

LOK SABHA

**SELECT COMMITTEE
ON
THE TAXATION LAWS (AMENDMENT)
BILL, 1973**

**EVIDENCE
(Volume I)**



**LOK SABHA SECRETARIA
NEW DELHI**

March, 1975/Phalguna 1896 (Saka)

Price Rs. 12.10

LOK SABHA SECRETARIAT

Corrigenda

the record of Evidence (Vol. I) tendered before
the Select Committee on the Taxation Laws
(Amendment) Bill, 1973.

- Page 15, col. 2, line 10, for "vies" read "gives"
Page 21, col. 1, line 20,
for "reected" read "rejected"
Page 23, col. 2, line 3, from bottom,
for "hvae to nesure" read "have to ensure"
Page 47, col. 2, line 26,
for "exenses" read "expenses"
Page 51, col. 1, line 26, for "nan-" read "ana-"
Page 60, (i) line 10, for "Yonoastrian"
read "Zonoastrian"
(ii) line 21, for "Shri S.S. Kothase"
read "Shri S.S. Kothari"
Page 71, col. 1, line 22,
for "every" read "a very"
Page 75, col. 2, line 5 from bottom,
for "cautions" read "cautious"
Page 77, col. 1, line 17,
for "slous" read "souls"
Page 89, col. 2, line 19 from bottom,
for "foce" read "force"
Page 107, (i) Col. 2, line 7, for "not" read "note"
(ii) col. 2, line 2 from bottom,
for "suesti n" read "question"
Page 121, for lines 1-2, read
"III. Federation of Associations of Small
Industries of India, Calcutta.
Spokesmen:"
Page 123, col. 1, line 24,
for "backward" read "background"
Page 133, col. 2, last line
for "subect" read "subject"
Page 185, col. 2, line 24,
for "taxed" read "taxes"
Page 204, col. 1, (i) for line 7 from bottom,
read "Shri P.P. Khambatta: My"
(ii) line 3 from bottom,
for "Mr. Shairman"
read "Mr. Chairman"
Page 210, col. 1, line 14,
for "Electrively" read "Effectively"
Page 216, col. 2, line 21 from bottom,
for "new" read "now"

- Page 221, col. 1, line 13,
omit "tions".
- Page 238, col. 2, line 9 from bottom,
for "Administstasion" read "Administration"
- Page 239, col. 2, (i) line 21 from bottom
for "Rs. 40,00" read "Rs. 40,000"
(ii) line 6 from bottom,
for "papers" read "payers"
- Page 242, col. 2, line 27,
for "Rs.lakhs" read "Rs. two lakhs"
- Page 244, col. 1, line 21, for "about" read "labour"
- Page 246, col. 1, for lines 20-21, read
"his willingness for being assessed on the
basis of the alternative schemes".
- Page 302, col. 2, line 11 from bottom,
For "Shri Virenda" read "Shri Virendra"
- Page 308, col. 2, line 2, for "poit" read "point"
- Page 315, col. 1, line 9, for "non-dedoration"
read "non-declaration"
- Page 334, col. 2, line 18 from bottom,
for "Shri S.N. Banerjee" read "Shri S.M. Banerjee"
- Page 336, col. 2, line 23, for "that" read "than"
- Page 338, col. 1, for last line.
read "tax evasion and avoidance
have you"
- Page 358, col. 2, line 5, for "pront" read "profit"
- Page 382, col. 2, line 8, for "prosonal"
read "provisional"
- Page 394, col. 2, line 4 from bottom,
for "number" read "member"
- Page 403, col. 2, line 1, for "Then" read "There"
- Page 407, col. 1, (i) line 1, for "Rs. 23 crores"
read "Rs. 1.23 crores"
(ii) line 3, for "gie" read "give"
(iii) col. 2, last line,
for "ready" read "cessary"
- Page 409, (i) line 1, for "Commf", read "Commerce"
(ii) line 7 for "Kokhale" read "Gokhale"
- Page 461, col. 1, line 23,
for "demand to" read "done and"
- Page 467, col. 1, line 11 from bottom,
for "wou" read "you"
- Page 468, col. 2, (i) line 18 from bottom,
for "celling" read "ceiling"
(ii) for line 22 from bottom
read "be considered invalid!"
- Page 492, col. 2, line 21, for "munerated"
read "enumerated"

- Page 512, col. 2, (i) line 2, for "inferior"
read "interior"
(ii) line 8, for "recoverty"
read "recovery"
- Page 517, col. 1, line 17 from bottom,
for "वन्के" read "उनको"
- Page 518, col. 2, line 8, for "बाल" read "लाख"
- Page 520, col. 2, line 14, from bottom,
for "अमल" read "अमल"
- Page 538, col. 2, line 11 from bottom,
for "the" read "this"
- Page 541, col. 2, (i) line 18 from bottom,
for "that" read "the"
(ii) last line, for "it"
read "is"
- Page 573, col. 2, after line 30,
insert "the entire working of the fraud law"
- Page 586, col. 1, line 4 from bottom,
for "shoud" read "should"
-

WITNESSES EXAMINED

S. No.	Name of the witness	Date of hearing	Page
1	2	3	4
1	Indian Revenue Service (income-tax) Association, New Delhi.	11-7-1973 & * 11-7-1974	2
	<i>Spokesmen :</i>		
	1. Shri P. S. Bhaskararn—President		
	2. Shri C. B. Rathi		
	3. Shri P. Srinivasan		
	4. Shri M. C. Joshi		
	5. Shri G. C. Agarwal		
	6. Shri S. G. Jaisinghani		
	7. Shri B. Gupta		
2	National Christian Council of India, New Delhi	11-7-1973	23
	<i>Spokesmen :</i>		
	1. Shri E. D. Devadasan—Vice-President		
	2. Shri M. A. Z. Rolston—General Secretary		
3	Associated Chambers of Commerce and Industry of India, New Delhi	12-7-1973	26
	<i>Spokesmen :</i>		
	1. Shri M. H. Mody		
	2. Shri Mohinder Puri		
	3. Shri T. Pooran		
	4. Shri M. M. Malhotra		
4	Indian Chamber of Commerce, Calcutta	19-9-1973	60
	<i>Spokesmen :</i>		
	1. Shri B. M. Khaitan—President		
	2. Shri R. S. Lodha—Member		
	3. Shri S. S. Kothari—Member		
	4. Shri H. C. Dass—Member		
	5. Shri C. S. Pande—Secretary General		
	6. Shri M. Chaudhuri—Sr. Asstt. Secretary.		
5	Calcutta Zoroastrian Community's Religious and Charity Funds, Calcutta	19-9-1973	76
	<i>Spokesmen :</i>		
	1. Shri D. R. Bhesania—Senior Trustee		
	2. Shri J. M. Guzdar—Secretary		
	3. Shri P. M. Narielwala		
	4. Shri C. R. Irani.		

* See Volume II.

1	2	3	4
6	Bengal Chamber of Commerce & Industry, Calcutta . . .	20-9-1973	80
<i>Spokesmen :</i>			
1. Shri R. N. Sen—Leader			
2. Shri S. K. Ganguly			
3. Shri K. P. Bhargava			
4. Shri S. Bhattacharya			
5. Shri K. C. Khanna			
6. Shri L. R. Puri			
7. Shri M. Ghose			
7	Institute of Socio-Economic Studies, Calcutta . . .	20-9-1973	96
<i>Spokesman :</i>			
Shri R. N. Lakhotia, President.			
8	Merchants' Chamber of Commerce, Calcutta . . .	21-9-1973	103
<i>Spokesmen :</i>			
1. Shri A. R. Kanoria—President			
2. Shri B. P. Agarwala			
3. Shri S. N. Dalmia			
4. Shri D. M. Kothari			
5. Shri Srikant Somani			
6. Shri H. R. Bose, Adl. Secretary			
7. Shri B. S. Kothari			
8. Shri Amitav Kothari			
9	Bharat Chamber of Commerce, Calcutta . . .	22-9-1973	120
<i>Spokesmen :</i>			
1. Shri K. L. Chowdhury—President			
2. Shri R. N. Bangur			
3. Shri S. B. Goenka			
4. Shri K. L. Dey			
5. Shri K. L. Dhandhanja			
6. Shri R. R. Bhiwaniwalla			
7. Shri V. B. Chaturvedi			
8. Shri G. D. Salarpuria			
9. Shri R. P. Pasari			
10. Shri K. C. Mukherjee—Secretary			
11. Shri B. K. Shroff			
10	Institute of Cost and Works Accountants of India, Calcutta. . .	22-9-1973 & *10-7-1974	138
<i>Spokesmen :</i>			
1. Shri M. R. S. Iyengar—President			
2. Shri V. Kalyanaraman Vice—President			
3. Shri N. K. Bose			
4. Shri A. K. Piewas			
5. Shri S. N. Ghose—Secretary.			
6. Shri G. K. Abhyankar			
7. Shri S. K. Mitra			

1	2	3	4
11	Federation of Associations of Small Industries of India, Calcutta	22-9-1973	142
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Swaraj Basu—Vice-President 2. Shri Arabinda Roy Chowdhary 3. Shri S. M. Banerji 4. Shri S. S. Singhanja 5. Shri L. N. Lohia 		
12	Taxator Bar Association, Cuttack	24-9-1973	147
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Satyanarayan Sahu—Secretary. 2. Shri Arjunlal Agarwal 3. Shri Nitya Nand Mohanty 4. Shri Debendra Nath Mohanty 		
13	Bengal National Chamber of Commerce and Industry, Calcutta	24-9-1973	156
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri G. Saha—President 2. Shri T. P. Chatterjee—Vice-President. 3. Shri Milan Mukherjee 4. Shri M. C. Podder 5. Shri I. P. Podder 6. Shri A. R. Dutta Gupta—Secretary 		
14	Calcutta Trades Association, Calcutta	25-9-1973	164
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri N. K. Jalar—President 2. Shri I. C. Sancheti—Vice-President 3. Shri S. K. Maskare—Hon'y. Secretary 4. Shri S.R. Sen Gupta—Addl. Secretary 5. Shri G. Kedia—Member. 		
15	Association of Company Secretaries, Executives and Advisers, Calcutta	25-9-1973	176
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Sukumar Bhattacharya—Chairman 2. Shri Nirmal Kumar Poddar—General Secretary 3. Shri Pestonji Manhergi Narielwale—Member 4. Shri Tulsi Das Mundhra—Member 		
16	Bengal Income-tax (Gazetted) Services Association Calcutta	25-9-1973	187
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri S. K. Roy—President 2. Shri J. N. Maitra—Secretary 3. Shri K. Chakravarty—Joint Secretary 4. Shri R. L. Botani—Member 		

1	2	3	4
17 Life Insurance Agent's Federation of India, Calcutta		25-9-1973	190
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri J. Prasad—President 2. Shri S. P. Hazra—Vice-President 3. Shri A. K. Purkayastha—General Secretary 4. Shri C. M. Dugar—Treasurer 			
18 Hindustan Chamber of Commerce, Bombay		8-10-1973	193
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri Ramesh Chandra Rastogi 2. Shri Laxmi Narayan Taparja 3. Shri J. N. Gupta 4. Shri Pannalal Sanganageria 			
19 (a) Standing Committee of Public Trusts of Bombay, Bombay		8-10-1973	201
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri P. P. Khambatta, Adovocate-Leader 2. Shri B. K. Boman-Behram, Advocate 3. Shri Chimanlal C. Shah—Solicitor 4. Smt. Z. E. G. Crrimbhoy 5. Dr. Y. Majumuddia 6. Shri C.C. Choksey 7. Monsingnor A. Cordeiro 8. Dr. R. C. Cooper 9. Shri H. L. Navalkar—Solicitor 10. Father Martins 11. Shri H.B. Kapadia—Hon Secretary. 			
(b) <i>Shri Bharat Jain Maha Mandal, Bombay</i>			201
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri Sriyans Prasad Jain 2. Shri C. C. Shah 3. Shri J. R. Shah 4. Shri Khemchandbhal Bora 5. Shri J. H. Doshi 6. Shri D. S. Gardi 			
20 Indian Merchant's Chamber, Bombay		9-10-1973	234
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri Ganesh Podar, Vice-President 2. Shri Charandas V. Mariwala 3. Shri V. B. Haribhakti 4. Shri C. C. Chokshi 5. Shri J. P. Thacker 6. Shri C.L. Gheevala—Secretary. 7. Shri M. K. Desai Dy.—Secretary. 8. Shri D. S. Pendurkar—Dy. Secretary 9. Shri N. Y. Galtonde 			

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21	All India Film Producers Council, Bombay	9-10-1973	255
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri G. P. Sippy—Vice-President 2. Shri Shree Ram Bohra—Vice-President 3. Shri Subodh Mukerji 4. Shri B. R. Chopra 5. Shri S. D. Narang 6. Shri Narayan Varma—Chartered Accountant 		
22	Bombay Study Circle on Corporate Law and Allied Subjects, Bombay.	9-10-1973	277
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri C. C. Chokshi—Chairman 2. Shri R. P. Kedia—Governor-Cum Hon. Secretary 3. Shri J. E. Dastur—Member 4. Shri C. C. Dalal—Member 5. Shri R. K. Joshi—Joint Secretary 		
23	Bombay Chamber of Commerce and Industry, Bombay	10-10-1973	276
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri R. C. Khanna 2. Shri Soli E. Dastur 		
24	Shri M. P. Chitale, Chartered Accountant, Bombay	10-10-1973	290
25	Anjuman-i-Islam, Bombay	10-10-1973	306
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Akbar Peerbhoy—President 2. Shri Mustaf Fakin 3. Shri S. S. Desnavi 4. Shri H. P. Italia 5. Shri R. M. Saeed 6. Shri A. M. Fakh 		
26	Gujarat Industries Association Bombay	11-10-1973	313
	<i>Spokesmen -</i>		
	<ol style="list-style-type: none"> 1. Shri J. M. Patel,—President 2. Shri Pradip Shah 3. Shri A. C. Patankar—Secretary 		
27	All India Manufacturers Organisation, Bombay	11-10-1973	317
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Ram Agrawal—President 2. Shri M. R. Shroff 3. Shri P. A. Shah 4. Shri B. S. Mohatta 5. Shri N. G. Abhyankar—Executive Director 6. Shri D. P. Birla 		

1	2	3	4
28	United Women's Organisation Committee, Bombay	11-10-1973	335
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Mrs. Gulistan Billimoria,—President 2. Mrs. Sujata Manohar 3. Mrs. Deena Ahmadullah 		
29	1. Shri N. A. Palkhivala,—Advocate, Supreme Court, Bombay	12-10-1973	345,590
	2. Shri S. P. Mehta	13-10-1973	
	3. Shri B. A. Palkhivala		
	4. Shri S. R. Vakil		
	5. Miss S. Bharucha		
30	Chamber of Commerce, Sangli	12-10-1973	386
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri A. G. Lale 2. Shri R. B. Shah 3. Shri K. B. Kayastha 4. Shri M. N. Nawandhar 		
31	Archibishop's House, Bombay	13-10-1973	401
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Rev. Father A. Gordeiro, Leader. 2. Rev. Father A. Martins 3. Rev. Father D. D'Monte, S.J. 4. Shri C. W. Thomas 5. Shri P. S. Rao 		
32	Trustees of the Parsi Panchayat Funds and Properties, Bombay	13-10-1973	404
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri P. P. Khambatta—Advocate, Leader. 2. Shri B. K. Boman Behran,—Advocate. 3. Shri G. P. Antia,—Jt. Secretary. 4. Shri H. B. Kapadia—Joint Secretary 5. Shri M. P. Bamji,—Chief Accountant. 		
33	Maharashtra Chamber of Commerce, Bombay	13-10-1973	408
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri M.L. Apte,—President 2. Shri N. N. Patil—Director and General Manager, Bahloli & Co. P. Ltd. 3. Shri R. G. Mohalikar,—Secretary 4. Shri S. B. Gandhi 5. Shri V. R. Gokhale—Asstt. Secretary. 		
34	Punjab, Haryana & Delhi Chamber of Commerce and Industry, New Delhi	2-11-1973	416
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri M. K. Mehra, M. P. —Deputy Chairman 2. Shri Mohinder Puri—C. Chairman 3. Shri C. K. Hazari—Member 4. Shri H. R. Gupta—Member 		

1	2	3	4
5. Shri R. Subramaniam—Member 6. Shri R. Thakur—Member 7. Shri M. L. Nandrajog—Secretary 8. Shri S. Ganapathi—Senior Asstt. Secretary			
35 Catholic Bishops, Conference of India, New Delhi		[2-11-1973	443
<i>Spokesmen :</i>			
1. Fr. Jonas Thaliath—Deputy Secretary General 2. Fr. Antunes Nazareth—Assistant Secretary. 3. Shri K. Annathanam of Messrs. Khanna and Annathanam, Legal Advisers			
36 Bar Association (Income-Tax), New Delhi		[2-11-1973	451
<i>Spokesman :</i>			
1. Shri K. K. Wadera—President 2. Shri Jagmohan Bhatia—Vice-President 3. Shri Jagdish Persad—Member 4. Shri B. B. Ahuja—Member			
37 All India Federation of Income-tax Gazetted Services Associations, New Delhi.		2-11-1973 15-12-1973 & * 10-6-1974	471, 367
<i>Spokesman :</i>			
1. Shri S. K. Roy—President 2. Shri K. Raha—President 3. Shri C. L. Wali 4. Shri R. C. Pandey—Secretary 5. Shri P. S. Gopalakrishnan 6. Shri O. S. Bajnai 7. Shri L. S. S. Chakravathy 8. Shri J. N. Moitra			
38 Federation of Indian Chambers of Commerce & Industry, New Delhi		3-11-1973	360
<i>Spokesmen :</i>			
1. Shri Charat Ram—President 2. Shri A. K. Jain—Chairman, Taxation Sub-Committee. 3. Shri D. C. Kothari 4. Shri Mahanmohan Mangaldas 5. Shri Viren J. Shah 6. Shri K. N. Modi 7. Shri H. B. D'ondy 8. Shri O. P. Vaish, 9. Shri G. L. Bansal—Secretary-General.			
39 Institute of Income-tax Practitioners of India, Bangalore		3-11-1973	511
<i>Spokesman :</i>			
1. Shri K. B. Basavarajan—President 2. Shri C. L. Ajeja 3. Shri M. V. Sastry 4. Shri Harilal T. Sodha			

1	2	3	4
40	Jamiat Ulama-i-Hind, New Delhi	3-11-1973	—515
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Maulana Syed Asad Madni, M. P. 2. Shri M. Swalehuddin 3. Shri Tazimuddin Siddiqi 4. Shri A. A. Kidwai 5. Shri N. A. Zaki 		
41	All India Women's Conference, New Delhi	3-11-1973	—523
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shrimati K. Lakshmi Raghuramaiah—President 2. Shrimati Kamla Mahekar 3. Shrimati Sunanda Bhandare 		
42	Bar Council of Delhi, New Delhi	[5-11-1973	+ 530
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Balram Sangal 2. Shri Vipin Chander Bahri 		
43	All India Tax Advocates Association, New Delhi	[5-11-1973	+ 547
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri G. C. Sharma—Vice-President 2. Shri O. P. Dua—General Secretary 3. Shri K. K. Wadhwa—Secretary 4. Shri Kartar Singh Suri, Member 5. Shri O. P. Sapra, Member 6. Shri V. Vasudevan 7. Shri Randhir Chawla 		
44	Central Wakf Council, New Delhi	5-11-1973	561
	<i>Spokesmen :</i>		
	<ol style="list-style-type: none"> 1. Shri Moinul Haque Choudhry, M. P. 2. Shri Ch. Tayyab Hussain, M. P. 3. Dr. V. N. Saiyed Mohd, M. P. 4. Shri Tajuddin Ahmed—Secretary 		

SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT) Bill, 1973

COMPOSITION OF THE COMMITTEE

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
- *6. Shri S. M. Banerjee
7. Shri Dharnidhar Basumatari
8. Shri Jyotirmoy Bosu
9. Shri Tridib Chaudhuri
10. Shri S. R. Damani
11. Shri Mani Ram Godara
12. Shri D. P. Jadeja
13. Shri Sat Pal Kapur
14. Shrimati Sheila Kaul
15. Shri Maharaj Singh
16. Shri P. G. Mavalankar
17. Shri Amrit Nahata
18. Shri H. M. Patel
19. Shri S. B. P. Pattabhi Rama Rao
- £20. Shri Chintamani Panigrahi
21. Shri R. Balakrishna Pillai
22. Shri Bhola Raut
23. Shri Vasant Sathe
24. Shri Era Sezhiyan
25. Shri K. K. Shetty
26. Shri Satyendra Narayan Sinha
27. Shri C. M. Stephen
28. Shri R. V. Swaminathan
29. Shri V. Tulsiram
- 30. Shri C. Subramaniam

*Appointment w.e.f. 17-8-1973 vice Shri K. Baladhandayutham died.

£Appointed w.e.f. 19-11-1974 vice Shri K. R. Ganesh resigned.

●Appointed w.e.f. 18-11-1974 vice Shri Y. B. Chavan resigned.

(ii)

1. Shri S. Harihara Iyer, *Joint Secretary and Legislative Counsel.*
2. Shri S. Ramaiah, *Additional Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri M. R. Yardi, *Finance Secretary*
2. Shri H. N. Ray, *Finance Secretary*
3. Shri R. D. Shah, *Chairman, Central Board of Direct Taxes.*
4. Shri S. R. Mehta, *Chairman, Central Board of Direct Taxes.*
5. Shri K. E. Johnson, *Member, Central Board of Direct Taxes.*
6. Shri C. C. Ganapathy, *Member, Central Board of Direct Taxes.*
7. Shri S. Narayan, *Member, Central Board of Direct Taxes.*
8. Shri I. P. Gupta, *Joint Secretary.*
9. Shri R. R. Khosla, *Director.*
10. Shri S. I. Tripathi, *Deputy Secretary.*
11. Shri O. P. Bhardwaj, *Deputy Secretary.*
12. Shri K. N. Balasubramaniam, *Officer on Special Duty, Implementation Cell.*
13. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

1. Shri P. K. Patnaik, *Additional Secretary.*
2. Shri H. G. Paranjpe, *Chief Financial Committee Officer.*

SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT), BILL, 1973.

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973.**

Wednesday, the 11th July, 1973 at 15.00 hours.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

2. Shri Virendra Agarwala
3. Shri Bhagwat Jha Azad
4. Shri Dharnidhar Basumatari
5. Shri S. R. Damani
6. Shri K. R. Ganesh
7. Shri Mani Ram Godara
8. Shri Sat Pal Kapur
9. Shrimati Sheila Kaul
10. Shri Maharaj Singh
11. Shri P. G. Mavalankar
12. Shri Amrit Nahata
13. Shri H. M. Patel
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri Bhola Raut
16. Shri Vasant Sathe
17. Shri K. K. Shetty
18. Shri Satyendra Narayan Sinha
19. Shri R. V. Swaminathan
20. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer, Joint Secretary and Legislative Counsel.
2. Shri S. Ramaiah, Deputy Legislative Counsel.

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)**

1. Shri R. D. Shah, Chairman, Central Board of Direct Taxes.
2. Shri K. E. Johnson, Member, Central Board of Direct Taxes.

3. Shri I. P. Gupta, Joint Secretary (F.T.D.).
4. Shri S. Narayan, Joint Secretary.
5. Shri R. R. Khosla, Director.
6. Shri O. P. Bhardwaj, Deputy Secretary.
7. Shri S. I. Tripathi, Deputy Secretary.
8. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Indian Revenue Service (Income Tax) Association, New Delhi.**Spokesmen:*

1. Shri P. S. Bhaskaran—*President.*
2. Shri C. B. Rathi
3. Shri P. Srinivasan
4. Shri M. C. Joshi
5. Shri G. C. Agarwal.

II. *National Christian Council of India, New Delhi.**Spokesmen:*

1. Shri E. D. Devadasan—*Vice-President.*
2. Rev. M. A. Z. Rolston—*General Secretary.*

I. *Indian Revenue Service (Income Tax) Association, New Delhi.**Spokesmen:*

1. Shri P. S. Bhaskaran—*President.*
2. Shri C. B. Rathi
3. Shri P. Srinivasan
4. Shri M. C. Joshi
5. Shri G. C. Agarwal

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we take your evidence, I must draw your attention to one of the directions which governs the evidence of witnesses. Under the Rules of Procedure and Conduct of Business of the Lok Sabha, the relevant direction is that

where witnesses appear before a Committee to give evidence, the Chairman shall make a declaration to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It shall, however, be explained to the witnesses that even

though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

You may take your memorandum as having been read by the hon. Members of the Committee and proceed.

SHRI P. S. BHASKARAN: At the outset, we would like to place before you a certain extract from the Wanchoo Committee's Report so as to place the matter in proper perspective. This is the recommendation of the Wanchoo Committee in Chapter VI of its report. That is headed as "Tax Administration." At page 126, paragraph 6.1, it says:

"The shortcomings in tax administration can frustrate even the best of tax policies. Though our terms of reference relating to the review of the administration and its procedures are incidental to the primary terms of reference, we place no less importance on the recommendations we propose to make in this chapter. In fact, our recommendations on tax administration will have to receive precedence if the other measures suggested by us are to yield the desired results."

We submit that the Wanchoo Committee gave its report in December, 1971 and the recommendations on technical matters have been considered and this Amendment Bill has been introduced in Parliament. But so far as this Association knows, nothing has been done regarding the recommendations on administration. So we would like to place before this Committee the Wanchoo Committee's observation that the proposals incorporated in the Bill may not give the desired results unless the recommendations on administration also receive the attention of the Government.

MR. CHAIRMAN: I would not like to shut you out, nor interrupt you, but I want you to appreciate that the scope of our deliberations is confined to what is contained in the Bill. I

have gone through your memorandum. Your grievance appears to be regarding the unfair treatment that is being given to direct recruits, Class I officers, by the department. There is a counter memorandum by the Class II officers and their grievance is also about unfair treatment to them on the part of the department. I for one want all these disputes to be resolved as early as possible because unless the workers are contented and satisfied, the administration would never improve. But I wonder whether that will fall directly within the scope of the deliberations of this Committee. I hope the Minister, Shri Ganesh, and the Chairman, CBDT, Shri Shah, will take note of them. To the extent they relate purely to the administration they are outside the scope of the provisions of this Bill and much as we wish to resolve the disputes, we may not be able to help you. Therefore, when you make your observations, I will be grateful if you will confine yourself to something which is directly within our purview.

SHRI BHAGWAT JHA AZAD: This is relevant in the sense that the Wanchoo Committee has recommended that in order to stop evasion of tax and to increase the revenue potential, it is essential that there should be job classification. Even in this Amending Bill we propose to change the nomenclature as senior and junior tax officers without having any job classification. It is relevant and we would like to hear from the witnesses how the jobs performed by class I and class II officers are different. We have examined this question in the Public Accounts Committee and some other committees as well. In the report of the PAC some two years back it was mentioned very clearly that Government are taking the same work from class I and class II officers. What is the work now being discharged by class I and class II officers? Will the change in nomenclature make them more efficient? Will it help us in getting more revenue? All these are very relevant.

SHRI P. S. BHASKARAN: The class I service in this department was started in September 1944. The press-note issued by the Government at that time made the statement that—

“the present system of having only class II officers did not give us officers of the requisite calibre to man the higher echelons of the service.”

It is in view of this policy decision that the class I service was started.

Now all income-tax officers, whether of class I or class II, are designated as income-tax officers with the result that in actual posting no distinction is made between class II and class I income-tax officers. The charges were not clearly earmarked as class I charges and class II charges. When class I income-tax officers holding certain charges were promoted or transferred, very junior class II income-tax officers were posted in those charges. There is no use denying these facts.

The question is why this has happened and why has Government's policy regarding administration been flouted in this manner. I do not want to go into that because that is not the subject-matter of the amending Bill. The fact remains that as early as 1948 the first Pay Commission recommended that class I charges and class II charges should be clearly earmarked and officers of the requisite seniority should be posted in those charges. The Income-tax Investigation Commission made the same recommendation and said that when a class II officer is posted in a class I charge, he should be remunerated adequately. The Direct Taxes Administration Committee (Tyagi Committee) made the same recommendation that we have to segregate the charges and appoint officers according to the charges. More recently, the Wanchoo Committee and the Pay Commission have made the same recommendation. Although 25 years have passed since the First Pay Commission made this recommenda-

tion in 1947, it has not been done, not because of any administrative problems but, we submit, because of certain other considerations.

Why should a class II income-tax officer be posted in a class I charge when a class I income-tax officer is available? And if that class II officer is competent to hold class II charge, why is he not promoted to class I? Thirdly, even though a very large number of promotions have taken place from class II to class I, why is it that one of those promoted officers is not put in charge of class I charge? Does it mean that the promotion is not being made on consideration of merit? We leave the answers to the Committee. We do not want to say anything in answer to these questions.

SHRI BHAGWAT JHA AZAD: During the last 25 years even though five Commissions and committees have made this recommendation that there should be clear, specific allocation of charge, why was it not done? Is it a fact that both class I and class II officers are doing the same work?

श्री सतपाल कपूर : अगर यहां पर डिटेल्स डिस्कस करेंगे, तो उस में फिर यह भी बात आएगी कि कितने क्लेज हाई कोर्ट में गए और उन में क्या हुआ ।

SHRI BHAGWAT JHA AZAD: Mr Chairman, I have put a question. Does the hon. Member indicate that the question should not be put? Should that question be answered or not?

MR CHAIRMAN: It will be answered in the way I will want him to answer. I would request the witness to complete his submissions and then answer the question of Shri Azad. Then we will ask questions.

SHRI BHAGWAT JHA AZAD: I want to mention here that in the Public Accounts Committee we examined this question in detail. I know a little of the background. I

have also gone through the memorandum submitted by the witnesses. Those who have not taken the trouble of understanding the problem should not interrupt me.

SHRI P. S. BHASKARAN: Our submission is that out of 30 lakhs of assesseees on our registers, hardly about 4 lakhs of assesseees come under categories 1 and 2. The balance of 26 lakhs come under categories 3, 4 and 5, where the business income is less than Rs. 15,000. We submit all these are cases which involve inferior or lesser responsibility, lesser tax effect and lesser complication in examination and completion of the assessment. All these cases could be handled by class II officers with advantage to the administration. It will be very easy for the administration to earmark charges consisting of these cases, to be wholly manned by class II officers.

Under the new procedure of assessment the cases are divided into scrutiny and non-scrutiny cases. Scrutiny cases involve detailed examination. The other cases are to be summarily assessed. The Wanchoo Committee recommended that non-scrutiny cases, i.e., summary assessment cases, should be given to Class II ITOs and junior Class I ITOs during their training period so that they could gain experience. The segregation of the charges into Class I and Class II in this manner should be done and that will solve the problem to a considerable extent.

In our Memorandum we have suggested that the nomenclature of Class I ITO should be Assistant Commissioner of Income-tax and not Senior ITO as is mentioned in the amending Bill. In this connection, I would like to place before the Committee....

MR. CHAIRMAN: This is the next point that you are making. Would you, at this stage, like to reply to the question put by the hon. Member, Shri Bhagwat Jha Azad, as to why was this demarcation not done all

these 25 years? You said earlier that there were important charges to which Class II officers were posted and there were lesser important charges to which Class I officers were posted. Could you tell us why and how this sort of mal-adjustment was permitted?

SHRI BHAGWAT JHA AZAD: Will you please tell us whether, at present, the charges that are meant for Class I officers are being held by Class II officers?

SHRI P. S. BHASKARAN: Yes; some charges are held like that.

MR. CHAIRMAN: You have stated in your Memorandum:

"Postings to the various charges were made in accordance with the likes and dislikes of the Commissioners. On the one hand, senior Class I officers were sometimes posted to comparatively unimportant charges and on the other Class II officers were on occasions posted to important charges normally meant for being manned by Class I officers often on considerations other than merit".

What you seem to imply is that the Commissioners do the postings according to their whims and fancies.

SHRI P. S. BHASKARAN: I would say, 'pure favoritism'.

SHRI BHAGWAT JHA AZAD: Is it correct that, against a sanctioned strength of 1200 and odd Class I officers, today there are in position only about 650 and the rest are being manned by Class II officers?

SHRI P. S. BHASKARAN: I do not have the exact figures. Something like that may be there.

There are about 2,600 ITOs. About 1,200 are Class I posts and, as you said, there may be 700 or 800 Class I ITOs in position now. 400 or 500 posts may be lying vacant. What we submit is that they may make 1,200

distinct Class I charges; if they do not have sufficient Class I officers, Class II officers may be taken, but it should be recognised that this is assumption of higher responsibility and those Class II officers must be given Class I officers' salary for doing that job; some criteria may be laid down for posting a Class II officer as a Class I officer, instead of leaving it to the likes and dislikes of the Commissioner....

SHRI BHAGWAT JHA AZAD: In order to make a comparative study, can you give us an idea as to what was the strength of Class I officers and what was the strength of Class II officers when these cadres were created in 1944?

SHRI P. S. BHASKARAN: In 1944 there was no Class I cadre. Only from Class II, Class I was created.

SHRI S. R. DAMANI: May I know to what extent this class distinction, which is going on since a long time, has affected the working of the Department and how public is affected on account of these differences. I think, you realise your responsibility as an officer and will see to it that the public do not suffer, that the Department's work does not suffer on account of these differences and that these differences are settled amicably among yourselves.

SHRI P. S. BHASKARAN: So far as I understand, every officer, whether belonging to Class II or Class I, is doing his full quota of work. This dispute is not at all affecting the output of the officers concerned. In personal relations also, barring a few exceptions—may be, very solitary ones—there is no friction.

SHRI H. M. PATEL: I would like to ask the witness to tell us the qualifications of those who are recruited to Class I and those who are recruited to Class II. Is there any distinction when they are recruited?

SHRI P. S. BHASKARAN: Yes, Sir. There is a very vital qualification that

Class I direct recruits come after a very stiff competitive examination conducted by the UPSC whereas most of the Class II ITOs have been promotees from the posts of UDCs and Inspectors; a few of them are, of course, direct recruits to Class II also.

SHRI H. M. PATEL: Your suggestion is, irrespective of the fact whether the person is Class I Officer or Class II Officer, that the same charge can be held by either of them and that there is no distinction.

SHRI P. S. BHASKARAN: It is not that.

SHRI H. M. PATEL: Your suggestion is that if a Class II Officer holds the position and charge of Class I Officer, he should be given additional remuneration.

SHRI P. S. BHASKARAN: Yes, Sir.

SHRI H. M. PATEL: At present the number of Class I officers is short of the number of posts that are really earmarked for Class I officers. Is that correct? Are there more Class I charges than there are Class I officers? You said that there are 2600 charges in all of which about 1200 are earmarked for Class I officers.

SHRI P. S. BHASKARAN: That is the sanctioned strength.

SHRI H. M. PATEL: There are perhaps 600 to 800. Therefore, 400 and odd officers of Class II are holding the charges which should be held by Class I officers.

SHRI P. S. BHASKARAN: Yes, Sir.

SHRI H. M. PATEL: Your main grievance is that Class II officers are made to do work and carry responsibility of Class I officers and they are not remunerated accordingly.

SHRI P. S. BHASKARAN: I would put it this way. Our grievance is that 1200 charges should be really Class I charges and the balance should

be Class II charges. There is an attempt to say that all these 2600 charges are of the same nature.

SHRI H. M. PATEL: You have said that there are non-scrutiny and scrutiny categories and that scrutiny category may be earmarked to Class I.

SHRI P. S. BHASKARAN: Yes, Sir.

SHRI VASANT SATHE: Can you tell us whether Class I officers do any special type of work which Class II officers today do not do it or they are not capable of doing it?

SHRI P. S. BHASKARAN: I will not say, capable of doing, but they are certainly doing it. As I told you, out of 30 lakh assessments, 26 lakh assessments are just routine assessments. It is about 3-4 lakh assessments which are the real assessments of the Department. There is certainly a lot of distinction between the assessment of a big corporation having a lot of manufacturing activities and the assessment of a wholesaler or a retailer who is doing business across the street. Most of the provisions of the Income-Tax Act will not be applicable to these 26 lakh assessments. Majority of the provisions will be applicable to about 1 lakh or 2 lakh assessments.

MR. CHAIRMAN: Which are those assessments to which you do not apply the Income-Tax provisions?

SHRI P. S. BHASKARAN: I am saying that majority of the assessments are less complicated. For example, depreciation calculation, development rebate calculation, rebate for new industrial undertakings, rebate for dividends on technical collaboration fees, etc. are of the problems which exist in a large majority of cases. They are confined only to big corporations. A large majority of assessments are just routine assessments.

SHRI VASANT SATHE: Are you suggesting that Class II officers with an experience of 10-15 years who are holding charges which otherwise should have been assigned to Class I officers are not capable of handling them?

SHRI P. S. BHASKARAN: No, Sir. On the other hand, I am suggesting that if they are capable, and they are capable, of handling charges, you give them additional remuneration.

SHRI VASANT SATHE: Are you suggesting that they should be given only additional remuneration but should not be given Class I status?

SHRI P. S. BHASKARAN: If you make them Class I officers, then there is no problem. But if they are in Class II and they are holding the charge of Class I, you give them additional remuneration. But do not try to confuse that all the 2400 or 2600 charges are of the same importance and of the same type.

SHRI DHARNIDHAR BASUMATARI: I really fail to understand the relevancy of putting forward their grievances before the Committee. The purpose of the Bill is to find out what are the lacunae in the Bill and how to remove them and collect the taxes. That is the main purpose of the Bill. Why are the officials coming up with their grievances about their promotions and all these things before the Committee? How can we expect from these officers to collect taxes for which purpose we are going to amend the Act. I did not expect at all that the officials would bring forward their grievances before the Committee.

I want to ask them whether the grievances that are being put before the Committee have been put to appropriate authorities. If we go into all these grievances, the purpose of the Committee is really frustrated. I do not understand how these officials can come with personal grievances of their own before the Committee. They should have pointed out that these are

the lacunae in the Act which should be removed in order to collect the taxes. But they have come up with their own grievances. I do not understand the relevance of their grievances here.

MR. CHAIRMAN: Mr. Bhaskaran, the import of the question is this. You seem to suggest that you do not mind if a junior Income-Tax officer, a Class II officer, holds an important charge and he is given remuneration for it, and if he passes the test, he is made a Class I officer, a senior Income-Tax officer. Your grievance is that Class II officers are given important posts and Class I officers are given un-important posts. You have attributed this to the whims and fancies of the Commissioners.

In your Memorandum, you have stated that a change of designation would set right a grave injustice which has been done. I fail to understand how an administrative lapse would be set right by changing the designation only. How can you say that there is a guarantee that a senior Income-Tax Officer will still not be doing one of the less important jobs and a junior Income-Tax officer will not be doing a more important job. That appears to be the main grievance that you are making before us. Is it not purely an administrative matter?

SHRI P. S. BHASKARAN: It is an administrative matter. Once the charges are demarcated into Class I and Class II charges, it will not be possible for any officer....

MR. CHAIRMAN: The demarcation of charges is an administrative matter. Is it not so? Is it not a purely administrative matter?

SHRI P. S. BHASKARAN: It is an administrative matter.

SHRI VIRENDRA AGARWALA: I am interested to know whether you had made a submission of this nature to the Pay Commission and if so, what is the recommendation of the Pay Commission on this question.

SHRI P. S. BHASKARAN: The Pay Commission has recommended that Class I and Class II charges should be segregated and that there should be no mixing of the officers. The Wanchoo Committee also recommended that. The Tyagi Committee also recommended that. In 1948 the Investigation Commission recommended that. The First Pay Commission also recommended that.

SHRI VIRENDRA AGARWALA: Do you feel that the recommendation of the Pay Commission should be accepted or do you differ with it?

SHRI P. S. BHASKARAN: We want that it should be accepted.

SHRI BHAGWAT JHA AZAD: What the Pay Commission has now said is about classification of the job. It is not a question of personal grievance between Class I and Class II officers. It is a question of having a job classification. Do you stress this aspect or have you come here only with a grievance?

SHRI P. S. BHASKARAN: We have not come with any grievance. There is an amendment proposing change in designation as Senior Income-tax Officers. We have come with a suggestion that the change should not be Senior Income-tax Officer but Assistant Commissioner of Income-tax. And that is clearly within the purview of this Committee.

MR. CHAIRMAN: Yes. You can make your submission on the next point.

SHRI P. S. BHASKARAN: The explanatory note on the change in designation says that the Wanchoo Committee recommended that the Income-tax Officers, Class I, should be re-designated as Senior ITOs and Assistant Commissioners in the Income-tax Department should be re-designated as Deputy Commissioners. I only wish to bring to the notice of the Committee

that the Wanchoo Committee had really recommended that the Class I Income-tax officers should be re-designated as Assistant Commissioners and not as Senior ITOs. And this is logical because they say that Assistant Commissioners should be re-designated as Deputy Commissioners. The Wanchoo Committee considered the recommendation of the Administrative Reforms Commission and said that, if there were insuperable difficulties in changing the designation, they might be called Senior ITOs. But their main recommendation was that their designation should be Assistant Commissioner of Income-tax. This is logical too when the Assistant Commissioner is re-designated as Deputy Commissioner of income-tax.

We have made one suggestion regarding section 13, Clause 6 of the Amending Bill. There is one provision which says that, if the total contribution by any person upto the end of the previous year is over Rs. 5,000, he will be deemed to be a principal contributor to the Trust and certain liabilities arise for the Trust. We submit that it will be very difficult for the ITO to keep an account of the contributions made by a particular person from year to year and arrive at the figure of Rs. 5,000. We would submit that Rs. 5,000 should be in relation to the previous year concerned or, say, one year previous or two years previous—not more than that.

MR. CHAIRMAN: We will consider that.

SHRI P. S. BHASKARAN: Regarding Clause 8, we have suggested a slight change. The amendment says that the annual value shall be deemed to be the actual annual rent payable by the tenant in certain circumstances. We have submitted that 'Salami' or 'Pugree' received at the time of letting out property should also be considered as part of the rent payable and the property should be assessed in that manner.

SHRI S. R. DAMANI: How will it be possible for the Department or officer to ascertain what amount of 'Salami' has been given?

SHRI P. S. BHASKARAN: By and large, 'Salami' has become an axiom now and many people show the receipts...

MR. CHAIRMAN: His point is, where 'Salami' is paid under the table, how will you know. Anyway, your suggestion will apply to cases where the quantum is known. It is a good suggestion; we shall consider.

SHRI P. S. BHASKARAN: Regarding clubbing of income of minor child, the present position is that the minor child's income will be clubbed with the husband's or wife's according as whose income is higher. Income is clubbed with the husband's and there is change in the total income; the wife's income becomes higher. There should be provision for rectification of the assessment by including the minor child's income with the wife's.

MR. CHAIRMAN: Where will the rectification be?

SHRI P. S. BHASKARAN: Under Section 155.

MR. CHAIRMAN: What about the question of finality and why should any wrong assessment be made?

SHRI P. S. BHASKARAN: These provisions are for avoidance of tax. That question of finality is not of such prominent importance in my view, regarding ordinary cases of taxation etc.

MR. CHAIRMAN: When this arrangement comes into play; there must be some finality to the proceedings.

SHRI P. S. BHASKARAN: This is the provision to combat tax avoidance. It should contain such provision as will make this thing effective.

MR. CHAIRMAN: All right. We will consider.

SHRI P. S. BHASKARAN: Clause 15 introduces Sec. 69D. Loans are taken on hundis. Repayment of loan should be by crossed cheque otherwise amount of loan will be treated as income of recipient. There are three issues involved, namely, the real identity of the person who advances the loan. Payment should be by cheque. Secondly, there should be genuineness of the loan. Even if the lender is genuine person this provision will not or may not be much help as I will explain a little later on this point. This is a problem not peculiar to hundi. This is common to all types of loans establishing the identity of the lender as well as genuineness of the loan. This should apply to all types of loans and not merely to hundis alone. That is the submission which we have to make. We suggest an alternative as in Sec 40A, sub-section (3). This will apply to loans above a certain limit, say Rs. 2500.

MR. CHAIRMAN: I don't understand the rationale of Rs. 2500 for any loan.

SHRI P. S. BHASKARAN: We only say that the limit may be suitably laid down so that hardship in small cases may be avoided. It should be in respect of all loans. That is our main submission.

SHRI S. R. DAMANI: You said about crossed cheque and payee accounts only. But what about the present position which we face? Keeping in view the present efficiency of the banking department, how is this thing or this idea going to help the business of the country? The cheque should be cleared at once. If it is done after one week or so, how is it going to affect?

MR. CHAIRMAN: Are there going to be practical difficulties because of the 'suppose inefficiency' in the banking transactions? That is this question.

SHRI P. S. BHASKARAN: I don't know much about inefficiency of

banks about which so much is made out. But I would submit this, that even if there is inefficiency, we should insist upon this measure, simply for the sake of combating tax evasion. To our mind, the benefits will be far more than the disadvantages, if any.

MR. CHAIRMAN: We have understood you. You may proceed to the next point.

SHRI S. R. DAMANI: What is your past experience on the basis of which you can suggest payment of such things by cheques only? Have you any particular reasons for advancing this plea?

SHRI P. S. BHASKARAN: As I said, Sir, this payment by crossed cheque will help in establishing the identity of lender. I have spoken about it already. Cash entries are made. Some cock and bull stories are made. He says, I have taken Rs. 5000 or Rs. 10,000 loan from such and such person. Here is the man. This type of explanation with retrospective effect will be eliminated. This will be a wholesome provision for establishing the identity of the lender and he cannot just explain away some money which is already introduced in the business and used for making payments etc.

SHRI VASANT SATHE: Why do you say that the limit should be Rs. 2500?

SHRI P. S. BHASKARAN: That is the provision of Sec. 43. There is similar provision of Section 40A, Sub-section (3) which may be put here also. The small assesseees who take loan of Rs. 500, 1000 or 2000 may not be put to this kind of difficulty. That is based on an existing provision in the Act.

SHRI VASANT SATHE: Will that not put a loophole, if at a moment you put a limit here for those who take the hundis to utilise this and take it from other persons?

MR. CHAIRMAN: That is what is happening in Section 48A(3).

SHRI P. S. BHASKARAN: We have put that limit because that is there in the existing provision. We would recommend that either this limit may be laid down or the limit may be removed from Section 48A(3) also. We come to Clause 42—Section 140A.

When an assessee files a return and the tax payable on the basis of that return is Rs. 500 or more, then he should pay the tax on or before the filing of return and the return shall be accompanied by proof of payment of such tax.

We have suggested deletion of the word 'on'. The assessee has to pay the tax on filing of the return. How could he attach evidence along with the return. We have suggested that the operative words should be—the assessee should pay the tax before the filing of the return.

We have one more suggestion in regard to clause 42(3). If he does not pay the tax—500 rupees, he shall be liable to pay interest from such date to the date of payment. From what date? It is not clear. The default continues from what date—it should be from the date of filing and that should be made clear in sub-section (3).

MR. CHAIRMAN: In other words the law should make it clear, and should state the period from which default continues.

SHRI P. S. BHASKARAN: It says part thereof of the amount. We are suggesting it should be part thereof of the month also.

Clause 43—Amendment to Sec. 141A. The provision is if the advance tax is more than the tax payable on the basis of the return, then if the Income Tax Officer thinks that the assessment cannot be completed

within six months, he should make a provisional assessment and refund the tax within six months. It is not clear as to what will happen if he does not do it within six months.

MR. CHAIRMAN: Option should be vested with the assessee to force assessment where it is to take more than six months.

SHRI P. S. BHASKARAN: The Income Tax Officer, if he cannot complete the assessment within six months, he has to complete the provisional assessment within six months and refund the tax. It is not obligatory on him now to complete the assessment and refund the tax. What happens in a case, if this is not done in six months, why should it not be given in the seventh month.

MR. CHAIRMAN: Assuming within six months assessment is not completed, even the power to make assessment does not exist.

SHRI P. S. BHASKARAN: That would seem to be. Existing Section has a proviso which authorises such refund.

MR. CHAIRMAN: You have to make a provisional or a regular assessment upto six months.

SHRI P. S. BHASKARAN: Existing Section 141A has a provision—Provided that in a case where regular assessment is not made within six months from the date of receipt of the return, the Income Tax Officer shall proceed to make a provisional assessment under this Section.

This proviso is being dropped. We suggest this may not be dropped.

MR. CHAIRMAN: I would not like to change the scheme.

SHRI P. S. BHASKARAN: The scheme is, upto six months if the Income Tax Officer expects that he would not be able to make assessment, refund can be given. After six months there is no question.

MR. CHAIRMAN: ITO says that he has not been able to make an assessment. Can he make it if he does not do it? He cannot make a provisional assessment under the present proviso. Hence this change.

SHRI BHAGWAT JHA AZAD: I would like to make a suggestion, Sir. What is happening at present is that when certain points are being raised by the witness, it is very good that you, being an expert, are meeting those points. But we would also like to be enlightened, what actually the Government has in mind for suggesting these changes, so that simultaneously, we may be able to understand the situation better.

MR. CHAIRMAN: As far as I am able to understand, under the existing provisions, you cannot make a provisional assessment until six months have passed. Here under the proposed amendment, you have not to wait for six months; if the Income Tax Officer feels that he cannot make an assessment within six months, he can make a provisional assessment.

SHRI R. D. SHAH: Under the present section, the wording is: "The Income Tax Officer may, if he is of opinion that the regular assessment of the assessee is likely to be delayed, proceed to make in a summary manner, a provisional assessment of the sum refundable to the assessee". I will now come to the proposed provision. It says: Provided that in a case where the regular assessment is not likely to be made within six months from the date of receipt of the return, the Income Tax Officer shall proceed to make an assessment under this section.

That means, the recommendation now is that he shall make the assessment if he thinks reasonably that the assessment is not likely to be made. He shall make this without waiting.

MR. CHAIRMAN: It is clear now that the intention is that we do not want the ITO to wait for six months to make the assessment under the

proposed law and that if he thinks that it is going to take more than six months, without waiting he will make the assessment. If the wordings do not make it clear, we will do that.

SHRI P. S. BHASKARAN: If the Income Tax Officer is not able to do that in six months, we suggest that this proviso should be retained so that after six months, the amount should be refunded to the assessee with interest.

SHRI R. D. SHAH: Personally speaking, I am not very happy with the dropping of the proviso. Ordinarily three have been cases, when a case has to be rectified within four years. There is no provision made in the law that if the case is not rectified what happens. What we do in such cases is, that this is an inherent right of the man to get his refund, but we are going to tighten it up. There are many provisions, which have come to our notice, just as it was pointed out that 'no' is not suitable at this juncture, but it is in keeping with the scheme which the Wanchoo Committee has foreseen. We know, administratively it is going to be difficult. We have got on our agenda to amend that 'on' also. We have noticed some of the lacunae, which we will place before you.

SHRI P. S. BHASKARAN: What we wanted to submit is that there should be a provision to enable him to refund the amount even after six months.

MR. CHAIRMAN: Please proceed further now.

SHRI P. S. BHASKARAN: Clause 45 of the Bill introduces a new Section 144B. This clause prescribes that the Inspecting Assistant Commissioner and the Income Tax Officer will have concurrent jurisdiction to make assessments. In a particular case, where the disputed addition aggregates to Rs. 25,000 or more, the Income Tax Officer will forward a draft assessment order to the assessee and send a copy to the Assistant Commissioner. Thereafter the Assistant Commissioner

will hear the assessee and finalise the assessment. And then there are consequential changes in the appellate procedure.

I would like to slightly depart from the memorandum and present my evidence in a slightly different manner. There is a provision in the present Act for giving assessment jurisdiction to Inspecting Assistant Commissioners, but to my knowledge, it has not been used so far. This is a mix-up of the existing procedure, where the Income Tax Officer makes the assessment and where the Inspecting Assistant Commissioner can also make an assessment. We suggest that this step is probably not very desirable, as it will lead to abnormal delays. It will lead to duplication of all assessment proceedings. A better alternative will be to give really important cases of assessment to the Inspecting Assessment Commissioner rather than saddle him with all sorts of sundry assessments of this nature.

MR. CHAIRMAN: That is a very major departure in assessment procedure.

SHRI P. S. BHASKARAN: The procedure is that the Income Tax Officer examines books of accounts, examines documents and prepares a draft assessment order. He gives it to the assessee and where the disputed assessment is over Rs. 25,000, he sends a report to the Assistant Commissioner and he has to hear the assessee and sign the assessment order. That means he will have to examine the case in every sphere, in minute detail on certain points if not all, and he will have to call the assessee with his books of accounts to explain several points. So, the entire procedure is that the Income-tax Officer examines the case and drafts an assessment order and the Inspecting Commissioner again examines the cases and finalises the assessment. The assessee goes with his books of accounts before the Income tax Officer and explains everything. He is

called a second time before the Assistant Commissioner and he has to go through this process again.

Now, regarding the rest of the procedure, an appeal will lie to the Commissioner and thereafter to the Appellate Tribunal. Therefore, this will lead to duplication and will have grave consequences on the completion of assessment in time.

MR. CHAIRMAN: Assuming that the procedure now prescribed does not necessitate a de novo looking into by the Deputy Commissioner of Assessment but is confined only to the Deputy Commissioner looking into the grievances or additions etc.—if that be the scope of the Section—would not most of your criticism be superfluous?

SHRI P. S. BHASKARAN: No, Sir; the assessment will be under the signature of the Inspecting Commissioner, but he is not responsible for the assessment.

MR. CHAIRMAN: Responsibility is a different aspect of the matter. What you said is that once it goes to the Deputy Commissioner, the entire gamut will be before him and he will have to start from scratch. I do not see that in the Section; what I see is that if the addition is to be more than Rs. 25,000, an order is sent to the assessee and a copy is sent to the Deputy Commissioner of Assessment. If that be the scope of the procedure, is not most of your criticism untenable?

SHRI P. S. BHASKARAN: With respect I submit that that is not the scope of the Section. The Section says that thereafter the assessment order will be under his signature.

MR. CHAIRMAN: It says that he might apply to the Deputy Commissioner under Section 144(B) and, within seven days of the date of receipt by him of the draft order or within such extended time not ex-

ceeding 15 days, the Deputy Commissioner of Assessment may look at the application made to him in this behalf and the Deputy Commissioner may make an assessment of the total income or loss by the assessee and determine the sum payable by him or refundable to him on the basis of such assessment.

SHRI P. S. BHASKARAN: So, the whole assessment is to be made by him.

MR. CHAIRMAN: On the basis of the draft assessment, the Deputy Commissioner has to determine, by hearing the assessee on the one side and the Income-tax Officer on the other.

SHRI BHAGWAT JHA AZAD: Even in normal cases where an assessment is made, when it is put to a higher officer, he will himself determine how much in detail he goes about it or does not go about it, but in any case he is entitled to know, before putting his signature, what the Income-tax Officer has done.

MR. CHAIRMAN: He is right. The Inquiry Officer starts where the Income-tax Officer left. Now, if that be the scope of this Section, and if the Deputy Commissioner starts where the Income-tax Officer leaves is not your criticism of this provision untenable?

SHRI P. S. BHASKARAN: With respect that is not the scope of the Section. The Deputy Director or Director gives instructions without actually shouldering the responsibility of the assessment. The assessment order is signed by the Income-tax Officer.

Now, in appellate proceedings, the scope of appeal is generally limited to points raised or grounds of appeal whereas, here, the scope is not restricted to the correction of the disputed additions. The entire assessment is before the Inspecting Deputy Commissioner and he signs the assessment order and his role is neither

adjudication nor arbitration of the disputed points. He is making the assessment and that will considerably delay the assessment procedure. My suggestion is that his advice should be confined to the disputed points which are before him. I do not see why he should look into the whole assessment.

MR. CHAIRMAN: It is not as though he cannot look into the matter, but it does not mean that he just starts from scratch.

SHRI P. S. BHASKARAN: I am not saying that he starts right from scratch but he will have to go through not only the disputed points but even the undisputed points.

SHRI BHAGWAT JHA AZAD: How do you say that?

SHRI P. S. BHASKARAN: The assessment has to be made by him.

SHRI BHAGWAT JHA AZAD: So what? The words are "on the basis of the assessment". Those are the operative words. So, the whole gamut is not before him; he only goes on the basis of the assessment.

SHRI P. S. BHASKARAN: The words used are "the Deputy Commissioner may make an assessment".

MR. CHAIRMAN: There is nothing to bar him from looking into the Income-tax Officer's assessment if he is not satisfied, but it is not necessary where he is satisfied. If the ITO looks into all aspects of the matter properly and adequately, he need not go into it.

SHRI VASANT SATHE: The wordings here are "notwithstanding anything contained in this Act... on the basis of such assessment". "...of the draft order.....refundable to me." On the basis of such assessment, means the assessment made by the Dy. Commissioner and not by the Income Tax Officer in reference.

MR. CHAIRMAN: 'Such assessment' is the draft assessment. That is not what you say.

SHRI P. S. BHASKARAN: The second point is that we have to consider the workload which will come on the IAC and the question of period for completing their assessment. I submit that the ITO may be able to do ten or twelve cases of assessment of this nature. But if 40 to 80 cases of assessment are referred to him, then it will take a considerable time to complete the assessment. In the months of March and April, there will be a large number of assessment cases and it will become difficult for him to do.

MR. CHAIRMAN: We want this practice to be discontinued.

SHRI BHAGWAT JHA AZAD: That makes a very bad reflection on the ITO. Do you presume that the majority will be challenged?

SHRI P. S. BHASKARAN: I have not understood your question properly.

SHRI BHAGWAT JHA AZAD: You are presuming that a large number of those assessments will be challenged.

SHRI P. S. BHASKARAN: What I am submitting is that in a month about 100 assessment cases are to be completed in a range of this nature. If 40 cases are referred to the IAC, he will not be able to dispose of them with the result what should be done in one month will be carried forward to the next month. There will be a considerable delay in the completion of these cases. I am not concerned with limitation of 30th March. I am only concerned with the delay in the completion of the assessment cases.

MR. CHAIRMAN: Well, it is subject to limitation. Are you trying to suggest that it is not subject to limitation?

SHRI P. S. BHASKARAN: At present, they are subject to limitation.

MR. CHAIRMAN: The Department will have to make suitable arrangement. Otherwise, no assessment can be made.

SHRI S. R. DAMANI: According to my experience and what I see is that LAC and ITO are working in consultation with each other. In such cases where the amount involved is Rs. 25,000/- or more, which is not permissible, if those cases are referred to the Dy. Commissioner or the IAC, I think the Department, in order to avoid more appeals, vies the assessee one more hearing so that he can place his view point before a senior officer and gets justice. In such cases, how do you presume that there will be accumulation of work and difference of opinion and the ITO will not be able to do more cases?

MR. CHAIRMAN: This has many plus points including minimising the litigation and appeal work. So far as drafting is concerned, let me tell you that the entire drafting will be meticulously gone into. We are not going through the drafting. It will be looked into by the Board very meticulously and the Law Ministry and we will do our bit to see that everything is included properly. But subject to the changes that we will be making in the drafting it is only in order to bring it in conformity with the prescribed standard that we will be doing it. There are certain changes which have many plus points. In this scheme there are plus points.

SHRI R. V. SWAMINATHAN: I want to know what other suggestions the witness can afford to give. Because I find that the present system of working of the IAC and ITO is perfectly all right as far as advantage to the client is concerned. If he has got any other suggestion in the interest of the client, he can tell us.

MR. CHAIRMAN: He has already given suggestions in that regard.

SHRI S. R. DAMANI: When the present system is working properly, then why does he say these things?

SHRI P. S. BHASKARAN: Where this type of addition could be made it could be assigned to the IAC so that

he makes all the investigations and the assessment order with the result that there will be no duplication of work and the assessee gets some consideration. But, I again say that there is likely to be a considerable delay.

MR. CHAIRMAN: What you have said about the delay is a compelling circumstance, otherwise that will ensure expeditious working.

SHRI VASANT SATHE: Whenever a dispute arises, these ITOs would normally refer this dispute to higher officers.

MR. CHAIRMAN: Where the case involves more than Rs. 20,000, we will consider that.

SHRI P. S. BHASKARAN: Subject to what I have said, I wish to bring certain points regarding appeal. The first point is that when the assessment is disputed and addition is made by the IAC, should there be two-tier of appeal to the Commissioner and the I.T.A.T. and so on. We submit that one level of appeal should be sufficient when assessment is made at such a senior level.

MR. CHAIRMAN: That means you want only one appeal to the tribunal.

SHRI P. S. BHASKARAN: Yes, sir. At present, there is no inter-mediate stage of appeal.

MR. CHAIRMAN: We will consider that.

SHRI P. S. BHASKARAN: As far as the present Act is concerned, when an IAC makes the assessment, the appeal will be to the Commissioner of Income Tax. Now, I wish to bring to the notice of the Committee, the provisions of Section 119 of the present Act. It says that the Board is entitled to give instructions to the officers subordinate to it and they are bound to observe and follow those instructions. There is an exception in the case of Appellate Assistant Commissioners. The Board cannot give any instructions which will fetter the discretion of the Appellate Assistant Commissioners. There is no such provision

regarding fettering the discretion of the Commissioners of Income Tax who are liable to hear an appeal.

MR. CHAIRMAN: We will have to make that change. If the appellate discretion vests in the Commissioners, an analogous provision will have to be made, prohibiting the Board from giving any direction to the Commissioners on par with the restrictions that they have for Appellate Assistant Commissioners.

SHRI P. S. BHASKARAN: The second point that I would like to mention in this connection is this. The Wanchoo Committee had recommended that the number of Income-Tax Officers under each Commissioner should not be more than 40. This recommendation has been made with the idea that the Commissioners will be closely associated with the day to day work; they will get involved in the assessment so that the quality of the work could be improved and the object of checking tax evasion could be met. Now, our submission is this. If this suggestion is implemented and the Commissioner is closely associated with the assessment work, giving up the appellate work, will it not involve some sort of difficulty, psychological difficulty with the assessees?

MR. CHAIRMAN: What is the way out?

SHRI P. S. BHASKARAN: We would submit that if the appellate work is given to the Commissioner, there should be a separate cadre, which will be wholly doing appellate work, like the Appellate Assistant Commissioners. This is our submission regarding this point.

SHRI BHAGWAT JHA AZAD: In the present conditions what happens is that the higher Officers are absolutely away from the actual assessment work. Today, they are doing much of the administrative job rather than doing anything with regard to assessment. I think what the Wanchoo Committee had suggested is that these

higher Officers, should be definitely in touch with the actual assessment. I am labouring on this point since long and I support the recommendation of the Wanchoo Committee on this point. You should not take them away from the actual assessment work, which they are partly today. This should be seen from this point and not from the point of view of what the witness says.

MR. CHAIRMAN: After assessment is over, the appeal must go to the Commissioners who are not connected with the.....

SHRI BHAGWAT JHA AZAD: I have understood the point. That is what I want to emphasise. He says that at present....

MR. CHAIRMAN: If I have understood him correctly, he says that if the Commissioners are connected with assessment itself, while they are sitting in judgment as appeal court, they will not be able to exercise an independent discretion because they will be associating themselves with the computation of assessable income for assessment purposes. Therefore, a machinery may be created by which an independent judgment will be brought about. I think this is your suggestion.

SHRI P. S. BHASKARAN: Let me make it clear that while I support the plea....

SHRI R D. SHAH: As the intention goes, it is not that the same Commissioner will be doing both the functions. The Wanchoo Committee had also recommended that the number of Commissioners should be increased. The idea is to have separate Commissioners (Appeals). The appeals will not go to the same person for the psychological reason, as mentioned, because he may not be in a position to do justice. The same judicial functions and the same administrative functions of law should not be vested in one individual. Of course, we have not spelt out our intention. The ad-

ministrative manner in which we propose to work it out is that there will be Administrative Commissioners, who will be included in the category of Commissioners, and they will be called Additional Commissioners (Income Tax Appeals), so that the difficulty which Mr. Bhaskaran pointed out is not likely to arise.

SHRI P. S. BHASKARAN: I am bringing before the Committee the position under the existing law.

SHRI BHAGWAT JHA AZAD: What Mr. Shah is saying is that there will be separate Additional Commissioners. But, they will be eligible otherwise both for assessment and hearing appeals and they will be interchangeable so that we can bear upon their experience.

MR. CHAIRMAN: There will not be dual function but they will have sufficient experience in both the spheres.

SHRI P. S. BHASKARAN: The next clause on which we have given our note is Clause 46. The Clause provides that applications against ex-parte assessment should be decided within 30 days. We submit that this time limit may not be quite sufficient, and in many cases, there may be practical problems. The time limit may be slightly extended so that it is sufficient. We have suggested 90 days.

MR. CHAIRMAN: We will consider that. What is the reason that it should be 90 days and not 30 days?

SHRI P. S. BHASKARAN: The problem is that assessment files sometimes are not available.

MR. CHAIRMAN: Whose fault is that?

SHRI P. S. BHASKARAN: Here, the law is being enacted....

MR. CHAIRMAN: Please do not advance these arguments, Mr. Bhaskaran, for God's sake. You have said that the time limit should be 90 days and we have understood the reasons.

Your reasons are compelling the other way.

SHRI S. R. DAMANI: If the files are not available within 30 days, what is the guarantee that they will be available within 90 days?

SHRI P. S. BHASKARAN: I am only saying that 30 days appears to be a too short period. Then, I would like to refer to the amending provision (Section 244) regarding payment of interest. It says that the interest should be paid from the date of payment to the date of refund. The period of one month from the date of appeal, therefore, shall be excluded in determining the period for which interest should be paid. Now, if interest is to be paid from the date of collection to the date of refund, we feel that there may not be any logical reason for excluding this one month period for calculation of interest. The date of the appeal order has no relevance to the payment of interest.

MR. CHAIRMAN: I mean one month was a reasonable period within which, with all the administrative difficulties, one should be able to verify and do it.

SHRI P. S. BHASKARAN: It is not delay. Now interest to be paid from the date of payment or collection

MR. CHAIRMAN: That is the time allowed for making over. Anyway, you may proceed to the next point.

SHRI P. S. BHASKARAN: I will now take up Chapter XIXA dealing with settlement.

MR. CHAIRMAN: It is an important chapter; and an important mechanism is being set up.

SHRI P. S. BHASKARAN: This is a very important innovation regarding settlement. We have a feeling that the legal provisions, as they are drafted to-day, may not achieve many of the purposes behind the legislation.

MR. CHAIRMAN: Why?

SHRI P. S. BHASKARAN: The first point is that an assessee can make an application to the Settlement Committee for making settlement; and once he makes an application, he is debarred from withdrawing that application. The second point is that the members constituting the committee can ask for any report from the income-tax authority, at any stage. Now, once the application is made, it would be difficult to withdraw it. Secondly the board can direct any income-tax authority to send reports, make investigations etc. Now, we feel that the term "any income-tax authority" may include the Appellate Assistant Commissioner, in the present set-up, when the matter is pending before the Appellate Commissioner. We feel that the call for a report from the Appellate Assistant Commissioner and requiring him to do investigation, would not be quite worthwhile. The real report should be from the income-tax officer and inspecting commissioner, and the commissioner concerned. The first suggestion that we make is that the provision for calling for reports etc. should be given to the income-tax authorities other than the appellate assistant commissioners.

MR. CHAIRMAN: First you told us that this new innovation which speaks of putting up new machinery for settlement, is a proper, just and appropriate mechanism. Now, you say that no report should be asked for from the Assistant Commissioner. Why?

SHRI P. S. BHASKARAN: Our reading of the section is that if the matter is pending before an income tax authority, the report is to be called for from that income-tax authority. It is not as if the settlement board has the discretion to call for the report from any authority. We feel that since it is the income-tax authority and the IAC who are concerned, the report should be called for from them.

MR. CHAIRMAN: We will make sure that it is not fettered. Again, it

is a question of draft. I do not think it could have been the intention that they go only by the report of the appellate authority. Would you draw my attention to the particular phraseology on which you fall back?

SHRI BHAGWAT JHA AZAD: I think it is 245B.

SHRI P. S. BHASKARAN: The application is made when the matter is pending before any income-tax authority and when you call for report from the concerned authority, my reading is that it is that income-tax authority before whom it is pending.

SHRI BHAGWAT JHA AZAD: Where is it mentioned so, in 245B?

MR. CHAIRMAN: The income-tax authority which is defined in 245A and 245B, includes everybody. Even assuming that what you say is correct, I do not see any harm in calling for it from the appellate authority.

SHRI P. S. BHASKARAN: There is nothing wrong; but what I submit is that to make detailed enquiries or a report regarding some factual matter, the more appropriate person is likely to be the income-tax officer and the inspecting commissioner.

MR. CHAIRMAN: Let us leave it to the wisdom of the Settlement Committee to decide who is the concerned authority under a particular circumstance.

SHRI BHAGWAT JHA AZAD: When you say an income-tax authority, it means deputy commissioner or the income-tax officer also.

SHRI P. S. BHASKARAN: My submission is that an application for settlement can be made when the matter is pending before any income-tax authority. Then you can call for a report from the concerned income-tax authority. My reading is that the "concerned income-tax authority" means the authority before whom the matter was pending when the refer-

ence was made to the Settlement Committee. If that is the Appellate Assistant Commissioner, I think that it may be more advantageous to call for a report from the Income-tax Officer and Inspecting Assistant Commissioner rather than the Appellate Commissioner.

SHRI R. D. SHAH: You know that an appellate assistant commissioner or a deputy commissioner has powers also to enhance the tax. In the course of appeal, he might have collected a certain information and the assessee has to come up for a settlement. Why should you not permit the settlement committee to do it?

SHRI P. S. BHASKARAN: I am not saying, "Do not call for the report from him." I am only suggesting that I have the apprehension that the provisions, as drafted, mean that you can call for a report from the authority concerned and not from anyone else. You can call for a report from any income-tax authority; I have no submissions on that.

SHRI BHAGWAT JHA AZAD: "concerned" here means concerned for the purpose of settlement.

SHRI VASANT SATHE: I wanted one clarification. Is it suggested that if an application is to be made for settlement, then, it should be made prior to the appellate stage; and that it will be more advantageous then? If the difficulty of calling for the report from the appellate commissioner is to be avoided, is it suggested that either the assessee makes the choice and has the advantage of appeal before appellate authority, or at the stage when he decides to go in for settlement? If that is done, we will avoid one stage.

MR. CHAIRMAN: Mr. Sathe, if you read 245C, you will find that application can be made at any stage, whether it is the ITO stage or any other stage.

SHRI VASANT SATHE: Should it be at any stage including the last stage or conditional only at the initial stage,

so that the assessee could not have the advantage of both?

MR. CHAIRMAN: It should be the one or the other.

SHRI VASANT SATHE: Today, as the amendment stands, under section 245C, he can go at any stage. I am suggesting whether a certain change could not be made in section 245C to obviate the difficulty of making an application at any stage instead of only at the income-tax officer's stage.

SHRI P. S. BHASKARAN: No. I would prefer that there should be a provision for making an application to the board of settlement at any stage of the proceedings. In fact, I would go one step further and say that even after an assessment is made, regarding the collection also, there should be a provision whereby if an assessee is bankrupt and he cannot make the payment, he can have approach to the board of settlement for settlement of the tax liabilities.

Then, proviso to section 245D seems to take away the concealment cases from the scope of these applications for settlement. We feel that there is no rationale criterion for leaving out concealment cases from settlement. In fact, there are cases where settlement should be tried, of course, at what stage of concealment etc. has to be considered. But most of the cases for settlement are bound to be cases where there is concealment. So, we feel that this proviso will take away a large part of the cases which really should form the subject matter of applications to the board of settlement.

SHRI K. R. GANESH: That has been deliberately put there.

MR. CHAIRMAN. And there is a rationale also, as far as I can say. It is the settlement machinery which will deal with it in the manner it wants to deal with it.

It is not as though everyone who comes for settlement is left out of the purview of prosecution or penalty. The settlement committee can decide

upon the prosecution, penalty, conviction and other penal provisions.

SHRI P. S. BHASKARAN: The proviso says that the settlement shall not be proceeded with.

SHRI R. D. SHAH: We have deliberately put the word 'established'. The question is that at that stage, the concealment has been established conclusively. Till the stage it is not established a man can go in for settlement, but once it is established at any stage, he cannot escape the rigours of the law by going to the settlement body. That is why we have deliberately put the word 'established'. There are cases of concealment, doubtful concealment, suspected concealment etc. which are not covered here; there, he can go in for settlement, but once the concealment has been established and there must be evidence for it, he cannot take advantage of the settlement body and escape the consequences of the law.

MR. CHAIRMAN: To put it the other way, it is like this. As Shri Vasant Sathe was saying, you have the one or the other, and you cannot have both; you exhaust everything here and your guilt is established, and after your guilt is fixed, then you come to the settlement committee—that is not the purport of this provision.

SHRI VASANT SATHE: He cannot have the best of both the worlds.

MR. CHAIRMAN: He cannot have the cake and eat it too.

SHRI VASANT SATHE: Once the guilt is established, there is no question of settlement.

SHRI P. S. BHASKARAN: It is very difficult to say at what stage the concealment is established.

As far as the ITO is concerned, he may consider he has established the concealment, but the appellate assistant commissioner may feel that there is no concealment at all; or sometimes, he may say there is concealment, and

the man may go before the tribunal and the latter may say that there is no concealment at all. The main purpose of this provision is to cut out litigation and try to ascertain the correct tax liability with penalties, prosecutions etc. Wherever applicable. Therefore, the meaning of the words 'concealment is established' is not very clear.

Another point that I would like to make is this. When a settlement application is made, what happens to the regular assessment proceedings? What about the limitation for the regular assessment proceedings?

MR. CHAIRMAN: What happens? They all come to an end.

SHRI P. S. BHASKARAN: If the application is rejected by the board of settlement, then the assessment may get time-barred.

MR. CHAIRMAN: As far as I am able to understand it, the import is clear; once you go before the settlement body, what they do is the final thing and there is no question of appeal or anything against it. What do you mean by the settlement failing? Do you mean that they do not pass an order or do you mean something else. If they do not pass an order, then we disband the committee and appoint a new one. It is a hypothetical question which would not arise.

SHRI P. S. BHASKARAN: Sub-clause 6 says that in certain circumstances, the settlement shall be void. What will happen to the assessments in a case where a settlement becomes void? The point that I had raised becomes quite relevant in this context. When there is fraud or things like that, the settlement becomes void.

MR. CHAIRMAN: It becomes void when it is quashed by a writ.

SHRI P. S. BHASKARAN: It shall be void if it is subsequently found by the committee that it has been

obtained by fraud or misrepresentation of facts. This is what 245 D (6) says at page 31 of the Bill.

MR. CHAIRMAN: Then, he may reopen proceedings. There is no bar to that.

SHRI P. S. BHASKARAN: Reopening may not be possible.

SHRI BHAGWAT JHA AZAD: If it becomes subsequently void, can the income-tax authority start prosecution against him? He says that the limitation clause would apply, and he has asked what would happen in that case.

SHRI P. S. BHASKARAN: I would submit that there should be separate provision regulating limitation in such cases.

MR. CHAIRMAN: Sub-clause 6 merely provides that he cannot obtain an order of settlement by fraud and plead limitation against reopening of assessment. That right will always be there with you. If there is any doubt, we shall clarify it. As I understand the provision, it is like this. Suppose in respect of business income, you have got a settlement for Rs. 5 lakhs and it is found that your income was actually Rs. 50 lakhs. In respect of the Rs. 45 lakhs, the settlement for Rs. 5 lakhs is not an estoppel and you can reopen the assessment and assess for Rs. 45 lakhs.

SHRI P. S. BHASKARAN: After a return has been filed by the assessee and no assessment has been made within the period of limitation, the Supreme Court decision clearly says you cannot reopen that assessment.

MR. CHAIRMAN: We shall consider it.

SHRI P. S. BHASKARAN: That almost completely what I had to say on the memorandum.

MR. CHAIRMAN: I have a very important but general question to ask. From the several memoranda which we have received from different bodies, federations, associations, indi-

viduals etc. we find that all of them seem to feel that we are making the law more and more stringent and more and more rigorous in order to unearth black money and to avoid evasion, and for that purpose, we are vesting more and more powers in our ITO's in fact, much greater powers in regard to raids, searches, seizures for assessments etc. All of whom without exception are complaining to us in their memoranda that the existing machinery and the officers themselves would not be able to carry the onerous responsibility involved. In other words, we are expecting of our officers something which would be, as it were, just impossible. What do you say to this criticism? Are you willing to assure you that if we cast all the responsibility on you which is there in law, we can safely rely on you? I want you to reply without any fear. You can forget that your Minister and your Chairman are here; you have Parliaments fullest protection.

SHRI P. S. BHASKARAN: I can assure you that in this department there is a very large number of officers who can certainly and very competently deal with this problem of tax evasion and collection of taxes with the least harassment to the taxpayer and utmost convenience to Government. All I would request the Committee is: give freedom for exercise of initiative, drive and their undoubted abilities which is needed to release the capacity of these officers.

I am sorry to come back to the point with which I began. We have no grievances against class II income tax officers. We are all sufferers in a common cause, we are all sufferers at the hands of the administration. What this Committee has to see is that every official of the department is able to exercise his initiative, drive and undoubted abilities in the most fruitful and constructive manner.

SHRI K. R. GANESH: I want a few facts. What is the percentage of class II officers who have put in 10 or more years of service?

SHRI P. S. BHASKARAN: I will put a counter-question.

SHRI K. R. GANESH: I am asking a specific question. What is the percentage of class II officers with 10 or more years of service?

SHRI P. S. BHASKARAN: I cannot give the exact number. Let me complete the answer by asking what is the percentage of Asstt. Commissioners have put in 13-14 years service in the cadre. As the hon. Finance Minister said, we have to consider the prospects and stagnation at every level in this department in comparison to the levels in other departments and also the service of each group in this department and not one particular class or particular group. That is my submission.

SHRI P. G. MAVALANKAR: As an important footnote to what you said, how many ITO's in class I or class II understand and interpret the existing laws correctly? Secondly—I hope the answer to the first question will be honest and if it is so, it will be not many' what are the specific legislative improvement you want to suggest so that assessee are helped? We have heard difficulties from the point of view of the officers only.

MR. CHAIRMAN: We will hear others.

SHRI P. G. MAVALANKAR: From the point of view of the officers, what improvements would you suggest in law? If you cannot do it now, give us another memorandum about it, about the legal difficulties, how to make the law simpler, so that interpretation and assessment are easier and honest.

SHRI P. S. BHASKARAN: I have not put it in the memorandum. We have dealt with the causes of tax evasion mainly from a criminal point of view. I would say quite a lot of errors in tax returns may be due to ignorance in understanding the law, the complicated provisions thereof. I certainly feel there is much room for educating the tax-payers, in making them understand the various provisions of the law.

As for the knowledge of the ITOs and interpretation of law, we know that even a single Judge of the Supreme Court does not agree. There are two conflicting decisions within 10 or 15 days of each other. On such matters, how can anyone predictly what is the correct position in the income-tax law?

SHRI S. R. DAMANI: Mr. Baskaran, you know this Bill has been brought in on the recommendation of the Wanchoo Committee just to reduce the tax burden and the Law Commission also has made recommendations. A part of the recommendations of the Wanchoo Committee is being implemented. The other part has not been implemented. What is your reaction about not implementing in full and implementing only a part of the recommendations? Will it serve the purpose for which we are trying to?

SHRI P. S. BHASKARAN: You mean the recommendations on technical matters or the beneficiary aspects of them?

SHRI S. R. DAMANI: As far as the reduction in the rates of taxation is concerned, it has not been implemented and other stringent measures have been recommended and implemented. Without the former, will it be possible that our purpose will be

II. *National Christian Council of India, New Delhi.*

Spokesmen:

1. Shri E. D. Devadasan—Vice-President.
2. Rev. M. A. Z. Rolston—General Secretary.

(The witnesses were called in they took their seats)

MR. CHAIRMAN: The witness may kindly note that the evidence they give would be treated as public and is liable to be published unless they specially desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

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served and whether the intention will be served?

SHRI P. S. BHASKARAN: That mainly is a policy decision.

MR. CHAIRMAN: Do you have anything to say?

SHRI P. S. BHASKARAN: On the rates of taxation, it is mainly a policy decision of the Government of India and we as an Association have nothing to say on the rates of taxation.

SHRI VASANT SATHE: Mr. Bhas-karan, you said a little while ago that the income-tax officers, given the freedom to exercise their initiative, and given the initiative, can deliver the goods in terms of recovering adequate revenue and taxes. Can you tell us one single factor, which is today uppermost in the minds of the income-tax officers, inhibiting this initiative?

SHRI P. S. BHASKARAN: The most inhibiting factor is the heavy workload on the income-tax officers. Secondly, there is a sense of frustration at all levels of the department.

SHRI VASANT SATHE: Frustration for what reasons?

MR. CHAIRMAN: Thank you very much, Mr. Bhas-karan.

(The witnesses then withdrew)

You may now proceed with the submission you may wish to make on your memorandum.

SHRI E. D. DEVADASAN: Mr. Chairman and gentlemen, we shall confine our submission to the provisions relating to charitable and religious institutions. While we recognise the responsibility of the State to play a greater role in the economic affairs and development of the country, if we have to ensure the democratic framework of the Constitution, we feel that the voluntary agencies should

be given an unhindered opportunity to carry on their charitable and religious work. If we accept this premise that the voluntary agencies are essential to preserve the democratic framework, then whatever malpractices may be practised by some agencies, it will be the responsibility of the Government to check such malpractices or prevent such agencies from operating, but not to put such restrictions as to prevent other agencies from operating.

It is well accepted that the obligations under the trusts are sacred and solemn. Most of the assets are given by people who have sacrificed themselves for noble causes.

MR. CHAIRMAN: Not necessarily; not always.

SHRI E. D. DEVADASAN: Granting there may be exceptions, mostly these charitable trusts are created on the basis of the sacrifice of certain individuals by setting apart a part of their assets for charitable works. Therefore, the trustees have an obligation to keep alive their trust. My first point now is, if the funds are allowed to be invested only in Government securities and scheduled banks or the Government financial institutions, then, under the present rate of inflation, the value of the entire thing would be drastically reduced if not wiped out within a period of 10 to 20 years.

MR. CHAIRMAN. Will you please clarify this, whether you have objections against the existing provisions which prescribe investment of trust funds in Government securities or Government approved securities in respect of certain accumulated incomes, or, is your objection directed against the proposed provisions contained in clause 6 of the Bill?

SHRI E. D. DEVADASAN: Under the present provisions.

MR. CHAIRMAN: Are you referring to clause 6(c)(e)?

SHRI DEVADASAN: I am referring clause 6(1)(bb)—activity for profit

MR. CHAIRMAN: It does not refer to any investment in any particular securities. It is only (c)(e) which says: "subject to the provisions of clause (bb) in the case of a trust or charitable or religious purposes or a charitable or religious institution, if any funds of the trust or institution are, or continue to remain, invested for any period during any previous year commencing after the 31st day of March, 1978, in any concern (including a company) which is carrying on any business and which is not owned or controlled by the Government."

SHRI E. D. DEVADASAN: I am objecting to this.

MR. CHAIRMAN: Your entire memorandum proceeds on the assumption that you are forced to invest in Government securities. Which are the provisions which contemplate or postulate compulsory investment in Government securities?

SHRI E. D. DEVADASAN: I came to that conclusion from this clause which says that an institution cannot invest its money in certain companies.

MR. CHAIRMAN: It merely says that you cannot invest in concerns including companies, which is quite different from saying that you are precluded from investing anywhere except in Government securities. You are trying to canvass before the Committee as though the new provision postulates compulsory investment in Government securities. That is not so. It is a prohibition that you cannot invest in a business concern. Have you any objection against that?

SHRI E. D. DEVADASAN: If we are allowed to invest in any company.....

MR. CHAIRMAN: You are now making a submission on the basis of an erroneous reading of the provision. We will give you further time. If necessary, you can submit an alternative memorandum. Of course, we cannot say whether we will be able to give you time.

SHRI E. D. DEVADASAN: As the Chairman has kindly suggested. We shall be pleased to submit an alternative memorandum on the basis of re-thinking.

MR. CHAIRMAN: I thank both Mr. Devadasan and Rev. Rolston.

(The Committee then adjourned).

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Thursday, the 12th July, 1973 at 15.00 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Virendra Agarwala
3. Shri Chhatrapati Ambesh
4. Shri Bhagwat Jha Azad
5. Shri Dharnidhar Basumatari
6. Shri S. R. Damani
7. Shri K. R. Ganesh
8. Shri Mani Ram Godara
9. Shri D. P. Jadeja
10. Shri Sat Pal Kapur
11. Shrimati Sheila Kaul
12. Shri Maharaj Singh
13. Shri P. G. Mavalankar
14. Shri Amrit Nahata
15. Shri H. M. Patel
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri Bhola Raut
18. Shri Vasant Sathe
19. Shri K. K. Shetty
20. Shri Satyendra Narayan Sinha

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer, *Joint Secretary and Legislative Counsel*
2. Shri S. Ramaiah, *Deputy Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri R. D. Shah, *Chairman, Central Board of Direct Taxes.*
2. Shri K. E. Johnson, *Member, Central Board of Direct Taxes.*
3. Shri I. P. Gupta, *Joint Secretary (FTD).*
4. Shri S. Narayan, *Joint Secretary.*

5. Shri R. R. Khosla, *Director.*
6. Shri O. P. Bhardwaj, *Deputy Secretary.*
7. Shri S. I. Tripathi, *Deputy Secretary.*
8. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

Associated Chambers of Commerce and Industry, New Delhi.

Spokesmen:

1. Shri M. H. Mody.
2. Shri Mohinder Puri.
3. Shri T. Pooran.
4. Shri M. M. Malhotra.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Direction 58 of the Directions of the Speaker under the Rules of Procedure and Conduct of Business of Lok Sabha provides that the witnesses must be informed that the evidence which they give would be treated as public and is liable to be published unless they desire that all or any part of the evidence tendered has to be treated as confidential. Even if they desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. The Committee would like you to take note of this.

SHRI M. H. MODY: Sir, I am not familiar with the procedure which you wish to adopt in these proceedings; whether—

MR. CHAIRMAN: You can deal with the memorandum point by point except that we will adjourn at 6 p.m. sharp. You will make your points and on every point we will question you. So you can be brief—because yours is a fairly long memorandum—if you want to take all the points. Or you can choose the salient points. It is your choice.

SHRI M. H. MODY: I would like to start off by expressing our thanks for providing us with this opportunity to make these observations on what we consider to be an extremely important Bill. I would like to make a few introductory remarks before I go on to deal with the specific issues. I may not deal with all of them but I will deal with the important ones.

The first point which I would like to make is that this Bill basically originates from the recommendations which have been made by the Wanchoo Committee and we have been rather disappointed with the Government in that some of the very important recommendations of the Wanchoo Committee have not been implemented by the Government. We again wish to emphasise that one of the important objects of appointing a learned Committee such as the Wanchoo Committee is frustrated if the fundamental recommendation on the most important points is not taken into account by the Government.

In particular, since this Bill is concerned with the question of black money which is a cause of concern to all of us, certain aspects of the recommendations of the Wanchoo

committee, particularly those dealing with the cases of the generation of black money, do not seem to have received any attention. We recognise that Government's proposed amendments deal with some of the problems concerning the detection of black money after it is generated, but very little has been done with a view to preventing the generation of black money itself and in order to ensure that the reasons why black money is coming into existence itself are prevented at the source.

MR. CHAIRMAN: What do you think are the salient features which deal with the generation of black money, and which have not been taken care of properly, except the rates which of course have been repeated by everybody, namely, that they have not been reduced?

SHRI M. H. MODY: I do think that this is a very important recommendation. You will remember that the Wanchoo Committee itself has stated that this is its central recommendation and that its other recommendations follow from this. To that extent, even at the cost of repeating something which you might have heard already, I do wish to say that this suggestion regarding reduction in tax rates is a very important one which needs to be implemented.

The Government's strategy hitherto has been that it wants to catch black money by increasing its power of search, power of seizure, power of imposing penalty and various other confiscatory revisions of this nature. Our submission is that experience shows that these powers have not worked. The time has come when the opposite remedy should be tried out and here is a learned body such as the Wanchoo Committee which has recommended certain suggestions. I personally feel that these suggestions should have been followed as a whole and not in a piecemeal fashion.

Dealing with the specific points which the Wanchoo Committee made, apart from high rates, they referred to the shortages and the consequent controls on business. We do recognise that this is outside the scope of this Committee but it is a very important factor. The next one is regarding donations to political parties which is a very important factor which enters into the generation of black money; then there is the existence of certain corrupt business practices and the pelling on the disallowance of bona fide business expenditure. These are important points. Certain of the ceilings which have been imposed on bona fide business expenditure are unfair and the imposition of these ceilings has encouraged some classes of businessmen to resort to bad practices which we think ought to be discouraged.

MR. CHAIRMAN: You are referring to the existing law?

SHRI M. H. MODY: Yes; they have also referred to another important point, that is, the ineffective enforcement of the existing tax laws. Sir, you yourself are conversant with the administration of the tax system, and some of us also have some experience of this matter, even if it is a little limited. We find that the administration itself needs to be toned up to a very large extent, and while adequate steps have not been taken to tone up the administration and to use the existing powers of the Government which are already vast, further powers are sought to be taken in order to—if I may use the expression—terrorise the taxpayer into giving up black market practices. We feel that this strategy is not an appropriate strategy.

MR. CHAIRMAN: Will it succeed or not?

SHRI M. H. MODY: We have very grave doubts about it, and the past record shows that it has not succeeded.

There is one other general point before I go on to the specific points, and that is, there are several provisions in this Bill which are retrospective in their effect and our submission is that these provisions which have a retrospective effect should be avoided as far as possible. I will deal with them as and when we come across those items. but specifically, the first item is the provision that the charities may not invest or may not continue to invest their funds in a business enterprise. The effect of this is, that investments which have taken place many years ago or which might have formed part of the corpus of a trust are now sought to be liquidated and converted into certain other authorised investments. We feel that this operates in a retrospective manner and should not be operated in that manner.

MR. CHAIRMAN: How is it retrospective? One agrees with the provisions or not; it is a different story, but on the limited question of retrospectivity, how is it retrospective?

SHRI M. H. MODY: It is in the sense that activities which the law recognised as legal and proper for many scores of years are suddenly now made illegal.

MR. CHAIRMAN: How is this particular provision retrospective?

SHRI M. H. MODY: You are forced to liquidate an investment which was otherwise valid. You can rightly say that in future the investments of the funds of charities and trusts may be made in such and such a manner, but to say that the existing investments should be liquidated, should be discontinued is retrospective in its consequence.

MR. CHAIRMAN: What you seem to suggest is that if the law contemplates discontinuance of the existing investment and for the future it becomes retrospective, that is a little philosophical.

SHRI M. H. MODY: Then there are certain amendments—clause 14 which seeks to amend section 64 of the Act; you are aware that this section deals with certain cases where the income of one person is treated as the income of another person. Here again, the principle that any legislation should not be retrospectively applied is well-established in the past. But nevertheless certain provisions are now sought to be made which will have a retrospective effect.

MR. CHAIRMAN: Which clause are you referring to?

SHRI M. H. MODY: Clause 14(1) (iv).

MR. CHAIRMAN: Would you like to elaborate on clause 13? The Members might like to ask some questions. If you think it is important, you may do so; otherwise, you can proceed.

SHRI M. H. MODY: I have nothing to say on clause 13. As far as clause 14 is concerned, there are certain provisions contained in this which, in my submission, are retrospective in their effect. For example, there is a provision regarding income derived from assets transferred by an assessee to the persons specified in section 64—If the income is reinvested that income should be treated as the income of the person who is the transferor. This is a provision of considerable complexity in administration and in actual effect results in the retrospective operation and reverses a state of affairs which the law recognised as valid and acceptable for all these years.

Let me give you some precedents.

MR. CHAIRMAN: What administrative difficulty do you think it will create?

SHRI M. H. MODY: From the administrative point of view, many of these instances of transfer may have taken place even 30 or 40 years ago. I personally think that it would be quite impossible for an assessee to ascertain himself what portion of the income is derived from the original transfer of

the assets and what portion of the income is derived from the subsequent accumulation of income.

You will remember that by the Taxation Amendment Act, 1970 certain substantial changes were made in those very sections dealing with Hindu undivided family, on the question of putting the personal property into the family hotch potch. At that time the law recognised that any transfer made prior to the application of the Act should not be touched.

MR. CHAIRMAN: That is a different scheme completely.

SHRI M. H. MODY: The principle is the same. When you are making a change of this nature, after all, you are dealing with a special area where you are deeming the income of one person to be that of another person. You are attaching some statutory fiction. That statutory fiction should operate prospectively and not retrospectively.

MR. CHAIRMAN: In other words, what you are suggesting is that all the transfers effected so far to the minor child or to the spouse, which were not taxed by the various sections so far, should be expressly exempted.

SHRI M. H. MODY: That is our submission.

Coming to the specific amendments I would like to discuss, my first submissions are on clauses 5 and 6 of the amending Bill, which primarily deal with certain amendments affecting charitable institutions and charitable trusts. Our first submission is that this rule, and which is forming part of the statute book for over ten years, which requires a charitable trust to compulsorily expend its income up to a certain limit, and to accumulate the income for a certain limited purpose, again subject to certain limitations, requires to be reconsidered. From my limited experience of the matter I have come to the conclusion that in fact

this has resulted in trusts being encouraged to expand money of the charities sometimes even recklessly because at a particular point of time you find yourself in a situation where you have to spend the income on the objects of the trust; otherwise, you will lose your charitable trust exemption. Therefore, you spend money on objects on which you would not have liked moneys to be spent on an earlier occasion. In the light of the restrictions which are already contained in the powers of the trustees to invest money in a certain manner and not to spend the money of the trust for the benefit of the relatives or of the author of the trust or persons who are related to the author or any of the trustees, these provisions require to be reconsidered. There is also a restriction on the investment of trust funds in a certain manner. In view of the restrictions which are very severe, the limitation upon the compulsory spending of income does not seem to make any sense. This provision about compulsory spending of income was introduced in 1961 when the other provisions were not on the statute book. In the light of the changed circumstances this provision needs to be reconsidered.

SHRI AMRIT NAHATA: Would you suggest any time limit?

SHRI M. H. MODY: I suggest no time limit. The trust should be permitted to spend its income, if it chooses, or to accumulate its income if it chooses.

SHRI S. R. DAMANI: Do you mean to say that the power of the trust to accumulate should be unlimited, be it 25 per cent or 100 per cent?

SHRI M. H. MODY: If necessary, the entire amount may be allowed to be accumulated. Let me give you the rationale of the government's argument when this provision was brought into force. At that time the feeling of the Government was that a charitable trust was being used as a device for accumulation of funds which were re-

invested in business which was being carried on by the author of the trust or the trustees themselves. Now the trustees cannot invest the trust funds in a company or business in which they are interested except to the extent specified in section 13(2)(h) of the Act. In view of these limitations which are now enforced, I submit that there is no harm in principle in a trust being allowed to accumulate any portion of its income.

SHRI AMRIT NAHATA: A charitable trust is constituted for a specific purpose and that purpose is not served unless that money is spent. If that money is to be spent for a charitable purpose, naturally government would like that money to be spent expeditiously and as soon as possible for the attainment of that purpose. What is wrong in prescribing a time-limit for this?

SHRI M. H. MODY: I am not suggesting for a moment that the trustees should be encouraged to accumulate funds. I am merely suggesting that there should be no provision in the income-tax law which would prevent them from accumulating money, if they choose too. This is also the submission of the Wanchoo Committee. What is really necessary is an all-India law which deals with the general administration of charitable trusts on the lines of the Bombay Public Trusts Act, which is enforced in both Maharashtra and Gujarat, which may be considered as a model legislation.

I submit the income tax law is not a medium for making rules regarding the administration of trusts; it should be limited to granting exemption and the conditions under which they should be granted.

MR. CHAIRMAN: Income-tax law may not be a medium, but it certainly is an effective medium for controlling malpractices leading to accumulation of wealth in different hands. How do you say that it will lead to discrimination in expenditure when you are allowed to accumulate under certain

circumstances? If you do not want to spend, you can accumulate subject to certain conditions. That is number one. But there is a rationale behind it. Where you want to save for the future, it can be done with the consent of the ITO. All that is needed in the meanwhile is that you do not invest money in shares but invest in government securities. That is the first thing. Why do you say that that provision is not a sufficient guarantee to ensure one not being compelled to spend recklessly because of the provision of spending if it is a bona fide thing?

Secondly, you were referring to 13(2)(h). It is a provision contemplated purely to ensure that trusts are not used as devices to earn exempted incomes, accumulate wealth and have large investments and have monopolies brought about. What objection can you have to this scheme of the law?

SHRI M. H. MODY: I have no objection to the limitation contained in 13(2)(h).

MR. CHAIRMAN: You also objected to it in your memorandum.

SHRI M. H. MODY: I have not. This provision is adequate. I was only making the additional point that the requirement regarding compulsory spending of income did not seem to fit in.

MR. CHAIRMAN: You say 13(2)(h) is sufficient and 1(e) is not necessary.

SHRI M. H. MODY: Yes.

SHRI VASANT SATHE: Would you suggest that a trust formulated for a particular charitable purpose should be allowed to spend its accumulated funds for a purpose which is not even enumerated in the formation of the trust?

SHRI M. H. MODY: No, that would be illegal; I am not suggesting that.

SHRI VASANT SATHE: For what purpose do you suggest this accumulated fund should be allowed to be spent?

SHRI M. H. MODY: It has ultimately to be spent on the object of the trust. Sometimes even a small trust accumulates its fund for its objectives.

SHRI VASANT SATHE: That provision is already there.

SHRI M. H. MODY: Only to the extent of 25 per cent of the income.

SHRI BHAGWAT JHA AZAD: Suppose you want to have a hospital, and the purpose is medical relief. If a trust wishes to accumulate the entire amount for a number of years, what happens to the purpose for which it is created. Why do you want a blanket permission for accumulating all that for a number of years?

SHRI M. H. MODY: Let us take an example of a trust which has an income of Rs. 1 lakh per annum. Let us say the purpose of the trust is medical relief. Under the existing law, you have to spend Rs. 75,000 on medical relief and you can only accumulate Rs. 25,000. If we want to set up an institution, a hospital, a nursing home or an institution for care of retarded children, if that is the object, it would not be served if only Rs. 25,000 are accumulated every year because the amount required may be substantial and they may have to wait for perhaps 12 years before the object of setting up the institution is achieved. But if you accumulate at the rate of Rs. 1 lakh a year, you may be able to achieve the object in two or three years.

SHRI BHAGWAT JHA AZAD: Do you mean to say that a trust set up for medical relief of the people should make people wait for ten years and then at the end when there is Rs. 10 lakhs there should be a hospital or something like that? Will the purpose of the trust not be better served if Rs. 75,000 is spent on current relief to people, the other part being accumulated for some other object, the object of setting up an institution?

SHRI M. H. MODY: That is a matter of personal judgment.

MR. CHAIRMAN: Under another provision, there is no difficulty; you can accumulate the entire Rs. 1 lakh.

SHRI R. D. SHAH: I will explain some of the points made by Shri Mody. The first thing he referred to was about wasteful expenditure. Previous to this, the law was that one could spend 100 per cent and the maximum time allowed was 3 months beyond the previous year. This is an improvement upon the immediately preceding position under the law. He is required to spend 75 per cent and he can accumulate the balance of 25 per cent indefinitely. Not only this. If some incomes were received during the close of the year and if they were to be spent in the three months of the following year, that might lead to wasteful expenditure. So this law says that it could be spent in the whole year following the year in which the income arose. So the question of fear of wasteful expenditure does not arise.

The second point was about the income-tax law governing investment. It is the income tax law which gives the benefit of tax exemption to charitable funds and, therefore, the law has the right to regulate investments and the manner in which they should be spent.

The third point is about accumulation. He can accumulate. He has to specify the object for which he accumulates for a period of ten years and spend that accumulation for some hospital and all that within that period of ten years. Certainly, if a trust's income is only Rs. 5,000, it cannot build a hospital within ten years. It all depends upon your object in a period of ten years.

There was a little difficulty in the existing law. If by any chance it so happens that the circumstances are changed beyond his control and he could not spend for the object for which he had accumulated, the position would arise that he would be liable to tax. This has also been tried to

be remedied here. He can prove to the ITO that due to circumstances beyond his control, he could not spend and therefore he should change the object for which this fund had been accumulated, for which he had already got the approval of the department. He can change it, but still the period within which he has to spend remains 10 plus 1.

So I personally feel that most of the arguments of Shri Mody have been met.

SHRI H. M. PATEL: The trouble that Shri Mody pointed out was that the object may be medical relief plus building a hospital. Suppose it was formed with the object also of building a hospital. You have a certain amount of money. You collect money. The income from this may be much too limited. So it is possible to go on accumulating the entire income, not 25 per cent.

MR. CHAIRMAN: 100 per cent.

SHRI BHAGWAT JHA AZAD: But a trust which has an income of Rs. 5,000 should not think of building a Hospital costing Rs. 25 lakhs.

SHRI R. D. SHAH: There is one more point. Why should he be asked to spend the whole of the amount, the income of the trust, for such purpose? Government, therefore, expect that this income which is exempt from tax should be spent at least to the extent of 75 per cent if the object of the trust is fulfilled. There is no need to accumulate.

SHRI S. R. DAMANI: If the entire income is allowed to be accumulated, what will be the activity of the trust? How is the public going to be benefited? It should contribute to the benefit of the public. Side by side, for building a hospital or college or school or dharmshala or community hall, some amount, 25 per cent or a little more, can be accumulated with the permission of the ITO.

SHRI M. H. MODY: My next comment is regarding the proposed amendment under which there would be a

loss of exemption from tax in respect of charities of a communal character. This matter was fully gone into in 1961 when the IT Act was codified and nothing has happened since then to justify the proposed amendment. Many of these charities which were created specifically for a communal group go back to more than 100 years and there is no reason why those which have been created at a time when the dominant object of the author was philanthropic should now be disturbed and the present amendment brought about.

MR. CHAIRMAN: This is a recommendation of the Wanchoo Committee.

SHRI M. H. MODY: I would make the other point, that though there is the cypres doctrine which applies to all kinds of trusts, particularly charitable trusts, a charitable trust may find itself in a position where even if it wishes, it may be unable to change its objects and, therefore, may lose its exemption altogether. Government seem to have made no provision for this kind of situation. I can understand if it is the intention that in future communal charities should not be encouraged.

MR. CHAIRMAN: But the cypres doctrine will entitle the trustees to go to court and seek its intervention for amendment of the objects.

SHRI M. H. MODY: My understanding of the law as it is, enunciated by the Bombay High Court, is that if you go to the High Court for amendment of the objects clause, it will be refused.

MR. CHAIRMAN: Do you have any cases to cite?

SHRI M. H. MODY: I will cite the necessary cases.

MR. CHAIRMAN: The doctrine itself says that where due to a certain change in circumstances, the intention of the authors cannot be carried out or there are other practical difficulties, the court shall intervene and allow diversion of the fund to the benefit of the community. I really do not know

of cases where this could not be done. If there are such cases, please let us know.

SHRI BHAGWAT JHA AZAD: What does witness suggest? Should it be changed or should it not be changed? Does he say that Government should provide for exemption if the objects are changed without going to court?

MR. CHAIRMAN: His point is that it should be made prospective and not retrospective.

SHRI BHAGWAT JHA AZAD: Does he say that Government should provide exemption for that or does he say that it should be as it is?

SHRI M. H. MODY: I agree that under the cypres doctrine, the High Court has the power to allow alteration of the objects clause of a trust provided it is satisfied that the principles which have been laid down for many years, both by the Privy Council and also by the courts of law in India, are observed. According to our understanding of the law—and this is a point which was made even before the Select Committee which heard evidence on the 1961 Bill—there is no existing provision in the law under which a person can go to the court and ask for a change of objects on the ground that he is losing tax exemption. The court will not allow the change of objects. That cannot be done. You can say 'My objects are unworkable; they are frustrated by impossibility'. Take, for example, construction of wells in Bombay. You cannot do that in Bombay because the Municipality will not allow it. In that case, the court will say: 'All right. I allow you to change the objects clause'. . . .

MR. CHAIRMAN: You have not answered the query. It was this. You have a certain object in the trust which provides that only one particular community will be benefited. As a result, you incur a certain disqualification in regard to exemption. You say that simultaneously you cannot go

to court to get it corrected. What Shri Azad is asking is: in this view of the matter, which aspect, according to you, needs to be emphasised in the context of the circumstances of today so as to make the law a little more rationale.

SHRI M. H. MODY: My personal opinion is that there should be a specific provision which would enable the trustees by their own action to delete the limitation in the trust deed which obliges them to spend money for the benefit of a particular community without having to go to a court of law. I hope you appreciate the delay involved. The court will take some years. The Act will come into force immediately. The courts will be flooded with applications. But it may take three or four years because you can get your objects clause amended because of the law's delays. In the meanwhile, you lose exemption for three or four years.

SHRI VASANT SATHE: If in this amendment itself we say that in view of this the trusts which are at present existing only for one community could be allowed to alter their objects and they will be deemed to have been altered if within a particular period of the Act coming into force they are altered, will that meet the requirement?

SHRI M. H. MODY: That would meet my requirement.

SHRI S. R. DAMANI: In regard to these communal trusts, if the clause is maintained as it is, it is going to affect them. But what are the activities they are doing?

SHRI M. H. MODY: My submission is that if the law is enacted in the present form, these charities would lose their tax exemption and thereby their income would be drastically reduced and the amount which would be available for the general public would be reduced.

My next point is regarding the limitation sought to be imposed on the carrying on of business by a charitable

trust. There are circumstances under which it is appropriate for a charity trust to carry on business and the existing law on the subject should not be disturbed. We have pointed out in the memorandum that there are fund-raising measures a trust may undertake like film shows, music performance, sports functions, etc.

SHRI VASANT SATHE: That is the same thing as carrying on a business?

SHRI M. H. MODY: It is the primary activity of a trust.

SHRI VASANT SATHE: Are you putting it on par with having a film show?

SHRI M. H. MODY: In the law as it stands today, it would be taken as being on par.

SHRI VASANT SATHE: You gave an example in the memorandum that that would prevent you from holding a film or a charity show for getting funds. Are you suggesting that holding a film show occasionally for raising funds is the same thing as carrying on a business *per se*?

SHRI M. H. MODY: For the purpose of the Income-tax Act, yes.

SHRI VASANT SATHE: If a clarification is made that carrying on business will not include holding a general performance like a film show with the permission of the income-tax authorities, will it meet your requirement?

SHRI M. H. MODY: That would meet partially my requirement, but I feel that a charity trust should be allowed to invest its funds in a limited company or in a business organisation.

MR. CHAIRMAN: On the limited question which you have raised in the memorandum also, in respect of film premiere, dramatic performance, dance and musical activities they are likely to constitute activities of profit—it is a matter of opinion,—at any rate we will certainly consider and we do not

want any of these activities to be covered by clause (bb). If that is the only objection, I think one can reasonably take it that it is not the intention of the draftsmen or the legislature or the Government at this stage to cope in an activity of artistic performance within the term of activity of profit, and if it falls within it, we will certainly consider it. Over and above that, do you have anything to say?

SHRI M. H. MODY: There are certain charitable trusts which I am personally aware of and whose sole function is to carry on these fund-raising activities by holding a film show or a premiere or a dance performance and the whole of the proceeds, after meeting the expenses, are donated to *bona-fide* charities such as hospitals, hotels, schools, etc. An hon. Member made the point that it may not amount to "making profits". The point that I was making is that under certain circumstances, the activity may be so repetitive in character that under the existing law it may amount to business. To this limited extent, our point is important and we request the Government to consider our suggestion, but where charitable trusts are carrying on business which is not related to this kind of activity, there is no reason why they should not be permitted to do so as just another method by which they can improve the return on their investment.

SHRI BHAGWAT JHA AZAD: For example, what kind of business, barring this?

SHRI M. H. MODY: It could run a shop.

MR. CHAIRMAN: There should be a blanket permission for any business whatsoever; is that your opinion?

SHRI P. G. MAVALANKAR: He referred to some of the trusts which are engaged for all time in collecting monies. I am wondering if that is also a part of its business. Any X, Y or Z trust may go on constantly raising funds for this and collecting money and then decide which particular acti-

erty that trust will give money to. Will that not constitute regular business and if that is so, is it not contrary to the main purpose of charity?

SHRI M. H. MODY: That is a matter of opinion. I personally think it does contribute to charity.

MR. CHAIRMAN: In that case, one of the primary purposes for which such business is being carried on is, to carry on such shows, with a view to collecting large moneys and donate them to others. It is still covered by clause (bb). In the Select Committee we will only go by the substance of the matter.

SHRI BHAGWAT JHA AZAD: Would you also envisage that it means that out of the funds of the trust shares are purchased and you get regular profit, and thereby you control the interests in that company. Is that also a business which you have in mind?

SHRI M. H. MODY: Yes; but I made a point earlier that this idea of exercising control over the business by investing funds of the business in an organisation or a company is no longer possible in view of the provisions of section 13(2)(h).

MR. CHAIRMAN: You will have even no objection to speculation? Well, you are only seeking permission; that is all.

SHRI M. H. MODY: What is even more important than the carrying on of business is the point regarding investment of the funds of a charity. Under the existing law, particularly in the State of Maharashtra with which I am familiar, the Charity Commissioner who controls these trusts, gives specific permission if he is satisfied that the investment is genuine and *bona fide*; that it is proper to invest the funds of a charity in a business concern either by purchase of shares or debentures or preference shares of the company. Subject to the restrictions which are already there in the Act, I feel that

there should be no further restriction upon these investments. If this is not done, the effect will be the income of the charities will be substantially reduced and it will only result in a reduction in the benefits which are provided to the beneficiaries of the trust.

I would like to repeat that the proposed amendment would be partially retrospective in its character because investments which were recognised as appropriate hitherto would result now disqualifying for exemption. The Wanchoo Committee itself has recommended that this rule should not apply to investments forming part of the corpus of the trust which the authors of the trust have donated to the trustees.

MR. CHAIRMAN: In other words, you are now on the proposed subsection (e). You do not want any restriction of the nature contemplated in it. You want absolutely untrammelled authority to invest.

MR. M. H. MODY: Except that limitation is already there in section 13(2)(h)

MR. CHAIRMAN: That is different. That is partly to ensure that the trust funds are not used in your own companies. Otherwise, you do not want any other restriction?

SHRI M. H. MODY: Yes; If the trustees are totally unrelated to a company which is quoted on the stock exchange, why should they not be permitted to invest in such company? I think this restriction is an excessive one.

SHRI S. R. DAMANI: What are the reasons for making an investment and taking the risk of a charitable fund? After all, they are meant for helping the public, the depositors. On the shares purchased from certain companies or on the deposits made therein, there is always an element of risk involved. What are the reasons for such investment of the charity funds?

You want permission for trust funds to be kept in deposit with companies, in which case there is a risk. Should the trust funds take such risks?

SHRI M. H. MODY: Under the general law the trustees have an obligation to safeguard the assets of the trust. If they invest the assets of the trust in a manner which amounts to a breach of trust or improper action on their part, they can be proceeded with under general law. If the trustees are satisfied that the risk involved in a particular investment is such a risk that they are prepared to take in return for the higher yield which will come to them by that investment, I do not see any reason why the income-tax law should intervene and prevent them from taking that risk. Further, it is our experience in Maharashtra that the Charity Commissioner has permitted many trusts to do this kind of thing because he is himself satisfied that it is in the interest of the trust to invest in securities which yield a higher return. Under the provisions of the Companies Act, in the case of trust of a certain character the voting rights relating to such investments which have been made by the trustees of a charity vest in the public trustee, who is an officer appointed by the Central Government. He alone can exercise the voting right of a trust. This is a further safeguard contained in the Companies Act. So, there need be no fear of any abuse being made by mere investment of funds in securities which he bought on consideration of yield.

SHRI BHAGWAT JHA AZAD: Can you quote one example where a trust, which has invested its money on a company with the hope of a higher yield, has come to grief?

SHRI M. H. MODY: At least within my experience there has been no such case.

SHRI VASANT SATHE: I could not follow your point about retrospective operation. If a particular provision is made which makes a particular action contrary to law hereafter and if it

also provides that within a particular time limit you have to come in conformity with the law, how is it retrospective?

SHRI M. H. MODY: If the law were to provide that any funds which are invested by the trusts, after the coming into force of the Act, or any donations received to the corpus of the trust even in the form of shares or debentures hereafter, those investments shall be made only in a particular manner and there can be no investments in companies, then I would say the law is operating prospectively. But if you make a provision along the lines which you are now making, there is an indirect retrospective operation.

SHRI VASANT SATHE: When you make a provision that within a certain period you shall come in conformity with this act, by converting your investment into those investments which will alone be permissible under the new Act, how does it become retrospective?

SHRI M. H. MODY: You are obliging a trust to sell an investment which formed the corpus of the trust so far.

SHRI VASANT SATHE: You are given a few years for doing that.

SHRI M. H. MODY: Giving a few years does not mean that it ceases to be retrospective. It may have been a transaction entered into 30 or 40 years ago.

SHRI VASANT SATHE: A strict meaning of retrospective operation would have been that you have no control over it, you cannot rectify it because of the enactment. Here you are given an opportunity to come in conformity with the Act. How is it retrospective?

SHRI M. H. MODY: I will then call it partially retrospective. In answer to the question how the trust suffers. I will say, that it will suffer because of the reduction in its income.

SHRI VASANT SATHE: Whether the investment of trust funds in a

company will be beneficial to the trust or not is a different question. Here we are on the question of retrospective effect.

SHRI M. H. MODY: I repeat that it is partially retrospective.

SHRI AMRIT NATHA: You say that the prohibitions contained in the earlier part of the law are sufficient. Suppose I am the author of a trust and my friend, Shri Sathe, is the author of another trust. Suppose my trust invests money in his company and his trust invests money in my company. Would that be, in your opinion, a fair practice on the part of the trust?

SHRI M. H. MODY: If you are concerned about situations of this nature, provisions should be made to meet those contingencies. Secondly, with due respect to the hon. Member, it is a hypothetical situation what is seldom found

MR. CHAIRMAN: The situations will be hypothetical because we are not arguing a case. So, we are not considering it with respect to a particular case. We have to consider all

SHRI M. H. MODY: The reason why I said this was a hypothetical example was this. The idea that you can have two equivalent companies and one person invests his trust money in another company and the other person in return in his company, in spite of the onerous obligations which are imposed upon the trustees of charitable trustees to exercise due care and caution in the investment of trust funds, is not likelihood because a trustee has to invest the funds wisely and in accordance with the wishes of the donor and in accordance with the law. He cannot do this recklessly merely to oblige a friend because that would be a breach of trust.

SHRI AMRIT NATHA: The primary function of the trust is not to earn money; that only subsidiary. The primary function is to engage itself in a charitable purpose. After engag-

ing themselves in the specified charitable purpose, if they feel they should also earn, let them earn; I have no objection. But, let them not claim for exemption. You cannot have best of all the world.

SHRI M. H. MODY: May I say that it is as much the duty of the trustee to spend money on charitable objectives, as to ensure that the income of the trust is increased in order to serve the charitable objective. Is it improper on the part of the trustee to attempt to increase the income of the trust so that the objective of spending the income on charitable purposes is also increased?

SHRI AMRIT NAHATA: Up to a certain limit, it is alright. But, if that becomes the predominant obsession with the trustees, we would like to check that.

SHRI M. H. MODY: I would agree with that view. But, it is also the duty of the trustee to increase the income of the trust.

SHRI AMRIT NAHATA: In that process, if they give rise to certain unholy practices that are prevalent in the corporate sector, we would certainly like to.....

MR. CHAIRMAN: I think we should proceed to the next point.

SHRI M. H. MODY: My next point on this subject is regarding anonymous donations. Again, we feel that this is likely to create hardship. We are aware that the Wanchoo Committee has made this recommendation. But, we feel that there are bonafide cases where a charitable trust makes collections and receives donations by way of boxes in which small amounts will be contributed, and we see no reason as to why donations of such a kind should be made liable to tax.

MR. CHAIRMAN: May be, boxes and the collection boxes etc. might come in the way. Assuming, they are left out, do you have any objection whatsoever?

SHRI M. H. MODY: Then, I have no objection.

SHRI VASANT SATHE: Mr. Mody, you may be knowing that in certain big temples, in these boxes, people put even gold rings and gold ornaments and some-times even cheques running into—I am told and I do not know—a fabulous figure are deposited. Then, in that case, would you suggest that because the amount is collected in the boxes, they should not be liable to tax? Or, would you suggest some limit on this? Suppose, if we say, that if the amount at a particular time, in the whole year, is Rs. 2000, then, it should be exempted; but, if it is beyond that, then, it should be taxed; will that meet your requirement? Or, are you suggesting a blanket exemption that all the money that is contained in the boxed should be exempted?

SHRI M. H. MODY: I recognise the difficulty and I am conscious of the fact that if you make exemption in favour of boxes, without any restriction on the amounts, there will be a substantial loophole because the amounts may be large.

SHRI VASANT SATHE: You should take into account the size of the box also.

SHRI M. H. MODY: You are right.

MR. CHAIRMAN: I think we are not talking at cross purpose. We are speaking of charitable trusts and not religious bodies.

SHRI M. H. MODY: We are not. I still think that the provision should not come in the way of bonafide collections by way of anonymous donations.

MR. CHAIRMAN: How is it bonafide? Do you mean to say that any amount should be exempted?

SHRI M. H. MODY: Yes, if it is in the nature of collection in a box.

MR. CHAIRMAN: That is a matter of opinion. Mr. Mody, if I have understood you clearly, do you mean to say, that if in a box Rs. 2000 or Rs. 1000 is donated, the income tax autho-

rities should not be entrusted with any authority to find out the real owner of the amount?

SHRI M. H. MODY: If you were to make the provision that, the Income Tax Officer ought to be satisfied, whether in relation to the facts of the case, the nature of the trust, the size of its operations, the amounts collected in a box are fair and reasonable, I would agree with that view. But, the present law says that for every donations, you must know as to who is the real donors.

MR. CHAIRMAN: Assuming for a moment, that it is not the intention of the authorities to seek the identity of the person who puts Rs. 50 in a box and assuming that drafting is done in such a manner so as to exclude bonafide donations in a box, than, if a provision is made to know the identity of a person who puts his black money by way of donation in a box of a charitable trust, do you have any serious and valid objection? You seem to suggest that if black money is donated in a box, it should be completely kept out of the purview of the present Act. I think this is what you have suggested in your memorandum also.

SHRI M. H. MODY: I have. In so far as the money comes into the organised sector, which is a disclosed sector of the economy, the fact that it is black money should not cause any heart burning or reluctance on the part of the Government to give any exemption. The point is that, small bonafide donations should be exempted.

MR. CHAIRMAN: We will see that.

SHRI AMRIT NAHATA: It is the other way round. Suppose, some charitable trust collects two lakhs of rupees and gives a statement that it has collected only Rs. 10,000, how can the Income Tax authorities verify whether the statement of the trust is correct or incorrect?

SHRI M. H. MODY: I agree that there is a difficulty involved. I am

still anxious to see that the *bonafide* collections are exempted.

MR. CHAIRMAN: The *bonafides* will have to be proved by the trust before the assessing officer. Suppose, if a trust collects Rs 10 lakhs by way of donation in a box, it will have to explain as to the manner in which the amount was collected.

SHRI H. M. PATEL: Mr. Mody's point, as I understand, is this. Charitable box collections are a normal practice with many trusts. Quite legitimately, fairly, large amounts might come through these boxes. For instance, let us take the Red Cross or the Flag Day of the Armed Forces. You may collect large amounts through hundreds of boxes. He says that where collections are made and it is clear that they are to be shown, to be justified, there is no question of making these liable to tax. I think I have understood him correctly. It may be that from one box, you may get Rs. 10,000, from another box Rs. 1000 and from a third box, Rs. 100. There are different types of charities, for which, people may have sentimental connections. In one box, it may be more and in another box, it may be less. His point is that when such collections are taking place in a legitimate way, and that too for charity, there can be no objection. His second point, if I have understood him correctly, is this. In any case, since charities divulge their accounts,—when they say that this is the amount they have collected—even if that happens to be a black market contribution, how does it change adversely the economy or whatever be the objective? I think these are his two points, if I have understood him correctly.

SHRI M. H. MODY: You have expressed it much better than I did.

SHRI H. M. PATEL: My view is that we need not discuss this further.

MR. CHAIRMAN: We will proceed further unless some fresh information is sought.

SHRIMATI SHEILA KAUL: I would like to know one thing. Suppose, somebody wants to put a part of his black money into a box—say Red Cross or a temple or a mosque or anywhere—and he goes quietly and puts his amount that he wanted to part with, then, how can you find out that who is the owner? A part of the black money is gone. I would like to know another thing also. Suppose, when the boxes are opened, are they opened in front of the income tax people? Suppose, if a part of it is taken away by the people concerned, how would you know that?

MR. CHAIRMAN: I think we can proceed further. This is a very delicate issue which we can deliberate among ourselves. We have to find a *via media*. Whereas we do not want any hardship to be caused to genuine collections, at the same time, this should not be allowed to be used as a device to rope in black money. We have understood his point. Mr. Mody, you can proceed further.

SHRI M. H. MODY: I would like to deal with clause 8 which deals with the assessment of property income. Here, there is a very substantial change being made in the law, by the insertion of an explanation, which is to the effect that the basis for assessment of property income, which is hitherto upon a notional annual rateable value, is now sought to be changed to the actual annual rent received. You will note from this Chamber's submission that we welcome it. But our submission is that when you are abandoning the notional basis for assessing the basis of income, you should also abandon the notional basis, for expenses. The actual expenses should be allowed as basis for property income.

MR. CHAIRMAN: Are you suggesting that the concept of taxation on notional income should be there? Will you explain the rationale, because it will lead to generation of black money? I will tell you how. Supposing I want to hire a house. It is not allowed deduction for tax purposes. If

the actual rental is Rs. 500, you reduce it by Rs. 400, and you will pass on the rental for Rs. 100 only.

SHRI M. H. MODY: That sort of contingency can arise even under the existing provisions of the law.

MR. CHAIRMAN: Why should it arise now? Where the rateable value is Rs. 400, it cannot be done.

SHRI M. H. MODY: Where the houses are in fact let for rent, it is much greater than the rateable value, in a legal way. I do not understand how when I get income from dividend it is fully used, subject to exemption; but if the income is by way of rent, it is taxed on a national basis. Why this difference? My submission, therefore, is that if you want to abandon it, you should do it completely.

SHRI S. R. DAMANI: Mr. Mody, you know very well that at present, there is acute shortage of residential houses everywhere. If this clause is omitted, how is it going to affect the house-building activities?

SHRI M. H. MODY: My submission is that the purpose of an income-tax statute is not to alleviate the housing shortage.

SHRI S. R. DAMANI: With all the shortages in cement and steel apart, what will be the effect of this restriction through this clause, on the general public or on the persons who are investing their funds for the construction of houses and giving them on rent? Do you think they would like it or discourage it?

SHRI M. H. MODY: I personally feel that it would not have any effect; it would be neutral. Now, I would like to deal with a group of clauses, viz. clauses 12 and 39 which deal with provisions regarding compulsory maintenance of accounts and their corresponding audit. Our first submission is that the limits which are specified in this section are too low; and they should be revised upwards.

MR. CHAIRMAN: According to you, an income of Rs. 25,000 on business is too low. If so, what, according to you, should be the turnover of a person getting that income?

SHRI M. H. MODY: If a man was engaged in a retail grain dealing business, the profit margin is extremely small; but if he is engaged in an advisory capacity, or acting as an advertising consultant, the profit margin may be very substantial. Therefore, to make a single rule of the thumb is unfair. But since one has to make some rule, the limit should be high. We are introducing a new idea which is radical in character and which we welcome in principle. We should experiment with this slowly. We should introduce this at a higher level now. Later, we may lower it. The present limit should be doubled.

MR. CHAIRMAN: Would it be better if we fix it with reference to the turnover?

SHRI M. H. MODY: That would be simpler.

SHRI VASANT SATHE: Is it suggested that the words, "business exceeds Rs. 25,000 or a grand receipt of Rs. 250,000, which is part of annual income" should be dropped?

SHRI M. H. MODY: You might do that, provided that limit is also increased to Rs. 5 lakhs.

MR. CHAIRMAN: Do you say this in respect of professionals also?

SHRI M. H. MODY: Yes, Sir.

MR. CHAIRMAN: How many professionals in India earn Rs. 5 lakhs as gross turnover?

SHRI M. H. MODY: I do not have the means of knowing it.

MR. CHAIRMAN: You are a professional yourself. The idea is that each professional earning more than Rs. 1,000 will have to maintain an account.

SHRI M. H. MODY: It seems to me that this discrimination is not warranted.

MR. CHAIRMAN: I will tell you why it is warranted. Professionals like chartered accountants, engineers and doctors are in a far better position to write up an account, than the pan-wallahs etc. who are not trained to write them up. It is based on a person's capacity plus his earnings.

SHRI M. H. MODY: It seems to be discrimination, that one person engaged in business is expected to do it, whereas others are not.

MR. CHAIRMAN: It is a matter of opinion. Let us leave it at that.

SHRI VASANT SATHE: It will mean putting a premium on ignorance if the pan-shop man is not to be taxed and that a chartered accountant or lawyer is to be taxed. May I ask you, "why do you think that a man whose net income—again I am coming back to that—is Rs. 25,000 a year (whether it is a small business with a large or small turnover, but with larger profits—whatever it is) cannot employ the services of a young man, particularly in view of the large scale of unemployment prevailing in India? would you not expect him to encourage the employment of persons? Do you think that Rs. 25,000 is too small a limit?

SHRI M. H. MODY: There are two provisions involved: one is compulsory keeping of accounts. The other is about auditing.

MR. CHAIRMAN: We are now concerned only with earnings. And the very point which Mr. Sathe has raised, has two aspects.

But there are two things which I want you to consider. Without maintenance of accounts, it is impossible to pin down the professionals and those businessmen who get certain assessments done just by estimates. Apart from the risk of under-assessment of income, you can never pin them down for penalty.

The object of the Bill is to curb evasion. You can check evasion effec-

tively only when you are able to pin them down for penalty purposes. In other words, at present, the position is that it only means that an honest man who earns Rs. 5000 or Rs. 10,000 and maintains accounts renders himself liable to the rigours of all the penalties and prosecutions, but anyone who earns up to Rs. 50,000 but does not maintain accounts is free from penalty. A person who does not maintain accounts can never be liable to penalty; if he does not maintain any accounts, he can never be penalised and sent to jail, and he will always have under-assessment. That is the first aspect.

The second aspect is the convenience or inconvenience involved. One can always employ somebody and pay Rs. 200 or Rs. 250 or Rs. 300 and get somebody to write the accounts, provided he has the intention of getting full, proper and honest accounts. It is from these two angles that I want you to make your submissions.

SHRI M. H. MODY: I have no quarrel with the principle. I welcome the rule that an assessee must be compelled to keep accounts. My only suggestion is that there must be some moderation exercised, that is to say, initially the limit ought to be higher, and it is only after a period of time when you have had experience of its operation that you may bring it down. Otherwise, in principle I concede Shri Vasant sathe's point, and I do not see any major difficulty involved in keeping those accounts.

MR. CHAIRMAN: We shall consider the point.

SHRI M. H. MODY: My next point is in regard to clause 39 which deals with the audit provision. I am looking at these two clauses as co-related. In clause 39, the provision is 'every person other than a company', while clause 12 applies to every person including a company.

As far as companies are concerned, there is a specific provision contained

in the Companies Act, which has been on the statute-book for many years, which specifies that a company should keep proper accounts. Therefore, it seems to me that there is no reason for this distinction that clause 12 should also be applied to every person including a company.

MR. CHAIRMAN: I do not get your point at all.

SHRI M. H. MODY: Clause 39 starts by saying 'every person other than a company'. If you look at clause 12, it starts by saying 'every person carrying on any business or profession'. Therefore, you are making a provision in clause 12 which requires even a company to keep proper books of accounts under this section.

SHRI VASANT SATHE: It will be redundant.

SHRI M. H. MODY: It is superfluous and redundant.

SHRI VASANT SATHE: That does not, however, affect them in any way.

MR. CHAIRMAN: It may be that it is perhaps lacking in drafting finesse.

SHRI M. H. MODY: It is not drafting finesse only. If you make two sets of provisions making identical rules, namely under the Companies Act, providing for keeping of books of accounts, which is already there and under the Income-tax Act and also provide for keeping of books of accounts under....

SHRI R. D. SHAH: To cut the argument short, the reason for putting in this phrase 'every person other than a company' is this. There are certain associations which are declared as companies under the Income-tax Act. That is why it is said 'every person other than a company'. So, if it is not declared as a company, still it may be an association. A company is required to be audited under the company law. So, this type of cases also are intended to be covered by this.

MR. CHAIRMAN: Does it mean that non-companies which are declared as

companies under the Income-tax Act are exempt from this?

SHRI R. D. SHAH: No.

MR. CHAIRMAN: Under section 139, the phrase is 'every person other than companies'. Will it include all the companies including those which have been declared companies?

SHRI R. D. SHAH: In the phrase 'every person other than a company', it means company according to the company law.

MR. CHAIRMAN: The term 'company' has been defined in the definition section. In section 217 it means any institution, association or body, whether incorporated or not whether Indian or non-Indian, which is declared by general or special order of the Board to be a 'company'. I think we shall consider this point.

SHRI M. H. MODY: I feel that I have not explained my point fully and if I may be permitted to do so, I shall explain it further.

As far as section 44B is concerned, it provides that every person which includes a company should keep books of accounts in certain manner. There is also the rule-making power in the hands of the Board under sub-section (2) under which the manner in which the books are to be kept can be prescribed. My fear is that these provisions will create a conflict at some future date with the corresponding provisions of the Companies Act which also provide that books of accounts must be kept.

MR. CHAIRMAN: Are you talking with reference to clause 39?

SHRI M. H. MODY: I am talking with regard to clause 12 relating to section 44B.

SHRI VASANT SATHE: Does he mean that double sets of books will have to be maintained?

SHRI M. H. MODY: Two sets of rules will be in force, one under the Companies Act and the other under

the Income-tax Act. These may be in conflict with each other.

MR. CHAIRMAN: I understand your point. So far as maintenance of books of accounts is concerned, the company law will take care of it, and, therefore, even for purposes of section 44B, companies should be excluded. Companies will come under the company law, and not the companies which are declared to be companies as such. We shall consider that.

SHRI M. H. MODY: As far as companies are concerned, this rule has been in force at least since 1913.

My next submission is also in regard to the two clauses together. There must be reasonable time for compliance in regard to the rules for audit. While the rules regarding the compulsory keeping of books of accounts may be brought into force as soon as the Act comes into force, the rules regarding their Audit should be brought into force after a certain time-lag, so that the assessee would have the time to settle down—and create the necessary systems for audit to be done in the manner prescribed.

MR. CHAIRMAN: Time is there before the filing of the return. The whole purpose will be frustrated if it is not before the filing of the return.

SHRI M. H. MODY: My suggestion was that the rules regarding keeping books of accounts might be brought into force the moment the Act came into force, but the rules regarding Audit should not be brought into force until after two or three years from that date.

MR. CHAIRMAN: What will happen in that case? We talk of audit and maintenance of books of accounts with reference to a relevant assessment year. They will be coming into force from a particular year. Suppose the law comes into force and applies to the assessment year 1975-76. Then, the accounts relevant would be those

relating to the year previous to the assessment year 1975-76, and for that, maintenance of accounts and audit both will be necessary.

SHRI M. H. MODY: That is precisely my point that the audit should not be made necessary from that year but should be deferred for 2 years, because otherwise it will create a lot of difficulties. The question of keeping proper books of account in a manner in which they can be audited by a chartered accountant is not easy and the assessee will have to learn it. Hence a time-lag is needed.

SHRI VASANT SATHE: Those forms will be prescribed.

SHRI M. H. MODY: Forms of accounts will be prescribed.

SHRI VASANT SATHE: From the advice they would take from experts, they would know how to do it.

SHRI M. H. MODY: My fear is also that there will not be a sufficient number of CAs available in the mofussil. If the rule is enforced in its present form, the extent of work involved will be so considerable that in the mofussil you may not find CAs to do this work.

MR. CHAIRMAN: How many assesses are required to do it?

SHRI M. H. MODY: I do not have the exact figures—may be 50,000.

MR. CHAIRMAN: We will be grateful if you will do some research in this and let us know. We want to make a realistic appraisal as to how many CAs are available and how many assesses are likely to be affected. The Dept. will also give us some figures and then we can make up our mind.

SHRI BHAGWAT JHA AZAD: Recently a note was circulated by the Chartered Accountants that only 5 per cent of the CAs in this country are cornering all the big business and 95 per cent are without work.

SHRI R. D. SHAH: The number of CAs is 9,000 and the cases of Rs. 50,000 income are 70,000.

SHRI H. M. PATEL: Mr. Mody's point is that CAs may not be available in the mofussil. I do not know how many of the 70,000 are in the mofussil.

MR. CHAIRMAN: It is a question of supply and demand.

SHRI M. H. MODY: My final point on this subject is this that in connection with any rules formulated by the Board regarding the manner in which books should be kept, the Institute of Chartered Accountants should be consulted and the statutory provision should be made along those lines.

MR. CHAIRMAN: The auditor has to be very objective. He must make a particular commitment, whether capital and revenue are properly apportioned or not, personal expense is debited or not, stock inventory is kept or not etc. Then only it will have some meaning.

SHRI M. H. MODY: I quite agree.

Clause 14; this deals with amendments to sec. 64. I made a reference to this earlier in my introductory remarks. I will deal with the specific issues involved.

The first is regarding aggregation of wife's income with the husband's. Under the existing law, if any businessman or any assessee pays remuneration to his wife or any other member of his family, the ITO has the right to consider whether the remuneration paid is fair and reasonable and whether it should be allowed as a deduction or not. In the light of this, our submission is that if in a particular case the ITO is satisfied that the remuneration is fair and reasonable, there is no reason why the rigours of the law under s. 64 should be applied regarding aggregation of the wife's income. Our plea, therefore, is that a reasonable amount about which the department itself is satisfied by examination which is already carried out should be permitted to all outside the scope of section 64.

SHRI VASANT SATHE: Are you afraid that this will lead to many cases of divorce?

SHRI M. H. MODY: I have no personal experience.

SHRI AMRIT NAHATA: Suppose a managing director employs his wife as interior decorator but the wife never does interior decoration. She bags a fat salary. Should this not be prevented?

SHRI M. H. MODY: Yes.

SHRI AMRIT NAHATA: That is the principal purpose behind this.

SHRI M. H. MODY: I will cite an example. There is a doctor. He employs his wife as a receptionist or operating assistant. In many cases, doctors' wives are also doctors. He pays a remuneration of Rs. 300. She might be a qualified doctor herself.

SHRI AMRIT NAHATA: Then this will not apply.

SHRI M. H. MODY: It will.

MR. CHAIRMAN: I am aware of the existing restrictions, the powers of the ITO to disallow any remuneration etc. which are not commensurate with the market rate. But are you sure that the relaxation in the case of relations is not being abused?

SHRI M. H. MODY: From my experience, I am not aware of any major examples.

SHRI VASANT SATHE: What about minor partners? Do they also serve in a genuine manner in assisting the doctor?

SHRI M. H. MODY: I have not made any such suggestion.

SHRI VASANT SATHE: This covers that also.

SHRI M. H. MODY: I am only dealing with this; I am not objecting to the other provisions.

SHRI VASANT SATHE: In the case of wives, who are themselves doctors, they can charge directly. Why do they need to be paid by the husband?

SHRI M. H. MODY: There is no reason why.....

SHRI VASANT SATHE: They have their income charged. This is a provision made to check devices in commissions and salaries in a *banami* way, in a disproportionate manner. So this is much more important than the exceptions.

SHRI M. H. MODY: That is a matter of opinion. My feeling is that at the present moment, the existing powers of the ITO in the matter are fairly rigorously exercised.

MR. CHAIRMAN: You have evaded my question on that point. If despite that provision, it is being abused, what can we do? We do not want hardship to be created. There are cases where professionals are working. One's own daughter may be working in that capacity; she may be highly qualified. We do not want such cases to be hit. We do not know whether they are hit or not. At the same time, what is the best way of ensuring that the existing relaxations are not abused?

SHRI M. H. MODY: Under Sec. 40A the ITO has the right to determine whether it is fair or not. Whatever he determines as fair should not be included in the husband's income. If he decides that the amount is unfair, the excess amount should be included.

SHRI P. G. MAVALANKAR: I would ask a question which the witness, if he likes, may answer in confidence. Is it a fact that a large number of such relations who are employed are not duly qualified in terms of the requisite qualifications? He gave the example of a doctor employing his wife as a receptionist. In that case, will he pay her the same salary he would have normally paid to another person or because she happens to be a relation, he will pay much more?

SHRI M. H. MODY: While there may be abuse adequate care is taken by the existing powers of the ITO

under Sec. 40A. What may be necessary is that those powers must be more rigorously exercised. But I do not think that the conclusion, therefore, is that a blanket provision of the nature should be made.

SHRI P. G. MAVALANKAR: In the existing provisions, it is already covered. Is it so?

MR. CHAIRMAN: He thinks so.

SHRI BHAGWAT JHA AZAD: Mr. Mody has agreed in reply to Mr. Nahata's question that he does not want the wife to be paid in the name of an interior decorator where the real purpose is to avoid the tax. He agreed that that should not be there. In the other case, he says and I also quote, as the hon. lady Member said, that there was a clinic and the wife was a B.A.B.L. and she was the Superintendent of the clinic. I think we want to avoid such a situation. In the light of this, I ask you have you come prepared to give us an idea as to how we can differentiate between the first and the second aspects? Which could be a genuine case?

MR. CHAIRMAN: I want to appreciate it. It is a very delicate issue. While we do not want any hardship to be caused in a genuine case, we do not want this to be used as a method to avoid taxes.

SHRI M. H. MODY: I have my own limitations, and I am unable to think of a provision by which a statutory distinction can be made. There is no statutory method by which a distinction of the nature which the hon. Member has suggested is possible. The only method is by administrative action by vesting the power with the authority which is perhaps a higher authority than the income-tax officer. That is the only method by which this objective can be achieved.

SHRI S. R. DAMANI: Suppose the income of the minor child in the partnership is included in the income of the parent. My question is connected with this. Suppose one man has three

sons; two major sons and one minor son. The minor has got a gift and he has not been included in the partnership. I want to know whether the income of that son, because he is a minor and because of his contribution to the capital, is going to be added to the income of the parent. If so, will it be justified? I would like Mr. Shah to explain this point also.

MR. CHAIRMAN: Mr. Shah will explain to us the existing provision of the law.

SHRI R. D. SHAH: Mr. Mody said that the provisions of section 40A should be enough and therefore there is no need for this provision. I would like to point out the judgment in the Newton Studios Ltd. case. It has come down to the position that the subjective judgment of the income-tax officer is not the criterion and we have rarely succeeded unless it is so bad that where a man deserves Rs. 100 he is paid a very big sum and there only we have succeeded in interfering. Otherwise, we have hardly succeeded in effectively implementing this provision.

Secondly, the Wanchoo Committee has categorically stated after examining a number of witnesses that this is nothing else but a camouflage. What the Wanchoo Committee said is really enlightening. It says: "Remunerating the spouse in this manner is nothing but an attempt to camouflage one's general income as the income of the spouse. We recommend that it should be provided in law that in computing the total income of any individual, there shall be included all such income as arises directly or indirectly." etc.

The point is, despite these provisions in Sec. 40A—(2) we have found that this legislation leads to litigation, ultimately revolving round the judgement. In view of the widespread misuse of this provision, the Committee recommended this.

MR. CHAIRMAN: I am coming back to the same question again. For the benefit of the Members, I would

just invite their attention to what is existing in the existing provisions of the law on this subject.

As Mr. Shah has pointed out and as you must have seen and I have also seen in my practical working, we do come across an absolute mess that notwithstanding these provisions, there is a case where a person has given evidence before the tribunal that his wife has been working, though we know that the wife has not attended office even for a single day, and she is paid a remuneration of Rs. 2,000 a day. As against this, supposing the wife is a doctor and her poor husband is the receptionist, whatever amount or pay she pays to him will be hit by this. In that sense is it not discriminatory?

SHRIMATI SHEILA KAUL: You are speaking of the wife. But there are many cases where the directors have their girl friends or boy friends to whom they pay. Then what happen?

MR. CHAIRMAN: When we come to clause by clause discussion, we will have to go into such details. At the moment we are on the question of spouse. We will be penalising, in a genuine case, the wife and we would not be penalising not only the girl friend but any other person also who, without deserving the money, is being paid. My question is in view of the statement now made by Mr. Shah, the difficulty is that the existing law is found to be inadequate and it leads to litigation, and we want to find a *via media*. Is there a way out?

SHRI M. H. MODY: The reason why they have found themselves in a difficult situation in view of the decision in the Newton Studios case which supports my view also is because the income-tax officer has not applied his impartial judgement to the question but has acted subjectively, and therefore it has been thrown out. If only the revenue authorities were to act objectively, which is a matter of widespread concern to us, this question would not arise. Because these

decisions are taken on subjective considerations, without regard to facts, they are thrown out in the courts of law.

Then I come to clause 19, which deals with house rent allowance. At present we have got three different steps of rules dealing with three different situations, dealing with an identical subject, namely, how do you compensate for the purpose of revenue the very high house rent paid by assessee. It is an expenditure which an individual has to incur out of his income for the purpose of maintaining his family and his standard of living. There are three rules which govern this. Rule 3 of the Income-tax Rules deals with rent-free accommodation provided by an employer. Rule 2(a) deals with a person receiving house rent allowance. The proposed section deals with a person who is not a salaried employee. My first submission is that there ought to be a rule which should apply to everybody. These three rules are not all-comprehensive. They exclude a class of people to whom none of the benefits is available. For example, an employee who does not receive any house rent allowance does not qualify for relief under rule 2(a). I see no logical reason for this discrimination. All these three rules ought to be made into a homogenous section which gives relief to all the persons to the same extent and does not discriminate between each other.

This argument applies equally to conveyance allowance. Now clause 19 provides for all kinds of assessee to be provided with relief. This should correspond more or less with rule 3 of the income-tax rule, namely, that the first ten per cent of the man's income should be treated as not entitled to relief, but any allowance paid in addition to ten per cent up to 25 per cent should qualify for relief. While there should be some sort of minimum there should be no maximum.

SHRI BHAGWAT JHA AZAD: How can you equate salaried people with people who have income from various sources, including from investments on shares and deposits?

SHRI M. H. MODY: I see no reason why the concession given to a salaried employee of a certain nature should be denied to a self-employed person. I think it amounts to discrimination. That is the main defect of our system of taxation; it bristles with this kind of discriminatory provisions.

MR. CHAIRMAN: A salaried person is in a far more disadvantageous position than a self-employed person. Do you agree with me?

SHRI M. H. MODY: No, an honest self-employed person is in a worse position than a salaried person.

MR. CHAIRMAN: Even an honest self-employed person is in a much happier position. He can get the conveyance expenses actually incurred by him, the office expenses incurred by him. The various expenses that he incurred are all allowed to him. In the case of salaried person, they are statutorily provided; beyond that nothing is allowed.

SHRI M. H. MODY: I do not think a salaried employee incurs those expenses. He does not maintain an office or employ staff. Then, a self-employed person has no provident fund, no pension, or other superannuation benefit to all back upon.

MR. CHAIRMAN: I am speaking of taxation only. Don't you see the distinction between persons who draw their income from salary and those who draw their income from other sources?

SHRI M. H. MODY: No, I do not.

Then I come to a very important clause, clause 26 (and also clause 27) which deal with amendment of section 104. Firstly, for the life of me, I cannot see how these provisions have anything to do with the basic objective of this legislation, namely, to pre-

vent the proliferation of black money. Here is an example of a case where some statutory amendment of a radical nature is being made which is not related to the basic objectives of the legislation. Secondly, I submit that here is a amendment which is going against the national interest. While it may be motivated by considerations of revenue, it will not be in the long-term interest of the country to make a provision which will result in retarding the growth of industry. For the benefit of the hon. Members I would like to explain that for the past many years the provisions of section 104 have ceased to be applicable to manufacturing companies. Basically, section 104 provides that you must compulsorily distribute a certain portion of your profits by way of dividends. It was felt by Government that this resulted in the dissipation of resources by enterprises and, therefore, in 1964 Government thought it fit not to apply this provision to manufacturing companies. Thereafter, Government appointed the Boothalingam Committee, which examined this question and suggested that section 104 should not be applied at all, in fact, it should be abolished. A similar recommendation was made by the Wanchoo Committee. In the light of all this, I personally fail to see any justification for making a provision of this nature which will only have the effect of depleting the resources of companies, thereby preventing them from growing and increasing their employment and investment which is necessary for the purpose of national growth. This is my general objection in principle.

SHRI AMRIT NAHATA: You are perhaps aware that this was a provision which was already applicable to public limited companies which is now made applicable to private limited companies also. If you feel that the proposed section will discourage the manufacturing industries, there is a way out; let the private limited companies be converted into public limited companies.

SHRI M. H. MODY: I am glad you made this point, because I was myself

going to do it. I would like to say that, strictly speaking, it is not correct to say that this will apply to private limited companies. It will apply to companies in which the public are not substantially interested.

You are also aware of the point that we have mentioned in our memorandum that the definition of "company in which public are substantially interested" is one of the most complex definitions in the statute.

My other objection is that the clause in its present form will have a drastic effect for the majority of companies to whom it will apply. It is not 45 per cent compulsory requirement which will apply but it is 90 per cent requirement which will apply. There are two provisions for certain companies. Compulsory requirement is 45 per cent but if your accumulated profits are equal or greater than your reserves, then 90 per cent requirement applies. Because of the fact that since 1964 there has been no compulsory distribution of profits, the companies have accumulated profits and the majority of the companies will be affected by the 90 per cent requirement. These companies will have barely anything left for the purpose of ploughing back in the business of the company.

SHRI AMRIT NAHATA: Let them be converted into public limited companies. Then, this will not apply.

MR. CHAIRMAN: In other words, the question is: Why not have the companies in which public are substantially interested instead of having such companies? Why not get out of the definition?

SHRI M. H. MODY: We must appreciate that it is not possible for every company to become a public limited company as defined in Section 2(18) of the Income-Tax Act. Firstly, there is the question of size. Companies below a certain size are not capable of becoming public companies because they will not be granted quotations by the stock exchanges. There are certain minimum-size re-

quirements imposed. A company must be of a certain size before it will qualify for becoming a public limited company. All such companies have hardly any profits to distribute as dividends.

SHRI BHAGWAT JHA AZAD: Will you agree, if these difficulties are removed, it will be advisable that those private limited companies are converted into public limited companies in the larger public interest? You are pointing out the difficulties that exist today. Suppose these difficulties are removed. Will you welcome this then?

SHRI M. H. MODY: The assumption that difficulties can be removed is one which I would like to challenge. It is a question of what is a "company in which public are substantially interested." This has been engaging the attention of the draftsman for the last 25 years. Every year the Government has made amendment to bring out the intention of the Government. But in spite of the repeated amendments the result has been that companies which are not intended to be treated as companies in which the public are not substantially interested—companies which are listed on the stock exchange, the companies which are well-known public companies,—are nevertheless treated as private companies for Section 104 purpose. The definition is so complex. So long as that definition remains it will create a lot of litigation.

SHRI BHAGWAT JHA AZAD: Have you given a thought as to how this complexity can be removed? Can you suggest a way out?

SHRI M. H. MODY: The only manner in which you can do is to delete the requirement altogether.

SHRI S. R. DAMANI: Will you agree that by putting this restriction, the small entrepreneurs or new entrepreneurs who are coming up with setting up industries will be hard hit because they will not be able to make a public limited company as their

shares are not subscribed to by the public? Besides this, by distributing the entire profits, they will not be able to expand and enlarge their business. So, they have to depend on borrowings from others.

SHRI M. H. MODY: I agree with you.

SHRI AMRIT NAHATA: You will probably agree that the closely-held companies enjoy certain advantages in law over the largely and widely-held companies.

SHRI M. H. MODY: I am not aware of any major advantages. There may be some minor advantages.

SHRI AMRIT NAHATA: If the closely held companies are required to distribute their profits as dividends to their limited number of shareholders, you think that this would act as a disincentive for the accumulation of capital in that particular manufacturing sector. This is an argument which has been invariably advanced to get concessions. But the actual experience is that "capital" is interested not in increasing production but in decreasing production and they find ways and means to see that production is confined and limited and prices are artificially raised. At least to me, this argument of giving more incentive for more investment does not hold good.

SHRI M. H. MODY: It is a matter of opinion. Personally, I feel, this concession which has been in operation for the last 8 years has resulted in tremendous growth of investment, in its employment and profits. You will recognise that businessmen are interested in profits. There can be profits only by increasing production. Therefore, today, when there is a need for increasing production at all levels, whether it is a small company or a large company, I think, this provision goes against the national policy.

I would like to make an analogous point that we must not look at this provision from the point of view of raising revenue but also from the point of view of national interest.

I agree that by inevitable process of growth and size, these companies will become public companies. But to make this kind of a provision in the taxation statute does not seem to be warranted.

MR. CHAIRMAN: If the proposed amendment becomes a law, as it is, then Section 104 becomes applicable to all the companies which fall within the fold of Section 104. Even the companies mentioned in sub-Section (4) which are manufacturing and processing companies do not enjoy immunity from Section 104. You say that once sub-Section (4) is amended in a manner contemplated in the Bill, the liability will rise. To what extent?

SHRI M. H. MODY: 90 per cent compulsory distribution of profits.

MR. CHAIRMAN: How do you get that figure?

SHRI M. H. MODY: I would like to invite your attention to clause 27 of the Bill, sub-clause (b) (2).

MR. CHAIRMAN: That is in the case of an investment company.

SHRI M. H. MODY: It has to be read in conjunction with sub-Section (4) of Section 109. This is not being amended. It remains on the statute book and it will come into force.

MR. CHAIRMAN: I do not think there is any confusion.

SHRI R. S. SHAH: It does not apply. You will see in sub-clause (3), in the case of industrial company, where it is wholly, the statutory percentage means it is 45 per cent and, whether it is partly, it says:

“in the case of an Indian company, not being an industrial company, a part of whose gross total income consists of profits and gains...”

“(a) in relation to the profits and gains attributable to such business”.

Then, in relation to the remaining part of its gross total income, if it is invested 90 per cent, in other cases 60 per cent. Therefore, the profits of

the industrial portion of the company's activities will be covered only by 45 per cent.

When you come to section 109(4) on which you rely, 'in the case of any other company not referred to in the preceding clauses', it means that in the case of trading companies and other companies, if they have a reserve, then it comes to 90 per cent.

SHRI M. H. MODY: Mr. Shah, you are right. I am grateful to you.

MR. CHAIRMAN: The second point that you tried to make was that it would compel the companies to declare dividends—if they do not declare dividends, they would be liable to pay something by way of income-tax for their failure to declare the statutory percentage of dividends—and that this goes against our programme of production. What I want to know from you is this. How do you directly relate non-declaration of dividends with growth in production, unless you assume that accumulation in the company itself means production *suo moto*?

SHRI M. H. MODY: This is a demonstrated fact. If this amount is distributed as dividend, a substantial portion will go away as taxes and the individual will be left with no resources for investment. If it is retained by the company, it is a matter of demonstrated fact, from my own personal experience, that these companies, in fact, invest these resources in productive enterprises.

As a matter of fact, the distinction between industrial company and non-industrial company is unreal. It is unfortunate that the legislators as well as the administration are attached to this idea that productive activity is something useful and in the national interest, while any kind of trading activity is anti-national and against the national interest.

MR. CHAIRMAN: It may have its own purpose. but is certainly not as urgent and important as industrial activity.

SHRI M. H. MODY: Firstly, there is the difficulty that you may be engaged in a trading business which is nevertheless necessary for the purpose of supporting a manufacturing business. After all a product which is manufactured has to be sold. Where the manufacturer himself sells the product, his activities are not hindered, but if the manufacturer employs a third party who carries out selling, then it is affected. You may be engaged in a business of transport or in a service industry. There are all kinds of industries which not only eventually contribute to employment but also under useful services. I personally see no distinction, whatever, between a manufacturing company and a trading company; all contribute to national development. If these trading companies did not exist, national development would be hindered.

MR. CHAIRMAN: Yes. We shall consider this

SHRI M. H. MODY: Another analogous point is this. When the Amendment was made in 1964 by which application of Section 104 to manufacturing companies was deleted, there was a corresponding change in the rate of tax applicable to such companies in the Finance Bill. There was a differential tax imposed upon such companies. If we are going to revert to the previous position, my submission is that there is a clear case for not making a distinction in the charging section, namely, the rate differential between a public company and a private company should be abolished. There is no need for a distinction of this nature.

Next I would like to deal with Clauses 42 and 43 which deal with self-assessment as it is called in our system of taxation. We have no quarrel with the principle that a person must pay his taxes immediately or as soon as practicable and feasible. Therefore, we are not objecting to the basic principle, but we think that a reasonable amendment should be

made to ensure that the law could be complied with. We have pointed out the difficulties which obtain even in place like Bombay which is a developed one, for example, in obtaining receipted challan from the Reserve Bank. One can then imagine the difficulties that would be faced elsewhere. Therefore, we feel that, at the most, what should be done is that the requirement of paying the self-assessment tax within 30 days may be brought down to 15 days.

I would like to observe that amendment to Section 158 requires two things: to pay the tax on or before furnishing the return and to produce evidence of that at the same time. If, for some reason, the challan is not available, I have delayed it and then I have to suffer the consequences of delay. I am not quarrelling with the principle, but my submission is that a reasonable concession should be made for compliance with the formalities.

My second and more violent quarrel is with the proposed amendment to Section 151A. I feel that there is a need for equity in our system of legislation. Whenever a provision is made against the assessee, it seems to go one way and when a provision is made for the benefit of earning revenue it seems to go another way. When you find this clear departure from equity in two sections which are so close to each other...

MR. CHAIRMAN: What is the departure?

SHRI M. H. MODY: The departure is this, if I have to pay my tax, it should be done immediately. I only ask that similarly, I should get my refund immediately. The existing section, in fact, provides a position which is much better than the amendment.

MR. CHAIRMAN: You want it to remain as it is?

SHRI M. H. MODY: Yes. I suggest that the existing provision should be retained at the very least. I would

go further and say that there should be a statutory provision for refund to be granted within 30 days of filing the return.

MR. CHAIRMAN: Please tell us the process.

SHRI M. H. MODY: The Department should resort to the same process. They should accept my return as it is.

MR. CHAIRMAN: What you are suggesting is that the moment on the basis of the return the ITO finds that the tax paid is in excess of what was due from him on the basis of the return, he must straightway return. Is that so?

SHRI M. H. MODY: Yes. That is right. This provision follows the American pattern under which you pay the tax with the return. They are not required to produce a challan; you just send a cheque. Correspondingly there is the obligation statutorily on the revenue authorities to grant you a refund within 30 days. I would like to mention about one incident. I was with the Internal Revenue Service in New York. I heard about the case of an assessee who made 6 applications in his own name after an interval of two or three days in each case claiming refund. The computer passes on this information. Six refunds are granted to him. After a lapse of 2 or 3 years you scrutinise the return. The revenue authority discovers that the assessee has obtained six refunds of identical amount. It was found; he was prosecuted and sent to jail. They did not take the decision that the rule should be abolished. The rule is a sound rule. Simply because one man abuses the rule, you do not abolish the rule.

MR. CHAIRMAN: How this illustration helps you?

SHRI M. H. MODY: It helps.

MR. CHAIRMAN: It is a matter of opinion. What do you suggest then?

SHRI M. H. MODY: Time limit might be extended.

MR. CHAIRMAN: That is one thing. Either the ITO makes assessment within 3 months or he gives refund within 3 months.

SHRI M. H. MODY: I would accept that.

MR. CHAIRMAN: We will consider.

SHRI R. D. SHAH: We have introduced the self-assessment scheme in which our intention is to see that assessee are not called to the department. This should apply to 75 or 80 per cent of the cases. He is in a position to make the assessment without calling the assessee to come there. I know the difficulty Mr. Mody points out. There are administrative bottlenecks which we are trying to clear up. But the law provides that in respect of self-assessment cases we do not want to call the assessee. Last year we did 75 per cent; this year, we hope to do 80 per cent.

MR. CHAIRMAN: If you give proof when you give your complete return that saves the trouble of going to the ITO; the assessee will be glad if they can avoid seeing the ITO.

SHRI M. H. MODY: What we require is that proof should be provided as soon as possible. We can send the challan by post later on.

MR. CHAIRMAN: You suggest that in case he is not able to do so, some provision should be made.

SHRI M. H. MODY: Don't insist on proof if it is complete in other respects.

MR. CHAIRMAN: If challan is not there, if there are certain difficulties, there are refund difficulties, he will have to come to the department in any case.

SHRI VASANT SATHE: Why not have payment by cheque?

MR. CHAIRMAN: Payment by drafts to the Department? We will think about it.

SHRI VASANT SATHE: That will come closer to the American system also.

MR. CHAIRMAN: We will consider. You may please proceed.

SHRI M. H. MODY: Clause 58 relates to the Settlement machinery.

SHRI BHAGWAT JHA AZAD: What would be the repercussion if the assessee wants to pay by draft or by cheque, and not by challan which consumes most of his time and his energy? Take up that point and please let us know whether it suits the department. If not, let us know, why not.

MR. CHAIRMAN: Do you accept it is a good provision.

SHRI M. H. MODY: In principle I have no quarrel with settlement.

MR. CHAIRMAN: You mean you have something to say on the mechanics.

SHRI M. H. MODY: There should be an independent judicial body. This is our suggestion. The present machinery whereby it is consisting of Members of the Board itself is not a satisfactory proposition. Being executive members having the responsibility for the collection of taxes as Members of the Board, I fail to see whether there is really any distinction between the Settlement Committee and the Members of the Board. Members may work as individuals and not as a Committee; there is also a provision like that.

MR. CHAIRMAN: I am not able to understand. Settlement body is not appellate body. What is sought to be done is, they cut short possibility of protracted litigation; this is some sort of rough and ready method provided both the sides play a fair

game. That is the basic requirement. What is your objection to that?

SHRI M. H. MODY: Present machinery is rather one sided. If you approach the Settlement Machinery with a proposition you have got to accept whatever the Settlement Committee says. You can't withdraw later on? You can't say, it is not acceptable to me. If you give me the right of appeal, I can understand about it. That is why we suggest that it should be independent judicial body.

MR. CHAIRMAN: I don't think that is a realistic appraisal. If you think the Department is unnecessarily trying to be unreasonable, you can proceed ahead. This is only to cut short litigation as I have already mentioned.

SHRI H. M. PATEL: He is saying that this arrangement is one sided. That is a point of view which you can consider.

MR. CHAIRMAN: We are discussing. We have no point of view. I have not made up my mind.

If there was a provision, as a result of which one not being satisfied, you have this constitution. Because of this provision constitution is likely to be one sided. I was suggesting to him that so far as penalty is concerned, that is immutable. If he has good grounds to give us that this is not fair, he can tell us and we shall consider.

SHRI S. R. DAMANI: What I understand is if in the Settlement Committee one weaker officer is included, they will go more to the Settlement Committee and in this way litigation will be averted.

MR. CHAIRMAN: It is not compulsory for the assessee to go far settlement. He has either to go through normal procedure of assessment, appeal, etc. As an alternative, Government wants to try a new system of settlement. It will depend

upon how far this Settlement Committee will be able to inspire confidence in the public. But it is not compulsory for the assessee to go there. The new instrument is being applied, and future will show about its success or otherwise.

SHRI M. H. MODY: If you wish the assessee to come forward before the Settlement Machinery, then they must have confidence in it. The idea is to avoid litigation. I may draw your attention to 245(d) and the words 'interest of revenue'.

SHRI S. R. DAMANI: The Settlement Board should announce that we are not interested in revenue and then come for settlement. Mr. Chairman, if you want to say 'judicial body' it will go as a regular court for hearing both sides in litigation.

MR. CHAIRMAN: It is the totality of the circumstances and not the revenue by which they will be motivated. What I am saying is that having members in this Committee who are otherwise members of the Board, are not going to jeopardise the nature of the Committee which is going to adjudicate. It is not going to be an independent body like a tribunal. It is not going to be an appellate body; it is not going to be a High Court or a Supreme Court. In this set up Members of the Board do come up.

The Judicial Officer will have to act and go through rules. 'Interest of revenue' will not be imposed but by virtue of rules there will be some latitude.

Assessment is made on Rs. 10 lakhs on those who do not have 1 lakh or 2 lakhs. They are likely to be sent to jail for 150 years if they have to live such a long life. Is there a process by which you can mitigate the absurdity?

SHRI P. G. MAVALANKAR: In order to introduce an element of confidence in that Committee what are the concrete suggestions in regard to the composition and functioning of this Settlement Committee and in

what way the provision of Settlement Committee is not an improvement over the existing provision?

SHRI M. H. MODY: The Board may consist of two persons—Chairman of the Board and the other should be an independent Judicial Officer who are not related to the activities of the Department.

Alternatively, the right of appeal or the right of withdrawal of my application may be given.

You are thinking in terms of compromise. How can this system work, if it is one sided.

SHRI P. G. MAVALANKAR: How does he justify withdrawal, I do not know?

MR. CHAIRMAN: We do not want them to go as a matter of experiment—just try if you can snatch anything. We have to take it seriously.

SHRI M. H. MODY: This is not a question of taking advantage of the situation of experimentation. Assessee is required to give all the information he has. The basic objective of settlement is to deal with cases of disclosure of undisclosed money. Having made disclosures to the revenue if you say he has no right of withdrawal, you have got the information on the basis of which you can take action.

SHRI BHAGWAT JHA AZAD: The moment you find, it does not suit you, you go back; the purpose is defeated.

SHRI M. H. MODY: What we want is fair treatment.

MR. CHAIRMAN: If someone has to exercise this right, it is an onerous right. It is a right, as a result of which there is another avenue of evasion. To my mind, if the scheme is to work, any departure from the basic scheme will frustrate the purpose.

SHRI M. H. MODY: In my limited judgment, I feel that a machinery of this nature will not have the confidence of the assessee and, therefore,

you will have very few cases coming forward.

With regard to the second point, let us for a moment also think of the genuine cases. I am not talking of evasion cases. There are also cases, where compromises are necessary. If it is to cover those cases, then I want a judicial board. In cases which do not involve tax evasion, you may provide for these remedies by way of appeal or a right to withdraw the application.

SHRI BHAGWAT JHA AZAD: If the right of withdrawal is there, the purpose is defeated.

MR. CHAIRMAN: You have been going to the Board earlier in cases where there is a dispute between the assessee and the Department. What prevents you to do that now?

SHRI M. H. MODY: There we have a right to withdraw. I make a proposition, if the Board does not accept it, I withdraw.

MR. CHAIRMAN: That is what is sought to be avoided.

SHRI H. M. PATEL: Government is providing a new machinery, which is an experiment. Mr. Mody seems to think the way this machinery is to work, the number of people who will go for settlement will be small. I think, he is entitled to hold that view. The scheme envisages this. The assessee may go voluntarily after considering all the factors and it is understood that the settlement Board's decision will be final. He will not be able to withdraw—on that basis he will go with his eyes open. If he does not wish to go, he will not go. The scheme will not work. Mr. Mody says, if you really want this scheme to work, then you will have to make it better, put some judicial person on the Board, who is independent and will inspire more confidence. It is a suggestion.

MR. CHAIRMAN: Please go ahead with the next clause.

SHRI M. H. MODY: I want to deal with clause 76, dealing with the provisional attachment of properties. I fear, that this provision is likely to result in considerable harassment to the assessee. While I understand that the revenue wishes to safeguard its interest, I cannot think of any assessee, who has not any proceeding pending before the authorities at any stage. You have an assessment pending before the Income Tax Officer, or have an appeal or a petition before the Commissioner. That means, if I want to sell any piece of property, the revenue will hold me to ransom saying I cannot sell while the proceedings were pending.

MR. CHAIRMAN: It does not refer to an proceedings, it refers to proceedings of assessment. Therefore, the contemplated action under this Section will have to be with reference to proceedings of assessment which are pending, and not any proceedings. With this modification, what do you say about this?

SHRI M. H. MODI: This is going to result in considerable harassment; that is what we feel.

SHRI BHAGWAT JHA AZAD: It is not necessary in all cases. It is only when the Income Tax Officer feel necessary. It is not a blanket power. If the ITO feels that way, then it is necessary to sell any property with his prior permission.

MR. CHAIRMAN: An honest man, who pays tax at the highest rate every quarter, has to strain every bit to pay money to the exchequer. A fellow, who is dishonest, does not worry. By the time the assessment is made, the property etc. has been disposed of. I do not think, this section will apply in every case where regular payments are being made. What are the genuine cases, where you think, hardship is likely to be caused?

SHRI M. H. MODY: This is a new Section, therefore, one has to visualise the kind of cases which are likely to arise in the light of one's general experience of dealing with income tax authorities. I fear that this is a very extensive power. I can understand the power which is to be exercised subject to some judicial checks, but it is very extensive power. This is very extensive power which is likely to hold the assesseees in terror.

SHRI VASANT SATHE: Is it not a fact that if such a provision had existed before, a large number of assesseees would have been in arrears today without any likelihood of their being recovered.

SHRI M. H. MODY: I am afraid that the situation which you are referring to is purely due to the total incompetency of the Revenue Department, in administering the existing provisions which are sufficiently extensive.

SHRI VASANT SATHE: What about the huge arrears and how are they going to be recovered?

SHRI BHAGWAT JHA AZAD: How would you like to protect our interest?

SHRI M. H. MODY: I said there was already a provision requiring a tax clearance certificate to be obtained in the case of sales of movable property. This law applies to any property.

MR. CHAIRMAN: I would not like any genuine man to be harrassed. Kindly cite a single case.

SHRI M. H. MODY: All penalty proceedings are started first against the assessee but as a result of discussion, explanation or appeal, they are dropped. Such procedures can always create difficulties.

MR. CHAIRMAN: No, no. This is just to ensure that you do not defeat

the right of the Revenue by your dwindling away your assets.

SHRI H. M. PATEL: There is no question of any arrears here at all. We are clearly, considering secret larger assessments. Here, you are only referring to the current assesseees in which case on what ground can the income tax department form an opinion that the property should be assessed?

MR. CHAIRMAN: The number of such cases is not one or two, but there are hundreds of cases where they are not able to recover large assessments. There are cases where the ITOs do not have the power to attach property every time it takes four years for making an assessment or three years for making an assessment or two years time now.

SHRI R. D. SHAH: The idea behind it is this. When you refer to the assessment which is being made, the liability has already accrued but the existing law does not provide for attachment.

When you start making an assessment and a fraud comes to your notice, it will take time to make an assessment which may be a period of three years. When a man knows that he is going to be caught, he starts frittering it away.

MR. CHAIRMAN: In all those cases their right to recover the amount is defeated and these are cases of this nature.

SHRI BHAGWAT JHA AZAD: I want to know from the Government whether there is any provision, at present, in the income tax law, under which, when an assessee has got to pay, he takes a clearance certificate?

MR. CHAIRMAN: This is with regard to movable property above Rs. 50,000.

SHRI BHAGWAT JHA AZAD: Please show that point. Mr. Mody, does it hold good?

MR. CHAIRMAN: That is not merely a check in their hands, but there are so many cases. How do you envisage that this can really act adversely and prejudicially in a genuine case? You have not been able to give a single case.

SHRI M. H. MODY: It is an apprehension. Then the question of penalty in Wealth Tax is very important. As you are aware, under Wealth Tax, there is a serious problem of evaluation and it is a matter on which there may be a difference of opinion between various parties. Even the revenue authorities have themselves differed on the question of evaluation of property from time to time. The existing provision in the Act contains a safeguard which is being deleted by the present provision. I would like to draw your attention to the explanation (1.) I am reading it out: "where the value of any assets returned by any person is less than 75 per cent of the value... then, such person shall, unless he proves that the failure to return the correct value did not arise from any fraud or any gross or wilful neglect....." In other words, there is a saving clause. If you can prove it, you can get the benefit of not being penalised. Then you cannot be penalised for submitting a value which is different from that which is determined by the revenue. Now, under the proposed law, there is a proposal that if there is a difference between the two values, then you are subjected to penalty no matter whether you have exercised due care and caution which the law requires. The consequences will follow upon you. I think this is very severe and ought to be looked into by this learned committee.

MR. CHAIRMAN: This existing provision is a special rule of evidence.

SHRI M. H. MODY: There is in the existing law firstly, a reversal of the normal rule of evidence and the burden is cast upon me to prove that I have acted bonafide. That burden

remains to be discharged by me. I must prove that the failure to return the correct value did not arise from fraud or a gross or wilful neglect on my part. Even this limited right which is given to the assessee to prove that he has acted bonafide is taken away. In other words, even if he acts bonafide, even if he is capable of proving that he has acted bonafide, so long as there is a difference between the assessed value and the returned value, he is liable to penalty.

SHRI BHAGWAT JHA AZAD: Suppose, if he wants to prove that he acted bonafide, is that also taken away? Does it mean that the punishing authority will summarily discharge the case? Is that your interpretation?

SHRI M. H. MODY: I draw that conclusion from Explanation (4).

MR. CHAIRMAN: This is the only safeguard. He has to prove the correct value. What do you interpret that to be?

SHRI M. H. MODY: The revenue authorities, at some stage, either the ITO or the Appellate Commissioner or the Tribunal or the Court of Law, must accept the figure which is shown in the return. This never happens. There are always bonafide differences in value. This can happen all the time without his acting *mala fide* in the matter.

MR. CHAIRMAN: Are you trying to intepret this to the effect that the value shown by him in the return is the correct value. In that case, the explanation will be redundant.

SHRI S. NARAYAN: The intention is that if there is difference of more than 30 per cent he is liable to penalty. An opportunity is given to him to prove that the value returned by him is, according to him from the patterns that he adopts for valuation, the correct value. For instance, I would put it this way.

I am saying this on my own. Suppose, he has furnished a certificate from the valuer, for this valuation, then, normally, it shall be presumed that the value given by him has been proved.

MR. CHAIRMAN: Mr. Mody, would you be satisfied if the drafting is done in such a way that the bonafide intention is included?

SHRI M. H. MODY: In that case, it would meet my point. I do not think that the legislation in its present form agrees with the explanation now given by the Board.

MR. CHAIRMAN: The intention is clear. If the Government has not brought about the intention, this can be done.

SHRI VASANT SATHÉ: We should consider the question of drafting and

making the necessary changes, to make the intention clear.

SHRI M. H. MODY: I would like to refer to amendment of Section 281 of the Income Tax Act which also deals with attachment of property in cases involving defrauding of revenue. It declares such transfers as void. In fact, under the existing Section, the authorities have got a right to set aside such transfers.

SHRI BHAGWAT JHA AZAD: You have got a right; if the assessment is due and if he transfers, you can set aside. But, we should keep the horses inside the stable rather than allow them to go out of the stable.

MR. CHAIRMAN: Thank you very much, Mr. Mody. Thank you all Gentlemen.

(The Witnesses then withdrew).

RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973

Wednesday, the 19th September, 1973 at 14.00 hours in Council Chamber, Legis-
lative Assembly Building, Calcutta.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Dharnidhar Basumatari
6. Shri Tridib Chaudhuri
7. Shri K. R. Ganesh
8. Shri Mani Ram Godara
9. Shri Maharaj Singh
10. Shri P. G. Mavalankar
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri Vasant Sathe
13. Shri Era Sezhiyan
14. Shri Satyendra Narayan Sinha
15. Shri C. M. Stephen
16. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer, *Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)

1. Shri R. D. Shah, *Chairman, Central Board of Direct Taxes.*
2. Shri S. Narayan, *Joint Secretary.*
3. Shri R. R. Khosla, *Director.*
4. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

I. Indian Chamber of Commerce, Calcutta**Spokesmen:**

- 1 B. M. Khaitan—President
2. Shri C. S. Pande—Secretary General.
3. Shri M. Chaudhuri—Sr. Asstt. Secretary
4. Shri R. S. Lodha—Member
5. Shri S. S. Kothari—Member
6. Shri H. C. Dass—Member.

II. Calcutta Yonoastrian Community's Religious and Charity Funds, Calcutta.**Spokesmen:**

1. Shri D. R. Bhesania—Senior Trusee
2. Shri J. M. Guzdar—Secretary.
3. Shri P. M. Narielwala—
4. Shri C. R. Irani

I. Indian Chamber of Commerce, Calcutta

1. Shri B. M. Khaitan—President.
2. Shri C. S. Pande—Secretary-General.
3. Shri M. Chaudhury—Sr. Assistant Secretary.
4. Shri R. S. Lodha
5. Shri S. S. Kothase
6. Shri H. C. Das

(The witnesses were called in and they took their seats)

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: It is the convention of this Select Committee to point out that your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Now, Mr. Khaitan, you may start.

SHRI B. M. KHAITAN: Sir, we are thankful to the Select Committee

for giving us an opportunity to appear before them. Our Chamber has given careful consideration to the provisions of the Taxation Laws (Amendment) Bill, 1973 and their detailed views have been set out in the memorandum which has already been submitted to you. I would like to take this opportunity to make a few preliminary observations before the Committee.

I wish to emphasise that the Chamber shares Government's anxiety to plug any loopholes in the law, to curb any undesirable practices and to prevent the growth of unaccounted money. But, we feel that in this process genuine difficulties should not be

created in the way of smooth running of the corporate sector. After all, it is important that business and industry should expand and far too many restrictions should not have the effect of slowing down economic activity. As far as unaccounted money is concerned, we feel that the problem cannot be solved merely by legislation unless the basic causes are rooted out. The Wanchoo Committee clearly identified these basic causes as follows; (a) High rate of taxation (b) economy of shortages and consequent controls and licensing (c) donations to political parties. The Wanchoo Committee had laid down the maximum emphasis on the high rates of taxation as the first and foremost reason for tax evasion and had recommended that the maximum marginal rate should be brought down to 75 per cent along with suitable reductions at the middle and lower slabs. The Committee had also suggested that at no stage of income however high, should a taxpayer be left with less than 25 per cent of the additional income after payment of income tax. Increasing control on distribution and prices were identified by the Wanchoo Committee as another important cause for tax evasion and creation of unaccounted money. They were in favour of reducing controls to absolute minimum levels. Government have, however, not taken action on these recommendations of the Wanchoo Committee which we feel could have a salutary effect on the tax structure as a whole. On the other hand, the recommendations of the Wanchoo Committee which purport to impose more penalties and restrictions have been accepted. I would respectfully urge on behalf of the Chamber that the Wanchoo Committee's more positive recommendations to reduce the incidence of taxation need to be favourably considered by Government if tax evasion has to be effectively discouraged. I would also like to refer to some recommendations of the Wanchoo Committee relating to company taxation. The Committee had

recommended that domestic companies should be taxed at a uniform rate of 55 per cent, irrespective of whether they are public or private, widely-held or closely-held and industrial or non-industrial. This has not been accepted and the effective rate of tax on companies continues to remain at 65 per cent to 70 per cent and is a severe disincentive to corporate growth. Similarly, the Committee's recommendation to abolish section 104 has not been accepted and instead the Bill now seeks to enlarge its scope by requiring compulsory distribution of dividends by Indian industrial companies. This would result in reducing the internal resources of such companies which would otherwise have been available for ploughing back into industry. Another important recommendation of the Committee that has been ignored is the abolition of surtax which has been widely recognised as a tax on efficiency. If all such recommendations had been accepted that would go a long way to strengthen the corporate sector, particularly at the present time when increased industrial production and a higher rate of growth is so vital for the economy.

As far as the penal provisions are concerned, it is now sought to empower the department to penalise and prosecute the assessee merely on the ground of suspicion and presumption. What is particularly unfortunate is that it is being provided that the assessee will be deemed to be guilty of an offence unless he proves to the contrary. The task of managing and running a company is already becoming extremely difficult due to the variety of restrictions provided under different legislations. Even an honest manager may unknowingly contravene a minor provision of the law and is now exposed to severe penalties and even imprisonment. Such a trend in our

legislation, I feel, Sir, is discouraging entrepreneurship in this country which is not in the larger interest of the economy. I would respectfully urge upon the Committee to give their dispassionate consideration to this aspect of the legislation. The Law Commission, in their 47th Report on the Trial and Punishment of Social and Economic Offences, while generally recommending that the accused should prove his innocence, specifically excluded taxation laws from such requirement mainly for two reasons, namely, that they are far too complex and complicated and, second, that they are changed too frequently. It would be worth mentioning here that over the last decade taxation laws have been changed as many as 25 times and not less than 800 odd amendments have been carried out in the process. The proposals under the Taxation Laws (Amendment) Bill, we feel, Sir, are directly opposed to the recommendations of the Law Commission. The various penal provisions and punishments across the board are also harsh. There is provision for rigorous imprisonment up to seven years whether for concealment of tax, or for non-payment or even failure to submit a return in time. Hardly any difference is made between the nature and gravity of an offence. This to our mind, Sir, is inequitable.

I would also make a reference to some provisions in the Bill relating to the assessment of charitable trusts. These trusts are at present fulfilling an important social purpose and are engaged in helping the poor and are contributing a great deal for public good by supplementing Government efforts in various social fields. The provisions of the Bill, as we see them, will weaken the trusts and discourage their activities. A complete ban has been proposed on trusts investing their funds in any business concern other than Government companies and even existing investments are required to be withdrawn within a period of five years. This amendment would reduce the income of

charitable trusts drastically, thereby curtailing the ability of the trusts to discharge their benevolent activities. I would respectfully suggest, Sir, that instead of a total ban some guidelines may be laid down in this respect whereby the trusts could be permitted to invest in approved investment which may include company shares. A further proposal is to bring under taxation the old trusts which were set up before the 1st of April, 1962, for the benefit of particular religious communities or castes. In most of these institutions in practice people belonging to other communities/religious are also given the same facilities. This needs to be looked into by the Committee. Another proposal is that a person would be regarded as a substantial contributor to a trust if his "total contribution up to the end of the relevant previous year exceeds five thousand rupees". We feel that substantiality should have some relationship to the totality of the contributions. We have made our suggestions in this regard in our memorandum.

In conclusion I would respectfully urge upon the Select Committee to kindly consider the genuine difficulties which will be faced by the honest tax-payers if all the proposed amendments to the income-tax law are accepted. We feel, Sir, that it is equally necessary to encourage honest tax payers by providing incentives for voluntary compliance with the law. We trust the Select Committee would kindly give their sympathetic consideration to this aspect also. A further need is to provide some stability in our tax structure. As I have already mentioned, more than 800 amendments have been carried out in the tax laws over the last 10 years. Such frequent changes lead to instability and affect business decisions and planning. Tax laws should be stable at least over a Plan period.

I would also urge that tax legislation should, in equity, be given prospective effect and not be made effective retrospectively so that actions taken in good faith and under the

existing law are not penalised by subsequent changes in the law.

We would be glad to give any clarification or explanation in respect of the written memorandum that our Chamber has submitted to the Select Committee.

SHRI S. S. KOTHARI: Mr. Chairman, if you kindly permit, I would like to make a few submissions.

MR. CHAIRMAN: Members will now put questions on the submission made by Mr. Khaitan. After we dispose of this, you can make your submission.

SHRI VIRENDRA AGARWALA: Mr. Khaitan, you might be aware that the Wanchoo Committee, about which you referred so much, has mentioned that the black money has exceeded the figure of Rs. 10 thousand crores by now—Rs. 7 thousand crores has been mentioned and it is estimated that the figure has gone as high as Rs. 10 thousand crores. Naturally, it is a concern for all quarters. Every honest citizen wants to curb it. You have suggested, 25 per cent should be left. Suppose, Government is not in a mood to do so, do you have any other suggestion to make which Government can take to curb the black money?

SHRI B. M. KHAITAN: It is a difficult question. In curbing black money we all agree with you and we support any action that you would like to take, but the main cause of black money is the incentive. If human being cannot save money from profit—high rate of taxation encourages him to create black money.

SHRI VIRENDRA AGARWALA: Government has to decide because black money has become a parallel economy.

SHRI B. M. KHAITAN: In our view, reduction in the tax rates is the only method by which we can achieve this. Moreover, this figure of Rs. 10 thousand crores is also an arbitrary figure. Anybody can say, it is

Rs. 9 thousand crores or Rs. 8 thousand crores.

SHRI VIRENDRA AGARWALA: Wanchoo Committee itself mentioned Rs. 7 thousand crores and it is frequently mentioned that the unaccounted money has reached the figure of Rs. 10 thousand crores. You can certainly deny the figure. In the process of incentive, so far as production is concerned, incentive and production are correlated. What is the sort of protection you envisage?

SHRI B. M. KHAITAN: I would submit, Sir, I do not think that there are so much restrictions and such high rate of taxation anywhere in the world. There may be parallel economy after the war when things were not as good as they should be but every developing country is moving towards incentive whereby we can increase our production. You expect the business community to help solve the unemployment problem, but there is no incentive. Every day legislation is coming for restriction.

SHRI VIRENDRA AGARWALA: Incentives are always meant for increasing production. It's no use saying that if incentives are not there people have a tendency to acquire black money.

SHRI S. S. KOTHARI: The main point is that you should lift controls. At one time production of sugar had increased considerably. At that time the price was less in the open market than what it was being offered through the ration shops. If you can increase production control becomes automatically unnecessary. If control is there some unscrupulous traders try to take advantage of the controls by selling commodities at higher prices in the black market. With lesser controls you will have less amount of black money.

MR. CHAIRMAN: Your contention is that with high rate of taxation people acquire a tendency to have black money. But in Kenya or in Hongkong where there is low rate of

taxation still black money is operating there. How do you explain the position?

SHRI B. M. KHAITAN: Kenya is unfortunately a deceptive country because of political instability. Also it is surrounded by politically instable countries like Tanzania, Malawe etc. where people have got insecurity regarding their future . . .

MR. CHAIRMAN: That is a matter of opinion. Tax evasion was less with the tax rates prevalent in 1950.

SHRI B. M. KHAITAN: 1973 is different from 1950. People's moods are changing now. Today at the tax rates of 1950, I think it will definitely be disincentive to create black money.

SHRI K. R. GANESH: You are a very intelligent and knowledgeable person. You must have seen that these things regarding tax evasions by largest Houses are being discussed in the Parliament day in and day out.

SHRI B. M. KHAITAN: I can also say that there are lot of Houses which are honest also.

MR. CHAIRMAN: Perhaps you will agree with me when I say that where the whole idea is about concentration of economic power there arise the chances of tax evasions.

SHRI B. M. KHAITAN: Nobody likes concentration of economic power.

MR. CHAIRMAN: Assuming your suggested rates are accepted, what do you think, the percentage would be by which the quantum of tax evasion would diminish?

SHRI VASANT SATHE: Supposing in any way your recommendation or the Wanchoo Committee's recommendations, if accepted, are to bring it down. You have laid emphasis on the Wanchoo Committee's recommendation that the maximum marginal rate should be brought down to 75 per cent. along with suitable reduction at the middle and lower slabs. I would like you to please let us know

if you have thought on those lines or if you have got some broad outlines.

SHRI B. M. KHAITAN: It is not possible to quantify the corresponding reduction of tax evasion. But experience in many other countries have definitely shown that ultimately revenue increases because of tax reduction.

MR. CHAIRMAN: What should be the overall rationalisation of tax structure according to you?

SHRI VIRENDRA AGARWALA: Wanchoo Committee said that if the tax structure is rationalised then Government will lose revenue of about Rs. 45 crores. Do you think that if the tax structure is rationalised then Govt. would gain anything more than Rs. 45 crores?

SHRI S. S. KOTHARI: Point is, we do not support evasion, that is clear, and secondly it is not possible to quantify exactly. The point is that 70/80 per cent of the people of India are honest and so give them the opportunity to pay taxes properly. 10/15 per cent of the people would never pay the taxes whatever be the taxes and with regard to them you can deal with them according to law but for the vast majority of the people who are good citizens but some of the tax rates have driven them to evasion. Neither 90 per cent are absolutely honest nor the 10 per cent are absolutely dishonest. If you want to rectify those people and get more revenue then that can be done by lowering the rates of taxes as is the experience of Japan, West Germany, U.K. and USA. What has happened there? They have reduced taxes and their income has gone up, consequently their production has increased and there has been industrial growth. So, for the sake of 10 per cent dishonest people please don't penalise everybody.

SHRI VASANT SATHE: I agree that 70/80 p.c. of the people are honest in this country. But you wanted us to make positive recommendation in your memorandum about this. You are experts in the business world, in

the industrial world, and so can you tell us in some concrete terms how much amount you feel would come if it is reduced?

SHRI S. S. KOTHARI: Nobody can quantify, I am sorry, Sir.

SHRI C. S. PANDE: When you reduce the rates of taxes you increase the saving capacity of an individual to invest in more productive activity.

MR. CHAIRMAN: That is a different aspect of the matter. I think we must confine ourselves to the objects of the Bill, and we can only think of measures to curb black money in the light of the recommendations of the Wanchoo Committee.

SHRI TRIDIB CHAUDHURY: Supposing there is a rational tax structure and the rates are such that you consider them reasonable, would you welcome the other provisions, the general provisions? You have complained about stringency, about penalties and all that. Now the main purpose of this Bill is unearthing of black-money—we may agree or may not agree with you that this Bill does not go to the root of the matter but if the laws are made stringent then there will be prevention of accumulation of black-money. So, how far would you agree with the general structure of the Bill?

SHRI B. M. KHAITAN: On this point one can only give his experience about other countries. More legislation and more restrictions create more and more difficulties.

SHRI TRIDIB CHAUDHURI: Are you not trying to have it both ways.

SHRI SYED AHMED AGA: I think the large majority of tax evaders are not the general masses of the people. It is perhaps confined to higher group, and not the middle or lower middle groups—I know they do not evade tax. So, if what you say is accepted then there will be loss of about 40 crores of rupees towards revenue.

SHRI B. M. KHAITAN: Sir, generally speaking our basic thinking is that tax evasion is going at the lower

level also. To-day, even a pan-shop owner can lend Rs. 10,000/- to a person whereas a businessman after paying his taxes—even if he earns Rs. 5,000/- a month—cannot lend Rs. 10,000/- to any person. So, it is upto you to decide whether more restriction should be imposed on 10/12 or 15 big houses to make them more dishonest or not. You are the custodian and whatever you will decide we will have to follow.

SHRI DHARNIDHAR BASUMATARI: Mr. Chairman, Sir, I have gone through the memorandum of this Learned Chamber of Commerce. When the witness first welcomed the Bill, I thought that he would welcome all the measures proposed in this Bill by the Government to check tax evasion and to unearth black money. But I find that there is no point suggested by them to help the Government and there is also no point to show that they are willing to co-operate with the Government. We have examined many witnesses and I find there is no witness who came and supported the whole Bill. According to them it is obvious that tax evasion is there in other countries also. Sir, everybody of us excepting one or two has visited all the countries. Sir, there is vast difference between our attitude and that of the people of other countries. They feel that tax evasion is a crime and to do something wrong is also a crime. But here in our country, it is regrettable to say that there is no feeling like that. The Government has brought this Bill just to check tax evasion and to unearth black money and we would expect that the learned witnesses would tell us the loopholes so that the Government may plug those to curb tax evasion. It is obvious that there is tax evasion from big business houses. So I would earnestly request the witnesses to co-operate with the Government.

SHRI P. G. MAVALANKAR: I would like to know from the learned witness of Indian Chamber of Commerce as to whether reduction from higher percentage will accompany at

least equivalent reduction in tax evasion and if not, it is no use pointing at human nature

MR. CHAIRMAN: Exactly.

SHRI P. G. MAVALANKAR: While we would like to see that honest people are encouraged by tax reduction but is there any guarantee by itself that merely by the fact of reducing the tax you will be able to eliminate tax avoidance? If not, then what are your concrete suggestions by way of fiscal and other legislative measures which should accompany the reduction of direct taxes from 97 per cent to 75 per cent?

SHRI K. R. GANESH: Mr. Khaitan, you started from a wrong premises when you cited the instance of a pan-shop owner. This is only a factual information. Some persons who are not within the tax slab may not be paying the tax. The problem really lies with the high brackets.

SHRI ERA SEZHIYAN: We are concerned with tax evasion resulting in black money. You can find this if you go through the report of the Wanchoo Enquiry Committee. It is at page 8. According to them this cannot be applicable to the common man.

SHRI S. S. KOTHARI: Sir, year after year the taxes are going up. So my submission is why not have a sitting with the Commissioners of Income Tax and the Minister and the Chairman and know their opinion about this?

SHRI K. R. GANESH: It is decided on the basis of economic policy and economic frame work.

SHRI S. S. KOTHARI: But we must take advantage of our officials on whom we are to depend for the execution of our policies?

SHRI C. M. STEPHEN: Sir, the Wanchoo Committee made certain recommendations. There were certain recommendations made on the positive side and certain recommendations were made on the curative side. The curative recommendations have been

accepted. Now, assuming that the Wanchoo Committee's recommendations are accepted in toto i.e. the positive side of the recommendations is accepted by the Government progressively would you or would you not agree that the other recommendations of the Wanchoo Committee which are incorporated in this Bill would be effective and would be accepted and would be incorporated in the provisions of the Bill?

MR. R. S. LODHA: You very rightly mentioned this question that if the rates are reduced, would the other proposals be acceptable. We should be guided by two things—firstly, the Wanchoo Committee came to this conclusion, after careful detailed examination, i.e. after examining the witnesses and statistics and made the suggestion for rationalisation of tax structure.

SHRI C. M. STEPHEN: I am not challenging this aspect. I am emphasising as to whether the administrative measures which are proposed in the Bill are acceptable to you. The rates etc. of taxes are different. In order to plug the tax evasion of even 10 per cent would you mean to say that some amendments are necessary?

SHRI R. S. LODHA: We have the Wanchoo Committee Report in our experience. It is very difficult to generalise but there are some basic recommendations in it with which we have no disagreement. I propose to take us some other recommendations also, for which you may consider suitable measures as you think proper, even if you accept the basic recommendations of the Wanchoo Committee or not. For instance our President referred to the question of clauses 26 and 27 regarding the closely held Industrial Company. The Wanchoo Committee suggested that there should be a uniform rate of tax of 55 per cent in all companies and there should be no distinction between the manufacturing company and the non-manufacturing company. Here, the Chamber would mention that the amendment in question was made a few years

back whereunder the manufacturing companies paid lesser tax and did not remain under compulsion to distribute dividends. Let us consider the experience of the new entrepreneurs. Supposing when any such person wants to go in the manufacturing line he obviously just cannot go to public and offer and sell his shares.

MR. CHAIRMAN: No Mr. Lodha. You are deviating from the main point. It is our experience—the Wanchoo Committee's experience too—that relief is to be given to the assessee. This committee is in a very precarious position as to how the Wanchoo Committee's Report is to be treated. Any way let us come to the next point.

SHRI S. S. KOTHARI: With regard to charitable trust, we are not opposed to the basic idea that charitable trust should not be used as an instrument either for tax avoidance or as a media for holding shares in groups. We are absolutely in unison with the Government that these charitable trusts in our country have been performing useful purposes. I think these charitable trusts are performing very useful services to the people through educational institutions and medical institutions etc. which are financed and helped by these charitable trusts and to that extent they are useful to the society. On this background we have to judge the provisions that have been provided in this Bill. One of the provisions, is that the anonymous donations should be taxed. I submit, Sir, that tax at 65 per cent should not be imposed in all cases, because in the street collections like Red Cross, St. John Ambulance some amounts are collected in the boxes. If these collections are taxed at 65 per cent, people's incentive would be reduced. When many of these charitable trusts perform social function, if these collections are taxed, this will have adverse effect on the street collection. So, my submission is that there should be certain limit in the case of street collections and there should be certain different rates of tax on the anonymous donations.

MR. CHAIRMAN: What is your concrete suggestion? Are you agreeing that the provisions as incorporated in the Bill should be retained or there should be some amendment to mitigate the hardships?

SHRI S. S. KOTHARI: I suggest that certain limit should be there. 70 per cent of the anonymous collections of these charitable institutions should be tax-free. In some cases only 10 per cent should be taxed because it is seen in some cases that more than 75 per cent of the collections are used towards charity.

MR. CHAIRMAN: Some coloured money is coming into charity, which I want to be taxed. I would request you to suggest any rationalisation of tax, if you have got something in your mind. We do not want that all payments are taxed because they may be getting genuine payments from different organisations. But where there is a group of anonymous donations, clear provision for their heavy taxation is to be made in the Bill.

SHRI S. S. KOTHARI: If the coloured money is coming into any charitable organisation it must be taxed heavily. But I submit that there should be certain limit of percentage of such anonymous donations which should be free of tax.

SHRI ERA SEZHIYAN: In your memorandum you stated in Clause 6(a)—“Actions taken in good faith and in accordance with the law and the custom prevailing at that time, should not be penalised by subsequent legislation.” So, do you suggest that they should not be penalised or action taken against them? If so why?

MR. CHAIRMAN: I think, that you are now dealing with the religious trusts and their performance.

SHRI S. S. KOTHARI: With regard to the religious trusts such as Muslim Wakf Trusts, Parsi Trusts, etc. it would be unfair not to give them opportunity of rationalisation. There should not

be any differentiation between different trusts of Hindus or Muslims or any other religious trusts. I am absolutely opposed to that provision. Either the provision should be deleted or should be provided time and machinery so that these trusts along with other charitable trusts can be extended exemption.

MR. CHAIRMAN: Do you think that there are legal difficulties in modifying the object of the trusts? Suppose the present trustees alter the trust written by an author, who is not there—have you applied your mind to this aspect?

SHRI H. C. DASS: From the framework of the Trust it is to be ascertained, but certain supplementary declarations are to be executed, and for that purpose time should be given.

MR. CHAIRMAN: Giving time is of no avail. As per law it is not possible for the High Court to make or amend the objects of the trust.

SHRI VASANT SATHE: Have you considered that if statute requires certain compliance the High Court can alter the original provision of the objects of the trusts particularly if the statute of the land requires it even at a later stage?

SHRI S. S. KOTHARI: Legal position may be examined later on.

SHRI VASANT SATHE: If it could be done legally then whether would you allow a particular trust to fall in line with the present requirement i.e., not to act contrary to the objects of the provisions.

SHRI S. S. KOTHARI: Yes Sir, that is my suggestion. Regarding investment by trusts, it is provided in the Bill that after 5 years charitable trusts would not make any investment in shares. My submission is that even under existing law this investment can not be used for controlling companies in the group. If the investment is less than 5 per cent then only that investment would qualify for exemption of income tax. My point is that in view of such restrictions why deprive these

trusts from earning income at a higher rate. They should at least be given the opportunity of investing in preference shares and debentures and loans. In case it is decided that you are not going to permit the trusts to hold any share or loan say after 5 years most of the trusts would have to liquidate their investments or they would have to sell their shares which could have been beneficial to the poor people. My submission is that those capital gains should be permitted to be invested not only in government securities but also in unit trust securities, fixed deposits with banks and also approved investments. This point may also be considered by the Committee.

SHRI SYED AHMED AGA: As we know charitable trusts are created in order to help the spread of education, sanitation and various other things amongst the needy people. But on the other hand, I find that there is some kind of manipulation in order to put that amount created as a trust in particular shares which yield more and more profits. My point is that if the yields from these trusts are taxed, that will be utilised by government for development of the country and will also narrow the gap between the rich and the poor. So why not pay tax out of the investments of the charitable trusts?

SHRI S. S. KOTHARI: May I submit, Sir, is this not a voluntary ceiling on income if a person contributes a sum of money to a charitable trust for relief of the poor, for education and other social welfare measures? If a trust gives loans, that also may be helpful to an activity for development. Further, the proposal will lead to litigation if we have to decide what activity for profit is related to the primary purpose of the trust and what is not related. I submit that this proposal should not be there at all.

SHRI SYED AHMED AGA: The other point that I want to ask is about the investments that you are making.

SHRI S. S. KOTHARI: To that my only submission is that the charitable

purposes may act as social welfare measures and if the trusts have more incomes from investments which are used for charitable purposes, then there should be no objection. The Committee may also consider that.

SHRI VASANT SATHE: Sir, the basic question is this. Would you say that we should encourage the practice of charity. First allow people to earn income beyond a certain limit, then allow them to invest something in the form of charity as a social welfare measure and then not to tax it so that it could be utilised for charitable purposes? Would you encourage this method of social welfare or as has been pointed out, a more direct method of social welfare via the investment directly in government securities or by way of giving tax? What would be more advantageous ultimately for the country?

SHRI S. S. KOTHARI: We admit that tax has to be paid but I think private charity also helps in increasing social welfare, e.g. giving scholarships to poor students, catering to the need of education amongst the poor and so on. My point is that you have to balance between the two things.

SHRI VASANT SATHE: The idea of restriction was particularly with regard to those trusts or those companies or investments which try to control certain companies. Therefore, to put a curb on this, the idea was to put a restriction on that tendency. Would you say that the trusts which have at present invested in shares which can be used for controls should be allowed to convert those shares in debentures or other investments which do not give them a controlling hand?

SHRI R. S. LODHA: If I may answer this point. We agree that the charitable trust funds should not be used for purposes of control of companies. Even today there are existing provisions in the law to take care of this. For instance, section 13(2) of the Income Tax Act prohibits investment of trust funds in which the donor or

any of the trustees has a substantial interest. It goes on to cover even the relatives. Again, there are specific sections in the Companies Act—section 153(b) read with section 187—providing that wherever the trust holds shares worth more than Rs. 1 lakh and up to Rs. 5 lakhs in certain cases, the voting rights are invariably to be exercised by the public trustees. We submit that the important point should be that the objects of the trust are charitable in nature and that in effect the activities of the trust also continue to be charitable and the funds are not used for control. Provided that even finance should not be provided should be no discouragement of such institutions.

MR. CHAIRMAN: Pausing here for a moment, on your assumption, if there are investments in debentures or preferential shares on which dividends are not in arrears, will it be exempted? Will you still be hit by 13(2)(h)? The Bill wants that even finance should not be provided.

SHRI S. S. KOTHARI: Debentures also should be exempted.

MR. CHAIRMAN: There are two aspects. There is to be no control, no concentration of power and also that finance is not to be provided.

SHRI H. C. DASS: Our submission is that if there is no control the finance should not be prohibited.

MR. CHAIRMAN: You are suggesting that we amend this existing 13(2)(h).

SHRI H. C. DASS: 12(2)(h) provides that so long as they carry reasonable security and reasonable rate of interest.

MR. CHAIRMAN: You are referring to sub-section (3), But none-the-less these two provisions lead you to one inevitable conclusion that the trust funds cannot be made available for purposes of financing of business. That is the injunction of the existing law.

SHRI H. C. DASS: There are two aspects. One is this period laid down for disinvestment, i.e. 5 years. The other is, so long as a trust holds up to 5 per cent shares in any undertaking or company, it does not lose tax exemption. If it is more than 5 per cent it loses its exemption. This hits a trust very hard. The Board will bear with me, there are trusts which pay more than 97.5 per cent income-tax because they could not throw away the shares they held. Not only this, they are paying wealth tax which is more than the income-tax. If we now tell them to disinvest all these shares it will be difficult.

MR. CHAIRMAN: You say 5 years' period is not enough.

SHRI H. C. DASS: My submission is that whatever law may be made, it should be prospective and not retrospective. If at all such restrictions are to be made, they should apply to investments made after this.

MR. CHAIRMAN: Your suggestion is that the existing trusts should be allowed to enjoy.

SHRI VASANT SATHE: It seems they are in agreement with the spirit of the legislation. If it is found on experience that the existing provisions for plugging loopholes have been ineffective and if the legislation tries to do something more effective, they seem to be in agreement.

Secondly, on the principle of retrospectivity you know the well-known principle of law that if the law declares a particular thing illegal then even those sections which become illegal by virtue of that law, the penal provisions apply to those sections which become illegal by virtue of those provisions made hereinafter although they may be originated before. Therefore in that sense it is not retrospective at all. What have you got to say with regard to these points.

SHRI H. C. DASS: The approach is from the point of view of a common man, from the point of view of a Welfare State. There are two points. As regards the point that the fund of

a trust is misutilised, to that our reply is that already there is a provision in the law and in so far as misuse of fund is concerned, that has already been taken care of by the existing law. The law is very well drafted and this has already been taken care of.

As regards retrospectivity, our submission is that fiscal laws are not particularly made retrospective; they are given prospective effect. Now, Sir, another point is that if a trust holds shares in TATA companies or in ICI companies, under the existing provisions this trust will have to disinvest all those shares. No trust will be able to buy one share in any limited company in India.

SHRI VASANT SATHE: Supposing we allow them to convert those shares into debentures. What will happen then.

SHRI H. C. DASS: This will need amendment of the existing provisions of law. This will cause hardships to the trusts. There will not be good returns.

MR. CHAIRMAN: I can understand to the extent you are saying that existing provisions should take care of what the present legislative measure seeks to take care of through the new provisions. We are already keeping in tact whatever we can. Regarding prospectivity and retrospectivity, an outright blanket ban is sought to be imposed.

SHRI H. C. DASS: In the past guidelines were set as to what investments a trust will be allowed to make and what investments it will not be allowed to make. Our submission is that such guidelines should be set out for future investments by trusts and whatever investments a trust holds at present it should not be compelled to throw away.

SHRI H. C. KHAITAN: After all charity stands for what: it is meant for doing some social good.

SHRI B. M. KHAITAN: In the private organisations some genuine Tr-

usts are being run where genuinely good works are done. All my submission is, please do not make any law to stop that help. Govt. have all the powers to stop mal-practices. After all, all are human beings, for some bad people why do you stop good and honest people doing good and honest job?

SHRI R. S. LODHA: Sir, this is a question of charitable trusts. I am sure, most of the honourable members here are in some way or other associated with some such institutions. Whether big or small, there are two things common in all such institutions. One is that they operate on tight budget, may be 50 lakhs or may be 5 thousand and secondly there are invariably some honorary dedicated workers behind the institution with every large number of beneficiaries. So, our submission is that in that perspective the existing activities should not be disturbed through reduction of available funds without appreciable impact on Govt. revenues.

Then, Sir, I come to Sec. 104 with which the Chamber is closely concerned. Sir, when the Govt. relaxation came a few years back in relation to manufacturing companies it was obviously done with a view to encourage productive activity and the experience is that it has really helped a new entrepreneur or small entrepreneur who wants to start manufacturing activity and wants to redeploy profit. Now if he is forced to distribute that, then he does not have any plough back and in that sense it will be a retrograde step. To-day there is inflationary pressure in the economy. If we are forced to pay more dividend it is not clear how it will help the situation. On the other hand if the companies are allowed to retain the profits there will be further expansion. Sir, after all, self-financing is the best form of finance—instead of taking loans from banks if entrepreneurs can stand on their own legs it should have the blessings from all quarters. Of course, there is a feeling

that the intention is not to discourage such companies from functioning but to force them to go public. I would submit it is not always possible easily. It is not open for the entrepreneurs of all sizes in all situations to just go public. So, if there is any blanket compulsory distribution there will be lot of difficulties.

MR. CHAIRMAN: Your point is that it would be inflationary, it would be disincentive to manufacturers and sufficient money will not be available to plough back. Therefore, what is your suggestion?

SHRI R. S. LODHA: When Govt. is keen to encourage entrepreneurs nothing should be done which results in loss to them.

MR. CHAIRMAN: We will consider.

SHRI VASANT SATHE: What about limitation—you say 25 lakhs or a new entrepreneur need not be public company but we say otherwise. Do you suggest that even above that we must encourage as private companies.

SHRI R. S. LODHA: Yes, Sir. Our submission is that at any level whether 25 lakhs or more plough back into productive activity should be encouraged by Govt. If this is not acceptable then at least Govt. should exempt companies with paid-up capital of up to 25 lakhs. Moreover, the manufacturing companies at least should get exemption as they are getting at present.

There is another question in relation to companies and that is in respect of allowance of business expenditure incurred by assesseees on account of commercial expenses. This point was raised earlier that some expenses are necessary to-day regarding entertainment or maintaining of guest houses and all that. Companies all over the world incur those expenses. And then this expenditure is increasing there is a growing gap between the real commercial profit and the

assessed profit. This Committee may consider whether this gap should be reduced. If there is a blanket ban I think it will widen the gap.

MR. CHAIRMAN: We are not interested in the gap but tell us if it has any bearing on evasion and then only it will have some meaning.

SHRI R. S. LODHA: According to Wanchoo Committee it has some bearing on evasion.

MR. CHAIRMAN: You always attack the Wanchoo Committee but now you are quoting the same. Please tell us your own views about the merits of the provision and that would be more convincing.

SHRI R. S. LODHA: Sir, our next point relates to clause 10 which seeks to amend section 32 of the Act so as to permit flexibility in regard to prescribing depreciation for ships. Our submission is that this flexibility should be extended and power should be given to the Department for prescribing and allowing higher write-off earlier specially in the context of the rising costs with reference to replacements and looking to the example of other countries viz., United Kingdom and Ceylon. These countries allow write-off at early stages. This will result in additional plough-back for priority industries and in view of inflation this would be helpful.

MR. CHAIRMAN: You want more depreciation so that it may help the entrepreneurs?

SHRI R. S. LODHA: Yes, Sir, I now come to the next topic i.e. clause 14. It is now provided that in the case of spouse any payment by way of salary, commission, fees or other form of remuneration in which the other spouse has substantial interest in it there would be blanket disallowance of such income or in other words those incomes will be included in the income of the spouse. Our submission is that the existing Section 40A is sufficient to deal with this matter. Sir, I can understand the justification not to allow the expenditure which

is either excessive or is fictitious but we should always have some flexibility and discretion available with the I. T. O. at the time of assessment. Suppose a man starts a new practice as a doctor and his wife who is a qualified nurse may have a natural bias to work with her husband. In such cases it should be open to the taxing authorities to apply their mind to it and to disallow according to law if they feel that her emolument is excessive. But why there should be a blanket ban.

MR. CHAIRMAN: Mr. Lodha I appreciate your points but the real difficulty arises when you come to actual assessment and then you will find it impossible to distinguish one from the other. What rational basis would you suggest for distinguishing one from the other?

SHRI R. S. LODHA: In that case the honourable Committee may consider that the onus of proof to show allowability is shifted to the assessee.

MR. CHAIRMAN: On whom is the onus now? It is on the department, I think. If you are claiming this then it is for the department to say that it is not allowable. If you are saying that it is the salary and this amount of income tax is allowable on the salary then it is for you to prove that the services have been rendered that means the onus is on you. Have you got any better method to suggest?

SHRI VASANT SATHE: What would you suggest if you were to enumerate a few glaring obvious examples which many Chambers of Commerce had already given to us? In the case of a doctor where the nurse is his wife, would it serve your purpose if the wife who is actually working as a nurse is exempted from income tax?

So far as other professions are concerned there are numerous instances where the wife who is actually working as a clerk, is shown to be acting as a Manager, Interior Decorator, Ad-

viser Market Surveyor etc. etc. and draws a fabulous salary. So, how to distinguish the genuine person from the other one? Would your Chamber enumerate and communicate to us the absolute genuine cases which according to you would be excluded? Would it serve the purpose?

SHRI R. S. LODHA: It should serve the purpose.

SHRI VASANT SATHE: You see, we do not want to cause hardship to the genuine persons.

MR. CHAIRMAN: The basic point is that we are not able to distinguish one from the other human ingenuity being limitless and boundless. Even the Department is at its wit's end to distinguish between them.

SHRI B. M. KHAITAN: Sir, after all we are not a party to such things viz. interior decorators market surveyor etc. etc. We are responsible businessmen. We do not like this sort of thing. We are taking up this case basically to show that there are some genuine cases which deserve consideration.

SHRI VASANT SATHE: But why do you leave it to the subjective consideration of a party?

SHRI S. S. KOTHARI: Let the doctor have professional qualifications. That would finish.

SHRI S. S. KOTHARI: I welcome the points that have been inserted regarding agreed assessments in the Bill. Clause 14 says where an assessment is to be done beyond a certain amount say about 25,000, a draft assessment order would be sent by the I.T.O. to the assessee and if the assessee wants to plead against that he can approach the Inspecting Assistant Commissioner, now known as Deputy Commissioner. The Deputy Commissioner can ask why he does not agree with such provision. My submission is that can the provision not be extended, i.e. whether the I. T. O. himself can discuss with the assessee as to what would be his disallowance. If they could, by discussion, arrive at

an agreed assessment that 'well upto 10,000 or 20,000 this assessee agrees' I feel in that case a considerable part of appeal would be dispensed with. I feel, if this could be considered by the honourable Committee it would be really worthwhile and we would have some really good performance in income tax administration in this country.

MR. CHAIRMAN: I do not wholly share this view. There is some doubt in my mind that this procedure may lead to administrative duplication.

SHRI B. M. KHAITAN: Sir, let me say something about the penalties and prosecution. What we feel is that the genuine business men may fall in some difficulties. There may be some defects and deficiencies in maintaining the papers for which there are some penal provisions in this clause—clause 64. So this clause is very harsh. I do not want to be a party or I do not also support for any illegal Act or anything which has been done as wrong. They are subject to prosecution. Suppose a genuine Manager or a Director signs thousands of papers following the existing law. But the laws are changing from time to time, so he may be in darkness of the frequent changing of laws. But the legal power is there, and the genuine people fall in difficulties. So, terrors come through all these harsh penalties and prosecution, which you may kindly consider at the time of passing the Bill.

MR. CHAIRMAN: Do you mean to say that under the existing provision honest men are likely to be harassed.

SHRI B. M. KHAITAN: Yes, Sir.

MR. CHAIRMAN: As you have got some genuine apprehension that the new provisions of the Bill which are being contemplated are likely to cause hardships and harassment to unsuspecting honest man who inadvertently commits error, you are opposing these provisions—Kindly enlighten us.

SHRI B. M. KHAITAN: Sir, I am not a lawyer or a man of any legal profession. All I can say, that in the present Act about tax deduction at source, if a company unintentionally fails to deduct it at the source and does not comply with legal formalities due to complexity of law, it invites extremely harsh penalties, I can give only a practical example and I cannot give any legal interpretation.

MR. CHAIRMAN: I am not going to the legal plane, but this is a serious matter. It has also appeared in your memorandum. That is why you perhaps have come prepared today to say that there are some provisions of which we should be careful. Section 276(B) says, if a person without reasonable cause or excuse fails to deduct or after deducting fails to pay the tax he should be punished.

SHRI B. M. KHAITAN: If a person deducts money but he does not comply with the legal formalities he should come under the provisions of penalties and prosecution.

MR. CHAIRMAN: If you are serious about it, would you submit your views clause by clause in writing?

SHRI VASANT SATHE: Mr. Chairman, Sir, before you conclude may I ask one point to Mr. Khaitan as to whether a man will be punishable if he deducts the tax but does not pay it?

SHRI B. M. KHAITAN: If he willfully does it, he must be punished.

MR. CHAIRMAN: What is your suggestion about Clause 25?

SHRI H. C. DASS: As regards Clause 25, it is being provided that if a person has to borrow money for the purpose of payment of tax then the interest on that money is now allowable to be set off against his income.

Then why the money borrowed for tax payment is not allowable to be set off against the business. In this connection there was a High Court Judgement in Chiranjilal case. In this case it was decided that in future the interest paid on the borrowed money should be allowed to be set off against the business.

MR. CHAIRMAN: We will consider it.

SHRI H. C. DASS: Next point is about Clause 19, i.e. about house allowance. Certain concessions are available where accommodation is provided by the employer to his employees likewise if an employer pays house allowance certain concessions of tax are also allowed. In the case of self-employed person if he owns a house then 10 per cent. This income is to be subjected to tax.

MR. CHAIRMAN: We will consider.

SHRI H. C. DASS: As regards Clause 16, the point is that companies other than investing companies, banking companies and other financial companies, if they purchase stock or shares, these are to be considered as speculative. Because they have certain surplus money, they have to invest the surplus money. This should not be treated as speculative business. Secondly, all these manufacturing income rate goes upto 60 to 70 per cent towards companies dividend.

MR. CHAIRMAN: Then is it correct that you are accepting the provision? The question is this, as Mr. Khaitan was emphasising, that a clean and healthy practice is something we must both accept as commendable but under the garb of clean and healthy practice there is the other side of the picture namely, malpractices and let me tell you that our studies have

revealed that large number of companies have found it extremely effective and expedient to deal in shares, their stock in trade and to dry out their manufacturing and other profits.

SHRI H. C. DASS: But these transactions are very closely examined by the income tax authorities, and I would say that a substantial portion of the litigation is on these points.

MR. CHAIRMAN: The only idea of this provision is to prevent malpractice and not to hit persons who are making profits.

SHRI VASANT SATHE: Mr. Chairman, with your permission I want to ask the last question. In all the evidence that we have had we are exercising on this point and we would really like assistance from experienced men like you. You know there is a plethora of this tax legislation which has beguiled and defied not only the tax practitioners but also the court and businessmen and created confusion worse confounded. As you know, we want really your genuine effort if you can give that, to streamline and find a method of really simplifying the tax procedure and provisions provided it really leads to the object which we have in mind, namely, unearthing of black money, prevention of evasion and furthering the cause of giving more revenues by way of taxation without hurting the people or without in any way hampering productive activity. Unfortunately I find, Sir, that in all the memoranda that have been placed before us the tendency is on the defensive by the various chambers. They take the provisions and then they say that do not give this, this will cause hardship, modify this, reduce the extent of tax. But no chamber up-till-now has come forward with a concrete positive structure of tax legislation which would really give the desired result. Now, we are all together in the nation as right citizens and patriotic citizens. Would you give a

thought to this as to how we can achieve the objective and give some more concrete suggestions even if they were to cause hardship to some individuals. I know that you also do not support wrong-doing but there are right-minded businessmen and industrialists. So would you kindly give some suggestion on these lines? That is my appeal to you.

SHRI B. M. KHAITAN: Sir, I am most grateful to you for the suggestion and I can assure you of giving our suggestions. This is the first time that a suggestion like this has come and we would start exercising on this. Unfortunately, there is no gap which has been due to the fact that every year legislations keep on coming and various committees keep on thinking on what legislation is coming and therefore, if we get a little respite from the legislations, I can assure you that as business people we would be prepared to put up a comprehensive scheme which in the national interest would be conducive to everybody. I can assure you that this point has gone home and we would certainly try to exercise on this point. I will end up by saying that we are sincerely thankful to this Committee for giving us a patient hearing and if we have offended anybody with our remarks, we apologise for that. Some of the things we have said have been said with greatest honesty and sincere feeling as to what we feel. I do not for a moment suggest that we are out to defend any dishonest man. With that I would thank you again for giving us patient hearing.

MR. CHAIRMAN: I thank you, Mr. Khaitan, and your colleagues. You will appreciate the task ahead of us is not only difficult but extremely delicate, and therefore, if you have found the Committee extra cautions, it was not to hurt you but just to understand your view points a little better. Thank you.

(The witnesses then withdrew.)

II. Calcutta Zoroastrian community's religious and charity funds, Calcutta.

Spokesmen:

1. Shri D. R. Bhesania—Senior Trustee
2. Shri J. M. Guzdar—Secretary
3. Shri P. M. Narielwala
4. Shri C. R. Irani

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Bhesania, it is the convention that the Chairman of the Select Committee must point out to you that the evidence which you are going to give here is to be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

You may proceed.

SHRI C. R. IRANI: Mr. Chairman, at the request of Mr. Bhesania I would like to make a few introductory comments. The Zoroastrian community in Calcutta has been a very small one. Today it numbers just over 2,000 people. The background of the charitable trust that the community has in Calcutta is as follows:

The objects of the trust are largely maintenance of fire temple, and saying religious prayers for the dead which in our form of religion is a prayer for all the dead of all communities, and not merely of that of the individual in whose name the prayers have been performed. This trust has a long history. The deed of the trust originally is dated 1867. It is a very simple document. The intention is that we should induce a feeling that an individual testator would set apart a certain amount of money for religious purposes, essentially and, he would also say that a part of the income of the trust would be used essentially for reli-

gious and also charitable purposes. The general scheme of the various trusts of the community is religious and charitable. If I may use the current expression, it is not possible to delink the two—religious and charitable—objectives. The point that I would personally like to urge is that the community is very small. The springs of charity for religious and charitable motives cannot be separated and further in Calcutta, if what has been established for all these years is to be disturbed now, it would result in hardship. The general position of the community here is that it also includes the needs of other sections of society.

MR. CHAIRMAN: You are also looking after others.

SHRI C. R. IRANI: The community as a whole cannot be accused either in Calcutta, or anywhere else for that matter of being so narrow and inward looking. I am also speaking of the community not merely of the trust.

MR. CHAIRMAN: If the objects of the trust enjoins carrying on welfare activity for other communities, then you are not hit. Your submission is that amendment of section 13 would cause hardship to you.

SHRI ERA SEZHIYAN: In the last page of your memorandum you have mentioned that they would be forced to discontinue their operations to the national disadvantages. Even if the existing trustee wanted to amend the trust agreements to provide for a secular benefit, it may not be possible to do so the benefit would be diluted

to such an extent that it would be completely ineffective. Have you taken the legal opinion that it would not be possible to amend the agreement even if the trustee wanted to do so? I know Madras High Court has amended provisions to make them secular. I think the provisions which are not secular may be amended.

SHRI C. R. IRANI: We have a large number of trusts. Particular scheme of a trust runs like this. A person sets apart a certain sum of money which is handed over to the trustees of the community; interest from that is spent on saying prayers for departed souls and out of the balance of the income, if available, this is used for charitable purpose. The balance thus saved does not even cover administrative expenditures. On pragmatical consideration there is no scope for referring any legal difficulty to court. A charitable trust may be for various purposes: it may be for education or for distributing medicines, etc. There are also *gambars* for rich and poor. It is an annual meet-together for both rich and poor. It has got religious implications.

MR. CHAIRMAN: Your submission is that it is beyond your means to take upon yourself the obligation of retaining the secular character for, you do not have adequate funds left over after meeting preliminary obligations inherent in the trust itself for performing religious rites, etc. Therefore you say that it does not mean anything.

SHRI C. R. IRANI: Yes, Sir.

MR. CHAIRMAN: What is your annual gross income?

SHRI P. M. NARIELWALA: The corpus is about Rs. 22.73 lakhs this year. This includes land and buildings, etc. Interest on security and deposits is Rs. 45 thousand and the gross income was about Rs. 1.37 lakhs.

MR. CHAIRMAN: I wonder whether your reasoning will ever hold good

in view of this figure. How much amount is spent on religious functions?

SHRI P. M. NARIELWALA: Building repairs in which religious ceremonies are held come to Rs. 37 thousand. Priest charges come to Rs. 52 thousand. Miscellaneous donation is only Rs. 13 thousand.

Now, Sir, our submission is that law ensures that secular character is not jeopardised. Charitable trusts created after 1st April, 1962, unless they are of secular character, lose tax benefit. Thus they cannot survive. Without tax exemptions existing institutions will find harder and harder to get donations. Framers say you must not discriminate on grounds of religion. Now, if I create charitable institution which is meant only for the benefit of the citizens of Calcutta it becomes legal. But if it is for a particular community it does not become so. We know the problems of the citizens of Calcutta; we know the problems of a particular community; we do not know the problems of other communities. It is not the question of diluting the funds; it is the question of diluting my understanding as I understand the citizens of Calcutta, or the members of my particular community and their problems better than I understand other communities. Therefore, what I plead is that while it is certainly correct for the original amendment that in future you should not create charities for the benefit of a particular religious community but attempt to shift this for general benefit then this would create no problem.

MR. CHAIRMAN: Basic thing is the discrimination. There is some point that there should be some amount of discrimination but law must be the same for every one and trusts are certainly equal. Therefore, that this artificial date of 1-4-62 is justifiable according to you is not so to us.

SHRI P. M. NARIELWALA: There is another justification. The amendment Act came into effect actually on 1-4-62 and Parliament is competent

to say that in future you don't do this. Our point is with regard to virtually retrospective amendment.

SHRI VASANT SATHE: If I have understood you correctly you say that Government, being secular, are not encouraging charity. The concept of secularism came about because of our Constitution after independence. Now, would you suggest that therefore any thing prior to our constitution which was non-secular should be allowed to continue although by our constitution the ban on anything which is discriminatory on the basis of religion is contrary to the principle of secularism? How would you harmonise these two self-contradictory things?

SHRI C. R. IRANI: The question is very weighty and requires careful consideration. The date on which the Constitution came into force did not certainly change our views. From the date of the commencement of the Constitution we were articulating the wishes of our people and we gave them a legal shape. Otherwise the argument that this should now have a retrospective effect will not help the matter.

MR. CHAIRMAN: We will give our most anxious consideration to the fact that no hardship is caused to the minority communities. We will see how best we can go about it.

SHRI VASANT SATHE: Don't emphasise on retrospectivity. Besides, if we are to limit some Association or

societies with a particular financial limitation and below that we were to exempt would that serve the purpose? For example, in Calcutta your Association might be a small thing but supposing in Bombay it is not so—it is a big thing.

SHRI C. R. IRANI: Difficulty is this that we could not say arbitrarily that this figure is good and the other figure is not. There is a lot to be said for the argument. But while considering this we must be careful how one takes into account the diminishing value of Indian rupee. What was five thousand 5 years ago is not so today.

SHRI P. M. NARIELWALA: If you do any discrimination I would suggest that you might perhaps say that income of trusts created prior to 1-4-62 should not be taxed. Then, Sir, I understand that the whole purpose of the Bill is to check tax evasion and avoidance. To the extent that these trusts are used as instruments for that purpose, and you have competence to discriminate between the abusing trusts and the trusts making legitimate use for the benefit of a particular community, for noble and useful social causes.

MR. CHAIRMAN: This has nothing to do with evasion. Thank you, gentlemen.

(The Committee then adjourned.)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Thursday, the 20th September, 1973 at 09.00 hours in Council Chamber, Legislative Assembly Building, Calcutta.

PRESENT

Shri Era Sezhiyan—*In the Chair*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Dharnidhar Basumatari
6. Shri Tridib Chaudhuri
7. Shri K. R. Ganesh
8. Shri Mani Ram Godara
9. Shri Maharaj Singh
10. Shri P. G. Mavalankar
11. Shri Vasant Sathe
12. Shri Satyendra Narayan Sinha
13. Shri C. M. Stephen
14. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer, *Joint Secretary and Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)**

1. Shri R. D. Shah, *Chairman, Central Board of Direct Taxes.*
2. Shri S. Narayan, *Joint Secretary.*
3. Shri R. R. Khosla, *Director.*
4. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

I. Bengal Chamber of Commerce and Industry, Calcutta.

Spokesmen:

1. Shri R. N. Sen—*Leader.*
2. Shri S. K. Ganguly
3. Shri K. P. Bhargava
4. Shri S. Bhattacharya
5. Shri K. C. Khanna
6. Shri L. R. Puri
7. Shri M. Ghose

II. Institute of Socio-Economic Studies, Calcutta.

Spokesman

Shri R. N. Lakhotia—*President.*

I. Bengal Chamber of Commerce and Industry, Calcutta.

Spokesmen:

1. Mr. R. N. Sen—*Leader.*
2. Mr. S. K. Ganguly
3. Mr. K. C. Khanna
4. Mr. S. Bhattacharya
5. Mr. K. P. Bhargava
6. Mr. L. R. Puri
7. Mr. M. Ghose

(The witnesses were called in and they took their seats)

SHRI H G. PARANJPE: Sir, Shri N. K. P. Salve, Chairman of this Committee is unfortunately ill to-day. So, under Rule 258(3) of the Rules of Procedure, the Committee may elect another Chairman.

SHRI VASANT SATHE: May I propose the name of Shri Era Sezhiyan to take the Chair?

SHRI VIRENDRA AGARWALA: I second the proposal

[Shri Era Sezhiyan took the Chair.]

MR. CHAIRMAN: Mr. Sen I have to make an announcement under Direction 58 of the Directions by the Speaker. The evidence that you give shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Now, we have received your written memorandum submitted by you dated 2nd July, 1973. This memorandum has been circulated to all the Members of the Committee and they have gone through it. If you want to say anything in particular you can say and after that the Members will be putting questions to you to elicit further information.

SHRI R. N. SEN: Mr. Chairman, and the Members of the Parliamen-

tary Select Committee on the Taxation Laws (Amendment) Bill, 1973 and other gentlemen who are present here, I welcome you all on behalf of the Bengal Chamber of Commerce and Industry to this city of Calcutta where our Chamber functions. We consider it a privilege that we have been given this opportunity to meet you gentlemen to place our views for consideration. We are perfectly aware that in the state of economy in the country ways and means must be found to raise more money and particularly so by stopping tax evasion. From this point of view there is no difference of opinion between the Government and the Chamber which I represent. We are, therefore, in complete harmony with Government's views and the objects of the Bill. Any difference, in our opinion, about the methods that should be adopted to achieve the common goal will, I feel sure, not be misunderstood by you. In making any laws care should be taken that law abiding people are not put to undue hardship. We are, therefore, making a few comments in order to ensure that justice is done to the honest tax payer. It is farthest from our mind to suggest something to shield the tax evader. It will however, be appreciated that whatever is done should be done without leaving any ambiguity generally. Tax payers believe that in using their discretion many of the tax officers are nervous in exercising their discretion against the revenue. There may be lot of truth in this belief as no Government officers can be expected to do something which may arouse suspicion of

his superiors. Whilst we understand this position, many tax payers suffer because many discretionary power are left to the officers. I would assure you that it is farthest from my mind to try to blame any section of the officers by ventilating this feeling of the assesseses. I will now try to put forward the points of view of the Bengal Chamber of Commerce and Industry and my colleagues will, if permitted by you, Mr. Chairman, make such contribution as they consider necessary. Copies of the statement concerning, as far as possible, our submission today will be made available to you. Thank you again for the opportunity that has been given to us.

Sir, I now go straight into the subject. Mr Chairman, you have already mentioned that the Chamber has submitted a memorandum. Now we try to make it as short as possible because we are conscious that you are all very busy men and therefore we tried to restrict it to a very few important points so that full attention could be given. Having got this opportunity through your generosity to come here and see you to-day, we have taken this opportunity of elaborating a number of clauses which we have mentioned in our memorandum, and I am adding a very few more. But at the same time we would not make our submission too voluminous. Now if we go to the Clause 6 of the amending Bill, section 13—there is no denying the fact that charitable causes got ready-help from many of these trusts.

MR. CHAIRMAN: Before we go to the clauses, let the honourable members put some questions for eliciting the primary views. Honourable members have you got to put any question to the learned witnesses?

SHRI VASANT SATHE: No Sir, let him continue with his views.

SHRI R. N. SEN: In regard to clause 6, my submission is that there is no denying the fact that many useful purposes have been served by many of these trusts in the past. Many of the charitable causes got lots of money

from these trusts and many of the old trusts were created at a time when the tax evasion were not a common thing. We are equally conscious that although the trusts are serving many good purposes, of late many unscrupulous people have been using these for their own benefit. So, from this point of view also I am not at all questioning the object because many people are baffling the revenue by taking shelter behind some loophole or other. I am completely sharing the motive of the Government in this whole matter. But as I have mentioned in my opening remarks that we should see that hardship is not unduly inflicted upon the honest people. I would just suggest that the proposed change in law in a way that no trust would be able to invest their funds in non-Government companies, that is to say, any income derived from investment from these non-Government companies will be subject to taxation, is too drastic. The real position is this that many of the trusts are of old standing. If anybody comes with ready black money he has the opportunity to do it, but I pointed out that in the past it did not happen. I can appreciate that the high rate of taxation has become a greater burden on these tax payers. But is it necessary to bar any kind of investment with the non-Government companies? Now many securities are covered as trust securities for which the control is already there. The Government can always change the laws also from time to time. But here, by doing it as a sort of package deal which perhaps you should not do—will it serve any purpose? Not only that, the old trusts which may have a lot of money invested in many of these companies what are they going to do after 1978? The difficulty will be that the 4 or 5 years' time which has been given to them is not at all enough.—And if for this reason they do distress sale. Will the economy be helped in any way? Will this time limit of 4 or 5 years be sufficient for all purposes? Here I may say—that although I am asking some queries and explaining about the

sub-section dealing with the trusts,— we are in this Chamber in Calcutta not very much concerned with it. We are only pointing out the impact of it of the community.

SHRI VIRENDRA AGARWALA: You have said that the charitable institutions or trusts are doing exceedingly good jobs in respect of social welfare. Nobody disputes that point. But, the point is that the trusts at the moment are engaged in such activities as are helping in creating black money. The purpose of this Committee, at the moment, is to curb that black money, Will you tell us as to how you expect the Committee to suggest that the black money which is created by the investment by various trusts can be checked.

SHRI R. N. SEN: I fully appreciate the question put by the honourable member. If in future investments are made subject to this law that purpose will be achieved. If somebody paid money out of his black money to the trust which was invested in shares previously and now they are transferred to Government securities and how will it help to bring out black money, I do not understand.

SHRI DHARNIDHAR BASUMATARI: Mr. Sen, your observations are that you are welcoming the measures, but at the same time you are suggesting us that this must be effective on those only who are unscrupulous. May I ask in what way you can help the Government to punish the unscrupulous men who are in the name of trust earning black money and doing mischief against the Government and against the tax payers?

SHRI R. N. SEN: In fact, we appreciate that, if I am suggesting correctly, some rigours of law will be unduly harsh on many honest people also. That does not necessarily mean that it will be my function to find out ways and means to punish the offenders. We as a Chamber can help you to formulate the law. So, we make our suggestions now. But beyond that is it possible for us to do anything? The laws have

been made and amended times without number in Parliament also. Have we been able to check the black money?

MR. CHAIRMAN: In clause 6 it is considered that some of these charitable institutions have become secured place of the black money, So do you feel or give any suggestion that this misuse can be checked?

SHRI R. N. SEN: In fact, the only thing I think is this that if a donor is asked to explain where the money comes from,—in the case of big donations to the trusts—and if our Income Tax Officers are vigilant this sort of misuse can be stopped. The income tax department is to chase the people who have accumulation of wealth and to see why and where they are finding these donations. In fact, that has been thought out by the Government where anonymous donations have been attacked. But, here I cannot understand how it can help in any way without chasing or causing hardships to some of the honest trusts. When a person makes a donation to a trust he can always be asked to explain the source of money which is donated. It would be necessary to chase the man, rather than chasing the trust, as to where did he get the money from. This applies also to the institution of pompus living

SHRI SYED AHMED AGA: You have said in you opening remarks that some ways and means must be found out to prevent tax evasion. I want to understand your reaction to a simple fact, why should not the trust be taxed or why should they be exempted on the plea as you are saying that these monies also come from the people who have got spare monies which are going to be spent on certain good objects. I think, there are also some other good objects to be performed by the Government if these monies are given or are taxed for the Government exchequer who will utilise this money for the development of the country as a whole. Therefore, I would like to know your reaction why the exemptions on trusts should continue.

SHRI R. N. SEN: We have in our Chamber's memorandum pointed out that we have no objection. I do not see any relation between the stoppage of tax evasion on black money and this method of investment. The honourable member has pointed out that money is wanted by the Government from different sources such as loans and taxation for the development purpose. I have no comments whatsoever against that. It is entirely a different perspective.

SHRI VASANT SATHE: May I draw the attention of Mr. Sen to Clause 6 where it is said that any trust which carries on any activity although in the case of charitable trust or institution for the relief of the poor, education or medical relief, which carries on any activity for profit, any income derived from such activity, unless the activity is carried on in the course of the actual carrying out of a primary purpose of the trust or institution. Now it is well known that the trusts are given certain exemptions of income tax and thus that money is not available to the exchequer. Now under the guise of savings this money is exempted and the trusts indulge in activities like any other commercial activity and making profits, which have no co-relationship with the primary object of the trust. Would you suggest that even in that case that profit should not be taxed? This is the simple question. We are not going into the general motivations or the laudable purposes of the trust at all. That is why I am asking this. Let us keep in the straight jacket of the law the Bill and only if we keep it within that framework, I think we will be able to have a better dialogue. Therefore, you kindly answer yourself to this particular aspect—would you suggest that even a profit-making activity like any other commercial activity not correlated with the primary object of the trust also be exempted and continue to be exempted?

SHRI R. N. SEN: Up-till-now I have not come to that point which

the honourable member has raised because my question was on investment only. My submission to you was up to now on restricting the investment, whether in government securities or in any company shares and debentures.

SHRI VASANT SATHE: Are you addressing us on clause (e) of section 8 or on (bb)? If you are addressing only on (e), then our question will be directed on (e) only.

SHRI R. N. SEN: At the moment I am speaking on clause (e) of section 8.

SHRI VASANT SATHE: Now, as far as (e) is concerned, would you suggest that if any funds of the trust or institution are, or continue to remain invested for a period—even this gap of five years—commencing after the 31st March, 1976, which is carrying on business and which is not owned or controlled by the government where the concern has direct interest in the matter? Would you suggest that people should be allowed under the guise of the trust to invest in companies in which they may be directly or indirectly interested because you know that this has resulted again in trust exemptions. You try to take advantage of the exemption via the trust, you plough back that money in your own companies or companies of your interest. This is avoiding tax. This is what leads to the growth of black money. That is why this section is going to be amended. Are you suggesting that we should allow even this existing malpractice to continue under the guise of the trust investment in companies?

SHRI R. N. SEN: To deal with this question raised by the honourable member. I understand there are already provisions in the law to provide against this. A person who is running a trust cannot invest the trust fund in the company managed by him, and in any case there is another law that the public trustee will exercise the vote on behalf of the trust and there-

fore the person cannot take any advantage by doing it that way because he loses his vote.

SHRI DHARNIDHAR BASUMATARI: If it is so, how this apprehension arises?

SHRI R. N. SEN: If I can refer you gentlemen to the existing Income Tax Act, section 13(1)(c),—if any part of such income or any property of the trust or institution whenever created or established is during the previous year used either directly or indirectly for the benefit of any person referred to in section (3). So that thing has been taken care of, and if it is found necessary to tighten that part of the law, I will be all with you.

MR. CHAIRMAN: But there is one difficulty. Suppose there are two trusts A and B. A has got a firm X and B has got a firm Y. A invests in B's firm and B in A's firm. So there will be a cross. The question is—should we allow this?

SHRI R. N. SEN: I am grateful to you, Mr. Chairman, for making the position very clear. I assure you that I shall always be with you in introducing any measure for plugging loopholes that way. My only point is that do not make it wider than is necessary because hitting the honest people harder also will not serve any purpose. In tax laws many people feel that they are very unfairly treated—at least that is my impression. Therefore, try to control the dishonest people in every way but don't make the law in such a way that more honest people than dishonest ones will be caught in the net.

SHRI TRIDIB CHAUDHURI: Mr. Chairman, we are unnecessarily drawing the Chamber into discussions which are not there in their memorandum. So far as clause 6 is concerned, they have limited themselves only to the time limit of five years and prospective investment. So let us confine ourselves to that aspect only.

MR. CHAIRMAN: You have said that five years' period is not enough. What do you suggest?

SHRI R. N. SEN: I suggest, at least make it 10 years. Of course, there may be distinction between old and new ones.

MR. CHAIRMAN: Now, let us go to the next clause.

SHRI R. N. SEN: It will be seen that even debentures will not be permitted now, as the Bill is drafted, in a company other than a Government company.

Clause 13(1)(b)—has also been made retrospective. We have already stated about this. I would only refer to the word 'primary' in clause (bb). Is it always possible to find out what is 'primary'? In many cases it is not possible. If I could mention about the anonymous donations, what will happen about the collections through boxes, which everybody will do?

SHRI TRIDIB CHAUDHURI: Supposing these collections through boxes on the streets, or through charity shows are excluded, what would you suggest, so far as anonymous donations are concerned? Sometimes, may be, by arrangement people who have surplus money prefer to donate in these trusts, provided their names are not given out because that may, according to them, lead to various implications. How, at least, that part of the trust fund could be brought under control?

SHRI R. N. SEN: I fully appreciate that point. My suggestion is not about the principle, but the quantum of Rs. 5,000 may be too small. The other thing is cumulative contributions. If I am knocked down in the street by a car and I am taken to a hospital run by the trust, will they render any help to me, or go through the records to find out if cumulatively I paid them Rs. 5,000. In order to drive home these facts of the absurdity of the thing—if a donor is knocked down in the street by a car and goes to a hospital run by the trust and if they find that the cumulative fund is Rs. 5,000, will they render any help, or check up their records? So, this amount should be considerably more than Rs. 5,000 and the period

should be 3 or 4 years, rather than ad infinitum. I hope I have answered the question put by the honourable member.

If we come to clause 12, it has already been provided that the businesses should maintain their books of account if their income exceeds Rs. 25,000 and turn-over Rs. 2 lakh 50 thousand. In another clause income-tax audit is for both business and profession. In this particular case may be, due to oversight the provision has been let out. Therefore, on that my suggestion is that some limit should be made applicable to the profession. You cannot ask all the people and all the profession to produce their books of account. I think this has been a drafting error and I do not want to emphasise this any more.

MR. CHAIRMAN: This is a deliberate error.

SHRI R. N. SEN: However, if it is deliberately done, I do not understand the reason.

MR. CHAIRMAN: That will be taken care of when we form the rules.

SHRI R. N. SEN: If there is no objection, institute of the Chartered Accountants may be consulted about these books of account.

Let us come to clause 14. A growing number of women are being educated and they may like to take jobs in their husbands' office or profession. That will become very, very difficult. I am fully aware of the need of locating the income but the Income-tax Officer has got very wide powers in this respect under section 40A. This will make it difficult even for a doctor to utilise the services of his wife if she is qualified, as a measure of economy. But you can employ somebody else's wife. It does not seem to be very reasonable, or in line with the present socialistic outlook of the society. I feel section 40A serves the purpose.

MR. CHAIRMAN: This clause actually refers to a business, not a profession.

SHRI R. N. SEN: If I may refer you, Mr. Chairman, to clause 14(1)(ii)—to the spouse by way of salary commission, fees or other form of remuneration in cash or in kind from a concern in which such individual has substantial interest will be included in the income of such individual. So, it does not say, business or profession.

SHRI VASANT SATHE: You must also be knowing various concerns where individuals employ their spouse as interior decorator, consultants or market surveyors or PROs and pay them huge salaries which they would not pay to the wives of any other man or to the daughters of any other man. When such a thing is done, would you suggest that even that should be excluded or would you like to enumerate any particular case like a nurse being the wife of a doctor and assisting him. If that is so, why should she not be a partner in the concern. When he insists on employing her should he have no corelation-ship? The idea is to plug the loop-hole. If you can cite a particular case then we can add a proviso but why do you give a blanket provision?

SHRI R. N. SEN: Actually I have not been able to make myself understood properly. First, paying excessive amount is covered by section 40A of I.T. Act. Secondly, I am fully conscious of the vices enumerated by the hon. member and I am with him in saying that everything should be done to stop that but at the same time I can crave the indulgence in saying that if we cannot cure a particular body we do not advise taking away the head. I am aware of the malpractices and I am not asking for a blanket exemption. I feel this should be stopped otherwise honest taxpayers are more penalised.

SHRI P. G. MAVALANKAR: How this can be done. Supposing she is

a qualified nurse and employed as a partner.

SHRI R. N. SEN: You can allow exemption for qualified people or people in the small income group in business because a shop may be run by husband and wife together. If a husband and wife together run a business and earn an annual income of Rs. 15 thousand or Rs. 20 thousand they should not be taxed together. You can tax them on the annual income earned above this.

SHRI DHARNIDHAR BASUMATARI: You are talking about business spouse. What about the individual workers. Supposing a wife is a professor and the husband is employed in a bank. Secondly, why do you assume that honest people will be penalised by Government? Why do you not think of dishonest people?

SHRI R. N. SEN: In fact, the provision here makes no difference or even allows any discretion to distinguish between an honest and a dishonest man. Here my colleague Mr. Bhattacharya would like to say a few words.

SHRI S. BHATTACHARYA: A lawyer appointing a chartered Accountant wife or vice-versa or a doctor appointing wife as nurse—under the law they cannot be in partnership. Where it is a question of profession it will depend on particular circumstances and in most cases people of different professions cannot become partners. Secondly, already there is a provision in respect of a case where husband or wife are partners in a business, their incomes will be clubbed but whether they are partners in a profession their incomes will not be clubbed. If such a distinction has been accepted by Government why should it not be maintained. Hon. member has suggested a case where in a business a professional has been employed. This distinction has already been accepted in the matter of partnerships. So, why should it not be accepted here.

SHRI VASANT SATHE: The word mentioned in 14(1)(ii) is "concern". Now will it not include professional concerns?

SHRI S. BHATTACHARYA: Therefore, I say it should be excluded.

SHRI VASANT SATHE: What is the speciality why it should be exempted?

SHRI S. BHATTACHARYA: I have already stated that there is a provision already that when husband and wife are partners in a firm their income shall be clubbed. This is already there from 1939. But a distinction has been made there that if the partnership firm is a professional firm this would not apply—it would only apply when it is a business firm.

SHRI VASANT SATHE: We are trying to extend it to the professional also. What is the sanctity of the profession for being excluded?

SHRI S. BHATTACHARYA: It is already there, Sir. This matter was considered at the time when earlier Bills in 1939 and 1961 were brought in and it was decided by the Government and by the Parliament that it should be like this.

SHRI VASANT SATHE: But that was being misused by the so-called professionals and so we think it should not be exempted.

SHRI S. BHATTACHARYA: But that has not been misused and there has been no complaint and that is why (i) is still being retained—"firm carrying on business" and not simply "firm". This is an accepted distinction and this should be maintained in (ii) also. In a business concern if the wife is a professional she should be exempted. Professional employing non-professional wife should not be exempted. If a non-professional employs a professional wife, there I have nothing to say.

SHRI VASANT SATHE: But how do you know that?

SHRI S. BHATTACHARYA: This should be suitably drafted.

SHRI VASANT SATHE: You say that where a non-professional employs a qualified professional and if she happens to be his wife then wife should not be exempted?

MR. S. BHATTACHARYA: Yes, Sir.

SHRI C. M. STEPHEN: I suppose you will concede that the existing provision has loophole and there is misuse. In the name of employing wife money is going in the same family without paying any tax. So, if you concede that there is misuse the only practical way to stop this is to put a blanket provision. If the wife is employed and gets salary both the income should be clubbed up. The choice before me is either to ask my wife to carry on a separate practice or if she is with me then both the income should be clubbed and pay higher income tax. Otherwise it becomes a social evil enabling people to evade tax. Would you or would you not agree with me about my two alternatives I have stated or can you suggest any other method to plug this.

SHRI R. N. SEN: It is a question of attitude. Are we always drafting the law with a view to dishonest men being caught or are we enacting a law for the general good and to save the honest men. We have gone on making laws more and more stringent but have we achieved our object? Therefore, the point is that it will never be decided by a debate here. It is a question of attitude. If we have been able to make this point that there should be some exemption for a professional husband employing a professional wife may be in a separate business unit then how it should be achieved or how it can be drafted—you will appreciate that all the clauses are debated in the Parliament, suggestions made, but alternative proposals are not drafted in the Parliament, it cannot be done, it goes back to the drafting committee again, and here we cannot give an alternative draft. We can give you the idea.

SHRI C. M. STEPHEN: Legislature is not banning anybody employing his

wife. You can employ your wife. If your wife draws salary from our firm then both the salary will be clubbed together for the purpose of assessment of income tax and you will be in the higher category and higher tax will have to be paid. If you want to avoid that your wife can take employment elsewhere, But if she wants to be with you and draws salary then the salary will be clubbed up together and the result is that you are in higher pay bracket. But there is no banning of employing a wife.

SHRI R. N. SEN: However, if we have any difference in attitude really we cannot solve it by any argument.

Now, I come to clause 19. Sir, you will appreciate that a grave injustice is being done. People who earn salaries on employment pay 10 per cent of the salary as his own rent and another 20 per cent in case of unfurnished accommodation and 25 per cent in place of furnished accommodation. Now, I cannot understand why this amount has been restricted to Rs. 300. Here there is no question of tax evasion, it is a question of justice to different classes of people. Sir, many people including myself have been unfairly treated. The benefit should also be extended to salaried employees who do not get rent-free accommodation or a house rent allowance.

SHRI VASANT SATHE: The idea was to protect fixed income of the people who have small and medium incomes. If you want that this should be extended to all then persons in the higher income category, not only fixed income, but who have huge establishment exceeding a rent of Rs. 2,000/- to Rs. 3,000/- per month, will also be covered. But the idea is not to get away with the establishment charges. Therefore, how should you make a distinction when you say that it should be made applicable to all irrespective of any particular group.

SHRI R. N. SEN: In that case the limit should not be Rs. 300/- but it should be somewhere about Rs. 1,000.

If this is not extended to all then people will make only one interpretation of it that the Government wants people who are not salaried to make something for them. Sir, who can remain honest with this difference in the tax system?

SHRI VASANT SATHE: Therefore, you want that this benefit should be extended also to everybody on the same prorata basis.

SHRI R. N. SEN: Yes, Sir. Another point regarding the proviso may also be considered by the Committee when I have got a house in Burdwan but I am working in Calcutta and I have also the 10th share of my ancestral property in Calcutta. Now, what is the rationale in these incomes? What do I do in this case—that should be considered by the Committee.

SHRI VASANT SATHE: Would you suggest that we should have some rational basis on the value of the property that a person may have? The idea behind was that person should not get the benefit both ways.

SHRI R. N. SEN: Let there be no seeming difference in relation to the benefits to the salaried people and other people otherwise it leads to the feeling that people are not fairly treated.

Now, I come to clause 25 i.e. interest paid on loans for paying tax and expenses incurred in regard to tax proceedings. Now, they are allowed under Chapter VI-A in computing the total income. According to this if you have a loss because of no income you cannot carry that forward. In case of salary income this can be possible because salary income can never be negative. There is some defect inherent in the whole thing.

SHRI VASANT SATHE: In the case of salaried people this problem will not arise.

SHRI R. N. SEN: Why business losses should not be carried forward? Why it will lapse at the end of the year?

SHRI VASANT SATHE: To what extent, you suggest, this should be allowed?

SHRI R. N. SEN: Actually this should not come under VI-A. It should come under section 37 of the Income Tax Act. You can have Chapter VI-A and Section 37 both. But so far as alternative drafting is concerned, of course, it will have to be done by the Government's legal draftsmen. I am only pointing out the inequalities of this thing to you.

SHRI C. M. STEPHEN: This particular item is being treated in this Bill. It is an item of expenditure, incurred because of income tax. We would have to pay tax but at the same time when we may have no money we have to take loan. When we have to go hospital we have to incur expenditure, but when we pay insurance premium then that amount is allowed to be deducted for the purpose of assessment. The medical expenses are not deductible from the assessment. What is wrong in it—how can it become a part of your business expenditure?

SHRI R. N. SEN: In fact, it is a part of the business to pay the taxes. If they are incurring an expenditure on interest or the expenditure on tax proceedings and have profits then I can remind the honourable member it is proposed to be given. I am not raising any issue which has not been proposed to be given in the Bill. I have only pointed out that the benefit will go to the wrong man, that is to say that a man who is earning profits he will get but it will not go to the man who is making loss or is ruined. Therefore, I have not suggested for this benefit. You have suggested it.

SHRI VASANT SATHE: I am not clear about your points. Are you happy with the provisions of the Bill? Please clarify it.

SHRI R. N. SEN: This question is put in a very unkind manner. I pointed out that you are giving it to a man who is better off but you are claiming from a man who is worse off.

I am not suggesting that the other man should not get, and therefore, by trying to give the poor man equal chance I would not ask you to sacrifice the other men also. The limit of Rs. 2,000|- should be removed because even now before the Tax Officers the expenditure beyond 2,000|-are allowed at the moment because of the Supreme Court decision.

If we come to the next clauses 26 and 27, now as per sections 104 and 109. the companies in which the public do not have substantial interest, I would say that the industrial company has been defined as wholly manufacturing company. That makes it very difficult because the manufacturing company also may have an income of Rs. 20, 000|- or something else, and therefore I suggest that the word 'wholly be replaced by mainly in order to avoid the trouble and vexation. It was already done in the existing Act and manufacturing companies are not obliged, like big companies who have more than Rs. 50 lakhs capital goods, to distribute any part of their income as dividend'. Now the law is being changed and they are compelled to distribute part of their profits as dividend. But there is another provision—when the reserve exceeds the capital, 90 per cent of the profits will have to be distributed. Now in the case of many companies who have built up their reserves due to earlier liberal provision. what will be their position unless they are saved by some special provisions? Whether they would be asked net to distribute the profits according to the percentage or they would be asked to distribute their whole profit because of the provision that their reserve exceeded the reserve. So. I would suggest that something should be done to relieve this difficulty of the tax payers from this burden which may be completely unwillingly or unknowingly done.

Not only that. Sir, I would make another submission. The companies in which the public are substantially interested, pay a lower rate of tax

because the other companies who are not obliged to distribute that much of income, the people are not interested in that. If this clause is enacted and thus the benefits enjoyed by the non-public companies are taken away then the differential rate of tax of the companies should cease to exist. But it has not been done. These companies will go on paying the dividend because the old idea was at one time and this will now again apply that if you do not distribute the dividend, the whole profit would be taxed. Therefore, the shareholders cannot now be taxed on the distributable income at higher rate because of withholding of payment of dividends for years together. So, what is the justification of applying different rates now?

MR. CHAIRMAN: The main objectives of Clauses 25, 26 and 27 are to prevent the assesses in the higher income group from avoiding accumulation of profits of the companies.

SHRI R. N. SEN: In fact when you are going to amend the sections, I am only suggesting two things—first is the high income group people would avoid getting dividend, as Mr. Chairman has already pointed out, to save their personal taxes, I am not objecting it. But the moment you do it, why should these companies pay tax on profits at a higher rate of non-distribution of the dividend. If you do force them to distribute, then what is the cause of differential rate of tax? There is another point also. There is a provision about the reserve funds. When the reserves exceed the capital largely because of the past law, you are compelling them to distribute as per the present provisions. But I suggest that no penalty should be levied on the reserves made due to the old laws.

SHRI VASANT SATHE: Mr. Sen. I am not able to appreciate this point. If the reserves were built up by taking advantage of the past laws and if they exceeded the capital, then do you suggest that whatever advantages were taken of such certain legal position, we should pay premium on that

and allow them to continue? Should we not make some additional provisions to plug this?

MR. R. N. SEN: In fact, the point is this, these reserves which were built up in the past, cannot be fixed with retrospective effect.

MR. CHAIRMAN: I have been told by some members, on clauses 26 & 27, that there is some misconception because these do not apply to any other companies referred to in the preceding clauses. What is your opinion?

SHRI L. R. PURI: The only point is that with the amending definition of the industrial company you can have a situation where many companies have got some non-manufacturing income. Then why the non-manufacturing income may be subject to 90 per cent distribution, is our point?

SHRI R. N. SEN: Sir, regarding clause 39, I may submit that the amount should be raised to Rs. 1 lakh in order to avoiding the troubles of audit in which the really small people would be likely to fall. Rs. 50,000/- may kindly be considered as a very very small amount. If you order for audit for that it may become very difficult for the people whose total turn over of business is very small.

SHRI P. G. MAVALANKAR: Why do you object for a compulsory audit on Rs. 50,000/- and why do you advocate it for Rs. 1 lakh?

SHRI R. N. SEN: I am not objecting it, but I may submit from the point of fair dealing that the revenue profit account should be maintained and accounted for so that the proper taxes are paid. So, as a matter of principle we have not objected it because the people of Rs. 50,000/- or even below would have their audit for their own benefit, but I suggest that the compulsory audit should be forced on Rs. 1 lakh.

SHRI P. G. MAVALANKAR: Is it practicable for various individuals or

for some professionals to give the services as auditors? What about the difficulties of the people who are engaged in other works and who are not chartered accountants?

SHRI R. N. SEN: In fact, by an Act of Parliament the Institute of Chartered Accountants' is there and they are the only people who are authorised to conduct the audit. The audit is considered essential for checking up the correctness of the accounts. If therefore it is found that by introduction of that thing bigger and bigger group of people will suffer—of course the people who will suffer most will be the tax evaders—the point that we want is the revenue should be properly accounted for. For that purpose we want the accounts to be properly maintained and for that the audit is a must.

SHRI SYED AHMED AGA: You have objected to the figure of Rs. 50,000/- and pleaded for Rs. 1 lakh. We feel that it must be audited because the real position must come out of those who are concerned mainly with tax evasion and making black money end all that. So, I cannot understand as to why should we not have Rs. 50,000/-.

SHRI R. N. SEN: My Chamber suggested 1 lakh with which I am in agreement. All that I said was that if you think that 50 thousand will serve the cause of revenue better, I will leave it to you but if you ask me, I will raise the limit to one lakh or two lakhs because that will leave the small people out and save them.

SHRI VASANT SATHE: Many institutions which had appeared before us had raised a point and the point was that in this clause (1) why should audit be restricted only to chartered accountants? Would practitioners having put in a minimum practice of say, five years, not be considered equally qualified to do the job. and there are a large number of such people as you know? (2) If all this audit was to be done, as you yourself say that a very large number of indi-

viduals and concerns would be brought within the framework and there are enough qualified chartered accountants to cope with this requirement, then in that case there is another aspect. Would you accept the suggestion that has been put that the chartered accountants should not be allowed also to appear before the income tax authorities in favour of the concerns whose audit they have done? Because then there is a clash of interest, they are liable to identify more with the interest of the concern and defend it rather than objectively really assess the income. Would you accept this condition being put if chartered accountants alone were to be given the job of auditing without the right to appear?

SHRI R. N. SEN: The first question is whether audit can be done by non-chartered accountants. That is not the subject matter for us to discuss and whether the Revenue will be prepared to accept the accounts certified by non-chartered accountants, it is for them to say that. The other thing is this, whether the chartered accountants should be allowed to make representation. The point is that if somebody will employ me to represent, I do not have the interest of the client in my mind. It becomes a clash of interest when I am auditing their accounts also. In fact I would rather say, and I think the income tax people will say that, that if you are a chartered accountant you have the benefit of going through all the accounts and therefore you will do the representation better and more honestly.

SHRI VASANT SATHE: But whatever you want to say by way of representation you have already said that in your certificate. Now, after having said it in the certificate, if you certify that this is what we have found to be the income after having examined the books of accounts, profits and the balance sheet, what more can you do before the income tax authorities by way of representation and defence of interest of the party?

SHRI R. N. SEN: We give the certificate in accordance with the provisions of the companies Act and the income there has nothing to do with the taxable income. These two are entirely different things and therefore what I have certified is not being put forward by me also as the taxed income.

SHRI VASANT SATHE: Then you suggest that we should either amend the Companies Act or put some more responsibility on the chartered accountants to certify the income within the requirements of the Income Tax Act? Would you agree to that?

SHRI R. N. SEN: Actually the question of a formal audit and the details of the audit are now being thrashed out between the Company Law Board and the Institute of Chartered Accountants and therefore that is a matter entirely different from the one under discussion here.

SHRI VASANT SATHE: I beg your pardon for this. What I want to know is this. Now that we are enlarging the scope of chartered accountants to audit the accounts and taxable incomes for the purpose of income tax and giving greater responsibility with added sanctity to the profession of chartered accountants. Don't you think it would be necessary that these chartered accountants then should also be required objectively to certify the incomes as required by the Income Tax Act?

SHRI R. N. SEN: The answer to that question can be decided between the Company Law Board and the Institute of Chartered Accountants and if what is accepted is done, that is to say, all the taxable profits are certified correctly, then the income tax practice would be gone because these are the people whom you have in your mind and the non-chartered accountants practitioners will nowhere be in the picture.

SHRI VASANT SATHE: There you forget the rider that then you don't have the right to appear.

MR. CHAIRMAN: Let us go to the next clause.

SHRI R. N. SEN: Coming to clause 42—you can say that tax should be paid, but I cannot quite see why proof of payment should be produced at the time of the hearing. Penalties will be there. Proof of payment will make things difficult. How can one do it by date? One has to deposit the money, get the challan and submit them as proof. So, this should be deleted. If it is not possible, you should allow another 15 days' time by which the people can deposit the money, get the challan and other things and, then, submit them as proof.

SHRI VASANT SATHE: That is a good point made.

SHRI R. N. SEN: I am glad that some of the honourable members have got the point which I was trying to make out. It is an undue hardship that is being put on us Tax-payers pay the money and keep the Government going. They are not criminals. That has got to be taken into account. This is another way of taking away part of the time allowed for submission of the returns.

Clause 45—Appeal will go from the Deputy Commissioner to the Commissioner. We do not understand why it cannot go to the Appellate Tribunal. Commissioner is a busy man. Will it expedite things?

MR. CHAIRMAN: It is not appeal. It is the assessment against which he goes in appeal to the Deputy Commissioner. They are providing two appeals—from Deputy Commissioner to the Commissioner, and then, to the Tribunal. By this procedure the workload on the tribunal will be minimised to the extent the problems are solved by the Deputy Commissioner.

SHRI R. N. SEN: All that I wanted to say was that there would be more load on the Commissioner.

MR. CHAIRMAN: Forget about the load. Let us consider it from the point of view of the assessee.

SHRI R. N. SEN: I am being assessed by the IAC, the appeal papers should go directly to the tribunal. That is what should be done.

MR. CHAIRMAN: Introduction of two appeals—I think it is good for the assessee. He gets a benefit.

SHRI R. N. SEN: The point is that this will delay matters. But if the Commissioners think that they have got some time at their disposal, I wish them good luck.

About clause 51, which is not included in the memorandum, you have been good enough to suggest 75 per cent of the current income can be set aside by the film artists into some of their annuity policies. An analogous thing, so far as the professional firms are concerned. They are allowed 10 percent with a limit of Rs. 5,000 for an annuity policy with almost impossible conditions attached. One of the conditions is that if an assessee has got more than Rs. 10 thousand as unearned income, the benefit is gone. The result is that some people—and I am one of the victims—start a policy and, then, years after it is found that they have been lucky to save something having an income of Rs. 10 thousand—the result is that the policy becomes a great liability because there is no longer any benefit for this policy and it has been saddled with a responsibility that cannot be computed. The period of time is also absolutely fixed. You cannot make it more or less. Therefore, it is a dangerous provision. Is there any mean test in the case of pension or provident fund? If you have not got a mean test for any of them why do you apply this like that? My suggestion is that 10 p.c. should be raised to 25 p.c. without any limit and the terms of the policy should be rationalised. Regarding clause 54, you will find in the 'Explanation' that if you pay the money after the issue of notice then only you are penalised. But the section is drafted in a way that you do not get the benefit of not failing to pay the money up to

the date of notice. I suggest that what is given in the note should be provided in the section itself. Regarding clause 57, regarding interest paid by the assessee and to the assessee, it should be on the same principle but even after all the amendments that is not so. Details I have given in the note which I propose to hand over to you. Regarding clause 58, if you allow a settlement and then say "in accordance with the Act." then why go in for the settlement. I say that it should be deleted. If it is 'in accordance with the Act' and if the committee is composed of people from department then why go in for a settlement. You should not say a blanket thing like 'in accordance with the Act' but you should give guidelines. If assessee feel that their cases may receive a more judicious sort of approach from outsiders let them have it. We do not show our disrespect for the court when we ask for a jury trial. Regarding clause 97, same thing applies here. Regarding clause 99, you can only avoid penalties by proving the value of the asset as returned by him as the correct value. How can I prove that it is a correct one? Can anybody prove anything? It would be a penalty in any case. I think it is a dangerous provision. It would have been all right if you could add that he has submitted it with due care.

SHRI P. G. MAVALANKAR: You were often saying about honest and dishonest tax-payers. How will the Chamber of Commerce help the Government and the public authorities in isolating the dishonest people from the honest people. Are you prepared to come out and help the Government in this respect?

SHRI R. N. SEN: Wanchoo Committee made certain suggestions about lowering the tax rates. By increasing the tax rate we make the tax burden very heavy on the honest man. A dishonest man does not disclose the real earning.

SHRI P. G. MAVALANKAR: You mentioned that honest tax-payers in our country should not suffer and should not be punished. My question is, in our country how you can distinguish between an honest and dishonest man.

SHRI R. N. SEN: I agree with you that in this country you can hardly distinguish between an honest and a dishonest tax-payer.

SHRI K. R. GANESH: I do not think it is correct to say that it is very difficult to distinguish between an honest and dishonest man in this country. What we are doing here is limited to a very small section of our people who are large tax-payers. So, please confine to that particular section.

SHRI R. N. SEN: A question has been put by an honourable member as to what suggestion we have got to make. Only thing is that people will have different ideas and people like me or people who have extensive experience in private sector as well as public sector—has anybody cared to ask for their suggestion? And, Sir, is it the place to discuss. Here I can give a lecture on the point but this is not a place for that.

SHRI VASANT SATHE: On this point many institutions came before us and made their comments. You know the whole object of the bill is to unearth black-money and prevent evasion of tax. One point that has been put forward by many institutions is that lowering of the ceiling of taxable income will have salutary effect. That has been recommended by the Wanchoo Committee and this has been quoted by various organisations. I want to know whether your association has really done some work on this point so as to enlighten the Government that on such slab—at present 75 because the tax limit is 97—so much is being evaded and if you lower it you will be able to make good this loss because otherwise it becomes subjective.

SHRI R. N. SEN: To find out the arithmetic of that, that is, to bring down from 97 to 75 what will be the loss and how much you will gain that can only be an estimate and it cannot be worked out. Only thing I can say is that by raising the rates you have not achieved the object. We have created more black-marketeers and tax evaders and that is why Wanchoo Committee wanted to do that. That has also to be found out by trial and error method. I cannot prove it that what is to be taxed that is being

evaded by the black-marketeers, we know that is being done.

MR. CHAIRMAN: Thank you, Mr. Sen.

SHRI R. N. SEN: Now, I would thank you Mr. Chairman and Hon'ble Members for giving me a patient hearing for such a long time. If I have not been able to do justice to the points on behalf of my Chamber you consider it as my personal failing. I again thank you.

(Witness then withdrew.)

II. Institute of Socio-Economic

Spokesman:

SHRI R. N. LAKHOTIA, President

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Lakhota, before you start giving your evidence I want to make it clear to you that your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. It should however, be noted that even though you might desire your evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Now, I would like to know the background of your Institute, i.e. what is the aim of your Institute, what kind of work you do and so on.

SHRI R. N. LAKHOTIA: I would like to submit that our Institute was established 2 years ago in Calcutta with the sole aim of acting as a forum devoted to the discussion and study of current socio-economic problems and as income-tax and other tax laws come within the purview of economic studies so this is one of the subjects on which the Institute is taking interest, arranging symposiums and seminars etc. Our last seminar was on the Taxation Law, (Amendment) Bill which was very favourably reported in the Newspapers and our sympo-

Studies, Calcutta

sium was well attended and represented. The Commissioner of Income Tax, Collector of Central Excise, former M.Ps. and many other people participated. Particularly about income tax, aspects of socio-economic studies like population planning, rationing, Govt's policy, socialism, social justice we have had discussions and meetings.

MR. CHAIRMAN: Have you published any brochure?

SHRI R. N. LAKHOTIA: No, Sir, they are under print and we shall be able to bring out our first major publication after 2½ months.

MR. CHAIRMAN: Apart from holding symposium and seminar have you been able to bring out anything with a complete shape about the studies made or evaluation made? Any available print which might be helpful to us?

SHRI R. N. LAKHOTIA: So far we have not published. Only we have given to the Press the summary and the same has been published in Newspapers like the Statesman.

MR. CHAIRMAN: How do you manage the Institute—wherefrom you get the fund?

SHRI R. N. LAKHOTIA: From members we collect funds. Members

of the Institute are from the public, there are some professors, some students, some members of the medical profession as well as from income-tax and other legal professions viz., Income-Tax lawyers and practitioners.

SHRI VIRENDRA AGARWALA: How many members are there?

SHRI R. N. LAKHOTIA: At present 200 and odd approximately.

MR. CHAIRMAN: What is the fee?

SHRI R. N. LAKHOTIA: Rupees 25 is the annual membership fee. Besides, there are student members as associates from whom we charge Rs. 10.

MR. CHAIRMAN: That means you have an income of only 3,000 to 4,000 per annum approximately. Are you able to run your organisation with this fund or do you receive any donations from anybody?

SHRI R. N. LAKHOTIA: Because of the fund position we cannot bring out any souvenir. So far as donation is concerned we did not receive any major donations uptill now.

MR. CHAIRMAN: What do you mean by major donations?

SHRI R. N. LAKHOTIA: Three or four thousand rupees.

MR. CHAIRMAN: How much have you received during the last two years?

SHRI R. N. LAKHOTIA: About Rs. 2,000 a year.

MR. CHAIRMAN: Have you any branch in other foreign countries? Have you any representative in some other countries?

SHRI R. N. LAKHOTIA: Our idea was to start branches in some of the foreign countries but due to foreign exchange difficulties it could not be done. Recently our Secretary has gone on world tour.

MR. CHAIRMAN: Why foreign exchange comes in?

MR. R. N. LAKHOTIA: Because if we want to send our man to visit other countries outside India we require foreign exchange.

MR. CHAIRMAN: Have you got members in those places where you represent?

SHRI R. N. LAKHOTIA: We have got representatives. They report to us about the inflation, current prices and all that. Say for example, our representative in U.S.A. will give us the latest figures relating to USA. which we will use in our different seminars and symposiums. This is the only function which we are doing from overseas countries.

MR. CHAIRMAN: You said that your Secretary had gone on a world tour? Who is your Secretary?

SHRI R. N. LAKHOTIA: His name is B. P. Nayar. He has gone on a business tour. He is a leather merchant and he had gone on world tour to explore the possibilities of leather export to those countries. During the course of his visit he will also work for the cause of our Association.

MR. CHAIRMAN: All right, Mr. Lakhotia, your memorandum has been circulated to all the members of the Committee. If you have got anything to say apart from those contained in your memorandum you can do so, briefly.

SHRI R. N. LAKHOTIA: Honourable Chairman and Members of the Select Committee, I would like to submit certain general observations on the provisions of the Taxation Laws (Amendment) Bill, 1973. When start with the objects of the Bill we find that it is written that the main objectives of the amendments proposed to be made are to unearth black-money and prevent its proliferation; to fight and curb tax evasion etc. etc. Sir, I submit that the two main objectives of this Bill viz. to unearth black-money and to prevent its proliferation and to fight and curb tax evasion cannot be achieved

by the provisions, as they are, in this Bill because there is no specific provision which helps the Government to unearth the black-money. In theory there might be some stringent provisions for searches, raids and seizures, provisions for penalties etc. There might be unearthing of black-money by means of prescribing compulsory maintenance of accounts, compulsory audit in certain cases. It might also be possible to bring out some black-money and avoid tax evasion to some extent. But I may submit that the general consensus of opinion at the time of the seminar organised by the Institute was that these two main objectives cannot be achieved. It can be achieved only if there is direct incentive to the tax payers in the form of reduction in the rates of tax and straight deduction for investment. If this straight deduction is allowed then it might be an incentive even in spite of higher rates. So, if the rates could not be lowered then at least this will mitigate the burden of the tax payers. Another point which came up for discussion in the seminar organised by us is the fact that cost of living is going up every year. Besides, there is inflation and due to this there is greater burden on the tax payer particularly when some machinery etc. has to be replaced by a new machinery. A machinery purchased about 20 years ago and costing Rs. one lakh at that time will cost Rs. five lakhs to-day for replacing it. It is not possible for a businessman to spend rupees five lakhs, and if by selling out the old machinery an extra amount of rupees three or four lakhs is available, it will be subject to income tax as there is no concession in the income-tax, for replacement of machineries, etc. Sir, another suggestion which was made was that cost of living having gone up by 20 to 25 per cent straight deduction should be available to other taxes from his income by way of the extra increase in the cost of living. So, if the cost of living and price index have gone up by 20 per cent these should be a provision in the next budget to consider

that 20 per cent will be given to him out of his total income because he is not getting anything.

MR. CHAIRMAN: Mr. Lakhota, some of your ideas will be valuable, but it is better if you confine your views on the provisions pertaining to this Bill. This Committee is not empowered to comment on any financial affairs outside the purview of this Bill.

SHRI R. N. LAKHOTIA: Sir, I would submit that in section 271 there are only one or two additions to be made, in Clause 64. Here we would welcome the reversal of the policy of changing the basis of levy of penalties. Formerly it was tax, but in 1968 it was changed and again it is perhaps to be changed. This is welcome. But there is one very important amendment which is going to be proposed and effective which looks to be very innocuous. But it is not so, Sir. I will just read the explanation to clause 64 in exact language "where in respect of any facts material to the computation of the total income of any person under this Act, such person fails to offer an explanation, or such person offers an explanation which he is not able to substantiate or which is found by the Income-tax officer or the Deputy Commissioner (Appeals) to be false then, the amount added or disallowed in computing the total income of such persons as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed". Here, I submit that (A) is in order. But, in regard to (B) we have got objection. The entire cause, if it is false then the persons must be charged with the consequences, but if he is not able to substantiate or that his substantiation is not upto the satisfaction of the I.T.O. then the I.T.O. may take into

account 99 per cent or seven 160 per cent to the revenue side without considering the real merits of the explanation. If in his opinion the explanation is not found to be satisfactory he will just add an amount, i.e., concealed amount because if the I.T.O. will have to give his opinion that the assessee has failed to give substantial evidence or proof regarding the particular case, then this is deemed as a concealment within the meaning of this. This will lead to unnecessary hardship. So, my suggestion is that this particular clause, i.e., only this part where the assessee is able to substantiate, should be retained, but who is not able to substantiate this should be replaced by suitable words.

SHRI VASANT SATHE: So, you agree that if it is found false then this part to be retained, and you also suggest that if any-body fails to substantiate that it is true then the officers should deem it as false—is not it? May I ask that if the assessee cannot substantiate—how do you find it to be false?

SHRI R. N. LAKHOTIA: I would like to submit that this problem has arisen in all cases where some loans are taken and some cash entries are there or even in the matter of explanation regarding the fall in gross profit rate. We are not very much concerned here with regard to loan. Wherever the loans are detected as false, the person should be penalised. There may be a case where a person gives an explanation that there was a general market depression and his profit came down but this fact at present he is not able to substantiate because it is impossible for him to substantiate. There is an experience in this connection. An electrical goods dealer may not be able to substantiate by an evidence, but according to his evidence the I.T.O. would consider whether it is satisfactory.

SHRI VASANT SATHE: Can you give us an example where an assessee

has wrong entries and he cannot give its explanation?

SHRI R. N. LAKHOTIA: I would like to submit one thing in this regard that if the entries are incorrect, then there is nothing to be done. I can give you an example of electrical goods retailer. He sells about 25 lakhs of rupees worth of goods, but due to keen competition he was buying goods at a price fixed by the Philips, which he could not sell in the market at the price which the other competitors were selling. In order to increase his sales he lowered the price by about 1 per cent and the Philips actually agreed to compensate by giving him extra commission. In this case, the I.T.O. did not accept the mere entries in the books even when the vouchers were there.

SHRI VASANT SATHE: How do you differentiate between the genuine and mala fide entries?

SHRI R. N. LAKHOTIA: I am not distinguishing like this. In regard to book entries, if there is any absence of cogent reasons the Income Tax Officer, by some suspicion can disallow such entries. Then he may explain to the I.T.O., and the I.T.O. in his turn may or may not accept that explanation according to the evidences available to the I.T.O.

SHRI VASANT SATHE: Are you putting the burden of bringing evidence on the I.T.O. to see that the assessee is wrong? Being an experienced man in income tax, you are trying to suggest a thing which is not really unknown to any concept of legal jurisprudence that you are saying that the Income Tax Officer is to bring evidence for the assessee who is wrong?

SHRI R. N. LAKHOTIA: I will submit that you cannot take it as my own views. I am fortified by the views of the Supreme Court of India. Where the entries are there in the books but the I.T.O. is not able to prove by a cogent evidence or by materials no penalty can be levied by the I.T.O.

SHRI P. G. MAVALANKAR: I want to know whether this institute has appointed any committee to give its views for the preparation of certain points. This is very important. Whether Mr. Lakhota is representing his views or his institute's views?

MR. CHAIRMAN: Mr. Lakhota, have your Institute appointed any committee to make a statement? The Chambers of Commerce appointed a committee and whatever they expressed was the views of the organisation. Whether the views which you have expressed were the studied opinion of your Institute or your personal opinion—or whether the Institute propagates its own views or partisan views?

SHRI R. N. LAKHOTIA: It is not my personal views. When I am asked questions by some honourable members which are beyond the views of the Institute I give my personal opinion. But, our Institute's memorandum is there with this august Committee where you can find the views of the Institute. I would submit that the Institute does not propagate any partisan views as such. The Institute, for this particular memorandum, appointed a small Committee and this committee drafted a memorandum and then it was submitted.

Sir, the committee consisted of three members,—myself, Shri B. P. Nayar and Prof. Ganguly, Lecturer, University College of Law. These three members discussed the provisions of this Bill.

SHRI C. M. STEPHEN: This is not a Bill sent out for eliciting public opinion. We are members of Select Committee, collecting evidences, we do not collect evidences from 50 crores of people. We only collect evidences from people who have got a status. The Bengal or Indian Chamber of Commerce has status, Trade Unions have got their own status, Academic Bodies have got status, research institutions have got status. When we see to the Institute of Socio Economic Studies, we were looking forward to the evidences of the institution with greater expectation and giving greater

weight because we expected something academic and that a very impartial position will be forthcoming. I find in the institute's memorandum that there is nothing about academic. There were some simple points that somebody may be harassed etc. etc. I am prepared to hear the views of an individual when he represents himself as individual. I am prepared to hear from an academic institution when the credentials of that institution are established.

MR. CHAIRMAN: He has submitted his institute's memorandum and he is now representing his institute. So, we should hear him.

MR. CHAIRMAN: We will discuss those points later amongst ourselves. Let him give his evidence first. Mr. Lakhota, have you anything to emphasise on the points that you have given in your memorandum?

SHRI R. N. LAKHOTIA: Out of these points I would like to make my submissions on some because there are certain anomalies in the drafting of the Bill. Sir, my first submission is regarding amendment of section 11—clause 5. There is an Explanation.

MR. CHAIRMAN: There your point is that it is redundant. You need not dilate on that.

SHRI R. N. LAKHOTIA: As regards clause 6—amendment of section 13—we have made a suggestion that the voluntary contributions should not be taxed and that the 100 per cent of the amount of contribution should be spent during the accounting year. Then, as regards section 44B, here from our practical experience we find that there are so many small traders who are doing business on wholesale basis where the turnover exceeds 2.5 lakhs but the income hardly exceeds five to seven thousand rupees. In such cases it would be a hardship for requiring them to maintain books of accounts. But those books of account are not spelt out in the Bill itself. It is submitted that if possible these books of account which are to be prescribed should be incorporated in the Act itself.

SHRI C. M. STEPHEN: But if the turnover is 2.5 lakhs, they should maintain books of accounts for purposes of sales tax.

SHRI R. N. LAKHOTIA: No because there is no sales tax on many items. Another thing is that there are lawyers—I am very sorry to say this—who are earning only Rs. 2 per case but there are thousands of lawyers in Calcutta and other places who are earning Rs. 5 to 6 thousand but here as per this proposed amendment all professional people have to compulsorily maintain books of accounts.

SHRI VASANT SATHE: Do you mean to say that your profession should also be included?

SHRI R. N. LAKHOTIA: Yes. My next point is about section 64—clause 14. There is a confusion regarding two clauses and there is an apparent contradiction between the provisions of two clauses. I want to make my submission clear in this respect by referring to the actual provisions of the clause. In section 64 of the I.T. Act there are two very important provisions. As regards (a)(i) I have nothing to say. As regards (ii), I shall come to that later. But I want to make my submission now regarding (iii)—to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm. This means that if a minor child is there, his income will be added in the hands of his parents. But there is another clause which says “to the son's wife or son's minor child of such individual, from assets transferred directly or indirectly” etc. Now, if the grandfather were to make a gift of some money to the grandson, and if the grandson was to be admitted in the partnership, then the income from the grandson's money would be included in the hands of his grandparent. But whether it will be included in the hands of the father or the grandfather is not clear.

MR. CHAIRMAN: I do not think it includes the grandfather.

SHRI R. N. LAKHOTIA: But it is written here that all such income as arises directly or indirectly to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm. Therefore, there should be a clarification that if there is such a case, then it will go to him whose income is higher. Coming to clause 19—insertion of section 80GG—we are in general agreement with the principle behind the deduction of rent, but it is couched with so many provisions that it makes the wholesome provision a negatory one.

MR. CHAIRMAN: We will give some consideration to it.

SHRI R. N. LAKHOTIA: Coming to clause 26—amendment of section 104—time and again, actually, there has been a clamour among the tax-payers and there had been an assurance that perhaps this section 104 might be deleted. But instead of doing that, there is a proposal to make it more stringent. Our suggestion is that this clause should be dispensed with and deleted. This is for your kind consideration.

As regards clause 39, we have discussed this provision and we have made some suggestions. Our suggestion is, why should Chartered Accountants alone be asked to give an audit report? If the Income-tax practitioner or a recognised member of a Bar Association practising in income-tax law he should be allowed to give his audit report, is a matter of my submission and for your consideration.

SHRI VASANT SATHE: Do you agree that some more responsibility should also be there along with the right?

SHRI R. N. LAKHOTIA: Yes, there should be some responsibility.

SHRI VASANT SATHE: Incidentally, why are you suggesting that this one lakh be increased to twenty-five lakhs? This is a very big jump.

SHRI R. N. LAKHOTIA: I will present the correct picture, how it is

going to undo the good which, actually, the Bill seeks to do.

There should be a provision so that some person is not allowed to audit and give a representation. As an auditor he is supposed to give an audit report on the correctness or otherwise of the accounts—to find out faults, if any. If he was to represent the same case, he should be debarred from arguing the same case. Either he should audit or practise.

SHRI VIRENDRA AGARWALA: Why do you say this? Practitioner is always in a better position to represent the case.

SHRI R. N. LAKHOTIA: It depends on the individual.

SHRI VIRENDRA AGARWALA: How can you make it a principle? It has been argued here that the chartered accountant should also be allowed to do the representation work. What you say is entirely opposed to it.

SHRI R. N. LAKHOTIA: A person submits an audit report on the account and has to safeguard revenue first, and looks after the client next. While representing a case he will look after the client first. In our view, even a tax auditor should not be allowed to practise.

SHRI VASANT SATHE: There should be no dual loyalty.

SHRI R. N. LAKHOTIA: As regards Rs. 25 lakhs—compulsory audit has been prescribed for an income of Rs. 50 thousand. In this age of inflation Rs. 50 thousand does not have much meaning and by the time the Bill is passed it will lose its value further. So, the gross receipt limit should not be less than Rs. 25 lakhs in any case. A shopkeeper having a very small shop where it is difficult for two people to sit, his turnover may be Rs. 5 lakhs. It is a case for audit. Audit will require all sorts of sophisticated vouchers which for a normal business man is difficult to maintain. Specially, these are to be kept for a number of years which may be as long as 16 years and in Calcutta where the

housing accommodation is difficult, where one family with two or three married couple is having accommodation in one room, this becomes difficult.

SHRI VASANT SATHE: This turnover is possible only in big cities like Calcutta, Bombay, etc. Would you suggest that if we were to classify the cities like A class, B class, C class and distinguish them as A class—25 lakhs, B class—10 lakhs and so on? Will that serve the purpose?

SHRI R. N. LAKHOTIA: You may make distinctions in theory, but there may be some unnecessary complications as in the case of wealth tax. Our only submission is that persons should not be put to undue hardship were there is no real gain to revenue. If there is a gain to revenue, do it by all means, but persons who are innocent, who are not able to make their living in these days of inflation should not be put to hardship.

As regards section 140A, there is an anomaly in the provision and that works against the interest of revenue. I would submit, I may be given two or three minutes' time on this. Through practical experience we find that under section 140A tax has to be paid within 30 days of the filing of returns. That means, if the last date is 30th June, the assessee should pay the tax by 30th July. The assessee may be in a position to file the return even on 2nd of April, but because he is to make the payment within 30 days, that means that he is to delay it. Otherwise, he will be required to make the payment two or three months earlier.

My submission is that the assessee who is so perfect and alert in the matter of filing returns in time should not be unduly punished. Therefore, the provision should have been within thirty days of the last date of filing the returns.

MR. CHAIRMAN: The main purpose is to link the payment with the return. The Income-tax Department

is experiencing much difficulties and that is why it has been suggested that payment should be linked with the return.

SHRI R. N. LAKHOTIA: Supposing the assessee is very alert who keeps his accounts in a perfect manner. How will he be permitted to file the return

on 2nd April. My submission is that there should be staggering of time. A person should be asked to pay within thirty days of the last date of filing the return.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Friday, the 21st September, 1973 at 09.00 hours in Council Chamber, Legislative
Assembly Building, Calcutta

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri Dharnidhar Basumatari
7. Shri Tridib Chaudhuri
8. Shri K. R. Ganesh
9. Shri Mani Ram Godara
10. Shri Moharaj Singh
11. Shri P. G. Mavalankar
12. Shri Vasant Sathe
13. Shri Era Sezhiyan
14. Shri Satyendra Narayan Sinha
15. Shri R. V. Swaminathan
16. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer, *Joint Secretary and Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)**

1. Shri R. D. Shah, *Chairman, Central Board of Direct Taxes.*
2. Shri S. Narayan, *Joint Secretary.*
3. Shri R. R. Khosla, *Director.*
4. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

Merchants' Chamber of Commerce, Calcutta

Spokesmen:

1. Shri A. R. Kanoria—President.
2. Shri B. P. Agarwala.
3. Shri S. N. Dalmia.
4. Shri D. M. Kothari.
5. Shri Srikant Somani.
6. Shri H. R. Bose—Additional Secretary.
7. Shri B. S. Kothari.
8. Shri Amitav Kothari.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Gentlemen, please note that the evidence which you will give here shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. It shall, however, be noted that even though you might desire your evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

SHRI A. R. KANORIA: On behalf of the Chamber we would like to thank you for the courtesy extended to us and giving us the privilege of submitting our views before the Committee. We have already submitted our memorandum on the 3rd July, 1973. Our submission would be that the Wanchoo Committee has recommended certain measures in the interest of National development and the Government would accept them as a package deal and will give due consideration to those measures. As regards discussions on different clauses are concerned I shall leave it to our colleague, Shri B. S. Kothari, to elaborate them.

SHRI B. S. KOTHARI: Sir, we have already submitted the memo-

randum and we would like to supplement our memorandum, in the course of the questions which might be put to us by the Honourable Members. Or, if you like I can submit in the beginning some of the things.

MR. CHAIRMAN: You can proceed with whatever you have to state on the basis of your memorandum. You can first make your general submissions and then you can come to clauses and as you proceed clause by clause, the Members will put questions.

SHRI B. S. KOTHARI: Thank you, Sir, I will go with the specific clauses straightaway. In clause 6 the proposed amendment which is being made we have to submit that in sub-clause (bb) which is going to be newly introduced the word used is, "in the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any activity for profit... any income derived from such activity unless the activity is carried in the course of actual carrying out of a primary purpose of the trust or institution..." Our submission is that the word 'activity' for "profit" which has been used should be replaced by the word "business" because activity for profit might be interpreted to mean any activity for profit such as rental income or in-

terest on securities. It should be limited in its scope to trading activities.

MR. CHAIRMAN: But activity must be a regular and systematic activity.

SHRI B. S. KOTHARI: The intention behind this is that no business should be carried out as a primary business. So keeping that objective in view I suggest if the word "business" is used instead of the word "profit" then it will take care of such eventuality.

MR. CHAIRMAN: You suggest only change in drafting otherwise it is acceptable to you, we take it.

SHRI ERA SEZHIYAN: You have stated in your memorandum that the wishes of the founder of the trust or institutions which are laid down in the conditions should not be changed. Suppose the founder is dead and gone, nothing could be done?

SHRI B. S. KOTHARI: Yes, Sir, that is our understanding. We don't object to the basic change in view of the change in the social concept but our submission is time limit should be given for such trusts so that they can rearrange.

SHRI ERA SEZHIYAN: Will you be agreeable to change the condition if law permits you to do this.

SHRI B. P. AGARWALA: Sir, the Trust was created with an objective.

MR. CHAIRMAN: The question is very specific. Would you or would you not accept it if the law permits to do this?

SHRI B. P. AGARWALA: Sir, in our opinion such changes should not be incorporated even if the law permits.

SHRI ERA SEZHIYAN: You have stated in your memorandum at page two that, "It is known to everybody that donation boxes are installed in many of the premises or institutions run by charitable Trusts so that visitors to such institutions are in a position to make voluntary contributions to the Trust Funds." You have also stated in the memorandum that, "At present these donations are the main backbone for carrying out charitable object of the Trust concerned." Now, my question is that have you made any study or have you got any statistics to show that these donations collected through boxes form the backbone for carrying out charitable objects of the Trusts concerned or is it your impression only? How could a responsible Chamber like yours come to the conclusion unless you possess some statistics or unless you made some study with the different Trusts.

SHRI B. S. KOTHARI: We know that many institutions run by charitable trusts do this in order to supplement their income

SHRI BHAGWAT JHA AZAD: This is a very general statement. We want to understand and appreciate your point of view. Could you please give us some examples by naming some Trusts to show on what you based your statement.

SHRI B. P. AGARWALA: I know of a certain institution such as the Pinjrapole Society of Calcutta which looks after the infirm cattles and cows. This society in Calcutta, on the *Gopaastami* day organises a *mela* where they place a *Thal* to collect money. Pretty amounts are collected by this method. There are Pinjrapole Societies everywhere in India.

SHRI BHAGWAT JHA AZAD: But 'Thal' collection is entirely different from the Box collection. Can you give us any indication as to what is the total amount of anonymous collection through the box in one or

two charitable institutions run by trusts?

SHRI B. S. KOTHARI: Sir, we have not studied it and so we would not be able to give you the figures. Our only submission in this respect would be that downright 65 per cent of tax irrespective of any quantum of collection is not fair. You should exempt a suitable percentage of the total income of that Institution which is received by way of anonymous collection and that should not be liable to tax.

MR. CHAIRMAN: What is the rationale of your suggestion? I can give you figures showing incomes of different temples. In Tirupathi Temple it was 9,18,44,000 rupees. Similarly I can give you the figures of several other temples viz. Nathdwara, Puri, Meenakshi etc. etc. Do you want that these incomes should be left out completely?

SHRI B. S. KOTHARI: Sir, institutions which are religious ones are exempted.

MR. CHAIRMAN: You are forgetting one thing. Religious institutions and charitable institutions are so interlaced that you cannot think one without the other. Religious and charitable institutions are interlaced and dovetailed.

SHRI BHAGWAT JHA AZAD: We want to know the views of the Government as to how the Government feel on this point?

MR. CHAIRMAN: The Government view, as I understand, is that the entirely religious institutions will be left out while religion mixed with charity will not be left out.

SHRI BHAGWAT JHA AZAD: Then what will be in the case of Tirupathi?

SHRI VIRENDRA AGARWALA: If the Tirupathi Temple runs a number of educational institutions then will it be covered by this Bill?

MR. CHAIRMAN: This point is not free from doubt. If it is a mixed trust for religion and charity, then whether it will be hit by this or not is a matter which will have to be examined.

SHRI BHAGWAT JHA AZAD: I have seen in Government papers that anonymous donations to the religious trusts are not taxable.

MR. CHAIRMAN: The question is whether all the trusts are free from religious performances or are free from charitable performances. Here the religious trusts are not free from charitable performances. So this question is not free from doubt.

SHRI TRIDIB CHAUDHURI: I may suggest that let us keep this doubt isolated for the present, and proceed on the basis of the trust because this matter is not exactly clear. A note has been given to us by the Finance Ministry which indicates at page 12 to make a particular amendment to the provisions about the charitable religious trust.

MR. CHAIRMAN: Let me make the position clear. There are three types of trusts or institutions. The first is—the trusts which carry on purely with the religious activities, the second is—the trust which carry on purely with the charitable activities and the third type is—the trusts which carry on with both the religious and charitable performance. So, Mr. Kothari, have you got anything further to say on clause 6?

SHRI B. S. KOTHARI: The interpretation should be made clear. Unless the religious organisations are wholly devoting their activities only to religious performances, it might be liable to come within the purview of this new clause. We suggest that either religious trusts should be defined or religious purpose should be defined to make it clear because religious institutions may carry on with its fund such activities as may be defined as charitable activities.

SHRI ERA SEZHIYAN: In your memorandum at page 3, you made some observations. I come to your first observation, i.e., "To help growth of smaller trusts and to enable them to carry out their charitable objects it is suggested that trusts having funds upto Rs. 5 lakhs should be exempted from the application of proposed provisions etc". It applies on two things—first the comments of the chamber are that the smaller trusts are better than the bigger trusts, and secondly, suppose you apply the limit of Rs. 5 lakhs then what will prevent the bigger trusts to be splitted up into smaller ones. what is the basis of your impression that smaller trusts are better than bigger trusts?

SHRI B. S. KOTHARI: Regarding Rs. 5 lakhs. our idea. i.e., the idea of the members of the Merchants' Chamber of Commerce. is that many of the trusts which are below Rs. 5 lakhs undertake certain charitable activities. They invest money in some concerns where from they can get their income for running the charitable work. If this total ban or prohibition is applied on investment, the trusts will not be able to invest even in shares, preference shares, debentures or give loans to anybody because the words used are very wide in their coverage. So, a limit should be allowed so that these small trusts are saved from the purview of this section and in that event they will be able to continue to have their incomes which at present they are having and be able to continue to render their services in the line, they have already adopted.

SHRI ERA SEZHIYAN: I have put a specific question that what is the basis of your impression that the smaller trusts are better than the bigger trusts?

MR. CHAIRMAN: The question is this: what is the justification of splitting of, say 15 lakhs into three 5 lakhs each?

SHRI B. S. KOTHARI: So far as our idea is concerned if these funds are diverted into the business, and such business controlled by these funds. and if they act against the national interest then total prohibition is welcomed.

MR. CHAIRMAN: Regarding Rs. 5 lakhs, have you got any further arguments?

SHRI D. M. KOTHARI: In the growing changing attitude of the people, it is seen not only in this Calcutta and West Bengal, but in many other places that smaller institutions are coming up and they are building up their own small hospitals, homoeopathic dispensaries and small schools. They collect donations from the various people and invest them in the shares and other institutions where from they get dividends and other income. Within the investment of Rs. 5 lakhs normally they derive income through shares, debentures and preference shares, say about 7 or 8 per cent, which comes at Rs. 40,000. Out of this income. the trust can carry on certain activities such as running of small dispensaries and small schools, keeping the total fund in tact without loosing the total fund of the public.

SHRI BHAGWAT JHA AZAD: May I point out that suppose the trusts of Rs. 5 lakhs are getting income of Rs 40,000 and by this Rs. 40,000 they are running hospitals and schools in the rural areas, keeping Rs. 5 lakhs in tact. So, some mischiefs are being done by the smaller trusts. So, there is no difference between a smaller trusts and a bigger trust because both of them are doing mischiefs—the smaller ones, by running hospitals and schools and the bigger ones, by doing bigger mischiefs. Then how do you say that the mere reduction in size could prevent the mischief?

SHRI VASANT SATHE: I like to put another question. The persons who are controlling big trusts are getting undue advantage through in-

vestments. So the restrictions proposed to be imposed should not apply to all the trusts because there are some other trusts who have some controlling forces over their business. Supposing 100 small trusts as you have said within the limits of Rs. 500,000 are using their funds through some investors are utilising this media and getting exemption of income tax and ploughing money in the trusts for their own business purpose. Once you accept the principle that there is this danger then how do you say that mere reduction in size will prevent the mischief?

SHRI B. S. KOTHARI: We agree that, so far as controlling or misuse of funds whether it is big or small trusts, are concerned the size and quantum become meaningful in the proposition. Steps will have to be taken to control that the same settler is not able to divide its fund in various trusts.

SHRI VASANT SATHÉ: It is not the question of one settler putting in 5 lakhs. Supposing, 10 persons decide to make 10 small trusts of Rs. 5 lakhs each within the limit of exemption, then the total comes to Rs. 50 lakhs. If they would invest this huge amount in this way then how do you prevent this mischief?

SHRI B. S. KOTHARI: I think this question is a presumption. If some businessmen enter into an arrangement like this—which is somewhat impossible—then this question would come. But I submit it has no basis of facts so far as the trusts-investments are concerned. We only want that the small trusts which are doing useful work, should be exempted so that they are viable to continue their activities. This is the basic idea of putting our suggestions.

MR. CHAIRMAN: The various memoranda that we have received from other organisations contain objection on blanket ban on investment. The basic difference between their approach and the approach of the Government has brought about this legislation. Therefore, if you are

serious about this committee you must tell us some ways and means by which we can effectively control all the cross-investments without affecting the genuine cases. And if you are not ready now I suggest send a supplementary not to us.

SHRI B. S. KOTHARI: We will do that, Mr. Chairman, you have just cited an example in which the trusts have small amounts of Rs. 1,000 as corpus and they can have donations. But all these donations according to the new definition will be treated as income which will have to be spent and which can only be accumulated in the prescribed manner.

MR. CHAIRMAN: That is not correct. If it is stated to be for corpus then it is not income. So all that you have to do is on the receipt just put a stamp paper for purposes of the corpus and it will not go on to the credit side of the profit and loss account. You see, this is a serious matter and we want that you should suggest something which will stop this sort of mischief and yet not hit the genuine cases.

SHRI P. G. MAVALANKAR: Sir, on the subject of charitable trusts we all agree that so far they have been making very useful contribution to the social services and to the needs of the poor and so on. We agree that they are doing very good work but the tendency we have found—and it is our experience now over a period of last several years—is that these trusts in the name of charity are agencies for (a) avoidance of tax (b) absorption of black money into the corpuses of these trusts and (c) malpractices in terms of the trustees doing business and commerce. Therefore, I want to ask two questions from the Chamber. Is it not time that we think less in terms of social service through the channels of private trusts and let the Government—the Welfare State—do this job? Previously the trusts were doing charities of various kinds but now there is no question of charity it is now the question of social justice even to the poorest of the poor.

therefore, we have now to change the nomenclature from charity to justice, and in that view my next question is—is it not right that in a Welfare State the Government have a duty to tax more people who have more wealth so that the ends of justice and social services are met?

SHRI B. S. KOTHARI: If the State is keen in taking over the responsibility of social services, it is good, but the question is what about the transition stage or till the stage when the Government is really able to look after the social welfare services of the people. It is a fact that many of these trusts are running schools, colleges, hospitals and dispensaries. The State can take them over any time they like. But the question is whether without resources the State can do it. The very fact that fiscal incentive is given for charity, shows that Government want this work to continue. Incentive in tax is one of the reasons why charitable institutions are growing up. It should be recognised that till the stage when Government would be able to take over the responsibility of social services, such as running of educational institutions, medical institutions and other philanthropic institutions; such work should not be discouraged.

SHRI VASANT SATHE: But the educational institutions and medical institutions are not covered by this. They are exempt.

MR. CHAIRMAN: Mr. Kothari, we are agitating only on one point. I tell you, though Mr. Mavalankar feels very strongly about it, supposing the Committee were to feel that we do not want to cause hardship to honest men, what about the colossal misuse of money and power by unscrupulous men forming trusts? What is your Chamber willing to do to help us and arrest this sort of mischief.

SHRI P. G. MAVALANKAR: And to add a footnote to your question. Mr. Chairman, what the Chamber is doing to reduce this transition period?

SHRI B. P. AGARWALA: Sir, all of us agree that some of the charitable trusts are doing very good work. It has also been expressed by the Committee that the genuine cases should be protected and safeguarded. We shall apply our mind to this question and submit a detailed note.

SHRI DHARNIDHAR BASUMATARI: In his reply to my friend Mr. Mavalankar's question, Mr. Kothari has said that while the Government has failed to develop the country in the way they like, the trusts are developing the country. How does he say and come to the conclusion that the Government has failed?

MR. CHAIRMAN: He did not say that.

SHRI DHARNIDHAR BASUMATARI: His remarks amounted to that idea. You see, the aim of this Bill is to plug money from unscrupulous persons. We want young men like you to help us so that we can plug the money, how to get more money from tax for the development of the country. What is there to have a suspicion and doubt that Government is going to do injustice to the people? That is not a fact, Government is not out to punish honest men.

SHRI B. S. KOTHARI: Sir, I am sorry, my statement has been misunderstood. We understand the anxiety of the Select Committee and the Government that measures should be taken to control misuse. My only submission is that the Government should realise the necessity of philanthropic institutions which are doing good work. That is why fiscal incentives are given. There are certain restrictions and discipline incorporated in the Bill. Our submission is that these should not affect the institutions which are doing fine work.

SHRI SAYED AHMED AGA: Mr. Chairman, fact remains that there has been misuse. It has become a device for evading tax. Until Government takes over the running of these trusts, what will be your reac-

tion, if in the meantime there is no exemption and all the exemptions given are withdrawn?

SHRI B. P. AGARWALA: Sir, we feel that these tax exemptions should be continued, but, at the same time, we feel that there should not be any misuse of the charities. All the trusts should not be mixed up together.

SHRI VASANT SATHE: On 6(iii), the Chamber has suggested that any person making contribution to the extent of 5 per cent of the Trust Fund should be deemed to be a substantial contributor. How do they come to this figure of 5 per cent? It may be a very big sum.

MR. CHAIRMAN: About this matter also, I hope, you will reconsider and submit a detailed note.

SHRI B. S. KOTHARI: Wanchoo Committee also recommended that 5 per cent of the corpus should be exempted or treated on substantial contribution.

MR. CHAIRMAN: What are your arguments?

SHRI B. S. KOTHARI: There is no limit prescribed. This will mean—if it is an old trust of, say, 20 years or 30 years, the whole arithmetic will have to be done. Another submission is that the amount should have some relation with the size of the trust. It should not be Rs. 5,000. It may be 1 per cent, 2 per cent or 5 per cent, which may be thought over but a blanket Rs. 5000 without considering the size of the trust is also not a logical proposition.

Coming to clause 12, regarding maintenance of accounts, we have to suggest that so far as business is concerned, there is exemption upto a certain limit but the word 'profession' has not been added in the proviso and hence irrespective of any quantum of income or receipts, professional people will have to maintain accounts.

MR. CHAIRMAN: Why not every profession maintain some accounts? For a business man having large turnover, the income of Rs. 25,000 might go up. There is no difficulty. But professionals, whose income is not known—let me tell you one thing, the professionals are the biggest tax evaders—what is their difficulty in maintaining accounts? Theirs is not a very onerous task. Everybody is capable of it.

SHRI B. S. KOTHARI: There is already power given to the Department—if accounts are not maintained to estimate income. It is the responsibility of the persons to give a true reflection of the accounts or their income.

MR. CHAIRMAN: Some guidance should be given.

SHRI B. S. KOTHARI: It may be given.

SHRI ERA SEZHIYAN: You have said that tax-payers will be left to maintain the books of accounts. We appreciate that it should not be complicated, that it should be a simpler form. But do you not agree that uniformity should be there.

SHRI B. S. KOTHARI: There are so many types of profession that it would be a herculean task even for the Board to prescribe documents records to be maintained by each profession.

SHRI B. P. AGARWALA: When you are making obligatory on the part of small traders having a turnover of Rs. 2.50 lakhs it will be too much to prescribe particular type of accounts because most of them are uneducated people. What is the logic behind having a prescribed accounting system for them. So in view of sub-section (i) there is no necessity of providing subsection (2).

MR. CHAIRMAN: After all they will give guidance which will be of a statutory nature. After all accounts are books of original entries and books of principal entries. Why

do you apprehend that smaller assesses would be put to such difficulties? They will help them.

SHRI B. S. KOTHARI: Regarding guidance, of course, it will really guide a small trader.

MR. CHAIRMAN: There is also a thinking on the part of the Government that before they issue any such prescribed form they will consult the Institute of Chartered Accountants.

SHRI D. M. KOTHARI: What I feel is that there is a basic principle for the maintenance of books of accounts and that is being followed wherever books of accounts are maintained. When we say that proper books are to be maintained by an assessee then basically it is needed that an assessee complies with the basic form of accounts which are normally the cash book or ledger, purchase register, sales register etc.

SHRI B. S. KOTHARI: Government has been thinking of devising simpler forms for submissions of income-tax returns and, if I am not wrong, since 1967 onwards Government have been revising forms of accounts in the shape of making simpler forms every year. But if you look to the form you will find that they are much more complicated than those used in previous years.

SHRI R. D. SHAH: Return forms during the last 3/4 years have been revised in consultation with the Chartered Accountants, income-tax lawyers, advocates and departmental officers and they in their judgment have come down to this. So you can expect that there must be some sort of balance in their judgment.

SHRI B. S. KOTHARI: At present very many traders are maintaining accounts on indigeneous method.

MR. CHAIRMAN: That is a very scientific method.

SHRI B. S. KOTHARI: If the Department prescribes particular types of forms then this system will have to be discarded. It will not be possible for them to do so because various forms will be required and the entire existing method will have to be changed.

MR. CHAIRMAN: We will consider that aspect.

SHRI VASANT SATHE: I thought the object was the subjective consideration of the officer to decide about maintenance of books of accounts of a particular assessee and the forms should be prescribed with a view to see that the assessees are safer.

MR. CHAIRMAN: Let Mr. Shah give guidance. Mr. Kothari, I think such guidance will be much better

SHRI B. S. KOTHARI: In spite of the fact that details are given, many times the books are rejected in the appellate stage on the ground that stock register is not maintained, particular details regarding stocks have been put in the ledger and cash books which are not accepted by the income tax officer.

SHRI R. D. SHAH: The Board will prescribe the type of accounts. We have some across cases where professionals having income of 70 thousand come and say they have no details as to from whom they have received the amount. They just say that they have earned 60/70 thousand but they cannot say wherefrom they have earned it.

MR. CHAIRMAN: Therefore, some checks are necessary.

SHRI D. M. KOTHARI: There is another practical difficulty. But if the suggestion of guidelines is recommended and implemented, of the total number of assessees in the register of the department at least 90 per cent are small assessees who are maintaining books of accounts in the manner they have learnt from years and generation together.

SHRI VASANT SATHE: We are concerned with bigger assessees.

SHRI D. M. KOTHARI: The bigger assessees invariably keep accounts in the standard forms. But assessees having a turnover of 2 lakhs 50 thousand or 5 lakhs will need certain people to maintain books of accounts. The partners must know how books are to be maintained and they have been maintaining the same in the normal manner, in the indigeneous manner, which may be called scientific manner. So, if sudden change is made then qualified persons will be needed otherwise it will be impossible for them to change over it. I am not pleading on behalf of the Chamber for not prescribing standard forms. Even a doctor having an income of 70 thousand rupees must maintain books of accounts in the standard form.

MR. CHAIRMAN: I understand in sales tax you have to maintain books of accounts of turnover of 30 thousand only. However, let us go to the next point.

SHRI B. S. KOTHARI: We come to clause 14. Here, sub-clause (ii) says, "any income earned by the spouse of an individual by way of salary, commission, fee or any other form of remuneration from a concern in which such individual has a substantial interest will be included in the total income of the individual" This will be done irrespective of the fact whether it is for genuine service or not, he (income-tax officer) has got no discretionary power about it. Even at present I.T.O. has got powers u/s 40A to disallow any unreasonable payment. So, we submit there is no reason for completely integrating such income with the spouse without any discretionary power to the Income-tax Officer.

SHRI VASANT SATHE: What cases have you in mind?

SHRI B. S. KOTHARI: Doctors might have qualified Nurses as wives.

SHRI VASANT SATHE: I am interested to know how many doctors in this country have their wives as nurses.

SHRI S. N. DALMIA: There are qualified doctors—both husband and wife are qualified doctors—I know there are hundreds of such example in this city of Calcutta. In such cases the wife is not dependant on husband. Their cases should not be ignored.

SHRI VASANT SATHE: If they are partners there is no problem.

MR. CHAIRMAN: You see, professionals as partners create no problem. But Section 40A is not a sufficient protection. In fact I should like to know if you can really make some contribution to save genuine cases. This is very complicated. It is not the intention of the Government to ignore genuine cases. But in the garb of genuine cases many malpractices are committed. In fact, I would request the Government how they can distinguish a genuine case from the other cases. This is regarding clubbing of wife's income—in clause 14(a).

SHRI BHAGWAT JHA AZAD: Mr. Chairman, Sir, I agree with your observation that Government must keep in mind that while plugging the loopholes to stop such misuse it shall not cause difficulties to the genuine persons and to the persons who have lower incomes because they have a larger percentage in this country. We will also welcome the Chamber's suggestions in this matter and I think, they will also consider that while plugging the loopholes the larger percentage who are not doing such practices will be safe.

MR. CHAIRMAN: I would also request the Government to let us know their views in the matter if they have made some study of this matter. We should like to know whether they are capable of sorting out this problem within the ambit or outside the ambit of this Bill.

SHRI VASANT SATHE: Sir, I have a genuine case in minds which is covered by 15(a)(1)(ii). Supposing an agriculturist has his wife working on the farm in which he has substantial interest obviously and he pays her salary. What will happen to her?

MR. CHAIRMAN: Agricultural income is outside the purview of this Bill.

SHRI VASANT SATHE: Supposing he has an industrial unit viz., workshop. What will happen if she helps in the work and receives a salary?

MR. CHAIRMAN: The income will be clubbed.

SHRI VASANT SATHE: In the case of cobbler or handloom weaver?

MR. CHAIRMAN: Yes, it will be clubbed. Now, Mr. Kothari, various sections of the community viz, cobbler, weaver, small agriculturist are coming into the picture. So, please let us know if you have any suggestions to make.

SHRI B. S. KOTHARI: The burden may be cast on the assesses to prove the bona fides.

MR. CHAIRMAN: That is there. You see they are losing cases after cases in the Tribunal. There may be 50 honest people and 50 dishonest people out of a hundred people. The 50 per cent dishonest people are in much higher income group. What are we to do? We want to get at them and we have nothing to say against the cobbler, the weaver, the small agriculturist or a man working in a workshop. But the difficulty arises because the existing system does not help us to distinguish between the genuine and phoney cases. So kindly enlighten us on this point.

SHRI B. S. KOTHARI: Sir, we will submit our views in a supplementary memorandum. Now, I come to sub-clause (3) of clause 14 regarding the income of a minor arising out of the benefits of partnership in a firm. Sir, the present amendment, according to

us is unjust, unfair and harsh as in all circumstances the parents of the minor are saddled with tax liability. It should not be done.

MR. CHAIRMAN: Mr Kothari, are you serious about your statement at page 7 of your memorandum?

SHRI B. S. KOTHARI: There should be specific provision for the adjustment of minor's share of loss, if any, while computing total income of such parents. If there are accumulated profits, minor's share may be liable for losses. Moreover there was a decision of Gujarat High Court in this regard. Hence this submission.

MR. CHAIRMAN: That may be provisions of the Partnership Act. So please let us know later if you are are at all serious in your statement at page 7 of your memorandum.

SHRI B. S. KOTHARI: Sir, I have another suggestion to make. In the case of a widow or in the case of a wife deserted by the husband if the father-in-law gives something to the widow or deserted daughter-in-law then that should not be added to the income of the father-in-law.

MR. CHAIRMAN: We will consider that.

SHRI D. M. KOTHARI: In clause 14, in explanation I, it has been mentioned that the income of the minor would be added to the income of the husband or the wife whose income is greater. Now the assessment of the husband or the wife would be kept pending till the assessment of either of them is completed. There is another possibility—if an assessment has been completed, in the appellate stage suppose it might be reduced, then how the department is going to trace back either in the case of the wife or husband. In that case, our submission is that it should be limited either to the husband or to the wife so that there can be no complication again for tracing back the income of the husband or the wife.

MR. CHAIRMAN: You help us in regard to the existing law. Some diff-

culties exist at present. I think, section 154 might have been amended in the line that increase in the ultimate income of one of the two, i.e. either father or mother, is deemed to be higher. I feel the Income Tax Officer should have been given some authority to change. Now let us pass on to the next one.

SHRI B. S. KOTHARI: In clause 16, if any part of the business of a company do consist of the purchase and sale of shares, then this activity of the company may be deemed as speculative business. The speculative business has already been defined in the Act. In case of the transaction which are generally settled by way of delivery a problem will arise, i.e. whether the delivery of share can be given and if so how will it go against this very definition of speculative transaction

MR. CHAIRMAN: We want to know the reason. It has come to our notice after considerable analysis that many big houses gained profits as a result of inter-connected transactions of shares.

SHRI B. S. KOTHARI: In this connection, I may say that the way in which the amendment is going to be made will likely be challenged because it goes against the definition of speculative transaction. It may lead to litigations and that is why it is to be amended properly.

Regarding Clause 25, section 80 (VV), where a limit of Rs. 2,000/- has been prescribed for allowing the expenses incurred for representing cases before the Tribunal or Court, I would state that this is against the decision as well as the recommendation of the Wanchoo Committee. The reason is that the fees have become higher now-a-days. So, the full expenses should be allowed.

MR. CHAIRMAN: There are many litigation cases that are being settled in the Courts. The professionals who are engaged by the business concerns may be urged to take lower rate.

However, we will take up the matter for due consideration.

SHRI B. S. KOTHARI: As regards Clause 21 we submit that this clause governs the industrial companies so that they should be obliged to declare dividends which are at present exempted. The Wanchoo Committee suggested that the entire differential rates as well as this whole clause regarding the compulsory distribution of dividends should go away. We do not know why this clause is being brought forward. The revenue from this will be very low. In view of wealth tax and capital gains tax there is necessity of this tax. The Supreme Court decision all sort of business factors should be taken into account. Moreover, when loans are taken from the banks or financial institutions, they put strict restrictions that dividend above 6 per cent cannot be declared until their loans have been fully repaid. Suppose, this clause is enforced and then at the same time they cannot declare the required percentage of dividend, then they will have to pay 37 per cent additional tax.

MR. CHAIRMAN: Most of the people do not pay wealth tax as per rules. I do not know as to how they can be managed.

SHRI B. S. KOTHARI: This is a thing which is somewhat complicated but all these aspects have been considered by Wanchoo Committee. Most of the small industrial companies retain some portion of their profits as they cannot go to the public to get their shares subscribed. They plough back their profits which is the main factor for their growth and expansion. Due to this section they will be affected. So by bringing in this clause the growth and expansion of the small companies will be hampered.

MR. CHAIRMAN: Then do you think that the existing law is satisfactory?

SHRI B. S. KOTHARI: Yes Sir. In Clause No. 35, I have to state that the word which has been used is 'if the Assistant Director of Inspection has reason to suspect',—the word 'suspect' is liable to be interpreted as too wide. It may lead to unfair exercise of power.

SHRI VASANT SATHE: I would submit that the word 'reason to suspect' put greater responsibility and restriction on the Inspector than the words which are suggesting 'reason to believe' because 'believe' is a vague word, but 'suspect' is something more definite and concrete.

SHRI VIRENDRA AGARWALA: The word 'suspect' arises in respect of documents, but 'believe' is a little stronger word which has got a definite meaning.

SHRI B. S. KOTHARI: In this context the word 'suspect' has been used in section 131(a), It has more wider implication. Our submission is that it should be replaced by the word 'believe'.

MR. CHAIRMAN: There has been a tremendous history behind the expression 'reasons to believe'. It has figured in the Income Tax Act under Section 148, i.e. erstwhile section 34, the Courts have interpreted that reasons to believe may not be reasons to suspect. If you have reasons to 'suspect', it is not the same as reasons to 'believe'.

SHRI B. S. KOTHARI: In Clause 36(2a) for the words 'which has not been disclosed', the words 'would not be disclosed' are to be substituted. Search is made during the year, but the return is still due and the year is not ended. How can the income be determined at the stage prior to filing of return as envisaged in this clause.

MR. CHAIRMAN: How can you envisage the circumstance where there is a concealment of income, if there is no suspicious movement? Theoretically it is not possible. If a person gets a higher amount in cash and he does not issue any receipt for this,

then the book of his account do not show any transaction. So, in such cases the actual position cannot be ascertained. The other day I was told by one of my friends that he had paid Rs. 8,000/- to a doctor and after that he asked for a receipt. The doctor issued a receipt of only Rs. 600/-. Suppose if my friend goes to the Income Tax Officer and reports the matter to him, can the Income Tax Officer detect the remaining Rs. 7400/- in the doctor's books of account and thereby force him to pay tax?

SHRI B. S. KOTHARI: In this case where there is a receipt of Rs. 600/- the Income Tax Officer may detect the actual facts of transaction considering the merits of the case.

MR. CHAIRMAN: But I do not understand how this concealment can be suspected.

Will you read the existing section 132(1) (b) for the benefit of the Committee?

SHRI B. S. KOTHARI: Existing Section 132(1) (b) reads as follows:—

'132(1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account, or other documents which will be useful for, or relevant to, any proceeding under the Income-tax Act, 1922 (11 of 1922) or under this Act.

MR. CHAIRMAN: It is already there in (b) and we are bringing it in (c). You please read (c). Now, supposing the man has Rs. 7400 with him—marked notes, then what happens? According to you until the return is filed no concealment can be lodged. You see, we are working under very close and cumbersome circumstances and the task is a delicate one. We are out to do as much as we can for eradication of evasion

of taxes. Kindly take those cases where all these mischiefs are being done. We are only anxious that genuine people are not hurt. For them if you have something to suggest we will give our most anxious consideration.

SHRI B. S. KOTHARI: We will give it in our supplementary memorandum. Then in the same section (1) (a), for the words "reason to suspect" we want "reason to believe". Then regarding section 133(a), clause 38, sub-clause (5), wide power is given. Now, there are two factors which I would like the Committee to consider. One is that this function is being given to the Income Tax Inspector. It should be—not below the rank of an Income Tax Officer. Then another thing is that no time limit has been fixed for such proceedings. We suggest that there should be a time limit for this.

SHRI BHAGWAT JHA AZAD: But does the Inspector act on his own behalf *suo moto* or does he act on the authority of the Income Tax Officer?

MR. CHAIRMAN: He has to be authorised by the Income Tax Officer.

SHRI B. S. KOTHARI: The idea is that an officer, a senior officer, has maturity of judgement than a junior Inspector.

SHRI B. S. AGARWALA: One more submission I have to make on this point. When wide powers have been given to the department, there should be corresponding obligation on their part also for their proper use and if they are used indiscriminately, some sort of action should be taken against those officers. There should be some sort of check as is existing in the Central Excise and Salt Act.

SHRI K. R. GANESH: The penal powers are there not only in the Income Tax Act but also in many other Acts. The point here is that we are dealing with the question of evasion which is a very important question which we are facing. What you are trying to imagine is the misuse of

these powers by the officers. We cannot rule out the element of misuse but considering the enormity of problems that these officers are facing, if you provide everything in law, then how does an officer act and why should he act?

SHRI B. S. KOTHARI: In Customs Act there are similar provisions. The officer can use his powers indiscriminately and maliciously and there should be some check that he can be proceeded against. It will be for the assessee to prove it that he has done it maliciously.

MR. CHAIRMAN: In other words, you want that there should be a moral deterrent. Similar provisions are there in the Foreign Exchange Regulation Act and in the Excise and Salt Act. We may consider your point and something has to be done about this. But about giving wilfully and maliciously false information, I will tell you something. It sometimes happens that a person double crosses. He first goes and tells the department and then he goes and tells the assesses. We are anxious that such people should be brought to book.

SHRI K. R. GANESH: It is not that large number of assesseees are to be caught by the Income-tax Officers. The problem is, unfortunately, I would like to place before you, there are very respectable and large institutions in this country which are defrauding the nation of the revenue. How do you catch them?

MR. CHAIRMAN: The problem of the Government is this: if you are serious about it, if you are serious about the menace, you must make sure that do not demoralise the officers against action.

SHRI VIRENDRA AGARWALA: We are encouraging, in a way, the misuse of power.

SHRI R. D. SHAH: We must draw a line between failure and success. In one case it will look like harassment and in another case we may succeed. In one case where we gath-

ered from a person that a person has gold underneath his house, or concealed in a wall. The officer went there and dug out the place, but could not find anything. Some how or other, when they were passing, a person saw a glitter and he brought it to the notice of the officer. They dug deeper and got Rs. 17,000. After digging so much if they did not get anything it might have a different effect. The point is, the Commissioner takes into consideration certain basic information before he authorises an officer. He may succeed and sometimes he may not succeed. Because of the failure we cannot say that it is malafide, or because we had another search and found secret cages, but we found nothing in it. It was a failure. God only knows how did it happen. I think it will be demoralising the officer if you judge it as malafide from a failure.

SHRI DHARNIDHAR BASUMATARI: Let us have their co-operation in stopping this menace.

SHRI BHAGWAT JHA AZAD: One of our friends, a Member of Parliament, informed the topmost man in the department including a Minister that an I. T. O. has got Rs. 7 lakhs in his house. For 6 days there was no raid and on the 8th day there was a raid. A Member of Parliament said this and he was prepared to say this on oath.

SHRI K. R. GANESH: Actually, this information is not either in my possession or of Mr. R. D. Shah.

MR. CHAIRMAN: May I say that let us discuss this aspect in the Committee.

SHRI P. G. MAVALANKAR: It is true, sometimes it is found and sometimes it is not. Mr Chairman, you said a little while ago, Government officers should not be demoralised. But how should we protect the powerless citizens?

MR. CHAIRMAN: We will have to find a via media.

SHRI B. S. KOTHARI: As Mr Shah has illustrated, there may be then difference between success and failure but for malafides he will have to prove in the court of law that there was a malicious intention. He cannot prove this in the court of law easily unless there are such factors. Unless he can prove, no action will be taken.

SHRI VIRENDRA AGARWALA: If the Government has got some specific information in respect of any Tax Officer, I think the powers of search and raid in respect of such officer must be provided in the Bill.

SHRI K. R. GANESH: The point which you are raising will be raised by others also. There are one or two things that I would like to submit. You are thinking of ordinary assessee. We are thinking of large assesseees who are defrauding—I do not want to mention the names—we cannot catch them. If you have to catch them—they are about 2000 to 3000 in number—who are using all these mechanisms—what they are doing is something anti-social, anti-national and dacoity of the nation—how are you going to catch them?

SHRI VASANT SATHE: I think a via media can be found out if we use the words "willful" and "malicious". This can protect the interest of an assessee. Secondly, we may consider putting a limitation so that a small majority of assesseees may not be affected or even harassed. Will that satisfy you?

SHRI B. P. AGARWALA: We agree that persons who are in the habit of evading taxes should be dealt with strongly and severely but genuine people should not be harassed. That is why we have suggested some sort of check on income-tax officers so that they may not be prompted to take action indiscriminately without any particular objective or facts before him as you have rightly provided in Central Excise Act which is also a revenue Act like the I. T. Act

MR. CHAIRMAN: Nothing which demoralises officers can work. We can just ensure a fair deal both for the assesseees and officers. We will think of it.

SHRI K. R. GANESH: Shri Azad has cited one example which is a bad example indeed. I am sorry for that. I will find it out. But there is another example also. There is an officer—an Assistant Income-tax Commissioner in-charge of Acquisition—in this city. A report was given to the CBI that he took Rs. 10 lakhs for consideration. CBI went to search his house. One of the impressions CBI got was that they had come to a very wrong place. The officer is living very modestly. They searched everything but found nothing and at the moment no officer in Calcutta is prepared to take charge of Acquisition.

SHRI VIRENDRA AGARWALA: Has the officer been transferred?

SHRI K. R. GANESH: No.

SHRI BHAGWAT JHA AZAD: This only shows how the entire department is going on. In a large number of searches they are successful; they may not be successful in a few cases. But for this if officers are not there to take charge then it is a sad commentary on the entire department. It is a sad commentary indeed.

SHRI VIRENDRA AGARWALA: Yes, it is a sad commentary.

SHRI BHAGWAT JHA AZAD: We would like to have some concrete suggestions from the witness as to how the law should be so framed that they should operate on those evaders and shall not operate on those who are genuine tax-payers.

MR. CHAIRMAN: I think there should be some sort of a provision that if the Commissioner is satisfied nothing will happen. No one should act arbitrarily and if an officer acts arbitrarily that must be construed as malafide. For that he should take the superior officer into confidence. Do you have any suggestion as

to how a wilful and malicious informant should be dealt with?

SHRI S. N. DALMIA: After enquiry if it is found that the report made by an informant is wrong, the identity of that informant should be made known to the assessee....

MR. CHAIRMAN: Suppose the informant succeeded ten times and did not succeed two times.

SHRI R. D. SHAH: Please understand that due to change in the procedure it is not easy now a days. Previously he used to give information but very recently we have prescribed a form where the informer shall sign and where it has been laid down that the informer will be liable under the Penal Code if the information is false. We ask for the source of information and all that in writing so that we can judge the bonafide and the informer also knows the consequences of wrong information. If he succeeds 10 times but fails two times then we take step and do not give credence to him. The consequence of giving wrong information is his removal.

SHRI B. P. AGARWALA: Then, Sir, in clause 39 provision is being made that in case of a business having an income of Rs. 50 thousand or a turnover exceeding Rs. 5 lakhs there will be compulsory audit. On this point we have to submit that this amount of turnover of 5 lakhs is too small. There are many businesses where with a turnover of 5 lakhs the assesseees make an income of 5 or 10 thousand rupees, e.g. commission agents. Lakhs of people are engaged in commission agency business with a turnover of 5 lakh but they only earn 5 or 10 thousand of rupees. We therefore suggest that in case of business it should be 50 thousand rupees of income and 5 lakhs of rupees turnover.

MR. CHAIRMAN: That means, if he earns 50 thousand with lesser amount of turnover i.e., less than 5 lakhs than he should not be included?

SHRI B. P. AGARWALA: Yes, Sir. Our submission is that 50 thousand of income should be subjected to audit whatever may be the turnover. Minimum income should be 50 thousand.

MR. CHAIRMAN: But this is same thing. I think you are confusing the point.

SHRI B. S. KOTHARI: The point is, if the turnover is, say 5 lakhs, it may not give income but then it is liable to be audited and taxed.

MR. CHAIRMAN: It is not linked up. There are 2 different circumstances, one is income and the other is turnover, and the criteria are in one case 50 thousand and turnover 5 lakhs.

SHRI B. S. KOTHARI: Our submission is so far as income criterion is concerned it should be 50 thousand but so far as turnover is concerned it should be increased to 25 lakhs.

MR. CHAIRMAN: Then 25 lakhs turnover means 2 per cent profit. So, either you want 2 p.c. profit criterion or 50 thousand rupees income. Is that a rational alternative? Then, supposing there is a turnover of 20 lakhs but there is loss—then there is no audit? In one year there may be profit but in the next year there may be loss. I think you have confused the matter. I will request you to reconsider your suggestion and let us know later on. You are not clear on the point. You please elaborate it more rationally and let us know.

SHRI B. S. KOTHARI: Then regarding furnishing of return also, if the audit is delayed naturally submission of returns is liable to be delayed. So, there should be provision for submitting unaudited returns.

MR. CHAIRMAN: Assuming for a moment what you say is correct what will happen if some one files a return of Rs. 50,000/- and after being audited it comes to Rs. 3 lakhs.

SHRI B. S. KOTHARI: The person will be liable to penalties. He would be supposed to have concealed his income.

MR. CHAIRMAN: There cannot be any penalty if a person files a revised return before the Income Tax Officers start the enquiry. Where is the *mensrea*? Please keep it in mind. We would give them sufficient time and subsequently any higher income found would be treated as deemed concealment unless proved otherwise.

SHRI B. S. KOTHARI: When the Audit will be done, certain adjustments will have to be done. The auditors may insist on certain formalities.

MR. CHAIRMAN: The deemed concealment will only shift the onus. This is what I am thinking because some time will have to be given.

SHRI B. S. KOTHARI: Sir, it will be impossible for the Auditors to do the work within the prescribed time. So, such period must not be fixed for filing returns of lesser incomes.

Then, Sir, I have one point to make regarding the Settlement Machinery. Instead of the Department it should be left on an independent body so that it may inspire confidence among the assessees.

MR. CHAIRMAN: One of the three shall be from the Department.

SHRI VASANT SATHE: Mr. Chairman, Sir, before the learned Chamber conclude their evidence I have one point to submit. Various Chambers of Commerce of different States have tendered their evidence before this Committee. You see, the main object of this Bill is to unearth the black-money and to prevent its proliferation and to avoid tax evasion. No one has yet come before us to help us and advise us particularly the Chambers who really are the persons concerned in these matters. We thought that some concrete help or suggestion would come forward from them as to how and at what point the black-money was generated. As you all know, there can be three points viz., the point at which production is taking place, the point where distribution is taking place and pro-

bably the third point is there where the officers are exercising their control. Now, we would like to know from you being the men in the line as to how these points can be plugged so as to unearth the black-money which by any assessment to-day is to the tune of more than Rs. 10,000 crores. This is more or less a parallel economy. This is all what is creating anxieties in the country and in the Parliament. So, being experienced persons in this line you should tell us as to how we could check this. Only by applying clause 6, clause 12 or clause 13 or 14 of this Bill we cannot arrive at anything much useful. Could you kindly enlighten us about this point in your supplementary memorandum?

MR. CHAIRMAN: If you can really enlighten us about this point as to how to solve this problem then it will simplify our task and the Committee will be grateful to your Chamber.

SHRI BHAGWAT JHA AZAD: What is the view of the Chamber about demonetisation of hundred rupee note?

SHRI A. R. KANORIA: Mr. Chairman and Members of the Select Committee, I on behalf of the Merchants' Chamber of Commerce thank all of you for giving us a patient hearing.

Thank you, once again.

MR. CHAIRMAN: I on behalf of the Committee thank you also.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Saturday the 22nd September, 1973 at 09.00 hours. in Council Chamber,
Legislative Assembly Buildings, Calcutta

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri Dharnidhar Basumatari
7. Shri Tridib Chaudhuri
8. Shri K. R. Ganesh
9. Shri Mani Ram Godara
10. Shri Maharaj Singh
11. Shri P. G. Mavalankar
12. Shri Era Sezhiyan
13. Shri Satyendra Narayan Sinha
14. Shri R. V. Swaminathan
15. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer, *Joint Secretary and Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)**

1. Shri R. D. Shah, *Chairman, Central Board of Direct Taxes.*
2. Shri S. Narayan, *Joint Secretary.*
3. Shri R. R. Khosla, *Director.*
4. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. Bharat Chamber of Commerce, Calcutta.

Spokesmen:

1. Shri K. L. Chowdhary—*President.*
2. Shri R. N. Bangur
3. Shri S. B. Goenka
4. Shri K. L. Dey
5. Shri K. L. Dhandhanian
6. Shri R. R. Bhiwaniwalla
7. Shri V. B. Chaturvedi
8. Shri G. D. Salarpuria
9. Shri R. P. Pasari
10. Shri K. C. Mukherjee—*Secretary.*
11. Shri B. K. Shroff

II. Institute of Cost and Works Accountants of India, Calcutta.

Spokesmen:

1. Shri V. Kalyanaraman—*Vice-President.*
2. Shri N. K. Bose
3. Shri A. K. Biswas
4. Shri S. N. Ghose—*Secretary.*

Saturday, the 22nd September, 1973 at 09.00 hours, in Council Chamber,
Legislative Assembly Buildings, Calcutta

1. Shri Swaraj Basu—Vice-President.
2. Shri A. Roy Chowdhury
3. Shri S. M. Banerji
4. Shri S. S. Singhanian
5. Shri L. N. Lohia

I. Bharat Chamber of Commerce, Calcutta.

Spokesmen:

1. Shri K. L. Chowdhary,—President.
2. Shri R. N. Bangur,
3. Shri K. L. Dhandhanian,
4. Shri R. R. Bhiwaniwalla,
5. Shri B. K. Shroff
6. Shri R. P. Pasari,
7. Shri V. B. Chaturvedi,
8. Shri G. D. Salarpuria,
9. Shri S. B. Goenka,
10. Shri K. L. Dey, and
11. Shri K. C. Mukherjee—Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Your evidence is likely to be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential and even though you might so desire that it should be treated as confidential it may be made available to the Members of Parliament.

You may proceed now with your evidence.

SHRI K. L. CHOWDHARY: Mr. Chairman, on behalf of the Chamber as also on my own, I am indeed thankful to you for giving us an opportunity to tender oral evidence before you on the Taxation Laws (Amendment) Bill.

In course of the memorandum submitted to you, we have endeavoured to highlight the salient features of the proposed amendments and highlight some of the deleterious consequences along with some constructive suggestions. The Bill envisages comprehensive changes in approach to and administration of direct taxation which have during the recent years undergone vital transformation due to successive amendments. Many of these changes are yet to receive fair trial. There is also no denying the

fact that due to frequent and too numerous piecemeal changes our direct tax system has become highly complicated and difficult of compliance. We have not only the largest number of direct taxes but also rare combinations among them. The amendments proposed in the Bill are at times much too stringent reducing the tax laws into penal codes. I need hardly emphasise that the efficacy of any tax system hinges, *inter alia*, on promotion of confidence of the assessors and the assessees. It is at times contended that the direct tax revenue in our country is much too low. In fact, revenue from direct taxes is an index of the State of economic development. In our country the cumulative incidence of direct taxes on non-agricultural income and more particularly on higher income brackets, is rather expropriatory and the rate of progression is beyond all proportion to the rate of marginal increments in income. In this context, I may be permitted to add that the successive bulging of the public sector both in industry and trade, take-over of private undertakings and the indifferent working of the Government undertakings which account for investments exceeding Rs. 5000 crores are some of the factors which would explain why direct tax

revenue has not been growing at a rate faster than at present.

With these words, may I now request you, Sir, to allow Shri R. N. Bangur to highlight some of the more important points of our memorandum. My friends present here will be glad to offer clarification on points posed in our memorandum as well as others as may be desired.

Thank you.

SHRI R. N. BANGUR: Mr. Chairman, I am immensely grateful to you for so kindly giving me an opportunity to highlight some of the more important provisions of the Bill.

At the very outset, I may inform you that our Chamber is, by and large, in agreement with the overall objectives behind the Taxation Laws (Amendment) Bill which is currently under your consideration.

The Amendment Bill is a mixed bag of few welcome features and many stringent provisions. While basing the Bill on the recommendations of the Direct Taxes Enquiry Committee, we find that many of the important recommendations of the Wanchoo Committee do not seem to have been covered in the proposed recommendation. We have indicated some of them in our Memorandum. In our considered view, the recommendations of the Wanchoo Committee should be treated as a package deal so much so that acceptance of a few to the exclusion of others may not achieve the purpose envisaged in the Bill.

I might add that some of the pending tax incentives have since been covered by the Direct Taxes (Amendment) Bill recently introduced in Parliament. In this context, I would invite your special attention to the following important provisions of the Amendment Bill:

(i) Vesting of enormous discretionary powers on the tax administration and delegation of the same down the ladder to a much lower level that at present even at the risk of arbitrary action and avoidable harassment;

(ii) Clubbing of income of individual with direct or indirect income in any form arising to the spouse, minor children, daughter-in-laws and grand children under certain circumstances even at the cost of our age-old social tradition and custom and undermining the socio economic status particularly of our women folk.

(iii) Tax system has an important role to play in economic regeneration through ploughing back of profits and fostering savings and investments. The growing dependence of our trades and industries on institutional finance and the various constraints under which the more, organised sector has now to work should warrant a review of the rates of taxation, their levy and administration from the stand-point of reactivising economic activities which is the crying need of this day.

(iv) The various stipulations about trusts, particularly charitable trust, envisaged in the Bill, would, I seriously apprehend, defeat the objectives for which they were originally set up. Some of the provisions like aggregation of contributions for the purpose of computation of total contribution, definition of substantial contribution, curbs on investment of trust funds, taxation of donations etc. would not only create insuperable difficulties for the trust but also dry up an important source of finance for many private undertakings. In any case it is suggested in our memorandum that tax measure should not apply to religious and charitable trusts which are exempted from taxation since the inception of tax laws. It seems that the intention of the Govt. is to tax these trusts under certain conditions. We would request you to suggest to Government not to tax the trusts in any circumstances which even the foreign Government did not do. Any misuse of trust fund may be controlled by other laws instead of fiscal measures.

(v) Taxable capacity in our country has not so far been attempted to be scientifically assessed. This study need be taken up for an early review

of the unprecedented rate of progression of income tax and surcharge for medium and high income groups. In our view a socialistic pattern of society may be achieved and sustained over time through persistent efforts directed to boost the level of both production and productivity. Otherwise, high and rising rates of rates of taxation will mean equal distribution of poverty to the serious detriment of the basic idea behind egalitarianism, namely, decentralisation of economic power and broadening the economic base. Direct taxation in our country as it is today has in effect been a tax on industry and efficiency. I have confidence that various provisions of the Bill will receive due consideration in the hands of the Select Committee in the light of the various observations made by our Chamber as well as others all over the country. Against this backward we shall now be glad to offer clarification on any point as may be desired by you. Before concluding I may mention that the Income Tax Act is not only applicable to businessmen but also applicable to the citizens earning more than a basic limit. Income Tax laws have already been complicated by several amendments year after year. This fiscal law has made it difficult for assesseees to know what they are to do. A simple law is required by the citizens. I may mention that this type of law will not achieve the desired result unless incentive is given. Thank you.

SHRI K. L. DHANDHANIA: I will confine myself to the objective of the Bill which has been before you. The main object of the Bill is to unearth black-money and to prevent its proliferation.

MR. CHAIRMAN: I want to make one thing clear. While I do not want to stop the witness from going on they would know that our procedure has been usually that we allow the main spokesman to make a general observation about the Bill—whatever criticism he has to offer, whatever suggestions he has to offer—and then immediately we take up clause by clause considera-

tion so that we can be more functional and business like. Two of your members have already spoken in a general way.

SHRI K. L. DHANDHANIA: Thank you, Sir. In this connection I would refer to the memorandum of the Chamber in which on pages 4, 9 and 30 comments have been given with concrete suggestions though they are not directly relating to the clauses. While saying so the business community shares the views of the Government about this menace of which everyone of us is anxious and worried. In the whole Bill the black money has not been defined. What is the meaning of black-money, whether it is unaccounted money, whether it includes money of the agricultural income and several other income or....

MR. CHAIRMAN: Can you define love? But it exists in the world between man and man, between man and God. You all know what it is. You would be knowing better what it is. What according to you is black-money? We will like to hear.

SHRI K. L. DHANDHANIA: According to us black-money is money which is evaded under the umbrella of the Act, that is the real black-money which may be defined under the umbrella of administration. There should be definition of black-money, otherwise there is confusion in the country about its quantum as well as about its proliferation and so-called parallel economy. It will be highly advisable to define this in clear terms to avoid confusion.

Next, Sir, there were several schemes in the last 20 years or more and about one thousand amendments have come but still there is a louder cry about black-money and proliferation of black-money. Why Sir? A good opportunity was available to the Wanchoo Committee to have a diagnosis, and in our opinion, they as a doctor, as a good surgeon gave a good diagnosis in their very comprehensive report. While doing so they also suggested a prescription to minimise such evils, to stop its growth and to eradi-

cate all these evils. Now, Sir, this Bill has been a prescription by the Government before Parliament. We will urge you to study and examine whether this prescription is proper, perfect or it is a fragmented prescription leaving out the main elements,

SHRI BHAGWAT JHA AZAD: Sir, the Wanchoo Committee has spoken of the most important measure viz. demonetisation of hundred rupee and ten rupee notes. We would like to know the views of the Chamber on this. Besides where a property is sold at a lower price what would be views of the Chamber there. What the witness has to say in this regard? What will be his prescription?

SHRI P. G. MAVALANKAR: Sir, so far as the prescription referred to by the witness is concerned do they want the prescription to be administered in part or in full?

SHRI K. L. DHANDHANIA: Sir, we have dealt with those in our memorandum at Annexure I as well as at page 4 of the memorandum and at subsequent pages also. In our opinion the prescription, by leaving out the main elements is not perfect and will not cure disease easily. We do not know the reason why those main elements have not been included in the Bill. Sir, in our opinion, the prescription should be complete and not incomplete one leaving out the main elements in fragmented manner, if we want to achieve the objective.

SHRI BHAGWAT JHA AZAD: For example?

SHRI K. L. DHANDHANIA: We have given many illustrations in our memorandum.

MR. CHAIRMAN: Your memorandum has been circulated to all the members and we have gone through it. If you have got any particular thinking on any point then please do emphasize that point.

SHRI K. L. DHANDHANIA: No, Sir, I have completed my general observation.

SHRI SYED AHMED AGA: Sir, he has said that evaded tax builds the blackmoney. Is it so?

MR. CHAIRMAN: The money evaded despite the umbrella of income tax is the black-money according to him.

SHRI ERA SEZHIYAN: Sir, we welcome the Bharat Chamber of Commerce. While seeking clarification from them it is my intention to clear some of our doubts. It is neither acceptance of what they say nor the rejection of what they say. From the answers I do not want to draw any conclusion and while putting questions I do not mean any reflection on them.

MR. CHAIRMAN: In a way we are educating ourselves.

SHRI ERA SEZHIYAN: Now, at page 1, paragraph 2 of your memorandum you have stated, "While in general agreement with the majority of the principal objectives out lined above . . ." You have yourselves reproduced the six main objectives. As you have said that you are in general agreement with the majority of the six objectives of the Bill may I ask which is the specific objective to which you do not agree.

SHRI R. N. BANGUR: We have said that we are in general agreement with the objectives of the Bill.

SHRI ERA SEZHIYAN: You have used the word 'majority'.

SHRI K. L. DHANDHANIA: 'To check avoidance of tax through various legal devices'.—we do not agree on this point.

MR. CHAIRMAN: That means you do not want the law to be amended to plug legal loopholes.

SHRI K. L. DHANDHANIA: No Sir, that is not my idea My submission is that in one of the Privy Council judgments on the Indian Income Tax, the judicial pronouncement was that there was nothing illegal if any one . . .

MR. CHAIRMAN: I am sorry to intervene, Mr. Dhandhania. We take our business very seriously. Does it go so far as to warrant saying that the Government should be sleeping and sitting silent to see that the loopholes remain unplugged.

SHRI K. L. DHANDHANIA: No Sir, that is the fiscal policy.

MR. CHAIRMAN: If that is not so then we must plug the legal loopholes to check tax avoidance. Within the law if you set up your affairs so that your tax liability is minimised then it is neither bad morality nor bad citizenship. That is one view of the matter. But the Government must see that the loopholes, whether big or small, are plugged really. I do not know how these are to be plugged as it is a terribly difficult job.

SHRI ERA SEZHIYAN: In page no. (viii) the Chamber has stated some points for which I want some more elucidation. The words are "the economic pressure arising in the wake of inflation have driven people to educate their women folk, train them up for professions and confer on them ownership of property'. Will the Chamber clarify their exact impression about it?

MR. CHAIRMAN: It seems, none of the honourable witnesses wants to say.

SHRI BHAGWAT JHA AZAD: Sir, if they do not want to say anything in reply to Shri Sezhiyan's question, then let us start with the trusts affairs and the clauses.

SHRI ERA SEZHIYAN: Sir, one more point from me. In the last page—page 14, it is stated 'if black money is construed to mean income which has evaded taxation, there are earners even outside the range of usual assesseees. The strategy of unearthing black money has to be planned accordingly'—I want to know whether the Bharat Chamber of Commerce have made any study on this point of unearthing black money and whether they can give us any suggestion to curb this menace.

SHRI R. N. BANGUR: Sir, this is an observation of the Chamber. In the press and in the political platform it is generally told that the business men are bad people and a parallel economy is working with them. Now Sir, if you go into the details of the prob-

lem you will find that it is not only with the business men but it is also prevalent in other social sectors.

MR. CHAIRMAN: Have you launched and study into it?

SHRI BHAGWAT JHA AZAD: It is not a question of business men or officers or people. Here the point is about black money and let the witness say whether they admit that black money is there or not. If they admit that black money is there, then they may help us by giving concrete suggestions as to how this black money can be stopped.

MR. CHAIRMAN: Mr. Bangur, we are not casting any aspersion on any particular class of people. The question is very simple.

SHRI DHARNIDHAR BASU-MATARI: I have heard that as members of the Parliament, we are here just to punish the scrupulous men and honest men. This should not have been the idea of the witness. That is not the purpose of the Government. Here they have said that we are suspecting them as hoarders and black-marketeers. But it is not at all the case or it is not at all our purpose. The object of this Bill is how to plug the black money wherever it is found. We want you just to co-operate with the Government under whom you are also the citizens.

SHRI BHAGWAT JHA AZAD: You are to suggest how to plug this.

SHRI ERA SEZHIYAN: Have you made any study into it?

SHRI R. N. BANGUR: Sir, perhaps you will agree that we the witnesses cannot answer all the questions of 4 or 5 members of Parliament at a time.

SHRI BHAGWAT JHA AZAD: Mr. Chairman, Sir, it should not be left to the discretion of the witnesses as to whether they would answer one of us or more than one. They should know the procedure. If they cannot answer a question properly or not upto the satisfaction of the members then different members can ask for clarification.

MR. CHAIRMAN: Mr. Bangur, the question of procedure comes here. It is a simple question put by Mr Era Sezhiyan. Let not the atmosphere be vitiated by any remarks which are unwarranted and unnecessary.

SHRI ERA SEZHIYAN: Mr. Chairman, Sir, the members are placing their questions at the same time which may be difficult for the witnesses to reply. We are to be enlightened by them. As we are deficient in this particular item it will be better if we put questions one by one.

SHRI R. V. SWAMINATHAN: I want to be a little more enlightened as regards the words 'even outside the range of usual assesses'. This may be seen at page xiv. What do they mean by these words?

SHRI R. N. BANGUR: The feeling of our chamber is that there are honest people who are holding money are not assesses. This is our impression.

SHRI R. V. SWAMINATHAN: It is not the proper answer 'The people who are holding money, they are not the assesses' Ma y I know who are the people holding money?

MR. CHAIRMAN: They have not made any study. So, whatever they are saying are their impressions only.

SHRI K. L. DHANDHANIA: Sir, may I clarify the point? The main point is about smuggling in our country. One reputed chartered accountant, Shri C. C. Choksi made a speech on taxation while speaking on the Wanchoo Committee recommendations as to how the smuggling has infiltrated in the economy of our country and to what extent it is pervading. Until and unless smuggling is stopped—though it is very difficult to stop the menace of black money cannot be avoided. The second point is about the volume of smuggling. So far as my humble

presumption goes, the amount of the black money may come to several crores of rupees, the major portion of which comes from smuggling. The third point is that the smuggling does not come under the purview of the taxation law. It comes under the Customs Act. It has also been suggested that the Customs Act should be amended. In addition to that more provisions should be brought in so that this menace is minimised.

SHRI K. R. GANESH: The Customs Act has recently been amended. There is no dispute that the smuggling is a serious problem in our country. The Wanchoo Committee also went into the question of smuggling. On the basis of the Kaul Committee, recently the Customs Act, Central Excise Act and Gold Control Act have been amended.

SHRI K. L. DHANDHANIA: I think, if it is implemented strictly, the menace will be much less

SHRI ERA SEZHIYAN: My specific question is whether you have made any detailed study over the black money. I am looking on this point in a broader sense because the impact of black money is such on our people that it is taking away the exact value of money which they earn and thus depriving them of having the exact necessities in exchange of their labour. Therefore, I appeal to the Bharat Chamber of Commerce to institute a study and to go deep into this affair and then submit us a memorandum later on about the ways and means for checking this menace.

MR. CHAIRMAN: The witnesses may better submit a supplementary memorandum.

SHRI R. N. BANGUR: Yes Sir. We are taking a note of it.

SHRI BHAGWAT JHA AZAD: One point I would like to place. Due to serious effects of black money, the Wanchoo Committee recommended that 100-rupee notes should be de-

monetised. Kindly enlighten us on this point also.

SHRI K. L. DHANDHANIA: Sir, for the last several years our Chamber has been advocating that the number of assesseees must be more. We are happy that there are about 32 lakhs assesseees but we are of the opinion that the number may be increased manifold and it should not be less than five millions. If it is so, it is for the administration to rope them up and we are with the administration to rope them up and once you have got those assesseees, you have got many sources of information, you have got many avenues which can be explored by you. By tightening up your administration many things may come out which will be helpful to unearth the black money and to minimise the growth of black money. We have given many illustrations in our memorandum quoting the Wanchoo Committee report. We have said that the uneconomic controls or ineffective controls or similar actions lead to the creation of black money. It is an open talk today how goods, whether essential or non-essential or industrial or otherwise, are being sold at rates beyond controlled rates. It is known to everyone and we are always discussing this point. My submission is that we should not have ineffective controls. If you want to control, make it fully effective so that this black money may come out.

MR. CHAIRMAN: The point that you are making is that ineffective control is worse than no control?

SHRI K. L. DHANDHANIA: Yes, Sir.

MR. CHAIRMAN: And that leads to the creation of black money and its proliferation?

SHRI K. L. DHANDHANIA: Yes, Sir.

MR. CHAIRMAN: Good. Now, you please answer Mr. Bhagwat Jha Azad's question about demonetisation. If you want to, you may reply and if you do not want to reply, you need not.

SHRI K. L. DHANDHANIA: Sir, our experience about demonetisation of Rs. 1000 notes is very bitter. That worsened situation from bad to worse. Secondly, demonetisation will mostly effect those who are beyond the jurisdiction of the Income Tax Act. You will make a poor poorer. That is my personal opinion. Demonetisation is not a singular term in monetary principles. Demonetisation is not going to cure this evil but it will create more evils. Thirdly about assesseees, I suggest that your house to house survey system gave a very good effect. Persons who are willing to be assesseees became assesseees and persons who are not willing to be so became afraid of the survey. I suggest a thorough survey throughout the country and our cooperation will always be with the administration.

MR. CHAIRMAN: Am I to understand that the Bharat Chamber is against demonetisation as such?

SHRI K. L. DHANDHANIA: Yes, Sir.

SHRI P. G. MAVALANKAR: Sir, I want to raise two points in relation to what has been said by Mr. Bangur. While talking in general terms, he made mention of the religious trusts and he said that even the foreign government did not do this. I want to know whether the Bharat Chamber realises that we are now living in an India which has been independent for the last twentysix years and whether he wants conditions preceding independence to be restored. In other words, my question is whether the Bharat Chamber thinks that good government is better than self-government. Then, Sir, the third point that Mr. Bangur made was that if you distribute further production of wealth, it will be distribution of poverty. Now, this is a fundamental question. I want to know how long does the Bharat Chamber want this country—with its teeming millions—to live below the poverty line in the most abject conditions and most diseased state and allow this vast contrast between millions of very very poor and very few very

very rich? We have to look at this problem with relation to the general economic situation in the country. Does the Chamber feel that it is better to have the present *status quo*, namely, let there be a vast contrast between the rich and the poor or whether to streamline the law in such a way so that everybody becomes equally poor for some time. I have been hearing about distribution of wealth amongst the people in the Universities, in schools, in colleges and in various platforms but nobody seems to give attention to this problem. How long do you want the contrast between the very rich and the very poor to continue and do you not realise that if this state of affairs continues, the consequence will be bloody revolution?

MR. CHAIRMAN: This is a good question relating to the Bill Mr. Mavalankar wants to know whether you think that the existing law which is not the same as the old one should not be there. Secondly, whether the existing order, namely, the disparity between the rich and the poor is the best order and whether you want the *status quo* to remain rather than have revolutionary measure so that all of us share the same lot of poverty? What is your view?

SHRI R. N. BANGUR: Sir, the words 'foreign government' used in my speech were to show that religious and charitable trusts in this country were treated in a most sacramental manner.

MR. CHAIRMAN: They had nothing to lose, but they treated us as slaves. Do you think the present Government should treat the people with less respect than the Britishers treated?

SHRI R. N. BANGUR: Sir, even if you go back to the days previous to foreign rule when our own rule was there, charities were not taxed.

SHRI BHAGWAT JHA AZAD: Sir, we agree that they were not taxed so much, but he should also agree with

us that in those days the trusts were not using their funds for purposes which were not charities. Hence the necessity.

MR. CHAIRMAN: Charities have been abused and are being abused. Does the Chamber accept the postulate that funds by some charities have been abused?

SHRI BHAGWAT JHA AZAD: Do you know, or do you not, that charities are being abused, e.g. their moneys are being invested and cross-invested among their own circle. If that is so, do you agree that measures suggested by Government would create good trusts?

SHRI ERA SEZHIYAN: On a single day 30 or 40 trusts were created.

MR. CHAIRMAN: One of the top most groups created 30 trusts in one day, and corpus, not exceeding two thousand, just to avoid section 13(2) (h). Another group, a very large group, in one day created 18 trusts—thousand rupees each. Another created, 28 in one day—corpus here is 175—the top most. These are the hard realities and facts of life, Mr. Bangur. If you want that we should close our eyes to that, it is a different story. But if you do not want to close your eyes, you have to answer Mr. Mavalankar's question objectively.

SHRI DHARNIDHAR BASUMATARI: Sir, he was comparing our country with foreign countries. Does he know that there is a very big trust in Switzerland and no one can find fault with any person there? Sir, as you have pointed out, many trusts have been created overnight. They know it very well. The purpose of the Government is to see that trust fund is not used for purposes other than that of the trust—it is not abused. So, there is no point in comparing our country with other countries. Let us put our heads together and try to create good things. It is our duty to find out the loopholes and plug them. So, instead of comparing our country

with other countries, please co-operate with us. It is unfortunate that some of them said that Britishers were better rulers.

MR. CHAIRMAN: No, they did not say that. We would only request you to help us in the matter.

SHRI R. N. BANGUR: Sir, as you have pointed out, there may be some cases like that, but there may not be many cases like that. It is a matter of study which is not available to the Chamber.

MR. CHAIRMAN: You have monopoly houses—three of them.

SHRI R. N. BANGUR: Yes, Sir, and from any discussion or study about the monopoly houses it is not known how many trusts are there throughout the country and how many of these are being misused. But for the fault of some if all the trusts are to suffer, that will not be fair. I think you are aware that against some bad deeds many good deeds are also being created and be created. As you are moving throughout the country you know more than we do what are the good trusts and what are the bad trusts. You have to find out a balance. That is all about the trusts.

MR. CHAIRMAN: What is your view about revolutionary measure for eradication of disparities?

SHRI R. N. BANGUR: Sir, I would only tell you that poverty is to be eradicated, but there are different ways of working out the things. According to the studies made by the Chamber, their feeling is that these high rates of taxation are not allowing any increase in production. There may be difference on this point. According to us a more rational structure of taxation would help eradication of poverty.

SHRI SAYED AHMED AGA: Mr. Chairman, he has just now mentioned that high rate of taxation is sort of disincentive for production. I would like to know, a part from other types

of production, is this taxation rate distracting production of essential for the life of the community?

SHRI R. N. BANGUR: We have no comments to make on this. Our only point is that there is a feeling that the present tax rates are too high for production purposes and it is for the Government to study these things. We do not have the necessary data for this purpose.

MR. CHAIRMAN: They say they have no data about the measure. They have expressed just an opinion. We need not pursue it further. Let us come to drafting. They have made only general observations.

SHRI V. B. CHATURVEDI: As regards clauses 5 and 6, our submission is that income received on the last day of the previous year will have to be necessarily spent and cannot be accumulated. Our suggestion is that Explanation (b) (2) (2) should be deleted. Supposing a dividend has been declared in the month of February and in the month of April it is actually accounted for, then the trust will be put to difficulties.

SHRI R. D. SHAH: I think the objection is misconceived. This section is realistic of the present situation. Where a person was required to spend within three months of the accounting year. If he has received on the last day or even if he has not received there will be difficulty in spending.

SHRI B. K. SHROFF: I feel there is a lacuna in the drafting.

SHRI R. D. SHAH: As I was saying, there will be difficulty in spending. That is why it led to misuse of spending.

SHRI B. K. SHROFF: As regards voluntary contribution also, 75 p.c. has to be spent. Supposing we receive land or shares or properties what will be the treatment.

MR. CHAIRMAN: Obviously received not for the corpus. These have got to be gifted. After all, what is the difference between land and cash.

SHRI ERA SEZHIYAN: I want a clarification about clause 6. In your memorandum at page 3 you have stated in justification of clause 6(1) which proposes to withdraw exemption even to trusts or institutions created for the benefit of any particular community or caste. But my point is, suppose 100 scholarships are created by such trust then at least some boys are going to benefit, may be of some particular community or caste. If we accept the logic of 6(1) then reservation about scheduled caste or backward communities, all these things should be taken up because boys of all communities should get the benefit.

MR. CHAIRMAN: It is a matter of opinion.

SHRI ERA SEZHIYAN: Then on page 2 you say that objects of the trust cannot be altered now. In the case of a trust created before 1961 where the founder is dead the object of the trust cannot be altered. I want to know their opinion.

SHRI BHAGWAT JHA AZAD: That has already been changed.

MR. CHAIRMAN: It is an important point. Would you like that it can be changed?

SHRI B. K. SHROFF: According to us it should be changed. Difficulty is that the trust is not permitted. So, there should be some law by which they can go to court.

MR. CHAIRMAN: You are aware of the doctrine of cypres by which an object of a trust can be amended with the intervention of a court where the implementation of the object becomes impracticable, difficult or inexpedient; would a fiscal measure entitle you within the contemplation of that doctrine to seek intervention of the court?

SHRI V. B. CHATURVEDI: There is a large number of trusts. Naturally,

if every trust goes for amendment then my submission is there should be amendment in the Income Tax itself to do away with the permission of the High Court. Otherwise it will be very expensive and there will be wasteful expenditure. Sometimes court takes long period.

MR. CHAIRMAN: Thank you, Mr. Chaturvedi, we will examine this.

SHRI BHAGAWAT JHA AZAD: At present most of the trusts whatever may be written in the objects are doing just contrary. Therefore, it is better for the Government to change it or allow them to change it to make it in tune with their doing in order to bring it up-to-date. Government should take note of this.

SHRI V. B. CHATURVEDI: My suggestion is that a machinery should be provided in the Income-tax Act

MR. CHAIRMAN: Question here is that trustees can change a religious trust into a secular trust without intervention of the court. Yes, we will seriously consider this.

SHRI ERA SEZHIYAN: Then on page 9 you say, "So long as the trusts spend the entire income received by way of donations, they should not be required to disclose the sources or the identity of the donors etc. "Suppose you receive donations but at the end you do not spend them, then when it will be known that they have spent the entire thing? There are two aspects viz., who give the donations and then keeping records.

SHRI B. K. SHROFF: In times of natural calamity, flood, drought certain voluntary contributions come up and it is not possible to keep records because there are collectors all over the country, we appoint so many people to collect fund who go from door to door, sometimes issue receipts and sometimes not.

SHRI ERA SEZHIYAN: But this is one of the important aspects where we would be careful because so many

complaints might come about the amount of donations received.

SHRI B. K. SHROFF: Secondly, I tell you that anonymous donations come. The whole idea of the Bill is to unearth black-money and to spend it for the welfare of the society.

MR. CHAIRMAN: No, no, not at all, we do not want to go directly to charities for good cause.

SHRI B. K. SHROFF: My argument was that supposing a trust for a good cause spends money and there is a provision that it can spend 75 per cent then so long it spends 75 per cent, but is not in a position to furnish identification although the money has already been spent out of the fund of the trust then it will create another difficulty for the trust in the matter of paying tax.

SHRI ERA SEZHIYAN: To the extent you spend money you get exemption. This is the present position.

MR. CHAIRMAN: He is giving the argument for a case when you receive money and spend away for good cause but are not in a position to furnish the source or identity.

SHRI K. L. DHANDHANIA: My submission is that there are two types of Trusts. There is one type of Trust like the charity trust about which we are so much worried. But there are some Trusts which collect amounts in very small denominations viz. one rupee, two rupees etc. etc. Our submission is that please do not encourage black-money to come into these Trusts. Please take into consideration the practical difficulties. Take the case of St. John Ambulance. They often make street collections. They come out in the streets and with open arms and collect one rupee or two rupees from different persons. At least their difficulties should be considered. So, regarding anonymous donations our submission is that let there not be any total ban but let it be restrictive. You can take 10/20 or 25 per cent of their income.

MR. CHAIRMAN: Have you any practical suggestion to make? You see we have been striving hard to find out some ways and means so that no hardship is caused to the genuine collector. So, we would be much obliged to know if you have made any study or research on this point.

SHRI K. L. DHANDHANIA: Number one is that ceiling may be prescribed. If I have an income of one lakh rupees then 10/15 or 20 per cent should be taxed.

MR. CHAIRMAN: That is a very serious drawback. If you legalise 80 per cent then that amount is also evaded.

SHRI K. L. DHANDHANIA: The Trust can make prescribed procedure of collection of anonymous funds and that will be subject to your approval. There will be the discretionary powers of the Income Tax Authority to declare as to how much anonymous collection would deserve concession. They will be the best judge to decide that.

MR. CHAIRMAN: You can write in advance to the Income Tax Authority and intimate them that you are going to make the anonymous collection so that they can come and make their verification.

SHRI SYED AHMED AGA: There are some spiritual persons who donate large amount of money but who do not want their identities to be disclosed. Are there such persons?

MR. CHAIRMAN: Mr. Aga's point is this. Is it to the knowledge of the Chamber that there are people even to-day who give large donations and do not want their names to be disclosed?

SHRI G. D. SALARPURIA: In Tirupathi two lakhs of rupees were donated by one person.

MR. CHAIRMAN: How do you know that it was donated by one person?

SHRI G. D. SALARPURIA: The money was in one bundle. In Ram-Krishna Mission also there are people

who donate large amount of money but do not want their names to be disclosed because there is a feeling that a person does not get the benefit of the charity if his name is disclosed.

MR CHAIRMAN: That means they want to get benefit in the next world? Are there some persons to-day who want to get benefit in the next world instead of getting benefit in this world?

SHRI G. D. SALARPURIA: There are some persons but they are very few.

MR. CHAIRMAN: So there are persons who donate big amounts not for income tax, not even for publicity and want to remain anonymous. My hats off to them.

SHRI SYED AHMED AGA: So, I take it that the Chamber is aware of the persons who donate very large amount of money to the Trusts but do not want their names to be disclosed.

SHRI G. D. SALARPURIA: There are such people.

SHRI B. K. SHROFF: Sir, regarding substantial contribution it is proposed that it should be Rs. 5,000/- from the institution of the Trust to the close of the accounting year. My humble submission is that base year may be prescribed and that the amount of Rs. 5,000/- is very low. Secondly, in case of natural calamities substantial contribution to Prime Minister's Drought Fund or the Governor's Relief Fund or even to the Ram Krishna Mission may even run into lakhs.

MR CHAIRMAN: We will consider the matter.

SHRI B. K. SHROFF: Now, coming to the total income of Trust and the taxable income of the Trust I would say that so far there was no definition of it That was prescribed in Section 104 like commercial profit for declaring dividends.

MR. CHAIRMAN: Is there any commercial profit? That was the judicial interpretation, I think.

SHRI B. K. SHROFF: Like that we do not know what is the total income of the Trust and what is the taxable income of the Trust. Suppose the total income of a Trust is Rs. 5 lakhs, Its management cost may be Rs. 50,000/- and other charities may be 4 lakhs. Now, whether the Trust has to pay tax on Rs. 5 lakhs or on 4-1/2 lakhs or on Rs. 50,000/-?

MR. CHAIRMAN: On Rs. 4-1/2 lakhs.

SHRI B. K SHROFF: That definition is not given.

MR. CHAIRMAN: It is implicit.

It is not very clear. If the trusts appeal for exemption of tax then there is some possibility of investing money in any other concern. Is not it?

SHRI R. N. BANGUR: My suggestion is, there might be trusts of Rs. 4 or 5 lakhs. If they spend Rs. 4 or 5 lakhs of rupees annually and at the same time you start taxing them, then their investment of money for their own purposes will come to an end. In the case where the earning is Rs 5 lakhs, the saving does not exceed Rs. 50,000/-. In that event the trusts, instead of performing their charitable activities, will go on spending towards tax. I do not think, this is the intention of the Parliament that the trusts would not carry on with their present objectives.

MR CHAIRMAN: In case if somebody makes anonymous donation then what happens? Supposing a provision of earning of about Rs. 3 lakhs is reduced to Rs. 2 lakhs then do you think that there will be no tax?

SHRI R. N. BANGUR: There might be many technical difficulties in the form of taxing various concerns. But, I think the existing laws of taxation for the trusts can serve the purpose.

Now I come to the question of explanation of relatives. Under the present Act, it is difficult to find out who are the relatives. We have to get a fuller list.

SHRI B K. SHROFF: Under section 13(3), a substantial donation comes

from somebody, and some of his relatives may derive benefit towards construction of trusts' building i.e. 'Dharamsala' where they may go as pilgrims and stay there. While the other pilgrims can stay there for a limited period, the relatives of a substantial donor can stay there for a longer period. There are also other instances where the trusts have to spend money towards the relatives of their donors

MR. CHAIRMAN: Mr. Bangur, please write to us in this regard later on mentioning a concrete case, when we will see that the proper definition of relatives is made and no undue hardships are caused on the real relatives of the donor.

SHRI R N. BANGUR: Sir, definition of relatives should be limited to the person, his wife and minor children.

SHRI V. B. CHATURVEDI: As regards the relatives I like to add something. In case of anonymous donations, where the donors and relatives are not known, they cannot enjoy the benefit of the trusts, which are generally enjoyed by the relatives of genuine donors. Here is a case that in the Marwari Relief Society Hospital somebody has donated Rs 5000/-. He or his relatives can be admitted and given free treatment. The contributors generally expect that he and his relatives would get more benefits than that of non-contributors. So, if the exemptions are withdrawn then the abnormal benefits that are given to them would cease, and they would get the same treatment like the other persons. So, the exemptions should not be withdrawn.

MR. CHAIRMAN: How would the chamber react if a restriction is imposed that you are not allowed to invest your money according to your own discretion?

It is not at all the intention of the Government, to deny the benefits to the genuine charities. If a restriction is put that you are not allowed to make investment according to your discretion but to Government's discretion, i.e., the fund of the trust

would be employed as the Government prescribe, then how does the chamber react?

SHRI V. B. CHATURVEDI: As in the Insurance Act where there is a guideline, the trusts also should get some guideline in this regard. A guideline should be given where the bulk of the money is to be invested in Government securities.

MR CHAIRMAN: The Government will prescribe the nature of investment and you will have to invest according to Government's prescription. Will you accept it?

SHRI V. B. CHATURVEDI: Yes Sir. This is a very good suggestion.

MR. CHAIRMAN: If you want to make donations in a few hospitals then you will have to write to the Income Tax Officer that so much money you want to donate to the hospital and the rest in the Govt. securities. In that even I do not think the restriction can substantially whittle down the activities of the trust.

SHRI R. N. BANGUR: Generally speaking, we are in agreement with you. The only point is, when it was felt by the business men that Unit Trusts were to be formed throughout the country on a cooperative basis by the public, only one Unit Trust was formed for the whole country. It is my experience that in 1951, 1952 & 1953 the condition of share market was very bad. As there was only one unit trust which invested Rs. 130 crores, much exemptions could not be granted. Had there been many Unit Trusts, more exemptions could be granted. So, the guideline for investment will be so formulated that the flow of benefit to the public who are getting something from these Trusts, would not be dried up.

SHRI V B. CHATURVEDI: There is another point regarding anonymous donations in the hospitals if they are given in the box then 65 per cent tax will be assessed. If the investment restrictions are there and if these donations are subject to 65

per cent tax then only 35 per cent remains with the hospital. But under Section 11, the charitable institutions are to spend 75 per cent of its income. So, it will create hardships to the genuine institutions if they pay 65 per cent tax because the total burden becomes about 140 per cent. (65 per cent plus 75 per cent).

SHRI R. N. BANGUR: Sir, I cannot understand on what basis this 65 per cent tax is levied on the anonymous donations. Perhaps it has been made on the assumption that the anonymous donations are made by the people whose incomes are taxable. But there are many people whose incomes are not taxable—they also donate anonymously. So, I suggest that whatever you do, please make the rate lower.

SHRI B. K. SHROFF: Sir, in 1961 Act, the trusts were allowed exemption. Now the present Act is going to give retrospective effect i.e., from the date of the creation of the Trusts. My submission is that the present Act should be given current effect.

SHRI V. B. CHATURVEDI: Regarding item No. 4 at page 13 of our memorandum, i.e., regarding two residential houses my submission is, if the house is situated in a remote place, i.e., away from the city or town the person concerned should also enjoy the exemption, otherwise it will cause hardship to him. So, this should not be taxed.

MR. CHAIRMAN. Do you mean that if one person has two houses,—that is, one house in the village and one in the city—the village house should be exempt?

SHRI V. B. CHATURVEDI. Yes, Sir.

MR. CHAIRMAN. We will consider that. Please take the next point maintenance of books of accounts.

SHRI R. R. BHIWANIWALLA: Sir, here the limit has been provided at Rs. 2.5 lakhs. We consider that to be a very low limit?

MR. CHAIRMAN: What do you suggest should be the limit?

SHRI R. R. BHIWANIWALLA: We suggest limit should be Rs. 4 lakhs.

MR. CHAIRMAN: What about the professionals, There is no limit for the professionals. Does your doctor give a receipt?

SHRI V. B. CHATURVEDI: Regarding doctors and nurses, if they are to maintain books and registers with an income of Rs. 5000, it becomes too hard for them.

MR. CHAIRMAN: We are not thinking of small doctors and other professionals, i.e., the beginners in profession, to be put on this liability of maintaining the accounts. But if someone is earning, say, Rs. 4 or 5 hundred a month, he should be reasonably asked to write simply the names of the patients, the fees, the daily expenditure he has incurred. However, what do you think should be the limit for the professionals?

SHRI R. R. BHIWANIWALLA: At present the exemption limit for all assessee is Rs. 5000/-. We suggest the exemption limit should be Rs. 7 or 8 or 10 thousand for everyone.

MR. CHAIRMAN: We will consider that. Next point?

SHRI V. B. CHATURVEDI: Item 6 at page 15 of our memorandum. This is about clubbing of income. Clubbing of income is concealed where the relations are also interested in any concern. There is already existing law by which only reasonable amount of remuneration has to be allowed if it is given to any relative. The I.T.O. is empowered to consider what is the reasonable amount of remuneration that is to be allowed. My suggestion is that the existing law should stand as it is.

MR. CHAIRMAN: Whom do you have in mind, which profession?

SHRI V. B. CHATURVEDI: Doctors, chartered accountants.

MR. CHAIRMAN: To cut short the long controversy on this matter, the Committee's thinking appears to be that no hardship should be caused to the genuine people. If you can suggest some ways where the genuine people

can be saved not for diversion of profits but to minimise the tax liability and are purely compelled by the exigencies of circumstances to get assistance either as an economic necessity or as a necessity of fiscal assistance it will be useful. It is only those cases where the incomes must not be clubbed. Mr. Shah has enough statistics to show that in many cases the authorities have lost cases on this score.

SHRI V. B. CHATURVEDI: We have also lost so many cases. However, my suggestion here is that the reasonability should be based on some qualifications and experience.

SHRI SYED AHMED AGA: Sir, with my experience I can understand women joining the job market as school and college teachers or office stenographers out of economic necessity but I cannot understand a business house trying to say that such and such is my wife who has been trying to decorate this or that thing.

SHRI V. B. CHATURVEDI: I want to say that the existing provisions do not work because they are not properly enforced by the authorities. If somebody employs his wife who has drawn a salary as interior decorator, then the I.T.O. should examine her and assess in that way.

MR. CHAIRMAN: But can you really get the evidence that the wife has acted as the interior decorator, You see, crores of rupees are lost to the exchequer because the law is faulty. If you cannot suggest anything which will help us in making the law, we will accept the amendments as they are. I think you better suggest something which will to our satisfaction take care of the interest of the revenue.

SHRI V. B. CHATURVEDI: Sir, in my opinion the words "qualifications and experience" should be added—the reasonableness should be guided by qualifications or experience.

MR. CHAIRMAN: At any rate, I take it that the Chamber would agree

that this sort of clubbing is exempted where there is a physical or economic necessity—as a matter of compulsion or assistance—and not where the objectives are incidental and the main objective is to avoid taxes.

SHRI ERA SEZHIYAN: Mr. Chairman, you wanted specific cases where exactly they were affected.

MR. CHAIRMAN: Would you be in a position, without divulging the names, to let us know where you have lost?

SHRI V. B. CHATURVEDI: Yes, Sir, we will do that.

Coming to para 9, page 21, of course, there is the amendment which says, if the payment is made by hundi or cheque, there is no difficulty. Our submission is that rules may be prescribed for cash payment, provided other things are proved, on the lines of section 40A which stipulates payment in excess of Rs. 2,500/-.

MR. CHAIRMAN: In genuine cases where there is hardship, where the cash payments were made due to exigency of the situation.

SHRI V. B. CHATURVEDI: Yes, Sir.

About speculation, there are certain companies which are investment companies. They are earning dividends. There may be some loss. The expression 'any part of business' would cause unnecessary hardship to companies having income from dividends and interest on securities. If a company suffers loss on investment in the first year, it will be speculative loss and if the same company earns profit in the following year, it will be non-speculative profit. As per provision of the Bill the previous loss on investment cannot be adjusted against the profit of the next year.

SHRI R. N. BANGUR: Under the present law there will be some difficulty for the manufacturing companies.

MR. CHAIRMAN: Because of the variation in the percentage of profits. What will be the hardship, if you have lost and then you are an investment company?

SHRI R. N. BANGUR: We were at a loss.

MR. CHAIRMAN: If you are an investment company your profit should be allowed to be set off. If there is a loss in share selling, or manufacturing business, then, will you be an investment company or a manufacturing company?

SHRI R. N. BANGUR: It will be an investment company.

MR. CHAIRMAN: Then your loss will be aggregated and carried forward for separate business losses.

SHRI R. N. BANGUR: We make a loss at the manufacturing time.

MR. CHAIRMAN: Our reading of the section is that once it is an investment company the distinction is abolished. The computation of income, aggregation, setting off will be governed as provided under the law. But the moment you are out of the investment company criterion, then, of course, the distinction will come and if you make a loss it will not be reduced. You do not want this to happen.

SHRI R. N. BANGUR: No.

MR. CHAIRMAN: We want this to happen. We do not want share dealings to be an instrument for tax avoidance.

SHRI S. B. GOENKA: At page 24 of our memorandum, item 11, we have suggested that due to the inflationary tendency and steep rise of prices 10 per cent of the total income subject to a maximum of Rs. 10,000 should be allowed deduction from the total income. Rs. 300 or 15 per cent is not sufficient. Secondly, there may be many members in the H.U.F. By virtue of being a member of H.U.F. he should not be deprived of the benefit. The word HUF should be deleted.

MR. CHAIRMAN: We will consider that suggestion.

SHRI B. K. SHROFF: Regarding item 13, p. 25, this new section proposes to allow deduction in computation of total income expenses incurred by an assessee in respect of any proceedings before the various authorities subject to a ceiling of Rs. 2000/-. Our submission is that this figure is too low as even a barrister takes Rs. 2000/- for one hearing. There should not be any ceiling on such expenses. If the expenditure is allowed it should be allowed for all.

Clause 26 proposes to extend application of sec. 104 to all closely held Indian companies including industrial companies and companies having capital assets of Rs. 50 lakhs or more currently excluded from the purview of sec. 104. If this is accepted it would most adversely affect the financial conditions of such companies and prevent ploughing back of income which is essential under prevailing condition. We, therefore, suggest that this clause should be deleted.

Under clause 36 an Assistant Director of Inspection is vested with wide powers to call for and examine any person, compel him to produce books and documents etc. on mere suspicion of concealment or likely concealment of income. This may cause unnecessary harassment. Here we have suggested that the word "suspect" should be substituted by the words "reasons to believe".

MR. CHAIRMAN: We will consider it.

SHRI K. L. DHANDHANIA: As regards search and seizures—Clause 36 amending section 132 of the I.T. Act—the proposal amendment seeks to give wide powers down the ladder. Powers should not be delegated to junior officers. It should be restricted to income-tax officer. There are many difficulties about Hindu society. We have given here some illustrations (p. 27).

MR. CHAIRMAN: Our basic consideration is to ensure genuine unsuspecting assessee are not put to harassment and hardship. It is not a police State we are living in. We want taxation on mutual cooperation and understanding. If it does not come then we will be forced to do this. It is the question of rebuttable presumption. As the Law of Evidence says even the *Prima facie* possession of some thing leads one, to a certain extent, in favour of ownership.

SHRI P. G. MAVLANKAR: About search and seizure whether the witness has in his mind the possible inroads on individual citizen's privacy or private liberty at the time of such search and seizure. If that is their apprehension then there is a serious point involved. In the name of unearthing certain concealed things we don't want our Income-tax Officers to inflict harassment, physical harassment in terms of inroads on privacy and private liberty of citizens.

MR. CHAIRMAN: There is a provision contemplated in Sec. 132(4A), page 17—"Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—(i) that such books of account, other documents, money, bullion etc., etc., belong or belongs to such persons; (ii) that the contents of such books of account and other documents are true; and every other part etc. etc." He says that such a presumption would create hardship. What I am saying is that this is a special rule of evidence, a suitable evidence. This is not the contention of the witnesses that in carrying out search there will be harassment or inroads on privacy or private liberty.

SHRI R. R. BHIWANIWALLA: Sir, regarding compulsory audit, the minimum of 5 lakhs is too low. It should be 10 lakhs.

MR. CHAIRMAN: We will consider this.

SHRI R. R. BHIWANIWALLA: Secondly, the question of time-limit. My submission is that within 90 days it may not be possible because audit has to be done.

MR. CHAIRMAN: Yes, some time will be allowed.

SHRI R. R. BHIWANIWALLA: Next point is about transition period. Sir, It will take 2/3 years. Therefore, so far as transition period is concerned, penalties may not be levied.

MR. CHAIRMAN: We will consider the suggestion.

SHRI R. R. BHIWANIWALLA: Then about permanent account numbers. You have made a limit of Rs. 50 thousand. This is with regard to clause 40 of the Bill—a new insertion at page 29. Sir, the annual turnover of Rs. 50 thousand has been taken. It means a daily turnover of about Rs. 139/- only. It will be too small a figure and small shop-keepers will be put to difficulty.

MR. CHAIRMAN: Let them take a scientific approach in the matter.

SHRI B. K. SHROFF: In the clause relating to permanent account number previously it used to be written as V(i) but now it has been written as 5, then a little space and then (i). It is sometimes misleading.

MR. CHAIRMAN: Yes, we will keep it in mind.

Thank you, Mr. Chowdhary, for submitting an elaborate memorandum and we expect you will give us the supplementary memorandum on the points you promised to give us. Ours is a onerous and difficult task. Whatever we ask is just to educate ourselves so that we can recommend to Govt. for giving the country a law which is a rational one. We do not mean any offence to any one of you. If that has happened it is due to inadvertence. I hope that will not be taken along with you outside the hall. Thank you very much.

(The witnesses then withdrew.)

D. Institute of Cost and Works Accountants of India, Calcutta.

Spokesmen:

1. Shri V. Kalyanaraman, *Vice-Presidents.*
2. Shri N. K. Bose,
3. Shri A. K. Biswas,
4. Shri S. N. Ghose, *Secretary.*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: According to the convention I am to announce one of the directions of the Speaker of the Lok Sabha which will govern your evidence. The evidence that you give will be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. Even if you might desire your evidence to be treated as confidential the same is liable to be made available to the Members of Parliament. Now, you may proceed.

SHRI ERA SEZHIYAN: Mr. Chairman, Sir, the distinguished witnesses are from the Institute of Cost and Works Accountants of India. We would like to know what are their qualifications and experiences and their preparations because we have heard of Chartered Accountants only.

MR. CHAIRMAN: Would you kindly tell us about your background and syllabus.

SHRI V. KALYANARAMAN: Mr. Chairman, Sir, before going to that I on behalf of my colleagues and on behalf of the Institute of Cost and Works Accountants of India thank you and the Members of the Select Committee for having given us an opportunity to appear before you and put forth our points which will be confined to one section of the Act only.

Now, as the honourable Member has asked me before I go into the subject I will briefly touch upon the syllabus, the competence and the quality of the

Cost Accountants more so because the honourable Member has said that he knows about the Chartered Accountants only. Sir, the Institute of Cost and Works Accountants of India which has been formed by an Act of Parliament is a regulatory body in the country for imparting knowledge in management accountancy. As the honourable Members might be aware, Sir, that management accountancy deals with the efficiency, propriety and avoiding wastage and control of costs and so these are the areas in which management accountancy is imparting knowledge to the Members. Our institute to-day has got about 3,000 members and about 30,000 student members all over the country. Sir, the basic requirements to become a student member of the Institute is a pass in the First year of three years Degree Course of a recognised University. Any student who has passed the first year of three years degree course of a recognised University is eligible to become a student member.

MR. CHAIRMAN: That is he may not be a degree holder.

SHRI V. KALYANARAMAN: Yes. Any student of any faculty with the above qualifications is competent to appear in our examinations. We have an examination system by which we control imparting of knowledge by having a training programme. We have a huge number of students spread all over the country and our Institute has taken up the onerous task of imparting knowledge to all the students by giving them training through postal coaching scheme. We have got a system of assessment and valuation

of the candidates' performances during the training programme because the candidates are to undergo a training for a period of one and a half years before passing the intermediate examination. After passing the intermediate examination also a student is required to undergo a training for another one and a half years. After the student passes the final examination he is not immediately enrolled as an associate member. This is exactly the point where we differ from the Chartered Accountants. Our system of imparting knowledge requires minimum three years' practical training in industry, banking and other specified areas which our Institute thinks fit. After a candidate completes all these trainings and after he passes the final examination he then makes an application to the Institute to become a Member. The Institute now decides as to whether the candidate has acquired knowledge to be enrolled as an Associate Member of the Institute. Thus persons who pass our examinations also have practical experiences particularly in the industrial sectors to take up jobs that may be assigned to them when they become full-fledged members. We have got higher calibre or status for the Institute members. Persons who have put in five years of service as Associate members would be declared as Fellow Members. Here again, the question of application is there and the Institute examines the competence of the Members to become the Fellow Members. Sir, this is all regarding our background and regarding syllabus I may say the following.

Our final examination consists of Cost Audit and Management Audit, Advanced Accountancy, one paper on Advanced Accountancy and one paper on Taxation. In Group II there are Methods of Business Statistics and Financial Management, Principle and Practice of Management, Costing Assessment Methods and Control, Applied Costing, quantitative Technique and Data Processing.

MR. CHAIRMAN: Whether it is actual cost audit or any other?

SHRI V. KALYANARAMAN: It is cost auditing Sir. This include management auditing. With regard to the syllabus of Intermediate course, I would state that the subjects of the Intermediate examinations are, business organisation in group I, economics, industrial law, mercantile law, company law, elementary mathematics, elementary statistics, book-keeping and accountancy, factory organisation, engineering cost accountancy, primary cost and over heads, methods etc. Apart from that, we have a post-graduate examination, which is known as management accountancy examination. Persons who are qualified and become associate members of the institute can take up this higher calibre post-graduate course and appear in the post-graduate examination, known as management accountancy examination. Also we have got psychology in advanced accountancy, management accountancy, works study and industrial relations including personnel management and Development and Design, as well as organisational methods. These are the subjects covered by the management accountancy examination.

MR. CHAIRMAN: Please tell us about the practical training in audit.

SHRI V. KALYANARAMAN: As far as practical training is concerned, the cost auditors have now come into the picture and this includes audit of management. We take those competent persons who have been qualified in the practising field. We have recognised their practical experience in industries as equivalent to those persons who are engaged with the cost auditors for a period of five years and also the persons who are in the industries for the purpose of cost audit. As far as Auditing training is concerned we confine ourselves into the management audit propriety and financial, but we do not go into the voucher audit.

SHRI ERA SEZHIYAN: For my general information, I want to ask you whether the persons who have completed the first year of the degree examination whether they should be required to serve for three years in an industrial or business management or some other specified area?

SHRI V. KALYANARAMAN: As far as our members are concerned we do not put restrictions on such students as you have referred just now to appear in our examinations. So, there are some students who are not engaged in any industrial sector-although most of our students are engaged in industries-can take up this examination.

SHRI R. V. SWAMINATHAN: You have said about the system, i.e. postal system by which you are imparting training, etc. Will you let us have some idea about it?

SHRI V. KALYANARAMAN: We have got two systems of training-one is postal system and the other is oral coaching. We take the students to the industrial centres for the purpose of practical training.

SHRI R. V. SWAMINATHAN: Is there any branch of these centres in Madras?

SHRI V. KALYANARAMAN: We have four regional councils what is known as nucleus centres. We have got it in all the important places such as in Tamil Nadu, -Madurai, Coimbatore and Trivandrum-all in south India.

SHRI ERA SEZHIYAN: After completing the 3-years apprenticeship, how many applications that are submitted by the candidates are being considered, i.e. what is the percentage of reduction of applications?

SHRI V. KALYANARAMAN: As you have said, it is not merely the acquiring of knowledge. In fact, when the persons who are connected with the cost or management accountancy, if they have completed successfully,

then they are enrolled as the Associates of our institute. If an application is made by a candidate who claims for his membership because of the reason that he is a post-graduate accountant, then he is enrolled as an Associate Member of the Institute. We feel that he is a competent cost accountant because he has acquired knowledge in storage accounting, material accounting, budgetary control and standard control.

SHRI ERA SEZHIYAN: What is the percentage of reduction?

SHRI V. KALYANARAMAN: If you come to the percentage of reduction it is around 10 per cent.

Sir, I would like to give one more point. While making an application a candidate has to give the names of 3 referees, two of whom must necessarily be the Associate Members of the Institute so that the Associate Members, if they like, can see that the candidate has acquired knowledge. That is why the percentage of reduction is low.

SHRI ERA SEZHIYAN: You have said that there are 3000 associate members enrolled in your Institute. Can you give us an idea of these 3000 associate members as to how many of them are in their practice or how many of them are employed?

SHRI V. KALYANARAMAN: As far as practising members are concerned, we have about 300 to 350 members who are competent to practise.

SHRI P. G. MAVALANKAR: I would now ask whether the syllabus of the cost accountants is recognised by any University in India?

SHRI V. KALYANARAMAN: Sir, this course is a specialised one. So the question of university recognition does not come, but at the same time the post-graduate persons who are being qualified in our final examination and who are associate members they are considered equivalent to M.A. of the affiliated university. For example, the Karnatic University.

Benaras University and the Poona University have recognised our members fit enough to take up post-graduate doctorate.

SHRI P. G. MAVALANKAR: Are the courses being conducted on behalf of your institute or by certain other colleges in various parts in India? If so,—I believe there are some of them—what kind of qualification do you prescribe for the teachers and professors who give instructions in these courses, and secondly, for those students who have been compulsorily doing some apprenticeship before they become students of your Institute?

SHRI V. KALYANARAMAN: No Sir. There are some colleges where the students, if they intend to be admitted in our institution as associate member, they can have training for appearing in our examination. We have recognised some institutions and colleges to do this function.

MR. CHAIRMAN: The Committee likes that more persons should come into the line of compulsory auditing because the existing chartered accountants are possibly inadequate. We also like to have one College of Auditing and at the same time it is very difficult to assess as to what extent you would be able to do that. I am making this enquiry because more auditors are required due to the amendment of the trusts laws. Under the trusts laws the requirement of the auditors will be increased because their task will be onerous and cumbersome. So, do you agree that restrictions on auditors certificate should be so imposed that competent persons would come in this line?

SHRI V. KALYANARAMAN: Yes Sir.

MR. CHAIRMAN: As regards the voucher auditing and verification of accounts for enabling the I.T.O. to assess the total income and determining the tax payable what do you suggest?

SHRI V. KALYANARAMAN: Here I will submit Sir, the amendment of Clause 39 stating that income tax return must accompany the audit report in the prescribed form. As regards the assesseees who are carrying on business, whose total sales exceed Rs. 5 lakhs or whose profits before deducting the tax payable exceed Rs. 50,000|-, mere audit report is not sufficient for the purpose of determining as to whether the net real income has been taken into account for the purpose of assessment. Here our Institute feels that the requirement is not only for voucher auditing but also for propriety auditing.

SHRI TRIDIB CHAUDHURI: While I was in the Select Committee on the Company's Law Bill, the cost accountants made certain representations with regard to cost auditing.

MR. CHAIRMAN: What was the contention there?

SHRI V. KALYANARAMAN: It is a question as to whether only the cost accountants should be qualified as cost additors.

MR. CHAIRMAN: How the chartered accountants are taken as qualified cost accountants? This Committee does not want the compulsory audit to be the prerogative of anybody. Provided one is properly qualified he may do the audit.

SHRI A. K. BISWAS: What we are asking for is that if this audit is done in a restricted sense for the purposes of the income tax, then we might approach the Government departments.

MR. CHAIRMAN: No, no. You see, we are deliberating on the provisions of the Bill which has a very limited object, namely, eradication of evasion of taxes, unearthing of black money and its growth etc. This committee is not competent to say whether the members of a particular Institute are competent to carry on audit for income tax or not. I suggest that you get proper recognition in the porper

forum in the Company Law and the Finance Ministry who only can evaluate your competence in this regard.

SHRI A. K. BISWAS: The only point is that we do not want to be financial auditors. Another point is that the vouchers will be there to prove the income but who will say about the cost which inflates the price and consequently the income.

MR. CHAIRMAN: We cannot say what the cost should be or whether

a cost is an ideal one or not. What we want to know is whether a profit and loss account is genuine or not on the basis of evidence. What I suggest is that you think over it, get proper recognition on the proper forum and thereafter we will take you straight-away. Thank you.

SHRI V. KALYANRAMAN: Thank you, very much, Sir.

(The witnesses then withdrew).

III. Federation of Associations of Small Industries of India, Calcutta

Spokesmen:

1. Shri Swaraj Basu—*Vice-President.*
2. Shri A. Roy Chowdhury.
3. Shri S. M. Banerjee.
4. Shri S. S. Singhanian.
5. Shri L. N. Lohia.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: According to the convention I have to point out to you that the evidence that you tender is to be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. Even though you might desire the evidence given by you to be treated as confidential, such evidence is likely to be made available to the members of Parliament. Now, you may proceed.

SHRI A. ROY CHOWDHURY: Hon'ble Chairman and Members of the Select Committee, we have placed our memorandum on behalf of the Federation of Small Industries in eastern region. I feel, Sir, that all the points which we have made in our memorandum need not be dilated at length before the Committee and to save the time of this Committee I shall just try to highlight some of the points which directly concern us. On the first page of our memorandum, we have tried to bring out the fiscal incentives which we, small people, deserve to receive in accordance with

the policy of the Government of India. I submit that under the provisions of section 80(i) of the Income Tax Act the benefit is only available to those who have their own capital employed and on that 6 per cent is calculated and that is deducted from the total profits. Here our submission is that small scale industrialists carry on their activities with the help of borrowed capital mainly and, in certain case, only. This concession is not available to the small scale industrialists in general. This concession is not extended to them even in case of revival or reconstruction. Our submission is that the small scale industrialists in most cases start their industries with old plants and machineries, shed and structures, etc., but they are deprived of this concession. Our humble submission is that this may be extended to the small scale industrialists in general. Even if it is a new undertaking set up with old plants and machineries it should get this benefit.

MR. CHAIRMAN: Firstly, capital and borrowed capital and even the new undertakings with old plants and

machineries should not disqualify from the benefits.

SHRI ERA SEZHIYAN: What is the implication?

MR. CHAIRMAN: Implication is very simple. You get 6 per cent deduction. He wants borrowed capital to be treated as his own capital. It means double deduction. Your capital is your own capital plus the borrowings. In computation of the total income that should also be allowed.

SHRI A. ROY CHAUDHURY: We want this to help the small scale units.

MR. CHAIRMAN: What is your conception of a small scale unit?

SHRI A. ROY CHAUDHURY: Rs. 7.5 lakhs, according to the present definition.

In this connection I would humbly submit that growth of capital is the urgent need of small scale industries. If that concession is extended to the small scale units they will be in a position to formulate their own capital and very well repay their loans which, in the present situation, they are not in a position to do. They go on borrowing. From the statistics it will appear that most of the small scale industries are proprietary or partnership concerns, or small private limited companies. Therefore, they have no scope of getting contribution by public invitation. So, the question of their fund goes only to the extent the proprietor, partners or directors can contribute. Loan is the only source. The distinction that I want to make is that in a large scale industry capital can come from outside public. In small scale they can invest a very meagre capital and beyond that they have to borrow. They have got very little to plough back in their own industry. As a result, my submission is that in future times also it may not be possible for the small scale units to stand on their own legs. In this context I also submit that the question of development of small scale

industries in backward areas has been rightly taken up at this time.

MR. CHAIRMAN: Another Bill has already taken care of that, as you know, the Direct Taxes Laws (Amendment) Bill of September, which has been moved in the Lok Sabha.

SHRI A. ROY CHAUDHURY: My next submission is that new small scale industries should be given tax holidays for the first five years, taking into account depreciation or development, whatever is possible. That will make it possible for the small scale units to, at least, formulate some capital of their own.

About depreciation, our humble submission is that depreciation at the present rate is uniformly applicable to both small and large scale units. The objection is that in course of time when the machinery or the plant is discarded, the small scale units are not in a position to replace them out of their own funds and they cannot retain the business because they are running at a loss.

MR. CHAIRMAN: We will keep your suggestion in mind.

SHRI A. ROY CHAUDHURY: Regarding compulsory maintenance of accounts and audit, our submission is that this is definitely a welcome measure, but so far as small scale industries are concerned, particularly those which are situated in the backward areas, or where the chartered accountants may not be available, it will be a great hardship on them to come to the town and get the accounts audited. They will have to incur a substantial expenditure also. There has not been any distinction between a trading and a manufacturing concern as their profitability cannot be called equal. We, therefore, submit that the ceiling should be raised to Rs. 5 lakhs in case of a manufacturing concern and in the case of a trading concern it should be raised to 7.5 lakhs. Moreover in a Bill the turnover also includes other charges, such as excise duty, etc.

MR. CHAIRMAN: We will go by sales understood as sales and turnover understood as turnover. We will not complicate the matter. In your books of account if you show this separately then there will be no difficulty. Here excise duty is certainly a turnover.

SHRI A. ROY CHOUDHURY: But excise duties are enhanced at random.

MR. CHAIRMAN: Do you not recover this from the buyers?

SHRI A. ROY CHOUDHURY: Yes.

MR. CHAIRMAN: We will go by the turnover as used here. What about sales-tax. Do they include excise duty?

SHRI A. ROY CHOUDHURY: Excise duties tend to go up by leaps and bounds.

MR. CHAIRMAN: Yes, you proceed.

SHRI A. ROY CHOUDHURY: Regarding clause 14, we have got to make our humble submission. Small-scale industries particularly are more or less family concerns consisting of husband, wife, children. Here if this restriction, over and above restrictions already put, is created, this will cause great hardship. We submit this should be judged on merits. If somebody is found to be qualified who can be paid some remuneration, that should not be taken away. This should be judged on individual merit.

MR. CHAIRMAN: We will consider that.

SHRI A. ROY CHOUDHURY: Now, as regards the small-scale industries, there is a legislation which is in the draft form. Here certain suggestions were made regarding risk capital and restricted partnership. Now all the partners are equally liable for any liability of the firm. Small-scale units in general are running short of capital and an incoming partner who can come with finance should not be treated the same manner as the other partners.

MR. CHAIRMAN: Is it related to any of the sections we are amending now? In our law what change do you want?

SHRI A. ROY CHOUDHURY: We propose that Restricted Partnership Act should be introduced and there should be some amendment in the Revenue Law also otherwise this benefit cannot be extended to the partners. Recommendation of the Committee on Small scale industries is on that line.

MR. CHAIRMAN: I think it is entirely outside the purview of the legislation we are considering at the moment.

SHRI TRIDIB CHAUDHURI: Mr. Chairman, let them go through the provisions of the Bill and send a supplementary memorandum.

MR. CHAIRMAN: If you think that what you suggest fall within the contemplation of the Bill you can write a supplementary memorandum. We will then consider.

SHRI A. ROY CHOUDHURY: Then about unexplained expenditure which has been incorporated in the Bill. Our submission is that there should be reasonable ceiling. Otherwise if the ITO feels that a particular expenditure according to him is not explained then the assessee will be in difficulty. Discretionary power has been conferred on the ITOs in the proposed amendment. Question of proving will lie with the ITOs.

MR. CHAIRMAN: You can prove the source.

SHRI A. ROY CHOUDHURY: If some expenditure is incurred which the ITO feels cannot be allowed then there will be difficulty.

MR. CHAIRMAN: That is something else. Are you referring to clause 15, 69C?

SHRI A. ROY CHOUDHURY: Yes, Sir.

MR. CHAIRMAN: This has nothing to do with unexplained expenditure. You have incurred certain expenditure, personal or business, the source of which you are not able to prove then it is presumed that you have got it by evasion or by some other means which cannot be explained.

SHRI A. ROY CHAUDHURY: Our next submission is about clause 27. We feel the proposed amendment will adversely affect the small scale industry in respect of payment of dividend. We have already submitted that the question of capital growth is a great problem to small scale industry. If it is taken away by the present provision then the small scale industry will suffer.

MR. CHAIRMAN: What percentage of small scale industries are in the corporate sector?

SHRI A. ROY CHAUDHURY: I regret, readily I have not got the figure. But approximately 10 per cent. If they are given this relief then they can plough back their profit.

MR. CHAIRMAN: We will consider this.

SHRI A. ROY CHAUDHURY: Next submission is about the tax rate on the corporate sector of the small scale industry i.e., 55 per cent. If that rate can be reduced then that will help them in ploughing back the profit in business. They are also equally taxed like large scale industry.

SHRI S. S. SINGHANIA: The thing is, the small scale industry whether in corporate sector or proprietorship cannot have public money contributed to their share. That is the difficulty. That is why capital building is a problem for us. We can, of course, borrow from banks but floatation of share capital is being denied to us.

SHRI R. V. SWAMINATHAN: Their point is that small scale industry does not get any benefit of borrowing money from Government nor by way of share capital. But you get loan?

SHRI A. ROY CHAUDHURY: We get loan but we cannot float any share capital nor we get money from Government or from public. We have no capital base as such. Whatever we can contribute only on small capital.

SHRI BHAGWAT JHA AZAD: Let not the structure of tax burden be equal on small and big industries. How would you feel if we keep you where you are and increase the burden on big industries?

SHRI A. ROY CHAUDHURY: The tax structure being very high from our point of view it will not help the small scale industries both in non-corporate and corporate sector. If tax relief is given the small scale industries will grow as a more organised sector than it is at present.

SHRI A. ROY CHAUDHURY: So far as partnership is concerned please refer to the report of the Wanchoo Committee. In the small scale sectors there are more partnership businesses. In the case of Limited Companies the Director gets a remuneration. Here also reasonable remuneration should also be allowed and the interest on the capital should not be taxed both in the hands of partners as well as in the hands of the partnership firm.

MR. CHAIRMAN: We will consider the matter. Thank you very much.

SHRI A. ROY CHAUDHURY: We are extremely grateful to you, Sir, for giving us a patient hearing.

(The Committee then adjourned.)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Monday, the 24th September, 1973 at 10.30 hours in Council Chamber, Legislative Assembly Building, Calcutta.

AND

PRESENT

Shri N. K. P. Salve—*Chairman*.

MEMBERS

2. Shri Virendra Agarwala
3. Shri Chhatrapati Ambesh
4. Shri Bhagwat Jha Azad
5. Shri S. M. Banerjee
6. Shri Jyotirmoy Bosu
7. Shri Tridib Chaudhuri
8. Shri K. R. Ganesh
9. Shri Mani Ram Godara
10. Shri Maharaj Singh
11. Shri P. G. Mavalankar
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri Vasant Sathe
14. Shri Satyendra Narayan Sinha
15. Shri C. M. Stephen
16. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer, Joint Secretary and Legislative Counsel.

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)**

1. Shri R. D. Shah, Chairman, Central Board of Direct Taxes.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri H. G. Pranjpe—*Deputy Secretary*.

WITNESSES EXAMINED

I. Taxation Bar Association, Cuttack

Spokesmen:

1. Shri Satyanarayan Sahu, Secretary.
2. Shri Arjunlal Agarwal
3. Shri Nitya Nand Mohanty
4. Shri Debendra Nath Mohanty

II. Bengal National Chamber of Commerce & Industry, Calcutta.

Spokesmen:

1. Shri G. Saha, President
2. Shri T. D. Chatterjee, Vice President.
3. Shri Milan Mukherjee
4. Shri M. C. Podder
5. Shri I. P. Podder
6. Shri A. R. Dutta Gupta, Secretary.

 I. Taxation Bar Association, Cuttack

Spokesmen:

1. Shri Satyanarayan Sahu—Secretary
2. Shri Arjunlal Agarwal.
3. Shri Nitya Nand Mohanty
4. Shri Debendra Nath Mohanty

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Agarwal, before you commence your evidence it is the convention of the Chairman of the Select Committee to point out to the witnesses one direction which governs your evidence before this Committee. Your evidence will be treated as public and is liable to be punished unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. However, if you desire that your evidence should be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now you may proceed with your evidence.

SHRI A. AGARWAL: Mr. Chairman, Sir, regarding the proposed

amendment of clause 6, sections 11 to 13, I would state that there was some discrimination between the pre-1962 Trusts,—made for a particular community or a caste,—and the post-1962 Trusts.

MR. CHAIRMAN: Mr. Agarwal, assuming that we know the existing provisions of the laws you should carry on with your evidence.

SHRI A. AGARWAL: Sir, by the restriction that has been made in the proposed amendment, the trusts which are rendering services, for example, I would cite an example of Puri where there are certain *Dharmasals* managed by the trust for a particular community, will fall into great difficulties.

SHRI VASANT SATHE: Mr. Chairman, Sir, about *Dharamsalas* they have made some observations in the opening para of their memorandum

They have said "there has been some futile exercise in changing the designations of officers which are not needed at all for efficient administration of tax laws. The object of the Bill is in consonance with the dictum that there is no morality about a tax and as such it (the Bill) seeks to destroy the morality of the Nation." Will the witnesses kindly enlighten us about this aspect as to how they make this insinuation?

MR. CHAIRMAN: Mr. Agarwal, if you have got anything to say about this observation, you may state it straight. If you think that we should proceed clause by clause then we should proceed likewise. The option is yours. Members are here to put questions to you.

SHRI N. N. MOHANTY: Hon'ble Chairman, Sir, while we have written about the observation, that has been quoted by an honourable member, in our memorandum, we wanted to submit that the Wanchoo Committee, was formed to give a report on the direct tax laws and on the basis of it this Amendment Bill has come. The Wanchoo Committee have suggested that the tax rate should be reduced. But, with due apology I submit that the Bill does not contain any such reduction of tax rate. So, my Association feels that if the tax rate is not reduced then there is no good in making so many amendments. Sir, there may be machinery, but that machinery cannot check the evasion by giving deterrent punishment or by penal methods. Only the fair and honest people can be checked by the existing Government machinery, but there are so many people in the country who do not fear this machinery and they will go on dodging the taxes and the machinery cannot check this. I may respectfully submit that in our country the morality of most of the people has gone down and that is why if the tax rate is reduced there will be no scope of dodgery. For this reason, we have incorporated in our memorandum an observation that this Bill has given nothing to prevent the

deteriorating trend of morality of the people.

Sir, I also submit that the majority of the people in the country are illiterate. There are very few people who are conscious of income tax. These illiterate people, due to illiteracy or ignorance, do not go to the Chartered Accountant or to the persons who are conversant with the taxation laws, for filing their returns, in due time. Sir, I know that ignorance is not an excuse, but the fact remains that the people due to their ignorance are finally prosecuted and punished. So, my submission is that these ignorant people should be, first of all, educated or made tax-conscious.

MR. CHAIRMAN: How they can be educated or how long should we wait for this?

SHRI N. N. MOHANTY: Sir, it is true that it will take a long time to make them tax conscious, i.e., I submit that the provisions of deterrent punishment should not be there in the Bill.

SHRI BHAGWAT JHA AZAD: What is your idea about the tax structure, i.e., rationalisation of tax structure?

SHRI N. N. MOHANTY: My suggestion is that the tax rate should be as per suggestion of the Wanchoo Committee—the tax rate should be reduced.

MR. CHAIRMAN: Mr. Mohanty, I would suggest, if you cannot answer properly to the question of Mr. Azad about the limit of tax or rationalisation of tax structure, better you submit a supplementary memorandum incorporating your views about the rationalisation of tax structure which would augment the moral responsibility of the people towards the exchequer and also would augment the revenue.

SHRI N. N. MOHANTY: Sir, due to high price, at present the limit should be raised to Rs. 12,500. The next point is, due publicity should be

given through press and the people should be made income-tax conscious and they should be educated properly.

SHRI JYOTIRMOY BOSU: Mr. Mohanty, will you kindly give us your valued comments on some points, published in the 'Economic and Political Weekly' which is a very important publication in the country. I now quote the point—"A Committee which ranked the prevalence of high tax rate as the first and foremost cause of evasion could have done better homework on the subject before making a definitive recommendation for the reduction of the present income tax rates applying to the higher ranges of income. So the scheme of voluntary disclosures did not work at all."

SHRI VASANT SATHE: Will they also be good enough, while submitting their supplementary memorandum, to co-relate the question of unearthing of black money which is now estimated to the tune of Rs. 10,000 crores, as to where it is and how it can be unearthed?

SHRI N. N. MOHANTY: I will submit, Sir, that this disclosure scheme came once in 1964 only for certain months, about one year and then they have very recently made a voluntary scheme. In 1964, it was not successful because the small assesseees could not ascertain the real fact due to want of proper publicity.

MR. CHAIRMAN: The query of the member, Shri Jyotirmoy Bosu, is what according to you will really augment the responsibility of the people without jeopardising revenue to the exchequer. In your supplementary memorandum you will please give it under clause by clause. Now, Mr. Agarwal, you start with your clause by clause discussion.

SHRI A. AGARWAL: Mr. Chairman, Sir, I was telling you about clause 6 where there were some discriminations between pre-1962 trusts and post-1962 trusts, i.e., some, Dharmasalas were constructed at

Puri where Hindus go there as pilgrims and enjoy some facilities. These dharmasalas should be kept outside the purview of this taxation laws because if you curb the exemptions then these will not properly function and as a result they are likely to be closed down. Sir, these dharmasalas are started with the object of giving certain benefits to the pilgrims of some particular community or particular caste. When the Government is not in a position to take up the dharmasalas and side by side if the taxations are going to be imposed on them, then lakhs and lakhs of people will be barred from having the benefits which were the primary objects of its starting.

The other facilities are such as Gujarathi Vidyalayas which are run by so many Gujarathi Trusts and where only Gujarathi students are having education.

MR. CHAIRMAN: But that will not be hit by this. Read the clause properly. Your first point is correct. If it is for a religious community, it is all right but Gujarathis have all the castes—Hindus, Muslims, Christians and so on.

You see the existing law. The matter is dealt with in section 11. Now, we come to section 13 where this exemption is a little diluted. So it is to be for either a community or a caste. Now what is sought to be omitted from the existing section 13 (b) are the words "created or established after the commencement of this Act". In other words, under section 13 exclusion will be applied outright. So any trust created for any particular religious community or caste will cease to enjoy the exemption. The question now is whether the Gujarathi community will fall as a religious community or a caste. I think there is no doubt in my mind that if you have a Gujarathi school run for the benefit of only those who speak Gujarathi, it is not hit by the exclusion. However, kindly make your submission on this point.

SHRI S. M. BANERJEE: Mr. Chairman, the witness mentioned about

Dharamshalas. But is he aware that in the name of trusts, crores of rupees is being given to various trusts. For instance, he must be knowing about Tirupathi where nearly a crore and a half rupees has come through the Goenkas. What is his opinion about those trusts? I can understand about *dharamsalas*. After all this Government cannot possibly take over the *dharamsalas*, they can have some *dharamsalas*. But I would like to have his clear opinion as to what he actually wants, which trusts he means.

SHRI BHAGWAT JHA AZAD: Sir, it is also our experience that some of the companies in the name of trusts are trying to misuse the funds by cross-investment of their purpose and all that. Is it the intention of the government and the Bill and we want also that this to be for such religious trusts? For instance, take the question of Tirupathi. If there is a misuse of money, that is another matter. But if it is carrying on religious purpose as it is prescribed in the trust, are we also going to catch that under the mischief of this Act? That should be explained to the witness.

MR. CHAIRMAN: I will explain so that Mr. Banerjee's question is understood in its proper perspective. It has two-fold angles. First is that it is all right what you have said about *dharamsalas*. But what Mr. Banerjee is saying is that in the name of charities, great havoc is being brought about. Mr. Bhagwat Jha Azad was saying that in the name of the Tirupathi temple on the one hand sentiments are exploited and on the other hand huge sums of money are embezzled. We know it for a fact that some of these trusts were paid huge money by the public which improved their finances but the trustees embezzled the money and they are undergoing imprisonment for six years. Therefore, please tell us where this sort of abuse is there in the name of religious trusts—we are not going into the economics of this question for that, there is another clause. This

sort of liberalisation in the name of sentiment and religion—would you suggest something which will ensure that this is not abused?

SHRI A. AGARWAL: In that case I think the particular trust should be caught hold of.

MR. CHAIRMAN: How? Since you are people who are experts and who have come from the Income Tax Bar, you can educate us on this point and give us some guidance in the matter;—can you come out with some subtle and ingenious way how we can bring about some built in checks?

SHRI A. AGARWAL: In that case the Income-tax Officer, or the higher authorities should be properly trained in checking up things, to go deep into the expenditure. If they find the funds being abused they will lose the exemption.

MR. CHAIRMAN: If after investigation it is found that the expenditure is not in consonance with the object of trust, if there is any breach of trust, the exemption should be taken away. We would consider that.

SHRI A. AGARWAL: Regarding donation, suppose an anonymous donor does not want to disclose his name. The amount donated will be taxed in the hands of the trust at the rate of 65 per cent. That is a most harassing rate of taxation. Secondly, it is not possible for the trust or the institution to know the names. Suppose, among the Hindus there is a psychology of making a *gupta dan*, which they consider to be sacred gift. If the name is disclosed it will hit the conscience of the man. Moreover, there are boxes kept in certain institutions and temples where people come and put donations. It is not practically possible to record the names of the donors.

MR. CHAIRMAN: While we respect the sentiment in the Committee we are sitting hard-headed and want to tackle the very big problem of black money. I really want to know from you whether you would think it to be a *gupta dan*—there are two kinds one

is hard earned money. I have paid taxes on it and still I want to remain anonymous. Another is, I want to remain anonymous, otherwise, Mr. Shah and Mr. Ganesh will come and catch my throat. It is the other part to which I would refer and would like you to come with a concrete suggestion.

SHRI A. AGARWAL: There is no doubt that there are abuses. Suppose, they are doing wrong. Why should all be penalised?

MR. CHAIRMAN: We do not want to touch the genuine anonymous donations but as I said, there are two types of donors. How do we distinguish?

SHRI A. AGARWAL: The other type should be heavily taxed.

MR. CHAIRMAN: That is what the Bill contemplates. The moment you have established the identity you are exonerated from the burden. Your trust will not be taxed. The man concerned will be chased. It is only where we fail to trace the identity that this provision comes in.

SHRI A. AGARWAL: There should be some restriction.

MR. CHAIRMAN: It is for the trust to decide. Are you supporting that the anonymous donations should be abolished altogether?

SHRI A. AGARWAL: Yes, but it should not be taxed in the hands of the trust.

SHRI BHAGWAT JHA AZAD: In the form of small donations, *gupta dans* are received. Tirupathi, Puri, they get small donations.

SHRI JYOTIRMOY BOSU: How is it going to put them in difficulty? This money is for the welfare of the country which is the ultimate object of the trust.

MR. CHAIRMAN: How is it that this 65 per cent which will be spent for the welfare of the State is going to cause any hardship?

SHRI A. AGARWAL: Black money should go to the State exchequer.

MR. CHAIRMAN: As Mr. Jyotirmoy Bosu pointed out, this 65 per cent will be spent for the welfare of the country and the trust will, at least, have 30 per cent. If the donor cannot be found, and black money is found with somebody, he not merely loses the black money, but he will have penalty and jail.

SHRI A. AGARWAL: It is not possible for them to identify.

SHRI JYOTIRMOY BOSU: I give you an example. An influential man started a mass media trust. He took out a newspaper and he was paying black money into the trust. He donated Rs 22 lakhs in this way. When he was asked by the Income-tax Authorities as to wherefrom he got the money he said, "these are donations received from a large number of people" and produced a huge list which ultimately proved to be fake. What would you do under the circumstances.

SHRI A. AGARWAL: In that case at least the black money has come into accounts and there should be taxation. There are difficulties also. I am giving you an example. A person who has donated Rs. 10,000,00 has given his name and address to the trust which accepts the money in good faith. Afterwards it was found that he gave a false name and a false address.

MR. CHAIRMAN: That's why we are saying that there is that difficulty and how you should overcome this. A real man comes and he gives a fictitious name and the trust accepts the money in good faith.

SHRI BHAGWAT JHA AZAD: Any such big amount which the trust receives, it is the responsibility of the trust to find out before receipt of the money whether he is the real person.

SHRI S. N. SAHU: This Bill has been drafted keeping in view big business houses in the country. Small trusts are serving the nation in its entirety. It is always viewed in terms of Tatas, Birlas.

Mr. CHAIRMAN: Don't mention the names. It is true that big business

ouses are involves but it is also true that small trusts have also to be taken into consideration Now, you suggest how you will plug the loophole, If you cannot suggest anything you may come to the next point.

SHRI A. AGARWAL: I come to clause regarding concession in respect of house property. Here there are some practical difficulties. Suppose, there is a big family which actually needs two or three houses. Moreover there is the concept of H.U.F. in India: Suppose a family consists of 50 or 100 persons. In that case they will require more than one house.

MR. CHAIRMAN: It is a family house or an individual house?

SHRI A. AGARWAL: Either it is a family house or an individual house with the same kitchen. If it is a family then it becomes joint family property.

MR. CHAIRMAN: Suppose he is assessed as an individual. In that case I.T. Deptt. will take the view that irrespective of the members of his family he will be allowed exemption only in respect of one house and not more than one house.

SHRI A. AGARWAL: Then Sir, family members may be 20.

MR. CHAIRMAN: How does that help? In one case members may be two. Do you suggest different in taxation because of large family?

SHRI A. AGARWAL: That is our submission, Sir.

MR. CHAIRMAN: That concept is unknown in any taxation laws.

SHRI A. AGARWAL: Then, Sir. It should be left to the Income Tax officers to decide how many houses are required for that person or whether he is in need of one house or more.

MR. CHAIRMAN: How can it left to the Income Tax Officers? Either you give us concrete suggestion or if you like you can send a note to us.

SHRI N. N. MOHANTY: In clause 12 a new provision has been made for compulsory maintenance of books of accounts when the income is 25 thousand or when the turnover exceeds two lakhs 50 thousand, but for the professionals there is no limit. The books of accounts would be prescribed by the Central Board of Direct Taxes. I seriously object to this clause because the rising of prices in this country is such now-a-days that anybody doing business with a turnover of 2 lakhs 50 thousand will get a profit of about 10 thousand. Supposing he does not know accounting then he will be required to maintain an accountant. So, I think the turnover as has been prescribed is small. I think 10 lakhs will be the reasonable turnover and the total income should be 50 thousand—20 p.c. profit at least.

MR. CHAIRMAN: I feel 25 thousand income is a reasonable income and according to your analogy of 20 per cent 2 lakhs 50 thousand turnover will give you a profit of 25 thousand.

SHRI N. N. MOHANTY: Sir, let it be 25 p. c. profit or turnover of 10 lakhs.

MR. CHAIRMAN: We will consider.

SHRI N. N. MOHANTY: Then, Sir, for professional people the provision which has been made is hard because they will have to appoint accountant.

MR. CHAIRMAN: We are considering that aspect of the matter as to whether the Board should take upon itself the responsibility of statutorily prescribing the books or give guidelines. In any case forms will be simplified. Now you tell us what should be the limit of professionals.

SHRI N. N. MOHANTY: Some as businessmen i.e. 25 thousand income.

MR. CHAIRMAN: 25 thousand is a high limit if you want to arrest evasion amongst professionals. I think a person can maintain books of accounts if he earns 10 thousand and in the case of income of 25 thousand a person can maintain an accountant. A businessman has to maintain an establishment but what professionals have to do?

SHRI N. N. MOHANTY: Sir, let it be made 20 thousand.

MR. CHAIRMAN: We will consider.

SHRI N. N. MOHANTY: Then clause 14—clubbing of income of the minor with father or mother. Our suggestion is that in a country where social security is lacking—Government can give social security to all types of people—if a businessman makes some social security for his children then that should not be touched.

MR. CHAIRMAN: You mean smaller businessmen require this social security for their children.

SHRI N. N. MOHANTY: Yes, Sir.

MR. CHAIRMAN: You please send us a note by strengthening your arguments. We do not want smaller traders to be hit by this—traders who want to pay taxes honestly. It is a good suggestion—we appreciate. You send us a note on this point as to how we can really by this enactment implement the concept of social security being given to those who need it in a trade or business.

SHRI N. N. MOHANTY: Sir, our next point is about the salary and commission and remuneration paid to the spouse.

MR. CHAIRMAN: Where the spouse has substantial interest he will be taxed.

SHRI N. N. MOHANTY: Supposing a lady is working in a Government office and if her husband is also working in the Government office then there is no question of their income being clubbed. But when a doctor has an establishment and he has a professional firm where his wife who is also a doctor is giving useful service what will be the case. Also when a lawyer has a professional firm where his wife is also doing useful service what will be the case. According to our opinion these incomes should not be totally clubbed because their wives are giving useful service.

MR. CHAIRMAN: Lawyers can form partnership. Similarly a lawyer wife and a lawyer husband can form partnership.

SHRI S. N. SAHU: No, it is barred by the Act.

MR. CHAIRMAN: Is that so in the case of professional firms?

SHRI BHAGWAT JHA AZAD: I think it is not so.

SHRI S. N. SAHU: There is no distinction between professional firms and other firms.

MR. CHAIRMAN: Is it so? Please read Section 64 of Act. It reads, 'In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner. So it is clear that if you are carrying on profession then you are exempt.

SHRI N. N. MOHANTY: Supposing one's wife is a stenographer and she is doing some other useful service i.e. assisting her husband then what will happen. Actually there are genuine cases where the wives are doing work for their husbands. So there should be some distinction.

MR. CHAIRMAN: What according to you would be the rational criteria for distinction?

SHRI N. N. MOHANTY: The remunerations paid by the professional peoples to their wives should come under exemption.

MR. CHAIRMAN: What is your view about a person carrying on a business viz. he has a small shop and his wife is writing accounts.

SHRI N. N. MOHANTY: They should be included.

MR. CHAIRMAN: On what criteria?

SHRI N. N. MOHANTY: Because actually the wife is giving service.

SHRI BHAGWAT JHA AZAD: We must see that genuine persons are not put to hardship. Now, can you think in terms of any cash amount upto which there should be no tax and beyond that amount all such incomes should be clubbed?

SHRI N. N. MOHANTY: Rs. 10,000.

MR. CHAIRMAN: You must prove that services have been rendered. What should be the rational limit within which it should be allowed so that this sort of association is not meant purely for tax avoidance but for bringing about real assistance?

SHRI BHAGWAT JHA AZAD: Mr. Chairman, Sir, my question to them was whether the income of the husband and wife put together should or should not be taxed upto a certain limit.

MR. CHAIRMAN: That is subject to proving that services are being rendered.

SHRI BHAGWAT JHA AZAD: Of course, Sir.

SHRI N. N. MOHANTY: The limit should be Rs. 25,000.

MR. CHAIRMAN: We will consider that.

SHRI N. N. MOHANTY: I now come to clause 15 regarding unexplained cash credits. Suppose we draw something from the books of account and we cannot explain the source should that be added for the purpose of income tax?

MR. CHAIRMAN: It is hypothetical. When you draw something from the books of account the source is explained. I think nothing can be more fair than this provision.

SHRI A. AGRAWAL: Sir, so far as clause 25 is concerned the amount is very negligible in cases of big business

houses. The expenses claimed and proved should be allowed irrespective of its quantum.

MR. CHAIRMAN: We will consider that. Please tell us about clause 39. Is it your view that Orissa, being a backward State, should have some limitations in compulsory auditing?

SHRI A. AGARWAL: In Orissa, there are practically three places where chartered accountants are available. These places—are Cuttack, Berhampore and Rourkela. Except these, there are no chartered accountants in the State. In the face of this the business people or the assesseees generally face difficulties to come from mufassil areas to the towns to have their books of accounts audited by the chartered accountants. Over and above these, if they have to remain in the towns for a certain period to have the auditing completed, they will have to incur some extra expenditure which may be very difficult on the part of the small assesseees to bear. and this will also kill their time.

MR. CHAIRMAN: We will consider it.

SHRI A. AGARWAL: Sir, I like to mention one thing. If the present exemption limit is maintained then the small assesseees of Orissa will be affected because they will have to incur heavy amount for auditing.

MR. CHAIRMAN: Why do you consider that Rs. 50,000 should not be the limit of exemption? What suggestion do you like to give us about limitation?

SHRI A. AGARWAL: Sir, I suggest that the turn over should be Rs. 50 lakhs.

MR. CHAIRMAN: You have stated that the Orissa people are somewhat backward. So, don't you think that Rs. 50 lakhs is too high for the limit

of exemption? Anyway, may I know about your professional capacities?

SHRI A. AGARWAL: We are all advocates Sir, there is another point about auditing. We have already mentioned in our memorandum that if a certificate is to be obtained from the Chartered Accountant for auditing the books of accounts then it will put another burden on the assesseees.

MR. CHAIRMAN: Mr. Agarwal, auditing has 3 main purposes—the first is, the convenience and facility of ensuring proper accounts in appropriate forms. If a person's income exceeds Rs. 50,000, he must have his accounts audited; secondly—the auditing certificates can ensure the sharing of responsibility of the assesseees with the Chartered Accountants; the third is it would facilitate the whole system of income tax. These are the three basic reasons which I see the department has accepted.

SHRI P. G. MAVALANKAR: I would like to know how they have arrived at Rs. 50 lakhs?

SHRI A. AGARWAL: Our Mr. Mohanty will reply this.

SHRI N. N. MOHANTY: In reply to the honourable member, I would like to state that in India, the number of chartered accountants are very few.

MR. CHAIRMAN: We are aware of it, but Rs. 50 lakhs is a very huge amount.

SHRI N. N. MOHANTY: It will be helpful if you consider this.

SHRI JYOTIRMOY BOSU: I have a simple question to ask. While you realise that this Bill covers the tax matter, only when it is detected, do you have any suggestion as to how

should we tackle the ocean of black money, which is creating in size every day. This Bill is only covering those persons who have submitted returns. But do you suggest any measure for the people who are not submitting their returns or audited accounts, etc. You know that in India the volume of black money is about 15,000 crores.

MR. CHAIRMAN: If you have got any suggestion as to how the large number of assesseees who are not detected, can be detected, then include that suggestion in your supplementary memorandum.

SHRI N. N. MOHANTY: As we proposed earlier that the tax structure as suggested by the Wanchoo Committee should have been taken into consideration. If tax structure is reduced, then the tax evasion will be lesser than at present. When the rate is high, then the tendency of suppressing of income is there. So I think the black money cannot grow up when the tax structure is reduced.

SHRI JYOTIRMOY BOSU: Would you not think that in the corporate sector or in the sector where big money moves or changes hands, chartered accountants do audit? Do you or do you not feel that the evasion of taxes in that particular sector is more than that of the rest?

SHRI N. N. MOHANTY: This is a very technical question, and we do not exactly know in which sector how much amount is being suppressed.

MR. CHAIRMAN: Thank you.

SHRI S. N. SAHU: Mr. Chairman and honourable members, we are really grateful to the select committee for offering us this opportunity of appearing before this august committee.

(The witnesses then withdrew).

II. Bengal National Chamber of Commerce and Industry, Calcutta.

Spokesmen:

1. Shri G. Saha, President.
2. Shri T. D. Chatterjee—Vice- President.
3. Shri Bilan Mukherjee.
4. Shri M. C. Podder.
5. Shri I. P. Podder.
6. Shri A. R. Dutta Gupta—Secretary.

(The witness were called in and they took their-seat).

MR. CHAIRMAN: Mr. Saha, according to the convention I must point out to you one direction of the Speaker, Lok Sabha which will govern your evidence before this Committee. In terms of the said direction I have to point out to you that our evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential and even if you desire that your evidence is to be treated as confidential such evidence is liable to be made available to the members of the Parliament.

Now, you can proceed with your evidence.

SHRI G. SAHA: Mr. Chairman and honourable members of Parliament, Sir, we are very grateful to you that you have allowed us to appear before you for the purpose of this evidence. Now, we will highlight some of the points of the memorandum that we have already submitted. Before we proceed, I am mentioning here that this Bengal National Chamber of Commerce & Industry is one of the oldest Chambers in India, Late W. C. Bonnerjee, one of the persons, who formed the Indian National Congress, was the first President of the Bengal National Chamber of Commerce. So from that point of view when the Indian National Congress was formed it was for the political freedom of the country and two years after the formation of India National Congress this

Chamber was formed with the constitution written by late W. C. Bonnerjee for the purpose of economic freedom of this country. On our part we are always with the Govt. and we are always trying to help our members against evasion or any other malpractice in the commerce and business. We are wholly with the Govt. in connection with the unearthing of black money and also with prevention of its generation and to curb the tax evasion. But the point is whether the steps taken in this Amendment Bill will be sufficient to eradicate the generation of the black money and evasion of tax. It is doubtful in our minds. One of the reasons of generation of black money is high marginal rate of tax. The maximum amount is 97.5 per cent, but at the same time we also agree that simply by reducing the marginal rate of tax from 97.5 per cent to any other level, i.e. 75 per cent we doubt whether it will stop the generation of black money. We have to see whether it is possible, in addition to reduction in the marginal rate of taxes, that the excise duty and other indirect taxes can be imposed. We have to see that they are collected at the sources. Sir, certain recommendations of the Wanchoo Committee which have direct relation with the black money have not been incorporated in this amending Bill. For example, in the case of genuine business expenditure and the lump sum paid on account of technical know how, certain recommendations have been made by the Wanchoo Committee but they have not been taken in this Bill. Now, it is also necessary that some of these genuine business expen-

ses like entertainment expenses and lump sum payment on account of technical know-how should be allowed at the time of assessment of income tax and also for the purpose of stopping generation of black money.

MR. CHAIRMAN: You have made two points: More rationalisation of tax structure is not enough and it must be followed by other proper measures. And your second point is, as recommended by the Wanchoo Committee, that certain genuine business expenses must be duly allowed. Now, on the second point I have a doubt in my mind. There are two things connected with entertainment expenses. You as people, who have such an impressive history of the origin of your Chamber and working all these years, must have seen that as a result of allowance of entertainment expenses two things have taken place; first, the grossest possible abuse by businessmen by way of ostentatious expenditure the wasteful expenditure, and secondly, the whole lot of personal expenses of Directors and Managing Directors were taken as entertainment expenses. What is the safeguard you can suggest against these things?

SHRI G. SAHA: We also agree with you that there are some abuses regarding personal expenditure. The best safeguard is to put certain percentage on profit. If you say that no entertainment expenses will be allowed then businessmen who have to carry on their business will find out some ways and means by which this entertainment expenditure can be made. Now, it is a question of race between the tax payer and the tax collector. Instead of having this race, the best method will be to put certain percentage on either higher turnover or on the net profit. But on the net profit it may not be very effective because there may be a loss and if there is a loss, they will be denied of entertainment expenditure.

SHRI BHAGWAT JHA AZAD: In that case what according to you should be the percentage?

SHRI G. SAHA: Prior to the abolition of this, there was a maximum amount of Rs. 30,000 on a certain slab which was related to the turnover.

MR. CHAIRMAN: But is that a fool-proof method, Mr. Saha, of checking the malaise you have and I have in mind? We want genuine expenses to be allowed but no personal expenses going into it. The percentage is not satisfactory method—at least the department has not been very happy with this method.

SHRI G. SAHA: But persons who are certifying the balance sheet will be able to find out whether personal expenses have been taken as entertainment expenses.

MR. CHAIRMAN: It is beyond the realm of audit. It is in the realm of investigation, and investigation is not easy in all cases. You go by a voucher, Supposing a Director takes entire family for a nice banquet or a fete and the expenses are debited in the books of accounts. He will show the expenses as entertainment expenses of the customers. Now, the hotel people are not going to write the names of the family members who eaten there. This is the practical angle of the matter that I want to bring to you because you have been so vague in your submissions, and I am putting our views to you candidly.

SHRI G. SAHA: Sir, I think before the abolition of this system three years back—I do not know the departments view point—it was working fairly satisfactorily, i.e, putting certain percentage on the maximum limit.

SHRI VASANT SATHE: Are you suggesting that we should have a percentage cum ceiling?

SHRI G. SAHA: Percentage with a maximum ceiling, say 30 or 40 thousand.

SHRI VASANT SATHE: Plus an in-built method of checking the actual expenditure?

SHRI G. SAHA: Yes.

SHRI VASANT SATHE: And if these three points are combined, you think the purpose will be achieved?

SHRI G. SAHA: Apart from this amendment Bill, unless we can improve our moral standard or professional morality, we cannot achieve anything.

SHRI VASANT SATHE: In this very context the useful suggestion which has been made by the witness, Mr. Saha is that we should consider plugging the loophole at the source, that is, in the form as we do in excise. That would be a better method of getting the revenue instead of getting it at a later stage. Now, along with that—it is a very good point—we know that the real revenue is from excise and sales tax, and income tax comes afterwards. Now, you suggest that we should go to the root itself where the money is generated. Can you in addition to that suggest some other method of getting the revenue at the production or distribution stage itself?

SHRI G. SAHA: Our suggestion is at the production method. Why we say this is because in the operation of sales tax Act it was found that there was large scale evasion. Then the Government strated putting the sales tax at the first point and by that process the revenue income from sales tax came to be manifold. From that point of view we suggest that if some method like the excise duty, that is, taxing at the source, can be found out, then evasion will be much less.

SHRI VASANT SATHE: Would you suggest that we extend the provisions of excise and sales tax to many other professions or avocations or lines which are not yet so covered?

MR. CHAIRMAN: As you know, schemes are basically different. To what extent could we bring about this sort of a cohesion?

SHRI BHAGWAT JHA AZAD: We appreciate the views of the witness when he says, if we want less evasion, we should go to the root. Therefore

it is natural that it should be at the source. The basic thing that I would like to say is that the Chamber has got experts. Let them give some thought on this matter and give suggestions to the Government which will be of great benefit.

MR. CHAIRMAN: You know, pure rationalisation is not enough. You have said, rationalisation of structure and all that. Please come forward with what is rationalisation of structure, what according to you are salient ancillary steps which we must take to plug the loopholes, which would stop generation of black money. Please give us your views in your supplementary memorandum.

SHRI G. SAHA: All right, Sir. Now, we would like to highlight some of the clauses in the Amendment Bill.

We take up clause 6(i)(a). This clause withdraws exemption for the benefit of any particular religious community or caste. When the Income-Tax Bill came in 1962, it stated that from that date onwards no particular community or religion should be allowed—the old trusts could continue for a particular community or caste. This is working for the last 12 years. We do not know if from the administrative point of view anything has been found which requires deletion of this exemption. So far as we know, this was working all right. This will create hardship to lots of people, specially the poor people, who are having their livelihood on the charity from a particular trust created for a particular community or caste. Of course, we submit, if from the administrative point of view anything extraordinary has been found which requires adoption of this new clause, we have no objection.

SHRI VASANT SATHE: This has also to be looked from the Constitutional point of view. In our secular approach we want to do away with caste distinctions. Therefore, keeping that in view, is this preference based on castes and communities a healthy thing?

SHRI BHAGWAT JHA AZAD: We have found, in course of time there are misuse of these trusts. Therefore, we want to do this.

MR. CHAIRMAN: Constitution was there in 1962 also. Whether after 1962 any special situation has come about as a result of which Government have considered it necessary to introduce and bring about this change, we will consider that.

SHRI G. SAHA: If it is found, during the last 12 years there has been misuse of this thing, we are one with the Government in bringing about this change.

MR. CHAIRMAN: You only want to know if any special situation has come about which compels Government to bring about this change. We will consider that.

SHRI JYOTIRMOY BOSU: The honourable witness is quite within his rights to cover this clause, but because they represent a chamber of commerce and industry, in fact, I was expecting to hear things of other interest.

SHRI PODDAR: There is another point also. The creator of the trust has given some guidance for the management and working of the trust. It is very difficult to change the terms and conditions of the trust. Who will change them? In that case, because of the change of thinking benefits are to be withdrawn at a later stage, I think is not fair in such circumstances.

SHRI VASANT SATHE: Have you not stated in your memorandum while giving your suggestion that in any case necessary amendment should be made by the Government to the Trust Act so that the trusts already created for the benefit of any particular religious community or caste could extend their welfare activities to the public in general and thus be eligible for the benefit of exemption from income-tax? So, if Trust Act can be amended, which is the purpose—and that is how this difficulty can be got over—then, you have no objection to bring all the trust.

SHRI G. SAHA: If in the working during the last 12 years there was any difficulty, we are one with the Government.

New clause 6(i)(b) regarding the term "any activity for profit". Charitable institutions sometime issue souvenirs, hold charity shows and in some cases they let out some portion of their own building and thus earn some income. There may also be a trust hospital which may carry on business in medicines as well. If these words are there they will be prevented from doing this. We, therefore, suggest that the words "any activity for profit" should be substituted by the words "any activity for business".

SHRI VASANT SATHE: If you carry on a trade in kerosene oil then what it has got to do with the running of a hospital. The point is that funds should be used for the primary objective for which a trust was created. The whole objective is to stop making profit and then use it for some other ulterior purposes.

MR. CHAIRMAN: Assuming we were to enact one blanket provision that the funds of the trust can only be employed in a particular manner into particular securities and investments to be prescribed by Government and nothing else, will the Chamber accept the suggestion.

SHRI G. SAHA: On principle we agree with you that the income of a trust must not be invested in some other shares with a view to control those businesses or those companies. Our Chamber stand by that position.

MR. CHAIRMAN: We will impose a blanket ban that you must only do this or that. Suppose you want to do business you will have to do this with the permission of the income-tax officer but those funds cannot be spent on speculative business or for buying some chemical industries and so on. Therefore be clear that this blanket ban is on your authority to invest.

SHRI G. SAHA: We entirely agree with your proposition. This Chamber does not want that these funds

should be utilised in concerns with a view to control business or ultimate concentration of economic power. Now, Sir, may I draw your attention to our memorandum, page 5. Ours is the oldest Chamber and we got a building. Our main object is to encourage business and economic development. This Chamber has got five floors—we are occupying 2 floors and 3 floors have been let, the income of which is assessed by the I.T. Deptt. After meeting the income-tax we are running at a deficit . . .

MR. CHAIRMAN: Please speak on the principles.

SHRI G. SAHA: In clause 6(i)(c) regarding identity of donors we would like to point out that identity cannot be proved in case of street box collection, charity shows etc. In our view this clause should be deleted or in the alternative you can take the last few years' average of such collections.

SHRI BHAGAWAT JHA AZAD: We don't want to penalise such box collection or charity or smaller donations. There are cases where people pay 5 lakhs of black-money—how to avoid that? Can you suggest how to stop that?

SHRI JYOTIRMOY BOSU: Not only that, they pay blackmoney of 5 lakhs of rupees through one door and take advantage of the blackmoney through another door.

SHRI G. SAHA: Regarding the contributions received our view is that whatever may be the source that should not be seriously challenged. We consider what should be challenged is how this money received by the trustees is being spent, whether for charitable purposes or for investment as suggested or according to the prescribed limit.

MR. CHAIRMAN: Any way, that is your thinking. We can go to the next clause.

SHRI VASANT SATHE: Mr Chairman, with regard to clause 6(i)(c) they have made a suggestion at page 8 of the memorandum. I have not understood how the suggestion is going to help them. They say, "The proposed provision should be withdrawn. However, to do away with the practice of certain trusts to control the company's affairs through the founders or settlers of the trust, it may be provided that no investment on shares of a company will be made if the company fails to declare a minimum of 10 per cent of dividend per year." Will they explain how this is going to help them?

MR. CHAIRMAN: I think, in view of the stand they have taken now on this point, this will not arise.

SHRI G. SAHA: We made this suggestion because original presumption was that the return of the amount invested in Govt. concern would be less. But now we entirely agree with your suggestion about prescribing investment of surplus fund and so on.

SHRI S. M. BANERJEE: You have stated in your memorandum at page 3, paragraph 2 that, "In the circumstance, the Committee do not understand how the provisions of the Bill which mainly seek to make the administrative procedure and penal provisions more stringent, would be able to tackle the problem of black money and tax evasion. They, on the other hand, apprehend that the Bill will cause avoidable hardship to honest assesseees, if enacted." Now, we are trying to bring back and unearth the black-money by stringent measures and that is one of the reasons why this Bill has been brought in. I would like to know from you that if you are against the procedures adopted in this Bill then what will be your opinion and what will be your specific suggestion to unearth black-money.

SHRI G. SAHA: Sir, we will deal that in our supplementary memorandum.

Now, I want to refer to Clause 14. Sir, we welcome the clause regarding the clubbing of income of husband and wife on principle. But in certain cases where both the husband and the wife who are both professionally qualified and get the income by their professional qualification will it be desirable that income of both should be clubbed?

MR. CHAIRMAN: We will see to it that genuine cases are not be hit by this provision. But how to distinguish between the genuine cases and other cases? It is a very difficult job and it has become a problem which has been baffling and eluding any solution so far. So if you can give some concrete suggestion about this in your supplementary memorandum we would be grateful. So far as we are concerned we must see that whether there is any tendency to minimize tax liability or whether there are genuine cases. But the demarcation is very difficult. Although there is Section 40A to deal with this matter but the experience of the Department is not very happy about this section. So, please send any concrete suggestion if you have, in your supplementary memorandum.

SHRI G. SAHA: We will do that Sir.

SHRI VASANT SATHE: While doing so would you concretise the thing a bit more so that the income of those spouse who are professionally qualified to give assistance to their husbands in the profession in which they are involved be excluded provided the remuneration commensurates. If some such concrete thing can be given then I think it may do justice to a lot of genuine cases. But even if the wife is professionally qualified and you give her a salary which has no co-relationship with the salary available in the market then it would be liable to question. So this point should be taken care of while submitting your supplementary memorandum.

SHRI BHAGWAT JHA AZAD: Why don't put a limit on the cash amount?

MR. CHAIRMAN: They have already dealt with that at page 14 of their memorandum. They have suggested Rs. 20,000 as the limit.

SHRI G. SAHA: We have proposed Rs. 20,000 because the husband and wife both may be professionally qualified but in some cases the wife may be doing the household work and husband may be doing office work. So, the simple thing that husband and wife both will be professionally qualified will not be sufficient. Therefore, to avoid these complications—as you have rightly suggested, Mr. Chairman, Sir, that it is very difficult to demarcate genuine and other cases—we have suggested this course.

SHRI VASANT SATHE: But when the wife is doing household work only would you want the income to be clubbed?

SHRI G. SAHA: Where the wife is working and the husband is also working there we have suggested Rs. 20,000 as the limit.

SHRI VASANT SATHE: Irrespective of whether she is working or not?

MR. CHAIRMAN: Make it subject to her working. So, on this point kindly reconsider your views.

SHRI G. SAHA: Sir, our next point relates to the proposed new Section 69D regarding *hundi* loans. Here it is stated that both for the amount received and amount paid account payee cheque will be required. The only distinction we want to make is that when the amount is paid it is disbursement and it does not come as an income. Therefore, at the time of payment it may be cash payment. Also the identity of the borrower should be clearly established.

MR. CHAIRMAN: That means you want that at the time of payment it must come as an account payee cheque and at this stage clearly identity of the borrower should be established. But why?

SHRI G. SAHA: If the identity of the borrower is established then he will give his income.

MR. CHAIRMAN: We will consider this.

SHRI G. SAHA: Sir, then I come to clauses 26 and 27, relating to Sections 104 and 109.

MR. CHAIRMAN: Section 104 is very important.

SHRI G. SAHA: There are lots of small industries on the basis of this present law. They plough back their profits because they are not distributing money. On the basis of the law they borrow money from different financial institutions on the understanding that they will not have to distribute that money as dividend. But if they now have to distribute 45 per cent compulsorily they will be put to hardship.

MR. CHAIRMAN: I do not think there would be such a case. You should be in a position to declare dividend. In Gangadhar Benerjee's case and a few other cases the Supreme Court has liberally considered this section that if you are really handicapped then you should not declare the dividend.

SHRI G. SAHA: Sir, if the money is ploughed back then there is expansion of business and also there is no evasion of tax. But in the case of term loans from financial institutions including commercial bank you will not be able to make any declaration of dividend without the previous sanction of those financial institutions. So, according to the agreement, when they borrow money from the said financial institutions or from the commercial banks, they are not permitted to declare dividend. If they want to declare dividend, prior sanction must be obtained from the said financial institution. On the other hand, according to the income tax law, they have to declare compulsory dividend. We have seen in this part

of India that if there is any case of mismanagement or misuse of this concession that is being given, then this concession is withdrawn.

MR. CHAIRMAN: In the case of industrial companies, if they do not declare dividend they are subject to taxation by 55 per cent. So, misuse is one thing and the lesser burden of taxation is another thing. However, we will consider it.

SHRI BASANT STATE: When the ploughing back of money in the same concern, i.e. within the same industrial concern where there are different units, are going on, would you encourage them?

SHRI G. SAHA: There are many points in this particular issue. Normally we understand that the money should be ploughed back in the same industry. If there is any limit in the particular industry, they may diversify their activities under the same company to other lines. In our memorandum we have actually preferred that the money should be ploughed in the same industry. If it is done, Sir, there will be more employment and more economic activity.

SHRI JYOTIRMOY BOSU: Mr. Saha, do you not agree that this Bill covers tax matters after these are detected? Do you have any suggestion to make as to how should we tackle the ocean of black money which is growing in size every day?

SHRI G. SAHA: This is a very difficult question to answer. I do not know whether it will be any contempt of this committee if I reply in my own views as I did not have any opportunity of appearing before the Select Committee.

MR. CHAIRMAN: Yes, you are permitted to give your evidence according to your own views.

SHRI G. SAHA: Sir, this Bill itself would not be able to tackle the black money in this country. The

first reason is that until and unless the standard of morality of the business community, professional people etc. raised nobody can stop the generation of black money. The second reason is—I do not know whether my evidence in this regard would be accepted or not, if it is not accepted then it will be deleted—the contribution to the political parties should also be stopped. Until and unless the payment to the trade union leaders, payment to the other executives to get work so quickly to obtain licenses etc. are stopped, the generation of black money cannot be stopped. It would not be possible simply by making some amendments to stop generation of black money.

SHRI JYOTIRMOY BOSU:
Kindly tell us whether you are inclined to think that if this scope of chartered accountants are made more widespread in the matter of auditing the accounts of business men or other men, evasion is likely to be reduced? Do you or do you not think that the corporate sector particularly the large business houses are the main places of the evasion of taxes?

SHRI M. P. PODDER: Sir, as regards black money there are two aspects—one is the unearthing of the existing black money in the country and the second aspect is to stop the generation of black money that is being generated every day and every year. I think if we go through this Amendment Bill, it will be seen that this is not helping in any way to touch the fringe of this problem. If something can be done in the cases of industries which are engaged in production with proper distribution of material management then misuse of these materials and other things will be taken into book.

SHRI BHAGWAT JHA AZAD:
I would ask for a clarification from Mr. Saha as he has rightly quoted from the Wanchoo Committee recommendations about demonitisation and about 125 chartered accountants firms in this country who have monopolised

the 75 per cent auditing thus leaving the rest 25 per cent to others.

SHRI G. SAHA: Regarding demonitisation we welcome any measures to stop the black money. We have doubt whether demonitisation will serve the purpose because the business community instead of keeping their money in open investment they put it in the stock exchange. So, whatever steps you adopt for demonitisation this will not perhaps solve the problem of generation of black money. In 1946, i.e., after the second world war there was a demonitisation, but no fruitful result came out of it.

SHRI JYOTIRMOY BOSU:
Can you tell us about the bulk evasion, which I feel takes places through two operations—first is inflated cost of production and the other is deflated sales revenue—how do you think, you can put an end to that?

SHRI G. SAHA: We do not agree with this proposition.

SHRI JYOTIRMOY BOSU:
Have you, by any chance got an information about the volume of production which is in excess of licensed registered installed capacity as highlighted in the Industrial Licensing Enquiry Committee report (Dutta Committee). That report contains an information that the percentage of production in excess of the licensed installed capacity was 905 per cent.

SHRI G. SAHA: Sir, I have never come across with any such figures although I have heard about this fact as you have stated.

SHRI JYOTIRMOY BOSU: You can have it from your research analysis.

SHRI G. SAHA: I can collect the statistics from my Chamber.

SHRI JYOTIRMOY BOSU:
What is your idea about cost audit account? Government makes it compulsory and mandatory to have cost audit account for every item of production as to how much cost it incurs.

SHRI G. SAHA: We agree that in the organised sector cost auditing should be introduced.

SHRI JYOTIRMOY BOSU: Although we have in our country the rate of taxation as high as 97.75 per cent, would you agree that the effective rate of taxation is not more than 45 per cent?

SHRI G. SAHA: Sir, it may be true but I cannot say the effective rate is 45 per cent. I have already told you that the marginal rate from 97.75 per cent to any other percentage will not solve this problem.

SHRI P. G. MAVALANKAR: I like to ask one simple question. You have said the standard of morality of the business men is very low. May I know particularly from your Chamber as to what concrete steps you are taking, both collectively or individually, to see that morality is not lowered down in the cases of the business community who are members of the Bengal National Chambers of Commerce?

SHRI G. SAHA: No Sir. From time to time we held meetings. We

have 300 members, most of whom are small scale and medium scale industrialists. We urge upon them that they should not adopt any unfair means either in the form of evasion of taxes or in the form of black marketing of their goods. We advise them even if you incur loss in your business yet you must not increase your prices.

SHRI P. G. MAVALANKAR: If they do not do that, what steps you take against them?

SHRI G. SAHA: Though we have in our constitution to disqualify them in such cases, but we are happy that no such circumstances were created up till now.

MR. CHAIRMAN: Mr. Saha, I must thank you very much. Your evidence has been extremely satisfactory, and I and the Committee members are very thankful to you for putting forth very interesting and concrete suggestions. We immensely appreciate your objective evaluation of the entire provisions of the Bill and we do look forward to your sustained cooperation in the matter. Thank you very much.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973.

Tuesday, the 25th September, 1973 at 09.00 hours in Council Chamber,
Legislative Assembly Building, Calcutta.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Virendra Agarwala
3. Shri Chhatrapati Ambesh
4. Shri Bhagwat Jha Azad
5. Shri S. M. Banerjee
6. Shri Jyotirmoy Bosu
7. Shri Tridib Chaudhuri
8. Shri K. R. Ganesh
9. Shri Mani Ram Godara
10. Shri Maharaj Singh
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri Vasant Sathe
13. Shri Era Sezhiyan
14. Shri C. M. Stephen
15. Shri R. V. Swaminathan
16. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer, Joint Secretary and Legislative Counsel.

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)

1. Shri R. D. Shah, Chairman, Central Board of Direct Taxes.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

Calcutta Trades Association, Calcutta.

Spokesmen:

1. Shri N. K. Jalan—*President*
2. Shri I. C. Sancheti—*Vice President.*
3. Shri S. K. Maskara—*Hony. Secretary.*
4. Shri S. R. Sen Gupta—*Addl. Secretary.*
5. Shri G. Kedia—*Member.*

II. Association of Company Secretaries, Executives and Advisers, Calcutta.

Spokesmen:

1. Shri Sukumar Bhattacharya—Chairman.
2. Shri Nirmal Kumar Poddar—General Secretary.
3. Shri Pestonji Mancherji Narielvala—Member.
4. Shri Tulsi Das Mundhra—Member.

III. Bengal Income-tax (Gazetted) Services Association, Calcutta.

Spokesmen:

1. Shri S. K. Roy—President.
2. Shri J. N. Maitra—Secretary.
3. Shri K. Chakravarty—Joint Secretary.
4. Shri R. L. Botani—Member.

IV. Life Insurance Agents' Federation of India, Calcutta.

Spokesmen:

1. Shri J. Prasad—President.
2. Shri S. P. Hazra—Vice-President.
3. Shri A. K. Purkayastha—General Secretary.
4. Shri C. M. Dugar—Treasurer.

I. Calcutta Trades Association, Calcutta.

Spokesmen:

1. Shri N. K. Jalan—President.
2. Shri I. C. Sancheti—Vice President.
3. Shri S. K. Maskara—Hony. Secretary.
4. Shri S. R. Sen Gupta—Addl. Secretary.
5. Shri G. Kedia—Member.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Jalan, before you proceed, according to the convention, I must point out to you one of the directions of the Speaker of the Lok Sabha which will govern your evidence. Your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of your evidence is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. You may proceed.

SHRI N. K. JALAN: Thank you, Mr. Chairman. On behalf of the Calcutta Trades Association I express my gratefulness to you and to the Parliamentary Committee for giving us this opportunity to place our views on one of the most important aspects of social life of the country, that is, the black money. Government's intention is very laudable and we are with the Government wholeheartedly that this ailment of the society should be check-

ed to the last extent possible. At the same time, Mr. Chairman, I beg to submit that while this Bill is a welcome Bill, it has got many features which will not help either the economic growth of the country, or it may retard the social and economic benefits at large. There are certain provisions, no doubt, which will help mitigate the ailment, but the main purpose of the Bill is to do good to the large possible people and, at the same time, the question of there being no retardation of the economic or industrial growth of the country is also to be kept in view. On that particular point, we, on behalf of the Association, have submitted this memorandum. We would like to stress on some points which we feel, need amendment, in our view.

That is all. Thank you, Mr. Chairman.

MR. CHAIRMAN: Would you now like to make your submissions clause by clause?

SHRI N. K. JALAN: I would request my colleague, Mr. Sancheti, to speak on the clauses.

SHRI I. C. SANCHETI: Sir, in the memorandum that we have submitted, we have taken the charitable trusts first. According to clause 6—amendment of Section 13—exemption to charitable trusts has been withdrawn—the religious trusts which were created before 1.4.62. By withdrawal of these exemptions there may be some of the oldest trusts which will suffer heavily. It may be stressed that some of the religious trusts, by nature, are doing the work of a particular religion or community, but some of their activities also relate to public utility purposes. I know some of the trusts personally which are religious in nature, but they are maintaining schools, *dharamsalas*, hospitals at several places in India. So, if the old trusts are taxed, they will be hard hit because their income is somewhat regulated by the expenditure.

MR. CHAIRMAN: I do not get your point. How is their income regulated by expenditure?

SHRI I. C. SANCHETI: The income of most of the old trusts is either from their properties or old tenants, or from investment in shares. There is no scope of any increment in their income. They have also expenditure proportionate to their income. So, if this income is taxed, funds for running public institutions will not be available to the trusts. Suppose, a trust has been created 30 or 40 years ago. Its settler has died. His family members are not in a position to give any donation and the primary object of the settler will not be carried out. At the same time, the institutions which are rendering service to the public without any caste, creed or religion, will be closed.

MR. CHAIRMAN: Is it your point that the institutions which are rendering any service to the public in general without any discrimination regarding caste, creed religion, will be closed?

SHRI I. C. SANCHETI: Sir, there are two elements. One is purely religious and the other is semi-religious and public utility service. For example, they are running schools or hospitals. There is no distinction of caste, creed or religion. Every citizen is

entitled to enter.

SHRI VASANT SATHE: Do we understand that your difficulty appears to be—in practice a trust is serving secular needs, an old settler made a restriction—so, if the Trust Act is amended to allow a particular trust to come in line with secular working as it is, then, you have no objection to the amendment that we propose? Will that solve your problem?

SHRI I. C. SANCHETI: Yes.

MR. CHAIRMAN: I do not think that the existing law has been created to serve the purpose of any particular religious community and at the same time cater to the needs of charitable purposes irrespective of distinction. Sec. 13 contemplates an exception of sec. 11. Sec. 11 says about the creation of a trust or an institution "for the benefit of any particular community which is proposed to be taken away by Sec. 13 saying that the exemption so far available to charitable trusts or institution created or established after the commencement of the Act" will not now be available. Will you accept this recognition of what was *de jure* as *de facto* position?

SHRI I. C. SANCHETI: These trusts created 30/40 years ago served a particular community as it was needed then. But they have established schools, hospitals where they maintain perfect communal character. So, expenditures of religious trust which are incurred for the public utility purposes should not come under the purview of taxation. These trusts should be allowed to amend the objectives to come under the purview.

MR. CHAIRMAN: I cannot find any rationale behind this contradictory statement. You cannot have two standards. If law is made to amend the objectives of these trusts it would apply to all. Do you suggest that there should be provision for the amendment of trust deeds?

SHRI I. C. SANCHETI: Yes, 'Primary object' is not clearly defined. An institution is running a hospital and a school. In some year there is a surplus in the hospital and a deficit in the

school earning. In another year it is vice-versa. Income from one is utilised to meet the deficit in another. So, there is one activity for earning and another activity for spending. For instance, the Marwari Relief Society have got different types of activities. They are running one shop providing people with food; they have got one Ayurvedic hospital and out of the income the money is utilised for running a regular hospital, providing relief to the drought or flood stricken people, providing relief to the refugees, etc. As the 'primary object' of the Society is to run a hospital, the interpretation might be made here that as they are doing different activities the earning from those activities should be taxed.

SHRI BHAGWAT JHA AZAD: Do you know that sometimes trust money is not utilised for the "primary object" for which it was established but for meeting other dubious purposes?

SHRI I. C. SANCHETI: No.

SHRI BHAGWAT JHA AZAD: In that case the Law has not intention to go over to you.

MR. CHAIRMAN: It happens that sometimes a particular activity may not constitute what we call 'primary object' but the money is utilised in other concerns i.e. in investments, in buying shares. I am not casting any aspersion but that happens. We have come to this conclusion as a result of investigation carried out by us. What would you suggest to put an effective check on this sort of misuse of funds?

SHRI I. C. SANCHETI: We do not support the trust fund being utilised for objects other than the primary objects of public welfare. There are two distinctions. One is, there are institutions who are spending their income for primary objects and are not creating reserve and the second is, there are trusts who are creating reserve and diverting the same with some motive, as the honourable Member has said. In our view, the first one should be exempted and the second one may be taxed.

MR. CHAIRMAN: Are you suggesting that 100 per cent income should be spent away? What do you understand when you say that some institutions spend their income for primary objects?

SHRI I. C. SANCHETI: Say 90 per cent or 75 per cent.

MR. CHAIRMAN: What happens to the rest 25 per cent?

SHRI I. C. SANCHETI: That will be kept reserved for emergencies, say, floods, droughts or famines.

SHRI VASANT SATHE: I would like to know what do you think is the magnitude of the fund of such a bonafide and genuine trust which you have in mind? Secondly, do we understand that if such a bonafide trust spends the entire earning from activities other than the primary activities i.e. welfare of people, charity and so on, then would you suggest that only such trusts with a certain limitation on the ceiling of their fund say, having a corpus of about 1 or 2 lakhs, will get exemption? Because, according to our experience, real mischief takes place in trusts which have huge fund at their disposal, even crores of rupees, and utilising the fund for their company or for their business. It is this mischief which we want to prevent. Would you like to make a distinction and give us an idea as to what ceiling there should be?

SHRI I. C. SANCHETI: About the magnitude of the trusts I am not in a position to tell you. But my point is, excepting the trusts created in big cities like Bombay or Calcutta by the industrialists with the primary motive of creating fund, there are so many trusts all over India who are spending their income really for public utility purposes. Although we cannot make any distinction but this fact should also be kept in mind. How much limitation of ceiling there should be, there are differences of opinion. Those who are creating charitable empire and earning lakhs of rupees—limitation may be made in those cases. But supposing a youngman wants to devote

some of his time for charitable works and makes a humble beginning with 50 thousand rupees fetching an income of say only 5 thousand and he wants to start a hospital then in such cases my submission is there should not be any tax. A distinction should be made between the real charitable institutions and the dubious institutions.

SHRI VIRENDRA AGARWALA: How would you make a distinction between the small and big? Would you like to have some figures laid down to make a distinction between big and small.

SHRI I. C. SANCHETI: We cannot make a distinction in this way. But while you make distinction in that way you please keep in mind cases, for example, in Calcutta there are Ramakrishna Mission or Marwari Relief Society who are spending their income for certain charitable purposes. There may be some dubious trusts also, and you can take action against them. But there is a way. We want to catch the criminals but at the same time we should not penalise the honest.

SHRI VIRENDRA AGARWALA: But what is that way you are speaking?

SHRI TRIDIB CHAUDHURI: Please give us some criteria to make the distinction.

MR. CHAIRMAN: I understand that you want a distinction based on qualities of trusts i.e., honest trusts and dishonest trusts. The committee appears to be one with you on the point about genuine trusts who are really doing charitable work. Therefore, you can give us a supplementary memorandum on the basis of which we can make a distinction by inserting a suitable clause, a suitable amendment, in the law. I think it will be more objective.

SHRI I. C. SANCHETI: We will give a supplementary memorandum.

SHRI JYOTIRMOY BOSU: You have said two things in course of your deliberation. Firstly, you have said that old trusts will suffer heavily. Would you explain that a little more?

SHRI I. C. SANCHETI: That means the trusts created 30/40 years ago. Most of their investment is either in immovable property or in shares or property let out to old tenants fetching a low income. Question is, the income as well as source of income are limited.

SHRI JYOTIRMOY BOSU: In the olden days viz. 40 years ago the intention of those who created the Trusts were little different compared to that which is prevalent to-day.

SHRI I. C. SANCHETI: Yes, Sir. But there were no problems as we are facing to-day.

SHRI JYOTIRMOY BOSU: Would you kindly explain it a little more. As you have said that the Trusts which were created 40 years ago invested and put their assets in immovable properties mainly and then in shares and something like that. But to-day, I maintain that most of the trusts are making liquid cash or should I say very readily negotiable assets. Is that correct?

MR. CHAIRMAN: That means they are investing the money in liquid assets.

SHRI I. C. SANCHETI: So far as the industrial emperors and other big industrialists are concerned there may be liquid assets

SHRI JYOTIRMOY BOSU: 95 per cent has remained in liquid assets.

SHRI I. C. SANCHETI: There are certain Trusts . . .

MR. CHAIRMAN: Mr. Sancheti, the question put by Shri Bosu is very specific. It is whether some of the Trusts find it more convenient to keep their assets in liquid form?

SHRI I. C. SANCHETI: There are Trusts who are maintaining liquid assets and at the same time there are Trusts who may not be maintaining liquid assets.

SHRI JYOTIRMOY BOSU: Please do not complicate the thing. My question is very specific. Please say yes or no.

SHRI I. C. SANCHETI: It is a fact that there are liquid cash of the trusts. But there are other Trusts who do not do this.

SHRI JYOTIRMOY BOSU: Most of them are keeping 5 per cent on immovable properties and 95 per cent on more negotiable liquid assets. You have said so.

SHRI I. C. SANCHETI: We have heard that big trusts may be keeping 5 per cent for immovable properties and the rest of more negotiable liquid assets.

SHRI VIRENDRA AGARWALA: Hearing will not do. How do you know it?

SHRI JYOTIRMOY BOSU: There is nothing wrong because you acquire knowledge through hearing.

MR. CHAIRMAN: Mr. Sancheti, hearing will not do. If it is to your knowledge that there are some Trusts who are engaged in keeping majority of the income as liquid assets then please say.

SHRI I. C. SANCHETI: Yes, Sir, there are such Trusts.

SHRI JYOTIRMOY BOSU: Very good.

SHRI CHHATRAPATI AMBESH: If you know that there are such Trusts then please give us the names.

MR. CHAIRMAN: No, not at all.

SHRI JYOTIRMOY BOSU: You have also said another thing that trustees will be hard hit.

SHRI I. C. SANCHETI: No, I have said trusts will be hard hit.

SHRI JYOTIRMOY BOSU: In an implied way you said that trustees will be hit hard.

SHRI VIRENDRA AGARWALA: Did you say that?

SHRI I. C. SANCHETI: No.

SHRI JYOTIRMOY BOSU: Now, so far as the welfare of the country is concerned there is no difference of

opinion between you and me. Please tell us very frankly and in a forthright manner your views about the fact that in India most of the Trusts are created to avoid payment of taxes. I want a frank answer from you as you are giving very good replies. While answering please forget that you are representing a Trade Association.

SHRI I. C. SANCHETI: I have already told you that in big cities like Calcutta and Bombay the industrialists and big magnates have created Trusts for that purposes but so far as India as a whole is concerned that is not the case.

SHRI TRIDIB CHAUDHURI: What is the use of cross-examining him. He has said that he is not holding brief for the bad Trusts.

MR. CHAIRMAN: The question put by Shri Jyotirmoy Bosu is very important and relevant for our purpose. So it should be answered by them.

SHRI JYOTIRMOY BOSU: Mr. Sancheti, there are Trusts in volume of money, in magnitude, in size and in number who indulge in tax avoidance. I know of a Trust in Gurusaday Road—I can even give the name of the Trust.

MR. CHAIRMAN: Kindly co-operate with me. Please do not mention any name.

SHRI JYOTIRMOY BOSU: All right, Sir, I will not name it. This Trust may have worth of 20 crores of rupees. In Rajasthan there may be 10 fickle Trusts having a lakh of rupees each. We are not interested in it. I am only asking that whether majority of these trusts are created to avoid payment of tax—I am not using the word evade.

MR. CHAIRMAN: There are 20 thousand trusts and these have a corpus of Rs. 2 crores. It is quantitatively 20,000 Trusts and in terms of money 20 crores of rupees. Now the larger portion of the money of the majority of these Trusts represent a

patter_n for tax evasion. What have you got to say?

SHRI I. C. SANCHETI: There may be few persons or few capitalists.

SHRI JYOTIRMOY BOSU: Suppose there are some trusts in Bombay which may be equivalent to 200 trusts in Bihar, then what would you say?

MR. CHAIRMAN: That is to say, you are to state moneywise and quantitywise.

SHRI I. C. SANCHETI: As quantitywise there may not be any trusts, but as moneywise there may be some trusts.

SHRI JYOTIRMOY BOSU: Mr. Sancheti, you are representing the Calcutta Trades Association. So, why instead of making your statement on the business profit and losses, you have chosen to represent the affairs of the trusts vigorously?

MR. CHAIRMAN: This question should not have come like this because they are at liberty to represent any particular clause which is in the Amendment Bill.

SHRI ERA SEZHIYAN: You have said about the exemption on the income of the charitable trusts. There are businesses done by the private companies and there are also businesses done by the charitable trusts. So, why you are pleading for exemption for the charitable trusts?

SHRI I. C. SANCHETI: The private companies are dealing and managing the affairs in their business for their own or for the directors benefit. But the trusts are dealing a matter which is of immense public importance just like the Government's aim of social welfare.

MR. CHAIRMAN: In your supplementary memorandum you will please put your suggestion about the blanket ban. If Government prescribes the mode of investment of the trusts' money instead of investing it according to the trusts own choice what will be

your reaction?

SHRI VASANT SATHE: Another thing which you have to put in your supplementary memorandum is about the purpose of the trusts in Calcutta, where one income is utilised for genuine purpose and where the liquid capital or asset is in the hands of a few persons. Please give us some figures also in your supplementary memorandum.

SHRI I. C. SANCHETI: We will try for that. There are certain trusts who are utilising their liquid money for some vested interests. We are to unearth them and control them. In reply to Mr. Chairman's question, I would submit that the people has little confidence over the Government managed concerns. So, if the trusts money is utilised according to the Government's direction then the interests of the trusts and trustees can be aggravated. At the same time there are problems of utilising trusts money for vested interests. So, my submission is, if Government make a panel of people from Professors, Engineers, Scientists, Doctors, Lawyers and also from the business men and from other social workers, then this will be a perfect body to formulate the mode of working of the trusts to the best interest of the country. Like the Chartered Accountants' Institute as existing in our country, this panel of distinguished people will form an institute for imparting training on groups young and devoted workers who will take part in the trusts affairs.

MR. CHAIRMAN: This is a very important suggestion. Mr. Sancheti, if you really want exemption as you have already stated, please incorporate your idea about the panel of eminent persons for imparting training etc. for the young men, in the supplementary memorandum. Now you proceed with the clauses.

SHRI I. C. SANCHETI: Regarding clause 6(i)(b), I would submit that there are some problems about annu

nymous donations. It seems that the intention of the legislators is that the black money come in the guise of anonymous donations and you want to check this type of black money. In some places some schools and hospitals are run by donation boxes. But the collection through donation boxes varies from place to place. At some places it may be Rs. 10,000 and at some places it may be Rs. 1 lakh. So, our point is that whether the box collection of nearly Rs. 10,000 or something like that should be taxed.

MR. CHAIRMAN: In this connection I may say that the Indian Red Cross Society generally gets collection through donation boxes and some times from street boxes nearly Rs. 20,000 or 30,000. In these cases please state your criteria with qualitative distinction in your memorandum.

SHRI VASANT SATHE: Please add one thing more in your supplementary memorandum. This is about the quantification of box donations because the box donations are generally made in coins, but there are some cases where big amounts are given in the boxes in notes and sometimes gold ornaments.

SHRI I. C. SANCHETI: I do not have any clear idea about this.

MR. CHAIRMAN: Do you think that the small people of the small trusts give small money and the big people give big money as donations?

SHRI I. C. SANCHETI: This is not only the case that the small people give small donations or big people always give big amounts to the trusts. My point is that whether there is any intention to check the black money by imposing this limit of exemption.

My next point is about the identity of the persons to the satisfaction of the I.T.O. The word 'satisfaction of the I.T.O.' is a vague one. Here I point out that there is a chance that this section may be misused by

the department and others. Suppose a man gives Rs. 5,000 in the name of a trust and he reports the matter to the I.T.O. by giving his name and address, but the I.T.O. may not be satisfied with that. So, there should be some clear elucidation about the words 'satisfaction of the I.T.O.'

MR. CHAIRMAN: No, it is not the exact point. In that case where the I.T.O. exercises his discretion arbitrarily then the courts are there.

SHRI I. C. SANCHETI: Sir, as regards the investment of money in the Government controlled companies, if a trust invests the whole amount in such concern, then their income will be very low and the present activities of the trusts, which they are carrying on will be dwindled. If the trusts invest in a big concern like public limited companies, then the trusts will get a larger amount instead of 5 per cent as in the Government securities.

MR. CHAIRMAN: We have understood your basic point that returns in government companies are not adequate and the trusts, specially small trusts, may not find it viable for their reason.

SHRI I. C. SANCHETI: It is our knowledge that some of the trusts who have invested in government or semi-government companies are not getting interest even on preference shares. The Oriental Gas Company is owned by the Government but they are not paying any interest on preference shares for years.

SHRI ERA SEZHIYAN: What criterion is there in the mind of the witness for distinction between a small trust and a big one?

MR. CHAIRMAN: The honourable member wants to know whether you have anything to put by way of criterion of what, according to you, is a small trust and a big trust.

SHRI I. C. SANCHETI: Up to 5 lakhs.

SHRI ERA SEZHIYAN: What is up to 5 lakhs?

SHRI I. C. SANCHETI: Corpus.

SHRI ERA SEZHIYAN: In many cases the corpus may be 1,000 but the income may be 5 lakhs. There are many trusts owned by a single family. There may be 30 trusts each having a corpus of 1,000 rupees.

SHRI I. C. SANCHETI: We can put a ceiling both on the income and corpus.

SHRI ERA SEZHIYAN: What should be the ceiling?

SHRI I. C. SANCHETI: The corpus should be 5 lakhs and the income may be 25 or 30 or 40 thousand.

MR. CHAIRMAN: According to him a trust having a corpus of 5 lakhs and an income including contribution not exceeding Rs. 40 thousand would be a small trust. Proceed to the next point please.

SHRI I. C. SANCHETI: As regards substantial contribution, it has been mentioned rupees 5 thousand for relevant years. This is too low a limit. According to us, it should be 25 thousand.

SHRI N. K. JALAN: On the next clause Mr. Maskara will say something.

SHRI S. K. MASKARA: Regarding clause 12, new section 44B, it is proposed that persons carrying on business with a turnover exceeding 2.5 lakhs and an income of 25 thousand are compulsorily required to maintain books of accounts. This means that we are trying to bring under the purview of this section small traders. According to us the minimum limits should be at least 5 lakhs for turnover and 25 thousand for profit. We would also recommend that not only persons carrying on business but also professionals should be made to maintain books.

MR. CHAIRMAN: What should be the limit for professionals?

SHRI S. K. MASKARA: For them the limit should be Rs. 25 thousand as income.

MR. CHAIRMAN: Should not Rs. 10 thousand be good for the professionals?

SHRI S. K. MASKARA: That is too low according to us.

Then regarding the prescribed sets of books of accounts, we submit that the types of books of accounts to be maintained should be prescribed in consultation with respective trades' associations and chambers.

MR. CHAIRMAN: Why not consult the Institute of Chartered Accountants? You see, it may not be a practical proposition to consult all the trades associations and therefore, if you put it to the Institute of Chartered Accountants, we can reasonably count on the Institute.

SHRI VASANT SATHE: Would you like it for each trade separately, that is, one type of books of accounts for one industry, another type for another type of industry and so on? But then there must be some common norm throughout the country.

SHRI S. K. MASKARA: No, Sir, we are making classifications.

SHRI VASANT SATHE: How many broad classifications you are suggesting?

SHRI S. K. MASKARA: There may be four broad classifications. We do not desire that one set of books of accounts should be applied to all places.

SHRI BHAGWAT JHA AZAD: How can you say four?

SHRI S. K. MASKARA: That has to be worked out. There may be as many as are required according to the different associations.

MR. CHAIRMAN: The whole thing is being done to bring about a certain uniformity and to avoid any maladjustment between the department and the assessee and with that end in view the best thing would be done.

SHRI S. K. MASKARA: Then we submit that the form should be very easy and printed in all languages.

SHRI I. C. SANCHETI: Regarding clause 14, Section 64, i.e. clubbing of income of the spouse working in the same concern, my submission is that if the husband is a lawyer, his wife may be working there as an assistant or an office superintendent because she has the qualification to work as such. If this is not allowed, then my wife will be working in somebody else's firm, and somebody else's wife may be working in my firm. This clause should be suitably amended.

MR. CHAIRMAN: This sort of assistance can we distinguish between genuine requirements and purposes of evading taxes by putting a ceiling? Can you envisage a case where wife should be paid Rs. 1 lakh? I can understand a wife being paid Rs. 500, even Rs. 2,000 or Rs. 2,500 in exceptional cases. It is not as though any one who wishes to employ his wife will be allowed. There must be a proof that she has worked.

SHRI VASANT SATHE: One of the aspects is that you employ your wife and pay her as charitably as has been put by Mr. Chairman—Rs. 2,000 or Rs. 2,500. There are many thousands of unemployed better qualified women begging for a job. If we find that your wife with less qualifications is employed and another with higher qualification is not getting the job, what is your suggestion? Should we consider that for disallowing your wife?

MR. CHAIRMAN: If the wife's qualifications are such that for a particular emoluments some other person can be employed, is it not legitimate that the salary should be disallowed?

SHRI G. KEDIA: When an employer is being assessed, whether he is a husband or not, any salary paid in excess of the requirement or qualification—whether a man or a woman—is being disallowed.

MR. CHAIRMAN: That is not working successfully. Are you willing to give some criteria to distinguish between genuine and non-genuine cases?

SHRI G. KEDIA: A ceiling should be fixed.

MR. CHAIRMAN: Please think over the matter and let us have your considered opinion.

SHRI I. C. SANCHETI: Then, Sir, taking the income of minor with the income of the father or mother—this will create practical difficulties.

MR. CHAIRMAN: How do you overcome the practical difficulties?

SHRI I. C. SANCHETI: We have suggested that at the time of filing return they should give a declaration mentioning the income of the father and the minor and, at least, for 5 years the department will assess on that income if the difference is not more than 25 per cent. It may also create difficulties.

MR. CHAIRMAN: What is the best way out?

SHRI I. C. SANCHETI: If the difference in the income is not more than 20 or 25 per cent, then, at least, for 5 years that should be assessed.

MR. CHAIRMAN: I think the best course is amendment of section 154. Whenever there is a change that will take care of all the problems. You are making a suggestion. If you do not accept the principle, be bold enough to say that the principle is not correct, and come forward with your suggestions why this provision is not good. Otherwise, in principle, you accept that minor's income should be clubbed.

SHRI I. C. SANCHETI: Yes, but there is practical hardship. For the upkeep of the minor, for his expenses, certain exemption should be there. An individual gets an exemption of Rs 5,000.

MR. CHAIRMAN: You want a higher exemption limit whether the income is clubbed.

SHRI I. C. SANCHETI: Yes.

MR. CHAIRMAN: We will consider that.

SHRI I. C. SANCHETI: In the minor's income—sometimes he is making some other investments which may derive him some income.

MR. CHAIRMAN: If he is being assessed separately and he has lost in some other investment which is unrelated to partnership, there is no question.

SHRI I. C. SANCHETI: Apart from the income, if the minor has got other income—the minor may have property and investment in shares, may have business also.

MR. CHAIRMAN: How is it hit by the clause? It is only share income that will be taxed. A minor can do business only through a trustee and though a partner he can only be admitted to the benefits.

SHRI I. C. SANCHETI: A minor can do business through a guardian.

MR. CHAIRMAN: You may come to next point.

SHRI I. C. SANCHETI: Regarding settlement proceedings, as you are aware there are so many disclosure petitions and settlement objections pending. If I file a petition before the commission and if the commission says 'No' to it then I should be allowed to withdraw the petition. The problem is, I am supposed to give full facts before it.

MR. CHAIRMAN: Proposed section 245(D) enumerated the circumstances under which you are to make an application. Under section 245(C) we should get some prescribed form in which you would be called upon to disclose all your facts in the petition itself which, if rejected, would jeopardise your interest. Is it your contention?

SHRI I. C. SANCHETI: Yes. If the petition is not entertained by the Commission I should be permitted to withdraw the petition.

MR. CHAIRMAN: Even if you withdraw the evidence is already there

SHRI I. C. SANCHETI: There must be a limit for disposing of a petition. Moreover when a petition is pending before a commission and has not been settled finally, in the meantime on the basis of that petition on the basis of the evidence disclosed in that petition, an I.T.O. should not be permitted to utilise this situation.

Now, Sir, Shri Jalan would like to say a few words.

SHRI N. K. JALAN: Under clause 25 interest on borrowing has been provided but it has not been provided in the case of borrowing against penalty, gift tax, estate duty, wealth duty and excise duty. We submit that this provision should be extended to cover these payments as well. Secondly, regarding legal expenses a ceiling has been imposed. The limit of Rs. 2,000.00, we consider, is very low. It depends from case to case. Then with regard to section 104, we have supported the amendment. We feel that all companies having assets more than 50 lakhs should be brought under the purview of this section otherwise the interest of the small shareholders will not be served. During the years when condition is good they will get 15/20 per cent dividend but during bad years dividends are script over and the reserve is not drawn upon for paying dividend. We feel, for the proper functioning of the share market giving of correct indices of the companies' status and integrating the bigger companies they should be brought within the purview of section 104. So, we accept this amendment.

Next is clause 38—delegation of powers of inspection and verification have been given to very subordinate officers' under the law. We feel that this would lead to abuse of powers and assesseees would be harassed. Inspectors have been given powers to inspect on any day, any time and call for production of valuables without any notice when the valuables may not always be in the house.

MR. CHAIRMAN: Are you referring to explanation to sub-section (b) but here it is not on his own volition but if he is so authorised?

SHRI I. C. SANCHETI: Sir, there is a general authority. We feel for this purpose there must be specific authority and there must not be blanket authority.

MR. CHAIRMAN: No, no. They cannot have blanket authority. It must be specific. You kindly reconsider, re-read the entire clause and tell us in your supplementary memorandum where do you find this provision and tell us specifically. I think you conclude now.

Thank you gentlemen.

[The witnesses then withdrew]

Association of Company Secretaries, Executives and Advisers, Calcutta.

Spokesmen:

1. Shri Sukumar Bhattacharya—Chairman.
2. Shri Nirmal Kumar Poddar—General Secretary.
3. Shri Pestonji Mancherji Narielwala—Member.
4. Shri Tulsi Das Mundhra—Member.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before you proceed I want to make it clear that the evidence you give before this Committee shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Now you can proceed.

SHRI ERA SEZHIYAN: Before you proceed we want to know the back round of your Association viz., how you get the members, what is the minimum qualification to become Secretary and Adviser and what you mean by Executives, etc.

SHRI S. BHATTACHARYYA: Sir, this Association was formed some 15 years ago, its principal aim being dissemination of knowledge as Mr. Narielwala had pointed out yesterday, to persuade the members of the Association and through them the public at large to accept the laws to understand the laws, to respect the laws and also to act according to the laws. That is our aim and in that membership is open to all persons

who after being graduates—that is the minimum qualification—are interested in Mercantile Law specially Company Law, Taxation and allied laws and amongst our members we do have Advocates, Chartered Accountants, Secretarial-rank Executives in the Companies and people in similar status.

SHRI ERA SEZHIYAN: Being advocates, your members should also know the law of the land and the Constitution. I find that in the cover page of your Memorandum you have printed, 'Memorandum on The Taxation Laws (Amendment Bill), 1973—Presented to Joint Select Committee, Appointed by the Parliament.' Don't you know the difference between a Select Committee and a Joint Select Committee?

SHRI S. BHATTACHARYYA: Sir, it is a mistake on our part and we are sorry for that.

MR. CHAIRMAN: If it were a smaller Association we would not have raised this question but since we respect your Association we thought that an Association of your eminence would know the distinction.

SHRI S. BHATTACHARYYA: Sir, I have already apologised for that.

MR. CHAIRMAN: It is all right.

SHRI S. BHATTACHARYYA: Mr. Chairman, Sir, regarding your direction about evidence I say that we have no objection if our evidence is treated as public.

Before I proceed I, on behalf of my colleagues and on behalf of the Association, thank you Mr. Chairman, and the other members of the Committee for giving us an opportunity to appear before this august Committee. We are indeed grateful to the Select Committee. If you permit Sir, then I will deal with some of the portions and then some portions will be dealt with by Mr. Narielwala and the colleagues on my right and left might also add something at the end, if there is anything to comment upon.

MR. CHAIRMAN: If you can highlight the most important points then it will be much better for both of us.

SHRI ERA SEZHIYAN: Sir, before they proceed I have got to ask one clarification from them. In the 2nd paragraph of their memorandum they have stated, '... it feels that any such attempt without an effort to eradicate the main causes assisting in such generation and proliferation, will be of little practical utility. In its opinion the Bill does not take into consideration such principal causes as expounded by the Wanchoo Committee and that accordingly the proposed provisions are not likely to be really effective in checking the growth of black money.' So, what according to them will curb the growth of black-money?

SHRI S. BHATTACHARYYA: Sir, we shall deal with this point in the course of our discussion.

Sir, firstly I take clause 6 viz. section 13(1)(b). It has been proposed that the words "created or established after the commencement of this Act" be dropped. It would mean that the distinction which was made in 1961 to leave out the charitable trusts formed before 1st April, 1962, would now be brought under the mischief of the provision of section 13. Sir it may

be recalled that the said provision of Section 13(1)(b) was inserted on a recommendation by the Select Committee appointed to consider the Income-tax Bill, 1961. At that time the then Finance Minister had said in the Lok Sabha that "It has also been provided that the exemption from tax in respect of the income of a charitable trust created hereafter would apply only to those trusts which are not for the benefit of any particular race, religious community or castes." Sir, the conditions which were operative in 1961, when the Government and the Parliament in all their wisdom had decided that these should be left out from the mischief of the provisions of Section 13, have in no way changed. So, is there anything new which has required the Government or the Parliament now to suggest that this distinction should be removed altogether. If it were meant to check the growth of black-money and its proliferation we could have understood that. Sir, that distinction was there in 1961 with a purpose that those trusts which were formed really for giving any benefit to the people should not be brought under the axe. That was the idea and that distinction should still be retained in our opinion. But here, we have an alternative thing to suggest. If the whole of it cannot be accepted at least some of it can be accepted. Sir, it was only on the 26th January, 1950 that secularity of India was declared through the Constitution. Most of the trusts about which we are concerned and which are undergoing difficulty were formed before 26th January, 1950. So, if at all a distinction has to be made it should be made in respect of those trusts which were created on and from the 26th January, 1950 and not in respect of those which were created earlier.

SHRI VASANT SATHE: The object as you told is not only to prevent or unearth black-money and its proliferation but there is another object which is evasion of tax. If we find after 10 years that a religious trust of a particular community or caste is mis-

using the funds and taking advantage of the exemption then should we not be entitled to make any amendment of the law because the exemption was made in 1961 in the wisdom of the Parliament?

SHRI S. BHATTACHARYYA: If the evasion of tax here is helped by the creation of the trusts for a particular community then I would agree with you, but in my opinion whether or not it is for any particular community, that has got nothing to do with the evasion of tax. That is why I have said that the force of the 1961 Act has not been lost yet. Moreover the provisions of the Act as they stand today make it clear that if there is anything for the benefit of the author of the trust or for his relatives, then the denial will be complete. There should be no exemption, and that is already there, but if it is merely a non-secular one in character then there should be no denial of the existing exemption.

SHRI TRIDIB CHAUDHURI: What is the non-qualification of a trust who is acting for the benefit of a particular religious community for the misuse of funds?

MR. CHAIRMAN: Mr. Bhattacharyya, it is in your view that there is hardly any change in the circumstances as existed in 1961 and as at present—is not it?

SHRI S. BHATTACHARYYA: Yes, Sir. My second point is about the use of anonymous donations. This applies only in the case of the charitable trusts, but not to the wholly religious trusts. My next point is about the mixed trusts, i.e. the trusts which are having both religious and charitable functions. For example, in the churches and temples there are donation boxes where a considerable amount is donated, I may cite a case about St. Paul's Cathedral. Here, on every Sunday large sums are collected by way of box collection from the religiously minded people. I do not think that this collection should be taxed. If you kindly look at page 4 of our

memorandum, we have suggested—“With the permission of the Commissioner of Income tax, a charitable trust may receive anonymous donations without suffering the consequences of the proposed amendment. There should be a permissible limit up to which charitable trusts may accept anonymous donations without having to pay tax thereon. Such limits may be set at 25 per cent of the gross income of the trust or Rs. 2,00,000, whichever is larger.” We have suggested this in the context of purely charitable trusts but about the mixture of charitable and religious trusts, as you have pointed out, we have not given any suggestion.

MR. CHAIRMAN: We will consider this.

SHRI VASANT SATHE: Do you not think that the use of such funds has got some relationship with the anonymous donations?

SHRI S. BHATTACHARYYA: Sir, the restriction is always there because it is specifically provided in the Act itself. Certain percentage for compulsory distribution may be specified, it may be about 75 per cent, for the expenditure of the trust and, the unspent amount should be taxed. There is another point, Sir. It is about the investment of funds in only Government concerns or Government securities and if there is any investment in other concerns that investment should be liquidated within a period of 5 years, i.e. within 31st March, 1978. Sir, one question arises here. Many trusts have been formed the corpus being certain shares given by the settler himself. The settlers have made certain conditions that their money should be kept in tact in some manner as the settlers decided. In that case the present provision should not apply because that will be something over which the trustees will have no control.

MR. CHAIRMAN: Regarding the case of donations which have been given by way of shares which are not hit by section 13(2)(h) we will consider.

SHRI S. BHATTACHARYYA: Sir, I have another point to submit. If the idea is to regulate the activities of the trusts, then the Companies Act already provides under section 153(e) and 187(b), for a control by the public trustees of exercising the voting rights on these shares.

MR. CHAIRMAN: If the investment is there then never a man can but have his voting right.

SHRI S. BHATTACHARYYA: The point which I am discussing is in the context of the growth of black money and generation of black money and the ways of checking it.

MR. CHAIRMAN: In case donations should be exempted and in case when a large sum is amassed i.e. Rs. 2 lakhs is earned in every year and after 5 years about 10 lakhs are invested in a company then do you think that the voting right should be left to any body?

SHRI S. BHATTACHARYYA: My point is that let there be a complete prohibition in future cases. It is in the present that the voting right should be left to anybody. My last point is that it is not clear in the present provision whether the investment in the companies should include also the debentures, or loans.

MR. CHAIRMAN: Investment is a most comprehensive term, so it can be invested in any form.

SHRI S. BHATTACHARYYA: If that is the case, then it should have been couched in a simpler and in more direct language in the provision. If you kindly look to Section 13(2)(a), you will find "if any part of the income or property of the trust or institution is there continues to be lent to any person referred to in sub-section (3) for any period during the previous year or a loan has been made for a specific item in sub-section 3(a)". Now look to clause 13(2)(h) where it says "if any funds of the trust or institution are continued to remain invested for any period during the previous year". The existing provision make it doubtful as to whether the investment is a loan.

MR. CHAIRMAN: If we can harmonise these two then I think it will satisfy you. Kindly see the proposed sub-section 1(e) in clause 13 which imposes a certain restriction. But this restriction is regulated by sub-section 2. It is not being amended. So, let us understand two things. It is this that after section (c)(d) in clause 13 sub-section (e) is inserted which contemplates that subject to provisions of clause (bb), in the case of a trust for charitable or religious purposes or a charitable or religious institution, if any funds of the trust or institution are, or continue to remain, invested for any period during any previous year commencing after, etc. etc." exemption would be less.

SHRI S. BHATTACHARYYA: In that case 13(2)(a) will have lost all its meaning and this section was put in to exempt those cases of lending which were genuine and proper.

MR. CHAIRMAN: So you are suggesting that 13(2)(a) should be amended to bring it in line with (h).

SHRI S. BHATTACHARYYA: Yes.

MR. CHAIRMAN: You mean to say that after we amend the law as it is proposed, 13(2)(a) and 13(2)(h) would hardly have any meaning.

SHRI S. BHATTACHARYYA: I am not suggesting that 13(2)(a) should be disturbed but retaining it the present clause should be suitably modified because 13(2)(a) provides sufficient safeguard, adequate security and adequate interest. Why should that be denied?

MR. CHAIRMAN: I ask you one thing. If you say that sub-section (2) should not only govern (c) and (d), but also (e), will that take care of the thing?

SHRI S. BHATTACHARYYA: Whatever restrictions be there, they should be in 13(2)(a).

MR. CHAIRMAN: We will consider that and look into it more minutely.

SHRI S. BHATTACHARYYA: Before leaving the subject of charitable trusts I request you, Sir, to look to the definition section, i.e. 2(15). What has been suggested is that there should be an amendment of section 13(1) leaving the definition in section 2(15) undisturbed. To our mind that is not proper. Even if 13(1) (b) is not amended, definitely section 2(15) requires an amendment to show what is a charitable purpose. If you kindly look to section 2(15)—charitable purpose “includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, not involving, in any case,” etc., etc.

MR. CHAIRMAN: I understand your point. You say this in order to avoid at High Court judgment. But then, what about the principle. You first make your submission on principle.

SHRI S. BHATTACHARYYA: On principle I have firstly this to say that I object to the language here—“in the course of actual carrying out of a primary purpose of the trust or institution”. These terms have always been found very difficult to interpret. Our suggestion is that it should be—“the carrying on of a primary function of the charitable purpose”. I think that would be more appropriate.

MR. CHAIRMAN: I request you that you please send us in a tabulated form the drafting changes that you are suggesting together with your comments.

SHRI S. BHATTACHARYYA: We shall certainly do that.

One last thing I would like to say with regard to these trusts. As I had mentioned about the shares which have been donated to form a nucleus of the trust in regard to those where the new provisions which are being proposed should apply. Similarly, there have been in the past many charitable trusts created with the nucleus not of shares but with the nucleus of a business donated. Now, in such cases, I can well understand that the

business activities should cease but that would mean selling of the business. Is that the contemplation? There are many cases . . .

MR. CHAIRMAN: That point you have already made, Mr. Bhattacharyya.

SHRI S. BHATTACHARYYA: Here also our suggestion is that where it is already there with a nucleus by way of donations, then in that case the new mischief should not operate.

SHRI VASANT SATHE: But on principle how do you differentiate? If you say that there should be a bar on new business and not on the old, what is the rationale?

SHRI S. BHATTACHARYYA: It is not so much a question of principle that I have raised here, it is a question of hardship from a practical point of view.

SHRI VASANT SATHE: What is the hardship?

SHRI S. BHATTACHARYYA: Let us take the case of a trust formed in 1935 with a business which had been donated by a munificent man and the entire profits are in fact distributed towards charitable purpose and that is enjoying exemption today. Now, if this new provision is brought in, the trust will either have to sell off the business or will have to carry on without any exemption.

SHRI VASANT SATHE: In other words, the hardship will be that hereafter no one will donate his business.

SHRI S. BHATTACHARYYA: What I mean to say is that by doing this what will happen is that the charitable purposes which are now existing for the benefit of the poor will now benefit the government to the largest extent.

SHRI JYOTIRMOY BOSU: In the context of this draft—would you agree that by and large trusts are created to avoid payment of taxes?

SHRI S. BHATTACHARYYA: Sir, with my experience for 27 years on one side of the Tax Department and the other side also, I can say that it

is not created with the principal motive of avoiding taxes. There may be some people who are doing this.

SHRI ERA SEZHIYAN: Sir, I had some occasion to read the report of the Public Accounts Committee in the year 1969-70. They found that 21 out of 45 trusts connected with industrial houses are having a corpus of 25.11 crores. Investments made were more than 15 per cent. Parliamentary Committee came to the conclusion that while the trusts fulfil a laudable social objective, they have also utilised the trusts to avoid taxes.

MR. CHAIRMAN: Possibly you have seen only trusts which are good ones. It is not within your knowledge that there are some trusts which are doing this.

SHRI S. M. BANERJEE: Mr. Chairman, I would like to have a small information. Has anybody here any information as to what is the total number of public charitable trusts now operating in India?

MR. CHAIRMAN: I would request the Ministry to collect that information and make it available to us next time.

SHRI VASANT SATHE: Have they made any studies on the basis of which they are placing their views before us?

SHRI S. BHATTACHARYYA: From my experience of handling in my firm 300 to 400 trusts which are all public charitable trusts....

MR. CHAIRMAN: Are they all in Calcutta alone?

SHRI S. BHATTACHARYYA: I would not say they are all in Calcutta alone, but my experience is that there have been a very few instances where it has been found that money has been lent out, but at adequate interest—within the four corners of the law.

MR. CHAIRMAN: What about concentration of economic power?

SHRI S. BHATTACHARYYA: In the case of small trusts this question does not arise. Of the 300 or 400 public charitable trusts that I have seen, if 3 to 4 lakhs is the nucleus to determine as to whether it is a big or small trust, I should say, out of 300 or 400 trusts, no less than 260 to 275 will be out of this category. Concentration through them will not be material. I appreciate that it can be used.

MR. CHAIRMAN: How do you check those 40, or for that matter, even if it is 10?

SHRI S. BHATTACHARYYA: I have not got the exact statistics.

MR. CHAIRMAN: I am on the question of quality—if the Government, at the moment, by the Bill desires that funds should not be available to them—never mind, security or controlling the business—but the finance should not be available to them because it helps them to have more economic power—what is your view?

SHRI S. BHATTACHARYYA: We have agreed on principle that any provision made by the Government to liquidate the concentration or to prohibit we are completely with it.

MR. CHAIRMAN: How do we amend the law to bring about automatic, blanket safeguard against this sort of investment of money?

SHRI S. BHATTACHARYYA: I have said that where a trust has been formed with a nucleus of business this mischief should not apply.

MR. CHAIRMAN: You were replying to a general question of Shri Jyotirmoy Bosu. His point was very poignant—if these trusts abused charities.

SHRI S. BHATTACHARYYA: Some trusts have abused, we admit.

MR. CHAIRMAN: You have said 40 of them. How do we get at the root?

SHRI S. BHATTACHARYYA: If for that purpose this provision is made I have nothing to say. We have only suggested that in respect of those concerns where the nucleus has been with shares this mischief should not apply.

MR. CHAIRMAN: Why not have a blanket provision—investment only in the form prescribed by the Government? Let the investment be, where there is a positive act of investment—let it be there by all means.

SHRI S. BHATTACHARYYA: We are entirely with the Government.

SHRI JYOTIRMOY BOSU: Would you kindly tell us from your own experience or whatever information you have that of recent period the trusts were created by those who were more inclined to create trusts out of the corpus of his predecessor who created the trust with immovable properties and other things?

SHRI S. BHATTACHARYYA: In bulk of the cases major portion of assets of these trusts consists of immovable properties. I am talking of the trusts formed 10/12 years ago.

SHRI BHAGWAT JHA AZAD: From our experience we find that exemption may have been used properly in the past but now it is being misused. Therefore we want to amend the Act. So kindly tell us as to how to safeguard the small ones and how to punish those which are putting black money and taking away the other by putting it, by investing it in other businesses.

SHRI S. BHATTACHARYYA: Let there be a prohibition on those trusts which have been created in the past 5/6 years or trusts to be created hereafter. Wherever there is a case of misuse of trust funds the law should be applied with all its rigour to all trusts past and present. Where there is no question of abuse there should be provision to safeguard them. We hold no brief for abuse of trust funds.

SHRI JYOTIRMOY BOSU: With regard to intensive audit and all that I cannot help quoting the Wanchoo Committee that "trusts in this country have played havoc in the field of collection of taxes and tax revenue." What is your comment on this?

SHRI S. BHATTACHARYYA: Where there is a genuine case Law should provide for a safeguard but in other cases all the rigours of the law should be applied equally. In this connection I would like to say that section 13 in its amended form came only a few years ago. The question of applying or testing its efficacy has not arisen yet. Unless and until it is tested why a new law should be brought in.

MR. CHAIRMAN: What we want to hear from you is that if trusts are used as a device for ploughing back black money into it and, on the other hand, skilfully utilising the same in other businesses, what an ITO would do in such circumstances?

SHRI S. BHATTACHARYYA: Will you kindly allow us to submit a supplementary memorandum in this respect. We will remember the points.

MR. CHAIRMAN: Yes. you are permitted to do so.

SHRI S. M. BANERJEE: The purpose for amending the Act is that we rather the Govt. got information that substantial portion of black money is being operated through these trusts and in the name of anonymous donations which are not taxed, where we could not put our hands. Do you mean to say all these trusts—whether good, bad or indifferent—are free from operation of such black money? Will you kindly give your suggestion as a citizen of this country in your supplementary memorandum as to how you want to put a check on this without jeopardising the interest of those trusts which are really running good businesses?

SHRI S. BHATTACHARYYA: Yes. we will do that.

SHRI VASANT SATHE: Also please let us know as to how to get over the mischief contemplated under sec. 13 (a)?

SHRI S. BHATTACHARYYA: Yes.

SHRI K. R. GANESH: Since you are an well-established institute you might put enough emphasis on the kinds of mechanism of evasion which are being indulged in by very large houses. There lies our problem and that is playing havoc in the country.

SHRI S. BHATTACHARYYA: We will also inform that.

MR. CHAIRMAN: I find your evidence is extremely helpful and valuable. If we are not able to hear you fully here we might invite you to Delhi. You can carry on upto 12.30 and you now come to the next point regarding compulsory maintenance of accounts.

SHRI P. M. NARIELVALA: We see nothing wrong about the limits of 25 thousand and 2.5 lakhs for businessmen. For professionals the limit which has been prescribed seems to be a little harsh. In this case the limit should be 1 lakh and income may be 25 thousand.

MR. CHAIRMAN: That is too much for professionals.

SHRI P. M. NARIELVALA: I mean, some limit should be there and the limit which has been prescribed may be a little less.

MR. CHAIRMAN: We will consider.

SHRI P. M. NARIELVALA: Regarding compulsory audit I think 50 lakhs and 5 lakhs are quite reasonable—it is 10 per cent ratio. It is difficult to draw the line but 10 per cent is not an unreasonable ratio. I think the ratio given by the framers of the Bill is fair and rational.

MR. CHAIRMAN: We will consider.

SHRI JYOTIRMOY BOSU: Kindly tell us—we get the impression that evasion takes place in the organised

sector of industry and business where auditing is done quite religiously.

SHRI P. M. NARIELVALA: I have no facts and figures either to support or to controvert that statement. Somebody said, where power is large, abuse will also be large and therefore it follows that where power is absolute, abuse is also absolute. In small sector having little power abuse is also less. The process of auditing envisaged is revolutionary, and the tax department will have a better base from which to operate and from which to deduct. I would add here that there are more cases, more proven cases of abuse in the corporate sector and statistics will support my point that proven case has durable base from which to start investigating operation. Compulsory account and audit will provide a durable base to start the investigating process. We are not aware that buses are going on in the organised sector—we have no statistics—that does not mean that abuse does not take place but it has not been proved. In the non-corporate, non-organised sector it is somewhat disciplined.

SHRI JYOTIRMOY BOSU: If the audit becomes compulsory for a certain income group or turnover group you would be able to impose better discipline, they would be told about the loopholes of law and they would be able to make it a scrutiny job and submit the tax return accordingly.

SHRI P. M. NARIELVALA: Even to-day the loopholes on the law can always be got out.

SHRI VASANT SATHE: It has been my experience that even in cases of concerns where auditing is done by chartered accountants there is a great deal of suppression of actual production—what comes in the balance-sheet is shown as having been produced in the particular concern and then what is gone as cost of production and what is profit and normally there the chartered accountants certify that as having seen from the books of accounts and balance-sheet and also certify that

the accounts shown are correct to the best of their knowledge and that is taken to be sacrosanct and it is taken as a base by the Income-Tax authorities and other authorities. Would you suggest that certain amendment about powers and duties of chartered accountants to go beyond the figures of production shown and to see the actual production also—some such thing should also be made to make audit more effective?

SHRI P. M. NARIELVALA: I think it is not really a matter of the amendment of law to provide for the duties and powers of the auditors. It is more a matter of investigation and of self-education. This sort of situation can be best taken care of by the Institute of Chartered Accountants showing the needs and guiding in various matters.

SHRI VASANT SATHE: I know of an Institution but I do not want to name it where even stocks are suppressed. In this case how are you going to find that out. If from the balance sheet and books of account you were to go to the profit and loss and the entire working then it will be seen that stocks of paper, printing etc. would show working only for three months. What happened to the rest of nine months nobody knew. How are you going to check that under the existing law

SHRI P. M. NARIELVALA: The whole process of auditing is undergoing revolutionary change and new provisions are being brought in. This is a matter where the Government is the regulating department both in the Company Law and in Income Tax.

MR. CHAIRMAN: If compulsory auditing is to come and if it is to be worthwhile then it should not be left vague. The general notion of auditing, I think, will have to be very objective. Audit will have to certify in terms of what is meant by objective auditing certificates will have to be given in terms yes-no answers such as have you checked the full expenses—the answer will be

yes or no; is the demarcation between revenue and capital correct? The answer will be yes or no, etc. etc.

SHRI P. M. NARIELVALA: Personally I feel that if you ask an auditor to certify regarding the demarcation of revenue and capital, then, I am afraid, I would have reservations.

MR. CHAIRMAN: No, that is all right.

SHRI P. M. NARIELVALA: No, Sir, it is not all right.

MR. CHAIRMAN: How?

SHRI P. M. NARIELVALA: To my mind a certificate is not the correct expression when you are referring to a matter which is a matter of opinion. I can certify that so much money has been spent because that is a matter of fact. What is the value of my certificate? The Income Tax Officer might come to an entirely different opinion. If my opinion is different then how does it help the I.T.Os.

MR. CHAIRMAN: At least there will not be palpable cases where the stocks, furniture and Godrej Almirahs will be going to the revenue account. Therefore, let it be a part of your obligation to say whether the demarcation between the revenue and the capital is correct.

SHRI P. M. NARIELVALA: But that is not the end of it.

MR. CHAIRMAN: It is certainly not the end. It is the beginning from where the I.T.Os should proceed further.

SHRI P. M. NARIELVALA: The fact that you may be able to punish the member who has given a certificate which you consider to be wrong does not solve your problem. What I am pleading for is this that the change ought to be gradual and in a manner which can keep up with the self-education needs.

MR. CHAIRMAN: What do you mean by the word 'gradual'? Do you want a conventional certificate to be given here? Can you pin-point that?

SHRI P. M. NARIELVALA: No, Sir. It must relate to allowable expenses.

MR. CHAIRMAN: Certainly, according to principles of accountancy revenue items have to be classified on certain criteria.

SHRI P. M. NARIELVALA: There are many instances where the I.T.Os have specific discretions.

SHRI BHAGWAT JHA AZAD: Is it possible to have all these things done properly audited in the light of the present auditing system where only 15 big firms are cornering the 75 per cent of accounting work in this country? Would you throw some light on it?

SHRI P. M. NARIELVALA: It is not a specific question it is only an observation.

SHRI BHAGWAT JHA AZAD: No, it is a specific question. When the Bill was before the Parliament the Chartered Accountants sent a memorandum saying that only 15 big firms of Chartered Accountants are cornering the auditing systems of the 75 per cent or more in the country and for that others say that there is a compromise in the standard and in the objectivity in the auditing of the big firms.

SHRI P. M. NARIELVALA: Is it the honourable Member's view that compulsory auditing should not go to certain categories?

MR. CHAIRMAN: That may be a remote point but the immediate point is that so far as the 15 big firms are concerned there may be a feeling that there is some sort of liaison or understanding between the companies and the auditors which is not very healthy.

SHRI JYOTIRMOY BOSU: The whole purpose is being frustrated.

SHRI P. M. NARIELVALA: I will submit that the proposal of compulsory audit was also made by the Board of Direct Taxes.

MR. CHAIRMAN: That is right. What do you think, if it is not possible

for the provision to put the responsibility of auditing on the auditors and unless and until the accounts of a company are audited, would anybody say that they have some additional income and let it be taxed? The Income Tax Officer cannot be held responsible for this onerous and cumbersome job and so this job must be done by the professionals and in this way the responsibility would be shared by them also.

SHRI K. R. GANESH: A serious discussion is going on in this important issue. There are many instances of facets and growth in the evasion of taxes in the large organised sector or in the large houses. You might have heard that a special cell of the Board is studying about this and they are already in the opinion that the large houses are not only misusing the present position or evading the taxed, but also they are looting by way of evasion, although they have their auditors for auditing the books of accounts.

SHRI P. M. NARIELVALA: If, during this investigation anything has been found which will indicate that the auditors in question do not perform their duties properly then certainly you have right to complain to the proper forum and that complaint will be processed in the manner provided for. But on the other hand it is also necessary to recognise that the auditors' powers of investigation and enquiry are extremely wide. If they neglect cross checking or neglect the exercise of discretion of power, etc. then you will have to consider whether these are taking place in a manner in which the auditors, by exercising their normal skill, could have detected the errors but they have not done this. You can increase the scope of audit, but you will never increase the level just available to the assesses. In that case the I.T. Department who have got extremely wide powers of enforcing the evidence, search and seizure of documents, may launch a vigorous search a persons or premises.

SHRI BHAGWAT JHA AZAD: There is a general impression that 15 chartered accountants' firms are auditing 75 per cent of the larger houses of this country where manipulation of tax returns are going on, or in other words they are looting the Govt. exchequer by way of tax evasion. So, my question is whether these auditors can be brought to book for their intentional or failure in proper auditing—is there any power or way to do that? If you cannot tell us at the moment, then put it in your supplementary memorandum and let us pass on to the next clause.

SHRI P. M. NARIELVALA: Sir, if it is a fact which implies some negligent performance on the part of a particular auditor. I can only say that such negligent auditors should be penalised.

SHRI VASANT SATHE: I want to know from Mr. Narielvala, as you are experienced person in the auditing line, if we want to utilise the agency of auditing which is a very useful agency in the country for unearthing black money and preventing the evasion of tax do you think that certain amount of modification or giving a larger power with added responsibility to the auditors would improve the situation?

SHRI P. M. NARIELVALA: Yes, Sir. I think, if it is done the auditing of accounts will take a lesser time.

SHRI JYOIRMOY BOSU: Will you kindly tell us as to whether the root cause of evasion of taxes in the organised sector is done through inflated cost of production and deflated sales revenue?

SHRI P. M. NARIELWALA: I would say without any hesitation that if there is any scope for manipulation of profit and loss account, this may happen by way of inflated cost and deflated revenue. The deflating of revenue can be made if the goods are sold and despatched without any invoice being raised. This is something which can normally be kept through three system—resale, opening and closing of factory production. If the deflation of revenue

is due to reduction in rate at which the goods are sold then the problem is very much harder.

SHRI JYOTIRMOY BOSU: Do you have any idea of plugging the loopholes of the black money and evasion of taxes and do you suggest that there should be some mandatory provision for cost audit accounts?

SHRI P. M. NARIELVALA: Sir, I think, it is a matter of detailed task. I think, some limit is to be established in the Company's Act. It is also a question of number of cost accountants. I would like to say some other suggestions to place before this Committee which are not only in favour of the assessee, but also there are some suggestions which are specifically for the revenue of Government. But since the time is short we cannot put it here.

MR. CHAIRMAN: Let us have your supplementary memorandum with the points which you like to add in this connection.

SHRI TRIDIB CHAUDHURI: I would ask Mr. Narielwala, if in the qualified audit reports very serious allegations are made against the company's director, a copy of which is also sent to the Government, what is your impression about the Company Law Administration Act on this qualified report?

SHRI P. M. NARIELWALA: Sir, I am glad to have an opportunity to answer this question because this is a lacuna in the Company Act which I myself once in my individual capacity pointed out to the Hon'ble Minister-in-charge of the Department. My suggestion was that there ought to be some machinery in the Company's Act under which the Company Law Board, on receipt of the auditor's qualification can react. This is completely lacking today. Sometimes it is found that no depreciation is provided, but as per Government rules a depreciation fund must be maintained.

Sir, I would like to make another suggestion that the organised sector may indulge in malpractice. I would submit that we have been the audi-

tors of the public and private sectors. I do not like to cast any aspersion on any particular sector. I would say that whenever human beings are left for controlling funds, some temptation and abuse of power will exist.

MR. CHAIRMAN: I think, we should end our discussion here with

III. Bengal Income-tax (Gazetted) Services Association, Calcutta

Spokesmen:

1. Shri S. K. Roy—*President*.

2. Shri J. N. Maitra—*Secretary*.

3. Shri K. Chakravarty—*Joint Secretary*.

4. Shri R. L. Botani—*Member*

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Mr. Roy, in accordance with the convention I have to point out to you one of the Directions of the Speaker of the Lok Sabha which governs your evidence that the evidence that you give shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. And even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, I will give you 15 minutes uninterrupted. You can make your submissions.

SHRI S. K. ROY: Sir, we are deeply indebted to this august body for having given us this opportunity for placing our views. Normally we should have started with the clauses which are more relevant but being hamstrung by time, as this august body is, as we also are, we would confine the ourselves to one or two points only. Sir, we are a service Association and naturally we are interested more in service matters than in others. On the other hand, Sir, we are also officers in the field

you gentlemen. I thank you for your valuable evidence.

SHRI S. BHATTACHARYYA: We are grateful that you have given us this opportunity of appearing before you. We shall try to be present before you as and when you call upon us to do so. Thank you, Sir.

[*The witnesses then withdrew*]

and naturally we have some experience of the department which we would like to place before this august body. I will take just one minute to point that the Bengal Income Tax, (Gazetted) Services Association is an association, the primary object of which is to foster a sense of loyalty and devotion to duty and also to foster an *esprit de corps* among the officers. We do not stop at that. We believe in higher purposes. We believe that the officers of this Department have a vital role to play in the great tasks ahead of the nation and in the context of other departments of the Government of India, we are a department which serves as a powerful instrument for bringing about rapid socio-economic changes and for giving to the will of the people.

Having introduced ourselves, we straightaway proceed to clauses 2 and 3 of the Bill. These clauses on the face of it appear to be innocuous and harmless. May we submit that this is a dangerous clause which will have far-reaching effects and repercussions not only on the administration of the Income Tax Department but other departments as well? We are dealing with a very important subject—the unearthing of black money—and the Income Tax Department and the officers who are in the department have a vital role to play and this Bill is itself a witness to that. The objects of the Bill. I may be permitted to repeat, are to unearth black money, to curb tax evasion, to prevent tax avoidance and last but not the least, which we consider to be equally important, the

streamlining of the administration which subserves the above objects. If I may give an illustration, a machinery may be manufactured for serving a very useful purpose but that machinery has naturally to be worked by the human agency. The machinery has to be worked by people, i.e. workmen who are adequate in number, who are qualified, who have the experience and, not the least bit of it, who are reasonably satisfied and happy. Sir, you are the law-makers and you are today engaged in enacting a very important law. But unless the law enforcement officers were to step in and work the law which you are to frame today, the entire purpose will be defeated. When I speak of the law enforcement officers, we speak about ourselves. Sir, in this Department, in the last twenty-five years there have been any number of amendments to the Income Tax Act, through the various Amendment Acts, and through the Annual Finance Acts; but so far there has not been any single body to go into the administrative structure of the Income Tax Department barring the Administrative Reforms Commission which had a larger perspective in view. This Department, we might say, was reorganised in 1945. At that time the decision of the Central Board of Revenue as it used to be called then, was that the Department should comprise of 75 per cent class I officers and 25 per cent class II officers. With this end in view a large number of class II officers were promoted as class I. At the time of reorganisation of the Department the percentage was, if I may quote the exact figures 321 class I officers and 83 class II officers. Today, Sir, the Department has on its roll 746 class I officers and 2236 class II officers. The percentage, if I may be permitted to compare, has risen from 26 per cent to 326 per cent. The growth of the Department has been erratic, like mushrooms, like a jungle and no attention has been paid to the growth of the Department and no proper attention has been given, if I may be permitted to say again, because of the lack of a scientific

personnel policy being pursued and nobody has gone into the working of the Department so far. I am giving you this background in the context of the amendments proposed in clauses 2 and 3. As the proposed amendments are dangerous, it will be the last straw on the camel's back. It will be an affront to the dignity of class II officers who are bearing the main burnt of the burden of the Income Tax Department. More than 2200 class II officers are there in the department who are actually doing the real work today. These class II officers are born under sections 116 and 117 of the Income Tax Act and there is no other department of the Government of India where there is so much distinction between the class I and class II officers. The functions which the class II officers perform are largely wide and different from the functions of the class II officers in other departments. We make bold to say, that this fact has been supported by any number of important personages and august bodies, like the Finance Minister Mr. Morarji Desai—and again when he was the Deputy Prime Minister, the Chairman of the Central Board of the Direct Taxes Mr. S. A. L. Narayana Rao, and no less a body than the A. R. C. (Working Group) and an august body like 'the Central Public Accounts Committee' have all said in their recommendations that there is no distinction whatsoever between the functions of the class I officers and the class II officers of the Department. They perform the same functions, and class I officers are succeeded by class II officers. Here in Bengal I may mention that Mr. S. B. Lall was a class I officer, who was holding charge....

MR. CHAIRMAN: Don't mention the name.

SHRI S. K. ROY: He was holding charge and on his promotion as A.C. was succeeded by a class II officer and who again was succeeded by a class I officer. There is absolutely

no distinction. These officers perform the same work and shoulder same responsibilities. There is no distinction even in the law. They are not subordinate to Class I officers. I do not want to dilate on this point any more—classification of officers into classes I, H III and IV is going to be a larger issue. It does not prevail in any civilised country—the USSR, USA, West Germany, East Germany etc. And this clause is going to make a further sub-division. As I have submitted it is an affront to these officers. They are denied opportunities and this will be against Article 39(d) of the Constitution. They are discriminated against and this will be the last straw on the camel's back. We have seen the report of the Public Accounts Committee. It has been stated that there is no justification for this discrimination. But from a reply given by the Hon'ble Minister for Revenue and Expenditure on the floor of the House in December, 1972, we find that it was said—the PAC had been persuaded to withdraw its recommendation. Sir, we are small people. We are completely bewildered as to how the Executive could have the temerity of persuading highest body in the land to withdraw its recommendations. Sir, we request this august body to set up a high power committee to go into this matter. We appeal to this august body, let a Parliamentary body be set up to go into the structure of the I.T. Department, its officer personnel, and its working and make recommendations to this effect. Sir, we oppose this amendment.

MR. CHAIRMAN: You mean clause 2—the nomenclature.

SHRI S. K. ROY: Clauses 2 and 3.

Sir, I will now come to some other matters. In clause 22, possibly, it has been said that interests on deposits to the extent of Rs. 3,000, if utilised for building purposes would be exempt. This is a laudable provision, but it touches only the fringe of the problem. As had been done in foreign

countries after the war, to encourage blackmarket money to come to the regular market—if we may suggest, the Government may announce that within 6 months of the passing of this Bill, all moneys which are kept in scheduled banks for a minimum period of 5 years, the source of such moneys will not be enquired into. Sir, do you mean that this would be placing a premium on dishonesty?

MR. CHAIRMAN: Absolutely.

SHRI S. K. ROY: Sir, may I respectfully say that would it not be a case of cutting one's nose to spite one's face?

MR. CHAIRMAN: Is it better that we cut our face to spite our nose? Is this your suggestion?

SHRI S. K. ROY: It can be withdrawn for laudable purposes like building hospitals, leper homes, poor homes and educational institutions like Schools, Colleges, Universities and also for house building purposes; provided it is spent under Government supervision.

MR. CHAIRMAN: What will happen to those who have gold, diamond, etc., and black moneys invested in lands and buildings and other things?

SHRI S. K. ROY: That does not come squarely within clause 22, but if you give us time, we will make our submission.

MR. CHAIRMAN: All right. Please come to next pont.

SHRI S. K. ROY: Clause 12 of the Bill, about accounts being audited, compulsorily maintained, and audited we would suggest that the limit of the turnover should be raised to Rs 5 lakhs. In the same context, there are instructions in this department that incomes up to 50,000 in the cities of Calcutta and Bombay, and 25,000 in other cities, disclosed in a return will not be enquired into and summarily dealt with. Possibly it defeats the purpose.

MR. CHAIRMAN: It is subject to some other restrictions—once in two years or three years—a return would be accepted in Calcutta and Bombay for expeditious assessment and once in three years a checking will be made. If anything wrong is found, then the accounts of an assessee will be examined every year. Is that correct?

SHRI S. K. ROY: Yes.

MR. CHAIRMAN: What is your suggestion? It should be reduced to how much?

SHRI S. K. ROY: We suggest Rs. 15,000 in all cases.

MR. CHAIRMAN: Let me tell you, we want to get at the large houses.

SHRI R. L. BOTANI: Sir, about clause 45—according to clause 32 the Deputy Commissioner has been given a concurrent jurisdiction and according to clause 68 the ITO can pass the penalty order by the approval of the

Deputy Commissioner—in clause 45 the ITO is required to refer the case and get the assessee's approval.

It will be better if Deputy Commissioner's prior approval is obtained than to refer it to the assessee. When the work norm which is heavy presently is fixed I do not think it necessary.

MR. CHAIRMAN: This is a very important amendment which is sought to be made. Your parent body is coming before us and I am sure you will be coming over there. I suggest you may kindly place that suggestion before them.

SHRI R. L. BOTANI: Clause 46 is very good but the time limit should be extended to six months.

MR. CHAIRMAN: We have discussed this point.

Thank you.

[The witnesses then withdrew]

IV. Life Insurance Agents' Federation of India, Calcutta.

Spokesmen:

1. Shri J. Prasad—President.

2. Shri S. P. Hazra—

Vice-President.

3. Shri A. K. Purkayastha—

General Secretary.

4. Shri C. M. Dugar—Treasurer.

MR. CHAIRMAN: One of the directions of the Speaker of Lok Sabha is that your evidence is liable to be treated as public and is liable to be published, unless you specifically desire that all or any part of your evidence tendered by you is to be treated as confidential. Even though you might so desire that all or any part of your evidence is to be treated confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI J. PRASAD: We do not want any part of our evidence to be kept as confidential. Now, our General Secretary will make our submissions before you.

SHRI A. K. PURKAYASTHA: I

do not want to read the memorandum which is already before you. I will just confine to three points. First, for the first time in the history of the country, for the first time in the history of Life Insurance, commission earning self-employed professionals, the Life Insurance agents, have been granted the benefit of Gratuity. But under sub-section 10 of Sec. 10 of the IT Act, 1961, no provision has been made to grant and benefit to income-tax on gratuity payable to anybody other than the salaried or wage earning class. It is our prayer that we should be given same exemption as it is given to the salaried class or wage earning class.

Secondly, as regards annuities we should be given the same status as

that of other professions in the country. You may be aware that LIC are recruiting full time professional career agents; educated young boys are taken in and given stipend for two years before they are put into the market. Many young boys feel hesitant to come as this profession has not gathered enough strength. We suggest this unorthodox profession may be given the same status as that of chartered accountants, solicitors and lawyers. Thirdly, when life contingency annuity is taken by somebody, the capital is taken as vanished and only income remains. As a result, there is lot of hesitancy on the part of people to take life contingency annuity or impaired life annuity from the LIC. Now in the country joint family is disintegrating. People are coming into urban areas

and families have become small. They would like to have annuity of their own because joint family which was protecting the older people and giving them solace of being looked after in their old age is now vanishing. Time will come when we will find that they are looked after by the younger group. This will create some socio-economic problem. We therefore submit that Government should allow exemption of income-tax to those who take these annuity schemes.

MR. CHAIRMAN: We will consider your suggestions to the extent they relate to the Bill. We will see what we can do.

Thank you.

[The Committee adjourned]

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAW (AMENDMENT) BILL, 1973.**

Monday the 8th October, 1973 from 14.00 to 18.10 hours in the Committee Room,
Sachivalaya, Bombay.

PRESENT

Shri N. K. P. Salve—Chairman

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri Jyotirmoy Bosu
7. Shri Tridib Chaudhuri
8. Shri S. R. Damani
9. Shri K. R. Ganesh
10. Shri Mani Ram Godara
11. Shri Maharaj Singh
12. Shri P. G. Mavalankar
13. Shri H. M. Patel
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri R. Balakrishna Pillai
16. Shri Vasant Sathe
17. Shri Era Sezhiyan
18. Shri Satyendra Narayan Sinha
19. Shri C. M. Stephen
20. Shri R. V. Swaminathan
21. Shri V. Tulsiram

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND
INSURANCE)**

1. Shri R. D. Shah, Chairman, CBDT.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri K. S. Bhalla—Under Secretary.

WITNESSES EXAMINED

I. *Hindustan Chamber of Commerce, Bombay.**Spokesmen:*

1. Shri Ramesh Chandra Rastogi
2. Shri Laxmi Narayan Taparia
3. Shri J. N. Gupta
4. Shri Pannalal Sanganeria

II. (a) *Standing Committee of Public Trusts of Bombay, Bombay.**Spokesmen:*

1. Shri P. P. Khambatta, Advocate-Leader
2. Shri B. K. Boman Behram, Advocate
3. Shri Chimanlal C. Shah, Solicitor
4. Smt. Z. E. G. Carrimbhoy
5. Dr. Y. Najmuddin
6. Shri C. C. Choksey
7. Monsingnor A. Cordeiro
8. Dr. R. C. Cooper
9. Shri H. L. Navalkar, Solicitor
10. Father Martins
11. Shri H. B. Kapadia, Hon. Secretary.

(b) *Shri Bharat Jain Maha Mandal, Bombay.**Spokesmen:*

1. Shri Sriyans Prasad Jain
2. Shri C. C. Shah
3. Shri J. R. Shah
4. Shri Khimchandbhai Bora
5. Shri J. H. Doshi
6. Shri D. S. Gardi

I. *Hindustan Chamber of Commerce, Bombay.**Spokesmen:*

1. Shri Ramesh Chandra Rastogi
2. Shri Laxmi Narayan Taparia
3. Shri J. N. Gupta
4. Shri Pannalal Sanganeria

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I thank you very much for having come here to appear before the Select Committee and give us your valuable suggestions and clarifications.

Before we take your evidence, I may draw your attention to Direction

58 of the Directions by the Speaker, which provides that the witnesses must be informed that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them

is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, before I take up the discussion, I want to tell you that we have received your memorandum and it has been circulated to all the Members and all the Members have read and have gone through it. Apart from what you have stated in it, if you want to highlight or emphasise anything, you can do so. First you can give a general introduction and then you can go clause-by-clause, and after each clause, the Members will put their questions for clarification.

How much time would you like to have? We have got three batches to be examined today. You have come first.

SHRI PANNALAL SANGANERIA: We will take half an hour.

MR. CHAIRMAN: Let us see.

SHRI PANNALAL SANGANERIA: Now, in the income-tax law, some measures are made prospective and some retrospective. Wherever the law is made retrospective, they have got both effects, either good or bad, and in the majority of cases, they make bad effect on the tax-payer because some cases are generally withdrawn due to the retrospective effect. Therefore, it is requested that taxation laws should be framed so as to have only a prospective effect. That is one suggestion.

The other suggestion is about the limit of Rs. 5,000.

MR. CHAIRMAN: You are going clause-by-clause? Or, are you going into general details?

SHRI PANNALAL SANGANERIA: Details.

MR. CHAIRMAN: I think on the first point, that is, the taxation laws should be made with prospective and not retrospective, are you going to explain your point of view, or, can I ask

the Members to finish it first? First, I think you are going to give your general impression. If you go clause-by-clause, then I think it will facilitate the Members if they could put the questions.

SHRI R. V. SWAMINATHAN: We have also gone through the memorandum. They have already given their points. If they have got anything to say in addition, let them say.

MR. CHAIRMAN: We know the Members read it, and some of them may seek clarifications.

SHRI PANNALAL SANGANERIA: If they are putting questions clause-by-clause, we are ready to answer them, because we have nothing to say more than what we have stated in the memorandum. But we will answer all the questions.

MR. CHAIRMAN: All right. We start with clause 6.

SHRI S. R. DAMANI: You have said in your memorandum that all anonymous donations should not be taxed; and they should be left as they are. I want to know from you what kind of donations should be treated separately, because there are several things such as flood relief or famine relief or construction of a tank or for such other general purposes. This is one thing. For creating a trust, people get some donation. They make the investment in some kind of securities. Will you explain as to which kind of donations you would like to be exempted and which should not be taxed?

SHRI PANNALAL SANGANERIA: The main purpose of the Bill is to unearth black money and as far as the present position of the law is concerned. All kinds of donations should be tax-free. Now, I do not understand as to how I can classify, because, donations may be from various sources. It may vary from one rupee to one lakh of rupees. It depends upon the person, depends upon the donor who wants to donate. There are very few

persons who can donate a very large amount like a lakh of rupees. They have a feeling and it is a traditional feeling—and belief that tax should not be upon them. I believe that all kinds of donations should be made tax free.

SHRI S. R. DAMANI: My question was this. Do you want to make a distinction between

SHRI PANNALAL SANGANERIA: No distinction at all.

SHRI S. R. DAMANI: Do you think that donations collected should be spent in the same year, for the purposes for which they were collected? I was asking this question. If we say that the donations collected should be spent for the purposes for which they were collected, in the same year, in that case, will you be satisfied?

SHRI PANNALAL SANGANERIA: Whether they are spent in the same year or within 15 days, that is another thing. Here, we are concerned with what are called *Gupta Dan* donations. We have mentioned about this in our memorandum also. There is a belief among so many persons and various communities that if they give their name, suppose if the name is declared, the intention of the donation will be defeated. So, the *Gupta Dan* theory must be maintained.

SHRI P. G. MAVALANKAR: Money collected from any source is *Gupta Dan*?

SHRI PANNALAL SANGANERIA: Money collection is a different thing. Donation is a different thing. You donate to any trust or to any association without disclosing your name, that we call donations.

SHRI P. G. MAVALANKAR: I would like to know whether the witness has this in mind. He says that there is the tradition of *Gupta Dan* in India. I see that point. My question is, whether *Gupta Dan* is to be given irrespective of finding out whether the money received is from a good source or an undesirable source?

SHRI PANNALAL SANGANERIA: That is black money I can say. I am talking about *Gupta Dan*. Suppose, I do not like to disclose my name. As for the question as to whether it will be in line with the spirit behind the Bill, I would say, that naturally it will be in line with the spirit behind the Bill.

SHRI P. G. MAVALANKAR: Do you think that any black money donated as *Gupta Dan* will be in tune with the tradition of spiritual India?

SHRI PANNALAL SANGANERIA: Yes, Sir.

MR. CHAIRMAN: We are not against *Gupta Dan*. We are against the secret rupee.

SHRI PANNALAL SANGANERIA: But, suppose the accountant is not required to give a receipt for one rupee donation. The donor will not come forward to give one rupee. That is the idea behind it.

MR. CHAIRMAN: Is it your contention or is it the contention of the Hindustan Chamber of Commerce that since the money comes into the trust, you should not worry about as to whether it is black or white? Once the money comes into the trust, they should accept it without questioning.

SHRI PANNALAL SANGANERIA: Yes, Sir.

SHRI JYOTIRMOY BOSU: Mr. Sanganeria have you by any chance read the Final Report of the Wanchoo Committee. On page 78, among other things, it says:

"Mis-use of tax exemptions or of trust funds by charitable and religious trusts has been confirmed by studies made from time to time. In recent study made by the Department of Company Affairs of 75 trusts, of which 62 were charitable, showed that the business houses creating a trust had mostly misappropriated the trust funds for their own business."

I would give another quotation.

The Public Accounts committee in their 121st Report (4th Lok Sabha) on charitable and religious trusts, have said:

"The Committee desired to have an idea of tax evasion through charitable trusts. The representative of the Board stated: 'I do not have any statistics to show that. This sort of evasion is practised through trusts, where donations are given without disclosing the sources of money. We do attempt to find out or check up. As to how many such cases "we have come across, we do not have statistic on this'."

"The Finance Secretary added: There is a great deal of room for evasion through the medium of trusts. That the extent of evasion is large is a recognised fact even without going into the collection of facts as to what are they actually doing and so on."

"The Committee desired to know the number of charitable trusts connected with big industrial groups. In their reply, the Ministry of Finance have stated: "The information presently available concerns 45 trusts, each with a corpus of over Rs. 5 lakhs, in which 25 per cent or more of the total corpus is invested in public/private companies and other concerns connected with some group of business'."

"From the data furnished by Government, the Committee observe that the total amount in the corpus of the above 45 trusts was about Rs. 24.11 crores. Out of these 45 trusts, the investment of 32 in the industrial concerns of the group was more than 50 per cent of the total amount in the corpus. The investment of quite a number of them was more than 90 per cent of the entire amount in the corpus."

"The Committee drew attention to the observations of the Tax Evasion Enquiry Committee about concealed income 'masquerading as

donations' to trusts 'from a large number of ghost or anonymous donors.' The representative of the Board stated: What you say is correct. Under Section 12, particularly where the Trust is created and donations given or contributions given, those contributions are not liable to tax."

On both the findings and observations that I have quoted, I would like to have your honest comments.

SHRI LAXMI NARAYAN TAPARIA: Perhaps, the Bill itself seeks to tax the trust and not the black money donor. The donor gives the money may be it is the official money. Once the money comes into the trust, then, it has to be applied for the permitted use, naturally. There are only three purposes, namely, medical, education and relief to the poor. These three objectives are the objectives of any welfare state. The use of money is controlled by the Public Charity Commissioner as well as the Income-Tax Department. Unless these authorities are satisfied, exemption is not given.

MR. CHAIRMAN: You do not go beyond the point that he has raised. Trusts are being used as a device for tax-dodging. Do you accept it?

SHRI LAXMI NARAYAN TAPARIA: I only agree if the suggestion is that, the money is used for holding some shares in companies or investment in....

MR. CHAIRMAN: We are not going into that question. He has brought out two separate findings: one on the basis of studies made by the Department of Company Affairs and the other by the Public Accounts Committee, wherein they have found that the trusts are used as a device to dodge tax, whatever may be the laudable objectives for which these trusts have been created, by the persons who are handling the affairs of the trust. What have you got to say on this?

SHRI LAXMI NARAYAN TAPARIA: The finding is that the monies have been invested in companies

where they hold power. It is a different thing from evasion. If you place more controls on the use of the trust's funds, it is welcome; but I do not understand this when the monies are received by the trust and they are not used for the purpose of acquiring power.

SHRI JYOTIRMOY BOSU: Did you understand me correctly? I said that the Public Accounts Committee drew attention to the observations of the Tax Evasion Enquiry Committee about concealed income "masquerading as donations to a large number of trusts." It also very clearly says that from the data supplied by the Government, it is known that the total investment in the groups was about Rs. 24.11 crores. Out of these 45 trusts, the investment of 32 in the industrial concerns of the group was more than 50 per cent of the total amount, in the corpus. The investment of a number of them was more than 90 per cent. Let us not digress.

SHRI R. V. SWAMINATHAN: There are people having black money who give money to the trusts and for charitable purposes. They put it in the charitable trusts which utilize that money for other purposes. Do you want to allow this?

SHRI C. M. STEPHEN: Your point is that even if the black money is used for the purpose of charity, further taxation should not be imposed. We may not accept it. If the black money is used for investment in companies to acquire economic power, it is a different matter. You are pleading for that type of charity where money is invested purely for charitable purposes; and in that case, the distinction between black money and white money need not be driven rather too far.

SHRI JYOTIRMOY BOSU: My questions were very clear.

SHRI PANNALAL SANGANERIA: I agree fully with the hon. Member who spoke earlier. He spoke about

two reports, i.e., one from the Public Accounts Committee and the other from a study made by the Department of Company Affairs. Suppose I donate Rs. 1 lakh to one trust and then that trust money is utilized through foul means for different purposes. In that event, two points arise. If I give Rs. 1 lakh which is black money, it should not be curbed; but the wrong utilization of the money should be curbed.

SHRI H. M. PATEL: I think he has made the point. As far as the black money comes, you should not object to it. But you can take steps to prevent its misuse.

SHRI JYOTIRMOY BOSU: Do you mean to say that we grant some recognition to the black money and welcome it?

SHRI VIRENDRA AGARWALA: That is his view. We can make a note of it.

SHRI PANNALAL SANGANERIA: We should not dishonour the black money.

SHRI LAXMI NARAYAN TAPARIA: In regard to investment, I would say that a few black sheep should not induce the Government to hit others.

SHRI JYOTIRMOY BOSU: I am talking about 90 per cent.

SHRI LAXMI NARAYAN TAPARIA: Such investments can be treated as other economic offences are. The use or misuse should be curbed, rather than the receipt of donations.

SHRI JYOTIRMOY BOSU: Do you or do you not feel that trusts in this country have played havoc in the matter of tax collection?

SHRI LAXMI NARAYAN TAPARIA: This is a matter of opinion. If the money is given to a trust, I feel it amounts to 100 per cent tax, because this is given for a purpose which is also the responsibility of the Welfare State. You must put restrictions on the use of the money.

SHRI C. M. STEPHEN: We are proceeding on the basis that a substantial portion of the money given to the trust is black money. Don't you think that if this money had been taxed, that portion should have gone to the Exchequer and only the remaining portion should have come to the trust? In that case, what is ethically wrong with the Government saying, "Hand over 65 per cent to the Exchequer?" The person who donates, might have expressed certain religious sentiments, but the ultimate utilization is none of the concern of the donor. Assuming that it is black money, Government may come in. What is wrong, ethically speaking, with it? We had failed to tax it at a particular stage. What is wrong about it?

SHRI PANNALAL SANGANERIA: Donors will not come forward under those circumstances.

SHRI C. M. STEPHEN: We are concerned about the money. We fail to tax it at a particular stage. At least to a certain extent, we collect it at the stage at which we discover it. What is wrong in it?

SHRI PANNALAL SANGANERIA: With this amendment, the effective donors will be less than they would otherwise be, because they will not come forward with donations. From where will you tax? If the money is not there, where will you tax and how will you tax?

SHRI R. V. SWAMINATHAN: Suppose there is a person who has donated Rs. 1 lakh. That donation is taxed to the extent of Rs. 65,000 and the trust will get only Rs. 35,000. But this Rs. 65,000 goes to the Government which will also use it for charitable purposes, social welfare schemes, schemes for meeting out social justice and so on.

SHRI PANNALAL SANGANERIA: People do not think in that spirit, that there is no harm if we give this Rs. 65,000 to Government and Rs. 35,000

is retained with the trust. That is the difficulty.

MR. CHAIRMAN: On page 1 of your memorandum in your comments on clause 6(e) you say that it is sought to withdraw the exemption from the tax in case of charitable trusts or institutions that carry on any activity for profit and then say in the second paragraph:

"In order to meet the demand of the charity, the trusts have to raise funds by several activities such as publishing a souvenir, investing their surplus funds in immovable property, construction of public halls etc. which are let out on rent for various functions".

Wherefrom do you get the idea that letting out on rent is an activity for profit? It does not come under the purview of profit. Income from rent will not come under profit.

SHRI H. M. PATEL: This is a point which the department should clarify. It is by no means clear. Earning money is profit. Let us have the clarification.

MR. CHAIRMAN: Regarding your comment on clause 14, amendment of sec. 64(iii), you say:

"This provision is most unjustified and against Hindu law and culture".

Which provision of Hindu law does this violate?

SHRI PANNALAL SANGANERIA: I may be permitted to correct this observation. It does not offend against Hindu law but is against Hindu tradition. You will find most of Hindu law is personal law. There is no such provision in Hindu law.

MR. CHAIRMAN: Then clause 39—amendment of section 139: You want to raise the limit of profit from Rs. 50,000 to Rs. 1 lakh and the turnover from Rs. 5 lakhs to Rs. 20 lakhs. What is the rationale behind this? Is

you put it at Rs. 20 lakhs, very few people will come under this.

SHRI PANNALAL SANGANERIA: This is a point we should have discussed at length because it is very important. Here many small dealers will be affected. Nowadays Rs. 5 lakhs has no meaning; though the profit may be more or less, a turnover of Rs. 5 lakhs has no meaning. There are various reasons for this.

MR. CHAIRMAN: Which has no meaning—Rs. 5 lakhs or Rs. 50,000?

SHRI PANNALAL SANGANERIA: Rs. 50,000 profit will be on what turnover? That is most important.

MR. CHAIRMAN: The two are not connected. If the turnover is less than Rs. 5 lakhs but the profit is Rs. 50,000, it will be attracted. Do you accept Rs. 50,000 margin?

SHRI PANNALAL SANGANERIA: No.

MR. CHAIRMAN: Why? I accept your plea that Rs. 5 lakhs in these days is not a large sum.

SHRI PANNALAL SANGANERIA: I believe the intention of the law is Rs. 50,000 for gross profit.

SHRI VIRENDRA AGARWALA: On what amount of turnover?

SHRI PANNALAL SANGANERIA: They are segregating turnover from profit. Let us take profit first.

SHRI VIRENDRA AGARWALA: Rs. 50,000 profit on what turnover?

SHRI PANNALAL SANGANERIA: It depends on the business.

SHRI S. R. DAMANI: In principle you agree. You say that the figure of turnover should be raised from Rs. 5 lakhs to Rs. 20 lakhs because Rs. 5 lakhs is too small a figure in these days. You want to increase the limit of profit from Rs. 50,000 to Rs. 1 lakh. Otherwise, you are in agreement with this in principle.

Now you say that in small villages one cannot find a chartered accountant.

MR. CHAIRMAN: He does not speak about small villages; he speaks about small margin.

SHRI S. R. DAMANI: He has mentioned that also. If the profit is Rs. 1 lakh, what will happen?

SHRI PANNALAL SANGANERIA: He can afford it if the profit is Rs. 1 lakh. That is the idea behind it.

SHRI JYOTIRMOY BOSU: In the organised sector today every business is audited by a chartered accountant and there is move of evasion. How do you feel that the appointment of a chartered accountant is going to avoid tax evasion? Kindly educate us in this matter.

SHRI LAXMI NARAYAN TAPARIA: The Bill puts two limits. One is about the turnover and the other is profits.

SHRI PANNALAL SANGANERIA: Only the big people who are having Rs. 1 lakh or above as profit can afford to have chartered accountants.

SHRI JYOTIRMOY BOSU: What is the benefit?

SHRI PANNALAL SANGANERIA: The income-tax department blindly believe in the accounts as audited by the chartered accountants.

MR. CHAIRMAN: Do they?

SHRI PANNALAL SANGANERIA: Yes, Sir. I think hon. Members will agree with me that the majority of the income-tax officers believe in the accounts of the chartered accountants. They believe on the audited reports prepared by the chartered accountants.

SHRI JYOTIRMOY BOSU: Do you believe that to allow the department to scrutinise the balance-sheet and the books of accounts will be better instead of accepting somebody's rubber-stamping it?

SHRI PANNALAL SANGANERIA: It is the duty of the department.

SHRI JYOTIRMOY BOSU: To be fair and just to all concerned, the

department should assume the responsibility of scrutinising the books of accounts and the balance-sheets and not go by anybody else's certificates.

SHRI LAXMI NARAYAN TAPARIA: They have a duty even today.

SHRI JYOTIRMOY BOSU: Try to help us please. I am asking you, whether you do not think that they should have, under all circumstances, the right and the authority to scrutinise all accounts and the balance-sheets before they accept the tax returns?

SHRI PANNALAL SANGANERIA: It is the duty of the department to go into details submitted by the assesseees.

SHRI JOTIRMOY BOSU: This Bill does not deal with black money; it is dealing with the taxation of the income of the assesseees. This Bill is not going to tackle the ocean of the evaded money.

SHRI PANNALAL SANGANERIA: This particular Bill will not come into effect if the income is below Rs. 50,000; these assesseees will not be attracted. Only the assesseees with more than Rs. 50,000 as income will be attracted. This is what I understand.

One thing more. The tax-practitioners and the advocates in income-tax law will be debarred to some extent from representing to the department. That is an important part of this amendment.

MR. CHAIRMAN: Is it your suggestion that the law practitioners also should be given power to certify the accounts?

SHRI PANNALAL SANGANERIA: There are two or three suggestions. Either the practitioners should be allowed to put their rubber-stamp on the accounts like the chartered accountants, or, the chartered accountants may be allowed only to certify the accounts and they may not be allowed to represent to the departments. Only the advocates and all

these practitioners should be allowed. It should be 'either' and 'or'.

SHRI JYOTIRMOY BOSU: I want to ask one or two questions.

SHRI PANNALAL SANGANERIA: You are most welcome to put questions.

SHRI JYOTIRMOY BOSU: Do you or do you not feel that undetected, inflated cost of production and deflated sales revenue are the major means of tax evasion? That is the methods by which so much black money has been created. Do you feel that if they take a rigid cost-audit accounting system, there may be some remedy?

SHRI LAXMI NARAYAN TAPARIA: We represent the textile merchants only in the Chamber. We feel that even small traders who have a turnover of much more than Rs. 5 lakhs still have profits which are less than Rs. 50,000. We have no idea about the industries.

SHRI R. V. SWAMINATHAN: They have given two or three new suggestions. Ask them about it.

MR. CHAIRMAN: One is about increasing the limit of Rs. 5,000 to Rs. 10 thousand. These second suggestion made is about the minors' income. The third one is about the assesseees and the dependants of the parents also. We will take them into consideration. About the last one, that is, the rate of income-tax to be reduced, as recommended by the Wanchoo Committee, have you any idea about the recommendation of the Wanchoo Committee?

SHRI PANNALAL SANGANERIA: They have recommended 75 per cent at the top.

MR. CHAIRMAN: How is it that it is likely to result in a better collection of the department? Is it your impression or have you made any study?

SHRI PANNALAL SANGANERIA: More and more people will come forward if the rate of tax is reduced.

MR. CHAIRMAN: Is that your expectation?

SHRI JYOTIRMOY BOSU: Have you seen the recent report of the Reserve Bank which says that the system of voluntary declaration has not succeeded at all?

SHRI PANNALAL SANGANERIA: If it has not succeeded, why was it extended for a further period of two months? It was up to December; but it was extended to another two months.

SHRI JYOTIRMOY BOSU: You have not understood it.

MR. CHAIRMAN: I thank you and your colleagues. I thank you on behalf of the Committee for the clarifications given by you on the points raised.

SHRI PANNALAL SANGANERIA:
We thank you.

(The witness then withdrew)

II. (a) Standing Committee of Public Trusts of Bombay, Bombay.

Spokesmen:

1. Shri P. P. Khambatta, Advocate-Leader
2. Shri B. K. Boman-Behram, Advocate
3. Shri Chimanlal C. Shah, Solicitor
4. Smt. Z. E. G. Carrimbhoy
5. Dr. Y. Najmuddin
6. Shri C. C. Choksey
7. Mosingnor A. Cordeiro
8. Dr. R. C. Cooper
9. Shri H. L. Navalkar, Solicitor
10. Father Martins
11. Shri H. B. Kapadia, Hon. Secretary.

(b) Shri Bharat Jain Maha Mandal Bombay.

Spokesmen:

1. Shri Sriyans Prasad Jain
2. Shri C. C. Shah
3. Shri J. R. Shah
4. Shri Khimchandbhai Bora
5. Shri J. H. Doshi
6. Shri D. S. Gardi

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Khambatta, I think you are the Leader of the Delegation. I, on behalf of the Committee, welcome you and others who have come here, to give evidence before us.

Now, may I invite your attention

to Direction 58 of the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, which governs the conduct of this Committee. The Direction provides that the witnesses, must be informed that the evidence they give would be treated as public and is liable to be

published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

I hope you are aware of this direction and I think you will accept this. We have received your Memorandum, copies of which have been circulated to the Members.

SHRI P. P. KHAMBATTA: Before we do that, I would like to make one request. Mr. Shah, who leads the next Delegation, would like to make a submission, if it is permitted.

SHRI CHIMANLAL C. SHAH: The next Delegation is likely to cover the same ground practically, and I would request you kindly to permit the members to be present here to listen, so that time will be saved.

MR. CHAIRMAN: I would repeat the Direction 58. The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction in mind, you can give evidence. I would suggest, Mr. Khambatta, that you give a background, dealing with your reactions to the bill's statement of objectives.

SHRI P. P. KHAMBATTA: There are four amendments in regard to which I may be permitted, on behalf of the present delegation, to offer certain comments. The first of these is the one which seeks to have these words, *viz.*, "created or established after the commencement of this Act", omitted. The result of this will be that the benefit of section 11 will be

lost to all such trusts or institutions which were created before 1st April, 1962. Apart from any legal aspect in the matter, the first question which arises is as to why this is being introduced and something is being done for doing away with trusts which, normally speaking, do a lot of good for the people; and, I believe, in one sense help in lessening the burden of the State itself. What is behind this piece of legislation, what is the object which is sought to be achieved, or what is the mischief which is sought to be repressed? So far as the normal trusts are concerned, I do not think there is anything intrinsically wrong in them except, perhaps, one aspect which is that a trust may be communal. The fact that these trusts are communal, is that—by itself—sufficient to seek to do away with the exemption which these trusts get under the Act? Our submission is that it would certainly not and should not be a sufficient and adequate reason. The reason is that after all, you don't have communal trusts in regard to one community alone. You have them in regard to all communities, including the major community. I believe that in volume at least, the greatest number would naturally be in regard to the majority community. Why, then, is it necessary to do away with those trusts? There can be no doubt at all that if this legislation goes through, most of the major trusts will have to wind up.

MR. CHAIRMAN: What do you mean by major trusts?

SHRI P. P. KHAMBATTA: The major trusts are those where the income is fairly large; and there are quite a number of trusts in Bombay at least and I have the honour of representing quite a number of these. If those incomes are to be subjected to tax, there can be very little doubt that these trusts will have to be wound up. Most of these trusts get their income from properties, investments etc. Others also get quite a large part of it from voluntary contributions. If all these are to be

taxed there will not only be not sufficient money to go round to the poor for whom these are meant; but I am afraid there will even be a deficit. After all, looking after big properties calls for a big staff. As everyone knows, expenses, of running anything has gone up to-day. Therefore, with fixed incomes and expenses going up, there can hardly be any doubt that trusts will automatically come to an end if this is brought about. Referring again to the main point, I would say that after all, any piece of legislation which is introduced in Parliament, must have as its object one or two things, either to achieve a laudable object which the law-makers feel to be good for the country, or they feel that the legislation should aim at suppressing some mischief which is found in some trusts. Perhaps one reason which has impelled the law-makers to have this bill may be to bring about a better integration by removing anything in the nature of communal trusts. No doubt, the object is very laudable; but will it be brought about this way? The result, as I said, will be practically the destruction of almost every big trust. How is it going to bring about an integration among the communities? We have not been able to understand this. I, therefore, venture to think that this cannot be behind the minds of the law-makers. Certain recommendations of the Wanchoo Committee might also, I think, have impelled the introduction of the present bill. It may be a moot point whether the Wanchoo Committee has suggested that the post-1962 trusts and pre-1962 trusts should be put entirely on the same footing. I do venture to think that the Wanchoo Committee also has not had it in mind; and certainly, it could not have intended that whatever is the legislation suggested, the effect of it should be a total destruction of the majority of the trusts.

Therefore, I again say that it could not be that the genesis of this Bill is what the Wanchoo Committee said.

Now, the third thing I say is this. A very laudable object may be, to repress certain mischiefs found to operate in certain trusts. For the most part, these have been taken care of, where, for instance, one finds that a trust is used as a vehicle for the purpose of . . .

MR. CHAIRMAN: You have made the third point.

SHRI P. P. KHAMBATTA: I am still trying to understand what is behind this legislation, what is the good which is stated to be done or the mischief which is stated to be repressed by this legislation. I am trying to understand to various reasons which have been suggested as being behind it. I have mentioned two. The third. I understand, is this: certain mischief which has been found to be in the operation and the functioning of trusts. Now, no doubt, as we are all aware, certain steps have already been taken in that direction. Certain things have been done to see that where a trust is taken as a medium for the purpose of exercising power through companies or benefiting individual families, the settler or the members of the family, steps are taken to see that this should not occur and where it occurs, it should be repressed. But so far as ordinary trusts are concerned, what is the mischief which the law makers have in mind and which they seek to repress? So far as normal trusts are concerned, what do they do? They do not carry on businesses? What they do is simply this, that they provide money for the poor, they have cheap housing for their community members and things like that; they have hospitals, medical relief and so on. What is the mischief there which our lawmakers have in mind which they seek to repress? As far as I can see, there is nothing at all.

SHRI BHAGWAT JHA AZAD: Have you by any chance seen the Public Accounts Committee report on these trusts, how they have misbehaved or are misbehaving? Have you

seen the report of the Company Law Department on the trusts? Have you seen the report of the Wanchoo Committee? If you have, kindly argue on that point. We do not propose to his trusts which are functioning very honestly in terms of their objects. But when you are asking what is the mischief sought to be repressed, I am drawing your attention to the reports of the three bodies I have mentioned. Please enlighten us as to how to stop the mischief of the big trusts and also say the smaller ones which you have in mind.

SHRI JYOTIRMOY BOSU: You spoke about normal trusts. What are normal trusts and what are abnormal trusts?

SHRI P. P. KHAMBATTA: I am very glad you have asked this question. I have in mind the normal communal trust which is not concerned with gaining any advantage for any particular family, settler or anything. I mean a trust in the broadest sense of the term, namely, the creation of obligations on trustees to provide certain things which are purely philanthropic....

MR. CHAIRMAN: The question is a very limited question in which you want to argue that communal trusts formed before 1st April, 1962 should not be denied exemption. For that, is it necessary for you to escalate it into the realm of controversy and canvass the case of trusts and their exemplary behaviour? It is open for you to do so, but it is, strictly speaking, not necessary. You may tell us some further points on why you would not want communal trusts formed before 1st April, 1962 to be denied this exemption without escalating it into realms of larger controversy.

MR. CHAIRMAN: You said that main point is that if they are subjected to income tax, there will be nothing left for them to do.

MR. SHAIRMAN: You said that the majority of the trusts would be hit by this provision. How many com-

munal trusts formed before 1st April, 1962 will be affected if the law was enacted as in this Bill? Have you made a study?

SHRI P. P. KHAMBATTA: This delegation represents the Standing Committee of Public Trusts of Bombay. We have given a list of all the trusts we represent, over 200. Practically all of them will be hit hard.

SHRI ERA SEZHIYAN: In the list, 201 are mentioned—probably there are more. Have you made a study of the assets and income and yearly expenditure of these 201?

SHRI P. P. KHAMBATTA: I have not made a study of all these trusts.

SHRI ERA SEZHIYAN: Not you, but your Standing Committee. Did they have such a classification of assets, income etc.?

SHRI P. P. KHAMBATTA: One of these is the trust of the Parsi Panchayats.

SHRI ERA SEZHIYAN: I want to know specifically figures of the total assets, income etc. of these 201. Have you got these?

SHRI P. P. KHAMBATTA: No, I have not got them here.

SHRI ERA SEZHIYAN: Did they make a study?

SHRI P. P. KHAMBATTA: Yes, case studies have been made. I have not got them here; I can furnish them a little later.

MR. CHAIRMAN: If you want us to take your argument that the majority of the trusts would be hit seriously, we would want you to satisfy us on two counts: Please state quantity-wise that there are so many thousand trusts in Bombay out of which so many thousands would be hit, the aggregate assets of the trusts are so many crores out of which so many crores would fall within the new law contemplated. Otherwise, your arguments would not weigh with us. Have you made such a study?

SHRI P. P. KHAMBATTA: A study has been made, but I am not in a position just now to give the figures.

MR. CHAIRMAN: Who has made the study? Is any one of them who have made it present here? If you are serious about this argument, let us have some more details about it.

SHRI C. C. SHAH: We will give you details of at least 30 trusts which I have studied myself and with which I am associated.

MR. CHAIRMAN: Does it substantiate Shri Khambatta's argument?

SHRI JYOTIRMOY BOSU: Also, are these trusts of the normal variety or the abnormal variety?

SHRI C. C. SHAH: These trusts are largely for education, medical relief, relief of poverty and for housing and other social services. With the present rate of taxation and with the income which these trusts have, particularly from voluntary contributions every year, a major part of the income, if not the whole of it, will be completely wiped out or taken away by way of taxation and little will be left to carry out the objects of the trusts. I will give only one instance when we come to the next delegation. We have worked out the details and I have got them ready and we will give them to you in that instance.

SHRI BHAGWAT JHA AZAD: I know there may be a few more like that. The point that we have raised is, while there are trusts like the Jain Temple Trusts, we want to be satisfied on this score, namely, what will be the number of trusts which you think will be affected. We want to understand this. Suggestions have been made by the Company Law Administration, and then by the Public Accounts Committee and then by the Wanchoo Committee. We want to prevent any mischief being done and save the honest tax-payers. Let us elucidate this point. We agree with you about the particular instance you mentioned. We do not want to hit such trusts.

SHRI H. M. PATEL: You actually represent a couple of hundred trusts. Will it be possible for you to let us have a study of these 200 trusts and give us proof and establish the point that you have been making, that the majority of trusts will suffer, within a reasonable period of time?

SHRI P. P. KHAMBATTA: Oh, yes.

SHRI ERA SEZHIYAN: Let me take Mr Shah's memorandum submitted by the Bharat Jain Mandal. At page 4 you have said that "it is true that there has been some abuse of the machinery of public trusts but we can say with our experience that a large number of public trusts in the community are fairly well-maintained by public spirited persons, who are respected by the community and who receive large donations." That means these have been managed by the community?

SHRI C. C. SHAH: By the Jain community.

SHRI ERA SEZHIYAN: Why do you say that the Jain trusts are good and the others are probably bad? That is the impression we get

MR. CHAIRMAN: You kindly understand the point. If you are trying to canvass the point before the Committee that notwithstanding the fact that there are a few communal trusts they are serving a laudable cause which is the welfare of the people, and they are not indulging in any malpractice and that this sort of denial of exemption would hit a majority of the trusts who are catering to the services, if this is your case, and if you are serious about it, then a two-fold study is utterly necessary. Please satisfy us on two points. How do you say that a majority of other trusts are to be blamed? We have certain figures and statistics given by the Government, which are not in consonance with what you are saying. But I do not know to what extent they are correct or not. You give us your figures.

Secondly, the other important point that you are making is that purely because they are communal it must not attract disqualification and the clean work should not be hit. On these specific points, we want to know your views. The Committee is not at all interested in general arguments. If you want us to do something very substantial, and if you want your points to be taken seriously—we have heard you with rapt attention—please give us facts and figures. You have our assurance that we will consider them.

SHRI C. C. SHAH: Regarding the observation which you made with reference to page 4 of our memorandum, all that we say is that the trusts with which we are associated are fairly well-managed trusts. That is not intended to cast any reflection on trusts managed by other communities. We are speaking from our own experience.

MR. CHAIRMAN: Will you tell us what is the income of these trusts for the last two years?

SHRI C. C. SHAH: I have got the figures for only one trust.

SHRI VIRENDRA AGARWALA: We want a study of your 30 trusts.

SHRI C. C. SHAH: We will give you.

SHRI S. R. DAMANI: Mr. Khambatta, in your memorandum, on page 4, you have said that "We believe that well over Rs. 100 crores (it may be even Rs. 500 crores) are being spent every year for the relief of poverty, education, medical relief and other charitable purposes." It is a pleasant surprise that these trusts have got a big income like that, and are serving a laudable cause. You have given this figure, but is there any basis, and have you got the facts and figures to abolish the income of such trusts which have such a large income?

SHRI P. P. KHAMBATTA: This is only an estimate made and like all estimates it is liable to error.

SHRI S. R. DAMANI: In this connection, you have given the names of 200 trusts in Bombay. I have gone through the list. Are they communal trusts or not?

SHRI P. P. KHAMBATTA: Most of them are communal trusts.

SHRI S. R. DAMANI: In cases where such big amounts are spent for charitable purposes, if the amendment is passed, how it is going to affect the institutions of the public at large?

SHRI P. P. KHAMBATTA: Most of these trusts spend their income in alleviating the suffering of the poor: that is, education, medical relief and things like that. Only very few may run a business but that business is not for the purpose which a normal business is fulfilling. We in the panchayats run our own business, but that is to help in the problem of unemployment; especially old people who are unable to work, we try to help them.

SHRI BHAGWAT JHA AZAD: We want to believe your submission that most of the trusts spend for the poor and not otherwise. We want to know whether it is your impression, or this is as a result of your study. If it is not as a result of any study, please tell us what is the basis of your statement.

SHRI VASANT SATHE: Would you kindly tell us, out of the lists that you have given us, the amount that is being spent extends from Rs. 100 crores to Rs. 500 crores—whether they are spending it actually for charitable and other noble purposes? If I understand the point which you have repeatedly been emphasising, all these trusts are benefiting the poor community at large; not only a particular caste or community.

SHRI R. P. KHAMBATTA: No. Most of them are communal trusts.

SHRI VASANT SATHE: Trusts constituted are communal. But, are they spending essentially or substantially for the benefit of that particular community?

SHRI P. P. KHAMBATTA: Yes.

SHRI VASANT SATHE: If that is so, will you kindly give a break-up of these trusts, quantum-wise. You said about normal trusts. We would also like to know as to what are the abnormal trusts. Apart from that, we would like to have a break up in the ease of each trust. I will make it clear. Supposing out of 200 trusts, 150 trusts are, let us say, small trusts, and the total aggregate amount which they spend is about 10 crores, whereas, 50 trusts or 30 trusts, or even a lesser number of them, control an amount of Rs. 200 crores, then, we will have to think on those lines so as to benefit ourselves. Will you kindly give us a break up of these trusts and their assets as well as their expenditure?

SHRI R. V. SWAMINATHAN: Mr. Khambatta, you said that some of the trusts are carrying on some business, not the business of the normal type. You said that they are running some business for the benefit of the poor people. Will you please give us one or two examples of the types of business which the trusts are carrying on?

SHRI P. P. KHAMBATTA: We have in the Parsi Panchayat, the Godrej Trust. It does not employ Parsis alone. It employs non-Parsis as well. But, mostly, the idea is to help people who are not in a position to help themselves. Quite a large number of people are old people who should have been on the retired list long ago. But, we do it in order to see that these people are not absolutely on the streets. In fact, this is practically the only business which the Parsi Panchayat carries on with charity funds worth more than Rs. 10 crores. For the rest, it is all...

SHRI ERA SEZHIYAN: Mr. Khambatta, if you see page 4 of your memorandum, you have said:

"We do not know what considerations have weighed with the Government in proposing this amendment. We believe that the consequences of this Amendment are not fully realised."

At the end, you have said:

Wanchoo Committee itself has paid handsome tribute to private philanthropy in the following words:

and you have quoted from the Wanchoo Committee Report. But, I would like to invite your attention to the next sentence given in the Wanchoo Committee report itself. You have quoted the other one which is convenient for you. The Wanchoo Committee has said:

"Unfortunately, however, there is no good cause which human ingenuity cannot defile and experience has shown that even in our country, these altruistic media have been abused with impunity for selfish personal ends. Since the tax concessions afforded to these institutions involve a sacrifice of public revenues, it becomes imperative to ensure that tax privileges are not abused and they are enjoyed only by those charitable and religious institutions which deserve them."

SHRI P. P. KHAMBATTA: We are heartily in agreement with the next paragraph, which is not quoted. The whole point is this, all these trusts which we represent, and which are mentioned in the memorandum, they do not resort to any of these things and so, when I was making a representation on behalf of these trusts, I have to point out to you only in regard to things which we do and not in regard to things which may be done by others.

SHRI ERA SEZHIYAN: That is not the question. We want to understand...

SHRI P. P. KHAMBATTA: On the first point, you have admirably summed up what I have to submit. A real normal trust which utilises whatever income it has, for education or relief of the poor or medical assistance and things like that, if its income is to be taxed, then, there will be nothing left. This is the simple point which I wanted to make.

SHRI JYOTIRMOY BOSU: Mr. Khambatta, the Tax Evasion Enquiry Committee which was set up by the Union Government observed about concealed income 'masquerading as donations to trusts from a large number of ghost or anonymous donors'. What are your comments on the same?

SHRI P. P. KHAMBATTA: I am coming to that. May we go in order? I have made my comment on the first point. I will take up the second one. When I come to that, I will....

SHRI JYOTIRMOY BOSU: The Wanchoo Committee has been extensively quoted by many. I would like to invite your attention to the following observations of the Wanchoo Committee.

"A recent study made by the Department of Company Affairs of 75 trusts of which 62 were charitable showed that the business houses creating a trust had mostly misappropriated the trust funds for their own business."

I want your comments on both.

SHRI P. P. KHAMBATTA: These trusts which I am representing do not come within that category at all.

SHRI JYOTIRMOY BOSU: I have not been able to explain the whole thing clearly. It has been stated that the donations received vary from Rs. 100 to Rs. 500 crores. I am putting it to you and the gentlemen who have come with you that the money which has come to you is mostly tax-evaded money. How do you react to that?

SHRI P. P. KHAMBATTA: I am coming to that. May I answer this at the relevant moment?

SHRI P. G. MAVALANKAR: The witness has mentioned about the good work that these trusts are doing. I accept all that he says. But, I would like to ask one or two somewhat basic questions. First of all, he has been referring to the trusts as communal trusts and that most of the work done is for communal interests and for various communities. I would like to know whether, in view of the fact that we have now got a social pattern, the Standing Committee of Public Trusts of Bombay have anything to say with regard to the maintenance of these communal trusts in the present social pattern? Does he want these communal trusts to go on endlessly? Secondly, he has been using the word 'charity' again and again. I would like to ask here one question. In view of the changed circumstances in our country—in the world at large, in general, and particularly in our country—does he want this idea of charity to remain all the time or does he want the idea of welfare to be propagated and not charity, and if so, what is the harm if, eventually, a number of these communal and charitable trusts are wound up, so that their tasks are taken up by the National Government in the years and decades to come. I would like to know the views of the Standing Committee of Public Trusts of Bombay in regard to these two basic issues.

SHRI P. P. KHAMBATTA: Taking your second question first. The point is this. It is all very well to say that the word 'charity' does not fit in with the present situation in the country. The word itself may not sound very well to the ears in a welfare State. But, have we come to the stage?..

SHRI P. G. MAVALANKAR: Sounds badly to those who receive the charity.

SHRI P. P. KHAMBATTA: The point is this. Have we attained a stage when we have a real Welfare State in the sense that what is done today in the name of charity need not be done at all? If we have come to that stage, then, by all means and

certainly, the word 'charity' should go. But, we have not reached that stage yet. What these charities are doing is this. They are helping in the same direction as the State itself does. In fact, they are lightening the burden on the State at least to some extent. Surely, there cannot be anything wrong with that. May be, you are perfectly right, Sir, that in the years to come perhaps 25 years hence, if we have a perfect Welfare State, where everything will be provided, then, charity should be a thing of the past. On the question of integration, is that something very wrong? After all, every individual starts at a particular point, which is his own family, and then, he takes his own community members and at the next stage, he goes to the people at large. We have to begin somewhere. It is not a question of doing charity at the expense of the Exchequer, if every single community has a communal trust, including the major community. After all, all of them are getting the benefit, because of the trusts.

SHRI JYOTIRMOY BOSU: Do you not believe in making charity, after paying the taxes?

SHRI P. P. KHAMBATTA: But that is always done. However, it depends on individuals and individuals.

SHRI JYOTIRMOY BOSU: That is where the shoe pinches.

SHRI SYED AHMED AGA: You made a distinction between two kinds of trusts, viz., one those run by various communal bodies. The other kind relates to those which are perhaps doing a very clean job. You say such functions are the responsibility of the State as well, but all of which our welfare state is not in a position to discharge. We could see that all these trusts get tax exemption. As such, in a way, the State is contributing towards that particular charitable body. That being the case, how would you react to the State having a very effective voice in regard to the management of the trust money?

SHRI P. P. KHAMBATTA: Perfectly, Sir. I entirely agree with the point of view, that there should be good checks by the State. As a matter of fact, in Maharashtra and Gujarat, we have the Charity Commissioner who takes care of most things. He sees to it that the management is clean and is carried on efficiently. There is a very good check imposed.

SHRI VASANT SATHE: Are we making provision in this bill, for participation in the management of the trusts?

MR. CHAIRMAN: There are State laws which seek to provide for effective checks on management.

SHRI SYED AHMED AGA: How would you react to a real participation by the State?

SHRI VIRENDRA AGARWALA: That is not part of the bill.

MR. CHAIRMAN: Have you got any suggestions to give in regard to such real participation?

SHRI C. C. SHAH: That is a general question which applies to all the trusts, not only communal ones. The second part of the question says that there is no provision in the present bill to indicate whether Government wants such a thing. When such a bill, i.e., having that provision comes up, we can give our reactions to it.

MR. CHAIRMAN: If you suggest something on this, we can consider including it in the bill.

SHRI C. C. SHAH: The Income-Tax Act is not the proper forum for making the provisions. It should be a Public Trusts Act, applied to all trusts; you have to consider as to what are the trusts in which the Government would like to have a voice; and in what manner.

MR. CHAIRMAN: Mr. Aga says that even in regard to communal trusts, you have made a distinction, i.e. some trusts doing good work and some which are not adhering to the highest

standards. Can you give us some idea to help us to distinguish between the two?

SHRI C. C. SHAH: There is a distinction between the mischief of mismanagement of trusts which is sought to be remedied; and the question as to which trust should be taxed which should not be. These are two separate issues. The mischief sought to be remedied, viz. mismanagement, can be remedied in three ways.

MR. CHAIRMAN: There are only two different issues. Electrively tackling the malpractice is an issue different from the other; namely denying exemption. You yourself have argued the point that even among communal trusts themselves, there are good and bad ones.

SHRI C. C. SHAH: The exemption is granted from income-tax to public trusts which are non-communal. That is also done at the cost of the Exchequer. The only small issue involved, is why should communal trusts which are doing the same kind of work should be denied exemption, which the public trusts get.

SHRI VIRENDRA AGARWALA: That is a very good point.

MR. CHAIRMAN: Then you should not have come to the second point of good and bad trusts.

SHRI C. C. SHAH: I can understand the approach under which all charity, where exemption is granted, is done at the cost of the Exchequer; and that, therefore, we would not give exemption to trusts, whether communal or non-communal. But we do not understand the idea that exemption would be given only to public trusts. Communal trusts are probably doing more good work than the public trusts.

MR. CHAIRMAN: Do you say that communal trusts are only as good or as bad as public charitable trusts?

SHRI C. C. SHAH: Something more than that. They are being managed

by people who have put their heart and soul into the matter. Because it is of their own community, of their own people, they personally attend to the matters. These are not big trusts dealing with crores of rupees.

MR. CHAIRMAN: Do you have any specific data? It is not fair to cast an aspersion on trusts managed by others.

SHRI C. C. SHAH: I am not casting aspersion. I am speaking only of my experience. We are associated with trusts which are only for relief of poverty, promotion of education and provision of medical relief or other social services. They are communal in the sense that they cater to the needs of a particular community. Is there any ground to deny the benefit of tax exemption to them when such exemption is granted to the other public trusts? That is the issue.

MR. CHAIRMAN: Communal trusts, good, bad or indifferent, should be granted exemption as is given to other public charitable trusts, good, bad or indifferent?

SHRI C. C. SHAH: Exactly.

SHRI VASANT SATHE: The idea of distinguishing between a communal trust and public trust is this. Basically we are taking both to be good. Let us not go into the question of bad. In a public trust, the benefit goes to the public at large, irrespective of caste, creed or sect, whereas in a communal trust the benefit goes only to that community at the expense of the entire society, which is contributing indirectly in the form of exemption. The burden of the exemption for the benefit of one community is borne by the entire society. Why should only particular community, majority or minority benefit at the expense of the entire society by being given an exemption? That was the point raised; this is the distinction.

SHRI C. C. SHAH: The simple and short answer is this: There have been communal trusts in this country since centuries. When the 1961 Act came

to be passed, Government deliberately took a decision on a policy matter that communal trusts would not enjoy the benefit, that is, those created after 1962, but that those that had already been created prior to 1962 would enjoy the benefit which they had enjoyed all these years. This major decision was taken because you do not make retrospective legislation unless it becomes absolutely necessary. People who created trusts year ago under conditions and the legislation then existing never imagined that those trusts would be wiped out by legislation to be made 50 or 100 years hereafter. This, we submit, would be a great injustice to the people who created such trusts.

SHRI BHAGWAT JHA AZAD: We do not want to wipe out trusts. The point is very simple. We are not to be begged down on the question of communal vs. non-communal. We are here for saving the good trusts which are carrying out the objectives laid down in their deed. We were told that there is a Parsi trust run on sound principles which is employing not only Parsis but non-Parsis too. In that view, I think the word 'communal' in the case of a trust has lost that particular meaning and we are not concerned with it. We are concerned with trusts which are doing good work which you stated, which we support. We shall support them. But we want to find out how to catch these trusts which are not actually performing what is laid down in their deed but doing something else. We want to save the good trusts, but how to bring to book those trusts which are doing mischief? How to do it under the law?

SHRI VASANT SATHE: I beg to differ. We are on the issue of communal trusts. The Bill wants specifically to include the communal trusts which are pre-1962 within the ambit of taxation. We do not want communal trusts to continue to have the benefit of exemption at the cost of the public exchequer whatever may be the decision taken in 1961. This appears to be the object. Why should

a distinction be made between post-1961 and pre-1961 if on merits a communal trust is a good thing for society?

SHRI BHAGWAT JHA AZAD: In that case you may reply to my question as I have put and his question as he has put it.

SHRI C. C. SHAH: Your question is very relevant. I am entirely *ad idem* with you that the mischief in the administration of a trust, communal or non-communal, must be set right by legislation or by every means. There are three ways in which it can be done. First, the I.T. Act has sought to do it by amendment from time to time of S.13 and S.12 of the Act. Section 13 has tried to remedy three mischiefs, on the settler, the founder or his relative trying to take advantage of the income of the trust under the guise of a charitable trust—this is prohibited now. Two, the settler or the founder trying to get the investment of the trust into his own concern or business under the guise of trust—this is now set right by the amendment of S.13 which says that it cannot be done. The third mischief S.13 has tried to remedy is that any indirect benefit being given by way of a loan, or by way of a man being permitted to reside in a particular house at a very cheap rent and he happens to be his relative is sought to be denied. All these mischiefs have been remedied by S.13.

The other way of remedying the mischief is via the Bombay Public Trusts Act. I would humbly request members to study this Act. I have been associated with it since it was enacted. I was a member of the Committee which recommended it. I have been associated with it ever since its beginning. The Charity Commissioner is given wide powers to supervise the administration of the trusts. We have to file our budgets and audited accounts. The Commissioner is authorised to see that the objects of the trust are carried out. After the accounts are filed, if he finds that there has been misappropriation, if even by negligence there

has been a loss to the trust, he can issue an order of surcharge and make the trustees make good the loss caused by the negligent trustee. The Commissioner is empowered to inspect the accounts of the trust. He has inspectors who go round and inspect the accounts. If he finds that there is anything wrong with the trust, he has the power to issue a directive to them and to apply to the court to say that that particular trustee or trustees are mismanaging and they should be removed. The good administration of a trust is taken care of by the control and supervision of the Charity Commissioner to whom these powers are given. The abuse in the trust is also dealt with under section 13 of the Act. Even then, if you point out any particular mischief which you seek to remedy, I am prepared to suggest remedies for it. Talking broadly that trusts are mismanaged, it does not lead us anywhere.

SHRI BHAGWAT JHA AZAD: We have got facts and figures. We are not talking broadly.

SHRI JYOTIRMOY BOSU: The Public Accounts Committee, in one of its reports, says that "from the data furnished by the Government to the Committee, the Committee observed that the total amount in the corpus of the above 45 trusts was about Rs. 24.11 crores. Out of these 45 trusts, the investment of 32 in the industrial concerns of the groups was more than 50 per cent of the total amount in the corpus. The investment of quite a number of them was more than 90 per cent of the entire amount in the corpus."

SHRI ERA SEZHIYAN: In one case it was 98.5 per cent.

SHRI C. C. SHAH: We do not approve of it. We join the Government in seeking to remedy that mischief. This is in relation to public trusts. This was before the amendment of section 13 of the Act. Now, that cannot be done.

MR. CHAIRMAN: Even after amending section 13, if you are referring to clause 13(2)(h), assuming that a Settler secures anything by donating 100 per cent of equity shareholding and nominates his name as a trustee, will the Charity Commissioner have anything to say in the matter?

SHRI C. C. SHAH: Yes, Sir, because the Act provides that the investments of trusts...

MR. CHAIRMAN: He donates initially.

SHRI C. C. SHAH: The investment of trust funds can be made only—

MR. CHAIRMAN: He donates this, and he does not invest the trust fund. In the State law on charities, there are so many deficiencies and inadequacies. If it is not full of deficiencies, we would not have been led to all this. Clause 13(2)(h) is also terribly deficient. If you are on a larger issue, namely, that there are good trusts and bad trusts and you can distinguish between the two, then you will have to do plenty of homework and just not dwell on the generalities. But if you are on a narrow question on this point, on the communal trusts only, then, assuming for the moment that the Committee is of the view that it is not particularly enamoured of denying exemption to the communal trusts, the Committee is nevertheless extremely anxious, at the same time, to ruthlessly put an end to the malpractices which are being carried out under the name of charities. In that case, firstly, it may not want to take up just some arguments and come out with them; and so, are you prepared to come out with facts and figures, because you are talking of generalities all the while?

SHRI C. C. SHAH: We are all entirely at one with you to ruthlessly put down any mismanagement or any mischief in the administration of the trusts.

MR. CHAIRMAN: The ruthless malpractices, as a result of exemptions, are borne out by the facts,

firstly, that you are augmenting your funds by tax-evaded money and secondly, finding avenues to build up your empires.

SHRI C. C. SHAH: We are all again with you on both the issues. You have in the present Bill suggested three amendments which meet that situation. In section 13, you are adding in the present Bill, clause (bb) by amending the present sub-section (1). That meets the first question which you realised namely unaccounted money being used. That takes care of it. We are not fighting that issue at all. We agree with you. We will point out some practical difficulties in the way of implementing it. But we are one with you on the broader issues that unaccounted money should not be the source of being used in the guise of charity. But that applies to both communal and non-communal trusts. That is not the issue on which we are arguing before you today.

The second question is about 98 per cent being invested. That is taken care of more stringently by sub-clause (e) which is being introduced now.

MR. CHAIRMAN: Do you accept that?

SHRI C. C. SHAH: Yes; not the least difficulty. Our only submission at present is on the amendment not (bb) but (a). That is the only issue on which we are arguing at present. We have not even opened our mouth on the other amendments.

MR. CHAIRMAN: You can answer Mr Sathe's question now.

SHRI VASANT SATHE: I wanted to ask what is sacrosanct about a trust which was created before 1962. Talking of retrospectivity here the question of the principle of retrospectivity will not apply because all that we are saying is prospectively we do not want to have a trust benefited at the expense of the exchequer. It is only prospective. How is it retros-

pective? If you are keen that you should enjoy the exemption that is, the public trust should enjoy the exemption, an amendment can be suggested to the Public Trusts Act, by which in spite of the intention of the original Settlers, an amendment can be brought about to bring it into line. On those grounds, about retrospectivity, will you clarify how it is retrospective, when all that we are saying is that prospectively the communal trusts will not enjoy the benefit of the tax which will be only prospective?

SHRI C. C. SHAH: It falls into two parts. I will deal later with the second part. The first part raises a fundamental question, that communal trusts, that is to say, trusts which benefit a particular religious community, will not be allowed to enjoy the tax exemption because they are for a particular community. That is the only issue before us.

There are two reasons which I would like to give. First, as my leader Mr. Khambatta rightly pointed out, it is not as if only one particular community derives the benefit of this exemption. Every community, be it Hindu, Muslim, Parsee, Jew, Sikh or any other community....

SHRI ERA SEZHIYAN: If all the communities derive the benefit, what is the harm in amending this?

MR. CHAIRMAN: In effect, you are talking of a trust which would be hit by the amendment.

SHRI C. C. SHAH: It is not one community alone which benefits by the exemption which is granted to the communal trusts, but it is every community, major or minor, which benefits by that exemption.

SHRI ERA SEZHIYAN: If that is so, what is the harm in amending the Act?

SHRI TRIDIB KUMAR CHAUDHURI: He is trying to make out a distinction. Whether it is community A, B or C, India as a whole is com-

posed of so many communities, and he says that all communities can derive the benefit of this exemption.

MR. CHAIRMAN: Your assumption rests on an extremely legal footing and whether or not such a trust will be hit is a matter of tremendous doubt. We can, for the sake of argument itself, go to communal trusts straightway.

SHRI CHIMANLAL C. SHAH: I am talking about communal trusts. But, the questions which have been asked, relate to non-communal trusts. So, I have to answer both.

SHRI BHAGWAT JHA AZAD: Mr. Sathé has asked question only with regard to communal trusts.

SHRI CHIMANLAL C. SHAH: I am answering his question. When you grant the benefit of exemption to a communal trust, the benefit goes to every community, and not merely to only one community. Now, the second part of the question was, why should we object to the exemption being withdrawn. If this is done, then, every community will be deprived of the benefit, and not merely one community. All communities alike will suffer. If there is a Hindu trust, a Parsi trust, a Jain trust and a Muslim trust all of them enjoy this benefit. It is not only the Hindu community or the Jain community which gets the benefit. If you take away this benefit, every one of the members of these communities will suffer. Therefore, it is not a question as to who will get the benefit and who will not.

MR. CHAIRMAN: You say that all the communities will be hit. Since the trusts catering to different communities will be hit, all the communities will be hit. This is the argument that you are putting forth.

SHRI ERA SEZHIYAN: Different communities have not different trusts. Each community will be benefited by

its own trust. If a particular trust caters to all the communities, then, all people will be benefited.

MR. CHAIRMAN: Supposing there is a Hindu trust, a Parsi trust, a Muslim trust and a Jain trust, if all the trusts together cater to the people at large.... This is what is being mentioned.

SHRI CHIMANLAL C. SHAH: If the people irrespective of the caste, community, or religion, are going to be benefited, it is a different issue altogether. If it is a non-communal trust, all benefit. What I am trying to respectfully point out is this. If it is a Hindu trust, and not a completely non-communal trust, then, if you deprive it of the benefit of exemption, it cannot survive. Now, the second part of the question which the hon. Member asked was, why should we not go to the Charity Commissioner.

MR. CHAIRMAN: This is a very important question. Assuming that we make a provision in the law, that all the communal trusts which are likely to be hit, can go to the Court and get their objects changed, do you apprehend any difficulty, of such an amendment when brought in, being struck down or challenged?

SHRI CHIMANLAL C. SHAH: Undoubtedly, it will be challenged.

MR. CHAIRMAN: On what grounds?

SHRI CHIMANLAL C. SHAH: On the ground that the wishes of the Settler cannot be ignored by the court. If I have created a trust, for a particular purpose, with a particular object, then....

MR. CHAIRMAN: Why not the law supersede? This question will be posed. If you want the benefit of exemption, then, you go to the Court. If you do not want the benefit of exemption, then, you need not go to the Court.

SHRI CHIMANLAL C. SHAH: Even the court will not be able to do that.

MR. CHAIRMAN: My question is, if we make a provision in the law, and if you go to the Court of Law, how the Courts will not act under the law?

SHRI C. M. STEPHEN: If the existing law is amended...

SHRI CHIMANLAL C. SHAH: The existing legislation provides and it is a well-settled law that the intentions of the settler have to be taken into account. The next question is, is it desirable to do it and why is it necessary to do it?

MR. CHAIRMAN: The doctrine of Cypres gives you the right. There being no provision in the law to go before a High Court and say that the objects are impossible of implementation, if we make a provision in one of the sections, that in case a communal trust wants the benefit of the exemption, it can go to the High Court and the High Court, notwithstanding anything contained in any other Law, can confer or give permission to such a communal trust to become a non-communal trust, what would be the position of such a law, so far as Constitution is concerned?

SHRI CHIMANLAL C. SHAH: My answer is two-fold. First, the constitutional validity of such a provision may be challenged. This will lead to a lot of litigation. As I said earlier, the Courts cannot ignore the wishes of the Settler, in trying to set at naught what he had intended to do. I may be wrong or I may be right. Whatever it may be, it is for the Courts to decide.

MR. CHAIRMAN: What is your opinion?

SHRI CHIMANLAL C. SHAH: My own view is that it will be unconstitutional. This will be challenged under Articles 14, 25 and 26. I am saying this with all the responsibility that I have. Now, the next issue is

this. Is it necessary to do it or is it desirable to do it?

MR. CHAIRMAN: We are not asking any question about the necessity or otherwise. Kindly help us, about the legality. How it will be challenged under Articles 14, 25 and 26?

SHRI CHIMANLAL C. SHAH: The man has created a trust with certain specific objects.

SHRI VASANT SATHE: If it is contrary to law today, while the Will might have been made a hundred years back... What is it that you are suggesting? If a Will is made some hundred years back, by somebody, then, no law should be made which will go contrary to the Will of that gentleman? Is that what you are suggesting?

MR. CHAIRMAN: It is not mandatory for the trustees to go to a Court of Law. It is entirely discretionary and they may go only if they want to get the benefit. Would it offend Article 14? How it would offend?

SHRI CHIMANLAL C. SHAH: I submit that it will be illegal to do so, to ignore entirely the wishes of the Settler.

SHRI VASANT SATHE: How will it be illegal?

MR. CHAIRMAN: Have you applied your mind?

SHRI VASANT SATHE: We are not going to legislate for a settler. We are going to make the law commonly applicable to all. How will it be illegal on a particular settler? Will you kindly explain that?

SHRI BHAGWAT JHA AZAD: The laws made a hundred or fifty years back no longer hold good. They might not have taken into account the changes in the country. Do you mean to say that a law once made, cannot be changed in spite of the changes that take place?

SHRI CHIMANLAL C. SHAH: I am not saying anything of that kind.

MR. CHAIRMAN: Have you anything to say in furtherance of your stand that such a provision would be violative of Articles 14, 25 and 26? If not, let us leave it at that.

SHRI VASANT SATHE: How will it be violative of Article 14? Mr. chairman, he is a learned person and we have to benefit by his evidence.

SHRI VIRENDRA AGARWALA: He has expressed his point of view.

MR. CHAIRMAN: I take it so. You said that it would violate Articles 25, 26 and 14. Have you got anything further to say?

SHRI JYOTIRMOY BOSU: If I understood you correctly, you said that an attempt to change the character of a trust against the wishes of the Settlor which might have been expressed years ago, unless their working becomes impossible, will not be acceptable to the court of law.

SHRI C. C. SHAH: That is the present law.

SHRI JYOTIRMOY BOSU: If this bill is enacted and the trust money becomes exposed to taxation, the running of the trust will become impossible, according to you, for that reason. If you can say the same thing before the court of law in support of your contention, why is it that you are thinking that the court will not accede to your request but would refuse to change the wishes of the settlor?

SHRI C. C. SHAH: Under the existing law, the court will say that the object is education or medical relief for a particular community. It is not impossible in the sense that medical relief cannot be given for that community thereafter, if very little money is left after taxation. It will not be impossible in the sense that it cannot be carried out at all, within such limits.

SHRI JYOTIRMOY BOSU: Is it not contradictory? You said that once the money is taxed, the function of the trusts will be impossible, ample material for you to go to the court. Now you say something different. You had said earlier that if you can prove that the working of the trusts will become impossible, the court will allow you to change the wishes of the settlor. Now you say that the court will say, "you can do it within the limited means."

SHRI C. C. SHAH: Supposing we spend Rs. 2 lakhs annually, what will be left after taxation, will be Rs. 10,000. It is not impossible, however, to continue the work.

SHRI JYOTIRMOY BOSU: I replace the word by "very difficult."

SHRI VASANT SATHE: That has reference to the object; this has reference to the working. Mr. Chairman, the basic question put by the hon. Member still remains unanswered.

SHRI ERA SEZHIYAN: I invite your attention to the changes that have been made to the Pachayappa's Trust group 100 years ago. The Trust was created to give education to the Hindu boys. But now, in the changed circumstances, not only Hindus but also others are getting education there. Because of this, Government pointed out that they cannot give the grant. They went to the High Court and the basic objective that was indicated by the Settlor has been changed.

SHRI C. C. SHAH: I have not said that it is impossible.

MR. CHAIRMAN: Before you answer Mr. Sathe, please reply to the question whether, if you can give permission, by law, to the communal trusts, there would be no difficulty. Anyway, we see that Article 14 speaks about equality before law. Article 26 speaks of freedom in regard to management of religious affairs. It says:

"Subject to public order, morality and health, every religious domination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law."

How do you react to this?

SHRI C. C. SHAH: Article 26 relates to religious trusts. Most of the trusts which we represent are, however, what we may call mixed trusts. They are both religious and charitable ones. They perform religious ceremonies and also do charitable work. I have not seen in this bill, any provision as to how such trusts are intended to be dealt with.

SHRI VASANT SATHE: You are drifting off a little. We have to bring you back to the main issue of communal trusts.

SHRI C. C. SHAH: The hon. Member's point was this: "why should communal trusts be given exemption?"

MR. CHAIRMAN: That is the basic question.

SHRI C. C. SHAH: My respectful submission is this, that there are limits to a man's charitable intentions. I would certainly wish that a man gives help for the entire humanity. But a man naturally likes to look round his own brethren.

Now take it this way. If I make a public trust, a really non-communal trust only for my village, limited to a small, particular area, that is permissible according to the law or according to the question the learned member put. But if I have a trust for the entire Parsi community or the Muslim community or for the entire Hindu community all over the country,

that is not allowed. I do not, with all respect, see the logic behind it.

MR. CHAIRMAN: The distinction is qualitative not quantitative.

SHRI C. C. SHAH: Therefore, as Shri Khambatta put it in the very beginning, is this legislation intended to bring about national integration? Is that the object? If it is qualitative—by qualitative, I understand it is meant for an entire community....

MR. CHAIRMAN: No. Irrespective of the size of the religious community, if it serves only a religious community, exemption is to be denied. Here quality means the quality of catering to a single community irrespective of the quantity. If you have a trust for a small village comprising all religious communities—it may be a small community—it qualifies for exemption because it comprises people from all communities. I am only trying to explain the rationale of the proposed law.

Now, let us go back to one very important question, because, speaking for the Community, we are quite a bit concerned about it. We are not at all anxious to hit good, genuine trust purely because they are communal, because that is in terms of s. 11.

SHRI C. C. SHAH: We are very grateful to you. In accordance with s. 11, a communal charity is not anything less than public charity. It is by s. 13 that it is excluded.

MR. CHAIRMAN: We do not want to hit them, without going into the question of retrospection. But the larger question comes up, and Shri Khambatta touched on it, that these trusts constitute the bulk of the trusts—this comes to us as some what of a discovery—and they have been rendering a very good service. They fall outside the trusts brought within this description, trusts to which Shri Jyotirmoy Bosu and Shri Sezhiyan referred. On this point, if you could give us a note, you will be serving their cause, looking at the

matter objectively rather than generalising about it.

SHRI C. C. SHAH: It will be our endeavour to assist the Committee in every respect we possibly can and we will try to place before you as much data as we can.

SHRI . M. STEPHEN: You raised the question of distinction. If it is for a village, we grant exemption; if it is for an entire community, we do not. Is this not the spirit of the Constitution? Take article 30. Take educational institutions. If the educational institution is for a particular religion, then no grant; but if the educational institution is limited in some other way for the purpose of one taluka or a particular state or whatever that be, then no refusal of grant. Therefore, the spirit of the Constitution says that if you put the emphasis on serving a particular religion or community only, the public exchequer will not meet the expenditure of it. Cannot the same rationale apply here also, namely, that if the charity is only for a particular religion, then the exchequer will not meet the expenditure of it, but if it is for some other purpose limited or circumscribed in the same spirit in which the article applies, it can come in. Therefore, there is a rationale.

SHRI C. C. SHAH: I appreciate that, not that it is without any rationale.

What the legislature tried to do was two-fold. If I understand rightly, first it stopped all communal trusts created after 1962 from getting the benefit. Second, the benefit of 5.80G is not permitted to communal trusts because any contribution or donation to a communal trust does not enjoy the exemption which it enjoys when it is a non-communal trust. So in two ways, the legislature has already taken steps to gradually reduce the communal trusts. Now my respectful submission is this: If after 1962, no communal trust can be

created, because it is denied the benefit of s.11 and secondly it is denied the benefit of s.80G, enough steps have been taken and let at least those that exist survive. They do no mischief, no harm; in any event, they do some good.

SHRI JYOTIRMOY BOSU: The Christian trusts get a lot of foreign remittances. How do they show them in their books of accounts? Government were unable to give us up-to-date figures about these remittances. About ten years ago, it was in the region of Rs. 2 crores. Now it has almost touched Rs. 16 crores per annum, if I am right.

MONSIGNOR A. CORDEIRO: Whatever remittances are received, whether in the country or from abroad, are shown as remittances and they are in the normal accounts.

MR. CHAIRMAN: Are they routed *via* the normal channels?

MONSIGNOR A. CORDEIRO: They are routed by the normal banks.

MR. CHAIRMAN: Do you take government permission for that?

MONSIGNOR A. CORDEIRO: If it is required.

MR. CHAIRMAN: Is permission required to you knowledge?

MONSIGNOR A. CORDEIRO: I do not know. I can obtain it.

MR. CHAIRMAN: As and when they are received, they are credited in the books of account. Is the source mentioned?

MONSIGNOR A. CORDEIRO: Anybody can ask where it has come from.

MR. CHAIRMAN: Are you subject to the jurisdiction of the Charity Commissioner.

MONSIGNOR A. CORDEIRO: Yes.

SHRI C. M. STEPHEN: Here, there is a provision about anonymous contributions. If this provision is retained, do you think that the contributions made to the Christian church will be hit, except, of course, the box collections? There are solid contributions being made to the Christian church by local donors and by foreign donors. If anonymity is the condition whereby such exemptions would be denied, do you think that the contributions being made to the Christian church will be hit?

MONSIGNOR A. CORDEIRO: To a certain extent they will be hit, but if the provision is made, it will make the keeping of the accounts almost impossible, because people are giving 10 paise or 15 paise each. How are we to know?

SHRI C. M. STEPHEN: For the Hindus there is something like *Gupt Dan* and all that, saying that the donor shall not reveal his name. For the Christians there is nothing like that.

SHRI P. P. KHAMBATTA: There is. The right hand does not know what the left hand does.

SHRI C. M. STEPHEN: There is nothing wrong in myself making a contribution saying "please put in my name," but there is no religious injunction against the donor revealing himself, whereas for the Hindus, for a certain section at least, there is a religious injunction against disclosing their identity.

SHRI VASANT SATHE: No, no. *(Interruption)*

SHRI C. M. STEPHEN: I am only emphasising this. For those donors who are making a contribution to the Christian church, there is no religious injunction against revealing their identity. You have collections in the church and anonymous collections. Solid contributions are there, and the provision now is that solid contributions made anonymously will have to be attracted by the payment of 65 per

cent tax. Supposing that provision comes into law, are you afraid that the Christian church will be affected and, if you are afraid, how are you afraid that way?

MONSIGNOR A. CORDEIRO: I understand that your point is about the major contributions. Here, there is a distribution between the religious trust and a charitable trust.

MR. CHAIRMAN: If you are collecting money for the church, for example, or if you are collecting money purely as a religious body but are utilising it for charitable purposes also, then, whether it is exempted or not may not be clear, but if it is partly religious and partly charitable in the objectives, then in that case may be you are not hit, and therefore, the question Mr. Stephen will become relevant. If you are ready you can answer it. But the basic question is this. May be the religious sentiment of any community may prevent the identity of the person from being disclosed. Mr. Stephen says it is not necessary so far as the Christians are concerned. Therefore, let every donor disclose his identity.

MONSIGNOR A. CORDEIRO: When there are box collections and door to door collections, it may not be identified.

MR. CHAIRMAN: When small amounts are collected at one particular place as a contribution...

MONSIGNOR A. CORDEIRO: Some people do not want their names to be made public, but if there are questions asked by the tax authorities, the names can be given.

SHRI JYOTIRMOY BOSU: Out of the corpus you have get in these 200 trusts, how much of it is in liquid cash or in negotiable assets?

SHRI C. C. SHAH: It is difficult to answer this off-hand.

SHRI JYOTIRMOY BOSU: Roughly, what would be the percentage?

SHRI C. C. SHAH: A large proportion of it, in my opinion, will be in securities and cash rather than immoveable property.

MR. CHAIRMAN: That is, liquid assets.

SHRI JYOTIRMOY BOSU: Thank you.

SHRI C. C. SHAH: There are only certain trusts who have taken to housing on a large scale. The Parsee or the Jain trusts have done housing for the poor people. They have large immovable properties. There are certain trusts whose investments have been in immoveable properties since a long time, and that depends upon the trusts. It may be that some trusts have made investments in immoveable properties and there are some who may have liquid assets. We cannot draw any general conclusion over that issue.

MR. CHAIRMAN: Whatever are the facts available as a result of your study, please give us, and we take it that it is your estimate that the majority of the trusts have liquid assets.

SHRI C. C. SHAH: In 1953, the Charity Commissioner in Bombay carried out a survey of investments of the trusts which were then registered with him. The analysis is that of all the communities—Hindus, Muslims Parsees, etc.—the investments in immoveable properties were Rs. 35,62,38,103.

MR. CHAIRMAN: In terms of percentage of the total assets.

SHRI C. C. SHAH: I am giving the total assets also. Then, in public securities, the total investment was Rs. 30,53,56,134. In other investments Rs. 24,90,82,151. The total investment was Rs. 91 crores odd. Out of Rs. 91 crores, about Rs. 35 crores were in immoveable properties; about Rs. 30 crores in public securities, and about Rs. 24 crores in other investments.

MR. CHAIRMAN: Other investment means...

SHRI C. C. SHAH: It may be shares, debentures, deposits with banks and so on.

SHRI H. M. PATEL: Then, should you not modify your original reply when you said that the bulk of the investments was in securities and cash? In the light of that, you should modify or revise your previous statement.

SHRI C. C. SHAH: It will depend upon the trusts. It is not that the bulk is in cash.

SHRI ERA SEZHIYAN: Which year was it?

SHRI C. C. SHAH: After 1953, the Charity Commissioner has not carried out any survey.

SHRI JYOTIRMOY BOSU: That means two-thirds of the corpus of the trusts in question are in liquid or negotiable assets.

SHRI C. C. SHAH: Yes; in 1953.

MR. CHAIRMAN: Please come to the next point.

SHRI C. C. SHAH: The The next point is the amendment of section 13 by the addition of sub-clause (bb) in sub-section (1). We only seek a clarification. Sometime there are charity shows out of which we get a fairly good income. That show is not connected or is not in the course of carrying out of the purpose, the primary purpose, of the trust. The primary purpose, of the trusts may be education, medical relief, removal of poverty, etc. But, (that is done in order to raise income for the trust. Will it be treated as activity for profit?

MR. CHAIRMAN: Will you be satisfied if we substitute the word 'activity' by the word 'business'?

SHRI CHIMANLAL C. SHAH: May I request that an explanation may be added?

MR. CHAIRMAN: We do not want to take the law more onerous than what it is. Instead of the word 'activity', if we say 'which carries on any business for profit', will you be satisfied?

SHRI CHIMANLAL C. SHAH: Yes. I think that will serve the purpose. I am going to the next point.

MR. CHAIRMAN: Mr. Shah, I also find that business is also inclusive of casual adventure, as defined elsewhere. Kindly see the implications. By solving one difficulty, let us not create another difficult.

SHRI VASANT SATHE: They are not interested in casual adventures.

SHRI JYOTIRMOY BOSU: Let us hope so.

MR. CHAIRMAN: We will take care of this. It is purely a question of drafting. It is not the intention of the Government. Let me tell you that it is not the intention of the Government to bring in this sort of provision and things like that. This should be made clear. It is purely a question of drafting. We will see to it. Apart from this, if there is anything else, you may mention. But, do you have any objection to the basic idea?

SHRI CHIMANLAL C. SHAH: No. But, the only thing is that, an explanation may be inserted that any activity undertaken to raise funds or in connection with the objects of the trust may not be treated as activity for profit. . .

MR. CHAIRMAN: We will see how best it can be done.

SHRI JYOTIRMOY BOSU: I read out from the Taxation Enquiry Committee observations about concealed income masquerading as donations. . .

SHRI CHIMANLAL C. SHAH: About sub-clause (d), which is being added in Section 13 we are at one, if it is a question of black money being spent. But, we are trying to point out certain practical difficulties. The practical difficulties are three-fold. Firstly,

we have box collections in the charitable institutions and particularly in the temples. In the Jain temples, with which I am concerned, we have *Bhandars*, just as we have *Bhandars* in the case of Hindu temples. It is impossible to identify the donor and there are sometimes fairly large collections, during religious holidays and particularly sacred days. Sometimes, people like to put more money into such boxes.

MR. CHAIRMAN: Are they for religious or charitable purposes? Or, are they mixed?

SHRI CHIMANLAL C. SHAH: Though it is a temple trust, it has both objects, religious as well as charitable. But, it is always there. I am going to explain later. But, I cannot say it is exclusively religious. That is one thing. The second difficulty which I may respectfully point out is this. Donations are received at the Office of the trust. The trustee does not personally know about the donor. A person may give 100, 1000 or 5000 rupees. He gives his name and address. A receipt is issued to him. Now, the trustee may not be able to identify the donor who has made the contribution.

MR. CHAIRMAN: Then, pay 65 per cent.

SHRI JYOTIRMOY BOSU: If you have confidence in the Government, of course.

SHRI CHIMANLAL C. SHAH: He gives his name and address. The Manager in-charge or the Cashier, issues a receipt to him, notes down his name and address. Then, when it comes to the assessment of the income of the trust, after three years or four years, if the Income Tax Officers ask as to who has paid the money, then, the trustee may not be in a position to say anything about the identity of the donor.

SHRI R. V. SWAMINATHAN: You can find out the particulars from the receipt which you have issued. You have said that the person comes and

he gives his name and address and you have also said that the Manager issues a receipt. After three years, if the Income Tax Officer asks the question, we can find out the particulars if he has given the address.

SHRI CHIMANLAL C. SHAH: No. It has been provided in the Bill that the identity of the person has to be established to the satisfaction of the Income Tax Officer. The address and name and other things are given. But, the question is of . . .

MR. CHAIRMAN: Supposing, A comes and gives Rs. 500. According to you, there may be a number of people like that. A instead of giving his name, gives the name of B or C or somebody else, and if this is done, the position in law is that, you have to pay 65 per cent tax, if you are not able to establish the identity of the person. Is there any difficulty in this? There is another point also. He might have given a wrong name. This sort of practice would be resorted to only by the persons who have the black money. Why should a person having name 'A' give the name of B?

SHRI CHIMANLAL C. SHAH: No wrong name. I did not say that he gives a wrong name. I said that he gives his name and address. But, after three years, we do not know where he is.

MR. CHAIRMAN: You should know the persons. When a person is a genuine contributor, after 3 years when it comes to assessment, you should be able to ascertain as to the whereabouts of the person, and he should be traceable.

SHRI CHIMANLAL C. SHAH: Both things are possible. He might have even given a wrong name. He might have given a correct name and yet, he may not be traceable.

MR. CHAIRMAN: He should be having the permanent Account No.

SHRI ERA SEZHIYAN: We are allotting permanent Account Nos. to all the persons: When he gives his

donation, he should be able to quote his Permanent Account No.

MR. CHAIRMAN: If this is the difficulty which you are apprehending, will it be alright, if we say that the donors should give the permanent account Nos. We do not want that the trusts should be put into difficulties. Will it be alright, as far as you are concerned?

SHRI CHIMANLAL C. SHAH: If he has no number allotted to him?

MR. CHAIRMAN: You can ask him to go the Income Tax Officer and get a certificate. He will not give the donation under such circumstances. Where he feels, that he will be putting himself into certain difficulties, by making the donation, he will not make the donation. It is that sort of money we are really after. It is this sort of mal practice—and it is sacred object of this Bill—which we want to prohibit and stop. We would be true to our soil only if we get at the root of this problem. It is in this that we are really interested. There is another thing. In order to overcome this sort of difficulty, would it really take care of the difficult situation, pointed out by the Father, where we have box collections and other things, where the identity of the person cannot be established, if we have a sort of division or bifurcation of the whole contributions into two, box collections and other things, where you are not likely to establish the identity of the person, we say that prior sanction is necessary. Where take care of the difficult situation, then, preventive action is necessary. Will it take care of the situation? I am putting this question to you, as well as to Father.

SHRI CHIMANLAL C. SHAH: Prior sanction in what manner?

MR. CHAIRMAN: Putting in a form to the Income Tax Officer, that you are running such and such a trust or institutions, and you are likely to get donations or contributions in a manner where you are not likely to establish

the identity of the persons concerned. In which case, our income-tax inspectors can possibly come and examine it. How would such a scheme work?

SHRI MONSIGNOR A. CORDOIRO: It has the air of feasibility. Whether it would be practicable in the case of every trust, remains to be seen, because it would first involve our obtaining the ITO's sanction to have such box collections.

MR. CHAIRMAN: He may or may not give it; but you would have discharged your obligation. Supposing you put, by way of box collection, Rs. 15,000/-, how are we going to know that these are, or are not, box collections? Otherwise, you might masquerade the donations of certain individuals as box collections. Have you any thing to suggest by which we can really ensure that we do not cause hardship to genuine cases; but, at the same time, prevent mischief?

SHRI MONSIGNOR A. CORDOIRO: It is rather difficult to talk of a formula which would not harass genuine people and at the same time, get money from others.

MR. CHAIRMAN: You can think about it and write to us.

SHRI S. R. DAMANI: We have discussed quite a lot about the donations from undisclosed and undesirable persons. I would like to know from Mr. Shah, Mr. Khambatta and the Father, as to how much, according to their own experience, is being made in such a way; or, in other words, are big amounts being donated, or small amounts? What is the percentage of such donations now; what is the estimated quantum, according to you; and secondly, for what purposes have such undisclosed amounts been paid. Some people give you about Rs. 50,000/-, sometimes to help people in distress, or towards cattle foods sometimes for flood-relief and such humanitarian causes. Or, is it a general practice to augment the corpus of the trust, not

in accordance with the existing Act? According to the Act, the corpus of the trust cannot be increased. I would like to know the approximate amount of such donations; and also as to what are the general purposes for which such disclosed amounts have been donated.

MR. CHAIRMAN: Have you any idea of the amounts which come anonymously to you; and for what special purposes?

SHRI C. C. SHAH: I can speak only about my experience. My experience is that, on an average, it may be 10 to 15 per cent of the total collections in which there is difficulty in establishing identity. For example, if my income is Rs. 2 lakhs i. e., coming to my trust, may be Rs. 30,000 or Rs. 40,000/- are through box collections or in this manner.

SHRI C. M. STEPHEN: It is inclusive of box collection.

SHRI C. C. SHAH: People like to put in some money as donations whenever they come to temples, other religious places or hospitals. Even a patient makes some donation when he goes out of the hospital.

MR. CHAIRMAN: You can seek exemption under some other section also, in regard to hospitals. Anyway, if it is the income of the hospital and if it falls under section 10 (22A) of the Income-Tax Act, that would be exempt, even as it is.

SHRI C. C. SHAH: If the trust is meant only for medical relief, then only Section 10 (22A) will apply; and not if it is a mixed trust, serving manifold causes.

MR. CHAIRMAN: If it is the income of a hospital or other institutions, as mentioned here, "for the reception and treatment of persons suffering from illness or mental defectiveness, or for the reception and treatment of persons during or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit;". There are two

points. If you pay something into the income and expenditure account of the hospital existing solely for philanthropic purposes and not profit, I do not think it would be hit.

SHRI C. C. SHAH: I appreciate that.

SHRI S. R. DAMANI: There are trusts which run hospitals, high schools and all that.

MR. CHAIRMAN: I would request Mr. Shah to answer upon the assumption that if any income went into the income of a hospital and it is satisfying the other conditions, it would be exempt.

SHRI VASANT SATHE: And the further assumption that if the money put into the hospitals is not utilized and is not included in the accounts of the hospitals; but is utilized by the trust for other purposes.

MR. CHAIRMAN: Then it ceases to be a hospital income.

SHRI VASANT SATHE: In that case, obviously, it would be covered.

SHRI C. C. SHAH: If it is covered by Sections 10(22) and 10(22A), it will be exempt; but there are mixed trusts which may not be covered. The second part of the question of Mr. Damani was to enquire as to what are the objects for which they are given. They are given for all kinds of purposes. In the temple, it is given principally for religious purposes; but it is known to them also that the income may be used for charitable purposes. You rightly said that in the case of drought and flood reliefs, people do give even fairly large amounts.

MR. CHAIRMAN: By cash or by cheque?

SHRI C. C. SHAH: If it is by cash, the same question arises. In the case of cheques, nothing arises. My only submission is that after all, there are many ways of eradicating evil of black

money apart from those which are charities. After all it is being put to good use, when given to charities.

MR. CHAIRMAN: That is a view point.

SHRI C. C. SHAH: A view point which you might take into consideration. After all, black money circulates not because of charities; it is generated elsewhere, it is only used here, used by people who are not consumers of luxury or anything.

SHRI JYOTIRMOY BOSU: You have lost sight of one thing. There are recognised institutions or public bodies doing familiar work, sending volunteers to refuge inhabited areas and so on. There are institutions like the Indian Red Cross, the St. John Ambulance, Ramakrishna Mission and Bharat Seva Sangh. If you ask a contribution to them, you get tax exemption. So why there should be this insistence?

SHRI C. C. SHAH: I am not talking of communal charities at all.

SHRI JYOTIRMOY BOSU: I have quoted the observations which are based on a sound and detailed study, that in 50-90 per cent cases, they have been grossly misused. There are enough number of institutions to which contributions can be made and which are eligible for tax exemption. So I really do not understand why there should be so much insistence.

SHRI C. C. SHAH: I think we are at cross purposes. I am not talking of donations to communal trusts; I am on donations to non-communal trusts.

MR. CHAIRMAN: The point is that this laudable purpose can be achieved via institutions, donations to which cause no problem.

SHRI C. C. SHAH: I am not talking of donations to institutions.

MR. CHAIRMAN: Why leave anything left in the realm of uncertainty which will cause doubt? That is the

crux of the question.

SHRI ERA SEZHIAN: In paragraph 3 of your memorandum, you say:

"We however would like to point out that it is not correct to treat voluntary contributions as the income of the trusts".

You think it is not an income. It may vary from year to year—that is a different point. But why do you want to exclude that?

SHRI C. C. SHAH: What we are discussing at present is sub-clause (d)—anonymous donations. Voluntary contributions being treated as income of a trust is a separate issue to which I am coming presently.

As regards (d), I have nothing more to say. On (e), I would like to make only two distinctions. Where a man has made a trust and invested the great part of the trust fund in his own business or in his own company certainly say it should not be done but where a trust has invested its funds in shares of good, sound companies or in debentures like TISCO, TELCO, Bombay Dyeing and so on which yield a little more income than government securities, even that is being sought to be prohibited. The trust is not there to utilise funds for its own business; it is there only to get a little more income than is available from public securities. This distinction may be borne in mind.

MR. CHAIRMAN: Yes. You want Government to prescribe securities in which you could have it invested.

SHRI C. C. SHAH: It may. I will tell you what the position in the States of Maharashtra and Gujarat is. If we want to invest in the shares or debentures of any company, we have to take the permission of the Charity Commission and satisfy him that it is a sound investment. Then it is permitted. But according to this clause, it is totally banned; it deprives the trusts of a good source of income.

MR. CHAIRMAN: What banned; it deprives you of the exemption.

SHRI C. C. SHAH: No, no—see sub-clause (c).

MR. CHAIRMAN: You may invest, but you will lose exemption.

SHRI C. C. SHAH: No, no; you cannot invest at all.

MR. CHAIRMAN: If you invest, what will happen?

SHRI C. C. SHAH: It is a breach of the provision of law. Therefore, we expose ourselves to the penal provisions of law. It may even be imprisonment.

MR. CHAIRMAN: It is not banned; you will only lose exemption. You do not accept this proposition? There is no question of jail or penalty. You just have to pay the tax; that is all.

SHRI C. C. SHAH: We are not talking of communal trusts at all. This applies to all trusts.

MR. CHAIRMAN: You said there is a ban. How?

DR. R. C. COOPER: The ban comes under the Bombay Public Trusts Act. It is a complete ban.

MR. CHAIRMAN: I think you were discussing (e). So far as (e) is concerned, if you violate it, all that will happen is that the rider of 13 will come into play no more no less.

DR. R. C. COOPER: Instead of this why cannot the law make a distinction and provide certain safeguards? For instance, where it is categorically established to the satisfaction of Government that there is no question of exercising control, why cannot this particular provision be broken into two parts, and say that in a case in which it is conclusively established that there is no question of voting or control, the exemption should still continue? For instance, there is another provision in the Com-

panies Act whereby you can give voting right to the Public Trustee of India. This can be invoked. Where it is successfully established that there is no control, why should charities be deprived of this? Therefore, you may consider breaking this into two parts.

MR. CHAIRMAN: Why not Government prescribe the investments into which the funds of the trusts can go without inviting the rider of s. 13?

DR. R. C. COOPER: With due respect in respect of trustees of one charitable trust, preference of TISCO or TELCO might involve exercising a right of control whereas in respect of another set of trustees who have no connection with these companies at all, there may be no control involved. So do not think it will be possible to distinguish with regard to shares or securities; it will have to be with regard to the opportunity of control.

MR. CHAIRMAN: What is the harm in accepting that the prescribed investment should be the only avenue?

DR. R. C. COOPER: What will be the prescribed investment?

MR. CHAIRMAN: It can be those which are recognised by the insurance law or some such thing. What will have to be prescribed will have to be worked out in detail, but this provision is to ensure that the trusts are not bogged into making investments which are not related to the objectives. Then it should be taken care of by the Government to find out which are the accepted investments, allowing 13(2)(h) to remain.

DR. R. C. COOPER: We would have no objection to that, but under the Insurance Act, certain types of debentures and preference shares are permissible. The difficulty will be that those preference shares, if there were voting rights, in spite of your prescribing them under the Insurance Act, will lead to complications. We would have no objection to any such

thing being prescribed so long as innocent trusts are not made to suffer.

SHRI S. R. DAMANI: We are on the contention of allowing an investment in preference shares, to make a little money so that the trusts' income can be increased.

DR. R. C. COOPER: Subject to the other safeguards.

SHRI S. R. DAMANI: Yes; what I want to know is this. Is income more important, or is safety more important than income? Which is more important? Income or the safety?

DR. R. C. COOPER: Both are equally important. Here in Maharashtra, under the 'Bombay Public Trusts Act, the safety factor is being independently taken care of by having to take the Charity Commissioner's permission. If you want to invest anything in other than Government securities, I may suggest that where first-class mortgage or debentures are involved, there is no question of lack of safety. At the same time, it is possible to get the income. I am not suggesting that income is more important than safety. But we are speaking of certain safeguards regarding safety. Where it is possible to get the Charity Commissioner's permission, why should it not be done?

SHRI S. R. DAMANI: For providing housing amenities to needy people, there also, you can get eight to 10 per cent. After all, there is a risk involved in respect of shares or preference shares. Why should you insist in such kinds of investments where risk is involved?

DR. R. C. COOPER: Sometimes it is impracticable. We are thinking of Rs. 5,000 to Rs. 10,000. You cannot construct a house within that amount. In today's conditions, and context, even housing is subject to the same risk, and with the various enactments on ceiling and so on, perhaps this factor of risk in housing is much more than in the case of securities.

SHRI VASANT SATHE: In Calcutta,

we were taking evidence. We have come across the possibility of gross investments. One trust most innocently, *prima facie*, invests in some other company in which some other people have interests, and they invest in that company. And by mutual arrangement, this is done. How could one avoid it?

SHRI C. C. SHAH: If you take away the voting rights on those shares, it serves your purpose.

SHRI VASANT SATHE: If you take away the voting rights, there should be no difficulty.

MR. CHAIRMAN: Kindly see the provisions. It is not merely the question of avoiding or evading the provisions of section 13 (2) (h). There is also the necessity of ensuring that the fund of the trust is not made available to those who are not connected with the trust. It is quite easy to circumvent it and make the fund available. But what has been agitating the mind of the Committee is this. It is the malpractices which are prevalent. Assuming that it was contemplated and provided in the law that so far as the funds are concerned they could only be spent in a particular manner prescribed by the Government, what would be your reaction?

DR. R. C. COOPER: There is a parallel provision somewhat on the lines of the inter-corporate investments in the Companies Act. You can put certain limits; subject to certain safeguards we want that genuine charities should not be made to suffer because of a blanket provision.

MR. CHAIRMAN: I mean a blanket on the funds, the funds which either go into the object of the charities or go in accordance with the avenues prescribed by the Government. If that is done, we are inclined to consider that that would take care of the major source of malpractices which are erupting from time to time. If that is done, may be the other things may not be there. How would you react

to this suggestion? I am talking of a blanket ban.

DR. R. C. COOPER: Do I understand that it refers to loans being made or to the purchase of shares and securities?

MR. CHAIRMAN: I refer to anything like that. Assuming you have the fund which is used for charity such as hospital or school or any other relief to the poor. If you do not do that, then, it should be invested in the manner as prescribed by the Government.

DR. R. C. COOPER: Also in shares and securities, because we are interested in investments which will give a decent income.

MR. CHAIRMAN: Ultimately, suppose the Committee decide that no larger investments should be made.

DR. R. C. COOPER: A distinction must be made between genuine investments and investments either to channelise or control the funds.

MR. CHAIRMAN: It is a distinction without a difference.

SHRI ERA SEZHIYAN: A study made by the Department or Company Affairs, as published in the *Company News and Notes*, Annual Number, 1970, shows that they have investigated about 75 companies of which two or three companies are in Bombay and a large number of them are governed by the Maharashtra Trusts Act. For example, Binami has an investment in shares of companies in the same group to the extent of 79 per cent, and a trust is controlled by the Binanis. They have been investing in the shares of Binanis which are a business group. There may be provisions in the Bombay or Maharashtra Trusts Act, but they have not been enough to control or prevent this mischief.

DR. R. C. COOPER: All these things are already taken care of by the subsequent amendments which have taken place in the income-tax law during

the last three years. Various provisions have been made in respect of the investment in sector 13(2)(h).

We make a distinction between a trust where there is no question of channelising the fund or controlling it and a trust in which the trustees have made a genuine investment in stock exchange, securities, etc., having regard to the safety, as for instance, first preference shares or second preference shares and mortgage debentures. In case of companies, with which the settlor is having no connection whatsoever, take away the voting rights.

SHRI VASANT SATHE: Voting right is not enough. Investment is the major advantage. You may take away the voting right. But,...

DR. R. C. COOPER: You can even provide that not more than a certain percentage of the total...

MR. CHAIRMAN: You are speaking about both the safety factor as well as the income factor being looked after. Would you clarify one thing? Is there any distinction between the investment in so far as the corpus is concerned or does it relate to investment of income only?

DR. R. C. COOPER: This includes corpus also. Very often, there are debentures, which these Settlers had originally put into a trust. These debentures become due for redemption. Then, but for the Charity Commissioner's permission, you can only invest in some Government securities. But, you can go to the Charity Commissioner and with his permission, you can invest in debentures and preference shares.

MR. CHAIRMAN: So far as the initial donation is concerned there is no restriction. There is no restriction in the scheme of things. Suppose, a person makes a donation of his 100 per cent equity holding to a trust and nominates 4 others as trustees, how would you distinguish such a case?

How such a case be taken care of either by the existing law or by the amendment proposed?

DR. R. C. COOPER: In the case of small trusts again, the difficulty would arise, but for this provision, actually where the investment is sold. There may be cases, where the investment which you considered safe 5 years earlier, may no longer be safe because of the change....

MR. CHAIRMAN: You are talking of change in investment—either cash converted into debentures or debentures converted into cash. I am talking about the initial donation.

DR. R. C. COOPER: Today, I am donating to a trust, there is no restriction of any kind of security being put in the....

MR. CHAIRMAN: That being the case and that particular donor, puts 4 of his nominees as trustees, how such a case would be taken care of under the existing law? This is my first question? Secondly, how would such a case be taken care of unless we enact a law in the form in which it is suggested now?

DR. R. C. COOPER: I am not objecting to the amendment of the law. But, I am objecting to this in this particular form. For instance, I am a trustee of a trust. One Settlor is added to it. He had given all very good first class industrial securities. Now, on account of various factors, occasions arise for our having to change this investment and put in other first class industrial securities, then, even though we may have no connection whatsoever with the management of any industrial concern, we will be made to suffer if the provision is enacted in the present form.

MR. CHAIRMAN: You have not answered my question. You are presenting another difficulty. The question which I raised relates to a malpractice. I have asked this question,

because, it is very important for us. What we recommend, will depend upon the view that the Committee takes. Supposing a person makes a 100 per cent donation of his equity holding, and nominates 4 or 5 persons to a charitable trust, such a case would not be hit under the existing law. What would be your suggestion? The exemption would be given. We want to prevent such a thing happening. How would such a thing be prevented, unless, the law is amended, as it is sought to be done in the amending Bill.

DR. R. C. COOPER: I fully agree with you that the law in the form, which you are contemplating, should be enacted. But, we should also take care of such cases, which I am referring. Certain safeguards or exemptions should be provided under the law, to prevent its application to the type of cases which I am referring.

MR. CHAIRMAN: Can you suggest some way of drafting?

DR. R. C. COOPER: I have suggested some changes.

MR. CHAIRMAN: You can write to us.

DR. R. C. COOPER: I have written a separate letter to the Select Committee and I have sent sufficient number of copies to be distributed amongst Members. I have made some important suggestions on this point and it is on record.

MR. CHAIRMAN: We do not take cognisance of such a letter.

DR. R. C. COOPER: It was a representation.

MR. CHAIRMAN: We will look into that. Have you, in that, suggested as to how to exclude the type of cases that you have in mind and to include the type of cases, which I have referred to?

DR. R. C. COOPER: I have also given suggestions with regard to anonymous donations.

MR. CHAIRMAN: Have you got a copy of it with you now?

DR. R. C. COOPER: I have not got it.

SHRI VASANT SATHE: It might have been wrongly addressed.

DR. R. C. COOPER: It was not wrongly addressed. There cannot be any question of mistake in addressing that representation.

SHRI CHIMANLAL C. SHAH: There are certain other points on which I would like to touch briefly. The hon. Member raised the point about voluntary contributions. The reason why we have suggested is this. Until the Finance Act of 1972, under original Section 12 of the Act, as it then existed, voluntary contributions were not treated as income. If I may respectfully point out, this was the position under original Section 12. It is only by the Finance Act of 1972, that voluntary contributions were included in the category of income. The idea is this. Income is a regular flow of money, like interest dividend etc. Voluntary contributions was, in fact, not included under income. But, Section 12, makes it income now. The third point, which I would like to submit is this. The present Bill has rightly appreciated this point. Under Section 11, as it stands at present, the trustees have to send 100 per cent of their income within 15 months. Now, voluntary contributions have been made income. They have put it at 75 per cent. My respectful submission is this. So far as the voluntary contributions are concerned, they do not come regularly. I can tell you from my own experience that once in three or four years, we make, what we call, a collection drive, in order to meet the deficit of the next, say 5 years. Now, if the voluntary contributions are to be treated as income of the year, and if we are compelled to spend 75 per cent of the voluntary contributions, during that year only, it will cause a great hardship to the trusts. My submission is this. Instead of 75 per cent, you can make it 50 per cent. You can leave it to the trustees. They

may spend more. Compulsorily, it should not be more than 50 per cent, particularly in view of the amendment to Section 12. Or, otherwise, all voluntary contributions need not be treated as income, as we have in the original section.

MR. CHAIRMAN: If it is of corpus, it will be treated as income.

SHRI CHIMANLAL C. SHAH: There is a point. There can be a specific direction that this shall be treated as part of the corpus. But, how many such specific directions can you obtain for voluntary contributions? Many of the trusts, which I run, they are all in deficit. We spend more. Then, we collect money. If, after 5 years, we make a collection drive and we collect, let us say, 3 lakhs or 5 lakhs of rupees, if all that has to be treated as income, and we are compelled to spend the same during the year, it will create hardship.

MR. CHAIRMAN: Voluntary contributions have, by a fiction of law, to be treated as income. But, we can say not more than 50 per cent should be...

SHRI CHIMANLAL C. SHAH: Yes. If voluntary contributions are not treated as income, then, we have no objection. If the original section stands, there is no objection.

MR. CHAIRMAN: If you carry on your argument a little further, to the extent you have income other than voluntary incomes, then, if we say that so far as incomes other than contributions are concerned, 100 per cent should be spent, what would be your view?

SHRI C. C. SHAH: We agree. After all, the object is that income should not be wrongly accumulated by the trustees.

MR. CHAIRMAN: That is why it should be a little less or a little more; but then, do you think that 50 per cent

should be spent, taking the aggregate of the two?

SHRI C. C. SHAH: You have put it as two years, including the previous year. That can stand.

MR. CHAIRMAN: I can only make it 50 per cent.

DR. R. C. COOPER: In the existing law also, there is a provision which entitles one to make an application to the income-tax officer. One additional point has to be added in that particular provision, for meeting the deficits of the subsequent year. As long as the trustees give an undertaking to the income-tax officer that they will invest in approved securities to be used over a period of 5 or 6 years, there is no problem.

SHRI ERA SEZHIYAN: As per Section 11(2) of the Income-Tax Act, the trustees can carry on.

DR. R. C. COOPER: For specific purposes also. One purpose is that the trust has run chronically into difficulties. For that purpose, he is making a drive.

SHRI C. C. SHAH: There are two alternatives, one of which is to make it 50 per cent.

SHRI VASANT SATHE: It is a point which could be considered whether 50 per cent is to be allowed and the rest to be spread over.

MR. CHAIRMAN: Next point please.

SHRI C. C. SHAH: We feel the difficulty in the matter of the mixed trusts, whose objects are both religious and charitable. At present, a purely religious trust is exempt from all the provisions of Sections 12 and 13. If it has a charitable objective also, then it is hit. My submission is that when it is a mixed trust, the benefit of Section 11 should accrue to it.

MR. CHAIRMAN: It means that it will be 1 per cent religious and 99 per cent charitable trusts.

SHRI C. C. SHAH: We put a very narrow definition on religion. Service

to humanity or poor people is not considered religious. That is the whole concept behind it. The idea probably is that religion should be encouraged; but charity is hit.

MR. CHAIRMAN: If you mean to say that the religious trust is encouraged. I think it is too wrong.

SHRI C. C. SHAH: I think some consideration should be given to this suggestion.

MR. CHAIRMAN: Any other suggestions? Now, gentlemen, all of you have given us valuable information in reply to our questions and we are thankful to you.

SHRI C. C. SHAH: That is all, Sir. We are very much obliged to you for the opportunity given to us.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973.**

Tuesday, the 9th October, 1973 from 09.00 to 13.10 hours in the Committee Room,
Sachivalaya, Bombay.

PRESENT

Shri N. K. P. Salve—Chairman

MEMBERS

2. **Shri Syed Ahmed Aga**
3. **Shri Virendra Agarwala**
4. **Shri Chhatrapati Ambesh**
5. **Shri Bhagwat Jha Azad**
6. **Shri Jyotirmoy Bosu**
7. **Shri Tridib Chaudhuri**
8. **Shri K. R. Ganesh**
9. **Shri Mani Ram Godara**
10. **Shri Maharaj Singh**
11. **Shri P. G. Mevalankar**
12. **Shri H. M. Patel**
13. **Shri S. B. P. Pattabhi Rama Rao**
14. **Shri R. Balakrishna Pillai**
15. **Shri Vasant Sathe**
16. **Shri Era Sezhiyan**
17. **Shri Satyendra Narayan Sinha**
18. **Shri R. V. Swaminathan**
19. **Shri V. Tulsiram**

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. **Shri R. D. Shah, Chairman, CBDT.**
2. **Shri S. Narayan, Joint Secretary.**
3. **Shri R. R. Khosla, Director.**
4. **Shri S. C. Grover, Under Secretary.**

SECRETARIAT

Shri K. S. Bhalla—Under Secretary.

WITNESSES EXAMINED

I. *Indian Merchants Chamber, Bombay* -
Spokesmen:

1. Shri Ganesh Podar, Vice-President.
2. Shri Charandas V. Mariwala
3. Shri V. B. Haribhakti
4. Shri C. C. Chokshi
5. Shri J. P. Thacker
6. Shri C. L. Gheevala, Secretary.
7. Shri M. K. Desai, Deputy Secretary.
8. Shri D. S. Pendurkar, Deputy Secretary.
9. Shri N. Y. Gaitonde

II. *All India Film Producers Council, Bombay*

Spokesmen:

1. Shri G. P. Sippy, Vice-President.
2. Shri Shree Ram Bohra, Vice-President.
3. Shri Subodh Mukerji
4. Shri B. R. Chopra
5. Shri S. D. Narang
6. Shri Narayan Varma, Chartered Accountant.

III. *Bombay Study Circle on Corporate Law and Allied Subjects, Bombay.*

Spokesmen:

1. Shri C. C. Chokshi, Chairman.
2. Shri R. P. Kedia, Convenor-cum-Hon. Secy
3. Shri J. E. Dastur, Member.
4. Shri C. C. Dalal, Member.
5. Shri R. K. Joshi, Joint Secretary.

I. Indian Merchants Chamber, Bombay

Spokesmen:

1. Shri Ganesh Podar, Vice-President.
2. Shri Charandas V. Mariwala
3. Shri V. B. Haribhakti
4. Shri C. C. Chokshi
5. Shri J. P. Thacker
6. Shri C. L. Gheevala, Secretary.
7. Shri M. K. Desai, Deputy Secretary.
8. Shri D. S. Pendurkar, Deputy Secretary.
9. Shri N. Y. Gaitonde

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we take your evidence, I may draw your attention to direction 58 of the Directions by the Speaker, which provides that witnesses must be informed that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I may point out that the Committee proposes to give you one and a half hours.

SHRI GANESH PODAR: We shall try to complete it within an hour and a half. We may require if at all, a maximum of 10 to 15 minutes more which will be a with your permission.

MR. CHAIRMAN: I request you to adhere to the schedule.

SHRI GANESH PODAR: Yes. Mr. Chairman and Members of the Select Committee of Parliament, I thank you very much on behalf of the Committee of the Indian Merchants Chamber, Bombay, on behalf of my colleagues and on my own behalf for having accorded to us this opportunity to appear before you and personally to convey to you our views and suggestions on the provisions of the Taxation Laws (Amendment) Bill, 1973.

The Committee of the Chamber have already submitted a detailed memorandum on the various provisions of the Bill and have sought to present their point of view I do not propose to go into the details of the various provisions but I would like to make a brief reference to the basic issues which in our opinion deserve your careful consideration.

The main objectives of this Bill are to unearth black money, prevent its proliferation and avoid income-tax evasion. My Committee fully appreciates the objectives underlying the provisions of this Bill and feels that there cannot be any difference of opinion as regards the question of taking remedial measures as may appear to be appropriate. They have often in the past stressed the imperative need and importance of tackling the evils of black money and tax evasion and urgency for minimising their scope and dimensions. The existence of these problems has released forces of widespread indiscipline in the economy, leading to serious imbalances and price distortions. Any effort to deal with the problems of black money and tax evasion should be conceived in a broad perspective and a positive approach should be made to find out the basic factors which tend to encourage their growth and proliferation and then decide to implement measures in creating a climate which will natural-

ly lead to their elimination. The Committee of the Chamber have carefully considered the various provisions of the Bill in this background, but regret to note that the problems are sought to be solved by the Government through a negative approach by placing undue emphasis on curbs and restrictions rather than endeavouring to adopt bold approach with a view to tackling the basic problems involved.

Wanchoo Committee rightly highlighted that a major factor contributing to the creation of black money and its proliferation is the built-in shortages in the economy. Any meaningful effort for tackling the problem of black money must necessarily involve the augmentation of production and the maintenance of price levels. It is increased production in agriculture as well as in industry that would work in the direction of improving the economy and help to remove the evil of black money. Unfortunately, rather than laying stress on more production, greater reliance is being placed for meeting the shortages accentuated mainly by the system of permits and quotas and licences and attendant practices of maldistribution through controls, regulations and restrictions. Such a policy coupled with the fiscal policies including the policy of deficit financing have given rise to serious unbridled inflationary pressures. Inevitably, such a situation has led to distortion of price structure providing a congenial climate for the tax evasion and proliferation of black money. My Committee feel, therefore, that there exists an imperative need to subject to a careful scrutiny the fiscal policy as also the industrial policy to bring about suitable modifications therein with a view to securing the twin objectives of increased production and price stability which would ensure the elimination of these evils.

Wanchoo Committee has also examined the different causes which lead to tax evasion. It is indeed a cumula-

tive result of a set of inter-related complex factors. Even as early as 1957, analysing the phenomenon, Shri T. T. Krishnamachari, the then Finance Minister of India, observed:

"I have come to the conclusion that our existing rates of direct tax at top levels deprive the tax structure of all flexibility. It is said that they tend to diminish the incentive for work but I am aware that they encourage large-scale evasion. It is now recognised that the very high rates of direct taxation in the top income brackets in many countries of the world in practice are tolerated or tolerable only because of considerable evasion that takes place. In other words, the high rates tend to be applied to a corroded tax base."

According to the Wanchoo Committee, prevalence of high rates is the first and the foremost reason for tax evasion, because this is what makes the evasion so profitable and attractive in spite of the attendant risks. Such rates create a psychological barrier to greater effort and undermine the capacity and the will to save and invest." At the existing level of taxation, a person having an income of Rs. 1 lakh is left with Rs. 40,200 without taking into account the additional incidence of wealth-tax. Having realised this impact they recommended that the maximum marginal rate of income-tax be reduced from 77.75 per cent to 75 per cent and some reduction in tax rates should also be given at the middle and lower levels. Instead of acting upon this basic recommendation, the Government has chosen to implement such of the recommendations of the Committee which enjoin levy of higher penalty and give extremely wide powers to the tax authorities. Even most reasonable recommendations of the Wanchoo Committee, such as taxation of domestic companies at a uniform rate of 35 per cent and abolition of surtax on companies have been totally ignored. Further, the recommendation relating

to the deletion of section 104 has not been accepted even though section 104 Companies are not in a position to plough back their profits because of relative high rate of taxation and the provision for compulsory distribution of dividends. My Committee cannot but feel that the provisions of the Bill reflect a purely negative approach and are likely to prove to be self-defeating.

My Committee would like to make a pertinent observation that the Government have in the past appointed a number of Committees and Commissions to go into the question of unaccounted money and tax evasion right from Prof. Kaldor to Wanchoo Committee and have only taken recourse to implementing the various recommendations that were of a revenue generating character and have totally disregarded the approach and the spirit of the other recommendations of these Committees.

It is a matter of deep regret that the Government should have thought in terms of introducing drastic provisions affecting the charitable trusts which in the opinion of my Committee, would radically affect the accepted and the age-old practice of social services being carried out by citizens of this country. It is well recognised on all sides that by tradition private philanthropy had been playing a prominent role in catering to the educational, medical, socio-economic and religious needs of the country. In so doing, it has supplemented the work of a welfare state. In this background, the position of the charitable trusts in any society and the contribution which they are able to make to the social welfare of the country has to be viewed. It should, therefore, be the endeavour of the state to help in all possible manner such efforts rather than inhibit them. Government's presumption may be that the state can find all the resources to render social services to the poor and the needy, but my Committee feel that the country has not attained a stage when it could

be possible for the Government to furnish such services to the vulnerable section of the community without their being supplemented by the charitable trusts. It is, therefore, unfortunate that some of the provisions of the Bill designed to curb malpractices that may be practised by a few, tend to restrict even *bona fide* activities of a large number of genuine charities. Government, may be in their anxiety to further the concept of secularism, are seeking the withdrawal of exemption in respect of charitable trusts instituted before 1st April, 1962. Secularism means equal respect and tolerance for all faiths and religions. It should not therefore, result in the obliteration of assistance by way of charity given to members of the public professing a particular religion or belonging to a particular caste or community.

Naturally, a question arises to whether it would be proper to foster the working charitable trusts through legislative action when nearly 40 per cent of the population is below the poverty line. As it is, the problem is immense and my Committee are of the firm view that the state alone cannot look after the welfare activities of the community for a long time to come and it is, therefore, but necessary that every effort to supplement it needs encouragement. In this background, these provisions should be reviewed.

Further, my Committee view with concern the provisions relating to searches, seizures, penalties and prosecutions because they are too drastic in relation to offence committed and are of a draconian character. Past experience presents enough testimony to the position that such measures do not deter the confirmed tax evaders who can circumvent them with ease. On the contrary, such measures create difficulties and hardship as also prove a possible source of harassment to the honest tax-payers. Jurisprudence requires that no innocent person should suffer and the law should protect an honest citizen. These provisions,

therefore, have to be reviewed in this light and suitably modified.

Before I conclude, I thank you once again for this opportunity for a discussion. May I know, with your permission, Sir, ask some of my colleagues to elaborate specific issues and the technical implications arising out of the provisions of this important Bill?

MR. CHAIRMAN: Before your colleagues take over, I would like to ask one or two questions on the general observations you have made. You have said making the law more and more stringent on the one hand and keeping the tax rates where they are, would not help achieve the objectives of the Bill, namely, unearthing of black money or checking and arresting its dimensions or its proliferation and you seem to be suggesting that what constituted the foundations of the Wanchoo Committee report, namely, rationalisation of tax structure, unless that is brought about, the efforts which we are making, may not lead to any positive results. Let that be so. But, certain questions arise here out of your observations. You say that if you keep the tax rates at a reduced level, it will make people more honest and efficient. But, statistics seem to reveal that tax-evaders are not few in the organised sectors and when we had the tax rates at a reduced level, as in the 50s, the experience of the Department was that tax evasion was not really less than when the tax rates went on increasing. I want, therefore, to ask you this question. Even in the 1950s., when the rates were more rational than what the Wanchoo Committee suggested, the tax evasion was rampant on a large-scale. What makes you feel that the members of your Chamber would be able to assure the Committee that with the rationalization of tax rates, there will be a miraculous change in the attitude of the recalcitrant and dishonest elements?

SHRI C. C. CHOKSHI: Thank you very much for this very good question. Taxpayers, as a class, may be

broadly divided into three categories. There are some tax-payers who will pay tax honestly and fully, whatever rates are levied by the Government. There are tax-payers, on the other hand, who will evade taxes, however small the taxation rates may be. But in between, there is a large number of tax-payers who form the bulk who, at certain rates of taxation, would not care to evade taxes and this class is the most important class to which we should pay attention, and whose number goes on increasing, as the rates of taxation goes on increasing. You are right when you say that there was tax evasion even when the tax rates were fairly moderate. This question of understanding as to what are the moderate tax rates, is to be divided into two parts. One is that the tax rates have got to bear a relationship to the capacity to earn income or to earn profits. We are living in a period of terrible shortages. Rightly or wrongly, people have got a lot of opportunity for making profits by a little bit of effort, by organizing their business or by putting in hard work if the persons are professionals. In this manner, a person gets an opportunity to get a higher income; and when he gets it, his reaction, as a human being, would be to try to retain as large a portion of it as possible, within reasonable limits, to enable him (a) to meet the cost of living; (b) to enable him to make sufficient savings for his old age when he retires; and (c) if he is in business, in order to enable him to plough back some amount into business, to maintain his business efficiency. These are the three factors which guide a tax-payer. I will give you an illustration to show as to what has happened during all these years. Let us go back to 1968-69 or 1969-70. In the case of a person having an income of Rs. 2 lakhs, he was saving, at that rate of tax an amount of Rs. 58,200. In the years 1971-72, when the Wanchoo Committee made their report, the marginal tax rate had gone up to 93 per cent. There was an increase therein. The saving came down to Rs. 54,800 out of Rs. 2 lakhs. The cost of living had

increased during that period. Thereafter, to-day, at the marginal rate of 97.75 per cent the saving in his hands has come down to Rs. 48,200 out of Rs. 2 lakhs. There is a considerable erosion in the net amount that is left with him, to enable him to meet the three requirements, viz., cost of living provision for old age and ploughing back sufficient amounts for maintaining his business efficiency. In these three things, costs have gone up; but the amounts with him have considerably gone down. We have to think of the third category of persons in this context.

MR. CHAIRMAN: It is the fourth category. The three others are those who are honest, dishonest and those conditioned by the law and the rate. The fourth category is compelled by the economic necessity.

SHRI C. C. CHOKSHI: I am speaking about the third category which forms the largest group. It is that category of persons whom we should not alienate. The present attempt of taxation laws is to ignore completely the first category, viz., those who are paying the taxes honestly, whatever the rates may be. The second category has got to be dealt with severely because they will evade taxes at any rate. I have no sympathy for them. But the third, which is the largest category, is one whose sympathy should not be alienated, in the context of increasing cost of living, increasing rates of taxation and when what is left with them goes down.

MR. CHAIRMAN: Do you mean to say that a person who reacts to the law and is led to tax evasion, is so led to this attitude, because of economic necessities?

SHRI C. C. CHOKSHI: It is not economic necessity, Sir.

MR. CHAIRMAN: You mean that the cost of living is going up and the residue that is left with the taxpayers after the payment of taxes, is increasingly decreasing.

SHRI C. C. CHOKSHI: That is my submission. I will illustrate it. Take the case of a man who is put in a position of being able to earn Rs. 2 lakhs per annum. I also preface my observation by saying that to-day, we have come to a state when the opportunity to make profits, to earn higher incomes, has increased due to terrible shortages and developmental activities in the country. I am not going into them. I am going into the bare facts of the situation. Take the case of a man who earned Rs. 2 lakhs in 1968-69. He was left with Rs. 58,200 for his three requirements. To-day, he finds that his ability to meet these three demands, or the net income left with him, has gone down so much that he finds it difficult to meet them. There is only one alternative; and that is to bring down his standard of life. That would be a normal observation, or expectation. There is no other way in which the man would be able to meet his demands. Where a person is paying taxes in an honest way, he can go on bringing down his standard of life. With Rs. 3,000 or Rs. 4,000 in the city of Bombay, nobody can say that a person is living in an ostentatious manner. After all, when a man is put in that position, i.e., to be able to earn Rs. 2 lakhs per annum, the rent of a house alone in Bombay is Rs. 1,000 for a small area of 1,000 sq. ft. As such, if he gets Rs. 4,000 per month, he cannot be said to be living ostentatiously.

SHRI ERA SEZHIYAN: Just now Mr. Chokshi said that the higher the rate of taxation, more the evasion. Therefore, we should reduce the tax. Was a study made by you? I have the benefit for report of a working group of the Central Direct Taxes Administration given in January, 1968 where they have come to this conclusion after making a detailed study. It is on p. 108:

"A study of the figures of deemed concealed income shows that at least in India an increase in the rate of taxation was not followed by an increase in tax evasion, nor has a

decrease in the rate brought about higher tax revenues". Have you made a study?

MR. CHAIRMAN: This is the crux of the question I had asked. How do you convenience the Committee that any reduction in the rate is going to be followed by increased revenues?

SHRI C. C. CHOKSHI: Unfortunately, we have not made my study on this point. But it is observed among human beings living in a society.

SHRI ERA SEZHIYAN: That is not proved in India.

MR. CHAIRMAN: It is a matter of opinion.

SHRI C. C. CHOKSHI: I cannot put it higher than that.

SHRI VASANT SATHE: After listening to Mr. Chokshi and the earlier remarks of Mr. Podar, that those whose income ranges upto Rs. 2 lakhs are the persons who are really very hard hit by these higher rates of taxes because their savings go down and cost of living has gone up, I would say that according to our knowledge and information given to us in Parliament, tax evasion on a very large scale is made by those whose income is not within the range of one lakh or two lakhs but whose income goes in a range much higher, companies, individuals and others. Has your Chamber made any study of this group where the evasion is largest? Also by a reduction of tax, how much can they save? You referred to the hardship caused to the people in the two-lakh group due to the high cost of living in Bombay, the price of a sq. foot of land being Rs. 11,000 and so on. Assuming for the sake of argument, that we have sympathy for these middle classes, have you made any study of the class where the evasion is in crores? Can you say how that class would respond to a tax reduction?

You want to plead for those persons who are hard hit. You say because of the cost of living, they cannot survive.

I will not say that people getting Rs. 10,000 or Rs. 20,000 a month are very poor people who really cannot survive.

Other studies made go against your opinion. So I ask whether you have any conclusion based on any study made and can you give us some facts and figures, say, based on a study of one thousand families whose income is so much, the tax is so much, hence they are discouraged? If you have made some such study and can make it available to us, we will be benefited.

SHRI C. C. CHOKSHI: There are three parts to this question. The first is whether an actual study has been made on this point which I had raised. My categorical answer is 'No.' At the same time, let me not be misunderstood to say that I was trying to plead the case of a person with a two-lakh income. I would request you to take into account the cases of people having an income ranging from Rs. 40,000 to Rs. 2 lakh per year. The rates of taxes are so high in this category. There is no doubt there is evasion at the higher range exceeding Rs. 2 lakhs. But there is also evasion between Rs. 40,000 and Rs. 2 lakhs.

SHRI VASANT SATHE: If there is evasion of, say, Rs. 100 crores, how much of it could be attributed to the category of 40,000 to 2 lakhs?

MR. CHAIRMAN: He said they have not made a study. Would you say that 90, 80 or 70 per cent of tax evasion would be curbed if the rates between Rs. 40,000 and Rs. 2 lakhs were reduced?

SHRI C. C. CHOKSHI: Yes. That is our observation.

SHRI P. G. MAVALANKAR: Mr. Chokshi referred to a category of tax papers and said (a) that they have to maintain themselves, (b) that they have to provide for old age and retired life and (i) that they require money for ploughing back into the business.

Leaving out (b) and (c), what exactly does he mean by 'maintaining themselves', because in the context of the India of today and the immediate tomorrow, there are millions and millions unable to have two square meals a day. So by maintaining certain standard of living, does he mean maintenance of certain ostentatious luxuries, unnecessary living, staying in big hotels, going abroad, living in luxurious houses, using costly articles etc. If a cut is made, there, does he not think that that will not affect their basic standard of living? Secondly, does he and the Chamber not agree that a good deal of black money has gone into this kind of expenditure so that if it is regulated and people are not allowed to spend on those things, there is no harm at all?

SHRI C. C. CHOKSHI: First of all, you have assumed that persons in the range 40,000—2 lakhs go to these luxury hotels. I submit they cannot afford it. That is my personal experience, if not at least a sort of calculation.

SHRI JYOTIRMOY BOSU: Two lakhs of rupees pre-tax?

SHRI C. C. CHOKSHI: Pre-tax.

SHRI P. G. MAVALANKAR: Maintaining oneself and family means maintaining certain decencies of living or also in being able to spend on ostentatious living.

SHRI C. C. CHOKSHI: I am not talking of ostentatious living; I am talking of reasonable living. I prefaced my observations by saying that to day we are living at a time when a lakh of rupees income is costly obtained by a person in business or in industry, or even in some professions. Therefore, we have to take all these things in a completely composite picture and not pull out one item. A lakh of rupees was a rare thing in the 1940 but now that is not so for any person at any level. But Rs. 1 lakh of income in big cities for persons carrying on a trade or industry is not such a big thing. When there is a

large number, and in the course of business, having got a lakh of rupees as income, if they are told that the Government is going to take away 70 per cent of their income and we must live within 30 per cent, what does it come to? The cost of living during this intervening period has gone up so much that these people, human beings as they are, are likely to be affected.

SHRI VASANT SATHE: We want certain concrete facts. What is the percentage of the people evading tax and having an income of over a lakh of rupees?

SHRI V. B. HARIBHAKTI: May I submit that tax evasion is something in respect of which, I submit all efforts at arriving at some figures have necessarily to be in the nature of estimates only. So, an attempt to prove that tax evasion in this group or that group is so much per cent of the total tax evasion is not just possible. After all, it is something which is not there on record, and therefore, it is not possible to make a study of the extent to which tax evasion in a particular income-group is prevalent.

SHRI BHAGWAT JHA AZAD: It should be possible.

SHRI V. B. HARIBHAKTI: It was pointed out that the working group in 1962 had made certain observations. Then Wanchoo Committee which was a high-powered committee and which went into the subject in very great detail, has come to a contrary conclusion. Its conclusions have been directly contrary to those of the working group.

MR. CHAIRMAN: Would you point out to the chapter or paragraph where they talk of the study they have made for coming to this conclusion? On page 20, they have mentioned some conclusions. Will you point out any study having been carried out by them. If you do so, we shall be grateful.

SHRI J. P. THACKER: The Wanchoo Committee has interviewed a number of chambers and other bodies. They

have issued a well-thought-out questionnaire. It was a study which they had undertaken and this is what they have to say: it is at page 9, paragraph 2.20. It says:

"We had posed the question whether tax evasion is dependent on the rates of taxation and whether it increases with the increase in the tax rates."

This means, when they had posed this question, this sort of study should be taken to have been undertaken by posing this question and putting out the questionnaire. Then they say:

"The chambers and other bodies representing trade and industry have been unanimous in their view that rates of taxation, which have reached expropriatory levels—the marginal rate for income-tax alone reaching 97.75 per cent.—breed tax evasion and generate black money. Most of the economists, professors, departmental officers and others, who replied to the Questionnaire or who appeared before us, have also subscribed to this view. Even those who did not concede that high rates led to evasion admitted before us that high rates did make tax evasion much more attractive "and profitable. When the marginal rate of taxation is as high as 97.75 per cent., the net profit on concealment can be as much as 4,300 per cent. of the after-tax income. The implication of 97.75 per cent. income-tax is that it is more profitable at a certain level of income to evade tax on Rs. 30 than to earn honestly Rs. 1,000. We will not be surprised that placed in such a situation, it would be difficult for a person to resist the temptation to evade taxes."

Then, at page 19, in paragraph 2.50, they refer to the seminar held under the auspices of the United Nations, and say:

"We are convinced that high marginal rates of taxation are a powerful contributory factor towards evasion inasmuch as they make the

fruits of evasion so attractive that a less scrupulous person would consider the incidental risks worth taking. In addition, the high rates of taxation create a psychological barrier to greater effort, and undermine the capacity and the will to save and invest. The Second Inter-regional seminar on Development Planning held at Amsterdam in September, 1966 under the auspices of the United Nations had sounded the following note of caution against stepping up rates of tax too stiffly:—

"Every effort should be made to guard against placing too heavy a tax burden on the more productive sectors of the economy. not only would unduly high tax rates reduce incentives to increase output and productivity, but they would also encourage tax evasion."

MR. CHAIRMAN: Where is the study?

SHRI J. P. THACKER: I would not say that it is a study in that sense.

MR. CHAIRMAN: If 500 witnesses appeared before us and repeated what Mr. Chokshi or Shri Podar have told us, will it mean a study?

SHRI J. P. THACKER: It is not only the chambers but economists, professors and all those who had something to do with this and who are knowledgeable persons.

MR. CHAIRMAN: We will not be impressed by what the economists and others tell us. We are down to earth people. The contention raised is that there is a large scale tax evasion as a result of high rates, particularly within a certain income range especially because of the increased price; is this a particular view which you are canvassing, or, is it supported by anything? There is a study made here strongly saying that there is no response, that the evasion does not decrease even if you decrease the rates. Against this, we are trying to examine. If there is something concrete, you have to point it out.

SHRI J. P. THACKER: Just as the study was undertaken by the working group, here was an enquiry by a high-powered committee which went into the question in depth and interviewed people from all walks of life and they have come to this conclusion after hearing those people who have some knowledge they were economists and professors—and who have given evidence before the Committee, and they were convinced that what they have stated could be substantiated if so required to do. As Mr. Chokshi said, no independent study has been undertaken by our Chamber, but the experience of other countries has shown particularly in England, which is also a socialist country, that when the rates of taxation were brought down in the budget, the income increases.

Here is a seminar held under the auspices of United Nations; which has come to the conclusion. One is expected to assume that those who were in the seminar of this status and magnitude must know what they speak about. Apart from that, thousands of other countries like the United Kingdom have shown that the moment the taxation is brought down, the evasion is less. That shows that people who are evading taxes, as Mr. Chokshi said, are basically honest, and they would not like to be dishonest unless they are pushed into it by higher rates of taxation. People would not like to be dishonest unless they are driven into it. Human nature being what it is....

SHRI JYOTIRMOY BOSU: Mr. Chokshi, kindly tell us, taking into consideration, the various reliefs and incentives that are granted to assesses in the corporate sector and different income group people, what is the effective rate of taxation to your mind today?

SHRI C. C. CHOKSHI: The effective rate of taxation on corporate bodies up to the assessment year 1973-74, after taking into account all the incentives, namely, development

rebate, tax holiday, depreciation etc. would be about 50 per cent. There has been a study made by the Indian Investment Centre. I cannot get away from that. But, that is with regard to the corporate bodies.

SHRI JYOTIRMOY BOSU: We shall come to that later on. But, I have got my answer. I am on a slightly different question.

MR. CHAIRMAN: In the corporate field, the rate is 50 per cent according to a study made by the Indian Investment Centre,

The effective rate we are....

SHRI C. C. CHOKSHI: I am coming to that. I have been asked a specific question with regard to the effective rate of taxation on corporate bodies and on individuals.

MR. CHAIRMAN: With regard to the corporate sector, the effective rate is 50 per cent. What is the effective rate with regard to the non-corporate sector?

SHRI C. C. CHOKSHI: On an income of Rs. lakhs, the rate would come to about 75 per cent. Whereas below Rs. 2 lakhs, it may be....

MR. CHAIRMAN: Perhaps, the question has not been understood clearly by you. What is meant by effective rate of taxation? Suppose, we say that the commercial profit of a concern is a lakh of rupees. Then, there are so many reliefs, deductions etc. allowed and the normal tax payable is determined at only Rs. 25,000. Though the rate may be Rs. 55,000, plus sur tax etc., the effective rate may work out to be only Rs. 25,000. The effective rate will be less than what it is in the paper. That is what is meant by effective rate of taxation.

SHRI C. C. CHOKSHI: The effective rate in the case of individuals,—the highest effective rate—is 75 per cent. The marginal rate is 97.75 per cent. In the case of corporate bodies, the effective rate is 50 per cent,

because, corporate bodies get an advantage of development rebate. which is very big advantage. This is being taken away from 31st May, 1974. Therefore, the effective rate may go up. That is my answer.

MR. CHAIRMAN: You said that in the non-corporate sector, the effective rate is 75 per cent, according to a study made.

SHRI C. C. CHOKSHI: I have given the figures with regard to the highest rate. The average effective rate means the average rate. As I said, on an income of Rs. 2 lakhs....

MR. CHAIRMAN: There can be a random study, taking, say, 100 assesseees from different income groups, and finding out the effective rate after ascertaining their real income and allowing for certain deductions. Has such a study been made in the non-corporate sector?

SHRI C. C. CHOKSHI: This study has been made by the department.

MR. CHAIRMAN: Did the Reserve Bank make a study?

SHRI C. C. CHOKSHI: I do not know. This is my calculation of the effective rate of taxation. The Reserve Bank, to my knowledge has made a study only with regard to the corporate sector.

SHRI ERA SEZHIYAN: I will give you the figures from the report of the Working Group of the Reserve Bank of India, and the figures relate to the year 1968-69. The total income assessed was Rs. 20 crores. Income tax including super tax come to Rs. 11 crores and sur tax was Rs. 2 crores...

SHRI C. C. CHOKSHI: That is why, I say that there are twopoints to be considered. The figures of 68-69 are out of date today. This is one.

SHRI JYOTIRMOY BOSU: I take it that it is 45 per cent on the corporate sector. According to a recent study made by the Reserve Bank of India, it has been observed:

"contrary to the general impression about raising tax burden on the corporate sector, tax provisions in relation to pre-tax profits has shown a steady decline during the past 5 years, 1965-66 to 1970-71."

If this is so, what will be your observations thereon?

SHRI C. C. CHOKSHI: With respect, I repeat, that up to the years 1972-73 the tax rate was not higher than 50 per cent. In some cases, it may be....

SHRI JYOTIRMOY BOSU: I am talking about the decline in regard to tax rate.

MR. CHAIRMAN: Mr. Chokshi, they have not been increasing all these years?

SHRI C. C. CHOKSHI: With respect, I submit again that so far as the rates of taxation are concerned, between the years 1965-66 to 1972-73, there has been an increase of only 2-1/2 per cent.

MR. CHAIRMAN: They have not decreased.

SHRI C. C. CHOKSHI: Now, in the year, 1971-72, it was 2-1/2 per cent. The sur-charge was levied in 1971-72. The figures which the hon. Member has quoted, are all in 1970-71, and profits before....

SHRI JYOTIRMOY BOSU: I have quoted five years, figures, from 1965-66 to 1970-71. I have talked about 5 years. There has been a steady decline in the tax rate.

SHRI C. C. CHOKSHI: With respect, I would say that these were the years when a number of incentives were given to the corporate sector. We cannot get away from the fact that between the years 1965-66 and 1970-71, effective rate was brought down by the incentives. Therefore, I may submit that I can accept this position. These were the years when economic development took place at a very fast rate because of a reason-

able effective rate of taxation on corporation.

SHRI JYOTIRMOY BOSU: Would you also agree with me that by comparison, the labour wages have gone down during the period under reference? While the tax rate has gone down, there has been a decline in the rates of labour wages also, in the field of organised sector.

SHRI C. C. CHOKSHI: To my knowledge, if the labour wages have gone down, during this period, it would be more on account of automation which was introduced during this 5 year period.

SHRI JYOTIRMOY BOSU: I am talking about the share of labour wages in the composite cost structure.

SHRI C. C. CHOKSHI: If we take the labour cost per person, about wages have gone up. But, if we go on an average basis, statistics may tell a different story when we co-relate in a different way. It is a very well known fact that you can prove imponderable things by co-relating in a different manner. Therefore, it depends on in what manner, we are trying to make use of the statistics. So far as the cost of labour per person is concerned, it has gone up considerably. But, if you co-related it to the turnover, that is, sales by companies, it is possible that it would have gone up. Because of automation, during this period.....

SHRI V. B. HARIBHAKTI: Our main point is this, that the maximum marginal rates on individuals being so high, they exchange tax evasion for corporate tax, then....

SHRI JYOTIRMOY BOSU: I am asking a more specific question in order to....

SHRI V. B. HARIBHAKTI: In corporate tax statistics, the average rate would be the effective rate. Our observations are based on what we have observed in actual practice.

SHRI JYOTIRMOY BOSU: You must be aware of the Government of India's voluntary disclosure scheme of concealed incomes. In your opinion, did it succeed? If so, to what extent; and if not, please give reasons therefor.

SHRI C. C. CHOKSHI: The voluntary disclosures scheme was introduced in 1965-66.

SHRI JYOTIRMOY BOSU: I am talking about the better category of tax-payers. How did they respond?

SHRI C. C. CHOKSHI: According to the published figures, it was a great success.

MR. CHAIRMAN: Was it so?

SHRI C. C. CHOKSHI: The figures said that they were able to unearth some crores of rupees.

SHRI JYOTIRMOY BOSU: Arrears of tax are going up by leaps and bounds. As you are a knowledgeable man, you should compare them with the figures which prevailed about 5 years back.

SHRI C. C. CHOKSHI: Thank you, Sir. But I am unable to give the figures straightway. To my mind, the real position is that no disclosure scheme can succeed when the normal tax rates are so high.

SHRI JYOTIRMOY BOSU: You can say that when you argue and conclude. I am asking for some information for myself and the Committee. Do you or do you not feel that an expenditure tax should be imposed; and that it would be a better check?

SHRI C. C. CHOKSHI: The expenditure tax was introduced during the periods 1957-58, 1958-59 and thereafter, again, it was brought during the period 1964-65 to 1966-67. It had not succeeded because when the tax rates are very high, what is left with a person is so small that he will not disclose his expenditure. Unless and until the introduction of expenditure

tax is brought in along with a considerable decrease in direct taxes which, in other words, is theory of Prof. Kaldar as I have understood it, it would not help matters. We should have an integrated system of taxation, viz. wealth tax, expenditure and income-tax, with the result that the ITO can proceed not only on the basis of income; but can also cross-check it with the expenditure. That was a concept which was tried; but it has failed not only in this country, but to the best of my knowledge, in other countries as well. Therefore, the latest theory of collecting the proper taxes is to introduce what is known as the value-added taxation. I have no experience of it; but those who have, believe that value-added taxation is the only method which would enable the collection of taxes properly, rather than a very high rate of direct taxes. That is a point which this august body can consider.

SHRI JYOTIRMOY BOSU: Have you, by any chance, read the Kaul Committee report on foreign exchange leakage?

SHRI C. C. CHOKSHI: No, Sir.

SHRI JYOTIRMOY BOSU: They have put this leakage around Rs. 300 crores, covering the malpractices in the matter of international trade, viz. under-invoicing and over-invoicing. The entire amount remains untouched by Indian taxation authorities. What do you say to it?

SHRI C. C. CHOKSHI: I have not seen that; but the Wanchoo Committee has made an observation on the very same point. They have said that there are some defects in the provisions of the Foreign Exchange (Regulations) Act, which are now sought to be set right by having a new legislation. It has been done now and it has become an Act.

SHRI JYOTIRMOY BOSU: It has been done to the satisfaction of the Government and not to mine. Do you mean to say that demonetization, as recommended in the interim report

of the Wanchoo Committee would lead to a check on the black money?

SHRI C. C. CHOKSHI: Mr. Podar will answer it.

SHRI GANESH PODAR: This aspect of demonetization, we feel, would certainly not lead to any worthwhile result.

SHRI TRIDIB CHAUDHURI: So far as the rates of taxation are concerned, we know the views of the Wanchoo Committee. Most of the Chambers of Commerce that have appeared before us have expressed themselves more or less in the same terms as the gentlemen before us. Already, more than 30 minutes have passed. The rates of taxation are not really within the purview of this bill. We have understood their points.

MR. CHAIRMAN: I understand that the next item is about the trusts.

SHRI JYOTIRMOY BOSU: I will take half-minute. I maintain that the non-firm household income assessed to income-tax rarely exceeds one-third of the actual assessable income accruing to the high-level household. What is your observation? My information is based on a very careful survey.

SHRI C. C. CHOKSHI: The suggestion is that there is a high degree of evasion, i.e. to the extent of two-thirds. I have no figures on this, i.e. whether it is two-thirds or 50 per cent. It may be a matter of guess. I cannot pronounce an opinion on this.

SHRI JYOTIRMOY BOSU: Does your Chamber not have a study circle on this?

SHRI GANESH PODAR: No, Sir.

MR. CHAIRMAN: So far as the trust is concerned, the Committee had occasion to listen to various representations. If you want to make your observations on this, you can do it; but please be brief.

SHRI V. B. HARIBHAKTI: I will be brief on trusts. The first submis-

sion which might not have been made earlier, is on Clause 5 which makes some welcome provisions to remove the difficulty which is at present felt by the charitable trusts in the matter of applying their funds to charitable purposes. In regard to the explanation which is sought to be introduced under this clause, viz. that if a charitable trust wants to get the benefit of the alternative assessment scheme mentioned in the explanation, it should exercise that option in writing before the return on income is filed. My respectful submission is that this might create hardship if return is delayed, or omitted by over-sight. Therefore, I would request that the assessee should be allowed to express the basis of the alternative schemes his willingness for being assessed on at any time before completion of the assessment.

MR. CHAIRMAN: We will consider that.

SHRI V. B. HARIBHAKTI: On the question of charitable trusts, you have heard enough and I would not like to dilate further. But our Chamber is very strongly against the new proposal to deny the tax exemption to the trusts formed before 1-4-62. Which are expressed to be for the benefit of a particular religious community or caste.

SHRI JYOTIRMOY BOSU: How is your Chamber interested in trusts?

SHRI V. B. HARIBHAKTI: It is not a question of being interested. We are a social organisation. Our plea is that if this provision becomes law, a large multitude of poor people will suffer. The Chamber is, no doubt, concerned for these poor people. Therefore, we are positively of the opinion that this create hardship because after all, Government is not able to look after all the needy people in the country who have to turn to these charitable trusts for help.

SHRI JYOTIRMOY BOSU: No doubt, you must have made some study of publications that have come

out from different bodies before you have drawn your conclusions. What are your reactions to the observations contained in para 3.50 p. 79 of the Wanchoo Committee Report and the PAC report which almost says that trusts in the country have played havoc in the field of tax collection?

SHRI V. B. HARIBHAKTI: I am glad you are supporting the Wanchoo Committee at least on this point.

SHRI K. R. GANESH: On this point. Let me make it clear that on the question of the Wanchoo Committee's recommendations in regard to the reduction of taxes, it is a matter of Government's social and economic policy where Government is not called upon to accept what the Committee has said on the economic strategy Government have been following for the last so many years.

SHRI V. B. HARIBHAKTI: My observations were limited to what Shri Bosu mentioned earlier. The Government's policy is something that the Government must decide.

SHRI JYOTIRMOY BOSU: The Wanchoo Committee as well as the PAC have observed in a very derogatory manner about trusts in this country. You are opposed to any reform of Government to tax trusts. I am asking whether you have made up your mind after studying carefully the observations in the two documents I have referred to.

SHRI V. B. HARIBHAKTI: I have carefully read those observations. We are not opposed to any reform on taxation of trusts. The Chamber is one with Government in making sure that these trusts are not used as a conduit for tax evasion. But this particular provision has nothing to do with tax evasion. You are taking away a tax exemption which has been available for all these years, which was allowed after very careful consideration when the new codified Income-tax Act came into force in 1961. You are trying to with-

draw the tax exemption now enjoyed by charitable trusts. If there are any loopholes, which have been used as a pipeline for tax evasion, by all means plug them. Therefore, the Chamber has also supported in its memorandum the taxing of anonymous donations where an attempt is made to siphon off black money into charitable trusts. Anonymous donations, where it is clear that they are a device to put black money into charitable trusts, should not be allowed. An anonymous donor should not be allowed to ease his conscience by allowing to put his tainted money into charitable trusts. We support the provision there. But our respectful submission is on the first aspect.

The next point is concerning the expression 'activity for profit'. This expression is too wide and might check legitimate activity like the one carried out in Bombay by the Ratan Tata Industrial Home which is doing wonderful work which, though an activity for profit, benefits a large number of poor people. Similarly, the Birla Hall's income is going to the Bombay Hospital. If the provision remains as it is, such worthwhile activities may also be discouraged. That was not the intention of the Wanchoo Committee. The intention seems to be that business as such should not be carried on by a charitable trust. There, it may be agreed, that the Government is wrongly denied the taxes of profits arising from carrying on business. If that is the intention, the expression 'activity for profit' should be substituted by the word 'business'.

Our further submission is that if this provision is to have retrospective effect many good charities would suffer. Some universities are run on income arising from such business.

MR. CHAIRMAN: Universities?

SHRI V. B. HARIBHAKTI: The income from the business goes to a university, an educational institution or a hospital, where the business held in trust for a charitable purpose.

SHRI R. V. SWAMINATHAN: Can you illustrate?

SHRI C. C. CHOKSHI: Tirupati.

MR. CHAIRMAN: That does not apply in this case.

SHRI V. B. HARIBHAKTI: A business may be held for charitable objectives, one of them being to support an educational institution. Our submission is that if Government's desire is that the business should not be carried on by charitable trusts, the provision should be that after the commencement of the Act, no business can be held in a trust for a charitable purpose. But as far as existing businesses are concerned, they should be protected.

MR. CHAIRMAN: We will consider it.

SHRI V. B. HARIBHAKTI: On the question of anonymous donations, there should be some provision whereby genuine collections for a charitable purpose should not be taxed. Hence we have suggested that where the ITO is satisfied that such donations are genuine, they should not be taxed.

MR. CHAIRMAN: I think that is very reasonable.

SHRI V. B. HARIBHAKTI: Regarding investments, this restriction would create a tremendous amount of hardship to a large number of trusts as their income will go down. After the enactment of Section 13(2)(h) of the Income-tax Act and taking into accounts 187 of the Companies Act regarding exercise of voting rights by the Public Trustees there is no need for such a provision. If the Government want to achieve the objective of checking the concentration and growth of economic power through the medium of trusts, we have no objection. But this provision goes too far and many small trusts which might have invested in loans on mortgages, preferences shares or debentures, etc. will all be forced to liquidate their investments and make losses and

invest their funds in government securities and get lesser income. The objective of checking the growth and concentration of economic power through trusts can be achieved by strengthening 13(2)(h) and the powers of the Public Trustee. You may bring down the limit at which he should exercise the voting power; voting right may not be allowed to be exercised by charitable trusts. But there is no need for a complete ban on investments like loans on mortgages, debentures, preference shares, etc.

On the question of the meaning of substantial contribution, the proposed provision is that any person who has made a substantial contribution is a person whose total contribution up to the end of the relevant previous year exceeds five thousand rupees. Our submission is that this should be related to the size of the trust.

MR. CHAIRMAN: What is the percentage?

SHRI V. B. HARIBHAKTI: Five per cent of the corpus of the trust at the beginning of the year should be considered reasonable.

MR. CHAIRMAN: We will consider it.

SHRI V. B. HARIBHAKTI: The aggregation should be limited to five years. It should not be indefinite, right from the beginning, because it will be impossible to find out what has been the contribution.

MR. CHAIRMAN: We will consider it both in relation to time and size.

SHRI V. B. HARIBHAKTI: It is not very clear from the provisions of the Act as to what income of the trust is taxable; whether it is the gross or the net income. Our submission is that it should be clarified in the Act itself that only the net income would be taxed.

MR. CHAIRMAN: What is the doubt? You will be allowed only such expenses as are allowed to others.

SHRI V. B. HARIBHAKTI: It is not that clear.

MR. CHAIRMAN: We do not want to complicate it more than what it already is. If the exemption is not allowed, you will be assessed like any other assessee. That is the end of the matter.

SHRI V. B. HARIBHAKTI: Let that be made clear.

MR. CHAIRMAN: Is it not clear? Is it beneficial to you or not? You cannot be put in to a worse position than that of a person who is being assessed.

SHRI V. B. HARIBHAKTI: A trust may be in a worse position because there is no deduction contemplated. There is a provision for deductions to be allowed on income from property.

MR. CHAIRMAN: Whatever is the legitimate purpose, that is allowed.

SHRI V. B. HARIBHAKTI: But the deduction should be specifically provided for this purpose.

MR. CHAIRMAN: Let us be clear about what you are seeking. Over and above the quantum of the income in the normal course, you want charities to be allowed further?

SHRI V. B. HARIBHAKTI: Yes.

SHRI ERA SEZHIAN: We will deduct for the expenses.

MR. CHAIRMAN: There is no rationale why it should be allowed for charity.

SHRI V. B. HARIBHAKTI: Our submission is that the expenditure on the objects should be allowed.

MR. CHAIRMAN: Take it this way: a trust's income is a lakh of rupees; and the expenses come to a lakh of rupees. There is nothing left.

SHRI V. B. HARIBHAKTI: On the objects.

MR. CHAIRMAN: Suppose you invest moneys in violation of the

provisions of clause 13 where the Settler himself is the substantial owner, and you are controlling the entire thing. The business income is a lakh of rupees and you donate a lakh of rupees. Then, nothing should be taxed?

SHRI V. B. HARIBHAKTI: You might say that if a large salary is paid to that person it may be disallowed since salary is not the object of the trust, but if expenditure is incurred on the charitable objects, which are legitimate charitable objects that must be allowed for the purpose of deduction.

MR. CHAIRMAN: Suppose a trust keeps the entire thing in violation of the section; has a business income of one lakh of rupees and donates it to a hospital. Nothing should be taxed?

SHRI V. B. HARIBHAKTI: I only suggest that the scheme of taxation should be rationalised that the trust does not suffer.

My further suggestion which arises but of these provisions is this. Of course, it is not directly connected with clause 1. At present, only a portion of the donations paid by an assessee is allowed as deduction for tax purpose in 50 per cent is allowed as deduction. In case certain types of donations like donations to a hospital or such other social purpose, or donations in case of a national calamity or for drought relief, etc., I would request the Committee to consider whether it would be useful to suggest a modification of section 80G whereby it is provided that where donations are given for a truly national or public purpose, the deduction allowed would be 100 per cent.

SHRI JYOTIRMOY BOSU: In this context, may I ask the witness whether he is aware of the fact that on donations made to institutions like the Red Cross, Ramakrishna Mission, St. John's Ambulance, etc., on the amounts

that you pay, you would get a tax relief?

SHRI V. B. HARIBHAKTI: Yes. But not for the Chief Ministers' Drought Relief Fund.

SHRI JYOTIRMOY BOSU: If you wish to make a donation of Rs. 50,000 to the Indian Red Cross, you have no head-ache.

SHRI V. B. HARIBHAKTI: The donations for national relief should be eligible for cent percent deduction.

Then, clause 42, which is about the payment of tax on self-assessment. In principle, we think this is a good provision, but our submission would be that as between the payment of tax and the receipt of the challan, about 15 days have got to elapse. There should be a provision that there will be an automatic extension of time to the extent of this time. One knows the time taken for the deposit of a cheque and the receipt to be obtained from the Reserve Bank.

MR. CHAIRMAN: We will consider that.

SHRI V. B. HARIBHAKTI: The new provision also speaks of a two per cent penalty for delay. This would be in addition to the punishment under section 139(8). This would be unfair. Where a penalty is imposed under section 273(a) also for late submission of return, this penalty should not be levied. Both the penalties cumulatively would too much.

Under section 139(8) and under the relevant rules, there is power to reduce the amount. Similarly, in this case also, in genuine cases if the Commissioner is satisfied that there should be a waiver for the penalty, such waiver should be allowed and a provision should be made for that.

SHRI GANESH PODAR: I would ask Mr. Chokshi to deal with the transfers and deduction of expense—section 64.

SHRI C. C. CHOKSHI: Thank you for giving me the opportunity. I speak on the proposed amendments to section 64. The objects which are proposed to be achieved by these amendments are six. The first is that if a spouse is employed in a concern in which the other spouse is either a partner or a shareholder holding a substantial or a controlling interest, etc., then the income would be added to the income of the spouse who has a substantial interest.

The second point is to see that the income of the minors, if they are admitted to the benefit of partnership, has to be added to the income of the parent,—either the father or the mother—whoever has the higher income.

The third point is that the income of the daughter-in-law or the son's child—

MR. CHAIRMAN: Please come to your evidence immediately. We know the provisions as they are.

SHRI C. C. CHOKSHI: Yes, there are three others which are not substantial parts of the amendment. They are being brought in by way of explanation. My first observation on this is that the efforts that are being made in order to plug these loopholes, if they can be called loopholes, will be sometimes infructuous. Sometimes, it will not achieve the objectives and in some cases it will create a considerable amount of hardship, may be, unintended hardship. The first point that I have to submit...

MR. CHAIRMAN: Does it apply to all the provisions?

SHRI C. C. CHOKSHI: Not all. That is why, I want to co-relate and say that these are the provisions which will create hardship. But, as your honour directed me, I would like to take up the points one after another. The first point that I will take up is with regard to the employment of the spouse in any concern in which the other spouse has substantial interest. No doubt, there can be an attempt at

tax evasion or tax avoidance. I can understand that. But, no provision has been made for genuine cases, where the spouse might have been employed because she or he deserves to be employed. Now, Sir, there is already a power. If the intention is that some sort of bogus payment may be given to the other spouse, I can understand that. There is already a power under Section 40 A sub-section (1), which gives powers to the Income Tax Officer to disallow such payments. Therefore, when you have already got the power to disallow an expenditure which is not justified, according to the facts of the case, it would amount to over-legislation on the same point. However, if the intention is that, there should be over-legislation, then, Sir, we are going to create a loophole where one does not exist.

With respect, I submit, that you should read the provision carefully. I am not trying to say something to the effect that people will always do it. But, those persons who want to avoid tax will take benefit from this. They will use this as a loophole. It says that it would be added where the spouse or the husband or somebody has 20% voting power. But, a person, can by giving his wife 20% voting power, thus make her a substantial shareholder of the Company and he can get himself employed, so that he takes benefit under this provision, that the income should be added to the income of the wife. This is the point I would like to emphasize. Where you are trying to plug a loophole, you are actually creating a loophole. My submission is that there is already sufficient power with the Government under Section 40A. When you try to plug the loopholes, where there are none, you may create some more loopholes. This is the one point which surprises me. There may be genuine cases, where a person might have employed his wife, who may be a qualified person. Such cases will be hit by this provision. I suppose this is not the intention of the Government. Secondly, I take up, the case with

regard to the minors being admitted to the benefits of partnership. It is no doubt true that minors do not always deserve to be made partners. But, there can be genuine cases where minors would be entitled to become partners, where, it is a case of a person whose grand father has died and he is being admitted to the benefits of the partnership, so that he gets the benefits of the partnership when the other partners wish to continue the partnership. Here, there is no intention of tax avoidance. It is said that the income of the child would be added to the income of the parent. This will effect genuine cases. If it is with regard to cases, where assets are transferred to a minor, I can understand that. There has been one attempt to plug the loophole which was created by the Supreme Court decision in Prembhai Parakhbhai's case. I am fully aware of that. But, care has been taken by explanation (3). But, there can be no tax avoidance in genuine cases, where minors are admitted to the benefits of the partnership. Then it has been provided that the assets transferred to the daughter-in-law or the son's child, would be taken into account and the income would be added to the income of the transferer. The kind of tax avoidance here will not be so terrific as to justify such an amendment. I leave it to the august body to consider this aspect. Now, I come to the last point. It has been provided that, where the assets have been transferred by the husband to the wife or by one spouse to another, the income from those assets transferred would be added to the income of the transferor. What is sought to be done is this. If the income's income is also added, this will create a lot of hardship, particularly, in respect of past years. I can understand this being done with regard to future years. But, if it is to be brought in regard to past years also, this will mean a lot of accounting difficulties. I respectfully submit that if the Government intends to bring forward this amendment, it can be there with

prospective effect. This leaves me with the last amendment. This is with regard to sub-section (2) which is being amended in Section 64. This is another typical example where this will be taken advantage of by some people. This is again a case, where you are creating a loophole, where one does not exist. Then, I come to Clause 25.

SHRI ERA SEZHIYAN: Before, you come to Clause 25, I would like to ask one question. With regard to the amendment to Section 64, you said that there are already enough powers under Section 40A etc. But, these are all matters of subjective judgment. So, in regard to genuine cases...

SHRI C. C. CHOKSHI: If the Income Tax Officer does not take a fair view, the matter may go to a higher authority and it is a judicial authority who will arbitrate on that.

MR. CHAIRMAN: The problem is this. If a person is unable to satisfy to the satisfaction of the Court...

SHRI C. C. CHOKSHI: We are again trying to attribute that the Courts cannot take a fair view.

MR. CHAIRMAN: The Courts would take a fair view. We do not want that genuine persons should be affected. But, what is happening is this. This is being used as a device. A wife may be employed. Her name may be on the registrar. But, she may be at home and the registers etc. may be signed at home.

SHRI C. C. CHOKSHI: Our experience is that there are clever Income Tax Officers who call the wife, cross-examine her and take her evidence and prove that it was a bogus payment and was not a correct payment. With respect, I....

MR. CHAIRMAN: Mr. Chokshi, you are aware that many of the cases have failed and they have failed in the tribunal. When you say that 'be

officers are clever, majority of them must be un-clever.

SHRI C. C. CHOKSHI: I did not say un-clever.

MR. CHAIRMAN: What is happening is this. Many of them fail to establish the case under section 40A.

SHRI C. C. CHOKSHI: The reasons may be two-fold. It may be that the cases which went through the tribunal were genuine cases, mostly. Those cases which were not genuine might not have gone to the higher authorities, and they would have accepted the Income Tax Officer's assessment.

MR. CHAIRMAN: Have you made any study to this effect?

SHRI C. C. CHOKSHI: I have not made a study, with respect, I submit.

MR. CHAIRMAN: You have had a wide experience in taxation work. On that basis, can you tell me whether such an allowance has been made?

SHRI C. C. CHOKSHI: I have taken up big cases where they have not happened at all. The cases which I handle are ones where there is no challenge at all.

SHRI VASANT SATHE: Would it be all right if we take into account certain well-known, genuine cases in which hardship is caused—as we were told during earlier evidences, in regard to the relationship between a nurse and a doctor? Do you think it would meet the requirements if we were to enumerate and exclude, by law, such cases on the basis of expertise, professional and technical knowledge, know-how and experience?

SHRI C. C. CHOKSHI: It would solve it partially, but not wholly. There can still be cases where a spouse may not be holding a technical qualification, may not be holding a professional qualification, but at the same time, be quite competent to render service in a concern where the husband has a controlling interest. It

can be a genuine case of that person working as a Typist, Stenographer or a Clerk. These are not cases which can be generalized.

MR. CHAIRMAN: Mr. Chokshi, we will give you an uninterrupted time of 5 minutes. You are again appearing before us.

SHRI JYOTIRMOY BOSU: I would not be here at that time, Mr. Chairman.

MR. CHAIRMAN: We have to abide by some time restrictions.

SHRI GANESH PODAR: We have a couple of more points, Sir.

MR. CHAIRMAN: We will consider carefully, whatever you have said in your memo., even at the time of our undertaking clause-by-clause consideration. If, over and above the points mentioned in your memo., you have some thing to say, you can tell us now.

SHRI J. P. THACKER: I will first deal with Clause 36 which concerns seizure and power of search. The words used in the sub-sections are, "when the authorized officer has reason to suspect." Suspicion should not be made the basis for an action which is in the nature of a punitive one. Only when the officer has reason to believe, should he be allowed to proceed. Providing only for suspicion would mean leaving the door very wide. It may lead to abuse of power. In the same section, some safeguards need to be provided. If, as a result of a certain search and seizure, nothing is proved, there must be some relief given to the person who has been made a victim of these provisions and it can be in the nature of a free compensation to be made to him. Secondly, the informer is being given some remuneration or inducement. The practice that a person should be encouraged to lodge complaints, is most reprehensive. The complaints may sometimes be genuine and sometimes frivolous. When such

complaints are made and the persons are rewarded for making complaints, there may be many cases where blackmail may be resorted to. It should be discouraged altogether. If, ultimately, it turns out that the complaint was frivolous and false, the name of the person making the complaint should be disclosed so that the victim has a right to go to the court and file compensation claims. Since the time is limited, I will go over the other points very fast.

MR. CHAIRMAN: Have you mentioned them in the memo. also?

SHRI J. P. THACKER: It should be totally discouraged. Otherwise, it will let loose private detectives on the private individuals. Clauses 75 and 76 as also 281 (A) and (B) deal with automatic lien and the provisional attachment. The submission is that under Clause 75, the lien is sought to be created during the pendency of proceedings and the proviso casts a burden on the *bona fide* purchaser without notice. So far as the proposed amendment is concerned, it deals with pending proceedings, which was not the recommendation of the Wanchoo Committee Report. What the Wanchoo Committee had suggested is that when a demand is raised, only then should the automatic lien be attached. Here, pending proceedings, if an attachment is deemed to have been made, it would become impossible for any one to deal with properties and transfer them. Every one will have difficulties in finding out whether proceedings are pending, because there are no provisions as to where a register is to be kept, to which place a *bona fide* purchaser can go and look. Merely making a mention about the pendency of proceedings would create hardship. The Wanchoo Committee had realized this in regard to certain provisions in the taxation laws of the United States and quoted them at the footnotes. I will give you the reference. It is at page 98. Only after a demand is rais-

ed, can a lien come into existence. Even today, it has become a matter of grave concern when, under rule 2 of the Second Schedule of the Income-Tax Act a notice is issued so far as the immovable properties are concerned, but they shall not be transferred. It shall be deemed as void. There is no provision or machinery whereby a *bona-fide* purchaser can look up in this regard. When you ask the Tax Recovery Officer whether any notice is given, the answer comes immediately that these are secret proceedings and that no reply can be given. Because of this, the difficulties will now be more accentuated. Apart from immovable properties, in the case of stock exchanges also it will become impossible to deal with them. Clause 57 deals with the provisional attachment also during the pendency of the proceedings. The attachment is effected the moment proceedings are pending, whereas according to the Wanchoo Committee and even the Notes on clauses to the Bill it is only when there is investigation that a provisional attachment comes. But the clause as it stands goes a step further and merely deals with any pending proceedings and not necessarily an investigation.

Now I will deal with the settlement procedures under Clause 58. Here a new chapter, XIXA, is sought to be inserted. This is only confined to pending matters before the income-tax authorities. Here case is defined as proceedings before either the ITO, the Commissioner and so on. Our suggestion is that these proceedings should in a way give a finding on long pending matters. They should be extended even to matters pending before the tribunal, High Courts and the Supreme Court and not necessarily be confined only to matters pending before the tax authorities.

MR. CHAIRMAN: We will consider it; I do not know to what extent it could really go.

SHRI J. P. THACKER: As for the Settlement Committee, 245D, refers to

materials contained in a report which they may call for. It is rather extraordinary that this report should not be open to inspection of the party concerned. It is to be treated as a confidential document except where the Committee thinks fit in a case where it may allow inspection of relevant extracts.

245D(1) says:

"On receipt of an application under s. 245C. the Settlement Committee may call for a report from the income-tax authority concerned and on the basis of the materials contained in such report and having regard to the interests of revenue and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Committee may by order, allow all the matters covered by the application or any part thereof to be proceeded with or reject the application".

MR. CHAIRMAN: How do you get the idea that all this will be behind the back of the petitioner?

SHRI J. P. THACKER: The report is called for by the Committee from the income tax authorities. That will be the basis for decision by the Committee, but it is not to be made available to the petitioner 245G says:

"No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Committee...."

MR. CHAIRMAN: Your apprehension is that in proceedings taken recourse to materials relied upon will not be made available to the petitioner. We will carefully look into the drafting. As it is, the proviso takes care of your apprehension.

SHRI J. P. THACKER: If that is so, it is all right. Then 245K says

that if a person, who has taken recourse to the settlement procedure, is found guilty, at no future time will he be entitled to take advantage of this machinery. To put a total embargo for the future like this seems to be unfair. If you see the last line of the clause, line 44, p. 33, it says:

"he shall not be entitled to apply for settlement under section 245C in relation to any other matter".

If with regard to one particular matter he is found guilty, there is no reason why in future years he should be debarred from going to the Settlement Committee and taking advantage of this machinery for other matters. After all, what is the idea of this machinery? It is that matters should be expeditiously disposed of.

MR. CHAIRMAN: We will consider it.

SHRI BHAGWAT JHA AZAD: Other matters concerned in the same case or any other matter?

SHRI J. P. THACKER: Any other matter. There is no reason why this should be there. It should be made clear that that is not the intention.

Then 245H(2). When an assessee comes before the Settlement Committee or the authorities concerned for settlement and he makes a disclosure, it should be provided that regardless of any subsequent fraud being found, whatever disclosure he makes should be without prejudice and he should not be penalised for that. Otherwise, it will deter many people from coming before the Committee and taking advantage of this machinery. But here it says that the immunity granted can be withdrawn. If that is so, the tax authorities will not find many people coming forward for settlement.

MR. CHAIRMAN: We will consider that.

SHRI H. M. PATEL: Shri Thacker seems to have made a study of the settlement procedure very carefully. Is he satisfied with the composition of the Settlement Committee?

SHRI P. P. THACKER: As the Bill stands, and as pointed out, the Wanchoo Committee has recommended that they should be from within the department. But, frankly speaking, this should be a body totally independent of the tax department altogether. It should be in the nature of a judicial bench or some such body; it can be a tribunal where independent judges sit. But here, the personnel are to be drawn from the department itself. I have nothing to say against the official. They are

first-class people; those whom we come into contact are excellent. But what will happen in the future, one never knows. Apart from that, after all, the persons from the department, however, independent they are, like Caesar's wife, they must not only be independent but they must appear to be independent, and they must appear to be impartial. If one has to inspire confidence, they must come from outside; they must be drawn from the judiciary.

SHRI GANESH PODAR: We have also made this point in our memorandum.

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew.)

(II. All India Film Producers Council, Bombay)

Spokesmen:

1. Shri G. P. Sippy, Vice-President.
2. Shri Shree Ram Bohra, Vice-President.
3. Shri Subodh Mukerji
4. Shri B. R. Chopra
5. Shri S. D. Narang
6. Shri Narayan Varma, Chartered Accountant.

[The witnesses were called in and they took their seats].

MR. CHAIRMAN: Before we take your evidence I may point out to you Direction 58 of the Directions by the Speaker which provide that their witnesses must be informed that the evidence they give would be treated as public and is liable form that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI G. P. SIPPY: We have already submitted our memorandum.

MR. CHAIRMAN: Yes; we have gone through it and we will go through it again at the time of

clause-by-clause consideration. I want to know whether you have something to say over and above what you have said in the memorandum; if so, it will be of immense help to us. If you want to add some more points to the memorandum, you can do it.

SHRI G. P. SIPPY: We would like to emphasise certain points. First, section 64(2) where the income of the spouse is to be added to that of the husband.

MR. CHAIRMAN: You are coming to the clauses straightway?

SHRI G. P. SIPPY: I think Mr. Chopra would like to make some general points.

SHRI B. R. CHOPRA: I have to make some general observations about certain aspects which are not mentioned in the memorandum. I

beg of you all to consider that nobody in this country has so far been able to apply his mind to this peculiar industry. All that we receive is condemnation for various reasons that are there, according to them, but which may not be there, but they may be there as part of the general set-up in the whole country. Nobody has been able to find out what really this industry is. Today, we swear by the names of Bimal Roy; we talk of B. N. Sirkar who made great movies; we talk of Chandu Lal Shah and these people are nowhere now. Bimal Roy died in debts; Mahboob Khan died in debts; B. N. Sirkar is nowhere, Mr. Chandulal Shah is not able to afford even medicine for his illness. Nobody seems to have applied his mind as to why this is happening in this particular industry and why it does not happen to the Tatas, Birlas and those who have continued very well for centuries, and why we have not been able to make up. Why the consideration has not been given or why nobody has tried to find out why this does not happen in America or Japan in respect of this industry? One has not found out why people like the Metro-Goldwyn Mayer, 20th Century Fox have been going on for so many years whereas we in this country cannot. It is due to the fact that nobody has applied his mind to this very peculiar industry.

For example, we are artists, producers and directors. There are very big expenses for keeping the show up and keeping it going round; the wardrobe is part of their equipment. It is part of our expenses. But every-time, when we are told to substantiate it, it is not possible. In foreign countries, a percentage of their expenses is allowed. The artists, producers and directors who are actively engaged in film-making are allowed certain percentage of their expenses.

I might give you a story. I met an artist, Karl Marden. He is a very big character-player in Berlin. I asked him how he was able to have a big house with so much around him, and how he was able to afford it all. He

said, "Government is paying for them not me. I am bringing my money. I am living in a small flat but when I come to a big house they will have to allow me." Here, in our case, if we have a house, if our producers have a house, that is the only visible guarantee of our so-called assets, while we have no real assets. Our assets are combustible. We make promises, ninety per cent of which we are not able to fulfil. I think when we come to the clauses, all these provisions may be dealt with. We are not technical men. We are people who are trying to do some artistic work. In our case, it is just like a painter who paints pictures, 80 per cent of which he does not sell or is not able to sell. It is like poetry which is created once in a while and not all the time. The general pattern of picturemaking everywhere in the world, has changed. About 80 per cent of the picture flop and only 20 per cent achieve success. We are losing, on an average, Rs. 50 crores on the production side every year. This is the fact. We would like to request that some kind of a study may be made about this industry, and some method should be found out whereby genuine people who are engaged in making serious and good pictures are not allowed to suffer. Something should be done. I do not know whether this will be done by this Committee or by somebody else. I am not a technical man. My submission in this. We are being maligned all the time. All the time, we are being told that we are bad people and we do this and that; we lead an ostentatious life. At least, for once, please try to understand and appreciate our position. Ours is a very big industry. I thought by placing our view point before you, you may be able to understand our problems.

SHRI JYOTIRMOY BOSU: Could you please tell us as to what is the total finance involved in your industry, in this country, over a period of 5 years and what is the annual turnover during the last 5 years? To what extent, this has increased?

SHRI B. R. CHOPRA: I cannot say off hand.

MR. CHAIRMAN: We appreciate your first please that consideration should be shown to the people who are engaged in creative part, I do not know whether this is the right forum where we can do anything more than confine ourselves to the objectives of the Bill. In that regard, if you want to make any suggestions, in order to rationalise the laws so that it benefits you, in regard to deductions etc., you can do so. We will consider that. But, I would like you to bear in mind that while on the one side, we would bear in mind whatever you have said, on the other, we are concerned with the question of tax evasion. We are down to earth people. The main purpose of the Bill is to prevent tax evasion, generation of black money and its proliferation. Therefore, I would appreciate very much if you give suggestions in order to make the tax rates reasonable, or in making the law simple so far as your industry is concerned and so far as the producers are concerned; you may also give suggestions in order to tone up the taxation system so that unscrupulous persons are not allowed to go scot-free. You have referred to the fact that the industry is being maligned. You also said that you are a victim of the circumstances. This is a facet of corruption, in the country. If you are anxious to get out of the present position, to which you have referred, you are free to suggest ways and means by which we can help you. But, as I said earlier, we are confined to the objectives of the Bill. You can start.

SHRI JYOTIRMOY BOSU: Can any of the gentlemen here before us, tell us, as to how much finance is involved in the Indian film industry. What is the annual turnover?

MR. CHAIRMAN: You can take it available later on.

SHRI G. P. SIPPY: We can make them available. But from whatever data we have got, I think we have about Rs. 70 crores of turn-over per year in the case of movies.

SHRI JYOTIRMOY BOSU: What was it 5 years ago?

SHRI G. P. SIPPY: It was much less. It may be only about Rs. 30 crores or Rs. 34 crores.

SHRI JYOTIRMOY BOSU: This is not discouraging.

SHRI G. P. SIPPY: We are prepared to cooperate with you and help you in so far as the objectives of this Bill are concerned. At the same time, we would like to place before you certain facts. Today, a high rate of tax is imposed on the film industry. This is the only industry in India which is singled out for 80% of the gross revenue before anything falls in our hands. This is the only industry in India which is treated in this manner. We are also subjected to 50% entertainment tax. All our receipts are collected at the box office. Out of 100 rupees collected at the box office, 50 rupees are taken away by every State Government. From a box collection of 100 rupees, we are left with a very meagre amount, with which we have to meet the cost of production and other things. About 93% of the collections are taken away by rest of the agencies.

SHRI JYOTIRMOY BOSU: This entertainment tax etc. fall on the persons who go to see the films.

SHRI G. P. SIPPY: Today, for making a colour film, we have to import certain things. We have to pay a very high custom duty on these imports. Only recently, there has been a 300% increase in the custom duty. The industry is already crippled. I am giving this background in order that you may be able to appreciate our difficulties and the hardships we are facing. I would again say that the film industry is already crippled. We do not get much out of the box collections. Out of the box collections, about 50% is taken away by the State Governments, and the distributors also take away something. The man who is responsible for production, gets only Rs. 7, out of the gross collections of Rs. 100/- at the box office.

SHRI ERA SEZHIYAN: Just now, Mr. Chopra said that something should be done with regard to the film industry. I do not know whether any study has been made by the industry to remove whatever the impediments there are.

SHRI B. R. CHOPRA: We are actually trying to take this up at all levels, but, so far, this has not been heeded to.

SHRI ERA SEZHIYAN: In the memorandum submitted to us, you have welcomed the amendments. At the same time, you have said that the Bill may not fulfil the main objectives as desired. This is your opinion. Now, I would like to quote certain observations of the Wanchoo Committee.

"We had sought views on this matter through a question in our Questionnaire and an overwhelming majority of persons, who sent their replies, was of the opinion that considerable amount of black money passes in transactions in the film world at different stages."

Now, I want to be very plain with you. You help us to understand. A hindi colour film may cost about Ra. 40 to 50 lakhs.

SHRI B. R. CHOPRA: Sometimes, even more.

SHRI ERA SEZHIYAN: For a leading star, something has to be paid in black and something in white. Am I right?

SHRI G. P. SIPPY: After the annuity system has been introduced, during the last three years.....

SHRI ERA SEZHIYAN: For a star, 75 per cent will be paid in black and 25 per cent in white.

SHRI G. P. SIPPY: After the annuity system has been introduced most of the money is being paid in white.

MR. CHAIRMAN: Do we take it, Mr Sippy, that you have no problem of black money?

SHRI G. P. SIPPY: I will be making a wrong statement if I say that. The problem of black money is there in past of the industries.

MR. CHAIRMAN: Let us be frank about it. We want to help you.

SHRI G. P. SIPPY: Certainly, we would like to cooperate. But, at the same time, we would request you to see that whatever little is left with us, is not wiped out.

SHRI JYOTIRMOY BOSU: But your annual turnover has doubled in five years.

SHRI G. P. SIPPY: The number of movies has gone up. The cost of everything has gone up. Moreover, people have become more cinema-minded to-day than 5 years ago.

SHRI B. R. CHOPRA: Even the number of cinema houses has gone up, as also the population. The number of people who see films most, viz. the student population, has gone up. There is nothing surprising about it.

MR. CHAIRMAN: We are aware of the various manifestations of the growing population in the country. Mr. Sezhiyan asked a question specifically. If you accept the premise of the question, we can proceed further. We want to know as to how we can help you. If you don't accept his premise, we can go to the next question.

SHRI SUBODH MUKHERJI: The question is quite simple and the answer also is quite simple. We are not using as much black money as previously, i.e. before the annuity system came into being. Its importance was understood by Mr. Morarji Desai. It is not generated in our industry. To a certain extent, it is consumed here as in any other industry. We do not like, just as you do not like it. We need your help in curbing this.

SHRI JYOTIRMOY BOSU: It has to do not only with actors and actresses. Anyway, I would like to have some information from the producers in regard to their wanting black money from the exhibitors.

SHRI B. R. CHOPRA: It does not at all exist, Sir.

SHRI G. P. SIPPY: It is the distributor who deals directly with the exhibitors, and not the producer. There is no question of any direct money being received by the producer from the distributor.

SHRI JYOTIRMOY BOSU: Mr. Sippy, are you aware of the fact that between the exhibitor and the person who delivers the film to the cinema, there is a lot of black money involved.

SHRI G. P. SIPPY: Absolutely not, Sir.

SHRI ERA SEZHIYAN: I come from Tamil Nadu and we know something about it. Individually, we are not saying anything against you. You say that there is no black money involved between the producer and the distributor. If you come with me, we can get the information from the horse's mouth. There are two methods, one of which is the outright sale. There are various *modus operandi*. Sometimes, the films are produced by one; and the world rights of the negative are sold to the other. We do not know the nominal price. The scope is there for black money. They transfer the world rights for some consideration, say Rs. 40 lakhs or Rs. 50 lakhs. The area rights are being sold again; and in some of such cases, there are no further rights. After 3 or 4 years, in key centres it is very difficult to find out the position. Why do you say that the producers do not have the black money. For example, whatever amounts are given for the constructed sets, are not taken into account.

SHRI B. R. CHOPRA: I beg to submit that the knowledge at your disposal is not comprehensive. Black-money can operate only from a position of strength. The producer is the weakest link in the chain.

SHRI JYOTIRMOY BOSU: That is a matter of opinion.

SHRI B. R. CHOPRA: I will be able to prove it with facts. Even a small Extra can dictate to a producer because he needs him. An artiste sells his talent and he can have strength. The producer does not have strength till his picture clicks.

MR. CHAIRMAN: There are producers and producers.

SHRI B. R. CHOPRA: If the picture is tested in the box-office, he gets strength; but in 99.9 per cent of cases, the pictures are traded before they are made. There are various ways, of selling the pictures. Sometimes, we sell outright. We give the pictures on minimum guarantees and also on advance basis. The pictures themselves cost so much. At this stage, it is impossible to generate black money in the hands of the producers. I mean it. In 1 per cent of cases, it may be possible. As a producer, I have not been able to take one single rupee as black money. When the picture clicks, it goes into the hands of the distributors, as also the exhibitor. There are shortages of playing time. Anything can happen between the exhibitor and the distributor; but we have no knowledge about it. The malpractices may be there, or may not be there. Whenever there is strength in anybody's hands, he exploits it. On behalf of the producers, I can assure you that we form the weakest link.

MR. CHAIRMAN: The general discussion will end here. We can take up clause-by-clause discussion.

SHRI R. V. SWAMINATHAN: I want to know whether this impression is confine to Bombay or it is true of other places like Madras and Calcutta also.

SHRI B. R. CHOPRA: The producer anywhere in the world, is the weakest link. Whatever operates in Bombay, operates in other places also.

MR. CHAIRMAN: We have heard your general position. We will bear it in mind. Please come to clause-by-clause.

SHRI G. P. SIPPY: We had a discussion earlier in our talks about the annuity system which has reduced the scope for black money. We, therefore, realize the importance of the annuity system to this industry... It can ultimately eliminate the black-money completely. It is very important. I would now request Mr. Varma to speak about it.

SHRI N. VERMA: Clause 51, section 180A. This is covered by our submission in p. 9 also. This provision is already in operation today by executive instructions; only this Bill gives *de jure* recognition to it. But certain limitations are being put simultaneously while it is being statutorily put under the Act. We object specially to two provisions that the annuity should be of such a type that the first instalment should start within five years of the date of signing of the annuity contract and the period in which the instalments should be completed should be ten years. If this provision is made, it is feared by the producers and artists that it will have no significant effect on artists to go in for such a contract where the annuity instalment starts so fast. The life of a new artist or an artist who is already established would be definitely more than 5, 7 or 10 years. In that case, it may so happen that going in for this annuity would entail form payment of more tax than would otherwise be the case.

The main reason why we are making this plea is this. It is only deferment of payment of tax. Tax is definitely going to be paid. The LIC is in the picture. Actually, the quantum of tax would be much higher. Meantime, the amount is lying with the LIC, that is, with Government.

MR. CHAIRMAN: We appreciate your suggestions that it should not be limited to five years or ten years because the life of an artist is likely to be more than that and that would hardly benefit him.

SHRI N. VERMA: The second point is that the Board will have power to

extend this to other individuals in the film industry. For the time being, it is specified that it will apply only to artists. Our submission is it should statutorily be provided that technicians and other groups of people directly and intimately connected with the film industry should also be covered. Not only that, even people outside the film industry who are placed in a similar position should be covered by this.

MR. CHAIRMAN: Everyone connected with industry should be brought under this?

SHRI N. VERMA: Those who are doing technical work.

MR. CHAIRMAN: Technical people do not have a short life.

SHRI B. R. CHOPRA: Directors do have a short life.

MR. CHAIRMAN: I can understand your suggestion that artistes who have a short life should be specified statutorily. But to say that everyone connected with it should be brought in seems to be rather too much.

SHRI N. VERMA: We have specified on p. 11 five categories.

MR. CHAIRMAN: What about playback singers? They seem to be going strong.

SHRI N. VERMA: There are one or two exceptions.

MR. CHAIRMAN: Film producer?

SHRI S. MUKHERJI: He is a technician.

MR. CHAIRMAN: Music director, playback singer, are all technicians engaged in the film industry. Technicians cannot be classified as artistes.

SHRI N. VERMA: We mean there are highly specialised areas like story writing. This is something which does not go for a long time. It is just like an author or poet. When a story is written, some people become famous for it for 3-4-5 years. Afterwards, their ideas get stale and they do not continue. Then photographers.

MR. CHAIRMAN: We appreciate your submission that it should be statutorily specified and not left to discretion.

SHRI B. R. CHOPRA: It has been misunderstood in most quarters that the producer is only a person who brings in money. Actually it is a technical job. That is why we say this facility should be extended to him.

MR. CHAIRMAN: The basic idea is this. People who are engaged in the work of a creative art whose creation becomes obsolete and does not have a long span, such people should have this benefit. We are impressed by the argument that the tax will in any case be paid. Suppose in an average profession a person has 30—35 years or 25 years, in the case of an artist it is only five or ten years. In five years, he has to pay as much tax which someone else may have to pay over 30—40 years. So we understand the argument for a spreadover. But while arguing for this, you must not expand the categories and include in it people who have the normal hazards. I do not know if the film producer will fall in this category.

SHRI B. R. CHOPRA: He is the man who is the real creator, who selects the story. His function is not just to bring in money. Take people like Bimal Rao, Mehboob Khan or Shanta Ram. Mortality is high among producers.

MR. CHAIRMAN: If you are serious about your argument that the producer should come under this, you must give us some convincing reasons.

SHRI SUBODH MUKERJI: Ninety per cent of those who have become producers are technicians, writers or directors. They become producers. They start their own firm because they want to give something which has artistic quality. This is a most healthy trend in our industry. People like Bimal Rai and Mehboob Khan were not people from big business houses. They were small technicians. They worked their way up and

became producers. Nowhere else in the world you see this. The creative talent of any person, a genius, is very limited. They were good writers and directors. That is why they are successful producers. It is a really technical job which cannot last more than a few years. He is a technician, artist, not a businessman.

MR. CHAIRMAN: We will consider it.

SHRI VASANT SATHE: Would you suggest that we distinguish between two types of producers—one who was a technician, a director or actor who later became a producer, and another who is a financier, who holds the money power but who comes in as a producer?

SHRI SUBODH MUKERJI: Yes, exactly.

SHRI VASANT SATHE: We include such type of persons who have come through the industry itself and become producers in this?

SHRI SUBODH MUKERJI: Yes.

[**SHRI ERA SEZHIYAN** in the Chair.]

SHRI G. P. SIPPY: As regards the other point that this is limited to 75 per cent of the total income earned by an artist, we want that there should be no limit. It should suit the person. He can even go in for 100 per cent. After all, he is going to pay the tax sometime and the money is going to be with LIC. This 75 per cent should be removed and made 100 per cent.

SHRI B. R. CHOPRA: Of course, if it is desired by the artist.

MR. CHAIRMAN: On what resources is he going to live, if it is 100 per cent?

SHRI G. P. SIPPY: The artist does not work at one picture at a time. He works in six to eight pictures at the same time. If it is 100 per cent, that would leave him with sufficient money.

MR. CHAIRMAN: Can you say on the total income, 75 per cent will be enough?

SHRI S. R. BOHRA: Take it to 90 per cent.

MR. CHAIRMAN: Well, you want that to be increased. We will consider it.

SHRI N. VERMA: The point is, at one point of time, when the instalment starts coming to the artist, he has sufficient income which flows to him from the earlier annuity contracts. At that moment, he would like to defer the entire 100 per cent for the future, because already he is receiving sufficient money out of the earlier annuity contracts which have been signed and the money started flowing. That is the reason why the percentage should not be fixed at 75.

MR. CHAIRMAN: You cannot have both. Either you stick to the five year annuity; otherwise, it becomes unlimited.

SHRI N. VERMA: I appreciate it.

Now, I come to clause 14 which seeks to amend section 64. We have raised two or three points here. One is that in genuine cases, several factors have to be considered. We would here quote the example of the film industry. One of the producers marries a film artist or a film artist marries a producer, which is quite common these days. Now, take an artist like Amitab Bachan who floats a company of producers. His wife is a renowned artist. To deny that benefit from her remuneration and disallowing it just because her husband owns more than 20 per cent in a concern would be unfair. Hence, I submit that this provision should be deleted.

SHRI VASANT SATHE: You say we would be discouraging such marriages.

SHRI N. VERMA: That is not so.

MR. CHAIRMAN: You should understand that there are other cases also. These cases are genuine cases, but I can give you any number of cases where the wife or the husband may be given some designation, say, marketing surveyor or something like that. It is a thing which you cannot test. For that, you pay Rs. 4,000 a month.

SHRI N. VERMA: We are aware that there is already a penalty provided in the Act, for such individuals, by completely disallowing that remuneration. There is already a provision by which a company who tries to create a bogus person for the payment of certain things will be punished; This is allowed in those cases. This is sufficient penalty. In a way, it will incur double taxation; rather, it will be a double penalty. Here, there is a further penalty.

SHRI BHAGWAT JHA AZAD: We have to amend this.

SHRI N. VERMA: In the process of trying to prevent certain cases from happening, and once you try to take into consideration a lot of genuine cases, a lot of people will suffer.

SHRI BHAGWAT JHA AZAD: How do you advise us? You want us to save the genuine people and punish those who are not genuine?

MR. CHAIRMAN: How to distinguish between these two cases?

SHRI N. VERMA: There is a provision in the Act that certain expenses like export market expenses are allowed. In the case of, say, one-third extra or one-half extra, the disallowance can be made in a case like this. But why prevent it in other cases? You are trying to prevent certain undesirable development in certain cases, but why prevent a lady from earning her remuneration?

SHRI BHAGWAT JHA AZAD: We are also anxious that the present provision is not sufficient. But how to remedy the situation?

SHRI N. VERMA: You disallow that. Instead of 100 per cent, disallow 150 per cent like those in the export market.

SHRI VASANT SATHE: On this very point, we have been hearing many Chambers and others. Do you think, if we can satisfy certain categories of genuine cases where a spouse, by her technical knowledge or proficiency, is qualified to work for the husband or *vice-versa*, such cases can be excluded? If there is no technical qualification *prima facie*, then, the presumption would be that they are the cases where the mischief takes place on a large scale. Examples have been quoted before us, where you call the wife as an interior decorator or a PRO or any such thing and give her a fabulous salary the like of which we have not known elsewhere. Do you think that we can qualify the provisions in such cases and say that if she deserves by virtue of her qualification, it may be done? In the case of, say, artists like Jaya Badhuri has no monetary interest actually, question. If we amend the provisions in the way indicated, do you think it will serve your purpose?

SHRI N. VERMA: Yes. Just to reply to the other hon. Member who raised a point earlier. The provision may not serve the purpose at all. As in the example given by me, one can plan it out so that the husband has not monetary interest actually, what will happen is, what is earned by the husband will be taxed in the hands of the wife. What is intended will not be done if the provision, as is worded in the Bill today, is made into a law.

As we have said at page 3 of our memorandum, all the shares of the company or more than 25 per cent thereof are held by the wife of an individual; the husband holds no shares but draws a remuneration. His other income is very high, while the wife has no other income. As per the provisions, the remuneration shall be taken as the income of the wife

and it will fetch lesser revenue to the Department. The provision, as worded now, can in fact be misused.

SHRI VASANT SATHE: That may be considered.

SHRI BHAGWAT JHA AZAD: You also concede my point that the present provision is not enough; but can you suggest a substitute?

SHRI N. VERMA: I have already submitted that the disallowance may be raised to 150 per cent or 200 per cent.

SHRI BHAGWAT JHA AZAD: We take the total amount of the husband and the wife to be a certain sum, and say that upon that, it can be allowed. And then, say, that beyond a certain limit, for example, Rs. 2,000, it should be clubbed.

SHRI N. VERMA: Yes; I think it should be all right.

SHRI B. R. CHOPRA: I am not a very technical man. But don't you think it is a disincentive to a wife's earning? When we are all for the promotion of education and other attainments among the women, don't you think that this will be a disincentive?

SHRI BHAGWAT JHA AZAD: That is why, I am suggesting that, beyond a particular limit, that should be done. How many in this country are getting more than 25 per cent.

SHRI B. R. CHOPRA: Let us think ahead. Let us think in terms of the future. We are trying to educate our daughters and we want that they should take their rightful places, among others.

SHRI BHAGWAT JHA AZAD: How many are getting?

SHRI B. R. CHOPRA: They can get. It is not a question of how many are getting.

SHRI VASANT SATHE: Purely by qualifications, she deserves, by all means, we can have it.

SHRI B. R. CHOPRA: The actual working is contrary to our own culture. Even Manu said something to the effect that this should not be done; women should be treated as a separate entity. Our own scriptures have said about this. We want to depart from the traditions of our own culture. I do not know why.

SHRI BHAGWAT JHA AZAD: That is why, we find, in the provisions of this Bill, the evidence of Indian culture so nicely.

SHRI N. VERMA: The next point is with regard to the case of a partnership, wherein, a minor is admitted to the benefits of a partnership. When some capital is gifted by the grand father, as per the law which is being amended and which is being put in this Bill, there will be tax at both the hands, one in the hands of the grand father and the other in the hands of one of the parents. Is that the intention of the Bill that there should be tax at both the sources?

SHRI VASANT SATHE: Which-ever is the higher income.

SHRI N. VERMA: That has not been provided in this Bill.

SHRI VASANT SATHE: That is the intention. We will consider that.

SHRI R. D. SHAH: Your doubt arises from a mis-reading of the section. What happens is this. If you read Explanation (3), it has been provided:

"For the purposes of Clauses (iv) and (v), where the assets transferred directly or indirectly...."

What happens is this. This has been provided in order to overcome the difficulty arising in the case of a year, where there is no direct nexus between the income transferred, You should read Clauses (iv) and (v) with Explanation 3. In such cases, the income would be taxed in the hands of the individual. That is the point. But, this will come where the assets are transferred directly, to the son's wife or the minor children,

otherwise than for adequate consideration. This is where there is a direct nexus. There is no question of double payment if you read both the Clauses together with Explanation 3.

SHRI N. VERMA: We feel that a lot of hardship will be caused and in many cases it will be difficult to correlate a particular investment with a particular source. So, these provisions with regard to the grand father and father-in-law, and to tax the income out of the income of the original transferor, should be made prospective.

MR. CHAIRMAN: We will consider that point.

SHRI N. VERMA: The next is regarding Section 133A, Clause 38. Certain powers are being given to the Income-tax Officers. The powers which are being given can be mis-used in many cases and there should be some safeguards under this provision. We suggest that these powers should be given to the higher authorities and these powers should not be given to the Income-tax Officer and his Inspector. Powers have been given to take evidence or record a statement etc. It has also been said that any person may be asked to give a statement etc. There may be some petty officer or there may be some clerk and if he is forced to give a statement etc., he may not be expected to make a statement, which necessarily is made with some sort of mental....

SHRI BHAGWAT JHA AZAD: He may not give a statement. But, he can say. 'I do not know; My Officers not present, and when he comes....'

SHRI N. VERMA: He is supposed to reply, when asked questions.

SHRI BHAGWAT JHA AZAD: He can say. 'I do not know; My Officers know better.'

SHRI N. VERMA: It only amounts to 'he can say'. But, sometimes, he may not know how to talk even. It

should be by some responsible Officer. Then, we come to Clause 67—Section 273A. On page 7 of our memorandum we have expressed our views on this Clause. The Commissioner's level is a very high level of authority in the income tax department's working, in the Central Board's working, and it seems that his power is being curbed under this Section. It has been provided that he can entertain any petition, either for the remission, waiver or reduction of any penalty or interest, only once in a life time. This would create difficulties. As the law is existing today, the Commissioners have got powers to waive penalties and interest etc. Under the amending provision, Section 273A, he is also given additional powers. So, in one way, you are giving more powers to the Commissioner and the same time, you are saying that an assessee will be entitled to relief only once. Recently, there was a case in the film industry and it was a case of amortisation. This was settled with the help of the Chairman sitting here and also with the help of the Commissioner and others. A person, for no fault of his, may be charged interest which may range from two to five lakhs of rupees. The tax, which otherwise would have normally been paid by him would be increased by about 10 or 20 per cent, and in the process, he may have to pay Rs. 2 to Rs. 5 lakhs, by way of interest. He would go and appeal to the Commissioner that this is something which is not fair and he is being taxed for no fault of his. In such cases, there may not be any concealment of income. But, if he is already given one relief earlier, he will not be entitled for relief for a second time, as per the amending Bill. There may be cases, where a person has a genuine difficulty and he finds that something is wrong, and in such cases, he may go to the Commissioner.

SHRI VASANT SATHE: You suggest that only malafide operations should be covered and others...

SHRI N. VERMA: Yes. Then, I come to Clause 64, Section 271, which is on Page 8 of our memorandum. Here, we feel that the explanation which is being added is very harsh. It relates to the case where a person is not able to prove his expense, or cannot substantiate it, or which may be found to be false. Then, it is supposed to be deemed as concealment. There can be many instances where a person is not able to substantiate an expense. We were just talking of a picture running in Bombay, called "Naina" where an artiste, having worked in that film, has left India and is not available now; and to substantiate the payment made to her, is very difficult.

MR. CHAIRMAN: You must have receipts for the money paid to her.

SHRI N. VERMA: On many occasions we issue cheques, till the contract is finished, and do not take receipts.

SHRI R. V. SWAMINATHAN: If it is by cheque, it is sufficient.

SHRI N. VERMA: It is a 5-year old story. We may not be able to trace it. Sometimes, fires also occur.

MR. CHAIRMAN: I accept all the other excuses, when somebody takes payment. But if you say that you cannot substantiate payment made by cheques, it is difficult to accept it, because you say you do not deal with black money.

SHRI N. VERMA: It is not a question of black money, Sir.

SHRI JYOTIRMOY BOSU: If you made payment by cheque, you can ask for the cheque from the bank; they will give it.

SHRI VASANT SATHE: There may be a few exceptional cases. You cannot prove thereby that it is the real position. As such, such exceptions should not be given here, unless you made cash payment and burnt the house intentionally.

SHRI N. VARMA: These are glaring examples. There are common ones also.

SHRI VASANT SATHE: Please give them. Anyway, you are on a weak ground.

SHRI SUBODH MUKHERJI: There is one more point. Sometimes, when we go to the Income-tax Officer, we agree to a settlement; but that is not a concealment. To expedite matters, he allows us Rs. 50,000 and we agree. We cannot now agree to such things because it will amount to concealment.

MR. CHAIRMAN: Some expenses would be termed as concealment. We cannot agree with you on this. They give the decision whether it is taxed or not.

SHRI SUBODH MUKHERJI: Here we agree; but we have now to go on fighting the case till it is settled. There will be a lot of litigation.

SHRI VASANT SATHE: I want to know from Mr. R. D. Shah whether it amounts to concealment per se, if they agree to certain additions?

MR. CHAIRMAN: Return and assessment always differ.

SHRI SUBODH MUKHERJI: The Income-tax Officer allows certain expenses; and in certain cases, we make a compromise. Will it amount to concealment?

SHRI R. D. SHAH: It would not.

SHRI SUBODH MUKHERJI: The Act provides for it.

SHRI VASANT SATHE: Does the Act provide that any accepted addition arrived at by agreement, would amount to concealment? I mean the agreed assessment.

SHRI R. D. SHAH: I would say that the law on the subject is not very stable. I will indicate how. There have been some decisions where there have been cash credits and they have been treated as income. Some courts have said that because the man has admitted it as income, it is concealment. Some other courts have said "No". Similarly, the explanation said that it will be treated as in-con-

cealment. This in-concealment has been deemed as no concealment. Sometimes, some tribunals have taken this to be concealment; and most of the time as not being so. In Anwar Ali's case, the Supreme Court decided that it would not be treated as such. The onus was on the Department to prove that it was so. By and large I would say, therefore, that it would be concealment. Some officers may take a different view and throw it up for appeal; but not ordinarily. We have tried to cover this point. I am going on to the next stage. If you have accepted certain items in the past, if you have made some tangible additions, and some expenditure items have been disallowed in the subsequent years when they brought in some unaccounted money, then they say that it is out of those amounts which were disallowed in the past. They themselves never said that this might be concealed money. Then, it would have been liable to action.

SHRI N. VARMA: When the addition is made thus, i.e. "Rs. 50,000|- added to certain groups of expenses not proved"—these are the common words used by income-tax people—would it amount to concealment or not?

SHRI R. D. SHAH: He would be called upon to substantiate his statement.

SHRI SUBODH MUKHERJI: We will try to go on substantiating it.

SHRI R. D. SHAH: Suppose a person says that he has spent Rs. 50,000|-; but he has no proof. There are two points. He might have spent it otherwise. He cannot mention it; or he might offer an explanation; but it is not substantiated.

SHRI B. R. CHOPRA: Sometimes, to cut the matter short, there are certain agreed assessments between the ITO and he assessee, whereby the producer is told that he may make it in such a manner that he is not penalized. It should not be treated as concealed income.

SHRI S. MUKHERJI: Clause 99, page 15 of our memorandum. The valuation report of the approved valuer should be accepted and we should not be penalised.

SHRI VASANT SATHE: We will consider that.

MR. CHAIRMAN: Thank you for your evidence.

SHRI G. P. SIPPY: Thank you for giving us a patient hearing.

(The witnesses then withdrew.)

II. Bombay Study Circle on Corporate Law and Allied Subjects, Bombay.

Spokesmen:

1. Shri C. C. Chokshi, Chairman.
2. Shri R. P. Kedia, Convenor-cum-Hon. Secy.
3. Shri J. E. Dastur, Member.
4. Shri C. C. Dalal, Member.
5. Shri R. K. Joshi, Joint Secretary.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: I would draw attention to direction 58 of the Directions by the Speaker under which it shall be made clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence is to be treated as confidential. Even so, such evidence is liable to be made available to the members of Parliament.

SHRI C. C. CHOKSHI: Yes.

MR. CHAIRMAN: We are glad to meet you again, Mr. Chokshi. You have already represented to us some of the important aspects. If there are any other aspects to which you wish to draw our special attention, apart from what has been stated in your memorandum which has been circulated to members, you may do so. You may give a general picture because we do not have much time left.

SHRI C. C. CHOKSHI: Thank you. I will not repeat what I have said on the earlier occasion when I had the honour of appearing before this august body. I will only confine myself to some of the important points.

First, I would clarify one point. Although we are described as a Study Circle, we are a Study Circle on company law and allied subjects. Therefore, an impression should not be created in the mind of hon. members that we have made any detailed study of the income-tax law, more particularly in the matter of collection of any that on income-tax assessments, etc.

I would now make a few observations. . .

SHRI P. G. MAVALANKAR: This Study Circle has been in existence for 2½ years. Have they taken up surveys, studies or projects in regard to company matters or other matters and are the results of such studies available to the public?

SHRI C. C. CHOKSHI: We are a Study Circle which came into existence about 2½ years ago. During this period, we had not taken up any project. What happened was that within less than a year of our formation, we had the Companies (Amendment) Bill. So most of our time was devoted to studying this Bill and making a representation on that. We meet only once a month and at that time, a large part of our time is devoted to solving the queries of our members, because we have members from different walks of life, different professions, cost accountants,

chartered accountants, company secretaries, managing directors, managers of companies, industrialists and officers of the company law department. Whatever time is left, we have devoted to studying the provisions of the company law, particularly points which create practical difficulties. Recently we devoted a lot of our time in studying the provisions of the MRTTP Act. These are the two laws on which we have so far been able to make some study; we have not been able to make a study of the impact of taxation on corporate bodies.

SHRI JYOTIRMOY BOSU: Whatever studies you have made, you must have published some papers. I suppose the Committee would be interested to see them.

SHRI C. C. CHOKSHI: We have not published them; we have only sent copies of our minutes of discussion to our members.

SHRI P. G. MAVALANKAR: There seems to be an increasing tendency on the part of professional bodies to generalise. We have now state legislation in a massive way. In order that this is examined in detail and Government are helped in their final formulation for the promotion of public welfare, we would like these expert bodies of professions not merely to have lectures, seminars and discussions but to undertake some in-depth studies so that they will help Government and the public.

SHRI C. C. CHOKSHI: I am grateful for the suggestion. We will bear this in mind and we will make a study of certain projects which will help Government in course of time in making legislation.

We have welcomed the provisions of the Bill. It has, according to the statement of objects and reasons, five objectives: unearth black money; prevent its proliferation, curb evasion, reduce avoidance, reduce arrears of

tax and objective rationalisation of the tax structure.

With very great respect, we submit that, seeing the provisions of this Bill, we feel that it is not likely to achieve this objective at all. If at all, the objectives will be frustrated, because the evasion is likely to increase and not decrease, although very wide powers are sought to be given to the Government officers and with these powers it is expected that they will be able to unearth black money. But our submission is that this objective is not likely to be achieved.

In this regard, I may refer to the observations of the Wanchoo Committee which has given eight reasons for the increase in black money or unaccounted money. They have given eight reasons. I had occasion to consider these eight reasons and actually I would broadly divide them into two parts. Out of the eight reasons, seven reasons are nothing but those relating to the high rate of taxation one way or the other. Only one reason is an independent reason, and that is, about the economy of shortages and consequent controls and licences. This is one of the independent reasons apart from the rate of taxation.

The first and foremost reason given by them is about the high rates of taxation. The third reason given by them is donations to political parties. I submit if anything is responsible for increasing evasion or avoidance, it is because of the high rates of taxation. It is the effect of the high rates of taxation but it is not the cause of avoidance. The fourth one is the corporate business practice. Corporate business practice, they have found, has gone down. I am referring to page 10 of the report. That has also gone down and because of the very high rates of taxation all sorts of manipulations may have been done.

MR. CHAIRMAN: How do you know this has gone down, and why?

SHRI C. C. CHOKSHI: That is what is being felt by the people. That is what the public at large says; when they find that certain types of ostentatious expenditure are incurred by company directors, they feel that these could not have been debited into the accounts. If that has not been done, where are they debited? So, they feel that it is an unfair practice.

The next one is about the ceiling on disallowance of business expenses. Everybody knows that a company has got to incur entertainment expenses if it is doing business on a large scale. Even the nationalised banks, to my knowledge, have got to undertake a certain amount of entertainment. These entertainment expenses are not being allowed in income-tax as deduction. Therefore, either they have been debited to the accounts and disallowed or they have not been debited and they have found a place in unaccounted money by sales-tax and other levies. The intention is not to avoid a sales-tax because the sales-tax has to be paid in addition to the income-tax. It is a charge on the buyer. Sometimes, the buyer of the goods says, "Don't give me the bill if you are charging the sales-tax. Don't charge the sales-tax". So, this is all the cumulative effect of the high rates of taxation.

The next one is the ineffective enforcement of the tax laws. That is also one of the reasons why the high rates of taxation lead to all sorts of corruption and corrupt practices. The deterioration of moral standards is also because of the high rates of taxation.

With respect, I submit that out of the eight reasons given by the Wanchoo Committee for tax evasion, the same can be broadly divided into two: one is the very high rates and the other is the economy of short-ages.

In this context, if we have to reduce the evasion, it becomes necessary that the tax structure is brought down to a reasonable level. I do

not wish to waste the time of the Committee—

SHRI JYOTIRMOY BOSU: You have talked about that in the morning.

SHRI C. C. CHOKSHI: I do not wish to repeat it. The next point which I wish to make is about the powers of search and seizure which were not dealt with in the morning. Very wide powers are sought to be given, just like the customs raids. I would request you to consider it this way. We read in the papers every third day that there is a customs raid, and in spite of that, smuggling is going on; smuggling is rampant. If this is happening, does it not lead to one conclusion—that out of eight or nine times when imported goods are smuggled, the goods are seized on one occasion—that there must be an arrangement between the smugglers and the officers of the Department that a certain amount of goods must be caught in order to save their face—

MR. CHAIRMAN: We would like to know that. It is a serious charge. Has that happened?

SHRI C. C. CHOKSHI: I have no proof. But this is a matter known to the public at large. Everybody is talking about it. There is a type of insurance system in the well-known country of Switzerland where they take an insurance on the goods—

SHRI JYOTIRMOY BOSU: Dubai and Kuwait.

SHRI C. C. CHOKSHI: Yes. They have worked it out: that out of every eight to 10 parcels which are being smuggled, one should be caught. Till then the smuggler is quite all right; every body is happy! If these uncontrolled powers are given there is no guarantee that similar things may not happen to the tax department also.

SHRI K. R. GANESH: How do you link it with the wide powers? Firstly it is not correct. As a responsible body, you should not simply mention what is said in the bazaar. I am surprised. We have got certain facts,

You cannot say that the seizures that they are effecting is as a result of arrangements with the smugglers.

SHRI R. V. SWAMINATHAN: He is not damaging the whole department. He says that this is a thing which we here in the streets.

SHRI K. R. GANESH: That is not to be said here.

SHRI R. V. SWAMINATHAN: Let us also know. We would also be benefited. These are the people who bring to our attention what they feel and know about it. We cannot prevent them.

SHRI K. R. GANESH: You may ask them but I am here to repudiate it.

MR. CHAIRMAN: Let us not go into general points.

SHRI C. C. CHOKSHI: So far as the provisions of the Bill are concerned, let me refer to clause 6. I am aware of the discussion which took place yesterday on clause 6. I do not wish to enter, therefore, into any controversy. I would submit the actual facts. I would refer to the sub-clauses of clause 6. One sub-clause seeks to delete the words "created or established after the commencement of this Act." That is sub-clause (a) of clause 6. As was discussed yesterday, it refers to what is called community trusts or trusts in which there is benefit to the community. The question was asked of the parties whether they have got any actual facts to prove that the communal trusts will suffer to a considerable extent. So far as a number of trusts from Bombay were concerned, they could not put forward any concrete figures, but I happen to be concerned with one trust in Bombay city. One can say that there is hardly any citizen in Bombay who has not heard about it, namely, the G. T. Charities. It is a very well known trust in Bombay which caters to the needs of the people of all communities. Christians and Jains, etc., In spite of that, because of certain provisions in

the trust deed, the whole trust is likely to be very adversely affected by the deletion of this clause and also by the introduction of clause (bb). It will happen in this way. This trust was created early in the year 1867 by the late Gokuldas Tejpal who died after writing his will. For interpretation of the will, the matter went to the Bombay High Court which settled that this trust is for charitable purposes in accordance with certain provisions of the will. The will laid down that there should be certain schools started in various places, at the place where he was born and at the places where he was working, that is in Bombay and other places; it was also laid down that there should be schools for boys as well as girls, both at that place as well as at Bombay. They are running about 5 schools. These schools are admitting students from different castes, creeds and religions. G.T. high school is well-known. There is the G.T. Hospital in Bombay. In addition to that, that trust is also running a Sanskrit Pathshala and also a hostel for poor students. In order to maintain these institutions, it had, during the course of time, had to increase its earnings. In order to increase its earnings, it had put up a auditorium, called the G.T. auditorium, which has a hall adjoining it. This hall has a very big history. In that hall, the very first annual meeting of the Indian National Congress was held. This is the history of the hall. This hall and the auditorium are being rented out for various purposes, and the income from that would be liable to tax because of clause (b). The hostel has 36 students. But, the admission is restricted to Hindu students because the hostel is adjoining a temple. The temple is called Laxmi Narayan Temple and the income of the temple is utilised for the purposes of running the hostel. This hostel has produced great leaders like Kani Kant, Bulabai Desai, late Justice Bhagwati, C. M. Trivedi. Morarji Desai and others. This hostel provides free education, free boarding, free books; everything is free to the

poor students. The students are admitted only on the basis of their qualifications. This type of educational institutions will be adversely affected by this Bill and I would respectfully submit that this may be taken into consideration by the Committee. This is, so far as Clause 6 is concerned. Then, I move on to....

SHRI VASANT SATHE: Sir, would you like us to ask questions at this stage or would you like to us to ask questions after he concludes his observations.

MR. CHAIRMAN: I think it will be better if questions are asked at the end.

SHRI VASANT SATHE: At least give us 5 minutes for asking questions.

SHRI C. C. CHOKSHI: The second point is about Clause 19 which says that if a person is a salary earner, he will not be entitled to any deduction under this Clause. But, we welcome the proviso which has been added to Clause 19. We are grateful for this. But, we would like to say that it will create a hardship for the salary earner if he does not get the benefit of deduction.

MR. CHAIRMAN: We have received representations on this point. We are going to consider that point.

SHRI C. C. CHOKSHI: Then, I move on to Clause 25. This is a very welcome proposition. It allows deductions in respect of interest on moneys borrowed to pay taxes. There are two provisions in Clause 25. The second one deals with deductions in respect of expenses incurred in connection with certain proceedings under the Act, before the appellate authorities and the income tax authorities, in the case of persons who are not carrying on business. So far as business carried on is concerned. Under Section 37, there are certain deductions allowed to persons who are carrying on business and there are also various High Court and Supreme Court decisions in this regard. But, in case of other

persons also, the limit laid down is only Rs. 2,000. This is likely to create difficulties in genuine cases. This should not be related to the year of payment. There should not be any limits laid down with regard to this deduction. This is our submission. The next observation is with regard to Clause 26. Clause 26 deals with the compulsory distribution of dividends by closely held companies. Today, the law is quite advantageous to closely held companies. Companies which are carrying on industries, other than specified, have to make a compulsory distribution of dividends. Companies which are not compelled to make a distribution of dividends are closely held companies, which are carrying on industries specified under the law. This provision was introduced in respect of closely held companies; carrying on certain industries, by Shri T. T. Krishnamachari, the former Finance Minister in 1965, because, at that time, he had raised the rates of tax on closely held companies from the average rate of 55 to 60 per cent. Today, this has gone upto 63 per cent in the case of such companies. At that time he mentioned that by raising the rates, he was going to exempt those companies from compulsory distribution of dividends. This was one of the reasons why he had exempted closely held companies, carrying on certain industries, from compulsory distribution of dividend. The present amending provision will adversely affect capital formation in relation to such companies. This is our submission.

The next one is regarding Clause 58, which is about settlements. We have made a submission that this is a welcome feature. But, so far as the constitution of this settlement body is concerned, we would like to make our respectful suggestions. Sir, it has been suggested that all the Members of the Settlement Committee should be only from the Central Board of Direct Taxes. No doubt, the Central Board of Direct Taxes would be one of the party which should have one representation and can help in the matter

and make a good contribution in the settlement of income tax cases. But, at the same time if this machinery is to succeed, and create a sense of confidence, then, it should have at least two more independent persons one of whom should be a person of the rank of a retired High Court Judge, or preferably a Supreme Court Judge, and the other should be a person of professional competence and proven integrity and honesty who is capable of sitting on a body like this. This would create a lot of confidence in the minds of the people. Otherwise, the provisions are welcome and they can be brought in for whatever they are worth.

Lastly, about Clause 116, which deals with the gifts. This applies to all gifts which have been made during the previous years. My submission is that, this would create practical difficulties. This was introduced in the year 1965 and it was found to create difficulties. Then, this was given up and to some extent, adjustment upwards was made in the gift tax rates. Is it necessary to bring this provision again? This would create difficulties. In addition to that, I would respectfully submit that this should be made prospective and not retrospective. The previous years' gifts before amendment should not be taken into account. These are the few submissions that I have to make.

SHRI VASANT SATHE: Mr. Choksi, we are really thankful to you for your observations. We try to enlighten ourselves and help ourselves with the help of your observations. As far as Clauses are concerned, my first question would be in regard to Clause 6, about communal trusts. I will not go into the object. But it is well-known that the communal trusts, in whatever communities they may be, are of those communities where people have created trusts because they have substantial incomes. And they are well-to-do communities. Such

communal trusts have benefitted on account of the exemption granted. When an exemption is given, it means that it is the Exchequer which has given the exemption; that is a loss to the Exchequer, i.e. to the entire people; and, therefore, this community enjoys the exemption at the cost of the entire community or the people. Hence the idea of refusing this exemption hereafter, irrespective of whether the trust came into existence before or after a particular date. Now, taking the example of the G.T. Trust which you mentioned, you had said that it was benefiting not only the members; but also other communities especially, in the schools, where the boys are admitted irrespective of caste and creed. Their major activity is to benefit the people at large. If we make a law, don't you think that it would be possible for this trust or these communal trusts to come in line, irrespective of the fact that some 50 or 80 years back, the will of the person was different? They can fall in line with the law of the land, as made to-day. Otherwise, they can take the permission of the high court and make a change and become a non-communal trust and then continue to have the exemption. Compatibility with law is a factor which the high courts also will have to take into account. There is nothing illegal in it; otherwise, the object itself will be frustrated. Therefore, in the Cypres provision, I think a high court will grant the permission, if a change is made in the law accordingly. Do you think that the hardship can be avoided on this point? On the larger question, you enumerated the 8 reasons given in the Wanchoo report. What, do you think, should be the measures to unearth the black money which, in the estimation of the Wanchoo Committee, is about Rs. 7,000 crores? It may be much more to-day. What are your positive suggestions other than reducing the rate of taxation? Do you think that merely by reducing the rate of taxation, all those items will be covered; and we will be able to unearth the black money? If that is your answer, we have nothing

to say. Have you got any other suggestions to enable us to make a provision for unearthing black money?

SHRI C. C. CHOKSHI: Two questions have been put to me. One is a proposal whether a trust like G.T. charities should not approach the court for the purpose of amending its constitution so as to become a secular trust. My answer to it is that as the trust has already become secular to a large extent; and as such, for it to go to the high court to remove all these things would hurt the feelings of that family and the board of trustees. It would not be worthwhile to force bodies like this to go to the high court and ask for the change in the constitution of the trust. I do not want to get involved in the controversy whether it would be legally possible or not. This august Committee can go into it. In regard to this trust, it would certainly not be desirable, since it has been carrying on for more than 100 years. That is why this legislation which says that communal trusts should not get this benefit, was brought into effect prospectively from 1962. It was a well-thought-out action. Nothing has happened during the intervening period. With regard to the second question, it is true that reducing the rate of taxes cannot be the only answer. I am in agreement with this proposition; but this proposition of reduction of rates of tax has also got to be followed up by simplification of tax laws. It is well known to those who are tax-payers to-day that tax laws are so complicated and that an ordinary person cannot look after his income-tax assessment. Therefore, when he gets into a tax planning, he finds that the laws are complicated. Tax evasion will increase because of this; and tax avoidance has already increased. All these complications could be avoided only if tax laws are made simple and reasonable.

SHRI K. R. GANESH: Is your body aware that the largest amount of tax evasion and the largest generation of black money takes place in the groups of bigger industrial houses? Secondly,

have you got any idea of the number of persons who have declared their wealth at more than Rs. 1 crore? Thirdly, I will refer you to page 4 of the Law Commission's report dealing with the question of social and economic crimes with reference to your objections to the enforcement machinery being set up. I submit that correct answers to these three questions would lead you to a set of conclusions absolutely different from those you get by saying that higher rates of taxation are responsible for tax evasion. The big industrial houses which have grown phenomenally in this country, are responsible for the generation of black money.

SHRI C. C. CHOKSHI: First of all, I do not agree with the proposition that evasion takes place only at the highest level.

SHRI K. R. GANESH: I do not say 'only'. We are concerned with that very large concentration which is defrauding the state by using all means, including legal means.

SHRI C. C. CHOKSHI: I agree. If you take per person or group of persons the quantum of tax evasion would be higher in the higher income group. At the same time, we cannot get away from the fact that even in that group, apart from the other groups, the amount of tax evaded would be less if the tax rates were lower and if the tax machinery or the tax laws were much more simple than what they are today.

As for the second question about the Law Commission's report, with respect, I submit there is no country in the world which has succeeded by making too many laws. You cannot rule any country with legislation; you have got to rule by the consent of the people, by their will and their co-operation. Therefore, over-legislation will never enable Government to root out these evils.

SHRI BHAGWAT JHA AZAD: This is a decision made by Parliament which represents the people's will.

SHRI C. C. CHOKSHI: I am not getting away from that. But this is one view of the matter. It may be rejected by this august body.

SHRI K. R. GANESH: What about the number of assesseees who have declared their wealth? The answer would bring out how this country is being robbed—I am using a very strong word but I am using it deliberately.

SHRI C. C. CHOKSHI: My answer is: the department has created a position whereby people do not like to declare their true wealth.

SHRI K. R. GANESH: That is why we need powers.

SHRI JYOTIRMOY BOSU: I have certain figures about arrears of income tax. It is about Rs. 840 crores according to the documents I have. Out of 16,21,589 assesseees with arrears of Rs. 439.46 crores, over 244 have arrears over Rs. 25 lakhs the total coming to Rs. 151.49 crores. How do you justify this?

SHRI C. C. CHOKSHI: If you kindly compare those figures for the last five years, you will find they have come down considerably. That shows that by an efficient administration, tax arrears could be reduced. It has nothing to do with the high rate of taxation; it is a question of exercising the department's powers for collection. If this is pursued, it can still come down.

SHRI J. E. DASTUR: I will start off by giving my reply to the question raised regarding communal trusts, being mainly in communities relatively well off. I do not know whether that is factually correct as such, because to my knowledge, there are communal trusts among Hindus, Muslims, Christians, Parsis probably all communities. Therefore, it is not as if this is a feature of only some particular communities.

Secondly, after all, are not people even of a particular community, citi-

zens of the country? To the extent a donor wants to look after those people, is he not relieving the burden on the State? I think the state and the citizen here are not working on competitive lines; they are all working towards the same end.

MR. CHAIRMAN: We have already heard this kind of argument, that the wishes of the settler should be respected. But the law of the land will override it when there is a conflict.

SHRI J. E. DASTUR: Regarding cypres, it is not for the State to collect more money by way of tax from the income of the communal trust, but rather to use the tax weapon as a lever to oblige the communal trust to become secular. I humbly submit that this very object is incapable of achievement under the present provisions because I am advised that cypres does not apply in India to non-testamentary trusts; it applies only to trusts made by wills, not to those not made by wills. Therefore, if you go to the court, it would not be in a position to grant a change of object.

Secondly, this doctrine can be invoked when the object of the trust has failed. Here there is no failure of the objects. There also, technically, I do not think it can be invoked.

MR. CHAIRMAN: We will consider it.

Thank you, Mr. Chokshi. If any of your members wishes to submit a supplementary memorandum on points not covered.....

SHRI C. C. CHOKSHI: Particularly on the accounts part, nobody has spoken.

MR. CHAIRMAN: You can send a supplementary memorandum covering all those points not covered in the present memorandum. We will consider them.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973.**

Wednesday, the 10th October, 1973 from 09.00 to 13.00 hours in the Committee Room, Sachivalaya, Bombay.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Tridib Chaudhuri
6. Shri K. R. Ganesh
7. Shri Mani Ram Godara
8. Shrimati Sheila Kaul
9. Shri Maharaj Singh
10. Shri P. G. Mavalankar
11. Shri H. M. Patel
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri R. Balakrishna Pillai
14. Shri Vasant Sathe
15. Shri Era Sezhiyan
16. Shri Satyendra Narayan Sinha
17. Shri C. M. Stephen
18. Shri R. V. Swaminathan
19. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Ramaiah, Deputy Legislative Counsel.

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri R. D. Shah, Chairman, CBDT.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri K. S. Bhalla—*Under Secretary.*

WITNESSES EXAMINED

I. Bombay Chamber of Commerce & Industry, Bombay.**Spokesmen:**

1. Shri R. C. Khanna
2. Shri Soli E. Dastur

II. Shri M. P. Chitable, Chartered Accountant, Bombay.**III. Anjuman-i-Islam, Bombay.****Spokesmen:**

1. Shri Akber Peerbhoy, President
2. Shri Mustafa Fakhir
3. Shri S. S. Desnavi
4. Shri H. P. Italia
5. Shri R. M. Saeed
6. Shri A. M. Fakhir

I. Bombay Chamber of Commerce and Industry, Bombay**Spokesmen:**

1. Shri R. C. Khanna
2. Shri Soli E. Dastur

(The witnesses were called in and they took their seats)

Mr. CHAIRMAN: Mr. Khanna, I would draw your attention to Direction 58 under which witnesses who appear before the Committee shall be informed that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament.

SHRI R. C. KHANNA: Yes.

I would like to start off with a few general comments. Basically, our approach to this Bill is based on the memorandum already submitted by

the Associated Chambers of Commerce and Industry of India. We have no separate memorandum as such. We propose to work on the memorandum given by the Associated Chambers of Commerce. We cannot necessarily cover every point in that memorandum. Where we feel no reiteration is necessary, we would avoid repetition of it.

We understand that this particular legislation was intended to be an attack on black money. Except for the stronger penal provisions which one sees here, there is nothing really of a very substantial nature which would bring out black money. The overall position would remain the same. The question is: are we going to get that black money into circulation at all if this legislation is passed? Also, are we going to catch the offenders as such with this legislation?

This Bill is more to make for plugging of loopholes in the Act. One would say that if you want to plug the loopholes, there should be a reduction of the rates of tax at least so that with the present inflationary pressures, something is left with the honest taxpayer as well. Otherwise, this could well lead to a situation when some more honest taxpayers might find themselves pushed over the line.

As far as black money is concerned, penalties by themselves have not brought out very much so far, to our knowledge. It is a question of how to eradicate black money itself, not basically of how to punish people dealing in it. The measures proposed to catch them are not going to be very effective, if they are not effective at the moment. It is a question of reducing the influence of the black money market rather than trying to catch the offenders. We should have considered a reduction in the rates of tax so that the temptation to go into black money methods is kept to the minimum and not that more honest taxpayers are pushed over the line.

I will now take up some of the provisions, those which are of a general nature; Mr. Dastur will take up those which are more of a legal nature.

The first point is about clause 5 in relation to charitable trusts.

MR. CHAIRMAN: About charitable trusts, almost all the witnesses who have already appeared before us have made detailed and elaborate submissions—including these who are directly connected with those charities. Since your Chamber covers a wider field, it might help you to present your case in a better manner if you focus your attention on the more important provisions. I would request you to be utterly brief on this.

SHRI R. C. KHANNA: It is the principle of it more than the individual items... It seems we are going to cut out investments of charity funds in the private sector altogether. It means

we are leaving money basically in government paper or bank deposits. Accumulations by themselves cannot be harmful because there are many projects which come to light as situations develop. We are aware some accumulations were there originally. Then the accumulation was tempted to go into additional charitable objects or to extend the nature of these activities. To the extent that the accumulations might have been harmful in the context of the investments giving control to people, one might say 'yes, this should not be done, but to the extent that there are bonafide charities, really speaking, we are at a loss to understand why the accumulation in that case is prohibited. After all, sooner or later, they will have to spend that money. It is only a question of waiting till you have got enough resources.

MR. CHAIRMAN: It is not all that innocent. It is the intention of the framers of the Bill to prevent finances being invested in companies falling strictly within the prohibition contemplated in 13(2)(h).

SHRI R. C. KHANNA: We have not very much to say as far as diversion is concerned. Where there are charities whose accumulation kept in bank balances and government paper, there should be no objection to accumulation. If they do it for any other purpose, we are not particularly strong on that. But basically, where they are retaining the money so that when they have a reserve they can use it, there should be no objection.

The other point is a matter of procedure more than anything else—that is in s. 11. There is this requirement that if you are not able to use the money accumulated for the object for which you have accumulated it, you can only use it for any other purpose with the permission of the ITO. We would suggest that it can be used for any other object on intimation to the ITO. Otherwise, getting permission, unless there is a definite guideline or something of that type, may be a long

process and one really does not know what is going to be his reaction. We can say that we are no longer in a position to carry on our object and we are going to use it for such and such other purpose. This should be enough. After all, it should be a charitable object.

The other point is on the question of the time-limit on spending the accumulation. When we have got to have a big amount, let us say, for a building or something of that kind—costs have gone up and one might need Rs. 8—Rs. 10 lakhs for this—to say all of a sudden, try to spend it as fast as possible, would only lead to waste of money rather than proper use of it.

MR. CHAIRMAN: What is your suggestion?

SHRI R. C. KHANNA: It may be for such longer period as the Commissioner may permit. At the moment, there is no option at all. There is just one year.

MR. CHAIRMAN: You agree to keep the fund either in the bank or in Government papers.

SHRI R. C. KHANNA: That is only about the investment side. I am not putting it into the companies of other people in the form of loan. The question is specifically about the investment in the genuine shares of other companies. That is not in relation to accumulation.

MR. CHAIRMAN: I understand you to suggest that so far as investments are concerned, as long as the moneys are kept in the bank and in Government paper, there should be no other restriction on the accumulation. The restrictions must not be enforced. As a corollary it follows, that if you have accumulated it for certain purposes, and the purposes are not achieved, then, you say that a longer period should be allowed. In the meantime it should remain in banks or in Government paper.

SHRI R. C. KHANNA: That is right. There should be some degree of discretion.

SHRI ERA SEZHIYAN: There is a suggestion that even in the provisions of the Bill, if you make a provision that within the provisions of the Act itself the trust may be allowed to make it secular, it would be desirable. If you allow the trust to change its objectives, then the communal aspect may come in.

SHRI S. E. DASTUR: I think making any such provision in the income-tax law would not perhaps be adequate. That is a matter which would have to be dealt with under the trust law. For example, there is a specific Bombay Public Trusts Act.

MR. CHAIRMAN: Are you on the question of propriety or legality?

SHRI S. E. DASTUR: Legality.

MR. CHAIRMAN: We cannot make a provision like that.

SHRI S. E. DASTUR: I think the Income-tax Act cannot give powers to the trustees to approach the court.

MR. CHAIRMAN: What will happen? Will it be struck down?

SHRI S. E. DASTUR: Yes. It is beyond the scope of the income-tax law. Sometimes ago, a provision was introduced for levying a tax on dividends, and it was struck down by the Supreme Court on the ground that income-tax is concerned only with taxing the income. Where the tax was directly levied on dividend, that was struck down.

MR. CHAIRMAN: The hon. Member's question is about the communal trusts created before 1st April 1962 and brought within the ambit of taxation. Otherwise, would you like to have a provision so that they can go to the High Court which will enable them to get a tax exemption. Or, will it also be irrelevant for the purpose of taxation?

SHRI S. E. DASTUR: That would be. Because it is essentially a matter of trust law and is not a matter which will come within the four concerns of the Income-tax Act. The Income-tax Act is for charging a tax on income and to provide measures against evasion of taxes on income.

MR. CHAIRMAN: If there is a provision that you can go to the high court if you want to enjoy an exemption, will it be all right?

SHRI S. E. DASTUR: Yes.

SHRI VASANT SATHE: If we make a provision in the taxation law that communal trusts cannot enjoy exemption, and then make an amendment as you suggested, in the trust laws, to enable the parties to move the high court so as to bring it in line with the provisions of the Income-tax Act, will it meet your requirements?

SHRI S. E. DASTUR: There is no Central Public Trusts Act. There are only local Acts in the various States on this subject.

SHRI VASANT SATHE: The local Acts may be amended.

SHRI S. E. DASTUR: Parliament could pass a Central Public Trust Act. It is in the concurrent list.

SHRI VASANT SATHE: Even a local Act can be amended with the consent of the President.

SHRI S. E. DASTUR: That would mean that the local Acts, wherever they exist, would have to be amended. There are several States where the local Acts do not exist. In Delhi itself, there is no Public Trusts Act.

MR. CHAIRMAN: We take it that otherwise there is no entry in the Constitution, but according to you, a provision will be a valid provision enabling the trust to go to the High Court. It is *intro vives*. You say that a trust can go to the High Court and get the communal trust converted into a non-communal trust.

SHRI S. E. DASTUR: I should think so. There is one further aspect, I do not know whether a provision of this type could perhaps also put a restriction on the minority rights and so whether there is a possibility of going to the court on that ground.

SHRI VASANT SATHE: Kindly enlighten us.

MR. CHAIRMAN: From that point of view, would it be struck down on the ground that it is a discrimination against the minorities? That is a very basic issue and we will be interested to know if you have made a study on the matter. If you speak only off-hand, you need not proceed on the point.

SHRI S. E. DASTUR: We have made a study.

SHRI R. C. KHANNA: Then, about "activity of profit." You know there are premiere and cinema shows and all that. I myself am connected as an auditor with one of the leading charity-givers in this context, namely, the Royal Western India Truf Club, which gives mon3 for charity.

MR. CHAIRMAN: But how do you expect it to be enunciated in the proposed legislation? Do you accept it?

SHRI R. C. KHANNA: I am at a loss to understand what business would be covered by this. If you talk of activity of profit, it could even cover letting out on profit.

MR. CHAIRMAN: The intention has been explained by the Government. It is not to rope in activities such as premiere shows and things like that. Otherwise, if it is going to be a systematic and regular business unrelated to the primary purpose, do we take it that you accept it in principle?

SHRI R. C. KHANNA: Yes.

MR. CHAIRMAN: Please come to the next point.

SHRI R. C. KHANNA: Then there is a point about the identity of donors. We have box collections. For instance,

when the traffic is held up by the road lights turning red, the children come and hold out their boxes saying it is Flag Day and all that, and asking for contributions of just a rupee or so. In such cases, how could the identity be established? I got a circular saying, "give us your dirty clothes and we will sell them to the poor people and we will make the money available for charities." Are they going to make a list of the persons who have given this money?

MR. CHAIRMAN: All the Chambers are highlighting this. Kindly tell us something about black money.

SHRI R. C. KHANNA: We are not aware of it.

SHRI R. V. SWAMINATHAN: Aware of what?

SHRI R. C. KHANNA: I have not experienced that before.

MR. CHAIRMAN: Mr. Khanna, if you want us to take your views more seriously, you should be a little more objective.

SHRI R. C. KHANNA: If the money of a charity is kept in bank balance and Government paper for use for charitable purposes.....

MR. CHAIRMAN: We appreciate your argument. We also want to see that genuine charities are not affected and this is a matter which is agitating our minds. That is why I asked you the question, to which, you have not given a reply. How should we prevent the flow of black money into the charities in the name of anonymous donations?

SHRI R. C. KHANNA: The question is, using the donation for certain purposes. If the funds have come into the charity, if they are controlled in the form of bank balance and Government securities, then, it is going to benefit the community as such. If it is used for the benefit of the individual, who is giving the donation....

MR. CHAIRMAN: Any other suggestions?

SHRI R. C. KHANNA: Not really on this point. Then, I would like to say something with regard to investment by charities. There are charitable trusts which are dependent on income from such investments already. One cannot retrospectively alter this sort of concept altogether. We can understand about the amending provision with regard to future investments. If you say, 'all right, if you go in for a new investment, you will face these consequences', it is all right. But, where, a particular institution has already been established and that institution, is dependent upon the dividend income from a particular industry, then, that institution should not be brought within the purview of the amending provision. This would upset the working of many of these institutions.

MR. CHAIRMAN: That will upset the working?

SHRI R. C. KHANNA: Because they are dependent upon the dividend. There is no substitute for the dividend as such. The provision may be applied in respect of investments made in future. Or, secondly, if it is in relation to the expenditure of income from such dividend, it should not be covered. Then, I come to Clause 7. This is in regard to allowance for purchase of books. On satisfaction of the requisite books having been purchased, or on an ad-hoc basis, deduction may be allowed to the employee at source. Otherwise, every employee, for this sort of allowance, has to file a return. The deduction should be given at source. The employee is merely to pursue it. Some mechanism may be evolved, to allow deduction at the source to the employee himself. Where a person has filed a return, there is no problem at all. He can substantiate his case. But, this problem arises where a person has not filed his return.

In relation to Clause 8, in regard to the question of using the rental value as against the annual value, we have no objection to using the rental value if it is higher, and annual value other-

wise. But, I will make an exception to that to have the rendering of service and renting is inter-connected..... there may be a case of repair.

MR. CHAIRMAN: That makes the law more and more complicated. Inter-connection has to be proved and the independence has to be proved. We want to minimise all that.

SHRI R. C. KHANNA: The point is that.....

MR. CHAIRMAN: What is the harm in it? If it is real rent, what is the difficulty?

SHRI R. C. KHANNA: The real rent is low. Compared to the real rent.....

MR. CHAIRMAN: If the real rent is low, the difficulty is that, one amount will be paid over the table and another under the table. What is the remedy against that? What can the department do?

SHRI R. C. KHANNA: The only point is that; it works only one way. Every one knows that, at the moment, rent includes things like fittings and other services. They are not going to the rental value. We should take into account all ancillary services which the landlord provides—expenses incurred in connection with fittings etc. Otherwise, there will be continuous litigation on this. That is why, I have suggested that there should be provision for fittings etc. These are proper allocations between the landlord and the tenant. We should take into account the various items in the nature of fittings and services.

MR. CHAIRMAN: We will consider that.

SHRI R. C. KHANNA: The question of repairs. At least on that, one should be allowed, if he can substantiate higher repairs, and he should be entitled.....

MR. CHAIRMAN: If one cannot substantiate, then, one-sixth?

SHRI R. C. KHANNA: We can keep one-sixth as the minimum. But, if a person is able to substantiate higher repairs, he should be able to claim on that.

MR. CHAIRMAN: Without any maximum?

SHRI R. C. KHANNA: Maximum of the total figure.

MR. CHAIRMAN: What is the basis? What are the reasons for it?

SHRI R. C. KHANNA: Sometimes, repairs are required to be made.

MR. CHAIRMAN: Will you suggest one-sixth as the minimum and one-third as the maximum?

SHRI R. C. KHANNA: That could be the maximum.

MR. CHAIRMAN: Any reasons for it?

SHRI R. C. KHANNA: There are certain cases, where there are repairs in excess of that figure, which the landlord refuses to do. The tenant does not get a deduction for it. Our suggestion means, that the landlord will get the deduction. At the moment the tenant is being made to do that repair. It should be that, he gets that as rent and then does the repair.

MR. CHAIRMAN: 4 months rent in repairs?

SHRI R. C. KHANNA: In fact, once a year, painting etc. may have to be done. We are having two months rent.

MR. CHAIRMAN: Whether you spend it or not?

SHRI R. C. KHANNA: On two months rent, there is depreciation also.

SHRI VASANT SATHE: Would you say 4 months rent or spread over a period of 5 years?

SHRI R. C. KHANNA: One-sixth should be the minimum. But, if you prove that it is more than one sixth, then, subject to one third, it should be allowed.

SHRI VASANT SATHE: It may not be, many people are going to spend the extra money.

MR. CHAIRMAN: You may not spend anything for 5 years. But, you will get ten months.

SHRI R. C. KHANNA: There is the question of auditing for this, as well as a separate one more or less, for maintenance books. We have got a limit of income of Rs. 25,000/- on books and Rs. 50,000/-, in relation to the audit. The point is that there is no distinction made between a partnership firm and an individual. If there are 10 partners and they make Rs. 50,000/-, it comes to Rs. 5,000/- each. The second point is that once the partnership accounts are audited, the partners, individually, should not be asked to get it done.

MR. CHAIRMAN: The only source of income of the partner, is the share income. He need not maintain any books of account.

SHRI R. C. KHANNA: It is an income taxable under the Act. As it stands at the moment, he has to record it, may be in his books. The maintenance of books is dealt with in Clause 12. The Board will prescribe the place where the books will be maintained. I would say that a man should be allowed to keep his books in other places also. There will be primary books which a doctor or the lawyer will keep with himself. He may have a part of them at one place; and the rest in another. It is unavoidable in this situation. The rigidity, that it should be in one place, may lead to complications.

MR. CHAIRMAN: The difficulty that will arise will be that the assesses will maintain some sort of a record which is anything but the books of account; and say, "This is my book of accounts; and you should accept

them as such." In the case of those who are maintaining standard or proper books of original entries, i.e. stock register etc., I can understand what you say. But what are we to do where different forms of books are maintained; somebody may keep it in loose chits and say, "this is my account"?

SHRI R. C. KHANNA: He has, in any case, to maintain full books. I am not speaking about it now. People are going to engage an accountant; but everybody cannot engage his own accountant. There should be a prescription that people can have books partly in one place; and partly in another, but under intimation to the Income-tax Officer.

MR. CHAIRMAN: That is all right

SHRI R. C. KHANNA: I would like next to touch Section 104, Clause 26 of the Bill. It is on the question of industrial companies. We want to create entrepreneurs one minute; and during the next minute, remove the reliefs. We make it difficult for him to put back his money into the business. He starts with bank loans and advances and wants to build up his business. He must plough back funds; but under Section 104, you are asking him to declare dividends compulsorily. After all, he draws a certain salary, to start with, because he has also to live. We have to consider that companies not above a particular size should be treated differently. We should make compulsory declaration of dividend necessary only for others. Companies having upto Rs. 50 lakhs must be exempt. As far as the manufacturing companies are concerned, whatever money is put back, would increase the employment potential and the country's production. If there is a possibility of concentration, one may consider segregation.

MR. CHAIRMAN: We will consider this most anxiously.

SHRI R. C. KHANNA: We are bringing the industrial companies into the net. The distributable income will be taken as gross total income. As tax

as they are concerned at least the distributable income should be the total income, because there are certain reliefs. We give them reliefs one minute and then the next minute, they go away. Those deductions are always given under Chapter VIA. We are whittling away the reliefs. At least in regard to the industrial company, it should be not on gross total income but on total income. I will now request Mr. Dastur to speak.

SHRI S. C. DASTUR: I should first like to deal with Clause 14 which prescribes certain amendments to Section 64, regarding clubbing of incomes; and particularly earned profits i.e. if any remuneration is paid by way of commission, fees, salary etc. to a spouse, it will be clubbed with the income of the paying spouse. On this, my first submission would be that there is, even today, adequate provision under the Act for disallowing of such remuneration, which is considered excessive. Undoubtedly, the law as laid down previously in the case of Newton Studios was that one could not apply subjective tests but I submit that Section 40A, as it stands at the present moment, takes care of it and gives complete discretion to the Income-tax Officer on a subjective consideration. The Supreme Court has also held, as you are aware in 78-ITR-268, that if an assessee wants to claim a deduction which falls within the subjective sections, then it is for the assessee to establish the business necessity and to show as to how the business benefits by the payment which is being made to the spouse.

MR. CHAIRMAN: It is correct; but the difficulty is there. No doubt it is laid down, but it is sought to be dealt with more clearly. The main difficulty is that the evidence interim of the assessee would fall under 40A which makes it almost impossible for the Department ever successfully to make disallowance under Section 40A, either before the tribunals or higher places.

That is why this difficulty has come. In a court of law it becomes impossible for the department to establish it.

Because of that difficulty, this provision is being made, we have to see how best we can ensure that genuine cases are not hit.

SHRI S. E. DASTUR: I submit that s. 40A does give adequate power. There are several decisions.

MR. CHAIRMAN: Experience shows that it is not adequate. If you think it is adequate, it is an opinion but it would help us a great deal if you tell us something proceeding on the assumption that it is not adequate.

SHRI S. E. DASTUR: My submission is that to the extent that the ITO disallows the payment under 40A, to that extent, it may be clubbed. If the wife gets Rs. 1,000 and the Income-tax Officer considers Rs. 600 as reasonable, Rs. 400 may be clubbed in the hands of the husband. The effect of it would be this. I will give a hypothetical example—the husband has an income of Rs. 1 lakh. If he pays a salary of, let us assume, Rs. 3,000 a month.....

MR. CHAIRMAN: Are you suggesting double taxation on that money?

SHRI S. E. DASTUR: Even under the law, double taxation is there in the hands of the husband. If the husband's income is Rs. 1 lakh and he gives Rs. 3,000 a month to his spouse—I do not think there is such a case—and the officer consider Rs. 1,000 reasonable, the effect will be that the husband will have to pay tax on Rs. 1,24,000 and the wife will have to pay tax on the balance of Rs. 12,000.

MR. CHAIRMAN: Making it deterrent; if the claim more than what is legitimately allowable, it will be clubbed.

SHRI S. E. DASTUR: In a genuine and proper case, he should get the deduction in his income tax assessment.

MR. CHAIRMAN: The difficulty, as I said, is basically in the department proving. I do appreciate your suggestion. We will consider it. It is a good suggestion. Where the department

really and genuinely feels that it is not just, what should be done. There is evidence of everyday attendance register, there are vouchers signed, cheques signed. In the face of this overwhelming evidence, what to do. The wife can do all this in one hour's time. What is to be done?

SHRI S. E. DASTUR: One may prescribe rules as to academic qualifications etc. Where a wife genuinely helps the person in his work, the deduction should be allowed. This would again be a case of where an honest assessee may suffer for the sins of the dishonest one.

MR. CHAIRMAN: What do you think of it? A scheme of ceiling?

SHRI S. E. DASTUR: A ceiling may be there, not more than Rs. 1,000 or Rs. 1,500 or whatever the Committee thinks feasible. But in certain professions, where you will appreciate the wife does render assistance, what is to be done? In the conditions in which one works, certainly in Bombay, there is a considerable amount of work which has to be done by him in which the wife does help. So in genuine cases, this should not be disallowed.

SHRI ERA SEZHIYAN: What is your reaction to a suggestion of a basic nature where the husband, wife and minor child are clubbed as a unit, subject of course to qualifications?

SHRI S. E. DASTUR: I personally would not favour that because there are several cases where wives have their own independent money. If it is clubbed with the husband's money, the rates of tax being what they are, it will be ruinous to him. If the rates are what the Committee recommends, then perhaps it may be something which is feasible. But with the rates of tax as they exist, incorporation of such a provision would be ruinous. Even if the rates are brought down, there is no guarantee that once this is introduced, the rates of taxes will not be hiked up. I may give an illustration. When the grossing up was abolished, the tax on companies was re-

duced; subsequently after three years, the tax was raised to the former level. Grossing up was gone for ever. This sort of relief do not last. That has been the experience.

SHRI VASANT SATHE: Do you not think that all these complications can be avoided if the family, husband, wife and minor child—the moment the minor becomes major, he becomes an individual—are treated as a unit with, of course, a change in the rates, the rates being made reasonable, and that will be a more stable and easier way of taxing?

SHRI S. E. DASTUR: I personally do not think so because several wives work independently. They would like to have their own incomes separately, not clubbed in the family income?

SHRI VASANT SATHE: How many wives enjoy a separate income?

SHRI S. E. DASTUR: If I am to believe what the Bombay Women, Graduates' Association have said in several meetings, ladies do enjoy their separate income.

SHRI C. M. STEPHEN: We presume that the salary being paid to a wife is not genuine. That is the idea behind this. But what is wrong in treating the family as a unit? I put it another way. We have got the pattern of need-based minimum fixed, fair wages fixed. For the fixation of these wages, we treat the family as a unit. We say three consumption units and say for a family of that number, this is the basis on which we have to proceed. If for the purpose of fixation of income of the working class, the family is to be taken as a unit including the husband, wife and minor child, if that is valid argument for the purpose of fixing wages, what is the rationale in demanding that for the purpose of the professions, for the fixation of their income, a different standard must apply? What is the inequity in having a uniform standard in all these cases?

SHRI S. E. DASTUR: Because there one is referring to the income which one fixes which the family is to get.

Here it is taxation rate which would go up tremendously when there is this clubbing once this is introduced.

SHRI C. M. STEPHEN: It is meant to be so. What is wrong in that? What is the residue left to the assessee? The assessee must be a person or family. For all other purposes, we are treating the family as a unit. Why for this purpose alone, an arrangement must be made whereby the residual income is left in different hands so that the family together may get a larger amount?

SHRI S. E. DASTUR: Take the family of only husband and wife, and the husband and wife—each of them—earn Rs. 20,000 and both of them work and they earn Rs. 40,000 together. Take another family where only the husband works and earns Rs. 40,000. I feel it would not be equitable that in a family where both of them work the same incidence of taxation should be attracted as in the case where only the husband works and the other spouse sits idle.

SHRIMATI SHEILA KAUL: What Mr. Stephen is asking is this. Why do you disturb the family? For instance, there is a person who is an MLA or an MP.

MR. CHAIRMAN: If you want to ask any question, it can be done. Otherwise, your point can be made later.

SHRI S. E. DASTUR: In England itself, where the husband and wife's income was initially clubbed, today, legislation has been introduced for having separate assessments in respect of certain types of income. So, where it was initially clubbed together,—because in the English law woman is regarded as a chattel—now, a provision has been introduced in the English Income-tax Act whereby separate assessments are being made in respect of certain types of income. Therefore, the tendency everywhere is to come to a point, from which we here want to retreat.

SHRI VASANT SATHE: We do not consider women in this country as chattel. That is our ancient tradition and that is the fortunate position.

MR. CHAIRMAN: Now you have another 10 minutes. Since you have some other points, we want you to address us on seizures and settlements and penalties now. The choice is entirely yours.

SHRI R. V. SWAMINATHAN: I would like to know what is the experience in other countries, say, the United Kingdom and the USA. Are the incomes of the husbands and wife clubbed or not?

SHRI S. E. DASTUR: In England, it was completely clubbed previously. Now, in respect of certain types of incomes, the wife and the husband have option to be assessed separately. They have the option to be assessed separately in respect of certain types of incomes.

On the question of clubbing, there is one more thing. If a minor child receives a certain share from his father or under a will I submit that the income which arises should not be clubbed. The Direct Taxes Enquiry Committee itself had provided in paragraph 3.40 of its report that if the business is inherited by the minor from his father on the death of the father and he is admitted to the benefit of the partnership, then there should be no clubbing. Actually, this is present in our existing law also in section 164.

MR. CHAIRMAN: Do you have a case in mind where he gets it from his father under a will and gets it from the mother?

SHRI S. E. DASTUR: Under the law that is proposed to be framed, that would happen.

MR. CHAIRMAN: We understand that.

SHRI S. E. DASTUR: On clause 15, may I point out, that it is provided in this clause that the amount borrowed

or repaid on *hundi* other than by cheques, would be treated as undisclosed income. That may be a presumption which is drawn but it should be a rebuttable presumption. It should be open to the assessee to establish that it is genuine. It should not be an absolute and conclusive presumption as it is at the moment.

MR. CHAIRMAN: Yes.

SHRI S. E. DASTUR: In clause 20, section 80H of the Act is proposed to be deleted; it provides for certain reliefs where the business has been started for rehabilitating refugees. A person may have started business, and he may have started on the footing that he may get the relief for a certain period of time. The omission would mean that all his calculations may go awry. I submit that, that should not be the case.

So far as sections 80V and 80VV are concerned, in respect of the fees or the interests on loans taken for paying the taxes, even the Direct Taxes Enquiry Committee has not laid down any ceiling for the allowance of deduction. In this connection, may I invite your attention to para 5.31 and 5.35 of their report where they have not laid down any ceiling at all, but a ceiling is now sought to be introduced. If there is to be a ceiling it should be per assessment, because it may happen that three assessments are completed in one year; the total deduction can only be Rs. 2,000 even in that case.

Then, about clause 36, as far as searches and seizures are concerned, it is proposed to add that the power of search can be exercised if the Commissioner or the other officers are of the view that the assessee would not have disclosed the concealed income. How is it possible for any officer objectively and rationally to arrive at a conclusion that the assessee would not have disclosed it?

MR. CHAIRMAN: If he has reason to believe that he would not disclose.

SHRI S. E. DASTUR: How can anyone go into the mind of the assessee and come to the conclusion that he will not disclose it? The reasons which are recorded should be made available to the assessee after the search is over.

MR. CHAIRMAN: There are high court judgments which say that they are available to the assessee in suitable proceedings.

SHRI S. E. DASTUR: I am not aware of any high court judgment on it.

MR. CHAIRMAN: Proceedings under section 147.

SHRI S. E. DASTUR: I think as of right the assessee should get inspection of the records, particularly when you are going into a matter where you think that even if the summons is issued he would not attend or he will not disclose the income, etc. When you are going into the realm of speculation, it should be made available.

MR. CHAIRMAN: What do you suggest? You are on clause 36. Which specific sub-section?

SHRI S. E. DASTUR: Sub-clause (vi) where the words are "which would not be disclosed." I submit that it is not possible for any officer to arrive at this conclusion. If he is able to arrive at the conclusion, the reasons should be made available to the assessee, so that they can challenge it.

MR. CHAIRMAN: After the event?

SHRI S. E. DASTUR: After the event. The reasons would have to be recorded before hand, and they should be recorded by the Commissioner or any other top officer.

MR. CHAIRMAN: Assuming that I agree with you for the moment, that it is virtually impossible to find out how one would not be disclosing something in advance, there is a basic difficulty. Even if the reasons are recorded, how do you help a person who is honest and who is unduly harassed?

SHRI S. E. DASTUR: He can file a writ petition challenging the search and ask for the return of his books.

MR. CHAIRMAN: What will come out of it? Where something is found, it does not matter whether it is right or wrong.

SHRI S. E. DASTUR: It does matter because the businessman will be deprived of his books for a minimum period of six months. He would be deprived of his books and accounts.

MR. CHAIRMAN: We have some other people in mind also. Mr. Dastur, suppose a person is harassed. How would you prevent such a person from being harassed. He is not interested in getting the reasons after the event. The damage is done. You suggest some way, where harassment should not be forced on.

SHRI S. E. DASTUR: Left to myself, I would suggest that the reasons should be given first and he may . . .

MR. CHAIRMAN: Take a case, where the Income Tax Officer feels that X is not disclosing. He records the reasons and when he goes, he finds that the person is honest. It is a question of striking a balance between the rights of the society and the private rights of an individual. The Income-Tax Officer has got the right to investigate where he goes into the privacy of an individual and to some extent, there is some violation and there is also an element of risk. Will you be able to suggest some way where it may not be in complete violation of the basic principles of natural justice?

SHRI S. E. DASTUR: The only suggestion that I can offer, is that, the Income Tax Officer, in circumstances of that type, should be liable to make compensation to the assessee if he has acted in violation of sound principles of law.

MR. CHAIRMAN: If he has acted bonafide?

SHRI S. E. DASTUR: If he has acted bonafide, he would not be liable.

But, if he has acted in violation of the principles of law . . .

MR. CHAIRMAN: It may be in violation of law. But, it may be an absolutely bonafide act. Then, what happens?

SHRI S. E. DASTUR: We are concerned not with just a violation of law but with gross violation of law. Where there are gross violations, of law, one would presume that one has not acted bonafide.

SHRI VASANT SATHE: How would you distinguish between gross violations and bonafide violations?

MR. CHAIRMAN: The question of acting bonafide is dependent upon the circumstances. Suppose, let us say, an informer goes and says that Mr. Sathe is having black money. But, the Income Tax Officer goes and finds that he is a honest man. The Income Tax Officer is acting bonafide. Sometimes, he is made a victim of circumstances. Have you any suggestions to make in this regard?

SHRI S. E. DASTUR: The reasons should be such, as would lead any reasonable persons acting bonafide to believe what the officer says he believes. Therefore, the reasons should be disclosed. As far as annuities to actors are concerned, I would say, this is a welcome proposition. The only suggestion that I would like to make is this. When I give this suggestion, I should not be misunderstood, because, I am also a professional man. The suggestion is that, the law should provide for professional people to be taxed in a manner, which gives him some benefit for the risk involved. The professional person should have something to fall back upon after a certain time. When he earns well the State takes away a large part of it. But, when he earns nothing he has nothing to fall back upon. This is especially with regard to the sole proprietor. In this connection, I would like to refer to Section 80 E of the present Act. This speaks of the retirement annuities, which is open only

to persons who are connected in any profession as partner. Infact, it is the sole proprietor who needs something when he does not earn.

SHRI VASANT SATHE: That is a good point to be considered.

SHRI S. E. DASTUR: I may mention that the Wanchoo Committee has mentioned about this in Paras 5.39 and 5.40 of their report. The Direct Taxes Enquiry Committee has commented upon this. But, this does not find any reflection in the Bill, as it is framed.

MR. CHAIRMAN: You are suggesting that 80E should also be applied in case of persons who are not in partnership?

SHRI S. E. DASTUR: Yes.

MR. CHAIRMAN: We will consider that.

SHRI S. E. DASTUR: Wanchoo Committee have made recommendations in paragraphs 5.39 and 5.40.

SHRI R. D. SHAH: I would like to explain the background, as to why it was restricted to partnership. The intention, when the legislation was introduced, was that some partners would change and new partners would come in. In the case of individuals, there is no such thing. It was primarily done with that intention. I am only giving the background.

MR. CHAIRMAN: The only point is that, it should be within the objectives of the Bill. It is not. The Section is not being amended.

SHRI S. E. DASTUR: This is one of the recommendations of the Wanchoo Committee itself. Kindly see paragraphs 5.39 and 5.40 of the Wanchoo Committee Report. Again the limit of Rs. 5,000 in section 80E seems to be unrealistic. Why there should be a limit of only Rs. 5,000? If you are in employment, the employer will contribute.

MR. CHAIRMAN: Have, in your memorandum made submissions on this point?

SHRI S. E. DASTUR: Yes.

MR. CHAIRMAN: Have you made elaborate submissions?

SHRI S. E. DASTUR: No. We have referred to this.

MR. CHAIRMAN: May I request you to send a detailed note on this, to the Committee? Then, we will consider that.

SHRI S. E. DASTUR: We will send a note. This is one of the recommendations of the Wanchoo Committee.

MR. CHAIRMAN: If it is within our purview, we will consider that. If it is outside the scope of the Bill, then, of course, we will not be able to consider that.

SHRI S. E. DASTUR: The general submission is that, professional people should have something to fall back upon when they do not earn. Some provision should be made in regard to them.

MR. CHAIRMAN: You write to us also.

SHRI S. E. DASTUR: Very well. As far as settlements are concerned, Clause 58, May I at the outset, state that a lot will depend on how it actually functions. It is difficult at this stage to envisage exactly certain things. I will only give two or three propositions

MR. CHAIRMAN: A lot will depend on the functioning of the Income Tax Department, after the Bill comes into force. This is true of all the institutions, which are to implement the various legislations of the State.

SHRI S. E. DASTUR: Right to withdraw the settlement....

MR. CHAIRMAN: If you feel that tribunal should not be the final authority, then, don't go to the tribunal.

SHRI S. E. DASTUR: I can withdraw my appeal from the tribunal.

MR. CHAIRMAN: You may withdraw from the tribunal. What happens before the Appellate Commissioner? You cannot withdraw from the Appellate Commissioner. He has a right to enhance.

SHRI S. E. DASTUR: The Settlement Committee should consist of retired High Court Judges. Not that, one has any doubt about the fairness of the Members of the Central Board. But, this would, perhaps, inspire greater confidence, because, after all, those who are engaged in the administration of the Act, may not be able to take the same judicial view. I may now refer to the new assessment procedures. In certain cases, an assessment will be made directly by the Deputy Commissioner (Assessment). In that case, the appeal would lie to the Commissioner of Income-Tax. One has found, in practice, that when an Assistant Commissioner becomes an Appellate Assistant Commissioner, the chair gives him a certain degree of impartiality and broader outlook. If a person has to go to the Commissioner by way of appeal, we must have a separate Commissioner for such work.

MR. CHAIRMAN: What did the Wanchoo Committee say on this? Anyway, we will apprise it to ourselves. Now, about the appeals arising out of orders of the Deputy Commissioner (Assessments); should they go directly to the tribunal?

SHRI S. E. DASTUR: I don't think so Sir. If we have a separate cadre of Appellate Commissioners, I think it would be better. There will be adequate work for that cadre.

MR. CHAIRMAN: Having a different cadre is a different concept.

SHRI S. E. DASTUR: I may have used the wrong word. My point is that such a Commissioner does only appellate work; or, in short, he does only judicial work.

MR. CHAIRMAN: Do you mean to say, all his life?

SHRI S. E. DASTUR: No, Sir as long as he is an Appellate Commissioner.

MR. CHAIRMAN: Anyway, we will consider your point.

SHRI S. E. DASTUR: Then, there is this restriction on appeal in Clause 60, that an appeal will not lie to the Appellate Assistant Commissioner, unless tax due on the basis of the return, is paid, or the advance tax has been paid. The tax which is due may itself be the subject-matter of litigation. My income may be fixed; but I may contend that I am liable to be charged at 55 per cent; but the Income-tax Officer may say something different.

MR. CHAIRMAN: Then your right is not affected.

SHRI S. E. DASTUR: It is, Sir. It is said that I must pay the tax which is due.

MR. CHAIRMAN: May be, it is only a drafting error.

SHRI S. E. DASTUR: Whatever is due, according to my own computation, should be prescribed as the amount payable.

MR. CHAIRMAN: We will take care of it.

SHRI S. E. DASTUR: Similar is the case with Clause (b). Under it, if advance tax is payable, I should have paid the advance tax. But the subject-matter of appeal itself may be that I do not have any income which is chargeable to tax and, therefore, I am not liable to pay it; but the provision says:

"(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him: . . ."

That is on the basis of the orders of the Income-tax Officer; but the subject-matter of my appeal being what

it is, he may say that I must pay it first; and then pursue my appeal. I think it is not the intention of the framers. I think the intention is to make you pay what you admit.

MR. CHAIRMAN: But the proviso is there.

SHRI S. E. DASTUR: Why should I enter into any discussion with somebody on this? Why must not I have it as a matter of right?

MR. CHAIRMAN: What prevents you from filing an estimate straight-way?

SHRI S. E. DASTUR: I say I have no income liable to advance taxation.

MR. CHAIRMAN: You may file an estimate below the limit.

SHRI S. E. DASTUR: Should a person be denied the right of appeal?

MR. CHAIRMAN: If it is purely the drafting part, it needs to be

II. Shri M. P. Chitale, Chartered Accountant, Bombay.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Chitale, on behalf of the Committee and of myself, I think you for appearing before us. You were a member of the Wanchoo Committee. We will hear what you have to say on this Bill which is to implement what the Committee has recommended with careful attention. Before you commence, I would draw your attention to direction 58 of the Speaker under which it shall be made clear to the witness that his evidence shall be treated as public and is liable to be published, unless he specifically desires that all or any part of the evidence given by him is to be treated as confidential. Even so, such evidence as may be desired to be treated as confidential is liable to be made available to the members of Parliament.

SHRI M. P. CHITALE: I know it.

At the outset, Mr. Chairmtan, I am grateful to you and appreciate this opportunity given to me to personally set forth my views concerning the manner in which the objec-

looked into. But the basic idea is this. Firstly, one who does not pay, according to his own calculations, has to be denied this right. Secondly, a person who does not file a return must also be denied that right. We will consider later on, about the person who is not liable to be charged.

SHRI S. E. DASTUR: About the other points, there can be no objection.

SHRI R. V. SWAMINATHAN: What is the present law?

SHRI S. E. DASTUR: There is no restriction on the right to file an appeal.

MR. CHAIRMAN: Thank you very much, Mr. Dastur; I think that is all.

SHRI S. E. DASTUR: Thank you, Sir.

[The witnesses then withdrew]

tives underlying this legislation can be more effectively fulfilled As I have mentioned, if we consider primarily the main problem of tax evasion. I do not regard it merely as a fiscal problem. I consider it like any other major problem in the economy as a social and economic problem That is why I have said that the tax system ultimately should be made more workable in the existing setting.

I apprehend that primarily due to the shortages in the economy, everybody likes to have something more. It is but natural for any human being to do so. When everybody tries to have more things and when the economy in general is not able to meet the total demand, it is but natural that whoever has capacity, whoever has opportunity, tries to catch hold of the things in his own way. So primarily my whole emphasis is on improvement in the general economy and the general climate so that eventually there will be a proper setting in which the administration also can work effectively.

That is why, while naturally I am wholly in agreement with all these penal clauses, because I do consider that without penalty or without some sort of punishment, no system can work, yet I do not think that any system can work merely on the basis of punishment. I say this primarily on the basis of my own personal experience. When I was in college, there was, for example, a rule that we should not ride a bicycle in the evenings without a lamp. The experience of the majority of us was that if we were likely to spot a policeman, then only we would not ride a bicycle without a lamp. Otherwise, the tendency was to ride a bicycle without a lamp at night. The same is the case with going by the left hand side of the road or the right hand side of the road.

Ultimately, the point is that man tries to comply with all these regulations because there is a fear of punishment for non-compliance. In some cases, he is driven also to obey. After all, any legislation is coercion. There are limits to what can be achieved merely through coercion. I believe that coercion has not been successful even in times of war much less will coercion on a large scale be successful in the economic field in times of peace. So primarily I have laid emphasis on taking into cognizance the normal traits of human nature and manipulating them to our advantage. It is in that light that I view what is required to be done in terms of all these recommendations. We have, of course, to step up the rate of savings in the economy and the rate of investment. These two things are not one and the same. If we consider the general picture of our economy, I take that the rate of savings has improved. Through taxation savings have improved. But have the savings necessarily resulted in augmentation in the rate of investment? I would say No. If I draw a picture, say, of tax revenues that have increased during last 7-8 years since 1965-66, I find there is an

increase in tax revenue of the order of over Rs. 2000 odd crores. But what is the net increase in the savings of the Central Government?—I am considering particularly the tax revenues of the Central Government. What are the savings in the hands of the Central Government? If one goes by economic classification, one finds that the savings of the Central Government were of the order of Rs. 350 crores in 1965-66. We have not improved on this. It is doubtful if they can be improved in the current year. That means, although we have transferred revenues of the order of more than Rs. 2,000 crores from the public, there has been no improvement in investment in the economy. That is why my primary emphasis is that while by all means we must have improved and efficient ways of collection and improved rate of savings, it is also necessary to see that ultimately this results in improvement in the rate of investment and the effective use of these savings for investment purposes.

I consider there are two classes; class of savers, class of investors. Ultimately who is to invest, who is to consider schemes which can be effectively deployed and money used in a particular field? Enterprising persons. But I find somehow or other in our economy particularly, the tax structure puts obstacles in the path of persons who take to enterprise.

If I may explain this a little more elaborately, suppose someone wants to start any concern. Take those who are in employment. After all, when savings are scarce in any economy, they must necessarily be utilised by the persons who are knowledgeable, who can put these savings to effective use, which means they must have prior background, experience and knowledge. He must have had the benefit of some employment in which he has gathered all this experience. Employment necessarily means that he is already acclimatised to a certain structure. For example, he gets the employer's contribution to provident

fund which is tax-free; he gets gratuity after retirement which is tax-free to the extent of Rs. 24,000. But what happens? Suppose I have to start an industry. In these days even a small scale industrial undertaking requires a sizeable amount of capital which cannot be just collected through the savings of one person. So I must necessarily take the aid of others. If I approach any of my friends, relatives or associates, they are prepared to give me Rs. 10,000 say, because of the confidence they have in me, but any of them may refuse to become a partner because he would say, "I do not mind losing Rs. 10,000 but if I become a partner, it is different." His joining me as a partner would strengthen my financial position, and I shall be able to make headway with much greater confidence, but he says that "my future savings will also be endangered and my other property will be endangered." It means he cannot join me as a partner. I must necessarily rest content with the borrowings, which is difficult. So, for this reason, particularly in foreign countries, where this problem initially arose, they evolved a form or organisation which we call a company form of organisation. That was peculiarly suitable, and it was evolved for the very purpose of collecting small sums from a large number of people, and yet sizeable in the total. Everybody's risk was spread out, and it did not carry any responsibility or liability at all. Yet, when this system was evolved, taxes were not of the order of 50 per cent. Actually, in England, the whole system was what is called the standard rate of tax. If the standard rate of tax was 10 to 15 per cent below, they will say that the company, where such companies are formed, will pay tax equal to the standard tax. Automatically, the highest prevalent tax was paid by the companies, but whatever was the dividend income received by the shareholders was not taxed in the hands of the recipient. That was the earlier system. That was the system till as late as 1965 in the United Kingdom. There was 15 per cent pro-

its tax which is analogous to the super-tax which we have now, and the standard rate of tax was about 38 per cent. But the dividends were not taxed. In 1966, they terminated the system and followed our system.

We started the system in 1961, making corporate tax a separate tax, and the personal tax will not have any connection with the corporate tax. In 1973, they have switched over to the old system. What are the words which the Chancellor said there? The Chancellor said that they wanted to rectify the mistakes made in 1965. That is why they said, "Taxes which are to be deducted from dividends will be regarded as advance tax paid by the companies." In Germany the distributed profits are taxed at the rate of fifteen per cent, and undistributed profits at the rate of 51 per cent. In France, a tax credit equal to 50 per cent of the dividend distributed, is given in the hands of the shareholder.

Why I am saying all this is because of this. There are two classes of people—severs and investors. What do we find? If I have to see that my friend receives eight per cent dividend, which is not much considering that even without any risk he gets eight per cent from company deposits in banks yet, when the share holder who has helped me, gets eight per cent in his hands, the actual cost to me is not less than 20 per cent or 25 per cent. I doubt whether the rate of industrial growth can make any progress if such a system is followed. I consider that after all any industrialist who is taking a risk can make headway provided his base is strong. I know that efforts have been made by the Government, particularly by establishing so many State Financial Corporations, such as the IFC, ICIC, the State Industrial Development Corporations, and so on. Certainly they do help in their own way, but I must confess that when it comes to providing risk capital, they cannot make much headway.

Firstly, the procedure is far too long, and they cannot take immediate decisions. That is why my whole emphasis is that if we want any person who has some schemes to go ahead with them, the first requirement is that at least he must find the condition suitable for collecting risk capital from his friends and associates. Particularly in this corporate sector, the dividend distributed—it is normally 7½ to 8 per cent—should be deducted before levying the corporation tax. What is a surplus in the case of a business enterprise? Can we say that a business enterprise has made any surplus unless we account for all the relevant inputs, and is not capital an input? Without capital, can any industry be established? Why not allow a reasonable cost? I can understand that such a system may impose an immediate strain on the government reserves. We can, however, make a start by saying that at least the dividend distributed up to Rs. 50,000 would be deducted. Let us watch what is the effect on the revenue and then go ahead.

MR. CHAIRMAN: We have heard your very erudite discourse. You seem to consider that unless the economic climate generally improves, there is not much possibility of attacking the generation of black money. Further, you say that as an improvement in the economic climate is utterly necessary, not merely there should be very substantial saving out of the surplus finances generated but they should be in the corporate or non-corporate savings.

SHRI M. P. CHITALE: I would like to elaborate the point. Consider the situation in the last two years. In 1971 and 1972, the rate of growth in the bank deposits was such that they were flushed with money. There were literally no takers. There have been no takers in spite of the fact that we have created all these financial institutions like the State Financial Corporations, the Industrial Finance Corporations, etc. Why? The

cost of risk capital is proportionately too high.

MR. CHAIRMAN: According to you it is utterly disproportionate to the extent that it is impeding the growth of the economy. Of course, it is a matter of opinion. It used to be motivated by other considerations. You say that it is not enough that savings could substantially be augmented but they should also be deployed for the optimum generation of production and growth; that the corporate or the non-corporate sector can be taken by the Government by starting with Rs. 350 crores or so. But the performance, according to you, is not very satisfactory.

So far as your observations on the general improvement of economic growth and your analysis of this malaise are concerned, it is a matter of your opinion, as against the opinion of the Members: As you know, we would like you to directly tackle the issue before us. This Bill has been brought forward to implement what you have recommended, by and large, to tackle the problems of tax evasion, generation of black money and its proliferation. You seem to suggest in the memorandum, or if I may say so, you have given utmost emphasis on the question of having largest savings in the hands of the tax payers. In fact, at one point, you suggest that if there are high tax rates, then, you should have a scheme of corresponding tax credit on savings.

SHRI M. P. CHITALE: I also say that unless the tax rates are high, there would not be any improvement in savings. I have not prescribed . . .

MR. CHAIRMAN: I have understood that. The tax rates have to be high and there has also to be a corresponding scheme of tax credit. But, the problems before us are immediate and two-fold. So, I would like to come straightway to the problems that we have before us. To what extent, you feel by whichever device

we may adopt, we can minimise the tax liability—and this is a vital factor—and to what extent we can effectively curb tax evasion?

SHRI M. P. CHITALE: To put it simple, to the extent that anybody can ostensibly save. In my scheme of tax credit, the person would not be penalised just because he has made some money. If he saves automatically, he would not be penalised by higher rates of tax. It is not that he would not have to pay any tax.

MR. CHAIRMAN: That is clear. As a result of this scheme, there will be lesser tax burden. Suppose, if we say that if a person invests Rs. 20,000 in shares which are issued in a particular year, there will be no tax on the same. What will be the fall in revenue in the highest slab of an individual's income?

SHRI M. P. CHITALE: There appears to be no doubt about a fall in tax revenues.

MR. CHAIRMAN: I am not on that question. I would like to come straightway to the problem. My question is this. If we accept the scheme, it will have the effect of lessening the tax burden. So, by reducing the tax, to what extent that will help or effectively minimise the malaise of tax evasion?

SHRI M. P. CHITALE: It will help to this extent that those persons who cannot save, because of the taxes, and who thus adopt the practices leading to black marketing and black money, would ostensibly save and thereby postentatious consumption in the economy, will come down. That will itself create a climate in which the tax administration will be more effective.

MR. CHAIRMAN: Conspicuous consumption will be less and people would have greater incentives and to that extent, they would not like to generate black money and rather they would show it in the white.

SHRI M. P. CHITALE: There would be competition from the people. Today, the difficulty is that people cannot compete. Actually, the person who indulges in unfair practices, is always at an advantage.

SHRI ERA SEZHIYAN: On this particular point...

SHRI VIRENDRA AGARWALA: I would like to ask one question. Apart from conspicuous consumption, we are really interested to know, as to what extent, this particular measure of yours, will help in checking black money, in terms of quantity?

SHRI M. P. CHITALE: Let me say this. Today, let us take, for example, certain trades. I am deliberately mentioning about the trade category just now. Let us consider the existing tax structure affecting the wholesale trade. The whole difficulty is that, by and large, persons who are not associated with business, somehow or other, do not undertake that business income is not equivalent to cash increase during the year. That is the whole difficulty. For example, I am a professional man and it does not matter whether the tax rate is 93 per cent or whatever is the rate. I have cash and I can pay it. But, a person doing business, even though he may have lakhs of rupees as income, may not have cash. I have pointed out about the real needs of business in my dissenting note. My needs, as a professional man, are minimum. I do not need any investment. But, a person who runs a business, has, for example, to pay the salaries of his employees. Otherwise, they will strike. They may ask for increased pay. How will he be able to meet the demand. He can do so only by increasing his turn over. How can he increase his turn over? He can do so only by increasing his stock and by giving more credit. All this involves increase in working capital. We should also take into account the rise in prices. Suppose, there is a 5 per cent increase, then, automatically, there will be an increase in the value of the

stocks even though in physical terms, they remain the same. Where from he has to bring this money?

MR. CHAIRMAN: We appreciate that your purpose. . .

SHRI M. P. CHITALE: What I would like to point out is that, if they are not supplemented by the savings of the society, either from banks or others, they cannot continue to carry on the business. When the taxation rates are increasing, they cannot continue to hold on to the stocks. What does he do? He suppresses. What else he can do?

MR. CHAIRMAN: When you augment the stocks, etc., the increase is shown.

SHRI M. P. CHITALE: He does not show it.

MR. CHAIRMAN: The growth is there.

SHRI M. P. CHITALE: Of course.

MR. CHAIRMAN: It does not impede the growth. It only generates black money.

SHRI M. P. CHITALE: It is not that he exactly suppresses. The suppression is only to the extent that he is required to support his stock.

MR. CHAIRMAN: It may be larger than that.

SHRI M. P. CHITALE: It depends on opportunity and capacity. The only way out is to indulge in luxury consumption, and corruption and all that to improve his own prospects.

MR. CHAIRMAN: Is there any limit to this sort of growth which is leading to disparities?

SHRI M. P. CHITALE: We should create counter-vailing forces. The thing is, business has to be carried on. It may be in the Government or it may be in the private sector. They should get savings. If they are not able to get savings in an ostensible manner, nothing else can be done. The whole point is that our country is

so vast, that I consider that trade and distribution is an important activity in our country. But, a heavy tax rate is imposed on honest distribution activities. By all means tax, tax on the basis of the manner in which profits have been used. If they have been used for ostentatious consumption, by all means, tax at the rate of 70 to 80 per cent. Only thing is that, at certain levels, it becomes impossible. I have no money to pay the tax. Again, I say that there is no need to reduce the tax rates at certain levels. I am saying that at certain stages, people are not able to pay the tax.

MR. CHAIRMAN: They do not have money to plough back. It is a particular view-point. You want profits to be taxed, depending upon how they are utilized. If they are utilized for improving his business as such, or for helping the economic growth of the country, then you must get the relief.

SHRI M. P. CHITALE: I have not disregarded that, possibly, investment in a particular sector or business might not be in the interests of the society. That is why I said "let it first be invested in the National Development Fund." If, according to the national plan, investments are encouraged in certain fields and if one is engaged in the manufacture of brewery,—for one reason or the other, a decision is taken that at this stage, we need not invest more in drinking or manufacture of brewery. I do not suggest that loan should be given from the National Development Fund for this purpose.

MR. CHAIRMAN: The point is that priority should be given according to the needs of national economic development. I have a different opinion on the point whether an individual, the private sector or the Government should do it.

SHRI M. P. CHITALE: A Government Undertaking means there is some coercion, because it can get money through taxation or because it

enjoys monopoly. If any organization has to grow and depend for its finances on the basis of its performance and not on the basis of some coercive power, then that organization will tend to perform better.

MR. CHAIRMAN: You, therefore, say that this sort of coercion is unjustified.

SHRI M. P. CHITALE: I am not suggesting anything in regard to the public sector or the private sector.

MR. CHAIRMAN: You said that coercion is indirectly brought about, through the growing rate of taxation.

SHRI M. P. CHITALE: I was of the view that investment should not necessarily be done either in the public or the private sector.

MR. CHAIRMAN: It is a question whether it is to be by the Government or by the private people. The entire income may be siphoned off and made over to the Government; and the Government may take up the investment and cater to the economic growth of the country.

SHRI M. P. CHITALE: For example, if this additional taxation were founded by the Government and not taken as part and parcel of general revenues, it is quite possible that from the common pool, those who are desirous of it and show performance either in the private sector or the public sector can avail of these funds. My point is simple. Persons who are entrusted with the management must know that they will get funds for growth, provided they show performance.

MR. CHAIRMAN: At what stage does it cease to be coercion and becomes purely performance-oriented?

SHRI M. P. CHITALE: I can never say that merely a certain profit should be regarded as a test. One need not necessarily consider a high profit as a sufficient criterion. We have to consider the standards earlier set and

then decide on the performance. It should not be decided on the basis of the size of the profits. For example, if the standards are set for the performance of hospitals, it is all right even if they make only minimum profits. We cannot say the hospital has failed in that case.

MR. CHAIRMAN: So far as the Bill before us is concerned, what would you suggest, in concrete terms?

SHRI M. P. CHITALE: I have tried to summarize it in my memo., Sir. Firstly, on page 3, in the field of personal taxation, I have suggested that the existing scheme of savings is not very effective. I have elaborated it in my note. I consider that this tax credit is a far more superior scheme. I do not attach much importance to the kind of income to be exempted. I say that any kind of income can as well be spent and as well be saved.

MR. CHAIRMAN: We have seen it. That is clear. You say that quality method employed or the profits should alone determine the liability for taxation.

SHRI M. P. CHITALE: Yes, Sir; within the Plan, naturally.

MR. CHAIRMAN: That is the sum and substance of your argument.

SHRI VIRENDRA AGGARWALA: I will first deal with what we have just said. I am interested to know as to what should be the maximum marginal rate of taxation, both on corporate and non-corporate institutions, if the profit or savings, as you have put it is utilized for investments on productive projects?

SHRI M. P. CHITALE: Basically, as I have said firstly, the rates must be higher. Only then will there be an effective incentive. If the tax rate itself is low, even if you give the incentive, it would also be of low potency.

SHRI VIRENDRA AGARWALA: Do you suggest that the present rates should continue?

SHRI M. P. CHITALE: I have said that 75 per cent is enough. These incomes are made in business, which means incomes are not received immediately in cash. Then there are other considerations. There are also wealth and other taxes.

SHRI VIRENDRA AGARWALA: What about corporate institutions?

SHRI M. P. CHITALE: I have said that apart from the 55 per cent taxation, there should be capital levy as well, because I consider that taxation should not merely depend on profits. If I improve my performance and better my profits, there can be a lee-way for me to save. How could I do it if taxes are merely a co-efficient of profits? The resources are somebody else's capital. If that is to be utilized properly, there can be a capital levy, together with taxes.

MR. CHAIRMAN: In your note on page 2, you have also said:

"High rates of tax have failed in practice to arrest this consumption, perpetuating in the process environment of shortages, controls, corruption and black-money."

On the other hand, you have also justified the present rates.

SHRI M. P. CHITALE: The whole difficulty is that our society has not been habituated to investment in industries. Exemption of investment income means that you do not take risks. You seek to get the immediate benefit. If there is an industry which will give the benefit 7 years later, it is not utilized. More than 50 per cent of the new companies have not been able to reach the profit-making stage for 7 years. Why should he invest? Is this 3,000 investment income of any assistance for taking risks? No.

SHRI VIRENDRA AGARWALA: For generally improving the economic situation and for converting the economy of shortages into one of plenty

do you not think that a reduction in tax rates is the basis on which the rate of savings can be raised?

SHRI M. P. CHITALE: Reduction of the effective rate.

MR. CHAIRMAN: Ultimately, reduction in the effective rate by virtue of the process he is suggesting.

Let us take a realistic level. On page 20 of the Wanchoo Committee Report, some rates have been suggested. Do I understand you to canvass that these should be the effective rates, and over and above these, the tax credits etc. should be provided for investment for purpose of savings?

SHRI M. P. CHITALE: Yes.

MR. CHAIRMAN: These according to you are high rates and this particular scheme should be worked.

SHRI M. P. CHITALE: I consider the existing method as not very effective. So I have suggested family as the basis. Tax rates have to be considered in totality. I consider what is the taxable capacity. I consider the family as the normal unit, natural unit. Then I make no distinction between capital gains and other gains. Capital gains are also ordinary gains. Then I consider tax credit. After all, ours is not a closed economy. Ours is an open economy. Several foreigners come here.

MR. CHAIRMAN: Open economy?

SHRI M. P. CHITALE: Yes, not like China's.

MR. CHAIRMAN: Is it entirely laissez faire?

SHRI M. P. CHITALE: Our children see the foreign books and magazines which come here and get their ideas. There are so many pressures on consumption. There are so many attractions for spending. I am merely suggesting a countervailing pressure to be created.

SHRI H. M. PATEL: I would like a clarification on one or two points. Once you said that the rates may be high, but the effective rate should be low and that should be achieved by tax credits etc. What would you say should be the effective rate?

SHRI M. P. CHITALE: That is my proposal. I leave it to the individual.

SHRI H. M. PATEL: What would you permit in your scheme? Suppose I say, keep the tax credit so as to bring the effective rate to 20 per cent, would you agree?

SHRI M. P. CHITALE: Yes.

SHRI H. M. PATEL: So that the scheme would provide for going down to whatever limit anybody desires.

SHRI M. P. CHITALE: Yes.

SHRI C. M. STEPHEN: Depends on the utilisation.

MR. CHAIRMAN: This is a very important question. Assuming for a moment that on 60,000 you suggest a tax of 20,000 or 25,000, it means 40,000. According to you, on these 40,000 what ought to be the tax incentive? We would like to understand it. We are not trying to pin you down to anything.

SHRI M. P. CHITALE: I do not mind being pinned down. That would clarify my views.

MR. CHAIRMAN: On an income of 60,000 you are recommending a tax of 20,000 or 25,000. On 40,000, what further tax credit do you suggest?

SHRI M. P. CHITALE: I only suggest my scheme. I have limited tax credit to 60 per cent, highest slab. It is a graded slab.

MR. CHAIRMAN: The tax credit should be restricted to 40 per cent of the residual income.

SHRI M. P. CHITALE: Presently the limit is 30 per cent or 20,000, the discrete amount. In view of the fact that I suggest that capital gains be

roped in, that the family incomes be roped in, let there not be the discrete limit of 20,000. Let there be a limit of 40 per cent.

SHRI H. M. PATEL: The second point. You say corporate tax plus capital levy. I have not understood this expression 'capital levy' in this context. I understand the normal interpretation of the term. But here how exactly would you apply capital levy on a company?

SHRI M. P. CHITALE: Firstly, I have gone on this basis, that after all, the main idea behind capital levy is that it would not be merely a tax on profits. There would be some opportunity to lower the tax burden by improving the performance because it is more a tax or charge on the capital committed to my charge or entrusted to the care of the management. So to that extent, it is just like an interest rate. What I am suggesting is that after all, all these shareholders or banks entrust a certain amount of public savings into the hands of the management. So let there be a charge of one per cent on all these savings. How they are to be computed? That is the real difficulty. We suggest it can be own fund plus all borrowed funds. Necessarily the volume will differ from time to time. So we have suggested a yardstick: interest into 8 or so. Let that be the total capital at stake, available, entrusted to the management.

SHRI H. M. PATEL: Levy on the capital itself seems to be in principle very odd. It is with that that he is going to run his business.

SHRI M. P. CHITALE: Presently there is a charge of 50 per cent whether I make a profit or not. Actually, when I make a profit, I pay tax. My point is: let there be a capital levy. Let it be collected when he makes a profit. I am not suggesting that there should be further burden because it will only mean further load on banks.

SHRI H. M. PATEL: Why have capital levy? Why not a higher tax? Capital levy means you are going to reduce the capital.

SHRI M. P. CHITALE: No. I am not suggesting that there should be an overall increase in the corporate burden. What is the overall burden now? Let us assume it is 55 or 50 per cent. Within that I am suggesting a capital levy. I am not suggesting this to be a supplementary levy. I am suggesting merely a reorganisation or rearrangement of the existing burden in such a manner that there will be an opportunity for those who are using capital effectively to reduce it. Which means that those, for example, who make full use of capital equipment, who carry on business with reduced inventories will necessarily pay less than the others. There will be this little incentive within the existing system. It means only the total burden is redistributed.

SHRI H. M. PATEL: Last question. You have in your thinking taken the family as the unit for purposes of taxation. Is that always fair? Will it not discourage husband, wife etc., all earning to find that they are going to be taxed at a higher level?

SHRI M. P. CHITALE: No; If we merely consider as to what is the present income-range and how many are the assessee affected. I have said, to start with, that you should remove this fear that there is some sort of penalising the wife. I have suggested income over Rs. 20,000 may be considered for clubbing. That means she is not affected. Anybody who understands the manner in which the wife is paying the tax at present knows that a lady who is having Rs. 20,000 as earned income is in no way affected by the family being taken as a unit. It will not impose a burden on the revenue nor will it impose a burden on the family. Consider the tax credit. It does not mean that the family cannot save. On their larger

income, they can get a higher tax credit.

SHRI ERA SEZHIYAN: You have taken the family as a unit for the assessment of income-tax. I personally agree with you. I want one or two clarifications. In the United Kingdom, I understand they have an option to take it as a unit or as an individual as it is. Do you accept that point of view? Will you give an option to take the family as a unit or an individual as such?

SHRI M. P. CHITALE: The option would not be very helpful in administration. One must have an amount of certainty in the administration. There should be some certainty.

SHRI ERA SEZHIYAN: To start with, in India, can we give the option?

SHRI M. P. CHITALE: There is not much to give an option. It is not as if I am penalising it. My scheme is not based on penalising. It is based on recognising primarily the natural human tendencies.

SHRI ERA SEZHIYAN: I agree that it is laudable and wise to introduce the system where family is taken as a unit. Now, can we give the option?

SHRI M. P. CHITALE: I do not think an option would be helpful.

MR. CHAIRMAN: According to you, it is not feasible or desirable.

SHRI M. P. CHITALE: Even under the existing scheme, the income of certain members is roped in an indirect manner.

SHRI ERA SEZHIYAN: Objection has been raised from certain quarters that there is danger of a family being split up if you take the family as a unit. That objection may be raised and can be raised. In your note you have said that it may result in the disruption of the families or even the institution of marriage. What is the basis of your observation?

SHRI M. P. CHITALE: If in any family, ladies are earning less than Rs. 20,000, there is no doubt that they are not affected, and there will not be any tendency to seek divorce. If they have more than Rs. 20,000, they can claim a larger rate of tax credit applicable to the larger incomes. They are in a position to save as a family and then claim higher rate of tax credit on the higher slabs of savings.

SHRI ERA SEZHIYAN: You are linking it with tax credit.

SHRI M. P. CHITALE: Yes.

SHRI VASANT SATHE: Your entire scheme is to encourage more savings for productive purposes and more investments. In para 9, you have said that "tax evasion and corruption originate, among other things, from the shortages of goods and services and incidental controls. The channelisation of savings for purposes of investment and production, and the effective and optimum use of scarce resources, is in this view, organically connected with the problem of tax evasion. The tax structure affecting business enterprises assumes relevance in this context. In my view, Government has not given sufficient and right attention to these aspects".

In that context, and having in view the basic objectives of this Bill, namely, unearthing black money which, in the findings of the Wanchoo Committee, was to the tune of Rs. 7,000 crores—today this must be much more—considering these aspects, and the proposition of yours, I would like to know where, in your opinion, all this black money is at present concentrated, in what sector or in what section and in whose hands.

Secondly, by the measures that you proposed for encouraging investment, do you think that this will encourage investments in sectors which are necessary for the society for the production of goods for primary needs, and that the money invested, after encouragement and incentives that are

given, in these sectors will give them larger profits? That means, luxury consumption goods, and thereby instead of in anyway really benefiting the society at large in the form of production of consumer goods, of high priority and as necessities, it will continue to augment the growth and power in the hands of this very class. How do you think all these measures you have suggested will really enable the State to unearth the black money, even if not directly, at least indirectly for the benefit of society? Would you like some restrictions to be put on the sectors in which these investments will have to be made?

SHRI M. P. CHITALE: Any Government activity, any continuing activity will entirely depend on the returns in the private sector and also in the public sector. If the public sector has to grow, it must have funds. The investment is taking place in the luxury consumption articles. Why is it taking place? It is taking place because those persons cannot save in an ostensible fashion, and the only outlet for their funds is in ostentatious luxury consumption. If the savings can be made in an ostensible fashion, it is natural that the demand for such articles will become less. If the demand is less, the investment in luxury products is less. It is all correlated to the demand.

SHRI VASANT SATHE: Don't you think it is over simplification? You have been emphasising on human nature. Human nature is for luxuries if one can afford. Instead of savings, if they spend on luxury goods and if luxury goods are available, don't you think that persons will go in for spendings on luxuries instead of spending on essential commodities?

SHRI M. P. CHITALE: A large section of the public wants to save for its own benefit. It is not that persons do not want to save. Persons just want to save because there are uncertainties. They may have to educate their children; they may have to provide for sickness, old age and all

that. For a businessman, there is need for saving. The point is that, some persons cannot meet that need. When they find that under the existing scheme, they cannot save in an ostensible manner, and they are in a position and they have the opportunity and capacity to make money and spend ostentatiously, then, even on those persons who would not otherwise enter into that field, pressure is brought on them. Let us take for example, a person employed in industry A. He is a salaried official and he is getting more than Rs. 2000. But he is also getting some secret commission etc. Why should he take secret commission etc? Does it mean that his family is in distress? This is because, he finds that other persons, who are at the same level in the society, as he himself is, are enjoying in a better manner. Let us take the example of two persons, one a grocer and another a salaried employee. We can take this as typical example. Let us say that there is an increase in income in the case of both the persons. When we see the style of living of both, we will find that the style of living in the case of a salaried employee is better than that of the grocer. This is because, in the case of a salaried employee, his annual increment is assured; his provident fund is assured; gratuity is assured and his whole way of living is in a planned way, as it were. If a person get a salary of Rs. 500 or Rs. 600, it is only in the case of bigger enterprises. This is so, whether the enterprise is in the private sector or it is in the public sector. It makes no difference. Such levels of salaries are received and they will go on increasing, because of the employees strength and that will set the consumption style. But, a person, who does not know as to what will be his trade fortunes tomorrow,—I am deliberately mentioning trade—will not spend in that manner. A farmer would not spend in that manner, even if he gets a bumper crop in a particular year. He does not know as to what will happen in the next two years, because, there

are so many uncertainties involved in this. We find that the style of living is better only in the case of persons who are getting a steady and assured income. Then, they set the style of living.

SHRI VASANT SATHE: They become patterns for others?

SHRI M. P. CHITALE: Yes. If they would have an uncertain income, then, it is not possible for them to live in that manner.

SHRI VASANT SATHE: How will this encourage investment in the essential priority sectors, where the rates of profits may not be high.

SHRI M. P. CHITALE: The whole point here is that, whether investment has to take place in luxury goods or in essential articles, it depends upon demand. Let there be a demand for that article. Then, people will invest in this.

SHRI VASANT SATHE: When you say demand, do you mean effective demand or the real demand? The real demand is there. People are starving. What do you mean by demand? People do not have purchasing power.

SHRI M. P. CHITALE: How many has to come their way? Let us say there is a factory and it is producing bread, which is an essential article. It is produced by us in plenty. Suppose, this business makes a loss then, somebody has to meet it whether it is A or B. This means, they must have money. How will they be able to get money? That is the problem.

SHRI VASANT SATHE: If the choice is between manufacturing bread and in producing plastics and other cosmetics, in which field, will he invest?

SHRI M. P. CHITALE: My point is that, that particular factory will remain idle. Bread will not be manufactured. They should have money to

continue. Somebody has to give the money.

SHRI VASANT SATHE: How will they be able to have the money and the purchasing power?

MR. CHAIRMAN: It is not necessary that you should agree with him.

SHRI VASANT SATHE: According to him, black money has to come out, in the country. My point is, how it will come out?

SHRI M. P. CHITALE: There are two things. One is, if you feel that without giving tax credit and tax holiday etc., if you have highest tax rates, it will reduce spending, and if you feel that is an effective method, by all means do it.

MR. CHAIRMAN: That is a manifestation. That is a fact of black money.

SHRI M. P. CHITALE: That has not been effective. The point is that, you should create a certain climate. Today, for example, if I should have a bag for travel and I go to the market. The shop-keeper says that the bag will cost Rs. 40 and he also says that an additional amount of Rs. 4 has to be paid by way of sales tax. But, I say that I am not interested in the bill and that I want a bag for Rs. 40. Then, he gets the bag at Rs. 40. What happens? Not necessarily, that the person is dishonest and all that. Nothing of the kind. Now, here, the small manufacturer cannot show the sale for sales tax. Excise duty is saved; sales tax is saved and income tax is also saved. My point is that, this is done because people support it. They do not go to the police. I do not know as to what will be the effect and what will be the consequences tomorrow. This happens because, the people, the rulers, the politicians and everybody else support it.

SHRI VIRENDRA AGARWALA: Mr. Chitale, you were a Member of the Wanchoo Committee. I would like to get one or two points clarified. The

most important recommendation of the Wanchoo Committee is that, tax rates should be reduced, particularly, in the case of personal income tax. The Committee felt that this is one of the most important method to check or unearth blackmoney. Now, is this based on any concrete study or research and analysis or it is just an impression of the Wanchoo Committee, that by reducing the tax rates, you will be able to unearth black money?

SHRI M. P. CHITALE: Before that, I would like to make one thing clear. I have not said that mere reduction in rates of tax would bring about an atmosphere where people would not hide income and avoid tax.

SHRI VIRENDRA AGARWALA: You have not answered my question.

SHRI M. P. CHITALE: That is why, I said that merely reducing the tax rates, is not going to help very much.

SHRI VIRENDRA AGARWALA: I am not asking that question. I have referred to one of the most important recommendations of the Wanchoo Committee. Now, my question is, is this based on any study or research or it is just an impression of the Wanchoo Committee or it was the view of the majority of the Members of the Wanchoo Committee?

SHRI M. P. CHITALE: I do not know what you mean by research? Whatever we say is all based on what we know about human nature. We have also said that the good element should also be recognised.

SHRI VIRENDRA AGARWALA: The second question is this. Let us assume that Government agrees to reduce the tax rates to the level mentioned in the Wanchoo Committee report. It is also known that Government would lose about Rs. 45 crores by way of revenue. Now, if the tax rates are reduced to that level, will it be possible for the Government to raise its revenue by more than Rs. 45 crores of rupees?

SHRI M. P. CHITALE: If it is done in the manner in which I have done it, there is no doubt about it, because in my scheme, you have got a saving and you reduce the tax only if there is a corresponding saving and investment. It is obvious there.

SHRI VIRENDRA AGARWALA: You have seen the bill and it does not include any provision for tax reduction etc. Do you think that this will, if approved in this form, help in checking the black money substantially?

SHRI M. P. CHITALE: It will help in checking it to a little extent.

SHRI VIRENDRA AGARWALA: To what extent?

SHRI M. P. CHITALE: To the extent that the Department's capacity will now be more strengthened.

SHRI VIRENDRA AGARWALA: In terms of capacity alone, or in terms of checking black money?

SHRI M. P. CHITALE: The penal powers which have been given will certainly be effective. Presently, these powers are enjoyed by the Customs authorities. How they are enjoyed and how they have been able to attack smuggling, are matters to be considered. We must have a balanced view, as to what extent they will be effective. If the consumer himself joins i.e. he is in league with the seller, there is no evidence. What can the Department do? Can the officers manufacture the evidence when all the parties concerned in the deal obliterate the evidence?

SHRI P. G. MAVLANKAR: From your study of the bill, do you find that the important recommendations of the Wanchoo Committee are covered by the provisions of the bill? If not, in what way can both the spirit and the recommendations of that Committee be incorporated into the bill? Secondly, can you tell us, in some detail, as to what you think about the beautiful measures suggested in the bill? If you think that these penal

measures are wrong, what alternatives can you suggest to check the anti-social activities and curb the undesirable elements?

MR. CHAIRMAN: That is the crux of the problem.

SHRI M. P. CHITALE: I have myself said initially that I am in favour of the penal provisions, because I consider that without an effective punishment, nothing can be done. Merely giving inducement, without any punishment, would not help. It would not work. We must have both. After all, who will punish, especially when the customer cooperates with the trader?

SHRI P. G. MAVLANKAR: Do you find the penal provisions adequate?

SHRI M. P. CHITALE: I do not think they are. But some safeguards can be put for their reasonable use.

MR. CHAIRMAN: If the problem is to be tackled in its totality, the remedies have to be *in toto*. You think that despite rationalization, if it is not found sufficient, we must have other remedial measures to make it total.

SHRI M. P. CHITALE: Yes, Sir.

MR. CHAIRMAN: Do you think that Government has implemented your salient and significant recommendations in this bill?

SHRI M. P. CHITALE: So far as punishment is concerned, it has done; but even there, not in certain respects. For example, it was suggested unanimously that no business on a large scale can be carried on without bank credit. It was suggested that bank credit should not be made available where the persons concerned have been proved to have committed tax offences, like concealment offences. So far, it has not been implemented. I can understand the difficulty. If you deny credit to an industry, there might be strike by the workers tomorrow. They may not be paid.

MR. CHAIRMAN: I want to know whether we can do it under the income-tax law. I may say for your information that the recommendation is being considered by the Department of Banking.

SHRI M. P. CHITALE: I am very happy to hear it.

SHRI VIRENDRA AGARWALA: What about the positive aspect?

SHRI M. P. CHITALE: There can be much more effective steps for improving the savings.

SHRI ERA SEZHIYAN: In your minute of dissent in the report of the Wanchoo Committee, you have suggested certain measures for unearthing black money. You have given the impression therein that the original purchaser of the bearer-bond directly pays a tax of 50 per cent. Is it notional? A person may pay Rs. 100 and take the balance after paying 3 per cent. You are suggesting that he is paying and that can be taken to have paid 50 per cent. Secondly, that bond becomes transferable, i.e. it will receive interest only after it is transferred, that is, only when the first transfer is made; and the endorsement is given. Till then, it can be with anybody, without disclosing the source or the identity. Therefore, would it not amount to a parallel black transaction, when it is going without endorsement from one person to another? Would it not be a proliferation without your being able to question it, because the person is ready to forego the interest of 3 per cent? He is operating the black money transactions this way.

The third thing is that this will take care of only black money which is in cash form. Black money is not new in cash form only; it is in so many other forms. Now it will be taken care of by bearer bonds?

SHRI M. P. CHITALE: I will answer the last point first. It deliberately restricts itself to cash because cash is more easy of proliferation than for example, other thing held in kind

It is deliberately restricted to cash. So I consider that to be a superiority, because if it is in a building, it is very easy to spot it. Where is the question of disclosure? With all these searches and seizures etc. whatever is in kind should be surveyed and searched. That can be tackled by such powers. But cash—no. That is why it is deliberately restricted to cash. It is more easy of proliferation. Really things are aggravated because it emerges in cash form because somebody is able to utilise it in any way he likes. A property cannot be utilised that way. That answers the last question.

As to whether it contemplates actual payment of tax, it does not. The scheme does not contemplate actual payment of 50 per cent. The scheme contemplates that after all, when the security will carry an interest of 2 per cent, its market value is 50 per cent. So what he is receiving in the shape of that paper is itself 50 although he has parted with 100. So virtually when that bond will be issued by Government. Money will be received by Government. So automatically Government has received 50. Ordinarily Government will be required to pay 6 per cent interest on government securities. This will be for 30 years and it will fetch 3 per cent. Automatically Government will gain; that is the tax. So I have suggested that it is 50 per cent.

About bearer bond held by him without endorsement, certainly it will be circulated. But why should you consider that to be a weakness. Today our currency is being so circulated.

Bond means that it is money left after payment of tax.

SHRI ERA SEZHIYAN: How?

SHRI M. P. CHITALE: What is meant by a bearer bond? I exchange my 100 rupees which cannot be disclosed for 50 rupees market value paper. When he paid 100 rupees, 100 rupees were received by Governments. Government issued the paper carrying 3 per cent interest. It is the market

value. LIC is not going to pay Rs. 100. Banks are not going to pay Rs. 100 in the market. He will get Rs. 100 only on maturity after 30 years. He is getting interest at 3 per cent. In effect, he gets in exchange presently Rs. 50. If tomorrow he wants to sell or transfer or negotiate this, any person will pay Rs. 50. What it means is that the bearer bond is money left after payment of 50 per cent by way of tax.

MR. CHAIRMAN: How is that?

SHRI M. P. CHITALE: It gets used, at 3 per cent for 30 years.

MR. CHAIRMAN: Rs 100 at 3 per cent. Therefore, that, according to you, is money after payment of interest. Rs. 100 available to the Government at 3 per cent is money available after that payment.

SHRI M. P. CHITALE: Correct.

SHRI ERA SEZHIYAN: It boils down to voluntary disclosure of 50 per cent paying the tax. It amounts to that.

SHRI M. P. CHITALE: As I have mentioned, voluntary disclosure schemes have failed. We have all found it out. That is why I say, let there be no confrontation between the tax people and the person. Let it be available on top with the banks. I am not required to disclose my name till I require to negotiate it. Till that time, there is complete anonymity.

SHRI ERA SEZHIYAN: It boils down to the voluntary disclosure scheme where the confrontation will not be there.

SHRI M. P. CHITALE: Disclosure is deferred till I negotiate, till I trans-

fer the bond to the endorsee. Till that does not want to take the benefit of the bond is not known.

SHRI ERA SEZHIYAN: The bearer bond may remain unendorsed. To that extent, it can go from hand to hand without being disclosed.

SHRI M. P. CHITALE: Yes.

SHRI ERA SEZHIYAN: The party does not want to take the benefit of the 3 per cent interest. In the course of 6 or 7 years—it cannot remain more than it—it can go on like that; it would later extinguish itself and become an endorsee bond. Did you draw up this scheme based on a scheme in operation in France?

SHRI M. P. CHITALE: I just discussed some rudimentary scheme. Then changes were made in the light of certain viewpoints. It just evolved. That is all.

MR. CHAIRMAN: Anything else?

SHRI M. P. CHITALE: Then again, take the case of these tax clearance certificates. When all taxes have been paid, it takes me 21 days. I find that other persons, for example, get tax clearance certificates immediately. There is no distinction between persons who are good and honest and others. The administration can certainly make that distinction. If I make a certain disclosure or declaration on the tax clearance form, and if I have paid less, later on you may 'hank' me if the statement is dishonest. This has to be cleared up. My point is that all these things merely create, what shall I say, room for corruption.

MR. CHAIRMAN: Thank you very much.

(The witness then withdrew):

III. Anjuman-I-Islam, Bombay.

Spokesmen :

1. Shri Akbar Peerbhoy, President.
2. Shri Mustafa Fakhir
3. Shri S. S. Desnavi
4. Shri H. P. Italia
5. Shri R. M. Sayeed
6. Shri A. M. Fakhir.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we take your evidence, I may draw your attention to Direction 58 of the Directions by the Speaker which provides that the witnesses must be informed that the evidence they give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. You may proceed.

SHRI AKBER PEERBHOY: Mr. Chairman, and Members of the Committee, my case falls within a very narrow ambit, and the objection I am taking is on five points. Let me make it clear from the beginning that I do not object to the provisions that are proposed to be enacted as regards the trust funds invested in the limited companies. My memorandum will show that we are in favour of it, because, investments in the companies are not desirable, and the consequences can be anything. Since I am a much older man than most of you, I may submit that I have seen trust funds being lost and in fact, one company went bankrupt. We feel that investments of such a nature should not be allowed.

The next point is that debentures should be allowed because they fetch a higher rate of interest than the

investments on the securities or in any other investment. Debentures are secured on the assets of the company and by taking debentures the trusts will get a higher yield which means a better prospect for the beneficiaries. That concludes my comments as regards the investment part. I have nothing to say against these provisions excepting that debentures may be allowed.

Then, in the amendment to section 13 of the Income-tax Act, the draft Bill wants to depart from the old section 13 which exempted the communal and sectional charitable trusts from the operation of the Income-tax Act. Now, the way it is worded shows that the exemption that we had prior to 1962, in respect of the charitable trusts which were engaged in giving scholarship, medical aid and such kind of assistance to the poor, is going to be taken away. The point is that this kind of blanket...

MR. CHAIRMAN: We have had extensive evidence on this point, namely, the denial of exemption to charitable trusts before 1-4-1962. The thinking of the Committee is that this does not appear to be consistent with or in close nexus with the objects of the Bill and the mind of the Government is also utterly open. We will most sympathetically consider this aspect of the matter.

SHRI AKBER PEERBHOY: Then, I will cut short my submission on this

point. I would like to make only one other point clear. Speaking for the Muslims, I would like to say that they are a backward community. You will recollect—those who are aware of the mind of the framers of the Constitution—that article 46 and article 15(4) provide for special consideration for the Scheduled Castes and Scheduled Tribes. At that time, there was a tremendous agitation among the Muslims that they should be placed in a special category because they are also backward. But it was negated.

MR. CHAIRMAN: It may not be necessary to argue on these lines. We have minorities as a whole, whether they are backward or not. They have a trust made before 1-4-1962. The Committee does not think that it is in close nexus with the objects of the Bill. May be we will consider it very sympathetically.

SHRI AKBER PEERBHOY: I just endorse whatever arguments have been advanced before you earlier on this aspect, with all the emphasis at my command. The arguments that have been advanced on behalf of the advanced communities like the Parsees and Christians will apply with greater force to a backward community like ours wherein the percentage of educated people is just eight per cent among women, and the scholarship that we give is really used by the poor and the deserving. Therefore, the arguments that have already been advanced apply with greater force in the case of the Muslims.

MR. CHAIRMAN: Any other aspect under section 13?

SHRI AKBER PEERBHOY: The amendment by clause 4 that is sought to be made to section 10 may also be referred to. Section 10(22) gives exemption to the universities and other educational institutions. Is there not a conflict between section 10(22) and...

MR. CHAIRMAN: Is there a conflict between section 10(22) and the proposed amendment? Section 10(22A) will remain.

SHRI AKBER PEERBHOY: Section 10(22) says:

“any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit;”

They are at the moment exempt from tax. If you look at the amendment that is sought to be made, to exemption so far available to charitable trusts or institutions created before 1-4-1962 for the benefit of any particular religious community will be taken away. The word “institution” in clause 4 should mean “educational institution”.

MR. CHAIRMAN: This is an independent provision. If you fall within Section 10(22), you need not come to that all. We do not take any thing out of Section 10(22). Why there should be doubt about it?

SHRI AKBER PEERBHOY: We thought that Section 10(22) may be over-riden.

MR. CHAIRMAN: There is no question of over-riding. This is an independent provision. If a particular case falls within Section 10(22), then, it would not be affected by the amending provision.

SHRI AKBER PEERBHOY: As regards 13(a), I have nothing more to add. I do not want to argue anything. You have already given me some indication about the thinking of the Committee.

MR. CHAIRMAN: And also the attitude of the Government.

SHRI AKBER PEERBHOY: Then. I come to amendment of Section 13—insertion of new Clause (bb). This deals with activity for profit. Here, you want to tax the activity for profit. Here, I would like to make one submission. There are charities which conduct charity shows etc.

MR. CHAIRMAN: We have this in mind. These difficulties have been pointed out to us. But, do you accept

the basic idea? It is not the intention of the Government to rope in charity shows. There will be suitable changes in the Bill itself. In the proposed law, we will leave that out. Otherwise, do you accept the basic idea that there should be taxation on profits arising out of any activity which is not carried on for the primary objectives of the trust?

SHRI AKBER PEERBHOY: But exemption should be made in respect of charity shows and collections made in gulla boxes.

MR. CHAIRMAN: What about anonymous donations?

SHRI AKBER PEERBHOY: For example, there may be an orphanage, where boxes may be kept and people may donate some money into them. This would be an anonymous donation collected and this would be treated as activity for profit. Therefore, I would like to submit and our suggestion is that, collections made by way of charity shows and box collections should be exempted.

MR. CHAIRMAN: Such collections would be out of this Clause. It is only activity for profit which is sought to be taxed.

SHRI AKBER PEERBHOY: I will be grateful if you can make it clear here. You can say that exemption will be given to charity shows and box collections. This is not activity for profit. The next thing I would like to refer is regarding voluntary contributions. It is said that where the identity of the person is not established, the tax would be 65 per cent. I do not know, whether, in a charity, if a person whose identity is not known, puts in Rs. 4000 or Rs. 5000, and his identity is not established that would apply...

MR. CHAIRMAN: That would apply. If someone puts Rs. 500 or 5 lakhs. and the Income Tax Officer asks questions and the trust is not able to establish the identity of the persons who have donated the amount, it will apply.

SHRI AKBER PEERBHOY: The point that I am trying to make is this. We do not know as to who has put the money into the box. People come to the orphanages and hospitals and dispensaries...

MR. CHAIRMAN: This question has been agitating our minds. We would like to see that genuine anonymous donations which come into the boxes, are not affected and they are left out, by some method or manner. This appears to be the thinking of the Committee. We will see how best it can be done.

SHRI VASANT SATHE: If a reasonable limit is put, would that meet your requirement?

SHRI AKBER PEERBHOY: That would be my alternative suggestion. My first suggestion is that, the whole of box collections should be exempted. It is a charitable institution. If the first suggestion is not acceptable to the Government or to the Committee. I would give my second suggestion that a limit may be put.

SHRI VIRENDRA AGARWALA: What limit do you suggest?

SHRI AKBER PEERBHOY: In the course of the year, if Rs. 50,000 is collected, it should be exempted. Boxes are opened in the presence of all the trustees. The boxes have a hole in them.

MR. CHAIRMAN: We will consider whether this is the best method, or, it should be done by some other manner. But, we will endeavour our best to see that genuine box collections are not roped in.

SHRI AKBER PEERBHOY: This should be particularly in regard to institutions like orphanages, hospitals, dispensaries etc.

SHRI VASANT SATHE: Would you suggest that it should have some relationship with the box collections made in the previous years, say, about 5 years? The average of the box collections made in the past 5 years should

form the basis and to that extent, the limit can be put.

SHRI AKBER PEERBHOY: May I say that it will be very difficult to correlate with past years for the simple reason....

MR. CHAIRMAN: Your suggestion is that, a limit can be put.

SHRI AKBER PEERBHOY: This is the alternative suggestion. My first suggestion is that, there should be complete exemption. If you are not able to accede to our request, our alternative suggestion is that, there can be a limit and I make it Rs. 50,000.

SHRI VASANT SATHE: Supposing, in the last 5 years, the average box collection of a small trust is Rs. 5,000 and if you say that the limit is Rs. 50,000, then next year, the trust will increase its box collections and show it at Rs. 40,000.

SHRI AKBER PEERBHOY: The objective of the Bill is to bring black money into circulation. You are converting black money into white by giving it to the charities.

SHRI VIRENDRA AGARWALA: That is what we want to stop. The State does not get anything out of it.

MR. CHAIRMAN: We will see now best we can help in regard to genuine collections.

SHRI SYED AHMED AGA: Is there any objection if we say that boxes should be opened, in the presence of the income tax Officers, besides the trustees?

SHRI AKBER PEERBHOY: We welcome that. We have no objection, I come to the other point. It has been provided that there will be 65 per cent tax, if the substantial contribution exceeds Rs. 5000. We feel that this is too low. If a person....

MR. CHAIRMAN: Do you suggest that it should be with reference to some percentage of the corpus?

SHRI AKBER PEERBHOY: I would put it much higher.

MR. CHAIRMAN: Much higher in absolute terms or in relation to the percentage of the corpus?

SHRI AKBER PEERBHOY: If a man gives Rs. 15,000 under this amendment, you have to tax it. The receiver would be taxed.

MR. CHAIRMAN: Instead of Rs. 5,000 what, according to you should be the percentage of corpus for the trust?

SHRI H. M. PATEL: Would you like the definition to be there?

MR. CHAIRMAN: You can write to us separately on this. We will consider.

SHRI AKBER PEERBHOY: I would say that Rs. 25,000 or Rs. 50,000 would be a substantial amount. Rs. 5,000 is too low. Secondly, the substantial contribution should be linked to the period, in one year. Suppose a man pays Rs. 1,000 this year and smaller amounts every subsequent year. Would he pay for his life-time? Our suggestion is that the period should be fixed.

MR. CHAIRMAN: Both the limit and the duration be fixed.

SHRI AKBER PEERBHOY: If you keep this amount of Rs. 5,000 then it should be in one financial year, and not running over many years.

MR. CHAIRMAN: We will consider it. We are ourselves seized of this problem.

SHRI AKBER PEERBHOY: As regards the Wakf, they are the creation of charity by a Muslim for the object of charity, i.e. for a religious purpose or charitable purpose. In this connection, I would suggest that a suitable provision should be made in the form of a definition or a proviso that Wakfs are exempt, because they are really religious,

MR. CHAIRMAN: Do we make it religious by a fiction of the law, or is it really so?

SHRI AKBER PEERBHOY: It is really religious, Sir.

SHRI VIRENDRA AGARWALA: The Wakfs are exempted.

SHRI AKBER PEERBHOY: The Wakf has got a concept of religion. It is for educational purposes. The Wakf can be created for various objects. One can create it for giving scholarships. Would that be considered as a charitable trust?

MR. CHAIRMAN: Then it would only be a charitable trust and not a religious one.

SHRI AKBER PEERBHOY: The concept of Wakf is itself a religious one.

MR. CHAIRMAN: We cannot help it. We cannot make an exception. A religious trust is exempt, to whatever religion it may belong.

SHRI AKBER PEERBHOY: The Wakfs can be partly religious and partly charitable; but the concept of a trust is different from the concept of a Wakf. In a trust, there is the board of trustees; but in the wakfs, property rests in God and the Mutavallis are managers who carry out the objectives which are mentioned in the Instrument.

MR. CHAIRMAN: I do not want to go into that argument. Anyhow, do you mean to say that by a fiction of the law, all the Wakfs should be treated as charitable? Many of them are private Wakfs. How are we to call them charitable?

SHRI AKBER PEERBHOY: Private Wakfs are not considered as chari-

table ones. It is not registered at all.

MR. CHAIRMAN: We are not creating it by a fiction of the law; we are not thinking of any mixed trust as a religious trust. It cannot be done for any one particular community, whether Christian, Muslim, Parsi or the Hindu.

SHRI AKBER PEERBHOY: As regards Bombay we have the Bombay Public Trust Act and the Bombay Charity Commissioner. He is a watchdog which sees to the filing of the accounts and to the keeping of the list of registers. He is supervising our trust from time to time. As such, Anjuman-I-Islam does not come into the picture of receiving black money, or of investing its funds in public companies. I am entirely in agreement with the amendment, that the role of black money should be ended. When investments are made by the Bombay charities, we have to take the prior permission of the Charity Commissioner. If I want to invest my trust's money in a particular manner, we have to apply to the Charity Commissioner under the Act which is in force in Bombay. He will ask hundred questions, which we will have to satisfy.

MR. CHAIRMAN: You have made the point already.

SHRI AKBER PEERBHOY: In reply to the first point I took up, you have already indicated that you would give us relief.

MR. CHAIRMAN: That is our present thinking. Now Mr. Peerbhoy, give there any other points over and above what you have made?

SHRI AKBER PEERBHOY: No, Sir, but I would request you to allow

my colleague from other institution to say a few words.

MR. CHAIRMAN : I regret it is not possible, since prior intimation to this effect was not given to us. Anyway,

that is all, Mr. Peerbhoy. Thank you very much.

SHRI AKBER PEERBHOY: Thank you, Sir.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973.

Thursday, the 11th October, 1973 from 09.00 to 12.45 hours in the Committee Room, Sachivalaya, Bombay.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri S. M. Banerjee
7. Shri Tridib Chaudhuri
8. Shri K. R. Ganesh
9. Shri Manj Ram Godara
10. Shrimati Sheila Kaul
11. Shri Maharaj Singh
12. Shri P. G. Mavalankar
13. Shri H. M. Patel
14. Shri R. Balakrishna Pillai
15. Shri Bholu Raut
16. Shri Vasant Sathe
17. Shri Era Sezhiyan
18. Shri Satyendra Narayan Sinha
19. Shri C. M. Stephen
20. Shri V. Tulsiram

LEGISLATIVE COUNSEL

Shri S. Ramaiah, *Deputy Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)

1. Shri R. D. Shah, *Chairman, CBDT.*
2. Shri S. Narayan, *Joint Secretary.*
3. Shri R. R. Khosla, *Director.*
4. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

Shri K. S. Bhalla—*Under Secretary.*

WITNESSES EXAMINED

I. Gujarat Industries Association, Bombay

Spokesmen:

1. Shri J. M. Patel, President
2. Shri Pradip Shah
3. Shri A. C. Patankar, Secretary

II. All India Manufactureres' Organisation, Bombay

Spokesmen:

1. Shri Ram Agrawal, President
2. Shri Pradip Shah.
3. Shri P. A. Shah
4. Shri B. S. Mohatta
5. Shri N. G. Abhyankar, Executive Director
6. Shri D. P. Birla

III. United Women's Organisation Committee, Bombay.

1. Mrs. Gulistan Billimoria, President.
2. Mrs. Sujata Manohar
3. Mrs. Deena Ahmadullah

I. Gujarat Industries Association, Bombay

Spokesmen:

1. Shri J. M. Patel, President
2. Shri Pradip Shah.
3. Shri A. C. Patankar, Secretary.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we take your evidence, I may point out to you Direction 58 of the Directions by the Speakers which provides that the witnesses must be informed that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

I want you to give me an estimate of the time that you are likely to take.

SHRI J. M. PATEL About 30 minutes.

Hon. Chairman, and hon. Members of the Committee, I am grateful to you for giving me the privilege of appearing before you on behalf of my association on the basis of the memorandum submitted by me. I shall deal with the important aspect of the proposed amendment, which is in respect of section 104. I shall deal only with that subject.

In the proposed amendment, companies which were exempted from declaration of dividends on profits...

MR. CHAIRMAN: Are you speaking on clauses 26 and 27?

SHRI J. M. PATEL: Yes. If this amendment is made into a law, it will adversely affect most of my members as this will not leave any resources if we have to declare a dividend out

of the profits of 45 per cent, Mr. Kaldor and the Bhoothalingam Committee and the Wanchoo Committee had recommended this section should be completely deleted. In 1964, this Act was amended, and the entire manufacturing companies were taken out of the purview of compulsory declaration of dividends. The majority of my members are small entrepreneurs and they have to depend upon a small capital only. They mostly rely on borrowings either from institutions or from friends and others. If this amendment becomes law, and if they have to declare a dividend out of the net profit of 45 per cent, nothing will be left and it will be very difficult for them to repay the borrowings.

Another point which I would submit is that unless a manufacturing company is allowed to conserve its profits, it will be very difficult for them even to withstand a recession. The years 1967 and 1968 saw severe recessions but most of the companies survived this because it was not compulsory for the manufacturing companies to declare a dividend. The contention may be that this is one way of conserving wealth, but for small companies they will be only requiring the money for such recession periods or for expansion or for such other contingencies.

The most important aspect is that after a certain period, the machinery will be worn out and they will have to be replaced, and every year the cost of the machinery is going up by 10 to 15 per cent. After a period of five to 10 years, the machinery requires replacement but the companies will not be having funds for such replacement.

Another suggestion which I would like to make here is that if the profits are required to be distributed and a dividend has to be declared, it will go into the hands of the individual shareholders. Ultimately it may not be that he brings back money to the company but he will consume it for his personal needs and thereby in most of the cases it will happen that

the savings will not remain in the hands of the company which require funds for expansion. Today, our Government policy is to encourage a new class of entrepreneurs; that is, the small industries, and the small industrialists want to start industries with very limited resources. The small industrialist cannot get public assistance. He has mostly to rely upon his friends or relatives who might help him. Most of these small companies are started by a group of people who are technocrats or who know the art of management or who put in a little money. The starting capital is so low that they have to rely upon heavy borrowings. Even now, the bank rates for lending money have also gone very high. For these reasons, I strongly feel that whatever has been recommended in the Wanchoo Committee report and by the earlier committees, the proposed amendment will create difficulties in the way of development if the profits of the small entrepreneurs are allowed to be retained, they may grow; otherwise, these companies will end up in losses.

MR. CHAIRMAN: We will consider this aspect. Come to the next point.

SHRI J. M. PATEL: I will deal with Section 104 only.

MR. CHAIRMAN: I may tell you one thing. The Committee has heard evidence on this point, and all the points you have been making have already been made by the various witnesses; the point is about the necessity of allowing the entrepreneurs, especially the small entrepreneurs in the corporate sector, to retain the profits with a view to repaying the loans and expansion and replacement from the point of view of technological growth and saving the interests of the small entrepreneurs. Now, apart from the question of the necessity of retention of profits for the purposes of the business of the small entrepreneurs if there is any other point on this section, which you would like to make, you can do so. These points have already been made.

SHRI J. M. PATEL: I would request my colleague Mr. Shah to deal with this.

SHRI PRADIP SHAH : There are one or two points, I would like to submit. This is regarding Section 104. of Companies. This is a penal tax. This operates very very harshly. The penalty for non-declaration is very severe. Even a small shortfall in the dividend to be declared, results in the penalty being imposed on the entire surplus. I may give an illustration. If the funds available after taxes have been paid is one lakh of rupees, and the dividend to be declared is only Rs. 45,000, and if Rs. 30,000 is declared by way of dividend, in that instance, the tax is levied on Rs. 70,000 and not on the shortfall of Rs. 15,000. That is, the entire distributable income less dividend distributed.

MR. CHAIRMAN: Section 105 enables you to make good the shortfall in three months time.

SHRI PRADIP SHAH: The shortfall has to be made good. Let us say that the person is not in a position to do that. If he is not able to declare, then, what will happen? Suppose, he has to declare Rs. 45,000 and he declares only Rs. 30,000, then for non-declaration of Rs. 15,000, he has to pay the penalty on Rs. 70,000. This is a very harsh penalty. If small people are made to pay the dividend they would not be able to conserve the resources. On the other hand, if they all to declare, they will be taxed. They would have to run to the Banks for financial assistance and they would also have to resort to borrowings. This will also lead to increase in posts.

MR. CHAIRMAN: Therefore, what is it that you suggest?

SHRI PRADIP SHAH : This should not be made applicable to manufacturing companies.

MR. CHAIRMAN: Do you suggest that manufacturing companies should be taken totally out of the provisions of Section 104?

SHRI PRADIP SHAH: As it is today.

MR. CHAIRMAN: That point has already been made.

SHRI ERA SEZHIYAN: While I appreciate the arguments put forth by the witness, I would like to refer to the following observations of the Wanchoo Committee:

“The provisions of Section 104 of the Income Tax Act are intended to plug avoidance of tax by shareholders of closely-held companies. In practice, however, the provisions do not seem to have achieved their intended purpose.”

Sometimes, there is a practice in some closely-held family companies to retain the excess income and not declare dividends. What will be your suggestion in that regard?

MR. CHAIRMAN : Kindly understand the question. Section 104 has a particular intent. Mr. Sezhiyan's question is this. You are saying that Section 104 should not be applied even in respect of industrial companies. Let us say, the husband, the wife and the son or two sons and a daughter are the shareholders in a company and the company is making profits to the extent of Rs. 10 or Rs. 20 lakhs. According to your suggestion the maximum taxation will not exceed 55 or 60 per cent. Whereas a person who does not have a corporate veil, will have to pay the tax at a much higher rate. What, according to you, therefore, is the solution, that both the intent of Section 104 is not violated and this hardship is not caused for a genuine case? That is his question.

SHRI PRADIP SHAH: Firstly, so far as the tax rates are concerned, we have changed the law and what used to be 55 or 58 per cent, is now 60 per cent in case of profits or over two lakhs of rupees. In case of large profits, sur tax will also be attracted and that will push the rate to about 70 per cent.

MR. CHAIRMAN It would depend upon their capital.

SHRI PRADIP SHAH : Yes. That is likely to push the rate by about 10 per cent. This will be about 70 per cent. Declaration of dividend is based on assessed profits and not the profits which are book profits. So also, there is some difference in case of disallowances etc. in respect of which you are forced to declare. If there is some surplus left, this will be required for the purposes of repayment of loans, replacement of machinery, after ten years, when you will have to pay double, almost. Wherefrom they will get the funds? When we take these factors into consideration, we will find that this Section has lost much of its emphasis, because, the tax rates have gone up very much. However, a proviso can be added that if funds are required for repayment of loans or replacement of machinery, they will be excluded from the purview of this Section.

MR. CHAIRMAN: Are you very certain about this argument that you are advancing? If I have understood your argument, as it is in the case of the company, the effective rates are fairly high purely because, commercial profits are not assessable profits. Secondly, sur-tax rates are also high. So, as it is, the corporate rate does not afford much of an encouragement. In that your argument? Are you sure about this argument? Are you serious about this argument? Have you made any study about the effective rates in respect of industrial companies? What is the effective rate? Have you made any study?

SHRI PRADIP SHAH : There are certain things which have come to my knowledge.

MR. CHAIRMAN: In fact, the development rebate is given. You get several priority industry deductions and you get industrial undertakings deductions etc. Have you made any study of the effective rate? The Reserve Bank of India has made a study of the effective rates in respect of industrial companies and their story is different than yours. Have you made any specific study? Are you

aware of the effective rates? Have you made any study? What are the effective rates from the commercial profits of the companies?

SHRI PRADIP SHAH: The effective rate is in relation to some of the companies' commercial profits as one sees them in case of certain companies which one comes into contact I did not make a special study of this.

MR. CHAIRMAN: Have you made any specific study?

SHRI PRADIP SHAH: In certain cases, which have come to my knowledge . . .

MR. CHAIRMAN: What are the conclusions?

SHRI PRADIP SHAH: We should take into account certain factors. For example, if profits are taken up after depreciation, by whatever method, what remains is not much of a surplus. We should take into account the need for replacement, the need to conserve resources, the need to increase the inventories etc. We should also take into account the debts which go on increasing. When all these are taken into consideration we find that, there is not much of a surplus. These funds are necessary and they are required by the company. Therefore we would suggest that a proviso may be added to Section 104, stating that whatever amounts are used for repayment of loans, they will be excluded from the purview of this Section.

MR. CHAIRMAN: If what you say is perfectly correct, then I do not see any necessity for Section 104 at all. If it is worthwhile, we can have some figures, accepting that the intention of the Government is very clear. But the corporate sector must not make Government forego revenues.

SHRI H. M. PATEL: You can make a list of the member-bodies of your organisation.

MR. CHAIRMAN: Since you say that you are representing small entrepreneurs, we want to give careful consideration to what you have to say. If

you make 40 or 50 sample studies and tell us as to what are the effective rates, we will then be able to appreciate your arguments much better, than if you give it on theoretical grounds.

SHRI H. M. PATEL: How many members do you have?

SHRI J. M. PATEL: We have 104 members, Sir.

SHRI H. M. PATEL: You can study about 50 per cent of your members.

MR. CHAIRMAN: You can study about 50 or 60 members for about three years, take an average position and tell us how the effective rates work out. My little experience in the realm of taxation is to the effect that the effective rate is much lower. But if your experience is to the contrary, we will be interested to educate ourselves specially in the small sector. Any other point?

SHRI J. M. PATEL: You have mentioned something about the development rebate. That rebate has been withdrawn. A mention was made

about the closely-held companies comprising of wife, husband and son; but the majority are not so now. Earlier, it was a family company, but now a new class of companies has come up.

MR. CHAIRMAN: I am only making an assumption that the corporate sector is making efforts to stifle the revenues. What you say, is not my contention.

SHRI P. G. MAVALANKAR: Mr. Shah, in the earlier part of his remarks, had said by way of illustration that if about 45 per cent is made declarable dividend and 30 per cent is declared, super-tax will be levied.

MR. CHAIRMAN: Yes; it is the present law. His assumption is correct. We will consider it. Any other point?

SHRI J. M. PATEL: We have covered all the points, Sir. Thank you very much.

MR. CHAIRMAN: Thank you Sirs.

(The witnesses then withdrew)

II. All India Manufacturers' Organisation, Bombay

Spokesman:

1. Shri Ram Agarwal, President
2. Shri M. R. Shroff
3. Shri P. A. Shah
4. Shri B. S. Mohatta
5. Shri N. G. Abhyankar, Executive Director
6. Shri D. P. Birla

(The witness were called in and they took their seats)

MR. CHAIRMAN: Mr. Agrawal, I have to point out Direction 58 of the Directions by the Speaker of the Lok Sabha, to you. This direction governs your evidence. The Direction Provides that the witnesses must be informed that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as

confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. You may please proceed now.

SHRI RAM AGRAWAL: We welcome this opportunity on behalf of the All India Manufacturers' Organisation or giving oral evidence before this august body. The Taxation Laws

(Amendment) Bill, which is before you for consideration, is one of the very important pieces of legislation that has been brought up in recent times, and considering its vital aspects, we hope due consideration to all the representations made to you and may be made to you will be given and after mature thought you will make your recommendations.

To begin with, I would like to mention a few things in general. The objective of any legislation, by and large, is to serve certain social purposes which have been set out by the nation. Therefore, the cardinal test whether a piece of legislation is capable of serving those objectives or not lies in the effect they have upon those objectives. It is, therefore, not on the objectives of the legislation we have to say anything against. The object for securing which the Bill has been brought forward is very laudable because it is to serve a social purpose. At the same time, we would like to examine a few aspects of the Bill critically, aspects which if implemented in their present form, are likely to militate against the very objectives which it is seeking to serve. Therefore, if these objectives are not likely to be served on account of any effects or side-effects they may have upon the economy of the country as a whole, we should view the legislation in its entirety and not only as an individual piece of legislation.

Primarily, this Bill is designed to give effect to a portion of the Wanchoo Committee's report. Earlier, of course, an effort was made to give effect to some of the recommendations of the Wanchoo Committee and some other portions of the Wanchoo Committee are being tried to be brought under the purview of legislation by this particular Bill.

One thing, however, we have observed in recent times. In all actions taken by Government from time to time, we appoint high power committees and commissions, spend a lot of money, undergo a considerable drill,

collect evidence and so on. All shades of opinion are represented on these committees and after such mature consideration, they submit their reports. You will appreciate that these reports are an integrated whole and cannot be torn apart in pieces. But what is happening is that these recommendations are very often—this is true not only of the Wanchoo Committee's recommendations but those of various other committees and commissions—torn out of their context, taken piecemeal, individually and sought to be implemented with the result that ultimately we are not going to have the effect which the recommendations as a whole are contemplated to have an account of its integrated approach. Therefore, we would suggest that such piecemeal approach is not in the overall interest of the country.

The Wanchoo Committee report has got two specific types of recommendations. One is the positive type of recommendations, positive in the sense that they are aimed at giving a fillip to the economy through certain measures to be adopted in the matter of taxation, fiscal measures etc. These are the measures which are very vital, very essential, because the primary objective of any legislation is to give a fillip to the economy because the prosperity of the masses through the prosperity of the country is the ultimate objective of the country. But what we observe is that these positive recommendations have been kept aside, altogether ignored, whereas the second set of recommendations which are punitive in nature, to a certain extent, we may say they are negative in nature, negative in the sense that they are meant to plug certain loopholes which are there in the previous legislations which are meant to combat avoidance, evasion, accumulation of black money through heavy penalties and so on—these provisions have been taken into consideration and are given effect to either in their entirety or by certain modifications here and there. Some of these modifications are also unwarranted.

Therefore, the whole scheme of the report is being twisted in this particular form and the very objective with which the august body was appointed previously, in order to understand the tempo of the country as a whole, to study the situation of the country as a whole and make recommendations, has been altogether ignored and the attempt in this particular case has been to approach the whole thing in a piecemeal manner.

I will give a few instances how this has been done. In order to encourage capital formation, savings and investment, nobody can deny that for boosting up the economy of the country, this is a most vital aspect and all efforts must be concentrated on this particular aspect of our economy, and whatever measures are adopted should be for purposes of encouraging saving and investment, because without growth there cannot be any increase in the prosperity of the country and we will not be able to make any progress. Whatever recommendations have been made for the purposes of encouraging investments and encouraging savings, have been ignored in this piece of legislation or even those earlier recommendations to give effect by way of budgetary measures. Take the corporate tax, for instance. Corporations in the country are a means of bringing about a certain economic renaissance. Through these corporations, millions of people with their small savings participate in the economic progress of the country. Take any public limited company or, even for the matter of that, some firms. You will find that the small entrepreneurs join hands together and become shareholders of even larger companies. People who have larger chunks of money are comparatively few. Those who are holding a small number of shares are very large in number and they are spread throughout the length and breadth of the country. Even in the villages, such people's savings have been channelised into these corporations. Therefore, this is a very im-

portant piece of instrument for bringing about a renaissance in the country in the economic field.

In the corporate field, all sorts of restrictions are there, but whatever measures have been recommended for reducing the burden on the corporate sector so that they may be able to plough back their earnings have not been considered at all. Remember that the Wanchoo Committee has not recommended that the corporations should make profits and run away with them or appropriate them in any manner they like. What they have said, is if they make profits and if they plough back those profits in distributing dividends only up to a limited extent, then for investment purposes, when they fund the money into certain funds, they should be given certain exemptions so that the encouragement to capital formation is there. They are drying up these resources and asking the people to borrow money from the Life Insurance Corporation and other financial institutions and ultimately they are putting so many strangleholds on these corporations. This is another way of saying, "We do not want this sector." We have no objection to it; if this is the policy of the Government, let them declare it so. Instead of having these half-hearted measures facing us, we do not mind if the Government makes a clear-cut enunciation saying that this is the Government's policy. But once when the mixed economy has been accepted as the policy and the private sector is to remain and function in an honourable way, then it should be allowed to function in a way by which it will be able to play an honourable role in the economy. In this process there will be bad people, and there are bad people in the private sector among the industrialists, and we have no sympathy for them. Let me declare it officially, and we shall not suggest anything which will stand in the way of the Government adopting such measures as to bring such people to book. But a large number of honest people who are in business and who are making an honest penny and side

by side serving the nation—they are mobilising the savings of the country throughout the length and breadth of the vast continent of ours—should not be treated on the same lines and be compared or put on park with the other people who are not honest. But here the presumption is that unless you have proved that you are not guilty, you are guilty. These are some of the fundamental things, and I would like that these things should be taken care of.

Take next the case of 55 per cent tax. The suggestion was that it should be reduced. Instead of that, in the closely-held companies, it has been increased, because the limit has been reduced from Rs. 10 lakhs to Rs. 2 lakhs. After Rs. 2 lakhs, 60 per cent must be distributed as dividend and so forth. A taxation limit has been imposed. The dividend distributed is also made compulsory so that they cannot have any savings of their own. These are all different aspects of the approach which clearly show that the thinking on the part of those who are bringing this legislation is not clear as to what is the objective of this legislation. If this thinking is clarified and this piece of legislation is viewed in a broader perspective, then I am sure we will be able to bring about a better understanding and the whole piece of legislation will be accordingly modified wherever it is considered necessary. Subject to these preliminary remarks, I would like Mr. Shroff to highlight some of the specific objectives of this legislation that has been brought up and also a few general aspects that he would like to make.

MR. CHAIRMAN: Mr. Sezhiyan would now like to ask some questions on the general observations you have made.

SHRI ERA SEZHIYAN: We are glad that you have appeared before the Committee to give some clarifications. We note that the All India Manufacturers' Organisation is an august, representative body of the manufacturers in India and it is engaged in manufacturing the goods in which we are interested. I hope you have given

careful consideration to the Bill and also carefully drafted your memorandum. But I would like to mention that in your memorandum, even in the opening line, you have addressed us as "The Chairman, Select Committee on Taxation (Amendment) Bill, 1973." It is the Taxation Laws (Amendment) Bill. It is not a taxation Bill. The laws have been given the go-by

Regarding this Bill, we are aware that this is not an ideal one. There are some positive aspects and they are yet to be finalised. At page 2 of your memorandum, paragraph 5, the All India Manufacturers' Organisation have themselves conceded that "there are some relieving features such as the deduction in respect of the higher house rentals that are being extended to non-salary earners," etc. They have themselves conceded that there are some relieving features in the Bill, but if you come to page 5 in paragraph 12, you will find that they have taken this view, namely, "that it is purely a negative Bill."

You have stated in your memorandum:

"The AIMO believe that the Select Committee will be persuaded to accept the view that the Taxation Amendment Bill, as now proposed, is purely a negative Bill...."

But, in the Bill, there are some positive features also which deserve some emphasis from your organisation.

SHRI RAM AGRAWAL: We have mentioned some of the positive aspects also. This is only an expression of language. If you like, we can take care of this and amend the same. The intention is not

SHRI H. M. PATEL: You mean to say largely negative?

SHRI ERA SEZHIYAN: Now, I would like to know whether you have made any study with regard to the effective rate on the corporate sector. Have you made any detailed and effective study in regard to this matter? What is the effective rate in India in someone else will pay it.

SHRI RAM AGRAWAL: We have pointed out about this in our note on Fiscal Policy. This was prepared by us a few months back and this was submitted to the Government of India. This is one of the document on behalf of the AIMO, in regard to policy matters. We have clarified this point and we will further

MR. CHAIRMAN: I think we are having this.

SHRI M. R. SHROFF: In the note, we have clarified that basic rates of tax vary from 55 to 60 per cent. We have suggested that the sur tax should go and we feel that in the basic shortage economy, with which we are faced, profit is not necessarily a function of managerial efficiency or competence. An atmosphere should be created, wherein, corporate savings should be encouraged rather than corporate consumption. There has to be an integration of higher tax rates and two positive measures are suggested. This is on the lines of the recommendations of the Wanchoo Committee. One is funding procedure, wherein, 20 per cent of the profits would be funded and this would be applied for either recurring expenditure by way of Research and development, which should be subject to tax or by way of expansion or modernisation or repayment of long term debts in which case the company would get a set off at a differential rate. We have mentioned about this funding procedure, in detail, in our note on fiscal policy. The point is that, while the basic tax structure would remain, the same, the effective rate would be reduced based on corporate saving and not on corporate consumption. Another point is with regard to distribution of dividends. Since the particular objective of development is to disperse ownership and that corporate sector should grow, we believe that distribution of dividend should be subjected to a lower rate of tax. In the case of smaller companies, up to 8 per cent distribution on equity should be totally exempted and in the case of larger public limited corporations, there

should be a lower rate of tax, of 30 per cent on distribution up 8 per cent. Thereafter, there should be the same basic rate. The idea is this. This would encourage distribution and this would build up greater respect and interest in the corporate sector, particularly, equity investment and thus, the load will be taken off from the public financial institutions.

SHRI ERA SEZHIYAN: I am not very clear. In the Reserve Bank Bulletin issued by the Bank in April 1972, they have mentioned the tax rates. They have made a study and they have found that in more than 1500 companies, large and medium size, the tax provision has declined from 50 per cent in the year 1965-66 to 44 per cent in the year 1969-70. In the case of 290 large companies, the tax provision has declined from

SHRI RAM AGRAWAL: In our note on Fiscal Policy, we have clarified this. This rate is not lesser because a large number of companies have earned development rebate.

SHRI ERA SEZHIYAN: What I wanted to know is this. Have you made any independent study of the effective rate in the corporate sector, apart from what the Reserve Bank has done?

SHRI RAM AGRAWAL: On Page 40, we have given these calculations.

SHRI ERA SEZHIYAN: This is from the findings of the Reserve Bank of India. I wanted to know, as to whether any independent study was made by the AIMO, about the effective rate in the corporate sector.

SHRI M. R. SHROFF: We should say that the data collected by the Reserve Bank is the most authentic one. The Statistics Department of the Reserve Bank is the best equipped in the country for undertaking corporate studies in this behalf. We have not endeavoured to make any study because, collection of statistics even by the Reserve Bank would mean many months behind, and sometimes, it be-

comes out of date. An independent study would take three years time. In the meantime, the tax structure would have changed. This is the basic difficulty. The study made by the Bank would be a very useful and authentic one.

SHRI H. M. PATEL: I think the question was of a very limited range and this is with regard to the effective rate in the corporate sector. The point was made that the effective rate is of a particular order. The study made by the Reserve Bank has also been mentioned. Many witnesses, who appeared earlier before us, mentioned about this and we suggested to them that they may make a study of the members of their organisations and give us the results. In the same way, you can make a random sample study of some of the Members of your organisation. If you do so, the point that you are making would be substantiated and we would also be benefited.

SHRI M. R. SHROFF: We appreciate your suggestion.

MR. CHAIRMAN: The basic point is this. For the purposes of economic growth the effectively rate has to be reduced either by reducing the total income and you suggested that we should also allow some of the capital expenses to be reduced by computation of total income, retaining higher rates of taxation or, otherwise, statutory declaration of dividends should not be made compulsory. For this, we should know what is, today, the real effective rate of taxation in the case of manufacturing companies. That will give us the real idea as to whether, after the effective rate of taxation, what is left with the limited companies is enough or they could still declare dividends and reasonable revenue can also be taxable. I hope I am clear.

SHRI M. R. SHROFF: I think it does not need any special study. It may be between 50 and 60 per cent. We take into account the various corporate tax incentives. Those who invest used to get a set off which necessarily reduces

the effective rate. I think, in the corporate sector, the rate may be 50, 55 or 60 per cent. It is because they have got an effective set-off. But it is not so in the case of Section 104. What you say was true a generation back, when 2-man companies were formed to evade checks. But to-day we find that a corporate form is healthier in many respects. If you want sole proprietors, partners etc. to graduate into corporate firms, then it is necessary that this distinction between the closely-held and the widely-held firms is removed gradually, in the Indian context. May be, there are certain extreme cases, where very wealthy people may have taken refuge under Section 104; but if you want small technocrats to take to this form, you must take certain steps. Even if it is public-limited, it is so in name, with 7 or 8 shareholders. In that case, would you not discourage the plough-back, rather than distribution? It may be that, by virtue of this, it would be somewhat lower, than if it is distributed. But if you take the general philosophy that corporate money fructifies better and the conspicuous consumption is less in the corporate sector, then we have to live with reasonable safeguards. Don't the tax authorities have reasonable safeguards?

MR. CHAIRMAN: Where is the scope for conspicuous consumption? Profits should first be taxed, i.e., profits in the hands of the company; and then dividends in the hands of the shareholders should be subject to tax. A big chunk should be siphoned off to the Exchequer. With what is left of the white money, I am doubtful whether he would be able to indulge in conspicuous consumption.

SHRI M. R. SHROFF: Not very much would be left. I would also say in this connection that saving would be there if the money are not frittered away. That will be with the Government.

MR. CHAIRMAN: We will come to the point whether money fructifies better in the corporate sector. Mr.

Agrawal said that we have to encourage savings and their proper utilization. It is a saving in the hands of the Government.

SHRI M. R. SHROFF: It is presumed to be saving; but one goes by the record.

MR. CHAIRMAN: Then, don't you agree with this?

SHRI M. R. SHROFF: We do not certainly say that the welfare state concept should not be there; but it is proved that self-interest has something to do with human endeavour.

MR. CHAIRMAN: That would mean entering into a discussion on a larger realm.

SHRI M. R. SHROFF: Let us look at the effective rates. Suppose Rs. one lakh is the profit, Rs. 60,000 is already siphoned off to the Government; and 11 per cent more also goes away. On the portion remaining, you want to put limitations.

MR. CHAIRMAN: Mr. Sezhiyan wants to know whether you have any information to prove that the figures you are relying upon are correct. Please substantiate them.

SHRI M. R. SHROFF: We will be doing it subsequently; but we have no reason to believe that the particular figures given by the Reserve Bank are incorrect.

SHRI VASANT SATHE: Mr. Agrawal, in his preliminary remarks, had said that the basic objectives of the entire fiscal policy and taxation legislation should be to encourage the ultimate social purpose of prosperity of the masses through certain positive measures. In this, capital formation, savings and investment form a very important part. According to various representatives of manufacturing and other concerns who have come before us, the tax structure is worsening day by day, i.e., against the interests of the tax-payers. It is very discouraging. Can you say from your experience whether, as a result of these measures, capital formation in the hands of these organizations, under the value-added

form of savings or real assets in the form of buildings or other property, which they have been able to build up, has in fact gone down, during the last 10 years? Can any break-up be given both of the larger houses and of smaller entrepreneurs, i.e., manufacturers and industrialists? That would really be very helpful. Can you give some idea on this?

SHRI RAM AGRAWAL: We can only say that we have made a note of your requirement. We have made some studies on each of these points. To what extent they are available in the form you require, we do not know. But we will attempt and send you, if you like.

SHRI VASANT SATHE: Off-hand, can you say that the capital formation and assets have gone down? You can take ten larger houses, manufacturing any 10 products, including, say, cosmetics. A man invests wherever he feels that this profit is the highest, especially if the economy as it stands today, is any criterion. We, therefore, find that investment is in that sector where the profits are more; and the production is directed towards the needs of people who have purchasing power. You know that many of our mills have gone sick. That is because, over the past some years, the proprietors did not plough back what they had earned. During the last few years, especially during the war period, they earned really fabulous profits; but did not plough back what they had earned. The result was that they did not bother about the machines to be replaced. I would like to know this from you, Mr. Agrawal or any one else amongst you. Have you made any broad analysis of 50 big textile mills; and can you tell us as to whether their assets have gone down, i.e. the assets of the manufacturers of cosmetics, or similar information with regard to the large houses, where the real capital formation has taken place? You can give us some idea now; and send the details of the studies later on.

SHRI RAM AGRAWAL: The whole thing has to be looked at from a different perspective, than what you have described. You have been drawing conclusions from some individual cases, where people have earned money much more than what they should have. Some people have also earned illegitimately. We have not denied these things. In our memorandum, we have clearly admitted that these things are happening. The menace of black money is there in the country to a very large extent. Tax evasion is there to a very considerable extent. All these are consequences also of the policy we are following. The policy requires to be changed. By merely adopting punitive measures of the type we are trying to adopt and making it more and more difficult for people to indulge in these things, we are not going to get satisfactory results. Therefore, we should adopt both positive as well as punitive measures simultaneously and those who are honest and are not indulging in this sort of practice, should be encouraged to continue their honest practices.

As for capital formation and all that, we are, again, making a very restricted view of the thing. If we see the growth of the economy of the country, as an Indian particularly I am ashamed when I see from the study of the UN that my country which has been developing for the last 25 years in a planned manner, which has invested over Rs. 40,000 crores in the economy by begging, borrowing, short of stealing perhaps, is 22nd in the list of developing countries in terms of increase in the standard of living of the people. This is the growth of the economy as a whole. We are looking at the economy as a whole and not at individual parts. You are justified in pointing out a few odd individual cases. We have no difference with you there. But as I have said in my observations, for the sake of those individuals whom you should justly take to task, why pena-

lise the rest? This is the point I wanted to emphasise and would emphasise over and over again. Capital formation is a thing which is to be seen not from the point of view of one or two individuals in the country but from the point of view of the country as a whole in the aggregate. The question is whether that capital formation for the increasing population of the country, for the increasing needs of the country for the rising expectations of the people, whether it is in public or private hands, is adequate or not, whether the growth is adequate or not. If that has not received attention, then all these efforts we are doing will not bear results.

SHRI K. R. GANESH: I would request the learned witness to use a little more temperate language in his observations. Apart from using the words. Begging and borrowing, he also used the word 'stealing'.

SHRI RAM AGRAWAL: I did not mean any offence.

SHRI K. R. GANESH: He may make his observations, not necessary that we accept them. But let the observations be made in restrained language.

SHRI RAM AGRAWAL: Yes.

SHRI VASANT SATHE: Perhaps I did not make myself clear. I was not having in mind a few instances. I was thinking of the totality of the manufacturing sector in this country, what is known as the private sector. During the last 10—20 years of our planned and mixed economy, because of the taxation system what has been the actual result? Has capital formation gone down? If it has, give us some facts. Secondly, where has it been utilised? You yourself have been emphasising the growth of social justice for the masses.

MR. CHAIRMAN: He did not say 'social justice'.

SHRI RAM AGRAWAL: I did not use it, but that is the objective.

SHRI VASANT SATHE: He used the words 'social welfare'.

SHRI RAM AGRAWAL: I do not deny that. We are committed to that....

SHRI VASANT SATHE: How has the tax structure disabled the manufacturers from investing in areas of necessities for the masses and not in areas of luxury and non-priority production for the classes or the few who have the purchasing power? What roll have they played in this area?

SHRI M. R. SHROFF: If I may take on some of these questions, within a licensed economy, I do not know how much of freedom in terms of choosing any particular item for manufacture is left. Of course, he initiates it. It is true we have found out that in the early 1970s our pattern of development has not been in terms of trading out goods and services in keeping with the consumption needs of the lower strata of society. Various studies have amply borne this out. The Fifth Plan is seeking to correct this as far as industrial licensing is concerned. Wherever you see growth in any part of the world, where it is left to the private sector, it is obvious that to a large extent money will flow in where the prospects of growth and profit are good. I would also underline the word 'growth'. It is natural that if people are not prevented from going in for manufacturing scooters, cosmetics or synthetics or whatever it is which in our wisdom are thought were necessary, if not considered priority, they were allowed; there the element of profit has obviously been higher than in areas where there has been a voluntary or statutory price control. So there private firms have done more than in areas where we need growth. You know the cement manufacturers have been crying hoarse, paper manufacturers have been crying hoarse and private steel manufacturers have been crying hoarse. We have the cheapest aluminium in the world. Anyone knows it. But we will not accept it

because it is priced high. We have jacked up the price. If we see capital formation there, it is woefully low in real terms, in terms of replacement value. If there is a company with a paid up capital of, say, Rs. 12 crores and it has accumulated Rs. 6 crores in 20 years, these 6 crores will not even replace the original block of Rs. 12 crores.

If you take it at the macro level, the private sector today spends about 700—800 crores a year on what we may call broadly capital formation, that is acquisition of assets, out of which 180—200 crores comes from ploughed back profits, another 300—350 crores comes from depreciation and the rest comes from borrowings or shares, because tapping of the share market in terms of new issues has never been Rs. 100 crores a year in this country. So the very fact that more and more resort is being had to borrowing would to some extent, show that ploughed back profits or for the matters of that, corporate profit generation has not been adequate. As a student of corporate finance, I would say one thing: distribution in this country at the corporate level is no higher than in the US or UK where also prudent corporate management prevails. In other words, if you see the position, in the last 20 years corporations have not distributed more than 55—65 per cent of their profits after tax. This would show there has been erosion, profits have not been large enough, tax rates have been high enough. One has to deeply go into this qualitative value analysis, but the fact remains that corporate profits have not been large enough for the rate of growth we envisage in industry.

SHRI S. M. BANERJEE: Mr. Agrawal, I may refer you to page 2, para 4 of your memorandum, where you have mentioned:

"It needs hardly to be emphasized that where the standards of integrity and honesty are below the moderate norms, the generality of

people and their custodians in the Parliament should view with grave concern the desirability or otherwise of the conferring of such wide powers on a bureaucratic administration without providing for adequate checks against the improper use of such powers."

You have used the words "standards of integrity and honesty are below the modern norms". Have you used this expression for all, including the business community?

SHRI RAM AGRAWAL: Including the business people. In the society as a whole, the general standard is going down. Moral values are going down day by day in the country.

SHRI ERA SEZHIYAN: Are the manufacturers included in this?

SHRI RAM AGRAWAL: Yes; Everybody. We are not making any exception.

SHRI S. M. BANERJEE: You have said that there are bad people also. You do not deny that there are bad people. You have asked that just for them why should the majority of the people suffer. You have quoted actually in your memorandum that some of the recommendations of the Wanchoo Committee have not been implemented but only the punitive ones are embodied in the legislation. I would like to know what is your specific suggestion for those, who, even according to you, are bad or who are actually holding the country to ransom by adopting certain measures by dubious methods such as hoarding, blackmarketing and anything sort of stealing? I would like to know what is your specific suggestion, without affecting the people in general who are honest?

SHRI RAM AGRAWAL: I think the arms of the Government are quite long and the present machinery is quite adequate to deal with such people with the existing legislation which is there. No new legislation

is necessary to deal with such people. It is only the implementation of the existing legislation that is required. It should be firmly implemented. It is not being firmly administered and more and more legislation is being indulged in and wide administrative powers are being given to lower and lower levels which misuse the powers very often. The result is harassment of the smaller people to a very large extent. This is what is happening.

SHRI S. M. BANERJEE: With the present tax structure, according to the Wanchoo Committee, black money is nearly Rs. 7,000 crores in the country. I do not know whether it will be Rs. 7,000 crores or even Rs. 10,000 crores. You will not deny that there is no black money.

SHRI RAM AGRAWAL: There is black money.

SHRI S. M. BANERJEE: There is a parallel economy. If punitive measures are not taken, what is the specific suggestion you make to unearth black money? Have you applied your mind to that aspect?

SHRI RAM AGRAWAL: We have on page 4 of the memorandum stated the cause and the remedies. We have given an analysis, and then we have mentioned that the Wanchoo Committee have stated that the large scale tax evasion is due to black money, etc.; the high rates of taxation under the direct tax law; the confiscatory nature of the marginal rate of income-tax, the economy of shortages and consequent controls and licences. These are the most important factors for black money; the controls are there. The licensing system is not being operated with satisfaction. All these are causes for this particular malady. On donations to political parties and ceiling on the disallowance of business expenses, international standards are there and the national standards are there. When the businessmen from here go abroad and if they spend a certain amount of money for business purposes according to the standards which have been existing

all over the country and all over the world, when they spend it, it is not allowed by the income-tax people; they say, "We do not allow this expenditure." When this is not allowed, wherefrom that money has to come? Such provisions in the law and such actions taken by the officers under their discretionary powers encourage the people or compel the people to find resources for making good the deficit. In many cases, honest people make a return of their income and the Income-tax Officers give their award; there is no appeal in many cases, and nobody listens to the assessee.

MR. CHAIRMAN: It is an extremely general statement, and I do not think it will lead us to any objectivity in this manner. In fact, I would request you to come down to the provisions of the Bill straightway.

SHRI S. M. BANERJEE: One question. Mr. Agrawal was saying something about the mixed economy in his opening speech. How does it stand comparison? We are having mixed economy now, although I for myself am against mixed economy unless it is complete socialist economy. Let us have it for sometime; now, you want that it should be free for all and the Government interference should be the least. May I know that you want the private sector should be left to do whatever they like and you do not want any interference from the Government?

The other question is about the textile industries, which was already referred to here. We have instances where the mills have taken huge amounts from the financial institutions and started another industry, and not giving the money to the textile industry. They want to close down a mill and hand it over, and start new units in some other places to enjoy the tax exemption for some years and to be free from all labour legislation. Have such cases been brought to your notice?

SHRI RAM AGRAWAL: It is an absolutely mistaken notion of yours

when you say that we are free for all in the matter of the private sector. We have never said it and we do not want it. In a mixed economy also, there should be some restrictions on the private sector against certain behaviour both in the interests of the overall economy and in the social interests. Therefore, the question of 'free for all' does not arise. I do not know from where you got that impression.

SHRI S. M. BANERJEE: Don't you have an honourable role in the private sector? You are already enjoying an honourable role. Don't you think the private sector is enjoying an honourable role in society?

SHRI RAM AGRAWAL: The mixed economy you have under the Five Year Plan entrusted a certain role to them, saying that so many thousand crores of rupees should be invested and a further expansion should be made. These targets are to be met in the private sector and then the private sector must be provided with the necessary facilities in order to do that.

SHRI S. M. BANERJEE: What more facilities do you want? Everytime when the prices increased, and when there was a question of bonus, you paid only the minimum; not even in those cases where they have to pay 8.33 per cent. When the question of wage rise comes, you say there is no money. In the last five years, the prices of all articles have risen. You have got the price increase also. What more facilities you want?

SHRI RAM AGRAWAL: I do not think this is related to our present discussion. If I were to tell you what we are doing in the field of labour relations, and what positive steps we are taking, it will take the time of this House. We have had a dialogue with the Central trade union organisations. We have got a progressive policy in this matter and we do not side everything that is done by the private sector in the matter of treatment that

is being meted out to the employees. That apart, the main point is with regard to taxation matters as an instrument

SHRI P. G. MAVALANKAR: Mr. Agrawal, I would like to ask you one question. In your remarks, you said that the Wanchoo Committee recommendations have been taken piece meal in this Bill. Many witnesses who appeared before us have mentioned to us about the reduction in tax rates. My question is, whether you think that mere reduction in direct tax rates from 97.75 per cent to a lower rate will by itself achieve the purpose or there should be certain other measures which should accompany the lowering of tax rates.

SHRI RAM AGRAWAL: The answer is 'No.'

SHRI P. G. MAVALANKAR: What should be the other measures?

SHRI RAM AGRAWAL: Mere reduction in tax rates would not by itself bring in substantial results. This is one of the methods which has been suggested and this may bring in some marginal relief.

SHRI P. G. MAVALANKAR: After reducing the tax rates, what other measures should be taken by way of implementing the desired goal that is set out. What are your suggestions?

SHRI N. G. ABHYANKAR: In the memorandum which has been submitted, a suggestion has been made that reduction in tax rates by a certain percentage will not necessarily do the trick. The total rate of savings and investment are short of the production effort necessary to build up production and to raise the living standards. To that end, measures have been suggested to stimulate savings and investment. Specific proposals have been put forward. One is about individual taxation. It has been submitted that, instead of taxing the individual on his gross taxable income, we should reduce it by 20 per cent, as savings. We

have suggested that, up to a certain percentage, we should treat as investment allowance for the individual and then, tax credits should be allowed, say up to 20 per cent, for modernisation and expansion of limited companies. This means, the total rate of incidence of tax would certainly be reduced and what is left in the hands of the individual, the corporate sector—are necessarily savings and savings to be invested in business. On the question of reduction in tax rates, we have said that, this by itself, will not do the trick. These measures have been suggested to step up savings and investment. We should also take into account controls and political donations etc.

MR. CHAIRMAN: Coming to the provisions of the Bill, Mr. Agrawal, if you like to make a statement on specific points connected with the Bill or relating to the provisions of the Bill, you can do so.

SHRI RAM AGRAWAL: The first thing is regarding donations to trusts etc. and I would request Mr. Shah to elaborate the points.

SHRI P. A. SHAH: Our first submission is with regard to Clause 6. We feel that the proposed amendment will come in the way of the larger interest of the charities. We have, at length, described as to how this would come in the way. We have explained that. If a person with a charitable intention wants to give away a portion of the income from the wealth he has, for the purposes of charity, he will not be able to do so if he is divested of the control of the shares.

MR. CHAIRMAN: Are you on Clause 6(1) (bb)?

SHRI P. A. SHAH: Kindly go through clause (e) about investments. Our submission in regard to this is that, if the person concerned is required to part with the control also, he may not do it at all and to that extent, the interest of the charities will suffer. We do not want that the trusts should enter into business activities or that they should be an instru-

ment for obtaining control by means of acquiring shares. But, where the donations are made to a trust, which are in terms of shares, these should be allowed to be kept as they are and the trusts should not be forced to part with them. We are trying to distinguish between the trusts which are used as a means of control and the trusts where the persons like to donate. A person may not have cash resources and he may like to donate only shares and he is reasonably sure that the trusts would....

MR. CHAIRMAN: How will he be affected?

SHRI P. A. SHAH: He loses control of the industry also.

MR. CHAIRMAN: To control the industry, you want this to happen?

SHRI P. A. SHAH: If he has got the control already. If I want to give a donation, and I do not have the liquid resources, and at the same time, I want to part with some shareholding which I have, in such a case, if I donate to a trust and the shares are held by the trust for the purposes of the trust, this should be distinguished from a case where the trusts go on lending and investing.

MR. CHAIRMAN: I am not able to understand your point, Mr. Shah. We have had discussions on this earlier. Several witnesses who appeared before us have stated their view points. There are two points in this case. There is no case for the denial of the grant of exemption to communal trusts which were formed before 1st April, 1972. The Committee will consider the statement. The second point is about the blanket ban on investment; it is liable to obstruct the flow of revenues into the trust and it might very substantially impede the functioning of the trust itself. We will consider this also. Have you got more points? The third is about anonymous donations.

SHRI P. A. SHAH: We have taken up, in our memo. the question of the restrictions coming in the way of donations.

MR. CHAIRMAN: Can you tell us something over and above what you have written in the memo? We will analyze the memo. carefully, especially when it is received from an association such as yours.

SHRI ERA SEZHIYAN: In page 6 of the memo. submitted to us, it has been stated that "The question to be considered is, should a person capable of helping charitable objects be expected to do so only under the pain of prejudicing his own business and industry?" May I take it that only where there is some benefit to an industry, should he give charity?

SHRI P. A. SHAH: It is not a question of benefit, but detriment. We are visualizing it in a case where a person wants to help and, in the process of helping, it so transpires that he cannot do it, except by losing control of the industry. He is required to give away much more than what he wants to give. In that case, he will not come at all. It is applicable only to limited companies. He does not get any other benefit.

SHRI ERA SEZHIYAN: We are not going to tax the person who is going to donate.

SHRI P. A. SHAH: We are required to liquidate this.

SHRI RAM AGRAWAL: The main point is that if an individual or an organization hands over some of its own shares in a corporation to a charitable trust, then the trust should not be compelled to liquidate the corpus. It should not be treated as an investment in shares, because it has come to him as it is.

MR. CHAIRMAN: If this sort of control is not vested before, it is not hit by the new legislation; it will be hit by the existing Act. If you do not pay it, you need not liquidate; someone else will pay it.

SHRI RAM AGRAWAL: In that case, the trust would not get the income.

MR. CHAIRMAN: You may argue that your revenues are impaired.

SHRI VASANT SATHE: Why do they want to do *via* the trust?

SHRI ERA SEZHIYAN: In what way is the organization that gives the donations going to be affected by this Section? If you are arguing for the charitable institutions, I can understand. Why are you talking about the business firm that gives the donation?

MR. CHAIRMAN: Are you going to suggest that because of this restriction, the donor will be jettisoned?

SHRI S. M. BANERJEE: How would it happen?

MR. CHAIRMAN: That is a viewpoint.

SHRI S. M. BANERJEE: As explained by Mr. Sezhiyan, we are interested only in taxing the person who received, i.e. the trust. Where is the difficulty if you really want to expend the money in a trust for any of the purposes excluding an industry? Do you want to maintain a charitable trust only to bolster up your own industry? Does it mean charity at home?

SHRI P. A. SHAH: I will make myself clear. Suppose there is a person having a block of shares and for whom it is necessary to have control of the industry; and he wants to make a donation. Under the present amendment, he will not be able to donate because he will be compelled to sell the shares.

SHRI S. M. BANERJEE: This is interesting. When boxes are kept and donations are put therein, it is probably only to help the widow. But the donor may say that his own wife might become a widow the next day. Would it be all right if the donor himself takes the box away?

SHRI P. A. SHAH: There are ample provisions whereby the charity funds are spent only for the purpose for which they are meant. They cannot be appropriated from the box. The donor cannot use it for himself. Now,

Sir, we have covered all the points. We will reply if you have got any queries.

SHRI RAM AGRAWAL: Over and above what has been stated in the memo., there is no other new important point.

MR. CHAIRMAN: Would you like to focus our attention on something else, e.g. about the settlement machinery, penalty provisions etc.?

SHRI B. R. SHROFF: I am coming to a very fundamental issue of having effective provisions. Mr. Banerjee made a very significant statement. He asked whether, if black-marketing and anti-social activities continue to pervade, the softening up of the mechanism or administration would help the process. We can take one significant step adopted in the last few years, viz. of penalizing on the basis of income or wealth evaded. I would ask whether it has helped plugging the loopholes in tax collection. I think this would answer your questions. We are again going back on the original position. We wanted to weed out those persons ruthlessly. I do not think it has helped.

SHRI RAM AGRAWAL: Another observation please.

In Hyderabad, a small traders' organisation made a representation to the State Government three or four years ago that the sales tax authorities were harassing their members, in spite of their making honest returns of their sales. They were adding sales amounts to their actual sales figures and trying to fleece them. The result was that all these people were making false returns of their sales. But they said: if you withdraw these sales tax officers and accept whatever returns we make, we promise you that your revenue will increase. The Minister in charge gave them the facility to do so. The submitted returns were accepted. In one year the sales tax revenue of the State from that particular group of industries increased by ten times

If you deal with people in that way, a large number of them will not indulge in dishonesty. When the question is raised whether all this will help in reducing these malpractices, I say it definitely will. By overstrictness even those who are honest are made dishonest. Thus a large number of people are turned from honest to dishonest. This is a very bad process because it puts a premium on dishonesty.

SHRI S. M. BANERJEE: I do not want any harassment to any assessee. But nobody has come across a case where a man has made a confession without interrogation. When he is interrogated, he makes a confession. Unless there is some punitive action, nobody comes out with the truth. You know what was the outcome of the voluntary disclosure scheme of the former Finance Minister, Shri T. T. Krishnamachari. How many disclosed?

SHRI RAM AGRAWAL: Enough laws are there. Take the Provident Fund Act. The provisions were not implemented with the result that some people were tempted to under advantage of it. For three, four and five years, they did not pay the contribution. their own as well as those collected from the employees. We have no sympathy for them. We have openly condemned them. But did Government take the strictest possible action against them? No. But if a small man comes in handy for purposes of penalty and harassment, he is caught.

SHRI S. M. BANERJEE: Since you have mentioned the provident fund, arrears are to the tune of Rs. 22 crores. Has your organisation black-listed or suspended or expelled such defaulters?

SHRI RAM AGRAWAL: It is not right to say that we should ostracise them. It is not going to help. They are themselves prepared to resign, many of them. It does not improve morals.

MR. CHAIRMAN: The unfortunate bone of the philosophy of black money is that those who are so palpably and clearly indulging in all these do not seem to meet with the disapproval of society. It is not taken as a stigma.

SHRI VASANT SATHE: They get protection from society.

MR. CHAIRMAN: Do you think something can be done to ensure that society looks down upon anyone who commits infraction of taxation laws and make him realise that he is an offender?

SHRI BHAGWAT JHA AZAD: As regards the provident fund offence, a man can either be fined or imprisoned. When the Labour Ministry wants to institute compulsory imprisonment, your people are opposing it. Should there not be a code of conduct among these classes who are committing such defaults? Because when Government wants to take action, your organisations oppose it.

SHRI RAM AGRAWAL: This is a very serious problem. Nobody is free from this particular thing, whether it is a businessman or trade union leader or politician or bureaucrat. Everybody is involved in it.

SHRI BHAGWAT JHA AZAD: Here is a concrete case of an anti-social act. How do we bring in the wrath of the community on him?

MR. CHAIRMAN: The whole society has become a victim of this malaise. I am not apportioning blame. If we can get at the very source of tax evasion, we would have gone a long way in implementing the objective of the legislation. From that angle, I am asking this question: Where it is lack of compliance with the provisions of the law, infraction of the law, which is a palpable and clear offence against society, what is to be done? Not depositing the employee's contribution to the provident fund is not only criminal, but something worse. There are people who are not paying tax purely for greed. I can

understand it if a person earns Rs. 30,000 but his child is ill with say cancer, and he has to spend Rs. 20,000 and he evades tax. But here only for the purpose of luxurious living, he indulges in tax evasion. Society does not look down upon him as having committed an offence against it. Is it possible to evolve some code? Your organisation can start it as a result of which you can show your disapproval. Never mind the question of deprivation of membership.

SHRI RAM AGRAWAL: We are aware of this aspect which is there in the business community. We have already taken steps amongst ourselves. We are taking steps to see in what way we can meet this menace which is an evil of society. For this purpose, recently, as you may have heard, a movement is going on to propogate the principle of trusteeship propounded by Gandhiji. A conference was called by Vinobhaji in Wardha and I attended it on behalf of our organisation and we have constituted a study group and one of the things we are considering is, in what way the organisation could propagate this particular idea amongst the business community and establish codes of ethics and conduct for them, for their behaviour *vis-a-vis* the employees and the consumers and the Government, the community in general and the shareholders. If they indulge in any breach of the code, they should be ostracised. That forum has already started working. We are working in the study group for that very purpose.

But then, in this very serious problem before the country as a whole and the community as a whole, the business community cannot be segregated piecemeal to be criticised on this approach. If we alone are merely selected for this criticism—

MR. CHAIRMAN: It is not our intention to criticise anybody. It is only our desire to understand your point of view. Please do not misunderstand us. We have come here to educate ourselves.

SHRI RAM AGRAWAL: Please do not misunderstand when we say these things.

MR. CHAIRMAN: Mr. Shroff made certain observations with reference to the income evaded and not with reference to the tax evaded. He posed the question whether the tax evaded has brought down the arrears and so on. It is implicit in his contention that heavier penalties do not bring about the requisite improvement in respect of tax evasion. Am I correct?

SHRI M. R. SHROFF: Yes.

MR. CHAIRMAN: Do we understand you to say that what is needed is better investigation, better implementation and better deduction procedures?

SHRI M. R. SHROFF: I entirely agree. The two things must go hand in hand. If our tax structure is to be rationalised, made more moderate, then, I for one would readily concede that our investigation procedures, our administrative machinery, and the penal provisions must go hand in hand. It does not mean that the honest taxpayer must suffer; it is I think symptomatic. This will not happen overnight as Mr. Mavalankar rightly observed.

I will tell you an instance. I go round the world quite a bit. Take a country like Kuwait where there is no income-tax. There is only a four per cent import duty. Yet, I find people who would like to evade it. In an affluent society like that, it seems ridiculous. What could happen is perhaps the high-salaried men in the affluent bracket who today are on the margin would be enabled to pay the tax and say, "Let us play fair." After all, some in this country have an income which is several times higher than what an average man has, and the main motivation should be the improvement of the lot of the people in general.

The third category is the medium-seized businessmen. I think in the era before us, in the next ten years, we may see a massive dose of hundreds of

thousands of people in the income-group of Rs. 1 lakh to Rs. 5 lakhs or in the income-group of Rs. 10,000 to Rs. 70,000. These are the type of people whom we want to induce to pay the taxes properly and make them honourable citizens.

Since we are having a frank talk, may I put it this way? "If gold rusts what can iron do?" I think some business people may ask, "To what happens outside why should I say anything?" So, people in the privileged positions do not change, and unless they change why should others change? The body politic, the body economy, is corroding. There is no doubt about it. If it is the impression that people in business particularly indulge in conspicuous consumption—

MR. CHAIRMAN: That is not what we say.

SHRI M. R. SHROFF: Let me put it this way. We are citizens of our country and we should have opportunities for private liberty and growth. I do not think everybody is satisfied with conditions where many in high positions are discredited. There are certain Members of Parliament against whom certain strictures were passed. We have recently a salutary example of another country where the Vice-President has to go because of corrupt practices. This sort of things happen even in the mightiest countries. If at all levels, we have the power to use the provisions of the law to see that those around us, whoever he may be, are brought to book if they err, I think it will set a salutary example for the rest. It requires a lot of courage to throw out one of the highest in the ranks, whether it is in respect of a business or in respect of any political body. If we could throw out the erring member, we would create that national ethos to see that even the mightiest must go. I think once this is done, and if you can throw down anyone, in whatever walk of life he is—if he errs—I think it will really set an example which no amount of sophisticated legislation will

fulfil, because ours is a country which is old, which is steeped in traditions and where all these sophisticated things do not percolate to the average ranks of men to see what kinds of things are said and done.

SHRI K. R. GANESH: We have listened to your discourse with interest. There are so many aspects of it. We will agree that if the highest in the land is under a cloud, he must go. That is the democratic process. Many in this land have gone.

Let me come to the question of taxes. All of us agree that we do not want penal provisions to see that the smaller and medium-seized business people and others are harassed. There are 2,500 assesseees who have an income of Rs. 5 lakhs and over. Our problem is this. Would it surprise you if I say that among the largest tax-evaders the black money generated is the highest?

SHRI S. P. BIRLA: Where the leadership plays a part.

SHRI K. R. GANESH: Take your position.

SHRI BHAGWAT JHA AZAD: You are generating black money. I do not blame the leadership.

MR. CHAIRMAN: It is not a question of anyone casting the blame on the other. If you want to be objective, please say.

SHRI K. R. GANESH: There are larger assesseees who indulge in all sorts of manipulations, avoidance of tax and so on. Would you help us to take care of that? That is the question. Instead of covering the entire gamut of what happens in this country, would you help us to take care of that? Would you be surprised that where investigations have been carried out—of course, I agree that we have to perfect our investigation machinery—we have arrived at certain facts which I think are very serious facts, that is, collusive transactions, collusive shares and also instances where the machi-

nery purchased out of the development rebate is just not there. I can understand if this is happening in some other sector, but this is happening in the highest sector.

SHRI M. R. SHROFF: Coming to our basic premise, it does not surprise me at all.

SHRIMATI SHEILA KAUL: What would you suggest?

SHRI M. R. SHROFF: It does not surprise me, when it is relatively larger where the level of taxation is in the highest bracket. The inducement to evade in that bracket is the highest. I am going into the human aspects. All those gentlemen are there to serve themselves to the best advantage of their interests. But they should work within the confines of the law.

The second premise that despite all the investigatory powers and so on and so forth, one has not been able to bring them to book is a matter where, if one is convinced that they are really dishonest and they have done this, there should be other measures to be devised after the legal processes have ceased. I have found that, people who have been found guilty, have been nationally awarded. It is for you, gentlemen, in Parliament, to think in solemn counsel as to how these things happen.

SHRI VASANT SATHE: If you are convinced about this, you should have condemned them.

SHRI M. R. SHROFF: Keeping up the joneses.

SHRI VASANT SATHE: Now, I would like to submit a few points. Mr. Agrawal, we have really benefited by your evidence, and I am speaking not only for myself but on behalf of all the Members present here. In your general observations, you said that it is for the leaders of India, in every sector, business, industry, politics etc., to give the lead and to create the right climate. I agree that as far as politicians are concerned their res-

ponsibility of giving the lead is unquestionable and their responsibility is well-known. As far as regulation of money is concerned, when money is generated, it becomes either black or white. After all, its is from the same source. Now, this trusteeship movement has been initiated by Vinobhaji. I would like to make an appeal here. After all, the politician is corrupt or somebody corrupts him. He has no inherent capacity apart from giving licences permits etc. Somebody gives him money. My appeal is this. Why should you not create a climate or start some movement in the country whereby these malpractices can be stopped and some effective steps can be taken to punish the bad elements in the society? Can you not start such a movement?

SHRI RAM AGRAWAL: From our side, we are taking every possible step. As I said already, we are moving in that direction. This is rather a slow process. But, I can assure you that we will spare no effort....

SHRI VASANT SATHE: I hope this will be commensurate with the results.

MR. CHAIRMAN: Mr. Agrawal, over and above what you have stated in the memorandum, have to say anything with regard to the provisions of the Bill?

SHRI S. N. BANERJEE: Mr. Agrawal, I would like to ask only one question. You mentioned about political donations and ghost donations. But, you should be aware that political donations are banned under the Companies Act. So, knowing fully well that political donations are banned, why should you subscribe to this view? Why should you pay political donations? Why should you not refuse?

SHRI VASANT SATHE: More so, when it is illegal.

SHRI TRIDIB CHAUDHURI: Mr. Chairman, so far, I have been sitting quiet. Now, I should say something. The discussion has degenerated

into mutual recrimination. Members of the Select Committee are trying to blame them, and they are also indirectly—it has come to that—trying to blame the Government. We have had enough discussion. They have made their points. Let us conclude.

MR. CHAIRMAN: Mr. Agrawal, I thank you for the views you have expressed here. But, I would like you to consider one thing. This sort of blaming each other is not going to help anybody. The Committee is not interested in blaming. If you have gathered that impression, kindly dis-

abuse your mind of that impression. We have come here to know and learn certain things connected with the Bill in general. If you can give a lecture, we also, as politicians, can do it 100 times and 200 times. We only look forward to more detailed discussions on the provisions of the Bill. But, you have nothing more to say over and above what you have stated in the memorandum. At any rate, we shall consider whatever you have stated generally, when we take up clause by clause consideration. Thank you.

(Witness then withdrew)

III. United Women's Organisation Committee, Bombay.

Spokesman:

1. Shrimati Gulistan

Billimoria, President

2. Shrimati Sujata Manohar

3. Shrimati Deena

Ahmadullah.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before you proceed, Mrs. Billimoria, I would draw your attention to direction 58 of Directions by the Speaker which reads:

"Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament."

SHRIMATI BILLIMORIA: Yes, I agree.

First of all, we do appreciate the provision amending sub-section (1) of s. 11 which liberalises the provision regarding the application of trust income. At the same time, we feel that voluntary contributions should not be

treated as income but should be treated only as donations which may be used by the Associations at their own discretion.

About voluntary donations, we are very particular that this should not be considered as part of the income of a welfare organisation. I have been connected with several collection drives for the defence services, army, navy and air force etc. As Chairman of this Committee, I have been connected for a number of years with such work. It has been our experience that whatever has been found in box collections has never been a very large amount, in large denomination notes. So we do feel that anonymous donations should not be considered as a sort of income and should not be taxed.

The other debatable point is about the provision concerning money invested in business, property, limited companies etc. The Bill says that such investments shall be terminated by 31-3-1978. There also, we are against the proposal. Before 1962, many people may have given shares. I will give an example. Tata 2nd

Pref. shares may be quoted in the market at perhaps Rs. 70 or Rs. 72. So when you try to sell shares worth Rs. 10,000 and convert it into money, it would be reduced to Rs. 7,000. Again these would be getting $7\frac{1}{2}$ per cent interest whereas the interest earned on government securities or bank deposits will be less with the result that already welfare organisations which have not got so much money to spend will have much less now to spend and to that extent, welfare work will suffer. Money spent on these welfare activities will be less than what should really have been spent.

About communal charities, we feel that they also should not be dragged in. After all, they take away some part of the burden of Government. Our Government is now a welfare state. We do feel that with the resources at their disposal, Government may not be able to do welfare work for all sections of society. Therefore, to the extent that these communal charities are looking after a certain percentage of the population, it will be a lesser burden on the Government itself. Therefore, we feel that the *status quo* should remain and those charities which before 1962 were exempted should be kept exempted.

Another thing is, it might be argued that why should there be a difference between those charities before 1962 and those after 1962. I would like to say that those charities which have been made after 1962 were made with the full knowledge of the law that they are going to be taxed, whereas those people who gave money before 1962 were under the impression that it was going to be used for charities alone and perhaps they may have given larger sums. Therefore, communal charities should not be affected for two reasons: firstly, it takes away some part of the burden from the Government itself, and secondly, they are doing some bit of good for their own people.

Another thing which I have not included in the memorandum is about

the trustees themselves. what we find is that no honest or conscientious person will become a trustee now. As a matter of fact, there is one particular trust where I am looking for a trustee and the people say that with all the provisions that are coming up in the Bill and when the Bill becomes an Act, we do not want to take up that responsibility.

MR. CHAIRMAN: Which particular provision you have in mind?

SHRIMATI BILLIMORIA: The provision is that certain documents and statements have to be made in time. If they are not made in time, one per cent of the income will be taken as penalty.

MR. CHAIRMAN: Penalty for not filling the returns?

SHRIMATI BILLIMORIA: Not for delay. We are treated even worse than the ordinary assesses. If the ordinary assessee do not send their returns or even if they cheat the Government, they are only taxed according to the rates at which they have to pay and the penalty is limited with tax.

MR. CHAIRMAN: Would you like to be brought on par with other assesseees?

SHRIMATI BILLIMORIA: Certainly not. We are not only not brought on par with other assesseees but we are treated worse than other assesseees. What I mean to say is, welfare organisations should be treated differently because these are people who spend their time, money and energy in order to do good to the people. Therefore, they cannot be put on the same basis as some other assesseees, some of whom may be blackmarketeers or profiteers or something like that.

SHRI VASANT SATHE: They should be treated more charitably.

SHRIMATI BILLIMORIA: So, I would say that the penalty should not be linked with the income but with the taxes.

MR. CHAIRMAN: The difficulty of the income-tax department's people is this. A trust which complies with the provisions under sections 11 and 13 enjoy an exemption, and when it enjoys an exemption, a voluntary return is not required. The difficulty arises where the trusts are in reality not covered by sections 11 and 13, but by taking advantage of the provisions of the law, they think they are exempted and are not filling the returns. Therefore, it was considered that the trusts should be asked to file the return not with a view to causing harassment which will discourage an honest man from becoming a trustee but because of a basic scheme which exempts the entire amount from taxation, and this particular provision by itself must not be used as a device by trusts which are not in law entitled to exemption, but relying on these provisions in their own way, and giving their own interpretation, they do not file the return. Therefore, it was considered expedient that everyone should be made to file the return. If you think this is hard, would you suggest something else?

SHRIMATI BILLIMORIA: You have said that for ordinary assessee's penalty is leviable for each year. If charitable organisations file their return one day later or ten days later, they will still have to pay a fine. There also we are treated adversely from the other assessee's who are real black-marketeers. This should be removed. If you feel that honest, charitable organisations have nothing to fear, then I cannot say anything.

MR. CHAIRMAN: We will consider it.

SHRIMATI SHEILA KAUL: I agree with what you have said. People who do social work are doing something else besides the social work. They must be given some extra incentive.

MR. CHAIRMAN: You have got the support of Shrimati Sheila Kaul! We will consider it.

SHRIMATI BILLIMORIA: Mrs. Kaul is the only woman in the Committee.

Then, about the investment in land, business, or limited companies. The land might have been taken years and years ago. The price of land has appreciated quite a lot. If this land is sold now, would you charge capital gains tax on that also?

MR. CHAIRMAN: They are not liable to taxation if they comply with the requirements of sections 11 and 13. Any gains and profits which comply with the requirements of sections 11 and 13 will never be taxed. The exemption is absolute.

SHRI R. D. SHAH: The point is this. If the capital gain is invested in a capital asset, it is not liable to tax. Otherwise, if the capital gain is utilised for the purpose of charities as is provided in the section, it is exempt.

MR. CHAIRMAN: Sections 11 and 13 require that the money should be spent in a particular manner. If you spend it in that particular manner, then there is no difficulty. If you accumulate any gain, it incurs a tax. If you comply with the requirements of sections 11 and 13, any gains are exempt.

SHRI VASANT SATHE: If they sell the land and earn some higher amount and they invest it profitably; will they be taxed on that? That is the question.

SHRIMATI AHMADULLAH: Yes. Having invested it, one does not want to expend it.

SHRIMATI BILLIMORIA: Another thing which we are really afraid about, and about which we talked quite a lot, is clubbing of the income of the husband and wife. We are dead against clubbing of the income of husband and wife. As I was looking through this Bill, I find it has been substantially modified. You say that it only applies to cases where the woman is working in a place where the husband has got

a substantial interest. I could give examples of women who are extremely clever in their own right, may be cleverer than their husbands even. You cannot club the income of the husband and the wife. We have been agitating against this since the introduction of this Bill in Parliament. We have written to the Prime Minister, the Home Minister, the Finance Minister and to everybody we could think of. We have written letters and sent telegrams. Then, we were under the impression, that for the time being this bill will not be brought out. Now, we are surprised to see that this has come up in this Bill.

MR. CHAIRMAN: If you say this, then, everything like salary, commission etc., will have to be allowed. The wife is bound to be cleverer than husband. But, you should also consider cases where the wife may be working for the husband only on paper,...

SHRIMATI BILLIMORIA: Instead of putting it down in the Bill it should be left to the discretion of the Income Tax Officers and Commissioners, who would be able to find out, after questioning the wife and the husband, whether the wife is really doing work in the office or not.

MR. CHAIRMAN: That discretion is there today.

SHRIMATI BILLIMORIA: But, not in the Bill, as it is drafted.

MR. CHAIRMAN: All of us put together have not been able to solve it. There is Section 40A which provides that under such circumstances, it has to be proved that what has been paid for is not more than what otherwise would have been paid for in the open market. But, the experience of the Department is very unhappy. An overwhelming evidence is created. Even if the wife is sitting at home, doing nothing, except being a good house wife, vouchers are signed, cash books, cheques etc. are signed by her at home, with the results, that there is and the wife may be working together

to suggest something in this regard? How should we distinguish between a genuine case and a non-genuine case?

SHRIMATI AHMADULLAH: We have amongst us a colleague and she is a Gujarati woman and she runs her own business. She had worked with her father. She is an extremely efficient woman. She goes abroad for business and other things. The Income Tax Officer put her to a very gruelling test for more than three quarters of an hour, at the end of which, when her replies were satisfactory, he apologised to her. But, there may be cases, where the woman may be knowing nothing, about the work, with which she is supposed to be connected. But, it should be easier for the Income Tax Officer to ascertain as to whether she is really working or she is merely a wife doing nothing. The real position can be ascertained by any intelligent Income Tax Officer. There is another matter in regard to which we have felt very strongly. This is in regard to women's education. The education of women has fallen behind that of men. As it is, opportunities are less for women. If you prevent her from earning her own money, what will happen is that, women's education will fall back. If the question arises as to who should be educated, whether the son or the daughter, the father will educate his son and not his daughter. In future, he will be even more inclined not to educate his daughter because her income will be taxed along with that of her husband. This is a socio-economic problem and it is a much bigger problem. This is not merely a tax problem. I humbly submit that we cannot afford to penalise women even more than what she is already penalised.

SHRIMATI MANOHAR: I would like to make some observations. This is in regard to Clause 14-Section 64. Here, I would like to suggest that for women, who are working in small scale industries, perhaps, you can make an exception. There are a number of small scale industries, where the husband and the wife may be working together

and both may be doing excellent work. In such cases, the income of the husband and the wife should not be clubbed for the purposes of tax.

MR. CHAIRMAN: Do you mean to say that there should be no limit?

SHRIMATI MANOHAR: You can exempt all small scale industries from the provisions of this Bill.

MR. CHAIRMAN: What should be the limit of small scale?

SHRIMATI MANOHAR: There are various definitions which have been laid down. I believe, there are ten definitions as to what should be considered a small scale industry. We can abide by them. Instead of creating confusion, by having fresh definitions, we can abide by the existing provisions. I also agree with what Mrs. Billimoria has said. You should leave it to the discretion of the Income Tax Officer as to whether the wife is really working or not. I would suggest that this matter should be taken up with the Department and we should see that this sort of thing is enforced instead of penalising the women who are genuine. If a woman is genuinely working. She is penalised.

SHRI VASANT SATHE: There are certain clever husbands who always take their wives and ask them to join to avoid taxation.

SHRIMATI MANOHAR: There is always a possibility that somebody may abuse the provisions of the Bill. What happens is this. It is not possible, by legislation, to avoid Indian malpractices. I would suggest that we should legislate bearing in mind that people can be honest, if they are given a chance to be honest, if I may put it that way. There may be a large number of cases, where the husband and the wife may be working together in small scale industries. They should be exempted. There may be some cases, whether this may be abused.

SHRI VASANT SATHE: Would you be satisfied if certain qualifica-

tions are prescribed as a test of genuineness whereby, purely on qualifications, of a wife, she becomes entitled in her own way. I say this, because, there have been instances where the wife works as PRO and interior decorator, where, even the test of scrutiny which you are suggesting would not be really applied. How are you to scrutinise? There may be various ways about that. My test would be this. Let us take a general example, like that of a doctor and a nurse. The test would be unmarried would deserve that even though the wife having the same qualification would be preferred. Would you think that would be a better provision?

SHRIMATI AHMADULLAH: If there is a doctor-nurse couple or a lawyer-couple, then it is obvious that the woman is qualified. In such a case, she can be exempted; but in our country where you need not have any qualifications to be a businessman, why should there be a qualification to be a business-woman? If you feel that she is pulling her weight and deserves that much money which she is getting, it should be all right.

SHRI VASANT SATHE: The qualification is determined by the nature of the business. If the business itself does not require any other qualification, then what you say is correct.

SHRI VIRENDRA AGRAWALA: Do you mean to say that no woman or wife need have any experience or qualification whatever?

SHRIMATI AHMADULLAH: I did not suggest that.

MR. CHAIRMAN: I must make it clear that while it is certainly not the intention of the Government, in this legislation to cause hardship to genuine cases, the real difficulty is something else. In terms of the provision under Section 40A, which is the relevant section which governs the case you have been canvassing,

there is absolutely no problem in regard to genuine cases. The real difficulty lies in our not being able to distinguish between genuine and non-genuine ones. I had explained earlier that a lady who was examined was not able, even to tell where the factory is, and what the products are; she was not able to explain in detail as to what are the ingredients which go into the end-product. Such jobs are assigned to ladies, for doing which she need not know any of these things. They are so ingeniously evolved. If she is made an office-supervisor, her only job is to maintain properly the office furniture and to see that the other arrangements are made properly. There are many ingenious ways like this. There are ladies who are appointed just to check the accounts. The cash book and the ledger are written every day. Checking up of accounts can be of many kinds; it need not necessarily mean auditing. She may have to check up merely whether the physical cash balance tallies with the entries in the registers. The real purpose of this legislation is to help the Income-tax Department to get over the difficulty which it is facing to-day, through this Section 40A; and the purpose is to study the reasonableness of the amount to be allowed, how much is to be allowed and how to evaluate, etc. It has been found, on experience, that in the case of 5 per cent or 10 per cent cases it is genuine; and in respect of the rest, it is not. Therefore, arguing on the same lines as Mrs. Sujata Manohar, is there anything wrong, in view of the difficulties explained above, in the legislature thinking of bringing about this kind of a legislation? I would request you to appreciate that there is no general possibility of clubbing *via* this. It has a very limited scope, where the husband can so devise and give remuneration, commissions etc. to the wife in a manner which he wants and create evidence. We want to know as to how we can get over this difficulty. You have not suggested anything in this regard.

SHRIMATI BILLIMORIA: What is the percentage of non-genuine and genuine cases, i.e. where these women are getting very high incomes? If there are very few cases of a non-genuine nature, and if the genuine cases would benefit by this, we would suggest that we should rather allow the majority of genuine cases to get the benefit. How many millionaires pay income-tax? A large majority of people do not pay any tax, because of their economic conditions.

MR. CHAIRMAN: Please do not escalate this argument.

SHRIMATI BILLIMORIA: Please do not misunderstand me. About 75 to 80 per cent of the people in India are not paying income-tax because of their very low income. Therefore, the percentage of people who are giving large incomes to their wives, would be so small that for their sake, we should not deprive the benefits to really deserving cases of women who work.

MR. CHAIRMAN: Who constitutes the exception—whether it is the genuine people or the non-genuine ones—is a question of facts. Mr. Shah, Chairman of the Board of Direct taxes, will speak on the facts.

SHRI R. D. SHAH: Unfortunately, I do not think I will be in a position to give any statistics as to how many there are in each case. However, I will tell my experience on this problem. As you said, this matter assumes significance and importance in cases which are of large dimensions and large incomes. If you take those incomes into account, we have made some studies and we find that in a variety of ways, the income is attempted to be diverted i.e. under the heads of commission etc. I have seen that in hospitals, ladies are appointed as Teaching Superintendents, Supervisors etc. and the incomes are distributed, in order to reduce the rates of taxation. You had said that 80 per cent of the working women have incomes below the taxation level. They are not affected. For this reason, women working even in small labora-

ories and factories are not affected. They would not have any income liable to taxation. We are concerned with middle-level people. There are two consequences. In a middle rung of business, if the husband is earning Rs. 25,000, you expect that the wife is also working there. On how much of a salary? It varies. One of the difficulties of the Department is in regard to the genuineness of the fact. We can however, find it out by cross-examining the woman. Even then, I have certain doubts. Ladies, as you said, are very clever and intelligent; and they can be tutored to answer two dozens of questions which the Income-tax people are likely to ask. Forgetting that, the next problem which arises is regarding the determination of the reasonableness of the amount to be paid. You will find that a clerk is paid Rs. 300 but the wife will be paid Rs. 700 or Rs. 1,000. It will be impossible for the Income-tax man to say that she should be paid only Rs. 300, because the court will say that you cannot bring in your subjective judgement over this problem. So what is the reasonable valuation of the emoluments for this particular person? These are the difficulties due to which we thought it would be safer to club this. As you put it very rightly, if the business is of a small dimension, then total income and the total impact of the tax is not going to be much. These are some of the problems.

SHRI VASANT SATHE: What about putting a limit on the income for this purpose so that the small and medium people are not harassed?

SHRI VIRENDRA AGARWALA: If you agree, what is the amount you would suggest?

SHRIMATI BILLIMORIA: To take an example, under 5,000 there is no income tax. The husband earns Rs. 5,000. So he is not paying income tax. The wife earns Rs. 5,000; she is also not paying income tax. You club the two incomes and it comes to Rs. 10,000. That comes under the higher bracket and is taxable.

MR. CHAIRMAN: You are making a mistake; this is not a general clubbing.

SHRIMATI BILLIMORIA: When this clause comes under amendment, is it going to be changed?

MR. CHAIRMAN: If a businessman pays, it comes under that; he pays Rs. 5000 to his wife. In that case it will be disallowed and taxed in his hands. If that is the case you have in mind, that is correct.

SHRI VIRENDRA AGARWALA: She did not mean that.

SHRIMATI BILLIMORIA: I was talking about the clubbing of incomes, not of big business people, but of ordinary people. Even though it is not there to-day we are afraid it might come in at a later stage.

SHRI BHAGWAT JHA AZAD: Take the case of a small scale industry. The husband earns 5,000. The wife earns Rs. 5,000. What happens? It becomes 10,000. Is it liable to tax? Suppose there is a small scale industry where both are there and the total income comes upto Rs. 6,000.

MR. CHAIRMAN: Then, of course, it will be clubbed, as the law stands, unless we take your suggestion and make some provisions that in small scale industries where the wife is genuinely working, it should be allowed as a deduction in the hands of the husband.

SHRIMATI MANOHAR: There is another thing. You have provided in cl. 14 that if a partition of a joint family takes place and the wife and children get a share of such partition, the income they derive from those properties is going to be clubbed. This is not really fair.

MR. CHAIRMAN: Where do you get that idea from?

SHRIMATI MANOHAR: Cl. 14.

MR. CHAIRMAN: Such property, as you know, is not a joint family property simpliciter.

SHRIMATI MANOHAR: But henceforth, since it is going to be converted into joint family property, that will be so. Why should the wife and child who have become entitled to these properties in their own right be subject to this? Why should the income they derive from those properties be jointly taxed? I can understand if the Committee says that the individual cannot convert. That is a different proposition. But once the property is accepted as joint family property, today a family can file a return as joint family as a separate unit. It is allowed. Why should the partition income derived by wife and child be subjected to this?

MR. CHAIRMAN: When it is transferred to any spouse and minor, it is liable to be taxed in the hands of the transferor. This is routed *via* the joint family.

SHRIMATI MANOHAR: If we allow a joint family to file a separate return on the basis that it is a separate entity, logically it would follow that if there is a partition and the members get a share, they should not be taxed jointly.

MR. CHAIRMAN: Are you against reciprocity?

SHRIMATI MANOHAR: Yes.

MR. CHAIRMAN: We will consider that.

SHRI VASANT SATHE: Provided it is really retrospective. In your memorandum, you have said that you are against retrospectivity.

SHRIMATI DEENA AHMADULLAH: In respect of Trusts formed before 1-4-62.

SHRI VASANT SATHE: As we are minded now, we are not strictly desirous of really withdrawing the exemption to communal trusts. If we say that hereafter we will not give exemption, that is not retrospective.

SHRIMATI AHMADULLAH: Income is derived today but the trust was founded before 1962.

SHRIMATI MANOHAR: Re. Clause about charitable trusts, I may add this to what Shrimati Billimoria said. Sub-cl. (bb) says that if a trust derives income from any activity for profit unless the activity is carried on in the course of the actual carrying out of a primary purpose of the trust, then it is going to be taxed. What happens in most public trusts or charitable trusts? They hold a cinema show to raise funds.

MR. CHAIRMAN: We will see to it. You are on the question of drafting?

SHRIMATI MANOHAR: Yes.

MR. CHAIRMAN: Are you a lawyer?

SHRIMATI MANOHAR: Yes. Instead of collecting funds by donations, they stage a play or a cinema show. What is wrong in that? The money is utilised for the welfare of the people. Why should trusts which believe in helping other people by raising money through self-help like this be penalised? I say this because this will be the direct result of this. I would suggest that this should not be allowed to happen. If the trust is utilising the income received in whatever manner for the benefit of the poor people, I think it should be exempt from taxation.

MR. CHAIRMAN: This is one aspect. There is another aspect of people doing some business trying to get exemption by utilising this provision in regard to trusts. To the extent that the money is accounted, there is exemption. To the extent it is not accounted, neither the beneficiaries nor the trustees, nor the departments know. In fact it is creating a lot many difficulties in the way of effectively arresting tax evasion *via* business activities. That is why the object of the Bill being the arresting of tax evasion, this provision has been brought. If you are carrying on any activity which is in the course of carrying out the primary objects of the trust, there is no objection. But if it is a business which is of a purely commercial activity, which is not in

consonance with the entire conception of charity, it cannot be done.

SHRIMATI MANOHAR: For instance, in the Maharashtra State Women's Council, an organisation with which we are connected, there is no question of evasion of tax. I will give you an instance. In our rescue home, we have a workshop where the girls are engaged in some commercial activity. That is, they take a contract with some commercial firms which are utilised for work with the rescue home. We have women working, who sell foods, etc., such as pappad, pickles and so on.

MR. CHAIRMAN: These activities would not be covered by this provision. The first one, you say, is for the purpose of providing employment to the girls, etc. Secondly, it is with a view to providing occupation. For instance, the *Bapno Ghar*. It is an activity in consonance with the primary objects of the trust.

SHRIMATI MANOHAR: It is not to provide employment, it is to give shelter to those women who have nowhere to go. Running the workshop or running a food establishment is not the primary purpose.

MR. CHAIRMAN: We are thankful to you. We will consider your points and see that there is no hardship caused to the trusts which are doing this sort of business.

SHRIMATI BILLIMORIA: In the Maharashtra State Women's Council, we are running a Women's Home Industries Depot where we get things made by poor women who have got no other place to display or sell them. We sell them in a particular shop and that shop makes a profit which may again be ploughed back into the depot itself. Why should it be taxed? We are all honorary workers. The overhead expenses are very few; there is profit; but that profit should not be taxed.

SHRI P. G. MAVALANKAR: Box collections are also one of the legitimate ways, and some of the trusts carry on activities which are def-

initely covered by these provisions, but which in effect are not meant to be covered. If they do it with their own self-help, not dependent on others, they should be encouraged.

MR. CHAIRMAN: We will consider the point.

SHRIMATI MANOHAR: I may refer to the point about converting the securities into shares of the Government concerns and so on. There are many cases where the original corpus of the trust—while the Settler had made a trust—consisted of shares in a private company. When the shares are in a private company, it will be extremely difficult to sell them. The shares may not have much market value. Even if they take 20 years, they will not be able to convert it. wherever the original corpus of the trust fund consists of shares in a private limited company, it should be exempted from the provisions of the Bill.

MR. CHAIRMAN: We will consider that. You have brought in a new angle. It may be that the shares of a particular trust do not have much market value so far as their income is concerned, and still they are fetching a good amount, and this will adversely affect the inflow of the revenues.

SHRIMATI MANOHAR: I can understand if the provision is made that they will not invest in a private limited company, but when they have already done it, the corpus should not be affected.

MR. CHAIRMAN: Mrs. Billimoria, I must thank you and your colleagues, and I must compliment you for having made a very valuable contribution to our deliberations. We will give our most anxious consideration to the various points that you have made before the Committee.

SHRIMATI BILLIMORIA: We thank you for giving us a patient hearing.

[The Committee then adjourned]

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Friday, the 12th October, 1973 from 09.00 to 13.20 hours in the Committee Room, Sachivalaya, Bombay.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

1. Shri Syed Ahmed Aga
2. Shri Virendra Agarwala
3. Shri Chhatrapati Ambesh
4. Shri Bhagwat Jha Azad
5. Shri S. M. Banerjee
6. Shri Tridib Chaudhuri
7. Shri S. R. Damani
8. Shri K. R. Ganesh
9. Shri Mani Ram Godare
10. Shrimati Sheila Kaul
11. Shri Maharaj Singh
12. Shri P. G. Mavalankar
13. Shri H. M. Patel
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri Bholu Raut
16. Shri Vasant Sathe
17. Shri Era Sezhiyan
18. Shri Satyendra Narayan Sinha
19. Shri R. V. Swaminathan
20. Shri Y. B. Chavan.

LEGISLATIVE COUNSEL

Shri S. Ramaish, Deputy Legislative Counsel.

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri R. D. Shah, Chairman, CBDT.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri K. S. Bhalla—*Under Secretary.*

WITNESSES EXAMINED

- I. 1. Shri N. A. Palkhivala, Advocate, Supreme Court, Bombay.
 2. Shri S. P. Mehta
 3. Shri B. A. Palkhiwala
 4. Shri S. R. Vakil
 5. Miss S. Bharucha

II. Chamber of Commerce, Sangli.

Spokesmen:

1. Shri A. G. Lale
 2. Shri R. B. Shah
 3. Shri K. B. Kayastha
 4. Shri M. N. Nawandhar

-
- I. 1. Shri N. A. Palkhivala, Advocate,
 Supreme Court, Bombay.
 2. Shri S. P. Mehta
 3. Shri B. A. Palkhiwala
 4. Shri S. R. Vakil
 5. Miss S. Bharucha

[The witnesses were called in and they took their seats].

MR. CHAIRMAN: Mr. Palkhivala, you must be aware of the direction which governs your evidence. According to convention, I am bound to point out to you this Direction which reads—

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Now, you may begin.

SHRI N. A. PALKHIVALA: Mr. Chairman, hon. Finance Minister, hon. Members of the Lok Sabha, you must have heard so much on this Bill, already, perhaps. I thought I had better deal with specific points rather than make any general observations. As all of you are aware, Sir, the main purpose of the Bill is to curb tax evasion, to check tax avoidance and to unearth black money. My endeavour will be to show how far this Bill can possibly satisfy all or any of these three objectives.

There are some fiscal Bills which are positive in the sense that the implementation of the same would lead to development and increase in production. There are some which are negative, in the sense that they will neither do any positive good nor do any positive harm, and there

are some which are counter-productive in the sense that they are not merely negative, but may defeat the very purpose which the Legislature has in mind. I think it would be a fair comment on this Bill, to say that it is not positive in any sense of the term at all. There is not a word in the Bill, which may possibly lead to increased production, which can result in the savings and which can result in growth. You may well say that this is not the intention of the Bill. I would accept that criticism. It is obviously not the objective of the Bill to increase production or lead to growth or to foster savings. But, Sir, as to the question whether the provisions of the Bill are negative or whether they are counter-productive, I would say, that most of the provisions are negative and some of them are counter-productive. My endeavour would be to show how some of your laudable objectives could be defeated by what is sought to be done here. The question of tax evasion, which, no doubt, is occupying the minds of the many distinguished Members of Parliament as well as quite a few people in the lay world, is a question, which, I think, calls for some realistic appraisal. My own plea is this. As a result of my experience in the profession as well as in the business world, I would say that there are two powerful factors which have led to tax evasion and creation of black money. The first and the foremost is the type of economic system, which we have built up and which we are persisting in, particularly, our pricing policy. The second factor is the fantastic rates of taxation. On the first part, I will not say anything except a few words. As regards the price structure, it is completely unrealistic and it will make the black market prosper and flourish even if Parliament did nothing but pass laws like this for the next 30 years. No power on earth can check black money so long as our present pricing system remains as it is. Let me give some examples to explain what I am talking about. One bag of cement has a controlled

price of Rs. 12. But, it is sold in the black market at Rs. 32 and it had gone up to Rs. 37. The difference between Rs. 12 and Rs. 32 is Rs. 20. So, the premium is almost 150—200 per cent. On a Rs. 12 price fixed, the manufacturer cannot make both ends meet. He cannot even keep the plant in good health. Every plant is a national asset, whether it belongs to the ACC. or it belongs to the Cement Corporation of India, owned by the Government. Every plant is a national asset. Everything really belongs to the nation. I think of only one Sector, namely, the national sector. I do not make a distinction between public and private sectors. There is only one sector, namely the national sector; and every one of us is in it. Every plant and machinery is in it. You are not in a position even to keep the plants in good health. When the price increase came, it gave Rs. 10/- per ton. Twenty bags make a ton and you give a price rise of Re. 0-50 per bag, when the black market premium is more than Rs. 20! In steel, the Government has now made the sensible decision of having some categories which are excluded from this recourse to price control. You find again that the plant could not be kept in good health but the black-marketeer makes all the money he wants. In cement, as a result of the price structure, the Central Government alone is losing Rs. 20 crores a year, even if only 10 per cent is sold in the black market. Actually, the proportion sold in the black market is much higher, But assuming it is only 10 per cent the Central Government is losing Rs. 20 crores a year, leaving aside the sales tax which is lost to the States. This is the sorry state of affairs. I will not give details but I can give you information as to how the price structure is working against the national interest and depriving Government of its dues. I must concede straightway that even assuming that you reduce your rates of taxation, the position will not improve if you allow your pricing policy to continue as it is. No dealer can show these things in

the books. Otherwise, he will be charged with criminal violation of the provisions of the Defence of India Act and the Essential Commodities Act. It is true that some reduction of taxes, unless accompanied by a very sensible pricing policy, may not be of any use.

I think the Select Committee, if I may say so with great respect, has a historic job to do. They are not concerned merely with the 141 clauses of the Bill. They have the privilege of deciding whether this country will go the same way as before, or whether we can experiment, for some years, with a more sensible and a more realistic tax structure. I make bold to say that there is no country in the world which has the levels of income-tax and wealth tax comparable to those in India. These levels are unheard of in any other country. I have got with me facts and figures of every important country in the world. There can be no contradiction of these figures. The only country which comes fairly close to India is Burma where there is no economic activity. It is a country with great potential. But it has now got queues for bread even in Rangoon although in the past it used to export rice to India and other countries. This is what misguided ideology can do to any nation. Where there is no economic activity and where the income-tax rate goes up to 99 per cent. it is a practical joke rather than a serious exercise in planning. If you exclude Burma, there is no country in the world which has got such levels of taxation as India. People may ask, "have you made a study as to how far the lack of development is the consequence of heavy taxation?" My answer to it would be, "It is like putting the question whether mother's love is good for the child; or like asking me to show how, if an employee is treated badly, he will not be loyal to the employer." The thing speaks for itself. All that you need is a little amount of commonsense to understand what is happening; and putting yourself in the position of

the man who earns a large income. The situation is this. A man finds that it is better for him to earn Rs. 30|- and keep it outside the scope of taxation rather than honestly earn Rs. 1,000|-. If he shows an income of Rs. 1,000|- he will not be able to keep even Rs. 30|- with him. I ask the hon. Members. "how many people in public life would pay their tax honestly if they had an opportunity of earning a large income and concealing it?" I am talking generally of human nature as a whole. Some people will always be dishonest, however low the taxation may be. I am talking of the large category of human citizens who are not basically dishonest. Human nature is not basically dishonest. I do believe that in India, as in other countries, there is a hard core of people who are basically not dishonest. But if you impose burdens on them which are unbearable, then they find ways and means of looking after themselves and their families. Another example is this. One man earns Rs. 60,000|- and another earns Rs. 6 lakhs a year. Are you aware of the difference between the two, after paying taxes? It is Rs. 23,630|-. Imagine the difference between the pre-tax and the post-tax amount. If your son is a qualified surgeon who can earn a decent amount, what temptation do you put in his way, to refrain from disclosing everything he earns? What incentive are you leaving for any one? I can understand a system where a man cannot earn; but here, he is permitted to earn; but he cannot keep his earnings. It is like telling a man, "you will not be debarred from having a child; but after you get the child, the State will take it away." In one case, the man does not earn at all; but in the other, you tell him, when he earns something, "you are only a tax collector for the Government." This has never worked in any country. If you look at the most progressive countries of Asia, viz., Korea, Taiwan, Thailand, Malaysia, Singapore and Iran, which are the countries with the fastest rates of growth, you will find that

the maximum limit of income-tax in those countries is 50 per cent. Incidentally, I may mention that when I am talking of high rates, I am not talking of top brackets alone. I am asking for a very serious and a very drastic reduction all along the line, even for Government servants. We made a study recently which indicated that even in socialist countries like the United Kingdom a Government servant would pay at the rate of 5.5 per cent average income-tax where his counterpart in India, would pay at the rate of 19 per cent. I am talking about the top level because it is more striking; but my argument extends all along the line. Now in these six most progressive countries of Asia, the rate, as I said, is no more than 50 per cent, and all along the line you have much lower rates than in India.

I am going to submit, if you will permit me, a written memorandum afterwards where I will give you all the comparable rates and you can see for yourselves where India is. Today our rate of growth, as a result of this terrific taxation, puts us practically at the lowest rung of the developing countries of the world. The only under-developed countries of the world whose rate of growth is as low as India's are Burma, Congo, Haiti, Mali and Somali. These are official world statistics.

Today India is helping to develop other countries. We have collaboration agreements with, and projects in, 27 countries of the world. We are able to open offices in Germany. There are Indian firms who are acting as consultants in Germany. We have our Tata Precision Factory in Singapore where we are showing the Singapore people what craftsmanship is, how they can train technicians. Indians are doing it.

What is the rate of growth in Singapore? Only four days ago, they announced a new plan and the rate of growth aimed therein is 15 per cent. For the last five years, their average

has been 14 per cent. What is our rate of growth? The Fifth Plan talks of 5.5 per cent only. But our actual rate of growth is not even 2 per cent.

Why, when Indian skills and techniques are developing other countries, can we not forge ahead in India itself? The reason is the fantastic taxation which no rational man can justify. We have become so used to it and our minds are so conditioned to it that we do not see what disaster can befall a country which indulges in this.

Let me give the example of Iran. We never get people from Iran to help in our technical problems. But Iranians take our help. Today in Iran, Indian technicians are working. They are helping in their electricity generation. The Tanavir project in Iran is 100 per cent owned by the Iran Government. Indian technicians are there as consultants. On the other hand, in our own country, we do not have sufficient electricity production. Whereas we are able to generate electricity for other countries, we are not able to do it here. Why? There are no savings out of which you can keep your plant in good health. Today our assets are rotting. You cannot spend enough. You cannot maintain them because there are not sufficient savings.

What is our rate of corporate saving? This rate has fallen to the lowest figure ever reached. Our rate of national savings is only 8 per cent. Why cannot we have 18—20 per cent? You may ask: Are we not redistributing our wealth? My answer is simple. I believe in redistribution of wealth. I think your fiscal system must be such as to achieve redistribution of wealth from the rich, let the wealth gradually go down to the poor. But what are we doing? Our redistribution taken the form of taking the wealth from the honest rich and making it over to the dishonest rich. This is the redistribution we are achieving today! The honest are getting poor; the dishonest are amassing wealth.

Look at some of the big restaurants and cinema houses. Who are the people who are having these? Smugglers and blackmarketeers. They are untouched by anything. They are not worried by this taxation. It is only the honest who are vociferous. You will not find the dishonest elements worried about this. It is only the honest who have the good of the country at heart who feel and are concerned about what is happening.

I am not pleading for myself or my class. I can live comfortably however high be the level of taxation because my needs are very few. I have no children to provide for. But I am thinking of what will happen to the poor. How can you generate resources in an atmosphere where your rates are so high?

Take Iran. Their last plan which was published only six months ago aims at a rate of growth of 14.3 per cent. Consider this: we cannot have even 5 per cent rate of growth while they have 14-15 per cent.

This, in short, is the position. You may ask: 'What about a tax cut? Do you think it is necessary in order to give a boost to the economy? Let me give you two examples of this. In 1972-73, two phenomena happened in the west. In the UK, they found that their economy was sagging. There was unemployment. Their figure of the unemployed reached one million. Do you know what they did? They cut taxes in their budget by £ 1,200 million. This was the cut in the UK budget in a single year. The Wanchoo Committee has told you: 'Bring down the rate to 75 per cent'. I tell you a cut in rates would not mean any less tax collection at all. I shall presently show that far from involving any loss, it would mean a gain to the exchequer.

As I said, in the UK, they had a cut of £ 1,200 million. But what did their Trade Union Congress, their apex labour party organisation, do? In an official publication, the Trade Union Congress said: 'Let there be a

cut of £ 1,500 million'. But the Chancellor of the Exchequer restricted the cut to £ 1,200 million. What has been the result in just twelve months? The economy has picked up. They have had the highest rate of growth since the last war. The figure of the unemployed has dropped from one million to about half that in just one year.

Then take the other example of Canada. This year in their budget, introduced at about the same time as my hon. friend, Shri Chavan presented ours,—when they found that their unemployment rate had gone up to 7 per cent, they had cuts in the budget to the extent of dollar 1,300 million.

Now these are steps by which the nation does not lose. I have not the slightest doubt that if you make your levels of taxation on individuals and companies reasonable, the Finance Ministry would be the greatest beneficiary. Let there be a boost given in this direction. Our Government wants revenues. But larger revenues will come not as a result of higher rates; they will be the result of larger incomes and more people having taxable income. Today instead of 3 million people with a taxable income, you could have at least 10 million people with taxable income—if only you could have savings which would result in larger generation of wealth.

Let me give you some statistics which cannot be controverted. Our country is a giant held in chains. If our industrial development could increase by only 12 per cent a year, do you know what would be the result? A 12 per cent increase in industrial production would mean for my hon. friend, the Finance Minister, a Rs. 930 crores per annum increase in excise and income tax alone—leave aside the benefit to the States by way of sales tax.

This is a brief picture of what the heavy rates of taxation are doing to us. My submission to the hon. members is, and I say it purely out of a burning desire to see that some good

is done to this country, please reduce the rates of tax, because even if you provide the death penalty for tax evasion, you will not be able to stop it with this level of taxation. On the other hand, if the rates are made reasonable and the laws are administered reasonably, you can have every hope that tax evasion will come down. Of course, it cannot happen overnight; it will take some time. But what we have done is that we have corrupted the nation. We have so corrupted the nation with this terrific burden that honest people in the higher brackets who would like to pay do not. But if the process is reversed, gradually you will find that this is a nation which is basically honest and it will rise to its legitimate moral stature.

I think it is a matter of the deepest regret that this Bill which is based on the Wanchoo Committee's report is based only on a part of the report and has deliberately ignored some other portions. Some portions which by themselves cannot work are sought to be incorporated in this Bill. As I read the Wanchoo Committee's report, a lowering of rates of tax all along the line, not only at the top levels, is absolutely essential. Without it all these measures would be useless.

MR. CHAIRMAN: Let me have one clarification. Whatever may be the tax rates are the moment, the fiscal policy, fiscal legislation and the creation of a climate, to which reference has been made,—these are palpably outside our purview. What has been agitating the minds of the members of the Committee is to what extent the question of rates is within our purview. As you are aware, the rates are determined annually by the Finance Act. We have to determine our scope very meticulously and carefully. We have been hearing witnesses on this question and invariably they have been telling us that unless we rationalise rates of taxation, it is very difficult for us to see how we can arrest tax-evasion. If you think that this Committee should take up this question, how do

you think it will fall within our purview and scope? This is a legal question.

SHRI N. A. PALKHIVALA: It would fall, in my opinion, clearly within the scope, jurisdiction and competence of this Committee.

This hon. Committee is dealing with this Bill. This Bill has a specific, overriding objective, namely, curbing tax evasion. If I may say so with great respect, it is not only the right but the duty of the hon. Members here to indicate in their report how this particular objective can be achieved. In other words, when the Select Committee is appointed, it does not deal merely with, say, Section 5 or section 7, but it deals with the Bill as a whole. You cannot deal with the Bill unless you deal with the objectives of the Bill. The primary object of this Bill is to curb or check tax evasion. If hon. Members are satisfied that tax evasion cannot be curbed, with the rates of taxation prevailing in our country, due to forces of human nature, I beg to submit that you have to set it in your report objectively,—whichever way you would like to do it—and it is clearly within your purview. To my mind, that part of the report will be more important than your comments on the clauses. We just deal with the symptoms; but we are never tackling the root cause at all. It is my submission that you would be pleased to deal with the root cause—whichever way you may like to deal with it. It is necessary that this Committee should discharge its historic function, whatever may be the ideology of the Members. I do not think ideology has any part to play here, whether it is Communist, or socialist. The basic fact remains that blackmarketing and hoarding should not be allowed to flourish.

I may submit to you that—as a result of my own personal experience,—you are converting more and more honest people into dishonest people. It is the character of the State which is at stake. We have played with it

for long, and the time has come when we should have the courage to decide the right way. I do not think it is politically impossible. On the contrary, politically, it would be perhaps a great feather on the cap of the present Government that they have been able to curb tax evasion and curb blackmarketing in the right way.

MR. CHAIRMAN: This is a narrow question of legality.

SHRI ERA SEZHIYAN: While appreciating your arguments, I may point out one thing. There are studies made by the ARC on the concealed income. They have come to the conclusion that an increase in the rate of taxation was not followed by an increase in the tax evasion, nor a decrease in the rate of taxation has brought about a higher tax collection.

The second point is what is your reaction to the suggestion of keeping the rate of tax high, to give a tax credit on a progressive scale in respect of the income saved and invested, and providing an effective in-built mechanism for promoting savings and investment?

SHRI N. A. PALKHIVALA: The first point is, an independent objective study has come to the conclusion that if the tax rates went up, the evasion did not go up. I would like to ask, how does the Committee know that. In a country of more than 500 million, even at that time, how does one know that evasion did not go up? With experience, I have become a little skeptic about your figures of tax evasion. It is like the report published recently in New York which said that there are eight million rats in that city. Who has counted the rats? How do you count them? Yet, it got published and I am sure 90 per cent of the people who read it must be believing that. My point is that we who deal with business and the honest business people, know. This is a matter of value judgment. It is not a matter of statistic. Not that the Committee could catch hold of say, 130 black-

marketeers and ask them, "Tell us, if the rates were lowered, would you still evade payment of tax." They may say yes or no.

SHRI ERA SEZHIYAN: It is not from any interview taken by anybody. It is a study made on the detection of concealed income and that is how it came to light. Do not under-estimate the scientific nature of the study.

SHRI N. A. PALKHIVALA: I am not trying to under-estimate the scientific nature of the study. But I am only cautioning the hon. Members against over-estimating the data available to them, on which a scientific conclusion can be reached. The correct data cannot be made available; it can be available, not to a man who sits in his office room; but only to the man in the market-place, who knows what is happening. For example, if anybody told me that an objective study shows that there is no money made by the cement dealers, I would not accept it. My personal experience shows that some cement dealers, steel dealers are making all the money that would make them comfortable for the next hundred years.

The point is, it is not a matter of study so much as a matter of evaluation. It is matter of value judgment. With a perceptive mind, you look at the facts and see what is happening.

So far as the second question is concerned, when I say a reduced rate of tax, I am not on the best mechanism of achieving it. It may be you have to keep your rate high but those who save may be taxed at the effective rate of 70 per cent. There are various mechanisms by which you can effectively reduce the rate.

Take Ceylon, I had the honour of advising that Government some years ago. They reduced the effective rate to 60 per cent. but the rate national highest rate remained on paper as 90 per cent. But they had a built-in mechanism, by which they who saved

paid not more than 60 per cent by way of taxes.

MR. CHAIRMAN: It was a very narrow question on which I interrupted, namely, the legality. I welcome the clarifications that are sought, but I would request hon. Members to be brief.

SHRI P. G. MAVALANKAR: The whole question was this. We have been talking about statistics which may deceive us, and the question of value judgment was injected into the whole argument. Would you tell us how it is possible for an institutional set-up to go into the question of value judgment? After all, if the individual is interested, he can do it, but if an institution has to make a decision, the question is whether that is feasible. Secondly, along with the direct taxes, what specific and concrete economic and fiscal measures would you suggest to help the point that you have been trying to establish so well?

SHRI N. A. PALKHIVALA: There are two points which the hon. Member has been pleased to raise. First, the value judgment one has to form, because we deal with human nature here. You are dealing with the normal human reactions to certain governmental levies. A value judgment has to be formed, because whichever way you form it, that would be the bedrock of your whole report. I would submit that a value judgment has a most significant place in the deliberations of the Committee like this.

So far as the second question is concerned, as to what are the other measures, I would not go into the details because as the Chairman rightly reminded me, your scope is somewhat limited and it would have to be restricted only to the fiscal measures. Without expatiating on the problem, I would merely say this. If only we would change our pricing system, we could effect one of the greatest economic transformations of our time. Today, the crying need is for the

basic materials which are needed for the people. We have got enough limestone and all that. What we need are the financial resources. We are just short of resources and, as I said, the redistribution has taken the form of wealth going from the honest rich to the dishonest rich. That is the redistribution that we have effected. Therefore, I would say that the pricing policy must be changed. Our economic policies must be changed. We have to think in terms of the national sector only. We cannot differentiate between the public and the private sector. I think, in course of time, the distinction will go. I have not the least doubt that people will become a little more realistic. We should have only one sector, namely, the national sector. Everybody has to work in support of the nation and to make the nation go forward. Neither the Government nor the people would be able to do it alone. We have to do it in collaboration.

SHRI SATYENDRA NARAYAN SINHA: Sir, the learned witness has said that he is not opposed to keeping the tax rates high, but, he wants that some in-built mechanism should be there in the tax system, so that, the effective rates of taxation may come down. May I ask him as to what is the present effective average rate of taxation within the corporate sector and individuals pay?

SHRI N. A. PALKHIVALA: First, I would like to, if I may say so with respect, correct the hon. Member. I have not said that the rates should remain as they are and that I want the other incentives. What I said was this. If a Government chooses to lower the rates, not by reducing the rates themselves, but, by having various incentives etc., then, that is a matter on which the Government has to take a decision. I am not on that. I am not on the type of mechanism that we should have. Whatever I have said, should not be taken to mean that I want the rate to remain at 97.75 per cent. I think that is psychologically and completely wrong. Therefore, I

am against this high rate. The hon. Member also mentioned the point about effective rates. I think a lot of pulling of wool over the eyes has been done by a simple gimmick. You are told 'don't think that our rates are high; our effective rates are low and we give depreciation and we give X and Y etc.' Let me tell you what the facts are. No country on earth will ever take depreciation into account in determining the effective rate. The initial depreciation which we are proposing to reintroduce is something which is antiquated and out-dated. There is no progressive country in the world which talks any more about depreciation and initial depreciation. I do not know if the hon. Members are aware of this. In many of the progressive countries including U. K. Ireland, many countries in Africa, as well as in some countries of the East, they have provided that you can write off 100% of the depreciation in any year, you like. You can write it off in the first year in the second year or any other year. We are told that if we take into account the depreciation, the income tax on companies would be reduced from a higher figure to a lower figure. It is all a pure jugglery with figures. You may well say that various deductions for revenue expenses are allowed, and if all that is taken into account, the rate will come down. The real incentives, which were given, in the past are all just taken away. Can you point out one progressive country, where the incentives are as low as they are in India today. In Shri T. T. Krishnamachari's time, we used to have various reliefs. If you paid more excise, you got relief in income-tax. You increased production and tax relief was given. If you were a priority industry, you paid a lower rate of tax. You were given various other reliefs. Everything is now gone. You increase production, your relief is zero. If you are a priority industry, no relief will be given. Even development rebate will go from May 1974. When, at a time, we need all these reliefs, we have nothing. The

initial depreciation which is sought to be given now is just meaningless. What good is your initial depreciation of 20 per cent, when in other countries, you can write off 100 per cent of the cost in one single year. What is this initial depreciation? It is nothing at all. What we are giving is a fleabite. We are giving Rs. 3000 as exemption in respect of dividend income and interest on bank deposits. Do you know that Pakistan has been giving Rs. 6,000 for the last several years?

Further we are only increasing the rate in another way. That is what the Canadian Finance Minister said in this year's Budget Speech. This is what the Canadian Finance Minister has said:

"If a man gets a 5 per cent rise in salary, but, the cost of living has also increased by 5 per cent, he has the same real purchasing power as he had before and nothing more, yet the progressive tax system can leave him worse off than he was before because he has entered a higher tax bracket."

Suppose, a person's income is Rs. 60,000 in one year. He pays a certain amount or tax on that. When he gets Rs. 70,000 in the next year, he pays more tax. But when he gets Rs. 70,000/- he gets no more in terms of real money, than last year's income. In terms of real money, he is not getting any more, but he has to pay a higher rate of tax. Suppose, a man has bought a house for Rs. 50,000. After ten years, he sells it for Rs. one lakh, you say that he has made a capital gain of Rs. 50,000. But he has actually made a loss when the one lakh is less at constant prices than Rs. 50,000 ten years ago. You say that he has made a capital gain when really he has made a capital loss. Lord Shawcross the ex-Attorney General of England, said recently that a capital gains tax which does not take into account the factor of inflation is the greatest fraud in the history of fiscal legislation. Look at the small man, the middle class man, who has some savings and who wants to invest the same in a new enterprise.

MR. CHAIRMAN: We have had sufficient discussion. I do not stop any Member from asking questions. We have to confine ourselves to the provisions of the Bill. May, I, therefore, request the hon. Members as well as the witness to be brief, on the general principles, Mr. Sathe.

SHRI VASANT SATHE: Sir, would you consider that the tax structure, having been what it has been all these years, going from bad to worse in the major industrial or business houses in the country, where substantial production of manufactured goods is taking place, including ACC Cement, during the last ten or fifteen years, has capital formation for the total assets, in their case, declined or increased? Secondly, has it been ploughed back or diverted in other investments? If so, where has this increase gone? There has been some capital formation and there has been some growth. Where has this been invested? Is it in the production of essential consumer goods for the masses, or, if I may use the word, for the higher sections of the society, who have a high purchasing power? And, therefore, would you think that growth should have no relationship with areas where investment of savings has to take place; and should it, in any way, be guided or controlled by the Government? These are my two suggestions.

SHRI N. A. PALKHIVALA: On the first question, as to whether the assets have increased, the answer is, "yes." But the point is that they have not increased half as fast as they should have. In a developing economy, if you find that the assets have increased from Rs. 30 crores to Rs. 35 crores, you must first take into consideration the fact that your rupee has gone down in value. We used to put up a new cement plant on the basis of the cost being Rs. 200 per ton of capacity. It was about 7 years ago. Now, it would cost Rs. 550 per ton. How do you find money for the new rate of Rs. 550? Resources must be generated. The generation has been diamally poor be-

cause with this level of taxation, there is no saving. Secondly, in reply to the question, "has it been diverted?" The answer is "no". Now in A.V.B. we build boilers at the instance of the Government. Without the boiler, we cannot generate electricity. In the case of priority industries, it is necessary to give incentives. Therefore, the priority status should have never been abolished. It was a grievous mistake committed, due to a short-sighted policy. People must have thought that more revenue will be obtained; but that can be done only by reducing the rates. I find sometimes a criticism that even a big house like Tata's makes lipsticks, as if it was a crime. I may tell you that Pandit Jawaharlal Nehru made a personal request and we have a letter which I can produce. Mr. C. C. Desai, the Secretary informed that the Prime Minister was very anxious that in order to save foreign exchange on cosmetics, we should go into that line; and at the instance of the Government, we went out of our way to go into that line.

SHRI S. R. DAMANI: My main question is this. You dealt extensively on industrial production and evasion of tax due to high rates prescribed. Do you think that by giving more exemptions for certain things like education of children or maintenance of old parents etc., the evil of tax evasion will be reduced?

SHRI N. A. PALKHIVALA: I would say that if a man is starved of food, there are two ways open to us: one is to give him normal food and the second is to give him injections of glucose. The kind of relief you refer to is like giving artificial respiration or injections of glucose. What we want is fresh air. Complicated exemptions and in a greater number of litigations. You have to be a lawyer to know their effect. I'd rather like that my practice was one-tenth of what it is and this country would be saved of such measures and the consequent litigations. We have

too many restrictions and complicated rules and regulations. Cases started now will be discussed in courts 20 years hence. We are fighting in the High Court cases pertaining to 1954-55 and many of them would go to the Supreme Court. For whose benefit is the complexity? The more the variety of exemptions, the more will be the litigation. There should be a simple structure.

SHRI S. M. BANERJEE: I have two questions. The learned witness has cited two causes, if I have understood him correctly, as leading to tax evasion. One was higher taxation and the other was the pricing policy. What, according to him, should be the correct price policy, and what should be the limit of profit allowed to a company after fixing the particular price?

SHRI N. A. PALKHIVALA: We should take into account the entire cost of production, that is the realistic figures and not arbitrary norms, and give such a return on shareholders' equity as are approved by the Tariff Commission. People are not fighting for a larger return, but they are fighting for the bare right to survive. The price structure has become so distorted. I do not want to go into details. Take a basic industry like cement. So many millions of our people are without houses in the country. The price of cement was fixed 6 years ago. After that, the Finance Ministers have levied higher taxes; wages and rail freight and electricity rates and royalties and many such other things have increased. But the price remains almost the same. What we ask is not an artificial return, but just a reasonable return which will enable a man to keep his plant and machinery in good health. In fact, there could even be a freezing of dividends.

SHRI Y. B. CHAVAN: I am not asking a question but am making a request that we may allow witness to conclude his arguments and at the end of it ask questions. This will save us valuable time.

MR. CHAIRMAN: You may speak on the provisions of the Bill.

SHRI N. A. PALKHIVALA: I am not disputing that there are some provisions which are an improvement. If I am not commenting on them, it does not mean that I am not aware of their soundness. It only means that I have no objection to them and I would rather save time for dealing with those provisions which call for critical comment.

I will deal now with the most important points; there are a few others with which I will deal in my written memorandum.

I am going by the printed copy of the Bill.

Page 1, clause 2. Here the designations of the Appellate Assistant Commissioner and Inspecting Assistant Commissioner are sought to be changed. I have no objection to the nomenclature as such, but I do think the time has come when we should realise that we should not, in the interest of conservation of paper and ink, if for nothing else, make changes unless they serve some useful purpose. What is the point of this change? All of us are used to the designations AAC and IAC. Do you realise how many millions of man-hours will be wasted on this? Take the work involved in rubber-stamping again. The same thing happens when we have new income-tax forms. How many millions of forms must be destroyed every year? I do not know. We have a new form this year; we had a new one last year. My firm belief is that it would benefit us a lot if our legislative activity were confined to productive things. These are all unproductive things. They serve no useful purpose. They would only mean wastage of millions of man-hours. I am against this because I see no valid reason why the designations, well established over thirty years, should now be changed.

Page 4, clause 6: Since the hon. Finance Minister is also here, I was just wondering whether I might take it that he will be pleased not to press this amendment in clause 6 which is about communal trusts, because then I need not take up your time.

MR. CHAIRMAN: We have heard views on this. I do not know what the Government's view is. So far as the Committee are concerned, more or less, by and large, we are inclined to feel that the discontinuance of this sort of exemption is not going to serve the object which we have.

SHRI N. A. PALKHIVALA: Thank you. I will not take up time of the Committee on this.

MR. CHAIRMAN: It is only to ensure speedy evidence from you on the other provisions of the Bill which are important, those concerning investments, anonymous donations etc. that I am saying this.

SHRI BHAGWAT JHA AZAD: What is the view of witness? If he is against it, he can have his say.

SHRI N. A. PALKHIVALA: I am talking of communal trusts.

SHRI BHAGWAT JHA AZAD: If he has anything to say against the provision as it stands, he can speak on that.

MR. CHAIRMAN: On the question of discontinuance of exemption to such trusts formed before 1-4-62, we have heard enough and we can discuss it amongst ourselves.

SHRI N. A. PALKHIVALA: I refer to cl. 6(i) (a):

"in clause (b), the words 'created or established after the commencement of this Act' shall be omitted"

Up to now, communal trusts created prior to 1962 have enjoyed exemption. If you will not make any change in that position, that exemption will continue and only new communal

trusts will be denied the tax exemption. If that is so, I will not deal with it.

MR. CHAIRMAN: Let me make this clear. The issue is still open. We have heard so much on it. We have discussed it among ourselves and we will discuss again. Therefore, we would like you to come to the other provisions.

SHRI N. A. PALKHIVALA: Very well.

SHRI VIRENDRA AGARWALA: If he has got anything to say, let him say. We are not agreed on this point.

SHRI BHAGWAT JHA AZAD: Whatever has been said before us, the Committee is not taking a decision here and now. Let the witness emphasise what he wants to.

SHRI VIRENDRA AGARWALA: Yes.

MR. CHAIRMAN: You may please proceed.

SHRI N. A. PALKHIVALA: I will not expatiate elaborately on this, but just take two or three minutes to indicate very briefly what is the point of the objection.

There is no doubt that non-communal trusts are undoubtedly the right thing for this country because we must have integration. But the simple point is this. At a time when your laws permitted communal trusts to be created and tax exemption to be obtained, if at such a time such trusts were created, now you cannot say that since it is a communal trust the tax exemption which has been enjoyed so far will be denied. It cannot be done at this stage. After all, most of those donors, settlers, must be dead now. They had certain objectives. Their objectives must be fulfilled. The function of a trustee is to give effect to the wishes of the testator or settler. He cannot go contrary to those wishes to get either tax exemption or anything else. Today no court has the power to convert a communal trust

into a non-communal one. Suppose you give such power under the Income-tax Act, I think an honest trustee would say: 'If I cannot get tax exemption, I cannot get it. But I must carry out the wishes of the testator or settler. We cannot substitute our wishes for the wishes of the testator. It was his money. He created a certain trust. Let it be administered according to his wishes.'

Then just consider the absurdity of the law. A citizen can create a trust for his village with 800 inhabitants and get exemption. He can create a trust for a small township with 5,000 people. He can create it subject to its being non-communal. Then he will get exemption. But if he creates a trust for so many millions of Muslims or Christians, he will not get the tax exemption.

If you are against all narrow-mindedness, why do you permit trusts for villages, trusts for certain linguistic minorities to get the benefit? Why do you want to single out religion? You still permit under your law even today a trust to be created only for those who speak, say, the Bengali language. It will get full tax exemption. There is no rationale behind this.

Secondly, speaking only as a student of constitutional law, I doubt whether such a provision is constitutionally valid, because the minorities are entitled to safeguard their own culture, their own language, their own religion. They are entitled to these as a matter of right. You must grant them these rights. You must leave them alone. If you are going to tax the old trusts, there will be nothing left for them.

Again in many of them the religious aspect is combined with the secular charitable aspect. How are you going to deal with this, because even if for the religious aspect they are denied the tax exemption, for the other aspect, the charitable aspect, they are entitled to the tax benefit. When a trust is partly religious and partly charitable, how will you segregate one

from the other? My point is this. I think we must have a certain degree of tolerance for even those whose view does not agree with ours. I am prepared to show and satisfy you that this will hit an important, broad section of the public.

Therefore, there is nothing to commend in this either in morality or in law or as a matter of politics. I think politically it would be most unwise to effect this change. You will create a hornets' nest round your ears. At any election, this can be a tremendous factor against any Government which enacts this law.

SHRI Y. B. CHAVAN: For the first time, you are giving political advice.

SHRI N. A. PALKHIVALA: I thought, ultimately I would give one clinching argument, to which there is no answer!

The second thing is this. I do wish that charities were left alone. It is true that there are some charities which are badly managed. In Maharashtra, we have an excellent law. You are saying that if any trust carries on an activity for profit, the income would be taxed unless the activity carried out is in the course of carrying out the primary objects of the trust. Just consider the effect of it. Suppose your charities are for education. You have a film premiere or play or a show or the raffles for the benefit or charity. This activity is not the primary purpose of your trust, because your trust is not constituted to show films. Therefore, the proceeds of the show will be taxed. Whom are you benefiting by this?

MR. CHAIRMAN: We are considering it. There appears to be a drafting lapse. It is not the intention of the Government to rope in this kind of profit.

SHRI N. A. PALKHIVALA: What is wrong with the present law? The present provision regarding a charitable purpose is one which does not involve the carrying on of any acti-

vity for profit. Your objective must not be to make profit. If your objective is charity, you can have a business activity to benefit the trust. You will be only hitting the poor people by doing this. If any charities are badly managed, it is for the Charity Law to deal with it; not for the income-tax law. Where does the income-tax law come in? Any bad management should be replaced by good management at the instance of the Government. But the income-tax law cannot make a general law for everybody. The word 'primary' is just meaningless. My suggestion is that the whole of this clause should be totally deleted since it will result in endless litigation and for nobody's benefit. I submit that clause 6(i)(b) should be deleted. It will serve no purpose. If at all you want to put it in any modified form, the word 'primary' in any event must go.

SHRI Y. B. CHAVAN: You say that the deletion will meet the intention?

MR. CHAIRMAN: It is a question of drafting. It is not the intention to make charity shows and plays, etc., come under any tax. But you seem to be posing a fundamental principle.

SHRI N. A. PALKHIVALA: Film shows, etc. will still be taxed if you take away the word 'primary.'

MR. CHAIRMAN: We will take care of it. The idea is in respect of "business activity" which is not in the course of carrying on the primary purpose. If you are opposed to this in principle, you may make your submission.

SHRI N. A. PALKHIVALA: In any event the word 'primary' must go.

MR. CHAIRMAN: We will consider it.

SHRI N. A. PALKHIVALA: If the clause is to be retained, it must be so drafted that regular business, unconnected with any of the purposes of the trust, would not qualify for tax relief. In other words, it should be put the other way.

MR. CHAIRMAN: That is our intention. That is the intention of the Government.

SHRI N. A. PALKHIVALA: It could be crafted as "pront from a regular business unconnected with any of the purposes of charity would not qualify." The wording could be something like that.

MR. CHAIRMAN: We will see to it.

SHRI N. A. PALKHIVALA: The clause (d) says that any voluntary contributions received by a trust would be taxable where the identity of the person is not established. It does not make any sense. There are collections at every temple and hospital where people go and put some money in the box. Surely, you cannot establish the identity. I think what is intended is that big donations by anonymous people should attract the tax. You must have some limit set; say, donations above Rs. 1,000 will be subject to tax.

MR. CHAIRMAN: We will consider it.

SHRI N. A. PALKHIVALA: I come to the next clause which is very harsh. In any event, even assuming it has to be retained, it has to be clarified. Consider the next clause in this context, clause (e). It says that the trust is denied exemption, if it invests its fund in any concern unless the concern is owned or controlled by the Government. Hon. Members will kindly note the severity and the harshness of this clause. I would call it savings harshness. A trust has an income of Rs. 5 lakhs from Government securities and it makes an investment of a hundred rupees in a share. Then it is not merely the dividend from the share which becomes disentitled to exemption. It is the totality of the trust income, of which this investment income may be one-thousandth part which is denied exemption. It is absolutely senseless. Whatever you want to do, you must see that that particular investment income will be disentitled.

not the totality of the trust income.

MR. CHAIRMAN: That will defeat the purpose. If any funds are invested in companies other than these, then the exemption is lost. The exemptions are enjoyed and the investments are used for all sorts of purposes. I am only talking of such trusts which abuse the charities.

SHRI N. A. PALKHIVALA: Suppose there is a trust whose entire corpus is invested in Government securities and the income is Rs. 5 lakhs. Suppose Rs. 100 are invested in one share on the stock exchange, then the Rs. 5 lakhs lose the exemption?

MR. CHAIRMAN: Yes.

SHRI N. A. PALKHIVALA: Well, it is open to the legislature to make such a law.

MR. CHAIRMAN: In your elucidation, you brought out the harshness very clearly. But it can be the other way round, in respect of the share of Rs. 100 which you mentioned.

SHRI N. A. PALKHIVALA: There is no such problem. When the total income from shares is Rs. 5 lakhs and the income from Government securities is, say, Rs. 3, that Rs. 3 will qualify for exemption and Rs. 5 lakhs will be taxed. All that I want to suggest is that you must deny the exemption to that income which flows from the prohibited investment. You cannot deny it for the total trust income. There are so many examples in this section itself. You say, "income derived from the investment. . ." etc. How can you deny the exemption in respect of other incomes?

MR. CHAIRMAN: That is the intention of the Government.

SHRI Y. B. CHAVAN: While we would not be swept off our feet by your argument, we will certainly consider your point.

SHRI N. A. PALKHIVALA: You have permitted investments in concerns which are owned or controlled by the Government. I have to make a submission on that. My first sub-

mission is, you will kindly exclude from the ambit of this new provision those shares which are themselves donated by way of corpus to the trust. For example, take the big foundations which have developed industries in a big way: the Ford Foundation, the Burroughs Wellcome Foundation, CIBA or the Rockefeller Foundation, etc. These are big foundations where the whole enterprise is virtually based upon the trust and it flourished. The corporate form is only for the purposes of carrying on the business. You have already dealt with the point that you do not have any objection to business being carried on in the cause of carrying out the objects of a charitable trust. Suppose, an objective like medical advance is the purpose or a charitable trust. They are trying to do Ayurvedic research. There are many companies in which the shares are owned by such charities and those institutions are doing excellent work. Therefore, my submission is that any shares which are donated by way of corpus to a trust, should be excluded from the ambit of this Clause. But, apart from that, I come to another very important question. You have said you have no objection to any investment in any concern. . .

MR. CHAIRMAN: That relates to business and this relates to investment. The two are different.

SHRI N. A. PALKHIVALA: I am talking of investment. It is like this. Suppose we carry on research directly, there is unlimited liability. Therefore you may choose to carry on research where profits are made in a corporate form, because there you have limited liability and you find that the trust is taking no big risk. I would like to give you one or two examples. Suppose, a trust wants to carry on research in regard to medicine, it can do so directly. But, there are risks involved in that. Hence, the trust may invest its money in a company and the company would carry on the same activity. There are many cases, where laudable objectives are carried on, but, they are carried on in a

corporate form, because, that is the most convenient form. In such cases, there should be total benefit of exemption. Therefore, my point is, the objectives should be taken into consideration. Of course there may be cases, where the tax benefits may be used by the trusts for their own benefit. There may be 20 trusts which are abusing the tax benefits. But, there are 100 trusts which do not. There are many trusts which are carrying on philanthropic activities for the benefit of the people, the people of India, and yet, they might have decided to carry on their activities in a corporate form. Then, what happens. They hold the shares in a limited company and they earn profits. You are denying exemption to those who are carrying on such activities, which have resulted in a lot of good to this country. We have got the Tata Charities. One of our objectives is to promote education. We wanted to provide books at cheaper rates and we wanted to publish such books. We could have done it directly. What we did was, we formed a company, which is owned by the Tata Charities, and that Company publishes books, scientific as well as technological books, for the benefit of students. In all these cases, for example, Tata Charitable Trust is holding shares in a limited company. They could have done it directly, it is true. But everything becomes facilitated when you have a limited company. There are many companies like this. I am giving this one example, which is of high educational value. In such cases, they will be denied exemption. The poor people will be adversely affected. If you make an analysis, and if you have statistics, you find that many of the charities are those, on whom, there cannot be any blame.

MR. CHAIRMAN: There are many cases, where the shares are held by the trusts in some companies, and *via* the Companies, the trusts carry on their activities for their own benefit.

SHRI N. A. PALKHIVALA: Your competence with regard to the proper exercise of the power is beyond question. I am only on the wisdom of exercising your undoubted power, would it be a good exercise of power to allow 100 good trusts to suffer in order that 10 dishonest people are roped in. If you do so, who will suffer? The people of India will suffer.

SHRI VASANT SATHE: Would you like to distinguish between the two and make any provision for the same?

SHRI N. A. PALKHIVALA: This is the one point on which I have not yet formulated my concrete amendment. On the second point, which arises out of this, I have done the formulation which I shall read out. In order that it may not be misquoted, I may give one copy to the stenographers I may also give some copies

MR. CHAIRMAN: Why do you say that it will be mis-quoted. It is being correctly recorded.

SHRI N. A. PALKHIVALA: Because I may be a bit fast. I would like this particular clause to be added there:

Explanation to Section 13(1)(e):

"For the removal of doubts, it is hereby declared that a company shall be deemed to be controlled by the Government if fifty-one per cent of the voting power in respect of its share capital is exercisable by the public trustee under Section 187B of the Companies Act, 1956, or by any public financial institution or other company owned or controlled by the Government."

For example, there is the Industrial Credit and Investment Corporation of India, wherein, Government and its institutions own more than 51 per cent. Suppose, a charity were to put its money in that company, it should

be perfectly allright. This is because, it is a Government controlled company. This should be the case in the case of all other companies, wherever the Government has the control. You are aware that under the Companies Act, there is a provision that public trustees have the voting right. In the case of Government institutions like your nationalised banks, nationalised insurance companies, financial institutions like the Industrial Development Bank of India, Industrial Credit and Investment Corporation of India, Industrial Finance Corporation, wherever these institutions are controlled by the Government and they have the voting power or the public trustee appointed by the Government of India has the voting power, and the voting power is more than 51 per cent, this should be enough. This means, they are controlled by the Government. The amendment I propose is only by way of clarification. That is why I have said, 'for the removal of doubts.....'

MR. CHAIRMAN: I think it only clarifies (e).

SHRI N. A. PALKHIVALA: I am only trying to save years of litigation. The charities cannot afford their type of litigation. You have already said that if the concern is controlled by the Government, investment is not barred. I am only clarifying the position, that the concern is controlled by the Government where more than 51 per cent of the voting power is under Government control. In other words, control may be exercised by the Government directly holding the shares, or through the Public Trustee or the Government holding shares through its corporations. I am only explaining the word 'control by the Government'. This explanation merely clarifies that control by the Government may be direct control, by direct shareholding in the Company, or the other type of control, where shares are held by public financial institutions or where the voting power is exercised by the public trustee.

MR. CHAIRMAN: Subject to the removal of the difficulties, we take it that you are otherwise in agreement with the provision, excepting that you want the term 'control' should be properly defined.

SHRI N. A. PALKHIVALA: This is the minimum, I submit. I leave it for the hon. Members, so that, some of the honest trusts at least may be saved. But, it is for the hon. Members to consider whether it is necessary to say that you should have no investment in shares.

MR. CHAIRMAN: About the harshness, you have already explained. Subject to that clarification, you are otherwise in agreement with the principle enunciated in this particular provision and that you want the term 'control' to be properly defined? Is that correct? You have given us a draft, and I, for one, would like to understand.

SHRI N. A. PALKHIVALA: My own view is this. I am not in agreement with this provision as it is proposed, and my own feeling is that the trusts should be permitted to invest in growth activities where the object is not self-aggrandisement. In other words, I am making a distinction between those trusts who are using the tax benefits for good purposes and those which are using the same for their own benefit. It is necessary to permit the trust to invest in limited companies, because of the growth prospects. The reason is that so long as the rate of inflation is higher than the yield on Government securities, every Trust would get poorer every year. Suppose it invests in securities, it gets 7 per cent. It gets poorer because the rate of inflation is much higher. The only remedy is to permit it to invest in growth equities. It would not be right to say that I have no objection. I submit, first, that the existing law is altogether sufficient. But if the Hon. Members are pleased to alter it, then please give sufficient safeguards.

SHRI H. M. PATEL: I thought Mr. Palkhivala had said that he is not able to suggest any changes to our draft, which would satisfy his point but that he is prepared to undertake re-drafting.

SHRI N. A. PALKHIVALA: I will do that, Sir.

SHRI H. M. PATEL: Mr. Palkhivala, I do not know whether we have understood you correctly. We should see whether we can ensure safeguards in the law which could distinguish undesirable activities of the trusts from the other activities.

SHRI BHAGWAT JHA AZAD: We have had detailed discussion on this provision; and we have agreed with the point that there are trusts which are doing a good job. But we feel that the present law is not enough. We, therefore, certainly want to differentiate between the good and bad ones. We have found it difficult to find a solution. If the learned witness can do it, we will be thankful.

SHRI S R. DAMANI: Mr. Palkhivala has mentioned about the trusts investing in financial institutions where about 51 per cent holding is that of the Government. In this connection, if financial institutions like the IFC are taken into account while calculating, to arrive at this figure of 51 per cent, there will be confusion. If they sell the shares, the percentage of holding i.e. of 51 per cent would naturally go down. In that case what will happen?

SHRI N. A. PALKHIVALA: When the percentage goes down, the trustees will sell the shares. It is very simple that the trustees will hold so long as the Government institutions have a controlling interest. When the Government's shares go below that, the trustees will sell the shares.

The next provision I would take up, is at line 14 of page 5, which tries

to define a person who has made a substantial contribution to the trusts. I would like the hon. Members to understand what the existence law says, so that in the light of that they can understand whether this provision is beneficial or counter-productive. The present provision is perfectly sensible. Now, what is sought to be done is that the substantial contribution is sought to be crystallized in the form of the rule that if all the contributions made by a man aggregate to Rs. 5,000, then it becomes a substantial contribution. See the difference between the existing law and the new one. Under the existing law, the word 'substantial is relative. In a trust of Rs. 5 crores, a contribution of Rs. 10,000 is a flea-bite. Anyone in his senses would say that, because the word "substantial is relative to the trust. On the other hand, if the trust corpus is of the order of Rs. 20,000 and the individual contribution is Rs. 5,000, he has contributed 25 per cent so, the word substantial is relative. A new rule of thumb is proposed instead. Just consider the utter inequity of the whole thing. Suppose you are a trustee. There are many trusts in various places, like the Bapno Ghar where poor women who were victims of bad treatment earlier, are given shelter. Suppose a man goes there and makes a contribution. He says that his name is 'Mr. Patel'. We give him a receipt. Then two years later, a lady comes and tells us that she is a Mrs. Nanavati. We do not know Mr. Patel's relationship with Mrs. Nanavati. But we later learn that they are related. Would she become disentitled for help? How do you act? Is the trust expected to discharge its normal functions or go on obtaining genealogical trees of donors? Look at the absurdity of it. I suggest that you let the law continue to be as it is. What is the difficulty that has arisen?

MR. CHAIRMAN: Subjective tests by the income-tax officers are available.

SHRI N. A. PALKHIVALA: It is always liable to correction by the higher authorities. You will not be doing justice. If any one of you, hon. Members, are connected with a public trust, you would realize what the difficulty is. The trust which runs Bapno Ghar gets 500 requests for assistance per year. We never ask whether the person seeking help, is related to A, B, or C. Therefore, please leave it alone. Otherwise, you will be making the law unfair and unjust. No problem has arisen in practice.

Kindly remember this. The entire income of the trust will become disentitled to exemption in any year when any relative has made a contribution five or ten years ago. The name may not be the same the surname may be different. How will you check it? So I submit the present law must be allowed to remain as it is and there is no necessity at all for a change.

SHRI Y. B. CHAVAN: I would like to tell you the history of this amendment. Most of the witnesses who appeared before the Wanchoo Committee themselves asked for it. The previous section mentioned the word 'substantial'. They wanted it to be defined because otherwise it would lead to a lot of litigation. The interpretation of the word 'substantial' that you gave is one of the many possible interpretations. The word 'substantial' will have to be related to the corpus or income has to be related to other factors also, possibly a man's capacity or the man's earning in a year. So if it is relative, it can be relative of many other factors. As a matter of fact, because of the insistence of witnesses who appeared before the Wanchoo Committee, the Committee said 5 per cent of the corpus.

SHRI N. A. PALKHIVALA: If you put it as a percentage of the corpus, it is all right.

MR. CHAIRMAN: Would it be all right to crystallise it by defining as to what constitutes 'substantial'?

SHRI N. A. PALKHIVALA: Make it a percentage of the corpus.

MR. CHAIRMAN: We will consider it

SHRI N. A. PALKHIVALA: I come to clause 8, sec. 23. I think there is a serious drafting error here. I doubt if it will work if you allow it to remain as it is. What was apparently intended was this. Suppose the bona-fide annual value of your house property is Rs. 12,000 a year, but in fact you get a rent of Rs. 15,000 a year. Then you will be taxed on the basis Rs. 15,000 annual value and not Rs. 12,000. If the actual is higher, you take that figure. That was the intention. As it is proposed, it says:

"In section 23 of the Income-tax Act, in sub-section (1), after the second proviso, the following *Explanation* should be inserted, namely:—

Explanation: Where any property is in the occupation of a tenant and the amount of annual rent paid or payable by him in respect thereof is in excess of the annual value as determined under this sub-section, the annual value shall be deemed to be the actual rent paid or payable'.

The annual value, as determined under this sub-section, would include not only the substantive part of 23 (i) but also the two provisos so that the benefit of the provisos is gone. Therefore, this explanation should come after sub-section (1) and not after the two provisos.

MR. CHAIRMAN: That is the intention.

SHRI N. A. PALKHIVALA: I have two suggestions to correct the drafting. One is that the explanation must come before the two provisos and not afterwards.

SHRI Y. B. CHAVAN: I think that is all right. We have ourselves discovered it.

SHRI N. A. PALKHIVALA: The second is omit the words 'as determined under this sub-section'. Just say 'in excess of the annual value'. If you say 'as determined under this sub-section', you are roping in the two provisos also.

The next is on p. 6, cl. 12, 44B, about keeping the books. There is one obvious error here. Under 44B, every person carrying on a business or profession must maintain books of account if his turnover is Rs. 2½ lakhs or profit is Rs. 25,000. If the turnover or profit is less, no such books need be maintained. If you do not maintain them, you will have to pay more tax. With this particular limit, small people would be harassed. Is it intended to apply this to professions, say, young doctors?

MR. CHAIRMAN: No. For professions it will be a much lesser limit. What shall be a reasonable limit? At the moment, it is only Rs. 5,000. The idea is that professionals earn substantially less than businessmen.

SHRI N. A. PALKHIVALA: If it is Rs. 25,000 for businessmen, it should be Rs. 15,000 for the professional man because I am talking of the small man.

MR. CHAIRMAN: We will consider it.

SHRI N. A. PALKHIVALA: What is most objectionable and what I would press for modification with all the force at my command, is that you leave everything to the Board to decide. Look at sub-section (2). The Board has to decide five things. It will decide what books will be maintained, it will decide what particulars should be put in, it will decide the form and manner in which the books will be kept, it will decide the place where they will be kept and it will decide the period for which they will be kept. This will be just impossible.

These conditions may be imposed on anyone. What will happen? The assessee has to carry on his profession or business. He cannot just bother about these things. This must be deleted altogether. What is stated in the opening part is enough. The opening part, "maintain such books of account and other documents as may enable the income tax authority to determine the tax payable.." is enough.

MR. CHAIRMAN: That itself will create disputes.

SHRI N. A. PALKHIVALA: What is the point of this? The Income-tax Act came into force in 1960. We have had it now for 113 years. How have books been kept? We have so many districts; there are regional difficulties; there are the problems of the small man in the mofussil. I am not talking of Bombay or places like that. Consider the man in the village or small township.

MR. CHAIRMAN: It is those in the mofussil we have in mind where they do not have experts. Would it be better if the Board gives some guidelines?

SHRI N. A. PALKHIVALA: The proposed amendment envisages mandatory forms.

MR. CHAIRMAN: You would throw it out lock, stock and barrel. What about people in the remote, distant areas? Those who are doing business there and having a turnover of Rs. 2.5 lakhs will be roped into this. For them, some guidelines should be necessary.

SHRI N. A. PALKHIVALA: It is not guidelines that the Bill refers to.

MR. CHAIRMAN: It would be better if it is provided that the books are in a standard form following a prescribed pattern or principle as per guidance given by the Board.

SHRI N. A. PALKHIVALA: If you refer to a standard or principle, I have no objection.

Look at the Companies Act, the form is there. In the Companies Act,

we have had no problem. But suppose the department were to decide what form the balance sheet should be in, can you imagine what chaotic conditions will be created?

You are dealing with different districts and different places. It will create chaotic conditions.

SHRI Y. B. CHAVAN: You wanted some distinction between a businessman and a professional man. What is the reason?

SHRI N. A. PALKHIVALA: I did not want any distinction. The Chairman was kind enough to tell me that he wanted it. He said he would like to have lower limit for professions. In other words, even if you have a lower income, you have still to maintain books.

MR. CHAIRMAN: What I asked was ought to be the limit. It has got to be less.

SHRI N. A. PALKHIVALA: My own suggestion would be to have the same limit. Even assuming that the hon. Chairman thinks that the limit might be less, I am not on that; what is worrying me most is this kind of power being given to the Board.

MR. CHAIRMAN: We do not want unnecessary powers to be given. The department would not like it either. But certainly guidelines should be available to people in the mofussil.

SHRI Y. B. CHAVAN: The whole thing is based on the recommendations of the Wanchoo Committee wherein they have said that the Central Board of Direct Taxes may settle it in consultation with the Institute of Chartered Accountants, Bar Associations, etc.

SHRI N. A. PALKHIVALA: The words "in consultation with the Chartered Accountants, Bar Association," etc. are all omitted. If you leave it to the Institute of Chartered Accountants, I have not the slightest objection. My objection arises because the professional man's approach is quite different from the bureaucrats'

approach. Let the chartered accountants decide; this should not be done as a bureaucrat's job.

MR. CHAIRMAN: Certainly we want the Board to carry the responsibility of guiding the people in the mofussil. They will take the assistance of the chartered accountants. That is the thinking at the present moment.

SHRI N. A. PALKHIVALA: That is the role of the professional bodies. If you say, "consultation with the Bar Association", it will be all right. But look at the way it is drafted. Suppose a man kept it in the standard form known to the chartered accountant, but did not keep it in the form prescribed by the Board. He is committing a breach of the law and is liable to be penalised and his books may be rejected on the ground that he has not maintained them in the prescribed form.

MR. CHAIRMAN: We understand it.

SHRI S. M. BANERJEE: Supposing they want to give it in the form of advice. What is the objection?

SHRI N. A. PALKHIVALA: The Bill provides for the mandate of the law. It is not advice.

MR. CHAIRMAN: The thinking appears to be that people want us to be functioning in an advisory capacity.

SHRI VASANT SATHE: If, as a matter of convenience, the Board in consultation with the Institute of Chartered Accountants formulates certain standard forms which will become part of the taxation law to be made available to any and everybody in whatever language they want it, if all the early precautions of consultation are taken and those forms formulated, and we do not change them for a period of time, do you think it will facilitate the work?

SHRI N. A. PALKHIVALA: If you, after consulting the Institute of Chartered Accountants, put the form in the law and make it mandatory, I do not have any objection. You must

put it in the law. Please ask the Department to tell you how many times the return of income form has been changed. In ten years, you would have wasted many tonnes of paper in this country in this way. Every year, tonnes of such forms are destroyed.

SHRI Y. B. CHAVAN: The revision has to be done for the convenience of the assessee themselves.

MR. CHAIRMAN: If the law goes on changing, and Parliament keeps on changing it, you will have to conform to the changing laws. That is a different aspect of the matter. I have indicated to you what by and large is the Committee's thinking. We want guidance to be given to the people who need it. Otherwise, for those who understand the standard forms, they need not be disturbed.

SHRI Y. B. CHAVAN: You want it to be mandatory. The point is whether it should be mandatory or it should be in an advisory capacity.

SHRI N. A. PALKHIVALA: If that is done by some professional men, it has some degree of permanency. The form of balance sheet is prescribed in the Companies Act itself. So, there is some stability.

SHRIMATI SHEILA KAUL: Why saddle the Board with all these forms?

MR. CHAIRMAN: We will consider it.

SHRI N. A. PALKHIVALA: Then, clause 14 seeks to re-draft section 64 (1).

My first point is about the new sub-section (1) which says that if any individual gives any salary, commission, fees or any other form of remuneration and it is paid to the wife or a husband in a concern where the other spouse has substantial interest, it must be just added to the income of the other. Suppose, the wife is running a business, and the husband is a lawyer or a chartered accountant, and the wife gives him Rs. 1,000 for looking after her accounts, that must be added to her income; or, the husband may run a business and any payment made to

the wife is to be added to his income. My point is, it does not work reasonably and justly at all. These things are counter-productive. When a citizen is left with a sense of grievance, he becomes a compulsive tax-dodger. I have seen completely honest people dodging tax when they find that the State is not fair to them. This will hit even honest people, because is there any reason why, in a concern, which is run by the wife, if the husband is a chartered accountant, he cannot give advice and taken his reasonable fees? The word "reasonable" is already there and because it happens to be a husband or a wife it is automatically disallowed if it is excess under section 40 A of the Income-Tax Act. This provision in the Bill is unfair and I may say that it is unconstitutional also. How is it a reasonable restriction on the right to carry on business?

Today, in this country, many boys and girls are getting educated. It is all to the good. The women are playing an important part in society. I have known of doctors and clinics which are run as partnership concerns or as limited companies where the wife is doing the accounts and looking after the general administration of the hospital or clinic. She is paid certain amounts and you will add it to the income of the husband.

SHRI BHAGWAT JHA AZAD: Suppose the husband is running a clinic and the wife is the superintendent who is paid Rs. 4,000 p.m.

SHRI N. A. PALKHIVALA: Under section 40A it will be disallowed.

Any amount that is unreasonably large, that excess will be disallowed. Today, there is a provision for disallowance automatically.

SHRI ERA SEZHIYAN: Section 40A has become a matter for objective judgment.

SHRI N. A. PALKHIVALA: In any well-regulated business administration and farsighted Government, how will you eliminate value judgments making a rule of thumb which hurts the innocent and harms the honest?

It is true that you are having a multiplicity of laws, but at what cost? If the administration forms value judgments in hundreds of cases, you cannot form value judgment in this? I can understand a husband not being able to form a value judgment in respect of his wife, but, surely, an outsider in the income tax department....

MR. CHAIRMAN: You mean, he dare not?

SHRI N. A. PALKHIVALA: What is the problem? It is inherent and implicit in the scheme of tax administration that value judgment by any honest un-biased income tax officer shall be formed and then on that basis, you should determine the excesses paid, for inclusion in the husband's income or the wife's income.

SHRI VASANT SATHE: This has been discussed earlier also. Many witnesses who appeared before us have enlightened us on this point. The difficulty has been this. We were told that there are instances, particularly in the higher bracket income of assesses, where they have a tendency to evade tax by appointing their wives who are not otherwise qualified. You gave examples of qualified persons. But, what about persons who are not otherwise qualified? They are appointed as advisers, interior decorators, advisers to interior decorators etc., where no qualification or no value judgment can really be applied. Such instances have come to our notice. We have asked other people also. Would you suggest that some ceiling, some reasonable ceiling, should be put, and secondly, the test of qualification should also be applied so that it is not entirely left to the subjective judgment? Do you think that this will serve the purpose?

SHRI N. A. PALKHIVALA: The basic answer is this. You gave the example of wives being appointed as advisers etc. Under the existing law, the payments will be disallowed.

Full amount will be taxed. There is provision in the existing law and if the existing law is not being enforced, then it is a matter of administrative inadequacy.

SHRI VASANT SATHE: Many lawyers like Mr. Palkhivala may take up such cases and they may say that under the existing law, exemption is available.

SHRI N. A. PALKHIVALA: Out of a lakh of cases, where this question arises, eminent lawyers would have handled just 100 cases. Many lawyers are not available for such cases. I have not argued such cases during the last 15 years. I may tell you that this is another provision which is counter-productive. Suppose, a person has a qualified wife and he thinks that his wife ought to be employed. You say that the whole amount will be taxed in his hands. He will see to it that his wife's income is not added to his. He will see to it that this is done. This is another counter-productive provision. You are creating situations, wherein, you are converting a honest citizen into a dishonest citizen. This is one typical example. Ten people may get away with the tax reliefs, whereas, there may be 100 cases, where people may suffer. Are you making laws only for the dishonest?

SHRI VASANT SATHE: What about qualification?

SHRI N. A. PALKHIVALA: My difficulty is this.

SHRI VASANT SATHE: You have been emphasizing qualification. That is why, I mentioned about this.

SHRI N. A. PALKHIVALA: There are various other provisions. You are going to make the gifts to the grand son, to the children of son, including in the income of the grand father. You are going to make the income from the income also includible in the income of the donor. Now, the first and the most important point I have to make is this. You should

lay down a time limit after which the transfers made to the grand children would fall within Section 64, and the time limit, after which income from income would equally be taxable. Otherwise, it is likely to create difficulties. There must be at least 100 thousand cases in India, where assets are transferred to the spouse, and the income from that, has been enjoyed by the wife i.e. she has enjoyed income from that income. This has never been taxed. No wife to my knowledge, has kept a separate bank account for the income from the assets transferred by the husband or for the income from that income. There is only one bank account kept. How will you be able to find out as to what was the income from income which was earned in the year 1953, and if you have to do so, you will have to make enquiries for all the past years, and find out what was the income of the husband and the wife. If this sort of enquiries are to be carried out, then, you will be doing nothing but this, for the next 5 years. Who will do it? Where from will you collect the data? If you say that income from future income will be taxed, then, they will keep a separate bank account.

MR. CHAIRMAN: We are aware of the difficulties inherent in a provision like this. We appreciate what you are saying. We will see as to how best we can overcome these difficulties, on the basis of the evidence that has come before us. Of course, we do not want that Parliament should enact a law, which, the Administration may find it impossible to work upon.

SHRI N. A. PALKHIVALA: Therefore, my own view would be this. You may say that the new provisions would apply to those transfers effected after a certain date.

SHRI Y. B. CHAVAN: We are thining of amending on these lines.

SHRI N. A. PALKHIVALA: Thank you.

SHRI VASANT SATHE: How would you react to the suggestion that the whole family should be treated as one unit-clubbing of the income of the husband and wife and also that of minor children?

SHRI N. A. PALKHIVALA: On page 10, you propose to have a new Section 69 D. What is sought to be done is this. If any hundi is taken or it is repaid, it must be by crossed payee cheque only. I am not against the principle. My point is this. You can very well say that unless it is by a crossed payee cheque, it will be presumed that it is the income of the person who has taken the hundi or who has repaid it. What you have done is different. I will give you a simple example, so that, the hon. Members may know as to what are the implications of this. Suppose, a person has taken a hundi and he has taken it by a crossed cheque and he has also repaid it by a crossed cheque. He is also able to prove through your own nationalised bank, that the money has been paid. Yet it will be taxed as the income of the person. If it was not endorsed for the payees account only. This is again counter productive because you will be creating difficulties for the honest citizens. If you say that unless the money is paid by a crossed cheque, the presumption will be against the person and it will be treated as the income of the person; then, the onus will be on the person to prove.

MR. CHAIRMAN: Your suggestion is that the rule of evidence will be created.

SHRI N. A. PALKHIVALA: You cannot treat a honest citizen like this. This is only one of your 37 laws, which the businessmen have to deal with. There are various other laws which a businessman has to comply with. There are hundred different obligations which a businessman has to fulfil. You can quite imagine as to what will be the position after a few years. People may be completely ignorant that Members of

Parliament have enacted such a law. If you ask me as to what are the various obligations of a businessman, I would not be able to give you a comprehensive list. My point is that we should have a rebuttable presumption. We should say, "it shall be deemed", so that he is on his guard. If he is paying by cheque, it is all right.

MR. CHAIRMAN: Thereby, you will be giving a purely statutory recognition to the existing position of the law. As it is, it is so in the case of any law, that unless he proves that it is against the law, he will be taxed.

SHRI N. A. PALKHIVALA: I am saying that the Parliament may shift the onus on the assessee.

In the next page, i.e. page 12, clause 26, Section 104 is one of the most economically unsound measures which the Parliament is asked to adopt. We are dealing with closely-held companies. You would remember that closely-held companies are not merely companies of great tycoons. Even when a small man wants to do business, it has to be often through a family company. There are hundreds and thousands of enterprising young men in this country who want to go forward. To help such a young man, his wife will bring in some money and the relatives also might bring in something. What you say is that the closely-held company must be compelled to distribute the dividends. The Wanchoo Committee has said that this out-dated provision should go. To-day we have gone back on all the incentives which constitute some of the good things done by Mr. T. T. Krishnarachari. He excluded industrial companies from Section 104. Now you say "distribute the profits." For whose benefit? Is it to be done, so that the Income-Tax Department should get some tax from the individual shareholders? From any economic standpoint, there is no country to-day which has this type of law. In England, all business needs are fully

taken into account. In other words, if you want to plough back funds into business, nobody comes in the way. What you contemplate doing, is against the recommendations of the Wanchoo Committee. I am not pleading for the big houses; but for the thousands of small companies.

SHRI P. G. MAVALANKAR: Can you plough back as long as you wish?

SHRI N. A. PALKHIVALA: Yes, Sir. If you are generating wealth for the country of developing the economy of the country, then any sensible government would say "don't spend the money", because what goes to the shareholders, would be spent. Otherwise, it would be ploughed back. Here, we are being starved of funds. Company savings to-day constitute 5.1 per cent which is the lowest rate we have ever reached. There are no savings.

SHRI ERA SEZHIYAN: In that case, where there are persons having marginal rate of interest above 5.1 per cent., they may impose special rates and avoid taxes.

SHRI N. A. PALKHIVALA: You are right. Suppose you compel the shareholders to declare dividends. They will get the dividends and they will have to pay taxes. If you allow the present law to remain as it is, the company will do something productive with the moneys. I am asking you to choose one of the two alternatives. Are you more interested in getting tax from 5,000 individuals or in the development of the economy of this country? Do you want more employment opportunities ultimately and a wider industrial base, or some money from a small number of individuals? It is a question of priority. That is why the Wanchoo Committee had strongly recommended that the whole section should be deleted. If you don't delete, at least make some helpful changes.

MR. CHAIRMAN: We will consider it

SHRI VASANT SATHE: If no dividend is distributed, what will be the incentive to the shareholder?

SHRI N. A. PALKHIVALA: You leave it to him. He will decide it for himself. He will take the money he needs for his house-hold expenses and let the remaining portion be used to develop the company.

Now about Clause 27 where again there is a rather insidious change sought to be made. Here, you are defining an industrial company. The word 'mainly' is the present word and it should remain. The new word does not make any sense. Suppose the company does a little trading. Then it becomes, not an industrial company simply because, for one week in 5 years, it has done some trading. If you say "wholly", you are hitting the company very badly. Here again, a big company will always have legal advice but your law applies to so many places where competent legal advice is not easily available.

Now I will take up page 15, Clause 35 of the bill in regard to search and seizure dealt with under Section 131. I would first like to say a few words generally before I come to the detailed provisions. One is always at a disadvantage in trying to speak against such a provision because it is assumed that you are trying to defend tax evaders; but what is lost sight of, is that even criminal jurisprudence has to conform to certain norms, in a civilized society which it is not a police State. The proposed provisions are admirably calculated to fit in with the pattern of a police State.

In fact, they would be the hallmark by which you would know a police state.

First about our existing provisions. I submit that the income-tax department has got tremendous capacity and latent efficiency. I think the

potential is limitless, if only the right atmosphere were created in this country. We have men of outstanding ability there who, in fact, can administer the law in an admirable way if only the whole climate were different. But today an atmosphere has grown up where it is assumed that unless more and more powers are taken by Government and a bigger stick is used on citizens, you cannot have honesty. I object to that assumption. I say it is completely ill-founded. Parliament for the last 20 years has done practically nothing except giving more and more powers to the department. Everytime Parliament is asked to give still more powers. What is wrong with the existing powers? Are you aware that the existing powers are, to my knowledge, wider than those you have in any other democracy? I am not aware of a single democratic country elsewhere in the world where the tax department has been given wider powers than what we have already given to our department. Why are they not being used?

Let me tell you what happens even when the powers are there. I mean no disrespect to any individual. I started by saying that the income tax department is capable of very good things. But I am blaming the atmosphere, the environment, the climate, which we have built up in this country. Let me give you two examples.

Recently a case came up in the Bombay High Court; from this you can judge how the existing powers have been used, leave alone more powers being required. What happened in the case? A jeweller's house was raided. I can understand their taking away all the jewellery, stock in trade etc. I can understand their taking away the books of account. But they took away the medical reports and other reports. A man was unwell. They took away those reports. They took away the school reports of a boy who was mentally

handicapped. They took away some affectionate letters written by one member of the family to another. All this happened. We asked the department: please return these documents to us, the medical reports, the handicapped child's reports. They would not return them even things which had nothing to do with the business. Ultimately, we moved the High Court and the High Court wrote a strong judgment asking that all these things be given back to us.

There was another case which went to the High Court. A man's house was raided. Would you believe it— one rupee notes were taken away. There were about 300 one-rupee notes found. The man said: 'Leave these with me for my use'. The department refused. They were taken away. They took away the correspondence etc. They were never returned.

Today the position is that you have to go to the High Court to get these things released. I can understand their initialling the documents, making photostat copies and taking them. But the school child's reports were taken away. The small money which the man wanted for his use was taken away. These had nothing to do with the case. This is the position.

You might ask: If you are innocent, what have to worry about? But consider what it is for an honest man to be charged in a criminal court even if he is acquitted. Look at the mental strain he has to undergo. Look at the loss to his reputation. It is all right for people who are not affected to feel unconcerned about it.

Again the law is not only for today. Today we have a reasonably strong Government. But what will happen some years later? You will find one political party using the proposed provisions against another political party. These laws that you pass are not only for the life of this Parliament; they will remain for years. Think of the future of this democracy. In other countries, tax

laws are used to discredit politicians. Think of what is happening to the opposition political parties in Pakistan and in other parts of the world.

My point is that any good administration would find the existing provision absolutely ample. Let me know which is the provision which today is inadequate. After so many hours of deliberation, these laws were passed. Now the department is asking for more powers. What is happening in the meanwhile? The real blackmarketeers, the real offenders, the real people with millions of cash, are left untouched. Nothing happens to them. It is the small man who gets caught. And once he is caught, life can be absolutely hell for him. I have seen people turn nervous wrecks after such a traumatic experience. To contemplate that such things happen to innocent men is, I think, really dreadful.

My point is that when you have an administration which is not adequate even today to deal with the powers already given (personal letters have been taken away and not returned for months)—surely you do not need to give more powers.

What is happening is that a sense of discipline is not there. It should be there. If you had that sense of discipline, you would find that the existing powers are more than ample. This is no reflection on any one at all. I admit the high calibre of the department. But in the present atmosphere, in the present climate, which has, unfortunately, been created in this country, I think it would be absolutely disastrous to give them more powers.

Let me just tell you what I have in mind. Let me quote from page 15 of the Bill. Proceedings can be taken if there is a reason to suspect that certain things are likely to be concealed. A man has some assets. He may disclose them. If you think he is not likely to disclose them in the next assessment, proceedings can

be taken against him.

Look at the next page—Page 16.

“...which has not been, or would not be, disclosed.”

Today the law is that if there is some reason to believe that the man will not disclose cash, jewellery etc. by all means take action. But when you say that it is likely that he would not disclose, that you can say of anybody. A man is told: ‘We think you are not likely to disclose....’ What is the protection? What is the protection to the honest citizen in our society?

Now you propose to let the department act on ‘reason to suspect’. Formerly the words were ‘reason to believe’. Now it is ‘reason to suspect’. You can have a political mayhem, with this kind of provision. The life of individuals can be politically ruined, privately ruined. My submission is that these powers are so wide that there is no other democratic country where such powers are given. These powers are there in totalitarian countries, but not in democracies.

Take page 15. How can the officer say that the citizen will not produce the books after right time. In other words, the officer may act on the basis of a conjecture. ‘I do not like the face of this man; I think he will not produce the books. So I can enter his house’. This is what will happen.

Then see page 20. You have now a section sought to be inserted—section 133A. The ITO may walk into any premises. Ten officers can enter the premises—no condition, no authority, not even reason to suspect. You might ask: ‘What is the loss? If the man is honest, he will be vindicated’. consider public reputation; consider the damage to his reputation. He may be a doctor running a dispensary. These people from the income-tax department enter his premises. A crowd will collect there. They will know that he must be a tax evador. Nobody will know that there is this

new section 133A under which without any reason to suspect even, anybody’s house can be raided. What an extraordinary power! This law will be valid not only for 1973, but for 1983. Consider what the future political development in our country can be.

My point is that the present powers are completely and totally adequate. They are more than adequate. If I as an administrator cannot work under these powers, then something is wrong with me. I must be a completely inadequate administrator. The inadequacy is not in the law; it is inadequacy in administration.

MR. CHAIRMAN: How do you make it that the real inadequacy is in the administration? After all, our Government has gained experience on this point. They say that we would not be effectively able to arrest tax evasion unless these powers are given. In that view of the matter, I would like you to address us from two angles: (1) Don’t you think there are some deficiencies in the existing law itself which does not allow the mechanism to function very effectively?

Secondly, what could we do to streamline the administration so that the powers available to them can be effectively utilised for arresting the menace?

SHRI N. A. PALKHIVALA: So far as the first point is concerned, after having given several hours of thought to this problem, I am not able to conceive of a single case where under the existing law adequate action cannot be taken to seize black or white money and relevant documents. You mention any case to me and I will tell you under what provision of the existing law action can be taken. There is no inadequacy at all. You might as well simply say that any income—tax officer shall have the right to go anywhere. That will be the widest power. In civilised jurisprudence,

one must reconcile the legitimate rights of honest citizens with the overriding powers of the State, and I am trying to have a reconciliation which is in the existing law. What you are doing here is no reconciliation. You are loading the administration with such terrific powers that virtually you will make it into a police State.

Secondly, about the toning up of the administration, the unfortunate difficulty of the income-tax department today is that the law keeps on changing so much and the complexities are so great, and they keep on multiplying, that no time is left for good administration—If the officer has to learn new laws and rules and learn all the time, where has he got the time to take appropriate action? You must release his energies to take action. Every administration has a limited amount of energy and maximum number of man-hours, a fixed number of hours per man. Human energy is limited, and if officers energy has to be spent in trying to keep pace with the technicalities, the complexities and the changes in the law, it becomes difficult. Do you know how often the rules are changed? New rules made by the Central Board under the Income-tax Act come to you practically every month; sometimes three or four times in a month. These tremendous complexities are eating up the time and the energy of the income-tax department, which should be released for dealing with cases where the people are guilty of tax evasion.

MR. CHAIRMAN: We have not had the opportunity to discuss this threadbare; this is a very important aspect of this Bill. Therefore, I would also want the Committee Members to apply their mind fully to this aspect. But, speaking for myself, I would want you to tell them one thing. Do we understand you to say that notwithstanding this endeavour on the part of the Government to make the laws more and more stringent and give more and more powers to the

officers,—these will purely embellish the statute-books—tax evasion will continue to remain as it is? Is that virtually what you are saying?

SHRI N. A. PALKHIVALA: It will have the opposite, counter-productive effect. Suppose it was found that the authorities come and raid the premises, people will start putting back their black money in things like jewels which are easier to hide sell. Or they may send money abroad you will be virtually draining the wealth of this country. It will be counter-productive. The instinct for survival is there, and human nature will fight against such a law and fight against the Government to see that they are left with something. Man's basic will show him ways to get out of the difficulty. The people who are dishonest will be able to defeat the Government even then.

MR. CHAIRMAN: My question is, how much it will help.

SHRI N. A. PALKHIVALA: It will not help.

MR. CHAIRMAN: That means, what the Wanchoo Committee has been saying to make laws more deterrent with a view to arresting tax evasion—according to you is a misconceived recommendation.

SHRI N. A. PALKHIVALA: What the Wanchoo Committee said was different. They made a package recommendation. You cannot take one part of it without the other. What the Wanchoo Committee said was, you must reduce the tax rates at different levels, and have more stringent provisions. You will have to reduce the taxation first. I subscribe to that view. My own view is the same, namely, you cannot have stringent laws against evasions in isolation. If you reduce or decrease the tax all along the line, and at the same time have more stringent measures, it will be helpful.

MR. CHAIRMAN: Reduction of tax and adoption of stringent measures,

according to you, will go co-extensively to achieve the objective.

SHRI N. A. PALKHIVALA: Yes. There is always the price of circumvention. Every human being forms a judgement. We are not dealing with archangels. For them no laws are needed. You will have to deal with normal human beings. I am talking of the ordinary majority. They will say, when the tax is reduced to 50 per cent. It is better for me to pay 50 per cent instead of trying to evade it. In short, the price of circumvention in one case becomes much greater than in another.

In countries like the United Kingdom which are ethical, where standards of high integrity were known, after they increased the taxes steeply there was corruption galore, and that is why the present Government has reduced the tax. Now, the maximum you pay there is 75 per cent on earned income. In Germany they found the same thing. After Germany was defeated in the last war, the British and the US occupation authorities imposed income-tax to such an extent that there was rampant corruption throughout the country. There was a hue and cry. Dr. Erhard came and reduced it to 50-60 per cent and the country became normal and people no more talked of tax evasion. A man's instinct for survival will tell him that he should lay by something for his family. The Wanchoo Committee made the emphatic recommendation that you must reduce the level of taxation, and it is not right to take the Wanchoo Committee's other recommendations in isolation.

SHRI BHAGWAT JHA AZAD: We are considering the Bill on the basis of certain expert advice. There have been some major recommendations of the Company Law Department. They have gone into all the aspects and have come to the conclusion that the Government should consider whether the provisions under section 7 should not be brought in line with the position recommended in the report.

We had certain deficiencies in relation to the Wanchoo Committee report also. And now the Government has begun to set on these recommendations.

As the learned witness, as one of the experts, will realise, we have before us not only the report of the Wanchoo Committee but the recommendations of the Company Law Administration, and based on their experience, they have recommended to the Government certain things. They say that the Government should come out with some provisions. Now, the whole burden of the arguments of the learned witness is that when these laws are there, these laws will operate only against the honest citizen. But one example of going to the high court and winning the case—it may be because of an indiscretion of one officer—does not to prove the argument that Government will act like that officer. What we would like to know is whether we should go by the expert bodies' recommendation, like those of the Company Law Board or the Wanchoo Committee, or whether we should say, because of one case of raid, the whole thing will go. I would like to know the opinion of Mr. R. D. Shah. In that raid, how many cases were there where the Officers have acted indiscreetly? We want to know the details. Mr. Palkhivala mentioned about Police state and all that. There may be one or two cases where the Officers might have acted indiscreetly. But, that does not mean that all of them act like that. Let us know the details from the department.

SHRI R. D. SHAH: There has been some statistics given in this matter, by the Wanchoo Committee itself. May, I read that out?

SHRI BHAGWAT JHA AZAD: What is your idea? He has mentioned about one case. You also please tell us.

SHRI R. D. SHAH: On Page 16, of the Wanchoo Committee report, some statistics has been given. From 1964-65 to 1970-71, the number of searches

and seizures conducted were 1447, number of successful searches were 1418 and amount of assets seized Rs. 699 lakhs. We do not seem to have received many reports to the effect that the seizures were indiscriminate. There is one case, about which, the learned witness has pointed out. Whenever cases of indiscriminate seizures arise, we would come to know of such cases. There might have been a few mistakes. This is because, in a search, a large number of Officers go and probably some Officers may seize. Administratively, we would be able to take care of such cases.

MR. CHAIRMAN: This data just gives nothing. This data is extremely inadequate, from the point of black money. In 7 years, the searches conducted were 1447, number successful 1418 and the amount seized is only Rs. 699 lakhs. This is Rs. 6 crores.

SHRI BHAGWAT JHA AZAD: Can we say this is inadequate? According to the statistics given, we find that, majority of them were successful. But, Chairman's comment is that, this does not help in.....

MR. CHAIRMAN: This is not my comment. I am just saying that these statistics.... You must understand what I have said. I merely said that these statistics do not give us the exact position. We are not here to convince the witness. We have come here to listen to him. Whatever our view points are, we will be able to discuss among ourselves. So, Mr. Palkhivala, so far as the question by Mr. Bhagwat Jha Azad is concerned, do you mean to say the laws, by themselves, as they are made, are such that they would put honest citizens into hardship? I hope you will agree with me that tax evasion is a malaise and it has to be checked and checked effectively. So, from that angle, please tell us, as to what is it that needs to be done by way of making the law more stringent?

SHRI K. R. GANESH: I do not want to go into the details of this—whatever you have mentioned. If

there has been any excess on the part of the Officers of the Department, in taking things, which they should not have taken, remedial action will be taken. But, I propose to give a brief history of the case. This is not a simple case. I have been very closely questioned in Parliament in regard to this case I had to answer many questions in regard to this case. This is a case of coordination between the Foreign Exchange Regulations enforcing authority and the Income Tax Directorate. Members of Parliament were also excited about this. I have found myself defensive in this. This is not a simple case. This is a very serious case, so far as this Company...

SHRI N. A. PALKHIVALA: I would like to give a reply to the hon. Member who put the question. Let me clarify a few things. I think, we are talking at cross purposes. Things which are unconnected with each other are sought to be linked together, as if they mean the same thing. What are the different things? The question of seizure is completely separate and distinct from the question of punishment, which is to be meted out to a person, if he is found to have evaded tax. The question of punishment comes later. We are not on the question of punishment at all. At present, punishment is out of our discussion. We are talking of seizure. I have never suggested that under the existing law, seizure should not be there. It has to be there in a country where there is an enormous amount of tax evasion. My only question is this. What are the safeguards, in the interest of decency of public administration, which are needed? If you try to be more stringent, then, you would be creating a problem. If you read the Wanchoo Committee report closely, you will see what are the inadequacies which it has mentioned. Suppose, a person is under the jurisdiction of Commissioner A, and some of his assets are transferred to another place, which is under the jurisdiction of Commissioner B, then, Commissioner B

should have also the power to search and seize. Wanchoo Committee has never said that without reasonable belief, as to whether there is tax evasion or not, you must indiscriminately search and seize documents. If you read carefully Page 16, you will find that, what the Wanchoo Committee said was this. The agencies which are, today, not given powers should be given powers. We should take an overall view. A black marketer in Bombay should not be allowed to escape by syphoning away his funds, to Jodhpur. There should be simultaneous search in Bombay and Jodhpur. But nowhere has the Wanchoo Committee suggested that without the safeguard of a reasonable belief as to whether a person is guilty or not, you should still take action. Certainly, there should be searches and seizures. I am all for it.

We mix up different aspect of the amendment. There is one aspect of the amendment against which I have not said a word, which is that there must be powers given to different agencies in different regions, so that simultaneous action can be taken and a search can be extended, i.e. if it is carried out in Maharashtra, it can be done in Punjab also. Further, the Wanchoo Committee recommended that suppose a man is assessed in Delhi but his assets are in Orissa; in that case the Commissioner in Orissa who has no jurisdiction may still make a search. In other words, your agencies must be more adequate. I am, however, dealing now with a completely different concept. I am in agreement with the Wanchoo Committee that the agencies must be more adequate. Your proposed law says, "If the income-tax officer suspects that the person will conceal income." It is proposed to change the law, to enable the income-tax officer take action if he feels that next year, the income will not be disclosed.

SHRI BHAGWAT JHA AZAD: Is that the meaning of this? I want to understand whether the meaning of "likely" gives that impression.

SHRI N. A. PALKHIVALA: Let

me read the exact words, so that the hon. Members may follow me more clearly and not feel that I am talking in the air.

SHRI BHAGWAT JHA AZAD: You are not talking in the air. What you quote is there.

SHRI R. D. SHAH: It would need an explanation. I will explain the background of the use of this word. At present, in the existing Section i.e. 132(b) it is provided thus;

"any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account...."

This is the existing Section which takes into account the likeliness of certain sets of books not being produced. What happens is that the Income--Tax assessment comes up a year later. It is based on the accounts of the previous year. If you have known that a particular person has entered into a deal or is found in possession of wealth without any ostensible reason,—e.g. about a smuggler, you do not know; but you reasonably presume this in the context of the situation—you feel that this man is not likely to produce, next year, the books of account in regard to the wealth. Now, if you wait for a year, may be neither the books would be there, nor the wealth. It is in this context that this provision has been expanded. The provision was already existing in the original Section, as far as the books were concerned. This has now been extended to the case dealing with the question as to where the moneys are to found. It often happens. For example, we caught hold of a man at an airport and he had Rs. 2 lakhs in his pockets. Ordinarily, we would resume that he would not carry Rs. 2 lakhs; but we could do nothing about it; and he said that he had borrowed from a person 'A'. We have to cover situations like this. I am only explaining the background. It is only an extension of the existing provision in the law.

SHRI N. A. PALKHIVALA: I have

not come to any of the Clauses.

MR. CHAIRMAN: If it is with reference to Section 133A, the changes are entirely in consonance with the Wanchoo Committee's report at page 51.

SHRI N. A. PALKHIVALA: Before I come to clauses, I would say that the Wanchoo Committee had recommended that the agencies should be strengthened. That is sought to be done by the bill; and it should be done. Now I come to questions which arise in regard to safeguards for the citizens, unconnected with the adequacy of the agencies, i.e. page 15, Clause 35, Section 131. Look at the change which is sought to be made in regard to the "Power regarding discovery, production of evidence etc." That is the existing provision in Sec. 131. That says that you will have various powers. Now, the new provision which is sought to be put as (IA) under Section 131 is:

"If the Assistant Director of Inspection has reason to suspect that any income has been concealed..."

That is correct; and then it says:

"...or is likely to be concealed, by any person or class of persons, within his jurisdiction..."

Then he can exercise certain powers. The important point is that these decisions are made at the level of Assistant Director of Inspection. There is virtually no safeguard. My ITO would know about my integrity or the lack of it. But some other ITO takes action to whom these things are not known. He has to form a view about my integrity. Not that I have concealed income; but that it is "likely" that when the time comes for me to show the income, I am not likely to dispose it.

MR. CHAIRMAN: The Wanchoo Committee has said that in page 35. Please refer to 2.107. It reads thus:

"We have been told that at present the Assistant Directors of Inspection (Intelligence) are not able

to make proper investigations as they lack statutory powers of compelling attendance, production of accounts and documents, etc. We can well visualize the occasions when it becomes necessary for an Income-tax Officer (Intelligence) to do so. We, therefore, recommend that the Income-Tax Officers (Intelligence) should be given the requisite powers under sections 131 and 133A of Income-tax Act, 1961 to enable them to work up cases effectively. This power should be available to them in respect of all the cases falling within the jurisdiction of the Commissioner of Income-tax under whom they are posted, and not only in respect of assesseees, whose cases are specifically allotted to them for assessment."

SHRI N. A. PALKHIVALA: Probably, I have not made myself clear. I am in agreement with what you have read. But I am on a different point.

MR. CHAIRMAN: Are you only on the question of extending the jurisdiction?

SHRI N. A. PALKHIVALA: But it should be subject to safeguards. Suppose you give power to a Punjab officer to search any person who comes to Punjab.

That is perfectly all right. The Wanchoo Committee said it should be done. But what is proposed is that he can take action not only when he has reason to suspect that income has been concealed but where he thinks that income likely to be concealed.

SHRI VASANT SATHE: Prospective.

SHRI N. A. PALKHIVALA: That is what I am talking of.

SHRI VASANT SATHE: Suspicion is of course wider than belief. If the ITO or the Commissioner has reason to suspect, it would not be just out of nothing. You gave the instance of the police state in which an officer may wake up in his dreams and say: 'I do

not like his face. Therefore, I will make a search of his house.' I do not think even 'reason to suspect' has that arbitrariness. It may be that based on past experience of concealment done by a particular assessee, the Commissioner may have a reason to suspect. It is so strong that he must have some evidence before him that if he does not act, he will not be able to do anything against potential mischief. If he has reason to suspect that this man is likely to conceal his income by concealing moneys, not only books etc. in his hands and some other assets, why do you think this power will be misused and therefore should not be used against potential mischief?

MR. CHAIRMAN: You may answer the question. After all, we have to come to a fair evaluation on this point. How does this section which is contemplated do anything more than what is recommended by the Wanchoo Committee? The Committee speaks of jurisdiction. That is what is being done here. Power is being given to inspect, enforce attendance and compel production of documents. This is purely the extent of jurisdiction.

SHRI N. A. PALKHIVALA: I have not made that point clear.

SHRI VASANT SATHE: Why cannot prospective or potential mischief be dealt with?

SHRI N. A. PALKHIVALA: There are two aspects to this new sub-section (IA). I am not criticising one aspect; I am only criticising the other aspect. The aspect I am not criticising is what the Wanchoo Committee recommended in the paragraph you read out, namely, the extension of territorial jurisdiction to the whole of India so that any one man in India can have this power of search and seizure used against him anywhere throughout the country. This new sub-section does that. I think that is correct. I am in favour of it.

I am on the other point; in what circumstances can this territorial jurisdiction be exercised. I say here: please have words which give some kind of safeguard. The way the provision runs, it is extremely wide and is likely to be abused. In any case where the ITO thinks it fit and proper, he may enter any house any time and so on. You trust him to do the right thing. But my point is: the whole function of law is that just as you cannot trust citizens, you cannot trust the administration either. Human nature is fallible. People do not become archangels when they get into power. It is the same human nature, the same Indian nature which will victimise the opponent when it gets into power. What I am saying is not my imagination; it is happening in at least half the countries of the world.

What is happening across the border? What is happening to the opponents of the ruling regime in Pakistan? Do you not know that the houses of opposition leaders are raided and they are clapped in jail etc.?

You are not legislating for only to day. I know with my friend, Shri R. D. Shah, as Chairman he is not likely to abuse the power. But you are legislating for the future also. Can you legislate in these terms on the assumption that it will not be abused in future, that however wide the powers they will be reasonably exercised? I submit no such assumption can be made. It is contrary to all teachings of history.

My submission is: by all means give the power throughout India to everybody as the Wanchoo Committee has said, but please give it with some safeguards. Make it clear that you need more than bare suspicion. Under the Bill bare suspicion is enough in all these cases.

I may give an example of what happens. A chief accountant was going from Calcutta to U.K. At the London airport he was searched. Not a thing was found. But look at the humilia-

tion he had to undergo in the presence of so many people. I can give his name later to Mr. Shah. Can you take merely a legalistic view of these things? Look at the humiliation the man had to suffer. It is all right for people who have not gone through this experience, but once it comes to you, you will realise what it is.

SHRI S. M. BANERJEE: What safeguards would you want?

SHRI N. A. PALKHIVALA: For example the word 'suspect' should be replaced by 'believe'. At least the man must have reason to believe. In other words, more suspicion cannot be the basis for such action.

SHRI BHAGWAT JHA AZAD: If he has reason to believe and even then if a search is carried out and it is found that out of 10 cases, in 8 nothing was found and in only two or three something was found, what is the position? You mentioned the case of a chief accountant, that he was searched and nothing was found. That is possible. But what should we do in such cases? In the case of 8, it is all right, but in the case of 2, it is not.

SHRI N. A. PALKHIVALA: The issue is not about the exercise of power; the point at issue is the terms in which you are conferring the power.

SHRI P. G. MAVALANKAR: I want to raise two issues which are very important. The witness and we are agreed that the powers for search and seizure vested in the department should be effective and extensive enough to punish mischief-makers. Even the Law Commission have recommended stricter measures. As far as I could gather, witness is not against enforcement of the strongest measures. The point is: by making these powers more extensive, are we going to achieve what the Wanchoo Committee and the Law Committee want us to achieve? Mr. Chairman gave the statistics a little while ago; out of 1447 searches, 1418 were successful, but the amount involved was only Rs. 7 crores. My guess is that these raids and searches were made only in such cases where the amount involved

was not big. In other words, even with the existing law, which is quite harsh, you have not been able to catch hold of the evil-doers... So merely by adding more penal measures, how are you going to get a guarantee that the evil-doers will be brought to book?

MR. CHAIRMAN: This is an aspect which has to be examined by us on the basis of facts. We will do it. Now we are listening to the witness viewpoint.

SHRI P. G. MAVALANKAR: I want to make a point which is more fundamental. He has been talking of all those things in the general ambit of the income-tax law and related Acts. I would like him, in view of his competence in constitutional law, to tell us whether the provisions now proposed also conflict with the citizens' fundamental rights to property, privacy etc.

MR. CHAIRMAN: We will have sufficient time to discuss all that. So far as the witness is concerned, we are on the clauses to hear his view points. We want to listen to him.

SHRI P. G. MAVALANKAR: The learned witness has made a fairly long, detailed, impassioned and brilliant plea against the proposed provision. In that context, he has suggested that if Parliament adopts these measures, we might commit a mistake. That is with regard to the smaller compass of the income-tax law. I want to ask him, in view of his knowledge of the law and the Constitution, whether he considers or not considers that this provision also means violation of the citizens' fundamental right to liberty and it is an invasion on his privacy which is also involved?

MR. CHAIRMAN: Mr. Mavalankar's question, so far as the witness is concerned, is this: he wants to find out whether that is likely to be struck down as unconstitutional.

SHRI S. M. BANERJEE: I would like to know from the learned witness

whether the right to accumulate money or the right to evade is also a fundamental right.

SHRI N. A. PALKHIVALA: First, petitions are already pending in the Supreme Court, in the Assam high court, the Bombay high court and probably in some other high courts also, challenging the validity of the existing provisions mentioned by Shri Mavalankar. It is a matter which is *sub-judice*. In some of the democratic countries, I have not the slightest doubt that such provision would be struck down as violating the right to privacy. There are two things: one is the citizen's right to privacy and the other is, the using of these power for a political purpose. Within my knowledge, in India, I have never seen instances where such powers have been used for political purposes, and a Minister like Shri Chavan will never do it. But you are laying down a law which can become a potent instrument.

MR. CHAIRMAN: You are again on the question of propriety. On the legality, it is *sub-judice*. But you can give your opinion.

SHRI N. A. PALKHIVALA: My own opinion is, it goes to an extent where it is unconstitutional. To say that it is "likely" or it is "suspected" is against the Constitution.

Regarding Shri Banerjee's question the hon. Member will not take me as saying that there is a right to evade or a right accumulate income, but one has the right to privacy and the right to keep his dignity and self-respects as a citizen. A man can be charged with dacoity, but you will see that there must be some safeguards before a man is so charged, because you are charging him with an offence punishable with seven years' imprisonment. I am not saying 'Do not give those powers.' But I am saying that you must give those powers couched in such words that the citizen feels that he has some security. Otherwise you are not giving him the constitutional right.

SHRI BHAGWAT JHA AZAD: What is your alternative?

SHRI N. A. PALKHIVALA: It must be on behalf; it should not be on suspicion. In the Income-tax Act, they have always used the word "belief". Judges have laid down that "belief" must be the belief of the reasonable man. The difference is this. The law may permit me to arrest a man because I have a suspicion. But, if the law says "belief", I must act as a reasonable man and not arbitrarily.

Secondly, when you talk of the future also, you might specify that from the past records of the man, it seems likely that he would conceal his income etc. that would make sense. Suppose there is a completely honest man and there is nothing against him—

MR. CHAIRMAN: Would you give an alternative draft?

SHRI N. A. PALKHIVALA: I shall.

SHRI BHAGWAT JHA AZAD: Is he taking a strong objection to the word "likely"? If that is the meaning, I do not like that word. But Mr. Shah said that this contingency might be met by saying "it is feared" or something like that. So, both these things could be considered.

MR. CHAIRMAN: Let us consider it.

SHRI N. A. PALKHIVALA: I shall next deal with the group of sections in detail. Page 21, clause 39. Section 139 deals with audit. What is said is—I am referring to clause(1B) on page 22—

"For the purposes of sub-section (1-A) the report shall be in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.";

There again, the same argument will apply, as applied to the keeping of the books.

MR. CHAIRMAN: Not at all. It is going to be an objective audit; the

man is going to be questioned and he will have to give answers. He must say yes or no. If moneys are to be paid, audit should take some responsibility.

SHRI N. A. PALKHIVALA: Yes, What you have in mind is on the type of what is done in regard to the company audit.

MR. CHAIRMAN: But the certificate is not going to be left as vague as it is under the Companies Act. It will be an objective audit and an objective certificate. Now, any suggestion about the limits?

SHRI N. A. PALKHIVALA: I think they are far too low.

MR. CHAIRMAN: Rs. 10 lakhs?

SHRI N. A. PALKHIVALA: The turnover should be at least Rs. 10 lakhs and the income should be Rs. 1 lakh.

MR. CHAIRMAN: Rs. 50,000 is a substantial income, but what about the turnover?

SHRI N. A. PALKHIVALA: If you put in the figure of 50,000 you will find that people who are showing 50,000 will show 40,000 or 45,000 and so on. You go by the income of the last three years. There are a large number of people on the border-line. They will see to it that they do not have more professional income. Let us be realistic. What is the meaning of this? Take a doctor. Either he is honest or is dishonest. Suppose he is dishonest, which auditor on earth can find it out?

MR. CHAIRMAN: It is just sharing the responsibility at the cost of the assessee.

SHRI N. A. PALKHIVALA: It is not as if audit is going to solve all the problems. What goes into the book is really what is going to be the basis of audit.

MR. CHAIRMAN: That is outside the scope of the audit.

SHRI N. A. PALKHIVALA: What I am saying is, you have a very large

number of people who are on the border-line; they can easily go on the lower side of the border-line rather than on the higher side to get rid of the nuisance of the audit in the sense that a voucher has to be maintained for everything. There are very busy professional men for whom it is a mighty nuisance to keep a record; say, some doctors. At the fag-end of the day, he might find it very difficult.

MR. CHAIRMAN: He has other people to do it for him.

SHRI N. A. PALKHIVALA: When he goes on a visit, he will have to carry in his mind what are the expenses. I am only saying that you must keep the figure at such a level that a large number of people do not have an inducement to show a lower income.

MR. CHAIRMAN: We are seeing it from the angle of administrative convenience of the assessees. We do not want very many small assessees. The turn over may be Rs. 5 lakhs or it may be Rs. 6 lakhs, and the income may be Rs. 20,000. This will happen especially in the case of Commission agencies, where the turn over is large. There are cases where the turn overs are comparatively large and the incomes are quite high. Some criteria have to be built up. There should be some standards. The tendency is always going to be there. Even if you keep it at Rs. 5 lakhs.....

SHRI N. A. PALKHIVALA: This is a new provision which you are introducing for the first time

SHRI VASANT SATHE: In this context, does Mr. Palkhivala not think—if we want that auditing should be really effective—that there should be some changes in the duties and powers of auditors so that they are able to go behind the books. For example, in the case of a manufacturing concern, they should be able to go into matters as what is the actual production and not what is shown in the account books.

MR. CHAIRMAN: Mr. Palkhivala is against powers being given to the Income Tax Officers, even.

SHRI VASANT SATHE: Are the powers and duties of the auditors adequate enough really to find out the income of any person? That is what I want to know from you. The auditors give a certificate that everything appears to be correct on the basis of an examination of the balance sheet and the books of accounts. Whether the auditors say, you take it for granted. Don't you think that there should be some change in the responsibilities and powers of auditors so that they may be able to know the real state of affairs?

SHRI N. A. PALKHIVALA: The point is this. Auditors are in a very unenviable position. He has certain responsibilities. He has also the power to ask questions. It is only to the extent to which correct information is given, that he can give an audit certificate. Under the present law, the auditor has the power to go into matters like production etc., and find out whether what is being stated is supported by facts. It is open to him to say this under the existing law.

Then, I come to Page 24—Clauses 42 and 43, which seek to amend Sections 140A and 141A. Today, the position is that, the assessee files a return. He has to make a self-assessment. If the tax payable, reduced by any tax already paid exceeds Rs. 500, he has to pay the tax within 30 days of the filing of the return. The amending provision says that he has to pay the tax before he files the return and failing which, he is penalised.

MR. CHAIRMAN: What time should be allowed?

SHRI N. A. PALKHIVALA: What is the point of this change? You are giving him four months' time for filing the return. Most people file the return on the last day. Then, they have to pay the tax and for getting a chalan from the treasury or the bank, some more time will be taken. There is no need for any change.

Then, Clause 43, seeks to amend Section 141A. This is the one Clause on which the note on the Clause is misleading. If you look at the note on Clause 43, it says:

"This seeks to amend Section 141A of the Act so as to provide that provisional assessment to grant refund shall be made within six months from the date of filing of the return."

This is in the case of those people who have paid more tax than what is due. Now, the existing law says that if within six months, the ITO does not complete the assessment, he will, then, make a provisional assessment. The law is sought to be changed. In other words, the existing law is what the note on this Clause—Clause 43—says. But, the new law wants to change this. "If the Income Tax Officer is of the opinion that the regular assessment of the assessee is not likely to be made within six months from the date of furnishing of the return, he shall make in a summary manner within the said six months a provisional assessment." On the filing of the return, if the Income Tax Officer thinks that within six months, he will not be able to make the assessment, he will make a provisional assessment. After six months, the proposed section will not operate. Whereas, if you look at the existing section, it says that in cases where regular assessment is not made within six months, the Income Tax Officer shall proceed to make a provisional assessment. What are you changing it for? You do not need any change at all.

Then, I come to page 25, Clause 45, which seeks to introduce new Sections 144A & B. Under certain circumstances the assessment will be made by the Inspecting Assistant Commissioner. The appeal will lie to the Commissioner and from the Commissioner to the Tribunal. When the assessee is not satisfied by the assessment made by the Income Tax Officer, most of them claim the right of appeal to the Assistant Commissioner and the Tribunal. The appeal to the Commis-

sioner would not be any better than an appeal to the Appellate Assistant Commissioner.

MR. CHAIRMAN: What is the rationale behind your suggestion?

SHRI N. A. PALKHIVALA: The rationale behind my suggestion is this. The Income-Tax Officer should only inform the assessee that this is what he proposes to do and ask him as to what are his objections.

MR. CHAIRMAN: Do you have any objection in regard to appeals to the Inspecting Assistant Commissioner?

SHRI N. A. PALKHIVALA: I suggest that the Inspecting Assistant Commissioner should give instructions, as he is bound to under the law, to the Income Tax Officer who should make the assessment. A change in the procedure does not seem to be called for. I am not having any strong views on this matter particularly. But, I do not see any justification for a change in the appellate procedure. This procedure should remain unchanged. Then, you are asking the assessee to file an appeal to the Deputy Commissioner (Assessment) within 7 days. My point is that, it should be made clear, that this is optional. It should be made clear that the procedure provided here, of his doing an appeal with 7 days, is optional. He may choose to say 'I will exercise my normal right of appeal.' The normal time for appeal is one month. You have reduced it to seven days. There should be more time for the appeal.

MR. CHAIRMAN: What should be the time limit?

SHRI N. A. PALKHIVALA: One month's time, with the powers to the Income Tax officer to extend the time on sufficient causes. The power to extend must be there. Here, it says "In no event not exceeding 15 days." Even if there is sickness in the family, should there be no extension?"

MR. CHAIRMAN: We will take care of it.

SHRI N. A. PALKHIVALA: I take it that the intention is that this would be on exclusive procedure and not on optional one.

MR. CHAIRMAN: It would not be optional.

SHRI N. A. PALKHIVALA: If so, all the safeguards for appeal should be there. Here, there is no safeguard. This is what I am objecting to.

MR. CHAIRMAN: It cannot be left to the whims and fancies of the particular assessees.

SHRI N. A. PALKHIVALA: Then you must provide all the normal safeguards.

MR. CHAIRMAN: What you say is that there should be a provision saying that the appeal should go to the appellate Commissioner and not Commissioners.

SHRI N. A. PALKHIVALA: You have fixed a time-limit. Suppose an assessee gets a draft order from the Income Tax Officer; and he is told that he should file an objection within 7 days, and he fails to do so. Suppose the I.A.C. confirms the ITO's view. In appeal, the assessee may be told, "You never raised any objection with the Income Tax Officer". You should, therefore, give time. Reasonable time should be given, along with power of Condonation of delay to the Inspecting Assistant Commissioner.

MR. CHAIRMAN: That safeguard is given.

SHRI N. A. PALKHIVALA: If that is given, it cannot work adversely against the citizen.

Then at page 27, Clause 49, any income earned after the business is discontinued, is sought to be taxed. I have no objection, but you should allow the expenditure incurred also. The Department says, "we will eat the cake and have it too."

MR. CHAIRMAN: We will consider your point.

SHRI N. A. ALKHIWALA: I would request you kindly to read Clause 50. Under it, even if a private company does not go into liquidation, there is a liability on the directors. It is provided that presumption will be against the directors. Honest people will no longer be associated with private companies. You will have a lower standard on the board of directors. Whom are you helping? This is counter-productive. You are leaving the field open to the dishonest. Does it help the cause we are fighting for? Our cause is to curb tax evasion. Are you making that possible, by making it impossible for the honest man to be a director? You say that he is presumed to be guilty. The burden is on him to prove himself innocent. The honest man might say, "I'd better not be a director." To-day; the law is that unless the company goes into liquidation, you cannot hold the director personally responsible.

MR. CHAIRMAN: You are right.

SHRI N. A. PALKHIVALA: Under the Bill he will be personally liable, even when the company continues to function.

SHRI ERA SEZHIYAN: There is a protection there, when it says, "...unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

SHRI N. A. PALKHIVALA: The burden is on him. In other words, the presumption of the law is that he is guilty.

MR. CHAIRMAN: There are circumstances in which tax collection has been put to serious jeopardy.

SHRI N. A. PALKHIVALA: I do not agree that you should hold any director liable personally on the presumption that he is guilty. You are raising a presumption against every director, of guilt. It is contrary to all well-recognized principles of jurisprudence. True it is a rebuttable presumption. But I am asking the hon.

Members to consider whether it would not be conducive to the creation of a situation wherein honest persons would become disinterested in becoming directors.

SHRI ERA SEZHIYAN: What will be your suggestion?

SHRI N. A. PALKHIVALA: You may make even the directors personally liable; but don't presume guilt against them, especially when the companies are going on. You may make your enquiries whether a director is guilty; but leave the field open for honest people.

SHRI ERA SEZHIYAN: The provisions in regard to liquidation will not be attracted.

SHRI VASANT SATHE: He says it is against the basic principles of jurisprudence and natural justice

MR. CHAIRMAN: It will be a great disincentive according to Mr. Palkhivala. They will be deemed to have been guilty.

SHRI N. A. PALKHIVALA: Next, we come to Section 180A. It is about annuity for actors, etc. I have not checked what the Wanchoo Committee has said. This particular Section assumes that but for this section, the annuities would be taxable,

MR. CHAIRMAN: It is there. It was experimented that in some cases, it was working. We thought of giving some statutory recognition.

SHRI N. A. PALKHIVALA: I will give an example. Suppose you had said in the Section that the period for which annuity will be paid, will not go beyond 10 years; and suppose an assessee is given on annuity for 11 years. You cannot tax him; and your Section is meaningless.

MR. CHAIRMAN: That is the law to-day. We want some regulation to be brought into it.

SHRI N. A. PALKHIVALA: We want to give this concession of annuities. We do not want people to forego that facility. But we cannot have this

new rule of thumb. No other country has done it to my knowledge. One cinema artiste may go on till the age of 37; and another till 67. How can you fix a time-limit for the first annuity and the last? The man may be dead before that.

MR. CHAIRMAN: Can the man himself decide?

SHRI N. A. PALKHIVALA: He knows what is best for him. The Government cannot tell him. Leave him alone. This again is counter-productive. The film artistes, who used to take cash, now take annuities honestly.

MR. CHAIRMAN: Members of the other delegations, I mean those from the industry, have not objected to it at all.

SHRI N. A. PALKHIVALA: They would not be aware as to what is the correct position in the law.

The point is that you do not need this new section at all. If your section remains, I have not the slightest doubt that I could succeed in any court in proving that even if an annuity does not comply with the Section, I cannot be taxed, except when the annuity accrues to me. How can you tax me? The point is that the man has not received anything. Wherefrom will he pay the tax? Suppose I do a piece of work. I do not want payment immediately, and I maintain my accounts on cash basis. Until I get the money, how can I be taxed? It is clearly unconstitutional to compel me to pay the tax. The income has not accrued to me. It has not been received. Still you say 'I want to tax you'. Is it not left to the individuals to decide when they will receive their fees? There must be some limit to state interference. There is no question of any guidance. What happens all over the world? We are not the only country facing the problem. When the income comes to the assessee, by all means he has to pay the tax. He can decide for himself when the income will come to him. When it comes, he has to pay and he will pay. Before that, where does he get the money to pay? You are making life impossible.

This is what I mean by counter-productive. This is how people become dishonest.

When you say a 'film artiste', by definition he must have a large income; otherwise, he would not be an artiste, he would be just an ordinary actor. You want to check black money. That is quite right. He should not deal in black money. We want everything to be above board. But he cannot be compelled to take a certain type of policy only. In fact, each of the well-known artistes has got several policies giving him secure incomes of Rs. 1 lakh—2 lakhs. He pays tax honestly. What is wrong with that?

Therefore, your interference would be counter-productive. It would again induce people to go in for black money. After all, the annuity policy is with your own LIC. The money is with Government. The policies are taken with the LIC. All the money goes into the public funds. Everytime the annuity is paid, the man will pay tax. What is wrong with the present system?

MR. CHAIRMAN: It is now 12.40. We have a small delegation waiting to give evidence. They may not take more than 20 minutes. Shri Palkhivala has spoken so elaborately and clearly. We do not want to hustle him. His evidence has been extremely invaluable to the Committee. We have undertaken an extremely onerous task. Therefore, I would request you to make an evaluation and tell me how much more time would you need. I know you are also a busy person.

SHRI N. A. PALKHIVALA: I think I would require an hour more, say between 9 and 10 tomorrow morning.

MR. CHAIRMAN: In that case, we would like to hear you tomorrow at 9 a. m.

On behalf of myself and my colleagues, I thank you.

SHRI N. A. PALKHIVALA: I am most grateful to the hon. members for their patience and courtesy.

(The witnesses then withdrew.)

II. Chamber of Commerce, Sangli.

Spokesmen:

Shri A. G. Lale

Shri R. B. Shah

Shri K. B. Kayastha and

Shri M. N. Nawandhar.

MR. CHAIRMAN: I would like, before you start, to draw your attention to Direction 58 of the Directions by the Speaker under which it shall be made clear to the witnesses who appeal before the Committee that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of it is to be treated as confidential. Even in that case such evidence as may be desired to be confidential is liable to be made available to the Members of Parliament.

SHRI A. G. LALE: Yes.

Respected Chairman and members of the Select Committee, I am the President of the Chamber of Commerce Sangli, appearing before you with my colleagues to represent the Chamber's views on the provisions of this Bill. Since I am not able to speak well in English, if there are any errors in my speaking, I would request you to condone them.

The main objective of the Bill is to unearth black money and prevent its proliferation; secondly, to avoid tax evasion and thirdly, prevent the avoidance of taxes through various devices like the formation of trusts and diversion of income or wealth to the members of the family. Fourth, to reduce tax arrears and to ensure that tax arrears do not accumulate in the future; fifth, to rationalise the exemption and deduction procedure; sixthly, to streamline the administrative set-up and make it functionally efficient.

In the view of the Chamber, the main reasons for these are as under: firstly, unbearably high rate of taxation; secondly, a heavy restriction on

the free flow of trade due to controls, permits and the licensing system; thirdly, donations to political parties; fourthly, wide discretionary powers to the authorities which create malpractices and corruption; fifthly, so many restrictions are imposed by the taxation laws such as the wealth-tax and finally, the low limits of the basic exemptions from tax.

Instead of acting upon these basic recommendations, the Government has chosen to implement only a few recommendations suggested by the Direct Taxes Inquiry Committee, that is, higher penalties and more power to the authorities. All those recommendations are interlinked and dependent upon one another. For example, if anybody is found to evade taxes, then he should be punished severely. Thus, in all cases, while adopting the stricter provisions of punishment, the main assumption of reducing the rates of taxes must be accepted by the Government, but this is not done by the Government. Hence, we request the Select Committee to see the need for a careful consideration to be given regarding the basic recommendations made by the Direct Taxes Enquiry Committee before finalising your report on the Bill.

The most prominent cause of this evil is the unbearable high rates of the tax structure. Taking into consideration the human psychology, nobody is prepared to pay 97.75 per cent as tax and take only 2.25 per cent which remains. There is also the other measure of direct taxes, such as wealth-tax which takes away the balance and all these create a liability on the capital of the tax-payer. While we welcome some provisions regarding penalties linked with tax settlement cases, and litigation expenses, our Chamber would like to make the following points regarding the clauses of the Bill.

Regarding clause 6, which amends section 13, so far as the trusts are concerned, our Chamber notes that the

intention of the Government is to place restrictions upon those bodies due to the reason that the capital of the trust is utilised for business purposes. To stop those practices, Government seek to impose restrictions. Further, the Government seek to take powers to see that the investments of trust should be made in securities of Government-controlled companies or in the Scheduled Banks and only then the tax exemption would be given. Clause 6 does impose such restrictions, and unidentified contributions are also heavily taxed. The Chamber suggests that exemptions should be given in respect of box collections, charity show collections and *bhandara* collections.

Regarding clause 12 (section 44B), taking into consideration the high prices of commodities now prevailing, the provision should not be linked with the turnover but linked with the income exceeding Rs. 50,000. Secondly, if the profits are capable of ascertainment, the conditions should be waved. The mandatory provision for compulsory maintenance of books of accounts when the profits exceed Rs. 25,000 or the turnover exceeds Rs. 2,50,000 is not advisable.

Then, the amendment to section 64 of the Income-tax Act makes a discrimination in partnership. The clubbing of the income of the spouse is not justified, other than in the profession.

MR. CHAIRMAN: Shall we also make it applicable to the professional firms? You want the professional firms to be brought into this category or the business firms to be brought into it.

SHRI A. G. LALE: There is a distinction.

MR. CHAIRMAN: I know that. But do you want this to be applied to the professional firms also?

SHRI A. G. LALE: I want business firms to be included.

Then, regarding remuneration or salary given to the spouse, in genuine cases it should be allowed. For example, in the case of a medical shop, when the wife of the owner is a degree-holder, the salary paid to the wife should be admitted. In any case, the proliferation of black money should be avoided.

MR. CHAIRMAN: The whole Bill must be negative, according to you. What is the number of your members in the Chambers?

SHRI A. G. LALE: About 200.

About clause 15 (new section 69-C and 69-D), the unexplained expenditure is desired to be added back in the income. This provision will adversely affect the small assesseees.

MR. CHAIRMAN: What about the big ones? We are worried about the big ones. How will it affect the smaller ones, and how small?

SHRI A. G. LALE: Those paying Rs. 50 or Rs. 100 should not be included.

MR. CHAIRMAN: Do you have such rates being paid in your region?

SHRI A. G. LALE: Small assesseees.

MR. CHAIRMAN: Your memorandum says that the unexplained expenditure, if added back in the income, will adversely affect the small assesseees. If it is above Rs. 50,000, it can be made with scrutiny?

SHRI A. G. LALE: For example—

MR. CHAIRMAN: You have given your memorandum. Apart from the memorandum, if you want to say anything, please say.

SHRI R. B. SHAH: Respected Chairman and Members of the Select Committee. I would like to draw your attention to the amendments proposed by the Government and which are before you. The intention of bringing forward these amendments is not to create black money or to encourage the accumulation of black money or to affect the economy of the country. But, the provisions of the Bill seem to be contradictory to the purposes for which this Bill has been brought forward.

As per the present tax procedure, the individuality of the tax-payers

remains unaffected, though there is individual taxation procedure and money also remains white but due to the new amendment it abolishes the individuality of the taxpayer, and it will encourage to proliferation of the black money.

MR. CHAIRMAN: Mr. Shah, I thank you for the evidence that you have given us to-day, in addition to the points mentioned in your memorandum. Thank you very much.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973.

Saturday, the 13th October, 1973 from 09.00 to 12.30 hours in the Committee
Room, Sachivalaya, Bombay.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri Tridib Chaudhuri
7. Shri S. R. Damani
8. Shri K. R. Ganesh
9. Shri Mani Ram Godara
10. Shrimati Sheila Kaul
11. Shri Maharaj Singh
12. Shri P. G. Mavalankar
13. Shri H. M. Patel
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri Bhola Raut
16. Shri Vasant Sathe
17. Shri Era Sezhiyan
18. Shri Satyendra Narayan Sinha
19. Shri R. V. Swaminathan
20. Shri V. Tulsiram
21. Shri Y. B. Chavan

LEGISLATIVE COUNSEL

Shri S. Ramaiah, Deputy Legislative Counsel.

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)

1. Shri R. D. Shah, Chairman, CBDT.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri K. S. Bhalla—*Under Secretary.*

WITNESSES EXAMINED

- I.
1. Shri N. A. Palkhivala, Advocate, Supreme Court, Bombay.
 2. Shri S. P. Mehta
 3. Shri B. A. Palkhiwala
 4. Shri S. R. Vakil
 5. Miss S. Bharucha

II. *Archbishop's House, Bombay.*

Spokesmen:

1. Rev. Father A. Caordeiro, Leader.
2. Rev. Father A. Martins.
3. Rev. Father D. D'Monte, S.J.
4. Shri C.W. Thomas
5. Shri P. S. Rao.

III. *Trustees of the Parsi Panchayat Funds and Properties, Bombay.*

Spokesmen:

1. Shri P. P. Khambatta, Advocate, Leader.
2. Shri B. K. Boman-Behram, Advocate.
3. Shri G. P. Antia, Jt. Secretary.
4. Shri H. B. Kapadia, Jt. Secretary.
5. Shri M. P. Bambji, Chief Acctt.

IV. *Maharashtra Chamber of Commerce, Bombay.***Spokesmen:**

1. Shri M. L. Apte, President.
2. Shri N. N. Pai, Director and General Manager, Batliboi & Co. Ltd.
3. Shri R. G. Mohadikar, Secretary.
4. Shri S. B. Gandhi
5. Shri V. R. Gokhale, Asstt. Secretary.

- I.
1. Shri N. A. Palkhivala, Advocate, Supreme Court, Bombay.
 2. Shri S. P. Mehta
 3. Shri B. A. Palkhivala
 4. Shri S. R. Vakil
 5. Miss S. Bharucha

MR. CHAIRMAN: Mr. Palkhivala, you may proceed.

SHRI N. A. PALKHIVALA: May I draw attention to p. 28, clause 52 which deals with s. 185? It provides that a firm shall not be regarded as a genuine firm if any of the partners is a *benamidar* for any other person. My point is that though it is perfectly right and proper that you refuse to grant registration to a firm where a partner is an undisclosed *benamidar* for another, if he is a disclosed *benamidar*, if it is openly known to everybody that he acts for Y, this kind of difficulty should not be created in the way of the firm. The income tax department knows that he acts for somebody else and the partners know that he acts for somebody else. Nobody is deceived. Then what is the point in saying that the firm will be refused registration?

MR. CHAIRMAN: The income will be taxed in the hands of the real owner.

SHRI N. A. PALKHIVALA: Sometimes it is done for a variety of reasons. For example, there may be a situation where due to the necessities of the case, somebody may be in Delhi, so many documents are required to be signed and a partner may

say 'In my place, you are there'; everybody knows that the man in Maharashtra is acting for somebody else in Delhi.

MR. CHAIRMAN: We will consider it.

SHRI Y. B. CHAVAN: What is your suggestion?

SHRI N. A. PALKHIVALA: My suggestion is: wherever a partner is a *benamidar* for anyone else and he is an undisclosed *benamidar*.

MR. CHAIRMAN: That is the law as it stands.

SHRI N. A. PALKHIVALA: The point is that it seems to be completely meaningless and needlessly harsh to do this when everybody including the income-tax department knows that I am acting for somebody else.

MR. CHAIRMAN: You do not want the explanation to be added.

SHRI N. A. PALKHIVALA: The present law is perfectly all right. It takes care of genuine cases and ensures that the right person is always taxed so that no tax is lost.

The next one is on p. 29, clause 57. I do not know whether it is a drafting error or whether it has been advised-

ly put in. This concerns refund to be given. The right to refund is qualified. Please see the second line, line 42, 'as a result of any amount having been paid by him in pursuance of any order of assessment or penalty....'. Then the refund becomes due. Refund may become due on account of other reason. There may have been advance tax paid, there may have been income-tax deducted at source. Surely the right to refund should be available even in those cases where the amount is due by way of advance payment of tax or tax deducted at source. How can you restrict it only to where an assessment is made? A man has already paid advance tax. Many of us do it; we may have paid even more tax than demanded. At the time of refund, we ultimately get it back. So the advance tax paid or tax deducted at source should equally qualify for the benefit of this section which is meant to give a speedy refund to the taxpayer.

"Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee" should remain without the following words which are unduly restrictive.

MR. CHAIRMAN: We will consider it. To my mind, it appears to be a drafting error because certainly you are entitled to refund whether it is advance tax paid or tax deducted at source.

SHRI N. A. PALKHIVALA: Then page 30; there is new chapter sought to be added—Settlement of cases. I think the whole object of this chapter is that without prejudice to the department, in order not to have protracted litigation, in the public interest a fair and speedy settlement must be reached. If that is the object, it is frustrated in this particular case by two things. First, the Settlement Committee consists of members of the Central Board of Direct Taxes, not ex-members. I can understand a retired member being there. But to ask a man who is already acting as

a member of the Central Board to do this is to ask the prosecutor to be also the judge. This is hardly conducive to inspiration of confidence in the taxpayer. If you have an independent body, it is another matter. You may have a retired government servant—no objection; you may have a retired member of the Central Board or retired member of the income-tax department—that would make perfect sense. But if you say that a man who is a sitting member of the Central Board will himself act as a judge, the result will be that cases which would otherwise come up will never come up for settlement.

MR. CHAIRMAN: What is your precise suggestion about the constitution of the Settlement Committee? How many persons should it comprise of?

SHRI N. A. PALKHIVALA: Three is a good number. My own feeling is that you could have firstly an ex-high court judge or a high court judge or a person qualified to become a high court judge; secondly, a chartered accountant. You could have a person nominated by the Government either as an ex-government servant or a person unconnected with the Central Government.

MR. CHAIRMAN: But one should be a member of the Board.

SHRI N. A. PALKHIVALA: May be, but at least there are two others who should be independent. My further suggestion is that this Board should be under the Ministry of Law and Justice.

MR. CHAIRMAN: Not under the Ministry of Finance?

SHRI N. A. PALKHIVALA: After all, the procedure is optional. While the hon. Finance Minister is here, I would like to make one suggestion which has been in my mind for several years. My own feeling is that one day, the machinery of assessment and further proceedings will break down merely because of the pressure or the load of work. In the Calcutta

High Court there are 30,000 petitions, dealing with taxation, pending. In the Bombay High Court we have at least 3,000 incomes-tax and other tax matters pending. In the Allahabad High Court it is even worse. One way out is this. Appoint men who will inspire confidence and are capable of quick disposal and whose integrity and capability are beyond question, to deal with the problems as the final judges. Even as a matter of public service, some could do the job. No judgement should be written; they should hear the parties and pass orders. From their orders there should be no appeal. You know the waste of time involved in writing 10 to 20 pages of judgements; this must be avoided, and all the time could be utilised in disposing of say, three more cases every day. In your department you have outstanding people. In the Income-tax Tribunal, there are at least four people whose names I need not mention here. If you appoint them, I will say "Do not fight the case upto the Supreme Court. You are likely to get a judgement at their hands better than at the hands of anybody else." Believe me, they will dispose of thousands of cases speedily, and the parties need not go in first appeal and second appeal and so on. Provide for such a procedure in the law. It should be purely optional. Nobody would be prejudiced.

Let me quote the instance of a man who is dead, Mr Gopinathan. He was a Commissioner of Income-tax, and afterwards a member of the Tribunal—a man of outstanding ability. If such men are appointed, it is good for you and good for the tax-payer. Today, in our country, litigation takes 20 years. When the matter goes to the High court, it takes 15 years on an average, which is a long part of a citizen's life.

Take, for instance, the CIBA case decided by the Supreme Court. They said royalty paid must be allowed as a deduction. In regard to the CIBA

case, it took more than ten years. It was a ridiculously long period; and it was time-consuming and waste of talent. It really meant no benefit to anybody except to the lawyers who appeared in the cases.

I am not interested in money nor I am saying this in the interest of the profession. I am only interested in seeing that justice is done. The hon. Finance Minister should consider it. When the law provides for the new body, its decision would be final. Even the Supreme Court cannot come, because there would be speaking order to which they could apply their minds.

MR. CHAIRMAN: Are you suggesting that a tribunal should be the final arbiter?

SHRI N. A. PALKHIVALA: I am talking of separate new body to be created. The Government must appoint people whose integrity is well known. There are people known for their great knowledge and ability, and who are well known for their sense of fairness and justice. You can have sittings in different parts of the country. Then, they can dispose of six cases in a day, because they know the subject inside out. They would be men of great experience. This is what is needed rather than the settlement of cases Chapter, particularly in India which has a very acute problem as regard arrears which are just fantastic. They are mounting. Five years later, what will be the situation in this country, and what is the good of having a system where the machinery of justice even cracks? This is my primary suggestion, and I would prefer it any day to this Settlement of Cases Chapter.

MR. CHAIRMAN: The Government are thinking of a body and let us hope it does not become another forum where delay takes place. Otherwise, what you say, by and large, could be agreed to by everybody, namely, that the settlement machinery must be independent and it must inspire confidence for their

justness and fairness in dealing with the cases. But there is an inherent danger in what you are suggesting; the entire thing depends on some individuals; the same set of persons may not be there; tomorrow, others may come and in that case nothing can come out. Let us build an institution where there will be built-in safeguards. You have suggested a high court judge and some professionals.

SHRI N. A. PALKHIVALA: In this country, appointments are sometimes so made that a man who is appointed to a certain tribunal has no knowledge, even the ABC, of what he has to do. You must appoint a man only on the ground that he is a man who knows his subject. Otherwise, it will take two years for him to learn the subject.

MR. CHAIRMAN: The point is, you must appoint a high court judge or any other person who is known for his knowledge of taxation laws. But how can it be provided statutorily?

SHRI N. A. PALKHIVALA: This is purely optional. Nobody is bound to go in for settlement. Your object will be achieved only if the Government takes the precaution to see that when a man is appointed, he is appointed because of his profound ability, quickness of mind, understanding and knowledge of the subject.

MR. CHAIRMAN: That is for the Government. I hope a good Government will do it. So far as the Committee is concerned, have you any suggestion to make in the law?

SHRI N. A. PALKHIVALA: It is two-fold. The first suggestion I have referred to is about the composition. I think the Board as envisaged in the Bill will never inspire confidence. The second suggestion is about section 25B where it is provided that an application once made shall not be withdrawn. That means if a man makes an application, he is struck with it. The point is, there is no right of appeal provided. If there is

no right of appeal provided, and the matter, once it is in the hands of those people, cannot be withdrawn. I doubt whether this would be a type of procedure which would inspire confidence. What will happen is, at the stage when you go for a settlement, unless you know the member in advance or you had any preliminary discussions, you will be taking absolutely a plunge in the dark. However arbitrary the order is, you cannot appeal and cannot withdraw the application.

MR. CHAIRMAN: If it is perverse, it can be challenged in appropriate proceedings. But subject to that, the Committee seems to be of the feeling that so far as finality is concerned, that provision must remain. The first suggestion that you have made, we will consider. That seems to be very valid. But subject to the Committee being really independent and inspiring confidence, what is wrong with it?

SHRI N. A. PALKHIVALA: You have got these two factors; one is, once an application is made, it cannot be withdrawn; secondly, no right of appeal. I am emphasising these two factors in relation to the tremendous importance of having such a Board which can inspire confidence.

SHRI VIRENDRA AGARWALA: What do you say about the right of appeal?

SHRI N. A. PALKHIVALA: I am not saying that you must provide for the right of appeal, if men of high integrity are appointed. But there are tremendous factors against the proposal in the Bill. Unless you have a Board which can inspire great confidence, this chapter will become almost a dead-letter.

SHRI H. M. PATEL: May I ask Mr Palkhivala to explain the composition of the Board?

SHRI N. A. PALKHIVALA: Apart from a number qualified to be a judge, another must be a chartered accountant who is known for his capability and mastery over the subject.

The third may be a person, who need not necessarily be a Member of the Board. I do not think he must be a Member of the Board. He might even be a person appointed from the Government service. Obviously he should be conversant with the Income tax law. He may be from the Income Tax Department, whether he is a Member of the Board or a Director of Inspection or a Commissioner of Income Tax. Some Commissioners of Income Tax have inspired great confidence by their sense of fairness. Commissioners of Income Tax may be appointed. I do not think it is right to say that one person should necessarily be a Member of the Board.

SHRI H. M. PATEL: Earlier, you said that, even in such an independent Board, there may be one Member form the Board. That was your personal view. So long as a person knows the subject, he may be even from Government service. He need not necessarily be a Member of the Board.

SHRI N. A. PALKHIVALA: There should not be a statutory requirement that the third person must necessarily be a Member of the Board. The reason is that the Government may find a Commissioner or a Director of Inspection, who is outstandingly good, known for his fairness and sense of justice, and they may choose to appoint him. If you say that he should necessarily be a member of the Board, then, you will be trying your hands for nothing.

MR. CHAIRMAN: We would only prescribe certain minimum qualifications. What about your suggestion that he should be a Government servant, who is qualified and he need not necessarily be a Member of the Board.

SHRI N. A. PALKHIVALA: The Government should be free to make its choice, either a Commissioner or a Director of Inspection or anybody else they like.

SHRI P. G. MAWALANKAR: Do you mean to say that if a person is an ex Member of the Board, he may be taken in? A person should be independent. So, as soon as a person becomes an ex Member, he may be appointed.

SHRI N. A. PALKHIVALA: Yes, because then he is not under Government control. The other thing, I would like to say is this. A person may be a Member of the Tribunal or an ex Member of the Board and the Government may find him eminently suitable. You should keep your options open and you should not tie yourself down....

The next Clause is Clause 60, on Page 34, where, a provision is sought to be inserted for the first time in the income tax law, that unless the admitted tax is paid, there should be no appeal. It has been provided:

“(4) No appeal under this section shall be admitted unless at the time of filing of the appeal—

(a) Where a return has been filed by the assessee, the assessee has paid the tax on the income returned by him; or

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of the advance tax which was payable by him”. Let us say that the department makes an assessment of one lakh in one case. The assessee says that he has no taxable income. What is the advance tax that he pays? But, the Department will say that he has been assessed at one lakh and he should have paid that one lakh as advance tax.

MR. CHAIRMAN: The suggestion is that he has got to pay the entire advance tax.

SHRI N. A. PALKHIVALA: What is the advance tax that he has to pay? The person's contention is that he has no taxable income. The Department taxes him at Rs. 50,000. He wants to go in appeal. How will he go an ap-

peal? The Department says that he should have paid the advance tax on Rs. 50,000. You should simply say that the admitted tax should be paid by him.

MR. CHAIRMAN: The intention behind this proposed change is clear, in that, any disputed tax liability has to be paid.

SHRI N. A. PALKHIVALA: Then, why should we have all these complications? We have a curious way of drafting in this country. The simple thing which a rational man would say is that, no appeal shall be admitted unless the assessee has paid the tax admitted by him. Why do you want (a) (b) and the rest of it?

MR. CHAIRMAN: We have to put it. Kindly give us a draft on this. The intention is clear. Where a return has been filed, according to the return, he has to pay. There are sometimes disputes. You have not raised that point. Sometimes, there is a dispute as to the amount of tax paid. The point is that, whether a person has filed a return or he has not filed the return, the tax payable by him, should be duly paid.

When will you be able to submit the memorandum?

SHRI N. A. PALKHIVALA: Before the next Parliament Session.

MR. CHAIRMAN: We are again meeting in November. If you are able to send your memorandum to us, before that,....

SHRI N. A. PALKHIVALA: I shall try to send it earlier.

MR. CHAIRMAN: Whatever you have said, we will be able to sit and consider peacefully. In regard to matters which have not been referred to by you, we would like to take it, that you are not opposed to the same.

SHRI N. A. PALKHIVALA: There is one provision on Page 35, which, I submit, is very unfair to the assessee. On Page 35, you have Clause 64— amendment of Section 271. The object of that, is to penalise the assessee who

has been guilty of concealment etc. Look at the way the explanation is worded. You are now, by a fiction of law, creating a concealment of income, where, in fact, there might have been no concealment. Kindly look at the explanation, at the bottom of Page 35.

MR. CHAIRMAN: What is your interpretation of this?

SHRI N. A. PALKHIVALA: Suppose, a person has ten gold sovereigns. He says that his grand father was having them; then, his father had them and subsequently, they came into his possession. He is asked to prove that his grand father had them. He cannot substantiate. You will tax him on the value of the sovereigns, on the ground that this was his concealed income. I can understand that. But, here, by a fiction of law, if he is not able to substantiate, it is conclusive proof that he has concealed his income. This makes no sense at all. What kind of jurisprudence is this? A man may not be able to substantiate as to what has happened 30 years ago. From our own experience, we know that we may not be able to say as to what has happened years ago in our own lives.

MR. CHAIRMAN: What is it that has to be substantiated? My query is this. Do you have to substantiate, in these proceedings, that there was no concealment or do you have to substantiate that this was your grand father's money?

SHRI N. A. PALKHIVALA: You have to substantiate that this was your grand father's money.

MR. CHAIRMAN: You could have done that. There will be no addition in the quantum.

SHRI N. A. PALKHIVALA: My point is that it may be a case where it is "not proved", as it is called in the law of evidence. A fact may be proved, disproved or not proved. If it is proved that you are guilty of concealment, then you should undoubtedly be punished. If your explanation is found to be false, you must be punished; but in case of 'not proved', you may be

perfectly innocent and you may be telling the truth. But there may be no evidence; it happens all the time in our experience. That means that a man has to offer an explanation at his peril.

MR. CHAIRMAN: My question is slightly different. Assuming that in the proceedings, it is found that there is a cash credit of Rs. one lakh. The explanation is that it was from the person's grand-father. The person gives the explanation that his grand-father was having such-and-such a status etc. That is disbelieved. He is not able to substantiate the fact that the source of the money is the grand-father, or his savings. Is that, by itself sufficient for levying penalty?

SHRI N. A. PALKHIVALA: Of course; undoubtedly, Sir.

MR. CHAIRMAN: Even if there is no concealment?

SHRI N. A. PALKHIVALA: Yes, Sir; that is my whole point. As the hon. Chairman is aware with his experience of income-tax matters, the man is very often disbelieved and even a penalty is levied on the ground that his plea is false. That is understandable. But here is a new mandatory, statutory fiction.

SHRI Y. B. CHAVAN: There are two points. Such a person offers an explanation which he is not in a position to substantiate; that is one part. The second part is about falsity.

SHRI N. A. PALKHIVALA: The second one should remain, where falsity is proved. Surely, it is the liberty of the citizen to put forward a case.

MR. CHAIRMAN: Actually, speaking for myself again, in the penal provisions, this extension of explanation is something I am not able to understand. Whatever be the law, he is entitled to know as to what his liabilities for penalty are, under the law. Therefore, without deleting what is stringently provided, would you be kind

enough to re-draft Clause 64 in clear language?

SHRI N. A. PALKHIVALA: I will do it, Sir.

MR. CHAIRMAN: We will consider it then. Now, there is another circumstance which Mr. Shah will explain with illustrations.

SHRI R. D. SHAH: I would like to have a draft. I appreciate the difficulty pointed out; but there are situations where a person just does not give an explanation that is covered. He gives such a flippant explanation that it is a cock-and-bull story. If he gives an explanation, it does not fall under it; it is obvious that it is palpably false but the Department is unable to prove that it is false.

SHRI N. A. PALKHIVALA: Under the present law, the position is that when penalties are levied, the onus is on the department.

SHRI R. D. SHAH: I have got a few cases of this type. In one example, the grandfather died and it was claimed that he left Rs. 5 lakhs each for three brothers. This was proved to be false by entries. They had said that the man had written some diaries; but they were proved to be bogus diaries. The tribunal held that the Department had to prove that this amount was concealed income. How can we do it?

SHRI N. A. PALKHIVALA: Assuming that the tribunal gives a wrong judgment; does it mean we should make the law harsh? In criminal cases, we find that innocent people are convicted every day; and guilty ones go scot-free. Does it mean that we should make the laws harsher and harsher?

SHRI R. D. SHAH: I am placing before you, a difficulty experienced by the Department. The Department has been financing a great deal of difficulty in situations where a man gives a palpably cock-and-bull story; and the Department fails to prove it to be so. I can understand it if it is a reasona-

ble story; but he is not able to give such a story.

SHRI N. A. PALKHIVAJA: What you say is the occupational hazard of any administrator, whether it is under civil, criminal or corporate law. The law is such that sometimes innocent people get punished and the guilty escape. So long as law is administered by human beings, this will happen. If the contrary view were right, the entire penal code would have to be rewritten. It is possible that the tribunal may have given a wrong judgment. Equally, it is possible that in some cases, a man is wrongly taxed on an income which he did not have.

SHRI R. S. SHAH: Please give us a draft which will cover this, by and large.

MR. CHAIRMAN: We are sitting here to make the law really stringent and effective, in order to arrest tax evasion. This is an important section. There are large number of cases where people, after having indulged in tax evasion, have got away with it, because the high courts have taken the view that penalties are higher. Therefore, we want to make the law not only strigent, but effectively stringent.

SHRI N. A. PALKHIVALA: If only you would carefully look for it, you would find that it is there in the existing provisions of the law. Even where there is 20 per cent difference between the return and the assessed income, the onus is on the party. There is no other country in the world where you have such a presumption of guilt, under the law. About the other difficulty pointed out by Mr. Shah, those things will happen, unless you have an administration by archangels. Our law-makers have not understood this so far. So far as you work under a human system, you will find that some wrong-doers will escape

You will find third-rate people rising to the top and first-rate people languishing at the bottom. It happens all the time, in all walks of life. But

you cannot, therefore, make the law harsh and severe to such an extent that honest people will have to pay the penalty. You will invariably have to leave some room for human judgment. Human judgment is fallible. Somebody may form a wrong judgment. But so what? What is the existing law? The existing law says that so long as there is even a 20 per cent difference between the returned income and assessed income, the onus is on the assessee to prove his innocence. You are presumed to be guilty; and you will have to pay the penalty. The burden is entirely on you. What more do you want?

Along with this, I would like to draw attention to clause 99 on p. 57, which contains a similar provisions in regard to wealth tax. There also, you are told that if he is not able to substantiate the explanation, the relevant assets shall be deemed to be concealed.

MR. CHAIRMAN: We have already asked the department about it. They said it is not the intention, just if there is a difference between the returned valuation and assessed valuation that the penal provisions are applicable. Therefore, the draft will be changed.

SHRI N. A. PALKHIWALA: Whatever that may be, the language as it is will always speak for itself.

MR. CHAIRMAN: We are told the draft will be changed.

SHRI N. A. PALKHIWALA: See page 57, line 5—

“Where in respect of any facts material to the computation of the net wealth of any person under this Act... (B) such person offers an explanation which he is not able to substantiate...”

Everyday explanations are offered which cannot be substantiated. Facts have happened 30 years ago, 25 years ago. You have no means of proving them. The conclusive presumption of guilt cannot follow.

The provision 'or which is found to be false' is all right.

We must remember that we are dealing with an illiterate country. This is not a case where the country is urbanised, highly sophisticated and highly civilised and records are kept. So many families in India have no past records.

MR. CHAIRMAN: I was talking with reference to Explanation 4, p. 57.

SHRI N. A. PALKHIVALA: That is a different thing. I have a separate point on that. Let me quickly finish with the other things before I come to that.

From page 41 onwards, you prescribe the penalties. Again one speaks with some hesitation and diffidence because you are dealing with tax evaders. But I am just indicating what, in my opinion, is the correct view without trying to defend the tax evaders of tax evasion at all. The point is that there must be some rationality about the extent of punishment that is provided. I do feel that to put dacoity and failure to deduct tax at source on the same footing seems rather odd. I can understand concealment being treated that way. But look at the very first section, 276B. Let me give an example. A man has employed a clerk. He pays him a salary of Rs. 600 a month. The employer does not deduct the tax at source. He says let the clerk pay his own tax. This has happened in the case of many honest people who have only three or four employees. Technically there is an obligation to deduct at source. Instead of that, the employee pays tax directly. But what is provided here is that if any person without reasonable cause or excuse fails to deduct and if the amount exceeds Rs. 1 lakh, he can be imprisoned for a period of seven years and fined also.

My point is this: cases of concealment are one thing. But failure to deduct tax at source in another. If it is wilfully done with a view to evade tax where there is that malicious intention, then punishment would be justified. But there can be pure negligence. Even pure negligence will make the assessee liable to the same punishment under the Bill.

Read this along with what is on p. 44. There are many directors who are not aware of the income tax law. They do not know anything about it. You are making each director liable to a ridiculous term of imprisonment. Even if a director is merely negligent he is liable to a compulsory jail sentence; he cannot be let off with a fine. See p. 44, (2) at the top.

MR. CHAIRMAN: If it is less than a lakh of rupees?

SHRI N. A. PALKHIVALA: Three years. Even for mere negligence! and even though there is no dishonest intention! It says that notwithstanding anything contained in sub-section (1) and so on, where there is any negligence on the part of any director, manager etc. he shall be liable to be proceeded against.

There are many cases where a director deliberately or wilfully commits a default. Let him go to jail. But there are cases where the man is honest but is simply guilty of negligence.

MR. CHAIRMAN: Supposing the aggregate tax deduction is Rs. 1,10,000 and the default is by 10 days in a company, what will happen?

SHRI N. A. PALKHIVALA: He can be prosecuted.

MR. CHAIRMAN: Seven years?

SHRI N. A. PALKHIVALA: A magistrate may have some sense and may not do it. In other words, in your zeal to catch tax-evaders which is perfectly legitimate, you are going too far.

MR. CHAIRMAN: Do not take it that this is final yet.

SHRI N. A. PALKHIVALA: I am talking of the formulation which is before me. I am pointing out that the existing formulation is such that zeal is outrunning discretion, zeal is outrunning commonsense. You cannot subject a man for bare negligence to a minimum compulsory sentence in jail.

MR. CHAIRMAN: My question was different. Will it be that the director will get a minimum of six months?

SHRI N. A. PALKHIVALA: Of course. It is compulsory.

MR. CHAIRMAN: In a case where the aggregate deduction is Rs. 1,10,000 and it is not deposited for seven days, minimum is six months?

SHRI N. A. PALKHIVALA: Even if it is merely not deposited in time, yes. I am speaking of perfectly honest people who have been guilty of this lapse. You cannot make imprisonment compulsory. You are not even leaving some option to the magistrate to act like a sane person. You may say, he can be let off with a fine, you may say, we will not start a prosecution.

MR. CHAIRMAN: There will be audit objection. The PAC will go into it.

SHRI N. A. PALKHIVALA: When we speak of law, we mean a sane law, a law based on commonsense. This is a barbaric law. This is like the law in another country where for theft they chop off the arm of the person. In Saudi Arabia, this is still the law. In fact, we had a lawyers' conference in Austria when the delegate from Pakistan said that such a law should be re-introduced.

These are barbaric sentences. This is a savage kind of punishment. The man may have delayed payment to the Exchequer. It may be he was negligent. But how much does he know of the law? He cannot carry

everything in his head. You are dealing, as I said, with a country where there is so much illiteracy. How many people know your laws? Consider the situation in a country where there may not be competent lawyers in townships and villages...

MR. CHAIRMAN: I am a little perturbed over this interpretation of the proviso. How do you read this from it?

SHRI N. A. PALKHIVALA: "Provided that, in the absence of special and adequate reasons... such imprisonment shall not be for less than six months".

Imprisonment is compulsory even if the man is hundred per cent honest. Even if he is negligent, imprisonment is compulsory. Because the words are, "six years and with fine."

SHRI ERA SEZHIYAN: "Provided that in the absence of sufficient and adequate reasons to the contrary to be recorded in the judgment of the court." So, that is there.

SHRI N. A. PALKHIVALA: If it is to be imprisonment, the imprisonment must be for at least six months.

MR. CHAIRMAN: We will consider it.

SHRI N. A. PALKHIVALA: Then there are two things. One is, imprisonment or fine. The other is, imprisonment and fine. When the words are "imprisonment and fine," there is not the slightest doubt that you must have a sentence of imprisonment. So, you may make it less than six months.

SHRI VIRENDRA AGARWALA: If it is imprisonment or fine, will it be all right?

SHRI N. A. PALKHIVALA: Yes.

MR. CHAIRMAN: Would you please let us have your own interpretation of the various clauses first to enable us to judge the real implications?

SHRI N. A. PALKHIVALA: Yes. On page 44, I may point out that the word "neglect" is put in. I can understand wilful neglect. Wilful neglect is where you deliberately neglect your duty, but mere absent-mindedness should not be penalised. You will remember that a person has to deal with a hundred other laws; not only the income-tax laws. Every Secretary, every Manager, every Director, will come under the new provisions.

Then, at page 57, Explanation 4, what we find is this. If you are already committed to a certain view as to its arbitrariness and unfairness, I would not say anything more. But the way it is drafted leads me to believe that it is another piece of barbaric legislation. It says that if any person returns the value of his asset at less than 70 per cent of the value as determined by the wealth-tax officer, he is liable to a penalty unless he proves that the value returned by him is correct.

MR. CHAIRMAN: The idea is that it should be a bonafide thing.

SHRI N. A. PALKHIVALA: The Government has a list of an approved valuers. One valuer says it is worth Rs. 3 lakhs; another says it is Rs. 4 lakhs. It is a value judgment. One may form one judgment and another may form another judgment. You have got the valuation made by an approved valuer. Where does the presumption of guilt come in?

MR. CHAIRMAN: Government is already on that point. What they meant was a bonafide valuation.

SHRI N. A. PALKHIVALA: My last point is this. It is in relation to the provision on page 76 which deals with the Gift-tax Act. You are adding up all the gifts made in the past four years in order to decide the value of the gifts. My submission is this. You will remember that some years ago we had a law of aggregation. The Aggregation law said that if over a period of years you give gifts to the same person, they should be aggregat-

ed. But here, you are aggregating all the gifts given to different individuals over a period of years. If you believe in the distribution of wealth, let it be done, but why aggregate all the gifts made to different donees? It should apply to the gifts made to the same donee. The tax is heavy enough and it gets unnecessarily aggravated now. My submission is it should be an aggregation where the gifts are made to the same donee.

SHRI VASANT SATHE: Even if the obvious intention is to avoid a tax? Say, he gives it to five cousins.

SHRI N. A. PALKHIVALA: If it is a bogus gift, it should be ignored; if it is a genuine gift, it is a different matter.

SHRI VASANT SATHE: Genuinely, five persons are being shown as having been given the gifts.

SHRI N. A. PALKHIVALA: In that case, the tax will have to be paid fully on the aggregate of the gifts in the same year. But under the Bill the gifts made in the past years are sought to be aggregated in order to increase the rate of tax. Suppose a man gives Rs. 10,000 to five people, he will pay a tax on Rs. 50,000. But the principle in the Bill is that not only must he pay a tax on Rs. 50,000 but all the gifts made in all the past four years will be aggregated so that the rate will go up. I am not disputing that a gift-tax should be paid on the aggregate of all gifts made in one year. But the question is, should you pay gift-tax at a rate determined by reference to the total number of gifts made in that one year or also take into account all the gifts made in the past four years? My point is, let the gifts be aggregated for the same year only, as under the existing law.

MR. CHAIRMAN: We will consider it.

Now, I am thankful to you for making an invaluable contribution by helping the Committee to carry on its task which is by no means an easy one.

SHRI VASANT SATHE: Any questions, Sir?

MR. CHAIRMAN: He has to go at 10 O'clock.

SHRI N. A. PALKHIVALA: My difficulty is, the plane leaves at 11 a.m. for Delhi.

MR. CHAIRMAN: You have taken upon yourself the task of drafting some of the clauses of the Bill. You know about it and we would like you to submit to us a detailed memorandum of whatever you have stated here plus anything else which you may like to state, and we would like to consider them by ourselves very calmly.

SHRI VASANT SATHE: Particularly about the basic object of unearthing black money.

II. Archbishops House, Bombay

1. Rev. Father A. Cordeiro Leader
2. Rev. Father D.D' Monte S. J.
3. Rev. Father A. Martins
4. Shri P. S. Rao
5. Shri C. W. Thomas.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Father Cordeiro, according to convention, I have to point out to you one of the directions of the Speaker, Lok Sabha, with regard to the conduct of this Committee. The Direction reads:

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

SHRI SATYENDRA NARAYAN SINHA: Please also suggest what measures can be proposed to prevent evasion.

SHRI N. A. PALKHIVALA: I would like to add one thing. For me it is always a privilege, pleasure and honour to appear before the Select Committee, and I am deeply grateful to the hon. Members for the courtesy and patience with which they heard me.

After my memorandum comes to you, if you like me again to appear before you, I shall be very happy to come and clarify any points on which you may have some doubts. I am most grateful to you all.

MR. CHAIRMAN: Thank you very much.

[The witnesses then withdrew]

We have received your memorandum. If you want to emphasize, any other point, you can do so.

REV. FATHER A. CORDEIRO: At the very outset, we express our grateful thanks to the Committee. In spite of your heavy schedule, you have been able to give us time. So, without wasting further time, we come to the first point which we wish to draw attention. This is Clause of the amendment Bill, which seeks to amend Section 13 of the Income Tax Act. A new clause (d) is being introduced:

"Any voluntary contribution received by a trust or institution created or established wholly for a charitable purpose, where the identity of the person who has made

such voluntary contribution is not established to the satisfaction of the Income Tax Officer."

and the later clause says that a levy of 65 per cent should be made on that. You are aware, Sir, that there are many trusts which make door to door collections. Collections are also made every Sunday at the gate of the Church. People also go begging in the streets and the public put small amounts, may be 25 paise, 50 paise, a rupee or more each in those boxes. If all these are clubbed together as donations the source of which is not established to the satisfaction of the Income-tax Officer and are taxed, we would contend that that charity would be killed.

MR. CHAIRMAN: Can you say that you would be able to safeguard it upto a certain level?

FATHER A. CORDEIRO: The Act, as it stands, is about purely charitable trusts.

MR. CHAIRMAN: Would you be satisfied if small amounts are exempted?

FATHER A. CORDEIRO: Perhaps we could set a limit.

SHRI VIRENDRA AGARWALA: We can have a limit.

FATHER A. CORDEIRO: In regard to the principle of the satisfaction of the Income-Tax Officer, the following points should be considered. They can make a surprise check on any day, or inspect the cash book and see whether, on any particular day, a large amount has been received. They can compare the amounts received during a year with the average for a period of 5 years.

MR. CHAIRMAN: We can consider the averages of the previous year. It is done in Madras. Do you accept it? We can consider that idea; but it is not final.

FATHER A. CORDEIRO: Then should not be a limit. Every year, the collection may go up.

MR. CHAIRMAN: We can have an increase of 25 per cent. Otherwise, it is likely to lead to evasion.

FATHER A. CORDEIRO: I concede that. Therefore, in these things, one should take the background of 5 years. On any particular day, the cash books can be inspected. The rate of 65 per cent may perhaps be too much. The next point is in regard to Clause 6 which seeks to amend Section 13 (1) (b). The amendment says:

"(bb) in the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any activity for profit, any income derived from such activity, unless the activity is carried on in the course of the actual carrying out of a primary purpose of the trust or institution;"

Here, we submit that the trusts have to engage in small ventures periodically, like a charity bazaar, a film premiere etc. which are very often meant for a specific project, e.g. a hunger and disease camp, etc.

MR. CHAIRMAN: We will take care of those occasional festivals which are conducted to augment the funds of charitable trusts.

FATHER A. CORDEIRO: There is only one point. In the course of carrying out one of the primary purposes of the school, we have observed this. There is a technical school to train boys for a particular trade. We have to purchase lathes etc. In order to employ the lathes fully and to the best of their capacity, it may at times be necessary to engage outside labour who will work on those things and the profit thus obtained, will be wholly ploughed back. I agree that we have to see as to which is the principal and which is an accessory activity. If the business is accessory, then it is all right.

SHRI H. M. PATEL: It happens with many educational institutions.

MR. CHAIRMAN: If it is of small quantum, we may be able to consider it. Otherwise, it would be open to abuse.

FATHER A. CORDEIRO: I concede, Sir.

FATHER D. D'MONTE: I am speaking in connection with the proposed amendment to Section 13 through Clause 8, where the proposed insertion is:

"(e) subject to the provisions of clause (bb), in the case of a trust for charitable or religious purposes or a charitable or religious institution, if any funds of the trust or institution are, or continue to remain, invested for any period during any previous year commencing after the 31st day of March, 1978, in any concern (including a company) which is carrying on any business and which is not owned or controlled by the Government."

In this case, would the funds that are spoken of, also include the corpus?

MR. CHAIRMAN: As it stands, it will include; but we will consider the matter, i.e. whether the word 'corpus' is made up of the shares. We are thinking about it; but we have not finalized an opinion.

SHRI Y. B. CHAVAN: At the present moment, the intention is to include it in the corpus.

MR. CHAIRMAN: We have received representations, saying "The corpus is included in the share; it should not be done." We will consider these representations.

FATHER D. D'MONTE: What goes into the corpus usually, as the interest which is utilized for the furtherance of its objectives. Since these funds also include the corpus, the income to the trust will be lessened to a certain extent. Many of the donations that the trust gets are for certain types of

acquisition for the trust. But a provision is not made for the administration of the trust. To the extent that we might budget for the administrative expenses, to that extent, the income will go down. We feel that it may effect the running of the institutions adversely.

SHRI Y. B. CHAVAN: What are your suggestions?

FATHER D. D'MONTE: My suggestion would be not to include the corpus within these funds.

MR. CHAIRMAN: We have noted it.

FATHER D. D'MONTE: I refer to clause 64 (i)(a), (b) and (c). In this case, if a trust does not through oversight etc. submit its returns in a year, you penalise it at one per cent of the gross income. Not giving the benefit of sections 11 and 12 may be a little harsh. Therefore we suggest that you levy a penalty on the tax rather than on the total income.

MR. CHAIRMAN: Where the trust has got exemption, there is no tax liability. Suppose Rs. 1 lakh is the income. If there is the tax liability it will be about Rs. 58,000. One per cent means only Rs. 1,000. The tax liability will be higher. Where there is no tax liability, one per cent will operate easily.

REV. FATHER D'MONTE: Yes. In that case, why not give them the benefit of sections 11 and 12? Instead of taking the gross income, you take the net income.

MR. CHAIRMAN: For trusts also?

REV. FATHER D'MONTE: Yes.

MR. CHAIRMAN: What will be left then?

REV. FATHER D'MONTE: If there is a surplus left, the tax should be one per cent on that; if there is no surplus, you put a percentage tax.

SHRIMATI SHEILA KAUL: What is the present position? How do you deal with such cases now?

SHRI R. D. SHAH: We have made it obligatory on all trusts to submit their returns of income. If they do not, what would be the consequences? If it is liable to tax, it pays a penalty proportionate to the tax. If it is a trust which in view of sections 11—13 is not liable to tax, there will be no penalty which would be relatable to the tax payable.

In order to overcome this difficulty and still make it obligatory for all trusts to submit returns, because it is only after the return comes that the department would be in a position to find out whether it enjoys the exemption, whether the provisions of sec. 13 are fulfilled or violated, we have provided this. Without the returns coming, the department could never know. Suppose, for example, it is fulfilled; in that case, there would be no penalty apparently if it is relatable to tax. But how to know that it is fulfilled or not. That is why, in order to enforce submission of returns of income, this has been introduced and penalty made relatable to the income, because in a good many cases, it may not be liable to tax at all. Administratively this is thought necessary.

This is the only exception here in this provision we have made, penalty relatable to income, and not to tax, because of this inherent difficulty.

SHRI H. M. PATEL: How much burden does it impose?

SHRI R. D. SHAH: If the income is 1 lakh, one per cent of it. If it is taxable, the tax would be Rs. 58,000. If it was put on par with others, 2 per cent for every month of default, which will be much larger.

SHRI H. M. PATEL: Could this not be made-up this much? There may be perfectly reasonable grounds why they may not have submitted their returns. This is where the IAO's discretion can be trusted.

SHRI Y. B. CHAVAN: It seems to be reasonable.

MR. CHAIRMAN: Thank you very much.

FATHER A. CORDEIRO: Thank you.

[The witnesses then withdrew]

III. Trustees of the Parsi Panchayat Funds and Properties, Bombay.

Spokesmen:

- Shri P. P. Khambatta, Advocate, Leader.
- Shri B. K. Boman-Behram Advocate.
- Shri G. P. Antia, Joint Secretary.
- Shri H. B. Kapadia, Joint Secretary.
- Shri M. P. Bamji, Chief Accountant.

MR. CHAIRMAN: Mr. Khambatta, you have already appeared before us. I would read out to Direction 58—

“Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be

treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament”.

SHRI P. P. KHAMBATTA: Yes.

MR. CHAIRMAN: As you have already appeared before us to represent the Standing Committee of Pub-

lic Trusts and as most of the points have been covered, if you have any new points to make or wish to emphasise any points already made, you may do so.

SHRI P. P. KHAMBATTA: So far as the present trust is concerned, we really are troubled about two points. One is in regard to the exemption of pre-1962 trusts, because, as you will presently see, this is a very big trust and if it were made to pay the tax, there will be nothing left to carry on the charities at all.

We have given you a statement showing our income, and you will notice from that, that the interest on securities is Rs. 2,62,100; the property is Rs. 11,62,000. Practically all these properties are meant for housing the poor and middle-class persons only. Then, the business loss is Rs. 84,000 odd. This is really for the purpose of helping the people who are old and not really in business in the normal sense of the word. This is a printing business—Godrej Memorial Press—which makes envelopes. It is not merely for the Parsees. Out of the number of employees I believe 50 per cent are Parsees and the rest are non-Parsees.

The income from other sources is Rs. 3,71,000 odd. The dividend is represented by that amount. Then the interest is Rs. 12 lakhs odd. Other items come to Rs. 87,000 odd. There are some voluntary donations being given to us, but this question about anonymity does not arise in our case at all. Whatever we have, practically we know everyone who has made the donation. We also have these box collections, but they are very small. If you see the figures for the last five years, you will notice that they do not exceed even Rs. 3,000 in a year. All the collections are mostly from the boxes kept in the temples and so on. If you notice the way the income comes to us—Rs. 30,00,000—and if I am to pay a tax on that, it is hardly necessary to point out that there will be only very little left. Our accent really is on the first point, whether the exemption in regard to the pre-

1962 trusts should be permitted or not. That really is the purpose of the present delegation.

SHRIMATI SHEILA KAUL: How many people are benefiting from your charities? What is the number?

SHRI P. P. KHAMBATTA: A large number. I should say about 15 per cent of the total number of Parsees. And Parsees are hardly about one lakh in the whole of India. You might say that about 15 per cent—15,000—are benefited. Out of that, quite a large number is in regard to the facilities for housing etc.

MR. CHAIRMAN: In the statement that has been given to us on the computation of the total income of the panchayat, it has been stated that the dividend is Rs. 371,000 and the interest is Rs. 12,79,000. May I know what is the total fund with you?

SHRI P. P. KHAMBATTA: These are moneys which are invested in deposits and savings banks also.

MR. CHAIRMAN: May we have the split-up of the total fund? In what manner they are invested?

SHRI P. P. KHAMBATTA: So far as the immovable properties are concerned, we have a total corpus of about Rs. 8 crores. Actually, the immoveable properties would be even a little more.

MR. CHAIRMAN: Apart from the immoveable properties, how much is the liquid fund?

SHRI P. P. KHAMBATTA: In shares of companies and debentures and Government securities?

MR. CHAIRMAN: For example in the private sector, or in debentures and Government securities, we should like to have the figures.

SHRI P. P. KHAMBATTA: The total is roughly about Rs. 8 crores. Out of that, the trust's immoveable property is about Rs. 5,00,00,000, inclusive of the Wadia Trust, the immoveable property is Rs. 1.18 crores in another Wadia Trust, it is about

Rs. 23 crores. That also consists of immoveable properties.

MR. CHAIRMAN: You can give us the consolidated figures.

SHRI P. P. KHAMBATTA: The immoveable properties would be about Rs 7½ crores, and the two businesses which we have—the Industrial Institute and the Godrej Memorial—will take, between them, about Rs. 3 lakhs to Rs. 4 lakhs.

MR. CHAIRMAN: Out of Rs. 8 crores of the fund, you said about Rs. 7½ crores are in immoveable properties, and Rs. 3 lakhs are put in the other institutions.

SHRI P. P. KHAMBATTA: From the above 3 crores about a crore and a half rupees are in Government securities and shares and things like that. I have given you the rough figures. Actually, the total comes to about Rs. 8 crores, of which the investment in Government securities and shares comes to about Rs. 1½ crores.

SHRI Y. B. CHAVAN: Are there any investments in other private industries?

SHRI P. P. KHAMBATTA: They would be covered by this. Where I have mentioned Rs. 1 crore and a half, there may be shares also. But most of our investments would be in debentures and shares, and some in equity shares. But the main point on this aspect of the matter is this. So far as Maharashtra is concerned, as you know, we have to take the permission of the Charity Commissioner, so that every-time an investment is made in share and things like that, it is only after obtaining his permission that it is made.

MR. CHAIRMAN: Can you please give the Committee, at least later, the break-up of the Rs. 1½ crores of securities, and tell us how much of it is in Government securities, how much in the private sector, etc.

SHRI P. P. KHAMBATTA: I will have that done.

MR. CHAIRMAN: For Rs. 1½ crores, you have got an income of Rs. 12 lakhs.

SHRI P. P. KHAMBATTA: That is by way of fixed deposits, mostly in banks and the savings banks.

MR. CHAIRMAN: If you take 10 per cent as the return, Rs. 12 lakhs will mean a capital of Rs. 1,30,00,000.

SHRI P. P. KHAMBATTA: It would not be 10 per cent. The deposits in the banks would be roughly giving about 6½ per cent.

MR. CHAIRMAN: It may come to Rs. 1,92,00,000.

SHRI P. P. KHAMBATTA: The figures that I have got here shows that about Rs. 1½ crores will be in regard to that item.

MR. CHAIRMAN: How much is being put in the securities and the fixed deposits, which give you an interest of Rs. 13 lakhs? If you say that it is derived from the deposits which give you an interest of 6½ per cent, then for Rs. 13 lakhs, it will come to about Rs. 2 crores. If you do not have the figures here, you can send them later on.

SHRI R. V. SWAMINATHAN: The investment income or the dividend that is derived on the investment.

SHRI P. P. KHAMBATTA: In regard to this investment in the shares of companies, even if any change has to be made, what we suggest is that, the investments which are already there, should be preserved. Otherwise, if all that has to be changed, it is bound to have a very adverse effect on the actual income at the end.

MR. CHAIRMAN: We are giving 5 years time in the Bill to make changes.

SHRI P. P. KHAMBATTA: May I respectfully point out that if everyone has got to do it, there will be a large loading on shares in the market. So, the prices are bound to come down. 5 years is not so long a time if you consider the larger amount which will have to be liquidated. What I was suggesting was this. In regard to investments which are already there, it is not absolutely necessary to change them. This can be

there with regard to investments which are to take place hereafter.

MR. CHAIRMAN: This may with regard to your Parsi Panchayat. But, I can show some trusts which invest large amounts in their own companies.

SHRI P. P. KHAMBATTA: In fact, the working in the statement is from the point of view of the Parsi Panchayat itself. We do not have this problem. The only thing we are concerned with is this. If we get a good return on the investment, is there any reason to change what is already invested?

SHRI H. M. PATEL: Mr. Khambatta, you will be helping us, if you could give us the break-up asked for. This will give us a clear picture and we will know the real position.

SHRI P. G. MAVALANKAR: Particularly, when the investments are controlled by the Charity Commissioner under the Maharashtra Act.

SHRI P. P. KHAMBATTA: I have said that collection boxes also do not bother us.

MR. CHAIRMAN: Your plea is that whatever amounts that have been invested, should not be touched by this provision. As I pointed out to you, we have got difficulties in other ways. There are cases, where 90 per cent have been invested in companies. We want to remedy the situation.

SHRI P. P. KHAMBATTA: I see the point there.

MR. CHAIRMAN: What are your suggestions in this regard? How will you avert these?

SHRI P. P. KHAMBATTA: The way we are looking at is this. After all, the present amendments are in regard to taxation. Are there not other ways of seeing to it that people do not employ trust funds for their own purposes.

MR. CHAIRMAN: What are the other ways?

SHRI P. P. KHAMBATTA: Well voting rights can be controlled.

MR. CHAIRMAN: What is the use? Suppose, trust funds are invested in their own concern. They do not want the voting rights. The funds are available for their own concern.

SHRI P. P. KHAMBATTA: The point is this. If the funds of a trust have been invested in particular business, and the business is being carried on in an efficient and honest way, there can be nothing wrong about it. It would only be wrong if the funds are used for dishonest purposes. Are there not ways to curb that?

SHRI Y. B. CHAVAN: Have you any suggestions in regard to this?

SHRI VASANT SATHE: How should we distinguish between a honest and dishonest purpose? How should we curb?

SHRI Y. B. CHAVAN: We have got a problem here. There are some trusts which control some business. There are some trusts like yours and you claim that you are doing some genuinely good work. But, we have got the problem with regard to the other type of trusts. How do you do that? Have you any suggestions in regard to this? You are a lawyer.

SHRI P. P. KHAMBATTA: My job begins only when the wrong is done and when the matter goes to the Court.

SHRI Y. B. CHAVAN: We are interested to know. How do you prevent this? This is the purpose of this legislation. As a witness, you have to help us in this matter.

SHRI P. P. KHAMBATTA: But, I do not think, speaking for myself, I can be of very great help as to how should we prevent the trusts from using their funds for their own purposes.

SHRI Y. B. CHAVAN: You can think about it and let us know about it.

SHRI P. P. KHAMBATTA: Certainly. There is no other point on which I wish to take up your time. Thank you.

(The witnesses then withdrew)

IV. Maharashtra Chamber of Commf., Bombay

Spokesmen:

1. Shri M. L. Apte, President
2. Shri S. B. Gandhi
3. Shri N. N. Pai
4. Shri R. G. Mohadikar
5. Shri V. R. Kokhale, Asstt. Secretary.

MR. CHAIRMAN: Mr. Apte, according to convention, I have to point out to you one of the directions of the Speaker, Lok Sabha, in regard to conduct of this Committee. It reads—

“The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.”

We have received your memorandum and this has been circulated to the Members and they have studied it. So, you may mention other points, over and above what you have stated in the memorandum. You may highlight some of the points mentioned in the memorandum, if you desire. We will take these points into account.

SHRI M. L. APTE: I would only make general observations for two or three minutes and then move to the specific issues we have raised. The memo. which we have submitted deals with specific provisions of the bill and our approach to this issue is one of growth and incentives. I believe that the economic situation, as it exists in the country to-day, needs a serious re-consideration of various aspects; and taxation certainly becomes one of the most important aspects. If you look at the past 2 or 3 years and the present situation, the stagnation which has be set the economy, we believe, has a lot to do with the structure of taxation. We had also looked at the Wanchoo Committee's report with great interest and had hoped that it would be growth-oriented and the recom-

mendations would be such which would stimulate the economy and economic activity. It appears that the bill, as proposed, does not some how appear, to us at least, to give any incentive or be growth-oriented. I think there are specific issues which my colleagues will deal with. Personal taxation, provisions about the trusts and the clubbing of incomes are issues which will hamper economic development and investment. No one can disagree that to-day, the need is for investment in the economy. I would leave the question of investment to Mr. Pai and Mr. Gandhi. They will deal with the specific recommendations which we have made in the memorandum.

SHRI S. B. GANDHI: I have already submitted a list of supplementary points. I have mainly concentrated on Clause 12 of the bill, referring to Section 44B(1)(i) pertaining to the maintenance of book accounts in each and every case where the turnover is more than Rs. 2,50,000. The issue is that because of the increase in prices, the turnover is so quick that it is completed in a short time. It is not a question of non-maintenance of books of account, but it is the paucity of accountants mofussil areas where there are self-employed men. And when they are self-employed, it is difficult for them to obtain the services of accountants. The second point which I have raised in my memo. is in regard to Clause 39.

MR. CHAIRMAN: In Clause 12, your suggestion is that the turnover should be Rs. 5 lakhs.

SHRI S. B. GANDHI: Yes, Sir. Then about Clause 39, I have quoted two instances; Section 139(1A), if passed as it is, would mean that the dealer whose annual turnover is Rs. 5 lakhs, has to get his books of accounts audited. In the instance which I have given, the turnover is not less than Rs. 6 lakhs a year. A Fair-Price Shop or a ration shop is there in every village having a population of not less than 3,000. The question I have put before the Committee is whether this will be a practicable approach. My suggestion in this regard is that instead of Rs. 5 lakhs being the turnover, it should be Rs. 10 lakhs. We do not want to oppose it saying that the books of accounts should not be audited; but the limit which is for the present prescribed, viz. Rs. 5 lakhs, should be increased to Rs. 10 lakhs.

MR. CHAIRMAN: What is the particular difficulty? For a turnover of Rs 5 lakhs, you are going to maintain the books of accounts. Only auditing is involved now, in addition.

SHRI S. B. GANDHI: The cost of running the ration shops will be increased. There are hardly 3 persons employed in the ration shops. The margin of profit is restricted to between 2 and 3 per cent; and comparing it to the annual turnover and the income from those shops, the workload involved in the case of auditing, would be very heavy. The shopkeeper will have to prepare not less than 12,000 vouchers. I have made another point, i.e. in regard to Section 139(1B). We have made only a prayer therein, I have given the statistical figures available to me from the papers in regard to the number of Chartered Accountants and the work involved. There is scope to add more of them for this purpose; and I have suggested that the Income-tax Practitioners who are well-qualified and the tax advocates who are exclusively devoted to taxation work, should also be allowed to carry out the auditing of these shops.

MR. CHAIRMAN: Do you suggest that these income-tax practitioners should have 5 years' standing or experience?

SHRI S. B. GANDHI: For registration, one year's standing is required. The minimum standard can be prescribed.

SHRI VASANT SATHE: Do you suggest that we should also prescribe the amounts or the schedule of fees, under the law, for auditing? Or, should it be left to the auditors?

SHRI S. B. GANDHI: It would be better if it is left to the auditors.

SHRI VASANT SATHE: In that case, the poor people are likely to be exploited; because experienced auditors will be few and if it is left to them, they may demand high rates.

SHRI M. L. APTE: The point is two-fold. One aspect relates to the number of auditors available. The work involved will be too much.

It will depend on the workload of each individual case. In one case, it will be only 5,000; in another, 20,000. It would be difficult to say that there should be a standardised fee: it would be impracticable.

MR. CHAIRMAN: A representation has been made to us on this; we are seized of the problem.

SHRI N. N. PAI: Cl. 6 Substantial donor has been defined as one who has made a total contribution of more than Rs 5000 upto the end of the relevant previous year, with the result that if a person has been making donations for the last 30-40 years, it has also to be taken into account for calculation of this amount. It would be difficult to do so for a trust which is not maintaining accounts on that basis. No individual accounts of donors are maintained from year to year. It will be difficult for them to prepare a detailed list of such donors. So this requirement should be done away with so far as its retrospective effect is concerned and the definition should be restricted only to the

amount of the donations made in the relevant previous year. As it is, it does not stipulate the period within which the donor has donated. This Rs. 5000 may represent to be the total of the donations the donor might have made at the rate of Rs. 100 for the past 50 years. No trust is in a position to maintain such accounts.

MR. CHAIRMAN: Your suggestion is that in a particular year if he makes more than Rs. 5000, he can be taken as a substantial donor.

SHRI Y. B. CHAVAN: You say it should not be made retrospectively.

SHRI N. N. PAI: Yes; that is right.

Re: cl.6(d), we have already dealt with this in p. 5 of our memorandum. Take, for example, a charitable trust like Tirupathi where donations are made by thousands of people in very small amounts. It will be difficult for them to find out who has donated.

MR. CHAIRMAN: That is covered by religious trusts; it is not attracted by the provisions of this Bill.

SHRI N. N. PAI: Re. cl.26, sec. 104, how it is going to retard growth of savings in the country, my Chairman has already dealt with it. I would only emphasise one more point. After the Payment of Bonus Act has come into force, the surplus left after Payment of tax. i.e. 60 per cent of allocable surplus, has to be distributed as dividend. The balance available with the company would be only 40 per cent out of which dividend will have to be distributed. If it is made compulsory, the savings left for ploughing back for future expansion will be very little. So distribution of dividends not be made compulsory in such cases.

MR. CHAIRMAN: If the provision is not there, there will be a tendency not to declare dividends. To avoid that mischief, this has been put in.

SHRI N. N. PAI: If an analysis is made of companies which do not distribute dividends, you will find there will be practically very few of

them. On the other hand, if it is made compulsory, there will be no saving left?

SHRI Y. B. CHAVAN: Your suggestion is that private limited companies should become public limited companies. After the Companies (Amendment) Bill, most of the companies will become public limited. Then the problem does not remain.

SHRI N. N. PAI: It still remains. Only a few will become public limited companies. It will still be a controlled company within the provisions of s. 104.

SHRI VASANT SATHE: Why do you say that in the case of closely-held companies, we should not encourage distribution of dividend? If it is not done, the tendency for the small people to invest will not be there. Now small people who invest in these closely held companies never get any dividend.

SHRI N. N. PAI: In the case of private limited companies, the shareholders are limited mainly to family members.

SHRI VASANT SATHE: Not family members, four enterprising people come together.

SHRI N. N. PAI: A closely-held team, restricted to less than 50. I have been associated with many private limited companies, I submit the surplus left with the company after payment of bonus is so little that it cannot be profitably employed for the purpose of business. The retention is so small.

SHRI VASANT SATHE: You suggest that all members of closely-held companies would be more interested in ploughing back savings for growth . . .

SHRI N. N. PAI: If it is necessary for business.

SHRI VASANT SATHE: . . . rather than having it distributed as dividend.

SHRI N. N. PAI: As it is, they have got to give a certain dividend; there will be a tendency to do so. But it should not be made compulsory.

Clause 14: The proposed clause (vi) in sub-s. 1 of sec. 64 seeks to include income arising from assets gifted by individual to son's minor child or to his son's wife, in the income of such individual. It would be desirable to apply this clause only in respect of the assets transferred after 31-3-73. Why? In respect of gifts already made previously, the gift tax has been paid by the assessee earlier and there is no provision under this amendment by which gift tax assessments are reopened and tax refunded. Since the law permitted at that time of making of the gifts, the assessees have done so, paid the gift tax and the assessments are also completed. If now the income arising from these gifts is sought to be added to the income of the individual assessees, it will really create hardship and unnecessary difficulties. Also, it may not be possible for the respective individuals to pay the tax because they have already transferred the assets. In the absence of provision for refund of tax, it is submitted that it should not be given retrospective effect.

Clause 42: This clause requires the receipted chalangans to be annexed to the return. There may be cases where for unexpected or for unforeseen circumstances, a person may not be in a position to pay the taxes before he submits the return. The result will be that he will not be in a position to submit a return without annexing the receipted chalan. In a case like this, the ITO should be at least empowered to go into the circumstances and permit the assessee to submit the return. He may also be empowered, in fit cases, to give time to the assessee. Owing to an unexpected calamity, and on account of certain events, the assessee may fall short of funds. It is only to meet such

contingencies that it is submitted that the ITOs may be given the power. Under the proposed clause, there is no power given to the ITOs to give such extension. At least some amendment should be made to meet this contingency after going into the facts of the case.

SHRI VASANT SATHE: Mr. Chairman, what is the harm in giving this power to the ITOs in exceptional circumstances to give an extension of time? That is all that they are asking.

MR. CHAIRMAN: We will consider it.

SHRI N. N. PAI: Sub-clause (3) of clause 42. It does not give any discretion. It provides for a penalty at the rate of two per cent per month. No discretion is given to the ITO. If this is the case, what is the use of giving a reasonable opportunity of being heard? The proviso provides for a reasonable opportunity being given to the assessee for being heard by the Income-tax Officer. But the officer is not vested with any discretion to waive the penalty. If he is satisfied with regard to the reasonableness of the non-payment of the tax in time, then he should be given discretion to waive the penalty. Under sub-section (3), there is no discretion given to the Income-tax Officer to waive the penalty.

MR. CHAIRMAN: Even the existing provision does not contain it. We will consider it, but the existing provision does not contain such a provision.

SHRI Y. B. CHAVAN: Opportunity will be given to him before the penalty is levied.

MR. CHAIRMAN: Before the ITO decides on the penalty, the assessee is heard.

SHRI N. N. PAI: Necessary discretion should be given to the Income-tax Officer.

SHRI Y. B. CHAVAN: The discretion is only before levying the penalty.

SHRI H. M. PATEL: Before he levies the penalty, he gives you an opportunity of proving the case. Therefore, there is no need for discretion afterwards.

SHRI N. N. PAI: The clause does not give any alternative to the Income-tax Officer.

SHRI H. M. PATEL: Before levying the penalty, he gives you the opportunity; that is, when you say what were the difficulties and special circumstances under which you were not able to pay. After hearing you, he will decide upon the matter.

SHRI S. B. GANDHI: The return is to be filed by the 30th June. As per the present proposals, it has to be accompanied by a chalan by the 30th June. The return must be filed along with the chalan. If the chalan does not accompany, then it is not a valid return. There will be two penalties; one for the non-payment of the dues and another for the late filing. There is also a two per cent penalty. Here also there is a two per cent penalty. For the same default, there will be two penalties. According to the present provisions, the Income-tax Officer levies a penalty, but there is no minimum prescribed. In the proposals which are before us for consideration, a minimum is prescribed.

SHRI Y. B. CHAVAN: He said there are two types of penalties.

SHRI R. D. SHAH: It does not invalidate the return; it is only an irregular return. If it is an invalid return, there is no question of penalty arising. If it is filed without a chalan, it does not invalidate the return.

SHRI H. M. PATEL: With the clarification given now, are you satisfied?

SHRI N. N. PAI: The clause reads that the return shall be filed with the proof of payment of tax.

SHRI Y. B. CHAVAN: The word "shall" possibly create the difficulty.

SHRI N. N. PAI: "Unless prevented by circumstances beyond control"—some such qualification or Amendment can be made. The Income-tax Officer can say that unless it is accompanied by a chalan it is no return.

MR. CHAIRMAN: We will see to it.

SHRI N. N. PAI: The last clause that I would like to refer, is Clause 47, by which, Section 153 is being amended. Now, the present section prescribes a time limit of two years in case of reopened cases. It will be presumed that the time limit is made applicable only for assessments relating to 71-72 onwards and subsequent years. But, there is no time limit as regards fresh assessments to be made in respect of cancelled assessments relating to the assessment years prior to 71-72 after these assessments have been set aside. Now, there is no time limit, under the present Act, and the Income Tax Officer can keep the assessments pending for years together. The time limit of two years, at present, relates to only assessment years 71-72 onwards. My submission is that, the time limit of two years should also be made applicable to assessments which have been cancelled and reopened in respect of years prior to 71-72 also.

SHRI R. D. SHAH: The time limit was introduced by the earlier amendment Bill. We were satisfied that the assessments will be completed within a period of two years. We had also provided that administrative instructions will be issued to complete the assessments within two years so that the liability of the requirement of two years may not interfere with the existing assessments. But, that would be taken care of in future by prescribing this time limit. That is why, the year 71-72 was mentioned.

SHRI N. N. PAI: In respect of earlier years, it is submitted, that there should be a time limit of two

years from the date on which the amendment Act comes into force.

SHRI M. L. APTE: I would like to draw your attention to Page 7 of our memorandum where, we have suggested that an equal number of independent unofficial members from the profession of law and accountancy be appointed as members of the income Tax Settlement Committee. I would like to suggest that it would be proper if the legal profession is also represented in the Settlement Committee.

SHRI Y. B. CHAVAN: What do you mean by independent member?

SHRI M. L. APTE: They would be non-official members meaning not from the service, not from the administration, not from Parliament, but, those who are in professions, like tax consultants, lawyers and so on.

MR. CHAIRMAN: Would you like to prescribe any qualification or any status for those members who could be appointed?

SHRI M. L. APTE: I think it would be difficult. The persons should be able to have a fair and independent view in case of ...

SHRI Y. B. CHAVAN: I can understand your saying that one member should be from non-Government organisation.

SHRI M. L. APTE: When we say independent persons, we mean non-official and non-Government persons. One more aspect I would like to mention is this. This is also on page 7 of our memorandum. Apart from the highest rate of income tax on personal income, and the Wanchoo Committee recommendation that the tax should be reduced to 75 per cent., and this should be the upper limit as it were, I might say this that as the present taxation operates, it generates evasion. I think this is not the real idea behind this legislation. It is also not desirable. I have said somewhere else that today, to fail in business is bad enough, but, to

succeed, even worse. This is how the taxation system operates. I have given instances, where an investor who invests money in business, may be in shares, may be in public limited companies, and brings a company which is sinking or was sinking, to a profitable level and operates it at optimum efficiency and profitability, actually he is doing this to his own detriment. Here, you should take into account the income tax and the wealth tax rates. The cumulative effect of all this is absolutely devastating as the system operates. I think some measures have to be taken. Otherwise, the options open to such a person are quite well known. He must operate at an efficient level which would not erode his own capital and scheme of profit. This is one possibility. The other way is to operate and go on eroding his capital till he reaches a stage, when he is not bothered about the business and squanders money and again brings the company to the level of inefficiency with which it was started. I do not think it is desirable in the present economic condition of the country. You should encourage a person when he works diligently. It may be argued that profitability is not necessarily the indication of the efficiency of a person. You may also say that profitability is actually dependent on various other factors etc. When a concern is having losses, and this runs into a few lakhs of rupees, and was only marginally profitable or there was no profit at all, and if someone makes it more profitable by his efforts, if you do not give him something for having worked hard, the net result is that, he will erode his own capital. If that happens, then, fresh investment will not come in. This is because, he is going to operate at a level, where tax is not going to be there, on the additional income. I think this is something which needs serious consideration, because the cumulative effect of income tax, wealth tax and other taxes, will create a situation, where, investment will not come in and economic growth will not be achieved.

MR. CHAIRMAN: Please suggest what exactly should be done?

SHRI M. L. APTE: The Wanchoo Committee recommendation which puts a ceiling at 75 per cent should be considered. I think there is lot of worth in it. Secondly, I do not know whether it is possible to propose a distinction between productive wealth and non-productive wealth, some person who has invested money against some person who has invested money with management attached to it, or someone who has invested money in property he has, only once and he is living on the income derived by way of rent and lease or whatever it is, against someone who risks his capital. I think a distinction has to be made. Otherwise, there is no incentive. You should also take into account the rates of interest that are available to an investor, without risking his capital. I do not think I am disclosing a secret. If I say, that in regard to rate of interest, there is one amount which is officially paid and there is also another amount which is paid, but, which is not shown. The rates of interest to-day, effectively, are much higher than what they appear. It means that there is no incentive to invest in shares or in any industrial venture, because if his capital appreciates he will have to pay tax. If it does not, he will have to pay wealth tax. Some relief has to be given.

SHRI Y. B. CHAVAN: You are not arguing for less than 75 per cent. You are arguing for no taxation at all. The moment a person goes into the efficiency level, he builds up capital; he would not build it up only if he works at an inefficiency level. If that is the disincentive, the

only alternative is to remain at the inefficiency level.

SHRI VIRENDRA AGARWALA: You are taking it too far.

SHRI H. M. PATEL: In our conversation, we can understand the distinction between risk capital and non-risk capital; but it is very difficult to operate in that way.

SHRI M. L. APTE: Where taxation cumulatively goes up to near 100 per cent, it is not an incentive.

MR. CHAIRMAN: We will no doubt consider that point.

SHRI VASANT SATHE: Would you welcome a suggestion that, instead of reducing the marginal rate of tax, the incentive to investment be given in the form of tax credit? Would that be more helpful and beneficial, both by way of giving tax relief and also encouraging real and positively productive industries? Would such a structure be beneficial, according to you?

SHRI M. L. APTE: Anything which would retain more money out of the profits earned, would help us, I think.

SHRI VASANT SATHE: Do you mean to say, in regard to investment as well?

SHRI M. L. APTE: Yes, Sir; for investment as well.

SHRI VASANT SATHE: We will think about it.

MR. CHAIRMAN: Thank you very much.

(The Committee then adjourned)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973.**

Friday, the 2nd November, 1973 from 09.00 to 13.10 hours and again from 15.00 to 18.00 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri S. M. Banerjee
7. Shri Dharnidhar Basumatari
8. Shri Tridib Chaudhuri
9. Shri K.R. Ganesh
10. Shri Mani Ram Godara
11. Shri D.P. Jadeja
12. Shrimati Sheila Kaul
13. Shri Maharaj Singh
14. Shri P.G. Mavalankar
15. Shri Amrit Nahata
16. Shri H.M. Patel
17. Shri R. Balakrishna Pillai
18. Shri Bhola Raut
19. Shri Vasant Sathe
20. Shri Era Sezhiyan
21. Shri K.K. Shetty
22. Shri C.M. Stephen
23. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—Joint Secretary and Legislative Counsel.
2. Shri S. Ramaiah—Deputy Legislative Counsel.

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri K.E. Johnson, Member, Central Board of Direct Taxes.
2. Shri S. Narayan, Joint Secretary.
3. Shri R.R. Khosla, Director.
4. Shri S.I. Tripathi, Deputy Secretary.
5. Shri S.C. Grover, Under Secretary.

SECRETARIAT

Shri H.G. Paranjpe—Deputy Secretary.

WITNESSES EXAMINED

I. Punjab, Haryana and Delhi Chamber of Commerce and Industry, New Delhi.

Spokesmen:

1. Shri M.K. Mohta, M.P.—Deputy Chairman
2. Shri Mohinder Puri—Co-Chairman
3. Shri C.K. Hazari—Member
4. Shri H.R. Gupta—Member.
5. Shri R. Subramaniam—Member
6. Shri R. Thakur—Member
7. Shri M.L. Nandrajog—Secretary
8. Shri S. Ganapathi—Senior Asstt. Secretary

II. Catholic Bishops' Conference of India, New Delhi

Spokesmen:

1. Fr. Jonas Thaliath—Deputy Secretary-General.
2. Fr. Antunes Nazareth—Assistant Secretary.
3. Shri K. Annadhanam of Messrs. Khanna and Annadhanam, Legal Advisers.

III. Bar Association (Income-tax), New Delhi

Spokesmen:

1. Shri K. K. Wadera—President.
2. Shri Jagmohan Bhatia—Vice-President.
3. Shri Jagdish Persad—Member.
4. Shri B.B. Ahuja—Member.

IV. All India Federation Income-tax Gazetted Services Association, New Delhi.

Spokesmen:

1. Shri K. Raha
2. Shri C.L. Wali
3. Shri R.C. Pandey
4. Shri P.S. Gopalakrishnan
5. Shri O.S. Bajpai

I. Punjab, Haryana and Delhi Chamber of Commerce and Industry, New Delhi.

Spokesmen:

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3. Shri C.K. Hazari—Member
4. Shri H.R. Gupta—Member
5. Shri R. Subramaniam—Member
6. Shri R. Thakur—Member
7. Shri M.L. Nandrajog—Secretary.
8. Shri S. Ganapathi—Senior Assistant Secretary.

(The witness were called in and they took their seats).

MR. CHAIRMAN: Mr. Mohta, it is the convention for the Chairman of the Committee to point out one of the Directions by the Speaker of the Lok Sabha which will govern your evidence. The direction is that the evidence that you might give will be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you may desire the evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Is there any difficulty in this?

SHRI M. K. MOHTA: No, Sir; it is all right.

MR. CHAIRMAN: You may proceed now.

SHRI M. K. MOHTA: At the outset, I must express my gratitude for your giving this opportunity to the Punjab, Haryana and Delhi Chamber of Commerce to place its views before this august body, in respect of this very important piece of legislation that is under the consideration of the Committee. Before I take up my comments on the specific clauses of the bill, I would like, with your permission, to deal very briefly with the general principles which must govern the framing of the laws such as this. The stated objectives before the framers of the income-tax law are several; and it would be profitable to consider the importance of such objectives in the first place, and the extent to which the draft before us has succeeded or not succeeded—in achieving these objectives. As far as the objectives are concerned, the first one is rationalization of tax laws and streamlining of tax administration. I may also submit, Sir, that the income-tax law has become so complicated and cumbersome over the years that it has become very difficult for the ordinary person or a non-technical person to understand its implications fully. In

1962, the original Income-tax Act included barely 68 Sections. The Act of 1961 has increased the number to 300. Over 800 amendments have been incorporated over the last decade. The present Bill, instead of rationalizing the tax law, makes it even more complicated and cumbersome. Then there is the question of stability in such tax laws. If, however, your changes are going to be there, the assessee would not even know where he stands; it would then be a paradise for tax lawyers but the poor assessee who is not well-versed in legal matters would find himself completely at a disadvantage. It is a situation where dishonest persons have a great advantage over the honest tax-payers. Another important aspect of the objectives is the unearthing of black money and tackling this problem of black-money in general. I would like to say a few words here, regarding the nature of black money and the steps that are needed to be taken by the Government to tackle this problem. The steps enumerated in the bill are like taking all kinds of steps after the horse has bolted. This is not calculated really to tackle the problem of black money as we find ourselves confronted with. If we take up the question of the root cause of this black money, we would realize that unless it is tackled and vigorous steps are taken by the Government to stop the generation of black money, no amount of income-tax provisions is going to yield the desired results. The first root cause, if I may submit, is the proliferation of controls in our economy. As soon as we have controls, we have black market; black market means black money. Black money leads to more corruption; with the aid of corruption, you have more black marketing and still more black money. This is a situation which feeds on itself and it seems to me that unless the Government is prepared to take a bold step to do away with controls as far as possible, this problem of black money is going to remain with us for a very long period of time. I would venture to suggest that de-control would be in the interests of

the common man. To-day, the Government machinery being what it is, we know very well, in spite of Government's protestations, that despite efforts over a 25-year period, no effective machinery has been devised by the Government to enforce the various controls. The result is that when a control is imposed, either the manufacturer is dishonest; if he is honest, the wholesaler, retailer or somebody else along the line is dishonest and the consumer can never hope to get commodities at controlled rates, except to a very small extent, i.e. a very small fraction of the total controlled production. If there is decontrol, it is true that higher prices would have to be paid; but it would not be higher than what the consumer is made to pay even to-day; but there would be a very important difference. The prices that would be paid would be entirely white money and not black money; and immediately, a number of consequences are apparent. First of all the State Governments will get more sales tax revenue; then, the money would go into the hands of the business concerns who would pay more income-tax to the Government; and with the aid of income-tax, the Government can put through various schemes of development which will be in the interests of the common man; whatever is the residual part of the profit, it can be ploughed back by the businessmen in developmental activities. It is well known that black money comes into consumption and aggravates inflation, whereas when the money becomes white and goes into productive purposes, it will end inflation which will be in the interests of the common man. Therefore, I would suggest that if we want, in right earnest, to put an end to black money, the first requirement would be to do away with controls as far as possible. No amount of this kind of provisions in the tax laws is going to make much dent in the problem as it is before us to-day. Then there is the question of the high tax rates. I do not propose to take up a lot of time of this august body in dwelling upon this subject. The recommendations of the Wanchoo Com-

mittee are before us. I have no doubt that the other witnesses who appeared before this Committee would have dealt with this subject in great detail. Suffice it to say that high tax rates lead to the temptation of tax evasion, and human nature being what it is, it is very difficult to curb this temptation, when we know that a little tax evasion is much more profitable to a person than a great deal of legitimate profits subject to tax. Sir, we cannot turn this nation into a nation of saints. After all, we have got to deal with human nature. Therefore, the second submission that I would like to make is that Government will have to do something in regard to the question of tax rates, not only at the higher levels, but, all along the line. At every level, tax rates have to be rationalised, have to be made more realistic, so that, more and more money is found for productive investment by the people and there is less temptation, much less temptation for tax evasion. Sir, it is like this. First of all, you put a temptation before a person and when that person has fallen into that, or when he has yielded to that temptation, then, you call him by all sorts of names and you give him all sorts of penalties. I am not holding a brief for tax evaders. I would like to make it very clear. My submission is, why should we give such a temptation to a person, in the first place. The third point that I would like to make is regarding the general level of morality in public life. Sir, every day, the common man reads in the papers about corruption at very high places. Whenever there is a change in any Ministry in any State, the very first act that the Ministry does is to hold an enquiry into the conduct of the previous Ministry and this goes on and on. What is the reaction of the common man? The small man, the ordinary person, thinks if this is the kind of behaviour of the leaders in all walks of life, why should he be singled out for all kinds of moralizing and there is a state of demoralisation prevailing in the country which does not help either the tax administration or all kinds of other administrations

in any way at all. Although, this is slightly outside the scope of the present discussion, I would like to submit that making the standard of public behaviour higher, particularly among our national leaders and our regional leaders, is of great importance. The larger question of the need for growth also cannot be lost sight of. India has been one of the few countries in the world, even among the under-developed countries, which has not been able to make a dent on poverty and has not been able to make sufficient progress as far as growth is concerned. We find that twenty years ago, the countries which were as under-developed as ours or even less developed than us, have made a lot of progress and our Government must do some serious thinking about it, because, after all, our policies have gone wrong somewhere. I would venture to suggest that one of the reasons, why our country has not been able to make the same kind of developmental effort and achieve the same kind of results, as some other countries have, is that, we, as a nation, lay too much stress on other things and give very little attention to the question of growth. There are some provisions which are specifically anti-growth, in this Bill, and I would like to touch upon them, when we come to clause by clause discussion. As a general proposition, I would say that it is much more important to keep in view this aspect of development, than any other aspect. With your permission, Sir, I would like to deal with some of the important clauses in the Bill, and then, if there are any questions from the hon. Members, I and my colleagues, would be very happy to answer them. Our detailed memorandum is in the hands of the hon. Members of the Committee and I would not deal with all the clauses that are dealt with in the memorandum, but, only some of them. The first submission that I would like to is in regard to Clauses 5 and 6 of the Bill dealing with charitable trusts. The provisions regarding charitable trusts were amended from time to

time and there are already adequate provisions for ensuring that the income of the charitable trusts are applied solely for the objects for which the trusts have been created and also for providing that utilisation of the funds of the trusts are not for the benefit of the authors of trusts or substantial contributors of the trusts. It was provided some time back that 75 per cent of the income of the trusts should be spent during the year of the income. Then, the percentage was increased to 100. Now, the present Bill, once again reduces it to 75 per cent. This is a very welcome provision, Sir. We would welcome this. But, there is one aspect on which, I would like to make my submission, namely, that the requirement of exercising the option to spend either during the previous year or the next previous year and where the income has accrued, but had not been received, either during the year of the receipt or in the succeeding year, is, to my mind, rather superfluous. This will cause hardship, as failure to exercise such option will result in the forfeiture of tax exemption. It appears to me that even if we do not have any such provision, the whole purpose of the section would still be admirably served. It is necessary that the provisions regarding charitable trusts do not become unduly cumbersome and I would like to make my submission regarding the provisions which now make business profits of charitable trusts, taxable. The first point that I would like to make here is that, tax rates that will apply to charitable trusts earning income from business, are so high and are almost expropriatory that it will hit several worthwhile causes very hard. Sir, there is no real reason for making such incomes subject to tax, because, the income would be applied to charitable causes which are considered worth-while. Unless they are applied to worthwhile charitable causes in the first place, the trusts will not get any exemption. The real criterion, to my mind, is not whether the income comes out of investment or out of any business activity. The

real criterion is, whether it is applied to worthwhile causes. Then, there does not seem to be any reason why Government should first have its cut before the income is available for such application. The second point I would like to say is regarding withdrawal of exemption to trusts for the benefit of a particular religious community. I do not know how far no information is correct. I think, the Committee is having second thoughts in regard on this provision.

MR. CHAIRMAN: The whole Bill is before us, Mr. Mohta. The entire Bill is before us. There is no question of any second thoughts. We have heard extensively on this aspect of the matter about the discontinuance to exemption to communal charities. I you want to make any more submissions, on this particular point, you can do so. Otherwise, you can come to the next point.

SHRI M. K. MOHTA: In that case, I would not take too much time of the hon. Committee except saying that no new situation has arisen, and it would be in the interest of justice that trusts that were created before the date mentioned here, should continue to get such exemption because they were created at the time when exemption was available and there is absolutely no way to get the provision of a trust deed altered to conform with the changing law. The objects of a trust have to be in accordance with the settlor's directions and there is absolutely no way of changing the provisions of a trust deed. Now, if the exemption is withdrawn, it will be a great hardship.

Then, I come to the question of identity of donors....

MR. CHAIRMAN: Before you come to that, I want to clarify a doubt which comes to my mind.

You seem to be suggesting, firstly, in principle, that there should be no restriction on exemption of incomes coming out of the business of the trusts even if the business is not

carried out as a primary objective of the trust. You say that is necessary to ensure large incomes coming to the trusts and to be utilised for the primary objective of the trust. On the other hand, you have stated in your Memorandum that there should be no restriction on the investments and that trusts should be free to invest in varied fields except subject to existing restrictions which, according to you, are adequate.

My question to you is this. It has been our experience that the existing restrictions, specially those contained in 13(2) (h) are being circumvented. Since you are technically speaking on the Taxation law, you should know about 13(2)(h) which prohibits funds of any trust or any institutions being invested in a concern where one of those persons has substantial interest. It has been our experience that this is very easy of circumvention. Therefore, my query to you is: How do you ensure the protection of interests of revenue in the light of the weaknesses in the existing law and in the light of the suggestion you are making that there should be no exemption.

I would like to know further how your Association would react if we were to consider relaxation of the condition of spending away of money, etc. but bring complete Government control on the utilisation of funds.

SHRI M. K. MOHTA: As far as the utilisation of funds is concerned, I would like to submit that the present provisions are quite adequate.

MR. CHAIRMAN: Our experience is to the contrary. We have statistics and figures with us which show that these restrictions are being very easily circumvented. I would request you to address the Committee on this assumption.

SHRI M. K. MOHTA: It depends on what is considered circumvention and what is not. After all, if the money of a trust is invested in a concern in which the stated persons, etc. do not

have any substantial interest, then it stands to reason that the trustees of the trust consider it necessary in the interest of the trust in order to ensure the security of the investment, in order to have adequate return, etc. to invest in certain concerns.

MR. CHAIRMAN: Circumvention is to achieve indirectly what you cannot achieve directly. That is what is being done.

SHRI M. K. MOHTA: I would like to respectfully suggest that too much is being perhaps read into the activities of certain trusts.

MR. CHAIRMAN: I am not on the question of activities. I am on the question of successful avoidance and circumvention about which we have detailed statistics and data with us. I do not want to waste your time and the Committee's time in reading all that out. I am suggesting that you may address us on the assumption that 13(2)(h) is not adequate. Supposing the Committee were to think that spending, etc. is unnecessary restriction, how would you react so far as the utilisation and investment of funds is concerned? That must come within the clutches of the Government.

SHRI M. K. MOHTA: I will not agree with this. By all means, you have restriction of compulsory spending of 75 per cent income of the trust. But please do not have any restriction on the investment of the trust because at one stroke, the Government would be reducing the income of the trust to 40 per cent. You can get 10 per cent, even 12 per cent....

MR. CHAIRMAN: I am not suggesting that you only invest in Government securities. The funds may be invested in prescribed securities. As you know, as regards the Insurance Act, there are prescribed securities in which the funds can be invested. What I am suggesting is that the ultimate destination of the funds be left to the volition and power of the Government.

SHRI MOHINDER PURI: It seems to be the view of my colleagues that

if the trust Act is adequately modified to leave sufficient discretion to the trustees to make a choice of proper investment security-wise and return-wise and, if it satisfies, so far as the circumvention is concerned, this will be adequate.

SHRI M. K. MOHTA: I would like to add one thing more. The total ban on investment will hit the trusts in another way. Many times, the trusts get donations not in cash but in kind. It may be that a trust has received donations consisting of shares in a particular company. If now this provision comes into effect, it means, you will be forcing the trust to sell such securities at 'distress' rates. That will not be in the interest of the trust at all.

One more aspect in respect of charitable trusts is regarding the definition of 'substantial' contribution. I would say in brief that fixing of an absolute amount of Rs. 5000 would not make any sense unless it is related to the corpus of the trust. It may be 25 per cent or 20 per cent that the hon. Committee may come to a view, not an absolute figure of Rs. 5000.

A very general point that I would like to make in respect of charitable trusts is this. After all, what is the motivation for any businessman to do business? It cannot be entirely personal profit-tax rates being what they are. It cannot be to have power in the concern or it cannot be concentration of economic power because economic power today rests entirely with the Government, not with any individual be he a businessman or otherwise. He donates something to charitable trusts because he wants to serve the community. If his hands are going to be so tightened, that even charitable trusts will not be able to function according to his conception, or according to his views, about how to serve the community, you are destroying one by one all the motivations. It is not going to be in the interest of society.

Now, I will take up clause 12 first, that is, regarding compulsory maintenance of accounts. The brief submission that I would like to make is that this kind of a provision ought to be introduced gradually. If people with turn-over of Rs. 5 lakhs or income of Rs. 25,000 are required compulsorily to maintain accounts, etc.; firstly, I would say, they may be given a little time to get familiar with the provisions of the Bill and, therefore, the provision may apply from the assessment year 1976-77 onwards. Then, the level of Rs. 5 lakhs or Rs. 25,000, to my mind, is rather low and may be suitably increased.

My another submission is that the Chambers of Commerce may be consulted before framing the rules so that the practical difficulties that may come in the way of observance of this provision may be brought to the notice of the Government before the rules are framed.

I now come to Clause 14 regarding clubbing of income of spouse, minor child, etc., with the individual's income. A very important change is already taking place in the social and economic life of the country in as much as more and more women are now taking an active part in all kinds of activities social, political and economic. Therefore, presuming in one stroke that any income arising to a woman must be an income of the husband diverted to the wife is not a very correct presumption.

MR. CHAIRMAN: That is not what is contemplated in the Bill—not every income of the woman.

SHRI M. K. MOHTA: Not 'every', but the kind of income that is stated in this provision.

There are cases of minor succeeding to a share on the death of a parent. It is such kinds of genuine cases that will be hit. What about the income of son's wife arising out of gifts made by the father-in-law and so on? Son's wife cannot be put on par with minor children. Therefore, inclusion of these

categories, to my mind, is not justified at all.

The second submission that I would like to make is regarding to the definition of 'substantial interest' in a company or a partnership firm. 20 per cent voting power or interest is too low a figure to be called a substantial interest. My submission is that it may be made at least one-third to conform with the provisions of Company Law also.

SHRI AMRIT NAHATA: These days, with five per cent interest, people control the undertakings.

SHRI M. K. MOHTA: They may have controlling interest with the aid of friends and supporters, but they cannot be said to have substantial interest. With five per cent ownership if a person is so popular that he is able to get the votes of other shareholders, he can certainly control the company. But he cannot be said to be owning a substantial part of the company. The Company Law has put the level at one-third, and to conform with that, here also one-third seems to be a much more reasonable figure than 20 per cent.

I would now go to Clause 15 concerning section 69D which provides that, if there is a borrowing on a hundi or repayment of a borrowing on a hundi otherwise than by account payee cheque, it will be deemed to be an income of the assessee. My submission here is that, first of all, it will be extremely difficult for the assessee to prove whether an account payee cheque or crossed cheque was received. The efficiency of the nationalised banks—you would pardon my saying this—being what it is, it will be impossible for the assessee to get a certificate from the bank that so and so cheques were account payee cheques and so and so cheques were not. This is a very important and practical difficulty that we will be getting into.

Then I would like to pose a fundamental question here. Should the criterion not be whether the person who

has lent the money really exists or whether it is a fictitious person? The criterion should not be whether the money was given by way of a bearer cheque or crossed cheque. If the assessee is able to produce the person and if the lender is also prepared to certify having lent the money, the transaction is proved beyond reasonable doubt. To say that simply because an account payee cheque was not given the money would be considered to be an income of the assessee would be a negation of justice.

Regarding repayment, may I respectfully submit that cheque is not a legal tender? A lender can definitely insist on cash being paid to him in discharge of the debt. Then the assessee would be in a very unenviable position; if he pays cash is caught by the Income-tax Department, and if he does not pay, the court will say that he must.

MR. CHAIRMAN: There is no difficulty here. If the payment is made in cash, you will have to pay tax on it.

SHRI M. K. MOHTA: My only submission is that it will be a negation of justice if you are made to pay tax on that.

MR. CHAIRMAN: That is the only difference. You were bringing in some sort of a legal difficulty. That difficulty does not exist.

SHRI M. K. MOHTA: Not legal, but it is a practical difficulty.

SHRI AMRIT NAHATA: There is a widespread practice in Madras. There are a large number of people who have no known sources of income. Still they pay income-tax. They maintain accounts and show large cash balances and they deposit these cash balances with certain concerns. It is very obvious that the black money of that particular concern is sought to be routed through such persons having low incomes; thereby the tax is evaded and the money is also used as white money. What is the solution for this practice?

SHRI M. K. MOHTA: If a person is a tax-payer and has cash balances out of moneys which have already been subjected to tax, that is no longer black money.

SHRI AMRIT NAHATA: One lakh of rupees owned by 'A' is divided on paper among ten persons each having Rs. 10,000.

SHRI M. K. MOHTA: The obvious course for the Income-tax Department would be to catch that person who owns Rs. 1 lakh or those ten persons among whom the money is divided.

MR. CHAIRMAN: This is oversimplification of the problem. If you could get at the black money so easily, we would not be deliberating so much about it.

SHRI M. K. MOHTA: If such a situation exists, then those persons who have declared Rs. 10,000 each would simply pay account payee cheques and this provision is not going to help matters.

MR. CHAIRMAN: Do you have anything to suggest to arrest this sort of malpractice?

SHRI M. K. MOHTA: The tax administration has to be strengthened or geared up in order to catch those people.

Another point is that, if a business concern or company has a far-flung organisation, all that a malicious accountant has to do in a branch is to receive an ordinary cheque—not an account-payee cheque—deposit it in the account of the concern and make the concern liable to pay income-tax. That is a very easy way of hitting a concern if you have some kind of enmity with it.

MR. CHAIRMAN: This sort of malpractices are resorted to even retrospectively. After two years when you are submitting the income-tax return, you take this into account. This will not happen.

SHRI M. K. MOHTA: My humble submission is that the powers given

to the Income Tax Officers and the Income Tax Department in general under the present provisions are adequate to catch hold of all kinds of fictitious transactions and this will not help matters in any way except perhaps harassing some honest and straightforward people.

SHRI VASANT SATHE: In short, do you suggest that there are adequate powers but they are not being implemented properly at present?

SHRI M. K. MOHTA: Yes, Sir That is right.

SHRI VASANT SATHE: That is why the whole black money accumulation. No need to give more powers at all?

SHRI M. K. MOHTA: Yes, Sir.

My next submission is in regard to Clause 16 (Sec.-73 of the Income Tax Act). An explanation is sought to be added. It would mean that all transactions of a company in shares would now be considered speculative transactions.

MR. CHAIRMAN: What is wrong with it?

SHRI M. K. MOHTA: I do not know what is the philosophy behind this.

MR. CHAIRMAN: I will tell you immediately. The philosophy is very simple. To deplete your manufacturing profits you show losses in your shares business. The share business is more or less managed in the sense that you can have 10 or 20 companies and go on investing in their shares and show losses and also show them as stock-in-trade. That way your manufacturing profits go down on account of loss in shares business which, in fact, is not a genuine loss, though legally it may be a loss.

SHRI M. K. MOHTA: My submission would be that just because a handful of people have been indulging in this practice, the entire share-holding of all the companies is sought to be put under discipline. That is just like

just because an air accident takes place, we should close down all the air-lines. I would like to submit that it is very important in the interests of economy to allow companies to invest in shares and if they have profits, tax them and if they have losses, treat them as losses.

MR. CHAIRMAN: If it is a genuine investment, this provision will not come into play. Only where the shares are treated as stock-in-trade, this provision will be applicable.

SHRI M. K. MOHTA: What is wrong?

MR. CHAIRMAN: There is nothing wrong. You can do that business but to curb this sort of mal-practice, if you sustain a loss in one particular year in shares business, instead of setting it off against your manufacturing profits, it may be carried forward to the next year and set off.

SHRI M. K. MOHTA: You may have no profit in subsequent years and this loss will lapse.

MR. CHAIRMAN: It is a speculative business.

SHRI M. K. MOHTA: I would not like to enter into an argument in such matters. If you feel that it would be necessary to allow the companies to deal in shares and if it is in the interests of the economy, then the present provision should not be there. If there are a handful of malpractices, the real solution lies elsewhere—in strengthening your Department to curb down such malpractices and expose them and tax them on the basis of the present provision. There are adequate provisions even to-day.

MR. CHAIRMAN: Which one you have in mind?

Suppose you have shares in 20 companies. You transfer the legal ownership. Now there are manufacturing profits but they are brought down by the loss in the shares business. Now what provision is there to combat that evil? It is for that purpose we have made this provision.

SHRI C. K. HAZARI: A company which is a manufacturing business normally will not have sufficient funds to make investment in shares. In fact, the Memorandum of the Company generally does not allow such situations. Manufacturing companies are not investing large amounts in shares. They are investing in shares whenever they have a surplus and as a financial man, I personally think that if there are surplus funds, then those funds, for a short period of time, should be allowed to be invested whether it results in profits or losses. The utilisation of the resources should be made to the maximum and that they should not lie idle.

There may be a situation today or in future when companies which earn profits are not expanding and there are all kinds of restrictions like MRTP Act etc. Many companies have large funds lying idle with them and if they are not permitted to put in the money in some investments like shares, it would be doing injustice.

MR. CHAIRMAN: I fail to understand this. Firstly, if it is an investment, we are not prohibiting.

Secondly, if it is a genuine business, the income tax law does not stand in the way of the economic growth. Actually, what is sought to be done by this is that if there is a loss in shares business, then that would not be allowed to be set off.

SHRI R. THAKUR: Whenever you make an investment, it does not necessarily result in profits.

MR. CHAIRMAN: I am speaking of stock-in-trade. That is not an investment.

SHRI C. K. HAZARI: That becomes a stock-in-trade only for a short period of time. If any loss results ultimately, it becomes a trading loss.

MR. CHAIRMAN: In that case how does this clause hit you?

SHRI R. THAKUR: It will hit. The question is one of a major principle—

whether a company should be allowed to invest at all or not. If so, in the course of the investment, if they sustain a loss, whether that loss should be allowed against other profits. That is the major issue. Suppose, a company has surplus funds. The question is whether it should keep these funds in the banks or whether it should be permitted to invest it in companies' shares. There will certainly be more mobility if moneys could be invested in the shares of various companies. So far as the investment part is concerned, I think there should be flexibility about it. Now, the question comes; when these shares are sold and if it results in losses, whether that loss should be set off against profits.

MR. CHAIRMAN: Such a loss would be on capital account or on revenue account?

SHRI R. THAKUR: If it is business in share dealings, then it is a revenue loss and if it is an investment of a durable character, then certainly it is different. As Mr. Hazari was referring to, if it is on capital account, the loss would be a capital loss and if it is a capital loss, it is prohibited by this and it would not be hit.

SHRI M. K. MOHTA: May I add that if it is a capital loss, it would not be hit; if it is a revenue loss, it would be hit.

May I make a submission? You were kind enough to give the example of a manufacturing company which, after a manipulation, was showing losses. If the transaction is done in such a way with the collusion of other parties and on the face of it is not a genuine transaction, then, the Income Tax Department can certainly disallow that transaction. Here, it is not only the fictitious transactions that are hit but all kinds of genuine transactions will also be hit.

MR. CHAIRMAN: You have not understood my query at all. The transaction is a legal transaction. You have twenty companies. You transfer

funds from one company which is earning profits to 19 companies. The transactions are truly genuine ones. You have sold at a price which is a genuine price and you have sustained a loss which in law is a genuine loss. Nonetheless you enjoy the control of the shares and you deplete the manufacturing profits. It is this type of malpractice which is sought to be curbed. You have been agitated over this provision no one will make any guess, so to say. Our facts are completely different. There are quite a few people who are well-advised in doing this and they do it merrily.

SHRI M. K. MOHTA: I have only to submit that in order to catch this particular category of tax-avoiders, may I say....

MR. CHAIRMAN: There is no provision at present....

SHRI M. K. MOHTA: The section should be much narrower and should be worded in such a way that when once collusion is found that transaction should be disallowed but all kinds of ordinary transactions should not be brought within the purview of this section.

MR. CHAIRMAN: Do you suggest that if in the transfer of companies there is some identity of interest etc. then, they should be hit by it...

SHRI M. K. MOHTA: We will frame a suitable amendment with our note and submit to you for consideration.

MR. CHAIRMAN: All right. You may proceed to the next point.

SHRI M. K. MOHTA: The next clause is clause 25. I have only a very brief submission to make. The amount of Rs. 2,000 which will be allowed for expenses on income-tax proceedings is extremely low and it is not quite justifiable to mention the amount here because this will depend upon case to case. Saying that it will be 2,000 does not seem to me to be justifiable. In a year of loss even this 2,000 will not be allowed. These are the two anomalies which require to be corrected.

MR. CHAIRMAN: All right. We will consider this. What is your next point?

SHRI M. K. MOHTA: My next point is regarding Clause 26 and Clause 27 regarding compulsory distribution of dividends by industrial companies. I understand the doubts in the minds of the frames of this Bill. It is this which has promoted them to suggest this amendment. The doubt is, people in higher income brackets promote companies in which public are not substantially interested and thereby they succeed in tax avoidance. But the net is thrown so wide. I would like the honourable committee to consider the case of the small scale industrialists. It is not so easy to go public. The small scale industrialist cannot hope to sell shares in the public in order to have become a company in which the public are substantially interested. That is one point we must bear in mind. Secondly no worthwhile industry will be promoted without the help of funds from financial institutions/banks. In every case where the financial institutions feel it necessary to do so they insist that company should go public. The very fact that in some cases financial institutions allow the private companies to remain private points to the fact that there are real difficulties in the way of such companies to go public. These companies, small-scale and medium and big-small-scale mostly which is engaging my mind,—will be under compulsion to distribute 45 per cent of profits as dividends. In the Company Law the new amendment that has come has taken a different philosophy and the Company Law people think that a certain amount of profit must go to reserves before dividend is declared and also that dividend should not be declared without Government's permission or without conforming to the rules etc. framed by the Government. There is high rate of income-tax on private companies. They are assured to distribute as much as 45 per cent of the profits after paying a very high rate of income-tax. Income-tax on closely held companies is higher than ordinary companies. After paying that high rate of tax, it is 69 per cent if I am not mistaken, 45 per cent of the residual amount

must be distributed to shareholders. Where will the money be for ploughing back? Small scale industrialist will be hard put to pay off the loans he has taken from banks|financial institutions. Take the case of even the big fish which seems to be really agitating the minds of the framers of this Bill. How does he enjoy that money? If money lies with the company it can be used only for furtherance of the aims and objects of the company but not for the benefit of any single individual. As soon as dividend is paid it is subject to tax. You have adequate provisions and methods to catch that big fish. The money remains with the company. It is an industrial company. The money can only be used for development of an industry which is in the interest of the economy. We cannot think of everything in terms of white and black because there are always different shades of grey. The one main objective before us is industrial development. We can, without detriment to interest of society, overlook the question of subjecting these kinds of profits to further taxation. What I feel is, this provision will deter the small scale industrialists in particular, and industrial development in general. It should be definitely done away with.

Wanchoo Committee has gone on record as saying that this Section 104 has not been understood by them. They asked, why should there be compulsory distribution and this and that.

MR. CHAIRMAN: We will consider that, Mr. Nahata.

SHRI AMRIT NAHATA: Dividend going to individual will be taxed; that may be used for consumption purposes. You said this. But in the case of closely held companies the dividend savings are very few. It does not apply to closely held companies. It is general experience that if closely held companies give dividends they would be quite substantial and the State will have its share and we hope that the rest will be saved and re-invested.

SHRI M. K. MOHTA: That is my submission. The State will have a share. Out of what? Out of funds that might have been available for industrial development. That is exactly my submission. If money remains with the company it must be used for industrial development. It can't be used for private consumption. If you compulsorily make it obligatory for them to pay dividend, the State will definitely have a share but the rest will be used for private consumption and development will suffer.

SHRI AMRIT NAHATA: If you take it to extreme length, it would come to this that 99 per cent are on starvation level because they don't save in any case and only 1 per cent are in affluence.

SHRI M. K. MOHTA: I don't think it leads to that.

SHRI H. M. PATEL: He made a distinction regarding closely-held companies and those not so closely-held and so on. He says, if they save money, does it not redound to help industrial development. That is the point. What is the position on this?

MR. CHAIRMAN: Section 104 is in regard to compulsory distribution of dividend by certain companies and so on. Sub-section 4 of that provides certain criteria so that his will not be applicable to them. The point which Mr. Mohta is making is if you remove it and allow the new provision to come in, those companies which are engaged in carrying on the business would be compelled to pay dividend and would be shifting the funds.

SHRI H. M. PATEL: What is Mr. Nahata's point?

MR. CHAIRMAN: This does not apply to the companies which are widely held where the shares are scattered. It applies only when the share holders are very few.

SHRI H. M. PATEL: We will have to consider whether or not to allow declaration of dividends and whether it results in any harm.

MR. CHAIRMAN: We shall discuss.

Mr. Mohta, we will consider it.

SHRI R. THAKUR: I wanted to add that it has been discussed in a greater detail in Wanchoo Committee itself. It was also discussed earlier by Boothalingam Committee and both the Committees strongly felt that this provision should not be there. What is the fresh thing which helps? One aspect would be clear—after paying the legitimate tax of the company if the Director of the Company feels that it helps the growth of the company, it should be left. It should not be made compulsory as it would retard the growth of the company. It would be against the very spirit of the Wanchoo as well as Boothalingam Committee Reports if it is made compulsory.

MR. CHAIRMAN: We shall give consideration to this aspect of the matter in view of the Wanchoo and Boothalingam Committee Reports.

In the existing law, according to you, is drafting satisfactory? You apply your mind and let us know in writing.

SHRI AMRIT NAHATA: Balance must be struck between the investment and capital formation and the need of the State.

SHRI R. THAKUR: So far as the company's total profit is concerned, the State has taken its due share and out of what is left with the company, if the company feels with the remaining income it is in a position to increase its business activities, to have a new line of business, to have its capital growth, it would not be in the interest of business if with the increased activity of the company and profits the State may get further. I think there is a very strong case and it should be considered. If we make it compulsory the small share holders might fritter away, but they would get dividend if the business is increased.

SHRI H. M. PATEL: It seems to me, when you say should not the State also benefit? The State is taking its 65 per cent.

MR. CHAIRMAN: This question goes into the entire scheme—as a corporate wing should it be allowed to minimise the tax liability? Whether this minimisation of the tax liability in the light of the larger interest is desirable or not. This is a question which we have to consider.

SHRI M. K. MOHTA: The next clauses which I would like to take up are 36-38 dealing with power of seizure, etc.

I would like to submit that even the existing powers are quite adequate to meet the exigencies of the situation. Without meaning any disrespect to anybody, I would like to submit that the real reason why there has not been any satisfactory result of the powers that have already been given to the administration is not that the powers were inadequate but because the administrative machinery has been weak. I do not want to go into the reason why it has been weak. But the fact remains that the administrative machinery needs to be geared up, to be made in a position to use the powers that have been given. It cannot be an argument that just because results were not produced by the administration, more and more powers should be given. If that remains the logic, then so much extensive powers similar to those existing in a Police State will have to be given if any results are to be achieved.

It has been stated in some quarters, what is the harm if we seize or search you? If you are honest, there is nothing to fear. I would submit that there is definite harm. If you search one's premises, if you question his wife, the kind of damage done to his prestige is beyond redemption. The same kind of argument can be applied to the politician. An administration might like to seize or search a politician on vague suspicion and argue that he has nothing to fear if he is above board. That

would bring the conditions similar to obtaining in a Police State. After all if we value personal liberty in this country to any extent, the kind of powers that are sought to be given, cannot be given to any administration.

MR. CHAIRMAN: We have transformed into law Wanchoo Committee's recommendations. On this you may say whatever you have to say as Wanchoo Committee itself has considered it.

SHRI M. K. MOHTA: Let the administration give a better account of itself with the powers that are already with it and to prove that they are working not only in the interest of revenue, but also in the interest of justice, because to my mind it is as much and even more important to safeguard the innocent person than to catch the guilty persons and that is something which is entirely lost sight of.

MR. CHAIRMAN: It would be a great assistance to the Committee if you take it up provision by provision and give your views in writing. Either you take them up now or submit in writing later on.

SHRI M. K. MOHTA: We will submit it later on. But I would like to submit that it is an impossible task to make any improvements on this. This provision should go lock, stock and barrel.

SHRI VASANT SATHE: You have made a point that this whole provision needs to go lock, stock and barrel and that it is an unjust provision. According to the Indian Penal Code, once an offence is completely proved, that safeguards all the innocents. Once the offence of tax evasion is proved, then usually we say that we can put it at par with the law of theft and make the punishment stringent.

Secondly, as you know, the burden of proof, according to the Criminal Procedure Code is on the prosecution. A thief can commit a theft, but he is supposed not to be guilty unless proved to be guilty and it is for the prosecution to prove that he has committed

a theft. But in respect of the tax evasion, the money is earned by the taxpayer, he makes money in manufacturing or business organization. Should the burden of showing real income be on the State or on the taxpayer? Where would you like the burden to lie?

SHRI M. K. MOHTA: Sir, I would like to submit, that if it is tax evasion and if it is proved, it should be made at par with theft. I have no doubt about it. Stringent measures should be provided. But at the same time, I would submit that the burden of proof must be on administration, and not on the assessee. We cannot proceed on the assumption that the taxpayer is guilty, unless proved innocent. And, therefore, sir, once the administration succeeds in proving that a taxpayer is guilty, whatever that may be, by all means stringent penalties must be provided.

SHRI VASANT SATHE: We find that a major portion of evasion of tax takes place in this way. The Income Tax authorities within the framework of the law, as it stands, try to find, where income has been hidden or avoided. You are a man of business and industrial world. How would you help us by suggesting that we can really lay our hands on that? What remedies should be provided to rationalise the income tax structure, apart from reducing the tax etc. to find out, whether income tax has been avoided or not?

SHRI M. K. MOHTA: I don't think, there will be any simple solution, the administration must be strengthened....

SHRI VASANT SATHE: That you have said more than once, but have you spelt it?

SHRI AMRIT NAHATA: Apart from the theory, don't you think and realise that shifting of the onus on administration would make a mockery of the tax laws?

SHRI M. K. MOHTA: I respectfully beg to differ on that point.

SHRI VASANT SATHE: You have not answered my question, as to how the administration should be strength-

ened, on which you said, simple answer cannot be given. If you can give us a detailed note, that would be helpful.

MR. CHAIRMAN: There are two things. There are some most important provisions of the Bill and we would like to give our very serious thought to all these provisions. There are two fold objectives that we want to achieve. Firstly, it is the objective which is enumerated in the Objects of the Bill, i.e. arresting proliferation of black money, arresting evasion effectively etc. It would be unrealistic to say that by providing for deterrent and strict legal measures, the provisions are not going to be at all effective in arresting evasion, or arresting proliferation of black money. You have attributed generation to controls etc. The idea is that we make the law so utterly clear that in a proper case, the burden itself shifts to the assessee, so that on technicalities and presumptions and assumptions of law, existing in the criminal jurisprudence, he is not able to wriggle out of the clutches of the department.

While doing so, it is to be ensured that it is not abused against an innocent person. Your earlier observation that it should go lock, stock and barrel is contrary to what the Wanchoo Committee and the Law Commission have stated and to me it appears against what common sense says. We want to make tax evasion very very unrewarding. You are painting one side of the picture. I would request you to give the other side in view of what I have said.

SHRI M. K. MOHTA: I entirely agree with you that the tax evasion should be made so unrewarding that nobody should think of evading tax in future. On that point, I have no difference with you. I also agree with you, Sir, that the assessee should not be able to wriggle out of the clutches of the department on technicalities, but at the same time, the department should not be in a position to get hold of innocent persons. The

only difference of opinion between you and my humble submission is that the onus of proof must in every case be on the administration and not on the assessee.

As far as the different specific provisions of the clauses are concerned, I would request my colleague, Mr. Thakur to make comments.

MR. CHAIRMAN: All that we are wanting to ensure is that by re-drafting or changing the Section, the unsuspecting man should not be harassed or that the officers must not feel that they can do anything and everything.

SHRI H. M. PATEL: In your memorandum, while discussing Clauses 36 to 38, you have emphasized on this that the powers that are being given are being given to the junior categories and therefore they are potentially more liable to abuse. Secondly, you have said that certain powers that are now being proposed to be given to them could be used vindictively and therefore the officers should be liable to punishment if it is found that they have really carried out the search etc. in a totally unjustifiable manner. Do I take it, then, that—leaving aside your extreme suggestion not to have this Clause at all—you would suggest that the Clause be so modified that the officers who are authorised to search etc. should also be made liable to punishment if their searches are found baseless, unjustified, etc.?

SHRI M. K. MOHTA: I would respectfully submit that you may go on giving more and more powers, but unless you see to it that the Administration is so clean that they are able to make good use of such powers, any amount of powers given here would be of no use. Therefore, to my mind, it is putting the cart before the horse. The first basic step is to strengthen the Administration so that they are able to work effectively within the four corners of the powers already given, and then give them more powers.

These are the two points dealt with in our memorandum on this question. My colleague Mr. Thakur would also like to make some comments.

SHRI R. THAKUR: I would like to make the submission that obviously these deterrent provisions are necessary, but there are areas in which possible improvement can be brought about.

One is this. On page 17 of the Bill...

SHRI H. M. PATEL: Any specific clauses?

SHRI R. THAKUR: Clause 36; the same clause that is being discussed. On p. 17 of the Bill, in I(a) I would submit that the term "reason to suspect" in the phrase "reason to suspect that any books of accounts..." etc., is a very loose term, which is likely to be mis-used. "Reason to believe" would be the proper term, so that there would be a more reasonable amount of certainty. The word "suspect" is not the proper word; it might create a hardship.

MR. CHAIRMAN: We will consider that.

SHRI R. THAKUR: Secondly, the only suggestion I would like to make is that, in regard to these powers, as recommended by the Wanchoo Committee there should be a certain reciprocal responsibility on the officers who are likely to conduct the search. These provisions are already there in the Customs Act and also in the Foreign Exchange Bill which is being formulated now. I think there should be some reciprocal provision here that where these powers are mis-used by the officers, there should be some responsibility and some punishment provided for them. Otherwise it becomes one-sided and likely to be mis-used in certain cases.

SHRI AMRIT NAHATA: I think this basic controversy could be resolved if I were to suggest a philosophical ground in between the two extre-

mes—one that all tax payers are honest and the other that all taxpayers are crooks. As you said in the beginning, they are all human beings. That would perhaps resolve this basic contention.

SHRI H. M. PATEL: And the other philosophy is that which was placed before us by one of the witnesses who said that there is a section—may be a small one—who will pay their taxes however onerous you make them; there is another section who will not pay their taxes however light you make them; but there is still another section in between who will pay their taxes if the burden on them is not too heavy and if reasonable incentives are provided to them to be honest. That is probably a more reasonable philosophy.

MR. CHAIRMAN: But we are dealing with the second category and not the third. However reasonable a law may be, some persons are bound to be culprits.

SHRI MOHINDER PURI: The Chamber's view on this matter is that before such authority is exercised, there should be adequate use of discretion at the higher level so that the community which is paying the proper taxes is not subjected to unnecessary and avoidable hardship.

Secondly, the Tax Department has to develop a system where, before he uses these powers, the tax officer has to give subjective thought and is accountable to his superiors for any wrong done to the society or individual at large.

SHRI AMRIT NAHATA: And, at the same time, protection for genuineness?

SHRI VASANT SATHE: I can assure the witnesses that we are as anxious as they are that the innocent be protected and that the powers are not unnecessarily enhanced. In fact, if you ask me for my personal opinion, I would like to reduce the powers. But, would you suggest to us any barometers for finding out how and

where and by what method evasion of tax on real income takes place? We know for a fact that black money is growing. So, what I am suggesting is that, if we really want this whole tax business to be more rational so that the innocent and honest are not harassed, you should suggest a concrete measure. No witness or body which has come before us up till now has really made any concrete suggestions. We are willing to change the entire law, but would you suggest to us how we will be able to find out the real income? Would you say that we should judge it on the basis of expenditure? Can we ask a person "From where have you got this car? How much have you paid for it? From where did you get this furniture—and so on?" Can we assess income by its utilisation? After all, black money is also used as money. So, will you suggest some concrete measures to us? Otherwise, we will only be beating about the bush.

SHRI MOHINDER PURI: My colleagues here would be willing to undertake an exercise by which the Chamber can submit some alternatives in this respect. But I would submit that we have a machinery which is manned by very able persons and if it can be geared up and if their past record can be subjected to review from time to time, we will be able to see what they have failed to achieve.

SHRI VASANT SATHE: They are also human beings and we know that in spite of their best capacity, human beings as they are, we have not been able to achieve the results. So your suggestion is the gearing up of the taxation machinery indirectly. At least you are mooting something like that. That means you are saying that they are not honest. Now, can you suggest a way out for this?

SHRI C. K. HAZARI: Sir, the problem is too intricate to find solution by any one, but, however, when we are talking about strengthening the tax administration, we definitely

have something in mind. It is not by law or provisions of law that this is going to be strengthened and this is what the Chamber, of Commerce feel. It is our feeling that the powers given to the tax administration today are more than adequate. The point is that they are being used by the junior officers. In the view of the Chamber there is no lacuna or anything lacking in the administration which prevents in using it.

Now, the point is why they are inadequate and if they give us a feeling that every time the Income-tax law is amended, more and more powers are being given, and since there has been failures in the performance and when questions in the Press and in Parliament come, they say that they do not have adequate powers, that this is a cloak, a disguise which can carry on. So more powers will be given by Parliament because what they are concerned is that the tax evasion should be curbed. This is not the remedy in my humble opinion, Sir. One of the factors for the tax administration not being successful is that apart from very very able officers who are there, there others who are not so honest and truthful. I am sorry to make this statement and I would like to make it clear that by making this kind of statement I do not want to cast any aspersions on anybody. But this is my humble opinion.

SHRI H. M. PATEL: Could you suggest which of the existing powers would have enabled the administration to plug that particular loophole which is sought to be plugged by the provision of additional powers? I think supposing you make a few instances it would enable us to understand the law fully that existing powers are not adequate whatever we have now in mind.

SHRI C. K. HAZARI: The Chamber could undertake some exercise in this respect. But in the Memorandum we have submitted that the powers which are being exercised by the superior officers should not be passed on to the junior officers.

SHRI H. M. PATEL: You say that the superior powers should not be given to junior officers. But can you give instances where these superior powers have not been exercised by the superior officers but by the junior officers?

MR. CHAIRMAN: It is not only qualitatively that we are making the law more stringent but there is a very substantial change quantitatively in the powers and in the law. And on that I would want you to suggest to us where you feel that this would hit or harass the assessee. We would be really assisted in this respect because, I am not casting any aspersions, but if you want a more objective evaluation, it is only with reference to the particular provisions that we can do much better performance. We can understand your view point and things like that because we are concerned about one thing and the case will go at default as it seems to be going now. Every one who is coming here is telling us that these powers are not going to help them and that the existing powers would help us but excepting one assessee no one has told us whether the law is deficient and it is likely to be abused or mishandled. Therefore if you can make some exercise in this regard and provide us the same it would be of much greater help to us. If you are not ready to do it now, then you can send your suggestions later on.

SHRI M. K. MOHTA: We would certainly do this exercise. But kindly indicate the specific point on which we can prepare a note. Of course we can prepare a note in what way the new powers will act to the detriment of the assessee. But in what way the Department has not been able to act in respect of the existing powers?

MR. CHAIRMAN: I may tell you this for the second part of your question. It is like this that the law now seeks to make a qualitative departure as regards presumptions, as regards his authority and right to act

under certain circumstances. So, it is not as though he will be acting and behaving under law which gave a certain quantitative evaluation but if certain quantitative evaluation is sought to be completely changed, the whole foundation has to be changed. But in this shift of the foundation there is a possibility of assessee being harassed. In that case you must take this point into consideration when you prepare the note.

SHRI M. K. MOHTA: I understand this, Sir. We will definitely submit a detailed note on this.

SHRI TRIDIB CHAUDHURI: In your Memorandum you have said that the Wanchoo Committee recommendations are a sort of package programme and you have also pointed out that one of the major recommendations of this Committee is the marginal development taxes to 75 per cent. You have regretted that that para finds no place in the Bill. It is because this point is actually outside the purview of the Bill but you would note that in the light of what our Chairman pointed out just now, there is a qualitative change in regard to presumptions. Do you agree that these powers be given subject to drafting improvements so that the innocent people may not be harassed?

MR. CHAIRMAN: In other words, rationalisation of tax rates?

SHRI M. K. MOHTA: The two questions must be dealt with separately. It is not a question of our agreeing to it or not agreeing to it. I would like to submit that rationalisation of tax rates is one aspect and must be dealt with separately. As far as the second aspect is concerned, when you are giving powers to the administration, they must be able to protect the interest of the innocent people. As far as details are concerned, as we submitted earlier, we will give you a detailed note on this. I was only wondering whether the Department has prepared any note on that?

MR. CHAIRMAN: That is available with us.

SHRI K. R. GANESH: It seems that you are not completely basing yourself on the powers recommended by the Wanchoo Commission. They have gone into the question of inadequacy of tax administration, flaws in the law, legal loopholes and so on. On the basis of that, they had made certain recommendations. It was presided over by an ex-chief Justice of Supreme Court. There was also a reference by the Law Commission on the complexity of social and economic crimes. They have gone into this question and laid down certain criteria. As far as the question of presumption and shifting of a burden is concerned, I understand, the drafting is there. It is based on these recommendations. Certain laws such as Foreign Exchange Regulations Act, Customs Act, Central Excise Amendment Act (already passed), they are all having it. This matter had been gone into by a committee which was appointed for this purpose. On that basis, they have principally reported on that.

SHRI M. K. MOHTA: Thank you for your clarification. Based on that, our submission will be sent to you in the form of a note.

SHRI ERA SEZHIYAN: On page 2 of your memorandum, you have mentioned about Chamber's experience. I want to know what do you mean by that?

SHRI MOHINDER PURI: This Chamber works through a Managing Committee which has panels for different pieces of legislation. There is a panel for taxation and this taxation panel constitutes a further sub-committee to look into it. While studying the Bill, the Chamber has expressed its opinion, out of its experience about the power which is not used in a proper manner to produce the desired results. Chamber's views regarding taxation have already

been expressed by me and my colleagues.

MR. CHAIRMAN: From this, one gets an impression that the existing powers are not sufficiently used. If that is your experience, you tell us, we will tell Mr. Ganesh to be more vigilant with your Association and tell them that these powers are not allowed to be misused. Is it your experience that where they need to be used have not been used? In other words, these powers are not being used, though they are on the statute book? But, I would like to give a very careful thought to what Mr. Ganesh has said in the matter? Mr. Thakur, you kindly read those provisions very carefully as has been pointed out by Mr. Ganesh? In the very nature of things, a mala fide action is possible because of the subject matter? But kindly bear in mind the basic things of the subject matter?

SHRI R. THAKUR: I quite appreciate this fact as has been mentioned by the hon. Minister. He has rightly said that he has carefully considered all the recommendations of the Wanchoo Committee. Earlier, we had submitted that the Report of the Committee is also there. There are three parts. One part is not there and it has been mentioned "what are the reasons for this". The reason has been that the root cause is not removed. Because one of our hon. Members was good enough to say, "if we want to change all these things what is the answer". The basic answer is there. As has been pointed out by Wanchoo Committee, the main reason is "marginal higher rate of taxation". I would like to make my humble submission. That this aspect has been pointed out, because unless it is there, I think, the other aspects of the Clauses have their places because the assumption is that, there will be this black marketing and black money in future also. The second part is, what is the effect of the existing law. I should say, in all fairness to the Department also,

that the existing laws have been used in different places and they must have their studies and the consequent results. We cannot dispute that. We do not know the details. But, the question is, what should be done, taking into consideration the recommendations of the Wanchoo Committee, the provisions of the Bill and the existing provisions of the law—whether these large powers or amendments are absolutely necessary and if so, whether these are likely to be abused. This is one part. Secondly, the question is, whether these powers are likely to affect honest tax payers. These are the two backgrounds in which this has to be closely studied and I think, Sir, it will be our duty in the Chamber to examine the suggestion that has been given, view it objectively and to make specific submissions—so that this matter may be considered by the Committee and if suitable amendments are considered, reasonable, they could be substituted. I would like to mention one other point. Earlier, Mr. Mohta also mentioned about this. This is in regard to Clause 6. I would like to supplement what Mr. Mohta has mentioned. I think we have been dealing much more about the activities of the various business institutions, where tax evasion is supposed to be there. But, unfortunately, I have a feeling that though it has a certain indirect relationship, a large number of institutions which are clearly working in the interest of the people, and a large number of people who are working in the rural areas for the benefit of the poor, have been brought on par with other trusts and these are likely to create unintended hardship in a large measure with a large number of institutions and a large number of people involved in it. My humble submission is this. Kindly see Section 2 sub-section (15). So far, the position is, the trusts which carry on activity for profit, for the purpose of relief to the poor, education and medical relief, were not liable to pay and they were not attracted

by Section 12 even if they were carrying on activity for profit. Only, the fourth category, namely, institutions or trusts which were for general public utility, if they were carrying on activity for profit, they were attracted, by the provisions. Now, the position is, all kinds of trusts whether they are for the benefit of the poor, or they provide medical relief or education, or all of them, they will be affected if they have any profit. My submission here is that, we should not take into account only trusts which are connected with certain business houses. We have to take into account the large interests of the country. I will give one example. There are large number of institutions and trusts working in rural areas doing work connected with Khadi and Village industries. They have to act according to the directions of the Khadi and Village Industries Commission. The activities of these organisations are supported by the Khadi and Village Industries Commission. They get a Pramen Pathra from them. This is a certificate to act. They have to act in a particular manner. I will not take much time of the House. But, I would like to mention only the earlier decisions of the Privy Council in regard to this matter. Perhaps, you are aware that Mahatma Gandhi...

MR. CHAIRMAN: We are aware of that. You can proceed on that assumption.

SHRI R. THAKUR: If this clause is brought about, this will create hardship. I can appreciate a related clause, which was just mentioned by the Chairman. This is regarding investments. I would like to submit on that, separately. So far as the first part is concerned, if the institutions or trusts, as have been specified in this case, and as is the case with many smaller institutions throughout the country, carrying on activity for the benefit of the weaker sections of the community, if they are affected by this Clause, and if each one of

them is required to submit a return, this will create hardship. In this connection, I would like to mention that in spite of this clear definition and the Court's decision....

MR. CHAIRMAN: You have made that point. That is the decision of the Mysore High Court.

SHRI R. THAKUR: What I am trying to say is this. In spite of all that, I have seen cases where the Income Tax Department has issued notices to them to file the return telling them that they are not entitled to get exemption under Section 80G because, the definition in regard to 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. May I read the letter from the Department?

MR. CHAIRMAN: Do not read the letter. What is the problem?

SHRI R. THAKUR: The problem is there is confusion. In spite of the clear position of the law, we find that notices are being issued today. If this amendment is proposed, then, there will be confusion to decide what are the institutions which carry on activity for profit in furtherance of the main objects of the trust. This will create utter confusion and unintended hardship will be caused. My submission is that....

MR. CHAIRMAN: Do I take it that in principle, you accept this Clause (bb)?

SHRI R. THAKUR: My humble suggestion is that this clause should not be there. I have a specific suggestion to make.

MR. CHAIRMAN: You say, in principle, this should not be there. Secondly, if it is there, the drafting is likely to create serious difficulties.

SHRI R. THAKUR: Only a part of it is to be amended. If the clause is to be there, let it be there. Now, the later part of new Clause (bb) says:

"unless the activity is carried on in the course of the actual carrying out of a primary purpose of the trust or institution."

Here, we can say unless the activity is carried on and the profit is used solely and exclusively for the primary purposes of the trust.'

MR. CHAIRMAN: This is already covered by Section 11. Is it necessary? This will be superfluous.

SHRI R. THAKUR: I am saying that this is creating a problems today because in spite of

MR. CHAIRMAN: Mr. Thakur, I understand. Let us be clear. One thing is about the basic principle which is behind this Clause. Another is, in spite of the principle, how to improve the drafting. There, you are not improving the drafting. What you are suggesting would virtually negate the provisions. There is exemption under Section 11, unless the advancement of any other object of general public utility which involves the carrying on of any activity for profit. You say that you are opposed in principle. But, in regard to drafting, you are not suggesting anything.

SHRI R. THAKUR: I do not think it is necessary because Section 2(15) is enough. There is no need for amendment.

MR. CHAIRMAN: Section 2(15) says that only in respect of general public utilities, this restriction remains. If the object of general public utility is being implemented, unless it involves the carrying on of any activity for profit, it will be exempt. It is difficult to understand the rationale. It is properly worded and this is the interpretation which has gone into the Mysore High Court decision. Why should an activity for profit for general public utility, be left out? What is the rationale behind? Will you explain?

SHRI R. THAKUR: The substitution that I am suggesting, would, in a sense, mean that if the profits of the trusts

or the institutions in all the four categories are fully and exclusively utilised in furtherance of the main objects of the trusts, there should be no restrictions. That would be my submission.

MR. CHAIRMAN: We are actually going by the U.K. law. I want to understand two things. The obvious intent and purport appears not to encourage business activities in the hands of the charities. There are obvious reasons why business must not become a sport in the hands of charities; and that is why this clause is sought to be brought in. I would like you to enlighten us on the point, viz., if this principle is accepted by the Committee, how should the re-drafting be done.

SHRI R. THAKUR: You can make any distinction between the trusts working in the rural areas and trusts connected with business houses. This is one part of it.

MR. CHAIRMAN: Do you mean to say that the activities of profit in rural areas should be treated differently from those in the urban areas?

SHRI R. THAKUR: Not only in regard to areas, Sir. The Wanchoo Committee has said that this device is being used to transfer certain money, i.e., as it is done in families so in the case of trusts. There are 3,000 institutions under the Khadi Commission which are working in the rural areas. They are serving 50,000 villages. They have nothing to do with any particular business house. By a stroke of this law, they are all affected.

MR. CHAIRMAN: How are they affected?

SHRI R. THAKUR: They are affected in the implementation of their primary business. All these institutions are already being asked to submit their accounts.

MR. CHAIRMAN: Please do not quote all sorts of illegalities committed by the Department. We know them. What is the real position of the law? Would the Khadi Bhandar's work in the villages be hit by this, according to you?

SHRI R. THAKUR: They will be hit much more. At one stage we had represented to the Finance Minister on this matter. We were directed to go to the Board. Mr. Dhebar as also the Chairman of the State Council of Maharashtra, among others, appeared before it; and we were directed to see the Chairman. Then a circular was issued by the Central Board of Direct Taxes clarifying that the institutions which are certified by the Khadi Commission should not be covered under Section 215. But I understand that this situation has arisen these days in various institutions and that the tax authorities at the lower level are compelling them. The institutions in the rural areas have a different pattern of maintaining accounts and if there are treated as business houses, all of them will be treated as having profits with-maintaining accounts and if these are our practical difficulties. There will be an unintended problem which has nothing to do with this device of transfer of money.

MR. CHAIRMAN: Do you tell us that even if this principle is accepted, the Department is going to create trouble? How would you then like us to make things clear? Assuming this principle commends itself to the Committee, how would you re-draft it to safeguard your interests?

SHRI R. THAKUR: I will have to take time to prepare and reply to this question, Sir.

MR. CHAIRMAN: I am inclined to consider that the Khadi Bhandar, with its primary purpose of helping the hand-spun cloth, has to resort to certain activities which would mean carrying on business. When it sells cloth, it is business activity.

SHRI R. THAKUR: But the difficulty is that in the primary object, there is mention that it is meant for the poorer sections. It does not specify that we will have tannery etc. I have one institution in mind and I can read out its objects. They lay down in broader terms that it is meant to help the weaker sections of the society. It was discussed in detail and emphasized that all the business activities were there; but since there is no profit-making or profit distribution, even if they have a little profit, they should not be treated as profits.

MR. CHAIRMAN: What will be the position, if we delete the word 'primary'?

SHRI R. THAKUR: The confusion would still be there.

MR. CHAIRMAN: How?

SHRI R. THAKUR: The basic problem is that once this clause comes into force, all these institutions, including those carrying on educational services and medical aid—I mean all of them. will be hit.

MR. CHAIRMAN: Which particular institutions, do you think, will be hit? The educational institutions are exempt under a different clause. Your example of Khadi Bhandar has not impressed us; and you can give other examples.

SHRI R. THAKUR: I can quote, e.g., the Indian Council of World Affairs, the Indian Institute of Public Administration etc. They are registered under the Societys' Registration Act. They carry out activities of research, training etc.

MR. CHAIRMAN: Regarding the Indian Council of World Affairs, would not their activity of selling tickets etc. be covered?

SHRI R. THAKUR: If you see our memo., you will find that it is not covered. When the memo. was drafted, that aspect was not specifically mentioned there. They are doing it

for the hall of the Sapru House. It will be affected. Genuine hardships will be there. So far as investment was concerned, if diversion of it is to be stopped, it should be done. If the impression of the Wanchoo Committee has been that it is used as a means and a place for evading taxes, it should be stopped; but where there are genuine trusts—and most of them are genuine—and they are carrying on their activities, why should they be stopped from doing so?

MR. CHAIRMAN: By pointing out these difficulties, you are wanting the deletion of the clause. I would like you to consider whether these difficulties could not be obviated by suitably redrafting the clause and changing it to 'actual carrying out of a main or ancillary purpose of the trust'; since you are pointing out cases of hardship because of the original constitution of the trust not covering these purposes....

SHRI R. THAKUR: If we say these things in regard to future trusts, one could understand that they are covered. But there are existing trusts which may be thousands in number, which had not foreseen this thing, and which had only a general clause of general public utility and helping the poor. It would be necessary to cover them also because this clause would not cover them. If it comes into retrospective effect in regard to existing trusts, that would create problems.

MR. CHAIRMAN: We shall consider the matter.

SHRI R. THAKUR: I would have thought that the existing provisions in regard to the right of trusts for investment may require amendment, and there I have some suggestions to give. I think that the idea is that since trusts are entering business by controlling the affairs of other companies by investing the trust funds there should be some limitations and they should be debarred from investing their funds in companies where the trustees are interested in any way directly or indirectly; that is one thing.

MR. CHAIRMAN: I tried to make that point clear to Mr. Mohta, but he did not take us any further. I have a letter with me which speaks of trusts being created by a certain Bombay industrialist registered in Madras, and he has created 97 trusts with the same set of people with combinations and permutations; as a result of that, the 20 per cent limit in regard to substantial interest is getting defeated. Whatever be the corpus, the totality of this is far more than the holding contemplated under clause 13 (2) (h) and yet each trust is exempt from it. There are many such ways which are bringing about circumvention of clause 13(2)(h). Therefore, I had asked Mr. Mohta to address us upon that assumption that clause 13(2)(h), is not a sufficiently effective curb on investments made into the trustees' own concerns. That is why we have asked for other ways which could commend itself to the committee whereby if genuine trusts feel any difficulties we could think of recommending some relaxation, provided the funds come directly within some statutory limit.

SHRI R. THAKUR: That would be most practical and that would really solve the problem. I would go further and make some suggestions in this regard. But these are my personal views because these have not been considered by the Chamber. If necessary, the voting rights also could be taken out in respect of such investment or trust funds in companies; that could be taken away, if that would enable the purpose in view to be achieved.

MR. CHAIRMAN: We are already considering the question as to what constitutes control. Someone has suggested to us that we should also define as to what constitutes control and there is one suggestion which has come before us namely that where the voting power of the trust is already given in favour of the public trustee, it must be taken that the control is with the Government. We are considering that point already. But I thought that Mr. Mohta was opposed to the basic philosophy of the clause itself.

SHRI M. K. MOHTA: That is correct. We as a Chamber are opposed to the basic philosophy of the clause. If some businessman has created 97 trusts or even 970 trusts for that matter and if their money is invested and the income is used for charitable purposes, I think that no wrong has been done, and Government should stop thinking about these things.

MR. CHAIRMAN: But he concentrates economic power in his hands.

SHRI M. K. MOHTA: With due respect, may I submit that concentration of economic power is entirely in the hands of the Government and not with any individual?

MR. CHAIRMAN: It is a matter of opinion.

SHRI M. K. MOHTA: That is right. We are here to give our opinion, with due respect. The concentration of economic power in this country is with no individual at all and it is with the Government only. Therefore, to say that any citizen can have concentration and can misuse the powers is a wrong premise to start with.

MR. CHAIRMAN: That is your opinion. Clause 13(2)(h), is limited. What is the intent of that clause? Is there any doubt about the intent? The intent is that trusts which are entitled to exemption must not at the cost of the exchequer be entitled to find funds to invest in their own companies, and that is precisely what is being done by these 97 trusts which have been created. If this kind of thing happens everywhere, then what would be the result? Would we be able to achieve the objective in view? Can we be obvious this? What have you to say on this that clause 13(2)(h), is not adequate? I wanted you to address us on this point, but you choose not to do so.

SHRI M. K. MOHTA: My respectful submission is that man will always remain imperfect. Perfection is the attribute of God only. If you want to make something perfect, then I feel

that while trying to catch one dishonest person, you should not put obstacles in the way of one hundred honest persons who are trying to do a public job. But that is what is being done here.

MR. CHAIRMAN: What is your concrete proposal in regard to this? The committee is actually interested in concrete proposals in regard to drafting.

SHRI R. THAKUR: In regard to drafting, in clause 5, I would say that a lot of improvements have been brought about in so far as the utilisation of the trust income to the extent of 75 per cent in the current year and in the subsequent year if the money is not received in the current year. But there is a clause which provides for option being exercised in writing before the expiry of the time allowed under sub-section (1) of sub-section (2) of section 139, for furnishing return of income. I think that this would be superfluous; when the law itself gives a clear mandate that it should be spent in that particular year, and if the money is not received, it should be spent in the next year, I think that this provision in regard to exercising this option is not necessary. It is an unnecessary burden on the administration. The law itself is very clear now that if somebody is not using it, he will be liable to tax. When it is essential now to complete it within the time prescribed, this provision is superfluous. If a person is not able to know the position by 31st March, at least by 30th June he would be able to know the actual position of the institution, and, therefore this provision for option is not at all necessary in the light of the earlier two provisions.

MR. CHAIRMAN: That is the existing provision. It is not a new provision.

SHRI R. THAKUR: In the light of the amplification now made, which makes the position clear, this option is not necessary.

MR. CHAIRMAN: Let me be very clear. The Committee will consider this provision regarding the expenditure part very carefully and rationalise it as best as we can.

SHRI M. K. MOHTA: With your permission, may I now go over a few other clauses very quickly?

Clause 41 makes it obligatory on a managing director to sign income-tax returns. This in my humble submission would go contrary to the concept of professionalisation in the management of business. The managing director is hardly the person to be changed with this responsibility. There may be a financial director who may be in a much better position to know the financial position or situation of the company and substantiate all the information etc. given in the income-tax return. To make the managing director responsible for everything, under the Income-tax Act or the Companies Act....

MR. CHAIRMAN: That only takes us to this suggestion that in addition to the managing director, one more director should be included. We are making this provision in order to fasten the liability. In case palpable concealment is found, whom shall we haul up?

SHRI M. K. MOHTA: Whosoever is responsible for that:

MR. CHAIRMAN: Do you think that the Managing Director has to be left out of it?

SHRI M. K. MOHTA: Sometimes, it can happen that the managing director may not be responsible.

MR. CHAIRMAN: If an employee does something without the knowledge of the managing director and does something fraudulently, then appropriate proceedings may be initiated and the managing director may be exonerated. But *prima facie*, whom do we hold responsible? Let us be rational about the whole matter. The idea that I am getting from your sug-

gestion is that we should include another director also along with the managing director.

SHRI M. K. MOHTA: The principal officer seems to be the correct person to sign such returns.

MR. CHAIRMAN: What is happening is that professionals are being made scapegoats. Someone else does the mischief and the CA or Cost Accountant or Secretary is punished. What objection do you have to the managing director being responsible for the return?

SHRI M. K. MOHTA: No objection, except that there may be cases where the managing director may not be directly responsible for any default that may have occurred. When we want to catch the correct person and the managing director is the correct person, by all means catch him.

MR. CHAIRMAN: After this law is passed, the managing director will make himself responsible. He will have to see the tax returns.

SHRI M. K. MOHTA: It could also happen that the managing director would have no time to look after the business except to look into the interincancies of income-tax law and company law.

MR. CHAIRMAN: That could happen.

SHRI C. K. HAZARI: In our memorandum, we have suggested that in all public companies, the board may pass a resolution and authorise a person to sign income-tax returns. Kindly consider this practical suggestion.

MR. CHAIRMAN: You get hold of some one else by the throat while somebody else escapes.

SHRI M. K. MOHTA: Why should that someone else allow himself to be caught?

MR. CHAIRMAN: Let us view it objectively. We want the managing director to be responsible to the department. I agree that taxation laws are cumbersome. It requires some attention. He can have proper

assistants for it. But legally he is responsible.

SHRI M. K. MOHTA: I do hope that the Committee has an open mind on this.

MR. CHAIRMAN: If your suggestion is that there should also be a financial director and he should be made responsible, that is one thing.

SHRI M. K. MOHTA: Is that the decision?

MR. CHAIRMAN: No, no.

SHRI M. K. MOHTA: I hope my submission will be taken into consideration.

MR. CHAIRMAN: All the provisions of the Bill would remain completely open until we sign the final report. As an eminent parliamentarian, you know that.

As for the prosecution part of it, that is taken care of by the prosecution section 273. If an honest, unsuspecting managing director is cheated by one of his employees—such cases would be rare—there is protection. He could say, 'I did not know; it is the employee who cheated the department, not I'.

SHRI M. K. MOHTA: For want of time, I would skip over some of the provisions and concentrate on some only. Clause 51. In principle, we welcome it. It was long overdue. My only comment is that it should not be restricted to film artistes only. It should be open to everybody.

Clause 55. As far as lien on assets transferred to minor child etc. are concerned, no time limit is prescribed. How will such lien apply for all time to come?

MR. CHAIRMAN: Time limit is there 'in respect of any period prior to such date'.

SHRI M. K. MOHTA: Upto when? Even after 25 years?

MR. CHAIRMAN: In respect of a certain period, whatever is the liability. What is wrong in it? I thought you were saying that there is no time limit prescribed for which period the liability is to be there.

SHRI M. K. MOHTA: Upto when will the liability continue?

MR. CHAIRMAN: Until taxes are paid. This is to help recovery.

SHRI R. SUBRAMANIAM: Cl. 58. The Chamber welcomes the proposal about the establishment of the settlement machinery on a statutory basis. But we have two doubts on this. One is that it talks about a case in any proceeding under the Act. There are several times when an assessee may want a ruling or interpretation. It seems to us that that sort of query would not be covered by this and this is meant only for taxpayers who want to make disclosures of any tax evasion.

MR. CHAIRMAN: You want this machinery to give interpretation in advance.

SHRI R. SUBRAMANIAM: We are not clear whatever it is only for cases where a person with concealed income wants to make disclosure. It refers to case in any proceeding under the Act....

MR. CHAIRMAN: 'Case' is defined in 245A(a).

SHRI R. SUBRAMANIAM: We were informed that this would even include any ruling which one may expect from the Central Board on any interpretation or legal point, which we think should not be the case.

MR. CHAIRMAN: If it is in relation to assessment or reassessment in respect of any year which may be pending before the income-tax authority, it will include anything related to that. What is your apprehension?

SHRI R. SUBRAMANIAM: In this case, if there is a legal interpretation, he cannot go to that machinery again. He cannot withdraw. His case can be rejected by the settlement machinery. He has no other revenue left after that.

MR. CHAIRMAN: I do not understand the point.

SHRI MOHINDER PURI: The point made is this. The officers of the Central Board of Direct Taxes are used in a number of cases where the assessee feels that the law is really on his side when the remedying authorities do not seem to accept the correct interpretation of law. This short-cuts the procedure. If such cases are covered by the settlement machinery, it seems that the proposed provision here would debar him if the board does not agree with him. Whereas the regular legal processes are available to him, here he can only make a one-time reference in the whole of his life.

MR. CHAIRMAN: Do not go to them. You cannot have the cake and eat it too. You want to have a try with the settlement machinery and then have the regular procedure?

SHRI M. K. MOHTA: There is another point. Under these provisions the assessee can make only one reference in the course of his life.

MR. CHAIRMAN: Only one?

SHRI M. K. MOHTA: Yes. For instance, I can go to the Board and get the thing satisfactorily settled. But if I get another problem, I cannot go to the Board; I must report to the appellate proceedings only.

MR. CHAIRMAN: The relevant sections under the settlement of cases—sections 245A and 245D—are completely different dealing with different circumstances. How do you say that it is only once? If it falls under this once, of course, yes; but if it never falls in this, he can go a number of times.

I want you to understand the import of this provision. Even in the settlement, if he does not come out with a clean breast, what do you want us to do?

SHRI M. K. MOHTA: It is one of clarification. Under the present provisions, a person can go to the Board and seek the good offices of the Board; they should not be debarred by any provision in the proposed legislation to

approach the Central Board of Direct Taxes.

MR. CHAIRMAN: Under which rule they go?

SHRI M. K. MOHTA: The representations go to the Board.

MR. CHAIRMAN: That can continue. If the Board wants to entertain any such thing in administrative matters, that is not covered by these provisions. We are now on the settlement machinery.

SHRI M. K. MOHTA: The clarification sought was whether this provision will not deprive the assessee of their right to use the Central Board of Direct Taxes to clear a question of law and thus short-circuit the period of harassment.

MR. CHAIRMAN: It is open to them to approach the Central Board of Revenue on administrative matters.

SHRI R. SUBRAMANIAM: There is a provision that after the Settlement Committee looks into it, they may reject the application. If the settlement machinery is expected to go into all these cases, regarding the disclosure of facts, *ab initio*, with full details, and is going to reject the cases, I do not think it will attract so many disclosures. I think there must be a provision where, just as an assessee cannot withdraw his case, the settlement committee must dispose of every application made unless there is a provision that the concealment has already been found by the Department, because if anyone comes to the settlement committee, he comes there with a great hope of a sense of justice. If he feels that it would be rejected after disclosing everything, you will not attract enough disclosures, and as I think that the assessee has no right of withdrawal, the settlement committee must dispose of every application made for settlement.

MR. CHAIRMAN: In other words, you suggest that if the proviso de-

prives a person who is already found guilty, he must be rightly deprived, but otherwise any other person who falls within section 245A should be allowed to take recourse to the settlement machinery and not be conditioned by the criteria laid down in section 245D; all these conditions should be removed.

SHRI R. SUBRAMANIAM: Yes; the case must be heard and disposed of and it should not be rejected outright.

MR. CHAIRMAN: We understand that it is governed by 245D, but if it is a case involving a matter of interest to the revenues, if it is in the nature and circumstances of the case, complex, then the settlement machinery must take up those cases. Are you suggesting that there should be no condition prescribed but that applications made should be admitted straightway?

SHRI R. SUBRAMANIAM: Yes.

MR. CHAIRMAN: We will consider it.

SHRI MOHINDER PURI: In order to inspire sufficient confidence, this settlement committee must have an independent person on it. We suggest that the quorum should not be less than two at any time and one of the persons present in the committee must be an independent Judicial authority and not a member of the Central Board of Direct Taxes. That is the first point. Secondly, he should have adequate judicial background.

MR. CHAIRMAN: We will consider it.

SHRI M. K. MOHTA: Then I come to clauses 64 and 99 dealing with penalties. My submission in brief is that the principle of *mens rea* must apply. Apart from this principle of *mens rea*, as far as clause 99 is concerned, I find that it is objectionable on principle, because, all it says is that if the value of the asset returned is 70 per cent of the assessed figure—

MR. CHAIRMAN: Are you on the explanation on page 56? Explanation 4 is on page 57, it says:

"Where the value of any asset returned by any person is less than seventy per cent. of the value of such asset as determined in an assessment under section 16 or section 17, such person shall be deemed to have furnished inaccurate particulars of such asset within the meaning of clause (c) of this subsection, unless he proves that the value of the asset as returned by him is the correct value.";

Before you make your submission, may I point out that the idea of the department was that the correct value should be the *bona fide* value. Assuming that the word "correct" is substituted by "*bona fide*", what would be your submission?

SHRI M. K. MOHTA: My submission is that the criterion that should be applied is not whether it should be 50 per cent or 70 per cent or 90 per cent, but that it should be whether there has been any wilful effort on the part of the assessee to evade tax.

MR. CHAIRMAN: Therefore, I say, "*bona fide*". Your concept will be covered by that word.

SHRI M. K. MOHTA: I do not know whether it will include that or not, I submit that after all there can be cases where different valuers may differ from each other and the appellate authority may differ from the opinion of the officers, and the court may differ from the appellate authority and so on. There can be no unanimity of opinion.

MR. CHAIRMAN: How does the word "*bona fide*" not cover such cases?

SHRI M. K. MOHTA: The emphasis then should be on the word "*bona fide*" and not on percentages.

MR. CHAIRMAN: You say that if it is "correct" it is not enough. You also say that the emphasis should be on the word "*bona fide*", if "*bona fide*" is put in. So, we will make it "*bona fide*" for everybody. Would it be all right?

SHRI M. K. MOHTA: That is my suggestion.

SHRI MOHINDER PURI: About the provision regarding attachments, the feeling of the chamber is, under the current taxation laws, there can be hardly any assessee who does not have proceedings pending at any time of his life and under the proposed legislation, his property can be attached without even a determination of his tax liability at all. There are several provisions to justify attachment of property immediately after a demand has been created. Mere suspicion of a likely existence of demand to be the basis of attachment of property does not seem to be correct and justified in the view of the chamber.

SHRI R. THAKUR: In clause 43, the time prescribed is 7 days and 15 days. In all fairness, to help the assessee as well as the department the time should be extended to 15 days and 30 days respectively. } Otherwise, with the present channel of communication system, it will be extremely difficult to comply with this provision.

Coming to clause 39 about the requirements of compulsory audit of accounts....

MR. CHAIRMAN: You do not want that provision?

SHRI R. THAKUR: It is a progressive measure which is in the interests of the nation and it should certainly be there. But a year or two may be given to adjust.

MR. CHAIRMAN: We understand that some time has to be given, but it has to be reasonable. We will consider it.

SHRI M. K. MOHTA: In respect of those points which we could not deal with in our oral evidence, our memorandum may be considered. On behalf of the chamber, I wish to thank you, Sir, the Minister and the hon. Members of the committee for the patient hearing given to us.

(The witness then withdrew)

II. Catholic Bishops' Conference of India, New Delhi

Spokesman:

1. Fr. Jonas Thaliath—Deputy Secretary General.
2. Fr. Antunes Nazareth—Assistant Secretary.
3. Shri K. Annadhanam of Messrs. Khanna and Annadhanam, Legal Advisers.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Under the Directions of the Speaker, the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of your evidence should be treated as confidential. Even then, such evidence is liable to be made available to Members of Parliament.

We have received your revised memorandum and we will consider every point made by you therein. Now if you have something to say outside the memorandum or focus our attention on some salient features of the memorandum, you may do so.

FR. JONAS THALIATH: I do not have very much outside the memorandum to say except by way of illustration or special emphasis. One of the main points I should present before you is, that generally speaking, especially after the revision of the income-tax laws in the previous years, these additional laws are going to affect many of our trusts in a very serious way. I have already mentioned in the memorandum that we can understand the difficulties facing the Government; but at the same time in the process of trying to eliminate the abuses, I am afraid the genuine trusts may suffer and the result will be that, while persons who were able to circumvent the laws may still continue, to do so, genuine trusts will be caught in the grip. We are afraid of this. Because, as law-abiding citizens we want to follow exactly what is prescribed by the law in the larger interests of the country. I am not attributing any motives to others who may somehow escape the law; but if we are forced to follow exactly all the amendments as they are proposed, I am afraid many of our

institutions will have to fold up.

Here I would like to emphasize two or three points. There is a provision in the Bill that no charitable trust or institution could, pursue with tax exemption any activity which is not in furtherance of the primary object of the trust or institution. Many of our charitable trusts cannot survive only on what they receive from the primary object of the trust or institution. I have given several small instances in the memorandum. None of these charitable trusts goes into big business. An institute intended to support poor or fallen women may sell handicrafts brought or gathered from the locality. There are several such institutions. In the light of the new law, all this cannot be considered to be in furtherance of the primary object of the trust or institution. In that case, many of these institutions will have to fold up. I find there is some incongruity in this. If these charitable trusts and institutions make profit in the line of their primary objectives, Government or the law-makers have no objection, in giving tax exemption. But a true charitable institution established for taking care of sick and poor cannot be expected to make profits. Our schools and hospitals are not meant to be institutions for making profits in the sense that we should get much more money from these than we spend.

MR. CHAIRMAN: The income-tax law does not enjoin any liability on these hospitals and medical and educational institutions to make profits. But it only says that if you make

profit, it is exempt from tax. It does not say that you should not charge heavy fees from the patients or students. Now the incomes of educational institutions and hospitals are exempt by some other clause. The provision in the proposed Bill is that if the income is from a business which is not the primary object of the trust, then it would be liable to tax. What have you to say on this? If in principle you think this is too harsh, in what way would you suggest liberalisation of the law so as to avoid hardship?

FR. JONAS THALIATH: I can understand that charitable trusts should not be involved in big business. I am talking of charitable trusts and institutions of Christians, especially of the Catholic Church. We are not engaged in such business. We are engaged in small activities that would give us some subsidiary revenue, like the running of printing presses or having some small book shops or selling handicrafts and things like that. If you close up that avenue also, then it becomes more difficult to run such institutions.

MR. CHAIRMAN: Can you suggest any rational criteria for differentiating big business from small business engaged in by charitable trusts to feed the revenues of the trust?

SHRI K. ANNADHANAM: Apparently, Government is interested in preventing the misuse of these organisations by business men who have founded them for their own sake. Perhaps the activities carried on by these charitable institutions may not be related to the primary object but the finances so obtained are available for their lawful objects. So, what the Government may apparently consider is the imposition of some sort of a regulation by which they can control such organisations and find out if they are really working in consonance with the principles and utilising their funds for the purposes of charity, irrespective of the fact that the sources from which they derive

their revenue may not be directly related to the primary object of the trust. Instead of cutting down the very sources which are there for earning money which can be spent for the eligible objects of the trust, you may introduce control, examine those trusts and organisations and see that those funds are not misused. You should think of a cure rather than a suicidal policy which will make it difficult for these trusts to function. The main criteria should be whether the funds derived from this business is utilized for the purposes and objects of the trust.

MR. CHAIRMAN: In other words, you are canvassing the philosophy that so long as the funds are utilised for the *bona fide* objects of the trust, one need not go into the question whether the funds were obtained from functions which were directly related to the primary objects of the trust. According to you that should be the criteria.

SHRI K. ANNADHANAM: Absolutely.

SHRI DHARNIDHAR BASUMATARI: Before this Bill came into the field did you pay tax on the incomes received by charitable institutions?

FR. JONAS THALIATH: No; so far, we have not been obliged to pay tax.

SHRI BHAGWAT JHA AZAD: Suppose people who have got black money in their possession create some trusts and divert that money for fulfilling the objects of the trust. How could we differentiate it from a genuine trust?

SHRI K. ANNADHANAM: I do not say that black money should be allowed to come to the trusts. Perhaps it is being done; I do not know. In such circumstances, the moment you find the human character is low, the Government should be able to intervene and take it over and set it right, in the same way as sick mills are taken over.

MR. CHAIRMAN: If the human character of the people running the trusts is the criterion, I think we will have to take over 99 per cent of the trusts.

FR. JONAS THALIATH: I do not know the whole situation and I am not conversant with these matters. But I may say that to my knowledge the stringent rules that have been introduced in the last revision of the income-tax law, requiring registration of trusts and institutions with the Income-tax officers the filing up of so many forms by trustees and Chartered Accountants strict auditing trusts' accounts requiring accounting and checking of accounts and things like that were non-existent before. Would you not give a little time to see how these rules are applied and how they will help to differentiate *bona fide* institutions from others. I think, you should be able to distinguish the *bonafide* institutes from *non-bonafide* institutes. Merely because there is going to be some misuse, you cannot put a general law which will affect everybody. If the steps suggested in the last revision of the income-tax law are strictly implemented, I feel pretty sure that black money could be unearthed. Then, when you come across cases of use of black money and so on, you should corner those people when you have some grounds.

In this connection, I would like to say that we have been seriously thinking of entering into some business, though not a very big business. We have about 1,100 hospitals and dispensaries in the country and the Catholic and Christian hospitals account for 16 per cent of the total beds in the country. But the prohibitive price of the medicines makes it impossible for us to administer health services in an economic fashion to the people. So, some thought is being given to the question whether it would be advisable for some of us to produce medicines in a cheap fashion and distribute them to the people. Now if you introduce a law like the one we are now considering,

then a good cause like the one which we are nurturing will be impossible, because we cannot restrict the supply of medicines to the hospitals only, even though we have 1,100 hospitals and dispensaries to start with.

MR. CHAIRMAN: May be such a case would fall within the mischief of this Bill because your primary purpose is to give medical relief. Manufacture of medicine will not be one of the objects.

FR. JONAS THALIATH: So, you will have to liberalise the law.

SHRI ERA SEZHIYAN: The witness says that big business should not be allowed to carry on these activities in the guise of a trust but the genuine trusts should be permitted to enter small business. Shri Annadham goes to the extent of saying that so long as the income or profit is utilized for the object of the trust, there should not be any restriction on the nature of the business engaged in by the trust. In fact, the Wanchoo Committee has gone into all the aspects of this question and has come to the conclusion that charitable trusts should not be permitted to enter a business which is not the primary object of the trust. Now if we give a general exemption then the big business will take advantage of it. So, how can we protect small institutions alone while not allowing the big business to take advantage of it?

FR. JONAS THALIATH: The way you are arguing it looks it is very difficult for the government to distinguish between *bonafide* and *malafide* institutions. Then, there is no future for the country. If you accept your inability to distinguish between *bonafide* and *malafide* institutions then there is no way out.

MR. CHAIRMAN: We are considering the taxation law of the country, which is an utterly mundane down to earth matter. I really wish human nature is what you want it to be. But, unfortunately, it is not so. We

want to help genuine and *bonafide* trusts like yours. In what way could it be done?

FR. JONAS THALIATH: I do not feel competent to answer this question. This is not my field. Anyhow I may make a suggestion. Now Government makes a distinction between big industries and small scale industries. In the same way, you may be able to make some distinction between big and small business, indicating the sort of small business activities open to genuine and *bonafide* institutions. You can draw up special rules governing this matter. Do not make it so tight that nobody can breathe.

MR. CHAIRMAN: What you are suggesting is that we should liberalise the law so that *bonafide* trusts are not hit by it.

FR. JONAS THALIATH: Yes Sir.

SHRI VASANT SATHE: Would you suggest that we make some provision in liberalising the law that the subsidiary object should be directly related to the primary object? The subsidiary object should have some correlation with the primary object of charity. If it is altogether disconnected like investing in some companies' shares or starting altogether a different business...

FR. JONAS THALIATH: Coming to the shares, I have a definite opinion about this subject. I do not think that investing in shares should be completely excluded. I do not think it must be. I very strongly feel about it.

SHRI VASANT SATHE: How does it benefit the primary object?

FR. JONAS THALIATH: Here it is a question of revenues.

MR. CHAIRMAN: The hon. Member's question is different. If the law is liberalised, then a business carried on not merely for the primary purpose but for a purpose which might be ancillary to one of the purposes would also be exempted. Would

it take care of the problems that you have in mind?

SHRI K. ANNADHANAM: I should think so.

SHRI P. G. MAVALANKAR: In the name of charity, business would dominate over charity! Charity would do what the business wants it to do!

SHRI K. ANNADHANAM: Charity should dominate over business.

SHRI P. G. MAVALANKAR: You have just said that even if black money comes and is used for charitable purposes, it is alright...

MR. CHAIRMAN: Mr. Annadham has only said that we need not worry about the source, as long as it is utilised properly.

FR. JONAS THALIATH: When Mr. Annadham gave the explanation, he did not give that explanation as an explanation of our policy. The difficulty was to distinguish between *bonafide* and *non-bonafide* trusts and institutions and it was in that context that the answer was given. I want to have it on record that it is the definite policy of the Bishops Conference not to touch black money and we shall have nothing to do with it.

MR. CHAIRMAN: All right. Next point.

FR. JONAS THALIATH: We have already been led to the next point, namely, investments. On the question of investments, I strongly feel that a certain liberalisation should be given. In the United States and Europe some times upto 95 per cent of the investment of the Church is in shares. Here also we are coming to a stage where shares will be the normal and perhaps the only feasible mode of investment. To simply close it down would mean strangling all charitable institutions and closing the avenue of development. You may legislate that the charitable and religious trusts should not have more than 2, 3 or 5 per cent of the total shares of a company and that they

should not have controlling authority on any company. Let the investments be under the direct supervision of the Government. But, I think, it should be open for charitable and religious trusts to invest in shares; because, if this is not allowed, what is there that is possible? Cultivation of land is becoming more and more difficult. Dairy development or urban land development is going to be restricted. In all these there are going to be ceiling. Institutions are going to be treated as individuals or families. What I think must be done is to liberalise the law and say that religious and charitable trusts could invest in shares upto a certain limited percentage of shares in a company.

MR. CHAIRMAN: The Clause provides that there is to be a ban on investment except in such companies the business of which is owned or controlled by Government. In other words, if you invest in companies which are owned hundred per cent or controlled by Government, then you can make investments. Control by the Government can be liberalised so as to avoid hardship. Have you given any thought to this? The law says 'owned or controlled. You can invest in a company which is owned or controlled by Government. Control of the Government can be through various ways, not only directly holding shares but through various other ways. What is the instrument for the Government to control it? Would you like to address us on that? How can we liberalise? You can apply your mind to the matter.

SHRI K. ANNADHANAM: I do not know what the idea was. I do not know how this question of control by Government came in and what is the manner of control you think should be exercised.

MR. CHAIRMAN: You may read clause 6(a) which is the relevant clause—banning the investment for profits.

SHRI K. ANNADHANAM: True. 'Owned by the Government', we

understand; 'controlled by the Government'—there may be any amount of control by the Government. What exactly is in the minds of the framers is not clear.

MR. CHAIRMAN: What, according to you, ought to be in the minds of the framers?

SHRI K. ANNADHANAM: 'Control' apparently may be there.

MR. CHAIRMAN: Shares, equities.

SHRI K. ANNADHANAM: Holding some shares or nominating one of the Government officers as Directors of the Government so that they watch the day-to-day proceedings and see that the things are not amiss and so that there may be some sort of influence of the Government while the companies are functioning.

MR. CHAIRMAN: Over-powering influence of the Government.

SHRI K. ANNADHANAM: Exactly. If there is a company where the Government is not able to put in a representative of theirs to look after the affairs of the company, then perhaps the investment in shares in that company will be outside the purview of the Government. I would rather say that investment of public companies generally should be permitted whether they are controlled by the Government in one form or the other or not controlled by the Government. And I suggest, the company law being what it is and the responsibility of the Auditors being what they are...

MR. CHAIRMAN: That is a different angle of the whole matter.

SHRI K. ANNADHANAM: There should be no difficulty in extending this to the public companies as such; may not be the private companies because the trustees may be interested in the private companies in one manner or the other.

MR. CHAIRMAN: That is a very important thing. Assume that the

Government were to acquire authority and power to regulate investments in some sort of prescribed securities. Over and above that, so far as the control is concerned, it has to be defined what 'control' is. As you very rightly said, there should be some sort of over-powering influence on the company. Would it meet the requirements and would the Bishops' Conference be satisfied if we say and define 'control' as control as a result of which you can have investment into a broader spectrum? Supposing if it is provided that a company which gives more than 50 per cent of its funding power to a public trustee just as with the Government, either voluntarily or through law, would it take care of the problem Father has in mind?

SHRI K. ANNADANAM: I presume so.

SHRI VASANT SATHE: Supposing in addition to 'controlled and which is not owned or controlled' if we were to say 'owned, controlled or approved by the Government', will it be all right?

FATHER JONAS THALIATH: I think it will be better.

SHRI K. ANNADHANAM: For 'approval' have to lay down some guidelines.

MR. CHAIRMAN: 'Approval' does not necessarily mean 'control' which I think, Father, has in mind. I think he is not really particular about whether the investment is made in X company or Y company but it should be in companies which are sound and which will give you profits.

FATHER JONAS THALIATH: Yes.

MR. CHAIRMAN: If that is so, I think your purpose will be served and the mischief we want to prevent, of stopping *Benami* in the name of getting investment in your own business. can also be stopped.

SHRI K. ANNADHANAM: I think that is a very good suggestion.

FATHER JONAS THALIATH: The only thing is: whether each investment should be approved or each company should be approved.

SHRI C. M. STEPHEN: There can be a prescribed list.

SHRI H. M. PATEL: The Government can lay down the list of companies and they can go on adding or subtracting.

FATHER JONAS THALIATH: Here is a difficulty I think you may keep in mind. Sometimes, when a company is floated, it is earlier to invest in shares and it is at that time that sometimes people buy shares in good companies. There should be a provision to include also those companies which are being floated.

SHRI VASANT SATHE: Please do not try to enlarge the scope.

FATHER JONAS THALIATH: I think this should not be excluded. It will also be easier to get shares in the beginning. Only a provision may be made that even companies that are being floated may also be approved by the Government.

SHRI VASANT SATHE: That is for the Government to lay down. Then that will cover the case you have in mind.

SHRI H. M. PATEL: Suppose a new company is started. Some of us would like to buy those shares and later we feel very charitable and we give those shares to a charitable trust. In that case, the Charitable Trust will have to consider whether they can hang on to that or they have to give it up. The list should not be a static list.

MR. CHAIRMAN: We will consider that aspect.

SHRI K. ANNADHANAM: There is one difficulty. There are many cases of persons leaving a will behind and they leave property to charity. In-

cluded in the will are properties of shares. Now the problem of the trust will be whether to reject the shares of companies which are not approved by the Government. There will be a real difficulty.

MR. CHAIRMAN: The alternative is to pay tax.

SHRI K. ANNADHANAM: Then, we will hand it over to the Government!

FATHER JONAS THALIATH: About anonymous donations, I do not know whether it will affect religious institutions.

MR. CHAIRMAN: Purely religious institutions would not be affected as the provision stands at present. But a trust which is partly religious and partly non-religious is likely to be affected

FATHER JONAS THALIATH: What has happened with us is that most of our dioceses are registered as mixed societies or even charitable trusts because the bulk of the work is charity. The purely church activity from a financial point of view is not often the larger one and hence we are usually registered as charitable trusts. Now it will be obligatory on our part to register all of our dioceses into two bodies, one for religious and the other for charitable purpose.

MR. CHAIRMAN: We do not want these legal niceties to come in.

FATHER JONAS THALIATH: But the law will affect us. For example, if money comes to the church from the alms box or from collections during Sunday Services it will be entered in the accounts of the society which is a charitable society, and since this will be anonymous donation we will be bound to pay tax. What to do about it?

MR. CHAIRMAN: If you think something is going to impose on you some hardship you may say so.

FATHER JONAS THALIATH: Either we should re-register as two societies, one religious and the other charitable or be allowed a certain amount of money which can be received anonymously.

MR. CHAIRMAN: The question is this and we are worried about it. Under the name of donations etc. large amounts of black money is going. It should be checked. What do you suggest, Mr. Annadhanam?

SHRI K. ANNADHANAM: It is very true and you have also knowledge of the fact. You have given exemption to religious institutions because possibly there is no means of having a control over it and so on. In Tirupathi what happens? Crores are put and many fresh notes are put there. Who put it is not known. Take church money. It is money saved by them. Everybody puts it according to his mite. What may be done is this. Limit may be placed so far as lowest collections are concerned. It should be entered as such. Law must be enacted to prevent anybody to give large donations, saying, don't give my name as donor for the purpose. Such amount received by charitable organisation must be taxed. But the difficulty is this: Instead of taxing the offender you are taxing the abetter.

MR. CHAIRMAN: If you identify you will not be taxed.

SHRI K. ANNADHANAM: We had by force of circumstances to abet the crime. That is the way trouble comes in. I know the consequences. One has to suffer punishment. This is where the vicious circle comes in. So far as these charitable organisations are concerned year's donations are received by the church collections and various other petty collections and so on. Charitable donations by anonymous persons must be prevented. But I do not know whether you can make distinction between one charitable organisation and another.

SHRI VASANT SATHE: You may take 3 or 4 or 5 years of donations to know the normal type of donations and that amount will be the guide.

SHRI C. M. STEPHEN: That will also include black money.

SHRI K. ANNADHANAM: To lay down a particular thing would depend naturally on the size of the organisation. You said 3 years and so on. That is one way, because percentage cannot be fixed.

MR. CHAIRMAN: All right. You may go to the next point.

FATHER JONAS THALIATH: You are taking away the privileges of tax exemption which was given to those trusts catering to a particular community. The privilege has been there from the beginning, it should not be discontinued. These institutions were established with their own specific constitutions and all that was done long time ago. From 1962 to 1973 they were having this privilege in spite of the several revisions in income-tax law. Why should it be curtailed now. I do not understand this. At least on humanitarian basis this should be continued.

SHRI K. K. SHETTY: Even the milkpowder imported from America is sold in black-market. Money is invested in buildings and other things. I have got the example of a church which invested lakhs of rupees on buildings. So, to say that the money or donations are free from this sort of thing is not true.

MR. CHAIRMAN: That is something different. We are not going into that. We are not to sit in judgment who is indulging in malpractice etc. We are making a law and the rationale of the law is that we want to follow Wanchoo Committee recommendations. On why it was said so, you should have asked them and not us. We have heard you extensively. We heard your counterpart in Bombay who appeared before us. Any other point?

FATHER JONAS THALIATH: in the amendment instead of 3 months one year is allowed for spending money received during the year that is an extra year is given. But I think in special cases it may be necessary to extend the period. Discretionary power should be given to the income-tax officer in exceptional cases to allow this when necessary. That will be certainly helpful. There are institutions that collect money from other institutions and we distribute the amount to the needy. One is also here in Delhi. We collect money from institutions and it takes one full year to do this. Only by end of the year we know how much money there is and what we have for distribution. Then we have to find out what are the projects for which we can give the money, what are the deserving cases, etc. It takes another 2 or 3 years. There will be difficulty if you insist that the whole amount should be spent within the next year. Therefore may I request that discretionary powers be given to the Income-tax officer.

MR. CHAIRMAN: We are going to review the whole thing.

FATHER JONAS THALIATH: We have covered the whole thing and we have nothing to comment upon.

SHRI C. M. STEPHEN: I would like to know your views in regard to anonymous donations or collections which are coming very frequently. Assuming if we have the advice to shift one from the other, what is your attitude to the proposition put forth here?

FATHER JONAS THALIATH: We as a body do not want that black money should be given to charitable and religious institutions as anonymous donation. We will welcome any reasonable step taken by the Government to check such cases.

MR. CHAIRMAN: Thank you, Father.

(The witnesses then with drew)

III. Bar Association (Income-tax), New Delhi

Spokesman:

1. Shri K.K. Wadera—President.
2. Shri Jagmohan Bhatia—Vice-President.
3. Shri Jagdish Persad—Member.
4. Shri B.B. Ahuja—Member.

(The witness were called in and they took their seats).

MR. CHAIRMAN: Before we take evidence I would like to invite the attention of the witnesses to Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha by which I inform them that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, from your Association we have received a memorandum which has been circulated to all the Members, and the Members have gone through the memorandum carefully. If you have got any points of a general nature which you want to emphasize to the Hon. Members of this Committee, you may do so, after which we will take up specific clauses.

SHRI K. K. WADERA: I would request Mr. Ahuja, our chief spokesman, to take up certain points to be dilated before you.

SHRI B. B. AHUJA: Mr. Chairman, it is my privilege today to appear before this Committee and place the views of my Bar Association.

The major objective of this Bill or the proposed Taxation Laws Amendment Act, as seen from the 'Aims and Objectives', is to unearth black money and prevent its proliferation. Our Association has gone through the Bill in great detail. Some of the provisions are really salutary and

deserve commendation, but some of the provisions are unnecessarily harsh. My Association feels that certain modifications can be made which will really serve the purpose.

It is our considered opinion that some of the provisions are so harsh that they will drive away the honest tax-payer who is ignorant and not very well informed about the tax laws. The provision in regard to penalty matters is actuated by very good considerations, but in our opinion, it does not help in the matter of being a real deterrent to the extent that it drives away totally a man from the tax officers.

Mr. Chairman, you will now permit me to speak on specific clauses. I may be permitted to start with Clause 12 of the Bill which is concerned with maintenance of accounts. Clause 12 of the Bill deals with the new Section in the Income Tax Act, viz., Section 44B. It provides that every person carrying on business or profession has to maintain accounts so that the Income Tax Officer is enabled to calculate his income which is necessary under the Act. Now, this provision as such, in our opinion, is a very laudable provision; but there is a proviso attached to it that business people having an income below Rs. 25,000 do not have to maintain accounts—and, I think, rightly so, because they are small assessee, who are not very well informed or educated and so many difficulties are in their way. But, in the opinion of this Association, there has been a certain amount of discrimination in this matter. Whereas business people have been granted exemption, other classes like artists, doctors, lawyers, archi-

pects, etc., have not been given exemption.

MR. CHAIRMAN: That has been deliberately done because professional people will be able to keep accounts. That is why we are making a distinction between the professional and business people.

SHRI B. B. AHUJA: I also thought so initially, but professional people do not necessarily have to be lawyers, doctors or architects; there are a large number of people in the country, particularly the artists who are not well educated. We feel that this 25,000 limit should apply to all.

MR. CHAIRMAN: What we are contemplating is not the maintenance of complicated accounts. It would be a simple account of the amounts received. We feel that the professionals would be better equipped to do this. For business people we gave exemption up to a limit of 25,000 because we wanted to exempt the small man.

SHRI B. B. AHUJA: I appreciate the spirit behind the exemption, but our view is that even small lawyers or other professionals like doctors, chartered accountants etc., who are at the start of their careers have to run about. . .

MR. CHAIRMAN: At the beginning, when they don't have a roaring business, it is easier for them to maintain simple accounts.

SHRI B. B. AHUJA: So far as my opinion is concerned, professionals are not only lawyers, doctors, etc., but there are a large number of people who come under this category in this country. Of course, it is not possible to enumerate those persons now. For example take the case of a singer. He may not know how to maintain the account for his income, because he may have to make journeys often and entertain people who want to engage him and in such circumstances he may have to incur expenditure for which he may not be in a position to maintain account. This can be

multiplied when we take all professionals into account. Sir, even if a small category of professionals do get some relief, it should not hurt the Revenue so much whereas the harassment or the difficulties caused to those sections of people are much great and coupled with the penalty provision under Section 251 which is deemed to be the part of this amendment this would harass the genuine assesseees.

Another point I would like to make is under Clause 12. It says that "after section 44A, the following section shall be inserted, namely:

* * *

(i) his annual income from such business exceeds twenty-five thousand rupees or the gross receipts or the value of the turnover of goods in such business exceed or exceeds two lakhs and fifty thousand rupees, in any one of the three years immediately preceding the previous year; or

(ii) where the business is newly set up, his annual income from such business is likely to exceed twenty-five thousand rupees or the gross receipts or the value of the turnover of goods in such business are or is likely to exceed two lakhs and fifty thousand rupees, during the previous year."

Our submission is that this provision is rather harsh. For the newly set up business people. Our submission is that they should be granted the same period; at least they should be put on par with those people who are getting the existing benefits. For a man who has newly set up his business it may be very difficult to make the guess and estimate for the first year or even in the second year whereas in the case of old assessee, he is required to see whether during the three year period his income exceeded or not. Therefore, my suggestion is that the newly set up business man should be placed at least on par with the old business people.

MR. CHAIRMAN: Your suggestion will be considered.

SHRI B. B. AHUJA: Now I come to Section 271 which deals with "Failure to keep maintain or retain books of account, documents etc." In India there are a large number of traders—small and big—but the small more than the big people are not able to understand or do not know how to maintain the account books. When the provision is introduced it will take considerable time for those people to gear up their own selves, their establishments, etc. For that there should be some time limit before the penalties could be levied. For instance three or four years could be given before the penalty provision is invoked. People like vegetable sellers, etc., are not making any accounts of their business and therefore some time-limit should be fixed before penalty provision is invoked. Our submission is that the penalty provision may be kept in abeyance for a certain period so that by that time they may be able to understand the accounting system.

SHRI P. G. MAVALANKAR: Such people who do not know the accounting system can employ some part-time accountant for this purpose.

SHRI B. B. AHUJA: Sir, under the present level of prices, if the turn-over is about Rs. 25,000 or even in some cases if it is 2.5 lakhs, the earning of the business people may be about 1 per cent of the total profit. Their income may not be more than Rs. 5,000 or Rs. 6,000 per year. If they are to pay to the part-time Accountant which would normally work out about Rs. 2,000 plus the tax of Rs. 3,000, they will really feel the pinch.

SHRI P. G. MAVALANKAR: After three or four years how will it not pinch them?

SHRI B. B. AHUJA: As I said earlier he will gear up himself to the situation and he will try to maintain the proper vouchers, and he will form a habit of maintaining accounts, etc.

Then I come to Clause No. 39. It is stated as:

"(1A) Every person other than a company,—

(i) carrying on any business where total sales, turn-over or receipts exceed or exceeds five hundred thousand rupees or whose profits before deducting the tax payable under this Act exceeds fifty thousand rupees, in any previous year, or"....

Those whose income is more than Rs. 50,000/- have got to submit these particulars along with the returns and audit report. Mr. Chairman, as we understand, the objective of this provision is again to unearth the black-money. But this provision will lead to frustration among the honest persons and this will ultimately retard the growth of the country. The question is whether this provision will help in achieving the objective for which it is intended to. We have read the Wanchoo Committee's report on direct taxes. This Committee have suggested guidelines on the basis of the information which the auditors are supposed to give. There are 7 items on this subject. It is given on page 47 of the Report.

(At the stage Shri N. K. P. Salve took the Chair)

Now, Mr. Chairman, I may take up the guidelines dealing with the 'security on loans'. This security on loans normally in business houses, apart from the corporate sector, is not recorded in the books on accounts. If it is recorded, it is always there. If it is not recorded, it has to be got from the assessee. The auditor has to seek information from the assessees. So far as the depreciation is concerned, it is according to the rules. Then again according to Section 41, and in our existing rules also, wherever all this information to be given to an assessee under a verification, I have got the forms of return which have got to give this information relating to detailed account of depreciation. All these things, in my respectful submission, are matters of determination of the assessable income of a

particular person according to the law prevailing at that time. So far as the actual credits and other things are concerned, probably, the auditor cannot do much. The only thing that he can do is that he will seek information from the assessee and give it to the Income-tax Officer. As we understand the black money is not what is normally seen in the books, according to the experience of most of us, who know what is happening today, those transactions which are being recorded in the books lose their character of being a black money. To that extent, the auditing as it is, will not solve the problem. That is one aspect of it. This is just like making the payment to the debtors on all matters of computation and getting the return. As I said earlier, they have not given it under verification from the assessee. It will be better if we have these details in a segregated sheet from the assessee under his oath instead of having it through a CA or an Auditor. Because even for security on loan, the auditor has got to go to the assessee and ask him to give information about it; he is not authorised, under any law, to make an independent enquiry about the source of income of any person. Mr. Chairman, with due respect, I must say if mere auditing would have been enough for the purpose of unearthing black money in the corporate sector, the things would not have been that bad. From our general knowledge and experience, we have seen that, in major manufacturing industries or the corporate sector, most of the things can be manipulated by the assessee and we cannot say that the corporate sector has been immune from all these things. My submission is that mere seeking certain information from the auditor which he has to get from the assessee will not help rather than it will be better if the deptt. itself establishes an audit cell. We have seen the experience of valuers. The Govt. approved certain valuers so that they give their report to the assessee and this report could be accepted by Department. I fully agree that the Government should

have their own valuation cell; it should be reorganised, because they are not dependent upon the assessee.

MR. CHAIRMAN: You are emphasising on one thing and that is correct. Even if it is outside the purview of the auditor, he could not bring in any certificate and the Income-tax Officer is left to do what he is supposed to do. What is supposed to be at the back of the mind of the people is one of the objectives and through manipulation of accounts, there is an evasion of taxes. If the intent has been that some law or responsibility may not shift or the whole professionals who are professional auditors to certification of particulars of account, would that be a total futile exercise, so far as certification of particular are concerned? The question is, whether through manipulation of accounts, there is evasion or not. And if this is so, whether compulsory audit could, to some extent, if nothing else, divide the responsibility between the auditor and the Income-tax Officer?

SHRI B. B. AHUJA: So far as the manipulation aspect is concerned, we believe—this is based on our experience on the tax side and also general experience—that evasion through manipulation of accounts—if I understand it correctly as wrong totalling or putting wrong things at wrong places—is negligible compared to the evasion which takes place outside the books. Anybody who goes to the market today would be able to find out the conditions. I may give an example. I have to buy something and the cost is Rs. 100. He gives it for Rs. 80. But, there is no entry in the books. Mr. Chairman, the real trouble lies in unrecorded parties in the.....

MR. CHAIRMAN: Have you made any study to the effect that evasion is largely attributable to transactions outside the books than through-manipulation of accounts?

SHRI B. B. AHUJA: Mr. Chairman, I have only my experience and the experience of my friends and collea-

gues to guide. In some of the cases, which I had occasion to represent, I could see how people evade tax and how people keep the books and what books they keep.

MR. CHAIRMAN: The other view is that through manipulation, tax evasion takes place. This is one view **against the other. It becomes difficult** for us to evaluate. You would be helping us, if you give us some more data. This is one opinion against the other opinion. It becomes difficult to evaluate the credibility of one against the other. You are as experienced or inexperienced as the others are experienced or inexperienced. If you are able to give some more details, we shall certainly consider.

SHRI B. B. AHUJA: If there is a **big assessee, in other words, he is** not a small assessee, and he is in the higher tax bracket, then, instead of evading tax through manipulation, he can do it by some other means, where possibly, there is no risk involved, so far as the Income Tax Officer is concerned. Of course, you are very right, Mr. Chairman, when you said **that we should evaluate one experience** against the another. We know that assessee who manipulate the books are very few and far between. If it is a question of manipulation of books, whether it is one set of books or it is one page of a book, he runs the risk of being caught by the Income Tax Officer who may be making a random check. But, he would adopt a method where there is absolutely no risk, unless the Income Tax Officer comes to his shop. It is **well known that manipulation is negligible.** It may be about 5 per cent. If at all auditing is to be done, our suggestion is that, an audit cell should be created in the Department. If the Income Tax Officer goes to a person and he is not able to find out anything, he can report to the Audit Cell, every fortnight or whatever is the period, and the Audit Cell will take further action. The persons in the Audit Cell will be persons who

will not be dependent on the assessee for their remuneration. They will not be dependent upon them. They will be Government Officers and they will be **really independent** persons. We have seen auditors who act as advisers and industrial consultants and they act in so many other ways. It seems, their remuneration from other sources is greater than from audit. I am only speaking from personal experience. I do not mean any slur on anybody. I have the greatest respect for the profession. But, with the limited time at **their disposal, they will not be able** to do that job also. Our suggestion is that, if at all auditing is necessary, **there should be audit cells in stead of** the professional auditors who are dependent on the remuneration of the assessee themselves.

SHRI ERA SEZHIYAN: In regard to Clause 39, in the memorandum submitted by them, on Page 8, they have made two observations. I would like to seek certain clarifications from the spokesmen of the Association, not from the personal experience but from the **experience of the Association.** On page 8, they have stated:

“Our past experience shows that in almost all cases involving evasion, the accounts were duly audited by the chartered accountants.”

Then, on the same page, you have stated:

“From the past experience, the evasion in unaudited account is not of a **higher magnitude than that of audited ones.**”

These two observations attracted me. As a Member of this Committee, I would like to know, as to how far these are correct. How have you come to these conclusions? If you could tell us this, it will help the Committee to know the basis on which the observations are made.

SHRI B. B. AHUJA: I withdraw that remark—the earlier one which you have quoted. It has inadvertently crept in. I withdraw this.

SHRI ERA SEZHIYAN: I understand this is a very old organisation and they should have their very rich experience of the past. You have said:

“From the past experience, the evasion in unaudited account is not of a higher magnitude than that of audited ones.”

How do you come to this conclusion?

SHRI B. B. AHUJA: The conclusion is based on our experience and the general experience of the tax advocates and also based on published cases. As I said earlier, if the audit . . .

SHRI ERA SEZHIYAN: I would like to be very clear. If this is the idea, then, I would say, that no account need be audited. Why bother the tax payer or the assessee. If we could do this, then, we can employ the best brains among the chartered accountants to some other useful purpose.

SHRI B. B. AHUJA: I will deal with the first question and then come to the second, whether auditing should be there or not. This was the question which has been put by the hon. Member.

SHRI ERA SEZHIYAN: If your assumption is true, I will ask the second question.

SHRI B. B. AHUJA: This is based on one factor and this is a reality. The big industry, the manufacturing units, the large scale business, the monopolies which come under the Monopolies Commission—they are all in the corporate sector. Now, the major evasion of tax, except for a few pockets, has been in the established industries and in the bigger industries. They are the people who contribute more to the revenue. Our past experience also shows and it is also generally known that evasion is more in the large scale business. It may be said that evasion is there in the small scale business. But, in our

opinion, it is difficult to say so. Evasion is more because temptation is more. If a company pays 65 per cent as tax, then, the temptation is much more. Now, the companies have to pay sur tax also. The tax rate may go upto 85 per cent. Whereas, in the case of smaller companies, it may be 20 per cent or 30 per cent or at the most 40 per cent. Now, it is the normal human behaviour, as we have seen in India. The higher the income the more is the temptation. In the context of the present tax structure, the temptation is great and in our humble opinion, it is a clear case, where the temptation will be much more in the case of persons who are in the higher income bracket and in the case of companies, where the tax rates are high than in the case of persons who have to pay 20 per cent on their extra income. Normally, this is one factor which makes us believe that evasion will be much more in the corporate sector than in the other sector. This is growing at a rapid place and this will soon engulf all the major consumer and capital industries. This is one basis, for our assuming that evasion in any case will not be less in the corporate sector than in the non-corporate sector. This is one aspect which leads us to the assumption, which we have mentioned. The other is general experience.

MR. CHAIRMAN: What is the justification for your assumption, that income in the corporate sector, after allowing for corporate taxation, is less than what it is in the individual sector? Do you know what is the effective rate of taxation in the corporate sector? Have you made any study of it, or have you read the report of the Reserve Bank of India in this regard?

SHRI B. B. AHUJA: I have not read it, Sir.

MR. CHAIRMAN: If you have read it, you would know that the Reserve Bank has worked it out to be between 36 per cent and 37 per cent. It is in regard to the commercial in-

come and the ultimate tax paid by them, after taking various deductions into account. Therefore, your entire premise goes away. Your observations here tend to create the impression that possibly, the evasion is there, not because of some collusion with the auditors.

SHRI B. B. AHUJA: I say that it is the shareholders who are involved. The auditor has to make a report.

MR CHAIRMAN: That report is extremely unsatisfactory. If at all this compulsory auditing is to remain, the auditor will not go scot-free by making this equivocal statement that he is satisfied with the state of affairs, and that it is fair. He has to give proof whether he had fully audited and whether capital or revenue has been divided properly or not. Some sort of an obligation would be there on him to examine the books of account. He will have to share the responsibility. He will not be the second ITO; but it would tantamount to sharing of the responsibility of the ITO.

SHRI B. B. AHUJA: In that case, there should be auditing cells, to ensure that he is not dependent on others.

MR. CHAIRMAN: Where is the auditing cell to be located?

SHRI B. B. AHUJA: These auditing cells should be maintained by the Government.

MR. CHAIRMAN: Do you mean to say that the Government should have auditing cells in their Departments? That means that departmental auditors should be there.

SHRI B. B. AHUJA: Yes, Sir.

MR. CHAIRMAN: They are not able to complete whatever work they already have. Are you very serious about this suggestion?

SHRI B. B. AHUJA: Yes. There are very experienced auditors in the Income-Tax Department.

SHRI ERA SEZHIYAN: Is this the official opinion of the Bar Association?

SHRI B. B. AHUJA: Yes, Sir.

MR. CHAIRMAN: Will the remuneration be paid by the assessee?

SHRI B. B. AHUJA: He will not pay it directly, Sir; but through the Government.

MR. CHAIRMAN: Let us go to the next point then.

SHRI ERA SEZHIYAN: The tax advocate who came before us in Calcutta and other places pleaded for a different thing. They said that the tax advocates should also be allowed to complete it when it is for more than Rs. 50,000/-, along with the chartered accountants. That was their plea. We had said that we would consider it. But the present idea is that compulsory auditing for more than that amount should be avoided. I want to have your reaction.

SHRI B. B. AHUJA: The hon. Member referred to the plea of certain associations which have suggested that tax advocates can also be allowed. I am very grateful for this new idea. It was rather one of the things which I was going to say. The Wanchoo Committee report had merely wanted to do the computing of depreciation income, i.e. payments made to directors and others are also to be taken into account. Their part of the return etc. is to be filed.

MR. CHAIRMAN: If there is checking, they should give a certificate also.

SHRI B. B. AHUJA: I am basing my statement only on certain guidelines. The Wanchoo Committee report wanted computation of profits under Section 41 and Section 48 in regard to payments made to the director and others; and certain other deductions i.e. allowable and disallowable deductions.

MR. CHAIRMAN: That is a statutory obligation for any assessee. He has got to do it.

SHRI B. B. AHUJA: My submission is that it would be better to have it under an oath from the assessee.

MR. CHAIRMAN: It is there now.

SHRI B. B. AHUJA: It is there now. If that is the objective, I would say that the advocates are better placed so far as these matters are concerned. They will be able to implement and interpret it better, being lawyers, having more of a legal bent of mind. They will be able to find out whether this transaction really falls within its ambit. They can more appropriately give the certificate. We want this suggestion to be considered by the Committee. All those deductions and disallowances which are statutorily required to be demand to depreciation worked out properly, according to law, and payments made to partners and directors deducted—they can be furnished by the advocate, if that is the objective.

In this connection, there is another point. It may involve small traders also, in addition to others. If, by small traders, we understand people having investment below Rs. 25,000, it is not correct.

MR. CHAIRMAN: What should be the reasonable limit?

SHRI B. B. AHUJA: Our suggestion is that the reasonable limit should be an income of Rs. 1 lakh and Rs. 10 lakhs as turnover. Keeping the current prices in view, a limit of Rs. 25,000 is too low. As I have already submitted, the turnover may mean nothing in so far as the income is concerned. Where the profit margin is 1 per cent, for instance, in commission agency business or certain other trades, it may run differently e.g. bullion transactions. Both conditions should be cumulative, instead of being alternate.

MR. CHAIRMAN: Supposing there is a professional who earns gross Rs. 1,20,000 or Rs. 1,30,000 and his income is Rs. 1 lakh, his income should not be audited?

SHRI B. B. AHUJA: I have not gone into the details of it. What I am submitting is that a distinction should be made between those people who receive gross receipts as professionals and those people whose profit is there or who are selling, dealing and manufacturing. There should be a distinction made between the two classes of people, because they cannot be put on a par so far as income is concerned. A professional is not concerned with much of the things which are involved in trade etc. and he is not to vouch for each and every expenditure as in trade.

MR. CHAIRMAN: The contemplated section governs both professionals and businessmen. Some limits are there. Are you suggesting different limits for professional and for business?

SHRI B. B. AHUJA: I am not suggesting that; I am only suggesting that the cumulative aspect may be kept in view, so far as business is concerned, and the income aspect may be kept so far as professionals are concerned.

MR. CHAIRMAN: That means two differentials or two different criteria.

SHRI B. B. AHUJA: Yes, two different criteria for the two sets of people.

MR. CHAIRMAN: We shall consider that.

SHRI B. B. AHUJA: I now come to clause 14 which is concerned with section 64 of the Income-tax Act

The second amendment which is sought to be made is one of the very vital amendments which go to the root of the tax structure, in my humble submission, and that is that the salary or remuneration which a wife receives from the firm in which the husband

has substantial interest or 20 per cent interest as delineated in the Bill, will be added to the income of the husband. In our opinion, this is a provision which is most harsh and which would cause hardship to the professionals rather than in any other class whatsoever; especially in the present times when the prices are rising all over the country, it is quite normal for people to supplement their monthly income by asking their spouses to work and get some money so that they could have better standards or at least keep up the same standard because the prices are going up. In that context, the first thing that they would like to do is to look to the firms where their husbands have some say; or they can employ their own wives there as stenotypists or as architects or as chartered accountants or even as lawyers. Asking them to go out of their own firms and companies will be too hard and probably they may not get employment elsewhere.

MR. CHAIRMAN: Everyone has repeated the same thing. Let me come to the point straightway. The real difficulty arises because of the grossly disproportionate payment that is usually made to the spouse. Section 40A has hopelessly failed to come to the rescue of the Department. While the wife is not doing any work, there is abundance of evidence created that she is doing work and so on; for instance, the wife is living in Bombay city while the husband is living in Delhi and the business is in Delhi or in Bombay and still the wife is getting work and payments are made and so on, such cases are there which create difficulties. But in genuine and *bona fide* cases, if you think that the wife has to work because of certain economic compulsions or compulsions of physical requirements, would you suggest that there should be some limit that we should fix beyond which it might be liable to tax?

SHRI B. B. AHUJA: I have disagreement with the Department on the statistics that they have....

MR. CHAIRMAN: Have you any cases where you have lost in the tribunal in this connection?

SHRI B. B. AHUJA: I think we have lost in tribunals because certain directors or certain partners are employees....

MR. CHAIRMAN: If that is done in a very crude or uncouth manner that is a different story. But if the appointment has been made in a subtle manner with a certain amount of finesse about it, we would like to see some cases where the case has gone in favour of the Department.

SHRI B. B. AHUJA: I would like to explain myself further. Merely because there are a few cases where while the wife is in Bombay, the husband is in Delhi, therefore, if it is said that their incomes will be added, it would not be proper in our humble submission; it would not be proper to make a law debarring each and every person from working for his betterment. It is not only a case of economic compulsion or a case where because of certain disabilities both the husband and wife have to work, but it is also a question of utilising the talents which are there in the country. We have got to look to this aspect also.

MR. CHAIRMAN: Utilise the talents and pay taxes. Who prevents you from utilising the talents?

SHRI B. B. AHUJA: If by utilising the talent, a man has to pay much more rate than what other people who do not utilise the talents do, then it would mean that talent is at a discount and, in that way there would be brain drain; that would not be desirable in our humble opinion.

So far as the remark that section 40A has hopelessly failed in dealing with such cases, I would only submit that the Department has experienced income-tax officers and inspectors to stop this kind of thing and they can very well collect the evidence in this regard.

MR. CHAIRMAN: With all that, this section has been found to be utterly inadequate to effectively halt division of income. What happens is that in the garb of paying salaries or commission for the spouse for services rendered, what is brought about is nothing but division of income *simpli-citer*. Please tell us some means to arrest this. Please come to point straight.

SHRI B. B. AHUJA: It can be arrested very well. The ITO has ample powers to call the person concerned and question them. There are very experienced ITOs who can do this.

SHRI VASANT SATHE: Would you be satisfied if we exclude certain genuine cases by qualifying them with the quality or merit basis, other things remaining the same, and we also put some reasonable limitation? The mischief is there because it was noticed that a salary of Rs. 4000 or Rs. 3000 was being paid to a spouse who otherwise by virtue of her qualifications or lack of them or experience or whatever it is, would not earn even Rs. 3000. She is paid Rs. 3000 just to stop the coupling of the income. In such cases, suppose we do two things; suppose firstly we provide that she should be otherwise qualified. One should not merely say that the wife would be an adviser; it may mean anything under the sun; or one should not say that she is a PRO which again may mean anything under the sun. Such things will have to be excluded. Suppose we say that she may be a doctor or a nurse or a lawyer or even a tax practitioner for that matter, would it be all right? If we excluded these cases, would it not meet the requirements?

SHRI B. B. AHUJA?: As regards this question whether she has merit, quality and so on, under the law, there is a lot of discretion vested with the ITO; he can conduct an enquiry; he can call the person concerned, examine and cross-examine the person and can freely determine the position. I do not see any hurdle in that. If a salary of Rs. 4000 is being paid to a wife, and the ITO does not make inquiries, with due respect, I would say that he is not doing his duties properly.

As regards the question of the law laying down certain qualifications, my submission is that it is going to be a very difficult task, because they may **employed in ever so many ways**, as lawyers, or doctors or nurses or stenotypists or architects or designers and so on. **There may be hundreds of** ways in which they may be employed. So, it is difficult to lay down certain definite criteria, to decide whether the person is well qualified and trained and so on. Section 40 is so wide that the ITO can make an assessment of directors and partners, etc., if a wife is paid a salary of Rs. 4000, he can make inquiries; and he can find out. If we start this way that because the Department or the officer is not able to track down the real revenue, and therefore the income is to be coupled, it would mean that probably one day we may end up by saying that since we are not able to track down something, therefore, we should tax everything. So, there would be no end to such a thing. This section gives very wide powers to the ITO and does not interfere with the discretion of the ITO, and in fact, at times, it has been stated that it is subjective because he has gone into all the aspects.

MR. CHAIRMAN: Which case do you have in mind when you say that 40A is subjective? Is there any authority which says that the ITO's decision is a subjective decision?

SHRI B. B. AHUJA: There is no particular case that I have in my mind at the moment. But our experience is that even the tribunal has taken the **view that it is subjective they have** said that if he is not satisfied about it, we cannot lay down anything, because we have paid it. If it is urged that the payment is genuine or the payment is by virtue of an agreement which is admissible, that would not hold and that has not hold even in the Supreme Court in one of the cases, whose citation I cannot recall just now.

So, our respectful submission and the considered view of the Bar is that the discretion of the officer in this matter should be respected. We should

presume that the officer will act according to law, and he can even make inquiries and he can take everything into consideration particularly when big revenue is involved.

MR. CHAIRMAN: If there is to be a *via media*, what should it be?

SHRI B. B. AHUJA: In the event, my suggestion is that the assessee should bear the onus of satisfying the officer that the payment is genuine for genuine work done. A clause can be inserted to that effect as in the case of companies where the benefit clause is there.

MR. CHAIRMAN: Under the existing law, on whom is the burden?

SHRI B. B. AHUJA: It can be made more specific by a clause so that normally it does not go. He has got to satisfy the officer that it is a genuine payment as in the case of 40C.

SHRI VASANT SATHE: In a factory, the wife may be put in charge of supervision of the mess for the workers. She can always answer questions on food preparations. What will the ITO ask her about food preparations which she cannot answer? Still she may be paid Rs. 2,000 a month.

SHRI B. B. AHUJA: My suggestion is that he should satisfy the officer where he is claiming deduction in regard to the salary of the wife.

SHRI VASANT SATHE: How will he satisfy?

SHRI B. B. AHUJA: I am not saying that the ITO should adopt only one way of asking the wife about food preparations. He has inspectors. He can make on the spot enquiries. He can send an inspection team at random and find out whether she is really there or not. If all this is not wanted to be done, probably the administration must do something about it. What about **Sec. 131A** they are introducing now for survey?

MR. CHAIRMAN: Your point is that this provision should be completely scrapped and 40A should remain as it is and effectively worked.

SHRI B. B. AHUJA: Yes, with the addition that a specific burden may be placed on the assessee.

MR. CHAIRMAN: That is already there in 40A.

SHRI B. B. AHUJA: Then in the same clause in regard to minors, previously as the law stands, where there is admission of a minor into the benefits of partnership where his father or mother is a partner, there is clubbing of the income of the minor. But now whether the father is a partner or not or the mother is not, the minor's benefits are going to be clubbed with that of the father. In cases where the assets have flowed from the father and mother, there is no difficulty. The law is already there; the income can be clubbed wherever the income is accruing because of those assets. As regards this national income to the father from the assets which really belong to the minor, there may be a large number of cases in backward areas where minors have got certain funds which are specifically theirs, not from the father or from the same relation of some other way. All those cases will come in now and there will be real difficulty if it is intended to secure for the minor certain income which can utilise for his education or further prospects. Probably the relations between the father or mother are not good. There may be many other cases. So this blanket provision for clubbing the minor's income with the father's where there is no connection between the two funds will not be justified. Because primarily when people want to avoid by legal means—they want to minimise their wealth tax those assets stand in their way and they go to the minor by one way or the other by transfer of assets or in very many other ways which the law can tackle. So this provision will not materially affect revenue. But it will mean hardship for these minors. Minors are under the guardians' Act or Wards Act. There is no provision which can mitigate them or leave any discretion with the ITO. It is a blanket provision which is not necessary.

MR. CHAIRMAN: In other words, it will act to the detriment of the minors even where such minors earnings in a partnership are utterly unrelated to any asset transferred by the spouse.

SHRI B. B. AHUJA: Yes. If at all this clause has to be drafted into the law, the existing arrangement should not be disturbed. This may apply to partnership newly formed after the law comes into force.

MR. CHAIRMAN: What is the rationale for the view that it should not be retrospective? I can understand the argument that it operates to the detriment of the minor when there is no nexus of such earnings with the assets transferred by the spouse.

SHRI B. B. AHUJA: People who have got to secure the interests of the minors in future will know what the law is now and will make such investments in shares etc. Instead of making the minors partners in a family concern.

MR. CHAIRMAN: They should not be taken unawares.

SHRI B. B. AHUJA: No. Then the provision about grandsons; etc., This is also a new provision intended to curb in some way the legal evasions people practise by the grandfather handing over the grandson, etc. it may be broadly all right in a way, but there are many cases. For instance, a husband is not behaving properly in his married life or the daughter of a man is a delinquent and the father of that girl has no other issue. So many problems can be there where they want to bestow it instead of to the son or daughter to some other person who will keep it secure under a settlement or some other matter. This has happened more in comparatively uneducated classes than in educated classes where they always make arrangements. In those cases, there will be real hardship. This is a blanket provision. Probably not much revenue is being lost. This is our experience Revenue is mostly being

lost by bold measures which are well known rather than by these measures. Probably the law should not take up cudges in this way in these cases because it will mean hardship.

MR. CHAIRMAN: You are forgetting one thing. The purpose is to get legal avoidance in this manner. Cases of a son or a daughter-in law misbehaving are very rare. In Indian society we do not have daughters-in-law misbehaving like that. It is not a phenomenon for which any differential treatment in taxation is possible. If there is some better argument, you might say.

SHRI B. B. AHUJA: After all, they are all adults. If they are minors, it is different. But if they are all adults, probably their income is being taxed.

MR. CHAIRMAN: Let them give it to the adult in that case. If a father gives it to his major son, it is all right. The son may be as big an assessee.

SHRI B. B. AHUJA: The Bar Association feels that this provision is not materially going to affect the income through taxation. But it will impose a hardship. That is my argument.

Another submission is that at least the existing arrangements should not be disturbed. It should be prospective.

The next point is about the Hindu undivided family. Earlier, the position was that all these families had been created by putting up the individual property into the common hotchpot. There was a time-limit; 31st December, 1969. That was the provision in the Wealth-tax and Income-tax Acts. What is done by this Bill is that the whole corpus in the wealth-tax and the whole income are sought to be taxed in the hands of the transferor. There is no provision saying that the families who have so far, before the Act comes into force, been under the existing Act, will be exempt from this particularly heavy charge. If at all this provision is sought to be

put on the statute, these families should not be exempted from this. Any further conversion may come within the purview of this particular provision.

Then, I may slightly deal with clause 15 also which deals with hundies. A new section 69D is sought to be brought on the statute-book. It provides that any payment or repayment of the amount covered by a hundi should be on a payee's account cheque. Otherwise, it is sought to be added to the income of the person at the time of repayment. Despite this stigma attached to the hundies in recent years, it is well known, and we all know, that the hundi is still one of the easiest and very convenient modes of raising loans. In the suburbs, and even in the towns, it is a very convenient form for raising a loan. When the man wants money instantly, it is a very convenient way. There is ample protection in section 60A against any violation. It is for the person to satisfy the income-tax officer by all means that it is a general transaction. If this blanket provision is put, the genuine transactions will certainly be affected. For a person raising a loan, say from Bombay, if he is not able to get one in Delhi, to get the payee's account takes 15 days. By that time, his needs would have been over. So his blanket provision of putting it on the payee's account,—and unless that is done, it will be taxed—is a very harsh one and it will interfere with the normal trade and will cause great inconvenience. Section, 68 is a good provision, and the department will have to be strict about it. Instead of asking for the payee's account cheque, they can be more strict about it so that the business does not suffer. If the business suffers, certainly the revenue to that extent is lost. It is mostly the small trader and the medium trader who are going to be affected by this. This big people have financial overdrafts on the banks or the corporations. It is the medium class trader or the seller who raises the loan who is going to suffer. In

our opinion, this provision is, therefore, unnecessary. Section 68 duly takes care of the situation.

Then I come to clause 19, which deals with section 80 GG, where new concessions in respect of rents paid are being introduced. Previously, it was available only to the salaried people. The proviso here is not a very salutary one. It takes away the benefit. It says:

"Nothing in this section shall apply to an assessee in any case where any residential accommodation is owned by him or by his spouse or minor child, or where such assessee is a member of a Hindu undivided family, by such family."

For instance, if a member of the family owns a house in Moradabad and is living in Delhi, he will go without this benefit. Even say, if his wife has a house in Madras and is living in Delhi, this blanket provision takes away the concession that is very legitimately due to the assessee.

So, my respectful submission is that this provision is unnecessary. If a person owns a house in some city, where he is working, it is one aspect. But even there, some difficulties can be there. For instance, a man working in R. K. Puram has a house in Wazirpur. He has got to let it. If the law wants to give him a concession, let it be a straight concession.

MR. CHAIRMAN: One amendment can be made to the proviso; namely, after the words "by such family", we may say, "in the city of employment."

SHRI B. B. AHUJA: That will mitigate it to some extent.

MR. CHAIRMAN: What is the only hardship you mention. It will be mitigated completely.

SHRI B. B. AHUJA: Suppose a man is working in R. K. Puram or Mehrauli, and he has a house in Wazirpur

or Azadpur. It is practically impossible for him to live there. He cannot. The distance being what it is, he cannot do it. In that case, this provision will not help him. My respectful submission is that the revenue will not be lost by keeping it as a straight concession. There are many other ways of tightening up the measures, but not this way.

MR. CHAIRMAN: He has no accommodation of his own and therefore he is paying beyond 10 per cent. Some relief is to be given. The house at Wazirpur may be let out on rent. Is it not?

SHRI B. B. AHUJA: Not necessarily. It may not. In R. K. Puram he may have to pay much more than at Wazirpur. In a village in the Delhi Union territory, say at Mahipalpur, he may be getting at Rs. 10, but he may have to pay Rs. 300 at R. K. Puram. So far as I understand, there is no such concession for them; so far as the salaried persons are concerned, they are straightaway getting this allowance. Why put this diluted concession for others, when the law is generous in the proper concession which is legitimately due to the assessee?

MR. CHAIRMAN: The intention of the framers of the law appears to be that it is legitimate only if you do not have a place of your own. If you have a place of your own, this concession is not available.

SHRI B. B. AHUJA: But this august body may make this provision clear.

MR. CHAIRMAN: If you can tell us, and if it commends itself to the Committee, it would be better; we can improve the drafting of it. Accept the principle and improve the draft.

SHRI B. B. AHUJA: I would suggest that it should be provided that unless he has got a house within a certain radius of his place of work, the concession should be available. That may be the condition which may

be provided for in the law. My submission is that the concession should be straight.

Then the next point is about clause 25, amending section 80VV. It is concerned with legal expenses. As we understand, the law at present is that all legal expenses incurred by a businessman or a professional man in connection with the tax proceedings are liable, in view of the Supreme Court's decision in the Birla Cotton case. They are considered to be normal expenses and they are allowed. But the proposed provision puts a limit of Rs. 2,000 on such expenses.

MR. CHAIRMAN: Only in respect of deduction under this section. It will not apply to the deduction under business.

SHRI B. B. AHUJA: This should be clarified. I have a suggestion that the proviso may read something like this: "Provided that no deduction shall in any case, other than business and professional, exceed in the aggregate..." etc. That will clarify the matter.

MR. CHAIRMAN: Otherwise you accept in principle that there should be restriction?

SHRI B. B. AHUJA: I accept there should be restriction. For other than business and profession the limit is rather low for the times we are going through. It should be extended to Rs. 5,000 for other than business and profession.

MR. CHAIRMAN: If a matter relating to some taxation on dividends is taken up to the Supreme Court, what will be the total expenses right from AAC to Supreme Court?

SHRI B. B. AHUJA: It is likely to be more than Rs. 5,000, excluding security. The present practice in the Supreme Court is to dispense with printing and so costs have been reduced. Of course security has to be deposited. The fees of the lawyers is the major burden. My submission is that the limit should be Rs. 5,000 for

other than business and profession. That clarificatory amendment should be there.

I now come to clause 42 which deals with section 140A. A person has to pay tax within thirty days of filing the return; that is present practice. Now he must enclose a receipt as proof of payment along with the return. This provision is unnecessary. If a man has not made payment, he will have to defer his return itself. The statute will attach a certain criminality on his part if a return is not filed. One penalty is for not filing of the return and ultimately another penalty for not paying the tax. There is thus a multiplicity of penalties which in our opinion is not necessary. The present provision is salutary and serves the purpose.

MR. CHAIRMAN: All this will not apply if you paid in advance; the difficulty or hardship part will not apply.

SHRI B. B. AHUJA: My submission is that most of these cases are middle-class cases, small businessmen who is always hard for finance. If the only idea is to collect taxes, there are other ways and they are in the law.

There should be some ceiling on the penalty.

MR. CHAIRMAN: Are you trying to suggest that the return itself would not be a valid return if it is not accompanied by proof of payment?

SHRI B. B. AHUJA: I feel so.

MR. CHAIRMAN: There is no complication at the moment because a return may be either in compliance with the statutory notice or a voluntary return. This section is entirely unrelated section so far as a filing of return is concerned. Sub-section 3 makes the whole position clear; it does not say that the return becomes invalid.

SHRI B. B. AHUJA: Taken together the interpretation will be like that. It is not necessary that this should be there because it will act as a deterrent to the small assessee; he will not file

the return unless he is possessed of the means.

SHRI JAGDISH PRASAD: There is scope of ambiguity.

MR. CHAIRMAN: Where is the scope? Sub-section 3 is clear; it says if he fails to pay the tax or any part thereof.

SHRI JAGDISH PRASAD: It says that the return 'shall be accompanied'. There is room for litigation. Why not make it clear in order to avoid ambiguity?

MR. CHAIRMAN: What should be provided?

SHRI JAGDISH PRASAD: We can say that a return filed in contravention of this section shall not be treated as invalid.

MR. CHAIRMAN: We can consider that.

SHRI VASANT SATHE: We can say here "Provided that before levying any such penalty the assessee shall be given a reasonable opportunity of being heard and the return shall not be a ceiling on penalty.

MR. CHAIRMAN: We can consider that.

SHRI B. B. AHUJA: There should be a ceiling on penalty.

MR. CHAIRMAN: It is an undisputed tax liability on him. If you put a limit of say 20 per cent i.e. 10 months, it means after 10 months, he need not pay at all. It means that a contumacious assessee will be at a premium.

SHRI JAGDISH PRASAD: In the case of section 271 (1)(a), there is a ceiling of 50 per cent on penalty for delay in filing the return. But under section 140A if there is no ceiling, it means the assessee may be tempted to delay the return rather than commit an offence under section 140A. So, here also there should be a ceiling of 50 per cent.

SHRI B. B. AHUJA: In clause 52 dealing with section 185, an explanation is sought to be introduced that if a partner in a firm is an undisclosed benamidar of an outsider and any one or more of the partners had knowledge thereof, the firm shall not be treated as a validly constituted firm. In our opinion, this provision is unnecessarily putting a burden on the other partners. One man may be in Delhi and another in Madras and it can be by correspondence. How does the partner come to know from which source this capital is coming? Apart from it, the words "or had reason to believe are dangerous and should be deleted."

By clause 60, a new sub-section (4) is sought to be introduced in section 249. We think this is a provision which is intended to make the recovery easier and convenient. In our submission, so many provisions are there in the Act which are intended to secure that object and this provision is unnecessary.

MR. CHAIRMAN: Pay according to your own estimate and go on appeal. What is wrong with it?

SHRI B. B. AHUJA: He files an appeal and he goes to the department. The department has the remedy under sections 221, 226, etc. So many provisions are there.

MR. CHAIRMAN: Where is the remedy to the department to prevent him from going on appeal?

SHRI B. B. AHUJA: I do not subscribe to the view that the right of appeal should be interlinked with the payment of tax. A man may have earned a lakh of rupees in one year. In the next year in the first month he might have lost 2 lakhs. Still he may be assessed on 2 lakhs and he cannot go on appeal. Suppose he has no money and a heavy assessment is made, what is the remedy?

SHRI VASANT SATHE: Such genuine cases will be covered by the proviso.

MR. CHAIRMAN: You may make the appeal in one form. You may apply to the Commissioner saying that the money has not been paid for this reason. There will be a preliminary hearing and the appeal will be entertained.

SHRI B. B. AHUJA: If the officer comes to the conclusion that he should not exercise his discretion, there will be no appeal against that. So, the appeal may not be admitted. There can always be an error of judgment about the circumstances of a man. Unless the Bill provides against this aspect also the remedy is not complete.

MR. CHAIRMAN: We may provide for the Tribunal against this.

SHRI B. B. AHUJA: Before I come to clause 64, the penalty provision, I will stress one point about charitable trusts, clause 6. I am sure many people must have made their submission before you on this point. The provision that no community trust would be allowed exemption is a very wide provision. In India a community is a very vast humanity. Take the Muslims or the Hindus who constitute the majority of the population. If there is a trust for a community, it is serving a social purpose. This legislation should not deny that benefit.

SHRI JAGDISH PRASAD: If at all there is any provision, it should be prospective and the existing arrangement should not be disturbed.

MR. CHAIRMAN: As it is communal trusts which came into being after 1962 are denied exemption.

SHRI JAGDISH PRASAD: There are many trusts which were functioning even prior to 1962. They will come within the mischief of the section. I say that those trusts which were enjoying exemption so far should continue to do that.

MR. CHAIRMAN: We will consider that.

SHRI B. B. AHUJA: Coming to penalty clause, clause 64, for a new assessee who does not file the return the penalty is harsher. Explanation 4 is very badly worded.

MR. CHAIRMAN: So far as drafting is concerned, as far as possible, we will get rid of all explanations and things like that. We will make it comprehensive and precise. If you have to say something on principle, you may say so.

SHRI B. B. AHUJA: In "deeming concealment" provisions, the blanket provision is very harsh. A man may get a credit for a person who has died or there may be many circumstances in which a person is not able to fully substantiate. In view of the rigorous penalties already there, no new provision is necessary.

The submissions we have made in respect of income-tax are equally applicable to wealth tax. Here I have to make a special submission, so far as the new penalty is concerned, even for late filing of return. A large number of cases are pending in tribunals where the returns have been filed. The penalty has been imposed on the basis of income. The law will come into force prospectively. It should be made retrospective from 1st June, 1969 when the system was changed; otherwise, it would be really harsh. It is a very hard case. Two writ petitions are still pending in the Supreme Court on this matter. For levying a tax of Rs. 500 the penalty is Rs. 50,000.

MR. CHAIRMAN: What happens where the penalty has already been paid?

SHRI B. B. AHUJA: The Commissioner can be given the power to exercise discretion in this matter. We have always been insisting that discretion should be vested with the officials who are very experienced.

Coming to section 132, instead of the words "reason to believe" the word "suspected" is used. The suspicion can be without basis also. According to the Wanchoo Committee Report the raid have been very successful under the present provision. The words "suspected" in place of "reason to believe" can be there in connection with a police case but not in a taxation law. In fact, this provision is being challenged in the Supreme Court. The existing provision will stand the test of the law laid down by the Hight Courts. This is good enough.

MR. CHAIRMAN: We will consider that.

'reason to suspect'—the ourts have stated that reason to suspect is likely to be more subjective. In this connection a provision has been made. You will find IA which says:

"Where any Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery of other valuable articles or thing in respect of which an officer has been authorised by the Director of Inspection or any other Commissioner or any such Deputy Director of Inspection or Deputy Commissioner (Amendment) as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Commissioner may, notwithstanding anything contained in Section 121, authorise the said officer to take action under any of the clauses aforesaid in resepect of such building, place, vessel, vehicle or aircraft."

In other words, there will always be a first authorisation. That will be 'reason to believe'.

SHRI B. B. AHUJA: In that event I stand corrected But my respectful

submission is that the authority should be vested as earlier in the Commissioner or Director of Inspection because they are higher-officers. Of course, all officers are very responsible but this is a very serious inroad into the liberty of the individual and the law must see to it that proper mind is applied by the higher officer before such an action is taken which will interfere with the liberty of the individual and the Director of Inspection and the Commissioner through their headquarters can always initiate action if reports are there.

MR. CHAIRMAN: This is nothing but purely extending the scope of operation. That is not the original authorisation.

SHRI B. B. AHUJA: I stand corrected so far as that particular aspect is concerned. On this question, my submission is that the authority should not be vested with the Deputy Commissioner, if should remain with the Director of Inspection or Commissioner.

Another small point—ostentatious expenditure, where a person can be immediately after information asked to explain the expenditure he has incurred. On principle, there cannot be any disagreement with the inspection. But, very often, there is likely to be a great harassment. No guidelines have been provided. Some guidelines ought to be there.

MR. CHAIRMAN: Let us depend upon the good-sense of the Board. You have been paying so many tributes to them.

SHRI B. B. AHUJA: I am paying tributes to some of the experienced officers who are all part and parcel of the Government and as such it is the Government that deserve the tribute for all the good things.

SHRI P. G. MAVALANKAR: I have been listening for nearly 90 minutes to the whole presentation of the Income Tax Bar Association.

On the one hand you are saying that you are agreeing with the laudable objectives of the Wanchoo Commission and all that and on the other hand, you have been saying that this is hard, very hard, extremely hard etc. On the first page of your memorandum you say:

“The un-ending competition in ingenuity between tax-gatherers and the tax-payers have rendered tax laws increasingly intricate and without achieving the desired objective.”

I would request you and through you request the Bar Association Members if they could, on the basis of their experience, simplify the clauses and send us their suggestions because this is a very grave matter and a serious business.

MR. CHAIRMAN: In respect of some of the clauses if you feel that they could have been drafted with more precision, we will certainly look into the drafting very carefully. You may send us a revised memorandum, but you may rest assured that the principle must not be diluted, the provisions must not be diluted; only the language. You can put it in more precise language so that there is less scope for competition of ingenuity.

SHRI H. M. PATEL: What the hon. Member wanted was that as the witness wanted that the tax law itself should be simplified as that is the one they referred to in their memorandum, if they could try their hand in simplifying it, it would be better.

MR. CHAIRMAN: As far as we are concerned, the rest of the laws are beyond our reach. To the extent it is within our right, you can help us.

SHRI P. G. MAVALANKAR: When they say that this is harsh, we agree to an extent but there is a view that in the present situation the evil of black money which is so harsh on the community should be curbed. How will these people help us to come out

of this—not merely by saying that it is harsh and harsh, etc.? What is the way out?

SHRI JAGADISH PRASAD: The answer is: that the remedy should not be worse than the disease.

SHRI P. G. MAVALANKAR: The whole point is that everybody goes on agreeing but when it comes to implementation, it is harsh.

SHRI B. B. AHUJA: I am grateful to the Committee for asking us to put

forth certain desired alternatives for certain clauses which, in our opinion, must be more simple than as they are in the Bill.

The main burden of our submissions is: please do not make the law so harsh that a man may be dissuaded to go to law. In that case, he will run away rather than complying with it. That is the harshness.

(The witnesses then withdraw.)

IV. All India Federation of Income-tax Gazetted Services Association, New Delhi

Spokesmen:

1. Shri K. Raha
2. Shri C. L. Wali
3. Shri R. C. Pandey
4. Shri P. S. Gopalakrishnan
5. Shri O. S. Bajpai

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before you commence your evidence, I must point out that one of the directions of the Speaker, Lok Sabha, which governs your evidence is that the evidence that you give shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Mr. Gopalakrishnan, you may now make your remarks.

SHRI P. S. GOPALAKRISHNAN: May I first invite your attention to Clause 58—Settlement of Cases? In principle, we are opposed to the entire Chapter regarding settlement of cases. I shall now give the reasons for it. In the proviso to section 245D(1), it is specified that the Settlement Committee shall not proceed with settlement in case perpetration of fraud on the income-tax authorities for evad-

ing tax or other sum payable under the Act has been established by any income-tax authority. This would mean that in almost every case the settlement would be available to the Settlement Committee because the establishment of concealment is very difficult and till the concealment is specifically established, the jurisdiction of the Settlement Committee will always come in. This would mean that every case of concealment would come within the purview of the Settlement Committee. It will be impossible to hold that concealment is conclusive in every case. We may contrast it with the provision of section 271(4A) where it is said that prior to detection if a person comes forward for settlement, the settlement will be finalised by the Commissioner. The expression used in section 271(4A) is 'detection' which is a point of time much earlier than establishment. Even if the concealment is detected by the income-tax officer, till he conclusively establishes it, the scope of the Settlement Committee will be there....

MR. CHAIRMAN: What objection do you have in this?

SHRI P. S. GOPALAKRISHNAN: It will frustrate the efforts of the Income-tax department. The fruits of all investigations are taken away by the Settlement Committee.

SHRI VASANT SATHE: What are the fruits?

SHRI P. S. GOPALAKRISHNAN: Penalty and prosecution should follow on the basis of the investigations already conducted by the Income-tax officer.

SHRI ERA SEZHIYAN: How do you feel that the efforts will be frustrated if the case goes to the Settlement Committee?

SHRI P. S. GOPALAKRISHNAN: After the materials have been gathered by the Income-tax officer, for proving a concealment case, the natural consequence should be to punish the man by penalising him or prosecuting him. There, the jurisdiction of the Settlement Committee will come and interfere and it has the power to waive the penalty or prosecution.

SHRI VASANT SATHE: How does that frustrate the efforts of the Income-tax officer? Ultimately our object is to get the revenue. The object is not to have the satisfaction of prosecution or penalty.

SHRI P. S. GOPALAKRISHNAN: After the tax-payer's accounts have been investigated and the concealment proved, the natural consequence should follow according to the law.

MR. CHAIRMAN: What leads you to the conclusion that the Settlement Committee cannot levy a penalty?

SHRI P. S. GOPALAKRISHNAN: They can. But they have also got the power to waive.

MR. CHAIRMAN: That power is there even today.

SHRI P. S. GOPALAKRISHNAN: I will come to the other provision later on.

MR. CHAIRMAN: This is a very important provision. I want you to satisfy the Committee on the general proposition that you have formulated that as a result of this provision everybody who is found to have concealed the particulars of his income would be frustrating the efforts of the Department. There are two things here. One is collecting appropriate tax on the real income earned. That would be found out as a result of your further investigations. Number two is appropriate penalty which should both penalise him for the lapses and also act as a deterrent for the future. Now what is your apprehension?

SHRI P. S. GOPALAKRISHNAN: There is the use of the word 'established'.

MR. CHAIRMAN: According to you, a person who has concealed his income, who would otherwise be going to the jail, would be going to the Settlement Committee. What impels you to feel that he will be let off without a penalty?

SHRI P. S. GOPALAKRISHNAN: If instead of 'established', the word 'detected' is used, that would be that would refer to a point of time earlier than establishment. Before detection, he comes on his own, offers the terms of settlement and gets the case settled.

MR. CHAIRMAN: How do you say that the efforts of your department would not be rewarded?

SHRI P. S. GOPALAKRISHNAN: The Wanchoo Committee has said that the entire settlement should be done by an independent tribunal and not by the Board....

MR. CHAIRMAN: That is a different point.

SHRI ERA SEZHIYAN: The question is, why do you feel that the efforts of the department will be frustrated.

SHRI P. S. GOPALAKRISHNAN: We have the experience of one Investi-

gation Commission in the past. There was compounding of the offences ultimately. All the efforts which were made were only partly rewarded.

SHRI ERA SEZHIYAN: This is not a new phenomenon. This has worked in the United States and United Kingdom.

Where a man comes forward, there is bound to be a compromise. The entire basis of the Settlement Board is based on the Principle that when a person comes before the Settlement Board, there should be some concession shown to him and a compromise. If you read Wanchoo Committee's report page 13, this will be clear. This, however, does not mean that an errant tax-payer should frustrate the administration. Therefore, they have suggested this Settlement Board where there is bound to be some compromise. I doubt if that would frustrate your efforts.

SHRI P. S. GOPALAKRISHNAN: In principle, we are opposed to any compromise.

SHRI C. M. STEPHEN: I do not know whether I have understood him correctly. I will state how I have understood him. There may possibly be two stages in the matter of assessment of an assessee. In the course of the investigation some irregularity, concealment or fraud might be detected by the investigating authority. There is another later stage where on collection of the data a specific case of fraud is completely established to the satisfaction of the income tax authority. Now, before they proceed to the later stage, the assessee rushes up to the Settlement Authority and they call for a report. At that moment of time, the income tax authority will not be able to say that a case of fraud has been established against him. It will only be possible for him to say that there is a possibility or a suspicion that this man has defrauded. As framed the provision says "established". Therefore, unless it is established, the settlement authority's jurisdiction is not taken away. If it is not es-

tablished, it is only detected, then the settlement authority can go into it and compromise and then that fellow may go out of hand. Therefore, what they suggest, according to me, is that the wording "established" will open a possibility of an errant assessee escape by using this as a ruse to go to the settlement authority.

SHRI R. S. GOPALAKRISHNAN: I am most grateful to the hon. Member for explaining and putting it more lucidly than I have done.

MR. CHAIRMAN: You are forgetting one thing. One thing has to be understood. If he is an honest assessee who is lawabiding, where is the question of the Settlement Machinery? The settlement machinery only comes in when there are complications arising out of the assessee wanting to evade, wanting to defraud and cheat. If we decide that with such assessee in principle there should be no compromise, then we can understand. If the Board struck a compromise in such matters, then the provision, as it is, I am unable to see any incongruity at this stage at least.

SHRI C. M. STEPHEN: Is there any possibility of an honest assessee by the subsequent event of having gone into liquidation not being able to pay, wanting to square up and getting some breathing space so that he can restore the whole business. That is how the settlement comes up, not merely by dishonesty.

MR. CHAIRMAN: That aspect we will consider a little later. For an honest assessee the settlement machinery is utterly unnecessary. If you accept the truth, then this distinction which you are trying to say, frankly I am not able to comprehend.

SHRI P. S. GOPALAKRISHNAN: In principle we do not accept a compromise.

Secondly, without prejudice to what we have said, if a settlement has to be made let it be made with a sincere person who atones for his fault. Detection is an earlier part of the investi-

gation. If some material is found against him and if he has got a change of heart, he comes forward and says, 'I want to compromise and settle the matter', let it be done, not after the detection has been laid at his door and he has already been proved a tax-dodger.

SHRI VASANT SATHE: When the settlement machinery is not there, even to-day you assess, establish and convict him and impose a penalty or any other penalty. Does not he go in appeal and if the appellate authority let him off, does it frustrate the Income Tax Officer? Then there will be frustration in every case where the lower court decides one thing and the higher court quashes it. Why do you bring in the element of frustration merely because what has been established by an Income Tax Officer has been set at naught by somebody in the higher up under the gamut of law?

SHRI P. S. GOPALAKRISHNAN: The present position is that we do make settlements even now. The difference, as pointed out earlier, is that the Commissioner can make the settlement.

MR. CHAIRMAN: There the powers are very limited. This is a very elaborate power. They can make the whole assessment, quantity and determine. The whole concept has touched a very important aspect. Is it not happening that nine out of 10 appeals are getting quashed because of the existing difficulties?

SHRI P. S. GOPALAKRISHNAN: That is true. That is why the provisions are being tightened up further.

SHRI K. R. GANESH: Is it your case that after putting in a lot of work and when the Income Tax Officer is on the point of catching this man, at that point he takes it to the Settlement Board and, therefore, a loophole is left here that all these people who are to be caught can take advantage of the settlement machinery?

SHRI P. S. GOPALAKRISHNAN: That is the point. I am most obliged to you.

MR. CHAIRMAN: There is no doubt about it. The scope of the section and the proviso has left no doubt that until you conclusively prove a person to be perpetrating a fraud, he can take a case, as defined there, to the settlement machinery. In principle, if you are to decide that these people are not to take, then who are the others who are to take. Honest assessee—why should they to go the Settlement Machinery?

SHRI P. S. GOPALAKRISHNAN: I oppose this Chapter entirely in principle.

SHRI VASANT SATHE: If this power of settlement was to be given to the Income Tax Officer himself even after establishment, would that satisfy the Income Tax Officers?

SHRI P. S. GOPALAKRISHNAN: We would not try and wish to exercise this power.

SHRI VASANT SATHE: What you suggest is that once it is established, the only way is to send him to jail?

SHRI P. S. GOPALAKRISHNAN: The normal provisions are there.

SHRI VASANT SATHE: Whatever be the consequences must be suffered.

SHRI P. S. GOPALAKRISHNAN: Yes.

SHRI K. R. GANESH: One point the Wanchoo Committee has said is that there has to be greater use of the deterrent punishment and a greater use of the powers of prosecution to see that these economic and social crimes are brought down to the extent possible. Probably, that particular aspect comes in conflict with this particular provision.

SHRI VASANT SATHE: Does the Wanchoo Committee itself not suggest a method for a compromise?

MR. CHAIRMAN: There is one more thing. To the extent that the penalty is not diluted, you agree. Your objection is that the AC may not levy the penalty. Nothing under the law says that the Settlement Commissioner cannot launch prosecution. Then what leads to the inference that he will escape the prosecution?

SHRI P. S. GOPALAKRISHNAN: The very purpose that a man comes for settlement is that he wants to escape prosecution.

MR. CHAIRMAN: Under suitable circumstances the Commissioner will not sanction prosecution. Is there immunity under the section?

MR. CHAIRMAN: Immunity is not in absolute terms. Commission can do what you can do. It is not in every case. Wherever it desires, it may do so, subject to the conditions which it may think fit. It is subject to certain objectives contained there. Settlement machinery cannot only determine the man's income, they can also levy the penalty and prosecute in suitable cases; they can fix up he cannot come back because this is final.

SHRI P. S. GOPALAKRISHNAN: May I proceed to the next point? It is this. There is no time limit prescribed for the disposal of settlement cases.

MR. CHAIRMAN: We will consider that.

SHRI P. S. GOPALAKRISHNAN: I come to 245-A. It starts with the very words: "Any proceedings pending before the Income-tax authority." If no proceeding is pending no settlement can be made. There are many hard cases like this. If the man has failed in appeal before the Appellate Assistant Commissioner and it is pending before Tribunal, and if he wants to make a clean breast he does not come under the provision. That is my point.

MR. CHAIRMAN: We will consider that. Scope is very narrow as you see. If the principle is accepted then I think we can ensure widening of the basis.

SHRI P. S. GOPALAKRISHNAN: There are some hard cases like that which we have come across.

MR. CHAIRMAN: I appreciate that.

SHRI VASANT SATHE: All suitable cases should be covered.

SHRI P. S. GOPALAKRISHNAN: Another point, Sir. The settlement Committee does not make an assessment by itself. It only makes an order, determining total income tax payable and penalty. Is it substitute for regular assessment?

MR. CHAIRMAN: In conformity with the orders of the settlement machinery.

SHRI P. S. GOPALAKRISHNAN: The proceedings should not become time-barred...

MR. CHAIRMAN: The proceedings are over and order is passed. Concurrently with the order the income-tax officer will have to pass the order.

SHRI P. S. GOPALAKRISHNAN: Should we not make a protective assessment in the normal Course? It is a lacuna which we want to bring to your very kind notice.

MR. CHAIRMAN: You are submitting very important points and we want to hear you more.

SHRI K. R. GANESH: The first submission that you made is this. The Board is making some special studies. The special cell is making the study. Those assesses who are now under the study of the special cell feel that at a particular point of time the cell is going to establish a certain case in a certain way, they can also come...

SHRI P. S. GOPALAKRISHNAN: They can also come under the section.

MR. CHAIRMAN: Only when assessment is pending they can go. Not if it is not a case of study and assessment is not pending..

SHRI P. S. GOPALAKRISHNAN: After study assessments are finalised.

SHRI VASANT SATHE: The object of settlement machinery is to curtail delays which are taking place. He said Settlement machinery itself should make assessment. Do you think the settlement machinery which will be composed of three persons, with independence, etc. will be very much overburdened and they will not be able to cope with the settlement and settle things early?

SHRI P. S. GOPALAKRISHNAN: This chapter is opening flood-gates to everybody. We will be saddled with all sorts of cases which may become impossible for a committee to dispose of.

SHRI ERA SEZHIYAN: Wanchoo Committee discussed about the voluntary disclosure. Short of that they suggested this thing. They said "We are strongly opposed to the idea of the introduction of any general scheme of disclosure either now or in the future". That is the position there. Both these points are made out there. They said: A rigid attitude would not only inhibit a one-time tax-evader or an unintended defaulter from making a clean breast of his affairs but would also unnecessarily strain the investigational resources of the department in cases of doubtful benefit proliferating litigation and holding up collections. Also it has been stated: "A provision of this type facilitating settlement in individual cases will have this advantage over general disclosure schemes that misuse thereof will be difficult and the disclosure will not normally breed further tax evasion." This is the basis on which they proceeded. They did not go by the scheme earlier, in the previous cases. Therefore, they submitted this one. This is the background.

MR. CHAIRMAN: We will have to ensure ourselves that penalty and prosecution etc. are not dispensed with by settlement commissioners. Penalty and prosecution might get mitigated

on account of their behaviour. This shows they have come to better path of rectitude.

SHRI P. S. GOPALAKRISHNAN: That should be followed by their behaviour which they establish.

MR. CHAIRMAN: That is 271(4)(A). I appreciate what Mr. Sezhiyan has pointed out. I do not see how we can do that without diluting this. Either we discard the principle or we have to accept that. You must allow those assesseees who have tried to creat the Department but want to come to the path of rectitude.

SHRI .P. S. GOPALAKRISHNAN: You are using the word 'detected and established' but I am using the word 'detected.'

MR. CHAIRMAN: Without being established he can come. When it is established he cannot go. The only thing is which we need to assure, even if he goes he must not think that by going merrily he will be free.

This is for expeditious disposal.

SHRI P. S. GOPALAKRISHNAN: It will not be expedited. It will take 10 or 15 years.

MR. CHAIRMAN: We will have to prescribe a limit for entertaining an application and for its disposal. It can not be kept hanging for 15 years.

SHRI ERA SEZHIYAN: On page 14 of the Wanchoo Committee's Report they have contemplated:

"However, we wish to emphasize that the Tribunal will proceed with the petition filed by a taxpayer only if the Department raised no objection to its being so entertrained. We consider that this will be a salutary safeguard, because otherwise the Tribunal might become an escape route for tax evaders who have been caught and who are likely to be heavily penalised or prosecuted."

What they contemplated was that at the time of application being put by the assessee the Department can object to it.

SHRI P. S. GOPALAKRISHNAN: If independent body is going to go into it I do not think there is any objection. We are going to say in place of Settlement Committee, the Investigation Commission of the past should be revived which should be composed of a High Court Judge.

SHRI H. M. PATEL: These points that are being raised are very important. Should we not give them more time on some other day?

MR. CHAIRMAN: I was looking at our own time table and schedule. Mr. Gopalakrishnan, we will have to suspend the evidence today. We would like to hear you on 15th

December from 10.00 A.M. onwards. You can come fully prepared.

SHRI ERA SEZHIYAN: In your memorandum you have said that the steps suggested in the Bill are not likely to achieve the objectives, though you have appreciated the objectives. You are not only experts in these laws, but you have to implement these things. We would very much welcome your positive suggestions, as to how these objectives can be achieved. If you can give your suggestions in writing, that would help us. Even if it means redrafting of some of the provisions, that can be done.

SHRI P. S. GOPALAKRISHNAN: We will do that, Sir.

MR. CHAIRMAN: If you can send us 70 copies, well and good, otherwise we will have them made here.

(The Committee then adjourned).

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE ON
THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Saturday, the 3rd November, 1973 from 10.00 to 13.25 hours and again from 15.30 to 18.00 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri S. M. Banerjee
7. Shri Dharnidhar Basumatari
8. Shri Jyotirmoy Bosu
9. Shri Tridib Chaudhuri
10. Shri K. R. Ganesh
11. Shri Mani Ram Godara
12. Shri D. P. Jadeja
13. Shrimati Sheila Kaul
14. Shri Maharaj Singh
15. Shri P. G. Mavalankar
16. Shri Amrit Nahata
17. Shri H. M. Patel
18. Shri R. Balakrishna Pillai
19. Shri Bhola Raut
20. Shri Vasant Sathe
21. Shri Era Sezhiyan
22. Shri K. K. Shetty
23. Shri C. M. Stephen
24. Shri Satyendra Narayan Sinha
25. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—Joint Secretary and Legislative Counsel.
2. Shri S. Ramaiah—Deputy Legislative Counsel.

**REPRESENTATIVE OF THE MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE AND INSURANCE)**

1. Shri K. E. Johnson, Member, Central Board of Direct Taxes.
2. Shri S. Narayan, Joint Secretary.
3. Shri R. R. Khosla, Director.
4. Shri S. I. Tripathi, Deputy Secretary.

5. Shri O. P. Bhardwaj, Deputy Secretary.
6. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*.

WITNESSES EXAMINED

I. *Federation of Indian Chambers of Commerce and Industry, New Delhi.*

Spokesmen:

1. Shri Charat Ram, President.
2. Shri A. K. Jain, Chairman, Taxation Sub-Committee.
3. Shri D. C. Kothari
4. Shri Madanmohan Mangaldas
5. Shri Viren J. Shah
6. Shri K. N. Modi
7. Shri H. B. Dhondy
8. Shri O. P. Vaish
9. Shri G. L. Bansal, Secretary-General.

II. *Institute of Income-tax Practitioners of India, Bangalore.*

Spokesmen:

1. Shri K. B. Basavarajan, President.
2. Shri C. L. Aneja
3. Shri M. V. Shastri
4. Shri Harilal T. Sodha

III. *Jamiat Ulama-i-Hind, New Delhi*

Spokesmen:

1. Maulana Syed Asad Madni, M.P.
2. Shri M. Swalehuddin
3. Shri Tazimuddin Siddiqi
4. Shri A. A. Kidwai
5. Shri N. A. Zaki

IV. *All India Women's Conference, New Delhi*

Spokesmen:

1. Shrimati K. Lakshmi Raghuramaiah, President.
2. Shrimati Kamla Mankekar
3. Shrimati Sunandā Bhandare

I. Federation of Indian Chambers of Commerce and Industry, New Delhi.

Spokesmen:

1. Shri Charat Ram, President
2. Shri A. K. Jain, Chairman, Taxation Sub-Committee
3. Shri D. C. Kothari
4. Shri Madanmohan Mangaldas
5. Shri Viren J. Shah
6. Shri K. N. Modi
7. Shri H. B. Dhondy
8. Shri O. P. Vaish
9. Shri G.L. Bansal, Secretary-General.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: I invite your attention to Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha by which I inform you that your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Now, we have received your memorandum and it has been circulated to all the Members. If you want to start with your introductory remarks, you may do so; we will take up specific clauses later.

SHRI CHARAT RAM: Mr. Chairman Sir, we are thankful to you for giving us this opportunity to meet you and present our views on the Taxation Laws (Amendment) Bill of 1973. We deem it a privilege to exchange our thoughts with such a distinguished group of members of the Parliament, on a legislation which in the main seeks to find solutions to the national problem of what has now come to be known as "black money". Our memorandum on the Bill is already in your hands. With your permission I would like to offer

briefly a few observations on some salient features of the same.

The "objects and reasons" which form the basis of the Bill covering as they do, unearthing of unaccounted money and preventing its further generation, curbing of tax evasion, checking of tax avoidance etc. are considered by us all to be entirely unexceptionable. We believe therefore that the various clauses of the Bill are to be viewed in terms of their capability of achieving these objectives; and that the objectives of the Bill in themselves are to be viewed in terms of their being able to solve some of the many pressing national problems. These pressing national problems appear to us to consist of, providing increased rate of employment, holding down the cost of living, increasing self reliance from foreign aid etc. It is our view, and we hope that there may be common ground amongst us all on this, that there is practically no alternative to a vastly accelerated production rate for a resolution of most of the national problems that beset us. We feel that the very important and unexceptionable ends of social justice also can be served in the short and long run both, only by an accelerated pace of production; and any measure which is likely to be counter-productive directly or indirectly, must hurt the goal of social justice as well. Our comments on the various clauses of the Bill would thus be in a sense from the touch-stone of, whether they

will indeed help in the acceleration of production or be a hurdle in its way. It would do the community little good if the pace of economic growth was further stalled on account of any of the clauses of the proposed Bill, while the hopes of prevention of further generation of unaccounted money may not materialise.

Sir, in the consideration of all these various enactments from time to time, we need to keep in view the basic aspects of motivations of human nature, and to consider whether a re-look at our understanding of these may not better help in achieving the desired results. Looking back over the years, one could state with confidence that the continually increasing sharpness of the various penal provisions has not reduced the evils of tax evasion, bribery, corruption, adulteration etc. I would like to put forward the view in all humility that in viewing the various provisions of the Bill, consideration be given by one Select Committee to the basic motivations and compulsions from which the actions of men derive.

The Wanchoo Committee has highlighted some eight dominant causes which lead to the generation of unaccounted money. These include, high rates of direct taxes, economy of shortages leading to a system of controls and licences, requirements of donations to political parties, corrupt business practices, disallowance of even normal business expenses, high rates of sales tax, deterioration in moral standards, and ineffective enforcement of tax laws. Galloping price increase as has been witnessed in the last year and which is continuing unabated, is in our view now another major contributory factor driving even the honest men to take resource to tax evasion; and all this they do, not necessarily for building up of assets, but for the maintenance of their normal living standards which they were able to do till yesterday. Of all the causes which lead to a

generation of unaccounted money listed by the Wanchoo Committee, in our view the foremost cause relates to "the economy of shortages, leading to a system of controls and licences". The economy of shortages in turn leads to "price controls", which in turn leaves vastly increased unaccounted gains in the hands of the tax evader. The case of cement can be cited as the simplest example of this phenomenon; where the open market price is more than double of the controlled price. There are innumerable examples of this type. If, even in the face of shortages, controlled prices were raised sufficiently to mop up the gap between open market and controlled prices, the generation and proliferation of unaccounted money would be greatly reduced, and at the same time will provide increased tax revenues for the government.

Sir, the second largest cause of generation of unaccounted money is the "high rates on direct taxes". The Wanchoo Committee had recommended that the marginal rate of personal tax should be brought down to a level of 75 per cent. There would need to be consequential adjustments in the other tax slabs also. We would also be rapidly reducing purchasing power of the rupee, the tax exemption limit should be raised to a figure of not less than Rs. 10,000/-. We are making this recommendation for reducing the generation of unaccounted money with all the responsibility at our command. Several countries have experimented with this, and the result has been that total tax revenues have in fact increased. It is often said that tax evasion has existed in all countries and at all levels of tax. Even if it be so, the extent of evasion certainly varies in different situations. At the margin there would perhaps always be some people who may not comply with the tax laws; the proportion of such people would certainly vary with the marginal rates of taxes.

Sales tax is another major source of leakage which leads to the generation of unaccounted money. The Wanchoo Committee has also highlighted this fact. It will be appreciated that the complexities of sales tax administration and the ease with which its payment can be avoided, cannot but lead to its large scale evasion. The Federation has been advocating for long, that if the evasion of sales tax is to be avoided, it should be merged with excise duty, where the question of evasion is not easy. Unfortunately that suggestion has not been accepted, and one hears of demands from State Governments, that even in those few cases in which sales tax has been merged with excise duty, the system should be given up. We feel that merging of sales tax with excise duty would certainly eliminate this major loop-hole which today exists for the generation of unaccounted money.

I have referred to some of the above matters for reducing the generation of unaccounted money even though they are not directly related to the Bill we have before us. I do, however, plead that this body of eminent members of the Parliament kindly give some thought to these suggestions, and use their good offices with the government to remove some obvious causes of unaccounted money, which continue to plague the economy.

Sir, in our memorandum we have tried to indicate at various places as to how some of the provisions of the Bill are diametrically opposed to the considered conclusions of not only the Wanchoo Committee but even of the Law Commission. Whereas these are likely to be considered when we are going over our memorandum in detail. I would like to briefly highlight some of these. A reading of some of the clauses of the Bill raises a doubt whether they may not have a retroactive applicability; this would certainly cause hardship which probably was not intended. There are clauses where a retrospective applica-

tion would make a tax payer incapable of meeting his tax liabilities. I am sure that this could not be the intention in the framing of the Bill. We would like to emphasise that any retrospective applicability of any of the provisions of the Bill needs to be entirely deleted.

Another important provision relates to the compulsory distribution of dividends by closely held manufacturing companies. The Wanchoo Committee had recommended the deletion of the provision relating to additional tax on closely held companies for failure to distribute statutory levels of profit as dividends. Instead of that, the Bill now seeks to introduce compulsory distribution of dividends even by manufacturing companies, a provision which was not existent so far. We feel that in the present economic situation, all the encouragement needs to be provided to manufacturing companies for not frittering away their profits by distribution of compulsory dividends.

In closing, I would like to make a brief reference to the various provisions in the Bill relating to punishment for various categories of tax offenders. We do not wish to plead for any sympathy or leniency towards approved offenders. The degree of proof required to hold a person guilty of an offence has been the subject of careful consideration by the Law Commission. The Commission has recommended that while in the case of several other economic offences, the burden of the proof may be shifted on the accused, in the case of taxation laws that could not be done on account of their being too complex and their being changed too frequently. It is unfortunate that the recommendations of the Law Commission have been ignored and penalties provided without due consideration of the fact whether the accused committed the offence intentionally or innocently. I would submit that on account of such provisions,

legislation loses moral sanctity and respect for law is weakened.

Sir, I would like to thank you and your colleagues, once again for providing us this opportunity for presenting our views before you on the Taxation Laws (Amendment) Bill.

We are now before you, Sir, and I think on the basis of our Memorandum, the hon. Members, may like to put questions so that we may answer them. Thank you.

MR. CHAIRMAN: Mr. Charat Ram, we will give a very careful consideration to all that you have stated in your Memorandum. But our usual practice is that we leave it to the witnesses either to pin-point the salient points on which they would like to throw some light or if they like to take up clause by clause consideration. In fact, it would be much better if you deal with the various clauses on which you have some suggestions to make.

SHRI CHARAT RAM: Sir, we feel that it will become easy for us if we go through our Memorandum where we have dealt with the various clauses that have been proposed in the present Bill. Then wherever the Members feel like putting questions, they can do so and we would be happy to clarify them.

SHRI VIRENDRA AGARWALA: In your general observation, you have mentioned one important point that the marginal rate of personal tax should be brought down to a level of 75 per cent and also the tax exemption limit should be raised to a figure of not less than Rs. 10,000/-. If these three recommendations were accepted, it is estimated that Government would lose a revenue of about Rs. 52 crores. In that case, how the Government will be able to make up this loss?

SHRI CHARAT RAM: It may be that some loss accrued, in the first instance, to the exchequer. But the experience generally is that the net

receipts to the exchequer are likely to go up. In any event, this would curb the evil of black money very considerably.

MR. CHAIRMAN: This can be on two accounts: It can be either by the growth of incomes themselves or it can be because of the honesty of the assessee consequent upon rationalisation of tax rates. How much would you attribute to one of these two factors? Second one is more important for us?

SHRI CHARAT RAM: Any guess about absolute amounts is really going to be....

MR. CHAIRMAN: I am not so much on the quantum; it has to be subjective evaluation?

SHRI CHARAT RAM: I would request my colleague to explain the cases of a few countries for reducing the marginal rates of tax with gains to the exchequer.

MR. CHAIRMAN: That is by growth of income? Do you really think that rationalization of tax rates will bring about a different attitude towards taxation as such? It is a direct question and I want a direct reply?

SHRI H. B. DHONDY: If the rationalisation results in a widespread recognition and the tax structure is fair both to the tax-payer and to the tax-gatherer, I would submit that the incentive to dishonesty is very vastly reduced. If the structure is reasonable and is realised to be reasonable, this is a question of building up mutual confidence; it has already started, to some extent, between the Department and the assessee. If this process can be accelerated through an internal practice, through a change in attitude of the Government in regard to its total policy, I submit, there is no reason to assume that the experience of India will be different from the experience of West Germany and Japan. We can distinguish them, but even on honesty. There was a great deal of dishonesty in Western Europe immediately after the

war which was partly caused by the circumstances prevailing at that time. The moment it is evident that there was a determined effort by Government to encourage economic growth with a fair social justice content in it, there would be a vast accretion to tax revenue. This has been borne out in a number of countries.

SHRI VASANT SATHE: This is a very basic issue. I believe it goes to the root of our whole problem of unearthing black money. As far as this basic issue is concerned, I believe shortages relating to essential commodities affect the people immediately. If there is a goods shortage, the entire price structure of the whole economy goes up. Therefore, while thinking in terms of basic essential commodities, we find that in the industrial sphere, investment does not take place in the essential commodities, it takes place in that sector where there is a maximum margin of profit. For that section of the society which has got the purchasing power to purchase those goods, it does take place in what is known as the luxury or comfort goods. Now, in this sphere, if the tax structure etc. is revised, sales tax, as you have said, is merged with the excise and all these facilities are given, how do you think that the basic investment for essential growth of essential commodities, on a mass scale, to meet the requirements of the entire society, will take place by the industrial class which has got the money? Whether they will invest in that? This is the basic question about shortages? Unless production takes place, shortages will not be removed.

SHRI CHARAT RAM: I am glad that you have raised this very important point and in the last few days, we have been discussing this matter with the Planning Commission. I would like to put it to you that this impression that the business community is investing its resources in luxury item is not really borne out by facts. We are prepared to classify

with the Planning Commission as to what are considered to be essential commodities of mass consumption? We have analysed what is the position of investment of each one of them. Let us assume that essential commodities of food are Vanaspati and Sugar. Then cloth is also an essential commodity. These are commodities of mass consumption. In this respect, we can find out what is the position of the capacity that has been built up? In the case of Vanaspati, the capacity is 100 per cent, that is, more than that of production and therefore no more investment is really needed. There is a shortage of oil—domestic as well as imported. In the case of sugar, if the sugarcane crop is good, the production of sugar will be more. This year, its production will be $4\frac{1}{2}$ tonnes more and there may be a problem of its disposal. But the investment is also there. In the matter of cloth, the capacity is there; it can be increased by increasing export. In our humble view, this is just an impression that we are going in for luxury items and non-essential items.

SHRI VASANT SATHE: As far as this sector is concerned, even in the items that you have mentioned, it is noticed that the production takes place basically in centralised system (capital intensive mode of production) which, in turn, gives less employment as far as our vast masses are concerned. How does that solve the problem of not only growth, but, social justice simultaneously? For example, in cloth, as you say....

SHRI CHARAT RAM: I would like to go back to the basic background in which I made my suggestion about shortages. I mentioned that shortages create a situation of price controls; price controls create a situation of large gaps between open market price and control price and lead to the generation of unaccounted money. If we want to reduce this gap, the price should be increased and the consumer will not be better off or worse off. But, the money which accrues in an unearned incremental manner to the

intermediaries will disappear. The State will get more tax, about 55 per cent or more and the black money in the hands of intermediaries will disappear. It was in this background that I....

SHRI VASANT SATHE: The ordinary persons who have got low purchasing power, will absolutely suffer with the increase in price. How would you tackle that problem?

SHRI CHARAT RAM: The consumer will not be affected. In the open market, if a cement bag is selling at Rs. 32 and the control price is Rs. 12|- and if this is increased to Rs. 25|- , the consumer will get at Rs. 32|- but, the money in the hands of the middlemen will reduce.

MR. CHAIRMAN: Taxation is not a subject which can be discussed in vacuum. Mr. Charat Ram, I would like you to come to things which have a more direct bearing....

SHRI SYED AHMED AGA: I would like to ask one question. I would like to correct my impression. I would like to know as to the proportion of your investment in coarse cloth and in the finer varieties. You said that you were discussing with the Planning Commission.

SHRI CHARAT RAM: I would request my colleague, Mr. Madan Mohan Mangaldas, to reply to this question.

SHRI MADAN MOHAN MANGALDAS: I believe you wanted to know to what extent the textile industry in the country produces fine, superfine and coarse varieties. I think, in all....

SHRI SYED AHMED AGA: I would like to know the proportion, whether more money is....

MR. CHAIRMAN: If he gives the figure, you can work out the proportion.

SHRI MADAN MOHAN MANGALDAS: The production of fine and superfine cloth, both together, is about

75 per cent and the rest is coarse and medium.

MR. CHAIRMAN: Of the 100 per cent cloth production?

SHRI MADAN MOHAN MANGALDAS: There is also the tremendous rise in the Egyptian and Sudanian cotton prices. I think, in the near future, this will further reduce the production.

SHRI ERA SEZHIYAN: Witness was speaking about black money and unaccounted money. He made a reference to the extent of high rates of taxation. Though this Committee is not directly concerned with the reduction of tax rates—which is the prerogative of the Finance Minister when he announces his Budget proposals—for our own information, I would like to know whether he is aware of the study made previously by the Administrative Reforms Commission. There, they have stated:

“A study of the figures or detected concealed income shows that at least a major increase in the rate of taxation, was not followed by an increase in tax evasion. Neither decrease in the tax rates has brought about a higher tax response. Therefore, we endorse the view of the Direct Taxes Administration Enquiry Committee that tax rates by themselves are not to blame for the large extent of evasion in the country.”

What would be your reaction to this? Secondly, tax evasion does not mean evasion in Income Tax only. There are also various other Acts, like the Sales Tax Act, Foreign Exchange Regulation Act, Import Trade Control Regulation Act, Customs Act, Central Excise Act etc. There is a conflagration of so many Acts to be tampered with. I would like to have his reaction to this, whether he is confident that by just reducing the tax rates, we can achieve the objective of preventing the proliferation of black money.

SHRI CHARAT RAM: I would request my colleague Mr. Shah, to reply to this question.

SHRI VIREN J. SHAH: I would request hon. Members to look at the two reports which Mr. Sezhiyan has cited. You will find that if you read this particular sentence, it leads us to erroneous conclusions. I think both the bodies, referred to by Mr. Sezhiyan, were presided over by the same person, Mr. Mahavir Tyagi. I would go a little backward and refer to what the earlier Committee has said:

“While we cannot deny that higher is the rate of tax, the greater will be the temptation for evasion and avoidance, we feel that the tax rates by themselves are not to be blamed for the large extent of evasion in the country.”

This is one. Coming to the second report. I may quote:

“As a theoretical proposition, we might concede that higher the rate of taxation, the higher is the gain of evading tax. However, it is often forgotten that there is a cost even for evading and keeping evaded income and if the cost of evasion is higher, then, the gain from it, . . . the rate of taxation by itself would not be a motivating factor causing evasion.”

Then, follows a statement about study etc. One thing should be noticed here. While the Wanchoo Committee has considered the increased tax rates as a major cause for evasion, other Committees have considered this as a contributing factor to tax evasion along with other things. What does it indicate? If the cost of making and keeping the black money or unaccounted money is higher, then, the savings in income tax, the temptation to save, would be less. I think, any cost benefit ratio would indicate this. What is the position today? The cost is not higher. The cost is very much lower. The second is about study. This is an interesting study. This is about detected concealed income. If we go on that

basis it does not necessarily lead to the conclusion that the concealed income went up and was in the same proportion as the machinery or detection was working.

SHRI ERA SEZHIYAN: They made a study about concealed income. From the data available, they came to the conclusion.

SHRI VIREN J. SHAH: There are two things. All the Committees have agreed on one thing. There is no difference of opinion in that, and that is, the higher the tax rate, the higher is the incentive for evasion of tax. Secondly, I would go back and refer to the question which was raised by the Chairman and which Mr. Dhondy answered elaborately, and I would say that higher tax rates lead to evasion. In my opinion and in the opinion of many, if there is a reduction in the tax rates, there is a great likelihood of reduction in evasion. I think there was also a question by Mr. Agarwal, whether this Rs. 52 crores would be made up. I think this would be made up. This is again a very small matter. I do not want to go into the various matters which Mr. Sathe had raised. It will lead to a considerable debate.

SHRI ERA SEZHIYAN: What will be the reaction of Mr. Shah or the others, if we keep the rates of taxation at the higher level—it may not be 97 per cent, but may come to 85 per cent—but we give tax credit in recognition of saving made etc.?

SHRI VIREN J. SHAH: Assuming that the option is to continue the existing arrangement, it would be slightly better; but, in our opinion, it is not likely to lead to the situation where the particular objectives of this bill and of this Committee, viz. of avoiding tax evasion, would be achieved. It does not seem to us that this kind of marginal and small changes could lead, in any substantive way, to curbing of this particular menace of black money. Your point was that income tax was not the only tax; there are sales tax etc. also. That is why our Chairman had made, in his open-

ing remarks, the suggestion that with regard to excise and other duties, your problems, i.e. the problems between the State Governments and the Central Government should be sorted out.

MR. CHAIRMAN: I would like to come to the next point.

SHRI ERA SEZHIYAN: It has been stated in the memo. in this connection that in the opinion of the Federation, this anti-social practice of evasion of taxes and accumulation of black money cannot be met squarely by tax laws alone. I also agree there, because in India, the position is not the same as in Western countries where tax evasion is regarded as a social crime; here in India, it is treated as a feat of intelligence and a mark of efficiency. Therefore, I want to know the opinion of the Federation as to how this problem can be met, socially or otherwise.

SHRI H. B. DHONDY: We have attempted to answer it; but it is not easy. We would like to go back to the Wanchoo Committee's findings about the causes which lead to the accretions of unaccounted money; and if we attempt to remove the causes themselves, it is likely to reduce such accretions. There are 8 reasons given here. They are all before us; and I think they are valuable in themselves.

SHRI VIREN J. SHAH: May I also say something? I think the deterioration in moral standards is the particular reason. People in all walks of life e.g. in business, industry, Government and particularly people who are in high places, should not give cause for people to think that this kind of money is welcome. If you can do it, it will be a tremendous contributory factor in removing the evil.

SHRI P. G. MAVLANKAR: I would like to invite the attention of the witnesses to the section where the objectives of the bill are mentioned.

MR. CHAIRMAN: Before we come to that, I think they will come specifically to clause-by-clause considera-

tion. Anyway, they have given their reaction in the memorandum.

SHRI P. G. MAVLANKAR: I am also on general observations. In the printed memo, which we have received from them, in Section-I on "Objectives of the Bill", there is a paragraph which says:

"No doubt, taxation nowadays has many purposes to secure. At the same time, the tendency to mix all the purposes has resulted in a situation that no one seems to know what purpose or purposes the tax system as a whole is intended to serve and in what order of importance...."

I would like the Federation to tell us what, according to them, is the order of importance. We have been told about human nature, i.e. how weak and bad it is, which leads to all kinds of unfair practices and social evils. I am not so sure whether it is always right to bring everything down to this question of human nature. Is it that the human nature is universally bad, or that it tends, in certain sections, to be more greedy and more ambitious?

SHRI H. B. DHONDY: I understand that your first question is, "What is the priority, in the opinion of the Federation?" The tax structure, in fact, does intend to subserve certain principles. It may be self-contradictory in certain respects. There can be very little dispute that whatever be the country and its circumstances, the most important objectives of its tax structure should be to enable the raising of resources for the proper functioning of Government in a manner acceptable to that particular community; and in doing so, particularly in the case of the less developed countries such as ours, to accelerate the economic growth, consistent with social justice. One has, therefore, to put one's priorities among these various objectives which are considered essential, viz., (a) A Government needs a certain amount of money to carry on its legitimate activities...that is the primary objectives; and (b) if it

raises its money without also subserving the objective and without accelerating the economic growth, it will be killing the goose in the long run.

SHRI P. G. MAVLANKAR: I want the Federation to tell us as to what is their order of priorities.

MR. CHAIRMAN: You cannot have a tax system which narrows down the scope without at the same time accelerating the economic growth. You have also to recognize that in a country with all the disparities of income as in India, its economic growth cannot be at the sacrifice, totally, of social justice. You must have a balance of considerations; but the ultimate objective must be increasing productivity and economic growth, because that is the source of economic wealth. You should take the legitimate share of the resources.

SHRI P. G. MAVLANKAR: Would you illustrate: in what way should the mixing be done?

SHRI CHARAT RAM: In my opening observations, I had spelt out our priorities, totalling 8 or 9. As the first of these, I mentioned the economy of shortages leading to controls and licences. The second place I had given to high rates of direct taxes and the third to high rates of sales tax.

SHRI P. G. MAVLANKAR: Can we have a word about human nature?

MR. CHAIRMAN: Kindly excuse me for putting this question. Would it be correct to say that one particular section of the community is more greedy?

SHRI K. N. MODI: It is due to high taxation, Sir. You are asking a particular person to pay 97 per cent. It is 97.75 per cent to-day and then on top of it, the authorities would also like to take away that 2.5 per cent because he has got some sort of benefits here and there in the shape of perquisites. How would you like it if a man earns one hundred rupees and you take

away all the one hundred rupees from him? I do not think that that is workable. I do not know how one is to live, if by this simple method of high taxation, you eliminate the incentive, you eliminate savings and you do not allow savings for expansion, for growth etc. I believe that until and unless this high taxation is reduced, this problem will be there; if that is reduced, then this kind of problem will not arise. This is my humble submission. I would not say that it is the business community which is responsible for these things.

If he has to lose one hundred per cent of what he earns, how can he live? So, there may be some such tendency, since he has to live. The question is this. What are the incentives which you have to give him. What are the incentives for savings and for growth? Even for a new company or a new entrepreneur, there should be some savings which he can invest. I do not know whether I am going out of the way when I say this, but Government think that there are monopolies and there are only 100 big firms or houses, and, therefore, there should be more people in industry. But how would a new entrepreneur come in it if he does not have the saving even to the extent of 15 per cent.

You need at least 15 per cent of the amount for floating a new company. You can get 80 to 85 per cent from a financial institution, but you need 15 per cent yourself; if you do not have the 15 per cent out of your saving, then how can you enter as a new entrepreneur? How can there be expansion? How can there be growth?

So, my submission in an overall package deal is that if the country wants more growth, if the country wants more production and there should be no shortages, the tax structure should be changed and should be brought down.

SHRI MADAN MOHAN MANGALDAS: On the point made by Mr. Mavlankar, may I say this? I believe that

he wants to know which section of the community is more vulnerable to this tendency....

MR. CHAIRMAN: What Mr. Mavalankar said was this. Possibly an impression was created that human nature as such was vulnerable to certain weaknesses. He said that a particular section in human society was more vulnerable, and if so, he wanted to know why it was so. If you accept the premise, you may answer it; if you think that everyone is subject to the same weakness, and every human being is subject to it, irrespective of the section to which he belongs, then the question does not arise.

SHRI VASANT SATHE: It is a question only of opportunities.

SHRI VIREN J SHAH: I think there is no intention to say that human nature is universally bad. I hope that is not the intention at all. But the point is this. When does human nature start acting in particular ways? When it is pressurised into a particular corner or when such opportunities arise, such things happen. Let me give you an example. When there is a strike by bus drivers in BEST, Bombay, the taxi drivers start charging Rs.1.75 instead of Rs.1.50 which is the normal rate. Not all taxi drivers charge it; most of them do, but there are a few who do charge only the normal rate. Similarly when there is an opportunity to make more money, some do so while some others do not.

Let me give you another example also. Suppose a man is honest and he does not want to make any money in an improper way; yet if he is earning only Rs. 500 a month, out of which he has to pay these taxes, and his wife is ill, his child is ill and so on, if he has an opportunity to make Rs. 500 more by doing something more, he will do it. That is human nature. I think that is what was meant by that statement about human nature.

SHRI AMRIT NAHATA: Some basic questions have been raised by

some of the learned witnesses here. Firstly, a balance has to be struck between the needs of revenue and those of investment. Secondly, growth should serve the purposes of social justice also.

Thirdly, the tax laws or the tax rates should be such that they do not constitute an incentive for dishonesty.

The term 'growth' is a very wide term. Today, in our country, the largest contribution to unaccounted money comes from those sections of society which do not contribute anything to growth. Take, for example, the middleman, the traders, the wholesalers and the retailers; the largest chunk of black money comes from this section.

MR. CHAIRMAN: I think you mean generation.

SHRI AMRIT NAHATA: They are the persons who contribute to black-marketing, speculation and hoarding. They do not contribute anything directly to growth.

I would here repeat what Mr. Sathe said that the answer of the textile expert was very misleading. The production of superfine and fine varieties constitutes 15 per cent, and naturally, only 15 per cent of the population consumes fine and superfine cloth. But what is the ratio of investment in superfine and fine cloth production to that in course cloth production? There is the case of synthetic and man-made yarn also to be considered.

Take again soap for example. The same is true in that case also.

In regard to textiles, in Japan, one thousand varieties have been fixed by Government. But in our country there are one lakh varieties, and hundreds of varieties of soaps; there is utter anarchy of the jungle in the sector of growth and in the pattern of investment. If that is rationalised and growth is made in those sectors which are concerned with essential commodities of mass consumption, that

would be one step in the right direction.

As regards the rates of taxation, I would submit that they have no very direct bearing on growth. Today, as I said, the proliferation of black money comes mainly from those sections which do not contribute anything towards growth.

As regards human nature which has been mentioned, I think it is not a question of human nature, but it is a question of the values that have come to be accepted in our society. If a man possessing wealth enjoys status and power and respect in society, nobody bothers about whether that money is white or black; means have been sacrificed. So long as money has power, money has status and money has respect, tax evasion and black marketing and black money are bound to be generated, whether the tax rates are high or low. So, let us not go into the question of human nature and human values. The basic values today, rightly or wrongly, do not have any respect for human being, for toil, for labour and for productive labour. So, the social values being what they are under the present circumstances, I do not think that the tax rates are going to make any considerable impact on the question of tax evasion.

Anyway, even as regards the tax rates, an impression has been created that India is the most highly taxed country which she is not. For example, one small difference alone will make India a very low-taxed country; for instance, in India, the husband and wife are separately taxed.

SHRI H. M. PATEL: May I intervene at this stage? We have already spent one hour discussing certain issues, undoubtedly very important. But it is very clear also that there are certain very firm views which we hold about them. They have been stated. I feel that now we ought to go on to the detailed consideration of the propositions, and let us have the

views of the witnesses. We are here to hear the views of the witnesses and not of the Members at this stage. We may cross-examine witnesses on the basis of the views which we hold, but I do not think we should discuss. . .

MR. CHAIRMAN: We are actually cross-examining the witnesses on these questions, because these are very important. It has a bearing on a very vital question, about the rationalisation of tax rates. Members want to understand the views of witnesses on that.

SHRI CHARAT RAM: I think the hon. member, Shri Nahata, did not ask any question but was making an observation. I would like to touch on only one issue he mentioned, where I am wholeheartedly with him, that the man who earns black money on account of the economy of shortages is not the man who probably is going to invest furthermore. But the point still remains that if the economy of shortages is to disappear or if the price structure is to be rational, this money, instead of going into the hands of the man who is less likely to invest in further expansion, should go into the hands of either the exchequer or industry which will use it usefully for the purpose intended.

SHRI VIREN J. SHAH: I would like to comment only on one point. Mention was made about the types of soaps manufactured here, whether it is luxury soaps or not. I think it would be an interesting study to make. That would take on Shri Sathe's point also. I do not know whether any government organisation has attempted it. When we talk about luxury and comfort goods, there is no study made to indicate the percentage of amount invested in what are really called luxury and comfort goods.

Talking about soaps, as regards soaps for washing cloths, there are a large number of small scale manufacturers. I am sure Shri Nahata would like to support them. They are making hundreds of thousands of varieties of soap. Most of these soaps

are not of the perfumed or sandal-wood type but are washing soaps. If we need not use soap for washing clothes, that is a policy decision Government has to make.

SHRI K. R. GANESH: Not so; you are simplifying.

SHRI VIREN J. SHAH: The second point made is, again, with great respect, absolute conjecture, that the so-called middlemen are the biggest generators of unaccounted money. No one knows. How do we know that it is so?

MR. CHAIRMAN: We will appreciate your views on this since you are not a middleman.

SHRI VIREN J. SHAH: I am not a middleman.

SRI H. B. DHONDY: Shri Nahata made the point that a large chunk of black money is generated by traders and middlemen who do not contribute to growth. I would only like to say that as far as the distributive service is concerned, it is indeed essential for growth. It must accompany production because if you only produce without commensurate increase in distribution, you cannot achieve social justice so far as the consumer is concerned.

MR. CHAIRMAN: If we have a good, streamlined public distribution system, the controversy whether there is generation of black money will end.

SHRI H. B. DHONDY: The other point is that among the more developed economies the proportion of the total production that goes into distribution is increasing and the employment potential—which is a very important point for India in the distributive functions in the total industrial economy is increasing. So it would be a mistake to minimise its importance.

MR. CHAIRMAN: The high degree of competition takes care of malpractices at the distribution stage.

SHRI K. N. MODI: Regarding textiles on the 15 per cent fine and superfine investment part, may I say that to

put up a plant for producing coarse and medium cloth needs more capital than for putting up a plant for producing superfine cloth? If you want to put up a plant with 25,000 spindles and 500 looms for fine and superfine, it might cost Rs. 1.12 crores, but if you want to put up a mill with the same capacity for coarse and medium cloth, it will cost Rs. 3 crores. So I want to make it clear that the 15 per cent investment is proportionately less; it is 7.12 per cent.

SHRI C. M. STEPHEN: As far as I could deduce from their memorandum, the entire argument of the Federation is centred on this point that whatever machinery Government may evolve, whatever coercive steps may think of, evasion cannot be fought unless the basic causes you enumerated, eight of them, are tackled and removed. Now Mr. Chitale who was a member of the Wanchoo Committee had given a dissenting note in which he had analysed the income structure and pointed that the number of persons drawing an income of more than Rs. 5 lakhs is only 10,000 and the number of those who are drawing Rs. 50,000 and above is only about 40,000.

Therefore it comes to this that the problem of evasion of tax by a section of population numbering about 10,000 is the problem to be tackled. As far as the others are concerned, to taxes are not expropriatory. Expropriatoriness comes only with respect to this small section. Your argument appears to me to be that if these 10,000 people are to be made to obey the law and pay tax, no coercive measure is going to succeed unless certain things are done. What are they? Tax rates must be reduced, controls and licences must go, sales tax must be removed, ceiling on allowances and perquisites must be lifted. If these things done, these 10,000 people may be inclined to fall in line with Government policy and measures.

You know India has accepted a particular social and economic philosophy where planning, controls and licensing have come to stay. Therefore, we

have to start with the proposition that we have to live with these. Your position is that if we want to live with these, we will also have to live with black money. That is, say, that these 10,000 people will be able to hold out against the Government, against the nation and against Parliament and against the tax structure, whatever coercive measures we are going to take. Am I correct in saying that your point is that unless these things are done, these 10,000 people will be able to bring the Government to its knees, bring the legislature to its knees and that we need not pursue any other method?

SHRI CHARAT RAM: The least I can say is that our position or the general observations I made in the beginning have somewhat been understood appropriately and correctly.

I have right in my first important point said that only answer to almost all the evils that we having of unaccounted money is increase, in production. I did not say at any point—and it is not a fact also that the only people who produce goods are the people whose income is over Rs. 5 lakhs. There are thousands and thousands of people who produce goods and that is why in the second point I made I said that The tax rates need reconsideration not only at the marginal rate level. I do not know about the figure Shri Stephen quoted. Probably it must be correct. people paying over 75 per cent tax are only 10,000 in number. Whatever their number may be, I have suggested that there should be an adjustment and there ought to be an adjustment in other tax slabs also and also for the minimum exemption limit of Rs. 5,000 being raised to Rs. 10,000. Our suggestion is that not the upper 10,000 alone should be considered; not at all. The point still remains that nobody wants to hold the economy to ransom. The fact of life is that there are hundreds of thousands of people who are producing goods, and there are certain problems on account of which production is not going up. We do not blame anybody specifically for it, and I think the Government, the businessmen, the Mem-

bers of Parliament—all of us—need to get together to find out how the production has to go up. But here, the economy of shortage continues for whosever's fault; we all feel that it will be difficult to get out of this problem. There is nobody saying that 10,000 people have to be given a preferential treatment. In the matter of sales-tax millions of people have to pay sales-tax. So, I think there is a little misunderstanding; may be I put it wrongly or did not put it properly. The basic point for all of us is that the solution lies in expanding production by as rapid a rate as possible.

MR. CHAIRMAN: We appreciate what you say.

SHRI VIRENDRA AGARWALA: I wish to ask a few things. The Wanchoo Committee has produced a package deal which includes quite a few correctives as well as punitive measures. But in whatever you have pointed out in your general observations, you have emphasized greatly on the positive and corrective measures. You have said nothing in respect of punitive measures, while the Bill we are discussing this morning includes largely punitive measures. I think these are the two extreme postures: one on the side of a correctives and the other on the side of punitive measures. It is obvious that if the Government or the country has to succeed in unearthing black money which is to the extent of Rs. 10,000 crores as has been pointed out by the Wanchoo Committee, this Committee will have to think in terms of a package deal, which means not only the punitive and corrective measures, but a combination of all. If really we are keen to unearth black money, neither the corrective measures alone can bring us this Rs. 10,000 crores nor can the punitive measures alone succeed. I would request you to tell us whether you accept the Wanchoo Committee's report as a package deal which includes both type of measures, or, you insist that only corrective measures need be taken up by the Government while ignoring all the punitive measures as

suggested by the Government. These are the aspects. I want to know whether the position has been taken up by you, by the business community, as you have pointed out just now. The other position has been taken up by the Government. They have taken up the punitive measures. The Bill is nothing but a punitive measure. You have talked nothing about the punitive measures. The Committee is really interested to understand whether we have to go into the problem in a package deal which the Wanchoo Committee has recommended, whether we have to suggest to Parliament in that light.

What is your point of view on this point, because this is a rather very serious point and it is being debated hotly, and quite a few Members are seriously concerned to the effect that if we have to succeed in unearthing black money we must do something about this, and we cannot allow this menace to go on like this any longer. For that reason, we are really interested to see that you should assist us in this task, and suggest something comprehensive which will include all aspects of the problem which can really help the Government to unearth black money.

MR. CHAIRMAN: If I may summarise it technically, the Wanchoo Committee seems to have taken a stand that the Government should rationalise the rates and, at the same time, make the law very extremely stringent, and provide deterrents against tax evasion. The witnesses from various organisations representing trade, who appeared before the Committee, have been canvassing rationalisation on the one side and leniency in the law on the other side. Mr. Agarwala's question is that if you really want the Committee to achieve the objectives on the lines suggested by the Wanchoo Committee, then in addition to the rationalisation of rates suggested by the Wanchoo Committee, should it not be accompanied by a stringent provision providing deterrents to make the evasion really unrewarding.

SHRI CHARAT RAM: I think this is a very important point, and you

will have seen already that the points that we have put up so far are not based so much on the technical aspects as on the general aspects. In my own opening observations, about the penal clauses, I have made it clear that we do not wish to plead for any sympathy or leniency. On the question of tax offenders and so on, I would request my colleague Mr. Shah to make some observations.

MR. CHARMAN: I want more direct answers. Let us have a frank discussion.

SHRI VIREN J. SHAH: I do not think I am qualified to answer the questions on the penalty provisions. I think Mr. Dhondy could deal with it.

MR. CHAIRMAN: On the philosophy.

SHRI VIREN J. SHAH: I would like to invite the attention of the hon. Member, Shri Agarwala, to the observations that we have made in paragraphs 2.8 and 2.9. The point that we are trying to make is that the penalty or the punishment should be commensurate with the offence and the circumstances in which...

MR. CHAIRMAN: Are you on the drafting or are you on the philosophy? We are now on the philosophy. Do you accept in principle that along with the rationalisation of tax rates, the Government must come out with some stringent provisions simultaneously?

SHRI VIREN J. SHAH: The idea is that the question of drafting is relevant here.

MR. CHAIRMAN: We will come to drafting, on the subject of punishment, later.

SHRI H. B. DHONDY: Nobody can dispute that the punitive part of the recommendations are as important as the correctives. We entirely agree with the point that the punitive part of it is also important, but there is the other point of view that prevention is always better than cure. Really speak-

ing, if you look to the causes of the black money and prescribe measures or diagnose the trouble in order to prevent it, then the punitive part will automatically take its proper role.

MR. CHAIRMAN: The Committee has been anxiously hearing evidence on the question of rationalisation of the tax—rate, because witness after witness has been canvassing that this is one way by which you can prevent the evil, but the regret of the Committee has been that to a direct question that we have been asking, whether a reduction in tax rates will bring about a corresponding reduction in tax evasion, the answers have been couched in all sorts of high-sounding economic philosophies and in an immaculate, diplomatic language and finesse, that we did not have a direct answer. Only today we have heard, from the Federation which you represent, that if one reduces the rates of taxation, cases of evasion will come down.

SHRI CHARAT RAM: I would like to go on record that we have discussed this matter specifically among ourselves and we are wholeheartedly with this proposition.

MR. CHAIRMAN: Now,, on the drafting of the Bill, clause by clause.

SHRI CHARAT RAM: I would request Mr. Dhondy to take up the first few clauses pertaining to the charitable and religious trusts.

SHRI H. B. DHONDY: The Federation's views on this are given at pages 8 to 11 of our memorandum. But I may begin with a certain basic approach. The main objectives of the Bill are, firstly, to prevent tax avoidance and secondly, to streamline the administration and reduce the cost of tax collection. Undoubtedly, the Federation recognises that the device of the trusts has been abused in the past. Already, before the Bill which is presently under consideration becomes law, some of the Wanchoo Committee's suggestions to prevent such abuses in the future have found their way. In effect, today, if you

look at the structure as it stands, it would be very difficult for persons having a substantial interest in public charitable trusts to divert the resources from the trusts officially and, at the same time, for a trust to escape taxation.

MR. CHAIRMAN: Our experience has revealed that section 13(2)(h) is not a sufficient safeguard to prohibit malpractices. We have on record some statistics which show clearly that hundreds and hundreds of trusts are being created each one less than 20 per cent, whereas the aggregate is several times more. As it is the law is extremely deficient. We want you to address the committee on the assumption that section 13(2)(h) is not adequate.

SHRI H. M. PATEL: The witness said that section 13(2)(h) came into effect from 1st April, 1973. How much evidences could have been accumulated to prove that it has not been found adequate?

MR. CHAIRMAN: From April to August about six months have passed and people who are smart enough have already started working.

SHRI H. M. PATEL: So, within six months, we have got this convincing data!

SHRI H. B. DHONDY: I was referring to all those recommendations of the Wanchoo Committee which have already been implemented, not just section 13(2)(h). Some of the recommendations of the Wanchoo Committees in regard to trusts have already found their way into the Finance Acts of 1972 and 1973.

MR. CHAIRMAN: The main provision has been section 13(2)(h). The others have been brought in to lend support to it. Mr. Patel, it is not from 1st April, 1973. It is 1970. That stands corrected. We will show you the data.

SHRI H. B. DHONDY: Since these amendments have become law, the ex-

perience of people who have to advise honest public trusts in an independent capacity is that the cost of these additional compliances is out of all proportion to the interests of revenue. Even the legitimate activities of *bona fide* trusts are in point of fact being subjected to unreasonable restraints by the excessive technicalities. The basic promise of our opposition is that income-tax law is not an effective medium to regulate the administration of public trusts. You have various other laws for that purpose. If it is felt that the working of public trusts needs to be regulated further, the Central Government may draft a model Bill for all the States to follow.

MR. CHAIRMAN: We have been extremely anxious that *bona fide* trusts must be left out. At the same time, our view is that trusts have been used as a device to augment large commercial empires. Charity literally begins at home. If charity is subservient to some other purposes, what is to be done? You may pinpoint those provisions which are likely to hit *bona fide* trusts which do not indulge in any malpractices.

SHRI H. B. DHONDY: I come to clause 5(1) which proposes to amend section 11. The basic objective of the amendment is praiseworthy because it makes the provision workable. Instead of requiring a trust to distribute the whole of its income, you are requiring only three-fourth of it to be distributed.

MR. CHAIRMAN: On the question of expenditure, we are going to reconsider and rationalise it.

SHRI H. B. DHONDY: Coming to clause 6(1)(a), when the Income-tax Act of 1961 became law, there were in existence at that time public charitable trusts for a particular community and Parliament in its wisdom did not give retrospective effect to that provision and exempted those trusts. There has been nothing brought on record since then to show that that particular sector of public trusts have been guilty of abusing it.

SHRI VASANT SATHE: How do you say it is retrospective in the legal sense?

SHRI H. B. DHONDY: Suppose a trust was created in 1940 and under the founder's directions, which cannot be amended even with the permission of the court in some cases, it was no doubt for public charitable objects but restricted only to one particular community, say, Muslims. The position will be that by this amendment, the income of the trust will be taxed at this relatively high rate.

Coming to clause 6(1)(b)—Activity for Profit—the language is vague and extremely wide.

MR. CHAIRMAN: Is it all right if we delete the word 'primary'? Have you referred to the U.K. Act in this respect?

SHRI H. B. DHONDY: I am sorry I do not remember the U.K. Act in this respect.

SHRI A. K. JAIN: If it is conducive to carrying out the purposes of the trust, it should be exempted.

MR. CHAIRMAN: Let me tell you we were very much impressed by the argument advanced by one of the ladies who appeared before us. She said that they are providing employment to indigent and fallen women by making some sort of pickles and that activity would be taxed. It is certainly not the intention of the legislation that this sort of activity should be taxed.

SHRI CHARAT RAM: We are with the Government in control being broadly exercised over the trusts. We are only trying to place before you the position that most of the charitable trusts have a building in which they might have let out some rooms as shops on rent or some auditorium to hold some meetings. These are basically not profit-earning things. These are a few things on which we can subsequently give you more specific instances in writing.

SHRI A. K. JAIN: The word "actual" should be dropped. You may say

"the main or ancillary purpose of the trust".

SHRI H. B. DHONDY: Clause 6(i)(c) deals with identification of donors. Apart from the practical difficulties mentioned in the representation of the Federation, this provision will result in unnecessary taxation of trusts in regard to incomes where it is impossible to identify them.

MR. CHAIRMAN: But how do you take care of the other aspect, namely, the induction of black money?

SHRI H. B. DHONDY: If there is an individual anonymous donation to a charity and the fund is going to be utilised for a legitimate charitable purpose, the public interest is served.

MR. CHAIRMAN: That is one aspect. But Government should have substantial control in the utilisation of funds.

SHRI H. B. DHONDY: Certainly.

Then, clause 6(iii) defines a person who has made substantial contribution to the trust or institution. Here the amount mentioned is Rs. 5,000. It must be related to the corpus. We have said that 20 per cent of the trust corpus would be a reasonable amount.

MR. CHAIRMAN: Are you referring to the utilisation of revenue account or the utilisation plus the corpus in the revenue?

SHRI H. B. DHONDY: To the extent the corpus is being spent.

MR. CHAIRMAN: On the mode and manner of investment of corpus some restrictions are sought to be imposed. Do you want relief there also?

SHRI CHARAT RAM: I suppose you are talking of control of government over anonymous donations.

MR. CHAIRMAN: I am referring to the utilisation and control of the funds of the trust.

SHRI CHARAT RAM: We are referring only to that part of the funds which are covered by this provision, namely, anonymous donations.

SHRI H. M. PATEL: You have suggested that the utilisation of these funds should be subject to Government control. We have been told that the Charity Commissioner's organisation that is set up in Maharashtra and Gujarat under the same Act are effective in controlling the proper use of the charity. Now when you refer of "effective and appropriate", does it mean that the Charity Commissioner's organisation is an inefficient organisation? If that organisation does not have sufficient powers now, that is a different question. Merely saying "governmental control" does not mean anything. How is it going to be done in an Act?

SHRI CHARAT RAM: In this case we are really discussing the anonymous donations. We have suggested that over this particular amount Government can have whatever control they wish to have for identification purposes. With regard to control of expenditure by the Government, whether it pertains to anonymous donations or otherwise, under the Charities Act there are various types of control on the basis of which only donations can be received and funds expended.

MR. CHAIRMAN: Mr. Dhondy did not give a very clean cut to the State legislation on account of what the Wanchoo Commission has submitted.

SHRI H. B. DHONDY: The provisions in law are there. It is a question of administrative implementation. You will not solve the problem by an additional provision in another law, namely, the income-tax law. For example, under the Maharashtra Act investments over a certain amount have to be either in Government securities or in approved securities. Now, if the administration of what is already in the statute is effective, you will be able to check whatever malpractices there are. By merely putting in another additional provision in another law you will not be able to check it.

MR. CHAIRMAN: The Wanchoo Committee Report says that there should be Central legislation.

SHRI H. B. DHONDY: It is for the constitutional *pundits* to decide whether it is a Central, Concurrent or State subject. That is why I said that as in the case of ceiling a model Bill should be circulated and if it is found that it is not within the competence of the Centre to legislate uniformly for the whole country, certainly I think it would not be very difficult in practice to get it passed by a majority of the States, if not all. But ultimately the implementation will still have to be done. I was saying that a separate law relating to the administration of the trusts is the appropriate statutory machinery. The administrative machinery will have to be there.

SHRI VASANT SATHE: All the witnesses suggesting that we should control only the utilisation of anonymous donations but not ban the donation even though a very large portion of it comes from black money? Suppose black money comes in a big way in anonymous donations and we want to ban it are you against it?

SHRI CHARAT RAM: First of all, there is genuine administrative difficulty and practically also it is difficult. With great respect, when a trust is set up for a laudable public purpose very often donations are invited from the public at large and it is not practicable to think in terms of maintaining meticulous lists of everyone of them. What I said was the Chamber's view that Government should not apply the blanket taxation provision in regard to donations merely because they are anonymous. If it is felt that individual donations over a prescribed amount may come from these coloured sources, then in regard to that part of it there may be some control. The further point was that since the spending of the moneys of the trust from all sources, including anonymous donations, is already subject to control both under the various trust laws and under the income-tax law, as regards the objects for which it must be spent, you are achieving the same purpose. Ultimately, the money is going to be spent. We are taking measures to ensure that the money is

going to be spent for a purpose which is considered to be in the public interest, whether it came from one source or the other.

SHRI A. K. JAIN: Take the case of Tirupathi where donations of more than Rs. 1 lakh are received every day. It is not being suggested that it is coloured money.

MR. CHAIRMAN: Some accounts received about the donations to the Tirupathi temple are disconcerting. We are told that there are heavy donations and these donations are mostly coloured money.

SHRI H. B. DHONDY: Let us assume for argument's sake that one part of it is coming from coloured money. But it is going to be utilized for a public charitable purpose. It does not go to the corpus of the charity.

MR. CHAIRMAN: You are harping on this point that if it is taken for corpus it should be treated differently from the revenue part. I am told that in Tirupathi they have put up a board to this effect. How many of the donors know what is the corpus as against revenue? If it is coming to the corpus, then it is not spent.

SHRI H. B. DHONDY: In Maharashtra if it is to the corpus it is exempt. But under the income-tax law whether they are towards corpus or the revenue it is incumbent to be spent. To that extent it is a reasonable provision. But the point I am making is some control has been brought in, as I mentioned when I began my general observations.

MR. CHAIRMAN: Suppose a person has got Rs. 5 lakhs of coloured money. It is brought into the corpus and it is sought to be diverted through 20 trusts for acquiring commercial interests. How do we check it?

SHRI CHARAT RAM: We agree with you that there is this problem of coloured money being funnelled in some measure, whatever may be the percentage, through anonymous dona-

tions. We really wish to find out a solution which checks the money being funnelled into various channels. But if at least a portion of the black money is spent on charities, is it not better than that money going to corrupt people? It is a suggestion. Of course, we have not given so much consideration to this point.

MR. CHAIRMAN: We will consider that question.

SHRI CHARAT RAM: Supposing we were to ban this anonymous donation going into the corpus and say that it must be spent on revenue account in the year in which it is received, would that appear a good solution?

MR. CHAIRMAN: That could be a solution. In fact, our anxiety is to find out a way by which genuine anonymous donations are not hit. The problem has eluded solution so far.

SHRI CHARAT RAM: It can be stipulated that anonymous donation should go only to revenue that it should be spent in the same year.

MR. CHAIRMAN: We will consider that.

SHRI H. B. DHONDY: Let us consider another aspect of this problem. Let us assume for argument's sake that we will provide or ensure that the tainted money does not enter a trust for use as public charity. What will he then do with that money? Instead of utilising that money for a public necessity, he will fritter it away, which will be a greater menace for the society than if he contributes it for a charitable purpose. Let us be realistic. I am not for a moment suggesting that his action is laudable. But I am suggesting a realistic approach.

SHRI VASANT SATHE: Charity at the cost of the society.

MR. CHAIRMAN: In other words, diverting black money from extravagant, wasteful and anti-social activities to charity.

SHRI H. B. DHONDY: The last point here is the definition of relatives. As it is, there is a wide definition for general purposes which has already become part of the law as a result of the Finance Bill. The Wanchoo Committee recommendation on the definition of "relatives" now introduced for this purpose is so wide that I can honestly say that I do not know who are my relatives. I dare say this will be the position for nine out of ten trusts. Under the existing law an administrative certificate from the auditors was required. This provision had not been complied with. It was explained to the department that it was absolutely unworkable for if such a certificate was given, it was given without the necessary verification and, therefore, was meaningless, or it was given very frivolously. I am specifically referring to clauses (6) and (7).

MR. CHAIRMAN: We will consider this point.

SHRI H. B. DHONDY: Now, I come to another clause relating to total ban on investment of funds of the trust in any concern carrying on any business, including even the original trust corpus. I would respectfully say that the Bill goes even against the provisions of the Wanchoo Committee's recommendations where they particularly have given exemption in regard to the original corpus. The Wanchoo Committee itself recommended in their report, para 177 p. 185, that the original corpus should not be included. The Bill includes this. That is the first point.

The second point is that once you are told that all the extended provisions regulate that the money generated from its investment is legitimately used for public charitable purposes, not diverted to any donor or a substantial benefactor of the trust, etc., then why stop the trust from earning a larger income consistent with the responsibility of the trustees for managing the affairs of the trust?

MR. CHAIRMAN: We are not able to check the first. Clause 13(2) (h) is not effective.

SHRI H. B. DHONDY: Clause 13 (2) (h) relates to investments from out of the corpus. I am now talking of incomes earned from other investments, provided it is ensured that the income earned in a concern which has a substantial interest in the trust is not misapplied. Then, the income of the trust becomes larger.

MR. CHAIRMAN: And you can build on empire and have a still larger income also. Is that fair?

SHRI H. B. DHONDY: Then, the answer is in the Companies Act. What is the purpose of using funds of the trust? To preserve control over voting power, the Companies Act has a provision to see that the voting power in the public trustees...

MR. CHAIRMAN: Not in respect of all the companies.

SHRI H. B. DHONDY: In respect of a sizeable amount.

MR. CHAIRMAN: If your argument is correct, assuming we were to define what is 'control', will you accept it? If we say, 'control' includes voting power given to public trustees and we take it as 'control with the Government', do you think that this provision is all right?

SHRI H. B. DHONDY: My submission is that if that is the picture, the object has been met in the Companies Act. This provision is unnecessary.

MR. CHAIRMAN: The public trustee may abstain from exercising the voting right conferred by this Section...

SHRI H. B. DHONDY: This is only an enabling provision to exercise the power.

MR. CHAIRMAN: Suppose we take care of that and give a mandatory direction. Assuming that the voting

power is given to the public trustees and there is such a control, would you have any objection to that?

SHRI H. B. DHONDY: That is in the Companies Act. My point is: Where is the need for a total ban on investments?

MR. CHAIRMAN: What is 'control' is not defined here. We will define what 'control' is, that is, where a public trustee is entitled to a voting right, it will be taken as 'control'. Does that adequately take care of the point that you are making?

SHRI A. K. JAIN: What is the purpose of banning investment in public companies? It is not that these funds are utilised by companies to build empires. As to whether the objective is being served by the Companies Act or not, you may kindly examine it. In our opinion, the provision of voting power in the case of 25 per cent of the capital of the company or Rs. 5 lakhs whichever is less is adequate. If you think that a public trustee is not utilising that power, you can give a direction to public trustees that they should utilise that power. That will be adequate to ensure that the funds of these trusts are not utilised for building up of empires.

MR. CHAIRMAN: How do we assure exemption to such companies only unless there is a law to the effect, as has been contemplated plus proper definition of the word 'control'.

SHRI A. K. JAIN: Suppose I invest a few lakhs in a company. I cannot exercise the voting power. I cannot utilise that money for controlling that company. The voting power, in fact, will be in a public trustee.

MR. CHAIRMAN: What you are trying to make is that the Companies Act takes care of divesting any such person of the control. What objection have you got if we define 'control' here? It will take care of such cases.

SHRI H. B. DHONDY: 'Control' can be defined. Once that is done,

there will be no need for a ban on the use of funds for any such purposes.

MR. CHAIRMAN: There are other companies in which this does not happen.

SHRI A. K. JAIN: It can happen only if the investment is less than 5 per cent of the capital of the company.

MR. CHAIRMAN: In any case, if the investments are more, it is covered by the Companies Act and if the investments are less, then empires cannot be built. That is your point.

SHRI H. B. DHONDY: Yes, Sir.

MR. CHAIRMAN: As regards Section 153B and Section 187B of the Companies Act to which you are referring, these provisions do not apply, firstly, where the trust is not created by instrument in writing and secondly, where the value of the shares, etc. held by a company in the trust does not exceed Rs. 1 lakh; exceed 1 lakh but does not exceed Rs. 5 lakhs or 25 per cent of the paid-up capital of the company whichever is less. That is the provision.

You are speaking of 5 per cent. It is 25 per cent. You better check it up.

SHRI A. K. JAIN: Our impression is that it is 5 per cent I will check it up. If it is 25 per cent., it can be brought down further.

MR. CHAIRMAN: If it is 25 per cent, it is fairly large....

SHRI SHAH: 'Whichever is less' means either one lakh or five lakhs or 25 per cent. With respect to the second part, that the public trustees may not exercise, that apprehension seems to be a bit difficult to appreciate.

MR. CHAIRMAN: If it is less than one lakh, it does not come in at all.

SHRI SHAH: It is intended for large amounts. If it is less than one lakh, it is not a large amount.

MR. CHAIRMAN: Where you have hundred per cent voting power and funds like 30 lakhs and 50 lakhs, then what happens?

SHRI H. B. DHONDY: With respect to whatever provision of law, you will find human ingenuity attempting to evade it. Let us take a practical view. The best way of dealing with it would be to include debentures also.

MR. CHAIRMAN: My question is this. As long as 'control' is fully and properly defined, what other objection do you have?

SHRI H. B. DHONDY: Do I understand that the proposal now is....

MR. CHAIRMAN: There is no proposal. It is just a question.

SHRI H. B. DHONDY: Allright: it is a hypothetical question. For argument's sake, if there is a definition of 'contro.' to the satisfaction of the Committee, control over the moneys invested by a person.

MR. CHAIRMAN: Taking care of the drawbacks in the Company Law.

SHRI H. B. DHONDY: Then with that safeguard, the provision would be exemption to trusts where the income is derived from investments made which would come under control....

MR. CHAIRMAN: Investments are banned except if they are in any business which is owned or controlled by Government. Once the deficiency in the Company Law is cured, then you can invest in companies which would, by this definition, be controlled or deemed to be controlled by the Government, and your problem or apprehension that your revenues would be decreased will not exist.

SHRI H. B. DHONDY: I was thinking of control by the company. You are talking of control by the Government. This scheme would include an explanation defining 'control by Government' to include control through the exercise of voting power under the Companies Act...

MR. CHAIRMAN: Let us remove that deficiency.

SHRI CHARAT RAM: Our main concern in making this point is that it should not lead to reduction of earnings by the trusts; the return should not go down.

MR. CHAIRMAN: Yes.

SHRI VASANT SATHE: The whole object appears to be that the trusts should not be depleted in their return by their investment. So, in addition to the words 'owned or controlled', if we were to say 'owned, controlled and approved by the Government'—if this is enlarged to the extent of also investment in companies which are approved—will that meet your requirement? The whole idea in introducing this Clause appears to be that, apart from controlling rights through voting rights, we also want to discourage investment via trusts enjoying the other benefits of exemption, etc. Therefore, if we were to say 'approved' also, will that be alright?

SHRI CHARAT RAM: All that I can say is that we really have a bit of horror for situations where there is vast discretion with Government. We like rules in which judgment and discretion of the administration is somewhat less.

MR. CHAIRMAN: Next point.

SHRI SHAH: I just want to add that the apprehension of public trustees not exercising may not be quite warranted.

SHRI P. G. MAVALANKAR: Supposing over and above the provisions in the Companies Act if there are two further restrictions, one subject to approval by the Commissioner as in Maharashtra and Gujarat and secondly subject to these investments being approved by Government, what is the harm? Control of the management is also taken away by the voting power being lifted out totally. If this happens, what is the harm?

MR. CHAIRMAN: That is precisely what we have to consider. We would

not want their incomes to be less. The Committee would like to consider a proposal in which the incomes are not affected and you are divested of control. 'Approval' might present some difficulties so far as the department is concerned. This includes one more important point, as, so far as the public trustees are concerned, they are not concerned about tax avoidance as such. Take care of problems which are genuine. If you attempt it, it will start a hornet's nest. The trustee is not interested.

SHRI VIREN J. SHAH: Tax avoidance comes subsequently. In order to avoid tax and control companies through monies which have come through the trust, that controlling part is taken care of by the Public Trustee.

SHRI H. B. DHONDY: Even the small marginal benefit, where the Wanchoo Committee's recommendation has not been fully accepted in the Bill, the benefit in respect of an additional house if the two houses are at two different stations—that part of the thing is not taken care of.

MR. CHAIRMAN: We will consider it.

SHRI A. K. JAIN: On clause 12, Sec. 44B—here in principle we have no objection. We want to increase the limit for many commodities. The turnover should be increased to Rs. 5 lakhs from Rs. 2.5 lakhs and further, it should be adequately publicised and an opportunity should be given to the assessee in advance. It should be brought into effect in 1976-77, (accounting year 1975-76). March 1974 is just six months ahead. We want one year gap should be given.

SHRI H. B. DHONDY: With regard to clause 12, at the moment as the provisions stand, the details would be spelt out in the rules to be prescribed.

MR. CHAIRMAN: We will try to bring it out.

SHRI A. K. JAIN: There are penal provisions regarding the manner of maintenance of books. Here there are large and small assesseees.

MR. CHAIRMAN: We will take care of that. We will not cast this burden on the Board also. What we intend providing and what the committee would consider providing is that if you can take care of it yourself, it is all right. There will be some guidelines. But the Board will not be under any obligation in this regard.

SHRI MADANMOHAN MANGAL-DAS: I will be dealing with this clause 14 (Sec. 64). I will deal with the income arising from assets transferred to the individual's grand sons to be included in the total income of the individual. I take it that this clause will not have any effect on the gifts already made in the past. It would not have any retrospective effect.

MR. CHAIRMAN: The incomes hereafter will be taxed in respect of these gifts. The law is clear.

SHRI MADANMOHAN MANGAL-DAS: If the gifts are given in the last 7 or 10 or 15 years.

MR. CHAIRMAN: We understand that only the gifts made hereafter will come under this clause.

SHRI MADANMOHAN MANGAL-DAS: I honestly feel that this would be a very impossible situation....

MR. CHAIRMAN: Administratively.

SHRI MADANMOHAN MANGAL-DAS: Also for the person who has made the gifts. He would not have the peace of mind. Supposing for the sake of argument....

MR. CHAIRMAN: Pay tax and have peace.

SHRI MADANMOHAN MANGAL-DAS: One wants to live honestly. We want to live in peace in the later life. I think if this clause is going to be retrospective, it is going to be absolutely impossible.

MR. CHAIRMAN: It's working is going to present difficulties for the

administration and going to cause hardship to those who have already acted under it.

SHRI MADAN MOHAN MANGAL-DAS: This is very important. Some of us around this table are grand-fathers. I ensure they love their grand-children. They want to live peacefully hereafter. Supposing, a person has Rs. 5 lakhs, he has given Rs. 4 lakhs in the past as gifts to his grand-children. He is left with Rs. 1 lakh. He is asked to lump his income and wealth. How is he going to do?

MR. CHAIRMAN: This is a hardship in the existing gifts. All right..

SHRI MADANMOHAN MANGAL-DAS: I think if you have it retrospectively, it is going to be a really impossible situation.

MR. CHAIRMAN: Hardship on the assessee and administrative difficulties.

SHRI VASANT SATHE: Here, a man who has gifted out of Rs. 5 lakhs, Rs. 4 lakhs to his grand-children who may be two years old. What is the objective of doing that?

SHRI MADANMOHAN MANGAL-DAS: Element of love.

SHRI VASANT SATHE: That is it? Is it element of love or element of evading tax?

MR. CHAIRMAN: Sometimes the element of love is also there.

SHRI VASANT SATHE: Why should it not be clubbed? What is the harm? I want to know as to what is the hardship on the grand-father?

SHRI MADANMOHAN MANGAL-DAS: I think I should explain it to him. It is understood or presumed that the grand-children are under your control and your son is also under your control. It does not happen in the ordinary life. Most of you know that they are very independent.

Even the grand-father does not know what sorts of investment, the son has made for the grand-children and what is the income out of it. But he will be imposed with all the penalties. I think he will be in a really impossible situation. How do you expect that the grand-father should know what income the gifts he has made 7 or 10 years ago is fetching. We would not know what my son invests or what he does. He is an architect and I am in the business. I certainly do not know where he invests his sons' income. So you want the grand-father for years on end to really give a correct data as to what is the income?

MR. CHAIRMAN: That is the administrative difficulty.

SHRI VASANT SATHE: We are not talking of gifts to the son. We are talking of gifts either to the son's wife or son's minor children. Therefore, if a gift is made ten years back to the son's minor child, definitely it is not the minor child which has invested it somewhere. The grand-father should know where it has gone.

SHRI MADANMOHAN MANGALDAS: I think you have not understood. The minor children of my son are not in my custody. They are in the custody of my son who is a major and who is responsible. I think when I give a gift, I should be able to do it with the feeling that as I have given the gift tax, for the future I will not be responsible.

SHRI VASANT SATHE: Incidentally, what will be the clause that will be really affected by this sort of gifts?

MR. CHAIRMAN: It is the principle we are talking of.

SHRI MADANMOHAN MANGALDAS: I think this is a very important point.

MR. CHAIRMAN: Yes. Every provision is important. I think there are some which are more important

on which you would like to make your submissions.

SHRIMATI SHEILA KAUL: Sometimes, even very ordinary people would like to give gifts to their grand-children. As the witness has just mentioned, I do personally feel that it is going to cause much hardship.

MR. CHAIRMAN: Anything of compassion appeals very quickly to the hon. Lady Member.

SHRI MADANMOHAN MANGALDAS: So far as gifts to be given in the future, instead of having a sort of a lien on the property transferred for the tax dues etc., I personally would feel that the idea is that the assets should not be transferred to the grand-children so that there is an avoidance of tax. Instead of having this sort of a link between the grand-parents continuously for years on end, I would rather have a steep gift tax rate for giving assets to the grand-children and be done with instead of having a continuity of this sort of responsibility for ascertaining as to what will be the income on the assets transferred to the grand-children. You can increase the rates at a prohibitive manner if you like but at least spare the grand-parents this hardship.

SHRI VASANT SATHE: A hanging sword.

SHRI MADANMOHAN MANGALDAS: I would rather like to have an impossible gift tax.

MR. CHAIRMAN: Why not have the same principle to father to son and wife to husband?

SHRI MADANMOHAN MANGALDAS: Well, you can do it. My point is this. So far as grand-children are concerned he has no control over them. These are two different propositions. You can make the provisions of gift tax so difficult that one should not be tempted to give a gift. Once having given a gift, you should not do this; you should forget it..

MR. CHAIRMAN: Suppose it is now 60 or 70 or 80 or 90 per cent, well, you say, it should be 97.75 per cent...

SHRI MADANMOHAN MANGAL-DAS: Make it even 100 per cent I don't mind....

MR. CHAIRMAN: I appreciate your anxiety.

SHRI MADANMOHAN MANGAL-DAS: I feel very strongly about it because I happen to be a grant-parent. You say return is wrong, the return is not given in time, there are wrong figures etc. I know what sort of mischief it could play.

SHRI H. B. DHONDY: The income on income is subjected to the clubbing provisions. It will create enormous administrative difficulties.

SHRI MADANMOHAN MANGAL-DAS: Income-on-income is worse. How could you really evaluate all this? I really do not understand how you will do it. How can he fill up the forms.

MR. CHAIRMAN: If the law is such you have to do it.

SHRI MADANMOHAN MANGAL-DAS: I am talking of past gifts.

MR. CHAIRMAN: Administrative difficulties I can understand but in future if this law is there, there is no difficulty.

SHRI MADANMOHAN MANGAL-DAS: Have punitive gift tax and do whatever you like for the future. For the past it is impossible.

MR. CHAIRMAN: We will consider and give our careful consideration in view of your fervant pleadings.

SHRI MADANMOHAN MANGAL-DAS: So far as one's wife in employment is concerned....

MR. CHAIRMAN None of you should be worried.

SHRI MADANMOHAN MANGAL-DAS: What will happen is this. A friend starts a new company and he employed my wife. His wife is employed in my company. How what happens is....

MR. CHAIRMAN: Under garb of giving remuneration to the wife in the concern in which one has substantial interest, this is used as a devise to defraud the income and the provisions of Section 40A are found to be hopelessly inadequate and that is the real difficulty.

SHRI MADANMOHAN MANGAL-DAS: There may be a few cases where flagrant violations take place. Large sums are given. There are also fringe benefits given. But what happens is, the honest people suffer. That is the real point. People are spending more time in the preservation of wild life that it is time that we think in terms of the preservation of honest species of human beings. It is impossible for an honest person to function in this country. For God's sake, I appeal to you, do something at least by which honesty is preserved at least among a few. Do you want this to happen? My friend starts a new company and he says I will employ your wife in my company and you employ my wife in your company. Do you want this sort of thing to happen in every sector?

SHRI P. G. MAVALANKAR: Employment is given on merits.

SHRI CHARAT RAM: We agree, there are cases of misuse. It should be looked into. There are thousands of persons in small business, trading business, small production business etc. They go for example to places like Jullundur, Ludhiana, Ambala etc. All of them work. So, this is a point well worth your consideration. We put it to you that while trying to avoid concealment or transmission of the income of the richer people....

SHRI H. M. PATEL: The point made was about fixation of a ceiling.

SHRI CHARAT RAM: Ceiling is a good suggestion and a practical proposition.

MR. CHAIRMAN: There is a strong case for ceiling. Now, what about the settlement machinery? What have to say on that?

SHRI A. K. JAIN: On Clause 16, I have a comment to make. You may restrict it in cases where it is controlled by the people. But here we are putting a new classification—even where a share is not taken at all, it is deemed to be a transaction.

MR. CHAIRMAN: We have statistics with us. Manufacturing profits are tabulated in transfers. Supposing you have many shares and that is your business. You have manufacturing profits. You go on selling at a loss and that means a loss to the revenue.

SHRI A. K. JAIN: Supposing there is a loss in share business. You can set of the loss in the speculative income.

Now you are trying to have a separate classification. It cannot be set of.

MR. CHAIRMAN: We have to weigh the two. Any way, you proceed to the next item.

SHRI A. K. JAIN: Clause 18—Section 80G.

We do not want to discourage individual charity.

SHRI CHARAT RAM: We welcome the medical benefits. When the people become old and old, they cannot carry on their business. We have to suggest that it may be considered. In the post-retirement stage they cannot function at all.

SHRI A. K. JAIN: Clause 25.—The proposed provision is pursuant to the recommendation of the Wanchoo Committee. It has been suggested that the entire expenses should be allowed.

MR. CHAIRMAN: We shall see.

SHRI D. C. KOTHARI: Clauses in Chapter VIA, if there is a loss no relief is given.

MR. CHAIRMAN: We shall consider.

SHRI D. C. KOTHARI: There is a suggestion on page 17 in regard to medical expenses. These can be extended to independent self employed persons.

MR. CHAIRMAN: Would you send us precisely the draft embodying views on Clause 19—New Section 80GG and 80VV.

We may go to Sections 104 and 109.

SHRI CHARAT RAM: The existing law is satisfactory.

SHRI O. P. VAISH: Section 132 (1A). We have pointed out in the memorandum the way in which provisions are drafted—for instance we have mentioned the very basis of exercising the power of search and seizure—reason to suspect or reason to believe.

MR. CHAIRMAN: Reason to suspect is not for original authorisation. This reason to suspect is after some proceedings have taken place.

SHRI O. P. VAISH: In the case of new assessment, we have more of reason to believe and the reason to suspect. As you will kindly refer to the Supreme Court Judgment, they have almost equated the two.

MR. CHAIRMAN: Reason to suspect is subjective but it is not subjective in the case of original authorisation. Original authorisation has 'still to believe'.

SHRI O. P. VAISH: In fact it was probably not pointed out at that time or was not noticed that we have changed the terminology from 'reason to believe' to 'reason to suspect'.

You will notice in 132 (1A)—authorised officer can act on a reason to suspect, while the other has to act

on reason to believe. The original taxation is on the basis of reason to believe. In the case of an authorised officer who is a junior officer, he can act on the basis of reason to suspect. The reason to suspect is on rumour.

MR. CHAIRMAN: One is by the Commissioner. Why are you saying—lower officer? I am on proposed 1A and extension of the existing authorisation.

SHRI O. P. VAISH: In both the places it is not the proper terminology which should be used. In fact it is a matter of exercising greater caution by the officers concerned, while they exercise this power of search and seizure. Even in cases under Section 147 where there is "reason to believe", we have a large number of cases where the court has repeatedly stressed that in the case of action being taken arbitrarily or where it is not warranted, the officer should know that the words are "reason to believe" and not "reason to suspect." I am only referring to the observations of the Supreme Court.

SHRI SHAH: My submission is that when we use the words "reason to believe" or "reason to suspect" we have to see whether the words create a situation where we cannot act. Suppose we were to use the same words "reason to believe" we have to ask ourselves "does it create a situation where we cannot act?" According to courts, "reason to believe" has been interpreted as requiring more reasonable grounds for action as against acting on mere suspicion.

SHRI H. M. PATEL: Therefore the point is made, it seems to me, that even in this case an officer should act on the basis of belief rather than suspicion. I think it is reasonable. Why should we bring in 'suspicion' rather than 'believe'?

MR. CHAIRMAN: We want to understand their viewpoint.

SHRI H. M. PATEL: I agree that we are trying to understand their viewpoint but, in the process, I am trying to understand, as a Member of the Committee, the point which you are presenting.

MR. CHAIRMAN: The one which we are presenting is that of the people who have drafted this Bill. In the original authorisation with reference to the efforts to get at some concealment it will be seen that these efforts in regard to search and seizure are based on reason to believe. When they have to go further, at that time a relaxation is given. Originally the action is governed by a stricter rule than would be required at a later stage. I think it is quite rational.

SHRI O. P. VAISH: In this connection our only submission is that "reason to believe" requires a more reasonable ground than suspicion.

SHRI K. N. MODI: There should not be an element of vindictiveness on anybody's part. You may have a search, but what I am told is that if you have a function, the Income Tax Officer can come for the function and after the function is over the Inspector can ask questions of the guests. Then, you must have a safeguard that there should be no vindictiveness. Otherwise it will create a wall between the assessee and the Income Tax authorities. So our submission is that while you are re-drafting it, it should be seen that there is no element of unnecessary victimisation or vindictiveness.

MR. CHAIRMAN: Then what do you suggest we should do if we want some sort of effective enquiry at expensive marriages or other social functions? What is the way out? We are living in a Gandhian world, but that is a different story. Let us come down to something more practical and realistic.

SHRI K. N. MODI: It is good that you are going to have simple marri-

ages, but this sort of mistrust should be avoided.

MR. CHAIRMAN: You have put forth your viewpoint, and the Committee will consider the entire problem. It can never be the intention of the Government or of this Committee to harass anybody or humiliate anybody. But still, things are happening which are undesirable and something has to be done. One philosophy is that if we have the enactment some harassing will be there and therefore we should not have any enactment, the other philosophy is that if we have the enactment it will act as a deterrent.

SHRI K. N. MODI: The intention of harassing may not be there. But the fundamental point is that it interferes with the democratic rights, and this is a serious objection which I would like to raise here.

MR. CHAIRMAN: We have understood your viewpoint.

SHRI O. P. VAISH: Sir, our submission is that since this is only an experimental provision, we thought that this kind of provision itself will have to be exercised with caution.

MR. CHAIRMAN: The level of the organisation will certainly consider this.

SHRI O. P. VAISH: The other point I would like to submit is that since these powers are to be exercised according to the Wanchoo Committee Report in a big way—and in all these acts where this kind of the power exists—there is a kind of a deterrent punishment given to the persons concerned in the Department. We have given our suggestion for modification of this Clause, on page 21 of our Memorandum. It is on the lines of the Foreign Exchange Regulations Bill or the Customs Bill.

MR. CHAIRMAN: There is one basic difference. Let me tell you why this provision is there in the Foreign Exchange Regulations Act and the Customs Act and why it is not here in this proposed Bill. There it

is some tangible property which is being searched. If it is there, then the officer proves his *bona fide* belief but here when you are talking of concealment, there are so many ways of doing it—one may be having the money concealed in his building etc. Here it is quite different as compared to the Foreign Exchange Regulations Act and Customs Act. One thing is that you have to make a very strong case for your argument, otherwise you will be causing a terrible burden on the Income-tax Department.

SHRI O. P. VAISH: After all they will be searching for a tangible property may be books of account or may be jewellery or other valuable article. If somebody reports about the unaccountable money and other things, one can make the search and he can find the search is successful.

MR. CHAIRMAN: If it is not found and the search is unsuccessful then the officer is *mala fide*.

SHRI K. R. GANESH: The present position is that only the Commissioner is authorised.

MR. CHAIRMAN: Are you trying to suggest something different here?

SHRI O. P. VAISH: Sir, we have suggested here the following:

“133B (1) Any income-tax authority exercising powers under this Act or any rule made thereunder—
who,—

(a) Without reasonable belief, searches, or causes to be searched any building, place, vessel, vehicle, aircraft or person; etc., etc.....”

In fact, it starts from the premise that the action has been taken without reasonable belief.

MR. CHAIRMAN: In other words, he goes flagrantly in violation of the legal provision and the damage is done.

SHRI O. P. VAISH: Let us have the pious hope that this provision will not be used at all and will not be required at all. The Administration will work efficiently and effectively. This is the only submission. The fact is that just as we have difficulty, the assessee may have the difficulty to make out a case against the Department. Then the existence of the provision will be a healthy sign.

SHRI P. G. MAVALANKAR: If a search is made and if it is unsuccessful—because the person may be really honest—then how that person will be protected by law?

MR. CHAIRMAN: On balance of consideration, we will have to determine whether we have to take the risk of some honest persons being harassed at the benefit of some dishonest persons or whether we have to go outright. So, it is a very sticky question. We do not want to demoralise the officer and at the same time we do not want to create this sort of a situation.

SHRI O. P. VAISH: Sir, the very mention of that was a delicate one.

SHRI C. M. STEPHEN: I am afraid we are over-emphasising on a particular possibility. I am trying to understand this. There are so many laws in the country. Where provisions for searches are there, then there are other provisions also under which there are possibilities of misuse of these powers. To my knowledge no law excepting the one that you have cited makes a provision that an officer who might have used it in a *mala fide* manner might be proceeded against under the law. There are a large number of people who have been admittedly accumulating the black money and it affects the economy of the nation. It is a war against a certain section of people whom we all consider are enemies of the economy. It happens that out of the large number of people in this country, a few of them are dishonest and they build up the black money. Against them, there are a

large number of officers, a huge majority of them, it will be considered, are fair and honest and that these people must be victimised. In that battle, it would be a wise policy, in that order, if some honest man may be protected. Would it not be in the interest of the public policy if the possibility of an escape for the dishonest man will not be kept open and whether that will be an appropriate approach? If you are insisting that sufficient safeguards must be taken against all possibly mischievous officers, is it not necessary to make a provision in the law which makes it impossible for an officer to make a search except at the risk of giving his head head. Ultimately, the effect will be that no search will take place. Therefore, if the emphasis is that the interest of the whole nation must be taken care of even if some dishonest man may have to be arrested after it is proved that he has come out dishonest, the emphasis should have been on the Criminal Law. That should be the standard. I think, it is only a question of harassment and nothing more than that. That cannot be a standard in this, because the whole spirit of the legislation is to battle up against a particular situation which is proved fatal to the whole nation?

MR. CHAIRMAN: In this respect, a very considered view will have to be taken.

SHRI VIREN J. SHAH: Let a dishonest man be harassed so that we can get the money.

SHRI K. R. GANESH: This question has been gone into by the Law Commission. There are certain Acts and Bills which have come up and are based on the basis of the recommendations of the Law Commission.

SHRI VIREN J. SHAH: In the last 30 years, we have made so many changes and there are many things which we have not done so far.

SHRI O. P. VAISH: We have submitted that the limit should be raised.

MR. CHAIRMAN: What is the limit which you suggest?

SHRI O. P. VAISH: Rs. 10 lakhs, we have suggested for the major towns in the country.

MR. CHAIRMAN: That will create difficulties?

SHRI D. C. KOTHARI: I do not know why this information is being asked from us? It is not possible to keep an account of each and every item and there are certain items which I would like to keep secret from my wife.

MR. CHAIRMAN: What do you suggest should be the prescribed limit?

SHRI MADANMOHAN MANGALDAS: It is not a question of putting a limit on various items of expenditure; it is a question of principle of maintaining a regular account of expenditure. I think it is impossible to fill in the form unless one has a continuous data of account.

SHRI CHARAT RAM: We are suggesting that this should be completely deleted.

MR. CHAIRMAN: We will consider it.

SHRI MADANMOHAN MANGALDAS: As far as clause 41 is concerned, Director should only sign the return of the income.

MR. CHAIRMAN: Plus the one who is responsible.

SHRI MADANMOHAN MANGALDAS: What about that company where there is no Managing Director?

MR. CHAIRMAN: Anybody can be a Managing Director.

SHRI MADANMOHAN MANGALDAS: I am referring to a company which has got no MG and the Director has got no authority to do it. They think that the staff committee will deal with it.

MR. CHAIRMAN: In Clause 41, we find that, it may be the Managing

Director or any other Director for the time being in charge.

SHRI CHARAT RAM: Mr. Chairman, I think we are improving this and you may kindly consider this.

MR. CHAIRMAN: Let us be clear. There has to be some objectivity about it. I cannot understand this. This has been canvassed before us. We have got professional Managers, but, someone else is responsible. The Committee would like to know, why should not a Managing Director be responsible in regard to taxation matters, which is a very important aspect in relation to the affairs of a company.

SHRI CHARAT RAM: Some of them may be hit by the provisions. Some of them may not be. When Managing Directors are signing any return, they really sign on the faith and belief, which they have in their Officers. I think we made a point.

MR. CHAIRMAN: There is another thing. If a Managing Director proves that he was not responsible for the fraud, the prosecution section lays down that he will be left out.

SHRI VIREN J. SHAH: In a case where there is no Managing Director as such, there will be difficulty. There are cases where a Company is managed by one person who is in charge of the affairs of that Company.

SHRI K. N. MODI: Suppose a Company files a return. Every thing is disclosed and according to the interpretation of the Income Tax Department certain item is not allowed.

MR. CHAIRMAN: There is no prosecution.

SHRI K. N. MODI: When a penalty is imposed, the persons who sign the return are liable for prosecution. There may be so many items which are disclosed in the return. But, the income tax authorities might say that our interpretation or our solicitor's interpretation is not correct. Then, they impose a penalty. Here, it is not only a question of money. But, the person has to go to jail also. That is the point

SHRI A. K. JAIN: If a Managing Director is responsible for a coveted act of his own, there are a few provisions. But, if an accountant fails to make the proper deductions at source, the Manager may be held responsible.

MR. CHAIRMAN: If you come straightway to the prosecution sections, you will find that in new Section 276 CC—Clause 71—it has been provided:

“Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of Section 139.”

SHRI O. P. VAISH: This section is the one which requires the furnishing of the return and the prosecution on that account. It prescribes the penalty. There is also another Clause which talks of deemed evasion. Both together, make the person liable for prosecution in case where the person is not able to furnish explanation for the reason....

SHRI A. K. JAIN: Kindly see Section 278B, sub-section (2), on Page 44 of the amending Bill. It says:

“Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

Even for neglect, he will be deemed to be guilty involving the provisions in sub-section (1).

MR. CHAIRMAN: You are creating a special rule of evidence. The proviso is there. If you see page 44—

“Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.”

You have to prove your innocence. There is also the basic question, which Mr. Stephen also mentioned, where we go by the principles of natural justice, where, *mens rea* has to be established first by the Department before they can proceed further. But, there are certain situations which permit a presumption of guilt unless you prove it to be otherwise.

SHRI A. K. JAIN: In this connection, I would invite your attention to page 5 of our Memorandum, where we have referred to the Law Commission Report.

“The Law Commission of India in their 47th Report on the Trial and Punishment of Social and Economic Offences generally recommended that the accused should prove that he committed the *actus reus* ‘innocently’, but specifically excluded taxation laws mainly for two reasons, first that they are far too complex and complicated, and second that they are changed frequently.”

MR. CHAIRMAN: We will consider that.

SHRI D. C. KOTHARI: Even to those persons who administer the law, it becomes difficult to know what the correct position of the law is.

MR. CHAIRMAN: The proviso does not cast any more burden than what is in the main section itself. A person will be deemed to be guilty. If it is proved that you are not, you are left out.

You have not made any suggestions in regard to the settlement machinery. I think it is too late to make suggestions. Would you....

SHRI O. P. VAISH: Particularly, we have not said anything in our

memorandum in regard to the settlement machinery except that this process should be expedited. It is up to you.

SHRI CHARAT RAM: Could you allow us to appear on some other day, may be for an hour or so, when we can explain some other points?

MR. CHAIRMAN: Our schedule is very tight. We have to examine many parties. However, now, if you like to explain some other aspects, or pin-points something, you can do so

SHRI CHARAT RAM: We can send a supplementary memo., Sir.

SHRI VASANT SATHE: We will be obliged if you could kindly enlighten us on the extent to which the various provisions that we are now making in this bill would enable us really to serve the basic objective of unearthing black money.

MR. CHAIRMAN: You are asking the wrong people to take up the cause. They will make out a strong case against it.

SHRI MADAN MOHAN MANGALDAS: With regard to Clause 55, Section 222, I think the lien extends for all times to come.

MR. CHAIRMAN: If taxes are not paid, the lieu will continue; but in minority, if you pay the taxes, the lien disappears.

SHRI MADAN MOHAN MANGALDAS: Supposing something happens subsequently, how will the minor be responsible for taxes which the grandparent or the father has not paid? This is an impossible situation.

MR. CHAIRMAN: Firstly, in the very scheme of things, the lien is only in respect of a liability; and this liability

(The witness then withdraw)

II. Institute of Income-tax Practitioners of India, Bangalore.

Spokesman:

1. Shri K.B. Basavarajan, President.
2. Shri C.L. Aneja
3. Shri M. V. Shastry
4. Shri Harilal T. Sodha

lity relates, in point of time, to period inferior to his attaining of majority. Supposing he attains majority on 1st January 1973 and the tax liability comes thereafter; or there is a liability of an earlier period. Unless it is extended beyond majority, where is the guarantee of recovery in the very scheme of things?

SHRI MADANMOHAN MANGALDAS: If he has the gift tax today, what is the need for this?

MR. CHAIRMAN: If the whole scheme is changed, it is a different story. But the law being what it is, it is only consequential.

SHRI MADAN MOHAN MANGALDAS: I hope you will give sympathetic consideration.

MR. CHAIRMAN: We will give.

SHRI K. R. GANESH: Earlier, Mr. Agarwal had mentioned about a package deal presented by the Wanchoo Committee. Actually, the package deal is not between the preventive or the coercive aspects and the fiscal aspect. The fiscal aspect itself is a package deal and it is where they recommend reduction to 55 per cent or so. They have also recommended capital levy. What is your opinion on this?

SHRI CHARAT RAM: We are generally opposed to the concept of capital levy. It would affect not just one person but different persons in different ways. It would affect some companies normally and some other companies extraordinarily. It is not a practical proposition.

Now, Sir, may I thank you, Mr. Chairman and members of the Committee for such a patient hearing?

MR. CHAIRMAN: Thank you.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: I have to draw your attention to Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha which reads:

"Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament".

SHRI K. B. BASAVARAJAN: We do not claim anything as confidential; the entire evidence may be published.

May it please the hon. Chairman and hon. members of the Select Committee? The Institute of Income-tax Practitioners of India was abolished in October, 1972, its registered office being located for the time being in Bangalore. As it does, it represents the whole class of income-tax practitioners and such advocates as are members of the Institute at present.

Our submission centres round Clause 39 which seeks to amend Section 139 of the present Act. We wholeheartedly welcome the provision for introduction of compulsory audit. But our grievance is this. Our grievance is that while income-tax practitioners, chartered accountants and tax advocates have been appearing in cases on the original side, they have been discriminated in the matter of compulsory auditing. In fact, ever since the Indian Income-tax Act was introduced in India, the veterans in the field are income-tax practitioners. It is an institution peculiar to India, although all these days, all the

three categories of professionals, namely, the chartered accountants, income-tax practitioner and tax advocates have been performing the duties assigned by the statute under the direct tax laws. Of course, in the 1961 Act, a firm on legal basis has been given to the institution of income-tax practitioners. For this class of representatives, a rational basis has been given to them, to give them a sufficient knowledge in accountancy and auditing so that they may be equipped to carry out the duties as assesses' representatives. Now, we welcome the measure, but our submission is this. Clause 39(1B) which excludes the income-tax practitioners should be amended to include the income-tax practitioners and tax advocates also. In the past, with regard to the duties to be performed by them is envisaged in the audit report as evolved by the Wanchoo Committee, they have been presenting such reports, though not exactly in the same manner but in a modified way.

I crave the indulgence of the hon. Chairman of the Committee to quote rule 12 in the old 1962 rules under the Act. There was Form No. 5. I am given to understand one thing. This question was discussed in the Tyagi Committee, but they came to the conclusion at that time that the compulsory audit was not necessary, and they evolved a form of audit report as in Form No. 5 that is appended to the Institute's memorandum which is before the Committee. There are some changes as between the form evolved by the Wanchoo Committee and Form No. 5 that was evolved in the 1962 rules. That is, to furnish that certificate, the right was conceded to all the three categories. They had to examine the accounts, draw the statement of accounts, and prepare the return and forward the return with the certificate as laid down in Form No. 5. Therefore, such a recognition and the right of furnishing the audit report was given by law under the Income-tax rules, 1962. Now, we fail to understand why this class is not given

the right to perform such duties as are now sought to be assigned under the audit report evolved by the Wanchoo Committee.

Another submission is this. While we are given the right to furnish audit certificates under the said rule 12 in the form laid down—Form No. 5—that was not at all taken into consideration. No discussion was there in the Wanchoo Committee's report as far as we have understood from a reading of the report. There is no reference made to it, namely, rule 12 and the form laid down there. It was unceremoniously ignored and this right was sought to be given to only one class.

Another submission of ours is this. There are about 10,000 to 12,000 income-tax practitioners. Unfortunately no reliable statistics are available either with the department or with the institute at present, with regard to the actual strength of the income-tax practitioners. In India, there are about 10,000 to 12,000 practitioners. If now, according to the compulsory audit scheme, cases above an income of Rs. 50,000 or a turnover of Rs. 5 lakhs are passed on to the chartered accountants, what will happen? Under the present summary assessment rules, the assessment of incomes below Rs. 50,000 in certain areas and incomes below Rs. 25,000 in certain other areas are being concluded under the summary assessment proceedings under section 143(1) of the Income-tax Act, 1961. My submission is this. It is a hard fact, an economic aspect of this provision, which I want to submit. Suppose, it is confined to the chartered accountants only under the present scheme, when the provisions are read together, the provision for compulsory audit takes away all the cases above that limit prescribed, and the cases under summary assessments do not require any assistance at all. It is a matter of a year or two before the assessees would definitely discard professionals because it does not require the help of the income-tax practitioner or the chartered accountant or any-

body. They can straightaway file the return because the department has been generous. We welcome that measure because it helps the poor assessee, but from the point of view of the profession, the profession of income-tax practitioners stands to lose both ways. They are losing their cases under summary assessment. Secondly, big cases above Rs. 50,000 of income or a turnover of Rs. 5 lakhs will pass on to the other class. In such a situation, the entire class of income-tax practitioners will perhaps be wiped out of their practice. This is a glaring example. The discrimination that is sought to be made by the Wanchoo Committee is seen through this economic aspect. Therefore, my submission is this. To prove that the work done by the income-tax practitioners, the chartered accountants and the tax advocates appearing in the original side is one and the same, with the permission of the hon. Chairman, I would request my colleague, Shri Hiralal T. Sodha, to speak on that aspect.

MR. CHAIRMAN: The sum and substance of what you are saying is threefold. First, you welcome the measure of compulsory audit. Secondly your grievance is that the provision as it is in the Bill provides for compulsory audit only by one section of the professionals, and if that is so, the professionals belonging to your institute would be definitely affected. Thirdly, in view of the summary assessment and in view of the existing provisions, taxation work is decreasing.

There is only one question which I would like you to answer immediately. In this Bill, it is stated that the audit is to be conducted by an accountant defined under the explanation to section 288. The explanation under this section defines an accountant. We had also representations from other professional experts, and our difficulty is this. This Committee is unable to sit in judgment and evaluate the expert knowledge of a particular set of professionals; Also, under the same section, whether they are competent or not is determined

by the Finance Ministry who can sit objectively and evaluate it. Virtually, your grievance is that you have not been included in the explanation to section 288. But the real remedy will lie somewhere else; not before that Committee. Do you understand my difficulty?

SHRI K. B. BASAVARAJAN: Yes.

MR. CHAIRMAN: Who can be considered as a proper accountant to audit an account is a matter which calls for a tremendous examination of what one has been doing all the time. One has to examine, for instance, what you are capable of doing, what you have been doing all these years and what your experience is, what your training is and in which manner you can effectively carry on the work which an auditor is supposed to carry on for the purpose of compulsory audit. It is not possible for a Committee like ours to go into it. How do you overcome this difficulty? How do you satisfy us that we should sit in judgment over your expertise?

SHRI K. B. BASAVARAJAN: Even now, the hon. Committee can call for such a report from the Central Board of Direct Taxes.

MR. CHAIRMAN: I do not think the Board is doing that. It is a set of experts in the Finance Ministry who must evaluate it. If they are competent to evaluate it, under the powers given to them, that can be done. It can be done elsewhere. Your legitimate grievance is such that it should be agitated before the Finance Ministry.

SHRI ERA SEZHIAN: We appreciate the arguments put forward by them, but I do not know from where they have got some of the figures they have given. For instance, in page 4, they say that there will be 15 lakhs of assesseees whose income will be over Rs. 50,000. If that is so, the Finance Ministry will be very happy. According to our assessment, it cannot be more than 70,000 assesseees.

SHRI K. B. BASAVARAJAN: It is an estimate made taking into consideration the turnover also.

MR. CHAIRMAN: Have you any basis for this inference?

SHRI K. B. BASAVARAJAN: It is no doubt a guess work based on turnover. Today because of inflation, the turnover of even ordinary merchants is shooting up. Our only basis is that the turnover is increasing day by day. On that, we made a fair estimate. We do not have any statistics. The committee can give a direction to the Government to examine this aspect. In fact, Wanchoo Committee should have examined this aspect. Unfortunately we should not be discriminated against in performing our duties.

MR. CHAIRMAN: Far from discriminating against anybody or patronising anybody, this committee is only interested in ensuring how we can achieve the objects of the Bill. You seem to be agreeing with the objective but your point is, one set of people is left out. We do not have the expertise ourselves to evaluate your expertise. If the Finance Ministry is agreeable to bringing you within the Explanation to section 288, what objection do we have?

SHRI HARILAL T. SODHA: I want to draw your attention to page 46 of the Wanchoo Committee's Report where it says:

"Doubts have been expressed whether enough qualified auditors will be available...."

MR. CHAIRMAN: You are on the same point. We are not the proper people to give you the relief. Only the Finance Ministry can give you the relief.

SHRI HARILAL T. SODHA: Comparison has been given that there were 2900 auditors in 1967 and in 1971 it has gone up to 5400. But what about the increase in assessments in 1971 as compared to 1967? It has gone up to more than 6 lakhs.

MR. CHAIRMAN: What will be the number of assessee_s with a turnover of over Rs. 5 lakhs?

SHRI HARILAL T. SODHA: 8 lakhs.

MR. CHAIRMAN: This is a startling disclosure you are making. Either the department is misleading us or they are hopelessly oblivious of the facts. How many cases will there be with above Rs. 10 lakhs turnover?

SHRI HARILAL T. SODHA: Nearly 5 lakhs in India.

MR. CHAIRMAN: We will ask the Department to collect the figures and supply them to us. We will try to rationalise this as much as we can. I completely sympathize with your grievance. No set of professionals should be deprived of what they are doing all these years. But we have our limitations. I am glad you raised

this point. We will ask the Department to get the information from the various Commissioners.

SHRI HARILAL T. SODHA: Out of 36 lakhs assessee_s 26 lakhs have salary income and only 10 lakhs are left out. Out of these 10 lakhs, the turnover in nearly 8 lakh cases will be more than Rs. 5 lakhs.

MR. CHAIRMAN: We accept the principle that there can be large turnover and lesser income or *vice versa*. Government have made evaluation income-wise. We will ask them to make it turnover-wise also.

SHRI HARILAL T. SODHA: We are grateful to the Committee for giving us an opportunity to present our case which the Wanchoo Committee did not do.

(The witness then withdrew)

III. Jamiat-Ulama-i-Hind, New Delhi

Spokesmen:

1. Maulana Syed Asad Madni, M.P.
2. Shri M. Swalehuddin
3. Shri Tazimuddin Siddiqi
4. Shri A. A. Kidwai
5. Shri N.A. Zaki

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: There is a direction by the Speaker which I must bring to your notice. That Direction says that the evidence which you tender will be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you should be treated as confidential. Even though you may desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

मौलाना सैयद अ. व. मदनो : जनाबवाला हम लोग अपना मेमॉरेंडम पेश कर चुके हैं

और वह आपके पास पहुंच चुका होगा । यह बिल जो इस वक्त पेश है, जिसके सिल-सिले में यह सेलेक्ट कमेटी बनी है, इसमें हमारे लिए कई उलझनें हैं । जैसा कि मालूम होता है, अगर हुकूमत की मंसा या मकसद यह है कि काले धन का चैरिटेबिल इदारों के नाम से जो गलत इस्तेमाल होता है उसको रोका जाये तो हमें उसमें कोई झंझट नहीं है और उससे हमारा कोई ताल्लुक नहीं है । उसको रोकने के लिए जो भी जहरी दवाव हो वह उठाने चाहिए लेकिन हमारे लिये सबसे बड़ी मुश्किल यह है कि हम लोग ऐसी कम्युनिटी से ताल्लुक रखते हैं जो अखिलयत है, माइनारिटी है जिसमें हजार

में से 999 मुसलमान बहुत गरीब और बैकवर्ड हैं, एकोनामिक, एक्सितादी तौर पर तिजारात इंडस्ट्री, मुस्लाजिमत, हर चीज में। दूसरी चीज यह है कि हमारे जो अबकाफ हैं उनका ज्यादातर हमारी मजहबी चीजों से ताल्कुक है। इसलिए इस तरह के मजहबी इदारे, हमारे इस तरह के अबकाफ भी अगर इस बिल से मुतास्सिर हो गए तो इस अक्लि-यत की कौमी जिन्दगी का मुस्त-किदल, इसका तरक्की करना और इसके मजहबी तहफ्फुजात सभी कुछ खतरे में पड़ जायेगा और उसको फिर किसी तरह से रोक नहीं सकते हैं। इस तरह की दुश्वारियां और मुश्किलात में हमारा मामला पड़ जायेगा।

आप शायद इस बात से वाकिफ न हों कि मुसलमानों ने इस मुल्क में अपनी मजहबी तालीम के लिए अंग्रेजों के पूरे दौर में काफी भी हुकूमत से मदद मंजूर नहीं की। गरीब से गरीब मुसलमान ने, मजदूरी करने वाले ने, घास खोदने वाले ने पैसा पैसा चन्दा करके मजहबी तालीम के इदारों को चलाया। इसी तरीके से जो हमारी और मजहबी चीज हैं मसलन मस्जिदें हैं या और चीजें हैं उनको कायम रखा और आज भी बनके चला रहे हैं। इस तरह की चीजों में इस गरीब कम्युनिटी के 70 फीसदी लोग जो बिल्कुल गरीब लोग हैं उन्हीं का हिस्सा है। जो कुछ थोड़े से मालदार लोग इस कम्युनिटी में हैं जिसको हकीकत में मालदार कहना भी मुश्किल है लेकिन हमारे लिहाज से जिनको मालदार समझा जाता है उनमें से बहुत थोड़े लोग ऐसे होंगे जो उसमें काफी हिस्सा लेते हैं। आम तौर से उनमें जो अक्सरियत है वह हिस्सा नहीं लेती। ज्यादातर गरीब लोग, किसान, मजदूर ही इसमें हिस्सा लेते हैं और इसी बिना पर इस तरह के मदद से और दूसरे इदारे चलते हैं। अब अगर इन इदारों को इस बिल की सख्त दफात के मातहत ले लिया जाये जिन दफात का काले धन को रोकने के लिए निफाज किया जा रहा है

तो उससे इस माइनारिटी कम्युनिटी के सामने दुश्वारियां पैदा होंगी और इस समाज का एक अच्छा खासा हिस्सा ग्राइन्दा बहुत खराब हो जायेगा। एक बात तो यह है कि इस्लाम में इस तरह के चैरिटेबल इन्स्टीट्यू-शन्स या और इस तरह की जो अच्छाई की चीजें हैं वह मजहबी चीजें, दान, चीजें समझी जाती हैं। मसलन कोई यतीमखाना बनाया गया तो उसमें जिन बच्चों के मां-बाप नहीं हैं वह बच्चे उसमें रहकर तालीम और तबियत पायेंगे और यह चीज समाज में उत बेसहारा बच्चों को इस समाज का एक अच्छा फर्द बनाने के लिए होती है। इसी तरह से अगर कोई मुसाफिर-खाा बना और कोई इस तरह की अच्छी चीज बनी तो उसको हम कमोबेश मजहबी चीज समझते हैं। मजहब ने इस सिलसिले में हम को भलाई करने की ताकीद और मौका दिया है और उसके लिए बहुत सबाब और नेकियां बताई हैं जैसे कि हम कोई मस्जिद बनाते हैं। इस तरह से हमारे यहां लोगों की भलाई करने के जो इदारे हैं या खालिस जिस चीज को हम मजहबी मानते हैं उनमें कोई बवत बड़ा फर्क नहीं है। इस लिहाज से ऐसे इदारे जो हैं उनको अगर आप इस बिल के मातहत ले पाते हैं तो फिर उसके नतीजे के तौर पर हमारी बहुत सी मजहबी मामलात की उलझने बाधस बनेंगी और हमारा समाज इन तमाम भलाईयों से महरूम हो जायेगा।

खास तौर से इस बिल की दफा (6) ने हमारे लिए ऐसी सुरते-हाल पैदा कर दी है जिससे हमारे अबकाफ ग्राहिस्ता ग्राहिस्ता खत्म हो जायेंगे। यह वह अबकाफ है जिनको इस गरीब कम्युनिटी ने धीरे धीरे सैकड़ों सालों में मेहनत कर करके बनाया है। साथ ही इस बात को भी सामने रखा जाये कि बद-किस्मती से बावजूद इसके कि अंग्रेजों के जमाने में सन 1857 में हमारे साथ बल्कि परे हिन्दी-स्तानियों के साथ बड़े बड़े जुल्म हुए हैं लेकिन उन्होंने भी इन अबकाफ की अहमियत को

समझा था। फिर पार्टिशन की वजह से हमारे मुल्क में इस तरह के जो चैरिटेबिल इदारे और अक्काफ मसलमानों के वे बड़े बर्बादियों के दौर से गुजर चुके हैं। उसको बड़े नुकसानात और तबाहियों का सामना करना पड़ा। ऐसी हालत में इस बर्बाद कम्युनिटी के जरिए से जो बच्चे खुचे अक्काफ चल रहे हैं जो कि गरीब की मदद से चल रहे हैं हम उम्मीद करते हैं कि हमारी नेशनल गवर्नमेंट उनकी तादाद कम करने के बजाये और बढ़ायेगी। यह अक्काफ गरीब अदायियों की भलाई और खैर के बायस हैं। बिलफर्ज अगर मसलमान बच्चों का एखलाक अच्छा न हो, वे बुराइयों में मुक्त्ला हो जाये तो उसका नुकसान और उम्का रिटर्न इस मुल्क को भी पहुंचेगा, सिर्फ मुसलमानों को ही नहीं पहुंचेगा। यह मुल्क भी ऐसे लोगों के होने से मुसीबत का बायस होगा। इसलिए यह चीज मुसलमानों के लिए भी जरूरी है और मुल्क के लिए भी जरूरी है कि इस तरह के इदारे, इस तरह की चीजें कायम रखी जाये जिससे कि उनकी अक्ली हालत ठीक रहे। अगर वे इस्लामी तालीम हासिल करके सच्चे मुसलमान, सच्चे शहरी और खदापरस्त बनें, झूठ न बोलें, रिश्वत न लें, डाका और चोरी न करें, दूसरे बेईमानी के काम न करें तो यह मुल्क के लिए भला है और इससे सभी को फायदा पहुंचेगा। इस लिहाज से हमारे जो अक्काफ हैं, मजहबी तालीम के जो इदारे हैं उनकी पूरी मदद करनी चाहिए ऐसा हमारे दस्तूर में दिया हुआ है। आईन्दा हमारे मुस्तकबिल के लिए वह रीढ़ की हड्डी का दर्जा रखते हैं। अब अगर कोई चंदा इन अक्काफ के लिए बिना नाम के दे दिया जाये उसपर 65 फीसदी टैक्स ले लिया जायेगा तो मुसलमानों में लाख दो लाख का चन्दा देने वाला कोई मेरे इल्म में है नहीं बल्कि होता यह है जैसे इंदगाह पर लाख दो लाख मसलमान इकट्ठे हुए तो उन्होंने मददसों के लिए चन्दा इकट्ठा किया और उसके लिए वहां पर कोई रसीदें भी नहीं कट सकती या जैसे अजमेर शरीफ में उसे

हुआ और वहां पर 50-60 हजार मुसलमान इकट्ठे हुए तो वहां पर 25 या 50 हजार की रकम इकट्ठा हो गई और अगर उसमें से 65 फीसदी ले लिया जाये तो फिर वे तमाम इदारे खत्म हो जायेंगे। वहां पर एक रुपया, दो रुपया या दस रुपया देने वाले ही होते हैं। पचास हजार देने वाला तो कोई होता नहीं है। चूंकि लाख दो खाल का मजमा होता है इसलिए लाख दो लाख रुपया भी जमा हो जाता है। ऐसी सूरत में इस बिल की सब्त दफात का उन तमाम भलाइयों और खैर के कामों पर जबदेस्त असर पड़ेगा और हमारे एतबार से मजहबी तालीम देने का जो हक है, जो होना भी चाहिए और जिसको अंग्रेजों के जमाने से मुसलमान अपने चन्दे से चलाते आ रहे हैं उसमें दुशवारी पैदा होगी। इसमें रजिस्ट्रेशन की ऐसी सूरत है कि बावजूद इस बात के कि हमने इलान किया, मिनिस्ट्री से इजाजत ली, चव्हाण साहब से भी मिले लेकिन हमारे मदरसे से जो फीले हुए हैं उनमें से 40 या 30 फीसदी भी अभीतक रजिस्ट्रेशन नहीं ब वा सके हैं। हजारों की तादाद में मदरसे इस मुल्क में फीले हुए हैं, हमने अखबारों में भी शायी किया कि रजिस्ट्रेशन न होने की शकल में वे कायम नहीं रह सकते हैं, उनका बजूद खतरे में पड़ जायेगा। अब आज करोड़ों मुसलमान बच्चे जो उनमें पढ़ रहे हैं उनकी मुस्तकबिल हालत पर उसका असर पड़ेगा। होना यह चाहिए था कि इस शर्त को हटया जाये और उनको आजादी दी जाये कि अपने तौर पर वे उन तालीमी इदारों को चला सकें। गरीब लोग उन मदरसों को चलाकर अपने बच्चों को पढ़ाना चाहते हैं। संक्यलर ऐजुकेशन के लिए गवर्नमेंट इन्तजाम करती है। इसको भी होना चाहिए। कोई एक कम्युनिटी अगर एक वक्फ करती है तो उसको आप वक्फ नहीं मानेंगे। अक्वल तो इसका हक होना चाहिए क्योंकि अगर आप वक्फ को मुस्तसना नहीं कर देंगे तो हमारा 60 फीसदी पैसा खत्म हो जाता है, चालीम फीसदी रह जाएगा।

सभापति महोदय : अगर धारा 11 और 13 की तहत एग्जेंप्शन मिलता है तो मिलेगा। यह तो हमने इक जनरल डेफनीशन बनाई है। लेकिन हमारे जो प्रावधान हैं जिनपर आप एक्टिन्स दे रहे हैं इसमें मैं आपकी बातों से तीन बातें समझ पाया हूँ।

मौलाना संयद अंसद मबनी : अभी मेरी बात पूरी नहीं हुई है।

मैं यह अर्ज कर रहा था कि जो रजिस्ट्रेशन का मसला है उसकी तारीख गुजर रही है।

सभापति महोदय : रजिस्ट्रेशन के लिए आप के ऊपर एक जिम्मेदारी है। आप रजिस्ट्रेशन के लिए अर्जी दे दीजिए और उसके बाद कुछ भी नहीं है।

मौलाना संयद अंसद मबनी : बिलफर्ज तारीख गुजर गई और अभी 60 फीसदी मदरसे ऐसे हैं जो अभी बाकी हैं तो उनका क्या इलाज है ?

सभापति महोदय : कमिश्नर के पास जायेंगे और कहेंगे कि मदरसे को कानून नहीं मालूम था, तारीख गुजर गई और फिर कमिश्नर अपनी मियाद बढ़ा देगा।

मौलाना संयद अंसद मबनी : स्कूल को जाना पड़ेगा।

सभापति महोदय : ट्रस्ट को जाना पड़ेगा, मदरसे को नहीं जाना पड़ेगा।

SHRI A. A. KIDWAI: What he means to say is that the Commissioner has the discretion. He can exercise it otherwise also.

MR. CHAIRMAN: Do you want extension of the date?

SHRI A. A. KIDWAI: With your permission, we will deal with it clause by clause.

MR. CHAIRMAN: I wanted to correct one wrong impression. After you have made the application under the section, if they have not complied with that, it is none of your fault....

SHRI A. A. KIDWAI: What he says is that we have not done.

MR. CHAIRMAN: Law is meant for everybody. Registration is required for a larger purpose. No exception can be made about it. Your trust may not do it, but there are many trusts which are abusing the provision of exemption—if any hardship is caused in a genuine case, you can tell us. Have you any concrete case where the Commissioner has refused?

SHRI A. A. KIDWAI: No. The difficulty is this. 70 per cent of our wakfs are situated in districts and villages. Most of them do not have any knowledge of income-tax or of the latest provisions of legislation.

MR. CHAIRMAN: Now you know the law. You can make the application.

SHRI A. A. KIDWAI: Actually, so far as Jammu & Kashmir is concerned, after meeting the Finance Minister, they have propagated throughout the country through their news media, papers, etc. They requested all the wakfs to go and register with their respective Commissioners. On our part we have done our duty. Still we feel that 60 to 70 per cent are left without registration.

MR. CHAIRMAN: In a provision like this where we think that it is necessary that the trusts must get registered if they want exemption, is it not necessary that we fix a deadline?

SHRI A. A. KIDWAI: Our community is very backward; they do not know anything of income-tax. Apart from this, in every State there are wakf boards. Every wakf is registered with the wakf board. Is it not sufficient for the Department? If they are registered with the State Wakf Boards, they should be deemed

to be registered with the Commissioner of income-tax.

MR. CHAIRMAN: Not at all. Various Committees of Parliament which want to supervise the working of the Income-tax Department ask for various figures and details. It is a question of principle. Then every trust will say that it is registered with the State Wakf Board.

SHRI BHAGWAT JHA AZAD: If this is the position that all of them are registered with State Wakf Boards, then they can send the same application here also.

MR. CHAIRMAN: In my personal capacity, I can request the Commissioner to condone the delay in these cases. But, otherwise, so far as the law is concerned, this is the rationale behind the law.

SHRI BHAGWAT JHA AZAD: I would respectfully submit that this is not within the purview of the Committee—registration or no registration.

कमेटी का इस बात से कोई सम्बन्ध नहीं है। इसके बारे में आपको फिर से फाइनेंस मिनिस्टर के पास जाना पड़ेगा। उस पर हम बहस नहीं कर सकते हैं।

SHRI JYOTIRMOY BOSU: If I got him right, *Garib Admiki pet katkar Paisa Wakf ko Detehain*. 99.9 per cent of them are outside taxable region.

गरीब आदमी पेट काट कर पैसा वक्फ को देता है।

मौलाना संयद अखतब मदनो : गरीब आदमी टैक्सबल नहीं है लेकिन इसके बावजूद भी चन्दा देता है।

श्री भागवत झा आजाद : गरीब आदमी जो पेट काट कर देता है उसको सबजैकट टू टैक्स मत करिये यह आप चाहते हैं। हम भी

यही चाहते हैं। लेकिन हम तो यही चाहते हैं कि जो आदमी सात आठ लाख रुपया ब्लैक मनी का दे देता है, उसको पकड़ा जाए।

मौलाना संयद अखतब मदनो : मैंने शुरू में कहा है कि काले धन के सिलसिले में हमारी एक परसेंट भी दिसचस्पी नहीं है। हमारा डर यही है कि एक एक पैसा चन्दा करके जो काम भलाई के हम कर रहे हैं, वे भी कहीं बन्द न हो जाएं।

सभापति इहोबय : कमेटी गौर करेगी कि मस्जिद, मंदिर या चर्च में जो कलैकशंस होते हैं उन पर किस तरह न चोट न पहुँचे इस तरह के कलैकशंस को हिट करने के लिए यह कानून बने। लेकिन साथ ही काला धन ट्रस्ट में न लगे यह भी तो देखना होगा

श्रीमती शोला कौल : इस तरह के जो वक्फ हैं उनको कोई धक्का नहीं लगेगा। कमेटी भी यही चाहती है कि इस तरह के जो वक्फ हैं, जो गरीबों की भलाई के कामों में लगे हुए हैं उनको सलामत रखा जाए।

मौलाना संयद अखतब मदनो : मीमोरेण्डम में हमने उन चीजों की निशानदेही की है। लेकिन जब कानून बन जाती है तो उस पर अमूल करने वाले जो होते हैं उनके सामने जो कानून का मंशा होता है वह नहीं होता है बल्कि कानून में जो कुछ होता है वह होता है और उस पर ही उनकी कलम चलती है। इस वास्ते बहुत एहतियात बरतनी होगी। एक दफा आपने इस में रखी है जिस में बैंकवर्ड क्लासिस को आपने रखा है और कहा है कि फलां फलां इससे मुस्तसना रहेंगे। आपकी बड़ी मेहरबानी होगी अगर हमें भी उस में आप शामिल कर लें।

श्री ज्योतिर्मय बसु : फाइनेंशल मिस-मैनेजमेंट जो है उसको ठीक करने के लिए आप क्या कर रहे हैं।

मौलाना संयद अंसद मदनी : हमारे रास्ते में सब से बड़ी ख़ावट यह है कि हमारे जो श्रीवांग हैं वे बहुत दौलतमन्द नहीं हैं। मस्जिदों के साथ जो दुकानें बगरह हैं उन से भी हमें जो आमदनी होती है वह बहुत ही कम हांती है। उसके बराबर का दुकान जो होता है, प्राईवेट प्रापर्टी जो होता है, उसका किराया अगर आठ सौ या हजार होता है माहवार तो मस्जिद के साथ लगी हुई दुकान डेढ़ दो सौ रुपये तक भी होता है। दिल्ली में ही चांदनी चौक में फतहपुरी में जो दुकानें किराए पर उठी हुई हैं उनको आप देखें। बावा ग्लास की दुकान का किराया जहां पांच चार या तीन हजार रुपया माहवार होगा वहां हमारी दुकान का 38 रुपये, 40 रुपये या सौ सवा सौ रुपया ही किराया है। इसी तरह से सहारनपुर में जहां प्राईवेट दुकान का किराया दो सौ रुपया है वहां मस्जिद के साथ लगी हुई दुकान का पौने दो रुपया, दो रुपया और सवा दो रुपया माहवार ही किराया है। अगर वहीं किवाड़ टूट जाता है तो किराया में से नया किवाड़ तक भी चढ़ाया नहीं जा सकता है। ऐसी हालत में हमारी कुछ मदद होनी चाहिये। हमारी कम्युनिटी इस लायक नहीं है कि खुद सब कुछ कर सके। हमें गवर्नमेंट से भी पूरी मदद नहीं मिलती है। गवर्नमेंट हमारी मदद करे, श्रीकाफ के सिलसिले में कुछ पावर्स हों, नाजायज़ मुसीबतें जो हैं वे दूर हों। बक्फ काउंसिल में भी बार बार इस पर गौर होता है। बक्फ बोर्ड बने हुए हैं। बक्फ एक्ट के सिलसिले में कुछ एमेंडमेंट्स हमने रखी हैं। कमेटी डेढ़ दो साल से दौरा कर रही है; लेकिन रिपोर्ट नहीं आती है। सारी एमेंडमेंट्स वैसे ही पड़ी हुई है।

सभापति महीदय : जिन ट्रस्ट्स में फाइनेंशल मिसमैनेजमेंट नहीं है, काला धन नहीं लगा है, वहां पर अगर किसी तरह का अन्याय हो रहा है, ज्यादाती हो रही है तो उस पर कमेटी बहुत सावधानी से बिचार करेगी।

मौलाना संयद अंसद मदनी : काले धन में हमारी कोई दिलचस्पी नहीं है। उसको आप ले लें। लेकिन जो ई मानदारी से मकसद को सामने रख कर काम कर रहे हैं, उनका गला नहीं कटना चाहिये।

सभापति महीदय : इस मामले में आप तसल्ली रख सकते हैं, ऐसा कुछ नहीं होगा।

SHRI A. A. KIDWAI: In Section 13 clause (b) and (c) in the proposed Bill there are words "created or established after the commencement of this Act" are sought to be deleted. We have objection to that because most of the trusts were created long back, as long as 200 or 300 years ago. Previously, in the Act of 1961 they were respected.

MR. CHAIRMAN: We will consider it. We have heard extensively on that point.

SHRI A. A. KIDWAI: In the proposed Bill there is a new clause coming up—clause BB to Section 13. What we would like to impress upon the hon. Members of this committee is that there are many Trusts—of course, most of the Wakf trusts are endowed with property—who have got some business. Their main object is to promote charity, to do welfare and to do relief of the poor which are given in Sec. 215 of the present Act. For example, you must have heard Arya Vaidyasala in the South. This is a famous institution of Ayurvedic medicines. They are running hospitals, they are running a college. If you take away the exemption from this trust, it will not only die but the institutions working under that like the hospitals, colleges and others will also meet the same fate. Moreover, they are actually working for the promotion of that system of medicine which our national Government also wants to promote. So what we want is that if the object is for charitable purpose and if the business is for the purpose of this charitable object, the exemption should not be withdrawn.

MR. CHAIRMAN: If the business is in actually carrying out the primary purpose of the Trust . . .

SHRI A. A. KIDWAI: For example, there is an orphanage. There is some cane furniture making and the boys are taught cane furniture making. That is also the primary purpose.

MR. CHAIRMAN: That is not a primary purpose.

SHRI A. A. KIDWAI: The primary purpose is the orphanage.

MR. CHAIRMAN: We will apply our mind to it very carefully. We have been thinking and if it commends itself to the committee, the committee may think of recommending that the word 'primary' be deleted. Instead of that we may put main or ancillary purpose by the business which serve or subserve the cause of charity.

SHRI A. A. KIDWAI: We don't dispute about that.

MR. CHAIRMAN: I may tell you, the present drafting is on the U.K. lines. But never mind, the conditions in U.K. are different.

SHRI A. A. KIDWAI: Apart from Chambers of Commerce there are cases also in respect of which the matters have gone to the High Courts. They are hit. Charity institutions will be very adversely affected.

MR. CHAIRMAN: For anonymous donations we want to devise some means by which donations are not hit.

SHRI A. A. KIDWAI: Single man's donation may be 5,000 or 20,000. But if collective donation is there, no ceiling can be put on that. It depends upon the assembly and the nature of the assembly. There are some poor men who have contributed. If you charge 65 per cent you not only hit the purpose, but you are also insulting the sentiments of that poor man who has contributed to that, which is a noble cause.

MR. CHAIRMAN: Neither framers of the law nor this Committee have that intention.

SHRI A. A. KIDWAI: Sub-section 3 of clause B is about substantial contribution to the trust institution and it says about total contribution exceeding Rs. 5,000. The language is very ambiguous. It has not said how they set 5,000.

MR. CHAIRMAN: We will take care of it. We will rationalise it. It has to be related to the corpus and related over the years. We will see that.

SHRI A. A. KIDWAI: There is a distinction to be made. The trustees are the custodians of the trust whereas the wakf is an irrevocable thing. Once the wakf is created it cannot be altered by the court of law. Under the Wakf Act, under the provisions of the Shariat, the personal laws of the Muslims, it cannot be done for a particular purpose. It is given for all time. It is not for particular time only.

MR. CHAIRMAN: It is given for perpetuity.

SHRI A. A. KIDWAI: If you say Registered Wakf under the 1954 Act under State legislation we will welcome it.

सभापति महोदय : यह बहुत बड़ा मसला है । हमारी लिमिट्स के बिल्कुल बाहर है । It is palpably outside our purview.

SHRI A. A. KIDWAI: There have been some opinions on the point whether trusts are abusing the trust exemptions. So, on that point I said this. The Finance Ministry is most welcome to appoint a Commission to examine all those trusts. Government appoints several commissions on all small matters.

MR. CHAIRMAN: You can represent to the Minister. It is his responsibility. So far as the Committee is concerned, it is outside our purview.

मौलाना संग्रह अखब मदनो : बैकवर्ड क्लासिस की ग्राम मदद करते हैं और करनी चाहिये । हम लोग भी एक माइनोरिटी हैं । इसी में हम को शामिल कर दीजिये ।

SHRI DHARNIDHAR BASUMATARI: There are some committees where *Mussalmans* are included. This is a matter of their constitution etc.

सभापति महोदय : होना चाहिये या नहीं यह दूसरा मसला है। हमारे अधिकार में यह नहीं है कि हम उसके मुताबिक सिफारिश भी कर सकें। इस बिल से उसका कोई सम्बन्ध नहीं है।

SHRI A. A. KIDWAI: While giving your recommendation you can also say.

MR. CHAIRMAN: They will not be bound by that type of recommendation, you see.

मीनाना संघद अद सबनी : दफा इस में मौजूद है। उसी में हम बढ़वाना चाहते हैं मुसलमानों को। उनके श्रौकाफ को बढ़ा दीजिये। इतना करने से तमाम तफसीलात की जरूरत नहीं होगी। वना तमाम तफसीलात को आपको देखना पड़ेगा।

MR. CHAIRMAN: Anything else?

SHRI M. SWALEHUDDIN: I am making a submission on Clause 6-A on the question of investment of the trust funds. Under this clause all the assets will have to be liquidated, if they are not invested in companies controlled by the Government. There should be no restriction on investments in general companies. There could be only a case of restriction when in the business of the settlers his heirs or nominees are interested in the business. That way, we will be forced to liquidate our shares and debentures and that may involve capital gains. We are not able to invest the whole of it in trust funds or make donations to other trusts and to that extent we will be subjected to capital gains. The investment is under general business and it is unconnected with the settlers.

MR. CHAIRMAN: This restriction is about investment in company which is

carrying on a business which is not on the control by the Government. If it is not carrying on any business you can make investment. That is, if it is investing company and not running business.

SHRI M. SWALEHUDDIN: Chance of misuse is there if the settlers are interested. If the settlers are not interested, what is the harm? Why this restriction should be placed?

MR. CHAIRMAN: Settlers may not be interested. Various ingenious devices have been adopted. Even the donations are sought sometimes to be masqueraded as black money. They are invested in companies by which the provisions of the law are sought to be circumvented. We only want to check all that. The short question is this. Do your trusts have large investments in business?

SHRI M. SWALEHUDDIN: We have invested. We hold shares of certain companies and debentures. Another question will arise i.e., a question of capital gains and the trust may be asked to pay for nothing.

MR. CHAIRMAN: If the trusts are exempt, the capital gains are also exempt. If you sell the property and acquire another property, it will be exempt.

SHRI M. SWALEHUDDIN: If a part of it is given as donation, then it will not be exempt. You will unnecessarily be harnessed with the payment of capital gains tax.

MR. CHAIRMAN: You will be compelled to liquidate smaller investments and you will be forced to pay capital gains unless you invest in another place.

We will consider it. The Committee is extremely anxious about the type of trust you are representing.

SHRI M. SWALEHUDDIN: The language used in the Bill is very wide.

MR. CHAIRMAN: It is bound to be wide. This is to give effect to the

recommendations of the Wanchoo Committee. It is to deal with bigger problems. We will see that the interests of the type of trusts like yours are protected.

SHRI M. SWALEHUDDIN: (D) may be suitably amended.

MR. CHAIRMAN: This is the view of the Committee that the bonafide trusts must not be put to any hardships and for that purpose to the extent it is possible to modify, we would like to modify.

We have been deliberating on (e) also very seriously. If we were to consider that, upto Rs. 5,000 should not be left out completely.

SHRI M. SWALEHUDDIN: We would request the Committee humbly to make a specific provision in Section 6(d) so that bonus, tax collections, etc., should not be within its purview.

MR. CHAIRMAN: We will certainly look into it.

Thank you.

(The witness then withdraw)

IV. All India Women's Conference, New Delhi.

Spokesmen:

1. Shrimati K. Lakshmi Raghuramajiah—President.
2. Shrimati Kamla Mankekar
3. Shrimati Sunanda Bhandare

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we take your evidence, I have to point out to you Direction 58 of the Directions by the Speaker. It reads "the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specially desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

SMT. K. LAKSHMI RAGURAM-AIAH: There is nothing more to add except what we have given in writing.

MR. CHAIRMAN: Will you like to elaborate the relevant provisions of the Bill which you think are likely to make inroads, what you may think—certain guarantees given in the Constitution?

SHRIMATI SUNANDA BHANDARE: In regard to clubbing of incomes of spouses I shall read out our views:

On principle there should never be clubbing of incomes of spouses where the incomes are derived out of self exertion. A provision of direct taxation must therefore make a clear distinction between:

- (a) an income earned by one spouse from the other spouse by self exertion; and
- (b) an income which is earned by a spouse as a devise to reduce the tax liability of the other spouse without any self exertion.

Any provision which clubs incomes falling under clause (a) above is clearly detrimental to a woman's individuality, inconsistent with the constitutional rights of a woman particularly her right to a free and equal status and destructive of the progress, achievements and personality of women. Such a provision will also clearly be in violation of her fundamental rights under the constitution particularly those guaranteed under Arti-

cles 19(1)(g) and 14 of the constitution. The amendment will destroy the incentive among qualified and trained women to work which our under-developed economy cannot afford.

It is therefore submitted that sub clause (ii) of clause 14 of the bill is objectionable in its present absolute form when it hits equally honest and dishonest tax payers. It is further submitted that by making the following amendment real object of the legislature will be fulfilled without causing any hardship to the spouses honestly working together.

“At the end of sub-clause (ii) of clause 14 of the taxation clause (Amendment Bill) 1973 add the following:

‘If in the opinion of the income-tax officer, any such income by way of salary, commission, fees or any other remuneration is excessive or unreasonable having regard to the legitimate needs of the concern.’

The provision after amendment bill read as follows:—

(i) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly.

(ii) to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest;

if in the opinion of the income tax officer any such income by way of salary, commission, fees or any other remuneration is excessive or unreasonable having regard to the legitimate needs of the concern’.”

This is a further amendment which we suggest and that it will not affect the honest tax payer and women who are actually working.

MR. CHAIRMAN: We are considerably scared on the question of vires

you have raised in your memorandum. Are you serious that it would . . .

SHRIMATI SUNANDA BHAN-DARE: I would suggest that it would.

MR. CHAIRMAN: So far as Art. 14 is concerned, it is equality before law. If a wife has substantial interest, then the husband's salary etc. would be the subject matter for clubbing and if husband has substantial interest, then the wife's salary would be the subject matter for clubbing; so what is the discrimination?

SHRIMATI SUNANDA BHAN-DARE: The discrimination is that we can have no profession. It is not that we grudge being clubbed with the husband . . .

MR. CHAIRMAN: Sometimes the husband is clubbed with the wife.

SHRIMATI SUNANDA BHAN-DARE: That is also not fair to the husband. It will discriminate married people as against unmarried people. Is it a reasonable classification to consider the married class as a separate class from the unmarried class?

MR. CHAIRMAN: If the Bill is made into law, it is open for a lady to remain unmarried or a man to remain unmarried.

SHRIMATI SUNANDA BHAN-DARE: Can it be said that we do not accept the institution of marriage?

MR. CHAIRMAN: We recognise the institution of marriage, but our difficulty is this. In fact, this relates to the second part which we will take up after we have considered the question of vires.

What is the evil that is sought to be checked here? We do not wish to unnecessarily create a discrimination between men and women. But if you are serious about the 'vires', please tell us how the practice of a profession is impeded by this. You are continue to have a profession etc. only the incomes are clubbed.

SHRIMATI SUNANDA BHAN-DARE: Is it not our right to have an individual income?

MR. CHAIRMAN: Cannot Parliament enact tomorrow that the incomes of the husband and wife will be clubbed? I hope it is not being done, but can it not be done? Your profession is not sought to be stultified; all that is said is that the incomes of the husband and wife are clubbed.

Now, the question that arises whether the wife is used as a device to divide income—whether the husband uses his wife as a unit to divide his income which ought to have been his income. He makes out an agreement whereby, say, he pays a commission or salary to his wife which, in fact, is not commensurate with the requirements of the business or market conditions as such. In such circumstances, how is the law to ensure that the interests of Government revenues are not jeopardised?

SHRIMATI SUNANDA BHAN-DARE: We have also not been unreasonable; we have only said that the income earned out of self-exertion should not be clubbed.

MR. CHAIRMAN: So you accept the principle but you see some difficulties?

SHRIMATI SUNANDA BHAN-DARE: We do not want to help the evasion of tax but we want that the honest tax-payer should not suffer. A woman who is really working, is qualified, trained and experienced or, even if she is not qualified or trained, if she has been doing the work for a long time and is capable of doing the work, should not be barred from working in her husband's firm if she wants to do so. Why should she be prevented from doing it?

MR. CHAIRMAN: That is not my contention at all. We just want to apprise ourselves of your view.

SHRI H. M. PATEL: They have put forth a concrete suggestion which really answers all the questions that

you seem to have been putting. They have said that the Income Tax Officer will be the judge as to whether what is being paid is reasonable or not, having regard to the qualifications etc. They are therefore asking for a very limited alteration in your proposed Bill and I think there is a great deal to be said on the point. I am not a lawyer, but it does seem to me that you are saying, in effect, that a woman has no right to be independent once she is married. That is what they have been trying to say—though not properly expressed perhaps. If this amendment is agreed to, then if a woman is qualified to earn a remuneration for a job whether as a Doctor or Lawyer or in any other category, she can be economically independent. I would suggest, Mr. Chairman, that we should give thought to the amendment that is proposed—whether that amendment can answer the objectives the Government has in mind in putting forward this Bill.

SHRI BHAGWAT JHA AZAD: They have put forward a concrete amendment, no doubt, but are they so confident of relying on the Income Tax Officers to be fair in dealing with them? I doubt it very much. We support your point, but are you sure that the Income Tax Officers will be fair?

SHRIMATI K. LAKSHMI RAGHURAMAIAH: We rely on the machinery of the Government.

MR. CHAIRMAN: There is already Section 40-A which has a provision on the lines which you are suggesting. But the difficulty arises because we have not been able to cope up. If you have gone through the section, it reads as follows. "Where the assessee incurs any expenditure . . . relatives etc."

SHRIMATI SUNANDA BHAN-DARE: If the Government machinery is not doing a proper job, are we to be blamed for that?

MR. CHAIRMAN: But your colleague has said that you rely on the Government machinery.

SHRIMATI SUNANDA BHAN-DARE: *Prima facie* we do.

MR. CHAIRMAN: Now, your case is that there is a provision as to the one you are suggesting but it appears....

SHRIMATI SUNANDA BHAN-DARE: In regard to Section 48, I do not know how it is being effected but this is a suggestion *prima facie* assuming that the Government officers will do their job well and I do not agree with the view that officers work arbitrarily and we do not want them to be partial to anyone.

MR. CHAIRMAN: That provision is already there which I read out to you.

SHRIMATI SHEILA KAUL: Now, suppose in a family, husband is earning Rs. 5000 to Rs. 6000 per month and wife is also earning about Rs. 4000 to Rs. 5000 per month, then both their incomes should not be clubbed together for the purpose of tax because they are working in their own capacity.

MR. CHAIRMAN: Their incomes will not be clubbed together for this purpose.

SHRI BHAGWAT JHA AZAD: There are persons in some firms who are giving to their wives a monthly salary amounting to a few thousand rupees which they do not deserve. That is why this provision is there. What would you like to say on this? Whether they should be punished or they should be allowed to continue this practice?

SHRIMATI SUNANDA BHAN-DARE: I do not suggest any ceiling. If one is competent to do a particular job, why she should not be given the salary which she deserves.

SHRI BHAGWAT JHA AZAD: But if she is not competent.....

SHRIMATI SUNANDA BHANDARE: Who is to decide on the question of competence?

MR. CHAIRMAN: Competence can be decided by the share-holders and

Income-tax Officers. But the real problem arises in a different manner. When you are talking about the *bona-fide* cases we have nothing to say. For example, a business man who is running various types of businesses appoints an interior decorator. Now the only work of the interior decorator is to visit the place once in a month or so and he is paid Rs. 1,000 per month. Now any accepted interior decorator once visits in a month—of course depending on the prestige of the interior decorator—one would say one thousand rupees would be enough for his supervision work. And he may not be visiting, but evidence is given. The difficulty lies in the fact that there is an evidence because there is a close nexus between the husband and wife.

SHRIMATI SUNDA BHAN-DARE: Then in the cases of some dishonest persons, honest persons are also punished.

SHRI VASANT SATHE: I would like to refer to the Memorandum submitted by the witnesses on the question of clubbing of incomes of spouses where the incomes are derived out of self-exertion. It is stated as:

“(a) an income earned by one spouse from the other spouse by self-exertion and....”.

Now, you are leaving it to the Income-tax Authorities to decide whether it is excessive or reasonable or not because self-exertion becomes too vague. For example, in a husband's concern, the wife is appointed as an adviser or PRO and in such cases the wife is paid a fabulous salary. But the general designation is given as “adviser”. Would you say that they are otherwise qualified to do that kind of job?

SHRIMATI SUNANDA BHAN-DARE: There may be some cases where qualifications may not be required.

SHRI VASANT SATHE: You might say ‘qualification and experience’.

SHRIMATI SUNANDA BHAN-DARE: For example, ladies working as clerks in their husbands' firms generally get a salary of Rs. 300 or so each. But if a clerk is being paid Rs. 1500 p.m. then I would say that that is unreasonable and excessive and it would not commensurate with the work she would be doing. But we have also an example that one is brought up in a family of a business man, she may not be trained or qualified in that sense, but she has been doing that work for a long time. In that case why should we disqualify her?

SHRI VASANT SATHE: No, no. Experience will also come in.

MR. CHAIRMAN: Is there any other point you would like to make?

SHRIMATI KAMLA MANKEKAR: May I read out a letter which I received from our Goa Branch. It says: "In this connection, we have to bring to your notice...total income of the husband and the wife as....." This has caused a great hardship to the married women. It is requested that the provision 86(5) of the IT Act 1961 may be suitably amended to remove this hardship.

MR. CHAIRMAN: That family is treated there as an association of persons. The real difficulty arises because of the concept of the Civil Law?

SHRIMATI KAMLA MANKEKAR. Since Goa is a part of India, why another law should be applicable over there?

MR. CHAIRMAN: The Civil Law is there.

SHRIMATI KAMLA MANKEKAR: But they are no longer under Portuguese rule?

SHRI VASANT SATHE: I think there is a point and we must bring them at par with our Indian laws?

SHRIMATI SHEILA KAUL: It is an important matter and should be considered?

MR. CHAIRMAN: We will consider it.

SHRI VASANT SATHE: In the meantime, if we make a recommendation to the Management of the Civil Law in Goa, I think, that would solve the problem?

SHRIMATI KAMLA MANKEKAR: This law is derived from Portuguese practice and should be changed and made the same as is being done here?

MR. CHAIRMAN: You kindly send us a supplementary memorandum on this point. I am not sure whether we can go into it or not?

SHRIMATI KAMLA MANKEKAR: We feel that clubbing of income is discriminatory to the wife?

MR. CHAIRMAN: Generally, clubbing is not contemplated.

SHRIMATI KAMLA MANKEKAR: For instance, in the case of a daughter—married or unmarried—her income is not clubbed? Anybody in the family can become anything with qualification or without qualification in the same firm and earns profit as a result of income? What my colleague has just now said, I would like to elaborate it and say that this discrimination is against the married woman. If she/he is not married, be she daughter or brother or brother's son, he may not have even the qualification to hold that position, but earns that income, yet the law does not say anything against his position and his privilege of getting the income. Why in the case of a wife that this question has been brought up?

SHRI VASANT SATHE: Being a wife should not be considered as a handicap?

MR. CHAIRMAN: We do appreciate that. One of the objectives of this law is to avoid evasion of tax. This is used as a media of dividing the income. We will see as to how far this hardship is to be minimized.

SHRIMATI SUNANDA BHAN-DARE: Do you mean to say that you have less faith in women?

MR. CHAIRMAN: In fact, husbands seem to have more faith in them. The predicament is both for a married man as well as a married woman.

SHRIMATI SUNANDA BHAN-DARE: It would encourage permissive society?

MR. CHAIRMAN: Then the people would not care to marry.

SHRIMATI SUNANDA BHAN-DARE: They are recognised all over the world?

MR. CHAIRMAN: What about in U.K.?

SHRIMATI SUNANDA BHAN-DARE: The ratio is 75 per cent and 19 per cent.

MR. CHAIRMAN: Then you are on the question of quantum and not on principle?

SHRIMATI KAMLA MANKEKAR: This clubbing is not compulsory. If you leave this option to us, that is fine?

MR. CHAIRMAN: We record your very serious protest against it. The Committee is not responsible for it; Mr. K. R. Ganesh is responsible for it. We will consider it. Thank you.

(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973.

Monday, the 5th November, 1973 from 10.00 to 12.15 hours and again from 15.30 to 17.50 hours.

PRESENT

Shri N.K.P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri S.M. Banerjee
7. Shri Dharnidhar Basumatari
8. Shri Tridib Chaudhuri
9. Shri K.R. Ganesh
10. Shri Mani Ram Godara
11. Shri D.P. Jadeja
12. Shri Maharaj Singh
13. Shri P.G. Mavalankar
14. Shri Amrit Nahata
15. Shri H.M. Patel
16. Shri Bhola Raut
18. Shri Era Sezhiyan
18. Shri K.K. Shetty
19. Shri Satyendra Narayan Sinha
20. Shri C.M. Stephen
21. Shri R.V. Swaminathan

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—*Joint Secretary and Legislative Counsel.*
2. Shri S. Ramaiah—*Deputy Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)

1. Shri K. E. Johnson—*Member, Central Board of Direct Taxes.*
2. Shri S. Narayan—*Joint Secretary.*
3. Shri R. R. Khosla—*Director.*
4. Shri S. I. Tripathi—*Deputy Secretary.*
5. Shri O. P. Bhardwaj—*Deputy Secretary.*
6. Shri S. C. Grover—*Under Secretary.*

SECRETARIAT

Shri H.G. Pranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Bar Council of Delhi, New Delhi*

Spokesmen:

1. Shri Balram Sangal
2. Shri Vipam Chander Bahri

II. *All India Tax Advocates Association, New Delhi.*

Spokesmen:

1. Shri G. C. Sharma—*Vice-President.*
2. Shri O. P. Dua—*General Secretary.*
3. Shri K. K. Wadhwa—*Secretary.*
4. Shri Kartar Singh Suri—*Member*
5. Shri O. P. Sapra—*Member*
6. Shri V. Vasudevan
7. Shri Randhir Chawla

III. *Central Wakf Council, New Delhi*

Spokesmen:

1. Shri Moinul Haque Choudhury, M.P.
2. Shri Ch. Tayyab Hussain, M.P.
3. Dr. V. N. Saiyed Mohd., M.P.
4. Shri Tajuddin Ahmed—*Secretary.*

I. *Bar Council of Delhi, New Delhi.*

Spokesmen:

1. Shri Balram Sangal
2. Shri Vipam Chander Bahri

(The witness were called in and they took to their seats.)

MR. CHAIRMAN: I welcome you and your colleague. I have to read out to you Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in the Lok Sabha which reads:

“Where witnesses appear before a Committee to give evidence the Chairman shall make it clear to the

witnesses that their evidence shall be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.”

SHRI BALRAM SANGAL: I have already signed this one.

MR. CHAIRMAN: We have your Memorandum which has been circulated to the hon. Members. If you want to say something in particular you may do so. Then we can proceed clause-by-clause.

SHRI BALRAM SANGAL: I am thankful to you for having called us to tender evidence before your august Committee. I am speaking on behalf of the Bar Council and in that capacity I submit before this House that this Council invited all the associations of Delhi including that of the High Court and the Civil Courts and I wish to submit that the views expressed by us now are the views of nearly 5,000 advocates of the City of Delhi. We have submitted a Memorandum to this august House and we will make submissions about it. The objectives with which this Bill has been introduced are five. They are: To unearth black money and prevent its proliferation; Check the avoidance of taxes through various legal devices which are adopted by assesseees from time to time; avoid and curb tax evasion by assesseees; to rationalise the exemptions and deductions available under the relevant enactments to the assesseees and to streamline the administrative machinery. It is a very laudable one and nobody can dispute this, that we should have such objective.

But in our view while amending the tax laws or introducing amendments in the tax laws we have to see to what extent the objective can be achieved through all the clauses which are purported to be introduced in the IT Act. As directed by the Bar Council, I will deal with Clause 39 of the Amendment Bill first. It is on page 7 of our Memorandum. While I deal with it first, I would like to say the reason. It is directly related to the advocates and the persons in profession. In regard to this Clause what is purported to be done is this. Section (IA) is to be introduced after Section 139(1) of the Income-tax Act. This is the position under the existing

section of the Act. The assessee has a taxable income. Suppose he fails to file his return within specified period. Now, what this new insertion of clause purports to do is this. It is to be filed with income-tax authorities in case the income of the assessee is Rs. 50,000 or turn over is Rs. 5 lakhs. In that event the returns must be accompanied with report of the auditor and the auditor would give his report on specific points which have been raised by the Wanchoo Committee in their recommendations to the House. Now, with regard to as to how it would be desirable for us to introduce this section and to make this amendment in the Bill I may read out to you the recommendations of the Wanchoo Committee which appear on page 47 of their report. They said:

We therefore recommend that a provision be introduced in the law making presentation of audited accounts mandatory in all cases of business or profession where the sales, turn-over receipt exceed Rs. 5 lakhs or the profit before tax exceed Rs. 50,000. We further recommend that a form of audit report be prescribed taking due note of the manner in which documents records and books are maintained in the non-corporate sector. Auditor's report should include among other things pertinent information like the following.

Scope of examination, whether full check, test-check or mere reconciliation.

MR. CHAIRMAN: We have it here; items 1 to 7 are stated therein.

SHRI BALRAM SANGAL: Let us first see whether the proposed amendment in the Bill will be able to achieve the objective because the objective is to unearth black money. As I pointed out at the very beginning the objective of the Bill is to avoid tax evasion and all that. There are certain points which I wish to place before you which the Bar Council feel strongly about. There are certain difficulties which are likely to arise. We have nothing against chartered accountants or anybody else. What we say are the sort

of difficulties likely to be experienced by the introduction of this kind of section. Auditors according to us are capable of examining only such books of accounts which are placed by the assessee whether of the corporate or of the non-corporate sector, etc. They have no authority, power, or control over and above that. Only he looks into the books which he is asked to see; he examines those books and accounts produced by the assessee before the auditor. He can't say whether a particular person or an assessee has concealed an income or not.

So, the first aspect is that the auditors would not be in a position to help the Administration in checking the evasion of tax. Secondly, the evasion of tax or the avoidance of tax is at no point of time recorded by an assessee in his books of accounts. He may even use his books of accounts for avoidance of tax but, keeping in view the limited sphere of the audit, the auditors would not be competent to make any enquiries from his clients

MR. CHAIRMAN: Your point is that, first of all, the basis on which this clause is put is not to augment revenue. You say that unless the books are available to the auditors, they cannot comment. But, in that case, even if another class of person like the Tax Advocates were to do this job, it would not alter this fact; the same background will be there. So, if you have any suggestions for overcoming this difficulty you may come out with them. As per the Act, an Auditor is the competent person to give an audited statement of accounts. Of course, if something is not available and as a result the Auditor has to leave something undone, I don't think anybody else would be able to do it. Therefore you cannot ask somebody else to do a job which the Auditor has not been able to do. So, what other steps can you suggest to overcome this difficulty?

SHRI BALRAM SANGAL: I can definitely give my suggestions on behalf of the Council as to what can be done and what positive steps the Administration can take in this direction.

I was submitting that it would assist the Income Tax Officer in saving time if the day to day checking of the books of the assessee is done by the Chartered Accountants or the Auditors who audit the books of accounts because it is possible that the assessee who produces his books of accounts might not have balanced them or totalled them properly. I have already submitted that a person who produces his books of accounts before an Income Tax Officer would have produced such books of accounts also before the Auditors. According to my experience, I can say that there would be a very negligible number of assessee who would be producing books of accounts which are not properly balanced or vouched or properly worked out.

Actually, I would say that a larger number of the assessee are such as would produce only such books as they desire. They never run the risk of producing books which are of incomplete nature. In such an event, if the Income Tax Officer has to check up, I feel that this shifting of responsibility or duty from the shoulders of the Income Tax Officer to the shoulders of the Chartered Accountants would not be anything of a saviour to the Department; because, in any event, the Income Tax authorities would take it for granted that the report before them is an audited one and the burden which has been placed on the authorities for making assessment would be shifted to the shoulders of the Auditors.

So far as the question of cross verification is concerned, I have seen that most of the Income Tax Officers are not taking any pains in making cross-checks or cross verifications.

MR. CHAIRMAN: How do you say that?

SHRI BALRAM SANGAL: That is what I feel from my experience of 22 years.

MR. CHAIRMAN: The Income Tax Officers do not make cross-references?

SHRI BALRAM SANGAL: Most of them do not; it is done in a limited number of cases. My submission is that the corporate sector is already under audit—those who are having 50,000 and above—and in their case it has been seen that such things are not done, if done, not effectively. If the machinery is geared up to the extent that all the steps are taken by the Administrative machinery to see that this checking etc. is done, it may be different, but you can easily find out to what extent I am correct.

SHRI AMRIT NAHATA: The Chairman has just now pointed out that this provision has nothing to do with the basic objectives of the Bill, viz. to unearth black-money and prevent the proliferation of black-money. It seems to me that this provision is only a procedural matter because it is hoped that when the books are placed before the Income Tax authorities that books are already duly audited and certified by the Auditors. The Income Tax authorities cannot be called upon to go into the accountancy part of it. As far as this is concerned, your genuine apprehension seems to be that this would mean loss of custom to a large number of Tax Advocates. If this is your apprehension, we would seek a clarification from you.

Firstly, as it is the Corporate bodies are already getting their accounts more or less audited by competent Auditors. A small section of the non-Corporate assesseees who have a turnover of more than Rs. 5 lakhs are also required to get their books duly audited, as proposed now. But still there would be a large number of assesseees left out of this provision who may hire the services of Tax Advocates.

Secondly, do you feel that mere auditing of books by Chartered Accountants would exclude the necessity of hiring the services of Tax Advocates when a case comes up before the Income Tax Authorities? Tax Advocates would still be required for pleading cases before the Income-tax authorities; and you need not therefore apprehend that you will lose your custom.

SHRI BALRAM SANGAL: My apprehension is not that the Tax Advocates would suffer or lose their custom. But what I feel is that when a clause is to be introduced in a Bill we will have to see to the real utility of its being kept in the Act. The question is whether the objective of saying the time of the Income Tax Officers and making them available for some other useful services can be achieved even by the introduction of this clause in the Bill. My apprehension that the Tax Advocates are likely to be displaced is not the only consideration. My submission is that unless some other steps are taken by the Administration, the mere introduction of the clause at this stage is not desirable because of the practical difficulties we have in this country.

MR. CHAIRMAN: This step has been taken for consideration on the basis of the Wanchoo Committee's Report. Even the Working Group of Central Tax have recommended that cases of incomes above Rs. 50,000 should be brought under 100 per cent check and there should be compulsory auditing by Chartered Accountants. Then the PAC have also made a recommendation to his effect, that where the income is more than Rs. 50,000|-, the accounts should be compulsorily audited. Do you agree to that in principle? By whom—that is a different point. Or do you not accept the very basis of this?

SHRI BALRAM SANGAL: This clause contains two things, Rs. 50,000 income or five lakhs turnover. Even if the turnover is five lakhs, the income may not be more than ten

thousand or fifteen thousand in some cases. Then putting the burden on the assessee to employ the auditor would be not fair. In our opinion, it is not going to achieve any objective.

MR. CHAIRMAN: All right, do you agree if the limit is raised to ten lakhs turnover?

SHRI BALRAM SANGAL: If that is the position, there should be no linking of audit with the turnover of a person. It should be entirely with the income and in no case it should be linked with the turnover. The Income Tax Department deals with the income and not the turnover. There are cases like cement, sugar, steel, bullion, where the percentage of profit is about one per cent. But these are so fast selling items that the turnover may be ten to twenty lakhs conveniently. The profit would not be more than 30/40 thousand of rupees.

MR. CHAIRMAN: Do you agree to the clause of Rs. fifty thousand without corresponding linkage to the turnover?

SHRI BALRAM SANGAL: Fifty thousand income is on the lower side. There are partnership firms. If a firm has two-three partners and the income is Rs. fifty thousand, to have an auditor for them would be a burden. There are many partnership firms, which have as many as six partners.

SHRI AMRIT NAHATA: For the time being, let us forget the profit and loss part of it. A firm with a turnover of fifty lakhs may suffer certain losses, but the size and bulk of the books will certainly depend on the turnover and not on profit and loss. If the turnover is greater, only then the books will be bulkier, and would call for a better accounting and that is why perhaps this provision seeks to have them audited by competent auditors, if a certain minimum turnover is there.

SHRI BALRAM SANGAL: If the turnover is more, the bulk of the books has to be heavier, but we have

to see whether the person can bear the burden of the auditor or not.

MR. CHAIRMAN: Even if the turnover is ten lakhs, do you mean to say that he would not have that much profit?

SHRI BALRAM SANGAL: It may be possible in some cases the profit may be good, it may be meagre in other cases.

SHRI AMRIT NAHATA: It is a part of the game.

MR. CHAIRMAN: If the income is taken to one lakh and the turnover taken to ten lakhs or twenty lakhs, would that satisfy you?

This has been going on for a long time. The Tax Enquiry Committee, the Income Tax Investigation Commission Wanchoo Committee, PAC—all have gone into this aspect. This question has been gone through in a very copious way. Even the working group of the A.R.C. have given reasons why they want this limit of fifty thousand for compulsory audit. You said, 'Let us not relate income to the turnover! That is a matter of opinion. I wanted to know, whether you agree to this or not in principle.'

SHRI BALRAM SANGAL: In the Wanchoo Committee report, it has been said that it would prevent manipulation of accounts at a later stage and the assessee would not be in a position to change the stand. In this behalf my submission is that it is not the audit which is going to cure this evil. I suggest something different. I suggest that there should be a large army of field officers, who should visit the assessee every now and then and authenticate the books, make cross verifications of sales and purchases, say exceeding ten thousand etc. If the books of accounts of the assessee are authenticated from time to time, then the question of manipulation of books at a later stage by an assessee would hardly arise.

MR. CHAIRMAN: You are putting a very dangerous proposition, that the army of officers may be let loose on a vast number of assessees. That would be a lot of harassment. Other witnesses complained against their interventions every now and then.

SHRI BALRAM SANGAL: They should not harass, but should go and sign the books.

SHRI AMRIT NAHATA: Do you mean to say that the Chartered Accountants and auditors should be employed by the tax authorities? That is what this amounts to. That means they would represent the tax department and audit the accounts.

SHRI BALRAM SANGAL: I am coming to that, Sir. The number of assessees that are not properly maintaining their accounts is limited. I would submit that there should be a cell of Chartered Accountants in the Government and whenever there is a need for investigation, the books of accounts may be referred to such a cell. It can serve a very useful purpose. In cases where the Income-Tax Department is of the view that there is some manipulation, their books can be audited by them.

MR. CHAIRMAN: Even now the Income Tax Department has got the power to do that. You are now going to the new aspect of the question. Your suggestion that there should be an army of officers is not a very healthy suggestion. But it is your opinion. That is all.

SHRI BALRAM SANGAL: Actually, this provision which has been mentioned in the Wanchoo Commission Report has been suggested by various sectors. But that is not so. There may be some bureaucratic set up of the administration?

MR. CHAIRMAN: In this, bureaucracy has not to do much. In this respect, I want to know the mind of the Bar Council?

SHRI RALRAM SANGAL: Ours is a vast country and the assessees are

spread all over the country; they are not concentrated in a big cities like the auditors who are concentrated in big cities and as a result thereof, if an assessee has to go from his town to the district again and again for the purpose of assessment of his accounts. it will cause a lot of inconvenience to him. For such a business, according to us, the number of auditors in the country is not more than 5000 who are practising Chartered Accountants. Under such circumstances, it may not be possible for the assessees to file their returns well in time or within the prescribed limit. So, at this stage, if this clause is introduced, it will cause a lot of inconvenience to them?

MR. CHAIRMAN: Are you on the question of a basic principle of compulsory audit or are you on the question of a compulsory principle of audit or are you on the question of practical difficulties? Do you accept in principle that audit should be provided?

SHRI BALRAM SANGAL: I have already submitted that we do not agree in principle to the introduction of this clause.

MR. CHAIRMAN: Even if the practical difficulties are removed?

SHRI BALRAM SANGAL: In this respect, some amendment would be necessary.

MR. CHAIRMAN: In principle, you mean to say that the law should be so modified as to take care of the practical difficulties? Would you consider compulsory auditing as a salutary feature?

SHRI BALRAM SANGAL: In our opinion, it is premature to introduce compulsory auditing in India. I have already submitted that the number of auditors in our country is not good enough.

SHRI ERA SEZHIYAN: There are 9000 CAs in the country. Do you think this number is not sufficient to meet the demand of the assessees?

SHRI BALRAM SANGAL: According to Wanchoo Committee, there were nearly 5000 auditors who were practising upto 1971 and according to my knowledge, this number is not sufficient to cope up with the work. We are aware of the fact that different persons in different States and even in the same State are maintaining their account books in different languages, but the auditors are mainly of the English language.

MR. CHAIRMAN: In how many languages, accounts are being audited?

SHRI BALRAM SANGAL: I cannot say that.

MR. CHAIRMAN: Have you made any study about it?

SHRI BALRAM SANGAL: I am saying according to my experience in Delhi in the corporate sector.

MR. CHAIRMAN: Delhi is not the whole of India.

SHRI BALRAM SANGAL: We are only representing Delhi.

MR. CHAIRMAN: In Delhi, you can have auditors who can understand English language.

SHRI BALRAM SANGAL: Auditors are generally of English accounts; they are not auditing the accounts other than English language.

श्री भागवत जी साजद : इन के कहने का क्या यह मत है कि सभी लोग केवल अंग्रेजी में ही अपना एकाउंट रखें ? सभी को अधिभार है कि अपना एकाउंट अपनी भाषा में रखें ।

सभापति महोदय : कोई भी अपना बहीखाता जिस लैंग्वेज में चाहे उस लैंग्वेज में रख सकता है । ऑडिटर रीजल लैंग्वेज में जहां तक बेरी जानकारी है ऑडिट करते हैं रीजल लैंग्वेज को हर ऑडिटर समझता है ।

श्री भागवत जी साजद : इस के लिए उन को पैसा मिलता है । जिन को नहीं आता है वह सीखें ।

MR. CHAIRMAN: Next point?

SHRI BALRAM SANGAL: As far as burden of charges on the assessee is concerned, according to us, they would not be able to hire the services of auditors. It will cause a lot of hardship of them.

SHRI BALRAM SANGAL: Another point which I would like to submit before this august House is that, the time limit for filing the return is 4 months now generally for all kinds of assesseees.

MR. CHAIRMAN: Depending upon which is the previous year. The minimum is 4 months, subject to extensions.

SHRI BALRAM SANGAL: Subject to extensions, of course, on further payment of interest and the discretion of the Income Tax Officer is there, whether he has the intention or not, and expose the assessee to penal consequences. My submission here is that,—I have already mentioned this—the number of auditors are limited and the workload on the auditors would be much more as compared to the existing work-load and the result would be, filing a return would invariably be delayed in a large number of cases and in all cases where the Income Tax Officer is not satisfied and where the income has accrued and the assessee has filed bilateral return, penalty would be imposed.

MR. CHAIRMAN: Would it be all-right if we provide that the audit report should be submitted before the assessment or some such thing; that it need not accompany the return but it may be submitted soon thereafter.

SHRI BALRAM SANGAL: Then, the very purpose of the auditor's report would be defeated. The purpose of the audit report is to facilitate

assessment. If the procedure suggested by you is to be adopted, by the Income Tax authorities, ultimately, the filing of the audit report at a later stage would not be of real use and....

MR. CHAIRMAN: Not at a later stage. I said, subsequently after the filing of the return but before the assessment is taken up.

SHRI BALRAM SANGAL: My submission is that no assessee would like to get the audit report filed subsequently.

MR. CHAIRMAN: Even if it is mandatorily provided?

SHRI BALRAM SANGAL: It may be provided. But, the assessee would say that the auditor's report should be filed along with the return. Otherwise, he would run the risk of wrong posting or wrong totalling.

MR. CHAIRMAN: That is the point. The responsibility is imposed not only on the assessee, but, the certificate is going to be such that the auditor also shares the responsibility. It is for that purpose two-fold objectives are sought to be achieved—proper computation of total income and sharing of the responsibility.

SHRI BALRAM SANGAL: I only submitted that when the person is making the payment to the auditor, he would certainly not ask his accountant or somebody else to total the books of accounts. He would like the burden to be shared by the auditor in regard to posting of books of accounts or to see that books of accounts are properly posted and properly balanced.

MR. CHAIRMAN: Auditors have to do this job?

SHRI BALRAM SANGAL: Auditors are to check up the totals to see that the....

MR. CHAIRMAN: Checking totals is one thing. Totalling up and posting is another.

SHRI BALRAM SANGAL: My submission here is that, there should be a sharing of the burden between the auditor and the assessee. I have submitted that in such an event, if the auditor's report is delayed, then, payment of revenue to the Government, completion of assessment, by the Department, and work-load will be greatly affected. Now, I would like to refer to the dissenting note of Mr. Rangnekar, who has given some practical suggestions and views. He feels that making this provision in the Bill, of compulsory audit would be undesirable at this stage. I would like to quote from Page 250 of the Report of the Wanchoo Committee, where Mr. Ranknekar has said:

"In the manner in which the profession has developed, the role of the auditors has obviously come under a cloud. Some auditors have set themselves up as management consultants, directors, businessmen, income tax experts (sic)! They seem to almost everything else other than searching audit. There can be no doubt that when an auditor starts to sell management and 'other' advice and offers various unspecified services, he immediately compromises his objectivity. Virtually one ends up with a situation where the company that has purchased the 'services' of the auditors in various forms follows the recommendations of its own auditor consultant leaving little else for 'audit'.

So, my submission is that these observations of Mr. Rangnekar are very pertinent and very important and the is what I am keeping in view and such sorts of things are likely to occur every time when books of accounts are audited. Now, let us see as to what sorts of recommendations have been made by the Committee in asking the auditors to audit the books of accounts of a concern.

MR. CHAIRMAN: What page you are referring to?

SHRI BALRAM SANGAL: Page 47 of the Report, Para 2.148.

MR. CHAIRMAN: Let me say one thing. This is what they have recommended. But, assuming that it commends; itself to the Committee that compulsory audit is to be provided, then, one thing is there that the auditor will be required to certify what is known as vital particulars. It will have to be an objective audit and the certificate will include certification of facts like, whether or not accounts are fully vouchered, whether capital and revenue are properly apportioned or not, whether personal expenses have gone into revenue or capital accounts and so on. But, I would like to point out one thing here. Whatever the Wanchoo Committee have recommended will only serve as guidelines. However, if the Committee accepts that compulsory audit has to be there, then, I can assure you that it will ensure an objective certification of vital particulars. You will address us on that basis.

SHRI BALRAM SANGAL: According to the recommendations of the Wanchoo Committee....

MR. CHAIRMAN: That is not conclusive on us.

SHRI BALRAM SANGAL: Of course not conclusive, but, may be...

MR. CHAIRMAN: That will serve as a guideline. If the Committee, as I told you, accepts that compulsory audit should be there, then, it will not leave anything to uncertainty.

SHRI BALRAM SANGAL: Of course, objective audit has to be there. But, this sort of certificate, in my opinion, is not going to serve any purpose.

MR. CHAIRMAN: You are entitled to express your opinion. But, I said what the Committee would be doing in case it accepts the principle.

SHRI BALRAM SANGAL: That is correct. Now, we are making our

own suggestions in regard to this matter. In the first instance, we feel that introduction of this Clause at this stage is premature and this has to be postponed for some time; this is not needed at the moment. Secondly, the Officers of the Department should visit the assesseees every now and then, quarterly or monthly, or whatever may be the period that maybe prescribed by the Department, and the assesseees should furnish their books of accounts, so that, the assesseees, at no point of time, may be in a position to manipulate their books of accounts before producing the same before the auditors, because, there is no security that the assesseees may not do it. Wanchoo Committee have expressed the view that there may be cases where manipulation of books of accounts by the assesseees, may take place.

The better course can be to provide field officers so that the books of account manipulated may not be changed and it will remain as they are in original and all sorts of clarifications must be resorted to by the Department without any slackness on their part and it should remain a continuous process at all levels. At District levels, at the level of towns and at Commissioner's level, all sorts of assesseees should be put to a constant checks, because it is only in that manner of action we can achieve the objective of the Bill. And as I have already suggested that there should be a Cell of Chartered Accountants instead of asking every assessee to go and get the books on account audited by the Chartered Accountant, by an auditor, let there be a Cell because our view is that only a very limited number of assesseees, is producing the books of account to the Income-tax Department but those books of account may be before the auditors or the Income-tax Officers which are desired by the assesseees and sought to be brought and the auditors have no control on this and they have no control on the Income-tax authorities. Therefore, there should be a Cell of the Chartered Accountants and the

auditors who can examine all such cases where there is a fear of evasion of tax-payers or assesseees and there is a number of sales or purchase or anything like that. In case the limit is fixed, it should be linked with the income of assessee and it should not be linked with the turn-over of the assessee because income-tax deals with the income of the individuals and not the turn-over of the individuals. So, the income of a person should be the criteria here.

MR. CHAIRMAN: Supposing a large amount of a turn-over of Rs. 5.00 crores results in loss, then it should not be audited?

SHRI BALRAM SANGAL: In the first instance I would say that the income-tax deals with the incomes of the persons. Therefore the criteria here is the incomes of the individuals and it should be taken into consideration and not the turn-over.

SHRI ERA SEZHIYAN: He does not want any limit on the income.

MR. CHAIRMAN: Suppose there is a loss then what will happen?

SHRI BALRAM SANGAL: Even in case of losses there may be an audit. In regard to job or service, of course, it is going to be an objective one. My submission is that advocates conversant with the taxation laws are also fully competent they are dealing with the law, they are dealing with the day-to-day working of the Department and in case such a work is entrusted to the auditors, our feeling is that the Income-tax authorities would be slack in performing their own duties. The feeling of the Wanchoo Committee was that in such events the Income-tax officers would be having time at their disposal to make investigation in respect of other cases. So, in other words, we feel that according to this clause and the Wanchoo Committee report, shifting the burden or making adjustments upon the auditors instead of putting it on the shoulders of the Income-tax authorities in that event they would be content with the report of the auditor and he will not

look into it or probe into the assessments. It is because we can say very well that even in the corporate sectors evasion has been found. So if evasion could not be prevented from doing by the big officers and in other large sections of the society, a doubt may arise that such evasion may not be prevented even in the corporate sectors.

SHRI VIPAN CHANDER BAHRI: Mr. Chairman on this point, I would like to put my view before you for consideration. The object of the Bill is to take out the black money and for that the means adopted are audit for uniformity of accounts and other factors. But whether the proposed bill envisages the means of audit which will achieve the objective. I would like to know what is the position in regard to the corporate sector.

MR. CHAIRMAN: Have you made any study of it?

SHRI VIPAN CHANDER BAHRI: Yes, Sir.

MR. CHAIRMAN: How many corporates you have examined. What is your observation on the corporate sector? You have made a point that in the corporate sector audit has proved utterly ineffective and there has been evasion. We are going to hear you if you give us some statistics. If you have any new points to make on this, then I can give you more time.

SHRI VIPAN CHANDER BAHRI: The guidelines which have been recommended by the Wanchoo Committee are likely to be incorporated in the auditor's report and item Nos. 3 to 7 already appear in the return prescribed and this information can be given by the assessee himself by the practioners, by the advocates and by the Chartered Accountants. There is no special requirement for this particular information that it can only be sought from an auditor. That is the point I am submitting, Sir.

MR. CHAIRMAN: So far as the Committee is concerned, if the object of compulsory audit commends

itself to the Committee we are going to make the certification of vital particulars on a very objective basis.

SHRI VIPAN CHANDER BAHRI: I am submitting that in respect of these requirements which are now proposed to be made part of the audit, the assessee, the income-tax practitioner, the advocate and the Chartered Accountant are also competent to give this information.

MR. CHAIRMAN: It is voucher auditing.

SHRI VIPAN CHANDER BAHRI: This information can be supplied by the assessee and this can be made part of the work of an assessee. These items No. 3 to 7 have already appeared and nothing new comes up under this information. The last point I would make is that if the Department wants to investigate some of them it should be the duty of the Department to go into the account. If the department feels that certain cases need detailed investigations, it should be the department itself which should have the detailed investigations done by an independent authority, not by the authority or auditor who is paid by the assessee.

MR. CHAIRMAN: There is no doubt about it that the Department itself should examine. Audit is not conclusive of anything. So far as the Department is concerned, it is not going to be binding on it at all.

SHRI VIPAN CHANDER BAHRI: I would like to point out an instance to this effect. The law introduced the institution of valuers for valuing immovable property. They had an approved list of valuers, but the situation that arose was diametrically opposite to what was intended, and the law was subsequently amended and they had their own valuation cell so that the valuation could be made in the cases where the Department wants it.

Similarly in cases where the Department wants to go into the investigation of certain cases, it should be by

an independent authority of the Department which should go into those cases and not by a person who is paid by the assessee.

SHRI BALRAM SANGAL: I had stated before that whatever I am saying is on behalf of the Bar Council; it is not by way of any confrontation with the chartered accountants or others. I must make myself clear about it once again that whatever views I have expressed on this Bill have been expressed by me under instructions from the Council. The Council had the privilege of having a meeting with all the Bar associations of the Union territory, and whatever views have been expressed are those of the Bar Associations, and our Council is constituted of few thousand brother-advocates.

MR. CHAIRMAN: There is no question of any confrontation, and there is no question of any hostility towards any profession. If you think that this sort of provision does not help achieve the objects of the Bill, you are entitled to hold that view.

SHRI BALRAM SANGAL: We are all here for a healthy enactment for the country as a whole.

In case Parliament deems it necessary to keep this provision, it would be desirable that the auditors who audit the accounts should not be permitted to represent the assessee before tax authorities, because only then the objective of the Bill can be more effectively achieved. This is our view and I leave it to the Committee to consider all these points.

SHRI R. V. SWAMINATHAN: The auditors prepare the accounts and then they are presented to the Department and then the tax is paid and there ends the matter. So, they just do some post office work. This is the first stage. So far as the second stage is concerned, when there is a dispute, they represent, and then the matter goes in appeal. Sometimes, they engage auditors, and sometimes they engage lawyers. I think what the witness perhaps wants is that in the first

stage itself, the lawyers must be brought in, even in cases where there is no dispute at all between the Department and the assessee.

SHRI BALRAM SANGAL: I had clarified this point that in case there is no dispute, there is no point in engaging any counsel.

MR. CHAIRMAN: When there is no dispute, there is no need for any counsel. But according to the witness, whatever he wants is that whenever any counsel is to be engaged, there should be a bar on a chartered accountant appearing in the same case.

SHRI BALRAM SANGAL: If the auditor is engaged for representing the assessee, then he would be a judge of his own case and according to us, his report is not likely to be much impartial. This is the view of the Council.

SHRI ERA SEZHIYAN: I do not think that this will go a long way. Suppose two persons A and B join together, and while A gives a certificate, B argues and while B gives a certificate A argues; what would happen in those cases?

SHRI BALRAM SANGAL: In that event, we have to accept the practical nature of that and the chances of such a thing happening.

SHRI ERA SEZHIYAN: In the PAC, when we examined this matter, our view was that the person who argued later on should be involved even at the earlier stage of giving the certificate; that was the idea that we had in mind.

MR. CHAIRMAN: There is another view point that the person who goes and represents must carry some responsibility.

SHRI BALRAM SANGAL: The responsibility, of course, is there.

MR. CHAIRMAN: What is the responsibility that lawyer carries? He only acts under instructions.

You must understand this basic distinction. What Mr. Sezhiyan is say-

ing is this. In one case, the person is compelled to give a certain certificate under peril of disqualification or penalty in case he is found to be at fault. In the other case, the lawyer acts only under instructions. When a person is acting under instructions, what is the responsibility? There is nothing whatsoever.

SHRI BALRAM SANGAL: If a lawyer makes any false representation, then under the Bar Councils Act, he is liable to have his licence cancelled or suspended....

MR. CHAIRMAN: But the lawyer is acting under instructions.

SHRI BALRAM SANGAL: My submission is that a chartered accountant or an auditor or anyone engaged for arguing the case before the authority is liable for penal consequences under the respective laws.

In regard to clause 12, the view of the Council is that in the first instance, there should be no prescription of accounts by the board, because every body should be left free to follow his own system of accounts....

MR. CHAIRMAN: He should be free to follow his own method of accounting under the recognised system of accountancy. If he is allowed to have his own system of accounting, then it will become difficult. The method of maintaining the books of accounts should be under a recognised system, and the accounts should be maintained under a system which would give a true picture of his income and expenditure and give a picture of the true state of affairs of the income of the assessee. It is a little dangerous. Suppose one person enters by way of a memorandum: at the end of the month, my total receipts are so much and my total expenditure is so much and this is the income. According to your argument, he has maintained the books of account in a manner consistent with his system. But that is not a recognised system. Therefore, I would request you to draw a distinction between the accepted recognised system which pres-

cribed certain norms, and the other within the recognised system, maintain your books of account.

SHRI BALRAM SANGAL: It can be like this, that he would maintain his books of accounts according to the recognised system in vogue in the country in different places, districts or towns. But there should be no prescription about the maintenance of a particular kind of accounts, because we can not have the same system of accounts throughout the country as a whole.

MR. CHAIRMAN: We may agree on that. But do you not think there should be some guidelines at least for the assesseees in the mofussil?

SHRI BALRAM SANGAL: Yes. But there is a provision here, section 271A to the effect that he would be liable to some penalty for not maintaining the accounts in the prescribed manner. Our feeling is that such prescription by the Board would not be in accordance with the formation of this country with various conditions existing in different places. Let every person be entitled to maintain his books of account in the recognised method whichever is prevalent in the area. That is one thing. Let us go a step further. If the income tax authorities feel that a person has to maintain his books in a proper manner, let there be a guideline by the IT authorities prescribing the maintenance of books of accounts by a particular assesseees in a particular manner. That may be so. But to make a general prescription for the country as a whole would not be in the fitness of things.

MR. CHAIRMAN: We will consider that. But we take it that you accept in principle the provision regarding compulsory maintenance of accounts.

SHRI BALRAM SANGAL: Yes.

MR. CHAIRMAN: Any limits?

SHRI BALRAM SANGAL: It should be Rs. 50,000 income and not less than Rs. 10 lakhs turnover. The proviso

to this clause says that nothing in this section shall apply to any person carrying on any business unless etc. etc. My submission is this clause should apply to all classes of assesseees.

MR. CHAIRMAN: Professionals are wilfully left out. Every professional will have to maintain accounts if he has an income above Rs. 5,000. What should be the limit for professionals? Rs. 50,000 for professionals?

SHRI BALRAM SANGAL: It may be qualified for different persons.

MR. CHAIRMAN: What limit? We take it that you will express the responsible views of your Council and tell us and try to guide us as to what can be the rational criteria.

SHRI BALRAM SANGAL: We feel that this sort of limit should be for all classes of assesseees.

MR. CHAIRMAN: Even for professionals? How many professionals file returns of Rs. 50,000 income in the country.

SHRI BALRAM SANGAL: I cannot say. There are no such statistics available.

SHRI ERA SEZHIYAN: I would advise them to consult their Council and let us have written note on this point.

MR. CHAIRMAN: If you have applied your mind to it already, you may submit a supplementary memorandum as to what, according to you, should be the reasonable limit for businessmen and for professionals for compulsory maintenance of accounts.

SHRI BALRAM SANGAL: Thank you. But my submission for the time being is only this much that there should be no distinction with regard to the maintenance of accounts. A professional has to face many difficulties and hardships in the initial stages. To ask him to maintain the accounts would be a harsh provision. Here the limit is only for businessmen. My submission is that it should be for all alike without any distinction. Coming to the penalty clause

linked with it, we have clause 65 incorporating 271A:

"Without prejudice to the provisions of section 271, if any person, without reasonable cause, fails to keep and maintain such books of accounts and other documents as required by section 44 or the rules made thereunder, in respect of any previous year or to retain such books of account and documents for the period specified in the said rules, the Income-tax Officer or the Deputy Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income".

This is nothing actually but a sort of clause couching section 271(1)(c), what sort of penalty to be imposed.

MR. CHAIRMAN: No, no. You are making a terrible mistake.

SHRI BALRAM SANGAL: It is in that nature. If I do not maintain accounts in the manner prescribed by the Board or the Central Board, then I would be liable to penalty. If I return my income at Rs. 20,000 but it is assessed at Rs. 30,000, according to this, I am liable to penalty on my income of Rs. 10,000 on which otherwise I would have paid tax. According to 271(1)(c), if I file my true income and if it falls below that particular limit, I am liable to penalty.

MR. CHAIRMAN: No. If you have an aggregate income returned not according to what it should be, you will be visited with penalty. The two are conceptually different. One is for concealment of income; another for non-conformation of accounts to the prescribed form. Assuming it commends itself to the Committee that the Board is not to prescribe, it has to give guidelines, yet accounts have to be maintained which must conform to a recognised system. Then if the

accounts are maintained in a manner which does not conform to a recognised system of accountancy or the guidelines given by the board, penalty will visit—unrelated to the question of penalty otherwise.

SHRI BALRAM SANGAL: Our view is that this clause provides a minimum penalty of 10 per cent and a maximum of 50 per cent of the difference of income which had been returned and which had been assessed. In any case, the penalty, if any, is not to be imposed in this way because there will be a lot of difficulties in the way of calculating what the income would have been otherwise and what it is now. In any case, if it is retained, it has to be a sort of fine.

MR. CHAIRMAN: Are you trying to suggest that if a person does not maintain accounts properly, but files correct return of income, then no penalty?

SHRI BALRAM SANGAL: Of course, because no motive can be attributed to him. Secondly, if he has not maintained accounts in the prescribed manner or as he is required to do, in that event, let there be a fine, because imposition of penalty would work harshly; there would be a lot of litigation and difficulties would arise.

A sort of mild penalty may be imposed.

MR. CHAIRMAN: That is true. But if a person does not conform to it—assuming the ultimate law is in accordance with the provisions of the Bill—and he defies but files a correct return of income, then there will be no penalty. But another person who conforms to the same system and honestly maintains the books, but there is variation, then the penalty will visit him. In fact, I thought that the penalty should be for non-compliance, unrelated to the return of income which may be correct or not. In this case, it is related entirely to the income. If, notwithstanding the fact that you have maintained all ac-

count, you return an income which is in flagrant violation of what has been prescribed by the Board, according to the present law, no penalty can visit. There is obviously an inconsistency, that the penalty should be for infraction of the directions.

SHRI P. G. MAVALANKAR: If I have understood the witness correctly, he seems to be making a distinction between penalty and fine. Penalty is for a wilful avoidance of paying the tax, and the fine is for a technical lapse of not having fulfilled the legal obligations of the provisions.

SHRI BALRAM SANGAL: I suggested that it should be a fine and not a penalty, because it is very difficult to work out the penalty.

MR. CHAIRMAN: It is a question of nomenclature—the difference between penalty and fine. It is a distinction without a difference.

SHRI P. G. MAVALANKAR: The point is, if you call it a penalty, there is a stigma; the person has committed a crime and is avoiding tax payment and therefore he is penalised. Fine is for a technical lapse.

MR. CHAIRMAN: It is the quantum that seems to matter with the assessee in taxation matters. If you call it a penalty and reduce it to a lesser amount, he would welcome it rather than call it a fine. We appreciate your point and you are right that if the return of income, notwithstanding the violation of the rules prescribed by the Board, is correct, there is no penalty. That does not appear to be very consistent.

SHRI R. V. SWAMINATHAN: They want to have it as a fine. Is it due to the quantum of the amount that will be involved in this? Suppose the penalty means a percentage and fine may be an exact amount. Is it because of the quantum of money that he feels so, or is there any other idea behind this?

SHRI BALRAM SANGAL: The underlying idea behind my suggestion is that it would be extremely

difficult for the tax authorities to find out what would have been the income in case the assessee maintained the accounts and what is the income now which has to be assessed. This creates difficulties for the assessee and also for the tax authorities to find out the difference and levy the penalty according to the difference, which may be from 10 to 50 per cent. In order to avoid practical difficulties for the taxing authorities and the hardship for the assessee, I suggested that a fine may be prescribed, just as under section 131 for non-appearance of witnesses.

MR. CHAIRMAN: It will be a happy future for the assessee not to have any audit and accounts and pay Rs. 100 year after year!

SHRI BALRAM SANGAL: I do not suggest that. A fine can be prescribed according to the quantum of the avoidance of tax.

MR. CHAIRMAN: Therefore, it has to be related to the size in one way or the other. Either to the size of the turnover or the size of the income, and not to what would have been avoided.

SHRI BALRAM SANGAL: I fear whether the taxing authorities would be competent.

MR. CHAIRMAN: Can they not in relation to the total income determine the tax and the penalty? Otherwise, would it not be far more advantageous for the assessee not to maintain accounts but pay a fine?

SHRI BALRAM SANGAL: It will have to be left to the discretion of the income-tax authorities.

MR. CHAIRMAN: Such arbitrary powers cannot be conferred. A rational criterion would be to relate it either to the income or to the tax or the turnover.

SHRI BALRAM SANGAL: Keeping in view the facts of the case, the Income-tax Officer will be left with the discretion. In that event, he

would not be in a position to impose a fine on the persons arbitrarily.

MR. CHAIRMAN: His discretion may be there, but subject to something being prescribed in the law. If there are mitigating circumstances, we should want to leave the discretion to him.

SHRI VIPAN CHANDER BAHRI: In the first instance, when it is the first default, then the fine or the penalty should be a very token penalty. In the case of a habitual offender who avoids payment of tax, the penalty could be more. So, my submission is, since there is a lot of illiteracy in the country, and the general public are not so much educated and they may be liable for many irregularities in that accounts are not properly maintained, it may not be an intention on their part to evade the tax or to commit an offence, but technically they may be doing some offence or a mistake.

SHRI P. G. MAVALANKAR: The trouble is, often the so-called educated only indulge in evasions.

MR. CHAIRMAN: It could be that we vest the discretionary powers in the hands of the ITO; on the totality of circumstances he will evaluate it, but it will have to have some nexus with something more objective. It cannot be just fixed at such and such an amount in absolute terms; it will have to be relatable to his liability of income-tax.

SHRI VIPAN CHANDER BAHRI: My submission is that it should be a mild one in the first instance, and to a habitual offender it may be more or severe.

MR. CHAIRMAN: In the law, it is difficult to provide it, but certainly, if the law leaves the discretion, the administration can take up the matter. We will consider your suggestion.

SHRI BALRAM SANGAL: Now, I shift to another clause. I will not be going through all the clauses. I am sure the Committee has got our

memorandum, and I request the Committee to read through our memorandum.

MR. CHAIRMAN: We will go through your points.

SHRI BALRAM SANGAL: The other important clause which needs to be brought before the Committee is—

MR. CHAIRMAN: How much time will you take?

SHRI BALRAM SANGAL: I think another 10 minutes.

I may refer to page 10—clause 42 of the Bill which seeks to amend section 140A of the Act. According to this provision, every person whose tax after deducting advance tax paid by him, exceeds Rs. 500, would be liable to make the payment on or before furnishing the return, and he should endorse a receipt along with the return. The time limit is already small for filing the return, because the accounts have to be audited etc. Now if he is required to pay the tax and file the return even earlier, it will only increase the hardships of the assessee without bringing any fruitful results to the administration. It is after all a question of the department receiving the revenue 30 or 40 days later or earlier. It does not jeopardise the revenue except that the department will be receiving it 30 or 40 days later. I submit that the existing section 140A is good enough and does not need any amendment.

MR. CHAIRMAN: You say that the period of 30 days for payment as provided now should be kept as it is. What about penalty?

SHRI BALRAM SANGAL: Sub-clause (3) of clause 42 gives arbitrary powers to the income-tax authorities.

MR. CHAIRMAN: We appreciate the point that he may delay filing the return itself and bear the 2 per cent penalty. Now, the Wanchoo Commission has very strongly recommended that no time should be allowed after filing the return. We must give due weight to it.

SHRI BALRAM SANGAL: I agree. But this clause provides that he has to enclose the receipt along with the return. Some people would like to pay their tax by cheque, because it will become very difficult to verify the particulars if the receipt is misplaced. If the payment is through cheque, it is easier to locate the payment and verify the tax particulars. If the tax is paid by cheque, the Reserve Bank or the Treasury will issue the receipt only after about 10 days.

MR. CHAIRMAN: You can give the cheque 10 days earlier.

SHRI BALRAM SANGAL: In that case, our return also should be got ready 15 days earlier. This provision will automatically cut the period of filing the return by 15 days.

MR. CHAIRMAN: Not necessarily. You can withdraw the money, pay the money in cash, take the receipt and attach it. You cannot eat the cake and keep it too.

SHRI VIPAN CHANDER BAHRI: I have an instance where the payment has been made through cash. It takes months and months to get the particulars. In a small case, if the tax involved is just Rs. 1000 or so, cash payment is all right. But when the tax to be paid is a huge amount, it is only proper that it should be paid by cheque and not by cash.

MR. CHAIRMAN: What is required in proof of payment. If you have paid by cheque and there is delay on the part of the Reserve Bank, you can say, "I have paid by cheque 15 days ago and this is the number and date of the cheque." That is proof in my opinion.

SHRI VIPAN CHANDER BAHRI: But notices are displayed saying that the date of receipt on the challan put by the Reserve Bank would be the date of payment, not the date of receipt of the cheque.

MR. CHAIRMAN: For no fault of his, if a bonafide assessee who has paid

by cheque is put to difficulty because of the delay on the part of the Reserve Bank, that can be considered. Suppose we provide that if the assessee makes payment by a draft and mentions the number and date of the draft and the top of the return, it shall be deemed to be proof of the payment, will it be all right?

SHRI VIPAN CHANDER BAHRI: It would depend upon the circumstances at that time.

MR. CHAIRMAN: Why should it depend upon the circumstances? Suppose I want to pay my tax of Rs. 20,000; I will go to my bank and get a draft in favour of the Government. In my return I will mention that the payment was made by draft. That is the end of the matter.

SHRI BALRAM SANGAL: That is not recognised by the income-tax department.

MR. CHAIRMAN: We will mention in the legislation that quoting the number of the draft will be a sufficient proof. We want to mitigate the hardships of the *bonafide*, honest, non-suspecting assessees.

SHRI VIPAN CHANDER BAHRI: In the last days of the financial year there will be such a rush even in the banks that it will be difficult to get a draft on the very last day or even a day before. This is a practical difficulty.

MR. CHAIRMAN: You are looking only at one side. What about the difficulties of the department? As experts you have to be objective.

SHRI VIPAN CHANDER BAHRI: It is our submission that if a cheque is tendered in time then no penalty should be prescribed.

SHRI H. M. PATEL: This suggestion ignores the fact that a cheque may bounce, while in the case of a draft the guarantee of the bank is there. If the cheque is tendered on

the last day and it bounces then the payment is not there.

MR. CHAIRMAN: So far as cheque is concerned, the normal rule will apply, that is, the date of encashment. So far as draft is concerned, we will recommend that it should be the date of presentation of the draft.

SHRI VIPAN CHANDER BAHRI: If a cheque is tendered in time and if it does not bounce, then it should be considered as making payment.

MR. CHAIRMAN: We will consider it.

SHRI BALRAM SANGAL: Clause 25 deals with Section 80VV. Under the proviso of this clause the assessee would be entitled to deduction of only Rs. 2,000 in respect of expenses which he may incur during one particular year. There should be no limit on expenses whenever an assessee wants to contest a case on appeal. In fact, the security in the Supreme Court itself comes to Rs 2,000. So, this limit of Rs. 2,000 on expenses for contesting the case before the departmental authorities or High Court or Supreme Court is too small. I say that there should be no limit at all on such bona-fide expenses which are properly accounted for. It would be preventing an assessee to have his fundamental right to defend himself as he desires. A senior advocate in the Supreme Court will charge Rs. 1,680 and the case may go on for days. So, there should be limit on this item of expenditure.

Coming to clause 45, which prescribes the time within which the Deputy Commissioner shall make the assessment, no powers have been

(The witnesses then withdrew)

II. All India Tax Advocates Association, New Delhi,

Spokesmen:

1. Shri G. C. Sharma—Vice-President
2. Shri O. P. Dua—General Secretary.
3. Shri K. K. Wadhwa—Secretary.

given to the Deputy Commissioner to condone delay even in really hard cases. The Deputy Commissioner should be given discretion to waive the time in deserving cases.

MR. CHAIRMAN: After a certain stage is reached, they are in a hurry to expedite the proceedings. For that purpose an opportunity is given to the assessee. At that time if he asks for two or three months it would be very difficult.

SHRI BALRAM SANGAL: It would not be a right to an assessee. I am only suggesting discretion to the Deputy Commissioner.

MR. CHAIRMAN: We will consider that.

SHRI BALRAM SANGAL: There is a clause which says that a person would be entitled to deduction only for one house. A person may be having a very big family of 15 or 20 members and also two small houses. Now he will get deduction only for one house. At the same time, another person with a small family of two or three members may be owning a very big bungalow. So, it should be left to the income-tax officer to see whether a person is entitled to deduction only for one house or two houses, depending on the size of his family.

MR. CHAIRMAN: It is a good point. We can give relief not in terms of the house but in terms of the family.

SHRI BALRAM SANGAL: The rest of the point we have mentioned in the memorandum.

MR. CHAIRMAN: We thank you.

4. Shri Kartar Singh Suri—Member.
5. Shri O. P. Sapra—Member
6. Shri V. Vasudevan
7. Shri Randhir Chawla

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Sharma I would like to invite your attention to Direction 58 of the Directions of the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, which reads—

“The witnesses may kindly note that the evidence they give would be treated as public and is liable to published, unless they specifically desire that all or any part of the evidence tendered by them to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.”

We have received your Memorandum. This has been circulated to the Members of the Committee. If you like to emphasize any points, you can do so. First, you can make a certain preliminary remarks of a general nature. Then, you can go clause by clause.

SHRI G. C. SHARMA: Mr. Chairman, it is indeed a matter of very great pride for me to represent this Association, which, today, has a very large strength of members, drawn from all over the country. I have already introduced the other members of this Association, who have very kindly come here to assist me in this task. Mr. Chairman, when a lawyer is asked to tender evidence, in connection with a measure before Parliament, there is some embarrassment and difficulty.

SHRI H. M. PATEL: May I intervene just for one moment? Would it not be better if we tell the witness

as to how much time he is allotted so that he can proceed on the basis of certain priorities?

MR. CHAIRMAN: Up to 5 P.M. will be all right.

SHRI G. C. SHARMA: I shall conclude by 5 P.M., if you so desire. I was just saying that when an association of lawyers is asked to tender evidence in connection with any measure which is under consideration of Parliament, the task is quite difficult and embarrassing, because I think the lawyers' functions is to practice and plead what the law is and not what the law ought to be. Nevertheless, since lawyers are invited to participate in discussions of this kind, I do not know what is expected of them. Perhaps, the whole evidence can be cast in two directions. One is that the lawyer has to test whether the provisions are really achieving the objects which the Bill seeks to achieve by a declaration in its Statement of Objects and Reasons. The other scrutiny which the lawyer is expected to make is whether the draftsman has really couched the language in the enactment so as to manifest clearly the intention behind it. Once, these two preliminary directions have been clearly laid down by us for tendering the evidence, I would make a few preliminary observations.

So far as the first observation is concerned, our candid and unhesitatingly-to-be-expressed reaction is that the provisions of the Bill which it clearly professes to have been introduced with no other motive or

object except to unearth black money to check its proliferation and to arrest it and bring it in the open market, hardly achieve these objectives. The reason for this reaction is quite simple. After all, this Bill is the outcome of an able body which made its recommendations, which has come to be known as the Wanchoo Committee. Almost all of us have read the report. The Committee listed a number of courses and also made many recommendations. Government, for reasons best known to them have chosen only such recommendations therefrom as in their opinion should be chosen.

From an analysis of the Bill it appears that perhaps the thinking on part of the Government seems to be that the more punitive and deterrent the punishment be provided for, the more tax evasion will be arrested. That is why we find this Bill adding to the multiple penalties which have already been there in the enactment. But we do not think so, and we feel that it is not possible to check tax evasion merely by providing numerous penalties, howsoever deterrent they may be.

In my humble submission, the root cause of tax evasion lies in something else. Frankly speaking, the root cause often lies in the big temptation to evade tax at such high rates of taxation, whether it be the profession incomes or the business income. When a person finds that he is earning a certain income which has already begun to attract the high level of taxation, he finds no incentive to earn more. Therefore, the only way to get rid of this temptation is to yield to it. It is a human thing and any man would do it. So, unless the tax rates are brought down, the desire and temptation to evade tax cannot be resisted, and that is perhaps not being appreciated.

Besides, I think that there is some apparent inconsistency in the proclamations of the Government themselves. On the one hand, the Government say particularly that new en-

terprises to the business should try to have capital formation, should try to have enough savings and the like. But how can the new entrepreneur launch upon a new enterprise, if the rates of taxation are so high? How will he be able to have any savings or capital? Apart from that, the high rates of taxation are no solution to arresting tax evasion. They are also acting as disincentives for formation of capital and savings which have to be built up for new enterprises.

Therefore, as we have said in our memorandum, the remedies for the malady are not efficacious but are worse than the disease. That is one aspect which this august Committee would like to give some thought, because this Bill has popularly come to be known as Black Money Bill and the whole object is to arrest tax evasion for which there is much scope. But this is not the proper forum to discuss it, and so I would not like to waste the time of the Committee; I shall refer to these clauses of the Bill which have been the subject-matter of current controversy.

The other point is this. As a lawyer, I find that this Bill, if I may very respectfully say so to the draftsman, is a very badly drafted one. I am quite sure that the only clause which will stand to benefit by the bad drafting will be my class. Now, the question is whether I should suggest the improvements in drafting and whether it is really the function of the association to be associated with a Select Committee and suggest drafting improvements. I do not think we should do so, because obviously the Select Committee will not pay any fees to my association, even if we are required to assist them in the task in regard to these amendments. If this observation disturbs the learned draftsman of the Bill, I shall presently be glad to point out so many infirmities and so many loose pieces of drafting in various provisions and try to argue from those words on what could be said on either side of the ambiguity. If I

were to convert the Select Committee into a court of appeal, I think it would be very difficult for the Select Committee on the basis of the words that the enactment uses to give a judgment either in my favour or against me. I shall presently refer to some of these aspects of the Bill.

I have been a student of taxation for some years and quite a serious one, and have been arguing a number of cases before courts. My own analysis of the recent legislation during the past five years has been that there is a tendency, which I have analysed, on the part of the Administration to bring forward these Bills one after the other. If I may say so, I have analysed five important features of the recent tax-legislation including the present one, and I shall be able to fit any clause of the Bill into any one of these features. Those five features of all these Bills may now be appreciated. The most important, as far as I can see, is the Government's very great desire to bring the black money into the open. But the black money does not come in the open. What is achieved by legislation is construction of very penetrating roads into the private rights and liberties of the citizens, merely with a view to finding out if any secret income exists. And whether black money will be found or not, still the Revenue Department is armed with indiscriminate powers of discovery and search for finding out black money. As regards the powers of seizures, the powers of search, the powers of requiring somebody to give explanation of the expenditure, the maintenance of accounts and all that, I will come to them later on.

The second feature is that we are introducing in our tax system increasingly more fictions, not only fictions in the matter of assessment of incomes but also in the matter of levy of penalty. We are going a step further. We are introducing fiction even in the matter of certain offences which would be deemed to have been committed in the eye of law.

The other feature is which actuates the administration to bring these frequent amendments is owing to the decisions of the courts. There is a growing tendency in the Central Board of Direct Taxes to do that. The moment you get a decision of the Supreme Court which is in favour of the assessee and which may slightly affect the revenue, the next day there is a proposal for an amendment. This is a tendency which is not healthy for any democratic society. After all, it took years for a law to get stabilised. The disputes arise; the people go to the courts and, ultimately, the interpretation of a statute is stabilised and, when the stabilised interpretation comes before the people, the next day an amendment is made.

MR. CHAIRMAN: Suppose there is a loophole in the law. It was not contemplated when the law was enacted. Is it not the function of the Government to plug the loophole?

SHRI G. C. SHARMA: I do not understand what is the meaning of "loophole" in a provision of law. If a "loophole" means that the decision that the court gave was in favour of an assessee because a certain word or a comma or a full-stop was missing from the enactment and, if a comma is put the decision will be in favour of the Government, then that, of course, would be a loophole. But where the nature of expenditure incurred for the purpose of 'business' has been debated long before the courts and the courts have said that this is a kind of expenditure which will certainly be allowed in the computation of 'business expenditure' of an assessee, when such a decision comes, the Government puts a ceiling on that through an amendment.

Take, for example, the Wealth Tax decision to get an income-tax deduction on fees paid to lawyers. The Government thinks that the Supreme Court has given a very wide latitude to an assessee to claim any expenditure in contesting their case. We find in the Bill there is a ceiling fixed on that. Of course, there is a debate

as to whether the ceiling will apply to persons who carry on this business. Apart from that, there is a ceiling prescribed. I do not appreciate this theory of prescribing a ceiling on legitimate business. Why should the Government think that there should be a limit or a ceiling fixed on any business expenditure once it is assured that this is an expenditure which is *bonafide* incurred, which is actually incurred and which has been incurred for the purpose of business.

The fourth tendency is to have concentrated of power in the Central Board of Direct Taxes. In every provision of the Bill, you will find a mention of the Central Board of Direct Taxes. When I studied the Indian Income-tax Law 22 years ago, there was not much of a reference in the statute to the Board. The people, even the lawyers, did not know what was the Board, who was the Chairman of the board, who was the Member of the Board, what the Board was doing and all that. Now, I find, there is hardly any provision in the income-tax Act in which the expression 'Board' does not occur. I will presently point out that it is so.

The centralisation of power in the Central Board of Direct Taxes is another tendency which is developing. You will find that this is so apparent even in this Bill. The Central Board of Direct Taxes officers feel that they can only prescribe the accounts book and nobody else. They consider themselves so capable that they will be able to read all languages in which the accounts books are written throughout India. They consider that they know more accountancy than anybody else on earth knows. This is another tendency which needs to be deprecated.

The Parliament should see that the Central Board of Direct Taxes does not take upon itself unlimited, arbitrary and naked powers to decide about each and every matter it likes and poke its nose, so to say, in every action of the subordinate autho-

rity. I do not know why this is not being taken care of.

Having made these preliminary observations, I would like to take up one or two clauses in great detail. Before I go to other clauses, I would first like to delate on clause 39 which is the most thought provoking clause as respect to practitioners. This is regarding the compulsory audit of accounts by a class of practitioners. Our Association has not been able to understand what is the real purpose of bringing in such a provision. Is it thought that audit by itself is an instrument for detecting secret income or is it thought that audit by itself shall lead to the discovery of concealed income? If audit was so efficacious and so much sanctity was attached to it, there would have been no tax evasion so far in this country. Most of the tax-evasion, if my information is correct, has been discovered in the past by investigation commissions and all that too in the case of large industrial houses where expert advice on accountancy had been given. So, I do not think this clause of compulsory audit by itself by a section of people who stand to gain by that in their profession is any solution to the problem of tax-evasion.

There is really no indication in the Bill that any punishment will be awarded to that accountant who has submitted an audit report in a case where the tax-evasion is ultimately detected. Also, I find, that there is no indication that the Revenue shall accept an auditor's certificate on its word and will not require an assessee to further prove the statement of his income or return. So, what kind of audit is required is the question that baffles us. Is it the same kind of audit that has been going on in this country for so many years without being made compulsory or is it some kind of new audit which the Government is thinking of to introduce? If it is a kind of audit which has been going on for so many years, it will serve no purpose. If audit is regarded as a

means for detection of income, it is to be an effective audit. For that purpose, the auditor cannot be identified with the class who also practices tax law. I will come to that a little later. But if this intention is that the audit should be a report of an independent examiner or an investigator of accounts who should really help the Government in a quasi-judicial manner without taking side of his client, the auditors must be brought under the control of the Government. That is there should be clear-cut class of auditors—an independent class of auditors. Unless that is done, no purpose will be served. I have come to address you on this in detail. As you may be knowing, this is a kind of controversy in tax practice which is being unnecessarily started by the Government on its own initiative for the first time in this country. So far as I know, chartered accountants and lawyers have been working so far hand in hand. We have mutual respect for each other. On many occasions we have served the cause of clients, working as a team like brothers, each contributing to the knowledge of the other. Indeed, it is impossible to define in tax practice the respective spheres of a chartered accountant and a lawyer. It will be a tall and wrong claim for any lawyer to say that he will never need the help of a chartered accountant in tax practice, and equally it will be a wrong claim for any chartered accountant to say that he will not need the help of a lawyer. In other words, the functions of a chartered accountant and of a lawyer in the field of tax practice are overlapping, and it is an utter mistake to consider that these functions can be divided. One cannot say, in a tax matter, that only a lawyer can do and a chartered accountant cannot do as much as it is wrong to say that only a chartered accountant can do and a lawyer cannot do. Therefore, once it is conceded that the functions are overlapping, why is the Government trying to create a division between these two classes? The relations bet-

ween these two classes have been very nice all these years, and this controversy is being created unnecessarily at the initiation of the Government itself. Government should try to avoid this kind of controversy..

MR. CHAIRMAN: This was a recommendation made by the Wanchoo Committee.

SHRI G. C. SHARMA: By this, a kind of bad relationship is being created. For decades, I have seen, the income-tax practitioners have been preparing the income-tax returns.

MR. CHAIRMAN: Even if this provision is taken as it is, only about two per cent of the total assesseees will be coming under the purview of this provision.

SHRI G. C. SHARMA: I doubt that. I do not know on what basis the statistics have been collected.

SHRI K. K. WADHERA: I do not think it is a correct figure. I would go to the extent of saying that the figures have been manipulated to give wrong information...

MR. CHAIRMAN: What is your estimate?

SHRI K. K. WADHERA: The moment this Clause is enacted, the workload is going to increase by more than a hundred per cent.

MR. CHAIRMAN: If this provision is applied, namely, those with an income of more than Rs. 50,000 should get their accounts audited, how many cases, you feel, would come under this?

SHRI G. C. SHARMA: If it is going to affect only two per cent, then what is the justification for making this change?

MR. CHAIRMAN: This was a recommendation made by the Wanchoo Committee.

SHRI G. C. SHARMA: It is not a document which has been faithfully followed by the Government

SHRI K. R. GANESH: Please do not use the expression 'initiation of the Government'. It was a recommendation of the Wanchoo Committee which Government has chosen to accept.

MR. CHAIRMAN: It was a recommendation made not only by the Wanchoo Committee but also by the A.R.C., the Taxation Inquiry Committee and the Public Accounts Committee. It is one thing to say that you do not accept the principle. But you have accepted the principle. If you think that this provision will affect the advocates, you may explain to us the difficulties and the Committee will try to remove them so far as it is possible. Our information is that the number of cases with income more than Rs. 50,000 would be about 70,000. If you have got any other figure, the Committee will be glad to consider it. But this is the figure that we have. As I said, if you feel that this provision will affect the tax advocates adversely, you may tell us the difficulties.

SHRI G. C. SHARMA: It is not a question of affecting a class of professionals. It is not a question of rendering some class jobless and making another class prosperous. It is not a question of exclusiveness of profession because some kind of exclusiveness is inherent in every profession. But the question remains what is the kind of audit that Government expects? Auditors have many functions. A chartered accountant has the function of checking the accounts system and advising clients how the accounts should be maintained. Another function that he performs is auditing the accounts. If his function is merely to verify what is recorded in the books of accounts, this audit will serve no purpose. But if he is to be an independent examiner of accounts who acts independently, who is free to act quasi-judicially, whose reports are published in papers and on

the basis of whose reports shares are sold, that is another matter. Therefore it will be logical that if Government makes the audit compulsory, it should withdraw the right of that independent auditor-Accountant to appear before the Income Tax authorities—because the two things are not consistent. How can I tell my client that his books are not in order and yet go before the Revenue authorities and try to get a higher depreciation allowance? Therefore it would be only right that an Accountant should not have the right to plead before income-tax authority the case of his client?

Therefore, if the Government thinks that this audit is correct in principle and appoints an independent Accountant, it must logically follow that the right of representation before the Income Tax authorities must be taken away from the Accountant. If the books of accounts have to be audited and that audit is to be a real examination of accounts based on real investigation—where the Auditor is free to give a certificate against his client—then that Auditor should not be allowed to appear before the Income Tax authorities to plead the case of his clients. Therefore, the argument which I was submitting for your consideration is that, unless the audit is not to be considered as synonymous with mere verification of accounts as maintained by the person who engages the Auditor, the two things are not consistent.

MR. CHAIRMAN: In that case, your argument will apply to the Corporate sector also?

SHRI G. C. SHARMA: Yes. In the present context, the provision, as it is, serves no purpose except that it creates a controversy between the so-called two rivals in the profession which are now working hand in hand. I do not understand why the Government should bring in a legislation which would disturb that harmony in the profession.

MR. CHAIRMAN: This does not say anything about arguing a case. An advocate can still appear before the Income Tax authorities nothing prevents him.

SHRI G. C. SHARMA: The Chartered Accountant does the same kind of work as the legal practitioner is doing today in the sense that he prepares the Income Tax returns or sees that they are prepared in the prescribed manner, checks up whether the forms have been filled in properly, whether the books have been maintained in the prescribed form, etc..

MR. CHAIRMAN: Just now you have said that even the Tax Advocates are preparing the returns for the assessee. As per the provisions of the Income Tax Act, a person who helps an assessee in preparing his statements should also sign. Do they do that?

SHRI G. C. SHARMA: They do it sometimes; but if they don't do it, there is no insistence.

MR. CHAIRMAN: But as per the provisions of the Act, whoever helps should also sign.

SHRI G. C. SHARMA: Some of them may be doing it and some may not be doing so; I am not aware. But if it is a statutory duty and they fail to do it the returns should not be accepted.

MR. CHAIRMAN: But how will they know that somebody has helped? You have yourself said just now that the Advocates are helping but I don't think many returns are received which are counter-signed.

SHRI O. P. DUA: It does not make a difference whether it is counter-signed or not.

SHRI G. C. SHARMA: If that is the legal requirement and they don't do it, it is not the fault of the system but of the particular lawyer.

But the real question is this; what kind of audit Government has in view. If it is the kind of audit that is already going on, it will serve no purpose except that it will create two rivals in the profession and one will always be trying to find fault with the other. Even if the auditor is a Chartered Accountant and the right of representation is conferred only on a lawyer, he will find fault with the other.

MR. CHAIRMAN: I cannot say what this Committee is going to decide, but supposing the Committee allows the Tax Advocates also to do this job, in what way will it eliminate the present difficulty you have pointed out if, according to you, the present system of audit is not good.

SHRI G. C. SHARMA: In my opinion, if it is only a question of allowing both the wings of the profession the right of audit...

MR. CHAIRMAN: If both are allowed, do you think the quality of the returns will improve?

SHRI G. C. SHARMA: If the same kind of audit goes on, whether it is a Tax Advocate or a Chartered Accountant, the audit will not improve. Therefore, unless the Auditor is made independent and he is excluded from the provisions of Section 258, the audit is not going to serve any purpose.

MR. CHAIRMAN: I may stretch the logical and say that the Tax Advocates should also be made independent.

SHRDI G. C. SHARMA: Tax advocates who practise as Accountants or Auditors should also not have the right of representation. It is not a question of pleading the case of one class against another. I want to present you before the picture of the profession in its reality; I am not asking for favours for one class in preference to another.

MR. CHAIRMAN: So what is your specific suggestion.

SHRI G. C. SHARMA: My specific suggestion is that so far the system has been going on very well.....

MR. CHAIRMAN: I am talking about this clause.

SHRI G. C. SHARMA: The clause should be entirely deleted.

MR. CHAIRMAN: That means that compulsory audit for 50,000 and above should not be there?

SHRI G. C. SHARMA: Otherwise the type of audit that is wanted must be defined. What we mean by 'audit' must be first defined and, secondly, what we mean by a person who is an Accountant or Auditor being made independent. If these two things are done, nobody can object to it. The question is, audit by whom, to what extent and with what objective? Unless all these ideas are defined we will be presuming that we are enacting this provision under the existing conditions that audit will continue to be what it has been in the past, and which will do more harm than good.

MR. CHAIRMAN: What will be your definition of audit and what will be your definition of Accountant?

SHRI G. C. SHARMA: My definition of audit would be that the audit should be done by one who is popularly known, an independent Accountant. In other words he will have the authority to take quasi-judicial decisions even against his clients in the matter of audit. He will have the authority to investigate and find out the actual fact. After all if the burden of the investigation is shared by the audit, the Department will feel obliged that this burden is reduced and a class of auditors has been created which has discovered the tax evasion on the basis of the investigation. Therefore, an auditor means an independent accountant, an examiner of accounts, and an investigator of accounts with the right to probe into the accounts and not merely provide the evidence in support of the accounts. Unless the audit is put

under an independent accountant, which would be excluded from the provisions of the Section 288, you cannot expect it to function very efficiently. If the auditor is given the right to probe into the accounts and give his independent Report then there may be a need to define the work of the accountant. But he should be taken out from the category of "authorised representative" under Section 288. That would be my suggestion, Sir.

Now, Mr. Chairman, there is another clause about the compulsory maintenance of accounts which is Clause 12. I shall presently point out the drafting blemishes of this clause.

It appears that it is based on a presumption, whether right or wrong, that income-tax evasion is generally and largely practised by only a class of people, that is, the businessmen and the people who carry on professions. Now, while I can say that income-tax evasion, to a great extent, is practised by this class of people and also by those who have got income from other sources like interest, dividends, commissions accruing and hire charges it is even practised by people who have got salary income like Directors in private sector companies.

[**SHRI N. K. P. SALVE** took the Chair.]

SHRI G. C. SHARMA: Mr. Chairman, I was on Clause 12 and I took the liberty of saying that as the clause stands it is applicable in its scope to any person who carries on vocation, I wonder if the Members of this august Assembly will also have to maintain books of accounts because as far as I understand Members of Parliament do nothing except carry on a vocation. But I am quite sure it is not the intention of the Legislature. Therefore, my suggestion would be that this clause should be made applicable not with reference to the head of income or to the slab under which that income is assessable but to the extent of income itself. For instance, the clause may be made applicable to any person whose total income

exceeds a certain specified limit, say Rs. 25,000/- or Rs. 50,000/-.

MR. CHAIRMAN: 44B does not postulate vocation or....

SHRI G. C. SHARMA: Sir, I think this is serious matter which requires the consideration of this Committee because later on somebody will say that the Member of Parliament enacted this Bill but they themselves did not maintain any accounts.

MR. CHAIRMAN: That is the correct position.

SHRI G. C. SHARMA: I am obliged, Sir.

MR. CHAIRMAN: Therefore, can you say what limit should be prescribed?

SHRI G. C. SHARMA: Sir, my suggestion is that this should be applicable neither specifically to profession nor to vocation. This clause should bring in persons whose total income exceeds a certain limit, may be Rs. 25,000/- or Rs. 50,000/- whatever may be the source of income. And if I may say so, Mr. Chairman, such a suggestion will be consistent with another provision which you are introducing in the Act, that is, the requirement of explaining personal expenditure. I do not think that a person can be required to explain or can successfully explain his personal expenditure unless he maintains an account of his income expenditure. Therefore, the entire clause may be redrafted so as to bring within its scope certain class of people whose total income exceeds certain specified limit and he should be required to maintain accounts of his income and expenditure irrespective of the slab of income.

MR. CHAIRMAN: What according to you should be the limit?

SHRI G. C. SHARMA: Say Rs. 25,000/- or Rs. 50,000/-.

MR. CHAIRMAN: That is for the business men.

SHRI G. C. SHARMA: I do not understand why a distinction has been made between a person who carries on business and a man who carries on professional work. Sir, my submission is that the same limit should be applied to all because the provision seems to be based on a wrong presumption that only this class of society practises tax evasion. Why people who have got income from hire and other sources should not be brought within the scope? Why people should not be brought within the scope who have got income from other sources? Why it should not be made compulsory for them?

MR. CHAIRMAN: For the obvious reason one man is a Director of a company. If he has to have his professional income, then his earning would only be as a remuneration possibly as a Director in which case all the accounts are necessary. The basic activity being of a nature in which the accounts are not wanted. These are the activities where day-to-day maintenance of transactions should be insisted upon and should be statutorily necessary. For the other person who has to ensure that, there is a minimum scope for any amendment, that is the basic distinction.

SHRI G. C. SHARMA: But, it is presumed that all the Directors of companies have no other source of income; they are declaring what they earn as fees. Unless they keep an account of their personal income, it would not be possible really to probe into their sources of income. Therefore, everybody whose total income exceeds Rs. 25,000 should maintain his account in order to prevent evasion of tax. For salary purpose it may not be necessary, but for expenditure, it should be necessary. I am told even the Government servants are required

to maintain some sort of accounts of their personal expenditure.

MR. CHAIRMAN: I appreciate the point made by you. A person who has got more than Rs. 25000 as his total income, we will consider it.

SHRI G. C. SHARMA: There are some drafting errors.

MR. CHAIRMAN: The Bill has been drafted in a very very great hurry. In that case, can you give us a supplementary memorandum pointing out those errors, because that would help the Committee?

SHRI G. C. SHARMA: If you ask the Association of Lawyers to draft it, then it would like to charge its fee for that purpose.

SHRI BHAGWAT JHA AZAD: Then, do not do it.

MR. CHAIRMAN: By becoming a lawyer, you do not cease to be a part of the society. If you have got some suggestions to make, they should be reduced to writing?

SHRI G. C. SHARMA: In your absence I talked about compulsory audit of accounts and finished that point. I had been asked pointedly to draw attention to clause 14 which is an amendment of Section 64. This clause has been cast on illogical lines in the sense that if I make a transfer of an asset to a son (major), the income arisen from that is not included in my income. On the other hand, if I make a transfer of an asset to my major son's wife, the income is included in my income. We do not really understand the logic behind it?

MR. CHAIRMAN: If a wife is to be made an assessee then the income of such a transferred asset is likely to be taxed in the hands of the transferer's spouse. Therefore, if the father of the son transfers it to the wife, it would be outside the purview. It is only to plug this loophole that this is going to be done.

SHRI G. C. SHARMA: If the father transfers it in favour of his son?

MR. CHAIRMAN: Our experience shows that in a family, there are already divided units. Then there are further divisions and sub-divisions. It is that which is sought to be curbed.

SHRI G. C. SHARMA: There is no purpose in this clause; it should be deleted as it is.

MR. CHAIRMAN: Then, it is a matter of opinion.

SHRI G. C. SHARMA: Of course.

MR. CHAIRMAN: If you think there is no problem, then there is no point to pursue. If you have got some answer to this problem, then we can understand it.

SHRI G. C. SHARMA: There is no question. The legislature will be perfectly right and it says "any income".

SHRI BHAGWAT JHA AZAD: Mr. Chairman, Mr. Witness should be told that it is not a question of opinion that he has to say. He has advanced logic in argument. If he straightway says illogical purposely, then he should proceed to the next point. If he has any logic or argument to give, he can give.

SHRI H. M. PATEL: As you have just now pointed out that there is a loophole, does there exist that loophole or not? Does he accept that there is a loophole or not? If he does not, certainly, the matter ends. It does not have a logic that....

SHRI G. C. SHARMA: I do not think there is any loophole.

MR. CHAIRMAN: Then it is all right. As I said, it is purely your view against the statistics that we have...

SHRI BHAGWAT JHA AZAD: Mr. Chairman, you have already pointed out the loophole. If one refuses to see or to accept that, well, we cannot help it. Let us go to the next point.

SHRI G. C. SHARMA: I would like to sit now. That is the end of the matter.

SHRI BHAGWAT JHA AZAD: Are they closing Mr. Chairman?

SHRI G. C. SHARMA: I have said so very respectfully that I have closed.

SHRI BHAGWAT JHA AZAD: He has closed for himself or for the group?

MR. CHAIRMAN: We have given you time up to 5 p.m. If any one of your colleagues wants to say anything, he can do so.

SHRI G. C. SHARMA: I am consulting them.

My friends say that I should resume. I would like to deal with some other Clauses. I thought they will speak on them. They do not want to speak. The other Clause which I would like to specifically point out is Clause 58. This is regarding the appointment of the Settlement Committee. Now, we feel that the powers of settlement should not be vested in the Central Board of Direct Taxes. One of the provisions here is that it is entirely in the discretion of the Central Board of Direct Taxes, sitting as settlement committee, not to allow withdrawal of any application and to reject any settlement application, simply on the report of the Income Tax authorities who may give an opinion that concealment has already been established. Now, Mr. Chairman

MR. CHAIRMAN: The proviso is there. If the concealment is established.

SHRI G. C. SHARMA: The Income Tax authorities will always say that their report or their opinion is correct whereas an assessee will say that settlement has been made at a time when no concealment had been detected. Therefore, to avoid that trouble, in the first instance, I would say this is not desirable. Secondly, this is going to be a very highly empowered body as the provisions are. In as much as it will have the power

of over-riding any decision which has been taken or which may be taken by the Income Tax authorities, it is extremely desirable and it would be in the interest of the assesseees as well as the Government that the assesseees have full faith in the judicial performance of the Board. Therefore, it should be completely independent. As it is, it is provided that three members of the Board will be the Members of the Settlement Committee. Therefore, it is necessary that it should be an entirely independent body and for this, either Judges of the High Court or Members of the Tribunal, or persons whose integrity is not doubted; and even professional people, may be co-opted to serve on the Settlement Committee. There is one particular expression occurring in Clause 58—Section 245D.

“On receipt of an application under Section 245C, the Settlement Committee may call for a report from the Income-tax authority concerned and on the basis of the materials contained in such report and having regard to the interests of the revenue”

This is a Clause which we feel should not be there. The expression ‘having regard to the interests of revenue, will open up a debate whether a certain thing is in the interest of revenue or not. Secondly, the people who are to determine the interest of the revenue are the people who are drawn from the revenue themselves.

MR. CHAIRMAN: Mr. Sharma, the two are conjoint. It has been provided:

“having regard to the interests of the revenue and having regard to the nature and circumstances of the case.”

Both have to be taken into account. It is a cumulative condition.

SHRI G. C. SHARMA: But, this will open an arena of debate.

MR. CHAIRMAN: I understand that difficulty. According to the present draft, there are only two circumstances. Interest of the revenue and nature and circumstances of the case or the complexity of the investigation involved therein. There is no other circumstance under which an application could be rejected. Would it be a fair reading of the Section? According to you, that unduly limits

SHRI G. C. SHARMA: The limits the discretion of the Settlement Committee. It is not necessary, therefore, to have such a thing.

MR. CHAIRMAN: We will consider that. Have you to say anything on searches and seizures?

SHRI G. C. SHARMA: On that, our respectful suggestion is that this is a very important provision and this makes a serious in-road into the private liberty of a citizen. So far, the authorisation Officer is either the Commissioner or the Director of Inspection and Officers of that rank. Now, under the Bill, this power of authorisation for such searches and seizures is proposed to be vested even in the subordinate Officers. I would suggest that this should not be at the level of Inspecting Assistant Commissioners.

MR. CHAIRMAN: We will consider that.

SHRI G. C. SHARMA: Similarly there is a provision that if there has been a function or ceremony, and some money has been spent on that ceremony, then the Income Tax authorities have the power to go to the spot and take immediate action and there also, the powers are given to an Inspector by delegation. This should not be there. A responsible Officer like an Assistant Commissioner should go. After all, a citizen has also some respect in society and if some one reaches there and misbehaves in a function, the whole thing comes into public disgrace. Therefore, the Committee should consider

whether such a power should be vested in the lower level of Officers.

MR. CHAIRMAN: We are not very much impressed by this sort of classification of the officers into commissioner, income tax inspector and so on. A human being is a human being basically. It is more a human problem. If your argument is that a senior man who has had more years of service and more experience is apt to be more mature in his approach, having lived in a certain strata of society we can understand the rationale of that argument.

SHRI G. C. SHARMA: I do not mean to look down upon the income-tax inspector because he is an inspector; what I mean to say is that he may not perhaps have that sense of judgment and wisdom which a superior officer may have.

MR. CHAIRMAN: Because of the delicate nature of the work.

SHRI G. C. SHARMA: I would like to draw attention to clause 16 of the Bill.

MR. CHAIRMAN: Before you do so, I want to understand your suggestion in regard to the independent constitution; you had mentioned High Court judges

SHRI G. C. SHARMA: I had mentioned people who were fit enough to be appointed as High Court judges, not necessarily High Court judges, but persons qualified to be High Court judges or President of the Income-tax Appellate tribunal or even members of the tribunal or even people drawn from the profession or persons from public life whose honesty and integrity is not doubted.

MR. CHAIRMAN: I was not sure whether you had included tribunal or not. That was why I wanted to know.

SHRI G. C. SHARMA: I would now refer to clause 60, to the proposed sub-section (3) of section 249 of the Act.

MR. CHAIRMAN: It relates to recovery of undisputed tax.

SHRI G. C. SHARMA: The intention seems to be to recover undisputed tax and further to penalise the person. In effect, there is an additional penalty for non-payment of tax, that is, undisputed tax. In effect, therefore, it is a penal provision. The person who does not pay the admitted tax or who has not paid advance tax which is demanded of him in time shall not only pay penalty at such an such a percent, but he shall also not be allowed to file an appeal against it.

MR. CHAIRMAN: With the utmost respect to your reading of the whole thing, I am unable to agree with the premise or the conclusion. Where do you find the first one? You may not pay the penalty. That is all.

SHRI G. C. SHARMA: I think I have not made myself clear. The provision is that if a person has not paid admitted tax, that is, tax due on the basis of his return, or he has not paid advance tax which he was liable to pay pursuant to a notice of demand for payment of tax issued by the ITO, if he has not paid after the assessment is made, he shall not be allowed to file an appeal. Therefore, the provision in substance is extra penalties, there is already a penalty provided for non-payment of admitted tax or advance tax; so, the provision becomes penal in character; instead of providing a penalty for non-payment in terms of money only, what is done is that a further penalty is imposed that he shall not be allowed to file an appeal. That is a matter involving an ethical consideration whether the determination of liability to tax should at all be made to depend upon the factum of payment. In other words, there may be very real circumstances where a person might have lost the money immediately after he has earned it, some calamity might have befallen him, he might not have filed the advance tax estimate for many reasons; he may have just forgotten that there is a provision under which he has to file it and he has the right to file an estimate showing that no

advance tax will be ultimately payable by him . . .

MR. CHAIRMAN: That will be covered by the proviso.

SHRI G. C. SHARMA: The question is whether in such matters discretion is at all necessary to be vested in the authority. Penalties have been provided for nonpayment of admitted tax, but the penalisation has gone further; this will be opposed to ethical principles . . .

MR. CHAIRMAN: Similar provisions exist in other Acts, and I think you are aware of them.

SHRI G. C. SHARMA: I consider that the provision in this form, that a person should not be allowed to get his disputed assessment adjudicated in appeal only on the ground that he failed to file an estimate for advance tax is a very harsh provision.

MR. CHAIRMAN: That is a difficult thing. If he has not given an estimate of advance tax but still he has disclosed and owes some tax because of the income that he has earned, what needs to be done in that case is a different story. But in principle, is it acceptable to you that whatever be his tax liability, the right to go in appeal in respect of the disputed item must be contingent upon his discharging the undisputed tax liability unless he is forestalled by unfortunate circumstances in which case, the proviso is there?

SHRI G. C. SHARMA: The whole difficulty is this. If that very authority is vested with that discretion to decide whether he should be allowed to file an appeal, which is the authority to demand the tax from him, it would not work well.

MR. CHAIRMAN: What do you suggest?

SHRI G. C. SHARMA: My feeling is that there is no rationale in connecting the adjudication of the liability

lity for tax with the question of filing of an appeal. It is a twofold penalty for non-payment of tax. It would be rather desirable that penalty for non-payment of tax be increased. If non-payment of disputed tax is considered to be such a big lapse, the remedy lies in increasing the rate of penalty for non-payment of tax rather than in depriving citizen of his right to get the disputed tax adjudicated upon.

MR. CHAIRMAN: Non-payment of tax can relate to disputed as well as undisputed items. Is the penalty leviable for non-payment of tax related purely to disputed items? It may be related not only to undisputed items but also to disputed items, it may be related also to interest; it may also be related to penalty itself; that is a different concept altogether.

SHRI G. C. SHARMA: The concept is that the person must pay the admitted tax. There are means to recover it and there are various provisions for levying penalty for non-payment. But is it a fair thing to tell him that he will not be allowed to get his appeal disposed of even in respect of that income which he has never accepted to be his income?

MR. CHAIRMAN: In my opinion, it is most fair, because it is a commitment that he owes to the State. Why should he not pay the undisputed item?

III. Central Wakf Council, New Delhi

Spokesmen:

1. Shri Moinul Haque Choudhury, M.P.
2. Shri Ch. Tayyab Hussain, M.P.
3. Dr. V. N. Saiyed Mohd. M.P.
4. Shri Tajuddin Ahmed, Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I have to bring to your notice Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha which reads:

SHRI G. S. SHARMA: It is a penal provision, which seeks to deprive him of the right of appeal.

MR. CHAIRMAN: That nomenclature may impress you very much, but it does not impress us. Assuming that it is penal, how is it unjust?

SHRI G. S. SHARMA: That way, no penal provision is unjust. That may be a matter of opinion.

MR. CHAIRMAN: If you think that that sort of provision should be made for collection of taxes, then it is necessary that we must have some rigorous measures which would bind even those who want to fight litigation in respect of disputed items to pay what is due according to their own estimate. What is wrong in principle in that?

SHRI H. M. PATEL: I presume that his suggestion is that there should be a discretion.

MR. CHAIRMAN: The proviso is there which gives the discretion to the Deputy Commissioner to exempt any person from the operation of the provisions of this sub-section.

MR. CHAIRMAN: Have you any other point to make?

SHRI G. S. SHARMA: No.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew.)

“Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any

part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament".

SHRI MOINUL HAQUE CHOU-DHURY: The evidence may be published; there is nothing confidential.

We have come to give evidence on behalf of the Central Wakf Council of India. This Council was set up under Section 8 of the Wakf Act 1954, an Act of Parliament. Under the law itself as laid down by Parliament, its Chairman is the Union Minister in charge of Wakfs. At the moment, Shri Fakruddin Ali Ahmed is the Chairman.

We are here on a Resolution passed by the Wakf Council authorising us to represent its viewpoint. That is why I made a request to you through correspondence, and I am grateful to you and to your colleagues on the Committee for giving us this opportunity of appearing before you and testifying about our viewpoint.

I will first take cl. 6. We are not going to deal with every matter; there are only a few specific matters with which we will deal. Cl. 6 is the first and foremost important matter for us. I will try to elaborate before I go into specific suggestions. Sec. 11 of the Income-tax Act, as originally enacted, granted a tax exemption to income derived from property held in a trust for charitable and religious purposes. In 1962, by an amendment to sec. 13(1)(b), this benefit was withdrawn with regard to trusts 'created or established after the commencement of this Act' for the benefit of any particular religious community or caste, although the benefit continued to remain under Explanation II to the same section for scheduled castes, backward classes, scheduled tribes and others

as laid down there. That means it started operating seriously even at that stage in a somewhat, if I may be allowed to put it, discriminatory manner against religious minorities like Muslims, Christians, Sikhs, Parsis, etc. if they liked to have trusts of this nature after April 1962 although a large section of the majority community which is also weaker section like some of the religious minorities in as many as in many States as many as 50—60 per cent of the population would consist of backward classes and scheduled castes, as declared by the Scheduled Caste Commissioner or by the States themselves.

To recall an instance, you will remember that even in Mysore State 65 per cent of the seats in various institutions were reserved for the backward classes, which came up before the Supreme Court and the Supreme Court had to strike it down. That means, this exemption which was granted, in Mysore State would be available, apart from the scheduled castes, to 65 per cent of the population, if that order of the Mysore Government was correct.

This Explanation itself would show how this principle of giving protection to the backward section by Explanation II had given advantage to some and had acted, as I had said, in a somewhat discriminatory manner to the religious minorities who in no circumstances would get the benefit of it after the 1962 amendment.

Clause 6 of the Bill by proposing to amend section 13(i)(b), between lines 25 and 30...

MR. CHAIRMAN: Communal trusts created before 1-4-62 would also be roped in within the gambit of this and the exemption will be denied.

SHRI MOINUL HAQUE CHOU-DHURY: By omitting these words, the old trusts whether created before 1962 or after 1962 will be at par and all will be denied.

Before I go into anything else, I would like to point out one thing

that so far as the wakfs in India are concerned, this institution is as old as the advent of Islam in this country. There are wakfs in India which may be 600—800 years old, from the time of the migration of Muslims say to some parts of Kerala. They were supposed to be among the first Muslims who came to this country. I would like to underline this part. There are wakf which may be as old as 600—800 years. Nobody knew of what was coming in future. The Mohammadan law is not changed; the Shariat law is not changed; the Wakfs Acts passed by Parliament or the various State legislatures have not been changed. All these wakf Boards are looking after nearly a lakh and a half of shrines, *khankas*, mosques, *kabristans*, *durgahs* etc. All these placed will be divetsed of any kind of tax exemption or of any consideration whatsoever.

This is a position which is really quite disquieting for us and we thought that we should bring it to your notice, your colleagues and to the Government.

Apart from the Mohammadan Law which has defined the wakfs, you will find that the Wakf Act of Parliament which was passed in 1954, has defined a wakf in section 66C read with section 3(1). This is a Central Act. I may be permitted to read both these sections. Section 3(1) says:

“wakf” means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes—

- (i) a wakf by user;
- (ii) grants (including *mashrut-ul-khidmat*) for any purpose recognised by the Muslim law as pious, religious or charitable; and
- (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;”

That means not for the benefit of children only. And;

“wakf, means any person making such dedication.”

Parliament later on added section 66C to supplement this definition. It says:

“Notwithstanding anything contained in this Act, where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being—

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafar-khana,

then such property shall be deemed to be comprised in that wakf and be dealt with in the same manner as the wakf in which it is so comprised.”

This definition is quite comprehensive. It will give the Select Committee an idea as to what really the wakfs in India consist of. These are Muslims graveyards, *dargahs*, *imambaras*, *khangahs* and *maqbaras*, etc. The words in both these sections have been used pious, religious and charitable purposes under the Mohammadan Law. They have not been defined in the Act.

I would quote from a very authoritative book, namely, *Principles of Mohomedan Law by Mulla*. It is considered as a very authoritative book. In its 16th edition, at pages 171 and 172, under section 178, what is considered for “such purposes” has been defined. It says:

“The following are valid objects of wakf:—

- (1) mosques and provision for imams to conduct worship therein;

(2) colleges and provision for professors to teach in colleges;

(3) aqueducts, bridges and carvanserais;

(4) distribution of alms to poor persons, and assistance to the poor to enable them to perform the pilgrimage to Mecca;

(5) celebrating the birth of Ali Murtaza;

(6) keeping *tazias* in the month of Muhurram, and provision for camels and dutiful for religious processions during Muharram;

(7) repairs of imambaras;

(7a) the maintenance of a khankah;

(8) celebrating the death anniversaries of the settlor and of the members of his family;

(9) performance of ceremonies known as *kadam sharif*;

(10) burning lamps in a mosque;

(11) reading the Koran in public places, and also at private houses;

(12) performance of annual *fateha* of the settlor and of the members of his family;

(13) the construction of a "robot" or free boarding house for pilgrims at Mecca;

(14) maintenance of poor relations and dependent;

Item 13 is not possible today in India, nowadays, because Saudi Government does not allow it. Then,

(15) payment of money to Fakirs, i.e., the poor;

(16) grant to an Idgah;

(17) a Durgah or shrine of a pir which has long been held in veneration by the public."

These are the purposes. This would show that they are something work for which the wakfs are created or had been created. Even in Delhi, there are several shrines such as Hazarat Nizamuddin Aulia, etc., which are visited by people of all communities. In this country, we have the tradition of going to one another's shrine. That is a tradition which we have inherited.

After having explained this, I would like to add that if this provision is allowed to remain as it is, it would cause a death-blow to the efforts at self help by minorities for their religious purposes, because these are all religious purposes or for charities for the poor and the less fortunate and the economically backward sections amongst them.

MR. CHAIRMAN: The Committee has heard extensively on this point, and the Committee is well apprised of the various hardships which may be caused to the various trusts, wakfs, etc., which may have been made trusts unsuspectingly for religious purposes or charitable purposes years ago. You can have my assurance on behalf of the Committee that the Committee will give its utmost and anxious consideration to the features that you and other witnesses have pointed out about the hardships which may be caused by the proposed amendments. You may now come to the next point.

SHRI MOINUL HAQUE CHOU-DHURY: We are very grateful to you for the assurance, and therefore, I will not repeat these points. I want to say only one or two things which may or may not have been brought to your notice; I do not know. I refer to some of the institutions which are not entitled to the Government grant.

MR. CHAIRMAN: Is the existing law, according to you, fair on this point?

SHRI MOINUL HAQUE CHOU-DHURY: Yes. Our suggestion on the

earlier point is an amendment; what we are proposing here under section 13 would be just. The amendment that we propose is:

"Provided always that section 13(b) shall not apply to institutions run under wakfs recognised by laws for religious, pious and charitable purposes."

MR. CHAIRMAN: We do not want to create a further category among the religious categories. If it is meant only for the Hindus if it is made by a Hindu, or if it is made by a Christian it is meant only for the Christians, or, if it is made by Sikhs, it would be only for the Sikhs, etc.—if such a provision is to be made, and if such exemptions are made in respect of each community, you can take it from me straightway that it will go against the very spirit of the law itself. Everyone must be entitled to it.

SHRI MOINUL HAQUE CHOU-DHURY: I am saying it should be for everybody. If you think of the wakf itself, this is one way. Otherwise, the otherway is to amend explanation (2).

MR. CHAIRMAN: That also is beyond us, because that is not the subject-matter of the amendment.

SHRI MOINUL HAQUE CHOU-DHURY: Then it has to be deleted. This is the only way, if I may say so.

MR. CHAIRMAN: When I asked whether you are satisfied with the existing law, you said it is all right.

SHRI MOINUL HAQUE CHOU-DHURY: The previous amendment has acted very much against us. Now, it would create further difficulties for us, but if the Committee is not prepared to revert to the pre-1962 period, the only alternative is to delete the present amendment. If the Committee is prepared, the other two suggestions that I am making could be considered: namely, Explanation (2) could be suitably amended to give protection to all those institutions. Here I am not talking only

about the religious minority institutions. That is my suggestion with regard to this clause.

I will then take up the second aspect in this very clause. Clause 6(c) proposes the insertion of a new clause, clause (d); that is about voluntary contribution. On that, I again beseech for your consideration here the insertion of a new sub-section (1A) after sub-section (1) of section 13 of the Act in the next page. Our submission is that we have got two kinds of donations for these institutions. In most of these *durgahs* there is a box put, so that people deposit coins in them, ten paise, or twenty paise, or a rupee. Most of the income of the *durgahs*, *kankas*, etc., come from door to door collection or the charity box. They should be completely exempted from any taxation. It is not possible for anybody to give the identity of these people. The law should not be made in such a way that it has got an inherent loopholes in it to be violated or it should operate in such a manner that the institution is likely to be completely destroyed. I am not talking about the mosques alone; this is true of *gurudwaras*, churches and other institutions of religious minorities. These may not be taxed; these should be exempted.

So far as donation is concerned, I am suggesting that donation of Rs. 5,000 should be exempted as not being substantial from the ambit of taxation. You will find that in clause 6(iii) a new provision is made substituting the old one which says: "(b) any person who has made a substantial contribution.....exceeds Rs. 5,000".

SHRI ERA SEZHIYAN: Supposing a donation is split into Rs. 4,000 and 1,000. How are you going to distinguish?

SHRI MOINUL HAQUE CHOU-DHURY: The effect is that you are penalising the institution. That is why we are saying that individual donations upto Rs. 5,000, they might be exempted.

The Finance Act of 1972 makes it compulsory for the Wakf for registration. Under the Act passed by Parliament or by State Legislatures, these Wakfs have got to be registered with the State Wakf Boards or the Charity Commissioner. This registration may be taken as sufficient for the purpose of income-tax. I do not know whether you can take into consideration this matter because there is no amendment to section 12.

MR. CHAIRMAN: It is outside our scope and certainly you can approach the Finance Minister directly with this proposal.

SHRI MOINUL HAQUE CHOU-DHURY: I shall now refer to clause 5. The sum total of amendments in this clause is that the amounts have got to be put in certain specified securities, approved securities. The principle underlying cannot be objected to. The date for receipt of applications may be extended upto 31-12-1973, because the time given was very short and many small institutions in the countryside are going by default.

MR. CHAIRMAN: Which is the exact sub-section?

SHRI MOINUL HAQUE CHOU-DHURY: I was talking about clause 5, which amend section 11 of the Income-Tax Act. A date has been specified by the Finance Act.

MR. CHAIRMAN: Are you referring to sub-section (2)?

SHRI MOINUL HAQUE CHOU-DHURY: I am referring to Registration, i.e., section 12(a).

MR. CHAIRMAN: For that, you can approach the Finance Ministry. I am sure they will be very reasonable.

SHRI MOINUL HAQUE CHOU-DHURY: I am under the impression that we can make suggestions to remove certain difficulties, even if it is beyond the ambit of what is proposed in the Bill.

MR. CHAIRMAN: If it is anywhere within the subject-matter of any provisions of the Bill or within the object of the Bill, we can consider it. But Registration is neither within the object of the Bill nor one of the provisions before us.

SHRI MOINUL HAQUE CHOU-DHURY: Then, section 10 is being amended by clause 4 for a limited purpose. I was going to make a suggestion about section 10(22).

MR. CHAIRMAN: That is outside our purview completely. We will consider carefully whatever you have stated about clause 6. You can have the assurance that we would very anxiously look into all the disquieting features which you and your colleagues have pointed out. Thank you.

SHRI MOINUL HAQUE CHOU-DHURY: Thank you, Sir.

(The Committee then adjourned.)

**RECORD OF EVIDENCE TENDERED BEFORE THE SELECT COMMITTEE
ON THE TAXATION LAWS (AMENDMENT) BILL, 1973**

Saturday, the 15th December, 1973 from 10.30 to 13.30 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Virendra Agarwala
3. Shri Dharnidhar Basumatari
4. Shri S. R. Damani
5. Shri K. R. Ganesh
6. Shrimati Sheila Kaul
7. Shri P. G. Mavalankar
8. Shri S. B. P. Pattabhi Rama Rao
9. Shri Bhola Raut
10. Shri Era Sezhiyan

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—*Joint Secretary and Legislative Counsel.*
2. Shri S. Ramaiah—*Deputy Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri K. E. Johnson, Member, Central Board of Direct Taxes.
2. Shri S. Narayan, Joint Secretary.
3. Shri I. P. Gupta, Joint Secretary (F. T. D.)
4. Shri R. R. Kholsa, Director.
5. Shri O. P. Bhardwaj, Deputy Secretary.
6. Shri S. I. Tripathi, Deputy Secretary.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

All India Federation of Income Tax Gazetted Service Association, New Delhi.
Spokesmen:

1. Shri K. Raha, President.
2. Shri P. S. Gopalakrishnan
3. Shri C. L. Wall
4. Shri O. S. Bajpai
5. Shri R. C. Pandey, Secretary

(The witness were called in and they took their seats)

MR. CHAIRMAN: Mr. Raha, You are already aware of the direction, which governs your evidence. Please note that the evidence that you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of it is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

We have received your supplementary memorandum last evening and we have already circulated it to the Members. You can proceed now.

SHRI P. S. GOPALAKRISHNAN: We are very grateful to you for having given us an opportunity for appearing before the Committee for the second time and placing before you our viewpoints on the draft Bill.

We have given a small note about the membership of our Federation on the first page, but there appears to be some confusion about the character of our Federation. We have given the composition of the Federation, showing the number of officers, cadre-wise, viz. Assistant Commissioners, Income-Tax Officers, Class I and Income Tax Officers, Class II.

MR. CHAIRMAN: These 55 per cent Class I people would be those, who possibly were promoted from Class II to Class I and as far as class II are concerned, they would be 100 per cent.

SHRI P. S. GOPALAKRISHNAN: Yes, Sir.

Sir, we have given another memorandum as directed last time. In part I, we have tried to deal with the provisions of the Bill, while in part II, we have dealt with the administrative set up. I will first deal with the clauses of the Bill.

Clause 58— Settlement of Cases:

The object of the provision as indicated by the Wanchoo Committee is:

"In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhabit a one-time tax evader or an unrepentant defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department, while needlessly proliferating litigation and holding up collections".

As we submitted last time, we are opposed to the entire chapter on settlement and there we have drawn some support for this from the report of the Income Tax Investigation Commission. We have quoted a part from the report of the Commission. We have also referred to the Direct Taxes Administration Enquiry Committee's report (para 7.12 of their Report). The passage is quoted on page 3 of our Memorandum.

MR. CHAIRMAN: That is true. The paragraphs quoted do not do justice to your views. This is a very important chapter and we attach tremendous importance to what you have to say in this matter. You will have to give us strong and cogent reasons for what you have cited.

SHRI P. S. GOPALAKRISHNAN: The Wanchoo Committee has dealt in its report with the scheme of voluntary disclosure. It has opposed the idea of any general scheme of disclosure. Those schemes would not only fail to achieve the intended purpose of unearthing black money, but would also have deleterious effect on the level of compliance among the tax paying public and on the morale of the administration.

All that we want to submit before you is that it is because of these

reasons that they are recommending that there should be a limited scheme of disclosure. They have opposed the scheme on general grounds. They want a restrictive provision.

MR. CHAIRMAN: If you have read the Wanchoo Committee Report very carefully, what they say is, that resorting to such a measure during normal time and that too frequently would not only shake the confidence of the honest tax payer, but would also invite contempt for the enforcement machinery. An honest man goes on paying his tax. For a dishonest man, who does not pay the tax due, you come out with a voluntary disclosure scheme, in which you give some concessions and by virtue of this what happens is that while an honest man is penalised, a dishonest man is not. That is what they say.

There are matters of assessment and otherwise which take an extremely complicated turn and to save labour, time, energy, etc. a properly functioning settlement machinery has been recommended by them. You are equating it with voluntary disclosure. We would like to understand this clearly. That is something which the Public Accounts Committee has denounced; the Wanchoo Committee has denounced and this Committee would certainly like to consider whether something which is of the nature of a voluntary disclosure is sought to be introduced through the back-door.

SHRI P. S. GOPALAKRISHNAN: That is exactly the point we are trying to make.

SHRI S. R. DAMANI: Mr. Gopalakrishnan, Chairman has asked you a clarification. I would like to know why your Association is so allergic to settlement. The Settlement Committee will consist of high officials. They will listen to both the parties. After listening, they will see whether there is any ground for settlement. In that case, they will do. Otherwise, they will not do it. I do not want to deal

with disclosure. It is a different subject. The members of your Association will also have the opportunity to explain as to why it should not be accepted, if they have definite proof of the concealment, which they have detected. Therefore, after hearing you, after hearing your arguments, they will come to the conclusion. The Settlement Committee will be giving full justification to both the parties and will expedite the disposal of the assessment cases, so that, speedy recovery can be made. This is what we think. Can you tell us specifically whether the parties will get the favour. Your main contention is that your efforts will not bring in the results; they might have taken pains, but, at the last moment, the Settlement Committee may get the credit and they may not get the reward. We feel that you will have full opportunity to explain your position and say what you feel. They will come to the conclusion, only after hearing the ITOs. Please explain, how far your fear is justified?

SHRI P. S. GOPALAKRISHNAN: May I submit one thing that we are not here to take credit for investigation, which we are conducting or to say as to who should get the credit or amongst whom the credit should be apportioned.

MR. CHAIRMAN: I am glad to hear that.

SHRI P. S. GOPALAKRISHNAN: We are only trying to say that black money should be eradicated and whether this particular provision will serve to eradicate black money. The hon. Member has gone far into the details of the provisions. When we deal with the various provisions, you will find that all the points that are made, are met in the memorandum. Our view has been expressed on Page 4 of our Memorandum, wherein we have said:

"Having expressed itself unreservedly against any general scheme of disclosure, the Committee, in our

humble submission, has opened the flood gates to further disclosures of the same nature (individually instead of collectively) by recommending the constitution of a Settlement Tribunal. The analogy with a similar provision existing in the UK or USA appears to us to be inappropriate as the conditions in this country are so abnormal that nothing short of the severest punishment will suffice to curb economic and social crimes like tax evasion."

Then, we have also referred to the Law Commission Report, where, they have said that social and economic offences should be dealt with, with utmost severity.

MR. CHAIRMAN: There, they must be. It is true. But, tell me, are they being dealt with today, when there is no settlement machinery?

SHRI P. S. GOPALAKRISHNAN: I shall come to that point later on. In the very memorandum, it is there.

SHRI S. R. DAMANI: I am seeking one clarification. While explaining, they may also say as to what are the percentages of cases, where their Officers are able to detect concealment.

MR. CHAIRMAN: You may reply this question a little later, that without the settlement machinery, how you are faring?

SHRI P. S. GOPALAKRISHNAN: I would like to invite your attention to Page 5, Para 2.6.

MR. CHAIRMAN: You take it that we have read it. The Law Commission's Report has been referred to. There is no doubt that stringent punishment should be given.

SHRI P. S. GOPALAKRISHNAN: I would like to quote para 2.6.

"Without prejudice to our basic approach that no quarter should be shown to tax evaders, we submit that the proposed provisions travel

far beyond the recommendations of the Wanchoo Committee."

This is a very important point, which we wanted to make before you.

"The provisions are not confined to cater to a few isolated cases of "one time tax evaders", or "unintending defaulters". On the other hand, the doors have been opened to all classes of tax evaders without restriction, provided they can bring themselves within the jurisdiction of the Settlement Committee (which is not difficult, as will be shown subsequently). We further submit that the existing provisions for settlement as embodied in Section 271(4A) are wide enough to cover "one time tax evaders" and "unintending defaulters" and leave enough room for compromise so as not to strain the resources of the Department. In our opinion, the limitations to settlement set under the existing law are necessary to prevent misuse and at the same time they cater to the genuine needs of those who want to tread the path of rectitude."

MR. CHAIRMAN: What do you mean by 'misuse'?

SHRI P. S. GOPALAKRISHNAN: We come to that later on. We are illustrating as to what we mean by the word 'misuse'.

MR. CHAIRMAN: Are you sure that the word is properly used? I hope so. You are a very careful person.

SHRI P. S. GOPALAKRISHNAN: In the next para itself, we have explained what we mean by 'misuse'. In Para 2.7....

MR. CHAIRMAN: Mr. Gopalakrishnan, I really wish you had given other statistics, where you have prosecuted, what have you achieved?

SHRI P. S. GOPALAKRISHNAN: On this, I would like to make one submission. Prosecutions were probably, not being launched on the apprehension that we may not succeed.

It is the authority which prosecutes, which is going to decide whether the prosecution is going to succeed or not. It is for the Courts to decide whether the prosecutions will succeed or not succeed.

MR. CHAIRMAN: So far as income tax is concerned, we are creating certain presumptions and assumptions of evidence and in that case, say, in one out of hundred or two out of hundred, penalty is assessed and in the remaining ninety eight cases, penalty is dropped. When you go to prosecution, you get within the realm of criminal jurisprudence, where the burden is very heavy on you and that is where the deficiency comes. Because, the Department, by its training, is not geared up to working and for making a fool proof case, prosecutions fail. As long as your prosecutions are going to fail, I am not one who would be delighted purely in having a very impressive statistics of prosecutions launched. We would like you to address us on this point.

SHRI P. S. GOPALAKRISHNAN: So far, the policy of the department, I understand, has been to resort to compounding instead of prosecution. This has been the policy followed so far.

MR. CHAIRMAN: Indiscriminately?

SHRI P. S. GOPALAKRISHNAN: I would not say that. You have yourself pointed out about this. Because of the difficulties in proving the cases in the Courts of Law, probably, we played safe and thus compounded the cases instead of going to prosecution, going to the Court. This has been the policy of the Department, so far. You have rightly pointed out that we do not have the infra-structure to process the case for prosecution. Happily now, the outlook is slowly changing. We have now people, who are being imparted training, right from the stage of investigation, as to how to process the case, in regard to collection of evidence, collection of data etc. The whole prosecution aspect is now being kept in mind even before assessment is made. In such of those cases which are now being prosecut-

ed, we take the help of people who are trained for this purpose. They assist the ITO in gathering such material as would support such cases ultimately.

SHRI S. R. DAMANI: You had mentioned that after every 75 cases, one case was prosecuted. I think you are aware of the procedure which the Government follows. They consult the Law Ministry and the legal experts as to what are the chances of success, if they launch prosecutions; and take a final decision after obtaining their opinion. But it is better to have a settlement when there is doubt.

SHRI P. S. GOPALAKRISHNAN: I have already submitted that so far, we were not processing the cases from the point of view of prosecution. We were concerned mainly with assessment and penalty, but now we have improved our techniques and give the technical data and knowledge necessary, so that the case is built up in such a manner and there is the gathering of evidence to see that ultimately, in addition to penalty, prosecution is also launched and it is upheld by the court. That is what we are trying to do. The efficiency was not there originally, because from the very beginning, i.e. when the assessment was being made, we were not collecting sufficient data to go to the court. We are now doing it from the initial stage itself.

SHRI VIRENDRA AGARWALA: I would request the Department to give details as to why prosecution proceedings were not pursued. Secondly, it will be interesting to know the result where such proceedings were pursued; and to what extent has the Department succeeded in substantiating the charge before the law courts. I think the Committee should have these two types of statistics to come to any conclusion on this point.

MR. CHAIRMAN: With these data, we will certainly ask the Department to give the explanation. Now, Mr. Gopalakrishnan, is it implicit in your contention that the Department did not prosecute where it should have done it?

SHRI P. S. GOPALAKRISHNAN: The reasons may lie in the nature of the case itself, or in the lack of will-power. Both are implicit. We have given only statistical details. The inferences can be drawn by anybody.

SHRI VIRENDRA AGARWALA: What is your inference?

SHRI P. S. GOPALAKRISHNAN: We have not been following the policy of prosecution liberally so far, because there is a provision that the Commissioner can compound the offence, either before or after. We are resorting to that section rather too very liberally.

SHRI S. R. DAMANI: In page 4 of your memo, you have said:

"The analogy with a similar provision existing in the U.K. or U.S.A. appears to us to be inept as the conditions in this country are so abnormal that nothing short of the severest punishment will suffice to curb economic and social crimes like tax evasion".

I want to know why people in our country are more inclined towards tax evasion and how the situation can be remedied.

SHRI P. S. GOPALAKRISHNAN: There are more transactions in cash in this country than in any other country of the world.

MR. CHAIRMAN: In the rural areas, you cannot help it.

SHRI S. R. DAMANI: That is only one cause.

SHRI P. S. GOPALAKRISHNAN: The result is that the cash hoarding in this country is greater. Secondly, in all the advanced countries of the world where the tax-payers file their returns, they are generally accepted. We anticipate that question later on. We would like to explain as to why they are accepted there. It is not that there is no machinery to check such returns there. In all advanced countries like the UK and USA, the data given by every tax-payer as well as

the data collected by the Department through various sources are linked together. Suppose there is a single item of omission made by any taxpayer; if it is cross-verified, the omission is detected straightway. It is found out from the machine. It is so much sophisticated there. In foreign countries, most transactions are done through banks. Even if there is omission in regard to one transaction, it is detected very easily.

MR. CHAIRMAN: You are absolutely correct.

SHRI P. S. GOPALAKRISHNAN: In our country, we were collecting data from various sources. Even that work of collection of data is being neglected.

MR. CHAIRMAN: Why?

SHRI P. S. GOPALAKRISHNAN: The reasons may relate to manpower shortage, time and administrative deficiency. We ourselves plead guilty to all these things.

MR. CHAIRMAN: That is very tragic. I know you had anticipated a question on this point; but I would put my question a little differently. I wonder whether you have known in the USA; if you do, you would know that once they have detected a fraud, the man gets an opportunity for settlement; and at that point, if he discloses up to the last dollar, he has a chance to save himself; otherwise, the Department has such means and methods that upto the last cent, they will know. They would know as to how much money has been earned and how much has been spent and where. They have such a highly developed fraud law in the USA; and the frauds there are also very highly deep-rooted ones. Where their bandits and robbers could not be sent to jail under the appropriate law, they are sent to the jails under the income-tax law. Why do you feel a properly set up settlement machinery would not have some such twin purpose to serve, to expedite the process of assessment and, at the same

time, also providing for an apt and appropriate penalty? Vengeance and vindictiveness are something which will never be the object of the State. The State is out only ensure that a citizen comes to the proper path. No tax law is made for vengeance; at least this law will not be made so. We want penalties to be meted out to recalcitrants, if there is an offence against the society. Therefore, if this twin purpose can be served, why should you draw a distinction with advanced countries?

SHRI P. S. GOPALAKRISHNAN: The question asked was as to how the conditions here are different from those in advanced countries where the settlement machinery is provided. The level of compliance in foreign countries is large, Sir.

MR. CHAIRMAN: You have also conceded that the non-compliance is much deeper. In cases of non-compliance there, the frauds involve colossal amounts.

SHRI P. S. GOPALAKRISHNAN: It is restricted to a small percentage of tax-paying population there, Sir, but in this country, it is not so.

MR. CHAIRMAN: If it can take care of these twin objects, that is on the one side you expedite the process of assessment and on the other ensure that the man does not cheat the Department will that be all right?

SHRI P. S. GOPALAKRISHNAN: The first object is to see whether the settlement machinery is adequate to handle the number of cases they are going to handle.

SHRI S. R. DAMANI: I think you are aware in U.K. and U.S.A. there is no contact between the Income Tax Officer and the Party whereas here both of them come in contact almost daily. If this system is avoided what is your reaction?

SHRI P. S. GOPALAKRISHNAN: That again does not arise directly from the point we are discussing.

Even under our own now there is provision—probably the ideal—that in 75 per cent cases there would not be contact and in only 25 per cent cases there will be contact. That is what we are working upon. Probably this percentage will go up.

[**SHRI S. B. P. PATTABHI RAMA RAO** in the Chair]

SHRI P. S. GOPALAKRISHNAN: Sir, may we wait till Mr. Salve comes?

MR. CHAIRMAN: Please continue.

SHRI P. S. GOPALAKRISHNAN: Even under the existing law relating to settlements, as many 2,209 declarations were received in 1971-72, and 3,691 in 1972-73. With the broadening of the scope of settlements under the proposed legislation, it may be expected that a much larger number of tax payers would take advantage of the scheme. Notwithstanding our basic objection to the settlements as proposed under the Bill, we submit that the provisions suffer from various infirmities as shown below:—

- (i) The Wanchoo Committee itself had recommended that settlement should be entrusted to an Independent Tribunal within the Department. The reason, in our opinion, is not far to seek. The Central Board of Direct Taxes, as constituted at present has a multiplicity of roles—like exercise of too many statutory functions formulation of policies and their execution, and too much involvement in day to day work. There is over centralisation and consequent delay in disposal of work. A more important reason is that the administration is not insulated from interference, particularly when the stakes involved in cases are very high and the affluent tax payers wield considerable influence in political circles.

So, the present machinery is completely inadequate to settle the cases which come within its scope.

SHRI P. G. MAVALANKAR: If it is not over-burdened and comprised of people from within the Department will it inspire the confidence of taxpayers?

SHRI P. S. GOPALAKRISHNAN: The Board is already over-burdened with other functions. Why add more functions? Even under the existing law we are getting 2,000 applications every year but where is the machinery to deal with these. This settlement machinery should be separated from the Central Board of Direct Taxes. We are thinking of a machinery like the Investigation Commission of 1948. We may revive it and have Benches in Madras, Bombay, and Calcutta. It may be composed of High Court Judges so that both the departmental as well as the taxpayers' cases are adequately represented.

SHRI S. R. DAMANI: Is there any specific reason as to why it should be independent and not under the Board of Direct Taxes?

SHRI P. S. GOPALAKRISHNAN: We have already given two reasons in this para. One is that they are over-burdened and the second is 'influence'.

No time limit has been set for the disposal of applications for settlement, a drawback from which the existing settlement provisions also suffer.

MR. CHAIRMAN: With your inadequate staff will it be possible?

SHRI P. S. GOPALAKRISHNAN: That is why we say the whole settlement machinery should be scrapped.
[**SHRI N. K. P. SALVE** in the Chair]

SHRI P. S. GOPALAKRISHNAN: Sir, may I repeat the two points already made in your absence? One is: You said applications be disposed of expeditiously. But even under the existing machinery for settlement the

settlements take more than five years to settle and if you liberalise.... We may anticipate, more applications will come in. Whether we have machinery to deal with them. There are about 60 commissioners and probably we are disposing of 500 to 600 petitions. If we take more applications, how are we going to dispose it of.

SHRI S. R. DAMANI: The cases which go to the High Courts take 10 to 12 years to be decided. Can you avoid the cases settled by the High Court?

SHRI P. S. GOPALAKRISHNAN: We are not on that point. The settlement machinery can expedite. We say, instead of expediting, may delay it.

MR. CHAIRMAN: That is not an important point. We may have more than one machinery.

Provision contemplated is there. Machinery will be inadequate.

SHRI P. S. GOPALAKRISHNAN: A large number of applications are likely to be received.

MR. CHAIRMAN: If expeditious disposal is not made, then it will be so.

SHRI P. S. GOPALAKRISHNAN: There should be an independent Tribunal.

SHRI K. R. GANESH: What do you mean by 'independent'?

SHRI P. S. GOPALAKRISHNAN: I have already placed before you 'independent tribunal' which we conceive of should be something like an investigation commission presided over by a judge and assisted by a Chartered Accountant and a Tribunal Member. They are away from the pulls and pressures of the Department. Independence of this machinery should be guaranteed as far as possible.

SHRI K. R. GANESH: Your settlement machinery is conceived for the

quick disposal of certain complicated matters. This is how it is conceived. Certain complicated matters are there plus certain unintended defaulters and also those who are the real defaulters and we want to detract them. How does the creation of an absolutely independent machinery achieve this objective? You have already got tribunals.

SHRI P. S. GOPALAKRISHNAN: Basically, we are opposed to the settlement. If you think that settlement machinery is necessary, then we say these are the infirmities in the settlement machinery. It will not serve to expedite the cases which are now pending. There will be no expeditious settlement. You will be flooded with a large number of applications. No time limit is prescribed.

MR. CHAIRMAN: Personally I think independent machinery is a machinery which will take care of the Department's interest and the assessee's fair demands. This attitude is necessary. Otherwise, the purpose will be frustrated.

SHRI K. R. GANESH: What are the various types of cases which require a settlement? One will be the type of cases that you have to detect. The others are a very large number of cases in which there is a genuine difference between an assessee and the Income Tax Department. Liquidation of these differences will solve quite a lot of problems that are being faced. How do you see that this aspect of the matter is taken care of?

MR. CHAIRMAN: These require expeditious disposal. How do you think that that can be achieved?

SHRI P. S. GOPALAKRISHNAN: Time limit is also there. None of these cases will be disposed of expeditiously.

MR. CHAIRMAN: Shall we have four settlement machineries in all the four zones?

SHRI P. S. GOPALAKRISHNAN: It will depend upon the volume of work.

MR. CHAIRMAN: As far as I am able to say, it is not the tribunal's work and still it will have both the function of ITO and ensuring too that justice is done.

Secondly, the point that you have made and which has impressed me personally very much is that something has got to be done to provide that this machinery itself is not made use of for habitual tax evaders and the provisions that are possibly made they may give relief to the genuine people. We are taking care of it. There is need for the expeditious disposal of cases in a summary manner. A man who makes a clean breast of—unintended defaulter—I do not know what is actually meant by this?

SHRI P. S. GOPALAKRISHNAN: Not by design, just by accident inadvertently.

MR. CHAIRMAN: If they go to Investigation Commission and then come for settlement, that has to be left out. Keeping this in view, please tell us how to make it effective.

SHRI P. S. GOPALAKRISHNAN: There should be machinery like the old investigation commission and there, as you have rightly pointed out, the interest of the tax payer should be paramount. We want to be fair to them. Both the Tax Payer and the Department should get right of representation.

SHRI ERA SEZHIYAN: The Settlement Board as contemplated may hamper the enthusiasm of the ITO. The assessee may try to avert it and go to the Settlement Board and block all the investigation. The second one is that they do not like the idea of being a part of the Board itself. This second point also, I concede. The Committee will of course take a view later on, but I personally feel that it is a valid point.

It should have a judicial character and thereby enjoy the confidence of the assessee. Suppose you make it

an independent body just like the MMTC and other such bodies and give it the right of objection at the earlier stage—that is, when a man wants to go to a Settlement Board—will that meet one of your objections?

Secondly, are you objecting to the concept of a Settlement Board itself? It is one thing to say that they will not be able to cope up with the work—but that is only a matter of working arrangement; suppose instead of one Board we have four Boards, one at Calcutta, one at Bombay and so on and they are working well, would it be acceptable? If you are not accepting the fundamental or basic question of the Board itself, it is a different thing. Therefore, I would like to know whether you would like to have such a system as in U.K. where an assessee can go voluntarily, even before being caught.

If these points are new, then you can answer them; if they are already covered, you need not.

MR. CHAIRMAN: The first point is that it has a demoralising effect on the officers.

SHRI P. S. GOPALAKRISHNAN: We are not taking any credit for anything...

SHRI ERA SEZHIAN: As Members of Parliament we also want to keep up the enthusiasm of the Department.

SHRI P. S. GOPALAKRISHNAN: I think we had dwelt on this point at the last meeting and I came under fire...

MR. CHAIRMAN: You came under fire? We take this very seriously. If you are giving evidence before us, you enjoy the confidence of the Parliament. There is no reason for you to come under fire...

SHRI P. S. GOPALAKRISHNAN: I meant that we were subjected to a lot of questioning that day by the Committee itself.

MR. CHAIRMAN: Oh, I see. The Committee itself can ask you questions, but did anyone from amongst your senior officers say anything?

SHRI P. S. GOPALAKRISHNAN: No, Sir. But when I used the expression "frustrated" the discussion proceeded for half-an-hour on the word "frustrated" as the last meeting.

MR. CHAIRMAN: Well, you may proceed. It is an important point you have made that approaching the settlement machinery is quite easy under the law as it is.

SHRI P. S. GOPALAKRISHNAN: Another point is whether the settlement machinery is necessary at all. I think we have made it clear that the settlement machinery is not necessary and we stick to the stand still because, under the existing provision, there are enough powers to make a settlement and, as the Hon'ble Member has said, if a man voluntarily comes forward, provisions are there in the present Act itself where penalty can be waived. Why do you want a new machinery?

SHRI K. R. GANESH: If there is already this provision in the existing law, what are the reasons for its not being fully utilised?

SHRI P. S. GOPALAKRISHNAN: They are being fully taken advantage of by all Tax payers.

MR. CHAIRMAN: You are aware that many settlements were effected by Commissioners and they came under terrible fire by the Advocate General. When it went to the Advocate General, he disapproved of the action of the Commissioners. This Section 271-A, you will find, is a little too limited and this, on the other hand, is a little too wide.

For example, if there is a complicated case where a person, for no rhyme or reason, has lost his entire business and it has also cast on him a tax liability which he is unable to pay, don't you think there should be some provision for such cases?

SHRI P. S. GOPALAKRISHNAN: There is already a provision in this Bill itself. In Section 273-A there is another provision which you are

introducing and most of it is overlapping.

I am referring to sub-clause (4) which reads as follows:

“Without prejudice to the powers conferred on him by any other provisions of this Act, the Commissioner may, on an application made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive the amount of any penalty payable by the assessee under this Act or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that—

- (i) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case; and
- (ii) the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.”

MR. CHAIRMAN: Sub-clause (a), (b) and (c) circumscribe the authority of the Commissioner tremendously.

SHRI P. S. GOPALAKRISHNAN: I am referring to sub-clause (4).

MR. CHAIRMAN: But this covers only penalty.

SHRI P. S. GOPALAKRISHNAN: Recoveries are also there. “Stay or compound any proceeding for the recovery” is wide enough to cover reduction and waiver.

MR. CHAIRMAN: There are penalties for recovery and it is this which can be compounded; it is not the write-off of the tax.

SHRI P. S. GOPALAKRISHNAN: I would submit that this will cover tax also.

MR. CHAIRMAN: Mr. Khosla, to my mind this compounding covers only the penalties to be recovered and not the tax?

SHRI R. R. KHOSLA: Yes, it refers only to penalties.

SHRI ERA SEZHIYAN: It is only penalty that can be waived and not the tax amount.

MR. CHAIRMAN: Anyway, we are thankful to you for pointing it out. But to come back to the question, we would like to give attention to the point that for a write-off, even the Settlement Board does not have the power.

SHRI P. S. GOPALAKRISHNAN: There may not be any provision in the law, but the Department has written off a lot of tax due to the Department. They write off even today.

MR. CHAIRMAN: The PAC has come down heavily on the Department in this regard. I am told that those debts are hardly recoverable. Anyway, the procedure for a write-off is now so cumbersome and onerous that nobody would want to take the responsibility for it.

SHRI P. S. GOPALAKRISHNAN: This settlement provision is made for defaulters only, not for the purpose of writing off already taxed income of the assessee.

MR. CHAIRMAN: I am not convinced about it. In four years' time, supposing, an assessee has lost everything and he wants to settle. How he will be able to settle?

SHRI P. S. GOPALAKRISHNAN: That power is already there with the Boards.

MR. CHAIRMAN: Which section?

SHRI P. S. GOPALAKRISHNAN: There is no need of any section.

MR. CHAIRMAN: I should say that the Finance Minister himself says that nobody wants to take any responsibility.

SHRI ERA SEZHIYAN: In this also, he has pointed out sections 128 and 271. On account of the waiver

or the reduction of penalty, I think taxation is not thought of there.

SHRI P. S. GOPALAKRISHNAN: No, no.

SHRI ERA SEZHIYAN: How can you say that the functioning of the Settlement Board can be covered?

SHRI P. S. GOPALAKRISHNAN: That was a misapprehension on my part which has been corrected by the Chairman.

MR. CHAIRMAN: We have not made up our mind what ultimately we are going to decide for the settlement machinery. This is for the hon. Members to decide. We have to take an objective approach, both ways. If it is there, then in which form it should be there.

SHRI P. S. GOPALAKRISHNAN: Our entire approach has been objective. Settlement by itself, we do not agree in principle.

MR. CHAIRMAN: There are two things. One is inadequacy which really goes beyond what is given in the Wanchoo Committee's Report.

SHRI P. S. GOPALAKRISHNAN: If you read page 9 of the material, in our view, there is no substitute for that.

MR. CHAIRMAN: The application will have to be simple facts without conceding anything.

SHRI P. S. GOPALAKRISHNAN: Why is it necessary? He may not proceed with the application.

MR. CHAIRMAN: You do not give a finality to this authority. That is not possible.

SHRI P. S. GOPALAKRISHNAN: Can the information which he has given in the statement be used against him?

MR. CHAIRMAN: Why not?

SHRI P. S. GOPALAKRISHNAN: Then we have to provide for that; then only it is effective. An application once filed cannot be withdrawn.

MR. CHAIRMAN: The ITO has to summon the Settlement Commissioner.

SHRI P. S. GOPALAKRISHNAN: You have to establish whatever he has said is true.

MR. CHAIRMAN: When his application is rejected, if you want to prosecute him, surely, you want to use his application against him.

SHRI P. S. GOPALAKRISHNAN: His application cannot be used unless it is proved that whatever he has admitted is true.

MR. CHAIRMAN: What I was trying to say is that I do not accept your premise that a man has to confess his guilt for this.

SHRI P. S. GOPALAKRISHNAN: This provision need not at all be in the law. What is the effect of this provision?

MR. CHAIRMAN: It is a part of the record of the Government.

SHRI P. S. GOPALAKRISHNAN: And nothing more?

MR. CHAIRMAN: An ITO can summon him. I say it becomes part of the Government record and as such treated, if necessary, against the assessee. What is the wrong in it?

SHRI P. S. GOPALAKRISHNAN: That should be specifically provided for.

SHRI S. R. DAMANI: I want to seek some clarification.

MR. CHAIRMAN: He says if the application is not to be withdrawn, then kindly make a provision that whatever is contained in the application or the application itself can be used against the applicant in the regular proceedings. If you want to ask any question on this point, you can do so.

SHRI ERA SEZHIYAN: Whatever information has been given before the Settlement Board should not be used against him if he wants to use it. Supposing, you put it specifically. But the information will be available to anybody. They can proceed and say, all right, we have arrived at such and such conclusion.

SHRI P. S. GOPALAKRISHNAN: There is no substitute for it.

SHRI ERA SEZHIYAN: How it is going to help in practice? The Department will come to know something. So, they say that they have arrived at the same information through some other sources. How can you prevent that?

SHRI P. S. GOPALAKRISHNAN: In most of the applications, they start with the words "without prejudice to." This is how they proceed. They do not want to involve themselves.

MR. CHAIRMAN: That means, the fault is yours. I do not accept the very premise of your suggestion. If you make a specific provision in the law that the contents of the application may be used against the assessee, who will come to settlement?

SHRI P. S. GOPALAKRISHNAN: This is something like a fly in a spider's net, and being used against him.

MR. CHAIRMAN: If the assessee falls within the proviso, he does not fall within 245 D. I have not been able to understand the rationale behind your suggestion, where you say that a provision that the contents of the application may be used against the assessee, should be specifically made.

SHRI P. S. GOPALAKRISHNAN: So that the assessee may realise the consequences of what they are going to do.

MR. CHAIRMAN: They would not realise otherwise, Mr. Gopalakrishnan?

SHRI ERA SEZHIYAN: Under the amending Bill, once an application is made, it shall not be allowed to be withdrawn by the applicant. Mr. Gopalakrishnan asked why this should be there. This provision has been made with a purpose. Suppose, if a case is before the Settlement Committee, and in the middle, if the applicant feels that the case may go against him, he may withdraw the

application. We want to avoid that. We want to give the Settlement Committee some sanctity and we want that this Committee should be approached with all the responsibility. That is why, this provision has been made. What is your reaction to this?

SHRI P. S. GOPALAKRISHNAN: If this provision should remain, then, we submit that it should be made explicit in the law that whatever evidence, whatever facts...

MR. CHAIRMAN: You want that to be linked. We will consider.

SHRI S. R. DAMANI: Mr. Gopalakrishnan,...

MR. CHAIRMAN: Mr. Damani, if you want to ask specific questions, you are certainly entitled to ask.

SHRI S. R. DAMANI: I have not certain questions to ask.

MR. CHAIRMAN: Are they general? Then, you may ask them in the end.

SHRI P. S. GOPALAKRISHNAN: Then, I would like to refer to Page 9, Para (v). The point we are making is this:

"Section 245 D(1) is worded clumsily. The settlement committee is enjoined, before allowing an application to be proceeded with, to have regard to the interests of the revenue, the nature and the circumstances of the case or the complexity of the investigation involved therein."

The expression 'nature and circumstances of the case' includes the complexity of the investigation and the interest of revenue. It includes both these things and a host of other things also.

MR. CHAIRMAN: You are right. The Settlement Committee should be the arbiter to determine the special nature and the circumstances of the case. We will take care of the drafting. The Committee is not responsible for drafting.

SHRI P. S. GOPALAKRISHNAN: We are also not competent to suggest anything. The idea occurred to us when we read the provision.

MR. CHAIRMAN: It will be very optimistic if you say that this is the only clause which is not properly worded.

SHRI P. S. GOPALAKRISHNAN: Then, I would like to refer to sub-para (vi)—Page 10....

MR. CHAIRMAN: Mr. Gopalakrishnan, you have made that point already. The proviso leaves a very wide area for people to approach. We will give very careful consideration to this proviso.

SHRI P. S. GOPALAKRISHNAN: I may read the sub-para.

MR. CHAIRMAN: I do not know whether Members want to hear further on this.

His point has been that this proviso leaves the nests open for a large number of tax evaders to approach the Settlement Committee. He says that we should tighten up the proviso. That is his suggestion in the matter, so that, the real confirmed tax evader does not easily avoid the regular assessment procedure and circumvent the procedure by going straightway to the settlement machinery. We will look into this proviso very carefully.

SHRI P. G. MAVALANKAR: Mr. Chairman, On page 10, they have said:

"Alternatively, if the Settlement Committee is to pay regard only to the interests of revenue and the complexity of the investigation, then the words "nature and circumstances of the case", would be a dangerous mixture to dilute the strict adherence to this requirement."

Is it being suggested that this is the only aim for which the Settlement Committee is being sought to be introduced?

MR. CHAIRMAN: That is what they have said, Mr. Mavalankar. But, the Settlement Committee should take into account the interest of revenue as well as the interest of justice.

SHRI P. G. MAVALANKAR: Exactly.

SHRI P. S. GOPALAKRISHNAN: We only say that the expression 'nature and circumstances of the case' includes other things also.

MR. CHAIRMAN: We will have to give very careful consideration to the proviso. Mr. Gopalakrishnan, we will ask the Department to tell us how far they can keep this open only to the un-intending defaulter or to somebody who was at one time an inadvertent tax evader. I do not know, what the term 'inadvertent tax evader', means. How this is possible?

SHRI P. S. GOPALAKRISHNAN: Then, I would like to refer to Page 11 of the memorandum, where we have said:

"The provisions of law relating to penalties and prosecutions cover broadly two aspects (1) concealment of particulars of income (2) submission of inaccurate particulars of income. The first proviso to sec. 245D(1), denies jurisdiction to the Settlement Committee, if concealment of particulars of income is established. It does not deny similar jurisdiction, as it should, where a tax payer is guilty of furnishing inaccurate particulars of income."

MR. CHAIRMAN: Where do you get that? This, I take it, has to be with respect to the very assessment which is sought to be taken.

SHRI P. S. GOPALAKRISHNAN: The point which we are trying to make is something different.

MR. CHAIRMAN: What is it?

SHRI P. S. GOPALAKRISHNAN: The penalty under Section 271(1) can be both in respect of concealment of particulars of income as well as submission of inaccurate particulars of

income. Whereas, here, we have closed only one gap. We have not closed the other gap.

MR. CHAIRMAN: If he is guilty of either of the two.

SHRI P. S. GOPALAKRISHNAN: Both must be covered.

MR. CHAIRMAN: If he tries to cheat you by not giving particulars, it is as good as concealment.

SHRI P. S. GOPALAKRISHNAN: On page 12, we have said:

"The sole arbiter whether concealment of particulars of the income or perpetration of fraud has been established in the Settlement Committee and its *opinion* is final, not its judicial satisfaction or belief."

We would only respectfully draw your attention to other statutory provisions where they say 'reasonable belief', 'judicial satisfaction' and not 'opinion'. That is the case fit for intervention by the Committee and not any subjective opinion. This expression does not sound happy to us.

MR. CHAIRMAN: Very good; we will consider it. Would you give us a draft of a proviso, Mr. Gopalakrishnan, where it would keep it open only to this? It will give us a better idea.

SHRI P. S. GOPALAKRISHNAN: Within my limitations, I will try to do it.

SHRI ERA SEZHIYAN: I feel that here, the word 'opinion' means judicial opinion.

MR. CHAIRMAN: Personally, I think it refers to judicial opinion. But since it is going to be important for the person, we can use a better word. This will be a quasi-judicial body and its opinion would be a judgement.

SHRI P. S. GOPALAKRISHNAN: Let us make it specific in the law itself, Sir. Now, Sir, in page 12 of our Memorandum, the sentence beginning with "The second proviso to section 245D(1) requires an order..."

may be omitted. We have changed our ideas after going through section 245E. Sub-sections (3) and (4) provide for it.

MR. CHAIRMAN: Sub-section (4) does not provide for it.

SHRI P. S. GOPALAKRISHNAN: It is a separate machinery. If the Settlement Committee itself has to deal with them through normal channels, it will lead to delays.

SHRI ERA SEZHIYAN: It is not a question of delay. Suppose you put a cell for this purpose, it will be independent of the departments. Will it not be more acceptable on that score?

MR. CHAIRMAN: You are again making an important point, Mr. Gopalakrishnan, that the Settlement Board should not merely be a board, but should have senior officers of the department working under it, who should be able to assess properly and assist the Board.

SHRI P. S. GOPALAKRISHNAN: As it is, they have to depend upon the department machinery.

MR. CHAIRMAN: Instead, would it not be better, if we keep the machinery of the department intact and let the department come on the one side and the assessee on the other?

SHRI P. S. GOPALAKRISHNAN: If you are going to ask the same set of persons to do this job in addition to their own duties, it will be impossible for them to do it efficiently.

MR. CHAIRMAN: My point is that assessing officer should not be kept out of it.

SHRI P. S. GOPALAKRISHNAN: Then, all other cases should be removed from him and he should be asked to concentrate on the cases assigned.

MR. CHAIRMAN: It is not possible; anyway, it is for the department to decide. The ITO and the IAC who deal with the case should not be taken out of the picture. At the lower

level, you can have people like the ITO and the IAC; and at the Board's level, you can have men at Commissioner's level—2 or 3 of them or as many as necessary; and some at the Inspecting Assistant Commissioner's level; the ITO and the IAC would still continue to function as such. Would it not be ideal?

SHRI P. S. GOPALAKRISHNAN: We are all concerned with the delay in dealing with the applications. If the delay is to be cut down, there should be a separate machinery untrammelled by any other work. The same ITO can not do this work.

MR. CHAIRMAN: What I say is my personal view of the matter. The ITO is the one who is the real pivot, around whom the whole thing revolves. He should not be kept out.

SHRI P. S. GOPALAKRISHNAN: We are not suggesting it.

MR. CHAIRMAN: Suppose there are 10 cases. According to you, he should handle only one. Steps may have been taken in advance; one does not know.

SHRI S. R. DAMANI: I differ from you, Mr. Chairman.

MR. CHAIRMAN: You may do it, Mr. Damani.

SHRI S. R. DAMANI: If you are keeping the ITO dealing with the case out of the picture, what would happen? Suppose an assessee and the ITO differ; the assessee wants to go to the Settlement Board and if the ITO has to conduct it, do you think the assessee will get justice in that case? I agree that the ITO can appear and put up his viewpoint.

MR. CHAIRMAN: What else am I saying? Mr. Damani, what the witness says is this: he says, "Let each settlement board have its own mechanism of investigation. It should have nothing completely to do with the regular course of assessment, etc." What I am trying to find out from him is this. I have not made up my mind and there is no question of my

agreeing or disagreeing. My point is: "Why do you want to cut out the ITO?" In what manner he should come, is a different matter.

SHRI P. S. GOPALAKRISHNAN: Our whole approach is to ensure that the delay in the disposal of the investigation is cut out.

MR. CHAIRMAN: Would it not be at the costs of investigation?

SHRI P. S. GOPALAKRISHNAN: No, Sir. A man doing it as a full-time job will do it better.

MR. CHAIRMAN: How much better? Can you have a parallel income-tax department?

Once an application is made, the man will have to give the fullest particulars and details. If they are not given, the Board will ask him to do so, on such points as it may deem necessary. The Department will give its reasons and the basis for its apprehensions. The Settlement Board will say: "Four is too much and 1 is too little; let us have a via media; we may have it as 2½". What you are suggesting is that they should have a parallel organization which, by itself, takes up the whole assessment.

SHRI P. S. GOPALAKRISHNAN: As also the investigation. It will help the settlement machinery.

MR. CHAIRMAN: All right.

SHRI P. S. GOPALAKRISHNAN: In page 13 of our memorandum, in sub-para (viii), we have said:

"Sub-section (6) of Section 246D provides for the levy of tax, penalty, or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective. It also provides that if the settlement has been obtained by fraud or misrepresentation of facts, the settlement shall be void...."

MR. CHAIRMAN: What happens?

SHRI P. S. GOPALAKRISHNAN: We have made a settlement. We find

that a misrepresentation or fraud has been committed. The whole settlement becomes void and the order of assessment under it, also becomes void. How will you proceed? The period of limitation would also have run out. As such, in cases like this, the period of limitation should be extended.

MR. CHAIRMAN: Do you want that it should be provided for, here?

SHRI P. S. GOPALAKRISHNAN: It should be provided under Section 153, Sir.

MR. CHAIRMAN: There is another question. Who decides that it is obtained by fraud?

SHRI P. S. GOPALAKRISHNAN: Settlement Commissioner.

MR. CHAIRMAN: I think we should prescribe some procedure also. Extension of limitation is necessary. It will revolutionise the entire concept of limitations. Why not the Settlement Committee be reopened and in such a case the prosecution will be compulsory.

SHRI P. S. GOPALAKRISHNAN: Whatever order they pass should remain valid and legal.

MR. CHAIRMAN: A limited authority to review its own order if they find it is obtained by fraud.

SHRI P. S. GOPALAKRISHNAN: The proposed section 245H(1) speaks of "immunity from imposition of any penalty". This seems to imply total immunity and the Committee will have power either to waive the penalty completely or to mispse the minimum prescribed under the law. A change to the effect that the immunity from imposition of penalty relates either to the whole or part of the penalty appears to be necessary.

MR. CHAIRMAN: Once you find during the proceedings that he has made complete disclosure and the manner in which the income has been derived then they must give full immunity.

SHRI P. S. GOPALAKRISHNAN: The two conditions prescribed are very easy to fulfil. I may make a complete disclosure. What I get in return is total immunity.

SHRI ERA SEZHIYAN: If we take 291 of the Income Tax Act there also the same wording is used. The whole means part also. If we can interpret in 291 why not in the new 245H(1).

MR. CHAIRMAN: I am not able to get you. You keep an entry to a limited set of people. Having given an entry if they behave themselves treat them respectfully.

SHRI ERA SEZHIYAN: Do you mean to say by the present wording Partial immunity cannot be given?

MR. CHAIRMAN: I think he can give partial immunity also.

SHRI P. S. GOPALAKRISHNAN: We want to make it clear.

MR. CHAIRMAN: Well, we will see if we can improve. It is only a rigid interpretation.

SHRI P. S. GOPALAKRISHNAN: Our next point is that a settlement committee constituted under the Act may be competent enough to grant immunity from prosecution from any offence under the Income Tax Act, but we doubt the wisdom in conferring such powers of immunity on the Settlement Committee "under any other Central Act" without reference to the authorities administering these Central Acts like Sea Customs Act, Foreign Exchange Regulation Act, etc.

The Settlement Committee is competent to grant immunity from prosecution arising from any offence under the Income Tax Act but we doubt how it is competent to judge the conduct of the person. Ministry is not going to deal with it. The Settlement machinery is going to deal with it.

MR. CHAIRMAN: I am on 291. Supposing it is not Customs Foreign Exchange Department but some other Department, they cannot have the authority.

SHRI P. S. GOPALAKRISHNAN: In 291, the power is with the Central Government.

MR. CHAIRMAN: Can the Settlement Committee when it is not acting as a Central Government grant immunity? We will consider this point.

SHRI P. S. GOPALAKRISHNAN: Page 14—sub para (xi) of the Memo of Income Tax Gazetted Services Assn. Instead of "granting of immunity", we are saying 'tendering immunity'. That is a legal expression.

Page 15—(xii)—There is no provision like this now. If you grant immunity, there should be an order passed.

MR. CHAIRMAN: We shall do it.

SHRI P. S. GOPALAKRISHNAN: Page 15 (xiii).

MR. CHAIRMAN: This will be taken care of.

'when the whole thing becomes void' what does it mean?

SHRI P. S. GOPALAKRISHNAN: The Settlement Machinery has all the powers of the Income Tax Department.

136—it says that proceedings before all the income tax officers are deemed to be judicial proceedings.

MR. CHAIRMAN: We will put this as an authority.

SHRI P. S. GOPALAKRISHNAN: Page 16—(xiv)

In 273A—any order passed under that Section, 'any court or authority' that should be added here.

MR. CHAIRMAN: It is purely drafting. We will look into it.

SHRI P. S. GOPALAKRISHNAN: Page 16—(xv).

'In one place you say immunity is granted from these acts but on the other hand you say 'forbids' an app-

licant from making an application for settlement'.

MR. CHAIRMAN: We are interested in collecting more tax. Let us not talk of our idealism.

SHRI P. S. GOPALAKRISHNAN: If once a settlement is made, there is no bar for another settlement.

If once a settlement is made, it should not be allowed second time. Page 17—(xvi)

SHRI R. R. KHOSLA: 245(f) (i)—It shall have all the powers which are vested including the power under 154.

SHRI ERA SEZHIYAN: There it says—In addition to the powers conferred on the Settlement Committee, it will have all the powers of the Income Tax Authority.

Income Tax Authority has got the power to rectify any mistake.

MR. CHAIRMAN: We shall take here 245(f) (i). This will take care of 245.

SHRI P. S. GOPALAKRISHNAN: "Under Section 245 F.....(xvii)

MR. CHAIRMAN: I think that this amendment would be better if we contemplate two types of time limit—what is the time limit within which the Board must decide an application; and secondly, the question as to what happens when it is found that the settlement was obtained by fraud. If we provide six months for the Settlement Board, the ITO should be given six more months of extension. It should be provided either here or in 163.

SHRI P. S. GOPALAKRISHNAN: In 153 it would be better.

MR. CHAIRMAN: We will look into this. The assessee must know his lot in good time. It may take six months time to decide. Another thing is, if there are too many applications, how will they deal with them? There must be a provision for a sufficient number of Settlement Boards

in the Act itself so that, according to the needs, the Ministry can constitute the Boards.

You may proceed.

SHRI P. S. GOPALAKRISHNAN: "Section 245 K seems to imply... (xviii).

It sets no limit on the number of applications for settlement. It means that any number of applications can be filed.

MR. CHAIRMAN: The proviso to the substantial provision will have to take care of that.

But what is wrong with it? While talking to you, I am also getting the opinion that you are dealing only with dishonest assesseees. Cannot he seek this relief in complicated assessments? Section 245 takes care of it, but if a complicated assessment is involved, why should it not be more than once? I know a case of Bombay where a foreign firm made a contract with a contractor of Bombay Harbour and one of the terms of the contract was that any increase in tax must be borne by the contractor of the Harbour. Now, the income-tax rates were increased with the result that the foreign firm said that the Indian Firm should bear the burden of taxation which was increased to Rs. 64 lakhs from Rs. 18 lakhs. Now, this is an absolutely genuine case where unintended hardship is caused. In such cases, why should he not go more than once?

SHRI P. S. GOPALAKRISHNAN: We have only pointed out that this provision was meant for a one-time defaulter.

MR. CHAIRMAN: Why not give him any number of times if it is a complicated case. This is what the Wanchoo Committee has also not meant. This is for getting rid of the investigational procedures.

SHRI ERA SEZHIYAN: Do you mean to say that even in genuine cases he should not have a Settlement Board more than once?

SHRI P. S. GOPALAKRISHNAN: Once you can go and say that you

have committed a mistake but you cannot go on making mistakes.

MR. CHAIRMAN: But in cases involving a tremendous amount of investigational procedures, why not give even half-a-dozen times?

SHRI ERA SEZHIYAN: Your basic presumption is that wherever goes before the Board is an evader or defaulter. I don't think so. There may be cases where a man feels that the litigation will take time and therefore goes to the Settlement Board. It does not prevent an honest man or non-evader from going before the Settlement Board. You say that only evaders go to the Settlement Board?

SHRI P. S. GOPALAKRISHNAN: We are not preventing him; but once a settlement is made....

MR. CHAIRMAN: Why should he not be given more than one chance if the assessment is complicated and he want to avoid protracted investigations?

SHRI P. S. GOPALAKRISHNAN: How do you distinguish between a genuine case and a case which is not genuine. Only if the evidence and circumstances of the case would justify it, then a second time can be allowed.

MR. CHAIRMAN: The proviso will take care of that. It can be amended.

SHRI P. S. GOPALAKRISHNAN: We had in mind the existing provision when we wrote this.

SHRI P. G. MAVALANKAR: When a law is very complicated, generally only people who are honest are caught in some complication of the law or the other. Therefore, I would like the witness to apply his mind and say specifically why he feels that more than once would not be given.

MR. CHAIRMAN: As he has explained very rightly, the existing proviso would admit even an assessee guilty of concealment once, twice or thrice. He says that if the proviso

can be narrowed down to provide only for persons who have inadvertently failed in some respects or for one-time tax evaders, he has no objection. There should be a definite provision. He says on the existing basis we have suggested this. More than once if a person is committing the same guilt and then he keeps on going to the Commission, should it be so?

SHRI S. R. DAMANI: I want to say that there are assessments pending for three or four years. In one year there is a case which has gone to the Settlement Board. Naturally second year, third year, the same case arises out of that. We will have to consider it. That should be taken into account.

SHRI P. S. GOPALAKRISHNAN: Then the disclosure is not complete. He covers all the years for which he is guilty.

SHRI S. R. DAMANI: Suppose cases for 1971-72, 1972-73 are pending. Some cases are pending for the year 1968-69. Assessee will go for that point. In some cases he may also refer those cases to the Settlement Committee. That should be considered as one and not that those cases should be considered separately.

SHRI P. S. GOPALAKRISHNAN: I come to page 20 of our Memo.

SHRI K. R. GANESH: We are dealing with the problem just now which has accumulated due to various reasons—for reasons—economic and others and the inadequacy of the Department. Wanchoo Committee has gone into it. We are saddled with a particular problem. There are two aspects—

How to develop your machinery to tackle this problem in future. Evasion dimensions are quite big. Some sort of readymade solution should be there. In that way this settlement machinery should be a body which, after due enquiry which it wants to conduct settles it as far as they can depending on the merit

of each case. Whether such a machinery on being saddled with all the pressure of work will succeed in its purpose.

MR. CHAIRMAN: The idea is to simplify the procedure and get expeditious disposal. Unless this is done by the Department and the assessee, the purpose will be frustrated.

SHRI K. R. GANESH: What is the answer to my question? I am putting a basic question. There is a reality now. As a result of the twenty years of the functioning in the Income Tax Department for which Department may not be held responsible, a problem has accumulated and accelerated. How to liquidate this problem?

Out of 400 crores, 100 crores may have to be written off. Who writes it off. The machinery we have set up takes a lot of time. Whether assets are there or they are not there we have to take all the safeguards which the Committee has to look to. Therefore, it is a very slow process. I am seeing for the last one year. We have now speeded up but it is itself a slow process. You have accumulated problem as a result of various problems so that we can start with the scratch.

SHRI P. S. GOPALAKRISHNAN: If it is accepted that settlement machinery has to be there. . .

MR. CHAIRMAN: It is as a result of this problem and not that it is essential for one's liking. Existing procedures including Commissioner's power have been found to be inadequate which the Finance Minister has pointed out. Therefore, we want more powerful body with authority and power to more summarily do justice to the Department and to the assessee.

SHRI K. R. GANESH: About paras 232 and 233 of recommendations of the Wanchoo Committee—I am not sure whether the Bill as drafted really does justice to that. You are making the Bill more cumbersome.

MR. CHAIRMAN: You are putting too many restrictions and impediments in the smooth working to bring us from where we are starting. In other words it will not help to solve the problem. At any rate you are giving us the proviso and when you give us the proviso. . .

SHRI P. S. GOPALAKRISHNAN: One has to liquidate what has already accumulated and further accumulation does not take place in the process. We are still not having that administrative set up. There is accumulation even now. There are also pending cases which have already accumulated.

MR. CHAIRMAN: Why do you see it will not take care of the future accumulations?

SHRI P. S. GOPALAKRISHNAN: The basic cause of this accumulation is still not analysed.

SHRI K. R. GANESH: I was in Singapore and I had discussions with the Commissioner of Income Tax. He seems to be a very powerful person. Their system is different than our system even though they have democracy. There is no check on him. There is only the judicial process which acts as a check on him. Because he is a powerful person, they are able to liquidate all the problems. They do not have the kind of problems that we have. He is a very powerful person. I had a long talk with him and asked him many questions. They do not bother about this. But, it is a very small place. That is a separate matter.

SHRI P. S. GOPALAKRISHNAN: What we are submitting is that, we have to analyse the basic cause. The machinery should be devised in such a way that such instances do not occur hereafter and that accumulations do not take place. We have to tackle this problem on a better footing than we have been doing so far.

SHRI K. R. GANESH: Your Department is now trying to remedy this by means of better staffing etc. By means of various other provisions that are being made, it will be geared up in the course of the next few years from now, to deal with the various aspects of the problems that are coming before us—investigation, searches, recovery and various other things. How do you liquidate the problem that is already there with our existing machinery? I feel that the settlement machinery will be powerful enough to tackle the problem and to do justice.

SHRI P. S. GOPALAKRISHNAN: Then, we have to give further thoughts to the recommendations of the Wanchoo Committee itself.

MR. CHAIRMAN: What Mr. Ganesh says is that, the Wanchoo Committee has gone far. The Bill is less than that. You are reducing it still further. The basic point is that, the Income Tax Officers do not want to take responsibility. If they are independent, bold and strong-headed, they will not care what the results will be. I must say that 50 per cent of our Appellate Assistant Commissioners would do much better if they are not to be worried about the fact that they may be answerable to somebody. Many people who have gone to the Tribunal, have blossomed into good judges. Today, in the department, nobody wants to take full responsibility. This impedes expeditious disposal. That in turn impedes expeditious clearance and that in turn puts the whole thing out of gear.

SHRI K. R. GANESH: So far as big assesseees are concerned, they will go to the High Court, Supreme Court etc. and they will have the backing of this walla and that walla and they will be able to get the things done, in the way they like. They are powerful enough to take care of themselves. What about small assesseees who do not have that much of influence?

SHRI P. S. GOPALAKRISHNAN: Why should we not try to improve the existing machinery itself? What thought have we applied to this matter?

MR. CHAIRMAN: I think it will need a revolution. Can you make an Income Tax Officer, today, feel independent and in that process, are you not taking risks yourself? It is not easy. It is easily said than done, Mr. Gopalakrishnan.

SHRI P. S. GOPALAKRISHNAN: Then, we will be only accumulating the problems. When we find a solution for the existing problems, should we not see that such problems do not repeat again and apply our mind towards that end?

MR. CHAIRMAN: What do you suggest?

SHRI P. S. GOPALAKRISHNAN: There is a suggestion that the Income Tax Officers should be made more independent and should be given more powers. What are the impediments that stand in the way of his independence?

SHRI K. R. GANESH: Depending upon the service and other conditions, there will always be constraints for giving the Income Tax Officers, wide powers. You will have to take into account the total picture.

SHRI P. S. GOPALAKRISHNAN: In Part II, we have dealt with the present administrative set up. I would beg of you to go through that.

MR. CHAIRMAN: That is a very important point. I would like you to address us on this point—how to improve the existing administrative machinery within the scope of the Bill.

SHRI P. S. GOPALAKRISHNAN: Not, within the scope of the Bill. We have mentioned in that Part, what are the impediments that stand in the way of the whole thing and about the affairs of the Department today.

SHRI P. G. MAVALANKAR: If the affairs today are bad, and are not as they should be and if the situation is to be remedied, is it being suggested that they will all be liquidated by merely giving the Income Tax Officers more powers?

MR. CHAIRMAN: That is one of the points. The existing administrative machinery has some latent and patent defects. I agree with you. They have also to be simultaneously liquidated while setting up this settlement machinery. That is your case?

SHRI P. S. GOPALAKRISHNAN: In the Statement of Objects and Reasons, one of the object has been given as, to streamline the administrative set-up and to make it functionally efficient.

Then, I would like to refer to Para 1.1, Part II, of the memorandum.

MR. CHAIRMAN: Who prevents you from pursuing black money?

SHRI P. S. GOPALAKRISHNAN: The object should be to prevent black money rather than trying to effect some improvement.

MR. CHAIRMAN: If the provisions today are effective enough rather than doing this, you detect black money and then tax it. Who prevents you?

SHRI P. S. GOPALAKRISHNAN: I would further quote from Para 1.2.

MR. CHAIRMAN: Here you have said:

“questionable methods are used to reach the prescribed targets.”

The Committee would like to know, as to what do you mean by ‘questionable methods’?

SHRI P. S. GOPALAKRISHNAN: Quantitatively, each person is asked to dispose off a certain number of cases.

He adopts questionable methods and sacrifices quality. The Income-Tax Officer is not a machine. Now, Sir, in page 48, we have given details year-wise.

MR. CHAIRMAN: You say that there should be better opportunity, so that an ITO can produce work of better quality; at the moment, the emphasis is on quantity. Your view is that the ITO is loaded with too much work. Would you like to elaborate on this point?

SHRI ERA SEZHIYAN: I am not quite clear about this. I do not know as to how the comparison stands between 1948 and now. I remember that last year, the PAC, when I was associated with it, had made an analysis of the number of assessments completed per ITO. This figure has fallen in spite of the fact that immediate assessment is there.

MR. CHAIRMAN: I think it has gone up.

SHRI ERA SEZHIYAN: I do not use the words, 'I think'. This has been proved by facts. We went into the question and have given the recommendation also.

SHRI P. S. GOPALAKRISHNAN: May I draw the analogy from 1948? Compared with it, it has risen.

MR. CHAIRMAN: Except for one year.

SHRI S. R. DAMANI: According to my personal experience, many ITOs have to do unproductive work. What he has said deserves very careful consideration. For the year 1969-70, you have given the number of cases as 27,682. The total number of assesses in the country is more than 30 lakhs. You have given various figures. To which area do they relate?

SHRI P. S. GOPALAKRISHNAN: These are cases in which concealment was detected and cases launched.

SHRI S. R. DAMANI: It means that out of a total number of assesses viz. 30 lakhs, the number of concealment cases was only less than 30,000. It is just 1 per cent.

SHRI P. S. GOPALAKRISHNAN: You may correct me if I am wrong in giving the calculation. During

1972-73, the number of assesses was 4 million and the concealment cases number only 12,554; it is not even half-a-per cent.

MR. CHAIRMAN: Mr. Gopalakrishnan, how much of this penalty has ultimately been upheld by the tribunal?

SHRI P. S. GOPALAKRISHNAN: We have no information on that, Sir.

MR. CHAIRMAN: You are making such an important inference, that is, that the fall in detection of concealment is due to the introduction of summary assessment scheme.

SHRI P. S. GOPALAKRISHNAN: Yes, Sir.

MR. CHAIRMAN: Therefore, in order to determine whether in the earlier detections and assessments, what you had levied by way of penalty was really productive work, we would like to know whether the tribunal had upheld the penalties. You have functioned as Appellate Commissioner. You know how impossible it is to get a penalty order ever sustained. That alone will sustain it; and not these figures. Whatever may be the merits of that scheme, there must be some process by which we can eliminate those assesses who are not in the business. You can get rid of 80 per cent of the assesses relating to employees or fixed income groups and concentrate only on the 20 per cent. What is wrong in accepting 80 per cent cases just on that basis?

SHRI P. S. GOPALAKRISHNAN: We will proceed to the next point where we have explained the whole matter.

SHRI S. R. DAMANI: The ratio of concealment is not even 1 per cent. It is less.

SHRI P. S. GOPALAKRISHNAN: That inference is not correct. There is no question of comparison between the total number of assessments and concealment. Concealment relates only to investigation.

SHRI S. R. DAMANI: Even during 1972-73, there were only 27,000 cases.

SHRI P. S. GOPALAKRISHNAN: This figure of 35 lakhs would include 10 lakh salary schemes. We have been accepting small income schemes.

MR. CHAIRMAN: Yes; that is what I say. According to me the amount of penalty levied by the ITO is not a valid criteria. Ultimate penalty sustained is the correct criteria. So, for qualitative evaluation you will have to go by ultimate accepted figures.

SHRI ERA SEZHIYAN: My impression is summary assessment does not cover the big cases. We thought summary assessment will help in concentrating on big cases. We can also say that as the ITOs have not worked that is why it has become less.

SHRI P. S. GOPALAKRISHNAN: May I draw your attention to page 48 of our Memorandum para 1.5:

"The procedure of summary assessments, introduced from 1.4.71, has accentuated the problem of tax evasion. Under this scheme, as formulated by the Board, assessment cases have been divided broadly into two classes, viz, scrutiny cases and non-scrutiny cases. Non-scrutiny cases are those non-company cases where the income is below Rs. 50,000 in Bombay or Calcutta and below Rs. 25,000/- in other places. In these cases, the returns of income filed by tax payers are accepted without enquiry, subject only to certain statutory adjustments. The first question which arises in our minds is whether persons earning incomes upto Rs. 50,000/- in Bombay or Calcutta and upto Rs. 25,000 elsewhere are such small tax payers who can be let off without any enquiry or investigation. For every rupee evaded in this bracket, the country has been losing about 50 paise and this is a loss, we submit, which the country can ill afford to bear..... With the increasing accent on the summary assessment scheme, there is no wonder that the

number of penalties initiated by the Department has been steadily going down. There is a clear lack of object in this regard because a revenue department is not concerning itself with its primary function of bringing into its coffers every pie that is legitimately due to the State."

Can we afford to throw-away revenue in this manner?

MR. CHAIRMAN: Please tell us how can we reduce the workload without sacrificing efficiency and tax revenue?

SHRI P. S. GOPALAKRISHNAN: We have made several changes in law. Is it not possible to make a small change in law that when a taxpayer files his return no assessment need be done on that. He pays only self-assessment tax. No formal order is necessary. In this issue of formal order we waste a lot of time. What is the alternative? We have specific cases of concealment. Under Section 132 search is made and we gather information from various other departments like Customs and we have got a lot of other information coming out of our intelligence machinery giving definite information. It is a matter of shame to us that all these cases are being processed as if they are summary assessments.

MR. CHAIRMAN: Do you mean to say that where you get specific information you do not go into it?

SHRI P. S. GOPALAKRISHNAN: Yes. Not in a detailed way. I am only telling you what is happening today. It is happening because of numbers.

MR. CHAIRMAN: You are suggesting that a whole lot of ground would be traversed if we eliminate the formality of assessment in the case of self-assessment. It can be possible. We would have a statutory letter written to the assessee that you filed a return and your return has been accepted. But there is one point. Your law

being so utterly complicated where is the guarantee that even an honest assessee does not need help and assistance? I think the best way is to eliminate 80 per cent of the workload and concentrate your attention on the remaining 20 per cent only.

SHRI P. S. GOPALAKRISHNAN: I would submit, let us not come to 20 per cent, but do it more.

MR. CHAIRMAN: What prevents you from doing it?

SHRI P. S. GOPALAKRISHNAN: In 80 per cent of the cases, we have still to pass orders.

MR. CHAIRMAN: What is the way out?

SHRI P. S. GOPALAKRISHNAN: We have to evolve some procedure.

MR. CHAIRMAN: How the number will be increased?

SHRI P. S. GOPALAKRISHNAN: We have to pay attention to those cases where we have specific information of concealment.

SHRI ERA SEZHIYAN: Without any limit—Rs. 15,000 or one lakh?

SHRI P. S. GOPALAKRISHNAN: I agree with you.

MR. CHAIRMAN: It cannot be brought in statute.

SHRI P. S. GOPALAKRISHNAN: One thing good may happen. Either he will be given a clean certificate or he will land himself into jail.

MR. CHAIRMAN: If the ITO's efforts will not land him into jail, then what he will do?

SHRI P. S. GOPALAKRISHNAN: That is the quality of his work to be judged.

MR. CHAIRMAN: I entirely agree with you in principle. In other cases, make a summary assessment after routine adjustment.

SHRI P. S. GOPALAKRISHNAN: Your nine months' time is wasted in the summary assessment.

MR. CHAIRMAN: What about the summary assessment of the 90 per cent cases?

SHRI P. S. GOPALAKRISHNAN: When the return has been filed, the matter ends there.

MR. CHAIRMAN: There is no clerical check even?

SHRI P. S. GOPALAKRISHNAN: Yes, Sir.

MR. CHAIRMAN: After working for 20 years in this Department, with various sections, if I am asked to file my return, I cannot do it correctly. The law is so cumbersome.

SHRI P. S. GOPALAKRISHNAN: Even in the case of summary assessment, we are losing a colossal amount on tax.

MR. CHAIRMAN: That is not an evasion.

SHRI P. S. GOPALAKRISHNAN: It is certainly an evasion.

MR. CHAIRMAN: How?

SHRI P. S. GOPALAKRISHNAN: A man shows his income below Rs. 50,000 and gets away with it. We should have a separate machinery for investigation. We cannot apply checks and balances in every case we take up.

MR. CHAIRMAN: We are informed that the return should be accepted as it is without scrutiny. Let me tell you before so many people who are sitting here, how many of us can file our returns? I will give my data and let the Chairman of Board of Direct Taxes file my return. What is the use of shifting the responsibility in that way? I think you must make your summary assessment. I entirely agree with you that when you make an investigation, the fellow must land himself into jail.

SHRI P. S. GOPALAKRISHNAN: That is not being done today. How you will plan your work in such a way that it deserves attention?

MR. CHAIRMAN: The time is not sufficient.

SHRI S. R. DAMANI: I find that what you are saying is quite contrary to what is being done. Actually, what is being done is that informations are being made available without mentioning the names and the ITOs are making so many enquiries. This sort of thing is going on. The result is that on such informations, the assessments are being reopened and examined. Therefore, summary assessment does not come in the way of concealment of income and the ITOs have helped the assesses in getting them released in many ways.

MR. CHAIRMAN: Kindly tell me what is your suggestion regarding remedial measures in favour of a large number of assessments or summary assessment without any responsibility on you?

SHRI P. S. GOPALAKRISHNAN: What is the responsibility on the ITO even today?

MR. CHAIRMAN: This clerical check.

SHRI P. S. GOPALAKRISHNAN: I do not want ITO to put his seal. You can say even statutorily any claim is not admissible.

MR. CHAIRMAN: Supposing, a man holds some shares and you have got that information and tell the ITO that he has not shown his dividend income. Will it not be palpable income?

SHRI P. S. GOPALAKRISHNAN: It is a waste of time to correlate it. The ITO has to do 500 cases per month and even one assessment will take ten minutes.

MR. CHAIRMAN: But when you tell him the specific information?

SHRI P. S. GOPALAKRISHNAN: You take the return and the statement accompanying it.

MR. CHAIRMAN: Has the Board instructed him to check up information with the record?

SHRI P. S. GOPALAKRISHNAN: He is bound to do this workload. The question is of quality of assessment.

SHRI ERA SEZHIAN: I am reading on page 142, para 3.23 of the PAC Report (1972-73) (Fifth Lok Sabha) Fifty-First Report. It says: "The Committee find that the number of income tax officers attending to assessment duties has progressively increased from 1701 as on 1st April, 1968 to 1912 as on 1st April, 1969, 2056 as on 1st April, 1970 and 2234 as on 1st April, 1971. The effect of this appears to have been the reverse of what might have been expected. The average number of assessments disposed of per Income Tax Officer on assessment duty has decreased from 1855 in 1968-69 to 1842 in 1969-70 and 1869 in 1970-71."

"No satisfactory explanation for this phenomenon has been adduced by the Ministry. The Committee suggest that the reasons for decrease in the average number of assessments particularly during the year 1970-71 may be investigated by the department."

This is one aspect. Regarding assessment cases, we also went into that and observed:

"The Committee are not satisfied that there was any need for this increase of Officers for assessment work in view of the simplification in assessment procedures brought about in recent years. They find that about 89 per cent of the assessee are in the categories II to V. The assessments in these cases do not require much effort on the part of the assessing officers."

"The Committee note that 71 per cent of the revenue is collected from 11 per cent of the total number of assessee falling in categories I and II. It is on these cases that the Income-Tax Officers should naturally concentrate. They should investigate thoroughly big cases to unearth concealment of income. There should be a greater emphasis on

survey work to bring substantial tax dodgers within the income-tax net."

MR. CHAIRMAN: The principle of summary assessment is a very sound principle, Mr. Gopalakrishnan. You have to eliminate part of the workload. What you are suggesting would mean total elimination. It will be a risk.

SHRI P. S. GOPALAKRISHNAN: Are we not taking risks. Even as it is, we are accepting the returns that are filed without scrutiny.

MR. CHAIRMAN: The law is so complicated, Mr. Gopalakrishnan. Many people may not file their returns correctly. Someone might have missed something. Is that the only suggestion that you are making?

SHRI P. S. GOPALAKRISHNAN: That is one of the suggestion. I would like to refer to Page 50—Para 1.7.

"Even in summary assessments cases, the poor Income Tax Officer is set such norms of work that he can hardly devote five minutes to each assessment. The result has been that even in such cases, mistakes are galore and tax payers have frequently been put to harassment and inconvenience."

MR. CHAIRMAN: What are the norms? Have you got some. We will ask the Department to give us the directions and instructions they have given you. But, I would appreciate your telling us as to what are the norms.

SHRI P. S. GOPALAKRISHNAN: Here, I would like to quote from the Eighty-Seventh Report of the Public Accounts Committee, to which Mr. Sezhiyan made a reference earlier:

"The Chairman, Central Board of Direct Taxes stated:

"There cannot be any question of revenue to be collected by an Income-tax Officer. The normal expectation is that an average Income-tax Officer Class I is expected to give about 300 standard

units. In case of Income-tax Officer Class II, the expectation is above 250.... These are the minimum standards.... The Commissioners are to evaluate the performance of each Income-tax Officer'."

MR. CHAIRMAN: The Income Tax Officers are assisted by Inspectors.

SHRI P. S. GOPALAKRISHNAN: I beg your pardon. It is not so. We are not assisted by Inspectors in assessment work.

MR. CHAIRMAN: In summary assessments?

SHRI P. S. GOPALAKRISHNAN: No, not at all.

MR. CHAIRMAN: Are you trying to make out a case that it is the summary assessment which is taking away most of your time? Is that what you are suggesting?

SHRI P. S. GOPALAKRISHNAN: Yes, Sir. We are wasting a lot of time in summary assessments 80 per cent of the manpower is wasted only on summary assessments. Why should we not cut out the summary assessments altogether? Why should we not accept the returns as they are and put them on scrutiny cases, where, wealth of information is there.

SHRI ERA SEZHIYAN: For the benefit of the Committee, I would like the Board to send us the notifications etc. which were issued detailing the procedure to be followed in respect of summary assessments.

I would like to quote from the Public Accounts Committee's Eighty-seventh Report—Para 1.25, wherein, they have said:

"The Committee wanted to know whether the Board had any Job Evaluation Cell and if so, any general study of the evaluation of the efficiency of the Income Tax Officers was made as per the standard units prescribed by the Department, with a view to classify them. The witness stated: 'Not in that way. That

is left to the Commissioners. He looks to the performance of each individual Income Tax Officer before he writes his confidentials.... The Board lays down the policy and the Commissioners are to follow'.

The Ministry in a note submitted to the Committee stated: 'There is no Job Evaluation Cell in the Board and the work of the officers is evaluated by their superiors on the basis of (i) the officer's output in terms of units prescribed by the Board and (ii) the quality of the officers's work'."

Job evaluation is not there. We have made comments on that.

MR. CHAIRMAN: So far as summary assessment is concerned, what job evaluation is possible? You can make quantitative evaluation.

SHRI P. S. GOPALAKRISHNAN: Let us cut out that summary assessment. It may mean a few crores of loss of revenue to the Government. We can make this up by scrutinising the 11 per cent of cases, where there is concealment, where scrutiny will produce better results. We can more than make up the loss of revenue.

MR. CHAIRMAN: You are making such a strong plea that we would like to examine this.

SHRI P. S. GOPALAKRISHNAN: We are spending most of our time in summary assessment.

MR. CHAIRMAN: Can it not be rationalised?

SHRI P. S. GOPALAKRISHNAN: We have not done job evaluation as to how much time is spent. An Income Tax Officer does not spend even 50 per cent of his time in assessment work.

MR. CHAIRMAN: Is that so?

SHRI P. S. GOPALAKRISHNAN: I would request the Members to come to the Income Tax Office and see what is happening there.

MR. CHAIRMAN: Why don't you tell us here?

SHRI P. S. GOPALAKRISHNAN: Statistical particulars are required and that is required in 24 hours time. They throw the entire work out of gear. Then, we have a lot of problems to attend to. Visitors come. For example, I am in the Salary Circle, where 90 per cent of my time is taken away by answering queries of the visitors. I cannot send them away. I have to maintain good relations with the public. People come only when they have some problem. They do not come to us unless they have a problem. We have to attend to them.

MR. CHAIRMAN: We will see what we can do about this.

SHRI P. S. GOPALAKRISHNAN: Not only statistics. Lot of time is wasted in

MR. CHAIRMAN: If you are in the Salary Circle, you have to meet people. You cannot say 'No' to them.

SHRI P. S. GOPALAKRISHNAN: You should take into account what is the time available to a man for assessment work. 50 per cent of the time is spent in furnishing statistical particulars. Then, reports have to be sent. We have also to attend to enquiries from private parties, we have to meet the public, answer their queries etc. This takes away most of our time. You should take into account what is the available time at the disposal of an Income Tax Officer to do assessment work and you should relate productivity to that available time only. We do not say that we should say 'No' to the people who come to us. We only say that if we do away with all the unnecessary work, we can devote that time to other useful work. Give us sufficient time to

MR. CHAIRMAN: Are you trying to suggest that this is the sort of system, which is preventing you from adopting an effective and continuous check to get at the black money?

SHRI P. S. GOPALAKRISHNAN
Yes, Sir.

We have been feeling very strongly about this. This is, at least, one of the basic causes for the inefficiency in the Department today. What happens is this. For example, I am told to dispose off 150 assessments above Rs. 50,000. If I do not give the 150 cases, by the end of the month, the wolf will be at my door next month. I will be told "You have not given me 150 cases. What is the matter with you?" We feel that it is better to drive the wolf at our door today and face the consequences later.

MR. CHAIRMAN: Assuming that we are making a provision for compulsory audit, and we make it compulsory for these people, these Chartered Accountants, to give a certificate that the returns are correct and the taxes are correctly calculated, and make them responsible, you think that would help in

SHRI P. S. GOPALAKRISHNAN: This will help at least in accountability. In those cases, I would submit, that no scrutiny need be done.

MR. CHAIRMAN: That will apply to cases only above Rs. 25,000. This is in respect of business income. Suppose, we bring in auditors, where there is no business income, and we prescribe a fees, and he gives a certificate. This will be in respect of non-business income, that is, 89 per cent of the cases, which Mr. Sezhiyan referred to, and if the auditor's certificate is there, then, you do not have to go any further.

SHRI P. S. GOPALAKRISHNAN: We do not have to go into the accuracy.

MR. CHAIRMAN: We will consider that.

SHRI P. S. GOPALAKRISHNAN: I only want to submit one thing. We should make effective use of the

machinery, in actual implementation. That is the only submission I wanted to make. Twenty-five years ago, I was proud to be in the service but today I am not. It is a picture of inefficiency in the Department today, due to circumstances beyond my control.

MR. CHAIRMAN: You are not able to take recourse to effective methods of detection?

SHRI S. R. DAMANI: It is a fact that ITOs are suffering hardships. They are being transferred to big cities like Bombay, Calcutta etc. without giving any reasons. Now, you can consider, if a person drawing Rs. 200 is transferred to Bombay where he cannot get accommodation for less than Rs. 150, how can he live? They are transferring these officers without considering where they are going to live. Are they going to live in the slums? It is also a fact that if they live 20 miles away in the suburbs, they have to spend Rs. 2 per day coming and going; how much money will be spent and how much time will be consumed? These will have to be taken into account and Government should consider that before transferring these officers, they should arrange for proper accommodation so that they will have no problems and they can deliver the goods.

MR. CHAIRMAN: Are you suggesting that we should include a clause in this Bill?

SHRI P. G. MAVLANKAR: I would like the witness to suggest whether, apart from reducing the pressure on time, he has any other suggestions to offer.

MR. CHAIRMAN: The important point he is making is that the assessment itself is taking so much time that they have no time for investigation.

SHRI P. G. MAVLANKAR: I appreciate that point; but over and above that, has he any other measures in his mind?

SHRI P. S. GOPALAKRISHNAN: They will be covered in the later paras.

MR. CHAIRMAN: Now that the memorandum is with us, we will examine it and see what steps can be taken.

SHRI P. S. GOPALAKRISHNAN: There are other points also made here. If the Committee should desire our assistance at any time, we will always be available.

MR. CHAIRMAN: We congratulate you on the work you have done; it has been of great assistance to us. Thank you very much.

(The Committee then adjourned).