

36

**ASSESSMENT OF PRIVATE
SCHOOLS, COLLEGES AND
COACHING CENTRES**

MINISTRY OF FINANCE

**PUBLIC ACCOUNTS
COMMITTEE
2006-2007**

THIRTY-SIXTH REPORT

FOURTEENTH LOK SABHA



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

THIRTY-SIXTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(2006-2007)

(FOURTEENTH LOK SABHA)

ASSESSMENT OF PRIVATE SCHOOLS,
COLLEGES AND COACHING CENTRES

[Action Taken on 14th Report of Public Accounts Committee
(14th Lok Sabha)]

MINISTRY OF FINANCE
(Department of Revenue)



Presented to Lok Sabha on.....

Laid in Rajya Sabha on.....

LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2006 - 2007)

Prof. Vijay Kumar Malhotra—*Chairman*

Lok Sabha

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3. Shri P.S. Gadhavi
4. Shri R.L. Jalappa
5. Shri Raghunath Jha
6. Shri Bhartruhari Mahtab
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1. Shri S.K. Sharma — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri Ashok Sarin — *Director*
4. Shri R.K. Suryanarayanan — *Assistant Director*

INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this 36th Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 14th Report (14th Lok Sabha) on “Assessment of Private Schools, Colleges and Coaching Centres”.

2. This Report was considered and adopted by the Public Accounts Committee at their sitting held on 16th November, 2006. Minutes of the sitting form Part II of the Report.

3. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix to the Report.

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

NEW DELHI;
17 November, 2006
26 Kartika, 1928 (Saka)

PROF. VIJAY KUMAR MALHOTRA
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT`

This Report of the Committee deals with the action taken by Government on the Observations/Recommendations of the Committee contained in their Fourteenth Report (14th Lok Sabha) on Chapter-III of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2003 (No. 13 of 2004), Union Government (Direct Taxes-System Appraisal) relating to “Assessment of Private Schools, Colleges and Coaching Centres”.

2. The Fourteenth Report which was presented to Lok Sabha on 13 August, 2005 contained 20 Observations/Recommendations. The Action Taken Notes in respect of all the Observations/Recommendations have been received from the Ministry of Finance (Department of Revenue) and are broadly categorized as follows:—

- (i) Recommendations and Observations which have been accepted by the Government;

Paragraph Nos. 92, 93, 94, 95, 96, 97, 99, 101, 102, 103, 104, 105, 106, 107, 109, 110 and 111.

- (ii) Recommendations and Observations which the Committee do not desire to pursue in the light of replies received from Government;

-Nil-

- (iii) Recommendations and Observations replies to which have not been accepted by the Committee and which require reiteration;

Paragraph Nos. 98, 100 and 108

- (iv) Recommendations and Observations in respect of which the Government have furnished interim replies.

-Nil-

3. The Action Taken Notes furnished by the Ministry on the various Observations/Recommendations of the Committee contained in the Report have been reproduced in the relevant chapters of this Report. In the succeeding paragraphs, the Committee deals with the action taken by Government on some of their recommendations.

Assessment of Private Schools, Colleges and Coaching Centres

4. The Original Report on the subject was based on the Audit review of the taxation policy in respect of private educational institutions, schools, colleges and coaching centres run by charitable trusts or by private management, in order to assess the effectiveness of implementation of the taxation policy effective from

1st April, 1999 which laid down that exemption of income of private educational institutions should be granted only after ensuring genuineness of their activities and compliance with the conditions specified in the relevant Income Tax Provisions.

5. The Committee's examination of the subject had revealed a number of irregularities in the assessment of the private educational institutions as well as deficiencies in the proper implementation of tax laws which resulted in substantial revenue loss to the Government.

Non-availability of database of Educational Institutions (Paragraph 98)

6. In their Original Report, the Committee had observed that a large number of private schools, colleges and coaching centres have come up whose income is not so exempt from levy of income tax. There is also no systematic and organised approach in the Department to ensure that all private educational institutions, which are required to fulfil certain obligations under the Act to claim the exemptions are, in fact, doing so before claiming the tax benefit. For this there was not any centralized arrangement in the Department of Revenue, Ministry of Finance to have an up-to-date database in respect of private educational institutions and coaching centres. The Committee had expressed their anguish that the Ministry of Finance, with large resources at their command, had not made any effort to identify the total assesses in the country by having effective co-ordination with the State Governments/ Universities/other regulatory authorities which had resulted in substantial revenue loss to the exchequer. The Committee had consequently asked the Ministry to create a reliable database within four months of the presentation of this Report.

7. The Ministry of Finance (Department of Revenue), in their Action Taken Note have stated that inserting the names of the approved/exempted institutions in the database will involve the Board, the field authorities and the DIT (Exemption) and DGIT (Systems). Necessary steps in this regard are underway. According to the Ministry, necessary directions to the field formations have been issued, the CsIT (CIB) have been directed to prepare a database in respect of educational institutions, update the same periodically and furnish the database to the jurisdictional Chief Commissioner of Income Tax and DGIT (Exemption).

8. Considering the fact that there was no systematic and organised approach in the Department to ensure that all private educational institutions, which were required to fulfil certain obligations under the Act to claim exemptions, were in fact doing so, the Committee had observed that this was possible only when there was reliable statistics of such institutions with them. They had therefore, desired that the Ministry of Finance (Department of Revenue) to create an appropriate database within four months of the presentation of their Report. In their reply, the Ministry have merely stated that necessary steps in this regard are underway and necessary directions to the field formations have been issued without indicating when such directions were issued and what has been the outcome thereof. Evidently, the Ministry have not made any substantial headway in this regard, which is regrettable. The Committee emphasise that the Ministry should ensure that directions issued in this regard result in creation of desired database without any further delay. They would like to be apprised of the latest position in this regard.

Survey Operations (Paragraph 100)

9. In their earlier Report, the Committee had observed that adequate steps had not been taken by the concerned authorities to bring all the private schools, colleges and coaching centres into the tax net through adequate and focused use of the powers to conduct surveys. Expressing their deep concern over the inefficient utilization of the power of survey given to the assessing officers under sections 133A and 133B of the Act to survey the business premises of the taxpayers to locate assesses and unearth unaccounted income, the Committee had desired to be apprised of the details of the cases, which were brought under the tax net during the preceding two years, as a result of the efforts initiated by them alongwith the number of new assesseees that have been brought to tax net and the amount of additional revenue realized from them.

10. In their Action Taken Note furnished to the Committee on the aforesaid recommendation of the Committee, the Ministry of Finance (Department of Revenue) stated as follows:—

“The result of surveys conducted on educational institutions by the field formations is as under:—

Financial Year	No. of Surveys conducted	No. of new assesses identified	Additional revenue realized (in Rs. Lac)
2002-03	24	1	77.29*
2003-04	27	5	256.13*
2004-05	37	4	25.61*

* Figures are provisional as assessments in all the cases are not yet complete”

11. The Committee are dismayed that even after nine months of the presentation of the original Report to Parliament, the Ministry have not been able to compile and provide figures of actual revenue realized as a result of surveys conducted from 2002-03 to 2004-05. They have given only provisional figures in this regard. The Ministry have conceded that assessments have not been completed in all the cases. The Committee regret to observe that the Ministry have been lax on this count and requisite urgency has not been shown by them. The Committee are of the view that by now, the Ministry should have been in a position to furnish complete and conclusive such information. The Committee would therefore desire that assessment in all the cases should be completed at the earliest and they be informed of the actual additional revenue realized from the new assesseees that have been brought to tax net as a result of survey operations.

Further, as regards the figures submitted by the Ministry, the Committee regret to note that only four new assesseees have been identified out of 37 surveys conducted during the Financial year 2004-05 and the additional revenue realized during the same Financial year is only Rs. 25.61 lakh from 37 surveys conducted as against the total amount of Rs. 256.13 lakh from 27 surveys conducted during

the Financial Year 2003-04. Evidently, no progress has been made by the income-tax authorities in identifying the new assesseees and in collection of additional revenue from the surveys conducted during the year 2004-05. Surprisingly, the surveys conducted by the Income Tax Department of late have not been yielding the desired results. Such a below-par performance is more glaring, considering the fact that the private schools, colleges and other educational institutions have consistently been collecting huge fees and other charges from the students. The Committee cannot but take a serious view of the inaction of the Income Tax Department to unearth undisclosed income of private educational institutions. The Committee would now like the Ministry of Finance (Department of Revenue), to closely monitor these operations at the highest level, with a view to realising the potential tax from these institutions. At the same time, the Committee would like to emphasise the need for effective tax deterrence against the rampant commercial exploitation of education in the country by various institutions.

Inadequacies in Law (Paragraph 108)

12. In Paragraph 108 of the Original Report, the Committee had observed that the laws providing tax exemption to educational institutions suffer from various inadequacies, for instance:

- (i) the new provisions enacted under Section 10(23C)(iiiab)/ (iiiad) do not yet provide any monitoring mechanism for checking the genuineness of activities of institutions claiming exemptions;
- (ii) there is no mechanism to ensure that the institutions could claim exemption only under section 11 and 12 or 10 (23C) (vi) of the Act;
- (iii) there is no time limit for granting approvals under clause 10(23C) (vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated;
- (iv) there is no provision in the case of exemption under Section 10(23C) (vi) to furnish the audited accounts with audit certificate along with returns of income;
- (v) no monitoring mechanism currently is available to monitor the investment of unutilised surplus of the institutions u/s 11(5) of the Act.

13. While observing that the existing tax laws are already very complex, the Committee had urged the Department of Revenue to make them simpler and clearer in consultation with the Ministry of Law and to plug the lacunae, if any, in the law.

14. In their Action Taken Note submitted to the Committee, the Ministry of Finance (Department of Revenue) have stated as follows:

“Several changes have been proposed through the Taxation Laws (Amendment) Bill, 2005 to remove inadequacies in the laws providing tax exemptions to educational institutions. Entities covered under section 10 (23C)(iiiad) and (iii ae) will be mandatorily required to file their returns of income. This will enable the department to monitor the genuineness of

activities of the institutions claiming exemptions. A time limit of one year has been proposed for disposal of applications for approvals/notifications for entities referred to in sections 10(23C)(iv)(v)(vi) and (via). Further it is proposed these entities will have to get their accounts audited by an Accountant and file the report of such audit along with their returns of income. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 12/12/2005. The Bill is yet to be passed by the Parliament.

The exercise to simplify the Income Tax Act is currently under way and the suggestions/recommendations of the Committee regarding simplification including the suggestion regarding merging the two streams of exemptions, have been forwarded to the Expert Group for their consideration.

In respect of the Committee's observation that there is no time limit for granting approvals under clause 10(23C)(vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated, it is stated that an assessee can claim exemption either u/s 10(23C)(vi) of the Act for an assessment year, then it may claim exemption u/s 11 to 13 of the Act, subject to fulfilment of conditions prescribed therein. Otherwise, its income shall be taxable.

In respect of the Committee's observation that no monitoring mechanism currently is available to monitor the investment of unutilized surplus of the institutions u/s 11(5) of the Act, it is stated that, as per the provisions of the Act, this surplus is to be utilized for educational purposes only. The assessee is supposed to file its tax return every year with the copy of audited balance sheet. This return is subject to scrutiny and in case of any violation, the assessee may not be allowed exemption and even the registration granted may be cancelled".

15. While observing that separate yet overlapping clauses in the Income Tax Act providing exemption under section 10(23C) and Sections 11 and 12 of the Act are being misused by private educational institutions, the Committee in their earlier Report, had recommended that the existing tax laws should be made simpler and clearer in consultation with the Ministry of Law and the lacunae in the law, if any, should be plugged suitably. In this regard, the Ministry *vide* their Action Taken Note have informed that necessary enabling changes have been brought in the statute through the Taxation Laws Amendment Act, 2005. With regard to the simplification of the existing tax laws, the Ministry have stated that the exercise to simplify the Income Tax Act is currently underway and the suggestions of the Committee to merge the provisions [Sections 11, 12 and 10 (23C) (vi)] governing tax exemptions for educational institutions have been forwarded for consideration to the Expert Group constituted for this purpose. The Committee desire that the Expert Group should be impressed upon to consider the matter expeditiously and submit its findings at the earliest. They would also like to be apprised about the findings of the Expert Group and the consequential action taken by the Government thereon.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee note that the bulk of assessments of private schools, colleges and charitable trusts are by and large completed in a summary manner, which is not desirable. The Committee would like to point out that unless cases involving assessments of educational institutions are identified and adequate number are selected for scrutiny, the department will have no means to ensure effective compliance of tax laws in such cases. The Chairperson, CBDT conceded during evidence that 98 per cent of cases are completed on the basis of returns filed by assessee and about two percent of the cases are picked up for scrutiny. The Committee have now been informed that guidelines have been issued on 20.9.2004 to pick up all the cases where exemption is claimed under section 11 of the Income Tax Act and the gross receipt exceeds Rs. 5 crore for scrutiny assessment. Besides, a residual clause has been inserted to enable the field officers to select any other case for scrutiny with the prior approval of the Chief Commissioner of Income Tax (CCIT) concerned. The Committee would like to point out that the Ministry should have considered these steps prior to being pointed out by Audit. Considering the very fact that large revenue potential exist in assessment of all eligible private educational institutions, the **Committee recommend that not only the guidelines issued by the Department in this regard should be followed scrupulously but discretion should also be allowed to the assessing/supervisory officers to randomly pick up cases for scrutiny so as to prevent these institutions from evading the payment of their legitimate dues to the Government.**

[Sl. No. 8 of Appendix II, Para 99 of the 14th Report of PAC (2005-2006)—
14th Lok Sabha]

Action Taken

The latest guidelines for F.Y. 2005-06 for selection of cases for scrutiny issued by the CBDT specifically provide for selection of cases of universities and other educational institutions where the aggregate annual receipts is more than Rs. 10 crore in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad (Rs. 5 crore in other places) in respect of institutions approved u/s 10 (23C) of the I.T. Act, 1961.

A clause providing for scrutiny of cases falling under Section 11 having gross receipts exceeding Rs. 5 crores already exists in the scrutiny guidelines for non-corporate assesses for F.Y. 2005-06.

The guidelines also include a residuary clause which provides for selection of cases not otherwise covered by various selection criteria, with the approval of the CCIT/DGIT concerned on the basis of specific reasons to be recorded in writing. A copy of these guidelines is enclosed.

[Ministry of Finance/Department of Revenue
O.M. No. F.No. 241/2/2005-A & PAC.II dt. 01-5-2006]

PROCEDURE FOR SELECTION OF CASES FOR "SCRUTINY" FOR
NON-CORPORATE ASSESSEES

In supersession of earlier Instructions on the above subject, the Board hereby lays down the following procedure for selection of returns/cases of Non-Corporate Assesseees for Scrutiny during the current financial year, *i.e.* 2005-06.

2. The following categories of cases shall be compulsorily scrutinized:—

- (a) All assessments pertaining to Search & Seizure cases.
- (b) All assessments pertaining to Surveys conducted u/s 133A of the I.T. Act.
- (c)* All returns where deduction claimed under Chapter VIA of the I.T. Act is Rs. 10 lakh or above in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad; and Rs. 5 lakh or above in other places.
- (d)*
 - (i) All returns where refund claimed is Rs. 10 lakh or above in Delhi, Mumbai, Chennai, Kolkata, Puna, Hyderabad, Bangalore and Ahmedabad and Rs. 5 lakh or above in other places.
 - (ii) In cases of non-residents, the refund limit for selecting a case for scrutiny shall be decided by the DGIT (International Taxation).
- (e) All cases wherein addition/disallowance sustained by the CIT (Appeal) in the appeals decided during the financial year 2004-05 amounts to Rs. 5 lakh or above in Delhi, Mumbai, Chennai, Kolkata, Puna, Hyderabad, Bangalore and Ahmedabad and Rs. 1 lakh or above in other places.
- (f)* All returns filed by local authorities assessable to income tax.
- (g) All cases of banks and Non-banking financial institutions with deposits of Rs. 5 crore and above.
- (h) Cases of universities, educational institutions, hospitals, nursing homes and other institutions for rehabilitation of patients (other than those, which are substantially financed by the Government), the aggregate annual receipts of which exceed Rs. 10 crore in Delhi, Mumbai, Chennai, Kolkata, Puna, Hyderabad, Bangalore and Ahmedabad and Rs. 5 crore in other places. [Ref. S. 10 (23C) & Rule 2BC].

* Selection of cases under these criteria {para 2(c), (d) and (f)} shall not be done manually in 60 cities on computer network but through Computer Assisted Scrutiny System (CASS), for which, necessary provisions have been made in the CASS software being issued by Directorate of Income Tax (Systems).

- (i) All cases where exemption is claimed under section 11 of I.T. Act and the gross receipts exceed Rs. 5 crore.
- (j) All cases where total value of International Transactions (as defined u/s 92B of the I.T. Act) exceeds Rs. 5 crore.
- (k) All cases of stockbrokers (including sub-brokers) where brokerage received is disclosed at Rs. 50 lakh or above and income declared is less than 10% of such brokerage.
- (l) All cases of stockbrokers (including sub-brokers) where there are claims of bad debts of Rs. 5 lakh or more.
- (m) All cases of professionals with gross receipts of Rs. 50 lakh or more and income declared is less than 20% of gross professional receipts.
- (n) All cases of deduction under sections 10A and/or 10B of the I.T. Act with export turnover exceeding Rs. 5 crore.
- (o) All cases of contractors whose gross contractual receipts exceed Rs. 2 crore and net income declared is less than 5% of gross contractual receipts.

3. Where a case does not fall in the categories specified at para 2 above but the CCIT/DGIT (International Taxation)/DGIT (Exemptions), of his own motion or on the matter having been brought to his notice by an authority below, is satisfied that the case needs to be taken up for scrutiny, the CCIT/DGIT (International Taxation)/DGIT (Exemptions), for reasons to be recorded in writing, may direct the Assessing Officer to take up the case for scrutiny.

4. The CCIT/DGIT (International Taxation)/DGIT (Exemptions), may issue suitable guidelines for reducing/increasing the number of cases selected under specific clauses of para 2, for proper management of the workload as well as to avoid large scale transfer of cases from one jurisdiction to another.

5. All returns filed in response to notice issued u/s 148, of the I.T. Act shall be selected for scrutiny.

6. In addition to above, selection of cases out of returns processed on AST will be made through a Computer Assisted Scrutiny System (CASS). The selection will be made centrally at RCCs on the basis of selection criteria determined by the Board. Separate instructions in this regard will be issued by the DIT (Systems).

7. Lists of cases picked up for scrutiny during each month shall be submitted by the Assessing Officer to the CIT and Addl. CIT, Range by 15th of the following month.

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee note that an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. One crore is required to obtain an approval from the prescribed

authority for claiming exemption of income. With effect from 1 April, 1997, every trust needed to obtain registration to become eligible to claim exemption of income under sections 11 & 12. The assessee has to make an application for registration to the CIT either before 1st July, 1973 or within one year from the date of creation of trust. If application is made after expiry of the aforesaid period, the Commissioner on reasonable grounds may condone the delay. Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application is received. These provisions indicate that educational institutions run either by non trusts or trusts could claim exemption of their income under both the sections 10(23C)(vi) and 11 & 12 according to their convenience as these sections are not mutually exclusive in operation.

The Committee are constrained to point out that there is no system in the Department at present to ensure that exemption of income is granted only to those educational institutions which have obtained approval/registration from prescribed authority. In support of this inadequacy a number of instances have been cited by the Audit in the Paragraphs under review. The Committee are, therefore, not convinced by the plea of the Department that the system of giving approvals is rigid and meticulous and that every effort is made so that only genuine and non-profit making institutions get approval. **The Committee have also been given to understand that a number of suggestions under consideration of the Ministry in this regard are that :** (i) a clause may be inserted in Section 10(23) so as to provide for mandatory audit of accounts and enclosing the audit report with the return of income every year; (ii) Penalty u/s 271B may be made applicable to audit u/s 10(23C) and 12A; and (iii) Institutions should apply to the Assessing Officer in the specified form and specify the purpose for accumulation irrespective of the fact whether the accumulation is 15% or more. According to the Ministry, Form No. 3A should also be modified so as to include the nature of activity in the Return, if this information is not given, the return may be treated as defective u/s 139(9); and include a column for number & date for approval u/s 10(23C). **Needless to say that these measures now proposed by the Ministry should have been taken much earlier. The Committee expect the Ministry to finalise these proposals and implement the same expeditiously.**

[Sl. No. 10 of Appendix II, Para 101 of the 14th Report of PAC
(2005-2006)-14th Lok Sabha]

Action Taken

In the Taxation Laws (Amendment) Bill, 2005, it is proposed to make it mandatory for funds and institutions of national importance or importance throughout State or States referred to in Section 10 (23C)(iv), wholly public religious and charitable trusts referred to in Section 10(23C)(v), universities and other educational institutions referred to in Section 10(23C)(vi) and hospitals and other medical institutions referred to in Section 10(23C)(via) to get their accounts audited by an Accountant as defined in the Explanation below sub-section 2 of section 288 of the Income Tax and file a report of such audit along with their returns of income. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 13/12/2005. The Bill is yet to be passed by the Parliament.

During the course of the budgetary exercise several suggestions relating to the Taxation regime of the Charitable Trusts/institutions were examined with a view to tightening this monitoring mechanism and preventing misuse of the relevant provisions and the following decisions taken:

(1) With respect to the suggestion that Penalty u/s 271B may be made applicable to audit u/s 10(23C) and 12A; it is decided that audited accounts are required to be filed along with the return in terms of Section 12A and 139 (9) of the Income Tax Act, 1961. If the Audit Report is not attached, the return is treated as defective. If the defect is not rectified within the specified time, the return may be treated as an invalid return and the provisions of the Act apply as if the assessee failed to furnish the return. This provides for adequate deterrence and separate penalty is not necessary.

(2) With respect to the suggestion 1 that Institutions should apply to the Assessing Officer in the specified form and specify the purpose for accumulation irrespective of the fact whether the accumulation is 15% or more, it is decided that certain flexibility is necessary to enable charitable trusts and institutions to accumulate funds and apply the same according to the objectives.

(3) With respect to the proposal that Form No. 3A should also be modified so as to include the nature of activity in the Return, if this information is not given, the return may be treated as defective u/s 139(9), and include a column for number and date for approval u/s 10(23C), it is stated that this suggestion is being examined.

After examination of all the suggestions, an amendment has been made *vide* the Finance Bill, 2006 whereby anonymous donations made to wholly charitable trusts and institutions other than religious trusts and religious Institutions shall be charged to tax @ 30%, plus surcharge and education cess. Such donations made to mixed purpose trusts or institutions *i.e.*, both charitable as well as religious, will be taxed only if such donations are for any educational or medical institution run by the trusts or institutions.

[Ministry of Finance/Department of Revenue
O.M. No. F.No., 241/2/2005-A&PAC.II dt. 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee note that prior approval of prescribed authority is required for claiming exemption of income by an educational institution existing solely for educational purposes and not for the purpose of profit and whose aggregate annual receipts exceed Rs. one crore. However, there is no time limit for granting such approval or rejection under Section 10(23C) (vi) and there is no specific provision for dealing with cases where applications are pending for approval for some reason. The assessing officer is not competent to grant exemption of income in such cases without approval of prescribed authority. Citing the examples of delay in grant or rejection of approvals, the Audit noticed in Maharashtra charge, that as on 31 March, 2003, 103 cases were pending approval for exemption. Out of 103 cases, 88 were

pending with DIT (Exemption) Mumbai alone. Out of 88 pending cases, 24 were pending for more than two years, 33 were pending for more than one year and institutions were claiming exemption under section 10(23 C) (vi) without approval of prescribed authority. Thus the objective of introducing the new provision 10(23C) (vi) for grant of approval after examination of the genuineness of the activities of such institutions has not been served. Keeping in view these shortcomings, **the Committee feel that there is no reason as to why appropriate legal provisions could not be incorporated in the Act so as to specify a fixed time limit for disposal of such applications.** The proposal to fix the time limit is now stated to be under active consideration of the Ministry. **The Ministry have also assured to put the names of the institutions, that have been granted registration/approvals, on their website. The Committee would like to be informed of the precise steps taken in this regard.** They cannot but over emphasised that there should be an inbuilt system in the Department to review these shortcomings noticed from time to time so as to *suo moto* take suitable remedial measures without any delay.

[Sl. No 11 of Appendix II Para 102 of the 14th Report of
PAC(2005-2006)-14th Lok Sabha]

Action Taken

Vide the Taxation Laws (Amendment) Bill, 2005, a time limit of one year is proposed to be provided for disposal of applications for notification under sections 10(23C)(iv) and (v) of the Act. A similar time limit will also be provided in Rule 2 CA for disposal of applications for approval under Sections 10(23C) (vi) and (via) of the Act once the Taxation Laws (Amendment) Bill is enacted. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 13/12/2005. The Bill is yet to be passed by the Parliament.

In respect of putting the names of the approved/registered institutions on the website, since tax exemption under section 11 and 10(23C) (vi) are not mutually exclusive, the educational institutions can claim exemption in either section. Putting the names of the approved/exempted institutions will involve the Board, the field authorities and the DIT (Systems). Necessary steps in this regard are underway.

[Ministry of Finance/Department of Revenue
O.M. No. 241/2/2005-A & PAC.II dt. 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

Chapter-III of the Audit Report on Assessment of Private Schools, Colleges and Coaching Centers has highlighted the cases relating to exemption of income without approval of prescribed authority in paras 3.17.1, 3.17.2 & 3.17.3; exemption granted without registration in para 3.19; and exemptions granted without audited accounts and audit reports in Para 3.24.1. In para nos. 3.17.1 to 3.17.3 two cases in Karnataka region, thirteen cases in Tamil Nadu and three cases in Delhi region have been reported which attracted non-levy of tax and interest of Rs. 36.79 crore. Similarly in para 3.19, 37 cases in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa,

Rajasthan, Tamil Nadu and West Bengal charges have been identified where the exemption of income without registration resulted in non-levy of tax of Rs. 3.54 crore. In case of para 3.24.1, exemptions were reportedly granted without audited accounts in 24 cases in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan, that led to non-levy of tax of Rs.1.26 crore.

In respect of Para 3.17.1, the Committee note that failure on the part of the Department to disallow exemption in the case of two assesseees in Karnataka, Bangalore Charge, viz. Desheeya Vidyashala Samithi, Shimoga and Education Society of Sisters of St. Joseph of Cluny, Bangalore resulted in under assessment of income totalling Rs. 81.32 lakh with consequent non-levy of total tax and interest of Rs. 30.51 lakh. Although the annual aggregate receipts of the institutions crossed Rs. one crore, they did not get themselves approved by the prescribed authority under section 10(23C) (vi) or get recognized under Section 12A of the Act. Moreover, the assessing officer exempted the income though he was not competent to do so. The Committee feel that mere application u/s 10(23C)(vi) does not entitle an assessee to exemption which can be allowed only on receipt of approval from competent authority. The Ministry have explained that in these cases, the procedure for granting of approvals could not be followed as the cases were summarily assessed u/s 143(1). Regarding remedial steps taken to withdraw the exemption of income granted to those institutions and to recover tax due from them, the Committee have been informed that the proceedings u/s 148/147 have been initiated in both cases which are likely to be completed by 31.03.2005. The tax demand and the interest thereon according to the Ministry will be covered expeditiously thereafter. The Committee regret to point out that the proceedings were made to wait till 31st March, 2005 for completion, when the cases were already more than 3 year old. **The Committee recommended that the Ministry should put in place a suitable mechanism for completion of remedial action on priority basis in similar cases, instead of waiting till the last day of the Financial Year, so that the revenue could be realised faster.**

[Sl. No 12 of Appendix II Para 103 of the 14th Report of
PAC(2005-2006)-14th Lok Sabha]

Action Taken

The recommendation has been considered and suitable instructions in this regard have been incorporated in the New Instruction on Receipt Audit to be issued shortly.

[Ministry of Finance/Department of Revenue O.M.No.
F.No. 241/2/2005-A&PAC.II dt. 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

In Tamil Nadu charge, seven cases of educational Institutions run by trusts were noticed, where no evidence was available in the records regarding submission of application by the assesseees for approval under section 10(23C)(vi). In six other cases, the concerned institutions had submitted applications, but the approvals of the prescribed authority granting exemption was allowed by the assessing officer

in these cases without approval from prescribed authority. These cases attracted levy of tax of Rs. 6.73 crore. Further, annual receipts of the institutions exceeded the prescribed limit of Rs. one crore and they were required to get approval u/s 10(23C)(vi). Out of 13 cases, six assesseees had applied for approval u/s 10(23C)(vi), which were pending and assessing officers were granting exemption u/s 11 & 12. The Ministry have now informed the Committee that the approval u/s 10(23C)(vi) has since been granted in the case of Hindu Educational Organisation in November, 2003. According to the Ministry the notification u/s 10(23C)(vi) was issued in the aforesaid case, though the income was exempted u/s 11 of the Act. The Committee would like to point out that the principle issue here is availability of alternate provisions, namely section 11/12 and Section 10(23C)(vi), in the statute to the assesseees and the resultant redundancy of Section 10(23C)(vi), when assessee could end up avoiding the rigours of detailed examination and prolonged procedure contemplated under Section 10(23) (vi) of the Act. **The Committee feel that since two separate Clauses providing exemption under section 10(23C), 11 and 12 overlap each other, these are being misused by educational institutions, apart from creating flaws in their tax assessments. They, therefore, recommend that this deficiency should be suitably resolved by necessary amendments in the provisions or by introducing a single section/clause for exemption educational institutions, whether run by trust or other than trusts.** They further urge the Ministry to strive in order to ensure that institutions flouting the legal requirement with impunity should be dealt sternly.

[Sl. No. 13 of Appendix II Para 104 of the 14th Report of
PAC (2005-2006)-14th Lok Sabha]

Action Taken

Amendment of the provisions of the Income-tax Act to provide for a single section/clause for exemptions of educational institutions whether run by trusts or other than trusts had been examined by the Ministry and not found to be feasible. The two streams of exemptions have a very different history and evolution and contain separate conditions and regulations. Educational institutions covered under section 10(23C) have traditionally enjoyed blanket exemptions whereas trusts under section 11 to 13 have had stringent conditions attached to them. Over the years, several amendments have been made whereby some of the conditions relating application and accumulation of income, investment of surplus auditing of accounts and filling of returns existing for trusts and institutions covered under sections 11 to 13 have been made applicable to educational institutions covered by section 10(23C) 1. Since reform in this area is an ongoing process, the recommendation of the Committee will be kept in mind during this process.

[Ministry of Finance/Department of Revenue
O.M. No. F.No. 241/2/2005-A & PAC.II dt. 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee are distressed to find that irregular grant of exemption without approval of DGIT/DIT in case of three educational institutions Oberoi Educational

Society, St. Joseph Academy and M/s DAV College Trust and Management Society, run by trusts in Delhi DIT (Exemption) charge, resulted in non-levy of tax of Rs. 23.35 lakh, Rs. 16.35 lakh and Rs. 29.36 crore respectively for the assessment years 2000-2001 to 2002-03. In case of Oberoi Education Society, the Department took almost three years to process the application under section 10(23C)(vi), which was ultimately not approved. It was also found that the approval u/s 10(23C)(vi) in all the cases has not yet been given and in the first two cases the matter is still being investigated. The Committee are surprised that the Department took three years to decide for grant of exemption under section 10(23C)(vi) and rejection by DG(IT), Kolkata in the case of Oberoi Education Society. Oberoi Education Society is a peculiar case when the department took almost three years to process the application under section 10(23C)(vi) which has ultimately not approved. Whereas, there is no compulsion on the assessee to avail the exemption as it is free to invoke section 11/12, being a trust, there is no compulsion on the department to finally decide applicability of section 10(23C)(vi), a provision that was specifically introduced to ensure rigorous application of provisions for exemptions. What has surprised the Committee is fact there is no mechanism available within the department to identify or link the cases of trusts and those seeking exemption of section 10(23C)(vi). The combined effect of all these shortcomings is that a significant provision of the Act, introduced with specific purpose, is not enforced. **The Committee feel that this needs to be seriously examined and suitable time limit fixed for deciding cases of application u/s 10(23C)(vi) and penalizing such institutions which do not follow the requirement instead of routinely allowing exemption u/s 11/12A.** From the foregoing, the Committee are constrained to observe that loopholes in enforcement of significant provisions of the Act need to be seriously examined and suitable time limit fixed for deciding cases of application u/s 10(23C)(vi). They feel that the very purpose of having a law is defeated, if it is not implemented earnestly. **The Committee, therefore, desire that as and when such cases of illegal or irregular exemptions come to the notice of the Department, suitable punitive action should be taken expeditiously against the erring officials without fear or favour, in order to prevent consequential loss to the exchequer.**

[Sl. No. 14 of Appendix II Para 105 of the 14th Report of the PAC (2005-2006)-14th Lok Sabha]

Action Taken

Vide the Taxation Laws (Amendment) Bill, 2005, a time limit of one year is proposed to be provided for disposal of applications for notification under sections 10(23C)(iv) and (v) of the Act. A similar time limit will also be provided in Rule 2 CA for disposal of applications for approval under Sections 10(23C)(vi) and (via) of the Act once the Taxation Laws (Amendment) Bill is enacted. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 13/12/2005. The Bill is yet to be passed by the Parliament.

As regards mechanism available within the department to identify or link the cases of trusts and those seeking exemption of section 10(23C)(vi), there is automatic linking as the Proforma report of the CIT/DIT(E) (prescribed by the CBDT *vide* Instruction No. 1981 dated 5/4/2000) contains information about assessment history

u/s 11 of the Act in respect of the applicant which has applied for approval u/s 10(23C)(vi).

The Hon'ble Committee's observation regarding action against erring officials have been noted for guidance & necessary action.

[Ministry of Finance/Department of Revenue O.M.
No. F.No. 241/2/2005-A & PAC.II dt. 01-05-2006]

Ministry of Finance /Department of Revenue

Recommendation of the Committee

With effect from 1st April, 1997, every trust is required to obtain registration to become eligible to claim exemption of income u/s 11 and 12. The test checks by Audit has revealed that in 37 cases falling in Assam, Bihar, Kerala, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal charges, where educational institutions run by trusts had not obtained registration u/s 12A of the Act; the assessing officers allowed exemption under section 11 and 12 without registration resulting in non-levy of tax of Rs. 3.54 crore. In their response, the Ministry have stated that most of the cases were completed u/s 143(1), wherein the Assessing Officer could not have disturbed the declared income. Moreover, in few cases, the institutions had approvals under the relevant clauses of section 10(23C) and, thus there was no requirement to be registered u/s 12A. The Ministry have taken the stand that these sections are not mutually exclusive and are applicable to educational institutions at the option of the assessee applicant. While **the Committee** desire that the Assessing Officers must ensure that eligible assesseees get registered before claiming any exemption, they also **feel that cases of trusts must be processed u/s 11 & 12 that exclusively deal with exemption in respect of educational institution run by Charitable Trusts and not under 10(23C) or 143(1) which do not bind them to get themselves registered before claiming exemptions.** The Committee are also not impressed by the assertion of the Ministry that the existing system of granting registrations is a rigorous one and registration is granted only after complete satisfaction of the statutory authorities, as the Ministry themselves have admitted that they have reopened the cases where the audit has objected that the educational institutions run by trusts were allowed exemptions without registration. **The Committee, therefore, recommend that it should be ensured that trusts that claim tax exemptions for running educational institutions invariably get themselves registered.** Besides, they desire that all cases where exemptions have been granted wrongly or illegally must be proved with a view to fixing responsibility. The Committee would like to be intimated about precise steps taken in this direction.

[Sl. No. 15 of Appendix II Para 106 of the 14th Report
of PAC (2005-2006) — 14th Lok Sabha]

Action Taken

Under the present tax law, tax exemption under sections 11 and 10(23C) (vi) are not mutually exclusive, the educational institutions can claim exemption in either section. While registration u/s 12A is a prerequisite for grant of exemption u/s 11, the same is not required for exemption u/s 10(23C)(vi). The authority for granting registration under section 12A is DIT (Exemption)/CIT whereas the prescribed

authority for approving the application under section 10(23C)(vi) is a higher authority namely CCIT/DGIT. The purpose of granting registration under section 12A is to verify the genuineness of the activities of the institution and even for approving the application under section 10(23C)(vi) such verification is done. Therefore, the observation of the Committee that exemption under section 10(23C)(vi) is being claimed by the educational institutions without verification is incorrect. Further, it is provided under proviso to section 143(3) that if, during the course of assessment proceedings the Assessing Officer finds any contravention of the provisions of section 10(23C)(vi), he may intimate such contravention to the prescribed authority and the prescribed authority can withdraw the approval granted.

Vide the Taxation Law (Amendment) Bill, 2005, it has been proposed to make filing of returns mandatory by universities and other educational institutions having aggregate annual receipts below Rs. 1 crore referred to in Section 10(23C)(iiiad). This will enable the Department to verify the activities of such entities as well. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 13/12/2005. The Bill is yet to be passed by the Parliament.

[Ministry of Finance/Department of Revenue
O.M. No. F.No. 241/2/2005-A & PAC.II dt. 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

Where the total income of the trust or institutions as computed under the Act without giving effect to the provisions of Sections 11 and 12 exceeded Rs. 50 thousand in any previous year, the accounts of such trusts or institutions should be audited for such accounting year and audit report filed in form 10B alongwith the return of income for the relevant assessment year. The Committee note that in 25 cases falling in Gujarat, Jharkhand, Maharashtra, Orissa and Rajasthan charges the educational institutions run by the trusts for the assessment years 1999-2000 to 2001-2002 claimed exemption without furnishing audited accounts and audit reports. According to the Committee non-compliance of the above provision required withdrawal of exemptions in these cases and levy of tax of Rs. 1.26 crore. In most of the cases according to the Ministry, the returns were processed under Section 143(1) of the Income Tax Act and the assessing officers have no powers to make adjustments in the income declared by the assesseees. The Ministry have admitted that there is no special mechanism to identify such errant educational institutions, the existing system of scrutinizing returns is deterrent enough for unscrupulous assesseees to make such unlawful claims. The role of internal audit is limited in these cases as the internal audit wing is required to see only 0.5% of all the cases processed u/s 143(1). As such, 99.5% of such cases do not pass through the audit scrutiny of the internal audit wing of the Department. The Committee are not aware whether the aforesaid cases have been selected for scrutiny by the concerned authorities subsequent to the issue of audit observation. As the Ministry have themselves admitted that there is no special mechanism in place. **The Committee need to be satisfied as to how the Ministry consider the existing system**

of scrutinizing returns as adequate. The Committee would like to be informed, if any, measures are contemplated to strengthen the system in this regard.

[Sl. No. 16 of Appendix II Para 107 of the 14th Report of
PAC (2005-2006)-14th Lok Sabha]

Action Taken

The scrutiny mechanism has been suitably modified by framing comprehensive guidelines for selection of cases of diverse entities on the basis of specific criteria, selection of cases processed on the computer network through the Computer Assisted Scrutiny System (CASS). Besides, discretion has been provided for selection of any other case concerned where, on the basis of certain facts, it is concerned necessary to select such case for scrutiny.

[Ministry of Finance/ Department of Revenue
O.M. No. F. No. 241/2/2005-A & PAC. II dt. 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee are of the view that apart from earning income from educational activities, several **private institutions earn income by asking for donations/ contributions from their wards in the name of building fund, swimming pool charges, calamity fund, poor fund etc.** although it has been judicially held one case of Unnikrishnan J.P. & Others Vs State of Andhra Pradesh & others, 1993 AIR 217B. SCR(1) 594 that the educational institutions cannot charge more than the fees fixed by the Government in any form, either as donation or capitation fees. The Committee are convinced that there is no dearth of cases where big amount as donations are taken before allowing admission of children in various schools. During evidence **the Committee had, therefore, desired that these funds should form a part of the income of such institutions and be taxed and exemption should not be allowed on such funds.** The Ministry have subsequently agreed to consider the proposal and take necessary suitable measures. The Committee would like to be intimated of the precise steps taken in this regard.

[Sl. No. 18 of Appendix II Para 109 of the 14th Report of
PAC (2005-2006)-14th Lok Sabha]

Action Taken

The Hon'ble Supreme Court in the case of Unnikrishnan J.P. & other Vs State of Andhra Pradesh & others, 1993 AIR 217B, SCR (1) 594, has held that an educational institution aided by the Government cannot charge more than the fees fixed by the Government. However, in the same judgement the Hon'ble Supreme Court has also held that in the case unaided private educational institution it may not be insisted that they shall charge only that fee as is charged for similar courses in the government institutions. Moreover the basic concept of granting exemption to these institutions is that there should not be any private gain to any trustee/ member of the trust or society running the educational institution. Under the existing provisions the private educational institution is allowed to generate surplus/profit but the same should be used for educational purposes alone. Further, in the case of

section 10(23C), all donations are included in the income of the university or other educational institution and in the case of trusts or institutions claiming exemption under section 11, all donations other than donations to the corpus are included in the total income.

Further, an amendment has been made *vide* the Finance Bill, 2006 whereby anonymous donations made to wholly charitable trusts and institutions other than religious trusts and Institutions shall be charged to tax @ 30% plus surcharge and education cess. Such donations made to mixed purpose trusts or institutions *i.e.* both charitable as well as religious, will be taxed only if such donations are for any educational or medical institution run by the trusts or institutions.

[Ministry of Finance/Department of Revenue
O.M. No. F.No. 241/2/2005-A & PAC. II dt. 01-05-2006]

Ministry of Finance/Department of Revenue
Recommendation of the Committee

The Committee further find that certain educational institutions are earning substantial income by lending their premises for commercial activities and that there is no restriction made by the Ministry on conducting such unspecified/Commercial activities in the premises of educational institutions. In response to be Committee's desire that educational institutions should be discouraged to use its premises for this purpose, the Ministry had also promised to consider the proposal and take necessary suitable measures. The Committee would like to be apprised of the outcome of steps taken in this regard in due course of time.

[Sl. No. 19 of Appendix II, Para 110 of the 14th Report of
PAC (2005-2006)—14th Lok Sabha]

Action Taken

Under the existing tax law, carrying on business by an educational institution claiming exemption either u/s 10(23C)(vi) [refer seventh proviso to section 10(23C)] or u/s 11[refer sub-section (4A)] is permissible only if the business is incidental to the attainment of the objectives of the institution and separate books of accounts are maintained for such business. The Honourable Supreme Court in the case of Assistant Commissioner of Income-Tax Vs. Thanthi Trust reported in 247 ITR 785 (2001) have held that a business whose income is utilized by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is a business which is incidental to the attainment of the objectives of the trust. While granting approval u/s 10 (23C)(vi) as well as while alongwith exemption u/s 11 this stipulation is taken into account. Further, if the Assessing Officer, during the course of assessment proceedings, finds any contravention of the provisions of section 10(23C) (vi) or Section 11, he may inform the prescribed authority who may then withdraw the approval/registration under the relevant section. To ensure regular scrutiny of such cases, the Department in its scrutiny guidelines provides for compulsory scrutiny in the case of bigger institutions.

[Ministry of Finance/Department of Revenue O.M.
No. F.No. 241/2/2005-A & PAC. II dt. 01-05-2006]

Ministry of Finance/Department of Revenue**Recommendation of the Committee**

During their study visit to Kerala region on the subject in November, 2004, the Committee were given to understand by the concerned Income-Tax Officials that the performance of the region was not up to the mark in respect of the completion of assessments, appeals etc. The main reason attributed by them was the shortage of staff. Out of 243 posts of Income-Tax Inspectors, 192 posts were stated to be lying vacant. It may just be possible that other regions might also be experiencing similar problems. The Committee, therefore, recommend that urgent steps are needed to assess the staff requirements in all the regions so as to take prompt steps to fill up the requisite vacancies wherever needed, expeditiously so that the work, at least on this account, does not suffer. The Committee also desire that the Department of Revenue should explore the feasibility of delegating some powers to Chief Commissioners/Commissions of Income-Tax to recruit officials in Group "C" and "D" cadres to facilitate speedy recruitment and early filling up of vacancies. As a long time measure, the Ministry/CBDT should undertake a detailed exercise of the overall manpower requirement in all the regions so as to ensure optimum number of persons at all levels with a view to ensuring smooth functioning.

[Sl.No. 20 of Appendix II, Para 111 of the 14th Report of
PAC (2005-2006)—14th Lok Sabha]

Action Taken

The matter of shortage of staff in Income-Tax Department and filling up of all vacant posts is under consideration of Government. It has been decided to fill up 3300 vacancies out of 8000 (approx.) vacant posts. The Government is considering the long term requirement of staff in Income-Tax Department. Filling up of 3300 vacant posts would ease the situation. Besides, a Committee has already been set up under the Member (Personnel & Vig.), CBDT to look into the issues relating to shortage of staff and heavy workload.

As regard delegation of power to CCs for making recruitment in Group C and D Cadres, the powers to fill Gr. D Posts at their level is already with Cadre Controlling CCsIT. The Cadre Controlling CCsIT recruit Group D officials through Employment Exchanges. CBDT has no power to delegate the power of recruiting Group C officials to CCsIT. Group C posts are filled up through Staff Selection Commission and Department abides by the guidelines/rules of DOP&T in this regard. Any such delegation is in the competence of Department of Personnel & Training.

[Ministry of Finance/Department of Revenue
O.M. No. F.No. 241/2/2005-A & PAC.II dt. 01-05-2006]

CHAPTER III

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

—NIL—

CHAPTER IV

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

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee note that a large number of private schools, colleges and coaching centers have come up whose income is not so exempt from levy of income-tax. The Committee are concerned to note that there exists no database in the Department of Revenue, Ministry of Finance, in respect of such private educational institutions and coaching centers. The Committee regret to observe that there is no systematic and organized approach in the Department to ensure that all educational institutions, which are required to fulfil certain obligations under the Act to claim the exemptions are, in fact, doing so before claiming the tax benefit. The Secretary (Department of Revenue) conceded during evidence that at present they do not have activity-wise databases. The Committee are constrained to point out that the Ministry of Finance, with large resources at their command have not made any effort to identify the total assesseees in the country by having effective co-ordination with the State Governments/Universities/other regulatory authorities which has resulted in substantial revenue loss to the exchequer. The Committee understand that various projects are underway in the Directorate General of Income-tax (Systems), which would help in building up a scientific database and for this the expertise of professional agencies is proposed to be utilised by the Ministry of Finance (Department of Revenue). The CIB Section of Income-Tax Department is also stated to be engaged in collection of information and preparing a database of schools, colleges and coaching centers as obtained from various sources. **The Committee would like the Ministry to undertake these proposed measures expeditiously with a view to creating a reliable database within four months of the presentation of this Report. The database, once prepared, should be updated periodically so that none of the potential assesseees escape the scrutiny of Income-Tax Department.**

[Sl. No. 7 of Appendix I, Para 98 of the 14th Report of
PAC (2005-2006)—14th Lok Sabha]

Action Taken

Tax exemption under sections 11 and 10(23C) (vi) are not mutually exclusive. Hence educational institutions can claim exemption in either section. Putting the names of the approved/exempted institutions will involve the Board, the field authorities and the DIT (Exemption) and DGIT (Systems). Necessary steps in this regard are underway.

Further, in view of the recommendations contained above, necessary directions to the field formations have been issued. The CsIT (CIB) have been directed to prepare a database in respect of educational institutions, update the same periodically and furnish the database to the jurisdictional Chief Commissioner of Income-Tax and DGIT (Exemption).

[Ministry of Finance/Department of Revenue
O.M. F.No. 241/2/2005-A & PAC.II dt 01-05-2006]

Ministry of Finance/Department of Revenue

Recommendation of the Committee

The Committee's examination of the subject reveals that so far the Department has not been able to widen the tax base by identifying such private educational institutions run by trusts which earn huge sums of money by functioning in a not-so charitable manner. The Committee feel that in order to discourage the practice of claiming exemption by ineligible institutions under the existing provisions of the Income-Tax, it is high time that the Department applies the provisions of tax exemptions with utmost care and only to genuine and eligible institutions. For this, **it is essential that the Department should prepare and monitor a comprehensive database of all such institutions and make it mandatory for them to file their annual income-tax returns.** The Committee have already emphasized the need for creating a reliable database earlier in this Report.

The Committee note that Section 139(4C)(e) makes it mandatory for educational institutions that exist solely for the purpose of education and not running with the profits motive, to file their returns in case their income exceeds Rs. 50,000. The Committee, however, understand that there is no central agency in the Department to monitor the filing of income-tax returns by educational institutions. Consequently, the Department is not in a position to ensure that all private schools, colleges and coaching centers file their returns of income. It is, therefore, not clear to the Committee as to how the income of educational institutions could be assessed correctly in the absence of complete information about potential assessees. In response to the Committee's view that every educational institution should be mandatory required to file returns, it has been informed by the Ministry that this has been taken care of by inserting Sub-section (4C) to Section 139 w.e.f. 1st April, 2003 in respect of educational institutions with aggregate receipts above Rs. 1 crore. **The Committee have also been informed that the proposal to make filing of returns compulsory for educational institutions is under active consideration of the Department.** The Committee hope that an early decision will be taken in the matter. They **recommend that a foolproof mechanism may be evolved to ensure that all the private educational institutions (as per the databases to be created) which have assessable income file their returns regularly and the defaulters are brought to book.**

The Committee note that another tool for unearthing undisclosed income available with the Department is Sections 133A and 133B of the Income-Tax Act that empower the assessing officers to survey the business premises of taxpayers to locate new assessees. However, they feel that adequate steps have not been taken

by the concerned authorities to bring all the private schools, colleges and coaching centers into the tax net through adequate and focussed use of the said power to conduct surveys. The Committee note that no surveys were conducted in Bombay, Thane, Pune, Aurangabad, Kolhapur and Nagpur during the period 1999-2000 to 2001-2002. In Delhi, only one CIT confirmed to Audit that no survey was conducted and the other 13 CITs did not furnish a reply. In Tamil Nadu charge, DIT (Exemption) and CIT-VIII, Chennai confirmed that no surveys were conducted. In Andhra Pradesh, only one private educational institution in Visakhapatnam charge and 7 in Vijayawada charge were brought into tax net. In Rajasthan, the Department had conducted 1138 surveys and only one educational institution was brought into tax net. In other charges, no surveys were reported to be conducted. The Ministry have asserted that a large number of surveys are conducted every year and that various field formations have reported about surveys being conducted on such institutions.

The Committee find it incomprehensible as to how in the absence of any reliable database (as commented earlier), it is possible for the assessing officer to use the power of survey efficiently. Moreover, the aforesaid argument does not seem to carry weight as the Ministry have not supported their contention by furnishing exact figures of the number of surveys conducted by them during last 2-3 years and the number of new assesseees identified as a result thereof. The Committee would like to be apprised of the details of the cases which were brought under the tax net during the preceding two years, as a result of the efforts initiated by them alongwith the number of new assessee that have been brought to tax net and the amount of additional revenue realised from them. The Committee hope that with creation of a reliable database of private educational institutions, the Department would instruct the assessing officers to use the powers available with them under relevant provisions of the Act judiciously to identify potential taxpayers and progressively wipe out the widening gap between taxpaying and tax-evading educational institutions.

[Sl. No. 9 of Appendix II, Para 100 of the 14th Report of
PAC (2005-2006)—14th Lok Sabha]

Action Taken

The necessary directions to the field formations have been issued. In particular the CsIT(CIB) have been directed to prepare a database in respect of educational institutions, update the same periodically and furnish the database to the jurisdictional Chief Commissioner of Income-Tax and DGIT (Exemption), and the process is almost complete.

In the Taxation Laws (Amendment) Bill, 2005 introduced in the Lok Sabha on 12/5/2005, it is proposed to provide that any university or other educational institutions having aggregate annual receipts below Rs. 1 crore, which is hitherto exempt as per Section 10 (23C)(iiiad), and was not required to file returns, will now furnish their returns of income compulsorily from the assessment year 2006-07 onwards. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 13/12/2005. The Bill is yet to be passed by the Parliament.

The results of surveys conducted on educational institutions by the field formations is as under:

Financial year	No. of surveys conducted	No. of new assessees identified	Additional revenue realized (in Rs. lac)
2002-03	24	1	77.29*
2003-04	27	5	256.13*
2004-05	37	4	25.61*

*figures are provisional as assessments in all the cases are not yet complete.

(Ministry of Finance/Department of Revenue
O.M. NO. F.No. 241/2/2005-A & PAC.II dt 01-05-2006)

Ministry of Finance/Department of Revenue

Recommendation of the Committee

From the foregoing it is evident that the laws providing tax exemption to educational institutions suffer from various inadequacies, for example, the new provisions enacted under Section 10(23C) (iiiab) (iiiad) do not yet provide any monitoring mechanism for checking the genuineness of activities of institutions claiming exemptions. There is no mechanism to ensure that the institutions could claim exemption only under section 11 and 12 or 10(23C) (vi) of the Act. Also, there is no time limit for granting approvals under clause 10(23C)(vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated. Besides there is no provision in the case of exemption under Section 10(23C)(vi) to furnish the audited accounts with audit certificate alongwith returns of income and finally, no monitoring mechanism currently is available to monitor the investment of unutilized surplus of the institutions u/s 11(5) of the Act. While conceding that there exists a loophole, the Secretary (Revenue) informed the Committee during evidence that they will have to study a little more to see if they can make use of both the provisions [(Sections 11, 12 and 10(23C)(vi)] or synchronize it by merging the two and have a single revision. The Committee are also of the view that the purpose of insertion of new Clause under Section (23C) may not have been yielded the desired results and had rather created more complications and infructuous work. While observing that the existing tax laws are already very complex, the Committee feel that it is imperative that the law is made simpler and clearer to avoid any misinterpretation/misuse of the same. They, therefore, desire that the Department of Revenue should undertake such an exercise expeditiously in consultation with the Ministry of Law as well as the Audit and the lacunae, if any, in the law be plugged suitably.

[Sl. No. 17 of Appendix II Para 108 of the 14th Report
of PAC (2005-2006)-14th Lok Sabha].

Action Taken

The reply to the observations of the Hon'ble Committee at paras 101, 102, 104 & 106 may kindly be pursued.

Several changes are proposed through the Taxation Laws (Amendment) Bill, 2005 to remove inadequacies in the laws providing tax exemptions to educational institutions. Entities covered under section 10 (23C)(iiiad) and (iii ae) will be mandatorily required to file their returns of income. This will enable the department to monitor the genuineness of activities of the institutions claiming exemptions. A time limit of one year has been proposed for disposal of applications for approvals/ notifications for entities referred to in sections 10(23C)(iv)(v)(vi) and (via). Further it is proposed these entities will have to get their accounts audited by an Accountant and file the report of such audit along with their returns of income. The Bill was referred to the Standing Committee on Finance which presented its report to the Lok Sabha on 13/12/2005. The Bill is yet to be passed by the Parliament.

The exercise to simplify the Income Tax Act is currently under way and the suggestions/recommendations of the Committee regarding simplification including the suggestion regarding merging the two streams of exemptions, have been forwarded to the Expert Group for their consideration.

In respect of the Committee's observation that there is no time limit for granting approvals under clause 10(23C)(vi) and nothing has been specified as to how in the absence of approval, exemption of income during that period is to be regulated, it is stated that an assessee can claim exemption either u/s 10(23C) (vi) of the Act or section 11 to 13 of the Act. If an assessee is not approved u/s 10(23C)(vi) of the Act for an assessment year, then it may claim exemption u/s 11 to 13 of the Act, subjected to fulfillment of conditions prescribed therein. Otherwise, its income shall be taxable.

In respect of the Committee's observation that no monitoring mechanism currently is available to monitor that investment of unutilized surplus of the institutions u/s 11(5) of the Act, it is stated that, as per the provisions of the Act, this surplus is to be utilized for educational purposes only. The assessee is supposed to file its tax return every year with the copy of audited balance sheet. This return is subject to scrutiny and in case of any violation, the assessee may not be allowed exemption and even the registration granted may be cancelled.

[Ministry of Finance/Department of Revenue
O.M. No. 241/2/2005-A & PAC.II dt.01-05-2006]

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH
GOVERNMENT HAVE FURNISHED INTERIM REPLIES/NO REPLIES

—NIL—

NEW DELHI;
17 November, 2006

26 Kartika, 1928 (Saka)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

PART II

MINUTES OF THE FIFTEENTH SITTING OF PUBLIC ACCOUNTS COMMITTEE (2006-2007) HELD ON 16TH NOVEMBER, 2006

The Committee sat from 1100hrs. to 1200 hrs. in Committee Room 'D' , Parliament House Annexe, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Khagen Das
3. Shri P.S. Gadhavi
4. Shri Raghunath Jha
5. Shri Bhartruhari Mahtab
6. Shri Brajesh Pathak
7. Shri Mohan Singh
8. Shri Rajiv Ranjan 'Lalan' Singh
9. Shri Kharabela Swain
10. Shri Tarit Baran Topdar

Rajya Sabha

11. Shri R.K. Dhawan
12. Shri Janardhana Poojary
13. Shri Suresh Bhardwaj
14. Dr. K. Malaisamy

SECRETARIAT

1. Shri Ashok Sarin — *Director*
2. Shri M.K. Madhusudhan — *Under Secretary*

Representatives of the Office of the Comptroller and Auditor General of India

1. Shri B.K. Chattopadhyay — ADAI(RC)
2. Shri Nand Kishore — Principal Director (AB)
3. Shri Sanjay Kumar — Director

**Representatives of the Ministry of Shipping, Road Transport & Highways
(Department of Shipping)**

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Representatives of Chennai Port Trust

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Representatives of Dredging Corporation of India Limited

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2. At the outset, the Chairman, welcomed the Members and the officers of C&AG of India to the sitting. Thereafter, the Committee then took up for consideration and adoption of the following draft Reports:—

- (i) Action taken on 14th Report of the Public Accounts Committee (14th Lok Sabha) relating to "Assessment of Private Schools, Colleges and Coaching Centres", and
- (ii) Action taken on 23rd Report of Public Accounts Committee (14th Lok Sabha) relating to "Review of Norms for Re-appropriation of Funds".

After some deliberations, the Committee adopted these draft Reports without any amendments/modifications and authorized the Chairman to finalise and present the same to Parliament in the light of factual verification by Audit.

3. xxx

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4. xxx

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5. xxx

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The Committee then adjourned.

APPENDIX

STATEMENT OF OBSERVATIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Department	Observations/Recommendations
1	2	3	4
1.	8	Finance (Deptt. of Revenue)	Considering the fact that there was no systematic and organised approach in the Department to ensure that all private educational institutions, which were required to fulfil certain obligations under the Act to claim exemptions, were in fact doing so, the Committee had observed that this was possible only when there was reliable statistics of such institutions with them. They had therefore, desired that the Ministry of Finance (Department of Revenue) to create an appropriate database within four months of the presentation of their Report. In their reply, the Ministry have merely stated that necessary steps in this regard are underway and necessary directions to the field formations have been issued without indicating when such directions were issued and what has been the outcome thereof. Evidently, the Ministry have not made any substantial headway in this regard, which is regrettable. The Committee emphasise that the Ministry should ensure that directions issued in this regard result in creation of desired database without any further delay. They would like to be apprised of the latest position in this regard.
2.	11	-do-	The Committee are dismayed that even after nine months of the presentation of the original Report to Parliament, the Ministry have not been able to compile and provide figures of actual revenue realized as a result of surveys conducted from 2002-03 to 2004-05. They have given only provisional figures in this regard. The Ministry have conceded that assessments have not been completed in all the cases. The Committee regret to observe that the Ministry have been lax on

1	2	3	4
			<p>this count and requisite urgency has not been shown by them. The Committee are of the view that by now, the Ministry should have been in a position to furnish complete and conclusive such information. The Committee would therefore desire that assessment in all the cases should be completed at the earliest and they be informed of the actual additional revenue realized from the new assesseees that have been brought to tax net as a result of survey operations.</p>
			<p>Further, as regards the figures submitted by the Ministry, the Committee regret to note that only four new assesseees have been identified out of 37 surveys conducted during the Financial year 2004-05 and the additional revenue realized during the same Financial year is only Rs. 25.61 lakh from 37 surveys conducted as against the total amount of Rs. 256.13 lakh from 27 surveys conducted during the Financial Year 2003-04. Evidently, no progress has been made by the income-tax authorities in identifying the new assesseees and in collection of additional revenue from the surveys conducted during the year 2004-05. Surprisingly, the surveys conducted by the Income Tax Department of late have not been yielding the desired results. Such a below-par performance is more glaring, considering the fact that the private schools, colleges and other educational institutions have consistently been collecting huge fees and other charges from the students. The Committee cannot but take a serious view of the inaction of the Income Tax Department to unearth undisclosed income of private educational institutions. The Committee would now like the Ministry of Finance (Department of Revenue), to closely monitor these operations at the highest level, with a view to realising the potential tax from these institutions. At the same time, the Committee would like to emphasise the need for effective tax deterrence against the rampant commercial exploitation of education in the country by various institutions.</p>

1	2	3	4
3.	15	Finance (Deptt. of Revenue)	<p>While observing that separate yet overlapping clauses in the Income Tax Act providing exemption under section 10(23C) and Sections 11 and 12 of the Act are being misused by private educational institutions, the Committee in their earlier Report, had recommended that the existing tax laws should be made simpler and clearer in consultation with the Ministry of Law and the lacunae in the law, if any, should be plugged suitably. In this regard, the Ministry vide their Action Taken Note have informed that necessary enabling changes have been brought in the statute through the Taxation Laws Amendment Act, 2005. With regard to the simplification of the existing tax laws, the Ministry have stated that the exercise to simplify the Income Tax Act is currently underway and the suggestions of the Committee to merge the provisions [Sections 11, 12 and 10 (23C) (vi)] governing tax exemptions for educational institutions have been forwarded for consideration to the Expert Group constituted for this purpose. The Committee desire that the Expert Group should be impressed upon to consider the matter expeditiously and submit its findings at the earliest. They would also like to be apprised about the findings of the Expert Group and the consequential action taken by the Government thereon.</p>