of the action taken by the Department on a review of the gift-tax cases involving contributions to political parties by

companies. Regarding periodical review of instructions, the Board is examining the question of setting up a machinery for reviewing instructions issued by it from time to time.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|503|72-A and PAC-I, dated the 11th August, 1976].

Recommendation

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

[S. No. 29 (para 4.37) of 193rd Report of PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

The reasons for delay in levying penalty was the complicated nature of the case in which contentious issues were involved. The Inspecting Assistant Commissioner decided in his discretion to await the decision of the Appellate Assistant Commissioner on the assessee's appeal against the G.T.O's order dated 30-6-69. The decision of AAC was given on 30-4-70. The final hearing of the case was on 29-12-70 after a two months' adjournment on assessee's request. A chart showing the progress of the case in chronological order is annexed.

The income-tax Appellate Tribunal has cancelled the Gift-tax assessment as well as the penalty levied by IAC. The question of collection to the tax and penalty, therefore, do not arise.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|519|72-A and PAC-I, dated the 19th|23rd August, 1976].

ANNEXURE

Assessment year 1963-64

Date of filing voluntary return by assessee (Gift shown 1 Lakh.)	3.7 63.
Date of completion of asstt. on same amount.	18.7.63.
Date of service of notice u/s 16 (1)(a).	5.2.69.
Date of filing return by assessee. (Under protest.)	14.3.69.
Date of completion of reassessment proceedings (Total gift Rs. 71,96,258.)	30.6 69.
Date of disposal of appeal by AAC.	30.4.70.
Date of report by I. T. O. on the implication of the order of the AAC.	30.8 70.
Date of final hearing by IAC.	29.12.70.
Date of penalty order.	19.6.71.
Date of ITAT'S order remitting back the case to AAC.	1.2.72.
Date of order of the AAC.	30.1.74.
Date of order of the ITAT cancelling the Gift tax reassessment and the penalty.	28.8.75.

CHAPTER V

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

Recommendation

A relevant point is the liaison between the taxation authorities and the State Governments in order to keep an eye on surrender of property at the time of issue of succession certificates and to secure taxation of such surrenders as gifts. It is not normally necessary in view of Section 212 of the Indian Succession Act, to apply for a succession certificate to establish the right to property left by a deceased, in the cases of intestacy of Hindu, Mohammaden, Buddhist, Sikh or Indian Christian. But such surrenders in favour of children or brothers are often made by widowed mothers or by sisters at the time of obtaining succession certificates. The Central Board of Direct Taxes may, therefore, ensure that coordination in this regard is maintained between the Income-tax Department and the State Authorities. The Committee note that the Commissioners of Income-tax have for some time now been instructed by the Board to arrange periodical collection of information from the courts on the issue of succession certificates, to see whether there were any surrenders of property at the time of issue of succession certificates and, if so, to subject such surrenders to Gift-tax. The Committee would like the Central Board of Direct Taxes to ascertain how far the objective has been achieved. The Committee would like to have a report in this regard.

[S. No. 3 (Para 1.16) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

The information has been called for from the Commissioners of Income-tax and the result will be communicated to the Committee as soon as replies are received from them.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|501|72-A & PAC-I, dated the 5th July, 1976].

Recommendation

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

[S. No. 12 (Para 1.50) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

The Gift Tax levied at Rs. 15,600 was reduced by the Appellate Assistant Commissioner to Rs. 6,800. The demand is yet to be collected as the company has gone into liquidation. The demand has been intimated to the official liquidator.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|517|72-A & PAC-I, daten the 19th July, 1976].

Recommendation

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

[Sl. No. 15 of Appendix V to 193rd Report, 1975-76 (Fifth Lok Sabha)].

Action Taken

The matter is under active consideration of the Board, and the final decision will be communicated to the Committee shortly.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|502|72-A & PAC-I, dated the 30th August, 1976].

Recommendation

The Committee are concerned to note that because of an erroneous application of the law relating to the transfer of property by the Kartha of a Hindu Undivided Family to his sons who, as coparceners are also the owners of the property, to a case of transfer of property to a trust, gifts aggregating Rs. 1.48 lakhs has escaped tax. resulting in a short-levy of Gift Tax of Rs. 22.768. Since the transfer of properties in the present case was made by the Hindu Undivided Family to a trust, which is a separate legal entity and not

directly to the members of the joint family, it is evident that it could not be treated as a case of transfer of property by a Hindu Undivided Family to its coparceners, and that the judgement of the Madras High Court reported in 49ITR817, is not applicable in this case. Since the assessing officers appear to be unaware of the correct legal position in this regard, the Committee desire that this should be clarified correctly to the officers of the Department.

[S. No. 16 (Para 1.72) to the Appendix V to 193rd Report of the Public Accounts Committee (1975-76) (Fifth Lok Sabha)].

Action Taken

The issue of instructions is being processed in consultation with the Ministry of Law whose advice is awaited.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/513/72-A & PAC-I dated the 23rd August, 1976].

Recommendation

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

The Committee find that the Ministry of Law have held the view that, in the present case, 'the trick adopted by the assessee is not covered by the statute'. The contention of the Ministry that there were two transactions, one of gift of machinery on the high seas and the other of issue of shares, however, does not appear to be correct since the foreign donor himself, in his letter dated 24th October, 1964, had treated the gift of machinery, the supply of machinery and the issue of shares as a single transaction. It would appear from this letter that despite the gift of machinery on the high seas, the shares in pursuance of the agreement would have been issued to the nominees only as nominees of the donor and it was this letter which made them the absolute owners of the shares. If it is accepted that the entire transaction was a single, continous one, then the rationale of the Supreme Court decision in Kothari's case would equally apply to this case also, since *prima facie*, the transactions are inter-connected as parts of the same transaction. and only a circuitous method has been adopted as a device to avoid tax. The legal niceties of the case notwithstanding, the Committee consider that it would be worthwhile to examine the entire case afresh in the light of the decision of the Supreme Court. The Committee would await the outcome of such review.

[S. Nos. 18 and 19 (Para Nos. 2.15 and 2.16) of Appendix V to 193rd Report of the PAC 1975-76) (Fifth Lok Sabha)].

Action Taken

Action pursuant to these recommendations is being processed in consultation with the Ministry of Law. Their advice is awaited.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236|734|73-A & PAC-I, dated the 30th August, 1976].

Recommendation

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

[S. No. 20 (Para No. 2.17) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

The question of amending the law suitably is under consideration.

[Department of Revenue and Banking (Revenue Wing) O.M No. 236/734/73-A & PAC-I, dated the 30th August, 1976].

Recommendation

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

[S. No. 24 (Para 3.15) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

Report from some of the Commissioners of Income-tax are still awaited. Final reply will be sent as soon as the reports are received.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/513/A&PAC-I, dated the 30th August, 1976].

Recommendation

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

[S. No. 30 (Para 4.38) respectively of 193rd Report of PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

The ITAT remitted the case back to the AAC who by his order dated 30-1-74, held that the action of the G.T.O. in initiating proceedings u/s 16(1)(a) was fully justified. THE ITAT by its order dated

28-8-74 have, however, cancelled the re-assessment proceedings on the ground that the value on which the shares were transferred was adequate and thus Section 4(a) of the GT Act did not apply in the instant case.

The Deptt. has not accepted the above order of the ITAT and reference applications have been filed, which are pending and have not yet been decided by the ITAT.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/519/72-A&PAC-I dated the 19/23rd August, 1976]

Recommendation

This is one more instance which has come to the notice of the Committee where the rectification of a patent error has been frustrated by the assessee seeking legal remedies on a more technical plea. In this connection, the Committee would invite the attention of Government to an earlier recommendation contained in paragraph 2.30 of their 120th Report (Fifth Lok Sabha) and reiterated in paragraphs 4.26 and 5.32 of their 187th Report (Fifth Lok Sabha) on the question of amending Article 226 of the Constitution, in so far as it relates to revenue matters, in respect of which adequate remedies are provided in the respective statutes themselves. Since such a step would have a salutary effect on the collection of revenues, the Committee urge Government to process this recommendation with the expedition that it rightly deserves.

[S. No. 31 (Para 4.39) of Appendix V to 193rd Report of the PAC (1975-76) (Fifth Lok Sabha)].

Action Taken

The question of barring the writ jurisdiction of courts in revenue matters is under consideration of the Ministry of Law and a decision thereon will be taken alongwith the decision on other proposals for general amendments to the Constitution.

[Department of Revenue and Banking (Revenue Wing) O.M. No. 236/519/72-A&PAC-I dated the 13th July, 1976]

NEW DELHI;
October 26, 1976
Kartika 4, 1898 (*S*)

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

APPENDIX

Conclusions/Recommendations

Sl. No.	Para No. of Report	Ministry/Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1.	1.4	Min. of Finance (Deptt. of Revenue and Banking)	The Committee expect that final replies to those recommendations/observations in respect of which only interim replies have so far been furnished would be submitted to them expeditiously after getting them vetted by Audit.
2.	1.12	-do-	The Committee regret that it has not been possible so far for the Department of Revenue & Banking to intimate whether the instructions issued in November, 1973 by the Directorate of O & M Services emphasising the need for better coordination between assessments made under different Direct Tax laws have been actually implemented in the field. All that has happened since the Committee presented their Report in April, 1976 is that relevant information in this regard has been called for from the Directorate of O & M Services who, in their turn, are stated to have taken steps to call for and collate the information from the Commissioners of Income-tax. Had there been a contemporaneous monitoring by Department or the Central Board of Direct Taxes of the implementation and impact of the instructions periodically issued by them,

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			there would not have been this kind of delay. As pointed out by the Committee in paragraph 1.15 of their 187th Report (Fifth Lok Sabha) and paragraph 1.37 of their 193rd Report (Fifth Lok Sabha) the responsibility of the Central Board of Direct Taxes does not end with merely issuing instructions without worrying over their honest implementation.
3.	1.13	Min. of Finance (Deptt. of Revenue and Banking)	The Director of Inspection (Income-tax & Audit) has at long last been directed to carry out a review of the impact of the Board's instructions and the Central Board of Direct Taxes are stated to be devising, in consultation with the Director of O & M Services and the Director of Inspection (R.S.), an effective method to ensure implementation of the various instructions issued by the Board and to evaluate the impact of these instructions on the tax administration. The Committee trust that this exercise, which has been overdue, will be completed speedily and all necessary steps taken.
4.	1.16	-do-	The Committee are of the view that in cases where transfers of immovable property could, in fact, be made to the donees by mutations having been passed by State Revenue authorities without reference to registered gift deeds, a possible motive for avoidance of Gift Tax as well as stamp duty cannot be entirely ruled out and it is not unlikely that a large number of transfers of agricultural holdings are resorted to by mutation which could contribute to considerable loss of revenue to the exchequer. The Committee

			would, therefore, like Government to re-examine the case from this angle and take necessary remedial measures. The Committee would await an early report in this regard.
5.	1.19	-do-	The Committee are perturbed that though they had specifically desired, in January 1974, that a review of the position relating to the levy of Gift Tax on gifts of agricultural land during the period from 1965-1966 to 1969-70 should be completed within a period of one year and necessary action taken to finalise the assessments before they became time-barred, the review is yet to be completed even after the lapse of more than 2½ years. Since such delays are detrimental, the Committee insist on the review being completed forthwith and urgent steps taken to subject to taxation such gifts as might have escaped the Gift Tax. The Committee would like to be apprised of the results of the review within a month.
6.	1.20	-do-	The Department's reply is silent in regard to another recommendation of the Committee that responsibility for the delay in completing the review should be fixed for appropriate action. Delays which result in loss of revenue are a serious matter and unless dealt with sternly, would further jeopardise the administration of taxation. The Committee would like to know the specific action taken on this recommendation.
7.	1.23	-do-	The Committee have carefully considered the reply furnished by the Department of Revenue & Banking to their recommendation contained in paragraph 1.48 of the 193rd Report (Fifth Lok

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			Sabha). It is surprising that relevant information in regard to the cases in which Section 52 of the Income-tax Act was applied is stated to be not readily available. This only serves to reinforce the earlier impression of the Committee in regard to the absence of a sound statistical base within the organisation, which could provide upto date and complete data on all aspects of the taxes administered by the Department. Since the total number of assessments in which Section 52 was applied are not likely to be large, it should not be beyond the capability of the Department to undertake a review of the cases in which capital assets had been transferred for inadequate consideration with a view to determining whether Gift Tax had been levied in all these cases and taking all necessary action in the interest of revenue. The Committee would, therefore, reiterate their earlier recommendation in this regard and would urge the Department to initiate necessary action without further loss of time.
8.	1.26	Min. of Finance (Deptt. of Revenue and Banking).	It is disconcerting that even after the lapse of seven years, there has been no finality as yet in the matter of framing rules for the valuation of the right to share in the profits of a firm. The Committee take a serious view of this delay and would like responsibility to be fixed therefor. The rules in this regard should also be framed without further waste of time.
9.	1.31	-do-	The Committee are far from satisfied with the somewhat laconic reply of the Department of Revenue & Banking to their

			pointed observations contained in paragraph 3.12 of their 193rd Report (Fifth Lok Sabha) regarding the legal validity of exempting from Gift Tax donations made by companies to political parties. It is distressing that in spite of the clear and unambiguous judicial pronouncements on the subject, the earliest of which was made more than decade ago by the Allahabad High Court, this important matter is stated to be 'still under examination.' The Committee would very much like to know, in some detail, the scope of the present examination, particularly in view of the clarifications already issued in June 1972, after taking into account the amendment to the Companies Act as well as the decisions of High Courts holding that donations paid to a political party are not allowable as a business expenditure.
10.	1.32	-do-	The reasons for the peculiar delay on the part of the Central Board of Direct Taxes in revising its earlier instructions of 1960 on the subject have also not been satisfactorily explained and the reply now furnished by the Department is silent on the Committee's specific query in this regard. It is evident from the sequence of events that revised instructions were issued (June 1972) by the Department only after the matter was taken up by the Committee in February 1972, whereas the correct legal position in this regard had been clarified as early as in April 1966. The relevant provisions of the Companies Act, 1956 had also been amended in 1969 itself as a sequel to a country-wide debate. It is, therefore, fairly obvious that there had been avoidable delay on the part of the Central Board of Direct Taxes in this regard and consequently there has been

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			failure to safeguard the revenues of the State. The Committee would, therefore, seek a more specific clarification in this regard. They would, in particular, like to know how far the officials in the higher echelons of the Administration have failed to discharge their responsibilities.
11	1.35	Min. of Finance (Deptt. of Revenue and Banking)	The Committee are surprised to learn that though this was a clear case of concealment by an assessee with a known history of tax evasion and tax avoidance, the Gift-tax assessment subsequently made as well as the penalty levied by the Department have been cancelled by the Appellate Tribunal. The Committee would like to know, in greater detail, the grounds on which the Tribunal had cancelled the assessment and the penalty and whether the Department's case was fully and properly presented before the Tribunal by engaging counsel equal in standing to those representing the assessee. That the Department is equally concerned over the Tribunal's decision in this case is evident from the fact that reference applications, contesting the decision, have been filed. The Committee would urge Government to have these proceedings expedited and would also like to be apprised of their outcome early.

GMGIPMDND—LS II—1795 LS—28-10-76—1100.