

LOK SABHA

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

**EVIDENCE
(Volume II)**



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1975/Phalguna 1896 (Saka)

Price Rs. 7.00

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 Bholu 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

*Appointed 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.

LEGISLATIVE COUNSEL

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. Balasubramanian, 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.
-

- Page 134, col. 2, (i) line 27, omit "fall"
(ii) line 22 from bottom,
for "lead" read "plead"
- Page 168, col. 1, line 9 for "main" read "maintain"
- Page 172, col. 1, for line 25,
read "and clause 39 section 139."
- Page 183, col. 1, (i) line 9 from bottom
for "sponse" read "spouse"
(ii) line 11 from bottom,
for "from" read "form"
- Page 217, col. 1, line 23, for "not" read "by"
- Page 218, col. 1, line 9, for "that" read "than"
- Page 222, col. 2, line 25, for "as" read "is"
- Page 224, col. 1, line 2 from bottom,
for "theoe" read "those"
- Page 226, col. 2, line 28, for "act" read "fact"
- Page 236, col. 2, line 25, for "recast" read "recent"
- Page 241, col. 2, line 10 from bottom, for "office"
read "companies"
- Page 253, col. 1, line 4,
for "specifica-" read "qualifica-"
- Page 256, col. 2, line 4. from bottom,
for "appointment" read "supplement"
- Page 264, col. 2, line 5, for "negligible"
read "negligible"
- Page 268, col. 1, for line 13 from bottom,
read "cases, the audit will serve the purpose."
- Page 272, col. 2, omit lines 1-2.
- Page 286, col. 1, line 14, for "is" read "as"
- Page 287, col. 2, line 15 from bottom,
for "tax" read "lax"
- Page 290, col. 1, line 17, for "comments" read "commends"
- Page 291, col. 1, line 22 from bottom,
for "Hindustan" read "Hinduism"
- Page 294, col. 2, line 19, for "its" read "Rs."
- Page 295, col. 1, for line 22,
read "other accountants under clause 39."
- Page 313, col. 2, line 4, for "revailing"
read "prevailing"
- Page 314, col. 1, line 22 from bottom,
for "exptitation" read "expiation"
- Page 323, col. 1, line 7 from bottom,
for "ganb" read "garb"
- Page 335, col. 2, last line,
for "sation" read "stan"
-

LOK SABHA SECRETARIAT

Corrigenda

to

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

- Page 2, line 1, for "Secretary" read "Secretariat"
Page 5, col. 1, line 24, for "one" read "me"
Page 6, col. 1, line 3 from bottom,
for "resported" read "resorted"
Page 7, col. 1, for line 2 from bottom,
read "Jyotirmoy Bosu who said about invest -"
Page 13, col. 1, (i) line 22, for "christians"
read "charities"
(ii) line 23, delete "charges"
Page 18, col. 1, line 5, for "my" read "may"
Page 35, col. 1, line 15, for "mush remember"
read "must remember"
Page 38, col. 1, line 6, for "inforcation"
read "information"
Page 70, col. 2, line 18 from bottom,
for "Accounts" read "Accountants"
Page 74, col. 1, for lines 13-15, read
"should not be allowed to invest even a
single rupee, into any of your own trusts
concerns or relations or"
Page 75, col. 1, line 19, for "Rs. 200" read "Rs. 2000"
Page 76, col. 1, line 12, for "miner" read "minor"
Page 81, (i) col. 1, line 8 for "includable"
read "includable"
(ii) col. 2, line 13 from bottom
for "accured" read "accrued"
Page 91, col. 1, line 8, for "Shri Bhagat"
read "Shri Bhagwat"
Page 92, col. 1, line 22, for "deafting" read "defeating"
Page 93, col. 1, line 2, for "Sevise" read "Service"
Page 104, (i) for line 28, read
"IV. Tamil Nadu State Income-tax
Employees' Association, Madras."
(ii) col. 2, omit lines 18-19 from bottom,
Page 106, col. 1, line 29, for "bickeding"
read "bickering"
Page 113, line 8, from bottom,
for "Shri b.D. Panda" read "Shri B.D. Pande"
Page 114, col. 1, line 29, for "bive" read "give"
Page 127, col. 1, line 18 from bottom,
for "purocess" read "process"
Page 132, col. 2, line 22 from bottom,
for "be read" read "one reads"

***WITNESSES EXAMINED**

S. No.	Name of witness	Date of hearing	Page
1	2	3	4
1.	Government of Andhra Pradesh, Hyderabad.	9-1-1974	2
	<i>Spokesmen :</i>		
1.	Shri C. R. Krishnaswamy Rao Sahib, Secretary to the Chief Minister.		
2.	Shri P. L. Sivaram, Commissioner, Endowments .		
3.	Shri V. Sundaresan, Secretary.		
4.	Shri S. V. Subramaniam, Executive Officer, Tirumala Tirupati Devasthanam.		
5.	Shri A. V. Surya Rao.		
6.	Shri R. Sankaran.		
2.	Consultative Committee of City Chambers of Commerce, Madras.	9-1-1974	15
	<i>Spokesmen :</i>		
1.	Shri S. Narayanaswamy, M. L. C.		
2.	Shri P. Brahmayya		
3.	Shri N. C. Krishnan		
4.	Shri C. S. Vidyasankaran		
5.	Shri R. N. Ratnam		
6.	Shri D. Shrinivasan		
3.	Sri Aurobindo Society, Pondicherry.	9-1-1974	
	<i>Spokesmen :</i>		
	Shri Arunendra Nath Tagore.		
4.	Madras State Income-tax Practitioners Association, Madras.	9-1-1974	25
	<i>Spokesmen :</i>		
1.	Shri V. N. Padmanabhan		
2.	Shri S. R. Gopalan		
3.	Shri M. S. Rangiah.		
5.	Shri T. V. Vishwanatha Aiyer, Advocate, Supreme Court of India, Madras.	10-1-1974	33
6.	Andhra Pradesh Tax Bar Association, Hyderabad.	10-1-1974	45
	<i>Spokesmen :</i>		
1.	Shri M. A. Mohiuddin		
2.	Shri Y. V. Anjaneyulu		
3.	Shri Keshavlal Adhia		
4.	Shri V. Venugopal.		

*Contains only the list of witnesses included in this volume. For other witnesses, see volume I.

(1)	(2)	(3)	(4)
7. Raja Charity Trust, Madras.	10-1-1974	53
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri P. R. Ramasubramania Raja, Managing Trustee . 2. Shri S. N. Ramakrishna Raja, Chartered Accountant. 3. Shri M. Sanotham, Chartered Accountant . 4. Shri N. K. Srikanta Raja . 			
8. The Karnataka (Mysore) State Income-tax Practitioners' Association, Bangalore.	10-1-1974	54
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri G. B. Patil. 2. Shri P. K. Ramachandra Setty 3. Shri P. N. S. Murthy 4. Shri M. Srinatha Rao. 			
9. Shri P. Sadagopan, Commissioner of Income-tax, Madras	11-1-1974	57
10. The Society of Income-tax Practitioners, Vijayawada.	11-1-1974	57
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri M. V. Shastry 2. Shri D. L. Narasimha Rao. 3. Shri M. Venkateswara Rao. 			
11. The Anakapalle Merchants' Association, Anakapalle.	11-1-1974	58
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri I. Ramakrishna Rao. 2. Shri B. K. Viswanadham 3. Shri K. Sreeramachandramurty. 4. Shri P. Appalarajam Hulu 5. Shri B. S. V. N. Naidu 6. Shri K.R. Nookaraju 			
12. Hindustan Chamber of Commerce, Madras.	12-2-1974	62
<i>Spokesmen :</i>			
<ol style="list-style-type: none"> 1. Shri C. Narayanaswamy 2. Shri V. Ramachandran 3. Shri Ashok Kumbhaj 4. Shri Bewrilal Nahar 5. Shri Anantha Krishna 			

(1)	(2)	(3)	(4)
13.	Madura-Ramnad Chamber of Commerce, Madurai . . .	12-1-1974	73
	<i>Spokesmen :</i>		
	1. Shri T. Manickavasagam		
	2. Shri M. A. Ramaswamy.		
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	1. Shri J. Gopalakrishnan		
	2. Shri K.Y. Sresty.		
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	<i>Spokesmen :</i>		
	1. Shri M.V. Krishnamurthy		
	2. Shri K.G. Subbarama Setty		
	3. Shri B. V. Rathnaiah Setty		
	4. Shri C. M. Reddy		
	5. Shri J. Srinivasan		
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	2. Shri K. S. Paripoornan		
	3. Shri P. K. Warriar		
	4. Shri K. G. Warriar.		
17.	Tamil Nadu Income-tax Employees' Association, Madras.	13-1-1974	104
	<i>Spokesmen :</i>		
	1. Shri G. Balu, President.		
	2. Shri C. R. K. Murthy, General Secretary		
	3. Shri N. Sundarajan		
	4. Shri K. Jayaraman.		
	5. Shri S. Raghavan		
18.	1. Shri B. D. Pande, Cabinet Secretary.	28-1-1974	
	2. Shri M. R. Yardi, Finance Secretary.		
	3. Shri H. N. Ray, Finance Secretary.	8-7-1974	113
	4. Shri M. G. Kaul, Secretary, Department of Economic Affairs.		
19.	Shri V. V. Badami, Director of Inspection (Investigation), Directorate of Inspection (Investigation), New Delhi.	29-1-1974	120

(1)	(2)	(3)	(4)
20.	1. Shri C. R. Krishnamurthi, Commissioner of Income-tax, Calcutta.	29-1-1974	136
	2. Shri O. V. Kuruvilla, Commissioner of Income-tax, Bombay.		
	3. Shri B. A. Shariff, Commissioner of Income-tax, Ahmedabad.		
21.	All India Federation of Income-tax Gazetted Services Associations, New Delhi.	10-6-1974	137
	<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. Bajpai.		
	7. Shri L.S.S. Chakravarthy		
	8. Shri J. N. Moitra		
22.	Institute of Chartered Accountants of India, New Delhi.	11-6-1974	172
	<i>Spokesman :</i>		
	1. Shri S. K. Gupta, President		
	2. Shri N. C. Krishnan, Vice-President		
	3. Shri Anil M. Parikh, Chairman, Taxation Committee.		
	4. Shri V.B. Haribhakti, Past President.		
	5. Shri R. Santhanam		
23.	Gujarat Chamber of Commerce and Industry, Ahmedabad.	13-6-1974	185
	<i>Spokesmen :</i>		
	1. Shri Rasiklal Vadilal Vasa, President		
	2. Shri Indravadan Pranal, Vice -President		
	3. Shri Shrenikbhai Kasturbhai		
	4. Shri Hasmukhlal C. Shah, Hon. Secretary.		
	5. Shri H. M. Talati, Chartered Accountant.		
	6. Shri I. N. Kania, Deputy Secretary.		
24.	Upper India Chamber of Commerce, Kanpur.	13-6-1974	204
	<i>Spokesmen :</i>		
	1. Shri Gulab Chand Jain, Vice-President.		
	2. Shri A. P. Gupta, Member of Executive Committee.		
	3. Shri Manohar Lal, Member, Taxation Sub-Committee.		
	4. Shri A.K. Basu, Secretary.		

(1)	(2)	(3)	(4)
25.	Shri R. D. Shah, former Chairman, Central Board of Direct Taxes.	14-6-1974	214
26.	Shri M. R. Yardi, Former Finance Secretary.	14-6-1974	234
27.	Income-tax Bar Association, Ahmedabad.	10-7-1974	266
<i>Spokesmen :</i>			
1. Shri L.G. Thakkar, President.			
2. Shri C. V. Mehta, Vice -President.			
3. Shri V. J. Shah, Secretary.			
28.	Shri G. P. Kapadia, Chartered Accountant, Bombay.	10-7-1974	272
29.	Institute of Cost and Works Accountants of India, Calcutta.	10-7-1974	293
<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. Biswas.			
5. Shri S. N. Ghose, Secretary.			
6. Shri G. K. Abhyankar.			
7. Shri S. K. Mitra.			
30.	Indian Revenue Service (Income-tax) Association, New Delhi.	11-7-1974	298
<i>Spokesmen :</i>			
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			
6. Shri S. G. Jaisinghani.			
7. Shri B. Gupta.			
31.	Shri Biharilal Kanaiyalal, Ahmedabad.	11-7-1974	309
32.	Gandhi Peace Foundation, New Delhi.	11-7-1974	316
<i>Spokesmen :</i>			
1. Shri V. Ramachandran, Secretary, Sarvaseva Sangh. Khadi Gramodyog Samiti, Coimbatore.			
2. Shri A. C. Sen, Secretary, AVARD, New Delhi.			
3. Shri Rameshwar Thakur, Chartered Accountant, New Delhi.			
4. Shri S. D. Nargolwala, Delhi, Parsi Anjuman, New Delhi.			
5. Shri Devendra Kumar, Secretary, Gandhi Smarak Nidhi, Delhi.			
6. Shri Rup Narayan, Secretary, All India Prohibition Council.			
7. Shri A. K. Karan, Secretary, U. P. Gandhi Smarak Nidhi.			

1	2	3	4
33.	Tax Practitioners Association, Srinagar.	11-9-1974	326
	<i>Spokesmen :</i>		
	1. Shri B. R. Bhasin, Advocate.		
	2. Shri Subash Dutt, Advocate.		
	3. Shri M. A. Bakshi.		
	4. Shri A. Rehman		
	5. Shri O. P. Sahney.		
	6. Shri S. K. Kaul.		
	7. Shri Mairajuddin.		
	8. Shri Ali Mohd. Raja.		
	9. Shri Hafiz-M-Umail.		
34.	Tax Consultants Association and Chamber of Commercial and Industrial Undertakings, Ludhiana.	11-9-1974	326
	<i>Spokesmen :</i>		
	1. Shri S. R. Mittal.		
	2. Shri B. B. Jain.		
35.	Viyaparik Association Mandal, Shree Ganganagar, Hanuman-garh Town, Rajasthan.	11-9-1974	331
	<i>Spokesmen :</i>		
	1. Shri Payare Lal Gupta.		
	2. Shri Prem Sukh Aggarwal.		
36.	Kashmir Chamber of Commerce and Industry, Srinagar.	12-5-1974	334
	<i>Spokesmen :</i>		
	1. Shri Dharambir Singh Oberoi, President		
	2. Shri P. N. Puri, I. P. President.		
	3. Shri G. Rasull Khan, Sr. Vice-President.		
	4. Shri Vijay Dhar, Jr. Vice-President.		
	5. Shri M. Amin Tramboo, Secretary-General.		
37.	Beopar Mandal, Srinagar.	12-9-1974	339
	<i>Spokesmen :</i>		
	1. Shri Om Prakash Kapur, General Secretary.		
	2. Shri Mohd. Yasin.		
	3. Shri Ashok Kumar.		

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 9th January, 1974 from 10.00 to 13.50 hours in Committee Room, Old Legislators' Hostel, Madras.

PRESENT

Shri N. K. P. Salve—Chairman

MEMBERS

2. Shri Chhatrapati Ambesh
3. Shri Bhagwat Jha Azad
4. Shri Dharnidhar Basumatari
5. Shri Jyotirmoy Bosu
6. Shri Tridib Chaudhuri
7. Shri K. R. Ganesh
8. Shrimati Sheila Kaul
9. Shri P. G. Mavalankar
10. Shri R. Balakrishna Pillai
11. Shri Bholu Raut
12. Shri Vasant Sathe
13. Shri Era Sezhiyan
14. Shri Satyendra Narayan Sinha
15. Shri C. M. Stephen
16. Shri R. V. Swaminathan
17. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram—Secretary.
2. 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, CBDT.
2. Shri S. Narayan—Joint Secretary.
3. Shri S. I. Tripathi—Deputy Secretary.
4. Shri G. S. Sampath—Commissioner of Income-tax, Madras.

SECRETARY

Shri H. G. Paranjpe—Deputy Secretary.

WITNESSES EXAMINED

I. *Government of Andhra Pradesh, Hyderabad.**Spokesmen:*

1. Shri C. R. Krishnaswamy Rao Sahib—Secretary to the Chief Minister.
2. Shri P. L. Sivaram—Commissioner, Endowments.
3. Shri V. Sundaresan—Secretary.
4. Shri S. V. Subramaniam—Executive Officer, Tirumala Tirupath Devasthanam.
5. Shri A. V. Surya Rao, P. A. to Commissioner for Endowments.
6. Shri R. Sankaran, Accounting Consultant, Tirumalai Tirupathi Devasthanam.

II. *Consultative Committee of City Chambers of Commerce, Madras.**Spokesmen:*

1. Shri S. Narayanaswamy—M.L.C.
2. Shri P. Brahmayya
3. Shri N. C. Krishnan
4. Shri C. S. Vidyasankaran
5. Shri R. N. Ratnam
6. Shri D. Shriniwasan.

III. *Sri Aurobindo Society, Pondicherry.**Spokesmen:*

Shri Arunendra Nath Tagore.

IV. *Madras State Income-tax Practitioners Association, Madras.**Spokesmen:*

1. Shri V. N. Padmanabhan
 2. Shri S. R. Gopalan
 3. Shri M. S. Rangiah
-

I. Government of Andhra Pradesh, Hyderabad.

Spokesmen:

- (1) Shri C. R. Krishnaswamy Rao Sahib, Secretary to Chief Minister.
- (2) Shri V. Sundaresan, Revenue Secretary.
- (3) Shri P. L. Sivaram, Commissioner for Endowments.
- (4) Shri S. V. Subramaniam, Executive Officer, Tirumalai Tirupathi Devasthanam.
- (5) Shri A. V. Surya Rao, Personal Assistant to the Commissioner, Endowments Department.
- (6) Shri R. Sankaran, Accounting Consultant, Tirumalai Tirupathi Devasthanam.

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

MR. CHAIRMAN: Before you begin evidence, it is necessary for me to invite your attention to Direction 58 of the Directions by the Speaker of Lok Sabha. 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 that the evidence be treated as confidential such evidence is liable to be made available to the Members of Parliament.

Now you may begin your evidence.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Sir, on behalf of the Government of Andhra Pradesh, a submission has been made to this Committee on the applicability of the Income-tax Act and the entire provisions of the Bill, which is now before this Committee, relating to religious and charitable trusts. We have set out our views *in extenso* in the memorandum. While not wishing to repeat every point that has been made therein, I will, if so permitted, highlight very important submissions already made.

Broadly speaking we have taken the view that the primary object of the tax law in its application to religious and charitable trusts has not

been to add to the revenue resources of the Nation through taxing the category of juridical persons for the purpose of augmenting the State revenues but are primarily devised to ensure that the existence of such institutions is not abused for the purpose of evasion or avoidance of taxes which would otherwise legitimately accrue to the State. The observations of the Wanchoo Committee and the principles of the Acts which have been amended during the last two or three years by various Finance Acts and provisions of this Bill also lend credence to that supposition. On that basis the State Government have felt that this broad objective is something with which they are in entire agreement. They would not like to enter into any kind of caveat so far as the objective is concerned. The State Government have felt that to the extent regulatory legislation already exists in certain places for ensuring fulfilment of these objectives, there would be no need to take recourse to the taxation laws or procedures prescribed thereon for achieving the same object. If I may say so the recommendations of the Wanchoo Committee were based against the background of non-existence of ordinary regulatory legislation in respect of public, religious and charitable trusts in this

country. Had there been no such regulatory legislation at all, and this piece of legislation made applicable to all States in India, that would have been wholly different. But already some States have regulatory legislation in respect of religious and charitable trusts. The position varies from State to State. Some States have a higher degree of supervision and control over these institutions. They are to be covered by some kind of action through civil courts in case there are malpractices. So far as Andhra Pradesh is concerned, public religious and charitable institutions there are governed by Wakfs Act in case of Muslim institutions and by a separate legislation in respect of Hindu religious and also charitable institutions other than Wakfs. That law has been there for several years. We in our memorandum have pointed out the amount of supervision and amount of intervention by the State over these institutions. That will be evident in the different sections of our enactment. It is not a control exercised only at the time of complaint or when some amount of malpractice is expected. But there is continuous control over the functions of the institutions. In the field of management we have provisions which permits the State Government and gives it absolute discretion to appoint Managing Committee in all these classes of institutions. We are aware that some of the trusts might have provided for nomination of managing trustees. But notwithstanding all that it is open to Government in order to avoid malpractices to appoint their own nominees. That is so far as general management of trusts is concerned.

MR. CHAIRMAN: It is not confined to supervision. You take authority to manage also. Is that power absolute?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Yes. It is not a question of removing trustee. We have provisions for appointment of trustees.

Take Tirumalai Tirupathi Devasthanam. It is totally under us. The composition of managing body is dictated by the law of legislature. The entire management is with Government nominated nominees.

MR. CHAIRMAN: Perhaps Wanchoo Committee might not have been apprised of the law of Andhra Pradesh relating to control and management of charitable institutions. That is what you are pointing out. Kindly let us know what provisions of Wanchoo Report you object?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Take their observation in page 84 of their report which says:—"We consider there is a strong case for having an all-India legislation for the purpose of controlling and regulating the working of various public charitable and religious trusts in India." This observation is made against the background of the information they have received pointing out that the law and procedures relating to the control of public trusts vary from State to State.

MR. CHAIRMAN: See what the Committee has said in the same page 84. They say:—

"From the replies received, we found that the law and procedures relating to the control of public trusts vary from State to State. In States like Andhra Pradesh, Bihar Gujarat and Maharashtra, all public trusts are required to be registered whereas in States like Kerala and Tamil Nadu there is no such procedure. In Rajasthan, however, certain public trusts having their assets or income beyond a certain limit are required to be registered. There is no uniform procedure either in these States, as regards scrutiny of accounts of these trusts. What is most surprising is that no data was generally available regarding the number of cases where trust property was found to have been used for purposes not germane to the objects of the trust."

SHRI C. R. KRISHNASWAMY RAO SAHIB: We have already legislation controlling the affairs of religious and charitable trusts. It is working for so many years.

MR. CHAIRMAN: Let us not talk at cross purposes. Let us know your suggestions.

SHRI C. R. KRISHNASWAMY RAO SAHIB: There is the other recommendation that the number of life trustees in any public trust should not exceed 25 per cent of the total strength of its trustees. This recommendation of the Wanchoo Committee is not related to the reference we have suggested.

MR. CHAIRMAN: Your power is absolute.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Yes. Not only to appoint trustees but also to appoint Executive Officer.

SHRI ERA SEZHIYAN: Let one know how many trusts are there in Andhra Pradesh coming under your purview.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Total number published under our Act comes to 30,000. We make a distinction, those which are assessable and those which are not. Those below, an income of Rs. 1000 are not assessable. That (i.g. assessable) comes to the extent of roughly 4200.

SHRI ERA SEZHIYAN: You have explained that you control 4200 institutions. Your own Government control administrative, financial matters. In your State Act, Section 95(1) says: "Where at any time it appears to the Government that any Board of Trustees has failed to perform its functions or has exceeded or abused any of the powers conferred upon it by or under this Act resulting in material loss or loss of prestige to the institution or endowment, the Government may communicate the particulars thereof to the Board of Trustees and if the Board of Trustees fails to remedy

such defect, excess, or abuse or to give a satisfactory explanation therefor within such time as the Government may fix in this behalf, the Government may dissolve the Board of Trustees." In the past 3 years how many cases were attracted under Section 95 and in how many cases you took action?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Action under that provision of the Act has not been taken because in most cases, the *malafides* are in respect of individual trustees rather than on the Board of Trustees as a whole. Action has been taken to suspend and dismiss individual trustees, wherever wrongs have been pointed out.

SHRI ERA SEZHIYAN: You stated that there are 30,000 institutions registered with the Government, out of which 4200 are really big ones. In the past 3 years or 5 years, from what you say, does that mean that everything is perfect with these 30,000 institutions.

SHRI C. R. KRISHNASWAMY RAO SAHIB: It only means there is no difficulty in taking action. What I mean to say is, we had no chance to dismiss the whole Board of Trustees, but taken action against individual trustee members. I will read out Section 26, under which Government has the power to suspend, remove or dismiss a hereditary or non-hereditary trustee, if he (a) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder. In about 140 cases action has been taken so far.

SHRI ERA SEZHIYAN: Are you satisfied with the number of cases in which action has been taken?

SHRI C. R. KRISHNASWAMY RAO SAHIB: It is only when malpractice arises that action has to be taken to suspend, remove or dismiss

the trustee. This is the residuary Section in this Act, when all other Sections have failed. If you look at this provision in the background of total control, the opportunity for malpractice is very very limited. We appoint the trustee, in which case, so to say, one must assume that State does not give room for such trustees who commit malfeasance or misfeasance, and where such malpractices are brought to our notice, we have taken action.

SHRI ERA SEZHIYAN: You want to give us the impression that chances of taking action are very low.

SHRI JYOTIRMOY BOSU: How many allegations of complaints have you received against trustees? You have given a figure of 140 as having been dealt with.

SHRI C. R. KRISHNASWAMY RAO SAHIB: We do not have the figure. I can only say, wherever complaints have been received, and on verification found to be true, we have taken action.

SHRI JYOTIRMOY BOSU: It would be helpful to the Committee if you say how many complaints were received.

MR. CHAIRMAN: You may later inform us as to how many complaints were received and in how many cases action was taken and what sort of malpractice was there warranting your interference.

SHRI JYOTIRMOY BOSU: I would like the witness to refer to the said Act Section 67 (2) with regard to utilisation of surplus funds—(2) Nothing in sub-section (1) shall prevent the trustee of a *math* or a specific endowment attached thereto from utilising such surplus for any other purpose consistent with the tenets of the *math*.

I would like to know in how many cases you have resorted to this sub-section during the last 10 years.

Then, in how many cases money

from your institutions have been invested in Commercial Houses. I will tell you why I am asking for information on this point. It came out in the press repeatedly that a particular big business house with a chain of newspapers had been getting money from such institutions out of their surplus funds. We would like to be enlightened on that. How many times, you have given money to them under the authority of this Sub-Section.

SHRI C. R. KRISHNASWAMY RAO SAHIB: That sub-section applies only to *Maths*, and, *Mathus* are special categories. They are for a particular denomination, viz., *Mathus*. *Maths* are very much less in our State. The correct section of the Act for utilisation of surplus funds etc. is Section 67(1).

MR. CHAIRMAN: Is it your knowledge that the kind of Trusts that speak of, under the Act have made investments in commercial houses?

SHRI JYOTIRMOY BOSU: Or lend money in any other form?

SHRI C. R. KRISHNASWAMY RAO SAHIB: I would like to draw the Committee's attention to the concerned section, i.e. Section 94, which reads—"A trustee or an Executive Officer or other person who is in...

SHRI JYOTIRMOY BOSU: Or lent money in any other form?

SHRI C. R. KRISHNASWAMY RAO SAHIB: I would like to draw the Committee's attention to Section 94, which reads—"A trustee or an Executive Officer or other person who is in charge of the administration of a Charitable or religious institution or endowment, shall not lend or borrow moneys on behalf of the charitable or religious institution or endowment, except with the sanction of such authority, and subject to such conditions, as may be prescribed." If you like I will also read the Corresponding Rules framed by the Government.

SHRI JYOTIRMOY BOSU: It says that you have the permission.

SHRI C. R. KRISHNASWAMY RAO SAHIB: I do not know whether the Member of the Committee has in view the allegations about that part of the T.T. Devasthanam funds invested in private concerns or quasi-government concerns.

SHRI BHAGAVAT JHA AZAD: The first point to be elicited is, investment in State Loans, State Undertakings, and the second point is in Religious Institutions etc.

SHRI JYOTIRMOY BOSU: I would like to make it clear 'by investment' if you say, 'participation in equity', that is one thing. I am saying, 'simple lending' is another thing. Both forms should be included.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Section 64 specifically refers to 'lending or borrowing'. I shall give the list showing the lending of money by T. T. Devasthanams. It is somewhat like this: Government of India Loan Rs. 5 lakhs A.P. Government Loan Rs. 10 lakhs A.P. Electricity Board Rs. 44 lakhs; 12 Years N.S. Bonds Rs. 1 lakh. Even where Government bonds like the State Industrial Finance Corporation or State Electricity Board, they have been asking the T.T. Devasthanam to lend part of money. Even that is being scrutinised with greatest care. The assumed wishes of the pilgrims who are the contributors of the funds must be held in mind, i.e., for public welfare. The T.T. Devasthanams have lent money to Sri Ramaswami Devasthanam, Bhadrachalam, which is another big devasthanam in our State where pilgrims flock in large numbers during Sri Rama Navami celebrations. The loan has been given to make improvements and to put up a stadium. Then, there is a small deposit to Co-operative Stores.

SHRI R. V. SWAMINATHAN: What is the answer that your Government have to give to my colleague Shri Hundi? Yours appears to be a fabu-ment or loan to a chain of newspapers.

SHRI C. R. KRISHNASWAMY RAO SAHIB: I have made enquiries. No such investment has been made. This question was raised in the A.P. Legislature also. The Executive Officer of the Devasthanams who is here also says, no funds have been invested in that manner.

SHRI ERA SAZHIYAN: What is the total investment by the T.T. Devasthanams?

SHRI C. R. KRISHNASWAMY RAO SAHIB: It is about Rs. 5 crores.

SHRI ERA SAZHIYAN: You do not participate in the profit or loss of the investments.

MR. CHAIRMAN: Have you made over money for temporary use for any commercial concern or private party, other than what you have mentioned just now?

SHRI C. R. KRISHNASWAMY RAO SAHIB: I do not think there is room for slightest suspicion. Even the State Electricity Board has approached us for more funds. We have not agreed to it. The investments in other sections might even be withdrawn and put into the State Electricity Board Loan was suggested, but, we said 'No. We do not want our liquidity to go below a particular figure. Under such circumstances how can Government, agree to lending to private firms?

MR. CHAIRMAN: Your primary concern is to deploy funds basically for the purpose for which the pilgrims put money into the Hundi.

SHRI C. R. KRISHNASWAMY RAO SAHIB: The provisions of Section 67 of the Act have been correctly followed.

SHRI R. BALAKRISHNA PILLAI: What is the total amount invested out of Devasthanam funds?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Rs. 8 crores including fixed deposits.

MR. CHAIRMAN: What is the annual collection?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Gross revenue is Rs. 6.5 crores, in a year.

SHRI JYOTIRMOY BOSU: Is there any method by which you can find information to verify if they are clean white money?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Receipts of T.T.D. fall under a variety of categories. Even a bus ticket we give is a receipt. The money, a man is paying for 'laddu' is a receipt. I presume your question really relates to specific payments made as donation.

SHRI JYOTIRMOY BOSU: Yes, by donation of Rs. 5000 etc.

SHRI C. R. KRISHNASWAMY RAO SAHIB: There is one category of donation. We are collecting monies as donation for what we term as "Seva". For "Kalyana Utsavan" it is Rs. 700 and have it performed. About 20 to 25 people perform it every day.

SHRI JYOTIRMOY BOSU: Originally it was Rs. 500 Now 700?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Yes. The donor's name is mentioned. The man who pays money is called "Grahastha". He sits there for a few hours for that 'darshan'. We can't ask him whether it is clean money or otherwise. Then, in addition there is the 'Hundi'. That Hundi is a well-recognised institution in Tirupathi. The money belongs entirely to God. There is a receptacle. People go to the receptacle and put the paisa or other offerings. Tradition contemplates every person to go to the Hundi to make their offerings. Tradition prevents anybody from making enquiries as to what the person puts in—even your neighbour does not know—what you are putting. Whether it is a device to dispose of large amounts of black money or given with a view to escape taxation, we can't find out.

SHRIMATI SHEILA KAUL: While you mentioned the loans you have given to the State Government? You have not mentioned about educational institutions.

SHRI C. R. KRISHNASWAMY RAO SAHIB: That is separate—investments and loans. I was referring to 67(1) and 91 of the Act which provides for a wide variety of uses of the surplus funds—like education, medical relief—in the annual Budget, for each item provision is made. There is a 'Kalyani Reservoir' providing water supply to the Town. Then, for setting up an airstrip at Tirupathi—these are the functions. Every year budget is drawn up, the surplus is estimated and provision is made to other needy empires for renovation all over the country. The TTD is running a college in Delhi; contribute for a choultry in badrinath and in Rishikesh.

SHRI JYOTIRMOY BOSU: Can you tell us on an average how many pilgrims you receive per day and how much you get?

MR. CHAIRMAN: I would request the Executive Officer to answer these questions which I am asking now. Tens of thousands of people are putting in money, a variety of people. Can you tell me how many are visiting the Devasthanam every day?

SHRI S. V. SUBRAMANIAM: We have got a counter installed at the temple and record the number of pilgrims who are having 'darshan' everyday. On December 1st, nearly 11,000 people had 'darshan'. Out of this, 10,000 came by bus and footpath; only 1200 came by car. The collections are: Rs. 80,000. Average it works to Rs. 5 to 7 only even during "Brahmotsavam".

SHRI JYOTIRMOY BOSU: That is the per capita income of our country but people like Mr. G. D. Birla....

MR. CHAIRMAN: Let us understand the facts clearly and freely discuss among ourselves later on. On 1st December 10,922 people visited and collections Rs. 80,000. Do you get this

in large denominations or small currency?

SHRI S. V. SUBRAMANIAM: Small coins and one rupee notes alone for Rs. 8,800; 20 per cent of one rupee and coins alone. Even during 'Brahmotsavam' we had collection of Rs. 16 lacs totally. 2.2 lakhs of persons had 'darshan'. Of them 1.17 lakhs by bus and 83,000 by foot.

SHRI BALAKRISHNA PILLAI: How much of hundred-rupee notes?

SHRI S. V. SUBRAMANIAM: We record the 10-rupee note number also.

SHRI BHAGWAT JHA AZAD: 20 per cent is small coins and one rupee. What about the 80 per cent?

MR. CHAIRMAN: With your knowledge, roughly how much in 10s. and 100s.?

SHRI BHAGWAT JHA AZAD: Since only 20 per cent is only small coins and one rupee, naturally we just want to know what about 80 per cent.

SHRI S. V. SUBRAMANIAM: I will give you those figures. The practice for daily counting is in the morning and afternoon, 4+4=8 hours. We count in the presence of officers, pilgrim-witnesses and Vigilance Officers. So far as 100-rupee currency is concerned, the number is also written. We have got a prescribed form also.

MR. CHAIRMAN: Alright. Just a check. Now, in what denominations you are collecting in the Hundis? One or two more questions I want to ask you. How do you assure of your accounting of monies put in the *Hundi*? Yours appears to be a fabulously rich institution in the whole country. All the charges put together—therefore we would like to know a little more minutely.

SHRI C. R. KRISHNASWAMY RAO SAHIB: So far as the money that comes to the *Hundi* is concerned, the Executive Officer was mentioning as to how it is being counted—cash in

the *Hundi*. It is done publicly. No fraud. When you go there you will see the counting. I have got photographs (exhibited a photo). There is a representative of the Devasthanam, Commissioner for Endowments, 2 pilgrim witnesses, representative of the Bank. The amount is credited into the Bank the same day.

SHRI JYOTIRMOY BOSU: You have Rs. 600 lakhs average collection every year?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Out of that Rs. 600 lakhs *Hundi* collections would be Rs. 3 to 3-1/2 crores. Others are other receipts. *Hundi* will be earning a lakh of rupees in December—a lean month. During summer the crowd is very much. The other question is about utilisation of the funds. Assuming that funds are taken custody and how it is realised, a budget is prepared. In T.T.D., we have a Senior Officer of the rank of Collector appointed as Executive Officer. The budget is scrutinised; accounts are audited; we have a system of concurrent audit done continuously. So far as T.T.D. is concerned, there is enough safeguard, statutory as well as administrative that the funds are utilised for the purpose approved by law. I may mention that in view of the large increases in the collection the complexity and diversity of operations increases. We have taken steps to have an efficient accounting system. In T.T.D., we have appointed, on the advice of an Officer who is now in the Ministry of Finance with regard to these matters, we have had an Accounting manual prepared with the help of Chief Cost Accounting Officer of the Government of India. We have had a firm of Chartered Accountants. For the implementation of Manual we have appointed a Chartered Accountant on our staff. We have tried to computerize the accounting operations to the maximum degree of control for collections etc. There will also be a little room for malpractices here and there. It is our endeavour....

MR. CHAIRMAN: How does this Bill adversely affect you?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Under the Law, when it is amended by this Act, every religious institution will have to file a return above the taxable limit. It will have to get it registered with the Income-tax authorities. It will have to give an indication of the items of receipt and spending and all that. Then the adjudication process will start. I will give an example. So far as registration is concerned, we have got already, registered with the State Authority. Now, we see no reason why there should be registration with I.T. Department. It is the State Government which approves utilisation of money. There is hardly any reason for us to be asked about it.

MR. CHAIRMAN: Is it only that burden of compliance that you are worried of?

SHRI C. R. KRISHNASWAMY RAO SAHIB: There is a substantial provision which will land us in difficulty. 75 per cent you have to spend in a single year. The emphasis should not be on spending. There may be temples like 'Kumbh Mela'. But no public purpose is served by insisting on spending, i.e., the extent of expenditure—a given fraction. What is really required is—phasing its own expenditure. For the purpose of expenditure, that is the point you are liberalising. Our submission is, we started our Memorandum by saying that our submission really related not only to the amendment piece, also the existing practice; that when several amendments were given effect to, it was given effect to by the Finance Act. It was taken up as part of the Budget exercises.

SHRI C. R. KRISHNASWAMY RAO SAHIB: On the pin-pointed question whether religious institutions can spend on charitable purposes, I would like to draw attention to Section 13(1), which reads:—

"The Commissioner, a Deputy Commissioner, an Asstt. Commissioner and every other person exercising powers or performing functions under this Act shall not interfere with and shall observe the forms, usages, ceremonies and practices appropriate to the religious institution or endowment in respect of which such powers are exercised or functions are performed and in the case of a math act in conformity with the rules, practices, usages or customs of the math in his dealings with the head of the math."

SHRI BHAGWAT JHA AZAD: The provisions under the Andhra Pradesh Act, are well set out. As a matter of fact, we did not have the T. T. Devasthanams in view when we drafted this section in the I.T. Act. The Act is for the whole country and if we exempt one or punish one or take action against others, we will have difficulty. The difference is in cases where money is being passed on in the name of Trusts. State control sought to be achieved has been given under 5 points in para 5 of your State's memorandum. I think, you are doing all the 5 points meticulously.

The next question I have in mind is about expenditure. When the pilgrims all over the country contribute the money, I think, you have taken the view 'Why should we spend it' but, why is it that you should not spend on welfare? Why you spend Rs. 2 crores in one place or Rs. 3 crores in one place. I think, the Bill is quite correct when it says 75 per cent of the income during the year should be spent. The impasse should be to spend.

SHRI C. R. KRISHNASWAMY RAO SAHIB: I do not think in a year the T. T. Devasthanams would have spent less than 75 per cent of their income. They would have spent more than 75 per cent of their income. The point is, there may be capital works expenditure to be incurred or incurred in a particular year. I submit, that should be a provision to be

made in the law relating to those institutions, and it is not relevant to the Income Tax Law....

SHRI BHAGWAT JHA AZAD: This is a point of interpretation. A religious institution should spend 75 per cent of their income during the year to qualify for exemption, that difficulty is got over in the case in the T.T.D., because, you say that more than 75 per cent is spent every year.

SHRI C. R. KRISHNASWAMY RAO SAHIB: I may say, for instance, during disturbed conditions in A.P., the daily income fell, but still, the staff had to be maintained. The view of our State is, our State have a well-conceived law, well-administered law to look after religious and charitable institutions and there is no need to provide for a deterrent through the Income-Tax Law.

SHRI BHAGWAT JHA AZAD: How do you say it is a deterrent provision in the Income Tax law? You yourself say, in A.P., leaving aside T. T. Devasthanams, out of 30,000 institutions, only 4,200 are assessable. We are making the law for the whole country. We have come to know of misuse of trust funds in some other places. That is why we are putting a provision like 75 per cent to be spent. T. T. Devasthanam has no problem, we understand. In your own State, let me know how many institutions have income over Rs. 1 lakh. How many have income between Rs. 20,000 and Rs. 1 lakh, and how many have income with less than Rs. 20,000 per year? My question is related to the 29,999 institutions in your State.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Temples with income over Rs. 1 lakh are 16; Temples with income Re. 20,000 to Rs. 1 lakh: 180, Temples with income less than Rs. 20,000: 4,000.

Temples below Rs. 1,000 are not assessed. Temples with income below Rs. 1,000 per year are about 24,000. Now, what about these trusts? How

are they working? Those will be the next questions for me to answer. My answer is large majority of these are religious institutions. Charitable trusts are very very small in number. We have made a suggestion in this regard, while making out the viewpoint of T. T. Devasthanams.

SHRI BHAGWAT JHA AZAD: For T. T. Devasthanams we will keep it separate. For others, there is no objection, am I right?

SHRI C. R. KRISHNASWAMY RAO SAHIB: I am sorry. We are not at all agreeable for this sort of discrimination. If that was the view of the Committee, my submission in that case would be that all religious, charitable trusts which are subject to superintendence of State Law should be exempted. You have exempted Local authorities, Municipal Councils and the like. You do not send the Taxman after them.

MR. CHAIRMAN: I will crystallise Shri Bhagwat Jha Azad's two questions. They are very important. (i) Where is the guarantee of avoidance of evasions and all sorts of manipulations? Unless there is a law in every State analogous to your Law or unless there is a Central Law, which Wandhoo Commission has referred to, we have to take things as they are. You have referred to your State Act. It is not enough to say that, because A.P., is looking after Trusts and charitable institutions well, they will enjoy exemption. The question at large is what will happen to all those Trusts which are still using this, as a device for tax manipulation. (ii) While naturally we are sure that one Trust like the T. T. Devasthanams are well-managed, how about other Trusts? Are they subjected to the same efficient management? How can even Andhra Pradesh vouchsafe for that?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Taking the second point first, keeping out the T.T. Devasthanams separate, I would say, we are appointing Executive Officers of the status of Deputy Commissioners,

Assistant Commissioners and then officers with lower status, depending on income of the temple. With regard to small temples we have grouped them and appointed one Executive Officer. The degree of control does not vary. It may be, we do not invest in such a large establishment, but the degree of control is the same.

MR. CHAIRMAN: We are not going to recommend for Andhra Pradesh alone.

SHRI C. R. KRISHNASWAMY RAO SAHIB: In respect of the first question, whether should be a central Legislation, my own view is, Central Legislation will not be flexible to take special problems into account. Secondly, even if the feeling is in favour of Central Legislation, I do not think the Central hierarchy of administrative control would be easy. The Centre may at best formulate a model law, after which there will not be any need for Central intervention.

SHRI BHAGWAT JHA AZAD: In A.P., the witness is saying by the appointment of Deputy Commissioners or Asstt. Commissioners, it is taken care of. Other States might claim that an individual put in charge of the institution is a reputable man with 'Padma Shri' title etc. Therefore, he cannot go wrong. Is that an argument to be accepted with a sense?

MR. CHAIRMAN: Is there a State Law which prohibits any form of investment in commercial houses?

SHRI BHAGWAT JHA AZAD: This State (A.P.) has got a law which has many good provisions, but I want to take care of the pattern of expenditure, and the man that is being put in charge is different, is altogether different.

MR. CHAIRMAN: About spending just two questions; They should have a conception on capital items—hospitals, Universities, colleges. It is true. But the extent of amassing concept is contrary to budget on charge. I want a specific answer. Do you think that

you will be hit ultimately by anonymous donations. You are having a manual. You will have no problem.

SHRI C. R. KRISHNASWAMY RAO SAHIB: The total investment is only Rs. 8 crores. Our annual income is Rs. 6.5 crores.

MR. CHAIRMAN: 75 per cent. There is no need for hesitancy.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Our annual income is Rs. 6.5 crores.

MR. CHAIRMAN: I don't think the T.T.D. Will be necessarily hit Are you worried about anonymous donations?

SHRI BHAGWAT JHA AZAD: We can't envisage under the law and make any exemption for the T.T.D. Our worry all over the country is that there are Trusts in the country where the Trustees are passing in their money and build money in large sums and spending them. Once I am compromised for specific cause, that black money is being put in the Trust or being spent for welfare. How to meet that point if you make an exemption for the T.T.D., then you will have to standardise the law of discrimination in all parts of the country.

SHRI C. R. KRISHNASWAMY RAO SAHIB: I do not know, in actual implementation what interpretation will be taken. We do not know. Different Income-tax Officers will take different views at different times.

MR. CHAIRMAN: A mixed institution is one which is both for religion and charity. Collections of temples, Churches and mosques will be outside the purview. Will that take care of the problem you have?

SHRI JYOTIRMOY BASU: Is it Hindu institutions only? Be more precise.

SHRI C. R. KRISHNASWAMY RAO SAHIB: So far as our State Act

is concerned, it does not apply to non-Hindu religious institutions, because for these reasons. So far as the Muslim institutions are concerned, they are implemented and regulated under the Wakf Act. The Govt. of India are having proposals to amend that Act. We, as part of the State Govt. gave suggestions on the lines on which it should be amended. In that, we have heavily drawn on this point.

SHRI JYOTIRMOY BOSU: Do you have any unit which looks after, ensures the proper functioning of the Muslim endowments and Christians too?

MR. CHAIRMAN: What about Catholic institutions?

SHRI C. R. KRISHNASWAMY RAO SAHIB: In so far as our State is concerned, all Christians which charges are not regulated under the Wakf Act. They come under this Law. If they are purely religious, they would not be subjected to it.

MR. CHAIRMAN: Your law there is churches as public churches. Are you treating it as such?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Our definition is...

MR. CHAIRMAN: In Andhra Pradesh, it is your law for Hindu Religious endowments and Charitable organisations. What is the thinking of the State Government? Are they agreeable to make it applicable to everybody?

SHRI C. R. KRISHNASWAMY RAO SAHIB: About extension of the Act to other religious institutions, I don't think. So far as Muslim religious institutions are concerned, we have been informed by the Govt. of India that they are for an All-India legislation. Some proposals have come from the Govt. of India about the Wakf Act in respect of which we have made submissions. In regard to other institutions, it will have to be considered. I don't think much thought has been given to it so far.

SHRI JYOTIRMOY BOSU: Do you receive deposits—interest bearing and non-interest bearing?

SHRI C. R. KRISHNASWAMY RAO SAHIB: No. T.T.D. does not ask the people to give money. I only want to make this clear.

SHRI VASANT SATHE: Do I understand that as far as this anonymous donations are concerned, if provision is made to ensure accounting as long as the religious institution is also charitable institution? Then if there is a provision in this very Act making it clear that a mixed institution mainly religious is exempted; but if religious and charitable for the purposes laid down in the Trust; if that is done here, they are also to be exempted from the anonymous clause. Do you think the purpose will be served?

SHRI C. R. KRISHNASWAMY RAO SAHIB: I said the general view taken by the State Government is that there should be complete exemption in respect of religious and charitable institutions in so far as they are governed by Law. Even purely charitable institutions receive anonymous donations going one step further.

SHRI VASANT SATHE: As far as purely charitable institutions are concerned, as at present advised, we don't think we will grant exemption, relief to anonymous donations.

SHRI C. R. KRISHNASWAMY RAO SAHIB: The alternative suggestion you made will be of great benefit.

SHRI VASANT SATHE: Shall we not possibly regulate the proper utilisation of the charitable part? That regulation is as the Act itself. Because it is there your Act and therefore that is taken care of. And wherever there is no such provision in State legislation taking care of the use of the funds for charitable purposes, to ensure a proper check, you say, that this provision relating to anonymous donations etc. should be noted.

SHRI C. R. KRISHNASWAMY RAO SAHIB: You have summarised our view exactly.

SHRI ERA SEZHIYAN: We are confronted with two things. Charitable Trust laws—their purpose is to ensure the smooth running of these institutions and also supervision, whether the incomes are properly utilised for the purpose for which they are created. Taxation and Finance Laws want to catch those who are evading taxes and their purpose becomes different. Regarding Andhra Pradesh, I can't say. But in Maharashtra there is a Trust Law. In Maharashtra itself I can show you a number of Trusts created to avoid taxes; but at the same time complying with the Tax Laws.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Trust Laws are not sufficiently stringent as tax reforms. That is because the Trust Law is inadequate—not because that is the object. When an institution contemplated is there, certainly it cannot be anybody's intention.

MR. CHAIRMAN: No, it is a public policy.

SHRI C. R. KRISHNASWAMY RAO SAHIB: Why should States which have done that be penalised?

MR. CHAIRMAN: Till we reach an ideal stage when all the States make such laws, we have to. What else?

SHRI C. R. KRISHNASWAMY RAO SAHIB: About University, educational institutions, I do not want to go deep. You have provided in your Act—In the I.T. Act certain categories are exempted like Universities. I would suggest if this is out of preponderative nature, that there should be a provision exempting the Trusts which are specially regulated under the State Law or the Central Law.

MR. CHAIRMAN: We will consider it.

SHRI C. R. KRISHNASWAMY RAO SAHIB: The alternative applying to all the institutions; just because, 'other Trusts' would mean

that a large number of religious institutions will have to go; their record of tax procedure should be looked. They may be in arrears. Eventually, the tax liability may be Nil.

MR. CHAIRMAN: We don't want infructuous administrative burden to be created. We want them to divert their attention to real work.; investing time and money by a Central Department would be neglect and waste of public funds.

SHRI VASANT SATHE: A more fundamental question. You have been in this Bill thinking as far as religious Trusts are concerned, whether we should exempt them from the previous exemption that was given before the Act of 1962. Now, the question is if the moneys of the Trust—whether you take the T.T.D. for example—whether the moneys are being used only for the benefit of a particular religious community? Although it is clear that it is a Hindu Religious Trust, I believe when you get donations from all castes—you are not restricting to a particular caste or castes. Only particular caste people can go there, perform *pooja* or put money in *Hundi*—is there any restriction? Can Harijans and Scheduled Caste persons go into the Venkateswara Temple?

SHRI C. R. KRISHNASWAMY RAO SAHIB: Yes; they can go anywhere. It is compulsory that on the Board of Trustees there should be one from Harijans. Only in the case of non-Hindus, they are allowed only upto a certain limit.

SHRI VASANT SATHE: I want to know whether the benefits of the activities of your Trust accrue to all castes. For example in *Shirdy Sai Baba* temple all communities, Hindus and Muslims are allowed, irrespective of religion.

SHRI C. R. KRISHNASWAMY RAO SAHIB: So far as charitable trusts are concerned, there is no question of any restrictions. For, in the case of *Venkateswara* University,

anybody can join it. So also in the case of Hospitals and other institutions run by the Endowments.

We would suggest that whatever concessions are proposed to be given, they may be given retrospective effect.

There is no question of the stringent regulation now in force being struck down. For the matter went upto the Supreme Court and in regard to the special provisions in regard to appointment of trustees which was challenged, the Supreme Court has held it as 'no property' and the restrictions imposed are reasonable restrictions. This is in AIR

1971, page 891. We will furnish a copy of the judgment to the Committee.

SHRI JYOTIRMOY BOSU: I suggest that you go through the report (121st Report) of the P.A.C. on Charitable Trusts, as also the Wanchoo Committee Report—paragraphs 3.48, 3.50 and 3.55.

SHRI C. R. KRISHNASWAMY: RAO SAHIB: We have gone through the Wanchoo Committee Report and many of the provisions of our Act anticipates the suggestions in that report.

(The Witnesses then withdrew)

II. Consultative Committee of the City Chambers of Commerce; Madras Spokesmen:

1. Shri S. Narayanaswamy, M.L.C.
2. Shri P. Brahmayya
3. Shri N. C. Krishnan
4. Shri C. S. Vidyasankaran
5. Shri R. N. Ratnam
6. Shri D. Shrinivasan.

(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 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 S. NARAYANASWAMY: There is no part of the evidence written or oral we presently tender before the Committee which should be treated as confidential. As far as

we are concerned, we shall treat today's proceedings as confidential. We are very grateful to the Committee for giving us this opportunity. I would like to make some preliminary observations before we get on to the points which you may like to elicit by way of questions.

According to the Statement of Objects and Reasons, the main purpose of this Bill is to unearth black-money and prevent its proliferation; to fight and curb tax evasions to check avoidance of tax through various legal devices, etc. and creation of trusts and diversion of income to members of family. In this process, it is your intention to amend the Income-tax Act, the Wealth-Tax Act, the Gift Tax Act and the Companies (Profits) Surtax Act.

In my preliminary observations, I would like to say that over a period

of 20 years, we have been tightening tax laws and also increasing tax rates. We find today that there is more of black-money, more evasion greater resourcefulness at tax avoidance. We presumed that with the lessons learnt, at least the recommendations of the Wanchoo Committee would be implemented both in letter and spirit. This unfortunately has not been done except in so far as they relate to what is known as plugging the loopholes and enhancing revenues. To us it appears that basically people feel and people have lost confidence that the Tax Officers would do justice. They feel that they do not go before a judicial body, but persons interested in collecting the maximum revenues. This they regard as unfortunate. It is not unfamiliar to hear the tax officer saying to the assessee, "whatever your views, I am going to assess and you are free to go on appeal." The younger the officer is, the more he ensures his future by getting the maximum revenues.

MR. CHAIRMAN: According to you there is unwillingness or lack of will to do justice on the part of the departmental officers. I hope there would not be any instructions?

SHRI S. NARAYANASWAMY: Government have not gone to that extent. But the instructions are to maximise revenues not to do injustice.

MR. CHAIRMAN: That is within the postulates of law. You are yourself a legislator and you know that parliament can make laws only. If they are not administered properly, there is another forum to seek remedy. You are voicing a grievance that the Wanchoo Committee recommendations were not fully implemented. I will come to that later. You are making a serious grievance that there is absence of will to do justice. In this connection, do you mean to say that the people at the top are responsible for this lamentable situation or is it something else?

SHRI S. NARAYANASWAMY: I can only make an assessment of the situation from the only source I have direct knowledge of. I do not know whether it is the top people or who else. But the Assessee Community has an overwhelming feeling, a suspicion that the will to do justice is not there. I would not say that the Chairman of the Board of Direct Taxes or the top Income-tax Commissioner or a Member of the Central Board of Revenue has instructed. But judged by results, the people have a legitimate grievance that the will to do justice is not there in the taxing officers. Every time the Income-tax Bill is amended, the claim is being made that it is done with a view to rationalization. But what actually happens is more and more discretionary powers are vested with the Officers of the Department. Today it is being sought to be decentralised to the point of powers being vested in more and more Junior officers.

The Wanchoo Committee report has suggested uniform streamlining of 55 per cent of Corporate taxation. Now, this has been thrown overboard. For instance, he has said something about Guest Houses. Most of the factories are situated in wilderness and the Directors have to come up for the meetings. I am being asked to pay taxes on them. Mr. Wanchoo has suggested that this should not be done. He has also said that the taxable income has been boosted whereas the real income is much lower. This is rather serious. Now, I come to the Charitable Endowments.

SHRI C. S. VIDYASANKARAN: With the permission of the Chairman, I would like to draw the attention of the Committee to Clause 45 of the Bill. It enables a Dy. Commissioner to issue directions to the Income-tax Officer even in pending assessment cases.

MR. CHAIRMAN: Are you referring to the point mentioned by Mr. Narayanaswami about the diminishing will to do justice?

SHRI C. S. VIDYASANKARAN: I am referring to Clause 45 dealing with Section 144A. An Income-tax Officer while acting as an Assessing Officer does quasi-judicial functions. The Madras High Court has taken exception to the instructions being given by higher authorities in making assessments. What the decision purports to say is that it is absolutely irregular and illegal and gives the go-bye to natural justice. Section 144A enables a Deputy Commissioner to give directions to the Income-tax Officer while making assessments. How will he act independently and judicially. That is one of the reasons that prompted Mr. Narayanaswami to say that the Income-tax Officers are afraid of making independent assessments.

MR. CHAIRMAN: If you read the section along with the proviso, you will find that the Senior officer is being brought in with the intended purpose of minimising the litigation.

SHRI C. S. VIDYASANKARAN: But it acts the other way.

MR. CHAIRMAN: If there are departmental abuses, it is a different story. The remedies are elsewhere. But so far as the law is concerned, the proviso makes it abundantly clear. I wanted to know whether your leader Mr. Narayanaswami had some special cases to cite to point out whether the Income-tax Officers are behaving in a manner to justify the impression that there is a diminishing will to do justice. That is why I asked what are the reasons.

SHRI S. NARAYANASWAMI: I will give one or two illustrations test, you consider them as inexcusable generalisations. I have a solid case of a Director of a private Company holding shares whose assessed value was much higher than the per value and this oppressive section relating to 'deemed evasion' was raised against him because there was difference of opinion as to what the value of the particular share was in mak-

ing a Wealth Return. It went on like this and we had to make a representation to the Chairman of the Central Board of Direct Taxes. His attention was drawn and remedy got. The gentleman never wanted to evade tax. He said he was not able to get a proper valuation. But it was called 'deemed evasion'.

SHRI BHAGWAT JHA AZAD: One swallow does not make a summer. It may be a solitary case and the witness cannot attribute motives. The motive the witness wants to assign is absolutely wrong.

MR. CHAIRMAN: It may be a stray case. But worse things happen in the Income-tax Department. But what I thought from the way in which you started was that there was an utter lack of will to do justice on the part of the Income-tax Department.

SHRI S. NARAYANASWAMI: I am not confining my observations to Madras alone now that my friend has objected to it. It happens in many places to my knowledge.

SHRI BHAGWAT JHA AZAD: There are thousands of appeals from the lower Courts to the District Court, the High Court and the Supreme Court. This does not mean that the decisions at the lower levels are all wrong.

SHRI S. NARAYANASWAMI: It is an opinion which unfortunately will continue to hold good. I have no other way of interpreting the lack of will to do justice except referring to cases within my knowledge. I do not see any objection to mention them here.

SHRI BHAGWAT JHA AZAD: Mr. Chairman, in that case the witness has to be called to order. It is his individual opinion. He should not attribute motives based on individual opinions.

SHRI VASANT SATHE: I want some enlightenment. You have stated in your memorandum that many of

the substantial recommendations of the Wanchoo Committee have been completely ignored and by-passed and consequently the Amendment Bill may not fully serve the purpose of controlling tax evasion. The main objects of the bill are to curtail tax evasion and unearth black money. With the top rate of income-tax remaining high, you say it is unrealistic to expect that tax evasion will disappear. You have also stated in your Memorandum that in his last Budget speech delivered in February 1973 the Finance Minister had indicated that he would introduce certain tax reliefs and that none of these Budget promises have been incorporated in the present Amendment Bill. Are you suggesting that this Bill had only the limited purpose of amending the Income-tax law? The various promises which relate to more or less the Directors and other persons should have been incorporated in this Bill itself, and because that has not been done, even the reduction to a lower marginal rate of tax may not be strictly within the purview of the Bill. Therefore, I want to know, strictly speaking, would you suggest that these remedies, which you are suggesting, and complaining as not having been incorporated, should have been brought up in this Amendment Bill?

WITNESS: So long as we get relief, it is immaterial in which Bill it comes.

SHRI VASANT SATHE: You are a seasoned lawyer as well as financier and legislator. You cannot make sweeping and general remarks, if you would not relate them to the basic purpose of unearthing black money. But, if you relate them to the Bill, then we have to restrict ourselves strictly to the purview and scope of the Bill. By making general remarks, you cannot say, 'I am not concerned with this'.

WITNESS: I said, 'It is immaterial in which Bill it comes.'

SHRI VASANT SATHE: We are a select committee on this Bill. You are making a sweeping statement.

WITNESS: I would supplement the statement..

SHRI BHAGWAT JHA AZAD: Sir, we appreciate the feeling of the witness. He has been able to give an opinion. He says we are not concerned in what way the relief comes. We want his opinion on this Bill. We are discussing the tax system, and we are discussing a particular point. From the beginning, we are saying that we are concerned with this Bill.

SHRI ERA SEZHIYAN: In the general observations, you have stated 'Many of the substantial recommendations of the Wanchoo Committee has been completely ignored and by-passed and consequently, the Amendment Bill may not fully serve the purpose of controlling tax evasion'. Apart from this one, what are the recommendations which you want to be put into the Bill specifically. Give three or four points which you want to be put into the Bill. That will be helpful to the Committee.

SHRI VASANT SATHE: What should have been brought into this Bill has not been brought out. Please enlighten us on this. What should be brought within the purview of the Bill and of our committee? On some occasion we may have a dialogue with you. Now we want to have the benefit of your suggestions on this Amendment Bill.

MR. CHAIRMAN: The issue is that the points referred to are palpably outside the purview and scope of the Bill. You have said that the recommendations of the Wanchoo Committee have not been implemented by the Government. I would like to be told what are these.

WITNESS: When this memorandum was submitted, it was August 1973. Then we could not comprehend the Bill which would come up

later. The Wanchoo Committee says at one stage that the marginal rate of tax should be reduced from 97.5 per cent to 80 per cent. If it is not possible, at least by these tax incentives, the marginal rate of tax should be reduced. That is what we are trying to attempt.

SHRI ERA SEZHIYAN: What about the other substantial recommendation? We accept this one. What are the other substantial recommendations? What are the other special recommendations which should have come here and which have not come?

WITNESS: In regard to Guest House maintenance, the Wanchoo Committee has made a recommendation.

SHRI ERA SEZHIYAN: Guest House is a very small item. Give a substantial recommendation.

WITNESS: According to you, the specific recommendation of the Wanchoo Committee that is not implemented is 'incentives'. The Guest House is not there. Section 64 amendment regarding the clubbing of the income of the wife and the husband.

MR. CHAIRMAN: That is in consonance with the recommendation.

WITNESS: They have also spelt out certain exceptions like technically qualified and competent persons. Both about Guest House and other recommendations have been set out on page 9 of the memorandum.

MR. CHAIRMAN: On page 77 of the Wanchoo Report, it is seen—

"We recommend that it should be provided in law that in computing the total income of an individual there shall be included all such income as arises directly or indirectly to the spouse of such individual by way of salary, commission, fees, or any other form of remuneration from a concern in which such individual has substantial interest".

In fact you are hauling up Government for implementing the Wanchoo Committee recommendation.

SHRI BHAGWAT JHA AZAD: We take your observations seriously. Therefore, we do take it that you would be relying upon facts and figures which are authentic.

MR. CHAIRMAN: We do agree that it is a suggestion for putting the recommendations of the Wanchoo Committee in the bill. We see that the Consultative Committee of the City Chambers of Commerce have not been able to substantiate the recommendations that had not been implemented.

WITNESS: We are aware of the limitations. We will give you four points, which we shall substantiate. We will give a detailed note on how these four points have arisen and how the recommendations of the Wanchoo Committee have not been implemented. The Wanchoo Committee has recommended to drop the 104 provisions. You did not take that recommendation of the Wanchoo Committee.

MR. CHAIRMAN: All those who have come and met us have contended that the Wanchoo Committee recommendation has not been implemented in full. They have been able to make out two points, i.e. rate of tax and 104. That is all. If you find any other point, please write to us.

WITNESS: Yes.

SHRI VASANT SATHE: The main question has not been answered. I wanted to know how the promises given by the Finance Minister to prevent tax evasion—the four points, (a) to (d)—could be incorporated in this Bill. Would you give your reasons. You should suggest ways.

WITNESS: Though the Wanchoo Committee has not dealt with the specific points, these are all additional incentives in an indirect way. If the

marginal rate of tax is not reduced, and if these incentives are given to entrepreneurs, it will have the effect of beating down the high rate of the marginal tax.

SHRI VASANT SATHE: You want the rate to be reduced by 10 per cent.

SHRI BHAGWAT JHA AZAD: I see you have said about 104.

SHRI VASANT SATHE: I do not want to be uncharitable.

WITNESS: We have indicated in page 2 of our memorandum four items which could be included as tax reliefs in this amendment Bill. If all substantial recommendations of Wanchoo Committee had been incorporated, that would have been different. But that has not been done. As indicated earlier, we will give you a note on what reliefs we want to be included in this Bill.

MR. CHAIRMAN: Your saying about 'guest houses' also is not wholly correct. Take Page 24 of the Wanchoo Committee Report. There it is said as follows: "We recommend that the exception contained in the second proviso to sub-section (4) of Section 37 of the Income tax Act, 1961 should be made applicable to guest houses maintained in the nature of transit houses for employees on duty, provided the stay is temporary and rent is charged. Where no rent is charged, the daily allowance admissible to the employee should be restricted on the same lines as for Government Servants." They have not said about lavish guest houses wherein Directors and others stay.

WITNESS: It is said that anonymous donations to charitable trusts will be taxed at the rate of 65 per cent unless the identity of the donors is established to the satisfaction of the Income tax Officer. This is likely to cause hardship on the donee. We say that anonymous donations should continue to be exempt from tax to the extent that they do not exceed

30 per cent of the gross income of the charitable trust or say Rs. 2.5 lakhs whichever is more.

SHRI ERA SEZHIYAN: Have you made a study as to the number of such trusts having such income as Rs. 2.5 lakhs and more? If so tell us, the number.

SHRI BHAGWAT JHA AZAD: We must know how many will be affected? Suppose it is only 20 per cent of the total trusts, then what you say would be infructuous.

WITNESS: We have not made any study of the totality of trusts. Take for instance donations to Red Cross and Flag Day Fund.

SHRI BHAGWAT JHA AZAD: Those we can consider. They are standard cases. Can you tell us number of trusts having more than Rs. 2.5 lakhs income?

SHRI JYOTIRMOY BOSU: Have you made systematic study? I have got uncharitable remarks made by competent authorities based on systematic study, regarding some of these trusts. When you say anything to Select Committee, you must talk on facts and figures and with all seriousness.

They are representing Chamber of Commerce. I thought they would talk more on corporate sector, cash benefit for trusts etc. But they are talking on tax reliefs to individuals.

MR. CHAIRMAN: They are entitled to make submissions but we are interested on information based on thorough study of facts and figures.

Clause 6 we will have it legally examined. But we are not willing to share your apprehension. Once it is taxed on anonymous donation it will not come in for accumulation.

SHRI BHAGWAT JHA AZAD: In case the anonymous donation exceed the foregoing limits set, out in (a) of page 3 of their memorandum,

they say that it should be left to discretion of the Commissioner and such conditions as he may impose. I cannot understand that.

WITNESS: We will submit a note on those things. Already there are adequate provisions to take care of the diversion of investment in controlled companies. One cannot invest in companies controlled by his relatives. It is not advantageous to invest in government companies.

SHRI BHAGWAT JHA AZAD: There in government companies, there is no private profit.

WITNESS: Considering the total investment in government companies, the return is not more than 8 per cent. We have given four suggestions in page 4 of our memorandum. Those things may be considered by the Committee.

SHRI BHAGWAT JHA AZAD: I can point out many instances wherein public sector companies are managed much better than some private trusts.

WITNESS: Let me read the first suggestion:

(a) The original corpus of the Trust which is already invested at a specified date should not be disturbed and for this purpose the logical date to be specified would be the 9th May 1973 when the amendment Bill was introduced in Parliament.

(b) If this is not acceptable, the Trust funds may be permitted to be invested or to remain invested in the private corporate sector subject to certain additional limitations on the following lines:

(i) the investment should be permitted only in a public company whose shares are quoted on a recognised Stock Exchange;

(ii) the aggregate investment by any single Trust should not exceed

10 per cent of the paid-up capital of a company;

(iii) fresh investments in the private corporate sector should not be allowed unless the company in which the investment is proposed has paid a dividend of 8 per cent on its equity capital on an average during the last three years.

So we have made these suggestions for your consideration.

MR. CHAIRMAN: Control is contemplated under Sec. 13(2)(h) and that has not been found adequate. Have you another control in view? We know of instances where 13(2)(h) has been circumvented.

WITNESS: They should be stray cases. . . .

MR. CHAIRMAN: We have found that 13(2)(h) is not sufficient. I will give you figures of cases where evasions have occurred.

SHRI ERA SEZHIYAN: My worry is such action gives financial help to the trustees and the connected concerns. Control is one thing and financial help is quite another thing.

WITNESS: Why should you resist it provided it yields interest and increase of production.

SHRI VASANT SATHE: Then why do you want tax exemption?

SHRI BHAGWAT JHA AZAD: They are not trusts, but they are just smoke-screens to help themselves. Do you support that?

WITNESS: Within certain safeguards. So long as you exclude the donor of the trust from such investment, it is not correct. I think they should make investments, consistent with security.

MR. CHAIRMAN: In other words, you want to maximise the income with security and you are not worried about control?

WITNESS: I am not against permission being given for investments.

Let the trust have the opportunity of making a sound investment.

MR. CHAIRMAN: That is at the cost of the Exchequer and the people this empire is built up and some are allowed to enjoy.

WITNESS: Even the existing fabric of industrialisation would not have been there but for the fortuitous circumstances and because of that there has been some capital formation.

MR. CHAIRMAN: We take it that so far as control is concerned, you do not think it to be business of tax legislation. Properly that should be left to the Trust.

SHRI VASANT SATHE: If the basic object of a trust is to take advantage of the tax exemption and use it for financing institutions, to finance a particular industry, then by the fortuitous circumstances, that was leading to corruption being a catalytic agent of industrial growth, do you want that?

WITNESS: I said because of historical accident.

SHRI VASANT SATHE: We want to remedy that historical accident. What objection can be there?

WITNESS: Can be done subject to maintaining proper objective criteria at a time when costs are going up, when banks are offering high rates of interest. We have trusts in the Southern Region which are in charge of feeding, awarding scholarships etc.

SHRI JYOTIRMOY BOSU: I will refer you to the observations of the P.A.C. on Charitable Trusts. There are also observations in the Wanchoo Committee report. All this shows that the investments are made so that the business groups appropriate most of the Trust funds for their own business. You have not studied that.

WITNESS: I have not denied the fact that there are terrific invest-

ments like that. What I said was that by an historical accident, there has been some capital formation.

SHRI JYOTIRMOY BOSU: What is the effective rate of taxation?

WITNESS: In the corporate sector, it is 65 per cent and it goes upto to 77 per cent.

SHRI VASANT SATHE: In the Reserve Bank Bulletin for July 1972, it is stated that the effective rate of taxation varies from 47.4 per cent in 65-66 to 39.8 per cent in 1969-70 and it is 42.8 in 1970-71 and that is in 290 large companies. Where do you get the 65 per cent you say?

MR. CHAIRMAN: If you think that the view of the Consultative Committee is there should be trusts to make such investments so long as there is large income and security, irrespective of the way how the money is utilised, then you are entitled to have your views. But if you think it is your duty to say that it is not in consonance with the very object and purpose for which charitable trusts exist and in such cases, it is necessary that restrictions have to come on the investments, at the same time without creating hardships, you can say your views. Before you give your views, the result of the study of the working of Section 13(2)(h) is this. There is a certain gentleman in Bombay who has created 97 Trusts. Though he lives in Bombay, they are registered in Madras. The only purpose is to supply capital to prohibited concerns by each of the Trusts. There is another famous man in Ahmedabad and he has created 30 Trusts; another one has created 18 trusts; yet another one in Bombay has created 28 trusts, all on the same day, with the same objects, for the same purpose and they create the trusts in Bombay and register them in Madras. Do you think they are motivated by considerations charitable? Are they not using the device purely to serve their own in-

terests? This is a delicate matter and you may make your submissions if you want.

SHRI VASANT SATHE: I do not know why they have chosen Madras. Perhaps there are learned people here to advise them.

MR. CHAIRMAN: We take the provisions of the Bill seriously. We want facts and figures. We are anxious that genuine charities should not be deprived of their rights by this clause. There are charities which are only in name-sake. The real purpose is something else.

WITNESS: I was mentioning that the existing provisions will take care because prohibitions are there.

MR. CHAIRMAN: Then we take it that the view of your Consultative Committee is that so long as the Trust funds are not in any way utilised for assisting in any manner the trustees directly or indirectly in their commercial concerns, then those relaxations may be given. Is that your view.

WITNESS: Yes.

MR. CHAIRMAN: The authorities have got powers where the Department feels that assistance by way of loans, by way of equity capital, by way of preference shares etc. is necessary. Do you have any suggestions to make about the restrictions?

WITNESS: The soundness of the investment must be the prime concern.

MR. CHAIRMAN: You may tell us after serious deliberation. We do not want genuine Trusts to be fettered in their earnings, provided the earning is not purely a device for indirectly achieving something else.

WITNESS: We can lay down some guidelines regarding the basic security of the investment, the return on the investment etc.

MR. CHAIRMAN: Let us know about it.

SHRI JYOTIRMOY BOSU: So, you do not want the Trusts to continue as reservoirs for black money.

WITNESS: My point is that the black money goes under-ground and it is not recorded.

SHRI VASANT SATHE: You say that black money comes in the form of Trusts and to that extent it should be welcome.

WITNESS: No.

MR. CHAIRMAN: You may come to your next point.

WITNESS: With regard to 'substantial contribution', the sum of Rs. 5000/- is too small. We suggest that it should be raised to Rs. 25,000/-.

MR. CHAIRMAN: On that point, many people have made representations.

WITNESS: With regard to Clause 6(i) (a), we feel that retrospective action should not be taken.

SHRI VASANT SATHE: How do you say that it is retrospective? The Trusts may have been created long before, but the incidence will be only prospective.

WITNESS: Take for instance a Trust created for a particular community, say the Rana community in Gujarat. That has been the subject-matter of a decision of the Supreme Court, which has held in no uncertain terms that the trust can benefit indirectly the author of the trusts or the cross section of the community. You are giving the go-bye by making it retro-active.

MR. CHAIRMAN: In the legal sense, it is not retrospective. There is absolutely no reason for making the proposed change.

WITNESS: Our fear is that it will ultimately lead to the annihilation of the Trust.

MR. CHAIRMAN: Within the postulates of Sec. 11 a Trust made for a religious community is a Charitable Trust but for the restriction in Sec. 13. The restriction operates from 1-4-62. Any Trust created for religious communities would not enjoy the exemption contemplated under Sec. 11. It has left untouched the Trusts made prior to that time for religious communities. What is sought to be done is to make the position the same for all the Trusts whether made before or after.

WITNESS: The result would be slow but certain annihilation of the Trusts.

MR. CHAIRMAN: We do not want that undue hardships should be treated for genuine religious trusts.

WITNESS: So far as the Trusts are concerned, there is the doctrine of cypres.

MR. CHAIRMAN: Purely because you are going to tax a Trust, will the Courts intervene and allow you to amend the objects?

WITNESS: The doctrine of cypres will not allow. If the object that is adumbrated is not possible to be achieved, there must be a similar object.

MR. CHAIRMAN: Will the first part apply where an object is impossible of being implemented?

WITNESS: Then the Court will say that it must be a similar object which can be performed.

MR. CHAIRMAN: The levy of tax is going to present no problem so long as you are going to find analogous objectives for which it can be applied.

WITNESS: The Court will permit alteration if the main object is not capable of being performed. The objects in such cases may be similar to the original object. This simplest thing to do is to make every Trust an assessable entity.

MR. CHAIRMAN: If I am giving you any indication of the temper of Parliament, if the Trusts are going to misbehave, that is going to happen shortly. I only wish that Associations and professionals who are associated with the Trust do not bring that unhappy day.

WITNESS: In Bombay they have passed the Public Trusts Act. Investment of the Trust moneys is scrutinised by the Public Trustees. Accounts should be submitted to the Commissioner and the investments should also be submitted. If there is such a legislation in other States, there will be the safeguard that the investments are not frittered away or used for illegal purposes.

MR. CHAIRMAN: Before you, we heard evidence from representatives of Andhra Pradesh Government. They are the most progressive of all States. They have absolute power to appoint their own trustees and executive officers.

WITNESS: The remedy is not in destroying things; the remedy lies in proper control and providing sufficient safeguards. In Madras they have the Hindu Religious Endowments Act providing for a Commissioner and for audit of religious and charitable institutions. In Maharashtra, I have told you there is Charity Commissioner to whom accounts have to be submitted. Have such an enactment.

MR. CHAIRMAN: I understand the validity of your argument. That is for protecting honest trusts.

WITNESS: We want to protect only honest trusts. Some more points Sir. We want the trusts to be independent. Sir, it is now proposed to publicise the names of defaulters as soon as it is finalised by I.T.O. It is not the ITO who finalises the cases. Most of the decisions of ITO and assistant Commissioners get reversed in Appellate Tribunal. So till it is settled by Appellate Tribunal, names of defaulters should not be publicised. Otherwise it will work hardship.

MR. CHAIRMAN: We take note of that.

WITNESS: Sub-section (4) of proposed new Section 273A gives extensive power to the Commissioner to waive or refund penalty in appropriate cases. This is not in keeping with the recommendations of the Wanchoo Committee. It is now said under sub-section (3) that where an order has been passed under sub-section (1) in favour of any person, he shall not be entitled to any relief at

any time after making of such order. This would work hardship.

SHRI BAGWAT JHA AZAD: If you want to have this process, you can do so. Otherwise you can take the regular course. Nobody compels you.

WITNESS: For Clause 35 we have suggested something.

MR. CHAIRMAN: All right. Thank you. Your suggestion under Clause 35 would be looked after by us.

(The witness then withdrew)

III. Sri Aurobindo Society, Pondicherry.

Spokesmen:

Shri Arunendra Nath Tagore.

(The witness was called in and he took his seat)

CHAIRMAN: Before we take your evidence, I have to draw your attention to Direction 58 of the Directions by the Speaker, 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."

SHRI ARUNENDRA NATH TAGORE: I want to draw your attention to the definition of 'charitable purpose'. I suggest to the Committee the inclusion of words 'any activity for personal or private profit.'

MR. CHAIRMAN: Where does the question of 'private profit' come under public charitable trusts.

SHRI ARUNENDRA NATH TAGORE: Charitable purpose will include 'any activity of public utility even for profit'. Suppose business is carried on by a trust. The business

is for profit. The ITO says it is activity for profit and therefore he says, income is not exempt and it is not charitable purpose. So I say let it be 'any activity of public utility even for profit but not for individual profit of trustee'.

MR. CHAIRMAN: That will be hit by Sec. 11. Such definition is not necessary.

SHRI ARUNENDRA NATH TAGORE: There is clash between Sec. 11(4) and Sec. 2(15).

MR. CHAIRMAN: If it is for profit, it will be hit by Sec. 11. If it is for profit, where does the question of charitable purpose come in? If you carry any activity other than object of public utility, will it be still charitable purpose? Let us know your problem in Pondicherry. Where does business come in?

SHRI ARUNENDRA NATH TAGORE: We have some business under our society. Some books are sold. They are exempted. We have some articles made by members of the Ashram, like ties, scents, etc. Our society is registered under Societies' Registration Act.

MR. CHAIRMAN: Are you having any difficulty about your incomes? Let us come to this. What is the

purpose of business? General or public utility?

SHRI ARUNENDRA NATH TAGORE: The entire profits are devoted to the Ashram. That is the purpose.

MR. CHAIRMAN: It will go outside the charitable purpose scope.

SHRI ARUNENDRA NATH TAGORE: The Income-tax people say that its purpose is earning profit. There are smaller Trusts created by certain individuals for the benefit of Ashram or Aurobindo International Centre of Education. They are producing certain articles by themselves and offering the entire profits to the Ashram. We have applied for exemption under Sec. 11 to the I.T.O.; while the Officers assessing similar Trusts, they say, "you people you are earning money; then you are giving it to the Ashram; therefore your pose is activity for the business" —though in the Deed of Trust it is specifically written for the purpose of this in the object of the Trust is to help the Ashram or the Centre of Education.

SHRI VASANT SATHE: It is a Trust to help another Trust? You say there is a Trust which may be purely a business Trust; but if ultimately its business earnings go to help another charitable, recognised Trust, that should be exempted?

MR. CHAIRMAN: In other words, as long as the profits are made over for charitable purposes. That is the case you are making out. It has a different content. What is your next point?

SHRI ARUNENDRA NATH TAGORE: Yes. In addition of Clause 5(a) of the Bill provides that the Trust can accumulate 25 per cent of its profits of its income for utilisation in future for such purposes, *viz.*, for charitable purpose. But our difficulty is this: In this section, capital expenditure is referred to. We have to incur some expenditure on a por-

tion of building construction which has to be replaced.

MR. CHAIRMAN: They will be treated as spending on building.

SHRI ARUNENDRA NATH TAGORE: Such a purpose, normally speaking, capital expenditure, that type is not revenue expenditure.

MR. CHAIRMAN: We will try to make it clear on the point that as long as you have divested yourself of the funds in implementing the object of the Trust; even as a result of that you acquire a capital asset, it should be treated as expenditure for the purpose of Trust. Then, what is your objection to it?

SHRI ARUNENDRA NATH TAGORE: Any expenditure for the maintenance of the Trust property or for its improvement, I am told by Mr. Shah, Chairman of the Board of Direct Taxes Department—the law makes no distinction of money spent on revenue and capital accounts. My difficulty is—there is a loan repayable by a Trust Rs. 3 lakhs to the State Bank of India for purchasing certain articles. Now, we applied for exemption to the Income-tax Officer. Accumulations may be meant to repay loans. The I.T.O. says 'it is not for a charitable purpose'. The section is simple. According to 2(15) any payment by the Trust is not charitable purpose, if for the purpose of acquiring some assets to the Trust, in consonance with the objects of the Trust.

MR. CHAIRMAN: Where you have a liability purely for meeting the objects of the Trust, where there is such a liability we will have to exempt it. We will see what can be done.

SHRI ARUNENDRA NATH TAGORE: I will be much obliged. Next, we come to Section 12. According to the new Act, it says 'any donation and contributions are to be considered as income of the religious Turst' and naturally it has to be spent; but according to Sec. 11. but there is

a little difficulty. Sometimes we receive, as a Society, Life member's subscription, admission fees and these moneys are not paid in one year; it goes on for several years. Again, we receive some grants from the Government to execute certain projects. It will take a long time. The whole income, under one year, it cannot be spent.

MR. CHAIRMAN: I have really not been able to understand your objection. Your Memorandum came to me. The Life-Membership usually is the corpus of the Trust. And fees of Life Membership would go to the corpus of the Trust.

SHRI ARUNENDRA NATH TAGORE: As the language in the Section stands, there is no distinction that Life Membership will become the corpus.

MR. CHAIRMAN: We will have to make a distinction between contribution and the corpus. Inherently by its very nature. I am inclined to think, *prime facie*, that Life Membership should go towards the corpus.

SHRI ARUNENDRA NATH TAGORE: In the Section, as it stands in the Act, specifically "for the purpose of the Trust"—This is the language of the section. The Taxing Authority can interpret the section.

MR. CHAIRMAN: They don't accept it. Have the Income-tax people refused to accept it?

SHRI ARUNENDRA NATH TAGORE: They are not going to accept for the purpose of the Trust.

MR. CHAIRMAN: It is strictly out of our purview of the Bill. We would like in a way to decide, if possible by the committee. I have no doubt in my mind that any voluntary contribution received by a Trust created wholly for charitable purpose or established in paying contributions made with a specific direction, that should form the Trust, under Section 11(b) shall be deemed to be income.

SHRI ARUNENDRA NATH TAGORE: ...unless specific direction is there. Why don't you mention? I submit the receipt is for this.

MR. CHAIRMAN: If the language of the section is clear, I am inclined to infer that the Life Membership is. Be that as it may, we will consider.

SHRI ARUNENDRA NATH TAGORE: I am much obliged for your suggestion.

MR. CHAIRMAN: We will see if we can persuade the Board of Direct Taxes.

SHRI ARUNENDRA NATH TAGORE: There are certain donations which are apparently donations though that is not specifically mentioned.

SHRI VASANT SATHE: The Direction is that it should be mentioned.

SHRI ARUNENDRA NATH TAGORE: We are again finding it difficult; the provision relating to Auditor's reports is such a clumsy form. Sec. 12 it should be simplified. Under Companies Act, they have some form. We do not object to having the Auditor's report; but it should be reasonable and a simple way.

MR. CHAIRMAN: What is the difficulty in the prescribed form? Have you got the Form before you? They do not create burden; because in most cases, it is willingly done.

SHRI ARUNENDRA NATH TAGORE: Sufficient responsibility should be vested with the Auditors.

MR. CHAIRMAN: You can write to the Board and the Chairman will consider anything connected with the Appeal.

SHRI VASANT SATHE: We should go to Aurobindo Ashram and try to help them.

SHRI ARUNENDRA NATH TAGORE: The last point of my submission—relates to Clause 6—in addition to Sec. 13(i)(a). This is an

anonymous donation. The difficulty lies there. In our Ashram, we have 'offering' boxes in our *Aurobindo Samadhi* and also in *Aurobindo* Room. People come and pay money when they make 'pranams'—small or big nobody is aware of. Even 65 per cent. It is very difficult. Our suggestion would have been to modify the amendment by providing the power of exempting certain institutions from this—say, like some contributions under 80 (g) viz. anonymous donation upto Rs. 50,000 or Rs. 1 lakh or 10 per cent of total donation whichever is less.

SHRI JYOTIRMOY BOSU: Then lots of money will get off.

SHRI ERA SEZHIYAN: What is the daily average collection?

SHRI ARUNENDRA NATH TAGORE: Our total expenditure is Rs. 60 lakhs.

MR. CHAIRMAN: anonymous, how much is it?

SHRI ARUNENDRA NATH TAGORE: Rs. 2000, 3000 a month.

SHRI VASANT SATHE: You will have no objection to the extent of Rs. 2000 or 10 per cent of your entire donation in the box to be exempted.

MR. CHAIRMAN: We will sympathetically consider what best can be done where it is genuinely anonymous and not purely anonymous for the sake of tax avoidance.

SHRI VASANT SATHE: You take an average of last 5 years collection.

SHRI BHAGWAT JHA AZAD: Out of Rs. 60 lakhs, only Rs. 20,000 or roughly Rs. 2,000 per month, they are taking. It does not matter much. We can think it in that way also.

SHRI ARUNENDRA NATH TAGORE: The whole purpose is to give a certain amount as exemption. The next question, I have to address myself, is about investment of trust funds in business, like debentures of a company or shares of a company re-

ceived by way of donations. That becomes actually part of investment in some business. What will happen to that?

MR. CHAIRMAN: You can receive donation and you can encash.

SHRI ARUNENDRA NATH TAGORE: At least if it is preserved as it is, it will earn some income. Suppose Rs. 1 lakh is given as debenture to form part of a business, a substantial portion is left out viz. "corpus; somebody has donated" i.e. Ashram is having a separate business for selling articles at reasonable rates. Shop was donated by somebody to the Ashram.

MR. CHAIRMAN: If it is for the purpose of corpus, you can encash and put that in the Corpus. Then, you pay tax if it is not mentioned for that purpose.

SHRI ARUNENDRA NATH TAGORE: My suggestion will be to exclude the Trust's own business. Certainly, we are not going to invest in certain other's business.

MR. CHAIRMAN: We have to legislate for all the Trusts. Otherwise, that will be a device for exemption.

SHRI JYOTIRMOY BOSU: What are your sources of revenue, collection and how much you get from within this country, and how much from outside the country.

SHRI ARUNENDRA NATH TAGORE: As a matter of fact, our sources of income is mostly from donations from the devotees. Our own resources income is Rs. 10 lakhs per year and about Rs. 50 lakhs come from devotees all over the country. For income derived outside India, I do not have statistics. If you want all those precisely, I can give you by letter. Now, the donations from outside are not much. It won't be more than Rs. 2 to 3 lakhs per year.

SHRI JYOTIRMOY BOSU: Among the devotees, how many belong to the corporate sector, and how many are

individuals? What do you mean by 'devotees'? We want to know the facts.

SHRI ARUNENDRA NATH TAGORE: It is a very difficult word to explain.

SHRI JYOTIRMOY BOSU: How do you spend this money of Rs. 60 lakhs that you collect every year? What are the liabilities that you meet every year?

SHRI ARUNENDRA NATH TAGORE: As a matter of fact our liabilities are to meet the expenses of the Ashram's activities. Then, your next question will be, what are the activities? I would say, it is a centre of education. We are maintaining students, teachers. Out of the income of the Trust we are paying rents and taxes. The Auroville project has just been coming up there.

SHRI JYOTIRMOY BOSU: Do you give free accommodation? Is it possible? I do not want to offend your feelings. Suppose one makes a donation and gets exemption from I.T., can he go over there and live free?

SHRI ARUNENDRA NATH TAGORE: That is not. I am myself a paying guest, when I live there. For the last 10 years or so, none has lived like that.

SHRI JYOTIRMOY BOSU: You get some money from the Corporate Sector for conducting research particularly on sociology. How much money do you get?

SHRI ARUNENDRA NATH TAGORE: That is not much.

SHRI JYOTIRMOY BOSU: You do get appreciable sums from big business houses and you tell them that you are conducting research, particularly sociology. How much did you get during the last 5 years?

SHRI ARUNENDRA NATH TAGORE: It is only a question pertaining to balance sheet. If you give me time for that, I can file the balance sheets.

MR. CHAIRMAN: Any question outside the Bill, for which you (Shri Jyotirmoy Bosu) want information, it will be better for you to let the Secretariat write for it.

SHRI JYOTIRMOY BOSU: The research that you have conducted. I would like to get details.

SHRI BALAKRISHNA PILLAI: Can you say how much money you are spending on Research?

SHRI ARUNENDRA NATH TAGORE: Unfortunately, as it was not included in our memorandum, I have not come prepared with the answer. I do not want to give a wrong statement all of a sudden. I have been asked by the Managing Trustees to invite you all to visit the Ashram once. So that you can see for yourselves what things we are doing. We invite you most cordially to pay a visit.

MR. CHAIRMAN: Thank you very much for the invitation. Some of the members of the Committee might feel inclined to visit the Ashram.

[The witness then withdrew]

IV. Madras State Income-tax Practitioners Association, Madras.

Spokesmen:

1. Shri V. N. Padmanabhan
2. Shri S. R. Gopalan
3. Shri M. S. Rangiah

(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 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 V. N. PADMANABHAN: Our Association feels greatly honoured for being granted this privilege to tender evidence before this august Committee, touching upon matters concerning tax practice. At the outset, we may be permitted to crave leave of the Hon'ble Committee to permit us to represent in the absence of our President who is convalescing in a Nursing Home.

This Association has earlier made representation dated 7th June, 1973, wherein a view was expressed, questioning the desirability of compulsory audit. Subsequent to the submission of that memorandum, all our members after considered deliberation on this subject in the context of changed economic scene on the national front and malaise of highest inflationary trend that the country is passing through, found the wisdom behind the scheme of compulsory audit as unquestionable and at the unanimous request of our members submit a supplementary memorandum insisting on compulsory audit. If compulsory audit were to come, this Association will be faced with the question of the eligibility of the members to conduct such audit, and furnish audit certificates in the light of Clause 39 of the Bill.

MR. CHAIRMAN: Your point is, I. T. Ps should be allowed to do it also. In that connection, we have heard evidence of various Income Tax Practitioners' Associations. We to'd them, the Committee constituted as it is, cannot evaluate the expertise or the

competence of any particular body to carry on the audit, because Cost Accountants say, they must be made Auditors; so also Co-operative Auditors say they must be made Auditors. We suggested them to make appropriate representation to the Finance Ministry which have the requisite talents and machinery available to evaluate as to who should be auditors or should not be auditors. Speaking for myself, I think no one should be left out of the ambit of audit and every one should have the right to audit. But after proper test, for, everyone should have the requisite knowledge for auditing, and everyone should be subject to some discipline. We cannot sit in judgment as to who should audit and who should not. You have to take up the matter with the Finance Ministry who are the competent persons to decide. Though every graduate is allowed to be an Income-tax Practitioner there should be some training and some knowledge of accounts is necessary. What should be the training and what should be level of knowledge is a matter for the Finance Ministry to decide, not this Committee. We for our part would certainly consider putting in our report that the Finance Ministry should examine that as there should be more auditors and it should not be exclusive to any particular category.

SHRI V. N. PADMANABHAN: In view of the cleavage now sought to be made, the experience of Income-tax Practitioners should be taken into account. They have been continuous practitioners and Rules were prescribed allowing them to make representations in support of returns and statements. Subsequently this rule was not observed. But the Rule is there. The Wanchoo Committee also have made recommendations. In the circumstances we find no reason why we should be debarred at this stage.

MR. CHAIRMAN: Wherever there is compulsory audit, auditor should give

a certificate of the state of affairs and income of the assessee. Now who is competent to do that is a matter which can only be determined by the Finance Ministry, and not this Committee. Clause 39 is within our ambit. How can we say whether the cooperative auditors or the cost accountants could be auditors. That is not our task.

SHRI ERA SEZHIYAN: They have suggested an amendment to clause 39.

SHRI V. N. PADMANABHAN: This has been referred to in the Wanchoo Committee report also.

MR. CHAIRMAN: The Wanchoo Committee refers only to Chartered Accountants. In page 46, it is said:

'Doubts have been expressed whether enough qualified auditors will be available for undertaking audit in all cases where it is mandatory. Companies are already statutorily required to get their accounts audited. We feel that if suitable limits are prescribed for the non-corporate sector, the work-load may not be too great to be tackled by the existing professional accountant. We understand that the number of Chartered Accountants has increased from 8000 in April, 1967 to over 12,000 in October 1971. Further, during the same period the number of Chartered Accountants solely in practice has risen significantly from 2900 to 5400. From the concern voiced from time to time in the press and elsewhere about a few well-known firms of Chartered Accountants monopolising bulk of the audit work relating to the corporate sector, it appears that there is a considerably large number of practising Chartered Accountants who can undertake additional work-load of audit in the non-corporate sector without much difficulty.'

So, you will see that they have spoken about Chartered Accountants only. Therefore it should be confined to Chartered Accountants. For others,

there should be proper tests so that quality does not deteriorate. That is not for us to decide.

SHRI V. N. PADMANABHAN: Now a difference between representation and certification is made. Even representation pre-supposes factual knowledge. We have been doing this all along. To deny this to us now is unfair and unreasonable on the part of the Government. Such a provision should not be introduced in the Bill.

A cleavage is made for the first time in this Bill between certification and representation. Certification has to be made by Chartered Accountants and representation can be made by anybody. In Section 268(2) certain norms are prescribed. We would like to state that representation involves factual knowledge, how to state facts and how to satisfy objections of income-tax authorities.

MR. CHAIRMAN: You are in other words saying that you are competent to audit. This plea has been made by several people and we will consider that.

SHRI JYOTIRMOY BOSU: Do you not agree that a few big audit firms monopolise the corporate sector in collusion with big business houses, do you not agree that this should be decentralised and also do you not agree that evasion is more in that corporate sector where audit by chartered accountants is compulsory?

MR. CHAIRMAN: This is a question more properly to be addressed to chartered accountants.

SHRI V. N. PADMANABHAN: I would only invite attention to question 16 of the Direct Taxes Administration Enquiry Committee wherein it is said that large-scale evasion was detected in cases where audited accounts have been furnished by chartered accountants. The Board is therefore not in favour of accounts being audited by chartered accountants.

The Committee then adjourned.

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

*Thursday, the 10th January, 1974 from 10.00 to 13.15 hours in Committee Room,
Old Legislators' Hostels, Madras.*

PRESENT

Shri N. K. P. Salve—Chairman

MEMBERS

2. Shri Chhatrapati Ambesh
3. Shri Bhagwat Jha Azad
4. Shri Dharnidhar Basumatari
5. Shri Jyotirmoy Bosu
6. Shri Tridib Chaudhuri
7. Shri K. R. Ganesh
8. Shri D. P. Jadeja
9. Shrimati Sheila Kaul
10. Shri Maharaj Singh
11. Shri R. Balakrishna Pillai
12. Shri Vasant Sathe
13. Shri Era Sezhiyan
14. Shri Satyendra Narayan Sinha
15. Shri C. M. Stephen
16. Shri R. V. Swaminathan
17. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram—Secretary
2. 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, CBDT
2. Shri S. Narayan—Joint Secretary
3. Shri S. I. Tripathi—Deputy Secretary

SECRETARIAT

Shri H. G. Paranjpe—Deputy Secretary.

WITNESSES EXAMINED

I. Shri T. V. Vishwanath Aiyar—Advocate, Supreme Court of India, Madras.

II. Andhra Pradesh Tax Bar Association, Hyderabad

Spokesmen:

1. Shri M. A. Mohiuddin
2. Shri Y. V. Anjaneyulu
3. Shri Keshavlal Adhia
4. Shri P. Vanugopal

III. Raja Charity Trust, Madras

Spokesmen:

1. Shri P. R. Ramasubramania Raja, Managing Trustee.
2. Shri S. N. Ramakrishna Raja, Chartered Accountant.
3. Shri M. Sanotham, Chartered Accountant.
4. Shri N. K. Srikanta Raja.

**IV. The Karnataka (Mysore) State Income-tax Practitioners' Association,
Bangalore**

Spokesmen:

1. Shri G. B. Patil
2. Shri P. K. Ramachandra Setty
3. Shri P. N. S. Murthy
4. Shri M. Srinatha Rao

I. Shri T. V. Vishwanathan Aiyar—
Advocate, Supreme Court of India,
Madras.

*(The witness was called in and he took
his seat)*

MR CHAIRMAN: Mr. Aiyar before you commence your evidence, it is the convention to point out to you one of the directions of the Speaker of the Lok Sabha which governs your evidence. 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 the evidence tendered by you is to 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. Kindly proceed.

SHRI T. V. VISHWANATHA AIYAR: Sir, I have in general supported the Bill. Therefore whatever suggestion I am making is how to make it better. Let us understand this point very clearly. Two or three things, therefore, are mentioned as important so far as this Bill is concerned. The Bill is based upon the recommendations of the Wanchoo Committee. Two or three important points I would like to make before I go to the details. So far as the tax evasion and creation of black money is concerned, I have just mentioned in the first paragraph I shall summarise it in a few minutes. The point is the recommendations have to be taken as a whole. Para 2.20 of the recommendations have to be taken as a whole, as several recommendations have been made. So far as the Bill is concerned, they have taken only particular items and accepted them or slightly varied or modified them. So far as the main matters are concerned, which I consider important, the higher rate of tax under the direct tax laws has not been considered in the bill. May be for good reasons. I am just pointing out that, the third is about donations to political parties, and the fourth is the proliferating and unproductive government expenditure, and the last is the corruption and deterioration in moral standards at all levels, and all sons.

that. So far as the identification of the disease is concerned, there is not much more to be said. It is fairly comprehensive. The question therefore is so far as the Bill is concerned what we should do about the two aspects. How to get out of this situation, I would like to mention two or three things at the outset. I am making general observations, because the particular items have been dealt with by the Bill and a number of special recommendations have been accepted by the Government. So far as the existence of evasion of black money is concerned, I do not think it requires to be reiterated. It is all there. The disease is there. There are two ways of getting over the disease. My first answer is out of experience, not expediency, prevention is better than cure, is the simple answer. You must see to it that the atmosphere prevents or negatives the possibility of tax evasion of black money or at least minimises it. That is one method of dealing with it. That is, first the disease is to be prevented. In this connection whatever recommendations have been made have not been seriously dealt with in the Bill. Therefore, the Bill is not adequate for the purpose. That is one point. The second point is, as much as possible, to see that it is prevented not only by negation but by cure also. The Bill has taken into consideration the curative aspect. How does it cure the situation? They can have only what are called limited results. The disease being there, it is like an ordinary palliative for headache. It is a medicine which will give cure for just one or two hours. It does not prevent the coming in of the disease. I am, therefore, pleading for good health rather than merely getting the disease and curing it by medicines. In that sense, there are three or four items which I think have not been dealt with in the Bill. I do mention that these are main items very much important, if you are really serious about dealing with the causes of tax evasion and creation of black money and its proliferation. Here I am using the same expression as is mentioned in the Statement of objects and re-

MR. CHAIRMAN: On generalities, we want you to clarify two or three things. The Wanchoo Committee went into the problem of the eradication of black money both for prevention and its generation and proliferation. They have suggested various measures. You have stated what is important to consider in your memorandum. In a Bill such as the one which we have before us, what according to you should have been further included that could have brought about the implementation of the items (a) to (e). They seem to have comprehensively dealt with the entire problem, and they have suggested remedies which are outside the fiscal law—some thing which is outside the fiscal law will palpably be outside the scope of a Bill like this. But do you think that if within the scope of the Bill the items in (a) to (e) are also taken care of properly, we will be able to overcome this menace of black money. Do you think that the Bill can be improved so far as (a) to (e) are concerned?

SHRI T. V. VISHWANATHA AIYAR: I agree with you that it can be done. I cannot speak about outside the fiscal limits. The matter is very familiar. All the same, one thing is the high rate of taxation is certainly within the limits of fiscal enactment. It is not outside the fiscal enactment. It is a matter which may be important as a policy, but it is not outside the fiscal bill.

SHRI VASANT SATHE: The scope of the Bill is limited. The Direct Taxation Amendment Bill and other measures can be taken to achieve the objects laid down in the Wanchoo Committee. But as far as this Bill is concerned, as far as the law is concerned, will you think that we can bring them out within the purview of this Bill?

SHRI T. V. VISHWANATHA AIYAR: Usually the method in so far as what are called rates of tax are concerned, is to have a standard rate, which is fixed in the Act itself not

in the Finance Act. I have mentioned that point that we should have a standard rate, which is acceptable. In the annual budgets you can make it plus or minus. The important point I want to mention is the fixation of a basic rate which will work at least for a plan period. This is absolutely necessary. It is part of the Act. It should be 'so and so a rate' unless it is changed by the Annual Act due to special reasons. This is not a new thing. It is done in Ceylon and many other places. What is called the standard rate is an acceptable rate, which does not come into being for the special occasion for special rates. When the Finance Act comes into being, you can say for special reasons in the annual budget it shall be plus or minus ten per cent. This is one matter.

The second matter is also part of the taxation law. Tax is to be the means of economic growth. It is a matter that should be at the bottom of the Finance Act. The principle must be such as will enable economic growth—growth in the ordinary sense and not in the extra ordinary sense. Taxation must be progressive on its own, even if there is no change in the rates. It must grow on itself even on the old rates. That is what is meant by progressive taxation. The important principle of general taxation is to allow for growth by itself. How does it happen? Incentives must be given. I want this matter to be dealt with. We are dealing with plans. Why should there not be a plan for taxation? The taxation levy should be for a plan period of five years so that people may deal with their affairs and transactions on the basis of known tax and not annual handicaps one way or the other. Because, it obstructs the natural growth of economy. I do not want to go into the special reasons.

MR. CHAIRMAN: You want the main Act to fix the rate and in accordance with the needs of the economy, variations are to be brought in later.

SHRI T. V. VISHWANATHA AIYAR: Yes. One other matter I would like to mention. Our taxation begins at the very low figure of 5,000. It is not the case elsewhere, and slab by slab the rate is higher. We get the top slab very early. In other places, for instance, for ten lakhs of Rupees, in U. K. it is 68.8 per cent, in U.S.A. it is 49.1 per cent.

SHRI VASANT SATHE: What is the per capita income of the country?

SHRI T. V. VISHWANATHA AIYAR: That is why I am mentioning it. We must remember that we are a nation of 550 million people.

SHRI VASANT SATHE: I am sorry to interrupt you. What is the effective rate of tax on the higher slab according to you? We shall have a useful dialogue.

SHRI T. V. VISHWANATHA AIYAR: The higher rate of effective tax, according to economists, is 77 per cent.

SHRI VASANT SATHE: There I suppose there is scope.

SHRI T. V. VISHWANATHA AIYAR: The Wanchoo Committee says it is 80 per cent.

SHRI VASANT SATHE: Now I am putting this before you. You should try to know in your mind what you think is the effective rate of tax. As at present brought out by the Wanchoo Committee, the effective rate of tax does not exceed 50 per cent.

SHRI T. V. VISHWANATHA AIYAR: You see that the rate here in India for instance on Rs. 30,000 is 23 per cent. The effective rate in Ceylon is 11.4 per cent, in Pakistan it is 12.8, in U. K. it is 13.1., in U.S.A., it is 3.2.

The third point I mentioned was about the higher rates reached at higher levels there.

MR. CHAIRMAN: Lest we enter into a dialogue, let me crystallise the

issue. What the hon. Member wants to know is this. I can speak with reference to the Corporate Sector. In a Corporate sector, take the total profits earned by the various Companies who pay tax, take the revenue, divide the profits earned by the total profits and you get the percentage. That is the effective rate so far as the Corporate sector is concerned. My question is, firstly, is it possible to have such an effective rate in the non-corporate sector and if there is such an effective rate, what according to you is the effective rate.

SHRI T. V. VISHWANATHA AIYAR: If arithmetic is to enter into the field, so far as I understand I may be wrong. 3.2 per cent seems to be the tax out of the GNP in the year.

MR. CHAIRMAN: You need not touch upon that aspect. Supposing the profit is 100 crores and the revenue collected is 40 crores. Then we find effective rate of taxation is 40 per cent.

SHRI T. V. VISHWANATHA AIYAR: You are mentioning it as a total figure and talking what is the average tax. That is for revenue purposes. But it does not touch the taxation of each man, because some people may be below that average.

SHRI ERA SEZHIYAN: The question is, suppose there is a person with income of Rs. 2 lakhs. What are the exemptions he is to get? Then what will be the effective rate?

SHRI T. V. VISHWANATHA AIYAR: My answer is because a man gets 2 lakhs, he does not get extra benefits. Whatever benefits any other man gets, he also gets.

SHRI ERA SEZHIYAN: My question is what will be the effective rate.

SHRI T. V. VISHWANATHA AIYAR: The rates I mentioned are on total income which are assessed; not on gross income. The Allowances are given, because they are spent. I can understand if you give incentives.

SHRI ERA SEZHIYAN: The allowances are not spent. Insurance premium is savings. National Savings deposit is a saving. You cannot say that they are spent.

SHRI T. V. VISHWANATHA AIYAR: They are all fixed. It is 15 per cent or 20 per cent, not exceeding Rs. 30,000.

SHRI BHAGWAT JHA AZAD: They are actually savings. Our question is when you are quoting the taxes and rates from other countries, in comparison to the rates of taxation in U.K., Ceylon and Pakistan, what is the effective rate of taxation in our country. It is about 98 per cent. The Wanchoo Committee has suggested some rate. We say that the effective rate is not that much. We would like to know from you what is the effective rate in this country.

SHRI T. V. VISHWANATHA AIYAR: When we are thinking of what is meant by the effective rate, the rates are on the assessable income and the rates which have been quoted are on that basis. I take it that it is 'without allowances'.

MR. CHAIRMAN: You must take into account the gross profits earned in a year and the ultimate tax you pay because of the various incentives.

SHRI T. V. VISHWANATHA AIYAR: The distinction must be between expenses on the one side and incentives on the other. Both should not be taken together. Let us allow certain things like Provident Fund, Insurance, gratuity etc. If that is what you mean, why is that incentive given? It is not allowed simply because it is high rate or low rate, but because it helps savings. It is a matter of revenue and it is a contribution.

MR. CHAIRMAN: You are going on the rationale of the whole incentives. For the Corporate sector, we have worked out the effective rate. We find that contrary to the general impression about the rising tax bur-

den on the Corporate sector, tax provision in relation to pre-tax profits has shown a steady decline during the past five years from 65-66 to 70-71. On account of series of incentives which the Corporate sector has been receiving during this period, the effective rate has come down considerably lower. From 47.4 per cent in 1965-66 it has come down to 39.8 per cent in 69-70 and it was 42.8 per cent in 70-71 in the case of 290 large companies. Without widening the area of controversy, my friends are anxious to know whether you have made a study of the effective rates in this manner, what are your comments with reference to the effective rate?

SHRI JYOTIRMOY BOSU: I have a table which shows that during the years 51-52 to 64-65 the actual incidence of direct taxation on the non-firm high income households is much smaller than what the income tax would be.

SHRI T. V. VISHWANATHA AIYAR: So far as the Corporate sector is concerned, the question of proliferation does not arise, whatever be the effective rate. The point we have to remember is that in spite of 65 per cent or 47 per cent or whatever it is, that money is in the company.

MR. CHAIRMAN: We want you to tell us what are your views about the burden of taxation with reference to effective rate?

SHRI T. V. VISHWANATHA AIYAR: The first point is about Corporate taxation. You have started with the theory that no incentives are taken into consideration for the purpose of effective rate. It does not require any answer from me. Therefore, the higher rate is not effectively higher rate, but little less. The question is whether the reduced rate is good or bad for the purpose of the Company. The only answer to that is that in each case the money is inside the company and therefore only the amount of tax varies, though the average rate adjusts itself. Therefore it is that so far as

the Company is concerned, to the extent to which you leave moneys without taking it by way of taxation, it continues with the Industry or the Company or the Corporate sector. That is one answer.

MR. CHAIRMAN: I do not think that answers our question. Let us go to the next point.

SHRI T. V. VISHWANATHA AIYAR: Yes. The higher rate of taxation is one thing.

SHRI BHAGWAT JHA AZAD: What I say is it is not 98 per cent. It is only 43 per cent. To say that that is excessive is not correct. We have heard every Chamber saying that the highest rate of taxation is 98 per cent but it is only 43 per cent. That is what I want to suggest.

SHRI JYOTIRMOY BASU: Results of survey on tax on household income of rich is 5.25 per cent in 1956-57 and in the following years it is 5 per cent, 5 per cent, 4.9 per cent., 3.3 per cent and 3.9 per cent. Are you making a suggestion that if tax rates are lower, then big business will not go in for tax evasion. If that is so, can you say why the voluntary disclosure scheme failed totally and utterly?

SHRI T. V. VISHWANATHA AIYAR: If you start with the theory that whatever be the rate, evasion will be there, then I have no answer at all. If you take the majority of small assesses, the effective rate will remain there in each branch. You are taking totality.

MR. CHAIRMAN: No.

SHRI ERA SEZHIAN: I shall give concrete example. One with an income of Rs. 2 lakhs, pays tax of Rs. 1,51,800. That is not 85 per cent but only 76 per cent. That is what we say.

SHRI T. V. VISHWANATHA AIYAR: That is not the average rate.

SHRI BHAGWAT JHA AZAD: That is the effective rate in the case of 295 companies.

MR. CHAIRMAN: Lowering of rate has been suggested by everybody concerned including experts. Mr. Aiyar is also an eminent lawyer and one with wide experience. Let us hear his views.

SHRI BHAGWAT JHA AZAD: If you allow the witness to talk freely, that is one thing. He talked on production, expenditure, corruption, licence etc. He has been talking on high rates. I say, it is not high rate.

MR. CHAIRMAN: We do not seem to be making any progress. Let us go to the next point.

SHRI T. V. VISHWANATHA AIYAR: Take the highest rate. It is 96 per cent. May be in the working it may come to 84 per cent. I have not worked it out myself. But what I say is, 84 per cent is still high according to me. That is a point which you might consider.

MR. CHAIRMAN: Even though we do not agree, we appreciate it.

SHRI T. V. VISHWANATHA AIYAR: What I say is, reduction must be in the effective rate and not in the nominal rate. The ultimate effective rate must not be high.

MR. CHAIRMAN: All right. Next point.

SHRI VASANT SATHE: The first two slabs are much lower and in the highest slab, the rate is too high, as high as 97.7 per cent. and so it acts as a disincentive to savings.

SHRI T. V. VISHWANATHA AIYAR: I am glad you have put it that way. That was what I was going to say. In the first two slabs we have 39.6 per cent plus 25 per cent totalling 65 per cent of the total number of assesses. I do not go into their rate. Let me come to the higher slabs. Those earning between Rs. 30,000 to Rs. 40,000 they are constituting 2.5

per cent of assesseees. From Rs. 40,000 to Rs. 50,000, it is 1 per cent. From Rs. 50,000 to Rs. 60,000—it is 6 per cent.

SHRI BHAGWAT JHA AZAD: What is the source of information?

SHRI T. V. VISHWANATHA AIYAR: Indian Economic Statistics—Part II, 1972, Ministry of Finance. I shall give revenue also. For above Rs. 2 lakhs income they constitute : 1 per cent. But revenue is 18.6 per cent. That is where you have to concentrate. I find there is a section in Bill which says that if it is more than Rs. 1 lakh some special deterrent punishment may be given. Considering the revenue this type of assesseees give, concentrate your attention more on them. The higher rate of taxation on them acts as a disincentive. They do not require money for any other purpose than to pay tax.

SHRI VASANT SATHE: Are you aware that in Hongkong the level of taxation is lowest. It is only 15 per cent. So there is no evasion of taxation there. Here in our country, the highest the rate, the more the evasion.

SHRI T. V. VISHWANATHA AIYAR: The higher rate on higher incomes is there. There we have to concentrate considering the revenue they give. It is to be taken in the totality. I cannot talk in air.

SHRI VASANT SATHE: In other words, you say reducing higher rates will not solve the problem.

SHRI T. V. VISHWANATHA AIYAR: No. It is one suggestion.

MR. CHAIRMAN: Come to the provisions of the bill.

SHRI JYOTIRMOY BOSU: What is your impression about present tax machinery and the procedures that are adopted, for example, settlement procedure.

MR. CHAIRMAN: The witness may connect it with the provisions of the bill. We will come to Clause 6.

SHRI T. V. VISHWANATHA AIYAR: In clause 6, substantial contribution with reference to charity is stated to be Rs. 5000. Rs. 5000 is a small figure.

Coming to Clause 12, it says "Every person carrying on any business or profession shall keep and maintain such books and accounts as will enable the Incometax Authority to determine the taxes payable by him and the exemptions etc." I want a slight amendment to that. In Clause (2) of the said clause, it is mentioned the department can specify the nature of the books and the other things. Therefore, I want the same principle to be adopted in the main Section itself. I suggest the addition of the words, 'as specified in sub-section (2)'.

MR. CHAIRMAN: The Committee does not seem to view that seriously. The burden cast on the Board may be given by way of a direction. Basically, what is required is honest and truthful maintenance of accounts. I am telling you this after hearing various witnesses. How would you react if power were only to give some sort of guidelines. Otherwise, it should be your option to maintain truthful and honest accounts in accordance with the recognised accountancy principles.

SHRI T. V. VISHWANATHA AIYAR: Section does not say so.

SHRI ERA SEZHIYAN: You should start with all the basic forms even with the working of the Bill. My point is, sub-section could work independently.

MR. CHAIRMAN: The prescribing part can wait. But, would you want the Board to prescribe?

SHRI T. V. VISHWANATHA AIYAR: It is stated here that such books of accounts and other documents to enable the Incometax authority to determine. Therefore, the responsibility of maintaining is thrown on the assessee, and the responsibility of judging is thrown on the department.

On that there is a lot of difficulty. The assessee would say his books are right, and the department might say, the assessee has not kept it right. The Board desires specific forms and they take the consequences of prescribing. Therefore, do not get out of that.

MR. CHAIRMAN: I have said, Board should be out of it. We do not want to put unnecessary responsibility. Board can give only guidelines. Those in the urban areas can have their own assistance. But, what is necessary is compulsory maintenance of accounts. What is your next point please?

SHRI T. V. VISHWANATHA AIYAR: Clause 14 (Section 64); I am not against this provision at all. Suppose on a birthday a man gives Rs. 1000 that should not create trouble. Ordinary birthday presents which is common in a Hindu family must be taken note of.

MR. CHAIRMAN: That also we are considering from the point of view of administrative difficulties.

SHRI T. V. VISHWANATHA AIYAR: Then, Clause 25. This relates to expenses for tax. Rs. 2000 is too small a figure.

MR. CHAIRMAN: Every one has made that point before us.

SHRI VASANT SATHE: Would you suggest some figure?

SHRI T. V. VISHWANATHA AIYAR: Whatever is reasonable according to the Income-tax officer.

SHRI VASANT SATHE: That would again vary from Officer to Officer. Would you like some figure to be put in the Act? When we say Rs. 2,000, what would you like the figure to be? -

SHRI T. V. VISHWANATHA AIYAR: I would say, whatever is reasonably incurred. Something, as reasonable as in the case of remuneration.

MR. CHAIRMAN: We will take more considered view of the whole matter.

SHRI T. V. VISHWANATHA AIYAR: Clause 35. The section says reason to suspect. That is the expression which is coming in for the first time.

MR. CHAIRMAN: It is there in 132(1) (1).

SHRI T. V. VISWANATHA AIYAR: It is an additional sub-section and it is introduced for the first time. Secondly, in every case has reason to believe is a much stronger expression than reason to suspect. 'Notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Incometax authority' will be a matter something in the air with nothing before him. In other cases, reason to believe in the face of some proceeding or document or some information before it by reason of some information or omission. Now, you do not have anything before you''

MR. CHAIRMAN: We will ask the Ministry to explain that.

SHRI T. V. VISHWANATHA AIYAR: When no proceeding is pending before the Income-tax authority means he could not have any information connected with the case. That cannot be, proper way of administering this Act. If there is failure, certain remedies are there to the I.T. Department to enforce it by one way or other.

MR. CHAIRMAN: Is your apprehension by subjective consideration he should exercise the powers in 131(1)(1).

SHRI T. V. VISHWANATHA AIYAR: Unfortunately, 131(1)(1) is when proceeding is pending, whereas in this case, no proceeding is pending. That is the distinction.

MR. CHAIRMAN: This clause 1-A will be inserted below sub-section 131(1) which says of vesting powers, as are there in a court under the Code of Civil Procedure, in the I.T.O., in

the Appellate Commissioner, in the I.A.C., and Commissioner. It does not say as to when this is to be exercised.

SHRI T. V. VISHWANATHA AIYAR: In all these cases, it is exercised in relation to a proceeding, because, discovery, inspection, enforcing of provisions are all compelling procedures.

MR. CHAIRMAN: Would you please tell us where do you get in the Section that the proceedings should be pending.

SHRI T. V. VISHWANATHA AIYAR: It should be in relation to something which he has to exercise.

MR. CHAIRMAN: That is your interpretation. Can you cite some authority that they can exercise these powers A to D only when some proceedings are pending.

SHRI T. V. VISHWANATHA AIYAR: The powers are parallel and akin to a Court's power. A Court is seized of the matter only when something is pending before it.

MR. CHAIRMAN: You mean, when trying a suit.

SHRI T. V. VISHWANATHA AIYAR: That is exactly the point I am making.

SHRI VASANT SATHE: A Civil Court gets the power only when something is pending.

MR. CHAIRMAN: The idea is that so far as Assistant Director is concerned, the power is to be vested even if proceedings are not pending.

SHRI T. V. VISHWANATHA AIYAR: Assuming that you want to give that power, say, as in other cases, 'By reason of something done by the assessee'.

MR. CHAIRMAN: If I have understood you, then, it will have to be where he has not only reason to suspect, but where he has reason to believe.

SHRI T. V. VISHWANATHA AIYAR: Then, omit the last two lines. 'notwithstanding no proceedings

with respect to such person or class of persons are pending before him or any other Income-tax authority.'

MR. CHAIRMAN: This will apply only to 131(1A) and it will not govern sub-section (1).

SHRI T. V. VISHWANATHA AIYAR: They want something they cannot do in it. That is why, I am harping on my point.

MR. CHAIRMAN: If it is the deliberate intention of the law-makers that so far as Assistant Commissioners are concerned, the power should be vested in him even if no proceedings are pending, what is your suggestion?

SHRI T. V. VISHWANATHA AIYAR: Your intention may be there. While it is good, I understand the intention. That is why I object. You want something which is extraordinary which is not found in any other matter. That is why I am mentioning this point—before introducing such items two things are required. Now, it is even without a paper—'suspicion'. It should be 'reason to believe'.

MR. CHAIRMAN: You are saying for that class of persons you want this to be deleted and 'reason to suspect' should be made 'reason to believe'. 'Something in possession or power'.

SHRI ERA SEZHIYAN: There may be a case pending against him. During the course of proceedings some information may be given. Issue notices to B, C. Technically it may not be there. In these cases, what are you doing?

SHRI T. V. VISHWANATHA AIYAR: I just want two things to be done. Some record should be made that 'there is some information before him', whether it relates to A, B or C. That is the first safeguard. That is why I say, it should be "reason to believe".

SHRI VASANT SATHE: Supposing we make 'reason to believe' then?

SHRI T. V. VISHWANATHA AIYAR: Then, I have also suggested, as in other cases Sects. 147, 131(1), kindly

see 132—please see the next section—that itself will show why it is safeguarded—“Where the Director of Inspection or the Commissioner, in consequence of information in his possession has reason to believe”—it is in the section itself. I want the same section to be here.

SHRI VASANT SATHE: The whole performance of the section is clear. Here we don't have a suit pending. “Where he suspects something in relation to another assessee about whom there is no suit pending”—I agree, that is ‘reason to believe’. There is some information; if that is enough, if yet no suit is pending, why should action be not taken? I want the entire aspect. The purpose will be defeated if the section is not there.

SHRI T. V. VISHWANATHA AIYAR: I will explain the matter in two ways. If you want the provision willy-nilly, there is no answer. Your object is to keep the section; whether it is good or right, I am trying to answer. Your purpose is not honest, is not enough. Therefore, the question now is whether for instance, ‘circumstances’ is made clear. This is clear. It is a case of working up, actual implementation. “Where the Director of Inspection or Commissioner in consequence of information in his possession, has reason to believe”—that is the way in which the framing of the section is. Sec. 147 and 270(a)—it is like that. It is not merely reason to believe. Apart from reason to suspect the individual—alright, my point is—if in the case in consequence of information in his possession—not pending proceedings. Therefore, if you say: “in consequence of information in his possession has reason to believe”—it will be right. I have nothing more to say.

SHRI VASANT SATHE: Then, that clause need not be there?

SHRI T. V. VISHWANATHA AIYAR: Once you get the information. Same thing you are recording it. It is not justiciable.

MR. CHAIRMAN: According to you, that is not justiciable?

SHRI T. V. VISHWANATHA AIYAR: That is not justiciable.

MR. CHAIRMAN: If he has given the ‘reason to believe’, he can exercise the power. Then the non-obstante part is otiose. That does not matter. Please come to the next.

SHRI T. V. VISHWANATHA AIYAR: About Clause 36, I would like to say one thing. It is purely drafting affairs. It is agreed in Note 5 that it is rebuttable presumption. i.e., Clause (d) sub-section 4(A). “Where any books of accounts or other documents. . . etc’ are found in the possession or control of any person in the case of search, it may be presumed”—Now the point is, you yourself agree that it is only rebuttable presumption. Kindly put in a clarification at the right place. It is not an irrebuttable presumption.

MR. CHAIRMAN: Evidence Act may presume, you record a fact unless and until it is disproved.

SHRI T. V. VISHWANATHA AIYAR: That is why I am trying to suggest, ‘search unless proved to the contrary’—it may be presumed. I am not introducing anything new. It is to making it clear.

MR. CHAIRMAN: It will only make express what is implied.

SHRI T. V. VISHWANATHA AIYAR: In a case where it is something in favour of the assessee, it should be made clear.

MR. CHAIRMAN: That is your view of the matter.

SHRI T. V. VISHWANATHA AIYAR: The second point is, ‘possession or control’. Now, suppose a Clerk is in possession,—you can draw any presumption against the owner; it is a matter you want to draw presumption; it is open to prove or disprove. But ‘possession or control’—both expressions are there. Suppose, a *Gumastha* has got it, is it to be drawn

against him? Therefore let us say 'against whom' it is to be drawn—because it is stated in 4(A) "in regard to a search it may be presumed it belongs to such person". That is why I am making a point. What I am trying to point out is, suppose a servant is there, the burden is thrown on him.

MR. CHAIRMAN: Either the owner or a person in possession.

SHRI T. V. VISHWANATHA AIYAR: Unless proved to the contrary. Therefore, nobody is prejudiced on that. Therefore it is another reason why I am asking this.

MR. CHAIRMAN: We can add 'owner or person in possession'.

SHRI BHAGWAT JHA AZAD: We will say, "if other person is in possession, against him also".

MR. CHAIRMAN: It is a special rule of evidence being made clear.

SHRI T. V. VISHWANATHA AIYAR: I am not against any Rule. But, do you want to do against the rule. That is the first thing. I am not against it. Let us be clear. But what I am trying to mention is by this method, once you draw a presumption that it belongs to the agent, you are necessarily leaving off the owner. That is not right.

SHRI VASANT SATHE: Therefore, you say the words "unless proved to the contrary" should be there. It will save everybody.

MR. CHAIRMAN: If you read the whole section, that person who is in possession or control, that he is not the owner, belongs to such a person. That is the whole scheme of the section. "Where books of accounts, documents, money, bullion or other valuables are kept or is found in the possession or control in the course of search it may be presumed . . . belongs or belong to such persons. The presumption is created with reference to possession and control.

SHRI VASANT SATHE: Therefore, he says if you add by way of abundant caution 'unless proved to the contrary', whatever little scope of misconception there may be, will be covered.

SHRI T. V. VISHWANATHA AIYAR: That is one matter. Please take Cl. 71. You can kindly see subsection 276(c)(ii)(2) and then see 'Explanation'. For the purpose of this section, "If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest chargeable or impossible under this Act, shall include a case where any person has in his possession or control any books of accounts or other documents" . . . etc. Now, it is treated as if it is an attempt to evade any tax—by that person. The use of the word 'possession or control' it does not bring out what you seek to do.

MR. CHAIRMAN: Section 276C reads—

"276C. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or impossible under this Act, he shall, without prejudice to any penalty that may be impossible on him under any other provision of this Act, be punishable,—

- (i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months:

- (ii) in any other case, with rigorous imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest chargeable or impossible under this Act, he shall, without prejudice to any penalty that may be impossible on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which may extend to three years and shall, in the discretion of the court, also be liable to fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than three months.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or impossible under this Act or the payment thereof shall include a case where any person—

- (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
- (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or
- (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
- (iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or impossible under this Act or the payment thereof."

Now what do you say....the explanation to be expunged?

SHRI T. V. VISHWANATHA AIYAR: You now kindly see, Sir, whereas

Clause (iv) gives any circumstance to exist—it will have the effect of evading any tax—is specifically mentioned.

MR. CHAIRMAN: An Accountant will fall into this, if he is not the party.

SHRI T. V. VISHWANATHA AIYAR: That is the whole trouble.

MR. CHAIRMAN: Section 276C. We will consider. An Accountant in control of books, he may not be guilty. That is alright. We will consider this.

SHRI T. V. VISHWANATHA AIYAR: In fact I want to make one other point and that is this. The Wanchoo Committee has not said about this, the rebuttable presumption and the way in which it is mentioned. But the framers of the Bill have included it.

MR. CHAIRMAN: We will certainly look into this. Others have also pointed about this.

SHRI T. V. VISHWANATHA AIYAR: Then I go to the next item, that is, clauses 71 and 72 which go together. Here the punishments are very deterrent. Therefore, it is necessary some time should be allowed to elapse, before actual implementation. That is, it should take effect after one or two years. People will have to take care of it.

MR. CHAIRMAN: You will see that the limit fixed is Rs. 100,000 and do you want such people should be given time?

SHRI T. V. VISHWANATHA AIYAR: You are thinking of the people in higher slabs. I am thinking of smaller people. Because this refers to imprisonment, there should be some consideration and time allowed.

MR. CHAIRMAN: There is a Proviso. However, in sub-clause (ii) we will consider whether the words 'if it is done wilfully' could be added.

SHRI T. V. VISHWANATHA AIYAR: I will say one word in general. The whole purpose of this legislation should be that as many good assesses as possible should not be made to suffer because of one hundred bad persons. Therefore I request that some consideration should be shown.

MR. CHAIRMAN: I appreciate it. A warning or something may be given in the first instance in desirable cases.

SHRI T. V. VISHWANATHA AIYAR: In the same section, there is reference to false entry or statement in books of account or other documents. There may be erroneous entries also and two entries may cancel each other and there may not be tax effect.

MR. CHAIRMAN: You are making a hypothetical argument.

SHRI T. V. VISHWANATHA AIYAR: What I am trying to say is that the punishment should be measured according to the gravity of the offence wilful and deliberate. Innocent persons should not be punished.

MR. CHAIRMAN: The courts award punishment as 'till rising of the Court'.

SHRI T. V. VISHWANATHA AIYAR: But in this Bill, you are fixing the quantum of punishment. You say minimum of three years. It should be more reasonable.

MR. CHAIRMAN: We will consider.

SHRI T. V. VISHWANATHA AIYAR: Next I come to section 75. Here the limit to tax payable is Rs. 5,000 and the value of the property is 10,000. But in these days of high cost this is very small. I have suggested that the amount be increased to Rs. 25,000.

MR. CHAIRMAN: I want to ask you one question. Supposing a person has property, assessment is pending and tax liability is not fastened, the property is mortgaged to a Bank, what will be the position of this Legisla-

tion. I want to know whether a section like this is workable? Will the right of a bonafide purchaser, before a tax liability is fastened be prejudiced by a law like this?

SHRI T. V. VISHWANATHA AIYAR: It should not affect.

MR. CHAIRMAN: Is it 'it should not' or is it 'it cannot'?

SHRI T. V. VISHWANATHA AIYAR: I should think it should not.

MR. CHAIRMAN: Will it be too *intra vires*?

SHRI T. V. VISHWANATHA AIYAR: I am coming to that point. It is open to a court or any other stature to say that taxes are the first charge like land revenue. I am not saying it cannot be *intra vires*. It is possible it is *intra vires* though it does not come under civil law. Under this Bill it will come.

MR. CHAIRMAN: It takes note of two conditions. It is not with a view to defraud the same liability which may come in future. But if it is for adequate consideration with notice, the assessment made every time would be pending.

SHRI T. V. VISHWANATHA AIYAR: That is why I am mentioning this point. You cannot rope in too many transactions. My anxiety is the tax should not go, and the man should not cheat. But you cannot make small transactions also involved in this.

MR. CHAIRMAN: We will consider it.

SHRI T. V. VISHWANATHA AIYAR: The rest are all merely consequential. There is one other point, clause 99, Wealth Tax evaluation. What is stated is this. I am now reading Clause 99 section 18, explanation 4.

MR. CHAIRMAN: I have understood what is your objection going to be. The variations by themselves will not bring to the department what was contemplated by the *bona fide* evaluation.

SHRI T. V. VISWANATHA AIYAR:
I have also said the same thing. If it is properly drawn up, it is all

right.

MR. CHAIRMAN: Thank you very much, Mr. Aiyar.

(The witness then withdrew).

II. Andhra Pradesh Tax Bar Association, Hyderabad

Spokesmen:

1. Shri M. A. Mohiuddin
2. Shri Y. V. Anjaneyulu
3. Shri Keshavlal Adhia
4. Shri P. Vanugopal

(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 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." Please proceed.

WITNESS: At the outset, I would like to thank you for this opportunity to appear before the committee and give our memorandum. As you would see from the memorandum, the first point is with regard to clause 3 of the Bill. Clause 3 of the Bill seeks to introduce a new clause (29A) to Section 2 wherein a "minor child" is defined as including a step child and an adopted child. We feel that there are some practical difficulties. A man may have divorced a woman or he may have died or married a widow. The late father of the child may have made some arrangements for the child. That step-child may not be with the present mother. This will cause difficulty in a genuine case.

MR. CHAIRMAN: Without being responsible for producing the child and without responsibility for giving anything, this is a liability.

WITNESS: There may be a case where the father of the step child may have left. It may be a case

where the woman divorced getting remarried to another person, in which case the liability is to be made quite clear. As the natural father, this man also is treated as liable. There is no provision for deletion in either case.

SHRI VASANT SATHE: All 'steps' should be removed!

WITNESS: Double taxation must be avoided. It must be clubbed with the father who has the larger income and not with the one who was responsible for generating the income.

Clause 5 of the Bill introduces an explanation which provides that where the income derived in any year is not received in that year, then the person can exercise the option whereby the income to be applied in the year of receipt by option may operate. There is one difficulty about the exercise of the option. The exercise of option is to be made before the 30th of June of the assessment year. May I respectfully invite the hon. members attention to the instance which we have mentioned in our memorandum. For instance, a trust derives an income of Rs. 1,00,000 in the assessment year 1973-74 of which only Rs. 50,000 has actually been received. Let us assume the non-receipt of the balance of Rs. 50,000. The trust is unable to comply with the requirements of the investment of the income for charitable purposes or in approved securities. It may be assumed that this sum of Rs. 50,000 has not been received in the previous year and received in the assessment year

1975-76, whatever may be the reasons for it. The new explanation provides that by a fiction so much of the income which is applied to charitable purposes in the year of receipt out of the balance sum of Rs. 50,000 shall be deemed to be income applied for charitable purposes in the previous year in which the income was derived. I do not know how to exercise this option. I file a return. In the first place, I do not know when this income will be received. Then, I do not know what will be the extent of income which will be received.

MR. CHAIRMAN: You may not be aware of the precise amount.

WITNESS: It is only to the extent of the income I have received I can specify.

The explanation on page 3 of the Bill says—

“(b) for the Explanation, the following Explanation shall be substituted, namely:—

“Explanation.— for the purpose of clauses (a) and (b),—

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of seventy-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in

India during the previous year immediately following as does not exceed the said amount—”

The said amount means, the annual amount—

“may at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1)....

The explanation does not state a blank cheque option is to be exercised. It has specific reference to so much of the income as has arisen in a year. In a subsequent year that option cannot be exercised. Unless I know what is that “so much”, I cannot exercise the option for the assessment year 1973-74.

MR. CHAIRMAN: This is ambiguity in drafting. It should be made clear to enable the exercise of the option. We will consider this. It is only a question of removing the ambiguity.

WITNESS: It must be made very clear. There are analogous provisions in the Income Tax Act. Later on when the asset is sold, it is brought within the purview of section 155. If sold within a period of five years, the same provision can be made clear. I shall spend the income which I receive. If I do not spend that will be my own mistake.

MR. CHAIRMAN: Mr. Anjaneyulu, it would be useful if you give us a precise draft. This ambiguity must be removed.

WITNESS: I shall do so.

In Clause 6, in section 13 of the Income-tax Act, in sub-clause (1) (a), it is proposed to remove the words “created or established after the commencement of this Act” with reference to the particular trusts created for the purposes of the religious community.

MR. CHAIRMAN: We have had so much evidence. We have your

evidence also. The committee is seized of the matter and is considering that the religious trusts, which came into existence, after 1-4-1962, should not be denied the benefits of the Act. You go to the next point.

WITNESS: The next point is with regard to clause 12 relating to compulsory maintenance of accounts. Our submission is that the turnover of Rs. 2½ lakhs is too meagre. We suggest that the limits of annual income and the turnover should be made cumulative instead of alternative.

MR. CHAIRMAN: Sometimes one may have a turnover of Rs. one crore and still there may be a loss. It will not have to be cumulative, but it will have to be alternative. You can suggest what should be the reasonable turnover.

WITNESS: According to us, it should be not less than Rs. 5 lakhs.

MR. CHAIRMAN: Is it all right for professionals? There is no limit fixed for professionals.

WITNESS: We do not agree. The same limit should apply to them.

Now I come to clause 14. There is already provision in the I.T. Act to deal with cases where the payment of salary to a spouse is considered unreasonable or disproportionate to the qualifications. We therefore feel that clause 14 is redundant and superfluous. This will create hardship and will create friction. A wife may be fully qualified and she may work in her husband's concern. There should be nothing wrong about it.

SHRI VASANT SATHE: We do not want to be unnecessarily harsh to the wives!

SHRIMATI SHEILA KAUL: I will look after that.

WITNESS: Let me now come to Clause 25 of the Bill. That relates to us directly. This restricts the expenses that a person can incur in prosecuting tax proceedings to Rs. 2000 which, in

these days, is unreasonable considering the amount of litigation to which a person is put. In fact, there are provisions now making for compulsory audit wherein he will have to pay considerable fees. Rs. 2000 is hopelessly inadequate.

MR. CHAIRMAN: We will consider that.

WITNESS: We now come to Clause 26. This proposes to extend the provisions of Section 104 to Industrial Companies also.

MR. CHAIRMAN: We are considering that question. All the Federations and Chambers have represented to us and the consensus appears to be that we should not do anything which would be anti-production.

WITNESS: Clause 38 gives powers of inspection to Inspectors of Income-tax Department to inspect books of accounts, stocks, cash etc. We feel that this is likely to be abused and abused badly. Our experience has been that this kind of powers with the Inspectors will lead to large-scale corruption and maladministration. That is our considered opinion. Such powers should be exercised by the Incometax Officers with the approval of the Asstt. Incometax Commissioner.

MR. CHAIRMAN: Do you mean to say that even delegation of power is risky.

WITNESS: Yes. It must be in the hands of senior and more responsible officers.

MR. CHAIRMAN: If you read Sec. 133A, you will find that the power is delegated only for limited purposes. Do you think that even for such limited purposes it is likely to be risky?

WITNESS: We feel that it should be under the authority of more senior officers.

SHRI VASANT SATHE: Cannot the Income-tax Officer take the assistance of an Inspector. The delegation is

only for the purpose of inspection and not for taking decision.

WITNESS: We feel that he should take the prior approval of the Asstt. Income-tax Commissioner at least. Our fear is that this power may be abused if it is not restricted.

MR. CHAIRMAN: It is a question of administrative difficulties, finding sufficient men and time. We will certainly consider your views. We do not want people to get offended and we must generate public confidence.

WITNESS: Now we come to clause 39. Firstly, this clause imposes a financial burden on the assessee without giving them any corresponding benefit. There is no guarantee that if the accounts are compulsorily audited, it would automatically bring about the acceptance of the return. Further, the unrecorded transactions, which are outside the books, will not come within the purview of compulsory audit. We do not have statistics as to how many assesseees there will be, who are affected by the turnover of Rs. 5 lakhs.

MR. CHAIRMAN: It has been done to ensure that the assesseees are such as can easily find an Auditor to audit their accounts. The existing limits do not appear to be realistic Rs. 50,000 may be all right. Rs. 5 lakhs is too low.

WITNESS: If it is considered that compulsory audit of accounts should be made, it should be made applicable only to cases of suspected tax evasion involving income of more than Rs 50,000. You can extend it later on.

I now come to Clause 46. We welcome the measure to impose a time-limit to dispose of an application. Previously there was no time-limit. There is no provision as to what will happen if the Income-tax Officer fails to dispose of within the time allowed under Section 146(1). In that case, the assessment made under Section 144 should be deemed to have been set aside.

MR. CHAIRMAN: If the application is not disposed of within 30 days, the

assessee must point out to the officer concerned. He must dispose of it within 7 days. Then it may be taken to have been withdrawn. We will ensure that the 30 days limit is made to work effectively and apprehensions in the minds of assesseees are dispelled.

Let us also know what would be the better alternative, of course not saying that if ITO did not complete within 30 days limit it should go in favour of assessee.

WITNESS: We will suggest a revised draft.

Now I come to Clause 54. In the explanation it is said—

“Explanation—For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to pay any penalty under this subsection merely by reason of the fact that before the levy of such penalty he has paid the tax.”

Our submission is that in the case of late payment of tax, the Central Board of Direct Taxes has imposed an interest rate of 12 per cent. He has to pay the interest. Penalty is not an additional source of revenue. It is only a deterrent. If he delays in payment, the interest for the period of delay has to be paid. It is at 12 per cent. Then why do you say again there would be a penalty.

SHRI VASANT SATHE: It cannot be *ad infinitum*?

SHRI ERA SEZHIYAN: Suppose he has not paid for 12 years.

WITNESS: For non-payment let there be penalty. We do not object. Here he had paid already. It is late payment. He pays interest. Why should there be again penalty? If it is delayed by 12 years, it means ITO is inefficient. Do not have inefficient Income-tax Officers.

SHRI BHAGWAT JHA AZAD: It is not a compliment to inefficient ITO. It is a compliment to the assessee who has allowed the thing to drag for 12 years.

MR. CHAIRMAN: According to existing law, no penalty is leviable un-

less an opportunity is given to assessee to be heard. The assessee does not pay the tax. The moment 'notice' is given, he pays tax. Till then he does not pay. Therefore Wanchoo Committee stated that we would dispense with this requirement of giving notice. They said that the fact that he has paid the tax will not exonerate, him exculpate him of the penal provisions. That is what is sought to be done here. It is only to inspire the facile working for the department where an opportunity to be heard given —to the assessee is used as a devise for failing to pay tax.

WITNESS: If he delays for 10 years, he pays 120 per cent interest.

SHRI VASANT SATHE: What should be the reasonable time? If it is a month, all right. Merely saying that he would pay interest and therefore penalty should not be there, is not correct.

WITNESS: In Clause 60 appeals and tax payment are sought to be linked.

MR. CHAIRMAN: If it is disputed income, you need not pay. You have not objected there. It is there by way of abundant caution.

WITNESS: There is penalty for non-payment. But why should his right of appeal be barred.

MR. CHAIRMAN: Take the case of speculator. After some time, he might have lost money and he might not be in a position to pay tax. He will be covered by the proviso. Experts have been coming and stressing the point before us. If you can point out a single instance wherein you could say that hardship will be caused because of this, then we will consider it.

WITNESS: But this is subject to the discretion of the Appellate Assistant Commissioner.

MR. CHAIRMAN: Is the discretion judicial or arbitrary.

WITNESS: Of course judicial. We have provisions for appeal.

MR. CHAIRMAN: Then what?

SHRI BAGWAT JHA AZAD: 'Discretion' should be used with discretion.

WITNESS: Now we come to settlement under Clause 58. Now we are giving statutory recognition to what were non-statutory settlements before. What we say is the basic principle of Wanchoo Committee should be accepted. There should be the association of non-officials; It is not as if we say that officials are not doing good work.

MR. CHAIRMAN: All right.

WITNESS: Section 245D seems to be in conflict with Section 245K. Under Section 245D there is ouster of jurisdiction of Settlement Committee once the concealment or fraud is established. But 245K says—

"Where:

(i) an order of settlement passed under sub-section (4) of Section 245D provides for imposition of penalty on the person who made the application under 245C for settlement, on the ground of concealment of particulars of his income etc....

That pre-supposes that in case of concealment of income, it is open to the Settlement Committee to direct imposition of penalty. That would conflict with ouster of jurisdiction.

MR. CHAIRMAN: The two things are different. 245K speaks of concealment or fraud found in the course of proceedings before the Settlement Committee. First deals with concealment or fraud before the Settlement Committee is seized of the matter. 245D presupposes the establishment of concealment or fraud before the matter has come to Settlement Committee. Section 245K speaks of concealment during settlement proceedings.

WITNESS: If that is the interpretation we agree. Then the Sections have to be changed. I shall send a revised draft.

MR. CHAIRMAN: Please do.

1

WITNESS: Hon'ble Members of the Committee may bear with me when I point out that establishment of concealment of income, after all, may be a matter for judicial reviews. How does the ouster of jurisdiction operate? For instance, review petition makes a claim before the Settlement Committee.

MR. CHAIRMAN: That is a very valid point. Would you suggest suitable amendment clause for it. By way of some explanation that 'concealment being upheld by a Tribunal or High Court' would have to be thought of.

WITNESS: It may be a matter right upto the Supreme Court. When we talk of Settlement Committee there should be no ouster of jurisdiction at all.

MR. CHAIRMAN: One clear concealment is where penalty is levied and the assessee pays the penalty. That is conclusive.

WITNESS: Normally those cases would occur once in a way. But, Hon'ble members are aware that seldom arises.

SHRI VASANT SATHE: As long as the factum of concealment is in dispute, by whatever legislation we propose to bring about ouster of jurisdiction, that should not operate as a bar. Is that your point?

WITNESS: If concealment is established by an order which has become final, that acts as an ouster. So long as it is in adjudication by a court of law, that should not act as an ouster.

MR. CHAIRMAN: How to make sure that a person who is a habitual delinquent should not be given the benefit? Would it not be better we leave it to the Settlement Committee itself to decide whether he is a type of assessee in whose case there is *prima facie* proof or evidence of concealment in earlier periods. There he should be debarred. Obviously, so far as jurisdiction is concerned on all consideration of this matter, it

will be a preliminary point for adoption of jurisdiction. Whether there is *prima facie* concealment, every person will keep on fighting upto Supreme Court level.

WITNESS: It is not that easy. litigation is very expensive. Very few people go to Supreme Court after Amendment of Sec. 133. My submission is, 'so long as the matter is *sub judice*' may be added, if, however, it has become final, then it acts as an ouster. That is where dividing line should be drawn. If discretion is given to the Settlement Committee, there may be a dual authority to adjudicate on that point. One is the Tribunal and another is Settlement Committee.

MR. CHAIRMAN: You are right.

SHRI VASANT SATHE: In fact, would you suggest that we should encourage assessee who are having matters in dispute before the Tribunal to come to the Settlement Committee.

WITNESS: Then on the question of penalty. Whether the penalty is 20 per cent or 15 per cent or even 10 percent, let there be provision or adjudication. After all, it is a Revenue Department and this Chapter is founded on that principle.

MR. CHAIRMAN: We will consider that suggestion.

SHRI VASANT SATHE: Settlement does not take away the possibility of penalty.

WITNESS: In fact 245 K says that can be a subject matter of Settlement.

SHRI VASANT SATHE: That is a good suggestion.

WITNESS: Clause 64 makes amendment to Sec. 271 in the matter of explanation (1) to Sec. 271. Any explanation which is found to be false by the I.T.O., or the Dy. Commissioner (Appeals) is treated as the concealed income.

MR. CHAIRMAN: We looked into that. It appears that at the moment, no addition is made in quantum that by itself will conclude. We will look into that matter, if otherwise there is no effective concealment. Deliberate concealment as such of particulars of income, will have to be taken care of.

WITNESS: Explanation 3 also brings about a fiction regarding concealment of income upon failure to make a return within the time stipulated. Notice under Sec. 148 is provided or, and the penalty is sought to be levied by teaming the delay as concealment of income. This we feel is harsh, because, there are provisions for levy of penalty, levy of interest and several other things for delay in filing of returns. By this explanation, there may be cases where the tax and penalty would far exceed the quantum of income itself.

MR. CHAIRMAN: What is harsh? If he does not file a return without a reasonable cause, we want to bring in 271(1)(c). Delay in filing return was simple as it were. Can't you imagine situation where a person does not file a return purely to conceal his income. Are such cases unknown? If there is reasonable cause he gets out of 271(1) and also 271(1)(c); otherwise the presumption is created.

WITNESS: The words 'deliberate' does not appear here. Only because he fails to file a return within the time limit prescribed, is there. Mere ignorance of law and other things and negligence also is not excluded here.

MR. CHAIRMAN: Are you inclined to say that, by itself it becomes more stringent than 271(1)(ac) as it exists.

WITNESS: This is an automatic consequence.

MR. CHAIRMAN: By the very scheme it will have to be like that when one does not file a return or guilt has to be found. 'Deliberately failing to file a return not there, but 271 (1)(a) is also 'reasonable cause'. You must understand that 271(1)(c)

is concealment of income where return is filed and the amendment proposed is creating presumption, fiction of concealment where return is not filed, and return not filed without reasonable cause. This is applicable only to those who have not been assessed. How do we get large number of people just kept outside the net of taxation, realise their responsibility? I think, same such provision is salutary, because only honest people carry the burden and others manage to remain outside the net of taxation.

WITNESS: It so happens, particularly, industrial group even for a delay of 2 years, the quantum of interest and taxes exceeds the income, and as per this provision, it may amount to two or three times the income.

MR. CHAIRMAN: You are on the quantum, but so far as principle is concerned I do not think you have made out any case for this conclusion not being drawn.

WITNESS: About maximum limit of penalty, earlier there was 50 per cent of the tax for the delay in the submission of return. Now "50 per cent" is being deleted whereby it becomes unlimited quantum of penalty. We feel '50 per cent' or existing provision should be retained, or some other maxim should be prescribed if '50 per cent' is considered to be lower. Then, I came to Clause 67, i.e., 273(A). We welcome this provision in as much as statutory recognition is being given for administrative powers being exercised presently by Heads of Departments by Commissioner of Income Tax. The words used only refer to say or composition or waiver of penalty. We want this facility to be extended to items like 'interest' 'fine' and also 'tax'. I think, it was an unintended omission. We feel that facility should be extended to tax, interest and fine.

MR. CHAIRMAN: We will consider that. The Wanchoo Committee has stated the existing provision may

be deleted, and the new amendments proposed does not take in all that was recommended by Wanchoo Committee Report is your point. You may please offer your own amendments, by a supplementary memorandum.

WITNESS: Then, I take up Clause 71. ie., 276(c) whereby wilful attempt of abetment is supposed to include possession of any record or documents containing false entries or statements.

MR. CHAIRMAN: This we will consider. (1) may be deleted. Clause (iv) will take care of all the abettors—is it not? This particular provision of mere possession of documents and records should be deleted. It is only pleaded that Accountant or Advocate should not get into difficulty or more possession of books containing false entry. You may make this clear in your supplementary memorandum, and suggest a redrafted clause.

SHRI VASANT SATHE: Shri Viswanatha Aiyar, Advocate who gave evidence earlier, made this point. He suggested 'unless otherwise proved' if added will take care of this contingency. We will consider that.

WITNESS: Only 2 provisions left. Clause 75 of the Bill creates a friction. When any proceeding is pending, any transfer of assets of the value exceeding Rs. 10,000|- is void. Hon. Members will appreciate that at no point of time, a man having an asset of over Rs. 10,000|- keep his proceeding pending. Already there is an existing provision with regard to properties worth more than Rs. 50,000|- to obtain clearance certificate under Sec. 230(A).

MR. CHAIRMAN: If it is for adequate consideration, then the rights of transferee are protected.

WITNESS : We are saying that it is 'or transfer of any assets the value of which is above Rs. 10,000|- shall

be considered to be void" by person in respect of whom any proceeding is pending—provided it is not for adequate consideration.

MR. CHAIRMAN: What about proviso? The proviso excludes such transfers for adequate consideration and without notice.

WITNESS: That creates hardship. You may have notice of pendency; but it ought to be or adequate consideration, bonafide, every one will have some proceeding pending.

MR. CHAIRMAN: You are on the proviso. It is alright.

WITNESS: Clause 86 of the Amendment Bill. It seeks certain amendments to Wealth Tax Act. Some provisions which are otherwise considered to be quite valid are now taken out of the purview of the 'gifts'. Where of course it is not bona fide transfer, we have no grouse. But merely eliminating all kinds of book entries, it will create grave hardship. A person would like to settle his debt affairs...

MR. CHAIRMAN : You can't gift by Book entries. Can you?

WITNESS: If the proposed amendment is passed, we can't.

MR. CHAIRMAN: Actionable claim itself? I create an actionable claim by giving it.

WITNESS: That is now not recognised.

MR. CHAIRMAN: You say that debt is now considered; after this it will not be considered and that will create grave hardship.

WITNESS: The proviso could be 'if the book entries show bonafides'.

MR. CHAIRMAN: Book entry is a device. Even after 2 years, you make book entries and be done with it.

WITNESS: With the existing provisions of filing Tax Returns, compulsory Audit and other things, I think, it will be possible.

MR. CHAIRMAN: We will consider.

WITNESS: Then, transfer to 'step-child' with regard to income tax provisions...

MR. CHAIRMAN: The same in Wealth Tax. It will be added twice.

WITNESS: The last point is about 'aggregation of gifts'.

This is again sought to be re-introduced. I think it was abandoned as impracticable in the past. It will only create hardship.

MR. CHAIRMAN: We will consider. Thank you very much. We will look forward to your supplementary memorandum.

(The witnesses then withdrew.)

III. Raja Charity Trust, Madras. Spokesmen

1. Shri P. R. Ramasubramania Raja, Managing Trustee.
2. Shri S. N. Ramakrishna Raja, Chartered Accountant.
3. Shri M. Sanotham, Chartered Accountant.
4. Shri N. K. Srikanta Raja.

(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 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." Please proceed.

SHRI P. R. RAMASUBRAMANIA RAJA: Hon'ble Chairman and Members of the Committee. We have already submitted our Memorandum regarding certain provisions proposed to be amended in the new Taxation laws (Amtd.) Bill. Actually there are two provisions to which we want to draw your kind attention. One is Section 13(bb)—it tries to tax the income, profits of the Trust; and also the investments under Section 13-A. These are the two sections in which we are directly interested. This Raja Charity Trust has been started in 1951 and running educational institutions, provides relief for medical and other

charitable causes. It also empowers us to run certain business and other activities to supplement and to have income for the Trust. We have been carrying on this for the last 25 years, only in the last 3—4 years, we have some income, by way of Sole Selling Agency and B.O.C. agency. We are supporting many institutions like our Polytechnic and we have recently donated for a big Hospital and we are running many elementary and nursery schools and all that. This section, we are afraid, will make us liable to be taxed, with the result our income will be much reduced. So, our submission is either this clause may be suitably amended or deleted.

MR. CHAIRMAN: From this trading activity, are you presently exempt?

SHRI P. R. RAMASUBRAMANIA RAJA : We are presently exempt.

MR. CHAIRMAN: If you carry on any business for the general public utility that is not charitable at all.

SHRI P. R. RAMASUBRAMANIA RAJA: The primary purpose of the Trust is not that. But in the Trust Deed, they have empowered to carry on the business, income of which will go to charitable cause. The sole selling agency moneys that are earned

by this commission as selling agency, is being canalised for charity.

MR. CHAIRMAN: Your activity is educational institutions, to give relief to the poor and medical relief—carry on business and divert the profit for educational purposes?

SHRI R. V. SWAMINATHAN: The entire profits go to the charity.

SHRI P. R. RAMASUBRAMANIA RAJA: We are donating to High schools, Polytechnic and other general purpose.

MR. CHAIRMAN: In that case, it would be examined. But if it is a general public utility which involves carrying on any activity of profit, it will be left out of it.

SHRI P. R. RAMASUBRAMANIA RAJA: 100 per cent we are donating for charity.

MR. CHAIRMAN: In our proposed Law, if it is kept as it is, then it will hit you. Is it?

SHRI P. R. RAMASUBRAMANIA RAJA: Yes. We are not investing the profits in our concerns. We keep the moneys in scheduled banks. There is no office of profit for the trustees. This is such a small trust. Our only submission is that such activities

IV. The Karnataka (Mysore) State Income-tax Practitioners' Association, Bangalore.

Spokesmen:

1. Shri G. B. Patil.
2. Shri P. K. Ramachandra Setty.
3. Shri P. N. S. Murthy.
4. Shri M. Srinatha Rao.

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

MR. CHAIRMAN: I may draw your attention to Direction 58 of the Direction by the Speaker which governs your evidence. It reads—

The witness 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

should not be crippled by the provisions of the Bill.

SHRI VASANT SATHEI: How much do you earn?

SHRI P. R. RAMASUBRAMANIA RAJA: Through our sole selling agency, we get Rs. 2 lakhs and the entire funds we donate to the charitable causes. We do not invest it in commercial concerns.

MR. CHAIRMAN: What was the gross income last year?

SHRI P. R. RAMASUBRAMANIA RAJA: It was 2.5 lakhs the net surplus. The disbursements were Rs. 2.53 lakhs we had drawn from previous years earnings. We do not have any reserves. Because we want to get more profits, we do not invest in Government securities. For the last 20 years we have been carrying on this Trust.

MR. CHAIRMAN: We will consider your request. But any law is likely to cause hardships even to Trusts like yours which is doing only legitimate and charitable activities. We will see whatever is possible to reduce the hardship and we will see what we can do. Thank you very much.

(The witnesses then withdrew)

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

G. B. PATIL: Our submission is only with reference to Clause 39 relating to compulsory audit in respect of assesseees other than companies where the turnover is Rs. 5 lakhs or where the income is more than 50,000 by Chartered Accountants. All these

50 years, assessee had the right of choosing their own representatives, from out of three categories of persons, Income-tax Practitioners, Chartered Accountants and Advocates. Now it is proposed to take away that right of the assessee and audit is to be done only by Chartered Accountants. That will hit persons in the other two categories.

MR. CHAIRMAN: Assuming that the right of audit is given to any one who is an expert in doing so and not confined to the Chartered Accountants only do you accept compulsory audit?

SHRI G. B. PATIL: If all the three categories, because of their qualifications and experience are allowed, we have no objection. We will accept it.

MR. CHAIRMAN: Now you say 'qualification and right'. This Committee has received representations from cost accountants, auditors of the cooperative department and others, even advocates that they be allowed to audit. Now this committee cannot sit in judgment and verify the expertise and say who is competent and who is not competent. The right forum to decide that is the Finance

Ministry. Speaking for myself, if proper tests are prescribed, anybody who passes such a test and subject to certain discipline, should be allowed and given the right of auditing. Now, coming to the limits, there is not too much of work forthcoming to the Chartered Accountants and therefore a higher level will have to be fixed. We will have to get the figures in regard to the number of practising Chartered Accountants and how many more are likely coming into the field and then we will have to fix some realistic limits and the result of that should be that assessee are not put to any hardships. That will have to be considered by us.

SHRI G. B. PATIL: The aim of this Bill is to unearth black-money and prevent its proliferation. Whether the accounts are audited by Chartered Accountants or other competent persons, that object could not be achieved and for that purpose auditing need not be restricted to Chartered Accountants only. If all the three categories are given the right to audit, we have no objection.

MR. CHAIRMAN: Anything else. 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 11th January, 1974 from 15.00 to 17.30 hours in the Committee
Room, Old Legislators' Hostel, Madras.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Chhatrapati Ambesh
3. Shri Bhagwat Jha Azad
4. Shri Dharanidhar Basumatari
5. Shri Tridib Chaudhuri
6. Shri K. R. Ganesh
7. Shri D. P. Jadeja
8. Shrimati Sheila Kaul
9. Shri Maharaj Singh
10. Shri S. B. P. Pattabhi Rama Rao
11. Shri R. Balakrishna Pillai
12. Shri Bhola Raut
13. Shri Vasant Sathe
14. Shri Satyendra Narayan Sinha
15. Shri C. M. Stephen
16. Shri R. V. Swaminathan
17. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram—*Secretary*
2. 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, CBDT*
2. Shri S. Narayan—*Joint Secretary*
3. Shri S. I. Tripathi—*Deputy Secretary*

SECRETARIAT

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

WITNESSES EXAMINED

- I. Shri P. Sadagopan, *Commissioner of Income-tax, Madras.*
- II. The Society of Income-tax Practitioners, *Vajayawada.*

Spokesmen:

1. Shri M. V. Shastry.
2. Shri D. L. Narasimha Rao
3. Shri M. Venkateswara Rao.

III. The Anakapalle Mercants' Association, Anakapalle.

Spokesmen:

1. Shri I. Ramakrishna Rao
2. Shri B. K. Viswanadham
3. Shri K. Sreeramachandramurty
4. Shri P. Appalanarsim Hulu
5. Shri B. S. V. N. Naidu
6. Shri K. R. Nookaraju

I. Shri P. Sadagopan, Commissioner of Income-tax, Madras.

(The witness was called in and he took his seat)

M. CHAIRMAN: Before we take your evidence, I may point out to you Direction 58 of the Directions by the Speaker which governs your evidence. It reads "the witness may kindly note that the evidence he gives would be treated as public and is liable to be published unless he specifical-

cally desires that all or any part of the evidence tendered by him is to be treated as confidential. Even though he might desire his evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament".

SHRI P. SADAGOPAN: Sir, I would like my testimony to be treated as confidential.

II. The Society of Income-tax Practitioners, Vijayawada.

Spokesmen:

1. Shri M. V. Shastry.
2. Shri D. L. Narasimha Rao.
3. Shri M. Venkateswara Rao.

(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 governs your evidence. 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." Please Proceed.

SHRI M. V. SHASTRY: We will abide by that. Sir, we have submitted a Memorandum to the Committee on behalf of the Society of Income-tax Practitioners, Vijayawada. The Society has been functioning for the last 27 years. It was registered under the Societies Registration Act as early as in 1948 and ever since it has been trying to build up the conduct and decorum of the members of the profession. The Members of the Society are very qualified persons. Most of them are Commerce graduates and some of them are post-graduates besides possessing law qualifications. They all possess the minimum qualification as prescribed by Rules 50 and 51 of the Income-tax Rules. We would like to draw the

*The evidence tendered by Shri P. Sadagopan, Commissioner of Income-tax, Madras has been treated as confidential at his request. Two copies thereof have been kept in Parliament Library for reference by the Members of Parliament only.

attention of the hon. Members that none of the professionals who are in the field to-day are without any qualification as required by law. In the present context of compulsory audit, we submit that they are having the necessary training and they have been able to discharge the assignments given to them under the Act to file the necessary statements required by the Assessing authorities and also to undertake certain scrutiny of the accounts wherever the accounts are suspected by the Department. They have been able to discharge their obligations very satisfactorily. In the present Bill distinction has been drawn between the Income-tax Practitioners and Tax Advocates on the one hand and the Chartered Accountants on the other in the sense that when the question of compulsory audit comes in respect of certain classes of assessees having a turnover of Rs. 5 lakhs and above or if their incomes exceed Rs. 50,000, the audit should be conducted only by the Chartered Accountants. Our submission is that so far as the audit is concerned, what is exactly expected in the context of unearthing black money or cutting the evasion of tax is tax-oriented scrutiny of the accounts. We have been looking into the accounts for the last 30 years. The assessees have been maintaining the accounts correctly and very rarely their accounts are wanting in certain respects. Most of the trade which is yielding black money is outside the books of accounts. Therefore, we are of the view that by searching the accounts any number of times, we will not be able to lay our hands on the black money that is in circulation and proliferation, outside the books of accounts.

III. The Anakapalia Merchants'

Association, Anakapalle.

Spokesmen:

1. Shri I. Ramakrishna Rao
2. Shri B. K. Viswanadham
3. Shri K. Sreeramachandramurthy
4. Shri P. Appalanarsim Hulu
5. Shri B. S. V. N. Naidu
6. Shri K. R. Nookaraju

MR. CHAIRMAN: I have gone through your memorandum. The Committee has had several submissions on this point. When there is compulsory audit, the Committee would like the limits to be fixed realistically, not Rs. 5 lakhs etc. If audit is to be made compulsory, there is no reason why it should be confined only to Chartered Accountants, if other people are qualified to do so. But the difficulty of the Committee is this. We cannot evolve as to who is competent for this. The Cost Accountants say they should be given the right. The co-operative society auditors want this. Lawyers, who have no knowledge of accounts also want this right. B. Coms. with ITP training wants this right. Some one who has the expertise has to decide the question. The Ministry of Finance is the competent authority to decide about qualification required. They will do it. You say that the scope of audit should not be confined only to Chartered Accountants. The Finance Ministry will attend to it, as I have already said.

Regarding compulsory maintenance of accounts, I think basically it should be left to the assessee to maintain the accounts as he chooses. Guidelines should be given by the Board of Direct Taxes in consultation with Institute of Chartered Accountants.

Regarding limits to maintenance of accounts, so far as professionals are concerned there is no limit. Do you like any limits to be put there?

SHRI M. V. SHASTRY: No, we like the present law as it stands at present.

MR. CHAIRMAN: Thank you.

((The witness then withdrew))

(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 governs your evidence. 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.” Please proceed.

SHRI I. RAMAKRISHNA RAO: We have already submitted a memorandum on the Amending Bill 1973 about direct taxes. We submit the following few lines to bring to your kind notice about the charitable Institutions and Trusts etc.

The Government cannot come to aid for each and every needy person. The Charitable Institutions have been doing yeoman service which is bridging the gap between the Government and individual. By introducing number of restrictions, the creation of trust will be very much hampered. In practice the communal institutions alone are doing tremendous work. Whether it is a communal institution or not it is only rendering service to the needy and poor. In such circumstances, the amendments proposing to discourage communal trust and institutions is not a welcome feature.

Regarding clause 64—amendment to Section 271(i)(E) we have inadvertently forgotten, while submitting our memorandum, to make our submission regarding penalties. We therefore request that we may be permitted to give evidence regarding this aspect.

While welcoming the change in the levy of penalties from the capital and income basis to tax basis under the Wealth and Income Tax Act, we respectfully submit that the change may be given retrospectively.

SHRI VASANT SATHE: It can only be prospectively.

MR. CHAIRMAN: I will have to say that if you are submitting fresh points, apart from what you had written in the memorandum, then you will have to send us a supplementary memorandum.

SHRI B. K. VISWANADHAM: Regarding fresh points, we will submit a supplementary memorandum and send it to you, Sir, later.

We submit that instead of putting the statutory limits for purpose of compulsory audit, this may be prescribed in the Finance Bill so that the necessary rules may be formulated by the Central Board of Direct Taxes according to the nature and type of business etc. Further we submit that separate turnover limits may be prescribed for different status of the assessee that is, individuals, Hindu Undivided Family, registered firms, companies, co-operative societies etc. This provision of compulsory audit also can be implemented according to the nature and type of business.

Under Section 139 the time limit for filing the return has been reduced from 6 to 4 months which is not sufficient, in the case of the assessee whose accounts have to be compulsorily audited. For example, under the companies Act even for a smaller company with minimum share holders and with minimum capital they have been given 6 months' time for getting their accounts audited and placing before the general body. Hence this aspect may be taken into consideration and sufficient time may be allowed.

SHRI P. APPALA NARASIMHULU: I submit there are practical difficulties in the working of amendment suggested to Section 64. You have said that in computing the total income of an individual there shall be included, all such incomes as arise directly or indirectly to daughter-in-law or grandson of such individual from the assets transferred directly or indirectly to the daughter-

in-law or grand child by such individual otherwise than, for adequate consideration. When daughter-in-law comes, it cannot be computed as to how many assets had been transferred directly or indirectly. This clashes with age-old custom in Hindu families. Then there is the case of prodigal son also. How can there be accounts for him and daughter-in-law. You must safeguard the right of every citizen.

MR. CHAIRMAN: While trying to plug loopholes, nobody should try to escape tax through legal niceties. We will consider practical difficulties, of course.

WITNESS: Regarding appeals, legal expenses have to be provided for. You

can provide a reasonable limit. Actual expenses incurred must be included. Rs. 2,000 is too low.

SHRI VASANT SATHE: What is 'reasonable' according to us, we will fix.

WITNESS: We object to Clause 116. The effect is to increase the rate of tax.

MR. CHAIRMAN: Thank you. As I have already said, please send us a supplementary memorandum regarding the fresh points you have suggested now, which are not already covered by your written memorandum. Thank you.

(The Committee then adjourned)

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

**Saturday, the 12th January, 1974 from 10.00 to 13.15 hours in Committee Room,
Old Legislators' Hostel, Madras.**

PRESENT

Shri N. K. P. Salve—Chairman

MEMBERS

2. Shri Bhagwat Jha Azad
3. Shri Dharnidhar Basumatari
4. Shri Tridib Chaudhuri
5. Shri K. R. Ganesh
6. Shri S. B. P. Pattabhi Rama Rao
7. Shri R. Balakrishna Pillai
8. Shri Bhola Raut
9. Shri Vasant Sathe
10. Shri Era Sezhiyan
11. Shri Satyendra Narayan Sinha
12. Shri R. V. Swaminathan
13. Shri V. Tulsiram.

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram—Secretary.
2. 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, CBI
2. Shri S. Narayan—Joint Secretary
3. Shri S. I. Tripathi—Deputy Secretary

SECRETARIAT

Shri H. G. Paranjpe—Deputy Secretary.

WITNESSES EXAMINED

I. Hindustan Chamber of Commerce, Madras.

Spokesmen:

1. Shri G. Narayanaswamy
2. Shri V. Ramachandran
3. Shri Ashok Kumbhaj
4. Shri Bawrilal Nahar
5. Shri Anantha Krishnan.

II. Madura-Ramnad Chamber of Commerce, Madurai.

Spokesmen:

1. Shri T. Manickavasagam
2. Shri M. A. Ramaswamy

III. Mysore State Chartered Accountants' Association, Bangalore.

Spokesmen:

1. Shri J. Gopalkrishnan
2. Shri K. Y. Sresty.

I. The Hindustan Chamber of Commerce, Madras.

Spokesmen:

- (1) Shri G. Narayanaswamy
- (2) Shri V. Ramachandran
- (3) Shri Ashok Kumbhaj
- (4) Shri Bawrilaj Nahar
- (5) Shri Anantha Krishnan

(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 governs your evidence. 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.”

Please proceed.

SHRI G. NARAYANASWAMY: Mr. Chairman, I would not like to go through the entire memorandum, but would just invite your kind attention to the salient points continued therein.

MR. CHAIRMAN: I take it that the spokesmen who have come on behalf of the Hindustan Chamber of Commerce are the office-bearers of the Chamber.

SHRI G. NARAYANASWAMY: Yes Sir. Mr. Deepak Banker, Chairman of the Hindustan Chamber of Commerce has not come. I am the Chairman of the Taxation Committee. Others are the members of the Taxation Committee. The Deputy Secretary of the H.C.C. is also with us.

Sir, we have set out in the first page of our memorandum one of the reasons set out by Wanchoo Committee as contributing to the root cause of tax

evasion is the high rates of taxes. I am conscious that this Committee may not be interested in that subject except academically and, therefore, I shall not dilate on it. The second point we have to refer to is regarding another observation of Wanchoo Committee that one of the reasons for tax evasion is the existence of inequitable provisions in the Income-tax Law, they have also set out in their report some examples of such provisions. This Bill is at least supposed to rectify all such inequities. On our going through the Bill, we found there is only one clause at least a major one which seeks to remedy or set right such inequitable provision i.e., allowance of the expenses for income-tax proceedings upto the limit of Rs. 2000. But the Supreme Court has already held in the case of Birla Bros (Pvt.) Ltd. (82 I.T.R. 166)—that Income tax appeal expenses (to the reasonable extent) would be allowable in full. Therefore by this clause, which is intended to give relief to the assessee, restricting it to Rs. 2000 may not be considered a relief. It is obvious that in these days of high cost of living Rs. 2000 is grossly inadequate and, therefore, this monetary limit on expenditure should be deleted. Actually, it should be ‘reasonable expenditure in connection with the appeal’.

MR. CHAIRMAN: We will consider. You can come to the next point.

SHRI G. NARAYANASWAMY: Most of the appeal expenditure would be payments to other professional men. If it is allowed in the hands of the

payer it would automatically get taxed at the hands of professional men.

MR. CHAIRMAN: That is a weak argument. Even if it is allowed at one end, it will get taxed at the other end, is a weak argument. Come to the next point.

SHRI G. NARAYANASWAMY: There are certain genuine charitable trusts, religious and charitable institutions, but whose main object is not tax evasion. At the same time I concede that there are trusts which are created mainly for purposes of evading or avoiding of taxes and this should be curbed. But genuine religious or charitable institutions should not be subjected to tax mainly on the ground that there are some institutions which exploit this provision in the Income-tax law.

MR. CHAIRMAN: Every one has given the same view. Our difficulty arises, how to implement it. How do we legislate to implement this suggestion of yours. Is there a catalogue of those trusts which are there purely for purposes of legal avoidance or evasion as against those of genuine charities.

SHRI G. NARAYANASWAMY: Firstly let me start with the fact that anonymous donations are taxed at 65 per cent. Moneys which escape taxation at the hands of donors get taxed at the hands of donors to the Trust. Assuming that such high rate of tax of anonymous donations is inevitable or has to be there, it should be conceded that at least in most of the religious or charitable institutions, not all the hundred per cent donations would be fictitious.

MR. CHAIRMAN: Religious institutions are not in the clause.

SHRI G. NARAYANASWAMY: It is a doubtful proposition. Thank you for the clarification. We had a doubt that the definition of charitable institution will include in itself a religious institution also.

MR. CHAIRMAN: If you think that the enactment is capable of creating

some litigation so far as religious institutions then you kindly make your point clear because we do not want any ambiguity. According to you does it leave any ambiguity? The draft amendment as it is completely leaves out 'other religious institution or institutions which are religious or charitable.' Only purely charitable institutions are brought in here.

SHRI G. NARAYANASWAMY: Definition of charitable institution does not include a religious trust but one may have a doubt on that point.

MR. CHAIRMAN: Are you expressing any opinion at random? This clause takes in a mixed institution which is religious and charitable. I am on the question of drafting. Do you think there is any ambiguity in drafting. Does it include an institution which is both religious and charitable? For instance, take Tirumala Tirupathi Devasthanams. They collect in the temple. They utilise for charities. Will it be covered?

SHRI G. NARAYANASWAMY: It should.

MR. CHAIRMAN: That is what we want to be enlightened and you give us valid reason.

SHRI ERA SEZHIYAN: If you read (1) (b), it says, 'wholly charitable'.

SHRI G. NARAYANASWAMY: The same charitable purpose will have to be put into this definition.

SHRI ERA SEZHIYAN: Voluntary donations which is covered by 13(b), we feel that wholly covers.

MR. CHAIRMAN: Is there any definition about 'religious'?

SHRI G. NARAYANASWAMY: By 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 the carrying on of any activity for profit." There, it stops. For an analogy, I will take Section 80G where deductions in respect of

donations are given. There, there is an exclusion 'of religious purpose'. Therefore, it should be drafted into clause (d), so that it would be possible to say religious purpose or charitable purpose.

MR. CHAIRMAN: Please be a little more clear. Now, 80G(a) is with reference to donors. Are you relying upon 80G that this clause would rope is not only charitable institutions but those which are charitable and religious or religious only?

SHRI G. NARAYANASWAMY: Explanation 3 under 80G says—'In this section 'charitable purpose', does not include any purpose the whole or substantially the whole of which is of a religious nature.' That might mean, that for all other sections, charitable purposes will include religious purposes also.

MR. CHAIRMAN: That explanation is limited to 80G which purely speaks of donor. In this clause 6, we are speaking of the liability of donee. Are you super-imposing this explanation in Section 13(1)(d).

SHRI G. NARAYANASWAMY: The definition of charitable purpose in Section 2(15) will have to be super-imposed in clause (d). Whether this would include religious purposes also I wanted to refer to other sections, to substantiate my argument that it might include. There is another section which refers to 'charitable purpose' as not including religious purpose.

MR. CHAIRMAN: You are inclined to explain that charitable purpose may also include 'religious purpose'. You mean a religious purpose may acquire a purpose of charitable nature and that is sought to be excluded. In other words 'charitable purpose' is defined in terms, and in the sense it has been considered necessary, in the explanation 3 to exclude a religious institution or the purpose of religious as distinguished from charitable; we will ask the Draftsman to explain why was it

necessary to exclude a religious institution from charitable purpose, when charitable purpose does not by any higher sense of imagination include a religious purpose at all. In other words, therefore, to summarise your contention, it is this. That because of explanation 3 to 80G, there is a lurking suspicion that charitable purpose might also include a religious purpose. In that sense, something which is wholly for charitable purpose, it may be canvassed further by analogy, would be inclusive of a religious purpose. We will take care of that. Please proceed.

SHRI G. NARAYANASWAMY: The Bill envisages that all Trust moneys should be invested in Government securities. We would suggest that so long as the Trust funds are not utilised for the purpose of Donors' companies, no further restriction need be there. In other words, the Trust funds can be permitted to be invested, partly in Government Securities and partly in industrial companies by way of debentures, equity capital. For example if the Trust has a right to invest in Unit Trust which in turn invests again in approved industrial securities there can possibly be no objection for at least a portion of the Trust funds to be invested in approved Industrial securities.

MR. CHAIRMAN: Your Chamber considers it proper if we withdrew even that 5 per cent limit completely, make a blanket ban on investment in industrial securities in which donors are interested and then invest in other Industrial companies, with certain criteria as approved by the L.I.C. etc. I take it that the Chamber welcomes this blanket ban on investments in which donors have interest.

WITNESS: Yes, Sir.

MR. CHAIRMAN: There is a valid question on this point. How do we check the gross investments—within the big list of the companies approved by the L.I.C.—that may take care of

it. After we have plugged this loop-hole, then what happens, you see, if we make it 5 per cent you will have 10 Trusts; if we have 2 per cent will have 50 Trusts. By you, I mean, one who is out to avoid. Make it absolutely blanket ban; but genuine investments, we wish to make it clear that true charities should pay Government revenues. Likewise we expect the charities to play fair and not use it for tax manipulations.

SHRI G. NARAYANASWAMY: The chamber welcomes the suggestion relating to Section 44(b)—making it obligatory for all the assessees to maintain accounts. Under 44 (b)(ii), the Board will make appropriate Rules as to the method of maintaining accounts.

MR. CHAIRMAN: We are not interested in burdening the Board with very much responsibility. We would rather leave it to the assessee himself. In the cities it is alright. But in the mofussil and in other places, the Board must go in and give some sort of guidance; some sort of forms etc. with the consultation of the Institute of Chartered Accountants and it will be more by way of guidance. Leave it to the assessee to maintain accounts properly if the limits are reasonable.

SHRI G. NARAYANASWAMY: Yes Sir. The next point relates to amendment to Section 64. It is well-known that a remuneration is paid to the spouse in which the other spouse is interested. What is more important is whether the remuneration paid to the spouse is reasonable, having regard to her qualification, nature of work etc. and whether excessive remuneration can be disallowed.

MR. CHAIRMAN: How do you say that? Statistics are to the contrary. That has been our very serious difficulty. We don't wish to create a new hardship where the spouse has been rendering service. The Department's grievance is that you have created it easily to circumvent the provisions of Section 40 (A).

SHRI G. NARAYANASWAMY: Some assessee will now request his wife to work in some other company of his friend and ask his wife to work in my company. We drive him a little more finer. Simply because in certain cases, they are able to take in addition, to theirs, that may not be justifiable, because that is denying justice to everybody. I said that I am being subjected to injustice. My wife works in my company is genuine. For the reasons that some others are making misuse, I think, that would not be correct reading to penalise others. Any legitimate services rendered should be rewarded. If such ingenuity could go finer...

MR. CHAIRMAN: That ingenuity works both ways.

SHRI G. NARAYANASWAMY: Therefore I say.

MR. CHAIRMAN: According to you, Section 40(A) is wide enough?

SHRI G. NARAYANASWAMY: No doubt.

MR. CHAIRMAN: We will consider. We don't want denial of justice to ladies.

SHRI G. NARAYANASWAMY: The present Section 40(A) is not wide enough. This will not be wider enough for the real ingenious ones.

MR. CHAIRMAN: Because Section 40-A to some extent at the appellate court, the whole evaluation of evidence becomes a little subjective; and if someone employs his wife, they pay Rs. 78,000/- or Rs. one lakh and thereby divides the income now; make-believe record can be created that she is working as 'interior art decorator' without her knowing even what interior art decoration is.

SHRI G. NARAYANASWAMY: Let us express an identical case. We concede both—the husband if not the wife—are intelligent. The same assessee can maintain a separate book, collect the interior decoration charges in her name and make the same lakh of rupees.

MR. CHAIRMAN: What you are suggesting is independent business in her own name?

SHRI G. NARAYANASWAMY: Or sub-contract.

MR. CHAIRMAN: I think, after your evidence, we are inclined to consider tightening this provision. We consider 40-A a little more seriously because some demarcating line has got to be found out between those who are blatantly flouting all the canons of truthfulness in his tax payments and those who are genuine tax payers. There are persons who are utterly not genuine and who will be let off. So we have to find means.

SHRI VASANT SATHE: You suggest ways for making effective 40-A. Difficulties arise in implementation. How can you get over that?

SHRI G. NARAYANASWAMY: If the appeal fails, that is the case where the facts have not been properly assessed at the original stage. It should not be let off.

SHRI VASANT SATHE: Can you suggest some objective which is to be incorporated in the provision itself, so that we can make 40-A a little more effective in the light of your observations?

SHRI G. NARAYANASWAMY: We can throw the onus of proof of services rendered on the assessee.

MR. CHAIRMAN: If you implement very rigorously and strictly, call the ladies to be examined to be heard is a real test. She will breakdown. There are very clever I.T.Os. But then, the grievance will come that ladies are being harassed and all that. The Department has also a very onerous task to perform.

SHRI VASANT SATHE: It may happen the otherway around us.

MR. CHAIRMAN: The I.T.O. is not able to come up to the standard in the talk. But examination may prove that she is not rendering services. Anyway we will consider.

SHRI G. NARAYANASWAMY: The next point is with regard to income of minor being clubbed with that of father or mother, notwithstanding the original capital was not given by either of them.

MR. CHAIRMAN: This is a very ingenious argument you are advancing. You say the family should not be the taxable unit, is that so? Is that the view of your Chamber?

SHRI G. NARAYANASWAMY: No, it is not the Chamber's view.

The next point is regarding taxing of the second degree income. At present, income from assets transferred are included. It is now proposed to include income arising from income. The computation of second degree income will be cumbersome and will involve trouble.

MR. CHAIRMAN: If retrospective effect is given, is it?

SHRI G. NARAYANASWAMY: Even for prospective effect. Supposing I invest a lakh of rupees and I earn Rs. 12,000 out of that. The assessee will always say that out of the 12,000 he has paid taxes etc.

MR. CHAIRMAN: Do you think it is absurd and illogical that while you tax the income from the corpus transferred, income on income is not correct. How is it rational?

SHRI G. NARAYANASWAMY: There is no rationale behind it.

MR. CHAIRMAN: What we can do is this. We can prescribe some rules according to which an assessee should maintain his accounts. Otherwise, the entire income would be taxed. I appreciate the difficulty you express. We will cast the burden on the assessee to prove that he does not add income on income under fear of penal tax etc.

SHRI G. NARAYANASWAMY: The revenue effect may not be substantial. Of course, I have made a study.

MR. CHAIRMAN: We will make a study of it. Let us make a rational and logical law.

SHRI VASANT SATHE: I would like to have an enlightenment. In fixing the wages of employees we treat the family as a Unit and then fix the wage of an employee. There, husband, wife and three children is considered to be a unit. What do you think of its effect if we are to treat family as the unit for the purpose of taxation?

SHRI G. NARAYANASWAMY: It requires deeper study. I am not able to answer it off-hand. It depends on the nature of work and the circumstances.

Another point is regarding clubbing of the incomes of grand-father, daughter-in-law and grand son. Firstly, it should not be made retrospective, because in a large number of cases, once the grand-father had given a donation, he may get separated and if he is to be taxed on income which he does not enjoy, it will result in considerable hardship, particularly when he has no control over the corpus. Even if it is made prospectively, the grand-son or daughter-in-law may be willing to receive the gift but may not come to the rescue of the grand-father or father-in-law to meet the tax liability which lies on the grand-father. Normally, we can presume that most of the grand parents are old enough and they may not live much longer to pay the clubbed tax. Therefore we may not proceed with the amount at all.

MR. CHAIRMAN: The donee will pay?

SHRI G. NARAYANASWAMY: That is a point to be considered.

SHRI VASANT SATHE: You are afraid that it will reduce their life?

SHRI G. NARAYANASWAMY: They may or may not, but they should not be made to pay for early death. Probably the father-in-law may stop making the gift. I would like this committee to consider the question of exempting gifts made on ceremonial occasions.

MR. CHAIRMAN: They should be left out?

SHRI G. NARAYANASWAMY: Yes Sir. We have in the Gift Tax an exemption of Rs. 10,000. We can have this same limit of Rs. 10,000 here also.

MR. CHAIRMAN: How many have Rs. 10,000 in the country.

SHRI G. NARAYANASWAMY: This is a very reasonable amount.

MR. CHAIRMAN: Yes, in principle I agree we have to show deference to the sentiments which are genuine. It should not be licence as it were.

SHRI G. NARAYANASWAMY: There cannot be any hard and fast rule. It all depends on the case.

MR. CHAIRMAN: It will have to be confined to some reasonable limits with reference to the revenue interests and not with reference to how rich a person is.

SHRI G. NARAYANASWAMY: Reasonable with reference to the transaction.

MR. CHAIRMAN: In the case of a person who has a million rupees asset, discloses one million and not discloses ten million, what is reasonable?

SHRI G. NARAYANASWAMY: If you make something known, it is all right. It cannot be used as a device.

MR. CHAIRMAN: We cannot create a larger loophole in our attempt to plug loopholes.

SHRI G. NARAYANASWAMY: The man gets married only once in most cases.

MR. CHAIRMAN: You have made a good suggestion. It is only a case of sentiment—A sum which an honest person would like to give on ceremonial occasions. But how much is left to the parent who pays taxes? How much can a person have. If he has one lakh, he gets only 40,000.

Anyway come to the next point.

SHRI G. NARAYANASWAMY: The next point is regarding Section 69-C, which we have dealt with in paragraph 13 of our memorandum. There can probably be no objection to taxing the unexplained expenditure as income but the objectionable provision is in section 133-A, whereby an Inspector is empowered to enter into the place of marriage and gether details of the expenditure. The proposed section 133-A reads 3 follows:

'...he may at time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the Income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

MR. CHAIRMAN: He only goes after the event.

SHRI G. NARAYANASWAMY: Assuming the marriage is over at 10 O'clock. He can go and take statements at 11 O'clock.

MR. CHAIRMAN: What is an honest assessee to be scared of?

SHRI G. NARAYANASWAMY: He is likely to be harassed and or embarrassed. There is no doubt about it. Here the income-tax authority includes an inspector.

MR. CHAIRMAN: The Inspector is a human being. He may not behave in an undignified manner.

SHRI G. NARAYANASWAMY: But the income-tax Act is based on the presumption that the higher ups in the department would act with better demenor.

MR. CHAIRMAN: It all depends on the background and attitude of the

person. We will consider 133-A. If the marriage is over at 10, we would not ask him to go at 10.15. Then what do you say about 69-C.

SHRI G. NARAYANASWAMY: I have no objection to 69-C.

MR. CHAIRMAN: Now we go to section 69-D.

SHRI G. NARAYANASWAMY: In the large number of cases, to comply with this section is practically impossible. There can be a genuine transaction without an account payee cheque and a fictitious one with an account payee cheque. A person from Madurai can borrow here, and if it is ninety days hundi, it will take four days for him to realise and while repaying, he has to repay, it four days earlier but has to pay interest for ninety days instead of 86 days. There will be several such practical difficulties.

MR. CHAIRMAN: Banks must be very efficient. We will consider the whole idea.

SHRI G. NARAYANASWAMY: The return of the loan may be either by draft or by cheque.

MR. CHAIRMAN: What is to be assured is that at that particular time that particular money has come. Whether it is genuine or not has to be made out. But still, it must not be retrospective.

SHRI G. NARAYANASWAMY: The next point is regarding Section 80-GG. According to this section, any rent paid for personal residence upto Rs. 300/- will be allowed as deduction except in the cases or (i) salaried employees and (ii) person who owns a house anywhere in this world. The salaried person should be given exemption up to Rs. 300. Only the salaried person who get the rent allowance get this exemption. Those who do not get the allowance do not get this exemption of Rs. 300. Even the salaried people who do not get the allowance should be given exemption. The persons who own houses elsewhere also should be given this exemption. Where is no logic in deny-

ing them this exemption. For instance, I have a house in Madura getting a rent of Rs. 35/- per month, and I pay Rs. 300 as house rent. Why should I be denied this exemption?

MR. CHAIRMAN: We will consider.

SHRI G. NARAYANASWAMY: The next representation is about sections 104 and 109.

MR. CHAIRMAN: We are going to consider that.

SHRI G. NARAYANASWAMY: Then we come to clause 36. It is stated in the proposed Section 132 (1A):

“Where any Commissioner, in consequence of information in his possession, has reason to suspect that any books of account....”

The word used here is ‘suspect’ instead of ‘believe’. Now the position is that a person may have suspicion without proof and he can make a search. The change of word as ‘suspect’ is likely to result in considerable harassment.

MR. CHAIRMAN: It is not for the first time. It is purely an extension of authority already exercised. You kindly mention this a little more properly. All this is done to extend the jurisdiction as it were or the places which can be searched over and above those for which original action was taken. The original action was not with reference to suspicion. You must appreciate that.

SHRI G. NARAYANASWAMY: Between the expressions “reason to suspect”, and “reasons to believe”, ‘belief’ would be a better word, because for ‘suspicion’, you need not have any reason.

MR. CHAIRMAN: You will note that this is not for initiating proceedings. Can’t you think of a case for valid reasons where the Commissioner issues an authorisation in favour of the officers concerned? The original action is a bona fide one.

SHRI G. NARAYANASWAMY: If it is going to further extend his area of activities, it is as good as the original one.

MR. CHAIRMAN: Not at all. The two things are entirely different. The first one vests authority, but this does not vest authority. It only extends.

SHRI G. NARAYANASWAMY: For extension of authority already vested, should an officer act on suspicion?

MR. CHAIRMAN: I think he should in cases like this. We are dealing with a difficult problem and we cannot put too many fetters.

SHRI G. NARAYANASWAMY: This provision is not made expressly subject to sub-section (i).

MR. CHAIRMAN: Please tell us whether this will apply only to cases where the Commissioner has already issued an authorisation.

SHRI G. NARAYANASWAMY: The sub-section starts as an independent sub-section. It can be used as an independent sub-section.

MR. CHAIRMAN: Can it be used in respect of any action for which the officer is not authorised?

SHRI G. NARAYANASWAMY: The Commissioner can issue a fresh authorisation.

MR. CHAIRMAN: I want you to express your apprehensions without any inhibitions. We have come here to understand your view-points. Is it possible that this sub-section can operate without the authorisation having been given to an officer?

SHRI G. NARAYANASWAMY: It is possible.

MR. CHAIRMAN: How?

SHRI G. NARAYANASWAMY: Where the Commissioner has information in his possession.

MR. CHAIRMAN: It is expressly subject to the provision in sub-section (1) where an authority has been vested. Kindly do not think of a case where they will act in abuse of this law. We are dealing with a difficult situation. We are after tax evaders and you are searching their premises. In such cases how far are you going to afford protection? Please proceed to the next point.

SHRI G. NARAYANASWAMY: The next point is about the introduction of compulsory audit. This Chamber welcomes the provision, but we suggest that the minimum limit can be increased to Rs. 10 lakhs.

MR. CHAIRMAN: How many people in Madras would be having a turnover of more than 10 lakhs.

SHRI G. NARAYANASWAMY: The statistics are not readily available.

MR. CHAIRMAN: Anyway, people with more than 10 lakhs turn-over will be much less. The auditors have to certify vital particulars. They have to take a serious responsibility on their shoulders. It should be possible for the existing number of Auditors to carry on. We will consider a realistic limit.

SHRI VASANT SATHE: The compulsory audit will have to be a little different in nature than what it is at present. It involves greater responsibility so that the audit would serve the purpose of saving the work of the I.T. officers by lending greater authenticity.

SHRI G. NARAYANASWAMY: I agree that unless the professional men take up additional responsibility, it is not worthwhile having such an audit.

The next point is with reference to the introduction of Permanent Account Numbers. This, in our opinion, will not serve any useful purpose.

MR. CHAIRMAN: Have you any idea of the accounting system in USA and other countries? The allocation of a Permanent Number is only the beginning.

SHRI G. NARAYANASWAMY: There conditions are different and everything is mechanised. Tomorrow the Sales Tax Department will introduce this system of Permanent Account Numbers. Half of the letter-heads of the firm will consist of Permanent Account numbers. We do not know whether it will improve administrative efficiency.

MR. CHAIRMAN: Every transaction will have to be cross-checked. Mention of the Permanent Number will be necessary for that purpose. This is only the beginning of ensuring some semblance of a cross-check.

SHRI VASANT SATHE: How is it going to cause hardship to the assessees?

MR. CHAIRMAN: The concensus of this Committee is very strong in favour of this. You can proceed to the next point.

SHRI G. NARAYANASWAMY: The next point relates to the proof of payment of self-assessment tax. It takes about 10 days to get the challan from the RBI and this requirement will curtail the meagre time limit already existing for submission of the return.

MR. CHAIRMAN: In the case of big assesseees, the payments certified by the Chartered Accounts will serve the purpose. We are contemplating that the assesseees should not be called in unnecessarily. If they are not to be called, then someone has to varify the proper preparation of the return and the remittance of tax etc. The Returns will be accepted on the basis of certain certification by a Chartered Accountant. Would that be a better scheme?

SHRI G. NARAYANASWAMY: It will be all right. With reference to clause 52, we have to point out that the refusal of registration to a firm if one or more of the other partners are benamidars for somebody else will cause hardship.

MR. CHAIRMAN: We will consider that.

SHRI G. NARAYANASWAMY: The next point is about Section 221. The levy of penalty even after the taxes have been paid is unfair. If the taxes have already been paid, there is no need for the penalty.

MR. CHAIRMAN: Under the existing law, no penalty can be levied for default, until an opportunity is given. The moment there is a notice, you pay the tax and then it is taken care of by the levy of interest. Therefore, the Wanchoo Committee has suggested that the liability to levy penalty must be there supposing for years the money has not been paid. The moment notice is served he pays. Such contingencies have to be covered by this.

SHRI G. NARAYANASWAMY: It is not the assessee who would get into trouble. It will be the administration that would get into trouble. The ITO has to review each file and see whether the tax has been paid within time or otherwise he has to levy the penalty. It might not have been done in all cases. After some years, it might be noted in the audit that Rs. 50 lakhs is the revenue loss because of non-collection of penalty in so many cases.

MR. CHAIRMAN: I am not willing to put such rigid interpretation to the section, even though that is possible. A strict auditor may view it like that. This is only to attract persons who bids time and who pays only when notice is sent to him. Only after opportunity of being heard is given he pays. Such cases have to be covered by this section.

SHRI VASANT SATHE: Suppose delay is one or two or three months. All right. But we do not cover cases wherein it is several years. Simply by paying interest he cannot go. He might have got 20 per cent profit somewhere and he pays only 12 per cent here.

SHRI G. NARAYANASWAMY: Then if he gets 20 per cent elsewhere, he has to pay 60 per cent tax.

SHRI VASANT SATHE: Who is to verify his profit elsewhere; we do not want to cover such cases.

MR. CHAIRMAN: Once you pay tax, there is no default under sec. 221.

SHRI G. NARAYANASWAMY: I have pointed out how this would increase the work of administration and how there is possibility of ITO being found fault with by audit for having lost so much revenue due to non-collection of penalties.

MR. CHAIRMAN: We do not want to cause hardship to the department or to others.

SHRI G. NARAYANASWAMY: We can amend Sec. 221 like this:

"When an assessee is or has been in default or is deemed to be in default etc., etc."

If we amend the first line as I have suggested, it would be all right.

MR. CHAIRMAN: You accept the principle, Mr. Narayanaswamy, that has been laid down here.

SHRI G. NARAYANASWAMY: Yes, Sir.

MR. CHAIRMAN: Then all right. We will consider what you have said also. It is only to cover cases wherein person does not pay till 'notice' is served and then only pays. Such persons should pay the penalty also. That is the intention.

SHRI G. NARAYANASWAMY: Now I come to Clause 55 amending Sec. 222. I have transferred my property in favour of minor son. Today I am not in arrears. After 50 years I may be. Then the minor holding the property his property is liable for attachment. Of course he might have become major by then.

MR. CHAIRMAN: What do you suggest?

SHRI G. NARAYANASWAMY: Till minor child gets majority, the liability may subsist.

MR. CHAIRMAN: Suppose a business is transferred by father to minor son. That means he transfers surplus capital. Suppose at the age of 17th year of the child, it is transferred. The son has no assets. But father has huge liabilities, say upto Rs. 20 lakhs. What do you do with it?

SHRI G. NARAYANASWAMY: We can have charge on transferred property upto the assessment relating to the year in which transfer was made. Now assessment is reopened for 1970-71, say, the assessment may come in 1980. Because it relates to assessment earlier to 1974-75, the charge on property may continue.

MR. CHAIRMAN: Your evidence has been of great assistance to us. But still there are other witnesses. You may finish your other points in 10 minutes. If you want to refer to points other than what is set out in the written memorandum submitted already, you can present a supplementary memorandum to us.

SHRI G. NARAYANASWAMY: Now I come to Settlement Machinery. In that what I want to suggest is that it may not consist wholly of officials alone. Non-officials, noted for their integrity, may also be included. It may also include members of Income-tax Appellate Tribunal.

MR. CHAIRMAN: All right. Next point.

SHRI G. NARAYANASWAMY: I come to those who give information. If valuable information is given, it helps the department. But we must give absolute immunity to the man.

MR. CHAIRMAN: There is no difficulty in giving immunity if the whole thing is truth. Suppose it is found that 50 per cent of the information is true and other 50 per cent he cheats. What do you suggest.

SHRI G. NARAYANASWAMY: To the extent he has given valuable information we stand to profit.

MR. CHAIRMAN: What happens to the penalty? If it is found that he had tried to cheat, prosecutions will have to go on.

SHRI G. NARAYANASWAMY: Then there is Clause 64 representing Sec. 271, relating to levy of penalty.

MR. CHAIRMAN: We will consider that. You are on the Explanation, I suppose.

SHRI G. NARAYANASWAMY: Yes.

MR. CHAIRMAN: Next point.

SHRI G. NARAYANASWAMY: Then I come to Clause 67, relating to Sec. 273. In Sec. 271(4A) (ii) (a) the words 'prior to the detection by the Income-tax Officer of the concealment of income etc.' are used. Sec. 271(4A) has been given two interpretations, one by Ministry of Law and one by Finance Ministry. I shall illustrate. I make a disclosure under Sec. 271(4A). Suppose it is found later on that A whom I represent, has a credit of Rs. 20,000 somewhere and that he has indulged in Havala transaction. Then my disclosure under Sec. 271 (4A) does not apply. It should be 'prior to the detection by ITO of the concealment of particulars etc'. That is the language used in Sec. 271 (4A) (ii) (a). What I suggest is that instead of the words 'prior to the detection by the Income-tax Officer etc.' use the expression "before the concealment is established".

MR. CHAIRMAN: We will consider that.

Thank you, Mr. Narayanaswamy. Your evidence has been of great help to us. You have my compliments.

(The witness then withdrew).

II. Madura-Ramnad Chamber of Commerce, Madurai.

Spokesmen:

1. Shri T. Manickavasagam

2. Shri M. A. Ramaswamy

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

MR. CHAIRMAN: Before we take your evidence, I have to point out to you Direction 58 of the Directions by the Speaker 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.” Please proceed.

WITNESS: First point is regarding Section 13—Clause 6 of the Taxation Laws (Amendment) Bill 1973. The income of charitable trust from the actual business carried on by the trusts is the subject of evidence. We feel that no trust will be able to sustain unless they have got some other activity behind them, particularly take a case of educational or medical trust. Unless there is some activity from which some income is earned by the trust, it will be very difficult from out of the funds of the Trust to sustain and otherwise from the public donations or small donations that the trust may get. We feel that the income of the trust out of the business of the trust should continued, to get the benefit.

MR. CHAIRMAN: Clause (b) otherwise provides, your income to be exempt. It is only business income that is sought to be taxed. If the income is utilised for charitable purpose it should be exempt. Is that your point?

SHRI VASANT SATHE: How it is earned and how is the income derived
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should not be material factor. It is utilised for charitable purpose should be the material factor.

WITNESS: Yes. Next point is with regard to onus of proof on the trusts with regard to identity of the donor in the case of donation to the trust. It becomes responsibility of the Trust to prove the identity.

MR. CHAIRMAN: Only for anonymous donations.

WITNESS: This may also to some extent retard the growth of charitable trusts.

MR. CHAIRMAN: Do you admit that black money's do come in this form?

WITNESS: In some cases they do come.

MR. CHAIRMAN: But, according to you they are put to good cause. We appreciate the very straight forward manner in which you have put your proposition.

WITNESS: Then, with regard to investment of trust funds it is said that investment should be concern's of govt. We feel that in case the investments are in govt. Controlled institutions, the interest is likely to be low, or, income for the trust is likely to be low. With the present concept of Joint Stock Company and also closed link association with financial institutions in the investments in the joint sector, we feel, there is adequate security even in the Joint Stock companies, and this will enable a trust to earn a higher per centage of income.

MR. CHAIRMAN: Is it the view of your Chamber that you should be free to make investment in such securities as would ensure reasonable incomes for the trust. Is it otherwise your view that we should not put a blanket ban either on the trust or trustees to

directly or indirectly benefit from the incomes of commercial institutions. Sometimes black moneys are brought into the trust and new companies or old companies of the members of the trust are utilising those funds for their own companies' benefit. There is at the moment an exemption of 5 per cent. Is it the view of the Chamber that we should give you authority to make such investments as you feel like, subject only to one ban, viz., you (trust's) concerns or relations or should not be allowed to invest even a single rupee into any of your own friends who are interested.

WITNESS: That is right. Genuine investments should be allowed.

MR. CHAIRMAN: When you are on the question of charities of the Madurai Meenakshi Amman Temple, I may ask you what according to you would be the income of that temple?

WITNESS: Not much, because hundi collection is not there. Only offerings are there.

SHRI R. V. SWAMINATHAN: It is not like Tirupati. Hundies are there. There is no temple without any hundi box. But, the system or custom is not there that toll of people who come to the temple offer some hundi donations. People go there to offer *pooja* or *archana*. They pay 50P. or 1 rupee like that. Receipt is being given. Without paying that amount one cannot enter that temple for offering that *pooja* or *archana*, there are not much of anonymous donations.

SHRI R. BALAKRISHNA PILLAI: In Sabarimala in Kerala it is just like Tirupati. Hundies are main collections. Rs. 50 lakhs or so pours in, just 12 days. So problem like Tirupati is there.

MR. CHAIRMAN: Is temple doing charities also?

WITNESS: No charities.

MR. CHAIRMAN: It is only by the way, we asked you this question. Please proceed.

WITNESS: So far two occupied houses were exempt and now, we are trying to exempt only house occupied by the assessee. On this, we strongly feel, with regard to professional executives, as also those who are in industry where they are entitled to certain amount of leave facility, and holiday tours—a concept even in our country is that they should enjoy leave and have some sort of holiday and join back for work with greater attention—the house or building which they are trying to own in hill stations, like Holiday Homes, should also be brought within the purview of exemptions.

MR. CHAIRMAN: Exemption for 2 houses should continue is your point. With your concept of holiday home as tourist spot, many of the executives, even good middle management cadre own their houses in these places.

SHRI VASANT SATHE: The individual who has home at holiday resort—that house—should be exempted. If he has any other house in any other town or in the country, that should not be exempted.

SHRI R. BALAKRISHNA PILLAI: Both.

WITNESS: Because, one is permanent residence and the second is holiday resort.

SHRI R. V. SWAMINATHAN: What is the reason?

WITNESS: If we accept the development of professional Managers, we should provide for them a certain amount of incentive. Industrial management is now changing and if you do not give that facility, you cannot get that type of industrial management people for rural places.

MR. CHAIRMAN: It is not with reference to particular category, but you want this facility to be given with the changing pattern and norms of management techniques which would be to the benefit of economy. We follow that.

WITNESS: This house will be occupied only for 1 to 3 months in a year is also a relevant point.

SHRI R. BALAKRISHNA ILLAI: Establishment expenses may be there.

MR. CHAIRMAN: If the house is kept only for 3 months, you can claim vacancy allowance.

SHRI BHAGWAT JHA AZAD: It is not open to the public for occupation during the vacancy.

WITNESS: Where H.U.F., have large number of individuals why we should not allow to maintain 2 houses is the next question.

Then, with regard to clause 12, with regard to maintenance of accounts, under the Bill if a person were to have Rs. 25,000 income or Rs. 200 monthly, he has to keep a set of proper accounts which cost him Rs. 600 to Rs. 700 per month.

MR. CHAIRMAN: That is very unrealistic. Is it in Madurai that charges are so high. You can have a part-time Accountant and pay him not more than Rs. 600/- a year. I know several lawyers who earn Rs. 70,000 to Rs. 80,000 and pay Rs. 100/- a month. Do not talk of an extreme case. It may not cost as high as you put it. That is an allowable deduction.

WITNESS: Our appeal is to increase the sum from Rs. 25,000 to 50,000.

MR. CHAIRMAN: Income part, the Committee has not been considerable favourably. What about turnover part?

WITNESS: Rs. 10 lakhs we have said.

MR. CHAIRMAN: Madurai must be a rich place then.

WITNESS: With regard to Clause 14—our suggestion is if the spouse has the necessary qualification and capacity to earn on her own merits—whether the spouse should be subject to this rigours—we feel that the income of the spouse need not be clubbed.

MR. CHAIRMAN: What is the reason? Will it create domestic problems, or what?

WITNESS: We allow ladies to get educated and allow them to earn also. Their earnings should be kept separate.

SHRI VASANT SATHE: If you allow the wife greater opportunity to serve, particularly in the same business of the husband or others, to that extent, opportunity of a man to get jobs becomes less; and there is greater unemployment. Normally even today—I don't know how it is in your part—it is the man who is supposed to support the family; women seldom has that responsibility. Therefore she does not support a family generally. Then, why do you want more and more women to be in service by this device of clubbing?

WITNESS: Where the woman is educated, capable of handling business, help running the business, is it not proper to give her equal treatment?

SHRI VASANT SATHE: There is the man who is unemployed. The wife is not unemployed. Then to whom preference in opportunity should be given? This wife is supplementing the husband's income.

WITNESS: My solution to this is: under the Constitution both are equal and we are likely to give more and more opportunity to women in India and I think there are certain cases where women are more educated than men.

MR. CHAIRMAN: You want ladies to be given more opportunity having regard to their ability?

SHRI VASANT SATHE: That means greater opportunity to evade tax, in addition to loss to the Exchequer.

MR. CHAIRMAN: In your case, the husband is unemployed; the burden is on the lady. Is there a larger issue? If it is a lady and a man, why should a lady carry on business, the man remaining unemployed? Any way, we

will consider whatever you have to say. Your basic contention is where the lady is qualified and is really rendering service, by this law, she will be hit. We have also heard eminent and distinguished ladies coming and giving evidence, and duly considered threats they have given to the committee.

WITNESS: Next point; the proposed amendment about income accruing to minor have to be clubbed with the income of the parent. The only suggestion which we have to make is by this process, accrual of property belong to the minor in the partnership will be

MR. CHAIRMAN: Even the father or anyone has nothing to do with it. We will consider.

WITNESS: With reference to Cl. 14 Sec. 64 Transfer to daughter-in-law is also brought into tax under S.64 in the hands of the transferer and this is to curb the tax evasion reasonably; with the transfer of his assets to daughter-in-law, income is diverted. It should be a good law. That may be the theme of the Act. Our submission is Sec.64 directs that even if transfer took place in 1920 or 1912 that is brought into taxation under Sec.64. This provision is retrospective and it is intended to be retrospective. Our submission is it requires a lot of materials for earlier years. We request the committee to make it perspective, at least in regard to daughter-in-law now made to tax.

In Clause 15 we are giving wide powers to the I.T. authorities with regard to unexplained expenditure: "If he cannot explain properly to the satisfaction of the I.T.O., it will be treated as the income of the assessee".

MR. CHAIRMAN: Is not that existing law?

SHRI ERA, SEZHIYAN: What is your suggestion? you want the deletion of the new clause or what?

MR. CHAIRMAN: There are no additional powers given or accruing to him—are being conferred. That is

the existing law. If you incur an expenditure of Rs. 20,000 today and if you are not able to explain the source, it will be presumed that it is but undisclosed income.

For penalty it is a different story. Where is the enhancement of power?

WITNESS: This is with reference again to Cl. 15—Sec. 69(b)—Hundi transactions. Now normally the businessman comes to Hundiwalla, borrows a certain amount executes a Hundi; but the Department demands strict proof for Hundi transactions. We have to give the assessment number of Hundi persons unless the Department and the assessee are fully satisfied about the financial creditworthiness of the person, they won't.

MR. CHAIRMAN: What would be Chamber's view if purely retaining Hundi loans,—payment by a/c payee cheques, or crossed draft or by cheque good for payment. Will there be any hardship?

WITNESS: We welcome the payment by crossed cheque. It also protects the demand on the businessman.

MR. CHAIRMAN: Before entering into transaction, you can ask his permanent account number, hundiwalla's licence Number. You will have to disclose that permanent number.

WITNESS: Pronotes and hundi documents must bear the permanent account number of the businessman who takes the loan, so that the borrower will be protected. We welcome that suggestion. If any false number is noted on Hundi, he will be penalised.

MR. CHAIRMAN: We ourselves want to give full protection to genuine borrower.

WITNESS. So that Hundi borrowers cannot retrace their steps.

MR. CHAIRMAN: We will consider it.

WITNESS: Then, Cl. 25—VI (a) of the Income-tax Act Under 80V, it is prayed that any expenditure for assessment upto a maximum of Rs.2000 will be allowed may be put.

MR. CHAIRMAN: We will consider that.

WITNESS: Cl. 27 Sec. 104—Wanchoo Committee has recommended. . .

MR. CHAIRMAN: We will take care of that; we do not want anything counter-productive. Compulsory declaration of dividends is a matter over which company itself has its own thinking. The Govt. has indicated something. You proceed to the next point.

WITNESS: I refer to Cl. 42 Sec. 140-A—self-assessment. Under the law, we have to pay the entire tax before submission of Return of income for the period. But there are incomes arising in Ceylon and other countries which are prohibiting remittances. Normally the Income-tax Act says it can be withheld. The section is stringent in the sense you have to pay entire tax before you get it. This hardship may kindly be removed in self-assessment.

MR. CHAIRMAN: You say foreign income is not received; but in return it is liable for taxation.

WITNESS: While you submit a return, you will have to pay tax. Another section says. . .

MR. CHAIRMAN: Do you think it will be taken care of, if it is provided that tax payable on the basis of any return furnished and in accordance with the provisions of this Act under Sec.139 and other provisions of the Act?

WITNESS: We have also got double income-tax relief given by some countries.

MR. CHAIRMAN: Even on the basis of your return, that is in our right.

WITNESS: 148 does not take that in the contingency.

MR. CHAIRMAN: Where you are entitled to double taxation relief, certainly you will get. But on the basis of the return you may not be entitled to get automatic abeyance for the income accrued to you from a foreign country, but not received.

WITNESS: If my entire income consists of foreign income then there will be difficulty.

MR. CHAIRMAN: There are some other sections of the Act or Rules which entitle you to relief and that must be taken care of. Any tax must not be more than what the law requires you to pay.

I think it will have to be on the basis of the returns and other relevant provisions of the Act.

WITNESS: The next is about clause 64. Explanation to Section 267.

MR. CHAIRMAN: We will look into that.

WITNESS: Then clause 65. This is a new provision for the levy of penalty. Already there is a provision where assessments are completed on estimation basis. Further penalty is rather too much.

MR. CHAIRMAN: No, no. We are providing for compulsory maintenance of accounts and if he does not maintain notwithstanding the compulsory requirement by law, then if there is no penalty, where is the compulsory part? This is an inevitable corollary of the mandatory stipulation that in case one fails to carry on the stipulation, there will be penalty. Otherwise, the provision will become a mockery.

WITNESS: With regard to penal provision in Sections 71 and 72 they are very rigorous. Economic crimes should not be equated with other crimes.

MR. CHAIRMAN: Today the biggest criminal against society is the person who at the cost of the societies' is enriching himself by committing economic crimes. Economic crimes are in no way less heinous than crimes of

dacoits of the Chambal Valley. You have otherwise given a very good evidence; do not spoil it. Anything else?

WITNESS: Thank you very much for giving us this opportunity.

(The witnesses then withdrew)

III. Mysore State Chartered Accountants' Association, Bangalore.

Spokesmen:

1. Shri J. Gopalakrishnan
2. Shri K. Y. Sresty.

MR. CHAIRMAN: Before we take your evidence, I may point out to you Direction 58 of the Directions by the Speaker 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.” Pleased proceed.

SHRI ERA SEZHIAN: In your original memorandum you have said, ‘on account of the very limited time at its disposal and also on account of the fact that the copies of the Amendment Bill were available only in the first week of June, this Association could not make a comprehensive study of all the legal implications involved in these amendments.’ I want to know whether you have since prepared any comprehensive statement now covering the different provisions of the Bill.

WITNESS: We have not prepared another written statement. But we will make additional submissions.

MR. CHAIRMAN: We will hear you now, you can make your submissions. If the Committee feels it necessary that on the additional points you raise now, we should like to have from you written document, then we will request you to give us a memorandum in writing. You may proceed.

Usually we expect the witnesses to touch the important and vital points even if they are in the memorandum, if they really consider these are the points to which attention of the committee should be focussed. You may proceed.

WITNESS: On page 2 of our memorandum, we have made observations relating to charitable institutions. We have suggested that the voluntary contributions up to Rs. 5000 may be exempted from tax as in the case of Capital gains. We have also submitted that the provision relating to the stoppage of investments in industrial concerns after the 31st March, 1978 may be applied on a Selection basis. We have stated that it will be possible to secure power by notification for such of those institutions which should be exempt especially in cases where the investments will be made in institutions which are not under the control of the Trustees or the Members in charge of the Management.

MR. CHAIRMAN: There should be exemption up to Rs. 5000. Above Rs. 5000, 50 per cent should be exempt. More than 50 per cent may be taxed at 65 per cent. This according to you will enable the institution to limit its expenditure. It is likely that the trustee may receive anonymous donations, disburse them away, and may not have money to pay the tax.

WITNESS: We think that it is possible that an anonymous donation is being taxed in the religious institution. The charitable institutions are religious institutions also.

MR. CHAIRMAN: The High Court says the religious purpose is also a charitable purpose.

WITNESS: The words 'charitable purpose' will also include religious purpose.

MR. CHAIRMAN: The term 'charitable purpose, is inclusive of religious purpose also.

WITNESS: Yes, there is a decision to this effect.

MR. CHAIRMAN: Will you be kind enough to let us have the citation. When was this decision given?

WITNESS: It is a reported decision.

MR. CHAIRMAN: We will look into this also. The clause, as it is, contemplates anonymous donations being made liable to tax at 65 per cent only in cases where it is wholly a charitable institution.

WITNESS: This interpretation can be given in view of the fact that there is distinction in 80G.

MR. CHAIRMAN: We have seen that explanation 3 which excludes religious purpose. Therefore this doubt has arisen.

WITNESS: Not only this; there is the Madras High Court decision.

The charitable purpose in India is not the same as in U.K. They have said that the charitable purpose will also include religious purpose. We have an enlarged scope. The concept of charitable purpose that is applicable to U.K. does not apply here. Our submission to Your Honour would be that a strict interpretation would make it liable.

MR. CHAIRMAN: Anything that does not come within the definition of charitable purpose cannot be a charitable purpose. How can that be a charitable purpose when once you define by statute that such and such is a charitable purpose. It exhausts the list.

WITNESS: Perhaps it would be much more proper in the interests of the institutions that we make the provision specific in the law.

MR. CHAIRMAN: We will make that clear.

WITNESS: Even in the case of the charitable institutions they must be made aware that to the extent they have received anonymous donations they will be liable to pay tax up to 65 per cent. Even there if the purpose of the charity is to be furthered, there must be a reduction of tax which would enable something available for application to the charitable purposes. It is in this context we have made our suggestions, because inclusion of anonymous donations as taxable is a departure from the known concept of the income.

MR. CHAIRMAN: Only by fiction, it is an income. Otherwise it is not an income. That is correct. But under the income tax law, if you have any moneys credited to your books of account, the source of which is not acceptable then that is treated as income. Failure to explain the source of receipt in the books of account may be income. It may be capital income or casual income. Whatever it is if you are not able to explain the source of a receipt, it is treated as an income.

WITNESS: This is already covered by section 67 of the Act.

MR. CHAIRMAN: That is superseded by 11. Even if it is income, it is not exempt.

WITNESS: There are practical difficulties in proving the identity of the donor. For example if we prove the identity of donor, the donor will have to be accepted by the Income tax officer. Even when evidence is produced about *hundis*, they say it is a bogus *hundi*. So they will say

that it is all bogus donors. How is the donation to be accepted for giving exemption. So, the administration of the provision also may lead to so many difficulties and put the charitable institution in a lot of difficulty.

MR. CHAIRMAN: We appreciate it.

WITNESS: It is quite possible there is difficulty in smaller institutions. They may be brought within the mischief of the provision in respect of all voluntary contributions. Irrespective of the limit it is quite possible to apply the rate of 65 per cent. We have only suggested a limit as a safeguard. As it is, even the smallest institution may come within the law and there will be mischief. These are religious institutions where they will have practical difficulties. They are not business institutions. We must find out a way to exempt them.

Then I come to clause 12 and the addition of section 44B. This is about the maintenance of accounts. We have given exemption in respect of business but we have not given exemption in respect of professions.

MR. CHAIRMAN: How much is the limit?

WITNESS: If the word profession is included in the definition now, it will be Rs. 25,000.

MR. CHAIRMAN: It is on the very high side for the professionals.

WITNESS: Then you may reduce it.

MR. CHAIRMAN: This is my personal thinking. If a professional makes Rs. 1,000 a month, I think he is one of the very few privileged persons. He must have the liability of maintaining accounts for the annual income of Rs. 12,000.

WITNESS: Rs. 25,000 is all right in respect of professions also, to begin with as a trial.

SHRI VASANT SATHE: If it is more, later on we can reduce.

WITNESS: The maintenance of accounts must be simpler in the case of lawyers, accountants, etc.

SHRI VASANT SATHE: The lawyers and the medical profession must be made to maintain accounts.

WITNESS: Without much of a liability for employing an Accountant, he can himself maintain the accounts. But the maintenance of accounts in their case should be only for incomes of Rs. 25,000. What is applicable to business, to start with, should be applicable to others also.

SHRI VASANT SATHE: How do you want to simplify?

WITNESS: It may be left to the assessee himself. In the mofussil, they will be maintaining accounts in their own way. Some instructions have to be issued to them in consultation with the chartered accountants. The books of account and documents to be maintained may be prescribed after consultation with the Institute of Chartered Accountants, Chamber of Commerce, etc. We have dealt with this in paragraph 6 on page 4 of our memorandum.

We have also referred to penal provisions. Where the return has been accepted and where the person has not maintained accounts, you cannot impose the penalty.

MR. CHAIRMAN: This is a mandatory provision. Non-maintenance of accounts is penal. Whether the tax is evaded or not there must be penalty for not maintaining accounts, irrespective of the fact what happens to the return.

WITNESS: We have brought this out on page 5 of our memorandum. They will instead of paying the amount of tax be paying the penalty. We are just now introducing this provision about penalty.

MR. CHAIRMAN: It has to be with reference to the percentage of taxation subject to a minimum. We will consider about that.

WITNESS: It may be fixed at Rs. 5000 depending upon a percentage of the income or 10 per cent of the tax, as the case may be.

SHRI VASANT SATHE: Rs. 500 or 5 per cent, which ever is higher.

WITNESS: Our next point is with reference to Clause 64. We have dealt with it extensively at pp. 6 to 8 proposed amendment, the income of of our Memorandum. According to the proposed amendment, the income of a minor child of an individual from his admission to the benefits of a partnership in a firm is includable in the hands of the parent whose income is higher. We have proposed some modifications at page 6 of our Memorandum. We want an exception to be made in favour of minor children above a specified age. Under the present economy, even children can take up employment. It is not improper for a minor to have some income of his own to put him well-equipped in life.

MR. CHAIRMAN: This is a new angle of approach. A boy of 12 can even work for a partnership. Do you have cases where the minors are really working?

WITNESS: Yes.

MR. CHAIRMAN: We will consider this aspect very very carefully. I know of a case where a minor works for a Stockbrokers' firm with fantastic memory.

SHRI VASANT SATHE: Will this not go against the concept of employing minors under the Labour laws? The idea is to prevent this as a device of evading tax. Persons with high incomes include minors as partners in business to avoid taxation. This is not a case of poor children taking up employment for the sake of livelihood.

MR. CHAIRMAN: I will tell more about the aspects of this matter.

WITNESS: The moment it is introduced as a legislation it will enhance the liability of the father without benefiting the minor.

SHRI ERA SEZHIYAN: We want to avoid tax evasion. How can we distinguish between these two types of cases.

SHRI VASANT SATHE: Where does the balance of convenience lie? There may be some cases where the minors may suffer. Will that not on the other hand aid evasion of tax by including minors as partners?

MR. CHAIRMAN: We will go into this matter in detail with relevance to administrative convenience the revenue yield, the difficulties etc. it is a substantial question, of principle.

WITNESS : This provision is only a consequence of the Supreme Court's decision in Prem Bhai Parikh's case where they have said that there is no proximate connection between the investment and the income arising from the partnership and the income cannot be included in the hands of the parents. If a provision is made that wherever a minor is admitted to the benefits of partnership, the income of the minor can be included in the income of either parent the effect of the judgment will be nullified.

Sec. 64 deals with the transfer of assets to the minor and the income arising therefrom. Constitutional difficulties may arise because of such a provision.

MR. CHAIRMAN: We may improve upon the law to help the department so that there is no evasion of tax. In the Supreme Court case the contention of the Department was that the father paid for the son being admitted to the benefits of the partnership, but the income which accrued to the son consequent upon his admission to the benefits of the partnership could not be clubbed with that of the father, because they could not establish the nexus between the son's income of share in the partnership with that of the assets the father has transferred to the minor.

SHRI VASANT SATHE: The minor is not a legal person under law who can be held responsible for his acts. Why should we treat a minor as an

independent person having an independent income.

MR. CHAIRMAN: Otherwise the minor will become a separate assessee. Anyhow, that is a larger issue and we will look into that. It was with a view to remedy a particular situation that this has been brought in. We will examine it carefully.

SHRI VASANT SATHE: I want to know under the I.T. Act can you punish a minor and send him to jail?

MR. CHAIRMAN: It cannot be done. The minor is assessed through guardian.

SHRI VASANT SATHE: That means, you treat it as if tax is separate and as far as punishment is concerned, guardian comes in.

WITNESS: Under the Indian Partnership Act of 1932, Section 30 has made a specific provision for admission of minors for the benefits of partnership. If I vaguely recollect, the Wanchoo Committee recommendation would have been to counter-act that Section 30 which provided for the admission of the minor to the benefits of partnership. So long as we have an existing set of law to admit a minor to the benefits of partnership, and there might be cases of genuine nature—it would be much more in the fitness of things except where they have been under special circumstances—where both are there—it would be perhaps more fit to exempt the entire minor. At least, if it is a device made for tax avoidance then, the age limit as we have suggested may be borne in mind.

Next that we have suggested is that step-child and adopted child must not be included within the definition of minor child. The relationship are all of a different phase altogether. The inclusion of step-child and adopted child within the definition of minor child may also not go long with the thinking which you are having.

SHRI VASANT SATHE: What is the difference between a step-child and adopted child?

WITNESS: The adopted child comes from the other family.

MR. CHAIRMAN: You do not want even adopted minor child's income to be included in the hands of an adopted father. It should not be included in the income of the father.

WITNESS: We would not suggest that it should be added in the income of the original father. What we are saying is same treatment should not be given.

MR. CHAIRMAN: Why?

WITNESS: Same relationship, you cannot expect in respect of adopted child from the original father.

MR. CHAIRMAN: I can understand about step-child, material difficulties arising.

WITNESS: Generally, adoption arises on the basis of certain conditions. Of course that is left to the discretion of the Committee. We suggest that the provision for inclusion of the minor's income in the hands of the parent whose income is higher, even though appropriate during the time when both the parents are alive, it is likely to cast an unnecessary burden on the widow. A suitable provision may be made in the Explanation 1 to 64(1) where mother is only alive, the income of the minor child shall not be included in her income. We do not want that the mother should have the obligation to pay tax on the income of her minor children, because, of the society's framework in the country.

MR. CHAIRMAN: We will consider whatever you have stated in the memorandum. I would like you to address us on what you have stated at page 13, about new chapter XIXA—SETTLEMENT MACHINERY. That is an important innovation contemplated by the law. Let us know what you have to say about that.

WITNESS: As far as definition of 'case' clause (a) is concerned, it must

be construed that at any stage a settlement petition may be made to the settlement committee.

SHRI ERA SEZHIYAN: As regards constitution of the Settlement Committee what is your suggestion?

WITNESS: We have suggested that the Committee which is to be formed under 245B must be consisting of a Judge of a High Court, a Chartered Accountant and a member of C.B.D.T. We want this Constituted outside the confines of the Act because, wherever there is settlement it is almost a settlement by the Government, which we consider, and when matters of such importance would be considered, there will be essentially application of the legal principles.

MR. CHAIRMAN: We will consider that. To inspire confidence amongst the prospective people it ought to be a body which should be free from the direct government control.

WITNESS: I have given a talk on settlement to a gathering. The proviso to S. 245D(i) may curtail all the applications. All that it at present states is that the application shall not be proceeded with, if the settlement Committee is of the opinion. It is not an opinion taken from the income tax authority about concealment of particulars of income by the applicant or perpetration of fraud on any income tax authority for evading payment of tax—that has been established by the I.T.A. That is, it is not on the facts which have been established before the I.T.O. that the application is not entertained. It is their opinion, further. Therefore, it may give room for two interpretations. One is, it is not as if the I.T.O. arrived at a certain concealment that would be binding on the settlement Committee that may be the starting point for them, (the Settlement Committee) to say whether settlement application can be entertained or not. In other words according to the proviso, "shall be proceeded with". There are two things under S. 245D. S. 245D(i) says allow all the

matters covered by the application on receipt of an application or any part thereof to be proceeded with or reject the application. There, the words used are 'proceed with or reject the application'. This 'proceed with' is governed by this proviso. It is not for the purpose of rejection it cannot be proceeded with. There is one other aspect.

MR. CHAIRMAN: They will either allow to be proceeded with or reject it.

WITNESS: First of all in order to proceed with, this proviso is put in.

MR. CHAIRMAN: Yes. If it falls within the proviso, they will not allow it.

WITNESS: Within that proviso itself it would be possible, in view of the words 'on receipt of application, having regard to the nature and circumstances of the case, to review'. That would be sufficient enough.

MR. CHAIRMAN: This alone would entitle them to proceed ahead under this maxim 'provided it is not precluded by the proviso.' I would put it that way. Some of the categories are already there, but even in the interests of revenue they cannot proceed with it if it is under the proviso. What is your problem?

WITNESS: First of all, Settlement Committee is of the opinion is put.

MR. CHAIRMAN: This interpretation is that it is subjective opinion.

WITNESS: Whether or not established, it need not consider very objectively. 245D may whittle down the settlements. It may fall into categories of 245D(i). Perhaps it is much more relevant if it may be put as an explanation to the clause itself.

MR. CHAIRMAN: First, address us on principles. Why on the categories in the proviso, benefits of settlement are being denied.

WITNESS: The term used here is concealment of particulars of income.

If under the proviso settlement is intended whatever faults the assessee may have committed that must be given the broadest consideration, so that it may come within the purview of the Settlement. In the proviso "Provided that no matter covered by the application shall be proceeded with if the Settlement Committee is of the opinion" is used. I would like to draw attention to Sec. 271, new explanation (3).

MR. CHAIRMAN: So far as that explanation is concerned dealing with concealment, we will be taking care of. Anything that is added to quantum will be deemed concealment—that I think, was never intended.

WITNESS: We are referring to non-filing of return as 'concealment'.

MR. CHAIRMAN: For failure to file a return a person will fall in the proviso.

WITNESS: It is by deeming concealment.

MR. CHAIRMAN: Then the proviso takes a case even for failure to file a return in time, he cannot go to the Settlement Committee. We will consider that. Thank you very much for pointing this out. It is never the intention to debar a person who fails to file a return.

SHRI VASANT SATHE: We should say in the sub-section and not take it away by the proviso. The proviso becomes a fetter, is your case.

MR. CHAIRMAN: For the rest of your evidence, we will give you half-an-hour on 13-1-74, and commence the meeting at 9.30 A.M., on 13-1-74.

(The Committee then adjourned).

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

Sunday, the 13th January, 1974 from 09.30 to 13.15 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Bhagwat Jha Azad
3. Shri Dharnidhar Basumatari
4. Shri Jyotirmoy Bosu
5. Shri Tridib Chaudhuri
6. Shri K. R. Ganesh
7. Shri Maharaj Singh
8. Shri S. B. P. Pattabhi Rama Rao
9. Shri R. Balakrishna Pillai
10. Shri Bholu Raut
11. Shri Vasant Sathe
12. Shri Era Sezhiyan
13. Shri Satyendra Narayan Sinha
14. Shri R. V. Swaminathan
15. Shri V. Tulsiram

LEGISLATIVE COUNSEL

2. Shri S. Harihara Iyer—*Joint Secretary and Legislative Council.*

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

1. Shri S. Narayan—*Joint Secretary.*
2. Shri S. I. Tripathi—*Deputy Secretary.*

SECRETARIAT

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

WITNESSES EXAMINED

I. Mysore State Chartered Accountants' Association, Bangalore.

Spokesmen:

1. Shri J. Gopalakrishnan
2. Shri K. Y. Sresty

II. Mysore Chamber of Commerce and Industry, Bangalore.

Spokesmen:

1. Shri M. V. Krishnamurthy
2. Shri K. G. Subbarama Setty
3. Shri B. V. Rathnaiah Setty
4. Shri C. M. Reddy
5. Shri J. Srinivasan

III. *Arya Vaidya Sala, Kottakkal, Kerala.*

Spokesmen:

1. Shri K. Sreenivasan
2. Shri K. S. Paripoornan
3. Shri P. K. Warriier
4. Shri K. G. Warriier.

IV. *Tamil Nadu Income-tax Employees' Association, Madras.*

Spokesmen:

1. Shri G. Balu—President.
2. Shri C. R. K. Murthy—General Secretary.
3. Shri N. Sundararajan
4. Shri K. Jayaraman
5. Shri S. Raghavan

I. *Mysore State Chartered Accountants' Association, Bangalore.*

(Further evidence)

Spokesmen:

1. Shri J. Gopalakrishnan
2. Shri K. Y. Sresty

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

MR. CHAIRMAN: The point you made yesterday that the proviso as contemplated under Sec. 245(d) was so wide that if read with the proposed Explanation III to Sec. 271 would prevent even an assessee who is morally guilty of delay in filing the return from taking advantage of the settlement provisions. Is there anything else you have to point out on the scheme of drafting of new Chapter XIXA.

WITNESS: If the settlement machinery is to be confined to administration within the Department, my submission to your Honour, would be—Sec. 119 a provision to the effect authorising the Board to make settlement in appropriate cases and appropriate circumstances would definitely much more meet with the requirements of law.

MR. CHAIRMAN: Why do you apprehend that? Government itself wants it. The consensus of the committee appears to be favourable.

WITNESS: The scheme could as well be on the Sec. 119.

MR. CHAIRMAN: All this elaborate drafting is not necessary?

WITNESS: If the Committee must be sure, it must be able to administer in meeting out the proposed amendment to give a finality to tax litigation, because settlement, as I understand, is an arbitration of tax liability; and if it is arbitration of tax liability, it should always be conceded that it must be fair. It must be decided if the Settlement committee is going to be within the Central Board of Direct Taxes, it can as well be achieved by putting a simple provision under 119 itself.—Because instructions to subordinate authorities is there; that empowers the Board of administer. In this connection, I may take a small example: the recent spot assessment scheme. In the last assessment year it was in furtherance of powers now vested in the Board under Sec. 119. Therefore, this settlement Committee, is only just an enlargement of the area where such settlement would take place.

MR. CHAIRMAN: We see a new point. It could be done with the powers of the Board and if the Board is to be the sole arbiter Sec. 119 would

have taken care of. Since the question before the Government and the committee is 'what ought to be the constitution'? We will consider this matter.

WITNESS: There is one other aspect which I would like to dwell. Settlement committee can only address itself to the computation of income; as far as the tax rates are concerned they are already determined under the respective Finance Acts. Therefore settlement committee would not have any power whatsoever to abridge or settle on the tax rates which are provided in the respective Finance Acts.

MR. CHAIRMAN: Rates—they may not be able to tamper with the power and authority to reduce the aggregate tax liability.

WITNESS: If necessary, Settlement committee should also be empowered, to see when they take for arbitration the total tax liability, they must not call that is particular income; that is particular tax. Once that is done, tax rates will automatically follow—independent of necessary enactments concerned.

MR. CHAIRMAN: The rates will go on as they are. The power and authority to reduce the tax. . .

WITNESS: We have now got the waiver.

MR. CHAIRMAN: Very stringent provisions will have to be made.

SHRI VASANT SATHE: Would that not confer a power contrary to law, if we were to say what standards can be prescribed? Because they will become arbitrary. If it is found ultimately that the income even in settlement—what is understandable is—that whether actually this income was there or not; or was it assessed by a lower authority or could be assessed at a lower level. But once an income is determined at Rs. 10 lakhs, then to say, that the rates would be applicable for someone else who has not come to

settlement—Can you say that the Settlement machinery can arbitrarily say that although the tax would be Rs. 6 lakhs, we reduce it and let you off with only Rs. 3 lakhs?

MR. CHAIRMAN: That is not possible. What happens is this: Even today, if a stage comes where they find tax incapable of recovery and that all the assets of the assessee and the entire belongings can never liquidate the taxes—even 3 generations can never liquidate them—then the Department has the system, even today, what is known as 'write-off'. That is such a cumbersome system. Anyone who goes ahead with the write-off just finds himself in terrible picture because of various circumstances; as a result of this his liability increases years after year. This power of write-off exercised by the Department has also to be vested in this machinery. This is what their suggestion. That is why I told them it will have to be very strict compliance with certain criteria which will have to be laid down.

SHRI VASANT SATHE: What sort of criteria can be laid down?

MR. CHAIRMAN: For reduction of tax liabilities, we want one stringent pre-condition.

WITNESS: The criteria is found in Sec. 245(d) itself. Because that is the basis of application of materials and having regard to interest of Revenue and having regard to the nature and circumstances of the case.

MR. CHAIRMAN: That is too abstract.

WITNESS: In the interests of Revenue; it is one aspect. If Rs. 10 lakhs is the supposed income what would be total amount of taxes that may be payable will be dependent upon the total assets that are left over with him—is one criterion.

Second—to establish the assessee without interfering with all the social aspects; there should be no effect on

employment; there should be no effect on the business. If these 2 factors could be taken care of. . .

MR. CHAIRMAN: How is it possible?

WITNESS: With reference to those aspects are concerned, can rehabilitate the assessee in business.

MR. CHAIRMAN: But the real criteria ought to be what according to a proper evaluation by the Department, is the real worth of the person and not any of his relations, his round-about-people, wife-children etc. What are the circumstances? What is the way he is living? What are the methods and then tax should only be reduced; where otherwise a person is absolute pauper it is not possible that he carries his business. Where a person is satisfactorily established to be otherwise absolute pauper, not able to discharge his obligation, then only it should be considered. .

WITNESS: We are in full agreement with you.

MR. CHAIRMAN: The committee will consider about it; because invariably revenue will be lost.

SHRI VASANT SATHE: One more criterion will have to be there. Whether he has exercised due diligence in the previous years by paying his taxes diligently in time and not allowing arrears to accumulate. If a man allows his arrears for 5 years to accumulate, in the sixth comes the settlement machinery—Now I am broke—and do away with all the arrears. That may not be permissible. This also will be a criterion,—whether he has been duly diligent and honest.

WITNESS: We have to make one submission. In settlement there are two aspects. Settlement envisages settlement Chapter and settlement of tax liability. We keep these two issues as independent. Where we are settling income as well as liability—these are the aspects which will definitely be taken into account—the total

overall liability that can be fixed for recovery. Where settlement only confines to settlement chapter—there must also be settlement of taxes by a separate sub-section.

MR. CHAIRMAN: I for one am for the working of this mechanism entirely independently and the income should be realistically determined and the tax also should be determined and the man must pay the tax. The Settlement Machinery is not for reduction of income or tax, but for expeditious determination of tax liability. If any person goes on postponing his liability with a view to defraud and comes before the Settlement Machinery, such a man cannot be helped. He will have to be punished.

WITNESS: The only incentive for him to come before the Settlement Committee is to save himself from prosecution.

MR. CHAIRMAN: While he wants expeditious settlement, there should be payment also.

WITNESS: He should be able to survive also. No one will come before the committee unless there is some incentive.

MR. CHAIRMAN: That point you have made yesterday and we will consider. The other question today is about reduction of tax liability. He must be left with something to live, only after paying the taxes. WRITE-off should be one in a thousand and it should be the exception and not the rule. We will have to provide for power to write off.

WITNESS: We have brought the two judgements. One is in Vol. LVII, 1965 I.T.R., page 546. It was a case between S. M. N. Thangaswamy Chettiar and another Vs. the Commissioner of Income-tax, Madras. It is said:

“Sections 4(3) and 15-B were not enacted at the same time. Hence it cannot be said that there is any scheme behind them. The use of the

phrase 'religious or charitable purposes' in Section 4(3) that is due more or less to historical reasons and not because of any intention on the part of the Legislature to have a dichotomy between 'religious' and 'charitable purpose' the latter meaning only secular charitable purposes. Notwithstanding the fact that the word 'religious' is also referred to in Section 4(3), the phrase 'charitable purpose' is implied in Section 15-B which apprehends both religious as well as charitable purposes."

The other judgement is in Vol. LVIII, 1965 I.T.R., page 140, between the Commissioner of Gift-Tax, Poona Vs. H. H. Sir Shahji, the Chhatrapati Maharajasaheb of Kelhapur. It is held there: "The expression 'charitable purposes' occurring in Section 5(1)(vi) of the Gift-tax Act of 1958 includes public and religious purposes'.

MR. CHAIRMAN: We will take care of it. It is a valid point.

WITNESS: Next we will refer to clause 80 which provides for return of income not to be invalid on certain grounds. This has reference to 292-B. This is a new section. It is said:

"No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

Now, there is another provision that says that the return must be accompanied by an auditor's report. Suppose, the auditor's report was not submitted and the return has been accepted,

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acted upon and assessment done, in such an event, the provision for compulsory audit becomes unnecessary or infructuous.

MR. CHAIRMAN: There should be another provision for penalty for failure to abide by the stipulation in regard to compulsory audit. Compulsory audit has been protested against. But without an audit report the return will not be in conformity with the provisions of the Act. We will consider the views and make our recommendations.

WITNESS: The next point is with regard to time limit. As a result of the introduction of compulsory audit, the previous time limit of six months has been taken away. We could file the returns upto September. As in the case of Companies Act, we request that the six months time may be allowed.

MR. CHAIRMAN: How much time do you want after the close of the year?

WITNESS: Six months after the close of the year, that is 31st March.

MR. CHAIRMAN: Let us leave the first year. For the subsequent years, what according to you would be reasonable time after the close of the financial year?

WITNESS: Six months; that is, September or at the most it should not go beyond October, in any case.

MR. CHAIRMAN: We will consider that.

WITNESS: An amendment is also being made to section 140-A to say that the time or payment of the tax within 30 days from the date of filing the return is also reduced.

MR. CHAIRMAN: That will remain along with the filing of the return.

WITNESS: Now, I come to clause 64, explanation 3, which I referred to yesterday. It speaks... shall be deemed to have concealed the particulars of his income.' What is con-

cealment of particulars of income is not defined. The assessee returns an income of Rs. 10,000. Ultimately, he will be assessed to 15,000. In that case what is the amount concealed. Is it 10,000 or 15,000.

MR. CHAIRMAN: What is his assessed income, is the concealed income.

WITNESS: That is not found here.

MR. CHAIRMAN: What is the doubt? If he does not file the return at all within the particular time?

WITNESS: It is a valid return in respect of section 148 notice. He files a return with reference to this notice showing an income of Rs. 10,000. But he is assessed to Rs. 15,000. Rs. 10,000 or Rs. 15,000 will be the concealed income. There is some sort of doubt. I leave it to the committee to decide.

MR. CHAIRMAN: It gives the idea that such cases are not covered by the explanation. This will apply to a person who has not been assessed, and who has not filed the return within the period of three years. Then which return do you say?

WITNESS: In respect of 148 notice. After the expiry of the period, still a notice can be issued.

MR. CHAIRMAN: What is the period under section 153, let us consider the explanation. Will your illustration apply to the person who does not file a return for three years?

WITNESS: He has not filed a return for three years. Subsequently he files a return.

MR. CHAIRMAN: That is no return.

WITNESS: It is in respect of notice under section 148. Such cases are covered by the explanation.

MR. CHAIRMAN: That is right. The explanation says—'... notwithstanding that such person furnishes a return of his income at anytime after the expiry of the period aforesaid in pursuance of a notice under section 148'. So far as his guilt is concerned, what

is contemplated here is that it does not in any manner minimise it and there are no extenuating circumstances. The concealed income is the entire assessed income.

WITNESS: Why should we make a distinction between the words income and the returned income. The penalty is not to be made with reference to the assessed income, but only in respect of the particulars which have been concealed.

MR. CHAIRMAN: In other words, 271(1)(c) will apply to the difference between the returned income and the assessed income. If a person's return is accepted, then there will be no 271(1)(c).

WITNESS: The entire returned income becomes concealed income.

MR. CHAIRMAN: The difference between the returned income and the assessed income is the basis for determining concealment.

WITNESS: That basis has been taken away.

MR. CHAIRMAN: We will consider it.

SHRI R. V. SWAMINATHAN: In the assessed income and the concealed income, the department will disallow certain item. Then the assessed income will be more.

MR. CHAIRMAN: In some cases, this might work inequitously. Supposing after three years he files a return of an income of Rs. 1 lakh, and is assessed to one lakh of rupees, there is no regular concealment. This is only the concealment under the explanation.

WITNESS: Yes, the concealment is the entire one lakh of rupees.

MR. CHAIRMAN: Take another case. He files a return for one lakh of rupees. For the purpose of the explanation, the income will be Rs. 1,50,000. For the purpose of 271(1)(c), it is only one lakh of rupees.

We will apply our mind and do what is just and equitable. To my mind, so

far as the return of income is concerned, if he does not file a return for three years, then the concealment will be the whole of it.

We are thankful to you for pointing out this aspect. There is perhaps some incongruity. We will see.

SHRI BHAGAT JHA AZAD: I suppose there may be circumstances where some part of the amount may not be taken as concealment. For example an expenditure of Rs. 10,000, out of Rs. 50,000 may be allowed, and the concealed income will then only be Rs. 40,000.

MR. CHAIRMAN: Under 271(1)(c), it will be Rs. 40,000. But under the explanation, it will be Rs. 1,40,000.

Mr. Gopalakrishnan, we are thankful to you for pointing this out to us. You may proceed to the next point.

WITNESS: Sir, we now invite your attention to clause 55, amendment to section 222. This occurs in chapter 17-D, Collection and recovery. The explanation proposed to be inserted says:—

“For the purpose of this subsection, the assessee's moveable or immovable property shall include any property which has been transferred by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid, and so far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, it shall even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date’.

Now there is section 65 of the Income-tax Act. I refer to the liability of a person in respect of income

included in the income of another person. Under Sec. 65 the provision is already there. Now after the enactment of this Explanation the result would be, the entire property can be proceeded with not only in respect of that particular tax attributable to the transferred property but in respect of the tax due by the transferor. Sec. 65 provides that in so far as the tax is attributable to the income arising out of the transfer, to that extent this liability is provided for.

SHRI VASANT SATHE: Do you mean to say that it should be limited to the property transferred.

WITNESS: To the tax due on that particular income.

MR. CHAIRMAN: Even in respect of such cases the liability would follow.

WITNESS: Suppose there is an assessee with an income of Rs. one lakh. The income from the transferred property would be Rs. 15000 or Rs. 20000. To collect the tax relating to the entire income, the transferred assets are also included.

MR. CHAIRMAN: Sometimes the assets are transferred with a view to defeating recovery. I am not talking of evasion of tax. Let us first come to common wave length. What do you think of a case where A has substantial taxes due to be paid to the exchequer but he transfers his assets to B with a view to avoidance. It is not a question of clubbing.

WITNESS: There is separate provision to deal with such cases.

MR. CHAIRMAN: I think that you accept the principle that the transferer should be made liable. At the most what you can ask is that it should be “liability to the extent of the transferred property”. Kindly read the Explanation along with the main provisions and you will find that the liability is restricted to the quantum of the property transferred. The assessee here is the transferer.

WITNESS: What we are referring to is not that.

MR. CHAIRMAN: Please make your point clearer.

WITNESS: We have got Sec. 64 which says that in the event of transfers, that income shall be included in the hands of the transferer and shall be assessed to tax. This income which has to be assessed has got some tax and tax goes along with the transferred property. Therefore, Sec. 65 has already made a provision that the transferred property shall be chargeable for purposes of recovery and the provisions of Chapter XVII shall be applicable.

MR. CHAIRMAN: That is with reference to the vicarious liability only. Take another case where the transferer is not worried about the clubbing but is interested in divesting himself of some moveable assets with the intention of defeating the revenues claimed or recovery against him.

WITNESS: There is another section which deals with transfers to defraud revenue. We are referring to transfers which are not prejudicial to revenue.

WITNESS: What I am saying is that the tax on the transferred property may be taken as 'X' amount. The tax that may be due by the transferer may be 'Y'. If in the collection of X plus Y, the entire property is included in a case where the transfer is recognised as valid in law....

MR. CHAIRMAN: If the transfer is valid in law, why should it be put into jeopardy? What about the interest on revenue?

WITNESS: That is a separate section.

MR. CHAIRMAN: Your point is that if the transfer is valid in law and the liability is not related to the income from the property in the hands of transferor, then why it should be held liable. But the Wanchoo Commission has recommended in Para 4:45 "We recommend that properties transferred directly or indirectly otherwise than for adequate

consideration by an individual to his spouse or a minor child may be made liable for attachment and sale for the purpose of recovering the tax dues of such individual". If the transfer is for adequate consideration, that it will now proceed to the next point.

WITNESS: In clause 44 dealing with sub-section (1) of section 142, they have changed the wording. Instead of the words "upon whom a notice has been served", they have stated "to whom a notice has been issued".

SHRI VASANT SATHE: If a man avoids getting the notice served, then how are to ensure the service?

MR. CHAIRMAN: What is your apprehension? Do you doubt that issuance may be manipulated or something like that?

WITNESS: The notice might not have been received by the assessee. Issue by itself will not mean knowledge to the assessee.

MR. CHAIRMAN: What is the right involved under Sec. 139?

WITNESS: An assessment can be made in respect of a case where a notice under Sec. 139 is issued.

MR. CHAIRMAN: The assessee may not have even received it. I do not appreciate a case where a person may not have genuinely received it. According to what the Wanchoo Commission says there will always be some persons who do not file their return voluntarily. In such cases the department can issue service of notice under sub-section (2) of Sec. 139. If there is no compliance, the ITO may proceed to give him another opportunity by issuing notice under sub-section (2) of Sec. 139 has to be properly served before the notice under sub-section (1) of Sec. 142 is issued. The Wanchoo Commission says it sees no reason why there should be such restriction.

Anyhow we will consider what you had said, apart from what the

Wanchoo Commission has said.
Sevise is a *sine quo non*.

WITNESS: Clause 47 relating to amendment of Sec. 153. Explanations 1, 2 and 4 have been existing. Explanation 3 is being added. Completion of prosecution and completion of assessment proceedings are not inter-connected.

MR. CHAIRMAN: Wanchoo Commission says there should be hurry and time should not be lost in launching prosecutions. We will have to find out and the department have to convince us whether launching prosecution is a time consuming exercise. To some extent there is force in what you say *viz.*, that launching prosecution and completion of assessment are not inter-connected. The department will have to give us convincing reasons. We will consider what you have said. This is a case of delinquent about whom the Wanchoo Commission says 'do not delay launching prosecution'. In such cases the only thing we have to see is whether circumstances so conjure up that the time of assessment machinery is directed only towards launching prosecution.

SHRI VASANT SATHE: If prosecution is before a criminal court, the records are in their custody till the case is over. How can the records be available to ITO?

MR. CHAIRMAN: They can always complete assessment with copies of records. That will not delay assessment. What the Wanchoo Commission says is that the law be suitably amended to exclude the time from launching of complaint to its final disposal. We do not know how long it would take to complete prosecution. There is provision for appeal. Anyhow we will consider what you have said.

WITNESS: Explanation 3 to Sec. 271 This is regarding the period in which a person files his return. It refers the period within which he can file return under sub-clause (ii) of clause (a) of Sub-Section (1) of Sec. 153. I think it should be sub-clause (iii) and not

sub-clause (ii). May be it is a printing mistake.

It refers to assessment in respect of ~~88-89~~.

MR. CHAIRMAN: In the corrigendum we have corrected it. It is only 2 years.

WITNESS: We come to Clause 99 Explanation 4.

MR. CHAIRMAN: That we will consider. Government have made it clear that if it is *bona fide*, will be no penalty.

WITNESS: The entire explanation has been taken away from I.T Act Why should there be explanation in Wealth Tax alone.

MR. CHAIRMAN: We will consider.

WITNESS: Now I come to Clause 116-Sec. 6A of Gift Tax Act. This is intended to aggregate taxable gifts made in one or more four previous years immediately preceding the previous year for which an assessment is to be made for determining the Gift Tax payable. This will cause hardship on donee.

Then there is Clause 52-Sec. 185-we have pointed in para 12.1.1, at page 12 of our memorandum. This is with reference to benamidar.

MR. CHAIRMAN: That we will consider.

WITNESS: We want to know whether sub-partnership and Hindu undivided family would be included in this.

MR. CHAIRMAN: We are not here to interpret laws.

We are on the limited question whether a benami firm should be denied registration or not. Everyone has made submission on that. We will see what can be done.

WITNESS: Now we come to page 17 of our memorandum. The proposed amendments in the Bill are likely to affect settled legal relationships, transactions that have already been completed and situations and circumstances in force. It is therefore, necessary that

careful provisions must be made giving effect to the date from which these provisions are made applicable. This is in para 24.3 of our memorandum on page 17.

MR. CHAIRMAN: What you say is this should not be made retrospective. What I suggest is that it would be worthwhile if you could send us in writing as to what exactly you want further, apart from the points you had already written. Your evidence had been helpful and we are thankful to you for it. You have given some good suggestions. If you have some more points, you can send us a supplementary memorandum.

WITNESS: We will send a supplementary memorandum.

MR. CHAIRMAN: Thank you.

WITNESS: Clause 49—Amendment to Section 176. Loss also can be al-

lowed if the business closes down. Sales tax and certain other liabilities may arise.

MR. CHAIRMAN: I have understood. Thank you very much. The Committee is particularly grateful for the study you have made of the Bill. Let us have your supplementary memorandum on the points wherever you find anomalies. Also, whether you think retrospective operation is likely to cause hardship, you may state your views.

WITNESS: We are extremely elevated that this Parliamentary Committee has given us this much of patience and judicial approach in the matter of giving our evidence. We are going with a feeling of extreme gratitude and satisfaction.

(The Witness then withdrew)

II. Mysore Chamber of Commerce and Industry, Bangalore

Spokesmen:

1. Shri M. V. Krishnamurthy
2. Shri K. G. Subbarama Setty
3. Shri B. V. Rathnaiah Setty
4. Shri C. M. Reddy
5. Shri J. Srinivasan

(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 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.” Please proceed.

SHRI M. V. KRISHNAMURTHY: In this connection, since the time is precious we have after careful discus-

sion in our Chamber taken the views of all the 1800 members for our colleague Shri J. Srinivasan to be our spokesman and answer any points which the Hon'ble members of the Committee would like to ask.

SHRI JYOTIRMOY BOSU: Did your Chamber at any point of time conduct any survey or research on matters relating to functioning of the tax machinery, trusts, donations, black-money, etc.

SHRI M. V. KRISHNAMURTHY: We have conducted a few seminars on procedures, on simplification of tax. We have requested the Income-Tax Officers to come and participate. When I.T.Os. come to our seminar, they are

free to ask directly or indirectly questions on how best they can implement the provisions of the I.T. Law without infringing on the rights of the business community. As far as I know from 1959 we have conducted such seminars. I do not think we have conducted any tax evasion seminars as such.

SHRI JYOTIRMOY BOSU: You have not conducted any basic fact finding.

SHRI J. SRINIVASAN: We have already presented our memorandum and on some points to be added. I may be permitted here and there to refer to it. The objectives of the Taxation Laws (Amendment) Bill have been set out in our short notes.

Wanchoo Committee recommendations as we understand it are wholesome recommendations. There are also certain recommendations in regard to rates of taxation and the responsibility for the creation of unaccounted money has been stated as "high rates of taxation". Therefore, I would put it that Wanchoo Committee was the doctor who has been asked by the Government of India to find out the ills connected with the black-money, and he gave 2 remedies, (i) in the form of a pill (ii) in the form of syrup. Both are to be taken by the Government but Government preferred to take the syrup, with the result, the Taxation (Amendment) Bill which is before Parliament will not achieve the whole purpose. That is our submission. We have no authority to go into the pros and cons of the deliberations of the Wanchoo Committee. As far as I can say, I can rely on the expert findings, and one of the recommendations are lowering of rates of taxation. Therefore, I submit that the cure for this particular unaccounted money is not only in the introduction of various provisions that have been included in the Taxation Laws (Amendment) Bill, but the wholesome contribution that the Committee has made. I submit that the Wanchoo

Committee's recommendation must be taken as a whole and the Select Committee must direct its attention to rates of taxation also.

SHRI JYOTIRMOY BOSU: Kindly tell us the highest rate of effective tax in the Corporate sector and other sector, after all the reliefs and incentives are taken note of.

SHRI J. SRINIVASAN: As far as companies are concerned in our opinion, the tax rate will be 65 per cent in the case of private limited companies.

MR. CHAIRMAN: Are you aware of the tax rate of non-corporate sector? You may state this with reference to a particular year if you are aware.

SHRI JYOTIRMOY BOSU: From 65-66 to 70-71, the effective rate of taxation has been going down consistently.

MR. CHAIRMAN: That is based on the study of the Reserve Bank of India. Chamber after Chamber have come and made this plea very strongly that the rate of taxation have been responsible for continuance of this malice and tax evasion and black-money, and not one of them have ever made a study of effective tax rates. Therefore, we take it your contentions are of a general nature.

SHRI J. SRINIVASAN: Since Wanchoo Committee has already gone into it and also has gone into the effective rates of taxation, we take it for granted that that is an expert body.

Mr. Chairman, Wanchoo Committee report has its own place. The Parliament in its own wisdom has set up a Select Committee to go before the people and find out what are the views of the people which would help to achieve the objectives. If the Wanchoo Committee was the be all and end all what was the warrant for the Select Committee is what you ask. Therefore, it is of utmost importance that various Chamber of Commerce who come before us would be well-

briefed and have all the data and information.

SHRI JYOTIRMOY BOSU: The witness has talked about reduction in the rates of taxation. Unless the witness knows that the highest corporate sector does not pay more than 45 per cent effective rate and unless he knows even if the taxes are reduced, the evasion will continue. That can be seen from the failure of the Voluntary Disclosure Schemes. Therefore, your submission to this Committee to make recommendations to reduce the rates will not cut much ice.

SHRI J. SRINIVASAN: My submission is, it may not be a single factor or panacea of all the ills of black-money. While I said it will definitely contribute, no distinction is made between honest tax-payer and the dishonest tax-payer. It is a question of punishing a person who is wrong, but nowhere in the bill has there been an encouragement to the person who pays tax correctly year after year. After they pay tax, there is very little money left in view of the fall in value of money.

SHRI JOYTIRMOY BOSU: Even after 45 per cent, you are left with 55 per cent.

SHRI BHAGWAT JHA AZAD: That you don't pay. In the corporate sector, effective payment will not be beyond 45 per cent.

SHRI J. SRINIVASAN: That is only in the corporate sector; in the personal taxation, individuals.

MR. CHAIRMAN: There is no rational justification so far as rates are concerned in corporate sector.

SHRI J. SRINIVASAN: I don't admit it in the absence of figures regarding justification for lower taxes in the corporate levels, you have figures. I don't want to contradict them in the absence of figures. As far as individual, the rates of taxes hurt very much.

MR. CHAIRMAN: If you want us to take your argument seriously that the rates do cause tax evasion, and the generation of black-money and its proliferation in society with deleterious effects, then you will be satisfied that within the corporate sector where rates are reasonable because it was not victim of this disease. But the corollary of Shri Bhagat's question would be: if you say that is reasonable rate, why is not there any better result here. Next question: Despite rational rates in corporate sector also there is no effect? So far as tax evasion is concerned, you have to give reasons which would appeal to you, hard-headed people. It is a very major decision which the committee has to take and recommend to the Government.

SHRI ERA SEZHIYAN: In the memorandum, they have put one thing clear: "The possible immediate revenue loss that might occur due to the lowering of the tax rates will be more than offset by the increased savings and investment and an around pep up to the economy in general." These remarks arise out of the main contention that the existing rates of taxes have lowered in the sense out of which this follows—one you lower the taxes to some stage—they have been done and all the 290 large companies, it has been found out—apart from effective rates coming down, another aspect also bears out. If you take the retained profits of large companies—it has doubled from 45 to 297 crores between 68-69 and 70-71 and the tax profits rose from 18.8 per cent to 26.2 per cent—almost higher rates. Therefore, the reason for persistent sluggishness provided in corporate sector should be found within the Corporate sector. Therefore, if you argue that point, there may be other points. If you go on this ground that fast impinging rates are responsible, the rate of retained profits have almost gone up from 18.8 to 26.2 per cent. It is the highest there.

SHRI J. SRINIVASAN: Our argument in respect of rates of taxation was the Government should not be afraid that there will be fall in revenues, because of the fall in the rates of taxation. We only say that it will be more than offset by retained reserves ploughed back into the industry and there will be more incentive.

SHRI JYOTIRMOY BOSU: I wanted to be benefitted by the presence of Chamber of Industry. I very much expect you to say something on inflation, leading to blackmoney generation. The only answer is cost accounting audit.

SHRI J. SRINIVASAN: The Government has already from the point of view of Company Law, as well as Income-tax law: The company law takes care of audit of the big companies or corporations.

SHRI JYOTIRMOY BOSU: To ascertain first the true cost of production and keep the finger; and keeping the finger on the true revenue earnings—they play both ways.

SHRI M. V. KRISHNAMURTHY: I think I can say 4 parallels are running the society. Government wants tax with as much ease as possible; The society wants everything best commodity at the lowest cost; Industrialist wants highest production with lowest cost; Labour wants highest wages with the least work. I cannot for a moment think where these 4 parallel lines must meet.

MR. CHAIRMAN: Let us not escalate the controversy on very narrow ambit. What leads to evasion, generation of black money and proliferation? Mr. Bosu's question was to what extent in your own expenses and depleted statement of sales are responsible for generation of black money. What do you have to comment on it?

SHRI JYOTIRMOY BOSU: There is no other way to curb black money for the corporate sector.

SHRI M. V. KRISHNAMURTHY: To be frank with you, it is a very very difficult question. When our Hon. Member was telling about cost, I was thinking what are the ways by which costs are increasing. I am confined to saying this thing; We will have to readily point out that you must make a survey. I think it is worth making a survey right now. We are now, not in a position, to give you some figures.

SHRI VASANT SATHE: You accept Wanchoo Committee's recommendations. You have suggested that this should also take into consideration reduction of the highest marginal tax from 97.75 to 75 per cent as recommended by the Wanchoo Commission and that, you say, will encourage investment and will not affect taxes. That is the point you are making. I would like to know—You may also be aware of the dissenting note given by Wanchoo Committee. He had suggested that merely reducing highest marginal tax may not be conducive either to investment or production investment. We are thinking of production investment. You have suggested, that if anything has to be considered, that we can give tax relief in the form of investment relief co-related to actual production investment done. Then that would be more beneficial instead of just blanket ban rate of the marginal taxes. What do you have to say?

SHRI J. SRINIVASAN: I would say in non-corporate sector, it will be quite conducive.

MR. CHAIRMAN: Why not in the corporate sector?

SHRI J. SRINIVASAN: I think we will have no difference of opinion in this sector.

Then, with regard to anonymous donations, we have already stated in our Memorandum it is not fair to tax the entire donation at the highest rate before allowing for the utilisation of those moneys for charitable purposes. It is our submission that anonymous

donations might come in certain cases out of unaccounted moneys. Perhaps that is the object in stating that this entire donation must be taxed at the highest rate. It is our submission that any anonymous donation may be difficult beyond sources. What we suggest is that unless fixed at some percentage of the total resources involved or if the individual item exceeds Rs. 5000/- then the burden of proving the source of these moneys should be put on the charitable institutions or otherwise, normally donations of anonymous nature should not be clubbed with donations which are legitimate and legal.

MR. CHAIRMAN: We take it that the view of the Chamber is upto Rs. 5000/-. It could be examined. Above Rs. 5000/- the burden is already there to prove identity. Otherwise it is to be taxed.

SHRI J. SRINIVASAN: With regard to prohibition of activity in business for charitable Trusts; they will derive money out of business activity profits carried on in the actual carrying on of the primary object of the Trust is also not without any ambiguity. Because many institutions have buildings, investments in various shapes like immovable property and donate whatever the income—it is applied for charitable purposes—whether this will also be taken for activity is a doubtful question needing priority.

MR. CHAIRMAN: Any property by way of investment and earnings—income from them is not business activity.

SHRI J. SRINIVASAN: Activity for profit. There is no word 'business' there—it is not business activity.

MR. CHAIRMAN: It would inherently imply as systematic indulgence in some undertakings, some endeavours to make these profits come, and activity is carried on. In the case of charitable Trust or institutions for the relief of education or medical

aid, it carries on any activity for profit. If you are having buildings or stock-in-trade and you are making profit or loss on the sale of buildings that will come here. But income from property would not fall into this.

SHRI J. SRINIVASAN: If some buildings are put up with borrowed money and if the rent from that is used for charitable purposes, that is not activity of profit and if that is considered activity for profit, it will be injurious to the charitable interests.

MR. CHAIRMAN: Is there any authority for your apprehension?

SHRI J. SRINIVASAN: It is to be decided whether it is an activity for profit or for income. The Income-tax Officer may view it differently.

MR. CHAIRMAN: Is there difference in the concept of income and profits?

SHRI J. SRINIVASAN: Yes. Profit is from business. If I have my own house property, I derive income from the rent.

MR. CHAIRMAN: Therefore, what do you suggest?

SHRI J. SRINIVASAN: An Explanatory Statement may be given under this clause to state categorically what is activity for profit.

MR. CHAIRMAN: This term activity for profit has already been there on the Statue Book. Now it is extended to other charities. All right. We will consider, if there is justification for your apprehension.

SHRI J. SRINIVASAN: Our next objection is with regard to withdrawal of exemption in respect of communal trusts.

MR. CHAIRMAN: That we are considering. Genuine Trusts should not be affected.

SHRI J. SRINIVASAN: Next is with regard to turnover limit of 2½ lakhs. They are not in proper consonance.

MR. CHAIRMAN: They are not alternatives, but cumulatives. What would be the reasonable limit?

SHRI J. SRINIVASAN: Turnover depends on various factors.

MR. CHAIRMAN: How many are there above 10 lakhs turnover and will it be a substantial number?

SHRI J. SRINIVASAN: At least 50 per cent of the assessees will come under this limit.

MR. CHAIRMAN: But more than 50 per cent are salaried people. You have to take only the business people.

SHRI J. SRINIVASAN: As far as clubbing minor child's share in a firm, it is unreasonable.

MR. CHAIRMAN: We will consider that.

SHRI J. SRINIVASAN: My next submission is...

MR. CHAIRMAN: Are you relying on Wanchoo Committee for this?

SHRI J. SRINIVASAN: No.

MR. CHAIRMAN: So far as this Committee is concerned, the whole matter is open and in that light you may offer your remarks.

SHRI J. SRINIVASAN: Our chamber feels that the second stage income out of income should not be taken for taxable purposes.

In regard to unexplained Hundi loans, further restrictions are not necessary.

MR. CHAIRMAN: Permanent account is for different purpose. Through Hundi, interpolations are done and money is passed from one to another. If repayment is by crossed cheque, will it remove the hardship?

SHRI J. SRINIVASAN: I think so.

MR. CHAIRMAN: Repayment can be by crossed cheque or Account Payee cheque or crossed Demand Draft.

SHRI J. SRINIVASAN: The lenders may not have bank accounts.

MR. CHAIRMAN: No, no. They all have accounts.

SHRI J. SRINIVASAN: Next is Section 80(gg) which covers rents paid. I suggest that the same 15 per cent or Rs. 3600 per annum must be given as in the case of the other assesseees.

In regard to 80VV, I suggest that the limit of Rs. 2000 may be made as Rs. 2000 per every assessment year as litigation may go on for a long time.

MR. CHAIRMAN: In principle, you accept a limit?

SHRI J. SRINIVASAN: Yes.

Then in regard to Explanation under 185(1),—clause 52—, we feel it is rather harsh. If one of the partners is a benamidar and for non-communication of that knowledge to other partners, all should not suffer. If the benamidar-partner does not disclose it, he alone should suffer.

MR. CHAIRMAN: We will consider that.

SHRI J. SRINIVASAN: Then I come to clause 80. I say that the non-compliance of any other provision by the assessee also must be viewed in the same spirit. Any default of a technical nature should not make the return invalid. The return shall not be invalid simply because it is technically erroneous. Consideration must be shown in respect of technical default by the assessee.

MR. CHAIRMAN: That is there. If it is a technical fault, the return will not be held to be invalid.

SHRI J. SRINIVASAN: Advance tax estimate has to be sent before the 15th. Yet, if, the estimate is given on the 15th, they say that the estimate should have been given on the 14th itself. These small things are insisted on by the department. These technical things should be not insisted upon.

Then I come to clause 64. The explanation to this clause should apply

up to a period of four or five years in respect of the non-filing of the returns.

MR. CHAIRMAN: Is it explanation 3 you are referring to.

SHRI J. SRINIVASAN: Yes. The point is for voluntary returns, a penalty is prescribed. I would say that the 'deemed concealment' should be restricted to cases where for a reasonable length of time, the assessee has not filed the return. You can say four or five years.

MR. CHAIRMAN: This will apply according to the explanation to cases coming within the three years' limit. One can file the return within three years.

SHRI J. SRINIVASAN: I understand the time-limit. It should be four or five years.

MR. CHAIRMAN: There is already the limit of three years. You suggest that it should be five years.

SHRI J. SRINIVASAN: Because, there are already provisions in the Act regarding non-filing of the return.

MR. CHAIRMAN: That is there even for five or ten years.

SHRI J. SRINIVASAN: Wanton concealment should be proved by the department. For non-filing of the return there is already adequate penalty provided in the Act.

MR. CHAIRMAN: That is there even for five years. You proceed to the next point.

SHRI J. SRINIVASAN: Then, Sir, about the non-filing of the return by the trusts. The penalty is related to the income as percentage of the income. Already there are amendments in the Act to revise the penalty on the basis of tax involved. We are going back to the position where the penalty is based on the income of the trust. After all the trust is said to

evade payment of the tax that might ultimately be determined to be due.

MR. CHAIRMAN: A trust would be exempt if it is a charitable trust falling within the provisions of the Act. How can a trust evade payment if it is exempt.

SHRI J. SRINIVASAN: All defaults under the Act are to be based on the amount that the trust seeks to evade and not in regard to the total income. A particular trust, which is quite sure that it is exempt from the provisions of the Act, does not file a return. It should not be punished on the basis of some income or some other basis.

MR. CHAIRMAN: Then it will never file a return at all.

SHRI J. SRINIVASAN: It should be on the logic of the size of the penalties envisaged in the Act in regard to the other assesseees. Here also the trust should not be faced with a situation which is quite different from the situation as far as the non-filing of the return by other assesseees, is concerned.

MR. CHAIRMAN: The basis of taxation is different. If you say that a trust would be liable to be penalised only with reference to certain tax, then such of the trusts as are otherwise exempt from taxation, will never file any returns at all. They cannot be dealt with.

SHRI J. SRINIVASAN: But there are other provisions in respect of trusts.

MR. CHAIRMAN: We will come to that. The two are different. There is no necessity for a trust to file a return if it is exempt. You are only trying to make a point that payment should be with reference to the tax. We will consider it. If once it is held that the trust is to be a charitable trust and its objects are not changed, then there should be no unnecessary work either for the department or for the trustees.

SHRI J. SRINIVASAN: I limit of Rs. 100 as penalty would meet the

situation rather than 1 per cent of the income.

Now, I come to the Settlement Committee. We suggest that professional men like chartered accountants, representatives of the Chambers of Commerce, etc. may be included in the Settlement Committee.

MR. CHAIRMAN: How do the representatives of the Chambers of Commerce come in here?

SHRI J. SRINIVASAN: It is a settlement of the personal income. A Chartered Accountant a Lawyer of any other businessman should be included in the settlement committee.

SHRI VASANT SATHE: Should they be independent persons?

SHRI J. SRINIVASAN: Not completely independent persons. There may be departmental people also.

MR. CHAIRMAN: This is going to be a statutory body vested with supreme authority. Whatever are the views of your chamber, you can give

to the committee here. Who are the persons to be appointed the Chambers of Commerce will not be asked. You tell us what should be proper constitution of the settlement committee.

SHRI J. SRINIVASAN: The settlement committee must include professional people like Chartered Accountants, lawyers or other people. It may be drawn from the Federation of Chambers of Commerce.

MR. CHAIRMAN: How does the Federation come in, I do not know. How is it going to have sufficient expertise in the matter.

SHRI J. SRINIVASAN: With regard to the size and the amount settled.

MR. CHAIRMAN: Any other point you have to make?

SHRI J. SRINIVASAN: No, Sir.

[The Witness then withdrew]

III. Arya Vaidya Sala, Kottakkal, Kerala.

1. Shri K. Sreenivasan
2. Shri K. S. Paripoornan
3. Shri P. K. Warriar
4. Shri K. K. Warriar

(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 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." Please proceed.

SHRI K. SREENIVASAN: So far as the Arya Vaidya Sala is concerned, we are mainly interested in the definition of the term "charitable purpose"—Section 2(15). The proposed amendment of Section 13 of the I.T. Act will create more confusion than what is there already both for the assesseees as well as the Courts. The

new clause proposed to be inserted is as follows:

"(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." The Parliament has already enacted Section 2(15) which reads:

"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 any activity for profit".

You will kindly appreciate that the expression "not involving the carrying on of any activity for profit" has created a lot of confusion. The Kerala High Court has taken one view and the Calcutta High Court has taken another view.

MR. CHAIRMAN: Are you on the question of drafting? What about the principle? Do you accept the principle? Do you accept the principle that if it is an activity for profit, which is not in consonance with the primary purpose of the trust, should it be outside the ambit of exemption?

SHRI K. SRINIVASAN: The element of profit will be there in any venture. The fact that a particular transaction results in profit is not material. For example, for purposes of giving medical relief, I start a Nursing Home.

MR. CHAIRMAN: It is exempt under Sec. 10. Assuming for the moment that we are able to give a clear-cut law that business activity for profit alone is to be taxed, what is your objection to it in principle? What is the primary purpose of a trust will depend upon the circumstances of each case as to what the trust primarily exists for.

SHRI K. SRINIVASAN: So far as the Arya Vaidya Sala is concerned, it came into existence in 1944. The purpose was to afford medical relief to the poor and also to impart Ayurvedic education to pupils. The Trust was enjoying the exemption under the old Act Sec. 4(3)(1) and later on when the new Act came into force in 1961, the definition of Sec. 2(15) was sought to be used. It was said that we will not be entitled to exemption because it is an activity for profit.

MR. CHAIRMAN: Did you go to Court and what is the position of the litigation?

SHRI K. SRINIVASAN: The litigation went against the assessee and we lost the exemption. We are now fighting it in Court.

MR. CHAIRMAN: I will tell you what is the Government's view so far as your grievance on this point is concerned for your benefit as well as for the benefit of the Members. "So far as the case of Arya Vaidya Sala is concerned, it is not denied that it carries on a regular business of sale of medicines. This amounts to carrying on activities for profit. The primary purpose of the trust is alleged to be free treatment of poor patients. As seen from the Judgment of the Kerala High Court (84 TLR 119) the vital facts not mentioned in the Memorandum are that the gross turnover of this institution in relation to the sale of medicines was in the region of Rs. 11.33 lakhs in the year 1962-63, Rs. 12.52 lakhs in the year 63-64 while during the same years the amounts received for special treatments were Rs. 25,138/- and Rs. 17,132/- respectively... The manufacture and sale of medicines on such a large scale could not be held to be for the purpose of giving treatment to poor patients... There is only some little activity of a charitable nature. The Kerala High Court has held it to be a trust with mixed objectives. It is not proposed to provide exemption to such cases."

An activity like yours is nothing but business unrelated to the object of providing medical relief to the poor. Have you got the latest figures to support your contention that your primary purpose is to treat poor patients and to impart Ayurvedic education. Your annual sales are in the region of Rs. 12 lakhs and charity seems to be a minor part of your activity.

SHRI R. BALAKRISHNA PILLAI: If you can enlighten us by saying what the total amount of sales of medicines in this year and how much money has been spent on the treatment of the poor, it will help the Committee.

MR. CHAIRMAN: Have you brought the audited Balance sheets? Your dialogue with us will be fruitful if you can better come to Delhi with facts and figures. If you have nothing else to say, we having nothing else to hear. Our minds are absolutely open in the matter.

SHRI K. SHEENIVASAN: What are the materials that are required by the Committee?

MR. CHAIRMAN: You yourself should know. The Committee would like to know the details with regard to sales of medicine, the number of hospitals you are running and the number of Colleges in which you are imparting Ayurvedic education.

SHRI BHAGWAT JHA AZAD: How much of the amount is spent for charitable purposes, that is for free treatment, how many people get free treatment, how many people get paid treatment etc.

MR. CHAIRMAN: We would not mind your charging Rs. 2000/- for a rich patient if, at the same time, you treat some 10 needy and poor patients. You can come to Delhi with all the facts and figures.

SHRI K. SREENIVASAN: We will come, Sir.

SHRI R. BALAKRISHNA PILLAI: It is a fact that poor people are being treated free.

SHRI K. G. WARRIER: We treat about 20,000 people free in a month.

SHRI R. V. SWAMINATHAN: What is the amount involved in free treatment.

SHRI K. G. WARRIER: Rs. 10 lakhs nearly.

MR. CHAIRMAN: Why was not this brought to the notice of Kerala High Court. If it had been brought to their notice, they would not have said that this is only 'minor activity'.

SHRI K. SHEENIVASAN: The Appellate Tribunal upheld our contention. The ommissioner weant in appeal to Kerala High Court. The High Court reversed the decision of Appellate Tribunal and said that this is not 'medical relief' but only following the object of general public utility. In subsequent years, we have been able to convince the Appellate Assistant Commissioner that this is 'medical relief'. He has agreed. But the department has gone in appeal to Income Tax Appellate Tribunal.

MR. CHAIRMAN: Bring before the Committee, at Delhi, all facts and figures in support of your contention.

SHRI K. G. WARRIER: Yes.

SHRI BHAGWAT JHA AZAD: When the Managing Director is here, he must be able to tell us, though not precisely, at least what is the total revenue and what is it that is spent on free medical relief.

SHRI K. G. WARRIES: Our total turnover is Rs. 139 lakhs and our profit is Rs. 22 lakhs. We spend Rs. 8 to Rs. 9 lakhs on free medical relief

MR. CHAIRMAN: How did you arrive at Rs. 22 lakhs profit. Is it after providing for Rs. 8 to Rs. 9 lakhs medical relief?

SHRI R. V. SWAMINATHAN: That is what I also want to know.

SHRI K. G. WARRIER: That is out of the profit. Out of Rs. 22 lakhs profit, we have spent about Rs. 8 to Rs. 9 lakhs on free medical relief to poor.

MR. CHAIRMAN: I think it is better you come with clear facts and figures of your balance-sheet, profit and loss account, for the past three years. Please send to us large number of copies of your annual report and brochure or literature on your 'sala'. Give us facts and figures to support your bonafides.

SHRI K. SRINIVASAN: Our bonafides were never in question. Even the Kerala High Court did not say anything on it. From 1944 we have been exempted. Supreme Court in (53ITR) held that ours is a charitable institution. Only after Amendment Act of 1961 came, interpretation question came and in Kerala High Court we lost the case.

MR. CHAIRMAN: The case has gone against you on facts. "Yours is a case of primarily carrying on business with little side activity of charitable nature". That is the finding.

SHRI K. SRINIVASAN: Finding of department.

MR. CHAIRMAN: Yes.

IV. Madras State Income-tax Practitioners Association, Madras.

Spokesmen:

1. Shri G. Balu—President,
2. Shri C. R. K. Murthy—General Secretary.
3. Shri N. Sundararajan
4. Shri K. Jayaraman
5. Shri S. Raghavan

(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 reads.

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SHRI G. BALU: We have no objection to our evidence being made public. It need not be treated as confidential.

SHRI R. BALAKRISHNA PILLAI: You did not appeal to Supreme Court.

SHRI K. SRINIVASAN: We withdrew the appeal because there was no evidence.

MR. CHAIRMAN: Let us have facts and figures. Send them to us fairly in advance.

SHRI K. G. WARRIER: Yes, Sir.

SHRI JYOTIRMOY BOSU: Yours is purely physiotherapy?

SHRI K. SRINIVASAN: Yes. All Ayurvedic treatment.

Within what time, we should send you the materials? When are we likely to be called to Delhi?

MR. CHAIRMAN: You won't be called before June 1974. Send us the material, well in advance. Come with facts and figures in support of your contention. Thank you.

(The witnesses then withdrew.)

public. It need not be treated as confidential.

SHRI K. JAYARAMAN: The ITOs are to be designated as Senior ITOs and Junior ITOs. Hitherto there has been no such distinction and ITOs who are senior in service and with sufficient merit have been given charge of difficult and complicated cases. There is no necessity to classify as Senior and Junior ITO in the Act itself, which is statutory.

MR. CHAIRMAN: You are afraid that the junior will be designated as Senior ITO because he belongs to Class I.

SHRI K. JAYARAMAN: Yes. There are many Class II officers who have

been put in charge of complicated cases and I know many Class I officers being put in charge on less difficult circles and company circles. We do not want this distinction of Senior ITO and Junior ITO. It need not be in the Act. These things can be done by the authorities themselves without introducing in the Statute Book as Junior and Senior I.T.Os.

SHRI BHAGWAT JHA AZAD: Have you any idea when this cadre of Cl. I and Cl. II was formed, what is the proportion now and what is the strength now to support your argument?

SHRI K. JAYARAMAN: Cl. I are selected from the I.A.S. cadre, Of course departmental people are also promoted, but per centage is maintained. The existing ratio is 2:1. So far as duties are concerned, it is given depending upon ability and not merely depending upon the cadre.

SHRI BHAGWAT JHA AZAD: Is it correct that many cases of Cl. I have been looked after by Cl. II. How many are in Cl. I and how many are in Cl. II?

SHRI N. SUNDARARAJAN: It is generally 2:1. As per Pay Commission's report it is more or less 1:1. The main point is, so long as the powers and duties are concerned they do not change. Where is the necessity and the need for a senior and junior in the statute book.

SHRI R. BALAKRISHNA PILLAI: Suppose in a particular office there are 5 officers—all I.T.Os. Who will be in charge of the office? What is the present procedure?

SHRI C. R. K. MURTHY: In the present administrative set up Cl. II I.T.O., also is in charge of administration. The I.T.O., in charge of administration need not necessarily belong to Cl. I. Either of them could be in charge of administration.

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SHRI JYOTIRMOY BOSU: Would you think this artificial distinction has caused demoralisation, frustration and disappointment?

SHRI N. SUNDARARAJAN: Yes.

SHRI JYOTIRMOY BOSU: Do you feel or do you not feel that this frustration and dis-satisfaction amongst class II I.T.Os in hampering the cause of tax collection?

SHRI N. SUNDARARAJAN: It is hampering the very functioning of the department. There is a fighting which goes on and it has gone up to the courts as such. At least 10 years before, there was talking between these two cadres. Now, there is not even that talking, because of the clamour for total abolition of Cl. I and II.

MR. CHAIRMAN: Therefore, briefly, your case is that when cases are allotted keeping in view the nature and complications of the case and given to an officer who is competent to handle the same—competent to determine with reference to the experience and their record of service—and as long as the I.T. officers under the Law exercise the same functions and enjoy the same powers and authority, there is no warrant for this nomenclature of senior and junior, when in reality a junior may be acting as senior and senior acting as junior, which will only create bitterness. Next point please.

SHRI VASANT SATHE: Would you also be in favour of total abolition of this distinction of Cl. I and Cl. II altogether, so that, it should be determined according to functions and have nothing to do with this artificial category of Cl. I and Cl. II. Somebody directly recruited and, therefore, a junior in experience in Class I and the experienced man in the department continues to be in Class II.

SHRI N. SUNDARARAJAN: Exactly. It should be negotiated with the Union. There are certain other problems. Our view has been with reference to Cl. I and Cl. II. We

are not very much concerned with that except that it hampers with the efficient functioning of the department. It hampers collection of taxes. It comes down, because the whole thing is balked in courts and we are not able to get our promotions also. The honourable thing would be to convene a meeting of all the Unions and then arrive at an amicable settlement so that it has got statutory effect as in U.K., and other countries. We suggest, it should be a negotiated settlement where Class III employees will have a say in the matter. Sometimes it happens, if you abolish Class II with no proper recourse for promotions for Class III, this will hamper. Therefore, convening of a conference of Cl. I, II, and III and arriving at an amicable settlement is suggested.

MR. CHAIRMAN: This conflict in the Income Tax is one of the most unfortunate phenomenon. It is not only impeding the smooth working, but also cutting at the very root of the department itself. Unless an end of it is brought to this sort of bickering and heart-burning, not on a stop-gap basis, but on an enduring basis, the prospects of the department are extremely bleak. It is not a case of Class I or Class II or senior or junior. It is basically a case of creating conditions where people would work in a sense of comradary and brotherhood and a sense of fellowship would come about. This committee will be extremely anxious to do this, but a settlement has to be found at your level. The various unions of Cl. I, II and all of them have to get together and accept some formula, as a result of which, this extremely unfortunate civil war which started in the department would come to an end. This is not directly germane to what you have to say. I think, as one who knows the working of the department, might make the views absolutely clear, if we do not do that I do not know how we are going to unearth black-money. The assessee ought to have a mortal fear in their

minds and for that we need an extremely sophisticated and smooth working machinery with optimum productivity. It cannot come about with these present distractions. Please proceed.

SHRI JYOTIRMOY BOSU: I feel very sorry when I realise these artificial distinctions are created.

SHRI S. RAGHAVAN : Our next point is the amendment which provides or assigning of concurrent jurisdiction on the Deputy Commissioner (Assessment). Clauses 30, 31 and 32. The basic idea appears to be greater flexibility depending on the needs. In fact it will be contrary. It involves lot of movement of files and administrative confusion. Already there is provision in 125(i) which says "the Commissioner feels that any particular case can be allotted to I.A.C., it may be done. Now, having concurrent jurisdiction with I.T.O., a Dy. Commissioner (Assessment) will only create confusion. There is no need for the creation of Dy. Commissioner (Assessment).

MR. CHAIRMAN: It is to help in the assessment proceedings. 125(1) is not concurrent jurisdiction. That is exclusive jurisdiction.

SHRI S. RAGHAVAN: Even that exclusive jurisdiction has not been invoked and now you are adding one more.

MR. CHAIRMAN: This scheme is different and that scheme is different. In the process of assessment, it is now with the intention of ending litigation, expeditiously and quickly disposing of that Dy. Commissioner is associated at a certain stage of assessment. This is enabling provision. Are you against the basic provision that Dy. Commissioner should not be associated with assessment?

SHRI N. SUNDARARAJAN:

Firstly, we are opposed to functional system as it is. The Federation of I.T. Employees has been opposing conferring of concurrent jurisdiction. Existing practice should continue. As it appears to the Association, when I.T.Os are divested of some of the assessment powers and duties to I.A.C., who is above him, and some of the functions to the I.T. Inspectors—that means what is available to the cadre of I.T.Os., you shift it to I.A.C., and what is available to the cadre of I.T.Os you shift it to the Inspectors. That means, you got the work done at cheap rate of you get work done at a higher rate.

Second objective is if you have compact jurisdiction it becomes easy. You find now for the same assessee for the same year, two assessments are being made and revision petitions are being received by Commissioner or Addl. Commissioner to set aside one of the assessments. This is all possible only in the concurrent jurisdictions and multi-circle jurisdictions where the same functions are performed by different officers, you do not know what a particular jurisdiction is. Even I.T.O.s and Commissioners at their level are unable to find out. Same is the case with assesses also. The assesses are not able to find out where exactly they should file their return of income. This is the position for the last 4 or 5 years.

SHRI S. RAGHAVAN: That should be separate for every I.T.C.

SHRI VASANT SATHE: You just want territorial jurisdiction instead of functional jurisdiction?

MR. CHAIRMAN: Whether territorial or functional so far as the proposed 144 (a) is concerned, it only contemplates the Deputy Commissioner being brought into the picture in such assessments where the circumstances warrant and appropriate opportunity being given to the assessee only with the in-

tent and purpose that, coming to take higher responsibility in a matter and the assessee may have to go in appeal.

(2) The matter looks more ingenious and scrutiny. There are unnecessary remarks—the Department is being maligned that there is corruption. If there are 2 types of people associated with one thing, there is lesser scope to anyone to maligning the Department. I am telling three positive purposes for which this is done.

SHRI S. RAGHAVAN : Even the provisions of 125 (1) confers the I.A.C. to do it.

MR. CHAIRMAN: We are on a principle and perhaps we are very well on a principle. If you accept in principle this is correct that D.C. should be associated there are valid reasons for Government to accept. This is the principle. Then they have formulated this law.

SHRI VASANT SATHE: For example if before an I.T.O. with territorial jurisdiction an assessment is pending and in case an Asstt. Commissioner finds that this particular matter which is before the I.T.C. is a complicated matter and it will take unnecessarily long time he calls for the file and decides matters. What is the objection in principle do you have to this policy?

SHRI S. RAGHAVAN: Straight-away the D.C. cannot make an assessment. Even now, an I.T.C. can approach the A.C. for instructions in complicated cases.

SHRI VASANT SATHE: It is for you to approach him. We are making statutory provision that the A.C. can deal with this matter. What is your disagreement?

MR. CHAIRMAN: He can call the file and give instructions. There is nothing statutory about it.

SHRI VASANT SATHE: But the case will be tried by the I.T.O. He can at the most give instructions. Can he call for the case and decide himself?

SHRI S. RAGHAVAN: Even now, the Commissioner can transfer a case to the A.C.

MR. CHAIRMAN: We want this sort of division of authority. Let not any one officer have unlimited authority.

SHRI K. JAYARAMAN: The D.C. has to verify, issue instructions. Even Board's instructions, at times, are questioned by the Audit—Comptroller & Auditor General and if the Inspecting Asst. Commissioner is given powers to issue instructions....

SHRI VASANT SATHE: Don't confuse this issue. We will consider that. Why do you object to the principle of a higher officer being authorised to handle a matter which is pending before the I.T.O. This is the short question. You are not opposed to it in principle.

SHRI K. JAYARAMAN: What is the use of multiplying provisions?

SHRI VASANT SATHE: It is essential to do so. Have you got any objection. Let us be frank here.

SHRI BHAGWAT JHA AZAD: It is alright there, but he says it is superfluous.

MR. CHAIRMAN: We don't want apprehensions which will unnecessarily add to the volume of the statutes and which also burdens the Department without any corresponding benefit. But it appears from the provision—I think it is a salutary provision and a bare reading will show you—it is not reading—with deleterious effects. The D.C. on his own or on a reference being made to him by the ITO or on an application of an assessee call for, examine the record of any proceedings in which the assessment is pending and if he considers having regard to the nature of the case or the amount involved, or any other reason, it is necessary and expedient, he may issue such directions as he thinks fit for the guidance

of the I.T.O. to enable him to complete the assessment and such directions shall be binding on the I.T.O. I don't see in this provision any of the difficulties as are pointed out.

SHRI C. R. K. MURTHY: With the same power as I.A.C., would it be necessary to create a new D. C.?

MR. CHAIRMAN: I am not here to answer these hypothetical questions. It is for the Department to take. We are here to make proper laws. I think the consensus of the Committee is this is a salutary provision; at least you can tell us whether it is going to hit the Department.

SHRI N. SUNDARARAJAN: It will not hit the Department. The objection is the functions of the ITO are shifted to the D.C. (assessment)

MR. CHAIRMAN: It is concurrent jurisdiction, I.T.O. and Deputy Commissioner are vested with concurrent jurisdiction. Otherwise the Courts will say someone else had not considered all the issues. Any directions given in assessment made in accordance with the directions, does not have any sanctity in law, because the I.T.O. is empowered to do such a thing and therefore it is necessary.

SHRI K. JAYARAMAN: With regard to summary assessment, the law has been amended in 1970. Provisions of 141 have been amended authorising the I.T.O. to straightaway complete the assessment, accepting the return by making adjustments wherever it is necessary—calculation of depreciation and all that—This is with a view to expedite the completion of assessment in summary income cases. But the very purpose of these provisions should not go to the benefit of higher income case and the Law has not been suitably worded that provision is applicable even in cases of Rs. 25,000/- and over. In the City of Madras the provisions of this law are made applicable to cases upto Rs. 40,000|-

Persons are shown as small income assesses. There is no proper provision. With regard to statement to be filed by them; some Returns do not even accompany proper statements and the requirements are not complete. They file the profit & loss account, get it accepted. This has given a loophole to tax evasion in a considerable way. As a matter of fact the raids in Madras City have proved—and even all over the State—that most of the persons who have been on small income cases, concealed their income.

MR. CHAIRMAN: How many cases?

SHRI K. JAYARAMAN: About 12 big cases involving lakhs and lakhs of concealment in 6 months' time.

MR. CHAIRMAN: Out of how many cases in which you made summary assessment, have you found concealment?

SHRI K. JAYARAMAN: I have to point out here that in the Department's raid if one case can bring so much, in all the cases there would have been such concealment which we have not been able to find out.

MR. CHAIRMAN: A balance has to be struck. We have to rationalise. You have to draw some rational criteria in some assessments you don't devote more than routine time. It is necessary for us to devote more time and towards these difficulties, what are your suggestions?

SHRI N. SUNDARARAJAN: I would like to point only with regard to cases less than Rs. 7,500 even by executive instructions, the Department was permitted to complete the assessment in small income cases upto 50,000 or one lakh.

MR. CHAIRMAN: Supposing there are salaried employees who have only dividend incomes. Salaried income is Rs. 25,000|- I think salaried employees—so far as they are concerned—they should be eliminated stright away.

SHRI N. SUNDARARAJAN: But the law has not been suitably worded. It has given powers to I.T.O. In all cases, we can make the provisions applicable to cases if salaried income, income from property and dividend—if the provisions are suitably worded, it is alright

Then, naturally this disclosure came into effect and during mass contact programme, the assesses who have no source of income, they simply contacted the I.T.O.—submitted their return—it is a disclosure—showing Rs. 20,000|- or 15,000|- get it accepted by the Department. The Department was wrong to accept the return. It gave them nucleus to show that they have substantial funds which was available to create bogus account, benami partnership, substantial capital to people who are not running a business.

MR. CHAIRMAN: Is that the starting point for further enquiry?

SHRI N. SUNDARARAJAN: But where is the time, Sir? 90 per cent are voluntary cases. Every I.T.O. has so much to complete as 500 cases in a month.

SHRI JYOTIRMOY BOSU: Tell me what was the figure—how many cases an I.T.O. was expected to complete a month 20 years ago?

SHRI C. R. K. MURTHY: It was only 100.

SHRI JYOTIRMOY BOSU: Would you think by allotting this task the quality of the work is deteriorating?

SHRI N. SUNDARARAJAN: That is what we have mentioned in the Memorandum.

SHRI JYOTIRMOY BOSU: After the mass-contact programme started, do you say that the demands have risen or gone down comparatively?

SHRI N. SUNDARARAJAN: We cannot judge it by demand alone in the sense demands are going up because of your extension of tax detection theory to various categories.

SHRI JYOTIRMOY BOSU: I do not know whether what you say is right.

SHRI BHAGWAT JHA AZAD: They have expressed certain of their difficulties. We would like to have from them more information and they may send it in the form of another memorandum or statement.

MR. CHAIRMAN: Now you have said about 12 cases detected in six months. We want to have fullest particulars about them and you may send them to your Commissioner and from the Commissioner we will get it through the Board and then confidentially circulate to members of the Committee.

SHRI N. SUNDARARAJAN: What we would suggest is this. The whole scheme of 143(1) is to accept a statement given by the assessee even without proper declaration of assets and liabilities and whatever is given is accepted. And there is a limit fixed of 500 per month. At least statement of audit should be attached. Merely they append a profit and loss account as passed by the General Body and that is accepted. That does not go to the credit of the department. If the return is accompanied by proper statement, it can be accepted. Discretion must be given to the Income-tax officers and then we will proceed in all other cases like that as in U.K. and other countries.

SHRI K. R. GANESH: The point you have made is that in the working of the summary assessment procedure, it seems there are many problems. Many associations and individual officers have also referred to it. While there may be need for relieving income-tax officers so that they may devote greater attention to scrutiny cases. Now they say they have found 12 cases of bigger assessee who have masqueraded and that in six months they have found. In these summary assessment cases, you have to accept the return even if there is

concealment. The I.T.Os. are not in a position to detect. Is that correct?

MR. N. SUNDARARAJAN: Yes.

MR. CHAIRMAN: When you have information that there is concealment, why do you not proceed?

SHRI K. JAYARAMAN: The directions of the Board and the instructions of the Commissioner and Higher authorities is to insist on 143(1) returns and we are asked to complete 500 or 600 assessment a month. The I.T.O. has no time to look into complaints. There is another aspect also. In six months, if we had found out 12 cases, it does not end there. There are many more complaints also. But the department is not able to go into them all. There is neither the time nor the staff.

MR. CHAIRMAN: So even if you have basis for suspecting soundly that there is evasion of tax, because of the Board's directions you are fettered from proceeding further. Is it?

SHRI N. SUNDARARAJAN: There is no time. Even without scrutiny, the statements under 143 have to be accepted. He has not even the time to see whether it is signed properly. He has to complete 500 cases in a month. He has got to pass an order, get it typed and communicate it.

SHRI VASANT SATHE: Is your suggestion that in all cases where summary assessments are made and statements made, the criteria should where certain requirements of *prima facie* proof of truthfulness of the return is there then irrespective of the amount involved, the ITO should be empowered to accept them, subject of course if later on by your own intelligence anything is found, you will be free to re-open the case. But this blanket power or blind instruction that ITO should accept all summary assessment statements and complete a certain number of cases in a month has led to mischief and this should be curbed. That is your position, is it?

SHRI N. SUNDARARAJAN: Yes. That is correct.

SHRI JYOTIRMOY BOSU: How can the Board give directions?

SHRI K. R. GANESH: It is a good scheme, but in the working of it many practical difficulties have arisen....

SHRI JYOTIRMOY BOSU: From your experience you say that?

SHRI K. R. GANESH: Not my experience, I am only trying to consolidate their experiences.

SHRI BHAGWAT JHA AZAD: In the course of the working of the scheme they have come across difficulties. They are not for rejection of the scheme. They say there are persons who are masquerading and we need to improve the scheme and plug the loopholes.

MR. CHAIRMAN: We have listened to your difficulties which you have pointed out and steps have to be taken to prevent tax evasion.

SHRI K. JAYARAMAN: I want to make one or two points outside the purview of the Bill.

MR. CHAIRMAN: If they are outside the purview of the Bill, they need not be said here.

I want to ask you one question. There is one point which has substantial bearing on the question of administration, and which must be demoralising the administration. I want to ask you what is your experience so far as the revenue audit is concerned and the scope of the audit.

SHRI N. SUNDARARAJAN: We are asked to do the duties of auditing the files done by senior income-tax officers in regard to company assessments. It is the internal audit.

MR. CHAIRMAN: I am talking of the revenue audit.

SHRI N. SUNDARARAJAN: These are all done by Upper Division Clerks headed by one Income-tax Inspector. These people are expected to find out the mistakes and on top of it, the revenue audit party also finds mistakes. Then, these persons, whose pay scales are fixed with reference to the routine duties, are being asked to submit their explanations for mistakes.

MR. CHAIRMAN: Explanations will be asked for mistakes. What is the nature of the mistake?

SHRI N. SUNDARARAJAN: Even for technical mistakes like arithmetical calculations, application of rates, computation of capital etc. This is a subject which has not been settled for years together. How to compute the capital is not settled.

MR. CHAIRMAN: The limited question I ask you is, is the revenue audit confined only to these errors in arithmetical calculations, acts of omission and commission, etc

SHRI K. JAYARAMAN: Our submission is that it should be confined only to arithmetical calculations. They now ask us to go into highly debatable points of law and other technical questions.

SHRI JYOTIRMOY BOSU: Even a little lapse on their part is taken notice of.

MR. CHAIRMAN: The second question is how much of your time is taken away for the audit.

SHRI K. JAYARAMAN: Half of our time is taken away for audit. In fact, most audit questions are pending for lack of staff, both internal and revenue.

MR. CHAIRMAN: If your energies are diverted to comply with audit objections then it will impede the

work of detention and investigation. Does this impede your work?

SHRI N. SUNDARARAJAN: It does highly impede.

MR. CHAIRMAN: One more question. Can you give some idea of how the I.T.O.'s time is taken away.

HRI N. SUNDARARAJAN: 50 per cent of his time is taken away. I can dare say that six months in a year of the I.T.O.s time is lost on this.

MR. CHAIRMAN: Lost or gained is not the question. What is the time taken in attending to audits, is the question.

SHRI N. SUNDARARAJAN: Because, it is not a settled question, the controversy goes on between the assessee and the I.T.O., and the revenue audit. It drags on for quite a long time.

SHRI VASANT SATHE: As people who are working in the department, I want to know from you, apart from the provisions of the Bill but in consonance with the basic objectives of the Bill of unearthing black money and preventing its proliferation, whether you have any basic administrative measures to suggest that would enable the basic objectives to be achieved. You may as well give a supplementary memorandum. That will be very helpful.

SHRI N. SUNDARARAJAN: We have suggested a reorganisation as far back as 1965. We do not know in which corner of the Boards office, it is sleeping. Our grievance is we have not been given an opportunity to dis-

cuss these matters. Though the Joint Consultative machinery had been instituted to consult members of the staff on matters of administration, for effectively tackling these problems, we are sorry to say that we have not been consulted.

SHRI VASANT SATHE: This is pending before your Board, and it will come. In keeping with the basic objectives, what specific measures of administrative improvement would you suggest. As responsible citizens, you have to suggest positive administrative measures that would be helpful. You can give this with your day-to-day experience.

SHRI K. JAYARAMAN: We will definitely give a memorandum on this. As we pointed out, the main thing is only foolproof system of jurisdiction. This is very much lacking now.

SHRI VASANT SATHE: That we have noted.

MR. CHAIRMAN: We are thankful to you. You have benefitted by your evidence.

SHRI K. JAYARAMAN: We have set our ideas in the conclusion part of our memorandum. Probably you may think that they are beyond your scope.

MR. CHAIRMAN: We will consider them.

Everything that you have stated in the memorandum will be duly vetted when we discuss the Bill clause-by-clause.

SHRI K. JAYARAMAN: We are thankful to the Committee for having given an opportunity to place our views.

The committee then adjourned.

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

Monday, the 28th January, 1974 from 10.00 to 11.30 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Bhagwat Jha Azad
4. Shri Tridib Chaudhuri
5. Shri S. R. Damani
6. Shri Mani Ram Godara
7. Shri D. P. Jadeja
8. Shrimati Sheila Kaul
9. Shri Maharaj Singh
10. Shri P. G. Mavalankar
11. Shri Amrit Nahata
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri Bholu Raut
14. Shri Vasant Sathe
15. Shri Era Sezhiyan
16. Shri Satyendra Narayan Sinha
17. 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 S. Narayan, *Joint Secretary.*
4. Shri S. I. Tripathi, *Deputy Secretary.*
5. Shri S. C. Grover, *Under secretary.*

SECRETARIAT

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

WITNESSES EXAMINED

1. Shri B. D. Panda, *Cabinet Secretary, Govern-
ment of India.*
2. Shri M. R. Yardi, *Finance Secretary, Govern-
ment of India.*
3. Shri M. G. Kaul, *Secretary, (Department of
Economic Affairs), Ministry of Finance,
Government of India.*

Appeared jointly.

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

MR. CHAIRMAN: Mr. Pande, according to the convention, it is necessary for me to draw your attention to Direction 58 of the Directions by the Speaker of Lok Sabha which governs your evidence before us. The direction says that the evidence you give here would 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.

I take it that you would tell us whenever you want any part of your evidence to be treated as confidential.

We have been carrying out a very laborious exercise of collecting evidence on the Taxation Laws (Amendment) Bill, 1973. This Bill, as is understandable, has evoked a very great interest throughout the country and we have received three hundred odd memoranda with many number of witnesses wanting to come and give evidence before us, good, bad and indifferent, relevant and irrelevant and all sorts of things have come about.

But after hearing the evidence, several times, all the Committee Members were inclined to feel that we were indulging in an exercise of gross futility so far as the objects of the Bill were concerned. In other words, we just could not assure ourselves that if this Bill was ever to be passed with all the modifications which we might think of, this by itself would ever reach the objects namely prevention of the generation and proliferation of black money as such.

Apart from the basic difficulties inherent in statutory provisions bringing about eradication of this malaise which seems to have gone very deep-rooted, there are other basic factors which seem to have been ignored. Even if the Wanchoo Committees

report was to be made a basis, it has been canvassed before us by everyone who has appeared that if we took the Wanchoo Committee's report piecemeal or in dribbles, we would not be doing justice to that report, and vehemently it has been canvassed before us that unless we make honest tax payment really rewarding and evasion punitive, it is not possible, whatever laws we may make, to bring about any change in the situation and we shall not be able to arrest the generation of black money or its proliferation.

In this background, we want to fully understand the view point of Government as to how Government think that this sort of Bill which implements the Wanchoo Committee's report only in part would ever achieve the objects of the Bill as such. Therefore, I would want you to tell us whether you want to impel Government to feel that ignoring the basic recommendation of the Wanchoo Committee, namely the rationalisation of rates—you may not accept all the rates that they have recommended—any amount of stringent provisions can really help to improve the situation.

SHRI B. D. PANDE: I would like to divide this question into two or three parts. The Wanchoo Committee made various recommendations some of which are of a very far-reaching character and are not related to any legislative enactment relating to the tax laws. I am deliberately using the phrase 'tax laws', because some of them, for instance, relate to the reform of the electoral processes like controlling the contributions to the political parties for fighting elections and so on. There is also reference to the question of economy of shortages and controls and the problems of licensing, and there is reference again to the deterioration in moral standards. These are some of the propositions which certainly are no doubt a part of the Wanchoo Committee's recommendations but quite outside the scope of any tax legislation relating to the administration of the tax

system. So, in effect, it has got to be a part proposal that will come before Parliament in respect of the tax laws.

MR. CHAIRMAN: We are concerned with that part which relates to fiscal laws. Of course, there is also a part which is outside the fiscal laws.

SHRI B. D. PANDE: That is what I am referring to. There is a part which is outside the scope of the fiscal laws. The other part which you referred to was about the rates of tax and rationalisation of the rate structure. That is a relevant point. But rationalisation of the rate structure properly falls within the domain of the annual Finance Bill, and the tax rates are adjusted and revised by Parliament annually on the basis of the provisions of the Finance Bill which is introduced in Parliament. Therefore, the tax rates are deliberately kept out. As regards the question whether marginal adjustments in the tax rates as had been proposed by reducing it from 97-1/2 per cent to 75 per cent would in turn lead to the reduction in tax evasion, there may be difference of opinion and there may be different views. People in Parliament have also expressed different views, and Members of Parliament have expressed different views. I am not going into the merits. But what I have intended to say here was that the rate structure, as you are aware, is fixed annually in the Finance Bill. This legislation was designed to remove that kind of item and to bring forward legislative provisions on all aspects of the Wanchoo Committee's recommendations where legislative enactment was necessary.

Some recommendations of the Wanchoo Committee have already been implemented in the previous years, for instance, the one relating to the acquisition of property and evaluation cell, taxing of casual incomes and lotteries etc., and some amendments to the provisions relating to trusts. These have already been

enacted. But in this Bill an attempt has been made to bring in all other legislative measures which had been recommended by the Wanchoo Committee. Some are administrative measures designed to strengthen the department and the process of assessment etc. Since they did not need any legislation, they have not been introduced here.

I would like to put it this way. Coming to the question of tax rate, that is a matter to be determined in the Finance Bill. But if you would like the points to be given, I shall give the points without taking sides one way or the other. But tax evasion is not confined only to the highest income bracket, but it is being found even in the middle income brackets where the tax rates are low. There is evidence and information and even in countries where the tax rates are as low as 15 or 17 per cent there is tax evasion, and even in our country, during the days of the Second World war, when the tax rates were very low, as the then tax laws stood, there was evasion. So, it is not quite clear whether tax evasion is directly connected with the rates. Of course, there is telling evidence in the Wanchoo Committee's report that evasion of tax of Rs. 30 or so is equivalent to an income of Rs. 1000. So, that point is also there.

MR. CHAIRMAN: We shall not let you get away so easily. My question is very clear. Suppose for any reason whatsoever you are not able to implement all the recommendations of the Wanchoo Committee; leave alone those which are outside the fiscal legislation such as moral standards etc.; that is outside fiscal legislation or any other legislation. But to the extent that it is within the realm of taxation, whether under the Finance Bill or this Bill or any other measure, how do you think that you will reach the objective of the Bill, unless you take the recommendations as a whole? Assuming for a moment

that that part of it is completely outside the scope of this Bill, a part of it is concerned with the Finance Bill and so on, how do you do justice to the objective by taking only certain recommendations out of the totality of recommendations?

SHRI B. D. PANDE: I do not think we do injustice by taking up certain of the recommendations. I think the recommendations that have been incorporated here should genuinely reduce the tax evasions and should lead to a better implementation of the prevention of the generation of black money. It is not that all the recommendations must be taken in there entirely. It never happens in respect of any Commission. There can be genuine differences of opinion in regard to some of the items.

MR. CHAIRMAN: We do understand it if you disagree and therefore you are not implementing the concerned recommendation. We would have accepted your stand then.

SHRI B. D. PANDE: There is a case where they have said that gifts should be aggregated over the lifetime of the assessee. We have not accepted it. To do so is going to cast a stupendous burden on the administrative structure and on the assesses themselves. The period has been kept only for a period of five years. Otherwise, for 25 years one cannot go on keeping the record and revising the taxes. There must be some finality. I am quoting one example of that kind. But excluding those items, if you go through the provisions, you will find that the provisions which have now been incorporated have been selected after a very careful thinking and they are feasible of implementation and are likely to lead to a better administration. Therefore, reduction in the evasion, if I may put it that way, does not touch all the items. As for as tax collection is concerned, every single recommendation was examined and those

that were found feasible for introduction by legislation were introduced in the Bill, and those that were not found feasible have not been accepted.

MR. CHAIRMAN: On this, we will deal with later on. Now, Mr. Sathe.

SHRI VASANT SATHE: Although it is true that we draw a lot from the Wanchoo Committee's recommendations, I do not think, and nobody has told us, that this Bill is essentially to be restricted only to the recommendations of the Wanchoo Committee. They have stated in the Statement of Objects and Reasons thus:

"The object of this Bill is to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958, and the Companies (Profits) Surtax Act, 1964. The proposals relating to the amendments to these enactments have been formulated after a detailed examination of the recommendations of the Direct Taxes Enquiry Committee (Wanchoo Committee) and the Forty-seventh Report of the Law Commission on the Trial and Punishment of Social and Economic Offences, the latter in so far as they relate to direct taxes. Opportunity has been taken to sponsor some amendments on the basis of suggestions received from various other quarters as well. Technical difficulties arising in the operation of some of the provisions of these enactments have also been taken into account in formulating these proposals."

Therefore, I do not think that we as the Select Committee of Parliament should in anyway be restricted to see to the Wanchoo Committee's recommendations alone. If we take these eight recommendations of the Wanchoo Committee, I find that at least four of them will come within the purview of the taxation laws. Another one which relates to high

rates of taxation comes under the direct tax laws, which will be covered by the Finance Bill if this Committee recommends. There is nothing to stop us from doing so. It could be implemented by way of the Finance Bill. But it would not come within the purview of this Bill directly.

Secondly, about the economy of shortage and consequent controls and licensing—this is about industrial licences—this will not be covered. Thirdly, contribution to political parties. I want to know whether we cannot, in the Income-tax Act, provide for either taxing or not allowing it as a deduction from taxable income, in the Income-tax Act.

SHRI B. D. PANDE: Contributions to political parties by corporate organisations are banned under the Companies Act.

SHRI VASANT SATHE: Even individually, if any such contribution is detected, can we not provide for a penalty?

SHRI B. D. PANDE: I do not think there is any deduction allowed for contributions to political parties.

SHRI VASANT SATHE: If any contribution finds its way illegally, how do you stop them? Can it be tackled by our law?

SHRI M. R. YARDI: They can be prosecuted.

SHRI B. D. PANDE: Not individuals; only corporate bodies.

SHRI VASANT SATHE: Individual contributions?

SHRI B. D. PANDE: Individual contributions are not banned.

SHRI M. R. YARDI: No deduction is given for individual contributions so far as income-tax is concerned.

SHRI VASANT SATHE: Can we make it penal under our income-tax law?

SHRI B. D. PANDE: How can anybody ban individual contributions to a political party? If an individual wishes to make a donation to any political party, what law can affect it or how can that be banned? I would like to know how it can come under the tax laws. We give him no credit.

MR. CHAIRMAN: He has no right for deduction in the computation of his income-tax.

SHRI VASANT SATHE: So, contributions to political parties cannot be taken care of under this law. Now, let us come to corrupt practices in business, which we have in mind and which we cannot take care of in this law. That is one thing to be considered. Just one corrupt practice is to avoid paying the tax because it may be a trust. There is the question of plugging the exemption for trusts. How much does it touch by way of unearthing black money, because what they are doing is, in the form of actual raids today they are not touching black money. How does it touch the basic objective of black money? There is the clubbing of husband and wife. They are two separate incomes. They are not black, but you are clubbing them so that you increase the rate. How do you achieve the basic objective of unearthing black money thereby. I am trying to see how each provision is correlated to the basic objective.

There is a third objective. They have mentioned a ceiling on and disallowance of business expenses. This is an important field. Why do we not try to cover this substantially in the sense that if you put a tax on expenditure you are removing it and formulate it properly, that is, tax at the source of expenditure—then, ostentatious expenditure like going to a hotel and spending the money and so on could be avoided; expenditure on construction of big buildings also comes in here. Now, we are dealing with income after it is generated.

Unearthing of black money can be done only after income is generated. We cannot go at the source in such cases. That is the job of the Sales-tax or the excise departments. But after it is spent or where it is accumulated. Only in two ways the money could be used; either you keep it in the house under lock and key or you use it. The moment you decide to tap it, will it not fall within the purview of the taxation authorities to plug the concerned loopholes? That will mean an expenditure tax and a ceiling on income. You will say you will not allow this unless you spend it.

How are you going to take care of the fifth recommendation of the Wanchoo Committee, whether by law it could be done? Then, as regards ineffective enforcement of tax laws, we are trying to take care of that to a certain extent. What are your views on that?

SHRI M. R. YARDI: You, Sir, and Mr. Sathe have raised very important issues relating to tax administration.

Firstly, I would beg to submit that the terms of reference of the Wanchoo Committee were wider than merely unearthing of black money. If you see the terms of reference, it was not merely unearthing of black money and preventing proliferation through further evasion of tax, it was also to check avoidance of tax through various legal devices, including formation of trusts, to reduce tax arrears, to examine various exemptions allowed by the tax laws with a view to their modification, curtailment or withdrawal and to indicate the manner in which tax assessment should be done by giving effect to all its recommendations. These were very wide terms of reference.

They have also made recommendations regarding non-fiscal measures.

I admit that black money continues to be the main problem. As the Finance Minister referred to it, it has become a parallel economy. Therefore,

it has to be tackled in all its aspects through plugging of loopholes, through rationalisation of tax system and through effective implementation of tax administration.

As my friend tried to point out, the non-fiscal aspects have to be taken into account not through this tax law but through other means. They are under examination and under consideration.

So far as fiscal measures are concerned, they have got to be effected partly through the Finance Bill and partly through this Bill. Whatever relates to tax rates has to be taken into the Finance Bill. That is a matter of budgetary exercise. Unfortunately, for us, you have called us at a time when the budgetary exercise is in the process of making. It will be extremely embarrassing for me or for my colleague who is dealing with Economic Affairs to express any view which will have a bearing on the Finance Bill. Should there be rationalisation of tax structure? Should tax law be rationalised or not? Has the rationalisation of tax structure a bearing on the reduction of black money? I cannot answer those questions now.

MR. CHAIRMAN: May I interrupt you? If you feel that at this stage, because of your pre-occupations which are connected with the Budget, you cannot be as free and frank as you would want to be, you tell us. I may tell you that your evidence is of a very great importance to us. We are going to determine the rationale of the entire Bill in the light of what you are going to tell us. If there is a slight inhibition in your mind about what you are going to tell us at this stage because of a delicate situation, you tell us. In that case, we can postpone it and hear you after the Budget.

SHRI M. R. YARDI: I would not be able to answer whether the rationalisation of tax structure should be attempted or not. I would not be able to answer whether Expenditure Tax is

a measure which should be considered. Such questions I cannot answer now.

MR. CHAIRMAN: I appreciate your difficulty.

SHRI ERA SEZHIYAN: We are going to present the Report only during the monsoon session of Parliament. We have got another inter-session period also. We can postpone it. We can have it after the Budget session. By that time, the Parliament would have passed the Finance Bill. We can have their evidence in a concrete form after the Budget session.

SHRI BHAGWAT JHA AZAD: As you know, we have got serious doubts about the efficacy of this Bill. We feel that this Bill, as it is drafted and as it before the Select Committee, will not go very far to achieve the objects that are there. In the light of that, the evidence of the Secretaries before us is very important. I would say, let us postpone it and have it after the Budget session.

MR. CHAIRMAN: We can have it after the Budget session.

SHRI M. R. YARDI: After the Budget session.

MR. CHAIRMAN: I wish to make it absolutely clear that we are not going to examine you superficially. We are going to have a detailed and intimate dialogue with you.

SHRI M. R. YARDI: We want that.

MR. CHAIRMAN: So, we postpone it.

SHRI M. R. YARDI: If you are not under an obligation to present the Report early.

MR. CHAIRMAN: We are not in a hurry. We refuse to be in a hurry.

SHRI M. R. YARDI: Actually, when I got the notice, I was feeling like that. I got it only a few days ago. Unfortunately you were not here. Writing a letter would not have been useful. And I did not know when you came. That was my difficulty. Otherwise, I would have contacted you immediately.

MR. CHAIRMAN: In view of this, we postpone; we shall hear you after the Finance Bill is passed.

SHRI M. R. YARDI: From our point of view also, this should not be a superficial examination.

MR. CHAIRMAN: We want to have a very intimate dialogue with you.

SHRI M. R. YARDI: We would also like to express our views very clearly.

SHRI TRIDIB CHAUDHURI: I appreciate the proposition that it is difficult for the witnesses to say anything now. But there is one point which is not related in any way to the Budget proposals. The Government has already taken a decision on it. But if they want to deal with it after the Finance Bill is passed, even then it is alright. Government have, more or less, taken a decision on demotisation. . .

MR. CHAIRMAN: That is a very important aspect. We shall ask them when they come after the Budget Session.

SHRI TRIDIB CHAUDHURI: All-right.

MR. CHAIRMAN: Then we shall call you after the Budget Session. 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 29th January, 1974 from 10.30 to 13.35 hours
PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Chhatrapati Ambesh
4. Shri Bhagwat Jha Azad
5. Shri S. M. Banerjee
6. Shri Tridib Chaudhuri
7. Shri Sat Pal Kapur
8. Shri Maharaj Singh
9. Shri P. G. Mavalankar
10. Shri Amrit Nahata
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri Bhola Raut
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.*
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 S. I. Tripathi, Deputy Secretary.
4. Shri S. C. Grover, Under Secretary.

SECRETARIAT

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

WITNESSES EXAMINED

- I. Shri V. V. Badami, Director of Inspection (Investigation), Directorate of Inspection (Investigation), New Delhi.
 - II. (1) Shri C. R. Krishnamurthi, Commissioner of Income-tax, Calcutta. Appeared jointly.
(2) Shri O. V. Kuruvilla, Commissioner of Income-tax, Bombay.
(3) Shri B. A. Shariff, Commissioner of Income-tax, Ahmedabad.
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- I. Shri V. V. Badami, Director of Inspection (Investigation), Directorate of Inspection (Investigation), New Delhi.
(*The witness was, called in and he took his seat*)

MR. CHAIRMAN: Mr. Badami, before you commence your evidence, it is essential for me to point out to you one of the directions of the Speaker of the Lok Sabha, which direction governs the evidence tendered before the Select Committee of the Lok Sabha. The direction is that the evidence you give would be treated as public and is liable to be made public unless you specially desire that all or any part of the evidence tendered by you is to be treated as confidential. I may also add that even though you may desire the evidence to be treated as confidential, it is liable to be made available to the Members of Parliament. You are doubtless aware that whatever discussions we have here is treated as confidential and is not to be made public till the Report of the Select Committee is presented to Parliament.

SHRI V. V. BADAMI: I have no objection, Sir.

MR. CHAIRMAN: Do you have any observations to make before we come to questions straightway?

SHRI V. V. BADAMI: Sir, as you know, I am functioning as Director of Inspection (Investigation). First of all, I would like to give some of my views regarding the seizure matters which are now covered in clause 36 of the present Bill. Although to some extent I might be digressing about certain things, but I personally feel that I would be rendering service by mentioning some of the facts which would be relevant in this context.

As you know, Sir, the Central Board of Direct Taxes had set up 4 Intelligence Wings each at Madras, Delhi, Bombay and Calcutta in January 1966. At that time, these Intelligence Wings were given the strength of one Deputy Director of Intelligence and 5 Assistant Directors of Inspection, 5 Inspectors and some nominal supporting staff. Now, eight years have passed and even today the strength of these Intelligence Wings at Bombay, Calcutta, Madras and Delhi remains the

same and during this period of 7 or 8 years, we have carried out some searches and seizure operations and there have been considerable expertise which have been built up. During the financial year 1972-73, the total number of searches which we carried out was approximately 343 and the seizure of cash, bullion, jewellery alone amounted to nearly Rs. 2.0 crores at these places. I am not mentioning the searches which have been carried out by the other Commissioners of Income-tax in their jurisdiction. When I say the seizures, I am not referring to the documents, I am not referring to the seizures of books of accounts which may throw much more light on the concealed income. So, the point which I would like to make is that the number of searches carried out is definitely limited by the personnel available to the Intelligence Wings at Delhi, Madras, Bombay and Calcutta. If we have a larger task force by way of these Intelligence Wings, we would have been able to cover a much wider area where we have always suspected a lot of concealment, evasion of tax, hoarded wealth and assets and documents which would have thrown light on these facts. It is not as though the Department is not considering expansion of the Units. The matter is before the Board for the strengthening of these Intelligence Wings. I would like to take this opportunity of saying that the time has come when these Intelligence Wings will have to be increasingly strengthened, it may have to be doubled or tripled. Although the present Bill gives greater powers in various fields, the main accent being to unearth the black-money and that black money does not generate in the first instance. So that being the position, the power to search and seizure is one of the most important weapons in the armoury of the Department. I would like to highlight one or two aspects where such searches and seizures are concerned. If it is the question of one individual or one businessman whom we are to cover under a search, the Commissioner of Income-tax can

create a very small task force under Intelligence Wings consisting of half-a-dozen officers and inspectors to cover it but where we have to cover a very large number of business premises we have to have a task force of nearly 300 or 400 officers. In fact in Bombay, in one of our searches relating to the multi-storeyed buildings, we were finding it very difficult to do our job as we were very anxious to carry out our search very successfully.

One important point to be mentioned here is that when a multi-storeyed building comes up, the promoters have taken their share of the profit, they collect the money from the field and then the regular owners come in the picture and they would account for it and support it by entering it in the books of accounts. At that time if you go and search the building, you will not get anything. So, the Commissioner of Bombay and I had a discussion. We said that we must take up search of those buildings, which were not yet complete where the promoters, builders and the organisers are concerned, and even the brokers had to be approached because they were helping those people in buying these plots and buildings which were nearing completion. We did not anticipate that we would be able to seize crores of rupees. But we wanted to see the documents in order to find out whether the people had paid much more money. At that stage, they might not have destroyed them. In Bombay, these constructions were going on in different places. We are not bothered about the buildings which were coming up; we were interested in the information. The jurisdiction was so widely distributed that the question of issuing warrants itself was a major problem. I can issue warrant which is not challenged in any court as it cuts across the jurisdiction of the Commissioner. The Commissioner and I personally were doing reconnaissance. I wrote out all through the night prepared search warrants and organized a search party. For this party, we required six

hundred people whom we used during two days. There are two alternatives: One is that if we warn the officers that they have to assemble next day in the morning, we run an inherent risk of information leaking about the contemplated search. It is like leakage of examination papers; it is not that every candidate is to benefit but somehow all the candidates get to know the question paper in advance.

In a similar manner, in income-tax searches, even if any one contains a friend or a relative inadvertently that the following day some search is being planned from the Department, the information of a search leaks. I think, to that extent, I would attribute our failure to this inherent trouble.

So, we started on this occasion saying that we would not caution the officers but pull them out while they were working so that they might not know about the search in advance. Even in such a case, what happens is that when the officers are called out, the Income-tax representatives appearing before them sense that a search is on, rush to the telephone and inform their clients saying that something big is on and so they had better be careful. I am told that such things happen; I cannot substantiate, but this comes from informants who just make a point to come and see me in my capacity as a Director of Inspection.

MR. CHAIRMAN: What happened in that raid?

SHRI V. V. BADAMI: We have seized a lot of material. I would not call all of it incriminating material; but it is interesting material which we have to study.

MR. CHAIRMAN: I asked this question deliberately, because you seize and put them in the cold storage.

SHRI V. V. BADAMI: They are all in the process of investigation.

MR. CHAIRMAN: When was the search carried out?

SHRI V. V. BADAMI: Last year.

MR. CHAIRMAN: How many months have passed since then?

SHRI V. V. BADAMI: Seven-eight months.

MR. CHAIRMAN: You are not in a position to say whether it is incriminating or not?

SHRI V. V. BADAMI: The Intelligence Wing which has only five Assistant Directors (Inspection), they are incapable of going through this mass of material. So, this material was made available to the special range which had been created and that is working under the Commissioner of Income tax. When we seize papers and documents, they get mixed up. Those which are not essential like payment of electricity bills and other papers, we leave them out. Now, we come to the residual matter which we have to examine ultimately and they are in the process of examination. Why I mentioned this is because I wanted to highlight the difficulties which the Intelligence Wing experiences today. Now, we have been thinking in terms of having at least a squad specially designed for the purpose of carrying out searches in various places. Today, we have reached a situation where we do not carry out any search by ourselves always. Because I know there is income tax involved, there could be some violation of customs rules etc. So we have a coordinated approach to searches. Now, we are at the fag end of the Financial year. Between February and March, all over the country and particularly in places like Bombay, Calcutta, Madras and Delhi and all the ITOs are fully engaged in disposal and collection work.

If I plan a search at such time, it requires 50 or 100 officers. Let me take 100 officers. I do not release them until the search operation is completed and their entire itinerary which they have drawn up themselves is completely upset. I am sure, the

income-tax representatives will prepare the bill for their expenses in this respect whether the hearing takes place or not. In this way, the whole thing will get upset; there is no permanent way of doing such things.

MR. CHAIRMAN: How your suggestion would take care of the problem when you say that you want to double or triple your existing establishment?

SHRI V. V. BADAMI: That is for a special search. But even in normal searches.....

MR. CHAIRMAN: My question to you is that how your suggestion, if implemented, would take care of the real problem you have or you are trying to suggest that you should have an independent force which should be incharge of search and seizure so that they are readily available and the people do not get warned? That is an important point. We will consider it along with what ought to be the size of this particular organisation which you want to build up.

SHRI V. V. BADAMI: It has got two aspects: One is that the people who are actually taking part in the search need not be extremely skilled people; they are only people who go for a search and open the cup-boards, etc. Today, for this purpose, we do not have men. We are using Income Tax officers and Inspectors to carry out this search because every search party is headed by an ITO. Sometimes, it is carried out even under the direction of the Assistant Commissioner. A *panch nama* is prepared at the end of the search. We do not need to take away ITOs who could be usefully employed in the ordinary normal work.

MR. CHAIRMAN: After going through this long story, what, according to you, should be the precise set up at these four centres so that this feeling of inadequacy of man-power does not impede efficiency in various searches and seizures.

SHRI V. V. BADAMI: I think it has to be a process which we have to arrive at by trial and error.

I think we should have a task force of thirty to forty persons at each of these centres. If they are not used by Income-tax, they would be used by Customs and Enforcement and it would not be an idle force. It could be a separate cadre because we have to give them specialised training.

MR. CHAIRMAN: We will consider it.

SHRI V. V. BADAMI: Now I am coming to the other aspect. After the material seized, to go through the seized material and prepare appraisal reports, it takes time. It is in that context that I would like to refer to the clause as it exists here. On p. 69, there is a new clause 9(A) which is proposed to be introduced. The explanatory note makes it clear further. When we issue a warrant for search, we name certain authorised officers and it is only these authorised officers who can request the Commissioner of Income-tax for the retention of books beyond the first 180 days which the law permits. Now, this authorised officer may be transferred from that place or he may have retired or he may have migrated from the country. This creates various problems because, under the law, it is only the authorised officer who can ask for retention. If he makes them over to the I.T.O. having jurisdiction, it means that all the valuable documents seized pass into the hands of a comparatively junior Income-Tax Officer who may not know how to utilise the material. Without mentioning names, I may say that we conducted a search in April 1972 for which we got the appraisal report prepared in the Intelligence Wing and we have been able to bring out an income-tax concealment of Rs. 35 lakhs which has been practically admitted by the assessee. This has been possible because the whole thing was processed in the Intelligence Wing under my direction or under the direction of the Deputy Director of Intelligence. If these

papers had passed into the hands of the field officer, I don't think the same result would have been achieved because he has the normal problems of assessment, disposal and other work.

So, it is my submission that this 9(A) would create a serious impediment in the appraisal of the seized documents and it can be easily overcome by having a simple provision that for the purpose of seeking extension of the period of retention of books of accounts, the Income-tax Officer having jurisdiction shall be deemed to be the authorised officer.

MR. CHAIRMAN: I understand that you are making this suggestion on the assumption that you people have better expertise than the Income-tax Officer who may be a junior man. We shall certainly consider this. It is a good suggestion and the Committee will give thought to your suggestion that the authorised officer should be allowed concurrent jurisdiction.

SHRI V. V. BADAMI: Because, here, it again becomes a statutory thing. If the Intelligence Wing is strengthened—because today we have five Assistant Directors of Inspection to assist the Deputy Director...

MR. CHAIRMAN: You have one Director at Delhi and four Deputy Directors at four other places?

SHRI V. V. BADAMI: Yes, at Bombay, Calcutta, Madras and Delhi; and he is assisted by five Assistant Directors.

MR. CHAIRMAN: At each of these centres?

SHRI V. V. BADAMI: Yes. Today, prosecution is processed by the Intelligence Wing and that takes away the entire time of one Assistant Director of Inspection. It means that we are depleted of one officer and the number is reduced to four. If the Intelligence Wing is expanded and its units are established in other cities also like Ahmedabad, Bangalore, Kanpur etc. . .

MR. CHAIRMAN: Not on such a large scale, but if it is to be a skeleton set-up, how many cities should it be?

SHRI V. V. BADAMI: About eight to ten cities, particularly where industrialisation has established itself and industrial units have come up. Even today there are Assistant Directors of Inspection working at other places, but they don't have the same set-up as the Intelligence Units at those places. My suggestion is that at these places also they should have the same set-up as there is in Bombay, Madras, Calcutta and Delhi.

MR. CHAIRMAN: I understand that you have made three suggestions. The first is the re-inforcing of the man-power working under you. The second is the extending of this Cell to other cities, especially where there are industrial complexes. And, thirdly, you have suggested a change in the proposed Section 9(A).

Now, pausing here for a moment, there are a few questions which I would like to be satisfied upon. The first question that strikes me is this. If you go through the Wanchoo Commission's Report and the statistics and figures they have given us, they say that you have carried out, in the aggregate, 14047 searches from 1964-65 to 1970-71. Out of these 14047, 1418 are stated to have been successful searches; and in this period of seven years, the total amount seized is less than Rs. 7 crores whereas black-money has been assessed at Rs. 7,000 crores.

SHRI V. V. BADAMI: Yes.

MR. CHAIRMAN: My question, therefore, is whether you are satisfied that the searches and seizures are really unearthing a substantial portion of black-money.

SHRI V. V. BADAMI: I thought I have made myself clear....

MR. CHAIRMAN: You may give the 1972 figures.

SHRI V. V. BADAMI: Not the figure part of it; but the reason

why we have not been as successful as we should be....

MR. CHAIRMAN: No, no. What I had meant was that whatever you have been able to unearth is just a drop in the ocean, if the Wanchoo Commission's figures are correct.

SHRI V. V. BADAMI: I would positively agree, but that is because we are operating only in four places. Considering the fact that in regard to the figures you have quoted, we were engaging in the search only 20 Assistant Directors of Inspection, would you call it a 'drop in the ocean'? It should be considered in the light of the infinitesimal strength we have in the Intelligence Wing to tackle the problem.

MR. CHAIRMAN: That is true. I think I have not made myself clear. I am talking with reference to the searches you have already made. In the searches you have made—you say that 14018 searches have been made—you have found only Rs. 7 crores. Do you really think that the searches that you have carried out are successful searches?

SHRI V. V. BADAMI: It is like this. I hope you will pardon me if I cite this example. Suppose, let us say, there is a treasure in this room. We organise a treasure hunt. We know that the treasure is here, but, only the person who is successful in finding out the treasure will claim the prize. This is how exactly it happens. When we go in for searches and seizures, it is in the two parts. The search figures which have been mentioned refer to seizure of cash, bullion, jewellery and other items..

MR. CHAIRMAN: Total assets seized—

SHRI V. V. BADAMI: But, this should also refer to the real impact of the books of accounts and documents. This is not reflected in these figures.

MR. CHAIRMAN: Therefore, will you please tell us, in these 14018

searches and seizures, which you have carried out, what amount of concealed income you have found out and how many people you have prosecuted?

SHRI V. V. BADAMI: I do not have those figures readily with me. It is extremely difficult, because, as you are fully aware, it is a continuous process of making these assessments, going on appeals, revisions coming in and our not accepting those and going in appeal etc. This is because whatever is seized in search, it does not become a complete operation in itself because it leads to assessment and the assessment is contested and....

MR. CHAIRMAN: I agree. As a result of this search, it is not as if what you find out is relevant to a particular assessment year. This may be relevant for subsequent assessment years also. My question is this. As a result of these searches and seizures, what is the quantum of money you have been able to assess and how many people you have prosecuted and sent to jail?

SHRI V. V. BADAMI: I do not have the prosecution figures with me. I think I can....

MR. CHAIRMAN: How do we evaluate the quality of work you have put in? This is a very important aspect on which the Committee is concerned. If we go on vesting powers in you, giving you more and more powers, and ultimately, if we find that as a result of these searches and seizures, the quantum of concealed income assessed or the number of people prosecuted is very unsatisfactory, then, some one has to explain.

SHRI V. V. BADAMI: May I point out this. You have asked, as to how many people we have sent to jail. I know, for instance, that in Madras, there have been a number of successful prosecutions. But, the punishment meted out was, the person should be imprisoned till the rising of the Court.

MR. CHAIRMAN: We have known of that case and we hope you would

go in revision in regard to this case and we wish you good luck. That is as good as conviction. So far as we are concerned, if it is once proved, there has to be some minimum punishment. That we can take care of. My question is entirely different. My question is this, Mr. Badami, if we give you more and more powers,—I do not know which other powers we are giving you, quantitatively there is not much difference in what this Bill seeks to do now as compared to what already has been there in existence are you able to satisfy the Committee that you have exercised this power in a manner where effective concealment of income has been detected? Otherwise, what will happen? It means, whatever law you make, it is of no use, until you people are really trained in a proper manner and you have expertise with the Department.

SHRI V. V. BADAMI: I shall try my best to explain this point. Search and seizure is not an end in itself, that you make so many assessments or you have prosecuted so many people. It is a way of taking a little more power, where we decide that in the given set of circumstances, a particular assessee has not been producing what he has to produce before the Department.

SHRI BHAGWAT JHA AZAD: We have appreciated the argument of the witness in the sense that you cannot ask for the concrete in everything. That is true. We also appreciate what the witness has said, that, the searches and seizures should have the impact on the books of accounts and all that. But, Mr. Chairman, witness has to satisfy that the 14018 searches that have been carried out, cannot be termed on these lines. It is true that it is a continuous process. But, the witness has to explain one thing. People have a feeling that these searches are carried out in cases, where nothing concrete comes out and that this is used as a means of harassment and the real purpose is not served. So, the witness has to satisfy us on two grounds. What more powers,

if at all they feel that they are not adequate at present, do they need to show concrete results? They must have direct effects as well as concrete results. If only this is done, peoples mind can be dis-abused of the impression that big people are allowed to escape, and these searches are carried out where nothing comes out. This has to be dis-abused from the public mind as well as our mind. We want the witness to tell us, how is it that even after nine to ten months, they are not in a position to decide. Mr. Chairman, is it not a device to give the person concerned a chance until you come to a conclusion in regard to a particular case. Therefore, these things have to be explained by the witness, which have been in our mind long before the witness appeared here. I think he is a knowledgable person.

MR. CHAIRMAN: This is a very important question which Mr. Bhagwat Jha Azad has raised. In other words, what qualitative change you want us to make in the law, so that when you carry out the searches and seizures etc., in future, there is a concrete outcome in terms of incriminating documents seized, quantum of concealed income assessed and the number of people sent to jail. This is one thing. Secondly, I, personally, would like to know, how long do you take to really purocess a case? Why do you take nine months to decide? How many documents are there in that case.

SHRI V. V. BADAMI: May I illustrate with this one case?

MR. CHAIRMAN: You say with reference to this case. The question is this.

SHRI V. V. BADAMI: One point which has been made is this. When there is a time lag, there is an opportunity for the assessee to so arrange his affairs that he can later on get way. The answer to that is, whatever material that has been seized, we are not releasing them. This is in our custody.

MR. CHAIRMAN: Are you trying to suggest that if you take a long time, the assessee does not get time to create counter-evidence; he does not get time to set things right? This is contrary to the notions of criminal law.

SHRI BHAGWAT JHA AZAD: It is also noticed in many places that they do not even know and they are not in a position to say as to who are guilty; they are not able to bring them to book and prosecute them. This also one thing which shows that they are becoming ineffective.

MR. CHAIRMAN: Please do not answer us superficially. We would like to have an intimate dialogue with you and a very detailed dialogue. We will call you again if necessary. We would like you to share your knowledge with us, in greater depth. Kindly come out with what the problems are and what the difficulties are.

SHRI V. V. BADAMI: I will take up this matter of prosecution. In this prosecution, it is very difficult to prove. The Courts have actually insisted that even if particular books of accounts have been seized from the assessee's house, we have got to prove to the satisfaction of the Court that they were written at the instance of the assessee from whose premises we seized the books of accounts.

MR. CHAIRMAN: This is the criminal law of the country.

SHRI V. V. BADAMI: It is common knowledge that the accounts are not written by the assessee. They are written by his munim. You have, in the Income tax Department.....

MR. CHAIRMAN: Are you then suggesting that we should amend the criminal law; that we should change the entire criminal jurisprudence?

SHRI V. V. BADAMI: We have to work within our limitations. We have certain limitations within which we have to work. What we can prove

to the satisfaction of the court, and what we can infer for the purpose of assessments, are two different things. In practice, we have found that the courts are not satisfied with the evidence which we place before them, whereas we think that we have obtained primary evidence.

MR. CHAIRMAN: The burden of proof lies on us. About it, the criminal law is well established. Whatever be the deficiencies of the Department in getting at the facts, we can certainly remedy them; but if you want us to change the entire concept, it would be difficult for us.

SHRI V. V. BADAMI: As you would appreciate, it is too much of a problem for me to say everything at this hearing. I have several thoughts in my mind. But in actual practice, we find that we do have difficulties in spite of having a special counsel for prosecution alone. He goes through the material and sifts it. The moment the assessee himself volunteers to say: "This is what I wrote and what I did," it becomes infructuous. The court says: "What are you going to prosecute him for?" So, we have to proceed a little more in detail; and say that there was a motive to conceal things. We learn by studying the decisions which are handed down by the court, to know as to what is the further proof that they need. That is the real problem.

MR. CHAIRMAN: You are in the process of understanding the problem a little more thoroughly.

SHRI V. V. BADAMI: Things are very clear in a case of criminal assault and any other criminal act, but in the Income-tax Act, because of its inherent nature and complexity of the provisions, it becomes all the more difficult for us to anticipate the degree of proof that is required. That is an inherent difficulty, especially in our working.

MR. CHAIRMAN: We can consider that.

SHRI V. V. BADAMI: It is in the Income-tax Act that we have powers of search and seizure. In the income-tax assessment cases tax evasion is an accepted activity. In many cases, the assessed income is different from the returned income. An assessee also accepts it; which means, *prima facie*, that there was concealment. Search-and-seizure is one of the methods of trying to bring to light certain information. This is not, by itself, going to unearth all the black money in the country; but it is one of the very effective means.

SHRI VASANT SATHE: I get the impression, after hearing Mr. Badami so far, that we are only on the short point of searches, criminal procedure code, law of evidence relating to it, and the burden of proof to be established. And that is the end of the matter. But how do these things help us to get Rs. 9 crores instead of Rs. 7 crores? This is where we get stuck up. I think our Committee here would not be satisfied with limiting itself to this, because the problem before this country is that we are not getting revenue. The black money is growing every day to the tune of thousands of crores of rupees. I believe that as an expert in this job, you should be able to help us and to tell us something about it. Once the money is generated, whether it is black or white, it operates in certain areas and certain fields. It is either converted into assets or moveable property like jewellery, gold etc., or fixtures and furnitures, or invested into some industries, or kept in lockers. Have you made any study as to where this money normally gets locked or smuggled? If you have done so, you can tell us its results; then we will know the extent of black money and in which major areas it is operating. Once we know that, we should be able to know as to what are the remedial measures that are required. We are willing to give you all the force you need. We have a huge army and police force. You must tell us: "such-

and-such are the areas and such-and-such an amount of forces is required and that such and such are the powers we need, to locate them." Unless you help us in this manner, all this talk will be too superficial. We know your limitations in regard to seizures. You will be able to get documents and sort them out, to help you and the assessee. As the Cr.P.C. stands, the burden of proof is on you and the accused is supposed to be innocent. In social crimes, the burden should be on him. We would like to amend it that way. Social crime is a much more evil crime; and we cannot throw the burden on the authorities. It should be on the assessee. There is nothing wrong in it. The evidence law can be changed, as far as the burden of proof is concerned. Would you kindly help us in these areas? I am interested in knowing as to how we can get Rs. 10,000 crores.

SHRI V. V. BADAMI: I will answer your points briefly. Your question has covered the entire gamut of what is happening in the country. I had said that I would like to preface my remarks with reference to a particular specialized field of experience which I have acquired by virtue of my posting as the Director of Inspection and Investigation. In the Taxation Laws (Amendment) Bill, the entire amendment in the Act is focussed on the problem which you have mentioned. The legislature will certainly go into it, in detail in regard to the various amendments; and I think the answer to many of your problems should be found when the entire amendment goes through. Our set up is a little Cell for making a little more detailed examination of the subject.

SHRI VASANT SATHE: This is a very important Cell. Your Cell alone can tell us as to where the black money operates and where you can locate it.

SHRI V. V. BADAMI: I will answer it. Recently we have had various

searches. These searches have in certain individual cases been successful while in other cases they have not been successful.

The hon. Member had wanted to know where a person kept his black money. Let me give you a simple instance. This is what is happening in the film world today. This is what I hear. I cannot vouch for it, because informants come to me and talk to me. Some of the film artistes who were searched carried much less money than what an average middle class man would carry. The explanation given to me by the informant was that these people who earned these huge amounts no longer kept it as money or as valuables, at home, but they bought building materials which are put away in unknown godowns, and when the necessity arose for them to raise the money, they would convert it into cash by selling the building material, and thus they would again make a profit on black money. We have no way at all of knowing where they have stored the building material, whether they have kept in the form of steel or cement and so on except that—they have their faith in their brokers. This was one of the explanations given to me by an informant who said that however much we might search the houses of these people we would not be able to get at anything, because they had their own agencies and they had their own methods of secreting black money. They do not put in a bank account because we can always look into the bank account. They do not put in the lockers, because at the time of the search we may get the key to the locker. They do not hide it in the house also because by now we have become experts who can try to locate hidden money. They have a thousand ways of keeping this black money in other forms.

SHRI VASANT SATHE: It may be converted into cement or building material. But where there is a will, there is a way. With experts such as

you have, it should not be difficult to check these sources of hiding also. After all, building material is not something which you can put underground and hide. There may be godowns where they are kept, but we can take care of them. You can tell us and we shall devise measures to deal with that.

MR. CHAIRMAN: I want hon. Members to appreciate one thing, namely that the witness is a specialist in one particular field. His job essentially is to carry out searches and seizures, that is, the intelligence part. It will do the Committee a lot of good if hon. Members would confine themselves to the limited subject of intelligence and searches and seizures, because that is a very important aspect.

SHRI VASANT SATHE: This was of the nature of intelligence. I am trying to find out the new areas of hiding.

MR. CHAIRMAN: He has said that black money is not kept in the form of currency.

SHRI VASANT SATHE: Are you not interested in knowing where black money is?

MR. CHAIRMAN: I am certainly interested in knowing it. In fact, if Mr. Badami could have identified where black money is kept, there would have been no necessity for this Bill. And it would be an oversimplification of the problems. What has happened is that black money is converted into all sorts of assets, and all that the witness is saying that he does not know where it is. What we are interested in knowing is this. Where exactly is the weakness of administration? Where exactly is the weakness of law whereby the people are no longer scared of the raids, and if at all there is anyone who is scared by the raid, he is the honest man who says that you may do all that you can to harass him and he will pay what is demanded of him?

SHRI VASANT SATHE: I was precisely coming to that.

SHRI V. V. BADAMI: To complete my answer to Shri Sathe's question, I may tell him in what other assets the black money is invested....

SHRI VASANT SATHE: And the corollary would be this; if these are the areas, what are the powers required which you do not have today to tap it? That was why I asked that question.

SHRI V. V. BADAMI: The answer to your query cannot come from the Income-tax administration. It is human ingenuity which is responsible for it and which creates this.

SHRI VASANT SATHE: Are you trying to suggest that your ingenuity or Government's ingenuity is far inferior compared to the ingenuity of those black-marketeers who hide the income to the tune of Rs. 10,000 crores and your ingenuity is so poor that you can get only Rs. 7 crores? Is that what you are trying to suggest to us? Then there is something very wrong with the whole system.

SHRI V. V. BADAMI: I am afraid, I have been misunderstood. When I talk of ingenuity, I am not comparing the powers of Government on the one side with the ingenuity of the individual on the other side. I am only referring to the ingenuity of the clever man; that clever man can be in the Government, he can be a member of the public; that is immaterial in my opinion. The man has the ability to organise his affairs in such a way that he knows our limitations and he is able to operate beyond our limitations; he knows what our powers are, what our time element is, and what our man-power is and he is able to place ahead, just as in an organised crime, the very intelligent man get away with it whereas only the man who is not so intelligent gets caught, likewise, in income-tax also, there are timid people and the moment the raid takes place they

come out with a complete confession of whatever they have hidden and they have placed themselves absolutely at the mercy of the Department, saying 'You may settle in any manner you like; I would only like the izzat and honour of myself and my family to be saved. I do not mind paying whatever you demand; I do not mind becoming even a pauper by paying the tax to the Department'. But there are other people who are so hard. I do not want to mention the names. But we had conducted in January one of the biggest searches and we got Rs. 32 lakhs. The case came up for hearing in August and it went on for nearly a month and a half. Till today, the judgment has to be delivered. We are yet to pass the order under section 132(5). For making this order, we have got to go to the various assessments which we have to reopen where we have to take a decision that this relates to those years. But the assessee would be utilising this additional time to create evidence for himself.

MR. CHAIRMAN: That was what Mr. Bhagwat Jha Azad had pointed out earlier.

SHRI V. V. BADAMI: We are absolutely helpless because there is an injunction. That is one of the points which I have been wanting to make. Just as there are provisions in other Acts, likewise, here also, a provision may be made that an order passed under section 132(5) shall not be made the matter of appeal before a court; but after all, one could resort to article 226 and seek a remedy. As long as we have been rendered immobile by the court injunction, the assessee would be creating evidence to cover this huge amount of Rs. 32 lakhs which we had seized.

SHRI VASANT SATHE: We appreciate that. But my question still remains unanswered.

SHRI BHAGWAT JHA AZAD: These provisions are there not merely for income-tax but other things also,

for dacoity, for robbery, for theft etc. When we want to prosecute a man, he will naturally try to defend himself. Am I to understand from what the witness has stated that the income-tax law of this country is still in a very primitive stage where nothing can be said with certainty and it is a continuing process and it is not possible to fix it up? If it is said that the income-tax law is in such a primitive stage that nothing can be said with certainty about it and the culprit can never be located, then I would only conclude that the whole thing requires a very thorough overhaul and under the present Act as it has been framed nothing can be done against the assessee and the offenders, and that is really a very disturbing thing.

MR. CHAIRMAN: What more devastating qualitative change would you need in your favour?

SHRI V. V. BADAMI: I hope you would recall my opening words. Probably I had not made myself clear. We have powers. We are not asking for more powers. It is up to the Government to arms us with more powers. I was only on the limited point that if we were given more powers and more facilities, we could certainly give a better account of ourselves.

MR. CHAIRMAN: If you say that the powers are adequate, does it mean that your techniques or norms or methods are not sophisticated, modern and up-to-date to get at the assessee and fix him and pin him down?

SHRI V. V. BADAMI: I think the Income-tax Act in India is as sophisticated as any other Act in any part of the world, and I have no doubt about it....

MR. CHAIRMAN: I do not know whether it is sophisticated but it is the most complicated.

SHRI V. V. BADAMI: The powers are there and the desire to get at the assessee is there. But as I start-

ed by saying, we have to try and see to what extent this can be done. Supposing we are given the manpower and the striking force which I have asked for, if I appear before this committee three years hence, I must be able to give a better account of myself saying that this is one way where we have progressed....

MR. CHAIRMAN: You have made that point very successfully that unless you have more manpower and a better and wider organisation you will not be able to be effective.

SHRI BHAGWAT JHA AZAD: From these three important suggestions that the witness has given, it appears that it is purely an internal arrangement and administrative action to be taken by the Government and the Board. So, does it require the Select Committee Members to do it?

MR. CHAIRMAN: I wish the Ministry of Finance was represented by way of the Minister of State at least. This is a very relevant question which has arisen before the Committee. We shall certainly take cognizance of it.

SHRI VASANT SATHE: I thought the Minister of State for Finance was here.

SHRIMATI SUSHILA ROHATGI: I am certainly assure the Chairman that all this would be taken into consideration when we deal with it.

MR. CHAIRMAN: Our Committees concern is, why it has become necessary to come and put it to the Select Committee. It should have been taken care of earlier.

SHRI BHAGWAT JHA AZAD: When we had been to Madras, Mr. Sadagopan said in the course of the suggestions on administrative reforms that he did not get enough power to look after the raided cars and vehicles that he brings into his compound. He also said that in the income-tax divisional office there are no materials like paper, pencil, type-

writer and all that. If there are enough powers with the Government, when these persons organise a raid in Bombay, Calcutta and Madras, it would be better. If this particular Intelligence Directorate has not got enough men, how shall we proceed? Shall we recommend in this report that there should be more persons on the Cell in the four cities in India? We want to understand this.

MR. CHAIRMAN: We will have to discuss it with the Minister. So far as the witness is concerned, he has to satisfy us that his norms and techniques are proper and the law that we are working upon is just and reasonable and it takes care of the difficulties in so far as the anxiety of the Government and the Committee in unearthing black money is concerned. Let us be very clear on one point. Our basic objective is to help you assist in unearthing black money. Therefore, in that context, I would really want you to share the ideas with us. If the figures indicate anything, your effort is really very ineffective. It has neither yielded revenue nor sent people to jail nor has the punishment been deterrent. It has become a nuisance in the sense that every third day be read about the searches and in society they have been taken as the biggest practical joke. We do not want this to happen. You may search hundred people or just 50 people, but those 50 people that you search must be put in jail to languish there for seven years. That is the type of administration we want.

SHRI VASANT SATHE: It would be helpful if you told us one thing. In this law which we are amending, there are two aspects. One is the power or the force that you want; that is not covered by this Bill. We can still recommend to the Government and plead for it on other forums, if necessary.

The second thing is can you tell us now what amendments you would like in the income-tax law which is

before us so that tomorrow you need not tell us "What can I do? This particular section gives the loophole to the assessee to evade the payment of tax, and so it becomes dilatory and so on., As you pointed out the power of appeal helps him to go on merrily over cases in the Supreme Court for 10 years, and that way your effort is frustrated. Can you tell us those measures which require amendment so that at least one aspect is taken care of, that is, the legal aspect? The administrative power is another aspect.

MR. CHAIRMAN: We want you to give us a summary, precisely as to what you want us to do in respect of the amendment of the law, and in the administrative matters, what you will like to do.

SHRI VASANT SATHE: So that next time you will be able to come to us and say "I have been able to get Rs. 2,000 crores of black money from these criminals who have been at large in this country, with the powers given to us."

SHRI P. G. MAVALANKAR: I want to pose the question slightly differently. Mr. Badami said just now that the powers are wide but the other things are lacking. Two other hon. Members spelt out what are the things that are lacking, namely manpower, facilities, techniques, etc. The witness also complained about certain legal procedures and the court proceedings, etc., which tend to delay matters. Supposing, he had at his disposal the methods, techniques and other things up-to-date, very effective and very modern, would he then see a case for modifying some of the complications to which you referred to in the income-tax law, so that those powers with the Government which are only on paper are lessened, the complications are reduced to some extent and the consequential legal difficulties will be less?

MR. CHAIRMAN: What he is suggesting is a better and a more efficient

force to work upon with lesser powers.

SHRI P. G. MAVALANKAR: Is that possible?

MR CHAIRMAN: He is complaining of the existing powers. I would request you not to insist on an answer to this question. Now, Mr. Badami, please summarise your points.

SHRI V. V. BADAMI: It is a tall order. You have been kind enough to elaborate some of the points which I did not make effectively. I hope whatever we have discussed must have gone on record.

MR. CHAIRMAN: Everything that is spoken here goes on record.

SHRI V. V. BADAMI: I shall be glad if we can move on to the next clause because I have something to say on clause 58. That is a new chapter which is being introduced for the settlement of cases.

MR. CHAIRMAN: Settlement machinery is something connected with the Directorate of Inspection?

SHRI V. V. BADAMI: You were good enough to say that I am concerned with search and seizure. But I am also concerned with the investigation of income-tax cases with the Commissioners of Income-tax. I am, so to say, an extension of the Board, because through me, the Commissioners seek additional assistance or additional enlightenment; they come to the Directorate, because the personnel working in the Directorate is a small compass engaged in searches and seizures. Wherever the expected concealment of income is in excess of Rs. 20 lakhs, those cases are supervised by the Directorate in consultation with the Board, so that there is a three-way traffic. The Commissioners can write to me, and the Board writes to me and we all get into a huddle and see in what way or process this investigation could be attended to. The Directorate has an associated responsibility—I would

not say all the responsibility—with the Central Board. Where the Board has desired that the Directorate should also look into settlements in the past. We have done it and under the present circumstances also, we have been rendering assistance in reaching settlements in the settlement cases, stage by stage.

MR. CHAIRMAN: I do not mind your making comments on the Bill; we will hear you since we have called you. But we would want you to exhaust first whatever you have to tell the Committee on the provisions and other matters connected with investigations, because the generation of black money is one thing. Unearth is the second aspect. If an assessee was frightened that black money generated would be traced by you, he will possibly not generate it. And that is a very important aspect of the Bill. As I remarked earlier, first, you exhaust your submissions on the promises relating to administrative and other relevant matters of investigation. You have suggested that an order under section 132 (5) should not be the subject-matter of appeal. Appeal to whom? Are you referring to the appeal to the Board?

SHRI AMRIT NAHATA: I would place a concrete example before him. Suppose I go to an ITO and place my balance-sheet before him and I show that in a particular business I had invested Rs. 5 lakhs. Suppose he asks me wherefrom I have brought that amount of Rs. 5 lakhs and I tell him that it came to me from an agricultural farm which I own in a particular area. The ITO has a genuine doubt that that particular farm cannot generate so much income. Does the ITO have power to verify, and does he come to your directorate? Do you investigate into the matter whether I really had so much income from that farm? Do you have the requisite legal powers and the personnel to find out whether the source of income that I have shown is genuine? If you find that it was just a

camouflage to convert black money into white, what do you do about it?

SHRI V. V. BADAMI: I shall answer these questions in the sequence in which you have raised them. On these points, the ITO does not come to the directorate, because he works under the Commissioner of Income-tax, and if the commissioner feels that any assistance or guidance or liaison with higher authorities is necessary, it is entirely his free will to make a reference to the directorate. On the second issue namely whether the commissioner under whom the ITO works, and who also has the inspecting assistant commissioners, has inspectors trained in this job who can go to the particular area where the person is supposed to have the agricultural farm or fruit orchard and so on, I would submit that they go through the agricultural records and test the veracity of the statement made before the authorities. If it is found consistently that either the land has been lying fallow or the crop has been a failure for last two years or so or that the person is an absentee landlord or has not invested much money or time or energy in that land, that is sufficient evidence to discard whatever evidence he has been trying to lead and, therefore, the camouflage cases to be a camouflage, and he stands exposed and the amount in the hands of the assessee gets taxed.

MR. CHAIRMAN: I did not get your suggestion in regard to section 132 (5) clearly. It is not appealable as it is. So, what is your problem? where is the provision for appeal for cases under section 132(5)?

SHRI V. V. BADAMI: When seizure takes place, within 90 days of the seizure, the ITO has to pass a summary order. The section says that in computing the time for passing this order which 90 days there shall be excluded from it the time for which through an injunction by the court, an order could not be passed. In the instance which I mentioned the I.T.O. was in the process of passing

an order, but the matter was taken to the court and the court heard the case for an extended period on this limited issue whether an order under section 132 (5) could be passed. Even now the court has not passed any order on the writ petition that he had filed. Since the injunction is there, we cannot go to those assessments which we wish to reopen.

MR. CHAIRMAN: So, what do you want?

SHRI V. V. BADAMI: We are hampered in our search case, because there is a writ petition in the court and there is an injunction.

MR. CHAIRMAN: Are you suggesting that the writ jurisdiction should be barred?

SHRI V. V. BADAMI: Just as it is barred under some other provisions.

MR. CHAIRMAN: I can understand your saying that this shall not be the subject-matter of any appeal before any court. But that cannot prevent the court from exercising its writ jurisdiction under article 226. Do you have in mind that the writ jurisdiction should be barred?

SHRI V. V. BADAMI: Probably, I have been confused on that issue.

SHRI VASANT SATHE: Would you like to suggest that even then there should be some provision which would enable you to carry out the purpose of the provision?

SHRI V. V. BADAMI: A provision to that effect is not necessary because many of the High Courts have been good enough to tell us that we may continue the process of assessment, but we shall not serve notice of assessment on that. What I meant was that these were time-consuming processes, namely making submissions before the court, obtaining the orders and so on.

SHRI VASANT SATHE: You had said earlier that the appeal should not be allowed....

MR. CHAIRMAN: He has said that he was a little confused on that.

SHRI VASANT SATHE: What was in his mind? Probably he was having in mind that this process of investigation and completion of assessment was getting thwarted because of this legal impediment.

SHRI V. V. BADAMI: That is there and it cannot be denied that it is an impediment. But as the chairman has just pointed out, the writ jurisdiction cannot be taken away.

MR. CHAIRMAN: Section 155 (2) does not relate to assessment order but to summary assessment in which you have to estimate the undisclosed income in a summary manner.

SHRI VASANT SATHE: Is that prevented by the writ jurisdiction?

MR. CHAIRMAN: He says that it has been prevented.

SHRI VASANT SATHE: In how many cases? It may be in one out of several hundreds.

MR. CHAIRMAN: If it is short of writ jurisdiction, we can consider. What will happen under the writ jurisdiction is palpably outside our scope.

SHRI V. V. BADAMI: In the major search cases, either the power of the director to issue the warrant or that of the commissioner has been challenged, but even then it has been decided that the director is competent and the provisions are absolutely *intra vires*, and there is no difficulty at all on that score.

MR. CHAIRMAN: The Supreme Court's latest decision is there.

SHRI V. V. BADAMI: There, the point taken is why the director of inspection should come in at all because the commissioner is there. But

I have said that the jurisdiction does lie. But that is only an enabling provision at the time of warrant and search by the director of inspection or the commissioner.

I was coming to the provision under section 132(3) where we do not seize the assets but we serve a prohibitory order. In one of the recent cases where a writ has been filed, the point has been taken and the case has been admitted for hearing. Supposing after 90 days we open the cup-board and we find that there are assets, the question arises whether they would be covered under the order under section 132(5), because it may also contain valuables and other materials. According to the writ petition, it is contended that it must be from the day the search and

- II. 1. Shri C. R. Krishnamurthy, Commissioner of Income-Tax, Calcutta.
2. Shri O. V. Kuruvilla, Commissioner of Income-Tax, Bombay.
3. Shri B. A. Shariff, Commissioner of Income-Tax, Ahmedabad.

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

MR. CHAIRMAN: I must point out to you the Direction of the Speaker, Lok Sabha, which governs the evidence tendered before this Committee. The Direction is that the evidence you give before the Committee would 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 your evidence to be treated as confidential, it is liable to be made available to Members of Parliament.

seizure had taken place. That is a slightly ambiguous provision and needs to be looked into.

MR. CHAIRMAN: We will consider this aspect.

Any other point regarding this?

SHRI V. V. BADAMI: I think, in have exhausted by points on this. I have said whatever I wanted to say in connection with the field in which I am working. As regards the other points....

MR. CHAIRMAN: If you want us to consider something in regard to provisions which are unconnected with this, you can send us a note. We will consider that.

SHRI V. V. BADAMI: Yes.

MR. CHAIRMAN: Thank you.

(The Witness then withdrew).

Would you like it to be treated as confidential?

SHRI O. V. KURUVILLA: I would like to have it treated as *confidential.

SHRI C. R. KRISHNAMURTHY: I would like it to be treated as *confidential.

SHRI B. A. SHARIFF: I would also like it to be treated as *confidential.

*The entire evidence tendered by Sarvashri O. V. Kuruvilla, C. R. Krishnamurthy and B. A. Shariff, Commissioners of Income-Tax has been treated as confidential at their request. Two copies thereof have been kept in Parliament Library for reference by the Members of Parliament only.

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

Monday, the 10th June, 1974 from 09.00 to 13.30 hours.

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 Tridib Chaudhuri
7. Shri K. R. Ganesh
8. Shri D. P. Jadeja
9. Shrimati Sheila Kaul
10. Shri Maharaj Singh
11. Shri H. M. Patel
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri Bhola Raut
14. Shri Vasant Sathe
15. Shri Era Sezhiyan
16. Shri Satyendra Narayan Sinha
17. 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 S. P. Mehta, *Chairman, CBDT.*
2. Shri C. C. Ganapathy, *Member, CBDT.*
3. Shri S. Narayan, *Joint Secretary.*
4. Shri I. P. P. Gupta, *Joint Secretary.*
5. Shri R. R. Khosla, *Director, CBDT.*
6. Shri S. I. Tripathi, *Deputy Secretary.*
7. Shri O. P. Bhardwaj, *Deputy Secretary.*
8. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

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

WITNESS EXAMINED

All India Federation of Income-tax Gazetted Services Associations, New Delhi.

Spokesmen:

1. Shri S. K. Roy—*President*
2. Shri P. S. Gopala Krishnan
3. Shri R. C. Pandey
4. Shri C. L. Wali
5. Shri L. S. S. Chakravarthy
6. Shri J. N. Moitra

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

MR. CHAIRMAN: Mr. Roy, it is the convention that the Chairman must point out one of the Directions by the Speaker of the Lok Sabha, which governs your evidence before the Committee. It says that whenever a witness appears before a Committee to give evidence it shall be made clear to him 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 was to be treated as confidential. Moreover, even though the witness might desire his evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI S. K. ROY: Sir, I understand the import of the Direction. We have no objection to the material being used in any manner by the august body.

MR. CHAIRMAN: Now, you may proceed.

SHRI P. S. GOPALA KRISHNAN: Sir, we are entirely in your hands as to in what order we should proceed.

MR. CHAIRMAN: It is entirely for you to decide as to what points are important for the Committee to know. If you leave it to me, before you commence, I would like you to answer a few questions about the Audit by the Comptroller and Auditor General.

It has been complained to us very bitterly that the Audit by the C. and A. G. several times exceeds the scope of the Audit. This is the complaint made by various Departments to us that they go into the interpretation of law which is not their domain, strictly speaking and that instils a fear in the minds of the officers from acting freely and fearlessly. Secondly, they seem to be working in a spirit of fault-finding so far as the Department is concerned with the result that a lot of time is wasted only in the process of complying with the Audit.

The manner in which the whole Audit seems to have been carried out has created such an awe that the Department is not able to mobilise its talent and its working as much as it should like to do to the best of its ability.

Now, the streamlining of the administration is a part of the purpose of this Bill. In Madras and elsewhere also, the officers, specially, the junior officers of the Department complained very very bitterly to us about the Audit. Do you subscribe to this view?

SHRI P. S. GOPALA KRISHNAN: We entirely subscribe to the view which you have propounded.

MR. CHAIRMAN: I have not propounded. I have only summarised the Departments' case.

SHRI P. S. GOPALA KRISHNAN: About the role of Audit, they have exceeded the functions assigned to them by the Constitution. It has had a very demoralising effect on the officers themselves because every time they make an assessment, they consider it in advance what will be the repercussions if the file is audited by the C. and A.G. Apart from this, we have a complete set-up to deal with Audit, objections and to answer audit queries which takes away a lot of time.

MR. CHAIRMAN: Have you any specific instance to show that they have exceeded their scope of Audit, that they have been unreasonable in their attitude and that attitude has a demoralising effect on the officers? You may not be ready with those instances just now. You may do it later on.

SHRI P. S. GOPALA KRISHNAN: We will be able to give such instances if we are given sufficient time.

SHRI VASANT SATHE: If the Audit entails a burden on your regular work and takes away a lot of your time, which type of audit requirement do you have in your mind?

SHRI P. S. GOPALA KRISHNAN: The procedure that the Audit follows is that they first give a half-margin note showing what objections they have raised and they ask for preliminary views. Thereafter, the points are discussed with the Income-Tax Officers by the Accounts Officer of the Audit Department. If they do not agree, if the Income-Tax Officer does not agree with view taken by the Audit, it goes to the Deputy Accountant General....

SHRI VASANT SATHE: Is the objection by the Audit in the nature of merits of assessment?

SHRI P. S. GOPALA KRISHNAN: Yes, Sir.

SHRI VASANT SATHE: I want to know whether within the framework of particular law as laid down by the Supreme Court or by the Highest court of the land, in a particular case, the assessment was not made in accordance with the law or otherwise. Is that the type of objection which is normally raised?

SHRI P. S. GOPALA KRISHNAN: It is very difficult to answer the question in this manner.

SHRI VASANT SATHE: We were more impressed by an argument that when the decision is given by the Supreme Court, then the question of interpretation, rightly or wrongly by the Department should not be so much a matter of jurisdiction of the Auditor General. If it is a question that it takes away much of your time, that is a different matter. Are these cases strictly within the ambit of Audit per se, meaning thereby that even though the law is clear and there is no dispute, you have not followed the procedure and you have allowed certain concessions and other things? What is the nature of objections of the Audit which causes a demoralising effect on the Officers?

SHRI P. S. GOPALA KRISHNAN: There are two or three types of objections which really boil down to this.

The first type of objection is based on a decision given much later. We go back to certain records and say that the view taken by the Officer at the time was wrong. We, therefore, apply the law to cases which have already been completed in the light of the decision given much later.

MR. CHAIRMAN: If I understand you correctly, if the Supreme Court decides a matter in 1974 and certain views have been taken, say, from 1970, the Audit says, as a result of that, that you have been taking a view which is contrary to the Supreme Court's view and that this is what has happened in four years' time, will you be able to give us such instances?

SHRI P. S. GOPALA KRISHNAN: We will be able to give you such instances.

MR. CHAIRMAN: If there is a decision given in 1974, do they go to 1970?

SHRI P. S. GOPALA KRISHNAN: Yes; there is no restriction.

MR. CHAIRMAN: There is a restriction on the period of auditing. Otherwise, there will be no finality.

SHRI P. S. GOPALA KRISHNAN: If there is a mistake which is common to several years, they go back to previous years also.

MR. CHAIRMAN: The Audit is from year to year.

SHRI P. S. GOPALA KRISHNAN: When they find there is a mistake in one year and it is common to earlier years, they go back to previous years also and they raise an objection.

MR. CHAIRMAN: Your grievance is that a judgment is given in 1974 and they say that because you have not taken this view from 1970 itself, the loss of revenue is so much in several years' time. Will you be able to give such instances?

SHRI P. S. GOPALA KRISHNAN: Yes, Sir.

SHRI VASANT SATHE: So, this is one type of objection which has a demoralising effect on the Income-Tax Officers.

MR. CHAIRMAN: Firstly, they do not confine their scrutiny to any particular year. They go back to previous years. A certain interpretation of law given by the Supreme Court is applied retrospectively and adverse comments are made.

SHRI P. S. GOPALA KRISHNAN: The Audit is on a particular file. They do not confine themselves merely to a particular years.

MR. CHAIRMAN: They will go 20 years back even?

SHRI P. S. GOPALA KRISHNAN: May not 20 years; may be 5 to 6 years.

MR. CHAIRMAN: If they take up a file, they may go back to 5-6 years.

SHRI P. S. GOPALA KRISHNAN: They might go back to 5-6 years.

MR. CHAIRMAN: No question of "might". You answer it specifically. What according to the rules laid down by the C. and A. G. is the period of stipulation?

SHRI P. S. GOPALA KRISHNAN: There is no such period of stipulation.

MR. CHAIRMAN: They go by the file; they will go back even 20 years.

SHRI P. S. GOPALA KRISHNAN: Yes.

MR. CHAIRMAN: What is your next objection which has a demoralising effect on the Income Tax Officers?

SHRI P. S. GOPALA KRISHNAN: Sir, our next objection is one which involves the Department. The Department says follow a particular

line of reasoning regarding interpretation of the instructions. Now, later on it is challenged and the matter goes to PAC or C. and A. G. and a different view is then taken. Then we are asked to review all cases where such type of mistakes have been committed. Now, a lot of time is taken in reviewing such cases.

MR. CHAIRMAN: Has your federation taken up the matter with the Board? If your grievance is that you are subjected to any harassment and explanations are asked for despite best work have you taken up the matter with the Board?

SHRI P. S. GOPALA KRISHNAN: We have taken up the matter with the Board authorities.

MR. CHAIRMAN: What do they say?

SHRI P. S. GOPALA KRISHNAN: Earlier explanations were called for in innumerable cases whereas now the explanations are called for only in cases which are malafide. The very procedure of calling for explanation has its own bad effect.

MR. CHAIRMAN: What other objections do you have?

SHRI P. S. GOPALA KRISHNAN: The discretion exercised by the ITO should not be the subject matter of any audit. In many cases we find even the discretion is being challenged.

MR. CHAIRMAN: Mr. Gopala Krishnan, I would request you to kindly give us a note giving specific instances at an early date so that when we invite the representatives of the C. and A. G. we ask him about these objections. I request the Chairman of the Board to relieve him for a fortnight and let him devote his attention to this.

SHRI ERA SEZHIYAN: Have you got to say anything about the internal audit.

SHRI P. S. GOPALA KRISHNAN: Internal audit is a part of our organisation.

SHRI ERA SEZHIYAN: Along with the other note, please give us a note about the impact of internal audit.

SHRI P. S. GOPALA KRISHNAN: Internal audit does not question the discretion. Its area is very specific. They do not exceed the bounds laid down by the Department. Secondly, no explanation is ever taken.

MR. CHAIRMAN: For fair assessment it may be better if you give us the functions of the internal audit.

SHRI VASANT SATHE: They may also point out to us if there is any conflict between the view taken by the Internal audit and the Revenue Audit. We are interested in knowing to what extent you feel the revenue department is demoralising and harassing. If you make out specific cases we will be able to place the same before the Auditor General for his comments.

SHRI H. M. PATEL: The internal audit has got a very limited function. In fact, if I may say, it is composed of very junior people and not the persons trained in audit. I only want to point this out. I am making a factual statement.

SHRI S. R. MEHTA: Not necessarily so. Actually, the auditors and the C. & A. G's party have also been given ten or fifteen days training. They come over to the department and then can start interpreting the laws.

MR. CHAIRMAN: It is improper for us to discuss the relevant qualifications and experience. Let us stop with that. Some of them are competent while others are not competent. It is not for us to decide who is competent. It is for the Auditor General

to decide. It is the Ministry and he who decide that. If they are competent they are appointed as internal auditors.

SHRI H. M. PATEL: My statement is very specific. What are the qualifications of the members of the internal audit? Who are the members of the internal audit?

SHRI S. R. MEHTA: The internal audit party of the department consists of such clerks and officers who have been interpreting and executing the provisions of law for a considerably long time.

MR. CHAIRMAN: For the benefit of the Members, I may point out clause 16 of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act 1971. That provides the scope in these terms. I was not aware of it. Frankly speaking, it is far more in scope than what the Company Law Administration provides.

"It shall be the duty of the Comptroller and Auditor General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union Territory having Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make, for this purpose, such examination of the accounts as he thinks fit and report thereon."

'Make an examination for this purpose' means the purpose of ensuring that there is an effective check on procedures and the rules which are being observed to ensure that the payment of the receipts, etc., etc. . . In view of this, we will also have to go into it so as to know what is the scope of the audit. It is precisely in respect of this that the Auditor General is being summoned here. It is a matter of opinion, Mr. Patel.

SHRI H. M. PATEL: It can be the other way.

MR. CHAIRMAN: May be. One thing is clear that the scope is basically confined to ensuring satisfaction that the rules and procedures in that behalf are designed to secure an effective check. These are the crucial words. And they are the cardinal principles for interpretation of the provisions. He has to ensure that the rules and procedures are observed and there is an effective check on ensuring payments made into the Consolidated Fund of India. For that purpose, he has to ensure that he satisfies himself while checking whether or not the assessment is made in accordance with the provisions of the Income-tax Act. Well, it is a matter of opinion. I have very limited experience. Other Members have far more experience in this matter.

Surely, I would like my friend here to submit his note because, I would like to examine the C. & A. G., as early as possible. This is a very important matter. I would request the Chairman of the Board of Direct Taxes to relieve you from the other work for this purpose so that you may submit your note within seven days. The Committee's time-table is also fixed. We have to send the note to the C. & A. G. also.

SHRI P. S. GOPALA KRISHNAN: We shall do our best.

MR. CHAIRMAN: I think ten days will be all right.

SHRI P. S. GOPALA KRISHNAN: We want at least fifteen days for this. We want this to be comprehensive enough.

MR. CHAIRMAN: All right, we shall give you fifteen days. You will see that your note reaches the Lok Sabha Secretariat within fifteen days.

SHRI P. S. GOPALA KRISHNAN: That will be done.

SHRI H. M. PATEL: I think it is right that they should go into it and submit a comprehensive note to us.

MR. CHAIRMAN: Kindly make a note of para 1.72 of this report.

SHRI P. S. GOPALA KRISHNAN: Last time when we were here we had discussed the Chapter regarding settlement of cases and you were good enough to tell us that we should prepare a memorandum. We have given another memorandum detailing therein the changes we would like to incorporate. In this we have given in what manner the present provisions should be modified or changed. May I proceed to explain the provisions which we would like to introduce in this Chapter?

We shall start with Sec. 245A.

MR. CHAIRMAN: I know Sec. 245A deals with the definition etc. Let us go to 245C(1). Why do you want to delegate the power? Why don't we know the circumstances under which we can refer the case?

SHRI P. S. GOPALA KRISHNAN: What we are concerned with is with regard to proviso to 245D(1). You will find on page 2 of our supplementary memorandum (please see page 31 of the Bill) wherein we have made our suggestions. May I explain some of the changes that we have made? The only change that we have made is this. We retain the words 'having regard to the nature and circumstances of the case'. There are two other conditions laid down which we are removing. The circumstances of the case will include both these conditions. What is indicated in the proviso is being put down as sub-sections (2) and (3). We are making the wording simpler.

MR. CHAIRMAN: What is the guide-line that you provide for the term 'having regard to the nature and circumstances of the case'?

SHRI P. S. GOPALA KRISHNAN: We have put down sub-sections '2 and 3' for the guide-lines.

MR. CHAIRMAN: It is not very comprehensive enough. I am very glad that you have stated that. What you say is that you have put down sub-sections (2) and (3). Then come to two and three.

SHRI P. S. GOPALA KRISHNAN: Two and three refer to cases referred to Wanchoo Committee of one-time defaulters or intended defaulters.

MR. CHAIRMAN: That means in the case of an assessee which otherwise however may be justified but if through proceedings of concealment under 271(1)(c) a tribunal is likely to come to *prima facie* conclusion that there is concealment then that case is shut out.

SHRI P. S. GOPALA KRISHNAN: No, Sir. Then Sub-section 3 comes in.

MR. CHAIRMAN: We will consider this. We see the rationale.

SHRI P. S. GOPALA KRISHNAN: Further, Sir, the independent tribunal should be under the Ministry of Finance and not under the Ministry of Law. It is for coordination of work.

MR. CHAIRMAN: Do you think it will function better if it were to go directly under the High Court?

SHRI P. S. GOPALA KRISHNAN: It will be better.

SHRI VASANT SATHE: In Section 10 every application received under sub-section 1 shall be disposed of within four years from the end of the financial year.

SHRI P. S. GOPALA KRISHNAN: It is only a question of suggesting time-limit within which the application should be disposed of. The Committee may decide about the time-limit.

MR. CHAIRMAN: At least you should expect the new tribunal to function better. We will say: "It should be disposed of expeditiously".

SHRI P. S. GOPALA KRISHNAN: I feel a time-limit is necessary.

MR. CHAIRMAN: Since you are suggesting one settlement tribunal don't you think in view of the complexities involved in various litigations we should have more than one settlement tribunal.

SHRI P. S. GOPALA KRISHNAN: We can have one each at Bombay, Calcutta, Madras and Delhi.

MR. CHAIRMAN: Why do you want it to be called 'settlement tribunal' and not 'settlement commission'?

SHRI P. S. GOPALA KRISHNAN: The phraseology can be changed.

Then, Sir, sub-section 9 on page 3 is very important. There was a lacuna in the Act where a settlement is made void there should be no provision for making re-assessment. Sir, there will be very rare cases where settlement would become void.

MR. CHAIRMAN: We can provide that the limitation will start from the day it becomes void.

SHRI VASANT SATHE: They are already providing for the limitation to start from the date of filing the application.

MR. CHAIRMAN: But if the proceedings are kept in abeyance by the court, the limitation might expire during this period. So, if it commences from the date it is declared void.....

SHRI VASANT SATHE: There is a limitation under Section 153.

MR. CHAIRMAN: But the provision is that Section 153 will not apply and if the Section does not apply, the limitation does not apply. Some limitation will have to be specifically provided.

SHRI P. S. GOPALA KRISHNAN: We have recast Section 245-E to make it more effective, by saying that

where they desire to re-open certain assessments the provisions contained in Sections 34 and 153 will not apply.

MR CHAIRMAN: Subject to draft-
ing changes, I think this is necessary.

SHRI P. S. GOPALA KRISHNAN: In 245F we have made only a minor change that the Income-Tax Authority will have the same powers for investigation and enquiry also.

MR. CHAIRMAN: They already have that power under the law.

SHRI P. S. GOPALA KRISHNAN: But once it goes to the Tribunal, they have the exclusive jurisdiction. If you want the Income-tax authority to conduct enquiries and investigations, they should have the same powers as the Tribunal. It is only then that they can summon and examine witnesses and examine books of accounts.

MR. CHAIRMAN: That is at the initial stage, not after the Tribunal or the Commission is seized of the matter. It is before they assume jurisdiction.

SHRI P. S. GOPALA KRISHNAN: But after the jurisdiction is assumed by the Tribunal, where is the machinery for the Tribunal to conduct the investigations?

MR. CHAIRMAN: Then this power should be given for investigation and enquiries which are conducted specifically under the direction of the Commission. Or do you want it for investigation and enquiry also.

SHRI P. S. GOPALA KRISHNAN: They have it already under the law. But after the Tribunal is seized of the proceedings, if it is going to direct some Income-Tax Officer to conduct investigations, he should have the power to summon witnesses, record statements, examine accounts etc. That power has not been given to him.

MR. CHAIRMAN: As I envisage it, what happens is this. When the proceedings go to the Commission, the assessee and the Department are the two parties. So, the Department will have to protect its own interest.

SHRI P. S. GOPALA KRISHNAN: But what about the machinery for investigations?

MR. CHAIRMAN: The Tribunal will determine the machinery. It can direct the Income-Tax Officers to conduct the enquiry, etc.

SHRI VASANT SATHE: What he wants to say is that the machinery which is to conduct the investigations should have the same powers as the Tribunal.

MR. CHAIRMAN: Then that exercise of powers should be subject to the directions of the Tribunal. Whatever powers they are required to exercise will be specified by the Tribunal.

SHRI P. S. GOPALA KRISHNAN: Then, in 245F(2) we have provided that they should be treated as judicial proceedings and therefore, the provisions relating to prosecution will apply if there is mis-representation of facts or fraud before the Tribunal. I think this is important and necessary.

In 245F(4) we have provided that "during the pendency of any application filed under sub-section 245-C, nothing in this chapter shall affect the operation of the other provisions of this Act, including the powers of the Income Tax Officer to make assessments in the normal course, unless a specific direction to the contrary is given by the Tribunal". The idea is that during the pendency of a petition, it may become time-barred.

MR. CHAIRMAN: In the petition itself they can ask for some such sort of thing. I think you are only making express what is implied.

SHRI P. S. GOPALA KRISHNAN: In 245H we have made some changes

in the following respects. Payment of tax or arrangements to pay it has been made a condition for granting immunity from prosecution or penalty. Otherwise, the whole object of a settlement would be nullified if the tax is not paid. So, we have made it a condition that before granting of immunity, either the tax levied should be paid or satisfactory arrangements for the payment of the same should be made.

MR. CHAIRMAN: I think it should be statutorily provided. In fact, after settlement, if he does not pay it, he should go to jail.

SHRI P. S. GOPALA KRISHNAN: The next one is with regard to the scope of the immunity. In the original amendment Bill it is provided that immunity may be granted from prosecution not only under the Income-Tax Act but also under the Indian Penal Code and other Central Acts. We have to remove the other Central Acts from the scope of the Bill.

MR. CHAIRMAN: Why? Supposing there is a case which involves not only income-tax but also Central excise and things like that. If they want to go in for a settlement and you think it is a fit case for a total, composite settlement, what objection do you have to it?

SHRI P. S. GOPALA KRISHNAN: How far the Settlement Committee is competent to deal with offences under other Central Acts is a point for consideration.

MR. CHAIRMAN: We may recommend to Parliament, if it commends itself to the Committee, that there should be power vested in the Committee to settle all matters—because we are interested in the collection of revenue.

SHRI P. S. GOPALA KRISHNAN: It will have to be considered whether it is worth-while to grant immunity under other Acts also.

SHRI VASANT SATHE: Are you suggesting, Mr. Chairman, that for the sake of collecting some lakhs, or even crores, we should give a blanket immunity under all existing laws?

MR. CHAIRMAN: What I am suggesting is this. Supposing a particular assessee has total assets worth crores of rupees—not in his own name but in the name of his wife, uncle or anybody else; he may say "So far as I am concerned, you cannot touch me, but if you are willing to settle for two crores, I will give all the details to you". Then the Tribunal may want to settle for two crores. In such cases whether or not the Tribunal should be vested with authority to condone all offences is a matter which the Committee may consider.

SHRI VASANT SATHE: That is a very wide proposition.

MR. CHAIRMAN: Whether we can do it or not is also a question.

SHRI VASANT SATHE: I don't think we can.

MR. CHAIRMAN: What is your suggestion? You think it is not possible for the Tribunal or Commission to grant immunity in respect of other cases?

SHRI P. S. GOPALA KRISHNAN: Yes. Let us confine ourselves to this Act.

MR. CHAIRMAN: How did you make such a provision? What is the rationale behind it?

Even under Section 291, the Central Government has got the power, but not the Tribunal. It can only recommend to the Central Government and if the Central Government sometimes feels diffident to take a decision, this may strengthen the hands of the Central Government in taking a decision.

Will it be ultra vires if this power is vested in the Commission?

SHRI L. S. S. CHAKRAVARTHY: The power to recommend can be given. If the Central Government have the power already to grant immunity under 291 and the Commission is also to be given the power...

MR. CHAIRMAN: It will not be overlapping. Even if the Commission grants immunity, the Central Government may or may not.

We can decide the issue—whether this power may be given to the Commission as it was given to the Investigation Commission and if so, whether it should be given power directly or whether power with some limitation should be given.

SHRI VASANT SATHE: Since this is specifically in relation to the Income tax Act, I think a provision should be made giving power to the Commission to give immunity even under any other law provided it is only in relation to this present law.

MR. CHAIRMAN: But unless you give immunity under IPC also, who will come forward? After all, we don't make a provision which will remain only in the books.

SHRI VASANT SATHE: Under IPC for what?

MR. CHAIRMAN: Under IPC for all lapses which are likely to be settled. We will have to consider this in some depth.

SHRI VASANT SATHE: A particular evasion may be a crime. Would you give immunity for an offence to be tried under the IPC also?

MR. CHAIRMAN: Because nobody would otherwise come forward.

I am sure they must have taken proper legal opinion before drafting this. But we will also take legal assistance in this matter—as to whether the Commission can be vested with this power or not.

SHRI P. S. GOPALA KRISHNAN: 245(I) says that the order made by the Settlement Tribunal must be conclusive and cannot be called into question before any court of law. We have not made any change in that.

But we have added another clause to take care of cases where it is not possible to identify in which year the income was earned and to make a decision with regard to penalty and tax.

MR. CHAIRMAN: That is implicit; let us not over-legislate. Any Tribunal worth its salt will have to take care of these problems.

You may proceed.

SHRI P. S. GOPALA KRISHNAN: The part of the Bill relating to the settlement being declared void is not clear as to how the settlement can be made void, who will take the initiative, what opportunity will be given to the assessee before the settlement is made void, and what will be the consequences.

MR. CHAIRMAN: As far as I envisage, for a settlement to be declared void, the initiative will come only from the Department and the Tribunal will have to adjudicate.

SHRI P. S. GOPALA KRISHNAN: Will an opportunity be given to the assessee?

MR. CHAIRMAN: Of course; the principles of natural justice require that. If there is a violation of the principles of natural justice, the jurisdiction can be taken away as far as these proceedings are concerned. It will be justified if the jurisdiction is taken away root and branch. The Department should also be made strong enough to confidently take decisions. Now the Department goes to the Commission for assistance, the Commission goes to the Tribunal and what the Tribunal may do is best not commented upon. Therefore, so far as the question of declaring it void is

concerned, I think we should insert a section to that effect.

SHRI P. S. GOPALA KRISHNAN: Yes.

SHRI VASANT SATHE: Are you agreeable to this proposal which you have made on page 6 of their Memorandum?

MR. CHAIRMAN: I am agreeable to nothing. They have brought out some very good points.

SHRI VASANT SATHE: You cannot limit the jurisdiction whether it is trivial or not. We cannot say that they will not have jurisdiction.

MR. CHAIRMAN: Under section 271A, this provision is also there. Then what is your next point, Mr. Gopala Krishnan?

SHRI P. S. GOPALA KRISHNAN: Sir, we had made the point at that time that whatever provision we made in law, unless the implementation machinery was sound, no amount of legislation would have any impact. Since we made the point last time, may I say a great calamity has overtaken us now? By this I mean to say that some seniority rules have been made in the Department by application of which the prospects of more than 2000 officers are adversely affected. Under this new rule, I have become junior to my own subordinates. My service of about thirty years has gone in vain. Most of us have lost the seniority by one to four years and some new recruits have become senior to some of us even though they were not in service during the period of our service. Sir, this has created complete breakdown and demoralisation in the administration. I am very sorry to say this.

MR. CHAIRMAN: I do not want to impede your right of making your personal grievances to this Committee because we are looking into the question of streamlining the administration and we cannot streamline the

administration so long as the officers are treated with injustice. We can look into it but on a preliminary issue, do you think that this Committee within the scope that it has been entrusted with, can really solve any of the issues you have in mind?

SHRI P. S. GOPALA KRISHNAN: Once it is agreed that the implementation machinery should be effective, I think the Members of the Committee should suggest how the machinery should be made effective and the administration should be made effective. We are a part of the administration and we want to do our best but let our morale not be shaken. You please restore the morale. Sir, the consequences of the seniority are so demoralising that by applying this new seniority rule, departmental officers who have got more number of years of service at their credit may not even get a chance of promotion before they retire from service.

MR. CHAIRMAN: First I would like to know what the Department has to say about this. But I have some doubts in my mind as to whether we can go into this aspect. Which specific clause or chapter this is related to?

SHRI P. S. GOPALA KRISHNAN: There is nowhere else we can turn to. All doors are closed. We come to you only with a begging bowl and say that save us from calamity.

MR. CHAIRMAN: Explain to us what exactly the grievances you have got. At the most we can mention about your problem very briefly in our Report, under the relevant heading 'streamlining of administration'.

SHRI VASANT SATHE: Are you suggesting that within the framework of the law as is now laid down by the decision of the Supreme Court for this dispute, there is a possibility for the Government of making any policy statement anew which will give justice to you and at the same time not doing any injustice to the other side?

SHRI P. S. GOPALA KRISHNAN: This is exactly what we are pleading for.

MR. CHAIRMAN: Why don't you come to some settlement with the other side?

SHRI P. S. GOPALA KRISHNAN: We have lost everything. We are in the worst position today. I have become junior my own subordinate; it is inconceivable.

MR. CHAIRMAN: There is a rule made by the Govt. In accordance with this, if something happens, that is a part of the game. What is the best way out?

SHRI P. S. GOPALA KRISHNAN: To go into the entire structure of the Deptt. and to find out what are the requirements of the Deptt.

MR. CHAIRMAN: Will that be with in our own scope?

SHRI R. C. PANDEY: They do not come into clash with the observations of the Supreme Court.

SHRI L. S. S. CHAKRAVARTHY: Mr. Gupta is the promotee and it is a combined judgment; it is going in his favour.

MR. CHAIRMAN: You want the whole matter to be examined? In the process, if you lose something more, then what will happen?

SHRI P. S. GOPALA KRISHNAN: Yes. There is nothing more for us to lose; we have lost everything.

SHRI R. C. PANDEY: If a parliamentary committee goes into it and whatever, decision they may take, we will accept it.

MR. CHAIRMAN: So far as this Select Committee is concerned, it will certainly not go into it. We may recommend to the Parliament which may direct the Ministry of Finance to set up a Commission to go into it. For that, you have to satisfy that such a procedure will really create a harmony and will not lead to further litigation.

SHRI P. S. GOPALA KRISHNAN: We can put forward only this that we have lost in this game.

MR. CHAIRMAN: Till the Supreme Court gave its decision, you had no grievances against the rule?

SHRI P. S. GOPALA KRISHNAN: There was no rule; there was a general law.

MR. CHAIRMAN: This rule was made in 1959.

SHRI P. S. GOPALA KRISHNAN: If there is a lacuna in that period, we were not the party to suffer.

MR. CHAIRMAN: You give us a note on this and we will call the other side here and take their views in the matter.

SHRI P. S. GOPALA KRISHNAN: We are all for living together as a family in this department.

MR. CHAIRMAN: Then why don't you do it?

SHRI P. S. GOPALA KRISHNAN: We are thrown on the street.

MR. CHAIRMAN: You are not a politician. This deptt. must function very harmoniously and in a certain degree of cohesion. This thing is creating a tremendous concern to all us. This thing cannot be solved by any court; it can be solved only on a discussion table.

SHRI L. S. S. CHAKRAVARTHY: The only sentence which the other side has said is: "We are prepared to take everything and we are not going to give you anything." We have reported this thing to the Chairman.

MR. CHAIRMAN: I have listened with great interest to the other side also; they have also come and talked to me in my individual capacity and it would be extremely intolerant of me if I were to endorse our views. They have expressed their willingness to settle this matter. I do not know really where the fault lies. You are sincere in your grievances; I have no doubt about it in my mind. They are

equally sincere in their convictions and expressions of their feelings.

SHRI P. S. GOPALA KRISHNAN: Our only anxiety is that the departmental machinery should function effectively. It should be ensured that the morale of the officers improves. At present there is gloom all round.

SHRI L. S. S. CHAKRAVARTHY: We represent most of the Income Tax Officers who have entered as Class II officers. They are working in that capacity for 15 years without any promotion whatsoever. Even if they are promoted to Class I, the new seniority rule is such that for the remainder of their service, they would be doing the same work as ITOs. This is one aspect. The grievance of the direct recruit is this: they say, "we come from the same competitive examination as the IAS officers. In the other departments, people from the same examination get promotions to higher echelons of posts like Joint Secretary etc. which we are not able to get. There was no Class I service in the department till 1944." There have been write petitions filed earlier, because of this background. But for the direct recruits to say that the officers who had joined the Department at a level lower than themselves, should continue for 30 years as ITOs. is not correct; but that is what is going to happen. Ultimately, the direct recruits would constitute 97 per cent. The promotees are wiped out completely from the picture; and there will be no chances of promotion for them for 30 years. The grievance of the other side is there, because of pyramidal structure. The number of top posts is 45; and the number of posts at the lower level is 3,000. Merely because the cadre of direct recruits started in 1945 while the IAS etc. have existed for a number of decades, the latter are getting most of the deputation posts. We are prepared to sit across the same table with them. I have summarized the grievances of both the sides. Our grievance is that 80 per cent of the officers are stamped out of existence for the next 30 years.

SHRI S. K. ROY: The previous Chairman of the Board was a person who had risen from the non-gazetted cadre; so also was the Chairman prior to him. After 1981, there will be hardly 15 persons as Assistant Commissioners from among the promotees. There will be no further promotion. The tradition in the Department was that officers from the lowest rung have risen to the highest positions; but the position to-day is that after 1981, there will be no promotee officers even among Assistant Commissioners. In this situation, how can the Department function effectively? Is it not within the scope of the terms of reference of this august body to go into this matter, when it is entrusted with the job of streamlining the Department? We think it is. Unless this problem is solved this entire piece of legislation will remain only on the statute book. We feel that injustice is being done. It is not only a question of giving proper equation between the two sides. It should also be ensured that the Department functions effectively. The two things have to be balanced. In the past, direct recruit officers used to get promoted as Assistant Commissioners, after serving for 10 years. But the Department is now seeking to reduce that period and make it 8 years, including the period of training at Nagpur for 2 years. Thus, the actual length of service for them comes to 6 years. But the officers in Class II are stagnating after serving for 10 years. There is absolutely no difference between their work and ours, statutorily or otherwise. In fact, a Class II officer succeeds a Class I officer in a post. He shoulders the same responsibility. The bulk of the work is done by Class II officers. Among the direct recruits who constitute 20 per cent of the total most of the officers have put in less than 5 years of service. Those among them who have put in more than 5 years' service are now on deputation to Secretarial posts; and as a result, the results viz. the higher targets being achieved, are due to the work of the promotee officers. The Supreme Court has said that it is a policy matter. We leave the policy matter alone

The Department should change the policy. As Mr. Gopala Krishnan had said, our lands and homes have been taken away from us; we have before us to-day a picture of dismal darkness. There is nothing to look forward to. Some drastic action should be taken to improve our lot; otherwise this bill will remain only on the statute book.

MR. CHAIRMAN: I am not going into any individual case; but I want to understand a typical case, since you are giving expression to serious grievances. Mr. Chakravarty, how long have you been an Appellate Commissioner?

SHRI L. S. S. CHAKRAVARTY: Since 1966, Sir.

MR. CHAIRMAN: What happens to you as a result of this rule?

SHRI L. S. S. CHAKRAVARTHY: I was promoted to Class I in 1956, after 9 years of service in Class II; and the charges which I had held were such as were held by Class I officers before and after that period. I was promoted to Grade I in 1958. During those days, there were grades 1 and 2. I was confirmed in Grade I, i.e. the senior scale of Class I. I was also given, under the old seniority rule, weightage by which I was senior to a direct recruit. I was confirmed in 1956, on the basis of which I was senior to a direct recruit of 1954. Now, I have been made junior to a direct recruit, recruited in 1959, because of the rule of February 1973. I am now junior to a direct recruit who entered the Department at Nagpur in July 1959. The position is so ridiculous. When I was promoted in 1956, many of the persons now made senior to me must have been in the college. Originally, in 1950 and 1952, the seniority rule envisaged that a person with a service of 5 years should be given weightage. The weightage is very important. Shri Mahavir Tyagi, who was the Minister then had taken us to ask and compared us to the Muslim League, for using that word. The Correct word used

should have been "equation". I spent 9 years in Class II. A direct recruit who has spent 2 years in that Grade is equated or even shown senior. I was shown senior to a direct recruit in 1954. Now, I am shown suddenly junior to a direct recruit in 1959 who was still studying in the College.

MR. CHAIRMAN: With this Rule coming in, your seniority will go down.

SHRI L. S. S. CHAKRAVARTY: Yes; it will go down very much. For all my life, I will be only drawing the pay which I have been drawing under the Pay Commission's recommendations. Even if there is a Selection Grade for which some posts are there. I will not be senior enough to get it because of this predicament.

SHRI ERA SEZHIYAN: I think, it will be better if we get a background note from there.

MR. CHAIRMAN: I would want you to give us a copy of the Supreme Court judgment, a copy of the Rule and a note on the consequences of the aforesaid Rule so far as you are concerned.

There is one thing which agitates our mind. After all, direct recruits are coming through an all-India competition. It is not that after they enter the service, there should be any privileged class which is totally contrary to the basic concept of administration. There is no such privileged class. Everybody is a brother officer. No one should be considered as the "blue blood" and the rest as *kachra*. That attitude must not come in.

I have talked to direct recruits also. They have told me that they have no acrimony and they want to work like brother officers. That old notion of a privileged class because they have come as direct recruits is no longer in existence. Despite all that, one factor remains. A person who comes through an all-India competition is bound to have a certain guaranteed course of career which may

not be available to a direct recruit. How will you overcome that difficulty? A direct recruit comes through a severe competition and there has to be, if not a privileged class, at least a preferential treatment.

SHRI S. K. ROY: A direct recruit who comes through a competition is certainly entitled to a chance of advancement in his official career. We do not dispute that. But this is only one-time examination. He has been tested only once. For the rest of 30—35 years, he is not tested at all in comparison to other officers who are doing the same work along with him. He may have an edge over a promotee officer. We do not dispute that. But after a certain stage, when two officers perform the same type of work, should not the performance count more than a one-time test which, according to the Chairman of the U.P. S.C., has been very much watered down. No longer First Class graduates are coming for a competitive examination. It is only the Second Class and Third Class graduates who are coming in.

SHRI ERA SEZHIYAN: While we fully sympathise with them, I think, let us have a background note from them. We have to go deeper into that. We should examine that because it has not deeper consequences.

MR. CHAIRMAN: We will have a note from them. We cannot adjudicate and we will not adjudicate. But if the merits of the case do warrant and the Committee feels inclined that this is something which adversely affected the administrative set-up, the Committee may make some recommendations with reference to any clause. But I do feel that one thing is very clear and that is that this sort of internal conflicts will not be conducive for streamlining the administration.

SHRI S. K. ROY: This is what the Wanchoo Committee has said:

"We do not agree with the views expressed by some officers recruited

to Class I that they should get the highest post, more or less, automatically. We recommend that merit and merit alone should be the criterion for appointment to higher post. This principle should not remain in theory but should be followed in practice."

A high-power Committee has gone into this matter and has given these views.

MR. CHAIRMAN: I am told, this is what in practice is being followed. We will accept their word. They are the people who do the selection. The D.P.C. makes a selection: If you have a grievance that they have not done it on merits, that the people are not taken on merits, we will not accept your word on that ground. The D.P.C. is the final authority on that:

SHRI S. K. ROY: We agree. But we are not allowed to walk into that arena. We are kept outside the zone. We become so junior and in spite of our working, we are not considered by the D.P.C.

SHRI VASANT SATHE: I personally feel that there is a very genuine grievance which has been brought before us. It is likely to adversely affect the efficient working of the Department. Therefore, both in view of the Wanchoo Committee's recommendations as well as the recommendation that we may like to make with the object of streamlining the administration and making it efficient, I think, it would be perfectly within our jurisdiction and, in fact, it will be duty of this Committee to go into the question after getting a full note from them and also hearing other parties. Certain basic principles of equity and justice must be laid down so that those criteria can be applied to all irrespective of whether they have come as promotees or whether they have come as direct recruits. Having come, the well known principle of 'equal opportunity for equal work' should be applied to all officers.

There are certain well known principles, and guidelines can be laid down which would do justice to them. The direct recruits are comparing themselves with the officers of other departments—IAS and IPS; they want that they should have equal opportunities on par with other direct recruits like IAS and IPS. Because they cannot get those opportunities, they are kicking below. This is what is happening today in this Department as I understand from the evidence that has been given before us today. Therefore, we shall have to take into consideration all these facts and resolve this dispute in the best interests of the Department.

MR. CHAIRMAN: Mr. Gopala Krishnan, please give us a note. We will see what we can do in the matter.

SHRI VASANT SATHE: I want to ask one question. We have not yet heard from this most experienced class how we can fulfil the main object of the Bill. I had asked them last time also to give us concrete suggestions as to how we can fulfil the main objective of the Bill i.e., unearthing black money and tracking down this proliferation. Mere generalisations will not help. We had requested to give us the benefit of their experience and give us some concrete suggestions. If the magnitude is more than Rs. 10,000 crores and if our entire effort is not going to touch even the fringe of it, then our whole objective is not going to be fulfilled.

MR. CHAIRMAN: Before we shift to the next subject, Mr. Gopala-Krishnan, in your report I would want you to include what you have commented on Wachoo Commission. I think, the Administrative Reforms Commission also went into it. . .

SHRI S. K. ROY: Yes. The Public Accounts Committee also has mentioned.

MR. CHAIRMAN: Do let us know what you have to say in that context. I personally feel that you are all a

set of reasonable beings. The only help that can come is by sitting across and talking with the representatives. . .

SHRI S. K. ROY: It should be with both the parties and not with one party alone.

SHRI VASANT SATHE: You can call, Mr. Chairman, representatives of both and have a dialogue with them.

MR. CHAIRMAN: So far as this Committee is concerned, it is not a conciliatory board. It is deliberating over a piece of legislation. Because there is the object of streamlining the administrative set-up, we will see what we can do within the very limited scope that we have. But, surely, as people in public life, concerned with the welfare of the State exchequer, it is our very anxious thought that the Department must function smoothly. No one can perform a miracle by finding out a formula which they think is the best and which you also think is the best. There has got to be 'give-and-take'. You have to consider everything in that spirit.

Now, Mr. Gopala Krishnan, you may answer Mr. Sathe's question.

SHRI P. S. GOPALA KRISHNAN: This problem should be tackled in different phases. We have already put forward one suggestion before you. The best way to tackle this problem is to have a thorough scrutiny of every case, big or small. There is no substitute for thorough scrutiny in all cases if you want to track black money. That is the first proposition. The objection will come that we do not have the manpower or the resources to attend to all cases in depth and minutely. . .

MR. CHAIRMAN: But you have the power under the law.

SHRI P. S. GOPALA KRISHNAN: Yes; we have.

MR. CHAIRMAN: If you are deficient in tracking down black money, it is because of inadequacy of resources and inadequacy of manpower and not because of insufficiency of power vested in the existing law. Is that so?

SHRI P. S. GOPALA KRISHNAN: We are not using even the existing powers in the Act effectively. If manpower and resources are not available, is it not the duty of the Government to plan for management and resources?

MR. CHAIRMAN: Not only sufficient manpower, but well trained manpower who must be aware of the techniques and who have the requisite expertise and knowhow to go ahead in the matter.

SHRI VASANT SATHE: Here I want to ask them a question, Mr. Chairman. Is it your experience that the black money is widely diffused...

SHRI P. S. GOPALA KRISHNAN: Yes.

SHRI VASANT SATHE: Meaning thereby that even the small assesseees that you have to deal with have large amounts of black money diffused among them and therefore even the small assesseees' assessments will have to be scrutinised more closely and that cannot be done without manpower? But we have been informed that the major evasion of tax and unaccounted money is from certain large assesseees and, therefore, if those large assesseees are tackled, then substantial amounts of black money can be unearthed. Have you any assessment as to how the black money is operating, how much is diffused and where is it?

SHRI P. S. GOPALA KRISHNAN: This is a subject on which efforts should have been undertaken by the Government long ago, to find out how this is generated how it is diffused and in whose hands it is. From our experience we can say that the question of black money is not confined

only to large industrial houses or moneyed people but it is found in all sections, right upto the lowest man in the society.

MR. CHAIRMAN: All right; not only the businessmen and industrialists, but even the bureaucrats and the politicians are not out of it. But that is not the question. So far as the law is concerned, what can we do to reach the objective? You have said that manpower, resources, proper training and expertise should be available.

SHRI P. S. GOPALA KRISHNAN: Every case must be tackled in depth. Exceptions may be made of marginal cases where negligible evasion may take place. If resources cannot be created to the extent of tackling every case, then the marginal cases may go out of the purview of detailed scrutiny. Therefore, the first proposition is creation of manpower and resources to tackle every case. The next aspect is, within the existing resources, what can we do to tackle black money. Last time I mentioned before you that even the cases where we have definite information that evasion is taking place, we are not able to tackle effectively.

MR. CHAIRMAN: Why?

SHRI P. S. GOPALA KRISHNAN: The time factor. The goal system is prevalent in the Department, i.e., the target system; you dispose of 150 cases every month. In that case he has to make a summary assessment.

MR. CHAIRMAN: Therefore, I take it that you are complaining to the Committee that even if you were to complain in a particular case to the I.A.C. that you find there is evasion, you will not be given any assistance to go into that and still, you will be forced to complete that case quickly.

SHRI P. S. GOPALA KRISHNAN: I shall put it differently. Even in cases where we have definite instances of evasion, that information is not being utilised effectively.

MR. CHAIRMAN: In other words, are you suggesting that the workload is too heavy?

SHRI P. S. GOPALA KRISHNAN: Yes, Sir.

MR. CHAIRMAN: Then you are repeating the same thing—insufficient manpower.

SHRI VASANT SATHE: Are you suggesting that instead of making a number of cases quantitywise, you should make assessments qualitywise so as to know how much money you have been able to unearth. Suppose we were to put such a criteria, I do not care whether you have done 100 cases or 10 cases, I only want to know how much of black money out of Rs. 10,000 crores have you been able to unearth? Why should I bother about how many cases you have done.

SHRI P. S. GOPALA KRISHNAN: That is the basic approach that I have suggested.

SHRI VASANT SATHE: I think that is a rational and reasonable approach.

SHRI P. S. GOPALA KRISHNAN: I have suggested that the method of making assessments should be dispensed with. To-day what we are doing is that whatever returns come we simply accept them and make assessment. To-day, our resources are such that we can concentrate mainly on cases where we get positive and definite information of concealments.

MR. CHAIRMAN: In other words, if a person files his return and a certificate that he has paid cash, that should be the end of the matter.

SHRI P. S. GOPALA KRISHNAN: Unless, there is a definite case of tax evasion against him.

MR. CHAIRMAN: But, this cannot be brought into the law.

SHRI P. S. GOPALA KRISHNAN: This is an administrative problem. We should dispense with the goal

system of assessments. If only we have definite information against a particular person we should bring him to book. Otherwise I shall give a clean certificate that he is honest or else I shall send him to the jail if he is not honest.

MR. CHAIRMAN: Let me know one thing. If this is not done how is the goal achieved to ensure that the total assessments are within this limitation?

SHRI P. S. GOPALA KRISHNAN: I suggest that the method of making summary assessments should be dispensed with. The law should be changed.

MR. CHAIRMAN: Upto what limit it should be done?

SHRI P. S. GOPALA KRISHNAN: No limit should be there. All assessments should be accepted. But let us not take cases only where there is an income exceeding Rs. 50,000 or so. If there is definite information with regard to any case, that should be pursued very vigorously.

MR. CHAIRMAN: Suppose there is no information. But, there questions of law arise. Someone says that a certain amount is deductible. He thinks that this capital gain is not subject to tax. Then, many questions of law may arise. Don't you think it is better that if at all we make some law, we may fix up some limit in respect of a return with such and such an income unless the assessee is a big assessee? In fact, even he may have incurred a loss. With reference to his concealed income, we can think of providing something in the law itself. Well, as long as the assessee files a return and submits a certificate from a proper person that he has paid the tax, there should be some printed acknowledgment in that regard. That should, by itself, mean an assessment. Why should it not be with reference to some quantum?

SHRI P. S. GOPALA KRISHNAN: The main difficulty we are having is that even today we are not able to complete all summary assessment cases upto 50,000 within that year.

MR. CHAIRMAN: There is some rationable behind that.

SHRI P. S. GOPALA KRISHNAN: It may be that many people file returns deliberately....

MR. CHAIRMAN: I have not read the instructions. I do not know whether it is the income returned or not.

SHRI P. S. GOPALA KRISHNAN: The return filed may be for an income of Rs. 50,000. We may accept it. There is no other problem at all. What I want to submit is that we should scrutinise all cases in depth where the individual is having Rs. 50,000 as his income. We are not doing that even to-day. It is a vicious circle. Upto Rs. 50,000 to-day we accept the returns. We scrutinise the returns above Rs. 50,000. That is how we are scrutinising the cases.

MR. CHAIRMAN: In other words, your suggestion is that there should be a blanket permission for non-scrutiny. But, where you have definite information about the concealment of income, there should be scrutiny.

SHRI P. S. GOPALA KRISHNAN: This is a drastic remedy. The only thing to do is to pursue the cases where we have definite information. But, the man-power we have today is less. Let us realise this situation.

SHRI VASANT SATHE: This may appear to be drastic but, in terms of results, this will be better. Our officers will give good results by just doing counter-checks etc. I would like the Committee to consider one thing. Let us accept the suggestion without any limit. Let the officers go ahead with the cases. If they feel that in the return filed there is a concealment of income, the officers

can bring in better results by pursuing the cases in depth and by scrutinising the returns of the assesseees.

MR. CHAIRMAN: Mr. Sezhiyan we would like to have the benefit of your matured view on this. This is a very important question. The witness is suggesting something revolutionary. He says that the man-power is not adequate enough in tracking down the black money. The man-power is enough only to deal with cases where they have definite information of concealment of income. In other cases, the return and a certificate that the tax has been paid must be accepted. The assessing officer is exculpated from all liability of scrutiny.

SHRI ERA SEZHIYAN: I am not very enthusiastic about this suggestion.

MR. CHAIRMAN: I would take it with a lot of reservation. What is the department's view on this matter? How can we reduce the unnecessary work so that we devote more time for probing into cases where they have definite information?

SHRI S. R. MEHTA: It is a fact that the Department has been thinking over this problem as to how to complete the assessments and reduce the arrears with the existing man-power. As you know if there is no adequate number of persons to make the assessments, one has to devise a machinery by which assessments could be divided into two categories—Category I and II, that is, those assessments which cannot be gone into in details and those assessments for which some sort of a scrutiny should be carried out. For this purpose, a provision was made in the Income-tax for starting summary assessment schemes. According to that scheme, Income-tax Officers are required to accept the returns if the income disclosed in the return is Rs. 25,000. But, in a couple of towns like Bombay and Calcutta, since the number of assesseees is too large and the number of I.T.Os there is inadequate to deal

effectively with all those cases, the limit of income for the summary assessment has been increased to Rs. 50,000. Now, the I.T.Os are called upon to carry out summary assessments of those cases and to make a scrutiny of all assessment cases with an income above those limits and also Company assessments. It has been our experience that even the summary assessment scheme, I do not know for what reason, has not been implemented in letter and in spirit in certain charges in the sense that, even in such cases, the income-tax officers have been found to call the assesseees for putting questions to them. They must have good reasons for doing so, but we have been asking the income-tax officers to do the summary assessment in the spirit and manner in which it has been laid down in the law.

In regard to scrutiny assessment, it is not quite correct to say that scrutiny assessments have also been done in a summary manner or in a slipshod manner. This would be evident from the fact that, in a very large number of cases, the income-tax officers have been able to find concealments; they have been able to discover cases involving prosecution of assesseees. So, it cannot be said that scrutiny assessment is not being made in a manner in which it is required to be made. But I do agree that, in most of the cases, that much attention has not been paid as the cases would require. For that it is a fact we do need larger manpower. From time to time we have been asking the Government to give us more staff, and we have been getting more staff from time to time. But, as you know, the work has also increasing at a rapid pace. With the expansion of our economy, the number of assesseees has been increasing. The mode of concealment has also been changing from time to time, and the income-tax officers have to be trained to be kept a pace with the changing methods adopted by the assesseees in concealing their income. It is a fact that we are under-staffed at all

levels, and if we are given more manpower, it might be possible for us to do greater justice to our work.

In regard to greater manpower also, there is a limitation. Suppose the Department needs 800 officers. It is impossible to recruit and train 800 officers in one lot. As a matter of fact, recruitment of Class I officers is generally limited to 50 to 60 each year because if, in selecting Class I officers, the UPSC goes down to a much lower level, the result would be that the quality of the officers would suffer. Similarly, giving promotion on a wholesale basis to the UDS-inspectors to the level of income-tax officers may also not bring about the best possible results. Therefore, the question has also to be considered in this perspective, whether we can recruit that number of officers straightwa. But with proper planning a time may come when we may have sufficient number of officers; we might perhaps fix a goal and then we can recruit the officers in various phases. But this does not apply only to officers; it also applies to other officials, persons in the lower cadre, clerks, inspectors, etc. I do agree with the members of the Federation that we do suffer from inadequacy of manpower in this Department. There are certain other areas which could also be thought of in improving the quality of our work. For instances, training and provision of gadgets to departmental officers. But till such time that we are able to recruit sufficient number of officers, we have to carry on our work as effectively and as efficiently as possible with the existing manpower, and for this, the summary assessment scheme and the scrutiny assessment scheme have been devised. I once again wish to point out that it is not a fact that all scrutiny assessments are done in a summary manner. There are cases where good work has been done and there are also cases where good work might not have been done. But I would not agree if anybody says that all scrutiny assessments are being done in a slipshod manner.

MR. CHAIRMAN: This gives us a better idea of the overall working. To summarise, it is like this. That this Department is under-staffed is a reality which has been admitted by the Chairman of the Central Board of Direct Taxes and in due course of time possibly these difficulties might be overcome. There are very many impediments which are responsible for this sort of under-staffing. As he points out, in the meanwhile, the best has to be achieved with whatever is available. But what is important is this. The process or the device of summary assessment does not conflict with the requirement of deeper probe into cases where supposedly returns are Rs. 25,000 in some cases and Rs. 50,000 in some other cases. In other words, if I understand him correctly, the summary assessment scheme is working satisfactorily. This is what Mr. Mehta says. And wherever it is necessary to go in for deeper probe into cases of Rs. 25,000 in some cases and Rs. 50,000 in some other cases, there is no bar to this happening.

SHRI VASANT SATHE: I think, there is a bar from what the witness has said. Where you say that the limit for summary assessment is Rs. 25,000 or Rs. 50,000, as the case may be, then they have to accept; there is no choice left. Mr. Mehta has not answered to the proposal made by Mr. Gopala Krishnan.

MR. CHAIRMAN: That proposal, we shall examine. Factually we want to know whether his instructions of accepting returns of Rs. 25,000 in some cases and Rs. 50,000 in some other cases stand in the way of their going deeper into the matter.

SHRI S. R. MEHTA: By and large these instructions are being carried out. But while issuing these instructions, the Board has also put certain limitations in the working of the scheme. Within those limitations, the income-tax officers are operating this scheme satisfactorily.

SHRI VASANT SATHE: This is not the answer to the question.

SHRI S. R. MEHTA: I will read it out. The scheme extends to all the assessee except the following categories: (i) all company cases excepting in the city charges of Bombay, Madras, Gujarat, Delhi and Calcutta where the Commissioners may in their discretion exclude such company cases as they deem fit; (ii) all category-I assessments, excepting in the city charges of Bombay and Calcutta where only category-I cases with returned/assessed income of Rs. 50,000 and above at other places this limit was modified to an amount which the Commissioner may fix between Rs. 25,000 and Rs. 50,000; (iii) all cases irrespective of their categories which involve a loss in business of Rs. 10,000 or above, even if the total income after set-off of such loss against income under other heads is a positive figure; (iv) first year's assessment in cases involving income from sources other than salaries over Rs. 20,000/- except where there is information that investment of over Rs. 25,000 is involved; (v) cases which from part of a group of cases in which detailed investigations for detecting tax evasion are considered necessary for any reason; (vi) cases in which specific allegations/information had been received regarding (a) tax evasion involving concealed income of over Rs. 25,000 and (b) fresh investments in immovable properties, shares, securities, deposits, etc., over Rs. 25,000 and which on preliminary enquiries appear to be *prima facie* correct; the inspecting Assistant Commissioners should get a list of such cases in each income-tax officer's charge in his range drawn up before 15th May each year; (vii) all cases which have been reopened under section 147 for purposes of reassessment;

“(vii) All cases of trusts.

“(ix) Cases in which assessee have claimed amortization expenses under Section 35D and 35E and/or deduction in respect of profits and gains from newly established undertakings or ships or hotel business in certain cases under Section 80J”.

MR. CHAIRMAN: Clause (vi) is very clear:

"Cases in which specific allegations information had been received regarding (a) tax evasion involving concealed income of over Rs. 25,000/- and (b) fresh investments in immovable properties, shares, securities, deposits, etc., over Rs. 25,000/- and which on preliminary enquiries appear to be *prima facie* correct."

SHRI P. S. GOPALA KRISHNAN: I think, we have not been able to put our point correctly. We are not against summary scheme. We are only saying in the context of how we would be able to tackle the problem of black-money. What we are saying is, that it will take half an hour for us to decide, whether all these things apply in a summary case. We are today locking up 75 per cent of our manpower in doing the summary assessments throughout the year.

MR. CHAIRMAN: Once you are required to make an order, just sign a typed order. That is the end of the matter. You want to be exonerated of that also. You are spending only half an hour.

SHRI L. S. S. CHAKRAVARTHY: Summary assessments are not so simple. Under 143, certain adjustments are to be made. The return will not contain all the information. It takes much more time in summary proceedings.

MR. CHAIRMAN: The Committee was also considering, whether we could entrust this task to some people. On the information given, whether the return is correct or not, whether the tax has been paid or not etc., if the return is accompanied by a certificate, I entirely and wholeheartedly endorse the view that an assessee who has paid his legitimate tax, must never be called to the Income Tax Department and that he should be allowed to live peacefully. Within the framework of the scheme, if the return is accompanied by a certificate, will it take care of the com-

plaint, you are making of spending much time on these?

SHRI P. S. GOPALA KRISHNAN: Then there would not be any need to make any assessment.

MR. CHAIRMAN: Your laws and returns are very complicated. Everybody is scared to compute the income tax as law requires. Therefore, to take care of this problem, let there be some certification.

SHRI P. S. GOPALA KRISHNAN: If we accept these returns, as they come, it will more than compensate by scrutinizing bigger cases.

MR. CHAIRMAN: Who prevents you?

SHRI P. S. GOPALA KRISHNAN: Summary cases.

MR. CHAIRMAN: Instruction (vi) is very clear. Where there is specific information or allegation, you have got to enquire.

SHRI P. S. GOPALA KRISHNAN: What we submit is, let us try to release the officers, who are doing summary cases and let them do investigation cases.

MR. CHAIRMAN: We will consider that.

SHRI P. S. GOPALA KRISHNAN: There is a system called 'agreed income system' in France. On the basis of an agreement between the Department and the assessee, they fix an income and that will operate for two or three years. This is based on certain data. The Government issues guidelines that for certain trades and professions, on the basis of standard unit, income should be fixed like this. That is done in consultation with the Chambers of Commerce etc. That will eliminate disputes in many cases.

MR. CHAIRMAN: That will go to the root of the matter. This system does exist in certain countries. This also brings about efficiency in productivity.

SHRI P. S. GOPALA KRISHNAN: It will relieve the manpower for investigation work.

MR. CHAIRMAN: This would be changing the entire charging system.

SHRI VASANT SATHE: Why don't you accept the system, which was indicated in the editorial of Times some time ago? All the returns should be treated as public documents available for anyone to inspect.

MR. CHAIRMAN: That provision even today is there subject to certain limitations.

SHRI VASANT SATHE: It should be made absolute public.

MR. CHAIRMAN: We can think of changing that.

SHRI BHAGWAT JHA AZAD: Let us know their opinion.

SHRI P. S. GOPALA KRISHNAN: We wholly endorse the idea.

MR. CHAIRMAN: The return comprises certain vital trade secrets. Now it is a discretionary power. Should the honest traders be put to the risk of his secrets being made known to others? There are assesses, who would not want even their turnover to be known to anybody. They are having competition with others.

SHRI BHAGWAT JHA AZAD: We would like to know, what they have to say about it.

MR. CHAIRMAN: They must reply with reference to the practical difficulties in the matter. The question asked is whether you think that this should be treated as a public document.

SHRI P. S. GOPALA KRISHNAN: We certainly agree.

MR. CHAIRMAN: In that case, do you think that making it a public document will induce all the assesses to confide everything about their trade?

SHRI P. S. GOPALA KRISHNAN: Even today it is not a secret. This will at least bring it to the public gaze. Any deficiencies in the turnover or profits will come to light if it is thrown open to the public gaze.

MR. CHAIRMAN: So, according to you, the existing law is inadequate and if it is modified, it would be in the interest of revenue collection?

SHRI P. S. GOPALA KRISHNAN: Yes.

MR. CHAIRMAN: We shall consider it.

SHRI P. S. GOPALA KRISHNAN: May I read a para from the Wanchoo Committee's report regarding workload? The Committee recommended that an officer conducting investigation cases should not normally be expected to handle more than forty to fifty assessments in a year and where the cases are specially complicated or involved, they should be reduced to four or five in a year. So, if you ask them to do more than 5 or 6 investigation cases, the quality will necessarily suffer.

MR. CHAIRMAN: But if there are complicated cases, they will go to the Central Circle.

SHRI P. S. GOPALA KRISHNAN: There also the same difficulty arises. No such target should be laid down.

MR. CHAIRMAN: For the Investigation Circle no target is laid down.

SHRI BHAGWAT JHA AZAD: While we agree that the work load might be on the high side, is it necessary that there should be no minimum laid down at all? Are we to understand the witness to have said that there should be no minimum laid down?

MR. CHAIRMAN: We had discussed that aspect in detail when you were not here....

SHRI BHAGWAT JHA AZAD: I am only putting this question with

reference to what he has said just now. He says that there should be a reasonable limit; I asked whether a minimum should be there or not.

MR. CHAIRMAN: Ordinarily the Investigation Circle have to complete their assessments within a time limit.

SHRI P. S. GOPALA KRISHNAN: Yes. Therefore, if you ask us to complete 200 cases within the bar of limitation, the quality cannot be high. There should be a reasonable limit consistent with efficiency. If you simply lay down targets and ask us to complete them irrespective of the nature of the cases, then we will have to sacrifice quality. But after the targets have been fulfilled, we will have to face the consequences of the quality later on.

SHRI BHAGWAT JHA AZAD: We have this recommendation of the Committee about work-load, but it does not form a part of the actual Act. It may be possible to put down our recommendations in this regard as general observations, but not as part of this Bill.

MR. CHAIRMAN: It will have to be only as general observations, to streamline the administration.

SHRI P. S. GOPALA KRISHNAN: Kindly review the work-load of the officers so that the quality of work will be better.

SHRI VASANT SATHE: The quality has to be judged by how much black-money you have un-earthed.

SHRI P. S. GOPALA KRISHNAN: In certain cases of assessments there may be no concealment. But nevertheless we will have to analyse the cases.

SHRI BHAGWAT JHA AZAD: I think the Federation can help us if they can evolve a rational formula of work-load and send it to us in a note later on. They must have made a study on this aspect.

SHRI P. S. GOPALA KRISHNAN: We have studied this problem and we have given, on the basis of our own

study, suggestions as to what should be the reasonable work-load for every officer. We have given it to the Board already.

SHRI BHAGWAT JHA AZAD: To whom have you given?

MR. CHAIRMAN: He says they have given it to the Board of Direct Taxes.

SHRI P. S. GOPALA KRISHNAN: We shall give you a copy of it if you like.

MR. CHAIRMAN: Along with the note, you can also tell us whether you are convinced that there should be no summary assessments.

SHRI P. S. GOPALA KRISHNAN: We say that we want to make the best use of the available man-power.

SHRI VASANT SATHE: Why are we so much concerned about the sanctity of the summary assessments? After all, this was brought in as a method of trying to expedite matters. I don't think there is any sanctity attached to summary assessments as such.

MR. CHAIRMAN: There may be no sanctity in the sense that it is supreme and must prevail over everything else, but the idea was that it will help us streamline the administration.

SHRI R. C. PANDEY: May we mention one case which we came across in the course of our raids? In this case, the returns were filed by one Tax Advocate on behalf of a group of minors, and the income in each case was assessed at Rs. 50,000/- All these cases of summary assessments escaped because later on we found that the real income was Rs. 5 lakhs 25 thousand.

MR. CHAIRMAN: You can reopen these assessments later on.

SHRI R. C. PANDEY: We are now reopening them. The information came subsequently.

SHRI P. S. GOPALA KRISHNAN: Sir, there is a popular misconception

that the entire strength of Income-tax Officers are engaged in assessment work. What happens is that we divide the total number of assessments to be done by the total strength of officers. There are a large number of officers who are tied up in headquarters. So when we fix up the workload, we should first find out what is the total number of officers who are working on the assessment side. In other words we should find out the effective manpower available for assessment work.

Then, Sir, the administrative problem comes under your purview under the head "streamlining of administration". Regarding the arrears, I may submit that most of the arrears on the book are bogus. They are not correct. Before the assessment is made, the credit is not given and later on they make the assessment and again make the demand. So it is the records which are not correct. Here man-power is to be streamlined and procedures should be changed. Our procedures are 50 years old. It becomes more and more complicated and the manuals are so complicated that some rethinking on the entire structure of the administration is necessary to simplify the procedure. The procedures are very cumbersome. There should be some simplified system which a lay man should be able to understand.

SHRI ERA SEZHIYAN: Mr. Chairman, the observation made by the witness is a very serious one. The witness has said that the figures given to Parliament are incorrect. I would like to know whether, in the opinion of the witness, the figures given to Parliament are correct or not more or less.

SHRI P. S. GOPALA KRISHNAN: It will be more or less correct.

SHRI ERA SEZHIYAN: Then in that case Parliament has been misguided.

SHRI P. S. GOPALA KRISHNAN: I do not say so, Sir.

SHRI BHAGWAT JHA AZAD: The figures given to Parliament are incorrect. I also feel that way. But it will help our Committee if you give us certain facts in support of your statement.

MR. CHAIRMAN: Is it possible for you to do it in one charge so that we can ask the Department to take up the Commissioner's charge for the particular year and find out how much they adjusted against arrears in that particular year. This would clarify the position.

SHRI P. S. GOPALA KRISHNAN: That can be done, Sir.

SHRI BHAGWAT JHA AZAD: The point is that they have made a statement. Now I would like to know whether it is a casual statement or whether they can substantiate this statement. The statement is that the facts and figures given to Parliament are incorrect.

SHRI P. S. GOPALA KRISHNAN: We raise the demand on the basis of the records available at the time of assessment. Later on we find that it is much less and it comes to our notice also and then we reduce the demand. It is because there is no challan available at that particular point of time. The reason for the non-availability of the challan is that the disbursements are not made at that time.

SHRI S. R. MEHTA: Even in Parliament we do admit that there are certain demands which are there because adjustments have not been made. We give two types of figures to Parliament—gross arrears and net arrears. Net arrears are arrived at after deducting three types of demand. Any actuals received should normally be adjusted and would be adjusted in course of time and one of those three demands is the tax already paid by the assessee but awaiting adjustment. So it is not

that we give wrong figures to Parliament. We tell Parliament that this amount is awaiting adjustment. It is not correct to say that we are keeping Parliament in dark in so far as the adjustment is concerned, although the tax is already collected.

SHRI P. S. GOPALA KRISHNAN: Then Sir, we have the perennial problem of forms, furniture, accommodation, etc. Last time the required forms were made available on 15th August or so. On account of this, a good amount of interest was lost. Otherwise the amount would have come before 31st July.

MR. CHAIRMAN: Is it very important for consideration by this Committee?

SHRI P. S. GOPALA KRISHNAN: these are basis requirements when we want to do the work very efficiently.

SHRI BHAGWAT JHA AZAD: This point was highlighted in Madras by one of the senior most officers of the Department. He said that there was no contingency funds, no accommodation, furniture, etc. Here the point is how far shall we be able to deal with this subject but I would say that it certainly affects the efficiency of the officers and this point should be brought to the notice of the Ministry concerned.

MR. CHAIRMAN: We can, in a general way, refer to them on these matters but we cannot write it in the statute that "arrangement shall be made". We can certainly, in our report, say that to streamline the administration, it is necessary that these things must be made available in good time and sufficient contingency funds should be provided.

SHRI P. S. GOPALA KRISHNAN: Kindly see page 56 regarding the financial powers of the Board.

SHRI VASANT SATHE: I think we should say in our Report that the Board itself should have financial powers to have the wherewithal and the basic minimum equipment that is essential.

MR. CHAIRMAN: If it comes to the Committee, we will recommend that.

SHRI VASANT SATHE: Why does the Board require to refer the matter to the Finance Department for allocation of certain funds for this and that? This is really ridiculous.

SHRI BHAGWAT JHA AZAD: Would you kindly direct the Board to put before us what are the difficulties in the way? Is the power of the Board not enough? You kindly send us a note on this.

SHRI R. C. PANDEY: The Board should have some power for creation of new posts and for appointment of these officers. The difficulty that this Board feels today is that they do not get approval.

SHRI BHAGWAT JHA AZAD: But the fact remains that they are not properly using it. For example, against the sanctioned strength of 1200, they are having only 600. Only last year, they increased it. This is due to inefficiency which results in the loss of revenue. I remember there is a Report of PAC on this which can be seen.

SHRI P. S. GOPALA KRISHNAN: There is financial memorandum accompanying the Bill where they have provided for 4 posts of Commissioners, 30 posts of Deputy Commissioners, 250 posts of UDCs, but there is no provision for ITOs. They should work out what are the additional job requirements as far as ITOs are concerned and how much more ITOs are required to administer the new provisions. Some research has to be done on this.

SHRI R. C. PANDEY: There are 19 clauses which entail more responsibility and work.

MR. CHAIRMAN: Which provision do you think will require additional work for ITOs?

SHRI R. C. PANDEY: Clauses 5 and 6.

MR. CHAIRMAN: It means wherever there is a change and the ITO has to examine it, you will say that more work is involved.

SHRI P. S. GOPALA KRISHNAN: Even then the Planning has not been done in the context of the changes which are taking place in the Bill.

SHRI L. S. S. CHAKRAVARTHY: Then the transfer has again to be correlated year after year.

MR. CHAIRMAN: You will have to go on examining it.

SHRI BHAGWAT JHA AZAD: Regarding the integrated system of Class I and Class II ITOs, what is the position of their promotion? Who are going to be promoted—junior ones or the senior ones? Will you give a note on that also?

SHRI P. S. GOPALA KRISHNAN: That is for the Government to do, Sir; not for us.

MR. CHAIRMAN: You give us your views. Please don't take it for granted that the Government is above the Parliament. We want to help you and understand your problems better. You should not tell the Committee that certain things are for the Government to do.

SHRI P. S. GOPALA KRISHNAN: Yes, Sir. We will now go to other points in some depth. We refer to Clauses 2, 3 and 29 which merely change the designations of the officers. We think it is a futile exercise, if we do not take steps for improving the efficiency.

MR. CHAIRMAN: Personally, I do not think that appellations and nomenclatures matter. It seems that you

also feel so. The other people had said that it was in consonance with the recommendations of the Wanchoo Commission. I suggest that a least on his question, your two associations should come to an understanding. Otherwise we will do whatever we think best.

SHRI BHAGWAT JHA AZAD: Would you like the idea that we may redesignate all the ITOs as Assistant Income-tax Commissioners and place all of them in Class II?

SHRI P. S. GOPALA KRISHNAN: The change in the designation is not going to improve the working.

MR. CHAIRMAN: Do you think that merely because of the difference in the Class, your interests are put to jeopardy? You had said so, last time as well. Now also you have said it. The other people have also made their points in this regard. The Wanchoo Commission's report is also in favour if their stand.

SHRI BHAGWAT JHA AZAD: When they raised the question of nomenclature, they should be prepared to give instances. But they are not willing to do so. Anyway, we can go to the next point.

SHRI P. S. GOPALA KRISHNAN: Let us now take up Clause 14, Sir, with regard to the proposed changes in Section 64.

SHRI S. K. ROY: The question raised by the hon. Member was squarely answered when I had the privilege of appearing as a witness before this body at Calcutta. We had said that in no civilized country of the world are the persons who are privileged to serve the public are divided into narrow classes like I, II, III and IV. This provision will create further sub-division. As a result, people will feel humiliated.

MR. CHAIRMAN: This is your case. Mr. Azad had suggested some remedial measures. Do you think that they would help meet your problems? If you feel that they would not, you can say so.

SHRI BHAGWAT JHA AZAD: I think the witness is not willing to go into details.

SHRI P. S. GOPALA KRISHNAN: With regard to Section 64, we feel that the changes are intended to plug some of the loopholes. These are likely to make the provisions more complicated and put further strain on the officers. We have given our views at page 22 of our original memorandum in the following manner:

"...It is possible to set at rest all attempts at tax avoidance by one stroke of the pen by introducing the concept of the family as a unit of assessment. The present complicated provisions dealing exclusively with Hindu undivided families as a separate entity will also disappear, if the family is taken as a unit of association. We are fortified in our view by the dissenting notes of two eminent members of the Wanchoo Committee at page 227".

All these complicated provisions will disappear the moment the family is taken as the unit. Otherwise, there will be an unnecessary burden on the administration. We will take not only the parents, grand-parents but also great grand-parents etc., into account.

MR. CHAIRMAN: That would necessitate the examination of the whole scheme, which may have to be altered. There is a hon. lady Member in our Committee, who strongly feels against the idea of clubbing of incomes. Suppose among a couple, the husband is working as a Stenographer and the wife is working as a Clerk. Their combined income would come to more than Rs. 6,000/- per annum.

SHRI P. S. GOPALA KRISHNAN: There could be no clubbing, Sir, upto Rs. 25,000.00 of the combined income.

SHRI R. C. PANDEY: Or we may give exemptions at the same level as we are giving to the individuals.

MR. CHAIRMAN: The whole pattern will have to be reviewed.

SHRI P. S. GOPALA KRISHNAN: Let us now move on to Clause 39 dealing with Section 139, on Compulsory Audit of Accounts. We have made certain suggestions in our memorandum, viz.:

"It will be accepted on all hands that the officials of the I.T. Department by their long association and experience, will be able to interpret tax laws correctly. This experience and know-how can be harnessed for the good of the Department, if officials, on retirement, are permitted to audit the accounts of tax payers, who are required to file audited statements of accounts. Since tax officials will know what the requirements of the Department are and what types of statements are needed, retired I.T. officials will greatly facilitate the disposal of assessments by compiling the statements in a manner which will meet the requirements of the Department. The Department can license these officials, set a code of conduct for them and provide for the regulation of their profession. This step will relieve the load on Chartered Accountants, who may not be able to handle lakhs of accounts within the statutory time limit prescribed for filing the returns of income. We, therefore, suggest that the provisions of Section 288(3) may be deleted and retired income-tax officials may be included in the list of authorized representatives for the purpose of Section 288(2)."

MR. CHAIRMAN: The bar is only for 2 years.

SHRI P. S. GOPALA KRISHNAN: It is applicable only in the case of income-tax officers, Sir.

MR. CHAIRMAN: I think it is a general ban on all the Government officials.

SHRI P. S. GOPALA KRISHNAN: No, Sir, I would like to draw your

kind attention to page 158 of the Wanchoo Committee's recommendation.

MR. CHAIRMAN: There is a specific ban—statutory one—on their practice so far as income tax officials are concerned.

SHRI L. S. S. CHAKRAVARTHY: The Income Tax officials cannot practise. No job can be accepted by them in any firm without the prior permission.

MR. CHAIRMAN: I am told on consultancy too there is a ban. It applies to every one.

It is a different story why the tribunals in the Supreme Court are allowed.

It can result in comparable amount of malpractice. Anyway, we will consider this.

SHRI P. S. GOPALA KRISHNAN: I come to Clause 39 at page 22. Sub-section 6 shall be substituted by 6 and 6A. While filing the return, certain additional information like assets, etc. has to be given and the requirements of additional information is not provided in sub-section 4, 4A and 5.

MR. CHAIRMAN: Why is it so? We will make it express. We will consider that.

SHRI P. S. GOPALA KRISHNAN: Clause 45. To introduce 144A and B, in our memorandum we have pointed out practical difficulties.

MR. CHAIRMAN: The Committee shall consider where in the interest of expeditious disposal it is desirable.

SHRI P. S. GOPALA KRISHNAN: It envisages that the Inspecting Commissioner makes assessment virtually. Why not make assessment at least in cases like the Birla Group, where bigger issues are involved and greater responsibility has to be shouldered. Let it be made liberal.

MR CHAIRMAN: There are many Birlas.

SHRI P. S. GOPALA KRISHNAN: There may be many more Deputy Commissioners also.

MR. CHAIRMAN: Let us come to some amicable settlement to deal with the situation.

SHRI P. S. GOPALA KRISHNAN: The experience of the senior officers may be utilised in handling bigger firms.

Please see page 27 of our Memorandum—clause 15 of the Bill. It provides that all *hundi* loans of the value of Rs. 2,500 and above should be paid by crossed cheques. Why not make it that all loans of Rs. 2,500 and above should be paid by way of crossed cheques.

MR. CHAIRMAN: It is a good suggestion. We will consider it. We may increase the limit from Rs. 2,500 to Rs. 5,000. It applies to every loan.

SHRI P. S. GOPALA KRISHNAN: May we pass on to clause 19, page 10 of the Bill at page 28 of our Memorandum. There is some lacuna in this provision. It says that: "In computing the total income of an assessee, not being an assessee having any income chargeable under the head "Salaries", there shall be deducted any expenditure incurred by him in excess of ten percent of his total income towards payment of rent. . ." There are hundreds of salary cases where house rent allowance is not paid. This provision should apply to everyone, even those who are not in receipt of house rent allowance. It is a blanket ban.

MR. CHAIRMAN: This is allowed only in respect of an assessee having income other than salary, deduction upto Rs. 300 if the rental payment is in excess of 10 per cent. In respect of salaried employee, if it is a rent-free house, it is taxed only, 10 per cent. Even if the value is much more than that, what is taxed is 10 per cent. Here, upto 10 per cent, there

is no relief. Above 10 per cent, only Rs. 300 is allowed.

SHRI P. S. GOPALA KRISHNAN: There are many salaried employees who are not given a rent-free house and they are not given a house-rent allowance. If they pay above 10 per cent, they should get an allowance.

MR. CHAIRMAN: If he is on par in every respect with a person having non-salary income, we will consider it.

SHRI P. S. GOPALA KRISHNAN: Clause 41, p. 24 of the Bill regarding signing and verification of returns.

It says that in the case of companies and partnership firms, they will be signed by the Managing Director, etc., unless there is any unavoidable reason.

In clauses (c) and (cc), the use of the expression "unavoidable reason" is bound to be taken undue advantage of to defeat the purpose of the amendment. A reason to be unavoidable will have to subserve the convenience of the managing director. In other words, the test of "unavoidability" is not what under legal principles and in abstract would be unavoidable but what a managing director is able to canvass as an unavoidable reason. Thus, even a common cold or fake illness will suffice to enable a managing director to avoid signing or verifying return. It will be better to specify the circumstances under which it is not obligatory for a managing director to sign or verify the return, as in the case of individuals. When a person is abroad, he need not sign the return.

MR. CHAIRMAN: I am inclined to consider it. If the Section has to have some meaning, "unavoidable reason" has got to be taken away. Otherwise, there will be reasons given and the case will be made out that it was unavoidable.

So far as the criminal law is concerned, the principle of *mens rea* is

to be established. So, even if he signs the return and verifies it to the best of his knowledge as true and correct, will he be liable here?

SHRI L. S. S. CHAKRAVARTHY: Under the criminal law, the principle of *mens rea* must be established.

MR. CHAIRMAN: Much of the force of the Section goes away if the person is otherwise honest. If he is dishonest, he is already roped in, whether he signs the return or not. There is Section 278B(2) which 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 other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Therefore, if you are to prove that he is guilty, even neglect will bring him within this. So, we may take away "unavoidable reason". I do not think it will really add to the liability under the criminal law. The prosecution will be difficult purely by the virtue of signing the returns unless it falls within Section 278B(2). If it is so, let there be "unavoidable reason".

SHRI P. S. GOPALA KRISHNAN: Our suggestion is that the unavoidable circumstances may be specified.

MR. CHAIRMAN: I can see unavoidable circumstances only if the fellow is not here.

SHRI L. S. S. CHAKRAVARTHY: That is already there in respect of individuals.

MR. CHAIRMAN: If he commits all sorts of frauds and at the time of filing the returns, he goes to England,

that will not exculpate him because of Section 278B(2).

SHRI P. S. GOPALA KRISHNAN: Then, I come to clause 1 regarding the date of commencement of the operation of the various provisions of the Bill. The date may be specified in the Bill itself. In any case, no provision should be retrospective in operation.

MR. CHAIRMAN: Yes; we will consider it.

SHRI P. S. GOPALA KRISHNAN: Clause 4.

They have introduced a new provision, Section 10. The proposed change is not based on any recommendations of the Wanchoo Committee and has nothing to do with "Black Money". Under the existing law, the remuneration received by an individual who is not a citizen of India, as an employee of a foreign enterprise is exempt from tax provided the foreign enterprise is not engaged in any trade or business in India, the remuneration is not deductible from the income of the employer and the stay of the employee does not exceed 90 days.

A philanthropic institution is generally not chargeable to tax and the remuneration paid to an employee of such an institution will not be claimed as a deduction from the income of the employer. Further, the conception of a philanthropic institution rules out the carrying on of a trade or business normally. Thus, the proposed clause adds little to the present provisions but places no restriction on a person's stay in India. The proposed clause is open to a more serious objection as well in principle. If the remuneration of an employee of a foreign philanthropic institution were to be exempt, there is no reason why the remuneration of an employee of an indigenous philanthropic institution should be taxed. In principle, either both should be taxed or both should be exempted. After all, the encouragement of philanthropic may

as well begin at home. A philanthropic purpose is generally well understood in common usage, but the courts will be concerned only with the legal interpretation of the expression. When the promotion of trade is considered a charitable purpose (vide Andhra Chamber of Commerce case) there is a danger that the expression "philanthropy" may lead to abuse, unless its limits are clearly defined.

MR. CHAIRMAN: We will consider it.

SHRI P. S. GOPALA KRISHNAN: This is not based on the recommendations of the Wanchoo Committee.

MR. CHAIRMAN: There are many provisions which have nothing to do with the Wanchoo Committee recommendations; there are others which over-legislate and there are many provisions which have not come here. We will consider it.

SHRI P. S. GOPALA KRISHNAN: It should be defined as to what is a 'philanthropic institution'.

MR. CHAIRMAN: It depends on the subject. Anyway, we shall consider that.

SHRI P. S. GOPALA KRISHNAN: We now turn to Clause 12—maintenance of accounts. We are making a few suggestions here. Firstly, the expressions used here are "income", "gross receipts" and "turnover". The Clause does not state whether these expressions refer to the figures as shown in the accounts or as determined by the officer.

MR. CHAIRMAN: I think, they refer to what is accepted by the Department.

SHRI ERA SEZHIAN: At every stage you are saying "what is found by the Department". He may make a false statement, he may conceal..

MR. CHAIRMAN: In every case where the income shown is less, it may not be concealment. Suppose he

claims certain amount as deductible in expenditure which, he says, is his right to claim, and the Department may say that, according to law, it is not claimable. It is not concealment. Therefore, according to the Department whatever is his turnover, that should be the criterion of his obligation to main the accounts.

SHRI ERA SEZHIYAN: I do not think so.

MR. CHAIRMAN: Anyway, we shall consider what the Department has to say.

Mr. Gopala Krishnan, please go ahead.

SHRI P. S. GOPALA KRISHNAN: The next point is that, in regard to newly set-up businesses, at the commencement of the business, nobody can predict that he will have a turnover of so much or that his income would be so much. Therefore, in such cases, some other criterion should be laid down; the maintenance of accounts may be made to depend upon the capital investment, owned or borrowed, in the business, of, say, Rs. 25,000/-.

SHRI ERA SEZHIYAN: Capital will not have any relation to the transaction, especially in commission business.

MR. CHAIRMAN: What happens in the case of 'professional'? What is the capital? Take, for instance, agency. What is the capital?

SHRI P. S. GOPALA KRISHNAN: In this case of professionals, there are no limitations. All have to maintain accounts.

SHRI ERA SEZHIYAN: It should not be linked up with capital.

MR. CHAIRMAN: The basic idea is that every one should maintain accounts.

SHRI P. S. GOPALA KRISHNAN: Then, there is some defect in the

drafting of this provision. Please see page 6 of the Bill:

"44B. Every person carrying on any business or profession shall keep and maintain such books of account and other documents as may enable the income-tax authority to determine the tax payable by him and the exemptions, deductions...."

Here the term 'income-tax authority' may be substituted by the term 'income-tax officer' because he is the first authority before whom all accounts are produced.

MR. CHAIRMAN: This is going to be redrafted. What the procedural system has got to be, we shall have to consider that very carefully.

SHRI P. S. GOPALA KRISHNAN: Secondly, the maintenance of books of accounts and documents enables an income-tax officer to determine the total income of a person which is the first stage. The determination of the tax payable is only the second stage; that comes later. Therefore, the sub-section may be recast to read as "...as may enable the income-tax officer to determine the total income of such person".

Another suggestion is this. Set-off and carry-forward of losses is an important right given to tax-payers under the existing law and often, the determination of losses is more difficult than the determination of income of an identical amount. It would not be unfair to expect assesses incurring large losses also to maintain proper books of account and to prove such losses to the satisfaction of the taxing authority. Hence it may be considered whether in the first proviso the following change may be made: "his annual income or loss from such business exceeds twenty-five thousand rupees".

MR. CHAIRMAN: If the loss is less than Rs. 25,000...

SHRI P. S. GOPALA KRISHNAN: He may not maintain accounts.

MR. CHAIRMAN: What about the turnover part then?

SHRI P. S. GOPALA KRISHNAN: Both may come in.

MR. CHAIRMAN: It is like this. "Annual income exceeding twenty-five thousand rupees or the gross receipts or the value of the turnover of goods in such business exceeding two lakhs and fifty thousand rupees" If the value of the turnover is more than Rs. 2,50,000, whatever may be the loss, he will have to maintain accounts. If the value of the turnover is less than Rs. 2,50,000, then he will say that he is not obliged to maintain accounts. How will you accept the loss? Have you ever accepted the loss without books?

SHRI R. C. PANDEY: We are accepting genuine losses.

MR. CHAIRMAN: In so many cases they have to fight in appeal—they have to go to Appellate Commissioner to fight out their case. There may be genuine differences of opinion.

SHRI P. S. GOPALA KRISHNAN: Coming to Clause 25—Section 80V, pages 11 and 12 of the Bill, there are two sections—one is with regard to the interest payment on the amount borrowed. This is a big sacrifice of revenue of the Government.

A man may borrow money at 9 per cent interest and pay the tax but, he may also get back the interest from the Department at 12 per cent which would mean a gain of three per cent to him. In fact, the provision works to our disadvantage.

MR. CHAIRMAN: In that case, the income is taxable.

SHRI P. S. GOPALA KRISHNAN: Why should you encourage the disputed tax on borrowing amount?

MR. CHAIRMAN: Let people borrow money to pay tax. It is their responsibility. And you tax it.

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SHRI P. S. GOPALA KRISHNAN: We want the proviso to Section 80VV to be done away with. This is regarding fees paid by the assessee in income-tax appeals. You allow deduction under this section provided it does not exceed Rs. 2,000. This should be done away with.

MR. CHAIRMAN: The proviso is understandable.

SHRI P. S. GOPALA KRISHNAN: Now, coming to clause 40, our suggestion is that the system of allotment of permanent account numbers may be enlarged so as to include refundees, trusts and everybody else. They are also in our registers and they should also be allotted permanent account numbers.

MR. CHAIRMAN: It is a good suggestion.

SHRI P. S. GOPALA KRISHNAN: Regarding clause 42—Sec. 140A, the only suggestion that we have to make is that there should be a maximum penalty prescribed under this section. As it is there is no maximum penalty fixed now. Only 2 per cent each month is the penalty fixed. Our suggestion is that the maximum amount of penalty shall not exceed 50 per cent of the tax payable.

MR. CHAIRMAN: We shall consider that suggestion also.

SHRI P. S. GOPALA KRISHNAN: Coming to Clause 43—Sec. 141A, The change that we are suggesting is this. The particular clause starting with 'if he 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' should be deleted. He is within his right not to give the provisional refund.

MR. CHAIRMAN: You mean that the I.T.O. shall, irrespective of circumstances, make it a pre-condition which enjoins on him the liability to make the payment.

SHRI P. S. GOPALA KRISHNAN: Why not remove the whole thing.

MR. CHAIRMAN: Suppose, this is not done within six months' time. Then what happens?

SHRI P. S. GOPALA KRISHNAN: There is no remedy.

MR. CHAIRMAN: You want that we should get rid of this. We shall consider this.

SHRI P. S. GOPALA KRISHNAN: As regards clause 60—Sec. 249—the new sub-section (4) that is proposed to be introduced in the Bill makes the admission of an appeal conditional on (a) the payment of tax on the income returned by the assessee or (b) where no return has been filed, he has paid an amount equal to the amount of advance tax which was payable by him. This creates a lot of difficulties administratively because where any return has been filed, one should pay tax as an advance tax. The later contingency will arise only in cases where assessments are made on account of the failure of an assessee to furnish his return of income. This clause is not happily worded and is not workable in practice, because advance tax is not payable by an assessee unless a notice under section 210 has been issued to him. Even where a notice has been issued, an assessee can file an estimate showing nil income and thus defeat the fulfilment of the condition.

Where no return is filed, it would be preferable to relate the tax payment to the tax determined in the assessment and this course appears to be justifiable because it will serve as a deterrent to an erring assessee firstly and secondly, in cases where the income assessed is out of proportion to the income assessed in the past, the proviso vests sufficient powers to exempt an assessee from the operation of this section.

MR. CHAIRMAN: This will have to be examined in greater detail. You have made your suggestions on all the points and we shall consider them.

SHRI S. K. ROY: Sir, the hon. Member, Shri Bhagwat Jha Azad had raised two points—one is regarding the senior scale and the other is regarding the designation. We may be permitted to submit notes on these matters.

MR. CHAIRMAN: He has not asked you to submit any note. Why should a separate note for this be submitted by you. You may add this in the note specifically asked for by us.

SHRI S. K. ROY: Sir, in conclusion, we thank you. We had the privilege of being called by this Committee to appear before you on two occasions. We have been particularly happy with the encouragement and understanding shown to us and the patient hearing that has been given to us which is in sharp contrast with the treatment which has been meted out to us by the Income-tax authorities.

MR. CHAIRMAN: It is not fair to make that comment. It embarrasses us. You have worked hard and you have made very good suggestions. The Committee appreciates the efforts made by you.

So far as the working of the department is concerned, the Committee will do their best. But, the scope of the Committee on this Bill is rather limited. I may assure you all that the Committee would be anxious to put an end to this acrimony or this sort of maladjustment which exists between the promotees and the direct recruits.

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 11th June, 1974 from 09.00 to 11.30 hours.

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 Tridib Chaudhuri
7. Shri S. R. Damani
8. Shri K. R. Ganesh
9. Shrimati Sheila Kaul
10. Shri Maharaj Singh
11. Shri H. M. Patel
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri Bholā Raut
14. Shri Vasant Sathe
15. Shri Era Sezhiyan
16. Shri Satyendra Narayan Sinha

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—*Joint Secretary and Legislative Counsel.*

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

1. Shri S. R. Mehta, *Chairman, CBDT.*
2. Shri C. C. Ganapathy, *Member, CBDT.*
3. Shri I. P. Gupta, *Joint Secretary.*
4. Shri S. Narayan, *Joint Secretary.*
5. Shri S. I. Tripathi, *Deputy Secretary.*
6. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

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

WITNESSES EXAMINED

Institute of Chartered Accountants of India, New Delhi.

Spokesmen:

1. Shri S. K. Gupta—*President*
2. Shri N. C. Krishnan—*Vice-President*
3. Shri Anil M. Parikh—*Chairman, Taxation Committee*
4. Shri V. B. Haribhakti—*Past President*
5. Shri R. Santhanam.

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

MR. CHAIRMAN: Will you kindly introduce your colleagues, Mr. Gupta?

SHRI S. K. GUPTA: We represent Institute of Chartered Accountants of India. Ours is a statutory body created by an Act of Parliament about twenty five years ago.

MR. CHAIRMAN: Before you start, I must point out to you that 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 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.

SHRI S. K. GUPTA: We have no intention for treating our evidence as confidential.

Sir, we shall try to restrict ourselves to Clause 12 [proposed Section 44 (b)] and Clause 39 which Section 13.

We welcome these provisions but we want to point out two or three areas where we feel there should be some modification. First, is about the term 'turnover'. Our feeling is that this term should be specifically defined and according to us 'turnover' means total invoices minus the trade discount, sales-tax, excise duty and other specific charges added to the invoice otherwise it may give a misleading idea to the people for whom it is intended.

MR. CHAIRMAN: The difficulty is, supposing there is an assessee and he shows a turnover of Rs. 2 lakhs and sales-tax payment Rs. 50,000. Do you think the deduction should be allowed.

SHRI S. K. GUPTA: Yes, it should be allowed.

MR. CHAIRMAN: We can consider about sales-tax, transport and trade discount but excise duty is basically wrong. And what about specific charges.

SHRI S.K. GUPTA: It will be better if it is mentioned net amount of sale'.

SHRI HARIBHAKTI: Where accounts are properly maintained the whole amount of invoice is not credited to sales. Only the value of goods is credited to sales.

MR. CHAIRMAN: You have in mind accounts of sophisticated companies where they are well-advised. But if you go to the villages they will not have the knowledge.

SHRI H. M. PATEL: When we are including smaller people there should be no refinement. If the figure of gross turn-over is too low then let us raise it.

SHRI V. B. HARIBHAKTI: We agree it should be simple. Therefore, the amount credited to sales account by the assessee. . .

MR. CHAIRMAN: That will be creating difficulties. Assuming we change the phraseology and make it gross turn-over. Then what should be the reasonable limit?

SHRI V. B. HARIBHAKTI: Sir, in that case it will be Rs. 3.0 lakhs.

MR. CHAIRMAN: At least you have pointed out that there might be litigations.

SHRI V. B. HARIBHAKTI: Yes, Sir.

MR. CHAIRMAN: There is no need to include the Companies here mainly because these have already come under Companies' Act.

SHRI S. K. GUPTA: They are statutorily to maintain their accounts and have them audited. Therefore, we are suggesting a slight modification in the wordings of this Clause as:

"Every person not being a Company if his total income or the income of any other person. . . number"

MR. CHAIRMAN: What difference does it make?

SHRI S. K. GUPTA: Companies in any case have to maintain their accounts. In case of a person, as a partner in a business house if his income from other sources is not more than the limit prescribed, he feels that he need not have to maintain separate accounts for that particular amount. If he is a partner of a firm the firm is maintaining the account.

MR. CHAIRMAN: Every account is entirely different from dividends and entirely different from interest and security or from salary. Do you think that the clause is so worded that it requires maintenance of accounts.

SHRI V. B. HARIBHAKTI: In fact, the firm has an income from business.

MR. CHAIRMAN: In that case, who carries on business?

SHRI V. B. HARIBHAKTI: The firm carries on business.

MR. CHAIRMAN: The maintenance of accounts is only required to be done by persons. But how the person is to be taxed? He should be taxed under the particular head. Therefore, here he is not maintaining the accounts of the business. The firm is maintaining the accounts of its business. It is a question of law. My understanding of the matter is if a person has an income from a firm, he may be having any amount of income from other sources, he is not liable to maintain an account.

SHRI S. K. GUPTA: It may be made abundantly clear here.

MR. CHAIRMAN: If he has business income over and above the share income and that income plus this income is less than Rs. 25,000.....

SHRI V. B. HARIBHAKTI: Supposing a person is a partner of the registered firm, then in recommending the limits of turnover and income the share from the registered firm should be excluded. The business carried on by him exceeds the limits here.

MR. CHAIRMAN: In that case he is carrying on business and his income

is more than Rs. 25,000/-. Other incomes are under different heads. If he is having a large share of incomes from other business, then he must maintain an account.

SHRI V. B. HARIBHAKTI: Supposing his income from business from other sources is less than the limit prescribed here, then he need not maintain an account.

MR. CHAIRMAN: Suppose his income is Rs. 15,000/- and income from individual business is Rs. 15,000|-, then he must maintain an account according to the requirement of the law. There is a rationale for it.

SHRI S. K. GUPTA: Our next point is that under the proposed Section 44B, the definition of the term 'annual income from the business' should be clearly mentioned. Sometimes the profit and loss of account and income, as per the income-tax Act, always differ.

MR. CHAIRMAN: What do you suggest?

SHRI S. K. GUPTA: As it stands today, it will create confusion and difficulty.

MR. CHAIRMAN: I think it is mentioned here as less than Rs. 25,000|- and it is not necessary to maintain an account. But under certain circumstances it will create difficulty. Anyway we will consider this.

SHRI S. K. GUPTA: Then as far as the provision is concerned, the Income Tax Act provides for the compulsory maintenance of accounts by all persons carrying on a profession and also by persons carrying on a business and if they feel that it is likely to exceed the limit of Rs. 2,50,000, they will have to maintain accounts. There may be a little difficulty for doing these things because in the middle of the year they may not be knowing that the yearly turn-over will be more than this prescribed amount. When they have settled, they will be in a

position to know that their turnover after the completion of the year will be more than Rs. 2,50,000|-.

MR. CHAIRMAN: How do you know this? What is the way out to get at an assessee who knows that his turn-over is going to be Rs. 2,50,000|-?

SHRI V. B. HARIBHAKTI: Supposing in the very first year for the continuing business, the provision is that the gross receipts or turn-over exceeds Rs. 2,50,000|- in any one of the three years immediately preceding the accounting year. . . " Supposing for the continuing business firm, the turn-over has not exceeded in the preceding year but is going to exceed in the current year, in which case you will exempt; but for new business it is not possible to know well in advance that in the current year the expectation is likely to be more than Rs. 2,50,000|-. Therefore, any assessee in the very first year commencing business, is normally not necessary to maintain the books of accounts and in order to have a uniform treatment, all assesseees should be on the same category and if any one of the three preceding years exceeds the limit, then they should maintain the accounts.

MR. CHAIRMAN: We will consider this. A company has to maintain its account.

SHRI S. K. GUPTA: What will be the position of an assessee if in the second year his position of keeping an account is also uncertain?

MR. CHAIRMAN: He has got to maintain his account. In the second year, he cannot get out of it.

SHRI ERA SEZHIYAN: Supposing, in the first year, the turnover does not exceed Rs. 2.50 lakhs; in the second year, he maintains it and in the third year, it begins to fall, what will be the position?

MR. CHAIRMAN: We will consider it.

SHRI ERA SEZHIYAN: Once a person is statutorily liable to maintain

his account, he will be liable to maintain it unless he applies to the ITO and satisfies him that his income has fallen below permanently.

MR. CHAIRMAN: This is not a very big turnover. We will keep in view the difficulties you have pointed out.

SHRI S. K. GUPTA: Clause 39. In fact, we welcome this provision and feel that this provision will enforce financial discipline in the commercial field; it will help in maintaining accurate accounts and reduce the time of the ITO; it will also assist an assessee to maintain his proper books of account. We want to mention that there should not be any misgivings about the functions which an auditor will be entrusted to perform as a result of this provision. Because this audit should not be and can never be taken against any omission in the return of tax and tax evasion, because it is for the auditor to examine the books as placed before him by an assessee. If he has not brought anything in his books of accounts, it will be difficult for an auditor to bring that matter in his certification.

MR. CHAIRMAN: If the scope of the audit is going to be as academic as it is now in the Companies Act, then we may as well scrap the whole thing. Let us be clear on this point. The Institute must know it. If the audit is not going to help the Income Tax Deptt. and the Exchequer to augment their resources, I don't think then audit has any meaning whatever.

SHRI S. K. GUPTA: In fact, I have mentioned that it will not serve any useful purpose.

MR. CHAIRMAN: It is not a theoretical purpose; it has got to be a very meaningful purpose and that is what you are going to certify. I understand in spite of all this, there is no guarantee that you will assist in generation of black money; there is no guarantee that an auditor will bring real books of account.

SHRI S. K. GUPTA: We will do our best. We can give an assurance that the provision is there to help the nation in that respect and whatever is possible for an auditor to do, we shall guide our members to see that things should be done in a proper manner.

MR. CHAIRMAN: What will be the obligations of an auditor?

SHRI S. K. GUPTA: If there is anything wrong in his books of account, then he can point out in his report. But there is a magnitude of the action that will not be covered by the audit report.

MR. CHAIRMAN: An auditor has got to certify: (1) whether they are vouched properly or not; (2) whether the apportionment between revenue and capital is correct or not; (3) whether the expenses are real or not; (4) whether all the turnover, according to the best of his knowledge and information, has been shown or not; (5) whether all other sources of income are properly shown or not; and (6) whether the investment made by an assessee and shown in the books of account, according to the best of knowledge and information of the auditor, has come out from a valid source or not. This would be a certification of vital particulars. Therefore, you will have to take upon yourself certain responsibilities. If the assessees are to be liable to pay some money to the professionals, the professionals are to carry burden much higher than what they were carrying. Therefore, the scope has to be extended in the context of the difficulties which we are facing and for all those, this Bill will be brought forward. If you think that you have any reservation in your mind, please place before the Committee.

SHRI S. K. GUPTA: The instances which you have mentioned, I feel there is no difficulty.

SHRI ANIL M. PARIKH: On the other points which you have suggested, I think, professionals have no difficulty. As far as investment is concerned, we may point out that out of unsecured loans, it has been credited in cash or by a cheque. It will not be for an auditor to sit in judgment whether it will be from a valid source; I don't think the professionals can be asked to sit in judgment. What we can point out is that we can say that these are the new investments. I don't think whether professionals can be asked to give their judgment that this source is valid or invalid.

MR. CHAIRMAN: The concept of the scope of audit has to be dynamic. 15 years ago, they were not as much dynamic as they are today and they have to be according to the requirements of the society in which it is being carried out. As far as an auditor is concerned, we will prescribe a certificate which will determine his authority. Suppose it is shown that a person's mother-in-law has brought in a certain amount of money. A query may be raised seeking the circumstances under which she could acquire it.

SHRI S. K. GUPTA: We are afraid of that portion, Sir. The circumstances may differ from man to man.

MR. CHAIRMAN: The professional cannot be hauled up if he has applied his mind honestly. But he needs to be hauled up not once but 20 times if, in the garb of doing it, he has done something wrong.

SHRI S. K. GUPTA: Our members may also be harassed, when they express an honest opinion.

SHRI V. B. HARIBHAKTI: It may not happen in all cases, but say, only in 5 per cent of the cases; but we do not want our members to be exposed even to that extent.

MR. CHAIRMAN: One of the common methods of finding out black money will be to examine the amounts masquerading as loans.

SHRI V. B. HARIBHAKTI: Let the ITO apply his mind. Our contribution would be that when unsecured loans are shown in the accounts of any party during the year, we would insist that it should be shown separately; and how much of it was received in cash and how much by cheque. Thereafter it is for the ITO to go into them and judge things and take a decision.

MR. CHAIRMAN: Would it be all right if it is left optional for an auditor i.e. it is provided that he may study and declare that he is satisfied; otherwise he might say, "I have not gone into the genuineness of the source?"

SHRI V. B. HARIBHAKTI: I think it would be an expression of an opinion in that case.

MR. CHAIRMAN: We need not specify the cases in which it would be compulsory for the ITO to apply his mind.

SHRI V. B. HARIBHAKTI: Let him do it in every case.

SHRI VIRENDRA AGARWALA: Will the compulsory audit as mentioned here serve any useful purpose in unearthing black money or not?

MR. CHAIRMAN: If it would serve that purpose, how?

SHRI V. B. HARIBHAKTI: It will serve a very useful purpose, because the basic malady to-day, as the Wanchoo Committee pointed out is two-fold, viz. (1) people claim that they are not maintaining accounts; and (2) even where accounts are maintained, the returns which may be submitted to the Income-Tax department may be totally wrong due to the persons concerned making deliberate mistakes in totalling, inflating the purchases and suppressing sales etc. When the assessee knows that he is subject to audit, it will be a great deterrent to his making those manipulations. If personal expenses are regularly

debited to the account of the company, the inspecting officer has no reason for not going into it. He must definitely report it. Similarly, certain expenses which are not allowable *prima facie*, might have been entered and the auditor is bound to find them out. Calculations with regard to depreciation should be gone into, to see whether they are at a higher rate; and whether there is any deliberate mistake in totals committed by the assessee to secure rebate etc. The information made available to the ITO should be far more reliable. The returns are bound to be far more accurate than now, if not 100 per cent accurate, if sufficient vigilance is exercised on the assessee and verification is also made by the auditors. To that extent the auditor will help in checking the proliferation of black money; but if something is completely outside the books, the auditor will, of course, not be able to help much. We do not claim that he would be able to do it.

SHRI ERA SEZHIYAN: The main reason for my putting this question is this. The Wanchoo Committee had realized that this will provide relief to the ITO. The witnesses here to-day do not want to have any responsibility. In their memorandum, they say that the auditor "...cannot guarantee that there is no evasion of tax by the assessee. The auditor can be expected to report on the correctness of the profits as per the entries made in the books of account. He cannot and should not be expected to certify the taxable income of the assessee." Earlier in their memorandum, the witnesses say:

"... 'audit' is no substitute for the exercise by the Income-Tax Officer of his duty to determine the income liable to tax...."

Therefore, it looks as though the very purpose of this provision will be defeated if they do not want to share the responsibility. They want to go

on record that they would not certify anything.

SHRI S. K. GUPTA: We can do it as far as the facts mentioned in the books are concerned.

SHRI ERA SEZHIYAN: You are doing only that, even in regard to the company audit. You have also said in your memorandum:

"...as an auditor can devote more time to examination and verification of accounts than an Income-tax Officer, auditor's services could be usefully harnessed for obtaining facts and figures that could be relied upon. To the extent the time and effort of the Income-Tax Officer now spent on gathering requisite information and verifying its correctness is saved, he would be enabled to apply himself more fruitfully to complicated aspects of law and investigation."

MR. CHAIRMAN: Let us make two things very clear. Firstly, a very strong representation has been made to the Committee that except serving as a nuisance, auditing will mean nothing more. It would mean patronizing a profession. It will not help in our efforts to achieve the ultimate aim. Secondly, we called you almost at the end of our job of taking evidence, to assure ourselves that this is not going to be a burden on the assessee without any rhyme or reason; and that this provision would help us in achieving the object of the bill. We can tell the Parliament easily, that this may be dropped. You had said that you have been auditing company accounts for many years; how many frauds have you detected? This Committee and the draftsmen of this bill have been told repeatedly that as a result of this provision, those persons who keep accounts would be subjected to greater strain. The companies are under statutory obligation to keep accounts; but the biggest frauds have been committed only by the com-

panies. You have to satisfy the Committee about the utility of this provision.

SHRI VIRENDRA AGARWALA: Is it the purpose of this bill or of this clause that the ITOs would depend entirely on the report of the auditors?

MR. CHAIRMAN: Let the witnesses reply first to Mr. Sezhiyan.

SHRI S. K. GUPTA: When you specifically asked whether we can do this, whether we can certify this and that, we said that we can do it. We have made only one point there that as far as the source of the investment is concerned, whether it is genuine or not, it may not be possible. It is a question of judgment. Only there we differ. About whatever points you have mentioned, we have said that we can do it. There is no difficulty on the part of the profession to report on all the aspects you have mentioned.

As far as our profession is concerned, I can assure you that we are definitely going to make use of this right which you have given to us...

MR. CHAIRMAN: The right is only proposed in the Bill so far.

SHRI S. K. GUPTA: Our profession is ready to take the entire responsibility. There may be some difficulty about the source, whether it is genuine or not. But there also, we shall try to meet your point.

MR. CHAIRMAN: We are going to draft the nature of the certificate. Only a person who is agreeable to give that certificate should take up the audit.

SHRI S. K. GUPTA: We have said that there will be no difficulty. As far as the preparation of the certificate is concerned, it will be better if we are consulted. The right of preparing the certificate is completely with you. We find no difficulty in giving that certificate.

SHRI TRIDIB CHAUDHURI: What additional responsibilities are thrown on the auditor? He is already auditing the Company accounts.

MR. CHAIRMAN: That is hopelessly inadequate. Let us be clear on this issue.

SHRI S. K. GUPTA: As far as the Company audit is concerned, we from our Institute have suggested to the Government to enlarge the scope of audit. We have made specific recommendations. It is with the Company Law Department now. We feel that the way the audit certificate is required today by law is not sufficient to bring out all the instances which you have mentioned. Secondly, all the frauds which are committed by the Companies are completely outside their books of accounts. That is why we wanted some additional powers.

MR. CHAIRMAN: To give you additional powers, it will be put in the certificate that you mention about the new investment, whether according to you the sources are properly explained. In that case, you have to be bold enough to say that those are the sources which are explained and these are the sources which are not explained.

You are going to take money for it. You are not doing something free or gratis. You have to apply your mind. You know the problem. It is only for that that compulsory audit is being provided here. If the responsibilities are not going to be shared by the profession, then it will be difficult.

SHRI S. K. GUPTA: I can give you an assurance that there will be no difficulty for the profession to take up the responsibility.

MR. CHAIRMAN: We will consider it.

There are a few more things. Why should the compulsory audit confine only to chartered accountants?

SHRI S. K. GUPTA: By education and training today, in this country, this is the only profession which is competent to do it. There is no other discipline. This is the only institute. . . .

MR. CHAIRMAN: 'Discipline' part is all right. You could take others also in your 'discipline'. I think, you are about 5,000 people.

SHRI S. K. GUPTA: We are about 9,000. It is going to be 10,000 in 3-4 months' time. We have given the statistics.

MR. CHAIRMAN: You are 8,896.

SHRI S. K. GUPTA: The number is going to be more now.

MR. CHAIRMAN: Have you got any idea about the new audits that will come about?

SHRI S. K. GUPTA: We have no idea.

MR. CHAIRMAN: I will not blame you. The Ministry itself does not seem to have a proper idea about it.

Even they do not seem to have a fair idea about the number of auditors needed for that. Someone estimated at 100,000 or 75,000. It will not be less than 1 million. One doesn't know. It may be somewhere between 200,000 to 300,000. It will go on increasing. If you project it for the next 10 years, the demand is going to be more and more. The entry of chartered accountants in the profession is so difficult. The examination is so difficult. Every year, you will have far less number to cope up with the demand. Is it possible for the Institute to take within its 'discipline' some other people who might otherwise be qualified by taking some examination or by relaxing some rules?

SHRI S. K. GUPTA: It will be very difficult for us to do. The training is a composite one. It is not that only by giving a short-term course, we can build up a cadre, to do this job.

MR CHAIRMAN: Only for a limited purpose of this audit.

SHRI S. K. GUPTA: Even for our boys, we give so much intensive training for three years. Even those who get more than 50 per cent marks in examination fail to qualify as chartered accountants. It is already difficult to qualify within a period of three years. It is very difficult to acquire that discipline. Any short-cut method will not serve the purpose.

SHRI V. B. HARIBHAKTI: In view of the very heavy responsibility which you have envisaged, we would not like the profession as a whole to be maligned. This is a very complicated and onerous responsibility. If it is given to a person who has not got adequate training, it will defeat the purpose of the Bill. It will unnecessarily affect the wholesome profession which is being brought about.

MR. CHAIRMAN: You conduct an examination and then you take him in your 'discipline'.

SHRI V. B. HARIBHAKTI: Only examination is not enough. We have purposely kept, in spite of so many other suggestions to the contrary, the compulsory period of four years. It gives practical training to the students in the field of auditing. This is the only way in which a person can acquire the technique of auditing. Any amount of examination will not enable a person to acquire the technique of auditing. Therefore, our respectful submission is that that may not be possible.

We have got detailed information about how many chartered accountants we have got in every city of the country.

MR. CHAIRMAN: That will not be a help unless you know how many new audits will come about. That is nobody's guess. How many you will have after 10 to 20 years. You cannot project that.

SHRI S. K. GUPTA: We can project it.

MR. CHAIRMAN: Even the Ministry cannot project it. How can you do that?

SHRI S. K. GUPTA: Membership.

MR. CHAIRMAN: Membership you can project; new audits you cannot project.

SHRI S. K. GUPTA: I can give you an instance. I come from West Bengal. The West Bengal Government imposed a rule that any school which is junior or high school will have the accounts audited.

MR. CHAIRMAN: That is in all the States.

SHRI S. K. GUPTA: There is no difficulty. If it is multiplied by 10 or 15 or even 100 times, I think, the profession can handle it.

MR. CHAIRMAN: Since you feel so strongly about the realm of audit being kept for the members of your Institute, it was pointed out to us at Nagpur that when the Chartered Accountants Act was enacted, the people who were income-tax practitioners for a duration of 7 or 10 years were automatically made members of your Institute. Is that true?

SHRI S. K. GUPTA: Before the Act came into existence, there was the G.D.A., the Government Diploma in Accountancy. In those days, the G.D.A. examination could be taken before the completion of the articles. At the time of the enactment of this Act, the people who were qualified as the G.D.A. and who had not completed their articles were given relaxation. It was only in those cases. They had already passed their examination.

MR. CHAIRMAN: We are going to take out their evidence. I was myself surprised about it. I am not aware of it.

SHRI S. K. GUPTA: The basic thing is that they had passed the examination, that is, before we granted them the licence.

MR. CHAIRMAN: We will come back to that. It is not so easy for those witnesses to have taken us for a ride. Because we put them to a very searching cross-examination on that point. We will take out that particular provision they were relying upon later on. We shall immediately come to the next point which is very important. What sort of discipline do you think you are going to ensure? This is a matter in which we can make a drastic provision in the law itself. We can provide in that that the person will cease to be a chartered accountant if an error is found in him for that purpose. In fact we intend doing it.

SHRI S. K. GUPTA: If a chartered accountant makes an error he is coming under our discipline. You know we are more strict than the High Court. If 89 cases are referred to the High Court, only in two cases they have enhanced the punishment but, in 71 cases, they reduced the punishment which the Institute has recommended to the High Court. We are maintaining it very strictly and we have been accused of being more strict than even the high courts.

MR. CHAIRMAN: What about the other discipline? The business is going to larger firms. How are you going to ensure that discipline? I am putting this question because you are relying upon 8,900 members many of whom are people who do not have much work. Neither it is your Institute's responsibility to provide them with work. Through this provision, are you in a position to enforce some discipline so that the work is spread out?

SHRI S. K. GUPTA: In fact this will be the type of work in which

larger firms are not interested to take. We can give examples of cooperative bodies doing school audit in which larger firms are not interested to do the audit. It is meant only for our members who are beginners and for whom audit is remunerative. This will be another category of audit in which larger firms will not be interested. Not even the established firms will be interested. That is mainly because the establishment cost would be such that the small assesses will not be in a position to pay that much audit fee. This is one thing. The second thing is that we have already issued a direction to our members of what we call self-regulatory measures whereby a firm with more than seven members—may be three partners or three petty assistants may be there—cannot take up the audit below Rs. 750/-. A larger firm cannot take audit below Rs. 1,500 Thus we find that the work will get distributed. This is our recommendation. Our recommendation is the force of law. Though it is not enacted into a law, it has the force of a law. We find no difficulty in this. I think the audit will be mostly done by these junior accountants or members. The senior members will not be in a position to do this audit because their establishment costs will come in the way of their audit.

SHRI V. B. HARIBHAKTI: As you have expressed a fear that it might go to bigger and established firms, we shall certainly take steps in this regard. We have no intention of worsening the position of confrontation of audit which, in any case, is going to spread out because of the Companies Act amendment. But, still, the matter will be kept under review and we shall certainly try to see that it does not add to the malady which was existing in a more virulent form sometime ago.

MR. CHAIRMAN: What Mr. Gupta said just now that larger firms may not be interested may be correct. But,

the fact remains that audit goes to the big firms. What assurance can the Institute give us by way of exercising its authority?

SHRI S. K. GUPTA: The Institute will see to it that work of audit goes to the junior members. We shall give you this assurance.

MR. CHAIRMAN: Can you give some guidelines to them?

SHRI S. K. GUPTA: We can give some guidelines to our members; There would be no difficulty as far as that part is concerned.

MR. CHAIRMAN: Will you prepare some guidelines for auditing by the junior members?

SHRI S. K. GUPTA: We have already planned that for the chartered accountants in mofussil towns. We have kept them ready. As soon as the Bill is passed, we shall enforce the guidelines.

MR. CHAIRMAN: It has also to be realised by your Institute that Parliament is not interested in patronising one profession and leaving out the other profession. The object of this Bill is very simple and limited. We want your assistance in arresting this menace of black-money. For that purpose, something must be done effectively. If a few firms only are to benefit out of the provision, then we must leave it out.

SHRI S. K. GUPTA: Sir, we shall see to it that the audit will flow mainly to the junior members and not to the established firms. We can give you that much assurance. We can also give you the assurance that we can curb that tendency of the audit going to larger firms.

SHRI V. B. HARIBHAKTI: Regarding audit, not only Wanchoo Committee but also half a dozen other highpowered Committees have made suggestions. Kaldor, committee has some suggestions; Investigation Committee has made some suggestions;

Working Group of the A. R. C. and Taxation Committee have also suggested something. Some of them are against compulsory auditing. When it comes to compulsory auditing, at least the Chartered have got a far more reliable base on which to compute the taxable income.

We are hundred per cent in agreement with you when you say that Parliament cannot be interested in patronising a particular profession. That is not our intention. What we are interested in is to see how far the members of our profession can assist the Government in having fair assessments of income. From that point of view only we are suggesting that this work can usefully be done by the members of our Institute. We are prepared to do even more than what the Wanchoo Committee has spelt out in paragraph 2.147 of their report. From the Committee's Report, some impression is created that we are trying to get away from what Wanchoo Committee has pointed it. That is not so. As Wanchoo Committee itself has pointed out, where the matter is beyond the judgement of the I.T.O., that cannot be left also to the Chartered Accountants.

MR. CHAIRMAN: Your obligation must be to point out the basic facts apart from what the I.T.O. can point out.

SHRI V. B. HARIBHAKTI: As you rightly pointed out we must give facts and verify them to see that they are correct.

MR. CHAIRMAN: The certificate given is worthy of the members.

SHRI V. B. HARIBHAKTI: You are absolutely correct.

MR. CHAIRMAN: It will be interesting to note—Mr. Haribhakti and Mr. Gupta will correct me if I am wrong—that 80 per cent of audit remains concentrated on the top four or five firms.

SHRI S. K. GUPTA: That figure is not correct.

MR. CHAIRMAN: May I know the correct figure?

SHRI S. K. GUPTA: You know there was a survey conducted by the Economic Times some time ago. The survey revealed that there were about twenty firms which share sixty-five per cent of the workload.

MR. CHAIRMAN: I would rather much prefer that the institute with all its powers and authority should regulate its affairs. Otherwise, we can very easily take care of this matter.

SHRI S. K. GUPTA: We are very much concerned with our junior members. I can tell you today we try to offer to any young man who is qualified with a job. Today the position is there is nobody without a job.

MR. CHAIRMAN: Further, it will be much better if you send over to us the form which you want to suggest and we will examine the same.

SHRI S. K. GUPTA: We will do so.

SHRI V. B. HARIBHAKTI: Now we come to clause 25. Perhaps it is a drafting mistake but regarding the fees.....

MR. CHAIRMAN: We are considering that. We are considering the utility and the validity of the whole proviso from practical side.

SHRI V. B. HARIBHAKTI: Now, we take up clause 27.

MR. CHAIRMAN: We are also considering that.

You have intimate working knowledge of the taxation law. Like all other witnesses you have pleaded for reduction in rates of taxation. Now, this has come about. What according to you is going to be its effect?

SHRI S. K. GUPTA: Our feeling is the situation should improve.

SHRI V. B. HARIBHAKTI: The resistance in higher bracket income has become less and they want to disclose more income. So, it is expected that greater amount of tax will be mopped up.

MR. CHAIRMAN: It has been laid down in the Members Handbook of the Institute of Chartered Accountants of India. "In pursuance of Clause 3 of Sub Section (1) of Section 4 of the Chartered Accountants Act 1949, the Central Government is pleased to specify the following conditions which a person referred to in the said clause shall fulfil in order to be entitled to have his name entered in the Register of Members of the Institutes of Chartered Accountants of India:

If he is an officer of the rank of Income-Tax officer in the Income Tax Department or the Government of India having minimum service of six year—in such capacity and reasonable experience in assessment of cases or experience of similar nature or if he is in practice as an Income Tax Consultant for a minimum period of ten years."

SHRI S. K. GUPTA: The condition is that he must have passed GDA examination before. In this connection please see 4 (1) (3).

The notification which you have read was under this provision.

SHRI V. B. HARIBHAKTI: It will be very harsh and most unfair if the income of spouse arising from any source in a firm in which other spouse has substantial interest is taken into account. If it is a question of an uneducated lady being given Rs. 5,000 as salary, then it may be attracted. In 40A the powers are already available with the Income-Tax authority. That authority can be exercised. But in genuine cases where the spouse is educated and has got requisite qualifications and

has got an opportunity to do useful work in the unit in which spouse has sufficient interest why should it be made applicable?

SHRI ERA SEZHIYAN: What will be your suggestion?

SHRI V. B. HARIBHAKTI: If the spouse has got academic or professional qualifications which justifies his/her engagement, the case of the spouse should be dealt with separately.

MR. CHAIRMAN: "The payments made to close relations or spouse" will be included in the from.

SHRIMATI SHEILA KAUL: The gentlemen just now said spouse. By spouse he means 'wife' but it can be husband also.

MR. CHAIRMAN: Where the wife is a partner and husband is employed officially, his income should be clubbed.

SHRIMATI SHEILA KAUL: It should not be.

MR. CHAIRMAN: What about the fees? I feel schedule may be prescribed for fees.

SHRI S. K. GUPTA: We shall issue guidelines to our members that the fees should be reasonable. By reasonable I mean 'nominal fees'.

SHRI N. C. KRISHNAN: We are not getting even the prescribed fees. These are less than the prescribed ones.

MR. CHAIRMAN: There are other people who are getting more than that. We should, therefore, lay down the guidelines so that the monopoly firms should not charge high fees.

Is it possible for you to give us a form as to what you think reasonable fees? It will be for our guidance as to know how things are moving. I do not want assesseees to be burdened too much.

This is a new and experimental provision and much depends on what the profession says. We will see what the views of the Committee are. Thank you very much.

(The Committee then adjourned.)

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

Thursday, the 13th June, 1974 from 09.30 to 13.00 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Bhagwat Jha Azad
5. Shri S. M. Banerjee
6. Shri Dharnidhar Basumatari
7. Shri Tridib Chaudhuri
8. Shri S. R. Damani
9. Shri K. R. Ganesh
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 Bholu Raut
16. Shri Vasant Sathe
17. Shri Era Sezhiyan
18. Shri K. K. Shetty
19. Shri R. V. Swaminathan
20. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—*Joint Secretary and Legislative Counsel.*

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

1. Shri S. R. Mehta, Chairman, CBDT.
2. Shri C. C. Ganapathy, Member, CBDT.
3. Shri I. P. Gupta, Joint Secretary.
4. Shri S. Narayan, Joint Secretary.
5. Shri S. I. Tripathi, Deputy Secretary.
6. Shri S. C. Grover, Under Secretary.

SECRETARIAT

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

WITNESSES EXAMINED

I. Gujarat Chamber of Commerce and Industry, Ahmedabad.

Spokesmen:

1. Shri Rasiklal Vadilal Vasa, President.
2. Shri Indravadan Pranlal, Vice-President.
3. Shri Shrenikbhai Kasturbhai.
4. Shri Hasmukhlal C. Shah, Hon. Secretary.
5. Shri H. M. Talati, Chartered Accountant.
6. Shri I. N. Kania, Deputy Secretary.

II. Upper India Chamber of Commerce, Kanpur.

Spokesmen:

1. Shri Gulab Chand Jain, Vice-President.
2. Shri A. P. Gupta, Member of Executive Committee.
3. Shri Manohar Lal, Member, Taxation Sub-Committee.
4. Shri A. K. Basu, Secretary.

I. Gujarat Chamber of Commerce and Industry, Ahmedabad

Spokesmen:

1. Shri Rasiklal Vadilal Vasa, President.
2. Shri Indravadan Pranlal, Vice-President.
3. Shri Shrenikbhai Kasturbhai.
4. Shri Hasmukhlal C. Shah, Hon. Secretary.
5. Shri H. M. Talati, Chartered Accountant.
6. Shri I. N. Kania, Deputy Secretary.

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

MR. CHAIRMAN: Mr. Vasa, it is the convention of the Chairman of the Select Committee of Lok Sabha to point out to the witnesses the Direction by the Speaker of the Lok Sabha which governs your evidence. It says:

"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 can start.

SHRI RASIKLAL VADILAL VASA:
"Honourable Chairman and Members of the Select Committee.

We are indeed much thankful to you Sir, for kindly granting us interview today to submit our considered views and suggestions on various provisions contained in the Taxation Laws (Amendment) Bill 1973. Sir, we feel that the Taxation Laws

3031 LS—13.

(Amendment) Bill which seeks to make amendments in the direct taxation laws of the country contains several provisions of far reaching character. It is felt that the amendments now proposed are calculated to make things quite difficult for tax evaders. In the process, the tax laws in general have been made more rigorous and stringent and it is apprehended that many of them would affect the honest tax-payers also. In view of the far-reaching nature of various provisions contained in the Bill, it is feared that it might act as a damper to genuine business and increase paper work and accounting exercise for the department without any substantial gain to the revenue.

We, therefore, humbly feel that in view of far-reaching effects of this Bill particularly in respect of charitable trusts, it is essential that various provisions in this regard should be reviewed and considered.

Following the recommendations of the Wanchoo Committee the action taken by the Govt. of India in reducing the maximum rate of income-tax etc. in India from 97.75 per cent to 77 per cent is really a step in the right direction in as much as it

would go a long way to give a push to the economy, augment revenue and lessen temptation to evade tax. While we appreciate the reduction in tax rate in India, it cannot but be emphasized that compared to many other developed and developing countries the rates of income-tax in India are comparatively much higher. We would therefore humbly request the Select Committee to recommend to the Central Govt. to further reduce the rate of maximum income-tax so that the economic incentives resulting from reduction in tax rates may go a long way in accelerating the pace of economic growth.

Instead of giving wide and coercive powers to the officials of taxation department for search and seizure as well as to prescribe such penalties which can only be described as confiscatory, it would be appropriate for the department to exercise existing powers properly and judiciously.

The proposed amendments reverting linking of penalties to tax rather than income or wealth is a welcome step. Besides on account of deeming provisions the levy of penalty will be come a mechanical process which is not desirable. Viewed in this context there is a strong case for moderating rather than further tightening the penal provisions which in some respects surpass even penalty and punishment imposed in criminal offences in the country.

To ensure that settlements are fair, prompt and independent they may be entrusted to a separate body called Direct Taxes settlement Tribunal. Its Chairman should be of the status of the Supreme Court Judge as was the case in the Income-tax Investigation Commission. This is essential to ensure judicial approach in the settlement of cases.

MR. CHAIRMAN: I suppose you will have something to say on the specific provisions regarding settlement machinery. If that is be so,

you can leave it from your general comments.

SHRI RASIKLAL VADILAL VASA: Now, I would request Mr. Kasturbhai to submit our view point particularly regarding some aspects of the charitable trusts.

MR. CHAIRMAN: What degree of effect the law will have at this stage, could be a matter of opinion. We wanted to achieve the object of arresting the generation and proliferation of black money and of tax evasion. You have stated that the reduction in the level of taxes would have three benefits, viz. (1) reduction in evasion and unearthing of black money; (2) reduction in avoidance of taxes; and (3) reduction in the amount of tax arrears. In your memorandum, you had stated that the Wanchoo Committee report should be accepted and the rates should be reduced to 75 per cent. They are now reduced to 77 per cent. You are asking for a further reduction. After all, the State has need for an increased amount of revenue for its various programmes. Do you find any change in the attitude of your members in response to this? The revised rates conform to what, you thought, were pragmatic and would lessen the temptation for evasion. This question is a general and not a technical one.

SHRI INDRAVADAN PRANLAL: We had then submitted that it should be reduced to 75 per cent. Thereafter, we have gone through the various tax reliefs allowed in other countries, as a result of which we have come to think that if the rate of tax is reduced, the revenue increases and people definitely get better facilities. We have got certain statistics relating to the USA where this has happened.

MR. CHAIRMAN: My question remains unanswered. After the Government's reducing the rate, do you think that there is a change in the attitude of the assesseees? You are now canvassing for a further reduction in the rates.

SHRI P. G. MAVALANKAR: Has the reduction already made, resulted in any significant response from the business community?

SHRI INDRAVADAN PRANLAL: This is the first year. We have to see what will be the reaction; human nature being what it is throughout the world, we wish to quote the experience of those countries where the burden was reduced, as a result of which the revenue earned has gone up.

MR. CHAIRMAN: If, in the course of the next few years, the Government finds that there is no response to this sort of reduction in tax rates, don't you think that they will be more than justified to raise it again to 97.75 per cent?

SHRI INDRAVADAN PRANLAL: The evaluation will have to be done after some time, Sir. But the change in the attitude is generally there.

SHRI VIRENDRA AGARWALA: The tax rates have been reduced this year; do you expect the revenue to go up?

SHRI INDRAVADAN PRANLAL: Yes, Sir.

SHRI H. M. PATEL: Have you now come to the conclusion, that since the Government has conceded what you had asked for earlier, you should ask for more? Or, is it that you are asking for further reduction on some other considered basis?

SHRI SHRENIKBHAI KASTURBHAI: The reduction that has been given has benefited mainly the people in the top-level income groups. The reduction in the rates for "in-between" incomes is not there; and less, have not got adequate reduction.

MR. CHAIRMAN: The slabs now provided are more liberal than what had been recommended by the Wanchoo Committee. On an income of Rs. 30,000, according to the revised rate, the tax is Rs. 5,730 as against

Rs 5,250 recommended by the Wanchoo Committee. The difference is very negligible.

SHRI SHRENIKBHAI KASTURBHAI: The inflation that had occurred during last year has wiped out this benefit. A man should be enabled to maintain parity in the standard of living. It is not possible now because of the inflation. If the rate of inflation and that of taxation are matched more response can be expected from the public.

SHRI VASANT SATHE: Does it mean that you should get something like D.A.?

SHRI SHRENIKBHAI KASTURBHAI: The net income should be coupled with the inflation.

MR. CHAIRMAN: We are thinking of standard of living only of those who have incomes of Rs. 30,000 and Rs. 40,000. There are sections of the population with lower incomes, whose standard of living does not figure anywhere.

SHRI AMRIT NAHATA: I wonder how this argument of inflation is relevant to the rate of taxation, because it is generally known that inflation has no effect on the standard of living of the richer sections of the people.

MR. CHAIRMAN: Unless it is a fixed income group.

SHRI AMRIT NAHATA: If you apply that argument, the revenue of the State in terms of real value goes down. As a matter of fact, I thought, the inflation should lead to a still higher rate of taxation on the higher income groups if the revenue of the State is to be kept at the same level and the marginal value of the money of the rich is to be retained at the pre-inflation level.

SHRI RASIKLAL VADILAL VASA: If the rate of taxation is the same and the inflation goes on, the honest man has to lower down his standard of living, whether he likes it or not.

SHRI H. M. PATEL: I think we are going into a new realm of argument.

MR. CHAIRMAN: I was only wanting to know their reaction to a very simple question, that a certain step has been taken which I thought was an extremely bold step by the Finance Minister. I thought your Chamber would be more than happy.

SHRI RASIKLAL VADILAL VASA: We welcome it.

MR. CHAIRMAN: There should be some response to it. It should not be that every time there is a charter of demands, reduce it, reduce it. There should be some end to it.

SHRI P. G. MAVALANKAR: If you see what the Wanchoo Committee had recommended and what the Government has done, there is hardly any difference. I would like to ask the witnesses whether they have any concrete ideas with regard to this matter, namely, after reduction of taxation rates, whether there are any specific measures or steps they would like to suggest to make it possible for the tax-payers to pay their taxes. In other words, will mere reduction in taxation help or have they any concrete measures to suggest in this direction?

MR. CHAIRMAN: I think, we will be drifting into the realm of generalities. I would like to hear them on specific points within the scope of the Bill.

SHRI P. G. MAVALANKAR: We have discussed general points with other witnesses also regarding the need for reduction in taxation and more response from the tax-payers to that. Apart from that, I want to know from them whether they have any specific measures to suggest in this regard.

MR. CHAIRMAN: Have you any specific suggestions to make in the matter of rationalisation of deductions

in the computation of total income for taxation?

SHRI H. M. TALATI: Apart from the deductions in the computation of total income itself, there should be such built in provisions as would bring about a larger residual income in the hands of the assesseees. The amount available to the tax-payer for meeting his personal expenses has got to have some bearing with the cost of living prevailing in the country. In absolute terms, the amount left with him may look larger but in reality the amount is not adequate to meet his personal expenses and to have a standard of living which he was having all these years.

Again if you take the salaried group, the fixed income group, an income which was considered as a fair income, namely, Rs. 2500 a month or Rs. 30,000 a year may not be so now. It is above that level of income that the rates of taxation were very steep. We find that the residual income which remains with the tax-payer in terms of purchasing power becomes much less because of overall increase in the cost of living and the inflation in the country.

MR. CHAIRMAN: His question was whether you have any specific suggestions in this regard.

SHRI H. M. TALATI: The basic exemptions which are to be granted to tax-payers should be linked up with this.

MR. CHAIRMAN: You mean initial exemptions. How much should it be?

SHRI H. M. TALATI: It should have a bearing to the cost of living. It was Rs. 5000 in those days. If the cost of living index has doubled, it will come to Rs. 10,000. If it is less than double, it should be Rs. 8000 or Rs. 9000. If that is taken into consideration, it will take care of increased cost of living.

MR. CHAIRMAN: If you give exemption to people earning Rs. 5000

or Rs. 7000, that is one thing. About a person who earns Rs. 2 lakhs, what difference does it make if you give exemption to him?

SHRI H. M. TALATI: We are talking about middle-income group.

SHRI AMRIT NAHATA: Take a person who earns Rs. 50,000 a year. Let us suppose that even despite inflation his income remains the same. Now, as against the fifty-thousandth rupee, the last rupee, which during pre-inflation he used to spend as a tip to the bearer, after inflation, he would perhaps reduce the tip to 50 p. How does it affect the living standard of that person? I fail to understand. Secondly, we should also assume that with inflation, the income of the middle-income group also increases. It does not affect the living standard at all.

MR. CHAIRMAN: Let us now go to the provisions of the Bill.

SHRI SHRENIKBHAI KASTURBHAI: I wanted to highlight two things. One is about the amendment to Section 13(i)(b) which is to omit the words "created or after the commencement of the Act." I would submit that if this is done, it would be the death-knell of the charitable trusts which were created before 1962.

MR. CHAIRMAN: We have extensively heard on this point. The Committee is already seized of the matter.

SHRI SHRENIKBHAI KASTURBHAI: This is a very vital thing. In Gujarat, we have got about 3000 hostels for special communities. There is a hostel for barbers; there is a hostel for *rabaries*, a backward community. All these hostels will be seriously affected along with others which are run in Ahmedabad, in Gujarat. They have to almost close down.

SHRI ERA SEZHIYAN: About the point just now referred to by the witness, in the Memorandum also, he has made the point. He said that they do not agree with the policy of the Government to withdraw relief

to charitable trusts created on communal basis prior to 1962.

If you take the Wanchoo Committee Report, you will find they have also gone into this question. They have also come to the conclusion that it would be anomalous if the trusts which were created before 1962 were to be left out of the purview. What has he to say about the conclusion arrived at by the Wanchoo Committee? It is not as if it is the policy of the Government. The Government is doing as per the recommendations of the Wanchoo Committee.

SHRI SHRENIKBHAI KASTURBHAI: My only submission is that no legislation should have retrospective effect. The things which were done earlier in all honesty and sincerely should not be changed later on because the thinking changes. We all agree that in the modern India, doing things on the basis of caste and creed should not be encouraged. But about those people who had done it legally, honestly and sincerely in the past, why should the new generation try to change it? Here, the help is given to the poor. It is not given to the rich on the basis of caste or creed. All this help is given to the poor people of different communities in one way or the other. Why should we interfere with that? From now on, you may do it. But it should not be with retrospective effect.

SHRI ERA SEZHIYAN: The Wanchoo Committee had made a very specific recommendation. It says:

"We recommend that the law may be suitably amended to provide exemptions to trusts created before 1962 if they conform to the requirements of law created after 1962."

Therefore, they have provided for this.

What I am saying is this. In the earlier part of the Report, when they were making this point, they were

very particular about other recommendations made by the Wanchoo Committee by saying that the Government does not seem to realise that the reforms suggested by experts based on integrity and implemented in bits will not yield desired results. At that time they said that the major recommendations, about 75 per cent had been omitted. But now Government has implemented them. Therefore, what have you to say about the other portions?

MR. CHAIRMAN: There is an apparent incongruity in what you seem to be canvassing through your memorandum and what you are telling us.

SHRI VASANT SATHE: You say that no law should have retrospective operation. Strictly speaking, the effect that is being given is not retrospective because all that is being said is that, hereafter, the law will be this. Now the necessary amendments or changes can be made legally so that you can come in line with the present law although you were registered before 1962. Therefore, it is not retrospective in that sense. For example, if you make a law now that people should go on the right of the road, those who were going on the left of the road cannot claim that they should be allowed to continue to go on the left of the road because that was what they were doing legally; they will have to walk on the right of the road because that is the law.

Another point which you have raised is that this is for the poor people of that particular caste. What we want now is that there should not be any distinction on caste. It should be for the poor people belonging to all the castes—without any distinction. What objection do you have to that?

SHRI SHRENIKHBHAI KASTURBHAI: I accept and understand your argument. But what I am trying to say is this. Those people who created these trusts originally might be dead and gone, but they had visualised

certain things; they wanted to help certain people which was legal at that time. Now you cannot just all of a sudden say, "We change all this; now you will have to allow all community to use hostels or hospitals. Otherwise the income-tax exemption will be withdrawn." It is tantamount to saying that you close down if you do not want to throw it open to public.

SHRI BHAGWAT JHA AZAD: But for the repeated stress that the hon. witness has been making that retrospective effect should not be given, I would not have intervened. I agree with the witness at the outset in principle that, normally, the law should not be applied retrospectively because the persons who then knew the law and acted accordingly should be spared. But what I want to point out is this. Why is retrospective effect being given? Has the hon. witness not studied the different assessments and conclusions arrived at which show how, under the cover of this law, trusts have been functioning, how these trusts have been misused? Is it the contention of the hon. witness that a law which has been misused and which has not been given effect to properly according to the original intention, should not be corrected subsequently?

SHRI SHRENIKHBHAI KASTURBHAI: If a trust has been misused, it should be penalised. But I do not know of any misuse of this type. Wherever there is misuse there are other legal means by which it can be stopped. You need not make a law for that purpose.

MR. CHAIRMAN: The basic question is whether the communal trusts have acted against the larger interests of the community as such, whether the exemption itself has not been fully and properly utilised. If you have to say anything on that, you may; otherwise, we go to the next point.

SHRI SHRENIKHBHAI KASTURBHAI: In Ahmedabad where we work

we have hardly seen any misuse. If we are told about it, we can understand. Otherwise, about 3,000 hostels being run for different communities would come to a grinding halt all of a sudden and the whole burden will be put on the State. Why should these hostels be asked to close down? What is illegal about it? What is wrong about it?

MR. CHAIRMAN: Why do you use the word 'illegal'? What do you mean by that?

SHRI SHRENIKBHAI KASTUR-BHAI: I only mean that it becomes impossible for those trusts to exist as soon as this law becomes effective.

MR. CHAIRMAN: We shall consider this. Next point.

SHRI SHRENIKBHAI KASTUR-BHAI: The next point is about investment. Clause (e) of sub-section (1) of section 13 will have the effect of prohibiting investment of the funds of trusts in any concern, including a company which is carrying on any business and which is not owned or controlled by Government. Here, Sir, we have not been able to understand why investments in preference shares and debentures are not allowed. We were given to understand that the main purpose of this amendment is to ensure that people are not allowed to control companies through the medium of charitable trusts. We agree that nobody should be allowed to control a company through charitable trusts. But we fail to understand how companies can be controlled by investing in preference shares and debentures.

MR. CHAIRMAN: Under certain circumstances, preference shareholders are allowed to vote. But that is a different thing. If you can buy debentures, if you can buy preference shares, it only means that exempted profits are available for financing companies. Suppose you have Rs. 10 lakhs as exempted profits and you invest in preference shares, at least finance is available. The idea is not to make even finance available.

SHRI SHRENIKBHAI KASTUR-BHAI: If I have Rs. 10 lakhs, I am asked to invest in government securities, whereas if I am allowed to invest in debentures, my income would be augmented.

MR. CHAIRMAN: You have not understood. When you have Rs. 10 lakhs, investment in government securities will mean money going for some other purposes and Rs. 10 lakhs going to a company means just helping a private trader. These are two different concepts.

SHRI SHRENIKBHAI KASTUR-BHAI: But the income is used for charitable purposes.

MR. CHAIRMAN: I am not on the question of income. You said just now that you did not understand the rationale of this provision. You have said that as long as equity shares are prohibited, the controlling interests will not come about. I say that that is not the end of the matter. The intention of this legislation is not merely to prohibit equity shareholding but also to prohibit the avenues of investment being available.

SHRI SHRENIKBHAI KASTUR-BHAI: Then you are draining away the income of the charitable trusts.

MR. CHAIRMAN: Now, that you have understood the rationale, you can make your submission.

SHRI SHRENIKBHAI KASTUR-BHAI: If you are stopping investments in companies, then you are stopping the money going for charitable purposes. We are aware of the inflationary conditions. If we invest only in government securities, we receive only 4-1/2 per cent. If we had invested Rs. 100 in a conversion loan of Government of India, it would have become Rs. 55 to-day while if we had invested it in debentures, it would have at least remained Rs. 100 and given more income throughout. You might have some rationale, but unless trusts are allowed to invest in debentures and preference shares

where interest rates are high, the incomes of the trusts would dwindle considerably and so also its capital, with the consequence that the charitable work that the trusts are doing will suffer considerably.

SHRI S. R. DAMANI: May I ask the hon. witness one question? The funds of the Trusts are the property of the public after donations. In that case will it be advisable for them to invest the funds in preference shares or debentures of the companies where the trustees are interested? There may be risk to some extent. Instead of investing them like that, could they not be deposited with the banks? In that case, the Government will have no objection. They can get 8 per cent interest on the deposits.

In Maharashtra, according to my information, there is a Commissioner for Charity. He is allowing them to advance money against the property where they yield 12 to 15 per cent interest. Since the aim is to earn more interest, why should they not deposit with the banks where they can get interest ranging from 12 to 15 per cent?

SHRI SHRENIKBHAI KASTURBHAI: I cannot agree.

MR. CHAIRMAN: The import of his question is this. You are worried that the income will be adversely affected. You do not invest the money in Government Securities because you do not get more money. That is why you invest your money elsewhere.

SHRI SHRENIKBHAI KASTURBHAI: If anyone invests money on house, his money will sink because of the Rent Act. Moneys got against properties mortgaged are in a terrible state because they cannot recover the money. Because of the Rent Act, they cannot even sell the property as there are other difficulties that come in.

MR. CHAIRMAN: You are painting a picture as though the property

owners are in distress. Anyway, Mr. Damani, he has answered your question whether it is right or wrong.

SHRI SHRENIKBHAI KASTURBHAI: Sir, the Hon'ble member made a point that the trustees are investing money of the trust in debentures and preference shares of companies where the trustees themselves are interested. This is not so. There is a trust Act in the Gu'jarat and Maharashtra States and the permission of the Charity Commissioner has to be obtained before any investment could be made in preference shares or debentures of any company. The Charity Commissioner grants permission only after he has satisfied himself about the propriety of the investments.

SHRI S. R. DAMANI: There are only a few States where the Trust Act is in vogue and where there are Commissioners for Charity. There are many States where there is no Commissioner for Charity. And there is no control over them. What would happen to those States?

I said that there are certain risks involved in investing such a huge capital on a company where the Trustees are interested. When there is an element of risk why should public funds be invested? Why should not money be advanced against security of property?

MR. CHAIRMAN: It is a matter of opinion.

SHRI SHRENIKBHAI KASTURBHAI: The solution is to have a uniform Act all over India as the one we have in Gu'jarat and Maharashtra.

SHRI AMRIT NAHATA: Mr. Chairman; I want to tell the hon. witness that he has based his assumption that the income from Government securities is always less than the income from debentures or preference shares invested in companies or corporate bodies. Surely, I think, this assumption is not always true. Sometimes there have been cases of swindling;

sometimes there have been cases of mal-functioning of the corporate bodies. It is always true that the income from debentures or preference shares should be more than the income from Government securities.

MR. CHAIRMAN: Say ostensibly more.

SHRI AMRIT NAHATA: It is always so. A trust is constituted for the purpose of public good or for charitable purposes. Though it is true it may be allowed to earn income on its own, at the same time, it cannot be allowed unrestricted freedom to invest its money and earn income and augment its funds by any means it likes. Take for example the trust which is indulging in speculation. Similarly, we feel they should not be allowed to raise more capital or invest more capital. The money lying with the trusts is made available for charitable purposes and to augment its capital for a social objective. We must adhere to this. And, therefore, the trust should not be allowed to invest money in debentures or preference shares in corporate bodies.

SHRI SHRENIKBHAI KASTURBHAI: There are Charity Commissioners in Gujarat and Maharashtra. They see to it that the trust money is not invested anywhere one likes. In Gujarat and Maharashtra we are very severely restricted from investing anywhere we like.

SHRI H. M. PATEL: It is more or less laid down in the law. This is not going to be presumed as the view of everybody. What Shri Shrenikbhai is telling us is this. Already there is an Act in existence in Bombay and Gujarat. There exist organisations of Commissioners for Charity. What is wrong in it? What public interest is going to be served if moneys are invested in concerns or organisations which would bring in more money or income to the trusts. What has the spokesman of the Government got to say to this? In other

words he has put it to us that what is existing in Maharashtra and Gujarat should be followed everywhere.

MR. CHAIRMAN: We shall consider that.

SHRI ERA SEZHIYAN: Just now the witness invited the attention of the Committee to the existence of Charity Commissioners in Maharashtra and Gujarat and also a Statute to control these things. May I also invite his attention to many instances where trusts have been created by big groups and where as much as 90 to 95 per cent of the funds have been invested only in individual groups? This has been found out on investigation.

SHRI SHRENIKBHAI KASTURBHAI: In Gujarat and Maharashtra only this Act has been implemented. And it has not been allowed at all there.

SHRI VIRENDRA AGARWALA: In Bombay the experiment has been a success and the Commissioner for Charity is controlling the investments of funds of the trusts. Can this not be followed on an all-India basis in other States?

MR. CHAIRMAN: I do not think the witness will be able to enlighten us. It is for the Committee to decide.

SHRI VIRENDRA AGARWALA: You can ask the witness to tell us something.

MR. CHAIRMAN: Have you any statistics to tell us how it is functioning?

SHRI SHRENIKBHAI KASTURBHAI: I am sorry, we do not have statistics.

MR. CHAIRMAN: This we can call for.

SHRI BHAGWAT JHA AZAD: The witness just now said that in Maharashtra and Gujarat there is an organisation under the control of Commissioner for Charity who is controlling the investment of funds from

Trusts. And Shri Sezhiyan wanted the Spokesman to find out the figures regarding the functioning of this organisation.

SHRI S. NARAYAN: The Wanchoo Committee in its report had said they tried to find out from various States how the charity laws are administered and whether any case of abuse brought to their notice. In the report they have said no State reported in that manner and we came to the conclusion that these laws are not being effectively administered from the point of view of checking the abuse.

SHRI VASANT SATHE: The point made by the learned witness is if we allow the charitable trusts to exist then we must also see that they make sufficient income and good income from wherever they can make. But we have also heard witnesses where it was pointed out that even where investment in the form of debentures or preferential shares is made in other companies it was seen often there is crores-investment. Apart from that why should we allow trusts to make investments in companies in preference to Government securities when we know that in making funds available to Government securities it serves a large purpose of the community as a whole. So, will it not mean that although a particular trust may suffer a little loss by not being allowed to take debentures in a particular company ultimately it benefits the community as a whole by being required to invest in particular government securities. So, why should there be any objection?

SHRI SHRENIKBHAI KASTURBHAI: It is not a small difference. It makes a sizeable difference. In these inflationary times unless the trusts can make more income the basic purpose definitely suffers.

SHRI P. G. MAVALANKAR: We are at a stage where in India the State is becoming increasingly a welfare State and the number of activities which the charitable trusts have

been doing in the last few years are becoming activities of the State. If that is so what harm is there if a welfare State goes on assuming actively an increasing number of welfare activities which so far have been done by the charitable trusts? If the trend is right then what is the harm in encouraging the State to have greater funds and also greater scope for activities.

Secondly, can the witness tell us whether in his experience the Charity Commissioner's restrictions have done two things:

(a) They have successfully controlled mis-investment or wilful investment; and

(b) Charity Commissioner's restrictions have not thwarted the executives of the trusts from their responsibility of carrying developmental activities.

SHRI SHRENIKBHAI KASTURBHAI: Definitely they have been controlling misuse of the funds very effectively and they are not thwarting in any way because they give permission only after considered opinion there is no thwarting. We are absolutely happy with the Charity Commissioner and the Charity Trusts Act because it controls the misuse of funds and help those who do good work. It is an excellent mode of controlling.

SHRI VASANT SATHE: The big and large houses must be continuing to keep the funds.

SHRI SHRENIKBHAI KASTURBHAI: I am only for the benefit of the charitable trust. I do not think it is more important whether the large houses or the small houses get the funds but the objective of the charitable trust should be supported.

MR. CHAIRMAN: It must not begin at home as it appears to be. I shall give you some figures. Here is a study made and it is a study of the pattern of investments of trusts having an income of over Rs. 1 lakh

or assets over Rs. 10 lakhs and there they have found out that the total assets were Rs. 124 crores. Investments in shares of public companies were Rs. 17.3 crores and investments in shares of private companies were Rs. 6.5 crores, partnership firms Rs. 2.2 crores and in loans and debentures Rs. 10.6 crores. It is pertinent to add that the study which appeared in the company news and notes referred to earlier showed that the aggregate investments in the Joint Stock Company of these trusts which were not associated with any industrial group amounted to 19.8 per cent only. That means 80.2 per cent were connected with the industrial groups.

SHRI SHRENIKBHAI KASTURBHAI: When new charitable trusts are created by donors they obviously can give only shares of their own company to start the trust. This is the main reason why only 19.8 per cent of the aggregate investment in the joint sector company are such which are not associated with any industrial group. What we are talking about now is of new investments and not of investments that were settled as corpus. There is a mix up here.

MR. CHAIRMAN: It is not the mixing up. It is how you ultimately control. An eminent industrialist from Gujarat whose name I would not like to refer has floated many trusts purely to keep this out of 5 per cent provision. 30 trusts have been floated by him. In a case like this do you not think there should be an outright ban?

SHRI SHRENIKBHAI KASTURBHAI: Where this sort of thing is there you take away the voting power and give it to the Charity Commissioner. Voting power can be assigned to Government or public trustee and they vote on these shares.

MR. CHAIRMAN: How will it work?

SHRI SHRENIKBHAI KASTURBHAI: Parliament can pass a law

taking away the voting right of equity shares from the trustees of Public Charitable trust and rest it in the Charity Commissioner as a public trustee.

MR. CHAIRMAN: We can say that your exemption is gone from within the ambit of taxation if you do so.

SHRI VASANT SATHE: That is a very good point which has been made.

SHRI S. R. DAMANI: I would like to know the views of the witness on the element of risk involved in the case of funds reinvested and why are the funds of the trust invested for a long period—15 years, 20 years? In a short period it can have more income. I do not agree with the views that the residential houses and other houses are not secure.

MR. CHAIRMAN: It is a matter of opinion.

SHRI S. R. DAMANI: I have also got a trust and there are plenty of persons who are asking for money and paying interest @ 12 per cent. It is not correct that money can be invested against property or that secure money can yield more interest. Why should we stress upon preference or debentures?

SHRI SHRENIKBHAI KASTURBHAI: The alternative is investment in the 12 years loan of the Government of India or the State Government which gives 5½ per cent to 6 per cent interest while the investment in preference shares yield 9.3 per cent interest. You can clearly see that this will provide a hedge against inflation.

In one of our trusts, we were getting in 1960 a sum of Rs. 30,000/-. Now for the same shares we are getting Rs. 50,000/-.

I am in agreement with the Hon'ble Member's view that the trust should not be the media to control the company. This should at all costs be stopped. But one should not be pro-

hibited from investing in ordinary shares, preference shares or debentures. It should be the Trust Act which should control the proper investment of funds of the Trusts by the Trustees.

SHRI H. M. TALATI: There is a tax on donation.

MR. CHAIRMAN: As a trust are you worried about the anonymous donation?

SHRI H. M. TALATI: Collections are made on blind day, Jawan Day, etc.

MR. CHAIRMAN: Mr. Talati, leave it, crores of rupees are collected.

SHRI S. R. DAMANI: This should be only for spending and not that it should be in the form of corpus.

MR. CHAIRMAN: They are referring to anonymous donations.

SHRI S. R. DAMANI: These are to be spent for certain causes but if they are given by undisclosed persons, then it becomes difficult.

MR. CHAIRMAN: It is more a matter for us to consider.

SHRI H. M. TALATI: Tax avoidance through diversion of income to Members of an individual's family, Clause 14: On the general principle, we are not against it, but we would request you to consider one or two problems that are likely to arise. One is, where both the husband and wife are qualified professionals, e.g. one is Advocate and the other is Solicitors or *vice-versa*.

MR. CHAIRMAN: You are deviating from the general pattern, where the husband is a doctor and the wife is a nurse.

SHRI VASANT SATHE: There his difficulty would be for *'vice-versa'*

MR. CHAIRMAN: Mr. Talati, we dare not do anything which may leave an impression that by and large, the women-folk are being given different treatment. However, we will consider this point.

Please proceed to the next point.

SHRI H. M. TALATI: There is a small point in clause 15. If instead of all the three steps being taken through account payee cheque, namely the receipt of hundi, payment of interest and repayment of hundi, if one step is by 'crossed cheque' so that the identity of the person is proved, would it not meet the needs of the department, even though the other two steps are there?

MR. CHAIRMAN: Sometimes evidence is created later. One uses one's black-money and after one year's time, having found hawala, he makes payment by cheque.

SHRI H. M. TALATI: If the initial transaction is by cheque, why should he do it later?

MR. CHAIRMAN: Do you think that it should be confined only to hundis, or should it be made applicable to all loans?

SHRI H. M. TALATI: Let it apply to all loans. We only want that genuine people should not be put to difficulties.

MR. CHAIRMAN: Your point is that if the original loan is taken by crossed account payee cheque, there will be no occasion to fabricate evidence. We will consider that.

SHRI H. M. TALATI: Clause, 16: By this clause, it is sought to treat the business of purchase and sale of shares of the company which are not investment, banking or financial company as speculation business. We are with the Govt. that if hawala business is sought to be done, it should be stopped. But would it not be proper to have a proper legislation regulating this in the stock exchange?

MR. CHAIRMAN: The rationale of this clause is that if an industrial company making large profits wants to reduce its income, it will make systematic purchase and selling of its shares and thereby reduce the taxable

profit or some other business. It is to get at that mischief.

SHRI H. M. TALATI: We are fully with the Government.

Clause 19: We are happy that a start is being made in giving a reduction for house rent paid by non-salaried people. Is it not that they are discriminated too much for this? The condition laid down for this is that the person concerned or any member of his family should not own a house anywhere in India. Our point is, if he is staying in a rented house, why should he be denied that?

SHRI VASANT SATHE: You want the benefit to be given to all.

SHRI H. M. TALATI: Yes, Sir. We want that they should be at par with salaried people. Our objection is to the proviso.

Clause 25: Is it necessary that we should have a limitation?

MR. CHAIRMAN: This is a minor point. What do you say about searches and seizures, Clause 36? Should this be made more stringent?

SHRI H. M. TALATI: The powers which are already with the department are more than adequate. We do not feel that they have not been able to fulfil their obligations for lack of powers. They have not been fully and properly exercised and in such a case to give them still more powers is not a welcome step. If there are any drawbacks and if you provide something to remove them, this would be good.

MR. CHAIRMAN: In concrete terms, what do you suggest?

SHRI H. M. TALATI: All these additional provisions would not be necessary except some.

MR. CHAIRMAN: Shall we go to other clauses now?

SHRI H. M. TALATI: In section 132 of the Income-tax Act in sub-section (1), it is stated:

“Where the Director of Inspection or the Commissioner or any such Deputy Director of Inspection or Deputy Commissioner (Assessment) as may be empowered in this behalf by the Board”;

Here the existing powers are adequate one and no need to empower Deputy Director of Inspection or Deputy Commissioner (assessment).

MR. CHAIRMAN: The general proposition is that the existing powers are not adequate. It is not because of any deficiency or inadequacy of powers but because of want of adequate exercise of power techniques and therefore, purely giving more and more power is not a solution to the matter. So, I ask you to let me know the clause itself where you think that the increase of powers are not going to help.

In Clause 36 there are various provisions of searches and seizures. Some of them are additional, and some of them are not additional. Therefore, I would like to know from you to which of your provisions this general proposition apply.

SHRI H. M. TALATI: On page 16 of the Bill under Clause 36(a)(ii) in clause (c), for the words “which has not been disclosed” the words “which has not been or would not be disclosed” shall be substituted. We are not going into the realm of the subject, subjecting judgment of and without meaning any disrespect to any one. The additional words “it would not be disclosed” are not at all necessary.

MR. CHAIRMAN: What is your comment on this? What do you say?

SHRI H. M. TALATI: Here it is mentioned as “it would not be disclosed”. “would not be” may mean anything according to man’s guess. The said allegation cannot be put to any proof nor it would be possible to lay down any guideline or test or determine this. I feel that “has not disclosed” is adequate.

MR. CHAIRMAN: Will you kindly refer to Section 132 sub-clause (b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where any Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing.....aircraft”;

Even there the books of accounts are already in existence. They are in existence and these are the books of accounts and the documents which can be tested. But under Sec. 37A it is stated as: “Any person to whom a notice under sub-section (4) of section 16 or a summons under section 37 was issued to produce or cause to be produced...or any person to whom a notice or summons as aforesaid has been or might be issued will not, or would not produce or cause to be produced...” Here what will you say? What factors will be given notably as would justify that an assessee would not cause to produce?

SHRI VASANT SATHE: On some other occasion, appropriate notice has been issued which has not been produced.

SHRI H. M. TALATI: The existence of the material to prove “would not be disclosed” will not be there. It will be only a matter of guess.

SHRI VASANT SATHE: What would be the harassment under this new clause?

SHRI H. M. TALATI: Taking this provision into consideration, any income-tax official can say that the assessee would not disclose the same in his income. The presumption is that the man is dishonest and he would not have disclosed the same as his income. And there is no standard or measure to find that there is any basis for this belief.

MR. CHAIRMAN: “Where any money, bullion, jewellery or other valu-

able article or thing represent either wholly or partly income or property which has not been disclosed or would not be disclosed.....” Now you read it. The built-in safeguard for an assessee is there. It is like this that he must be in possession of all these assets and there must be circumstances to indicate that he has not disclosed and that he would not disclose. Mr. Sathe’s question is relevant; firstly there is a concept of no disclosure and something which would not be disclosed is being brought within the purview of the Section. In accordance with the Section 132 (1) (b) and (c) what has been done? He is in possession of these things which will not be disclosed for income-tax purposes or he is not legally to disclose. A person has been submitting a return for Rs. 10,000 - and he is in possession of bullion worth of Rs. 10.00 lakhs. Well, he may say that he has earned that this year end.

SHRI H. M. TALATI: He accepts the tax liability for the additional amount. Even by presuming that he would not disclose the same, I do not envisage what the department has achieved? It is because of this that in sub-clause (c) the present provision that “IT HAS NOT BEEN DISCLOSED” is adequate. He cannot say “All right, I will not disclose, let me see what happens.”

The moment he says that, he exposes himself to tax as well as penalty.

MR. CHAIRMAN: The question is that at that point the department should have power to seize it. I may tell you that the Committee is going to be extremely cautious in giving more and more powers. Therefore, I would say that it is not an academic argument. We want to convince you that we are not just giving powers to Income-tax Officers or some others.

SHRI H. M. PATEL: Mr. Chairman, here I must point out one thing. The witness is emphasising the fact that the powers proposed to be given are

based on a subjective element. Apart from the original point which is still valid, his emphasis is on the subjective element which I do not think is completely washed out by the argument that has been urged by you.

MR. CHAIRMAN: What he was saying was that we are giving added powers. Now conceptually the subjective powers are already there.

SHRI H. M. PATEL: He does not deny the need for such powers. Therefore, he says that the powers which are already there are adequate for whatever purpose you want. That subjective element is undesirable and that is his argument.

MR. CHAIRMAN: If you read that Section, you will find that it is not so subjective. Here the words "or would not be disclosed" are to be added.

SHRI H. M. PATEL: It has not been disclosed is the important point.

MR. CHAIRMAN: What? Some assets in his possession.

SHRI H. M. PATEL: That has already been established.

SHRI VASANT SATHE: The present provision is about assessment wherein certain things have already come to light. Kindly see the present Section 132(1)(b). The present provision is to safeguard it and therefore it would not become irrelevant. What objection the learned witness has to such a provision if his intention is to safeguard it? There is certain evidence that he has got certain assets. Now, there is an apprehension that he is going to get away from them. How will he protect his interest?

SHRI H. M. TALATI: The provision in question could be tested and it can be proved that the assessee would not have produced any books of accounts or documents. This is not a matter of mere opinion or subjective approach. Hence because of this provision there cannot be any difficulty in enforcing it.

MR. CHAIRMAN: That is a different point. Assuming on the question we will ask the Department to tell us whether they had any difficulty?

SHRI H. M. PATEL: According to the recommendation No. 20 of the Wanchoo Committee, I find nothing to say that this particular thing follows automatically from that recommendation.

MR. CHAIRMAN: It means the necessity of this clause is something which the Department will explain to us.

SHRI K. R. GANESH: The concept was already there. Therefore in the beginning, you were not correct.

MR. CHAIRMAN: If you only broaden the circumstances under which he can issue orders where you find really bullion, money, jewellery and other articles and where you apprehend that these are partly out of income and partly out of undisclosed wealth or wealth which may not be disclosed or income which may not be disclosed, you authorise search and seizure, I think, if it is not in the scheme, it is difficult.

SHRI VASANT SATHE: Why do you feel that there is going to be a harassment?

MR. CHAIRMAN: Mr. Talati, if you have any other argument to advance, you may do so. In the absence of optimism, it is mutually exclusive to both— an assessee and the Department.

SHRI H. M. TALATI: People are being put to all these problems for days together and then subsequently months. This thing already happens under the present provision and it would happen to a large extent if additional provisions are there.

SHRI K. R. GANESH: The committee are interested in not giving very large powers to the Income Tax Department. But you must make some substantial contribution to this and not say things as you are trying.

to say—as if the Department has been harassing people and nothing has come out.

SHRI S. M. BANERJEE: The learned witness is apprehensive of certain harassments if more powers are given to the ITOs. You have made it very clear that you are not in favour of giving more powers to them. We should be cautious about it. The witness is talking of harassment and is, at the same time, sharing the optimism of the Department with us. Can he deny that in the matter of seizures and searches, those people who have honestly cooperated with the Department have not been harassed at all? On the contrary, there are instances to show that the moment certain assesses came to know about the intended seizure, they indulged in all sorts of wrong activities.

MR. CHAIRMAN: You are absolutely right, Mr. Banerjee. If the assesses cooperate with the Government in the matter, there will be nothing to conceal. Maybe, there is trouble involved in attending tax proceedings etc. I can give you an instance. When the houses of film stars were raided in Bombay, one of them raised the plea that there was a rain of notes the day before the previous day and that that star concerned collected some notes; or that they had obtained a treasure all of a sudden. What can be done in such circumstances?

SHRI H. M. TALATI: That is why we have stressed, in our memorandum, the need for having the preventive measures suggested by the Wanchoo Committee, viz. of penalizing the tax officer who misuses the powers. People will then have some confidence in the administrative machinery.

MR. CHAIRMAN: Mr. Talati, you have shifted on to a different, and more difficult ground.

SHRI K. R. GANESH: As a responsible Chamber, you are taking a position that the Department is not facing a problem, as a result of

which certain types of Officers have created havoc in our society. If your stand is correct, the Wanchoo Committee would not have been there. Why should you plead for such people?

SHRI H. M. TALATI: We are not doing it, Sir. That is why we had stated in the beginning itself that we have no sympathy for the tax evaders. We are at one with you on that problem.

SHRI P. G. MAVALANKAR: Should we, at this stage, go into the details and facts about which there is an obvious controversy between the Government and the members of the Committee; and between the witnesses and the Department? The point is that the witnesses say that powers already given are adequate and that if we give more powers, better results would not be obtained. On the contrary, such enhanced powers will result not only in harassment to the assesses but also inroads into individual freedom and privacy of the citizens.

MR. CHAIRMAN: Mr. Mavalankar, the provision of the law cannot be considered in a vacuum or in thin air. It has got to be considered in the context of hard realities. That is why I had asked the witnesses to point out the circumstances which warrant this sort of an amendment. It is not as though the Committee has accepted it. But surely if the witnesses are arguing for something, the Committee should put them to a gruelling test.

SHRI VASANT SATHE: Now that the Chairman has given some concrete instances, can the witnesses give another concrete instance where an assessee who is well-known and reputed, has been really harassed even under the existing law?

SHRI H. M. TALATI: We will send you the details, Sir; we will give you the name, address and every thing about such a case. I am not running away from it.

SHRI S. R. DAMANI: The main objective of the bill is to unearth black money and for achieving it, seizures and searches are essential. The loopholes remaining in the existing Act in the matter of conducting them, are proposed to be plugged through this bill. The purpose is not to give more powers but to do this. Does Mr. Talati agree with this proposal; if not, can he give us some other alternative by which harassment can be reduced and the purpose of unearthing black money can be achieved?

SHRI H. M. TALATI: I was referring to the suggestion made in our memo. which was based on the report of the Wanchoo Committee, saying that there should be a corresponding provision to see that the officials do not harass the assesses; and that if they do, action should be taken against them.

MR. CHAIRMAN: Now let us go over to the next point.

SHRI H. M. TALATI: We now come to the provision regarding compulsory audit. We have suggested that under the present circumstances auditing should not be made compulsory. Our alternative suggestion is that the Department should encourage the assesses to have auditing, by accepting the returns submitted by the latter for some time, in the beginning. People will have recourse to it in course of time, if you make it voluntary and also give incentives.

MR. CHAIRMAN: This is the most extraordinary proposition I have ever heard. If a dishonest man gives a return, how can it be accepted. The purpose behind compulsory audit is to ensure the sharing of the job of scrutiny by a third expert party, since sufficient time for this is not available with the ITO. That purpose cannot be achieved otherwise. We can understand it if you say that there should be no compulsory audit at all.

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SHRI H. M. TALATI: We had started by saying that. Sir.

SHRI S. M. BANERJEE: Instances have come to our notice in which accounts were being manipulated with the help of chartered accounts.

SHRI H. M. TALATI: That itself supports the plea of the Chamber not to have compulsory auditing, Sir.

MR. CHAIRMAN: But the chartered accountants themselves were reticent about taking any responsibility in the matter. Such being the case, the Committee would not be in a hurry to provide for auditing by them.

SHRI H. M. PATEL: The witness objects to compulsory auditing; but the reason for this, given in their memorandum, is that it would create difficulties as far as the interior parts of the country are concerned. Is this their main ground for objection? Is it also not a fact that there were complaints from junior auditors that they were unable to get business; and, therefore, it became necessary under the Company Law to make certain changes?

SHRI M. M. TALATI: I might say, it is not about the work but it is a complaint about company audit.

SHRI H. M. PATEL: It is because junior auditors were not getting work. Larger concerns were doing most of the work. Therefore, many of them had either to starve or go out of business. They were going into other professions. Therefore, the availability of chartered accountants for giving effect to this provision cannot be questioned on that ground. Theoretically, they are available.

SHRI H. M. TALATI: I may give you a few instances. Take, for example, Ahmedabad District. Except the city of Ahmedabad, at no other place there is a chartered accountant available.

MR. CHAIRMAN: Factually, it is incorrect because the institute has given us a list. They seem to be making out a case that they are well spread over. Only the large firms which may not be interested in this audit and those assesseees who think that they will be bothered about will not find anything in it. But from the point of view of the Department, from the point of view of those junior people in the profession. I do not see any reason for objecting to compulsory audit.

SHRI H. M. TALATI: There are no chartered accountants available in mofussil areas.

MR. CHAIRMAN: The Junior chartered accountants will shift to mofussil areas. They have started moving to mofussil areas in the hope that the compulsory audit will come about.

SHRI H. M. TALATI: We welcome that.

MR. CHAIRMAN: They are shifting their offices to mofussil areas.

SHRI H. M. TALATI: Now, I come to Clause 41.

In large concerns, would it be right to expect the whole burden to be passed on to the Managing Director or his senior partner who is in-charge though, as a matter of fact, the details may be looked into by others?

MR. CHAIRMAN: We will consider it. Anything about Settlement machinery?

SHRI H. M. TALATI: About the Settlement Committee, as the President as pointed out, we would wish that this Committee is headed by a judge, so that the assessee has confidence in the judicial approach.

MR. CHAIRMAN: We will consider that.

Another thing here is that a new provision is made by which an immunity given can be withdrawn.

SHRI H. M. TALATI: To the extent it is settled, don't withdraw it. For new things, you take whatever action you like.

MR. CHAIRMAN: Supposing by fraud you get a settlement done, then what happens?

SHRI H. M. TALATI: Suppose a person has concealed his income. Actually, it is Rs. 20 lakhs. But fraudulently, he has shown it as Rs. 10 lakhs and gets it settled. Our suggestion is that so far as Rs. 10 lakhs are concerned, don't withdraw that. For additional Rs. 10 lakhs, you take all action.

MR. CHAIRMAN: Then, there will be no immunity. It is a matter of opinion.

SHRI H. M. TALATI: That action may include even prosecution and imprisonment.

MR. CHAIRMAN: How long are you going to tolerate it. You come for a settlement and, at the time of settlement, you are not going to speak the truth. And you want the dishonest person to be let off.

SHRI H. M. TALATI: You take action for the balance. You may impose any amount of penalty or launch a prosecution and sentence him to imprisonment, whether the amount is Rs. 1 lakh or Rs. 10 lakhs. There is an apprehension that there may be a chance of misunderstanding.

MR. CHAIRMAN: Let me make one thing clear. We do want a settlement machinery with very wide powers to bring an end to all litigation, to bring an end to harassment of the assessee and to have expeditious collection of taxes. Surely, it should not be a device for non-payment of taxes and for more and more fraud. These safeguards have got to be there.

SHRI H. M. TALATI: They should be there.

MR. CHAIRMAN: Therefore, I thought, the chamber would suggest something about it.

SHRI H. M. TALATI: If you find a person who is telling a lie, you send him to 7 years imprisonment. Supposing you find he has concealed Rs. 10 lakhs income, you take all action. But you exclude the first Rs. 10 lakhs.

MR. CHAIRMAN: Why exclude? He has been speaking the falsehood. Even at the time of settlement, he does not speak the truth.

SHRI H. M. TALATI: There may be a difference of opinion in interpretation and understanding.

MR. CHAIRMAN: Then, there is no fraud.

SHRI VASANT SATHE: Kindly see p. 63 of the Bill. It reads:

"An immunity granted to a person under sub-Section (1) may, at any time be withdrawn by the Settlement Committee if it is, satisfied that such person has not complied with the conditions subject to which the immunity was granted or that such person had, in the course of the settlement proceedings, concealed any particulars, materials to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted.

It is not as though there is any difference of opinion. It is only where there is a positive finding of falsehood.

SHRI H. M. TALATI: For what he has disclosed immunity given may be safeguarded. For he has not disclosed and is brought out the severest action may be taken against him. That is only my point.

MR. CHAIRMAN: The entire settlement becomes null and void. The whole thing is open.

SHRI R. V. SWAMINATHAN: What is a settlement? Settlement

means that a person comes to the Department saying, "Please help; please save me. This is what has happened. I want a settlement.' Even then, if he tells lies, if he is not honest, what is the settlement? It is not a settlement at all.

SHRI H. M. TALATI: My next point is about clauses 71 and 72 where rigorous imprisonment is provided for failure to deduct or pay tax. As regards failure to pay, we agree there. But about the failure to deduct, there may be cases of difference of opinion where a person honestly believes that he did not deduct tax. The known case will be payment to contractors, 2 per cent or 1 per cent, as the case may be. The company honestly believes it is not a contract and, therefore, it is not deducted. Later on, the Department feels that it is a contract and, therefore, it should have been deducted. In this case would prosecution be proper? Would it be right to take such people to court?

MR. CHAIRMAN: We shall consider that point. You may go to the next.

SHRI H. M. TALATI: I now come to automatic lien, clause 75. Here the only question would be this. Especially in the case of movables, deposits in banks and shares, if there are assessments pending and the man goes and sells the shares in stock exchange, how is the payer to know that his assessment is pending? Should he insist on tax-clearance certificate in every transactions? He is a bona fide purchaser without notice.

MR. CHAIRMAN: Do you think that his rights are defeated by this provision?

SHRI H. M. TALATI: Yes, Sir.

MR. CHAIRMAN: Have you gone through the proviso which says:

"Provided that such charge or transfer shall not be void if it is made for adequate consideration and without notice of the pendency of such proceeding..."

SHRI H. M. TALATI: Yes, Sir.

MR. CHAIRMAN: At a particular time it is likely that the assessee is not in default....

SHRI H. M. TALATI: At the time of completion, he may be in trouble, he may not be able to pay the taxes.

MR. CHAIRMAN: Clause 75 reads as follows:

"Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge or parts with the possession...."

SHRI H. M. TALATI: Normally at any given time some proceedings would be pending. No one can honestly believe at any particular time that no proceedings are pending against him.

MR. CHAIRMAN: What you are saying is that always some proceedings might be pending....

SHRI H. M. TALATI: Pendency will always be there.

MR. CHAIRMAN: We shall consider this. This point has not been raised by anybody. We shall give a serious thought to this point about pendency of the proceedings and the notice of liability of tax. Thank you.

This is the list of Chartered Accountants in various places. Amreli, Anand...

SHRI H. B. TALATI: Anand is in Kaira District.

MR. CHAIRMAN: Bhavnagar...

SHRI H. M. TALATI: It is in Bhavnagar district.

MR. CHAIRMAN: Gandhidham...

SHRI H. M. TALATI: Gandhidham is in Kutch.

MR. CHAIRMAN: Godhra, Himatnagar...

SHRI H. M. TALATI: Himatnagar is in Sabarkanta district.

MR. CHAIRMAN: Jamnagar, Junagarh Mehsana....

SHRI H. M. TALATI: Jamnagar is in Junagar District. Junagarh is in Junagarh District and Mahsana is in Mahsana District. I want to mention my last point, i.e., about the aggregation of taxable gifts. Our suggestion is that this provision should be made applicable only with prospective effect, from the date of introduction of this Bill in Parliament; this may not be given retrospective effect. One small point about section 64, income's income. Please do not make it retrospective....

MR. CHAIRMAN: I know there are administrative difficulties.

SHRI H. M. TALATI: Please do not make it retrospective. You may try to spell it out in such a manner that it becomes workable.

MR. CHAIRMAN: Thank you very much.

The witnesses then withdrew.)

II. Upper India Chamber of Commerce, Kanpur.

Spokesmen:

1. Shri Gulab Chand Jain, Vice-President.
2. Shri A. P. Gupta, Member of Executive Committee.
3. Shri Manohar Lal, Member, Taxation Sub-Committee.
4. Shri A. K. Basu, Secretary.

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

MR. CHAIRMAN: Before we proceed, I may invite your attention to Direction 58 of the Directions by the Speaker 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." You may proceed.

SHRI G. C. JAIN: May I go on according to my memorandum?

MR. CHAIRMAN: The best course that commends to us is this. You may take it that so far as your memorandum is concerned, it has been read. Do you want to highlight any of the salient provisions of the Bill? Please do so.

SHRI G. C. JAIN: First of all, the Finance Act 1974 has made some changes in the rates of taxation in regard to direct taxes. This does not go far enough. I would specifically refer to the taxation on corporate sector. In this memorandum I have referred to the high rate of taxation imposed under the Finance Act, 1973. The tendency is to increase it still. It would only increase the burden resulting in proliferation of black money as it has been there.

MR. CHAIRMAN: You seem to be suggesting in your memorandum that effect should be given to the recommendations of the Wanchoo Committee in respect of rates. That has now been done.

SHRI G. C. JAIN: That is in regard to individuals but not in regard to companies.

MR. CHAIRMAN: Have they recommended anything in regard to companies?

SHRI G. C. JAIN: In case of companies they have recommended that the rate should be reduced. They say that the high rate of tax evasion is because of this.

MR. CHAIRMAN: What, according to you, is the effective rate of corporate taxation in our country? Have you done any work on it?

SHRI G. C. JAIN: I have not done that.

SHRI ERA SEZHIYAN: In the memorandum on page 1, they have said that the causes of tax evasion as pointed out by the Wanchoo Committee Report are because of (a) to (h). They have made a remark below that the proposals in the Bill ignore the items (a) (b), (c), (d), (e) and (f) above which, one may say, are the core of the tax-evasion and creation of black. Being a very learned man in the field the Committee is very anxious to know how the items (a) to (f) could have been included in the present Bill. (a) is re: high rates of taxation. The budget proposals could not be included in this Bill. (b) is about the economy of shortages and consequent controls and licences. This will not find a place in the Bill. Then comes donations to political parties. This cannot be included directly. Then comes the corrupt business practices. We do not do that. The person concerned with that should take better care of that. (f) is regarding the high rates of sales tax. They do not come under this Bill. Why does he want this Committee to take charge of all these things? We are aware that these things may contribute to the aim of this. Can he explain to us this how this Bill can take care of these things which, he feels, this Bill has ignored?

SHRI G. C. JAIN: Instead of (d) it should be (e). It is a misprint. The main reason for this Bill is to reduce the black money. For that purpose, these things have to be taken into account and legislation should provide for that.

MR. CHAIRMAN: You are a learned man. Even the taxation law cannot take care of economy of shortages and consequent controls and licences.

SHRI G. C. JAIN: It can take care of at least 'Ceiling on and disallowances of, business expenditure.'

MR. CHAIRMAN: It can never take care of (b). Similarly, we can never take care of (f). Anyway if the witness says that Government must take proper steps we can understand. You say that the Bill has ignored the budget proposals. That is not merely outside the scope of the Bill but this is also outside the scope of the entire taxation laws.

SHRI G. C. JAIN: I would submit that items (c) and (e) can surely be taken care of.

MR. CHAIRMAN: (c) could have been taken care of .

SHRI G. C. JAIN: (e) also can be taken care of.

MR. CHAIRMAN: Well, (c) and (e) could have been taken care of.

SHRI G. C. JAIN: My second point is in regard to investments made by trusts. What is provided for here is that the money invested in the companies controlled by or owned by Government should be exempt. This would restrict the scope. My submission is that there should be freedom given to the trusts. Why should they invest in government concerns? There are so many private concerns and also public sector concerns which are not—only owned but may be partly owned by Government. So, the trust money should be allowed to be invested on private concerns. Public limited companies are also giving quite a reasonable percentage of interests on deposits. The Government companies are not making that much profit. Therefore, my submission is that there should be no restriction and our memorandum simply suggests that it should be open in trusts to invest the money just as Sec. 27 (A) of Insurance Act allows LIC. to invest.

MR. CHAIRMAN: Assuming that we define all this, do you accept the principle?

SHRI G. C. JAIN: Even then, I

would not accept that principle.

SHRI P. G. MAVALANKAR: What is the objection of the witness to investments of funds in Government companies?

SHRI G. C. JAIN: My submission is that the government companies may not be making much profits. Why should the trust's money be locked in such companies or concerns in which there is no prospect of a profit? If I invest my money in any progressive company, I would be getting more money. The money is given more or less on government securities.

SHRI P. G. MAVALANKAR: Is profitability the sole concern?

SHRI G. C. JAIN: It is not the sole concern. It is one of the concerns. It may be a prime concern. The Insurance Act provides that in a certain situation, investments can be made in debentures and in preference shares and in other shares. The amount should not only be secure to the Trust but it should also be possible for them to earn a higher income.

SHRI P. G. MAVALANKAR: Tell us what should be the principle laid down under which the trustees might be asked to invest only in those companies? Apart from that, what objection has the witness got to the provision of the Bill?

SHRI G. C. JAIN: We have said companies specified in the Insurance Act be allowed.

SHRI S. R. DAMANI: Since when your Chamber has been registered and working?

SHRI G. C. JAIN: It was established in 1888. It is the oldest Chamber in U.P. Our membership is 200 which comprises of industrialists, businessmen, banks and till recently Government companies were members.

SHRI S. R. DAMANI: You are talking about the investment of the trust money. Please tell us whether the trust money is the property of the public or the property of the trustees.

SHRI G. C. JAIN: It is not the property of the trustees.

SHRI S. R. DAMANI: Then you may agree that it is the property of the public.

SHRI G. C. JAIN: Yes.

SHRI S. R. DAMANI: In that case to what would you give more importance—to the safety of the money or the yield from the money?

SHRI G. C. JAIN: To both—safety as well as yield.

Now I take up clause 7 of the Bill, that is, amendment to Section 16. A slight change has taken place since the Bill was introduced because of Finance Bill. This has lost validity after the introduction of Finance Bill 1974.

MR. CHAIRMAN: Yes, this has become redundant. We will consider it.

SHRI G. C. JAIN: Next I come to clause 12, that is, introduction of new Section 44(b). Sir, if you have a look at it when we are prescribing that the rules be prescribed about what are the books and in what form to be maintained the first clause does not go well.

MR. CHAIRMAN: I think we will reconsider the second part. We would not like to give responsibility to the Board for this. The Board may be responsible for issuing general instructions or directions somewhere but not have the statutory right.

SHRI G. C. JAIN: Then 2 is redundant.

MR. CHAIRMAN: 'As may determine the total income'. It is on assumption that you will have the right to maintain books and the Board if at all concerned will issue directions, circulars giving guidance to them in the offices.

♦ SHRI G. C. JAIN: There is a clash between this and the rule laid down

under the Companies Act. In this regard please see Sec. 139—it has been said that the companies are excluded.

MR. CHAIRMAN: We are thankful to you for this point. We will consider how to synchronise.

SHRI G. C. JAIN: The second point is that the limits prescribed are very small and these should be increased to Rs. 50,000 and 5 lakhs. These two should also be synchronised and the same limit should be maintained.

MR. CHAIRMAN: Our idea is that every assessee (whosoever is a businessman) should maintain accounts. If a person is not running any business, he can get rid of maintain accounts.

SHRI S. R. DAMANI: On what calculations you have asked for this limit of Rs. 50,000 and Rs. 5 lakhs.

MR. CHAIRMAN: This is their own view. Parliament or Government seems to be thinking that maintaining of Accounts will leave lesser scope for tax evasion. So far as the Committee is concerned it is felt that neat and tidy affair of every assessee should be ensured whosoever carries on business.

SHRI G. C. JAIN: Clause 14 and sub-Section 64. To my mind these should not be clubbed.

There is no reason why the benefit of his or her ability should not be given to a wife or husband profitably employed in a company.

Sub-clause 3: My submission is that it is very harsh to keep away minors.

MR. CHAIRMAN: With whom will he be clubbed?

SHRI G. C. JAIN: With the mother or the old grand father.

MR. CHAIRMAN: We are ourselves concerned with this Section and we will carefully go through it.

SHRI G. C. JAIN: Sub-clause (vi): There is no reason, why it should be extended on the same basis, as I have submitted before.

MR. CHAIRMAN: The reason appears to be that a person has a major son. He is an independent assessee. He cannot give something to his wife. Therefore, you find the grand-father a very convenient person to give anything he likes to his grand-son.

SHRI G. C. JAIN: I would like the minor to be excluded from this.

Then I come to Explanation 2. This is much too wide. "Relatives" is a much wide term even as defined in the Income Tax Act.

MR. CHAIRMAN: I personally think, that if clause 2 is a valid proposition of law, then the explanation is reasonable. This is the type of concerns which are sought to be roped in.

SHRI G. C. JAIN: I would respectfully beg to differ.

MR. CHAIRMAN: It is a matter of opinion.

SHRI G. C. JAIN: Clause 19, proviso: "Provided that 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."

It may happen that because of business or service, a person may have a rented house for residence at a place, where he does not own a house. It is, therefore, suggested that the proviso be amended so that its application may cover only such cases where the rented accommodation is not in the same area, where the residential accommodation owned by him or spouse etc. is situated.

SHRI MANOHAR LAL: Further, salaried persons, who are not granted any house or any house rent allowance should be offered this type of concession. That means, this deduction should be made applicable in the case of such salaried persons also.

SHRI G. C. JAIN: Clause 25, insertion of new section 80 VV:

It fixes an artificial limit about the expenses.

MR. CHAIRMAN: We will take care of this.

SHRI G. C. JAIN: Clauses 26 and 27: Amendment of Sections 104 and 109: As I have submitted, the distinction between the closely held industrial company and the widely held company should go. Previously, in respect of the closely held companies, the first slab of lower rate was upto ten lakhs. Now it has been reduced to Rs. two lakhs. On the one hand, the rates have been reduced and on the other these have been increased.

This provision should not be there. Until now, whatever exemption is being granted to industrial companies, that should be allowed to continue.

MR. CHAIRMAN: We will consider that.

SHRI G. C. JAIN: Clause 35, Amendment of Section 131, Sub-section 1A. It says:

"if the Assistant Director of Inspection has reason to suspect that any income has been concealed or is likely to be concealed..."

Our objection is to the word, "suspect", and then "is likely to be concealed". It gives too wider powers. "Likely to be concealed" should not be there. "Concealed" is all right. And then it should be "reason to believe," instead of "reason to suspect".

SHRI VASANT SATHE: Once you say, "reason to believe", "likely to be concealed" becomes relevant. There

will be some evidence, only then he will say.

SHRI G. C. JAIN: That is giving much too power "Likely to be" may be taken as ten years after

SHRI VASANT SATHE: "Reasons to believe" would be sufficient for caution.

MR. CHAIRMAN: Section 131 deals with the powers for discovery of concealed income, etc. After sub-section (1), the following sub-section be inserted namely:—

"(1A) If the Assistant Director of Inspection has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purpose of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income-tax authority." So, if he has reason to suspect, is that good enough? Courts have stated that you may not initiate proceedings unless you have reason to believe that there is some concealment. But courts have invariably stated that we have to give reason for suspicion and certainly you have the authority to go into this question.

SHRI G. C. JAIN: In this context I would like to draw your kind attention to a particular point....

MR. CHAIRMAN: Please refer to Clause 132 (a) sub-section (1). I could have understood it if it is for search and seizure which is a little more than a suspicion, but it is only for an enquiry.

SHRI G. C. JAIN: There is another aspect of it because suspicion here has reason to believe that there is likelihood of concealing. Suppose I have

got the information, I may have to dispose it of earlier.

MR. CHAIRMAN: On cumbersome occasions, one way or the other, is not going to influence us. What is going to influence us is the cardinal principle or the sound principle which is adopted but that is abused either by the assessee or it is not followed by the Department. Then the remedy is elsewhere. Suspicion may not be on a good ground for reopening assessment or putting the assessee to the process of seizure or a search but when they have suspicion, they have invariably good enough of it to go and enquire.

SHRI H. M. PATEL: Suspicion has reason to believe that income is concealed and the other is that suspicion has reason to believe that is likelihood of concealing. Now, there are two subjective elements. For the first one, there is no objection in starting the enquiry. I think he is drawing the distinction between these two.

MR. CHAIRMAN: Suspicion has reason to believe that income is likely to be concealed. So suspicion not of a concealed income but suspicion that which is likely to be concealed means that a subjective assessment is superimposed by another assessment.

SHRI G. C. JAIN: Yes, Sir.

SHRI VASANT SATHE: So in the first place, if the words 'reason to believe' are modified as 'reason to believe that it is likely to be concealed'.

SHRI G. C. JAIN: Yes, Sir.

MR. CHAIRMAN: We will consider it. Any other major point that you would like to contribute.

SHRI G. C. JAIN: In regard to the settlement machinery, one is about the withdrawal of permission. Incidentally there is one small point about the Section 221, that is about the reduction of the penalty. If the tax is paid already altogether, then the penalty goes but if it is reduced, then the penalty is not reduced proportionately. As the law stands at

present, if the tax is wholly reduced or if the tax is partly reduced, the same penalty stands. Why is it so?

MR. CHAIRMAN: That is the provision made under that Section.

SHRI MANOHAR LAL: Sir, there is no provision for partial reduction of penalty.

MR. CHAIRMAN: Is it Section 221 sub-clause (2)? Possibly the rationale is that you still continue to be a defaulter. But your point is about the quantum of penalty. We will consider it. If I understand it rightly the levy of penalty is not related to the quantum in respect of which a default has been committed; it is in respect of a default. There is a provision for partial relief also and not that there is automatic partial relief.

SHRI G. C. JAIN: Yes, Sir.

MR. CHAIRMAN: It depends upon the circumstances; we will consider it.

SHRI G. C. JAIN: Chapter XIXA, Section 245 (D) and sub-clause (3). My submission is that where the settlement committee does not accept the whole application as it is, then an assessee should be allowed to withdraw his whole application.

MR. CHAIRMAN: How can they accept half and reject half? Assuming you apply for settlement for five assessment years and they say that they will take settlement only for two years, so, it is final only in respect of two years.

SHRI G. C. JAIN: Why should I be bound to have the settlement for two years and ignore the three years thinking that the whole settlement will be good to me?

MR. CHAIRMAN: You have made a very valid point. I think no one has made this point so far. You are taking the settlement as a whole and they only take part of it and you do not want that?

SHRI G. C. JAIN: Yes, Sir.

MR. CHAIRMAN: In such cases where a prayer is not granted, some option should be given.

SHRI G. C. JAIN: I should be allowed to withdraw. But, all the same, that option should be given to me.

MR. CHAIRMAN: Will it take care if a provision is made that only a part of the subject is taken up for settlement at the initial stage and it will be opened to the assessee to withdraw the entire application.

SHRI G. C. JAIN: That will suffice.

SHRI H. M. PATEL: There should not be this partial business, otherwise there is no justification for this settlement.

MR. CHAIRMAN: I entirely agree with you. But under certain circumstances, it could happen that the settlement machinery will say, all right, these two settlements are complicated and two are not. Would you agree that two settlements should go to the ITO and two not?

SHRI H. M. PATEL: I would not.

MR. CHAIRMAN: Supposing, a person is coming for settlement for five assessment years. There are complications for the first four assessment years and there is no complication for the fifth assessment year. It can proceed in the normal course.

SHRI H. M. PATEL: Let the settlement machinery settle it.

MR. CHAIRMAN: Settlement is not a substitute for regular assessment.

SHRI H. M. PATEL: At the initial stage, they will say that they will take only this and not others. Let them decide at the initial stage.

MR. CHAIRMAN: That is how the law might be changed. Mr. Jain, you have made a very good point.

SHRI H. M. PATEL: The whole scheme is that if you want things to be settled, then you have a recourse to this provision. If that is so, then they do it for the entire matter and

not for partial way. Therefore, it is incumbent upon the settlement body that if it accepts for settlement, it must settle; if it does not accept, then let us not proceed. If it says that it will take up this and not the other, then it is not his agreement that it was not considered. So, he should be permitted to come again.

SHRI G. C. JAIN: Sub-section 2 of Section 245 (G). Here, there is no time limit. If the Settlement Committee is satisfied, it may be withdrawn within a particular number of years; but not later. It should not be open for all times. I am dealing with Section 245H sub-section (2); I am sorry for the mistake. A time limit should be provided for the withdrawal; otherwise it may be said after five years that the immunity is withdrawn.

MR. CHAIRMAN: What is to be done if it is found that the settlement has been arrived at by giving false evidence?

SHRI G. C. JAIN: It should be done within a particular period thereafter, say 2 years from the date of the knowledge that the conditions have not been fulfilled.

MR. CHAIRMAN: It may come to knowledge 10 years after the issue of the order; but the immunity should be withdrawn within two years thereafter. I think it can be considered.

SHRI G. C. JAIN: I now come to Section 249, i.e. Clause 60 of the bill. This is in regard to appeal. My objections are two. One is that instead of the word "admitted", the word 'heard' should be used. Secondly, we have to take into account the fact of time having been allowed in certain cases; and make an addition of a certain phrase, as mentioned in our memo. Otherwise, I might be taxed. If time is allowed, it should not be a bar. The position in respect of these two points should be made clear here.

MR. CHAIRMAN: How long would they remain admitted, but unheard?

SHRI G. C. JAIN: It might be for 3 years, Sir.

MR. CHAIRMAN: If the appeal is admitted but not heard for an indefinite period, what would happen?

SHRI G. C. JAIN: It would not happen, Sir; there are certain rules and regulations requiring that they must be heard within a certain period.

MR. CHAIRMAN: That means that if he does not pay it will be heard *ex-parte*, on merits. Suppose it is filed, it is admitted; it is on record. It cannot be heard until he pays.

SHRI MANOHAR LAL: It may be rejected outright, Sir.

MR. CHAIRMAN: You must have seen several judgments proving that even an *ex-parte* order cannot be an order of dismissal. When the proviso is there, why are you afraid? It takes care of hard cases.

SHRI G. C. JAIN: The next point is about penalties and prosecutions. I feel that we have too many of them.

MR. CHAIRMAN: Let us go clause by clause; we would then be more objective.

SHRI G. C. JAIN: Now I come to Clause 65 of the bill, relating to the addition of Section 271A. Here it says:

"Without prejudice to the provisions of section 271, if any person, without reasonable cause, fails to keep and maintain any such books of account and other documents as required by section 44B or the rules made thereunder, in respect of any previous year or to retain such books of account and other 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 . . .'

Here it means that the man has not kept any books and his income is not assessable. Under the provisions of the Act, I was supposed to keep the books; but I do not keep the accounts; but I am not, at the same time, taxable for the current year. I do not know on what basis this provision has been made. That means I am suffering a loss for committing a mistake i.e. maintaining books of account.

MR. CHAIRMAN: That is the ultimate outcome of the two provisions; if you do not keep the accounts, penalty would be leviable on the basis of the difference in the returned income and the assessed income.

SHRI MANOHAR LAL: Non-maintenance of accounts itself, irrespective of the amount of concealed income, should be punishable.

MR. CHAIRMAN: Should it not be with reference to the income avoided?

SHRI G. C. JAIN: In that case, a minimum penalty should be there; otherwise it would mean that a person is defaulting in one particular aspect and still he escapes.

MR. CHAIRMAN: In some cases, even if he does not maintain accounts, but submits correct accounts, he gets out of it.

SHRI ERA SEZHIYAN: You want the emphasis to be shifted from the tax avoided to the income. We are more concerned with the tax avoided.

SHRI VASANT SATHE: Why should we not provide for a fixed penalty for not maintaining accounts?

MR. CHAIRMAN: We will consider it.

SHRI VASANT SATHE: I want to know why this percentage basis is mentioned here. If non-maintenance of accounts is not to be penalized, why should people maintain accounts at all?

SHRI G. C. JAIN: There are two more points, Sir, I take Clause 273A first. Please refer to sub-section (3), which says:

"Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order."

I can get the benefit of waiver of reduction in interest only for one year. When the power vests in the Commissioners of Income-tax? They should be allowed to use discretion. Why should their powers be curtailed?

MR. CHAIRMAN: An assessee must not become a habitual delinquent.

SHRI G. C. JAIN: That will be taken care of by the Central Board of Direct Taxes. Why should their powers be curtailed?

MR. CHAIRMAN: There may be circumstances.

SHRI G. C. JAIN: In regard to Clauses 71 and 72, my submission is this. What is the main offence? Is it whether I want to avoid tax or I do not want to pay tax in time? Here, we have something over-lapping interest, penal interest, penalty and prosecution.

My suggestion is that we should give a chance to the person to reform himself. In the first instance, supposing the man does not pay tax, does not file the return, it should be by way of interest. Then, the rate of interest should go on increasing. Beyond that, there should be penalty and then there should be prosecution.

MR. CHAIRMAN: Are you talking of an unwarranted assessment or are

you talking of a person who is a delinquent or who is a tax-evader?

SHRI G. C. JAIN: Who is a delinquent. There are so many types of defaults. I have taken all the Sections 276B, 276C, 276CC, etc. together. We have got too many penalties. They should be rationalised.

For the first failure to pay advance tax or to file the return or to pay tax in time, an interest may be levied, for the time being, for 2 or 3 months. After that, the rate of interest may be increased for another 2 or 3 months. If he still does not pay, he should be penalised. After that, he should be prosecuted. A time-limit should be fixed. If he does not follow that, you proceed accordingly. In the first instance, you levy an interest; then, at a higher rate of interest; then, you impose a penalty and then, you launch a prosecution. So, a man will think, if he pays the tax in time,

he will gain this much. Otherwise, for every default, the whole gamut is open. That will not be reforming the man. An attempt should be made to reform the man, not to think of only punishing him. Of course, no leniency should be shown to the man who does not pay tax.

SHRI VASANT SATHE: What will be your view to making all assessments and returns a public document?

SHRI G. C. JAIN: I will not have any objection to that.

MR. CHAIRMAN: Mr. Jain, thank you very much. You have put in a lot of labour and effort in studying these Clauses. Your evidence has been of a help to the Committee. We appreciate it.

SHRI G. C. JAIN: Thank you, Sir.

(The Committee then adjourned.)

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

Friday, the 14th June, 1974 from 09.00 to 13.15 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agorwala
4. Shri Chhatrapati Ambesh
5. Shri Bhagwat Jha Azad
6. Shri S. M. Banerjee
7. Shri Dharnidhar Basumatari
8. Shri Tridib Chaudhuri
9. Shri S. R. Damani
10. Shri K. R. Ganesh
11. Shri D. P. Jadeja
12. Shrimati Shiela Kaul
13. Shri Maharaj Singh
14. Shri Amrit Nahata
15. Shri H. M. Patel
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri R. Balakrishna Pillai
18. Shri Vasant Sathe
19. Shri Era Sezhiyan
20. Shri K. K. Shetty
21. Shri V. Tulsiram

LEGISLATIVE COUNSEL

1. Shri S. Harihar Iyer—*Joint Secretary and Legislative Counsel.*
REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)

1. Shri S. R. Mehta, *Chairman, CBDT.*
2. Shri C. C. Ganapathy, *Member, CBDT.*
3. Shri I. P. Gupta, *Joint Secretary.*
4. Shri S. Narayan, *Joint Secretary.*
5. Shri R. R. Khosla, *Director.*
6. Shri S. I. Tripathi, *Deputy Secretary.*
7. Shri O. P. Bhardwaj, *Deputy Secretary.*
8. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

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

WITNESSES EXAMINED

- I. Shri R. D. Shah, *Former Chairman, Central Board of Direct Taxes.*
- II. Shri M. R. Yadi, *Former Finance Secretary.*

I. Shri R. D. Shah, *Former Chairman, Central Board of Direct Taxes.*

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

MR. CHAIRMAN: Well Mr. Shah, we welcome you this time on the other side of the table.

Before we take your evidence, I may point out to you direction 58 of the Directions by the Speaker 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." You may proceed.

SHRI R. D. SHAH: I would only make one request that on points where I might be giving out my personal experience to illustrate certain points that I would not like to be made public.

[As requested by Shri R. D. Shah, certain portions of his evidence—marked asterisks—have been treated as confidential. Two copies thereof have been kept in Parliament Library for reference by the Members of Parliament.]

MR. CHAIRMAN: It is entirely your volition and discretion in the matter. You tell us whichever of the portions you do not want to be made public.

SHRI R. D. SHAH: Sir, if the Committee permits me, I would like to proceed from apparently rudimentary principles in order only to develop the subject and the point that I am making. So, I would first of all begin with the problem of blackmoney itself which has been engaging the attention of the Committee and the Government.

In my opinion black-money can be divided into three sectors. The first sector is the sector where the black-money is generated in a manner that even if the tax-payer desires that he should account for it he would not like to do it for the simple reason

that it would involve him in various other criminal proceedings. For example, any money that is generated as a violation of controls; this violation in itself would make the tax-payer or the businessman liable to criminal prosecution. Although the Members have gone through the report of the Wanchoo Committee, yet I may be permitted to make brief reference to the report only with the intention of reinforcing my views which are some times in consonance with the report. Mr. Chitale says:

"So far as our economy will be confronted with shortages in one sphere or the other and the forces influencing the demand for black money continue to operate, it is difficult...."

So, in this economy of shortages where various aspects of functioning are controlled, the violation thereof generates black-money; but the tax-payer will not be in a position to declare the black-money unless he exposes himself to criminal proceedings. Therefore, I consider that the sector where the black-money is generated as a result of the existence of controls and its ineffective implementation by the various enforcement agencies, that sector will be dealt with by the Income-Tax Department to a very limited extent.

MR. CHAIRMAN: You mean to say the intent of tax evasion is just incidental.

SHRI R. D. SHAH: In this case it is incidental.

There is another sector where the black-money is generated with the object of evading taxes. There is the second sector which includes black-money generated by tax evasion e.g. where the prices have shot up and an individual can declare his profits if he so wishes. However he does not account for the full extent of profits and for that purpose he adopts various means and methods to reduce his accountable income which he can declare but he

does not wish to do. The Department can play a very vital role in controlling or in meeting with the aspect of black money created by the tax payer with the primary aim of evading or reducing his tax liability.

I would, therefore, divide the black money into these two sectors and the extent to which the tax payer, the administration and the law—the law which we are trying to amend, can deal with it. It will depend upon whether the extent of black money is generated in the first sector or in the second sector. As it is, it is difficult to quantify the black money. The quantum of the black money which can be detected or controlled, will depend upon the quantum of generation of black money in the first sector *vis-a-vis* black money in the second sector.

The third sector that I would like to indicate is the one where the black money that has been generated in these two sectors ultimately flows into; what is known as investments, ostentatious living and similar other channels through which it manifests. Its manifestation can be dealt with by the Department but we must bear in mind this aspect that the first sector is the source. The various control agencies, various departments of the Government, if they have failed to control the creation of the black money, the Department would have to wait so far as this sector is concerned, till this black money gets manifested and to the extent it is manifested; in the process, a good part of it might be frittered away which cannot even be noticed by the Department. The third sector is composed of the black money generated from these first two sectors. The third sector is its deployment, manifestation and consumption.

I will first deal with the second sector.

SHRI ERA SEZHIYAN: So far as I could understand Shri Shah, he said:

1. The first sector is of persons, due to various controls and other scarcity created in the market, even though they want to be honest or are honest but are saddled with the source of black money.

2. Black money is being created by evading the tax measures.

3. The manifestation stage.

Where the black money flows from one sector to the other or whether there is a water tight department in each sector, what is his view? Rs. 10,000 crores start from the first sector; does it go to the other sector and then the third one or about three thousand is in the first sector, 3,000 in the second one and 4,000 in the third sector. Is there a continuous flow where you want to demarcate them or does he say that those are the places where the black money is created and also operates?

MR. CHAIRMAN: There is a bit of difference in understanding between me and Shri Sezhan. My understanding was the person who is otherwise not willing to abide by the controls, etc. willy nilly has to take recourse to clandestine structures. All the three sectors deal with dishonest assesseees or dishonest citizens. There may be difference of degrees.

SHRI R. D. SHAH: The first sector is one where the money had been generated and kept out of the accounts for the larger fear that it would also involve him in criminal prosecution. The fruits of the first sector move into the third sector. The second sector is one where all the profits can be legitimately accounted for. A man purchases certain articles and there is no control. He can demand the selling prices which is very high and, therefore, he makes very substantial profits. In his accounts he reduces his profits with the intention to evade taxation. The money created by this manipulation of accounts in various ways go to the second sector and ultimately flows into the third sector. The

first sector is independent of the second sector but the fruits of the two sectors flow into the third sector in the form of manifestation.

SHRI ERA SEZHIAN: The black money is generated from two sources:

1. To overcome control.
2. To evade tax.

Both of them flow from different origin into the third sector. Both of them are un-accounted. These should have been brought into account and they should have been taxed. Even at the first stage it is liable for taxation. It is not as if it can escape taxation. There is also avoidance of taxation.

SHRI R. D. SHAH: In the first sector even if the man wishes to pay the tax he would not do so because it would also bring about another criminal liability because the money generated is not violation of controls and various other activities. In the second sector, the Department can play an effective role and a partially effective role so far as the third sector is concerned. So far as the first sector is concerned the Department can play very little role. To what extent the Department can deal with this problem of black-money depends upon their role in the second and third sectors. That is the point I want to make.

SHRI S. B. P. PATTABHI RAMA RAO: Where do you place the black money by way of taking bribe to a high attitude in to high offices?

SHRI R. D. SHAH: I shall put that down in the first sector. The man would not account for it because Govt. rules do not permit acceptance of such an amount.

SHRI AMRIT NAHATA: I think, one assumption that Mr. Shah is making is slightly doubtful. He says that the first sector is composed of persons, who do not pay tax, because their incomes are otherwise illegal.

And even if they wanted to pay tax, they could not.

MR. CHAIRMAN: Because there are other offences connected with tax evasion.

SHRI AMRIT NAHATA: The assumption is that otherwise he would like to pay the tax.

SHRI R. D. SHAH: Even if he wishes to do, he would not be able to do it.

MR. CHAIRMAN: It could happen in a given case in a million.

SHRI AMRIT NAHATA: This would lead to very misleading conclusion that we should do away with controls etc.

I can divide the account books into three categories. One is hard-earned honest money and honest payment of tax, second is hard-earned money, but tax evasion, and the third category is dishonestly earned money and tax evasion.

MR. CHAIRMAN: And the fourth is its utilization.

SHRI R. D. SHAH: What I was trying to say was that the extent to which the Tax Department can play an effective role depends on the sector. Towards this direction, the Wanchoo Committee has very rightly and wisely dealt with not only the changes in law to be brought about, but also the emphasis that they have laid on the tax administration itself. I am only illustrating this point in order to indicate the extent to which the Department can play an effective role.

The Wanchoo Committee has divided its report into two parts, one is the tax administration and the other is the law. You might have the most sophisticated law, but a poor administration. You might have reasonable good law, but a very dynamic administration and you might have both a sophisticated law to deal with all

sorts of problems and also an effective administration. In my humble opinion, if I were given a choice of having the present law, but an administration which has been very largely discussed by the Wanchoo Committee in its report, I would prefer a stronger administration even with the present law, rather than have a sophisticated law and the present state of administration.

MR. CHAIRMAN: Do you think that the administration is weak to administer the present law?

SHRI R. D. SHAH: If you will permit me to express my frank opinion about the matter, I would certainly say this that the department started functioning in 1921 and the Wanchoo Committee report has come in 1970. The department has ceased to develop and grow on proper lines to deal with the menacing problems of vast magnitude. I will quote in support briefly the various paragraphs of the Wanchoo Committee report.

MR. CHAIRMAN: We want to fall on your experience.

SHRI R. D. SHAH: I personally feel that the Wanchoo Committee, after a thorough examination has come down to make certain statements which bring out the deficiencies of this Department. Unless they are made good, you might give me a very sophisticated law, but I doubt, whether I would be able to produce any worthwhile result. At no moment, I am criticising any individual, I am only expressing my opinion about the system that we have created to deal with this problem. In this connection, Wanchoo Committee itself has written:

Page 126, para 6.1:

"Shortcomings in tax administration can frustrate even the best of tax policies. Though our terms of reference relating to review of the administration and its procedure are incidental to the primary terms of reference, we place no less im-

portance 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."

As I go on, I will illustrate any number of points and the problems which have been set this Department and may I say very frankly that on many occasions, I found myself very much frustrated and helpless. If this is the fate, whoever may be the Chairman, I doubt, if we would be able to achieve the results. You may make a law, which you consider is effective, but it will only bring frustration to the Department under the present circumstances. Therefore, I want to deal with the aspect of tax administration in the best possible manner, and if necessary, indicating the extent to which the position of the Board as well as its Chairman is hampered by various limitations so that he just cannot function.

Once I was reconciled to the position that the Board could function under the Ministry but with enlarged financial powers. As time passed, I have come down to this conclusion that the Board has got to have an autonomous existence; if it has to function satisfactorily it has got to have its own finance instead of depending upon another department, though of the same Ministry of Finance.

MR. CHAIRMAN: That money was not allotted to you?

SHRI R. D. SHAH:****The Board can function with urgency only if its Chairman has an adequate status and I think there is nothing more necessary than a complete autonomy. It has been recommended by the Working Group of the Administrative Reforms Commission though it was turned down by the Reforms Commission itself. Now, I will read out for your information from page 128,

para 6.9 of the Wanchoo Committee Report, as to the observation of the Reforms Commission. It says:

"The Commission would therefore recommend that rather than be deprived of its policy making responsibility, the Central Board of Direct Taxes should be allowed to function as a self-contained department administering not only its subordinate offices but also its headquarter establishment."

This was the recommendation. Even where the complete autonomy for the Board was not accepted, I will now indicate to you how the Board functions and then you can see whether it is possible for the Board or the Chairman of the Board to be responsible for what besets the Department for its failures. For example, the position of the Board is something like that. Somebody provides a land over which the Board has little choice *i.e.*, the various economic policies, which constitute the framework of the law. Somebody (the Department of Expenditure) issues the seeds, over which the Board has little control as to its quantity. Somebody dictates what manure to use and the Board is ultimately responsible for producing that quality and quantity of foodgrains which is the expectation of the Parliament and the people. I really do not know how can it function.

Sir, you were present in a television interview when the returns were printed late and there was a lot of public criticism for this late publication of the returns. I had to even seek the assistance of the Finance Minister in order to reach the target. We had to make a lot of effort. You can imagine the state of a bank which has no say pay-in-slips etc. and still it is supposed to run. For example, I went to Gwalior during war time. There the staff told me, "We could use to the occasion, but kindly give us challans so that we can issue demand notices." What happens is

that stationery and printing is handled by one department, housing needs are handled by other department, personnel policies of the Board are handled by the Personnel Department and so on. The technical staff is drawn from the field organisation partly or largely and they have a fixed tenure on which the Board has no control. If it is found that a particular man is not upto the mark, well, we have to put up with him. Frankly speaking, every word, that I say is true; it is further corroborated by an independent Committee like the Wanchoo Committee; it has rightly criticised the Department. Therefore, I would say that where there is a responsibility, there must also be power.

MR. CHAIRMAN: In view of what you are telling, it is very shocking. Did you ever make any efforts to get this autonomy business incorporated in this law?

SHRI R. D. SHAH: I do not think it will form part of the law. As I mentioned it earlier also at one point of time I was reconciled to a position that the Board with added financial powers could function satisfactorily. Now, I have come to the conclusion that nothing but complete autonomy can help the Board. There is no question of my trying. If my successor and his successor has to function with effectiveness, then there is nothing better than the autonomy of the Board.

SHRI H. M. PATEL: He said that when this Wanchoo Committee's proposal was under consideration, he was of the view that perhaps with the granting of additional financial powers, the Deptt. might be able to function satisfactorily. Now, he has come to the conclusion that it would not be sufficient. What is necessary now is complete autonomy. Have I understood you correctly?

SHRI R. D. SHAH: Yes, Sir. As time passed my views have changed. The Board has been given secretarial assistance which is drawn from the field. We judge persons on the basis of confidential rolls. Some persons may be excellent in field work and others not. But in view of the prevalence of various procedures and rules regarding fixity of tenures, if a misfit comes into the apex organization, he sticks to it and becomes almost a drag. I am only trying to indicate why I have gradually veered round to the opinion that the Board should have an organisation just like the P&T Board wherein all the staff is drawn from the field offices. The Wanchoo Committee had said that there should be a tenure—I would not say that—so that the officer goes back to the field and does not become fossilized to one type of work. It is not only financial powers that we need to solve the problem. Even if we have them, we would still be in the hands of the Printing and Stationery Department for our requirements and of the Ministry of Housing for renting out the premises etc.

MR. CHAIRMAN: Your remarks appear to me to be of a very fundamental character. You seem to be building up a case for a huge superstructure without a foundation. Would you clarify our doubts at this stage; or should we listen to you fully? It would be better to proceed point by point, unless you feel interrupted.

SHRI BHAGWAT JHA AZAD: At the end, we may not be able to get all the points clarified.

SHRI R. D. SHAH: As I had said in the beginning, even though these points are made out by me, I would reinforce them by quoting the views of the Wanchoo Committee on the subject. But I am not depending on their views, because what I say is based on my own personal experience.

MR. CHAIRMAN: Whatever be the modality that you adopt, your contentions create some doubt in our minds about basic things.

SHRI BHAGWAT JHA AZAD: Mr. Shah's remarks only show how this Board is functioning at present. All our criticisms so far about the Board are now justified by the remarks of its ex-Chairman. Mr. Shah has seen as to how the bureaucracy functions, himself being a bureaucrat. We had the same feeling. We fully understand and appreciate his views; but when he asks for another bureaucratic, autonomous board for this purpose, how is he confident that it would solve the problems? I give the example of the Railway Board, the biggest board in the country with so many officials. It is the whitest elephant and still the worst undertaking among autonomous boards in the country that has brought us to the brink. Now about the P&T Board, about which also he had mentioned. Nothing clicks in relation to the P&T Board's working. We do not get a telephone call in one trial. We must try a dozen times. Sometimes, we may not get the number even then; and we may have to run with the car to do the job. So far as his analysis is concerned, he is correct; but probably, not in his suggestion.

MR. CHAIRMAN: This point was there in my mind also, Mr. Shah.

SHRI R. D. SHAH: I would try to clarify the point raised by the hon. Member. There is a limit to which even the most dynamic person in charge of the Board as it is at present, can function and produce results. If you remove the handicaps in its working, I would say, along with the hon. Member, that we should hold that person responsible for its failure. We have tried the present system since 1921; and we have found that these handicaps make it ineffective. They are so real and serious. We should try to improve the situation, if necessary by changing the *modus operandi*. I

may be permitted to quote some material, which might answer, to some extent, the points made by Mr. Azad. It is found at page 127, para 6.7, thus:

"The Board does not have the same independent status as the Railway or the P&T Board has; it is a part of the Department of Revenue and Insurance. This restricts its administrative and financial powers and impinges on its independence. The Internal Finance Cell of the Department of Revenue processes the proposals of the Board having financial implications; yet does not function as part of the Board. Most of the proposals have also to be referred to the Department of Expenditure of the Finance Ministry for approval. Such complete dependence for financial sanction or approval on an outside agency, which may not be alive to the importance or urgency of the problems of the Department, is a serious handicap from which the Central Board of Direct Taxes suffers."

I gave an example where one of my proposals was turned down. Another example regarding the project of Directory of Permanent Account Numbers. The whole amount was sanctioned by the hon. Minister; but for the sake of a small amount it got involved in a controversy which meant loss of time till the project was wholly cleared. Last year, I wanted to introduce programmed calculators but it got delayed because of the various rigmaroles etc. involved in it. It was intended to be implemented by the 1st April of last year; but it could not be taken up till the end of April this year. How can you function in such circumstances? Time is the essence of the matter. I will quote a further handicap of the Board.

SHRI BHAGWAT JHA AZAD: Mr. Shah has emphasized and is re-emphasizing the point about the limitations of the Board. He has chosen to give

us examples viz. a scheme not approved, one post of Assistant Director not provided etc. He also had certain other minor requirements, which were not met. He has taken up the same point which was emphasized before us in Madras when Mr. Shah was there and in the meetings held here.

Is the Chairman of the Board so helpless that he cannot provide to his subordinate officers in different headquarters even the papers, pencils, typewriters for typing orders for assesses, etc.? The point was raised at Madras and other place; also. Is it so much? If it is so much, we must think over it.

For example, he said that one scheme could not be given effect to by the Board for want of an Assistant Director. Am I to understand that the Chairman of the Board cannot reorganise the functions of the Board which, according to outsiders, looks very top-heavy? How is it that this very Board keeps its sanctioned strength at 1200 Officers and fills only 600 Officers? How is it that the Board, while running the Central Circle with Class II Officers, keeps 600 Class I posts vacant? Is it the limitation of the powers of the Chairman of the Board? We want to understand it. How is it that meeting small requirements of the Board, re-arranging the staff of the Board, keeping 600 posts vacant, is beyond the purview of the Chairman? If it is so, I want to know whether the powers given so far have been properly utilised or not utilised or mis-utilised or under-utilised.

MR. CHAIRMAN: Are there 600 posts lying vacant?

SHRI R. D. SHAH: I do not know about the figures I would like to make one thing clear here. I did not say that I could not get the post. What I said was that I got the post after a lot of struggle for it. The time factor is the most important

thing. About Class I and Class II posts, it has got so much of historical background.

MR. CHAIRMAN: I am not going into that. Is it correct that 600 posts are still lying vacant?

SHRI BHAGWAT JHA AZAD: Is it that small requirements could not be met or the posts already sanctioned could not be filled because of the limitations of the Chairman? Does the Chairman want more powers to have these things done?

SHRI H. M. PATEL: He has used the word "small" requirements. But these are of very great importance. He gave an example that the Finance Minister gave his approval to the introduction of Permanent Account Numbers. Thereafter, to give effect to that decision, several months' time was wasted because the Expenditure Department would not give sanction for a certain amount. Therefore, he used the word "small" requirements. I only wanted to clarify what he meant.

SHRI BHAGWAT JHA AZAD: This point has been emphasized before us at Madras, Calcutta and Bombay, that there are certain things which are not being done in the Subordinate Offices. Are they also the limitation of the Chairman? Why can't the Chairman provide such things for the efficient functioning of the Board?

MR. CHAIRMAN: Within the powers available to him.

SHRI R. D. SHAH: I may try to clarify it. The point is that you have to rely on various Departments and Ministries for it...

MR. CHAIRMAN: For 600 vacant posts, are you so much dependent on other Departments? Is it correct factually that they are 600 posts still lying vacant?

SHRI R. D. SHAH: To the extent Class I posts are vacant....

MR. CHAIRMAN: You forget about Class I and Class II. Are there 600 posts vacant?

SHRI R. D. SHAH: Always there may be some posts lying vacant because the D.P.C. takes some time and sometimes we get ad hoc sanctions.

SHRI BHAGWAT JHA AZAD: That is not the point. I am quoting from the Public Accounts Committee. I am not going into the historical background of that or the quarrel before the Supreme Court.

My question is very specific. The ex-Chairman of the Board said about the small requirements. I am only trying to understand it. How is it that about small requirements which have been emphasized before the Committee in Madras, Calcutta and Bombay, it is not possible for the Chairman to coordinate the functions for efficient working of the Board?

There as a sanctioned strength of Class I officers. I do not know what is the position now after six months or one year. I am told, by ad hoc promotions, they have been filled up. As the ex-Member of the Public Accounts Committee, I know the sanctioned strength of Class I officers was 1200. At that particular moment, when we examined them, only 600 posts were filled. Even the Central Circle was being run by Class II officers whereas Class I posts were lying vacant.

I want to understand how could that be that for doing these things, there should be autonomous powers given to the Board. How is it that these things which, according to us, are within the powers of the Board could not be done?

MR. CHAIRMAN: Whatever be the reasons, are these figures factually correct?

SHRI R. D. SHAH: That can be verified by the present Chairman.

MR. CHAIRMAN: To your knowledge.

SHRI R. D. SHAH: The hon. Member said that 600 Class I posts remained vacant. But they were filled to a very large extent by Class II officers. Out of 3000 and odd posts all over the country, some posts will remain vacant for some time or other for the holding of the D.P.C., etc. But this problem is really an involved problem because of various complications. I would not like to take that as an instance.

If the intention is to say that the Board could have functioned better, I would say that there is always a scope for improvement. What I am trying to emphasize is that the improvement also calls for a certain amount of environment under which it can improve. As I was talking about the small requirements, I would like to give you a few instances.

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What I am saying is that when the dependence is too much on other Ministries on which the Board has no control, it cannot function properly.

This is my personal view. What I am trying to indicate is that it has also the blessings or the approval of a very eminent Committee, the Wanchoo Committee, which has visited a large number of places and has had talks with the various people. As the hon. Member says, this was a point made out at Madras. Calcutta and everywhere else.

SHRI S. R. DAMANI: It is a very important Board because it has responsibility of collecting a huge amount, collecting more information about the assessees. Therefore, from the explanation given by Mr. Shah, I understand that this Board requires some limited autonomy so that they can meet their requirements and bring efficiency in the working of the Department; otherwise, for small things there is delay and things are held up. Now I want to ask one question in this connection, Mr. Shah

has visited many countries. I want to know whether, in those countries the Boards are autonomous, to what extent they are autonomous, how they are functioning, how they are able to make quicker assessments and reduce the arrears and also bring to book the tax-evaders.

SHRI R. D. SHAH: On this question, to what extent you want to make the Board autonomous, to what extent you want to increase the financial powers, to what extent you want to allocate to it a status, I would say, an independent examination may be made.

SHRI VASANT SATHE: From what you have been telling us, we feel that your Board is handicapped because even for small matters it does not have powers. But you seem to be going to the extreme conclusion that the Board must be completely autonomous. Is it because of a certain amount of frustration that you have come to this conclusion? Within the framework of the Department, with certain more financial powers, the Board could be more efficient. I will tell you why we feel this. As has been said by Mr. Bhagwat Jha Azad, the experience of completely autonomous Boards like the Railways and the P&T is not very encouraging. Therefore, can we not harmonise the two—have control over the department as part of the Ministry which is answerable ultimately to Parliament and yet give the Board adequate financial as well as administrative powers? Will that meet the requirement? All the examples that you have given come within the realm of financial powers as, for example, providing taps, providing lifts in staff quarters, providing stationery, appointment of a director, etc. If those powers are given—without making the Board completely autonomous—, will that meet the requirement? I say this because once it is made completely autonomous, as has been our experience, if a good man is there, it

is alright; otherwise that runs amuck and behaves in an irresponsible manner; there is no accountability in such boards. What have you to say on this?

SHRI R. D. SHAH: These petty examples which I have given have been given deliberately; it was only to illustrate the handicaps. These small things are illustrative of the handicaps of the Board. It is not out of any feeling of frustration that I say this. If you want a certain objective to be achieved by a certain time and if you find that, in spite of the best will in the world, you cannot do it because it is controlled by some one else, you feel ultimately that this dependence on others is not going to help.

SHRI VASANT SATHE: If those powers are given, will that meet the requirement?

SHRI R. D. SHAH: To what extent the P&T Board would have functioned better if it were like that, etc., will have to be studied. But what I am saying is that this is a problem which you have to consider before you think of achieving results merely as a result of this Bill.

SHRI ERA SEZHIYAN: Though the provisions of the Bill do not relate to the matter that is under discussion, because it is a very important matter raised by him we would like to have the fuller appreciation of the contents of his submission. I fully support the demand for autonomy by which I mean that the Department or anybody who has been given a responsibility should have sufficient facilities or resources to discharge the responsibility assigned to him. You have cited certain examples. I want to know whether there has been any planning to obtain these things. All these things do not crop up all of a sudden within a month or a week. Just as you plan the budget, these things should have been planned well

in advance, including stationery. Where exactly has this gone wrong? Even after becoming an autonomous one, such a situation may arise; if it does not arise in the Board, it may arise in the Madras office; they may say that unless you give them those powers, they will not be able to do; they cannot approach Delhi for everything, etc. I want to know where exactly has this gone wrong, whether it is due to lack of proper planning on the part of the Department concerned or on the part of the sanctioning Ministry. This Department happens to be in the Finance Ministry. The other Ministries have to depend on the Finance Ministry for financial sanction.

I would point out one more thing to the witness. There is also another Board functioning in the same Ministry. We do not receive so many complaints about that. When we examined them in the Public Accounts Committee about which Mr. Bhagwat Jha Azad also made a mention, at one stage the Secretary who appeared before the Committee at that time—I do not want to mention the name—himself confused that the efficiency of this Board was not comparable to that of the other Board. Both the Boards function under the same Ministry. Why is it something peculiar happens only to this Board? I have got every respect to the gentleman who is appearing as a witness here for his efficiency and hard work. There should be something fundamental. The basic structure and the functioning of the Department itself should be probed. Has there been any coordinated and well-planned working within the Department? In what way has this been put in a more disadvantageous position compared to the other Board which is functioning within the same Ministry?

SHRI R. D. SHAH: While I certainly do not want to minimise the working of this Board, I am only pinpointing the reasons for it. I will point out the

various paragraphs where he has been outlined by the Wanchoo Committee. We have got a Directorate of Research, Statistics and Publication. In this connection I will point out that the working of the Directorate of Inspection has been most unsatisfactory. There was no Directorate of Organisation and Planning and Methods. This has been recently started. There are absolutely no training facilities. If I may quote the Wanchoo Committee on this point. "Training facilities in the Income Tax Department are woefully inadequate."

Therefore, what I am trying to point out is that this Department is still almost undeveloped. It has to develop on various organisational sides—research, statistics, publication, analysis. It is still almost in its infancy.

SHRI TRIDIB CHAUDHURI: I would like to ask the witness, between the two alternatives of complete autonomy as suggested in Wanchoo Committee's report and an elaborate organisation with sufficient which one is more important.

SHRI R. D. SHAH: Sir, I would only like to leave this point at that. You might create a Board which you consider has the necessary powers with which it can deal with the problems expeditiously without too much reliance on others so that its schemes are not frustrated.

SHRI H. M. PATEL: Mr. Chairman, first of all, I would like to say that I doubt very much that the particular illustrations given make out a case for the establishment of an independent autonomous Board. It is quite true that the sort of illustrations given suggest that we might set-up just another PWD department or printing department separate for the Direct Taxes Board. If the witness say that the houses in Calcutta have no lift for the past 10 years although it has 10 stories, that cannot be rectified by autonomy. That can be rectified only if the Board is given powers for constructing their own houses. How is it

possible for the Government to function in this manner? Since 1921 this Board came into existence. Steadily its scope and authority increased. I would like to ask how frequently did the Board ask for additional powers to re-organise itself? When he says it is only within the last 2-3 years that the training aspect was given importance is it because they thought of the importance of training late or was their proposal turned down by the Ministry earlier? There is general slackness in the administration as a whole. That is something which we may try to improve.

I would like to have a little more information on this point. It seems to me that the Board has Class I and Class II officers.

Their grievances exist for a long time and yet there is no final solution to it. But so long as this persists, the Board's work will undoubtedly suffer. Who is at fault for all these things? I put this question with no desire to question the basic point that you must make the Board capable of discharging the duty in an efficient manner. I am satisfied with it. I am not satisfied with the case for an independent or autonomous Board as has been made out by illustrations given.

SHRI R. D. SHAH: While I was talking of the autonomy of the Board, the views may differ, but I do feel that it would certainly make a world of difference in the proper functioning of the Board.

If I am not wrong, my belief is probably correct that the Audit & Accounts Service have got their own arrangements in regard to many more things and they are functioning in a different manner. The small problems which we are facing, I do not think they are facing.

But this question requires to be thoroughly examined.

I would only stress this point of training. I do not want to go into the past. I was the person in charge of training and at one time there was

not even one ITO to assist me. Since then the faculty has developed. What I am trying to indicate is that this is the system prevailing and this is what has to be improved. How to do it? My way of looking at it was that probably with added financial powers we would be satisfied but I may not be wrong in saying now that it is not enough. Before we think of achieving the result and dealing with this problem of black money a suitable organisation will have to be created.

SHRI DHARNIDHAR BASUMATARI: I have been listening to Mr. Shah. He has a vast experience. From our experience we can say that statutory Boards do not function properly. For example, the Railway Board is the strongest Board constituted by experts and at the same time it is a high powered Board. There we find more corruption. It is not my contention but the contention of the Minister who said that the Railway Board is the strongest Board and no finger can be laid. The Boards being constituted by the Government or by legislation cannot be said to be efficient. This I am saying on the basis of my experience for the last 27 years in the Parliamentary life. So is the case of Scheduled Castes and Scheduled Tribes. This is a constitutional matter. As a Member of this Committee I want to say if we feel that the Board is the only way to find out unearthed money, I do not think it would be a wise decision. If an independent Board is created, I think it will lead to more corruption. I am all opposed to such a proposition.

SHRI R. D. SHAH: I would leave it at that and say that the Committee might examine this problem and examine this question of the report on the tax administration. What I was interested in was that proper administration might be given in order to do, justice to achieve the result and in reply to what the hon. member said, I would add and quote the Wanchoo Committee—

We would like to emphasise that no system however perfect can

work on its in view of the human element involved."

That will always be there even if you give me a perfect mechanism. As hon. Member Shri Patel also said that the efficiency and all those things are there. With all the handicaps can this Board achieve better results or not, you may examine this?

This much is on administration.

SHRI K. R. GANESH: While the Committee will definitely profit by your experience and the conclusions to which you have come, some of the points made by you about financial powers, more initiative by the Board may require consideration both by the Committee and the Government, there are some problems which I think I should also bring to your notice and to the notice of the Committee.

Is it your case that accumulation of arrears, large scale pending assessments, large refunds, pending appeals, are due to lack of autonomy?

Is it your case that a proper personnel administration policy in spite of the act various Committee like the Direct Taxes Enquiry Committee, the P. A. C., the Administrative Reforms Committee has commented on this from time to time and yet a rational personnel administration has not arisen and the problem of Class II and Class I is still a serious problem—is all due to autonomy? Certain realities are there. We have to make adjustments. I am referring to the case of ad hoc promotions.

You may say that the Department has no staff. Quite a lot of staff has been sanctioned and according to the O & M study more staff is to be given.

The number of Income Tax officers who should have been relieved as a result of summary assessment, whether they have been relieved or not?

If we do not have proper statistics, is it your case that it is due to the fact that the Board has no autonomy at various levels?

As Mr. Patel rightly summarised, the problem of printing is a problem connected with the Works and Housing Ministry. Similarly various other things are handled by the different departments; of course, necessary coordination is always there. According to you, if these problems are to be solved, then you must have an independent organization with all the connected departments, the lift organization, CPWD, printing etc. You are one of the authors of the Act. I know, great administrative problems are there. My only point is, that some more thinking has to go in this respect. It is not so much a question of autonomy, it is a question of certain administrative drive. I would not like you to use the various administrative bottlenecks which are inherent in our system and which I agree should be removed. Incompetence available somewhere else should not be lost sight of and then come to this conclusion that for all these problems, there is one single solution of autonomy.

SHRI R. D. SHAH: I do not say, nor did I ever say that this solution is going to work like a magic wand. What I want to indicate is that all those areas, where the arrears were growing or other deficiencies were there, it may be that the Board did not function efficiently or vigorously. I do not know what the circumstances were. If probably the Board had more powers, they would have worked more effectively. What happens today is that we allow the arrears to grow and try to catch up. That means, we are always chasing. Instead of that, we should have our planning and organization in such a way that we are able to live with the issues, rather than catch them up later. This is a very vast question, on which probably I can give any amount of time.

MR. CHAIRMAN: I think, we will have to find out something in between what you have said and what the Minister wanted.

SHRI R. D. SHAH: Now I would come to the most important thing, where the Department can deal with second and third sectors. The various techniques of tax evasion are very well known to everybody. I hope, you will permit me to repeat a few things. I feel that our approach and methods have to change almost completely with regard to the problem of tackling the tax evasion.

As I said, the methods of tax evasion suppression of profits and production are universal there from time immemorial ever since income-tax was levied. However, as a result of various surveys that have taken place and as a result investigations personally conducted by me in the Investigation Commission etc., I do feel that our present techniques in handling these cases will have to undergo metamorphosis. The whole point is that in order to know what should be the method, we should also know what are the techniques that are being employed today. During the course of our searches and seizures, we have come across a very very important and dangerous development over the last many years and that is that there is a thriving industry of manufacturing vouchers.

Now a change has come in the whole technique. What a voucher vendor (or name lender) does is that he opens bank accounts in various names. To give credibility to the transaction he issues cheques, gets money and then again deposits it in the bank a/c. Well, he may get a small commission say 1 or 2 per cent on the bogus transaction of say Rs. 1 lakh. The name lender gets Rs. 1000, saves tax on Rs. 1,00,000 and the revenue suffers a loss of Rs. 7,000 or so depending upon the rate of tax. The result is that Rs. 1,00,000 are generated into black money. I am convinced that this is a menace which today plays a more damaging role in this tax evasion technique.

MR. CHAIRMAN: Do you consider it to be the biggest menace?

SHRI R. D. SHAH: I consider it a very very important menace to be dealt with. Secondly, I feel, I have no evidence, that a large number of the bank accounts are fictitious or pseudonymous. Previously, when a businessman used to produce his accounts, I found that he would quote, full details in respect of cheques received by him. There were full details of transactions in his cash books. Narrative was complete so that the officer did not have to struggle or hunt for any information.

Similarly, when he produced vouchers in support of his transactions, you will find that there always were full details of the printing press where they were printed. These things are very relevant in the process of an investigation of a case. But today you will find that this subsidiary evidence which ultimately goes to establish a case does not exist. Sometimes it becomes impossible to trace entries. You cannot go on chasing entry after entry with the possibility that you may unearth transaction resulting in the black money. That is why I say that if we see the trends of the tax evasion techniques that have now developed, the question that we ask ourselves is this: Are the present methods enough to deal with this? I have only indicated that the present techniques of investigation are inadequate. The search and seizures can, to some extent, play an important role in trying to tackle the unaccounted portion of the transaction. But I would still say that in order that the Department can function better, the administration should be as impersonal as far as possible, the methods should be made as impersonal as possible and for that purpose, I would rely on an extensive use of permanent a/c. Nos. I would say that it has to be developed into a powerful medium which alone can deal with this problem. Fortunately, the Wanchoo Committee has also considered this idea of a permanent account number. According to me, it would help the department to function im-

personally; solve the problem of tax arrears as assessments would be based on definite data, and would create or generate a fear which would keep a tax-payer within legal boundary. The Wanchoo Committee has also said that we should make obligatory to use this permanent account number on certain transactions.

What I personally feel is that the Department should set up a complete and adequate organisation. There should not be any complaint that they are suffering from shortages and all that. Let them be provided with a little more of their requirements than what may be needed. This permanent account number should be issued to an applicant within 24 to 48 hours. He should apply for this permanent a/c. No. on a form (which we have already evolved with necessary details so that a person does not ask for more than one number in the same capacity for audulent purposes). The utilization of this No. may be made obligatory on certain types of transactions. The types of transactions can be suitably selected and varied from time to time so that it does not become an unnecessary burden on the individual and yet play an effective check. All these details can be worked out once the system is developed and the organisation set up.

Though we, as a policy, oppose computerisation, but there are certain things for which it is inevitable. I have visited some countries and have seen its operation. They collect data and feed into computer; keep data ready for a check but rarely use it. It remains as a sort of a sword hanging over the heads of the citizens. The Department can use it when it wants to do it. The idea is to generate fear so that the tax payers remain within bounds.

MR. CHAIRMAN: I am sorry, Mr. Shah, I will have to interrupt you for about 5 minutes. We have to discuss an urgent point raised by Mr. Aga. We will call you again.

(The witness then withdrew)

(Shri R. D. Shah, was called in.)

MR. CHAIRMAN: Mr Shah, you may continue now.

SHRI R. D. SHAH: What I was trying to say was in the context of the changed techniques adopted by the people in order to evade taxes. They do it in a variety of ways. There is almost a thriving industry of manufacturing bogus vouchers supported by almost all types of evidence, like, bank accounts, payments by banks, etc. in order to suppress profits which often times in respect of various imported articles is colossal. Various intermediaries, not one, half a dozen are created so that the end-product is substantially reduced so far as the Department is concerned and the profit is fragmented at the intermediary levels. When the Income-Tax Officer tries to establish even one chain of transactions, he often times fails to do it because he does not get at the intermediaries.

This is the state of affairs. Even with positive information, even with seizing of records which I know have been lying for a long time, the Income-Tax Officer fails to establish it. The investigation takes a long time. In the manner in which the profits are fragmented at various levels, what the ultimate assessment is made, based on such evidence, becomes more a matter of inference than proof which sometimes gets up set in appeal. So, we have to think of a proper machinery to deal with this aspect of tax evasion techniques.

Now, we have introduced the system of Permanent Account Numbers for existing tax-payers. I know that there are still some draw-backs or difficulties. We were determined to introduce it with whatever handicaps we had. I would suggest the extension of this principle not only to persons but also to transactions. Anybody having a Bank Account, anybody wanting to purchase shares or subscribe to shares, or various other transactions, (all such transactions can be examined and listed out and

changed from time to time as need be in order that the amount of work involved is not beyond reach) must be required to quote the number. This must be made obligatory by law. Probably, we might need a separate law, not as a part of the Income-Tax law.

For that purpose, what I would suggest is that there should be a central organisation with regional offices. Suitable forms may be devised for the purpose so that you know the activities of the man to the extent possible from the form itself. If the Department so wishes, in respect of a new Permanent Account Number holder, the Income-Tax Officer could go and verify the person's activities and reasons why he is not a tax-payer. Because we have already issued Permanent Account Numbers to tax-payers, new applications for P.A.Ns. would necessarily mean that the applicant is not on the records of the Department.

In order to prevent persons from getting, to the extent possible, bogus Permanent Account Numbers for future utilisation for manipulations, we need to create an organisation like this and have a system of 'identity cards' of the type 'security cards' where the Permanent Account Number is required to be imprinted/embossed on the various types of transactions.

SHRI VASANT SATHE: Are you suggesting that this should be an independent organisation of the tax administration?

SHRI R. D. SHAH: That can be examined. It may need a separate legislation. It can be examined whether it needs a separate legislation or it should be a part of the Income-tax law. To my mind, it needs a separate legislation.

About the present system of Permanent Account Numbers, there is a fundamental draw-back. I am conscious of it. The drawback is: What prevents a man from utilising my or somebody else's Permanent Account Number and putting me into trouble? There is nothing to check that. I

have been studying this problem for a long time. I have obtained quite a number of cards....

MR. CHAIRMAN: You mean, identity cards.

SHRI R. D. SHAH: I will not call them identity cards. In Malaysia, they have got identity cards with a person's photograph. We do not want to make the whole country look, as if we distrust them all; something like the U.S. Security Card. I have some sample cards with me. There are two facets of it. There are various combinations of these cards. One is a card on which the person can have his signature so that, like, the Traveler's Cheque, when this card is to be utilised for certain transactions of importance, the person can sign in the presence of an authorised Officer so that there is less chance of a duplication or misrepresentation.

Now, the beauty of this card is that if a person wants to utilise somebody else's card and therefore wants to rub off his signature and write his own, he cannot do it. This card will then show blank. This card cannot be duplicated or used by another man by erasing. Secondly, this card can be embossed on the transactions as may be necessary. The procedure is fool-proof. However, the person has to keep the card safely in his own interest as a valuable security.

MR. CHAIRMAN: Suppose he has two cards.

SHRI R. D. SHAH: That is why I said that the form to be devised should be such that a man does not take out another card in his own name. If he still does it, then he will be exposing himself to prosecution. I have made a study of the whole process. This type of machines are not very expensive and they can be placed at post offices, banks and so on, so that the person does not have to face difficulties. As Wanchoo Committee itself has pointed out, to a very great extent, the utilisation of this will stop benami transactions. It is not only a question

of benami transactions but also fictitious transactions. The hon. members are aware of what has appeared in the issue of 29th April of the *Economic Times* on which there was a debate in Parliament—about bogus newsprint importers on the approved list. These things are going on on a colossal scale. I have brought for information another cutting from the *Indian Express* of 14th May where it is stated that 38 non-existing small scale industries are reported to have procured steel quotas from the Government. To a very large extent, these type of activities will be contained by this system; I will not say 'eliminated', but they will be contained.

SHRI VASANT SATHE: I have not understood you. While taking steel quota, how will this card be used?

SHRI R. D. SHAH: When he applies, he will have to have his application imprinted, with his PAN card. This will show that the person is existing; it is not a non-existing, bogus or fictitious person. Secondly, he cannot be benami because the man will not get two cards.

SHRI VASANT SATHE: What I am asking is how will getting of quota be relevant to this card system.

SHRI R. D. SHAH: As I said, the *Economic Times* has shown how there were bogus newsprint importers in approved list. There were non-existing parties.

MR. CHAIRMAN: How would the use of this prevent such things?

SHRI R. D. SHAH: You would be able to trace the persons by this. We have cases of sales of prestigious cars by STC. Some of these have not been traced to the purchasers.

SHRI VASANT SATHE: Are you suggesting that, for every transaction, whether it is taking licence or getting quota or purchasing a car or sale or purchase of a house, for every transaction, he will have to produce this card and get an endorsement?

SHRI R. D. SHAH: It is not a question of producing. On all those applications that he makes, he will have to get this embossed so that you know that it is an existing person who is on the income-tax list. Today a person may be trading in a dozen names.

SHRI VASANT SATHE: Do you know how benami transactions in small scale industries take place? It is not always bogus in the sense that there are non-existing industries. These small industries are, in fact, controlled by the big industries in the name of other persons, in the name of their sons or daughters-in-law. They could obtain these cards also for them.

SHRI R. D. SHAH: To a reasonable extent, all these fictitious activities can be contained, though not eliminated. Accounts in the banks in various fictitious names will disappear....

SHRI VASANT SATHE: Accounts in banks also will be under this number?

SHRI R. D. SHAH: The limit, the extent of it, may be decided from year to year or time to time depending upon the volume. I am only evolving a principle. Because the techniques have changed, we have also to change our attack on the problem.

SHRI S. R. DAMANI: You are right in saying about benami transactions. But those fictitious transactions can be detected by the Department by examining their account books, stock lists and others. That may be easier or simpler than introducing a complicated system of card. Our country is a vast one; it will be difficult to work it. Considering the magnitude, the length and width of the country, I wonder whether it will be possible to trace the benami transactions by introducing this system of card.

SHRI BHAGWAT JHA AZAD: The country may be vast, but such persons are few. I think, this system is quite feasible.

SHRI R. D. SHAH: The country may be vast. I have explained the principle. It can be applied to various transactions. This can be varied from year to year depending on the volume. A study was made in the United States where there was similar system and they found that evasion was not substantial, compared to the revenue because this is the cause of a major fear in the minds of the people. Computer is not a respecter of persons. Therefore, if an unreported transaction is detected the man can be prosecuted straightway. In the changed context and with the need for good public relations and less harassment to tax-payers this impersonal system is essential. Once this is done there are many concomitant steps that should follow. Today a person can take any number of insurance policies and the Department does not know of it. So, if this system is introduced, you can say this year we will check all insurance policies. Then you can come to know who are those people who have subscribed to it. That fear alone will check tax evasion substantially. Therefore, I say this is the only method by which we will be in a position to control to a very large extent the 'benami' transactions.

Now, my third point is about the management side of it. The assessment work should be made impersonal. As the hon. Minister said we are having a lot of arrears of assessment. As it is done everywhere all assessments are accepted in the first instance. We have got Section 143(1) where you can accept the return. I would only add one corollary. We face criticism almost everyday that the tax returns are very complicated. It is so in all the countries and it has to be so. The return is only a reflection of the law. It cannot be simplified. If we are going to accept the return in the first instance and try to match it on the computer then the return has to be elaborate. The return of very big assesseees may also be accepted in the first instance. Thereafter depending upon the manpower, facilities and type of cases (the

selected type of cases; can be taken up for investigation. The purpose of investigation should also be to create an impression in the minds of the people that tax evasion will not pay. It should act as a deterrent.

Having accepted the procedure, as to what sort of principle should be adopted for selection, the first fundamental requirement will be that all returns must be filed by one date—whether 15th June or 15th July—so that principles of selection are decided only thereafter giving no chance to a person to know before-hand so that he is not able to manipulate his return to conform to the principles of selection for verification.

SHRI BHAGWAT JHA AZAD: What would be the percentage of tax collected as self assessment, advance tax in any particular year?

SHRI R. D. SHAH: We generally take it that it is to the extent of 85 per cent.

SHRI S. R. DAMANI: Have any efforts been made to instal computer in your Department?

SHRI R. D. SHAH: What you call computer, I call 'programmed calculator'. Somebody may call it as computer. What we are aiming through there is to know how much tax is contributed by various sections of the law, various incentives and the various measures which the Government has taken. What is the contribution to the revenue? Similarly, as the hon. member said after making the assessment, what is ultimately remaining after the appellate stage, tribunal stage etc. To obtain this data we need to calculate tax eight to ten times at least. With the help of calculator we can calculate speedily and be able to build up the statistics in a scientific way to know economic component, the tax component of each piece of legislation and of administrative procedure. What I am trying to indicate is that it is not utilised at present but that it should be utilised.

SHRI S. R. DAMANI: I learnt that some time ago efforts were made and there was opposition from the staff members to instal a computer. I understand the opposition was for the sake of creation of unemployment. Will it be possible to see that such a computer scheme is materialised?

SHRI R. D. SHAH: If we want to combat tax evasion, which is practised in a subtle way and has different techniques, we have to utilise computers. It does not affect the staff. But it is a policy decision which has to be taken at a high level.

SHRI VASANT SATHE: If a complete scheme, a new methodology is evolved along with computer, would you suggest that while accepting returns, in the first instance there need not be any such bracketing of limits?

SHRI R. D. SHAH: This comes to a question of selectivity. You can select cases on the basis of income, trade, profession, so as to cover whole strata of life not merely of income. One thing is there that the Company cases and the bigger cases are always subjected to investigation. Along with computer, these are checked up independently also

All individual cases need not be checked up. I may be permitted to draw your attention to Clause 14. There is a misconception prevailing and the people feel that the clubbing of income would mean that the income of husband and wife wholly will be clubbed together and taxed at the appropriate rate. Mr. Chitale has also suggested sort of deduction may be given. Wanchoo Committee have also suggested a way out. I have been thinking and I feel that there is still a better way out which does not affect the working woman, which does not affect a small assessee, but only affects the class of people who are planning purely to avoid tax. Wanchoo Committee did not approve of the idea of clubbing. I do not consider my approach as clubbing. It is popularly understood to mean that the incomes of the husband and wife will be clubbed together and taxed according-

ly as one unit. The Wanchoo Committee detailed various types of manipulations in order to avoid payment of tax by individuals, groups of high incomes. They suggested certain solutions which are embodied in this Bill. I will quote, what they have said:

Page 77, para 3.40:

"(a) In order to circumvent the provision relating to the clubbing of the income of minor children with that of the parent, if both are partners in a firm it is so arranged that partners of one firm get their minor children admitted to the benefits of partnership in another firm, in exchange for admitting in their firm the minor children of the partners of the other firm, so that it is not possible to club the income of the minors with that of the parents".

Then para (c) of page 78:

"Taxpayers generally so arrange their affairs by what are euphemistically known as 'cross transfers' and other ways that it becomes difficult to prove that there has been a direct or indirect transfer of assets to the minor children within the meaning of section 64 of the Income Tax Act, 1961. Amount received by the minor as a result of such a cross transfer and in other ways is shown as capital contributed by him in a firm where neither of his parents is a partner and the minor's share income has consequently to be assessed in his hands, and cannot be clubbed with the income of his parent."

The present Section 64 as it exists and the earlier Section 16 almost became an ineffective piece of legislation, so far as its implementation was concerned. You might catch an unwary man once, but he would always arrange in future his affairs in a way that he is able to evade tax. Unfortunately, for a man who is big enough, who has large business at his command and a large number of companies, it is always possible to manipulate. A small man cannot do that. The Wanchoo Committee says this in detail. They

have suggested a way out. We should have an effective legislation to curb the misuse and simultaneously respect the sentiments of many working men and women in the lower or middle-income groups. I am giving an idea that can be developed further by the Board. You can take the assessable incomes of the husband and wife over a certain level, as also that of minor children and then club together. The level could be such that it would affect only the big ones.

MR. CHAIRMAN: What is your suggestion?

SHRI R. D. SHAH: In the context of the prices today, Rs. 25,000/- should be the taxable income for each Rs. 50,000/-, more or less, is reasonable. This is because it will affect only the higher strata.

SHRI BHAGWAT JHA AZAD: This is a good idea.

SHRI S. B. P. PATTABHI RAMA RAO: How does the cost of collection compare with other under-developed countries?

SHRI R. D. SHAH: It is 1.9 per cent here, earlier it was 2 per cent. It has gone down. In Germany, where it is computerised, it is 3.5 per cent.

SHRI S. B. P. PATTABHI RAMA RAO: What is the total expenditure on the middle level officers, Assistant Commissioners etc.

SHRI R. D. SHAH: The present Chairman might be able to tell that.

SHRI S. R. DAMANI: Many witnesses have expressed a fear before this Committee that with the additional powers now being given to the Income Tax authorities, the assesseees would be harassed more. How far is their fear correct?

SHRI R. D. SHAH: It is very difficult to answer. May I tell you that if you consider my idea of impersonal assessment, most of these fears will disappear.

SHRI VASANT SATHE: What would be your view to a suggestion

that all returns and assessments in the country be made public documents?

SHRI R. D. SHAH: To some extent, the law of secrecy has gone. Whenever anybody wants some information about any assessee, he can have it. Shri Bhulabhai Desai speaking on Chamber's Committee report 1937—the basis for Income-tax Act of 1939—said that the (then) Government in this country did not respect the rights of citizens as important. At that time, simple power was being asked for a tax Inspector to visit the assessee's premises. On his insistence the proposal was withdrawn. I am one of those, who will frankly say that the rights of the citizens should be fully protected.

SHRI VASANT SATHE: In Sweden, all returns are public documents, available to anyone for inspection.

SHRI R. D. SHAH: Even within this law, there are areas where there are serious dangers to the rights of a citizen, and to what extent it can be used or misused, I can not say.

MR. CHAIRMAN: We thank you very much for having come here and given us an excellent piece of advice.

[The witness then withdrew]

II. SHRI M. R. YARDI,

Former Finance Secretary.

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Mr. Yardi, we welcome you here. Before we begin, I think you must have gone through the Direction of the Speaker.

SHRI M. R. YARDI: Yes, Sir.

MR. CHAIRMAN: Would you like to offer some general remarks?

SHRI M. R. YARDI: I don't think I have got any general remarks to offer.

SHRI VASANT SATHE: Mr. Yardi, there are so many things

which have been mentioned in this Bill. There are two main objects in the Statement of Objects and Reasons—to unearth black money and to prevent its proliferation. Then there are other clause also. Do you find that all these provisions made in the Bill separately, severally or collectively are sufficient to achieve the main objectives and to what extent will they be helpful, and if not what more should be done or can be done by way of this enactment? It has been said before us that there are various other measures outside the Taxation Law that will have to be taken up; but that is a different thing. Within the ambit of this Taxation Law, can we take some measures so as to really achieve the object other than what is being provided in the Bill and to what extent the provisions in the Bill really meet the object? I know it is difficult to quantify the amount of black money in this country; but whatever figure has been given in the Parliament, leaving that, to what extent, do we achieve the objectives by the provisions made in this Bill?

SHRI M. R. YARDI: As you yourself have said that a legislation by itself will not be able to unearth black money or to prevent its proliferation, other measures will have to be taken which are not within the purview of the Revenue Department. So far as this Bill is concerned, I cannot conceive of any legislative measure which ought to have found a place here for this purpose, but has not been included in the Bill. The Bill has its own limitation to the extent that it enables the tax administration to take stringent measures against tax evaders; to that extent, they will be able to prevent tax evasion or unearth black money. But it is too much to expect that this will prevent generation of black money or to unearth black money completely. One of the measures which has already been taken is the rationalisation of the tax structure. But tax

evasion is due to causes other than high rates. In a controlled economy, if we are not able to administer price control and distribution controls effectively, that itself generates a lot of black money. Moreover, if the cumulative effect of taxation in the fields of income-tax, excise and sales tax bears very heavily on production, there would be a tendency not to show the total production. A certain portion of it is sought to be concealed. If this is done, it will not form part of the normal accounts; and to that extent, there will be evasion of income tax. This question will have to be tackled from that angle also. When price controls are ineffective, we should consider whether it is necessary to continue with them and if so, as to what steps should be taken to make them effective. Our experience of civil supplies and food administration has been that price control is ineffective without distribution control. The law is ineffective unless you make procurement from producers. But so far as this bill is concerned, I cannot think of any provision which should have been included in it and this has not been done. I think it is a comprehensive bill. It will improve the tax administration to a great extent. It will put the fear of the law into the minds of the tax evader, provided the Administration goes after the tax evader and does not utilize these powers for harassing the ordinary small tax-payer. That danger is also there. Personally, I think it is good for the Government to arm itself with draconian powers as are included in this bill; but these will have to be utilized with a great deal of circumspection. If I were in charge of tax administration, I would say that it should be used only against real tax evaders and not against small tax payers. For example, the concealment in certain cases may be just Rs. 100/-. A person such as a lecturer might have forgotten to declare some fee which he might have got for the examination of some papers. Such a concealment should

not be dealt with under the provisions of this law.

SHRI VASANT SATHE: Can we make a provision saying that only concealments above a certain amount will attract the provisions of this law?

SHRI M. R. YARDI: Take the case of theft. There is a section in the I.P.C. saying that offences of a trivial nature will not be dealt under it. But you will have to leave such things for the courts to decide. In the I.P.C. the maximum punishment for theft is 2 years.

SHRI VASANT SATHE: Do you suggest that we should leave to the discretion of the courts? There is another point. The main object of the amendment proposed is the unearthing and arresting of proliferation of black money. That is why I had asked you to tell us as to how much of black money would these provisions taken singularly or collectively, be able to unearth, once they are put on the Statute Book. It would be a funny situation if we found later that we have taken out only a mouse from the mountain.

SHRI M. R. YARDI: There are two main provisions dealing with revision of rates, maximum punishment, settlement of cases and concealment. The Income-tax Department should go after the real tax evaders. Even if only 10 cases of evasion are taken to the court and dealt with very severely, it will make it apparent to the tax evader that, in the long run, tax evasion does not pay. The provisions should be utilized in such a manner as to bring this about. If this is done and if the settlement provisions are utilized properly, I think we should be able to collect a lot of black money.

SHRI H. M. PATEL: The witness seems to believe that this bill will not result in harassment of the small and innocent people. Does he think that discretionary powers have been

vested in the officers now, which should be exercised wisely? I do not see any such provision in this bill. The old income-tax law took away most of the discretionary powers. If there is delay in submission of a return, it is treated as a delay. Virtually, the maximum punishment can be given, whether the offence was deliberate or due to a genuine difficulty. Have you reviewed the Income-Tax Act so as to study the grant of discretionary powers to the ITOs?

SHRI M. R. YARDI: We should distinguish clearly between technical offences, viz. delayed filing of returns, where there is no intention of concealment or evasion; but it happens due to certain reasons; and what we know as the major offences. I personally think that it was a grave error to have taken the discretionary powers away from the tax administrators. There might be a view that these discretionary powers should be vested at a sufficiently higher level. But even then I think a lot of unnecessary harassment can be avoided if some element of discretion is given to the officers to waive penalties, especially in cases involving purely technical offences. Personally, I think, this Bill does not but ought to make provision or discretionary powers.

SHRI H. M. PATEL: As regards the powers of search, etc., as proposals stand, don't you think that they give rather excessive powers in the hands of relatively junior officers? Would it not be wiser, in certain matters, that they exercise the powers with the prior consent or approval of more senior officers? Otherwise, as they are now worded with a considerable amount of subjective element it seems to me that these may well result in harassment of people who do not deserve to be harassed.

SHRI M. R. YARDI: I would accept this position that in the case of powers of search, perhaps prior approval of a higher authority—I take

it that it has been given to an Inspector—of an officer at a sufficient higher level should be taken.

SHRI S. R. DAMANI: We are very happy that we have a very experienced witness before the Committee and we should take advantage of the experience of the Finance Secretary.

The most important thing in implementing or carrying out any objective is the incentive and the intention of the officers concerned to handle this job. If they have got an incentive, if they have got the scope to work, they can bring about results. Otherwise, if they have got handicaps, if they are not enthusiastic, the results will not be achieved. Whatever the law may provide, it depends entirely on the attitude of the officers concerned, to carry out the job.

In this connection, I would like to know this. Is it a fact that in recent years the officers are not enthusiastic and are hesitant in taking decisions? Has it come to your notice?

SHRI M. R. YARDI: I do not think any such instances have come to our notice where the officers have shown hesitation in taking decisions.

SHRI S. R. DAMANI: About the revenue audit, I am told and it is known to everybody that many of the Department's people challenge the interpretation given by an Officer. As you know, the laws are very vague. There are different interpretations. Once you will remember our Chairman addressed a public meeting, the Income-Tax Officers' Seminar, and said that it is easier to give an interpretation of the Gita but it is difficult to interpret certain sections of the Income tax law. Is it a fact that such kind of differences have arisen and, if so, whether you expect that any Officer will take a bold decision if after 5 or 10 years.

he will have to explain why he interpreted the law in this way or in that way. In that case, he will have to safeguard his own interest and he may not take the risk of giving a bold decision. What are your views about it?

SHRI M. R. YARDI: So far as the revenue audit is concerned, it is their function to point out any thing done by the administration which has resulted in a loss of the revenue to the Government. I myself have appeared before the Public Accounts Committee in connection with tax administration. I would, by and large, say that the revenue audit has been performing its functions with a sense of responsibility. It may be that somebody in his enthusiasm may question a decision which has been taken. In one or two cases, I had to inform the P.A.C. that this was a decision taken by an officer acting in a quasi-judicial function. Therefore, we cannot ask this question as to why a particular decision was taken. But in some of the cases, I find, they only bring it to the notice of the Board that there is a High Court decision which is against this decision; the circular is not in accordance with the High Court decision or the Supreme Court decision or they might ask the Board to review its own decision when a certain revenue loss has taken place. I think, two things are necessary. One is that the administration should also know what are the proper functions of the audit. Actually, most of the points which were raised by the Audit related not so much to the interpretation of the law but to the technical mistakes, arithmetical mistake. Most of them were arithmetical mistakes. The Audit should also realise that when an officer has taken a decision in a quasi-judicial function, that should not be questioned.

The Board's circular will not come in that category because when the Board issues a circular, that is an administrative circular. So, the decision has not been taken by the Board in a quasi-judicial function.

Therefore the Board should have to find out whether the circular could be amended or not or whether there can be a method of resolving the differences between the Audit and the tax administration. Many of the points which are raised by the Audit are discussed in a joint Committee with the Director of Audit. Many of them are settled ultimately the P.A.C. has to take a view whether the Audit is exceeding its authority or whether the administration is at fault. Wherever the Audit has raised any issue in regard to a quasi-judicial decision taken by an officer, we have always brought it to the notice of the P.A.C. that the decision has been taken in a quasi-judicial function and, therefore, it should not be questioned. I must say, at least in the meeting, it was accepted, I do not know, when the Report comes, it is accepted or not.

SHRI S. R. DAMANI: What is generally being said I have mentioned. The Audit is to check the accounts, whether the calculations are right or wrong. But when there are so many differences on the interpretation of the law, how can an officer take the risk of taking any decision? If he takes a decision in favour of the assessee, he may have to explain later on. Naturally, he will have to safeguard his own interest. If he takes a decision in favour of Revenue, then there may be an appeal. In order to achieve the goal of quicker assessment and stopping evasion of tax, the officials should be given some discretionary powers which cannot be challenged so that they can take right decisions.

SHRI M. R. YARDI: Personally, I think, no decision which is taken by an officer in a quasi-judicial function should be questioned by any one. If somebody thinks that the decision is not proper, the proper way is to take it to the appellate court. No one should question it, either in audit or in the Public Accounts Committee. This is more for the members of the Public Ac-

counts Committee to take note of. But I want to say one thing. No officer should hesitate to take a decision merely because somebody is going to criticise it. After all, even the appellate authority may take a different view and may criticise it.

SHRI S. R. DAMANI: Regarding black money, there are two things: one is stopping further generation of black money and the other is how to get the black money or the unaccounted money for productive use. By seizures and searches if they get Rs. 10 or 15 crores, that is not going to serve the purpose. Have you thought of this as to how this black money can be brought out and used for productive purposes? Side by side we should also stop further generation.

SHRI M. R. YARDI: I think, the Wanchoo Committee had considered other schemes such as premium bonds....

SHRI S. R. DAMANI: What is your suggestion? Is it possible to do something about it?

SHRI M. R. YARDI: I do not think any one can agree that we should draw out the black money by giving tax concessions and immunity from prosecution. After all, it will only mean that we are trying to protect the evaders. All of us have been taxed very high as a result of tax evasion. It will be too much for us to accept that the evaders should be given further facilities to declare their black money and get tax concessions and immunity from prosecution, etc. So, we came to the conclusion that settlement was the only way in which we can voluntarily get this.

SHRI S. R. DAMANI: Otherwise, that money will be in circulation. You have rightly said that unless production and distribution are properly controlled, whatever achievement we want to have cannot be achieved. If any commodity is subsidised and if there is no proper distribution system, that will not

reach the consumer at that price and that will create unaccounted money. In this context, in order to increase production so that ultimately the prices can be brought down and the shortages can be removed, have you thought of any scheme?

SHRI M. R. YARDI: This does not come within the purview of this Bill.

MR. CHAIRMAN: Yes Mr. Basumatari.

SHRI D. BASUMATARI: To unearth black money, do you think that this Bill gives enough powers to the officers concerned?

SHRI M. R. YARDI: I think, the powers given in this Bill are sufficient. The Bill is sufficiently comprehensive and gives the necessary powers to the tax administration. But there are only two qualifications. One is that we shall have to strengthen our intelligence and investigation wings. I think, there is not much of intelligence in the tax administration. The revenue intelligence is working in the Personnel Department. We have not got a separate intelligence wing of our own so that we can collect information. Similarly, the investigation machinery will also have to be strengthened. But the legal powers, I think, are fairly comprehensive.

SHRI D. BASUMATARI: There was a suggestion from some quarter that, to make the Board function efficiently, it should be made an autonomous and independent body. Do you support this?

SHRI M. R. YARDI: I do not know, how a tax Board can be an autonomous body. I can understand, the production Board or the distribution Board can be an autonomous body. But if any delegation of powers is necessary, that could be considered. I do not think you can consider an autonomous Board for tax administration.

SHRI H. M. PATEL: I would like to ask one or two questions regarding administration. The Wanchoo Committee, I understand, has made various recommendations and has laid stress on the fact that, howsoever good the law may be, unless the administration functions effectively, the result will not be satisfactory. What steps have been taken or are under contemplation of Government in order to do this? For instance, even today the persons you recruit into income-tax service have no special qualifications. May be, they come through competitive examinations. But, as you know, income-tax service is the last option that is exercised by people. May be, that is because of the salary scales. So, has proper thought been given to making the salary scales attractive enough so as to ensure that you have the best people for this service? Have the promotional aspects been gone into so that they remain an attraction? Also has satisfactory arrangement for training been made so that, before he takes on the job of an income-tax officer, he is fully qualified to do this duty in a satisfactory manner?

SHRI M. R. YARDI: So far as salary incentives are concerned, the Government have accepted the recommendations of the Pay Commission and brought all the salary scales of the Central Government officers on the same level, but not to the same level as the IAS. Personally, I think, the present pay scales which have now been accepted by Government should enable the candidates who have got a special aptitude for income-tax work to come to the income-tax department, because wherever they go—to any Central service—they will get the same benefits.

So far as adequate promotion prospects are concerned, Government have taken a decision that the cadre authority will review the cadre strength at various levels and see whether the promotion prospects are adequate or not.

This has got to be done during this year or so. But already some decisions have been taken to increase the number of posts of Commissioners, Assistant Commissioners, etc. So far as training is concerned, Government has started a training college at Nagpur for the training of these officers. But personally I think—this is my personal view—that the time has now come for Government to consider whether all the officers for the various Central Services should be recruited by the same competitive examination or whether we should not have different competitive examinations for the different services in order to attract persons with special qualifications for these services.

SHRI VASANT SATHE: We have had a grievance from Class I officers that their chances of promotion in the Service are thwarted because at certain levels they are not treated on par with the All India Service cadre. Would you agree that at certain level of the Class I officers they should have the same opportunities as the IAS officers such as to hold the posts of Secretary and Joint Secretary and such avenues should be provided as a natural part of the service facilities?

SHRI M. R. YARDI: That principle has been accepted by the Government that so far as Secretariat posts are concerned all Central services together with All India Service should be considered equal for holding the posts of Deputy Secretary, Joint Secretary, Additional Secretary and Secretary. But the main problem would arise whether the background and experience which the officer has got by working in the Income-tax Department will fit him to work in the other departments. Therefore, the induction will have to start at the level of Under Secretaries and Deputy Secretaries. That process has started and we have taken Income Tax officers or the postal service officers into various other related departments and ap-

pointed them as Deputy Secretaries. As these officers do not have experience of working in departments like agriculture and labour it is very difficult to consider them for jobs there but that should apply to IAS officers as well. It has not been applied so strictly to IAS officers.

SHRI H. M. PATEL: A suggestion has been made to us regarding making the Board autonomous. The reason as to why such a suggestion was made was that the Board is at present handicapped in various ways. Some of its important requests and requirements are not being met in good time. Illustrations of various things were given. Now, they say if the Board were autonomous and the Finance Minister's approval is given to a certain thing then having regard to its importance it could have been proceeded with expeditiously. Similarly, if the Board feels that certain additional appointments are necessary then if it takes six to eight months before the approval is given then again a sense of frustration creeps in.

SHRI B. R. YARDI: When the Finance Minister approves of a certain scheme or system it does not mean that he automatically approves of the addition of staff. Specific orders of the Finance Minister will have to be taken for the appointment of the staff unless it is a marginal case of appointment of a few clerks here and there.

I know the Board has been having this grievance that some of its staff proposals have not received adequate attention at the hands of the Expenditure Department. They have a feeling that they do not have sufficient staff to enable it to perform its functions. On the other hand there is also an impression which is shared by some of the higher officer including the Ministers that the staff is there but it is not properly organised to look after the various aspects.

I was asked to take a comprehensive view of the staff requirements of the Board and we suggested what kind of additional staff may be necessary

in certain aspects. When you want to make certain improvements it is also necessary to see as to what are your priorities. It is necessary to employ all your staff on doing every kind of work that is there or would you fix your priorities in such manner that you are able to deploy your existing staff in a more rational and efficient manner. Personally, I think, whenever any new additions to the work are made the natural tendency is to ask for staff to handle that work without taking into account the staff which is already existing. I think that a little attention to a proper re-organisation of the work and proper improvement of procedures will go a long way in relieving the staff for the really important work. Secondly, if the Board is not satisfied with the view taken by the Revenue Department it can very easily approach the Finance Secretary and point out that such and such thing has been pending over one month. It can also be taken to the Minister. I do not think any thing will be delayed over a year if the case is strong. My personal view is that there is a lot of scope for re-organisation and improvement in the procedure.

SHRI S. R. DAMANI: In continuation of your reply to question put by Mr. Patel about the pay scales, Mr. Sezhiyan mentioned about the policy adopted in U. K. Just now Mr. Shah also said that our collection charges (expenditure) come to less than 2 per cent. The pay scales depend on the responsibility and delicacy of the work. What the pay scale of officers who are making assessment to the tune of crores of rupees? Their pay is Rs. 1,000 or Rs. 1,100/-. You post them to big cities and department does not provide residential accommodation to them. Can they afford to pay high rent and can they maintain themselves and can they save themselves from taking any other way to pull on? Your collection charges are only less than 2 per cent where as in Germany it is 4 per cent. Just to encourage them and provide them with sufficient facility to maintain their

status and to have their both ends meet and discharge higher responsibility, will it not be advisable to have a separate pay scale for this Department?

SHRI M. R. YARDI: You cannot determine the pay scales of officers on the basis of the proportion of collection charges to the total recoveries. Government cannot take isolated cases for pay scales. There are certain relativities. Everybody says they are getting so much, we should be given that much. There is pressure from the Confederation of the Government officers which includes I think representatives from the Income Tax, Customs and other Services also that there should be complete uniformity with the All India Service and there should not be any difference at all between one service and another. What you say is correct that in some service if you take into account the special responsibility, etc. there may be a case for having special pay scale for certain categories of service. But it will be very difficult to do it in the present circumstances or under the present conditions.

SHRI H. M. PATEL: In cities like Bombay or Calcutta if no residential accommodation is provided, somebody will be able to oblige him with suitable accommodation. People who have to discharge responsibilities of certain nature should be provided with essential facilities at Government cost and nothing less than that.

SHRI M. R. YARDI: In principle I agree with whatever you have stated. I personally think that no Tax Officer should be left to the mercy of any tax payer and, therefore, Government should take up a building programme in order to provide residential accommodation to all the Tax Officers upto a certain level. The main difficulty has been of finance and Government at a very high level has taken a decision that no new construction will be permitted for a temporary period. Unfortunately, the Finance Secretary is

not in a position to say that his own Department should make an expenditure.

MR. CHAIRMAN: If you entrust them with certain assignments, certain responsibilities and do not provide due facilities, it is likely to take them into the lap of rich tax payer.

SHRI H. M. PATEL: It may be worth-while for Government to hire accommodation.

MR. CHAIRMAN: I understand you were responsible in the formulation of Wanchoo Committee's recommendations which found its expression in the making of the Bill there is a basic question of principle that I want to ask you.

SHRI M. R. YARDI: When I became Finance Secretary, the Wanchoo Committee Report had already been processed.

MR. CHAIRMAN: I am on the question of formulation of policies which would go into the making of the Bill.

SHRI M. R. YARDI: That had already been done. If I had again started taking a view on the policy decision, it would have taken six months more. I took it as was done by my predecessor Mr. Pande.

MR. CHAIRMAN: Then Mr. Pande's view will have to be taken. One of the significant and important recommendations was so lightly left out and that relates to what they have stated in para 2.61 at page 22—

“That we recommend that the donation by tax payer other than office, to recognised political parties should be allowed as a deduction from the gross total income subject to certain restrictions. The maximum amount eligible for deduction on account of donation to political parties should be 10 per cent of the gross total income subject to a ceiling of Rs. 10,000/-.”

Such donations to political parties have a very major factor in the black money parallel economy which exists. Why was this recommendation completely ruled outside the ambit of this taxation?

SHRI M. R. YARDI: I would not be able to tell you off hand without referring to the papers.

MR. CHAIRMAN: Do you see any rational justification for its being left out? I should like to have your reaction to this recommendation.

SHRI M. R. YARDI: Personally I do not remember having seen this recommendation.

So far as small donations are concerned there should be no objection to it. But we shall have to be very careful as to the limit fixed. Subject to a limit can be done, otherwise the Companies may pass on the money like this also.

MR. CHAIRMAN: That is a different story. That would be done under the garb of something. We are only talking with reference to this recommendation. I did not deliberately ask any question about company donations.

SHRI M. R. YARDI: I would not see any objection, if the amount is restricted to a small amount.

SHRI ERA SEZHIYAN: The recommendation says, ten per cent subject to a maximum of ten thousand.

SHRI M. R. YARDI: Ten thousand is a large amount.

MR. CHAIRMAN: The principle is otherwise acceptable to you.

SHRI M. R. YARDI: As an individual, yes, Sir.

So far as an individual is concerned, ten thousand is a large amount. Maximum Re. one thousand should be there.

MR. CHAIRMAN: If you want some honest politics to come about, why should not an individual be

allowed to earn and spend money on politics. Someone earns hundred thousand rupees, if you allow some deductions, he would be able to spend some money on himself.

SHRI M. R. YARDI: I do not think that a person who earns a lakh of rupees will give Rs. ten thousand.

MR. CHAIRMAN: A politician is earning Rs. hundred thousand, why should he not be allowed to spend Rs. ten or twenty thousand on his political activities?

SHRI M. R. YARDI: You mean his own income.

MR. CHAIRMAN: This would include his own income.

SHRI M. R. YARDI: You are exempting election expenses from the taxable income.

MR. CHAIRMAN: This is a different aspect. I am referring to political activity as such. They get the money willy-nilly. Do you still think that 5,000 limit is the limit that ought to exist.

SHRI M. R. YARDI: That seems to be all right.

SHRI ERA SEZHIYAN: The recommendation that we are considering now, I understand that this question is under consideration in consultation with the Home Ministry. When they gave this note to us about six months back, in remarks column, recommendation 31, 'individual donation to political parties to qualify for deduction out of taxable income' it is mentioned, 'under consideration in consultation with the Ministry of Home Affairs'. We expect, some decision should have been taken by now.

MR. CHAIRMAN: I am grateful to you for pointing this out. I would request the Department to write to the Cabinet Secretary and be ready with the answer. Wanchoo Commission report itself came out in December, 1971.

SHRI VASANT SATHE: You said that the areas where black-money was generated were at the level of production, distribution and I believe, ultimately it comes in the form of assets or properties that were created. Therefore, would you say that under the existing law, there is any inhibition or lacuna not to enable the Income Tax Officer to find out what the production of a particular concern or an individual or an industrial house is, particularly when we take into consideration the Excise law, which enables you to know the production. Of course, quite a few industrial houses are not within the purview of excise.

Then comes the distribution and the third stage is the property. We find that there are large properties which are visible even to the naked eye. These are there in the posh localities, costing five to ten lakhs, yet these are lost sight of by the Income Tax Department. How does this escape the administration even under the existing law and how will it be possible to handle this situation by bringing an amendment?

SHRI M. R. YARDI: I do not think the Income Tax Department will be able to control the production or distribution of the various commodities. It is an impossible task. In so far as the Excise Department is concerned there used to be a proper supervision over the production of a factory. But after some time Govt. found that it was irksome to the industry. Therefore they introduced a procedure for its removal. Now, it is for a factory itself to keep an a/c. of production and move it out of the factory by crediting the excise duty in a personal ledger a/c. Therefore, from the Excise Department, there is no proper check over the production and this matter has been under consideration by a committee headed by Mr. Venkattapayaa. They have submitted one part of the report and they have yet to submit its second part. Perhaps at that time this question of proper supervision over the production could be taken up. Then the question of coordination between the

Excise Department and the Income Tax Department will arise. So far as evaluation of property is concerned, the Income Tax Officers are not valuation experts. Recently, an evaluation cell was added to the Income Tax Board. I think most of the experts are now in position. Therefore, in case of doubt, the Income Tax Officer can refer it to the valuation expert and get the valuation of the property.

SHRI VASANT SATHE: Is there any inhibition in the existing law which prohibits an Income Tax Officer from really knowing the extent of value of the property in relation to the income of the assessee?

SHRI M. R. YARDI: There is no inhibition in the existing law.

SHRI VASANT SATHE: You know that this ostentatious expenditure is going up in the country. Then you know the amount of black money and the way it is being thrown away every day. Supposing, a man spends above Rs. 1000 a day and it is going up, can we think in terms of reintroducing the expenditure tax?

SHRI M. R. YARDI: I am not aware why the expenditure tax was given up. But there may be a case for limiting this expenditure on marriages and big parties, etc. But I do not know how far that will be effective in curbing this ostentatious expenditure.

SHRI VASANT SATHE: If it is introduced, then there will be an indirect check.

SHRI M. R. YARDI: I don't think so. It will be difficult to operate.

SHRI VASANT SATHE: When you get some tax today, you do not even know how much he has spent.

SHRI M. R. YARDI: How will you know? It is very difficult for the income tax officer to know about it, unless the party discloses it.

MR. CHAIRMAN: Thank you very much for agreeing to come here and give evidence before us.

[The Committee then adjourned.]

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

Monday, the 8th July, 1974 from 10.00 to 12.30 hours.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Virendra Agarwala
4. Shri Chhatrapati Ambesh
5. Shri S. M. Banerjee
6. Shri Dharnidhar Basumatari
7. Shri Tridib Chaudhuri
8. Shri S. R. Damani
9. Shri Mani Ram Godara
10. Shrimati Sheila Kaul
11. Shri Maharaj Singh
12. Shri Amrit Nahata
13. Shri H. M. Patel
14. Shri Bhola Raut
15. Shri Satyendra Narayan Sinha
16. Shri Y. B. Chavan.

LEGISLATIVE COUNSEL

I. Shri Harihar Iyer—*Joint Secretary and Legislative Counsel.*
REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)

1. Shri S. R. Mehta, Chairman, CBDT.
2. Shri C. C. Ganapathy, *Joint Secretary.*
3. Shri S. Narayan, *Joint Secretary.*
4. Shri I. P. Gupta, *Joint Secretary.*
5. Shri R. R. Khosla, *Director.*
6. Shri S. I. Tripathi, *Deputy Secretary.*
7. Shri O. P. Bhardwaj, *Deputy Secretary.*
8. Shri K. N. Balasubramanian, *Officer on Special Duty.*
9. Shri S. C. Grover, *Under Secretary.*

SECRETARIAT

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

WITNESS EXAMINED

- I. Shri B. D. Pande, *Cabinet Secretary, Government of India.*
- II. Shri H. N. Ray, *Finance Secretary, Government of India.*
- III. Shri M. G. Kaul, *Secretary (Department of Economic Affairs), Ministry of Finance, Government of India.*

(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 provides:

"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."

Mr. Pande, do you want your evidence to be treated as confidential?

SHRI B. D. PANDE: Not at this stage unless I specifically indicate that.

MR. CHAIRMAN: Do you want us to come to questions or would you like to make general observation putting forth the views of the Ministry so far as this particular piece of legislation is concerned made on the lines of the recommendations of the Wanchoo Committee to achieve the objective?

SHRI B. D. PANDE: I have not got a copy of the record of the earlier meeting which we had when we were asked to appear before the Committee and Mr. Yardi had made a brief introductory remark. I would like to make a mention that the proposals that have been put in the Taxation Laws Amendment Bill cover part of the recommendations of the Wanchoo Committee which require legislative action. Some of the recommendations of the Wanchoo Committee have already been implemented by the earlier Finance Acts for example those relating to the acquisition of urban property and certain proposals regarding trusts. This proposal covers a large number of other recommendations which need legislative action. Some measures which need administrative action are not included in the Bill. Some measures relating to check on black marketing, deterioration in moral standards and contribution to

political parties and economy of shortages and consequent controls and licences are naturally outside the purview of this Act. What I wanted to mention was that the legislative part relating to the tax laws which the Wanchoo Committee recommended are included in this Bill.

MR. CHAIRMAN: Mr. Ray, have you to make any general observations?

SHRI H. N. RAY: I do not think I have to say anything at this stage on the general issues.

MR. CHAIRMAN: Mr. Kaul, have you to say anything?

SHRI M. G. KAUL: No, Sir.

SHRI VIRENDRA AGARWALA: You said that donations to particular party, controls and licensing which are largely responsible for black money and black marketing in this country are not covered in this Bill. Do you not think that all those things need some legislative action?

SHRI B. D. PANDE: Those are outside the purview of taxation laws.

MR. CHAIRMAN: In respect of contribution by individuals, they have recommended that a certain ceiling should be allowed as deduction in total taxable income.

SHRI H. N. RAY: May I make a submission on this matter? The Wanchoo Committee had recommended two things. One was grants made to the political parties for election purposes. The second recommendation was that donations given by individuals should be taken into account as deductions for tax purposes. My submission is that these two are closely linked and a decision has to be taken on the first issue about the question of public funds going to political parties. This is a matter which has strong political overtones. There is the question of balance between different parties, advantages and disadvantages among different parties, etc. I therefore submit as government servants it would be difficult for us to make any comments. This is a matter which should be taken up at the poli-

tical level rather than at the official level.

The two are closely interlinked; and unless a decision is taken on the first, it is impossible to take a decision on the merits of the second question.

MR. CHAIRMAN: We want to make it clear that we do not want to ask you any question which you, as a public servant, should not be asked. But this is an extremely complicated and difficult legislative measure and we want to apprise ourselves of what the Government thinking is. The Finance Minister is a Member of the Committee and when we come to general discussions we will have the benefit of his opinions.

SHRI Y. B. CHAVAN: I think he has made the position clear about where the matter stands.

MR. CHAIRMAN: We do not know the views of the Government. You can tell us, if you are aware of that.

SHRI B. D. PANDEY: On the points I can answer. This particular recommendation about contribution was referred by the Finance Ministry to the Home Minister for consideration because decisions in respect of elections and election laws are primarily decisions to be taken in that Ministry. We are awaiting the decision of the Government on that matter and it is a major question. There has been to our knowledge no Government decision on that.

SHRI VIRENDRA AGARWALA: If this legislation does not include any clearcut thinking of the Government on such a vital matter as this do you think it can serve the purpose of curbing black money to any substantial extent?

SHRI B. D. PANDE: I would say yes, because the proposed provisions would enable the Board of Direct Taxes and the income-tax department to take a large number of measures. Any decision on other aspects will supplement this and strengthen their hands when it comes.

SHRI VIRENDRA AGARWALA: The problem of unearthing black mo-

ney is entirely a political problem and nothing is required to be done?

SHRI B. D. PANDE: I am not saying so. I am only saying that these provisions will help in their own way.

SHRI VIRENDRA AGARWALA: To what extent?

MR. CHAIRMAN: There is a finding by Wanchoo Committee that political corruption is one of the main factors which leads to sheltering monopoly houses and corrupt businessmen who are forced to tax evasion. What according to you would be the efficacy of this measure in view of what the Wanchoo Committee had stated?

SHRI B. D. PANDE: The Wanchoo Committee, to the best of my reading, does not say that that is the only source of black money. That is one of the sources. There are many other sources, such as bad business practices, etc. And whatever law is brought on other aspects will not affect the provisions of the proposed legislation. They will not contradict each other.

MR. CHAIRMAN: How will they not contradict? If a businessman has to live in business, he has to seek political patronage and favours, he is forced to make political payments. Then how do you say it will not contradict? Is it not a contradiction in terms? If you do things piecemeal like this, would it not be counterproductive?

SHRI B. D. PANDE: If the income has been assessed, he will be liable to tax.

MR. CHAIRMAN: I would much rather say that we should not ask you this question. But if you answer, I must ask you some question about it. If you say that this is a matter on which the Government alone must answer, I will have the benefit of the advice of the Finance Minister because he is a member of this committee.

SHRI B. D. PANDE: As Mr. Ray mentioned earlier the basic issue about donations to political parties is

a political decision. The only point I was mentioning was that whatever decision is taken on that the provision in this amending Bill would remain unaffected.

MR. CHAIRMAN: We are not convinced about it; you must convince us that it is so. To the extent you are legislating that will work, notwithstanding that a very important and vital aspect recommended by the Wanchoo Commission remains completely unlegislated, and outside the purview. I think that is what you mean?

SHRI Y. B. CHAVAN: I do not think that is what he means. He says possibly with those things, the whole thing will be complete. With this, it may be incomplete.

SHRI B. D. PANDE: That was the point that I was making. I do not think there is any provision here which will negate or contradict or go against any decision taken there. That will be supplemental. That was what I said. That decision will be supplemental and perhaps there is..

MR. CHAIRMAN: They do not stand diluted?

SHRI B. D. PANDE: My understanding is correct. I doubt if they will be diluted.

SHRI S. R. DAMANI: Sir, Mr. Pande has expressed his views about donations to political parties. The political parties, not only in this country, but in other countries of the world also, require funds to propagate their policies and as such they have to approach some persons and Corporations for funds so that they can implement their policies and programmes. This is happening. This is necessary for any country which requires a strong Government. So, if you approve of it, if you give legal sanction that any person or any Corporation can give donation to political parties, that will stop the generation of black money. So don't you think that it would be better if we put a clause that to some extent political

donations should be allowed? Upto 1969, there was a clause to this effect. There was such a provision. So, if you allow donation to political parties, what is wrong? Will it not help in curbing black money?

MR. CHAIRMAN: He has said that it is a political decision. So, it will not be fair for us to ask the public servants. We have the Finance Minister as a Member of this Committee. When we come to general discussion, we can engage him in a gruelling cross-examination..

SHRI VIRENDRA AGARWALA: Ban on donations to political parties by Corporations, don't you think has been one of the most potential factors responsible for generation of black money in this country?

SHRI B. D. PANDE: It is the same question in a different form. But, the decision is a political decision.

SHRI VIRENDRA AGARWALA: Will this Bill really serve the purpose to any extent, even to the extent of 5 per cent? We have excluded very important things like price control, licensing etc. Everything has been excluded. It is only a punitive action which we have suggested.

MR. CHAIRMAN: They have frankly said it is a political decision. We should not embarrass them on this matter. When we asked him whether this measure will contradict other measures, he says it does not. We can ask question which does not impinge on the political aspect.

SHRI TRIDIB CHAUDHURI: Leaving aside the political aspect and the political decision which is yet to be taken, so far as this Bill is concerned, apart from the clauses which widen the scope of compulsory audit and certain other administrative measures which give more punitive powers in the hands of the tax authorities with regard to searches and other things, there are no inbuilt provisions or inbuilt mechanism in the Bill itself, which will really help in unearthing black money. Are there any other

provisions or are they only limited and merely administrative measures?

MR. CHAIRMAN: He says that the measures by themselves take care and they will be able to arrest generation and proliferation of black money to a certain degree. To the extent it does not take care of it, there being no legislative sanction in regard to donations to political parties, it is left out. According to him, to the extent it is enacted, it will work properly towards the objective. That is what he says.

SHRI H. N. RAY: So far as the Wanchoo Committee is concerned, they considered several proposals for curbing black money. But, eventually having rejected things like bearer bonds and Swiss type accounts, and so on they came only to two hard conclusions. One conclusion was, a settlement procedure and the second one was, putting more teeth into the searches and seizures procedures. Both these two have been accepted in this Bill, as you, Sir, are very well aware and a whole chapter has been introduced with regard to the settlement procedure. A special committee consisting of three members of the Board is to be appointed and wherever concealment or misrepresentation of facts or fraud has not been established, it is open to people to come up and have a settlement of their case, after giving a hearing to both sides, namely, the assessee and the income tax authority. So far as searches and seizures are concerned, enormous powers have been given and we hope that they will be exercised equitably and properly and efficiently. We hope that they will produce results.

MR. CHAIRMAN: The measures you referred to, only deal with chasing black money once it is generated. We are dealing with the question of generation. The measures you referred to are meant to chase the black money after it is generated.

SHRI H. N. RAY: My submission is, we are here dealing with a taxation measure. Generation of black money takes place in many ways and

I think this is somewhat beyond the scope of a pure taxation measure to go into these other factors. As the Cabinet Secretary pointed out, this is a measure which can be administered to the exclusion of other measures which Government may be contemplating and may be adopting. This is limited to that extent.

MR. CHAIRMAN: You are again treading on difficult lines. We are not on the realm of abstraction. We were talking of legislation on a matter, which can really take care of a very deep rooted malaise, which may compel an honest man to generate black money. We were on that question. You say that it is outside the realm of taxation. We are not dealing with things like a nation developing character assessee becoming honest, people becoming truthful etc. We are not going to ask any questions about it. But if you say, 'Yes. This is being human nature and these are the hard realities in life a certain legislative measure can tackle some of the problems', then, we would say the measures you have referred to only deal with chasing black money after it is generated. The question of donations to political parties goes to the root of generation of black money.

SHRI B. D. PANDE: This is the point which has been raised by the Wanchoo Committee itself.

MR. CHAIRMAN: We will leave you at that, so far as politics is concerned, and donations to political parties is concerned. But, there are other points on which we would really like to satisfy ourselves because there is a grave apprehension in the minds of the Members of this Committee as to how this measure, as it is framed, is going to help in preventing the generation and proliferation of black money or in arresting tax evasion. My first question is this. The senior Commissioners appeared before this Committee. When we asked them, "Are the existing powers with you not enough to bring the delinquent assessee and

tax evaders to book?", they frankly told us: "They are more than adequate." "Then what prevents you from striking at the root of the matter?" was the next question of the Committee. They replied that they had two difficulties. They said, "We are not staffed adequately. Our resources are not sufficient. Secondly, our techniques, methods and expertise are not what they ought to be." You are sitting only in the Secretariat and watching things work. In the light of the fears expressed by people working in the field, how do you think that this legislative measure takes care of the two things pointed by the senior Commissioners?

SHRI H. N. RAY: This is primarily a question of administration; and I do not see why the Central Board of Direct Taxes which is in very close contact with the proposals from the field, has raised the issue. The Ministry has never taken the stand that such proposals should not be considered sympathetically and that necessary remedial measures—if there are any required—should not be taken to strengthen the organisation, to improve it and also to give them the necessary additional staff that may be required. I think it is in the interests of the country that direct taxes are properly levied and are properly collected. I have no doubt that the Government would be very open to any reasonable demand in these matters.

MR. CHAIRMAN: This does not answer my question. Your reply is only skindeep. Does this legislative measure in any manner take care of both these difficulties? They say they are not able to grow because they lack expertise. Without expertise, in spite of any amount of law-making that you may have, things will remain what they are.

SHRI H. N. RAY: This department has been in existence for over half a century. Within this period, expertise should have grown in it; and I have no doubt that there are many people who are pretty good experts in

this line otherwise we would not be collecting Rs. 1300 crores every year.

MR. CHAIRMAN: The department would be in existence for another century; and there would be many committees of this type, if we go on making legislation after legislation without going into the root of the matter.

SHRI H. N. RAY: In any case, I entirely agree with you that mere legislation is not adequate. What is required is proper enforcement and administrative organization to back it up as well. The best administrative machinery anywhere in the world would not be able to function, if it did not have an adequate legal framework. As the Wanchoo Committee had pointed out, there are still considerable loopholes in this Act which we are trying to plug. This is a combined effort, to be tackled both legally and administratively. They are complementary to each other.

SHRI VIRENDRA AGARWALA: From what you say, it appears that on the administrative side, there is hardly any coordination between the Board and the Ministry. The Ministry assumes certain things which the Board does not do. In this manner, there are many loopholes in the functioning of the Board which are not being rectified. The Ministry is thinking all the time in terms of bringing some legislative measure before the Parliament, which does not help the situation. The two bodies are moving in two different directions.

SHRI B. D. PANDE: I think there is perhaps a misunderstanding, because the Ministry does not function in this matter without the closest coordination and, in fact, at the initiative of the Board. This legislative proposal has not been brought in isolation, or without consultation with the Board. In fact, such proposals are processed, examined, thoroughly discussed, vetted and presented jointly before the Government. The Board is not a body separate. In fact the Board is the same thing as the Government in many ways, be-

cause its Chairman is also the Additional Secretary to Government; but apart from this, none of the proposals relating to direct taxes or any other taxes are processed without consulting them. Your second point was about staff. There has been, if I remember correctly, a considerable strengthening of the staff and the organisational set-up. In fact, expansion in some respects is so fast that the Board and the Commissioners themselves feel that we should not recruit so many people at the same time, because they would not be able to give them proper training. The Board has also set up a very big training centre. They have been experimenting with all kinds of new methods for assessment and detection. I believe they have a very big organisation for training people of this kind; and they are in touch with the most advanced methods that are employed in other countries of the world. It is now for the Board, in consultation with its senior Commissioners, to see how things can be improved. But I would not say that our systems are perfect and that they are anywhere near the desired level of efficiency. But I believe that in the last few years, the Board has taken several measures to improve the efficiency, including strengthening of its own organisation.

SHRI VIRENDRA AGARWALA: If it is so, why did the ex-Chairman of the Board plead before this Committee, that the Board be made autonomous in character?

SHRI B. D. PANDE: I do not understand what is meant by autonomy. They do have it in some measure.

SHRI VIRENDRA AGARWALA: Mr. R. D. Shah, while appearing before us, pleaded for granting autonomy to the Central Board of Direct Taxes.

SHRI S. R. DAMANI: Mr. Shah said that there are so many difficulties facing the Board in its day-to-day functioning. He said that it has to depend on various Ministries even

for getting the forms printed and for many other things. As such, he had suggested that limited powers be given to the Board, so that they can cope with the heavy work and fulfil the intention of the Government to ensure quicker assessment and also check up cases where the evasions have taken place. What is your reaction to this?

SHRI H. N. RAY: If there are any concrete proposals made for providing any additional facilities to the Board or for giving them more delegated powers to spend money on contingencies, printing of forms etc; I have no doubt that the Finance Minister would be very open to such proposals. I do not think that it is anybody's intention to impose any needless irritants in the proper functioning of the Board. It is in everybody's interest to let them function efficiently. But when it comes to the question of autonomy, one is not clear as to what exactly is meant thereby. After all, fiscal policy happens to be a very important tool for economic management. I would submit that the Finance Ministry as a whole has to take a view on this matter.

SHRI S. R. DAMANI: In this bill, more emphasis has been made on unearthing black money, seizure and searches. According to the past records quoted in the Wanchoo Committee's report, during the period 1964 to 1970-71, 14,747 searches have taken place and the total money unearthed is less than Rs. 7 crores. How do you say that by placing more emphasis on searches and seizures hereafter, a much greater amount of black money will be unearthed?

SHRI H. N. RAY: I do not think that the intention of searches and seizures is to try and recover all the black money. It is really to act as a deterrent. In other words, there must be a fear in the minds of people who are accumulating black money that they are not free from search. Its deterrent value, rather than the actual amount of money eventually

seized thereby, has to be taken into account.

SHRI S. R. DAMANI: The income tax officers are generally paid between Rs. 800 and Rs. 1200|-, subject to all deductions. You are transferring them to big cities where there is acute shortage of residential accommodation, without providing them with such accommodation. You are giving them more and more powers to go and search. The mind of the ITO would always be under strain because of the existence of this problem. What are you doing about it?

SHRI H. N. RAY: We are fully aware of difficulties in regard to accommodation. In fact, in Bombay quite a number of houses have already been built, particularly for income tax officers. Recently, there has been another proposal for putting up a multi-storeyed building on certain plots of land which have been acquired. The only difficulty is that the resource position of the Government itself is very difficult. It is really a decision which the Finance Minister has to take, whether he would be able to relax the ban in the case of houses for ITOs. We are doing all that lies in our power. I think the percentage of satisfaction of housing requirements for ITOs, in a comparatively difficult place like Bombay is not too bad.

SHRI H. M. PATEL: When an ITO with very wide powers is posted to places like Bombay without providing him with accommodation, he finds it possible to get accommodation, if he accepts the generous offer of assistance from somebody. Does your limitation of financial resources help you achieve your objectives? I feel you must requisition houses; or have a series of flats.

SHRI H. N. RAY: The only embarrassment is that there is a ban on the construction of fresh houses; and the Finance Ministry might have to do some tight-rope walking before it decides to relax the order to help its own officers.

SHRI H. M. PATEL: It concerns national interests and not the personal ones of the Finance Minister:

SHRI H. N. RAY: The Finance Minister is here. I am sure he will keep in mind the feelings of the hon. Members expressed here in this regard.

SHRI H. M. PATEL: I am sure he will take cognizance of our remarks. Now, in regard to the autonomous status suggested by Mr. Shah, I do not think he was very clear in his mind as to what he wanted to achieve by obtaining it, for the Board. But he had said that his demands for staff took even more than one year to be met. When the need for staff is very urgent, such a delay creates difficulties. Then there was the question of printing forms. You cannot naturally give every department a printing organization of its own. Nevertheless when you introduce a new form and insist that people should send their returns etc. in them, if they are not ready by the due dates by which people have to submit the returns, how can you expect efficiency? Surely, the Government should assist the Board in such cases by giving the highest priority to the Board's printing needs. Similarly regarding housing, Mr. Shah said that there were housing projects which took several years even to get clearance from the Ministry in the first instance.

SHRI H. N. RAY: There is very little that we can say in this matter, except that these are things with which we have every sympathy. We will endeavour to see that these irritants are removed and that the Department is given full liberty to work efficiently. I certainly will do my personal best, for whatever little it is worth, to see that the question of forms and staff does not stand in the way of efficient functioning of the Board.

SHRI H. M. PATEL: I do feel this reply is not good enough. It is not a question of sympathising with Mr.

It. D. Shah or anybody else or even the Members of this Committee.

The point is this. Are you satisfied that it should take you so much time in order to clear the demand for additional staff? Why should it take that much time? What is it that comes in the way of getting these things cleared in a couple of months?

MR CHAIRMAN: Are you aware that these have been the real problems of the Department?

SHRI H. N. RAY: It is true that the staff has been asked for and the staff has also been sanctioned. But there is a difference between deciding whether the staff is adequate or not adequate. At the present moment, because of financial difficulties through which we are passing and because of certain blanket bans which have been imposed particularly with regard to sanctioning of additional staff, we have to be a little careful in these matters. I have no doubt that if a perfectly good case is made out, it will be agreed to.

SHRI H. M. PATEL: The question of limitation of funds and so on must be balanced against the fact that you have a definite problem. It is not just saying, "Why don't you give more staff?". But if you are satisfied that efficient enforcement is of the prime importance, if you want a certain objective to be achieved, then you must have the most efficient enforcement machinery. Why should you also not give the highest priority to seeing to it that the enforcement machinery has all the equipment it needs, human beings and other resources? I do not think on balance you will find that it will not pay you to spend more money in order to see that the enforcement machinery is more efficient. You say that there are many points to go into when considering a proposal for additional staff. If you ultimately clear the proposal at the end of two years, it is clear that the staff was necessary. The point is: So much time ought not

to be necessary in order to sanction the required staff.

MR. CHAIRMAN: We have been told that we seem to be going competently at a tangent so far as the objective of streamlining the administrative machinery is concerned. That is one of the important objectives of the Bill.

SHRI H. N. RAY: I think, it is accepted by all that the enforcement machinery must be efficient and that it has to be efficient. This is a long-drawn out process. It cannot be done overnight. It has to be done gradually. Today, we cannot recruit a large number of officers for several reasons, e.g., there will be dilution in quality, that it will result in promotion blocks subsequently. Because the service has a typical cadre pattern and, because there are certain promotional prospects, one has to stagger out recruitment. To that extent, we cannot just go ahead and push in more people. A question of training is also involved.

SHRI H. M. PATEL: I think, I will have to press this point further.

MR. CHAIRMAN: We will ultimately have to ask the Finance Minister on these points and see what we can do and put it in the report.

SHRI H. M. PATEL: It is not merely to say that it cannot be done overnight. Nobody expects you to do it overnight. If you accept the fact that these things out to be cleared much more expeditiously than what happens today, surely it is possible for you to give this Committee that assurance. I cannot see why it should take a couple of years or even a year to clear these things.

About training, in fact, there is another important point to which really sufficient attention has not been given according to the evidence which we have got. The Income-Tax Officers are recruited. There is no special qualification prescribed for them. In fact, today, they happen to

be amongst the last category from the competitive examinations who really offer themselves for Income-Tax Officer. They have no special specification for the work which they are supposed to be doing.

The point is, after recruitment, what is the extent of comprehensive training given to them which would make them efficient Income-Tax Officers specialising in various directions which is very necessary. Are you satisfied that this is adequate today? If you are not satisfied, how soon do you think it will be before you take steps which will result in your staff being really very efficient?

SHRI B. D. PANDE: I think, it would be of assistance to the Committee if the Finance Ministry or the Board of Direct Taxes were to give a statement to the Committee indicating the strength of the staff over the last 5 or 6 years. I think, that would enable the Committee to appreciate how the staff position has increased or has been improved over the last few years by the Government. I think, there have been very substantial improvements in the different categories. I remember being questioned in the Public Accounts Committee for the increases in the staff being sanctioned. I am only mentioning that a detailed statement would be valuable to the Committee to know the exact position. I agree with Mr. Patel that whatever staff is necessary, it should be sanctioned without too much delay.

SHRI H. M. PATEL: In regard to certain matters regarding Income-Tax Officers, Class I and Class II, etc., those disputes have been pending for years. I believe, though a certain amount of progress has been made, that matter still remains finally unresolved. Is that going to be speedily resolved?

MR. CHAIRMAN: You seem to be specialised in making rules which has unleashed a terrible warfare!

SHRI B. D. PANDE: As you are aware there has been litigation for the last 14 years. They have been

going to the court. Nobody seems to own the responsibility. Somebody objected to the rules that the Government had framed. There are two sides of people....

MR. CHAIRMAN: who interpret in different manner.

SHRI B. D. PANDE: Yes. They went to the court, The courts gave out a different interpretation.

MR. CHAIRMAN: Did your interpretation solve the problem?

SHRI B. D. PANDE: Having gone to the supreme authority for interpretation of the rules, how could our interpretation help? It has been one of the most difficult problems which the Department has been facing.

MR. CHAIRMAN: They have been coming and telling us. The fight continues. You may make any amount of laws.

SHRI B. D. PANDE: To the best of my knowledge, the attempts have been made to bring them together to resolve the problem without going into further litigation.

I do not know how many Finance Ministers, how many Finance Secretaries, have attempted to solve the problem. There has been a lot of litigation. They have been to the High Courts and the Supreme Court. This is something which none of us can help.

As regards training, there is substantial programme of training. There is a two-year training programme. Attempts are being made by the Board to continuously keep on improving the training programme. That will be a continuous process.

The third point was raised about the recruitment of Income-Tax officers....

MR. CHAIRMAN: Are you referring to training in Nagpur?

SHRI B. D. PANDE: There is a partial training in Mussorie and then

a longer training in Nagpur which is being increased.

MR. CHAIRMAN: I wish you personally see as to what serious limitations they are facing.

SHRI B. D. PANDE: I know, there is the problem of space, accommodation, housing and so on. That is there. I am aware of that.

The other point was what should be the initial qualification for recruitment. I believe it has been discussed on several occasions whether it should be confined to people with certain specified university degrees, say, a degree in economics or commerce, or it should be open to people of all subjects. There is always differences of opinion as to which has produced ultimately the basic administrators in the department. We could not come to a clear-cut decision that recruitments should be confined only to university students of a particular subject because a study of the people who have done well do not necessarily show that they alone have done best. This proposal was considered on various occasions. The UPSC is now examining the general question.

SHRI H. M. PATEL: I am not averse to generalists, people with general qualifications, being considered for these posts. But the position today is when successful candidate are asked to select the services which they want to join, only those people at the lower level of the list, namely, those who could not reasonably be expected to be selected for the IFS, IAS or postal or other services join the income-tax department. That is because your emoluments are not as attractive as those of the IAS or IFS. So, is it not desirable that you have some method by which you are able to get the best?

SHRI B. D. PANDE: In other words, your suggestion is that we have to make the service conditions attractive so that initially better candidates opt from this service.

SHRI SYED AHMED AGA: This Bill is an attempt to curb the generation of black money. Unless we generate sufficient income and distribute it in a reasonable way how can we stop or curb black money? In this sense, is this not a half way house? The essential commodities will have to be produced and distributed in the public sector so that people can get it. In the absence of any such effort, how can this legislation curb the generation of black money?

Secondly the black money is gradually converted into white money. To give a concrete example, I wanted to dispose of my land to clear some of my liabilities. When I was in the look out for a buyer, a person offered to buy my land for a particular price, but he said that he will give half the amount in black money. I could not accept that offer because I have to utilize that money for clearing my liability and so I have to account for it. This shows how people convert black money into white money. How are you going to deal with transactions of this type?

SHRI B. D. PANDE: Government are aware that in the sale of property etc. part of the money is paid in cash and part in cheque. One of the earlier recommendations on this subject has been covered by the earlier Bill, namely, the Acquisition of Property Bill. In that Bill an attempt was made to see that the registration charges are related to the value of the land. As far as the production and distribution of essential commodities are concerned, that is a very important question. That is covered by the total problem.

SHRI DHARNIDHAR BASU-MATARI: The income-tax officers are technical people, generally commerce graduates, who are trained in this work. They also get training from the training centres at Mussorie and Nagpur. There is a general complaint from the income-tax officers that officers from the IAS,

who have actually no knowledge of the subject are placed directly above them and this creates heart-burning. We have heard this complaint in evidence.

SHRI B. D. PANDEY: No IAS officer goes into the income-tax department and no IAS officer is posted above any income-tax officer. In fact, that is a separate cadre. The training in Mussorie is for all Class I officers of the Central Government. It is a fundamental foundation training of four months on all aspects of the Constitution of India, major development programmes in the Five Year Plans of India, the economy, the history of India and so on. After that, each department gives intensive training to its employees. The income-tax officers are given an intensive course in Nagpur. The other departments have their own training centres. So, the two services do not meet in that sense.

SHRI S. R. DAMANI: Shri Patel raised a very important question about the recruitment of staff and their qualifications. Since the income-tax department is entrusted with a very delicate task, unless you recruit competent and efficient people, you cannot maintain the efficiency of the department.

Shri Yardi told us that the total cost of collection was less than two per cent. He also said that in U.K. there was a special cadre. It would be advisable to create a special cadre and pay them higher salary and other facilities so that they can do their job more efficiently and produce the results which you want.

SHRI B. D. PANDEY: This is a big problem of the whole principle of cadre organisation and methods of recruitment. This recommendation of the Wanchoo Committee was also referred to the Pay Commission which was looking into the cadre structures of different services. Evidence was tendered before the Pay Commissions by different service associations and after weighing that the Pay

Commission recommended a particular pattern. The question of making the services attractive from the point of view of the initial entrant into Government service is a matter which ought to be examined.

SHRI VIRENDRA AGARWALA: There is an impression in the Committee that if the administrative efficiency of the Board as a whole is raised and if the powers already vested in the Board are adequately and effectively exercised, this Bill will not be required.

SHRI H. N. RAY: I am not in entire agreement with that statement. The first thing is that the lacuna in the law has to be plugged and then only can the administrative machinery come into operation. The Wanchoo Committee had pointed out the lacuna in their report.

MR. CHAIRMAN: Your officers in the field tell us that there are no lacunae in the law and that the Wanchoo Committee had only suggested the extension of jurisdiction. I shall take it up when I come to clauses. The Commissioner in Madras appearing before us tells us: if I make a seizure of properties, consisting of say, things like steel wire, etc. I do not have the authority to appoint a chowkidar to watch over them; if I make seizures I cannot watch over them. The Directorate of Inspection talk vociferously here of their discovery of tremendous tax evasion 12 months ago. When I ask them: what have you done during these 12 months, they say: we have not been able to make substantial progress because we are short of trained men to carry on raids, searches and seizures.

Without ensuring that there is an efficiency machinery to implement the existing law, how could you assure the Committee that this sort of legislative measure which increases the power of the officers is really worthwhile? Secondly, you have to give us good reasons for your optimism that this is going to

solve the problem, when people in the field say that they are not able to get at the people even under the existing law because of the reasons I mentioned earlier.

SHRI H. N. RAY: We have got to start somewhere. While not denying the fact that there were certain lapses on the part of the administrative organisation, I would submit that there is a fairly reasonable and efficient organisation already in the field.

MR. CHAIRMAN: How many persons from the monopoly houses have you prosecuted so far?

SHRI H. N. RAY: Offhand I cannot give you figures; we can work it out.

MR. CHAIRMAN: Were they able to amass so much wealth in 25 years without evading tax worth crores of rupees? There is deficiency in the existing law to get at them.

SHRI H. N. RAY: The Wanchoo Committee had made the recommendations.

MR. CHAIRMAN: Let us forget it. What are the deficiencies, which prevented you from getting at the sharks who had built large empires? Without gross evasion of tax you cannot build these empires.

SHRI H. N. RAY: Some of the assesses have the benefit of the best legal brains in examining the provisions of the law. The law must first of all be free from lacuna. As it is the Wanchoo Committee have incorporated many changes in the report and several reforms have been suggested with regard to trusts.

MR. CHAIRMAN: We are running away from the main issue. I want to pin you down to the issue of inadequacy or otherwise of the provisions with regard to tax evasion.

SHRI H. N. RAY: It is not one provision. I mentioned about trusts. I think it is for the first time we are taking measures to suggest that charitable and religious trusts will not

be engaging the activities of profit. This was previously not there. Even to-day, there is provision in the tax law which says—'provided there is only 5 per cent participation'.

MR. CHAIRMAN: Do I take it that the tax evasion is carried out for the benefit of the trusts?

SHRI B. D. PANDE: You have rightly referred to the point that many of the officers in the field have said that the existing laws are inadequate. I am intending to put for the consideration of this Committee that when the Government appointed the Wanchoo Committee with its terms of reference, they desired that the Wanchoo Committee should go into the whole matter, examine the structure of the tax laws and make suitable recommendations for the consideration of the Government. This Committee took evidence of a large number of people including officers in the field, people outside and so on. They examined various provisions of the law and then they made recommendations stating that this is desirable and should be implemented by the Government. This Committee worked for 2-1/2 to 3 years and the recommendations have been made by the Committee after intensive examination of the subject independently of the Department. If it is felt that those justifications for the recommendations are not adequate and are not necessary, then it is a different matter.

MR. CHAIRMAN: Will you draw our attention where Wanchoo Committee has said that the existing law is inadequate?

SHRI B. D. PANDE: What I am saying is that taking note of the existing law, taking note of the evidence tendered before the Committee, it made recommendations to the Government for modifications of the law, to appointment whatever exists in the tax law.

What I am suggesting for the consideration of this Committee is that

after three years deliberation, recording evidence, it has made recommendations to the Government and amendments have been proposed without saying that the existing provisions are inadequate. If the Select Committee or Parliament considers any of these amendments unnecessary....

MR. CHAIRMAN: How do we share your optimism?

SHRI B. D. PANDE: It is not a question of optimism. What I am placing for the consideration of the Committee is that taking note of the existing provisions of the Income Tax Act, taking note of the provisions of the law, taking note of the evidence tendered and taking note of all the factors, Wanchoo Committee made recommendations for further amendment of the law and these amendments of the law have now been put before Parliament.

SHRI VIRENDRA AGARWALA: Supposing this Bill is adopted as law and the administrative inefficiency of the Department remains as it is to-day, do you think it would be able to produce any result?

SHRI B. D. PANDE: It is obvious it would not be able to produce the result.

SHRI VIRENDRA AGARWALA: Why do you not give first priority to improve the efficiency of the Board?

SHRI B. D. PANDE: Administrative efficiency is a matter which is going side by side and is being taken care of by the Government. Government have taken various measures. They do not need legislative sanction. Administrative improvements can be made by the Government without legislative sanction. Only those measures which need legislative and parliamentary sanctions have been brought in this Bill.

SHRI VIRENDRA AGARWALA: Has Finance Secretary got any definite proposals to raise administrative efficiency of the Board?

SHRI H. N. RAY: It is something which is of great concern. I am sorry I have taken over very recently and am not in a position to tell you which are the proposals which are under consideration. I know there is a question of building some houses and this is something of which we are keen about. Only change we have suggested is that the houses should be built just like in Bombay types and not on the Delhi model with large floor area.

SHRI B. D. PANDE: I presume Mr. R. D. Shah had brought before the Committee various improvements which he intended to make during his tenure as Chairman of the Board. I think he made some revolutionary changes like Permanent Account Number. In the course of two years he made several improvements in the content of training, recruitment of staff, posting of officers, weeding out of officers, improvement in the accounting procedure, in the form of return to be submitted so that evasion can be detected.

SHRI AMRIT NAHATA: There are two questions. Just now reference was made by Mr. H. M. Patel to another law which was enacted with the intention of curbing the practice of exchanging black money at the time of transaction or selling or buying landed property. In that account, I would like to know whether that law has remained on paper or whether it has been implemented or whether it has been backed by adequate machinery? If so, how many cases of actual acquisition are there and what is their value? I fear that law has remained on paper. My second question is this. You have very rightly pointed out that it is obvious and it can be taken for granted that the bigger sharks who evade tax on a massive scale have quite often escaped any prosecution or any action. This may be due to any loopholes in the law. We are told that it is being looked into and those loopholes are being removed or it may be due to inefficiency or in-

adequate machinery. We are told that inefficiency is being removed and whatever inadequacies are there, these are being removed. Lastly, it may also be due to some extra legal and extra administrative reasons. The entire income tax machinery that is being set up, their social outlook, their attitude to the material value of life, their social composition and their moral fibre, all these things may be equally responsible for the efficient functioning of the income tax machinery. I am afraid you are not catching the bigger fry; you are going after the smaller one.

MR. CHAIRMAN: This point is very important.

SHRI H. N. RAY: I am told that four thousands notices for acquisition have been issued and since it is a long drawn process it takes some time to culminate in a sale. But 29 orders have been issued for taking over possession of the property.

MR. CHAIRMAN: When was the earliest order made?

SHRI H. N. RAY: I am sorry. I do not have that information.

MR. CHAIRMAN: Has any property been acquired?

SHRI S. R. MEHTA: The procedure for acquisition of property is this. First of all, the Assistant Commissioner of Income Tax comes to know that a particular property has been acquired by under-selling or giving some money in black. Then he issues a notice to the assessee asking him to explain as to why his property should not be acquired. On receipt of the reply from him, he satisfies himself that the transaction has not been above board. Thereafter, if he is satisfied, he passes an order of acquisition. Now, when the order of acquisition is passed, the assessee is entitled to go in for an appeal. There are four stages of an appeal. Until the last appeal is decided, the property cannot be taken over. So, the first stage of order issuing for the acquisition of property has been passed in 29

cases. In one case, I am told that the appeal has also been heard and it is likely that it may be dismissed.

SHRI VIRENDRA AGARWALA: What is the total value of the property?

SHRI S. R. MEHTA: It is likely to be over about half a crore of rupees.

MR. CHAIRMAN: What was the suspected tax evasion?

SHRI S. R. MEHTA: I am not quite sure; but, it may be to the extent of Rs. 15 to 20 lakhs. Actually, there are advantages of this provision. We got people who do it and the second is that there is a preventive aspect of it. It appears that as a result of this provision, people have stopped, to some extent, this method of passing money in black. It might not have stopped totally, but the extent of money that passes under hand has definitely gone down.

SHRI VIRENDRA AGARWALA: How do you know that it has gone down?

MR. CHAIRMAN: We do not have the figure of how many thousands we have bargained.

SHRI Y. B. CHAVAN: Here again you are talking how much money Government gets in the matter. Our main object is to prevent this sort of tendency. It is not that we have started certain profit making business; it is, really speaking, to stop certain wrong tendencies. What is the value of the property that we get as a profit is not the criterion by which you can judge the performance of the Act.

MR. CHAIRMAN: It is utterly correct that the Government is not going to acquire for profit but it does get crores of rupees in case of tax evaders which constitutes a deterrent.

SHRI AMRIT NAHTA: It is true that the intention behind the drafting of the Bill was to deter, but is it reasonable to suppose that a very effective implementation of the law

would prove to be more of a deterrent?

SHRI Y. B. CHAVAN: That is why it is being done.

MR. CHAIRMAN: It is a little too early for us to judge; we will have to wait and see.

SHRI H. M. PATEL: Mr. Mehta has mentioned that there are 4 stages of an appeal. It means there is a great deal of delay between the initiation of an action and the final result. Is it necessary to have so many stages of an appeal?

MR. CHAIRMAN: That is the law accepted by the Parliament after the recommendations of the Select Committee.

SHRI H. M. PATEL: My point is, is it necessary to have so many stages of an appeal?

MR. CHAIRMAN: That is something which we may consider. That is not within the purview of the scope of this Committee.

SHRI Y. B. CHAVAN: You were on the Committee and you are also responsible for all this.

MR. CHAIRMAN: If the law has made the procedure cumbersome, the Parliament and the Select Committee must take responsibility along with the Finance Minister. All that I can say at this stage is, it is too early to say anything.

SHRI S. M. BANERJEE: A lot has been said about the improvement in the administrative efficiency and so on. As far as my information goes, I think, this particular Department has recently done a very good job. Raids have been carried out and those people who are known for political influence were also searched and many things have come out. About inefficiency I must know from the Cabinet Secretary or Mr. Ray, the Finance Secretary—is it a fact that this particular Depart-

ment suffers because of too much of undue political influence so far as big business houses are concerned and that is one of the reasons why despite their good wishes to arrest the sharks, to bring them to book, they are unable to do it. The political influence is in the form of both visible or invisible.

The main purpose of this Select Committee was to see that some of the recommendations of the Wanchoo Committee were implemented and there was parallel economy—black economy—running. What concrete steps are being taken to unearth black money? I am not against giving more powers to the Board provided it uses judiciously.

SHRI B. D. PANDE: On the point of influence—visible and invisible—I would submit that the Government expects the Board to work judiciously in dealing with all the cases that come to their notice.

About various other measures for curbing black money it was discussed before Shri Banerjee came here today. We said that in this particular Bill only legislative proposals made by the Wanchoo Committee have been brought and some of them are outside the purview of the Board of Direct Taxes.

SHRI S. R. DAMANI: Taking advantage of the presence of the Finance Minister, I refer to the reply given by Mr. Ray and also Mr. Pande about providing residential accommodation to the Income Tax Officers in big cities. They say the matter is under consideration. My submission is you are collecting Rs. 13 crores by way of direct taxation. You take some flats on rent and provide the officers with the same. People who are in service should be free of fear.

It has been said that there is too much difference in the interpretation of rules. In many cases the decision of the officers is being challenged. The officers become nervous. What protection are you giving to the officers so that they can take decision without fear of Revenue Audit?

SHRI H. N. RAY: The first suggestion about taking the houses on lease is something which we are examining and in fact the Pay Commission in their recommendations have suggested it. This is a continuous process. Quite a number of houses have been built in Bombay and are occupied by the Income Tax Officers in a good locality and on the opposite side of this site land has been acquired and we are considering the construction of more houses.

On the question of influence and interference Section 119 is there, prohibiting the Board from issuing instructions in particular cases.

MR. CHAIRMAN: Please do not take us for a ride.

SHRIMATI SHEILA KAUL: Mr. Ray had been mentioning a number of times that there have been some accommodation arrangements for the Income Tax Officers in Bombay. I would like to know do the officers require houses only in Bombay and nowhere else?

SHRI H. N. RAY: We just refer to Bombay, because it happens to be a place where accommodation cannot be got easily as compared to other places.

MR. CHAIRMAN: Was it within the knowledge of the Government that some of the stringent provisions we had enacted in the law had actually worked to the detriment of the Government and of revenue and the delinquent people have been allowed to get away because the more stringent the provision specially with regard to penalty and prosecutions, more stringent becomes the views of the court? That is the judicial system under which we are working. One of the senior-most commissioners told us in connection with one such stringent penal vision:

"When we try to plug fraud by the mechanism of legal fiction, it has only limited effectiveness. I thought I should bring this to the notice of the committee. I would like to give a few instances in this Bill of legal

fiction which may not fully hit the target. I would like to refer to clause 64, section 271, Explanation B which says, "if such a person offers an explanation which he has not been able to substantiate...." This is a legal fiction. If he fails to substantiate, it will be treated as concealment. I think it is far-reaching and it will back-fire because the adjudicating authorities may have their own reservation.... My personal view is this legal fiction is double edged."

Wanchoo Commission has not recommended this. In the case of penal provisions, it is the principles of criminal jurisprudence which should apply, not other principles. What makes you feel that this will not back-fire?

SHRI H. N. RAY: My impression is that the Bill has in certain cases moderated the rigorous of the law. For instance, at one stage the punishment that could be inflicted was based upon the income sought to be concealed. Now it has been reduced to the quantum of the tax evaded, which makes a lot of difference. Similarly, about this Explanation, there was an arbitrary figure of 80 per cent laid down...

MR. CHAIRMAN: My question is this. Suppose a cash credit appears in your books of accounts and you are not able to give a satisfactory explanation. It is straightaway treated as your income and taxed. For the purpose of penalty, you are before the ITO and you say, "It is my mother in law who has given this money". You have given that explanation for quantum purposes and it has been rejected. The same explanation is given for penalty. In penalty proceedings, the question of substantiating your explanation arises. If you are not able to substantiate it in quantum, how can you substantiate it in penalty? So, virtually the law of quantum applies for penalty also. The appellate authorities will take a very meticulous view.

SHRI B. D. PANDE: One reason for this kind of clause is the present ordinary criminal law which puts the entire burden of proof on the prosecution is becoming extremely difficult of enforcement in tax measures and an attempt is being made to pass the burden of proof to the other side. This is being done increasingly in a large number of tax laws. This is based on certain recommendations of the Law Commission.

MR. CHAIRMAN: The appellate courts take an extremely stringent view where an assessee is called upon in criminal proceedings to prove his innocence.

SHRI B. D. PANDE: In such cases, it is for the committee to consider it. The background of this is the general background that we are finding it extremely difficult to prosecute successfully any case of tax evasion. After years of litigation, when a fraud is deducted, the punishment awarded is ridiculously low like imprisonment till the rising of the court or a fine of Rs. 100!

MR. CHAIRMAN: The committee is extremely anxious about legislation being enacted which would bring the delinquent people to book. But suppose it back-fires?

SHRI B. D. PANDE: I agree. As Mr. Ray mentioned, the original provision was that penalty would be equal to the income evaded. It was so high that the appellate courts set it aside. So far as this provision is concerned, it is a matter for consideration whether it will really back-fire or not.

SHRI H. N. RAY: There is no such apparent injustice, because he has offered an explanation. If it is reasonable, it is likely to be acceptable to the Deputy Commissioner. If it is not, he always has the right of appeal.

MR. CHAIRMAN: The explanation offered is with reference to a particular item in respect of which there is allegation of concealment. If he could give an explanation which he was able to substantiate, the ITO would not tax

it in his hands. I am not on quantum. I am on penal proceedings. If he has substantiated it in quantum proceedings, it would not come in the penalty proceedings.

SHRI H. N. RAY: This has to be read with clause (c): "who has concealed the particulars of an income or furnished inaccurate particulars of such income". This explanation is only meant to elaborate that particular point.

MR. CHAIRMAN: Now, what should he substantiate—that there was no concealment or furnishing of inaccurate particulars? Or, does he have to substantiate the explanation in respect of concealment income?

SHRI B. D. PANDE: He has to substantiate that the explanation he has furnished is not false.

MR. CHAIRMAN: If that be so, there will be no penalty proceedings at all.

SHRI AMRIT NAHATA: In the income-tax laws and other economic laws, in the case of these offences, the onus of proof lies on the accused whereas in the ordinary criminal law, it lies on the prosecution. We are introducing certain penal provisions in the economic laws. Would the Secretaries suggest an appropriate amendment in the criminal laws also so that this hiatus is removed?

SHRI B. D. PANDE: Recently an amendment was moved to the Cr.P.C. that certain provisions of the Cr.P.C. would not apply to certain economic offences, as recommended by the Law Commission, like foreign exchange regulation laws, income-tax laws etc.

MR. CHAIRMAN: The judicial department tells me that the income-tax law is not there.

SHRI Y. B. CHAVAN: That is because we are amending the Income-tax Act itself.

SHRI B. D. PANDE: Recently the Essential Commodities Act has also been amended placing the burden of proof on the person concerned. The Bill will be coming to Parliament shortly.

MR. CHAIRMAN: Which are those recommendations of the Wanchoo Committee for making the law stringent? We have evidence which says that what you have legislated is beyond what the Wanchoo Commission has recommended.

SHRI H. N. RAY: There are some recommendations about intra-family transfers which we have accepted.

MR. CHAIRMAN: I am not on avoidance. I am talking of provisions for investigation and penal provisions.

SHRI H. N. RAY: The trusts are required to furnish returns. If a trust fails to submit a return, then punishment follows.

MR. CHAIRMAN: I am on the question of more power being given to the tax officers for search, seizure and investigation. Where is that recommendation. If you are not ready with it, you may give a note on it.

SHRI H. N. RAY: We will give a note.

MR. CHAIRMAN: We have evidence of an eminent authority on taxation to the effect that we have over-legislated as compared to the recommendations of the Wanchoo Committee.

Then, we have received complaints from many quarters that corruption in the department has increased many many fold. After all the income-tax officers are no different from the people in other sections of the Indian society and if corruption has increased generally, it will reflect itself in all spheres. Have you consi-

dered the possibility of corruption playing havoc with society if you give more and more powers to these officials? How do you ensure that this does not result in harassment of the assesseees?

SHRI H. N. RAY: I think the Wanchoo Committee, when making these recommendations, had this very much in mind. It considered the question of giving such additional powers to the officers of the income-tax department and thought that the balance of advantage lies in giving them these powers. Then, like other departments, the income-tax department has also a Vigilance Cell through which we try to exercise whatever control we can. Further, there is the Central Vigilance Commission and the CBI. So, whatever steps can be taken are taken. When we find that these officials have movable or immovable property which is disproportionate to their income, we ask them to explain this,

MR. CHAIRMAN: It becomes very grave and serious when it relates to officers who have to collect tax from the people. In the case of an officer who sits in the Secretariat, whose nexus with the public is remote, the chances of monetary corruption is very much less. The more power you give, when the power is related to money, the more is the possibility of corruption. What is the safeguard to ensure that this is not misused or abused to unleash more and more corruption? What is the protection to the smaller man who has not so much of resources to fight litigation?

SHRI H. N. RAY: The Commissioners and Deputy Commissioners exercise the tightest possible supervision. Further, when a high-powered committee presided over by a Supreme Court Judge, whose knowledge of men and affairs is very great, after considering the possibility of abuse and misuse of these powers, did recommend a certain course of action. Government have to be

guided by that. It is a question of judgment. Perhaps we cannot do better than the judgment of the Wanchoo Committee.

MR. CHAIRMAN: What do you think of a legislative measure providing for action against an officer who gives vexatious assessment? What is your reaction?

SHRI H. N. RAY: It is very difficult to define what is "vexatious".

MR. CHAIRMAN: Leave it to the courts to be proved by the complainant.

SHRI H. N. RAY: On the one hand, we have to get revenue. We have also to see that we do not demoralise the officers. At the same time, we have also to see that there is no harassment of the innocent taxpayer. This is a delicate line which one can easily transgress one way or the other. I would not say more on this point.

SHRI H. M. PATEL: Shri Ray takes shelter under the recommendations of the Wanchoo Committee. Is it not a fact that you are giving wide powers to the income-tax officers, whose salary is not much? So, these powers are likely to be abused. Should we not put a check on that? Since the Government shuts its eyes to this problem on the ground that the Wanchoo Committee has made a particular recommendation, we must consider it. Is it not known that even today the income-tax officers harass the tax-payers? They exercise their powers in a manner which compels the tax-payers to find ways and means of avoiding payment of tax. When you are giving the income-tax officers these additional powers, I think you are taking a step which may, I do not say must, result in very serious harassment to a large number of honest tax-payers. Whatever harsh steps you may wish to take against dishonest people, we are not against them. But these provisions will cover honest innocent people also. Suppose it is proved subsequently that the action of the

income-tax officer was clearly unjustifiable, what steps will be taken against the officers concerned? If you think it is absolutely essential to give wide powers to the income-tax officers, you should take deterrent steps against those officers who act arbitrarily and unfairly to the assesseees.

SHRI B. D. PANDE: This is no doubt a very important point from the point of view of public administration also, general probity and cleanliness of public administration. As the Chairman has pointed out, a lot of money is dealt with here. I think the brief point raised by Shri Ray for the consideration of the Committee is whether the measures to check abuse of such power should find provision in the law or it should be dealt with by administrative measures so as not to demoralise the general administration. This briefly is the position. I certainly would be a supporter of the strongest possible administrative action against any delinquent who has exceeded his powers. There are enough powers available with the government to take action in such cases—reduction in rank, removal, dismissal and even criminal proceedings. I think there is already provision in the general law of the land, in the Indian Penal Code and so on.

MR. CHAIRMAN: That is too remote.

SHRI B. D. PANDE: It is very difficult to come to a judgment on this question.

MR. CHAIRMAN: In the Central Excise Act there is a specific provision for action being taken against any Officer who acts in excess of his authority.

SHRI B. D. PANDE: My experience is that nobody has ever been prosecuted under that provision. It is very difficult to prove this kind of thing.

SHRI H. M. PATEL: Balancing between what? It is all very well to say that the services should not be

demoralised. Don't take any step which demoralises the services. Why should the services be demoralised when action will be taken only in the case of clear abuse of power. You can provide in the law that the decision to launch a prosecution will not be taken at any junior level but, say, by the Government at the highest level, at the level of the Minister or the Finance Secretary. It is so easy to say that the services may be demoralised. Why should the services be demoralised if you take action only after deciding at a sufficiently high enough level whether there is a *prima facie* abuse of power or not.

The other point is: Is the Government not supposed to concern itself with avoiding undue harassment of the public?

SHRI B. D. PANDE: Yes, Sir.

SHRI H. M. PATEL: When you give wide powers to the relatively low-paid officers compared to the enormous money power, is it not undesirable that they should not be placed in the hands of the officers at that level? If you do this, where should the balancing come? It should be balanced by providing, should he abuse the power, that action will be taken against him.

SHRI AMRIT NAHATA: I am on this question of balancing. I think, hardly 5 per cent of our country's population is assessed under the income-Tax laws.....

MR. CHAIRMAN: I think, there are only 30 lakhs assesseees in a country of 560 millions.

SHRI AMRIT NAHATA: Half a per cent. Out of this, let me assume that 30 to 40 per cent are honest tax-payers, say, salaried group and all that. I am assuming on the outer limit side. So, there are very few honest tax-payers. When we are discussing the question of enlarging the powers of Income-Tax Officers, giving them greater powers of inspection,

etc., there is the danger and it is well-founded that these will be abused. This possibility of abusing the powers by the Income-Tax Officers against a very negligible small number of honest tax-payers has to be balanced against the need of providing for stringent powers against the monster of tax-evasion. I think, if we have to balance, if we have to prevent tax-evasion which is of a monster size, and if a very small section of people are going to be harassed, it can be taken in stride as a part of the game.

SHRI H. M. PATEL: It is an admirable sentiment. But I would remind Mr. Nahata that there was a time when men of his extremely liberal views did consider that it is most important that even one innocent man should not be harassed and that all men should always stand up for an honest innocent man.

SHRI AMRIT NAHATA: I agree with this noble principle that hundred guilty men may go scot-free and one innocent man should not be harassed.

MR. CHAIRMAN: We will strike the balance when we discuss it amongst ourselves.

We thank you very much. I would like to make only one point here. We have been entrusted with a task which is extremely difficult and onerous. Therefore, in the process, if you think that the Committee has been putting questions on matters beyond a limit where possibly you were not able to answer, it is entirely not your fault. We are very thankful to you for your cooperation.

SHRI B. D. PANDE: We have no grievance of that kind.

SHRI S. R. DAMANI: We did not put any question to Mr. Kaul. Therefore, you kindly allow me to ask only one question.

MR. CHAIRMAN: At least he happens to be the happiest man in the Committee.

SHRI S. R. DAMANI: Mr. Kaul, you are one of the most eminent economists in the country. I only want to know, accordingly to you, to what extent these controls and shortages are responsible for creating black money and what steps are necessary to cover shortages and create more production.

SHRI M. G. KAUL: I was going to get away without any questioning. I shall be happy to answer this question.

There can be no doubt that in the realm of shortages and controls, the effect of shortages and imposition of controls is responsible for mal-practices. It is our duty to try and reduce the shortages and, the same time, while the shortages exist to reduce the mal-practices. Most of what we have been discussing today is directed to this end.

The reduction of controls is not really possible until the shortages in physical terms are reduced. For instance, I refer to import controls. We have to issue licences because the commodities are in short supply and we have to ensure that they are given to high priority sectors. In doing so, you exercise controls which can be of use. There is no doubt about it. But it should be our task as it is our task to reduce the ill-effects to the greatest possible extent which we are attempting to do.

SHRI H. M. PATEL: I would like to ask him one question as to whether the possibility of taxation on expenditure was ever considered, when you were considering this all-comprehensive revision of taxation laws.

SHRI M. G. KAUL: I would not be able to answer that adequately. I have myself not been involved in such a discussion.

MR. CHAIRMAN: Mr. Pande, are you aware of it?

SHRI B. D. PANDE: I do not know whether I can answer this question of what taxation measures should or should not be taken. I believe the points are under consideration of the Finance Minister.

SHRI H. N. RAY: I should only like to submit that the expenditure tax had a long and chequered history; it has come on and it has come off. There had been a lot of difficulty in implementation. What has been done this time is to specify certain expenditure items that are to be included in the return itself. It is hoped thereby that this will be a further check in reconciling the residual income and ensuring there is proper collection of income-tax as such. We feel that it is probably easier to tax income rather than to tax expenditure without going into a lot of detailed examination of all the expenditure items, vouchers, etc.

[The Committee then adjourned]

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

Wednesday, the 10th July, 1974 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. Shrimati Sheila Kaul
11. Shri Maharaj Singh
12. Shri P. G. Mavalankar
13. Shri Amrit Nahata
14. Shri H. M. Patel
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri Vasant Sathe
17. Shri Satyendra Narayan Sinha

LEGISLATIVE COUNSEL

1. Shri S. Harihara Iyer—*Joint Secretary and Legislative Counsel.*
- REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE
AND INSURANCE)**

1. Shri S. R. Mehta, Chairman, CBDT.
2. Shri C. C. Ganapathy, Joint Secretary.
3. Shri S. Narayan, Joint Secretary.
4. Shri S. I. Tripathi, Deputy Secretary.
5. Shri K. N. Balasubramanian, Officer on Special Duty.
6. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri H. G. Paranjpe—Deputy Secretary.

WITNESSES EXAMINED

I. Income-tax Bar Association, Ahmedabad.

Spokesmen:

1. Shri L. G. Thakkar—President.
2. Shri C. V. Mehta—Vice-President.
3. Shri V. J. Shah—Secretary.

II. Shri G. P. Kapadia—Chartered Accountant, Bombay.

III. Institute of Cost and Works Accountants of India, Calcutta.

Spokesmen:

1. Shri M. R. S. Iyengar—President.
2. Shri V. Kalyanaraman—Vice-President.
3. Shri G. K. Abhyankar
4. Shri S. K. Mitra
5. Shri S. N. Ghose—Secretary.

I. Income-tax Bar Association, Ahmedabad.

Spokesmen:

1. Shri L. G. Thakkar—President.
2. Shri C. V. Mehta—Vice-President.
3. Shri V. J. Shah—Secretary.

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

MR. CHAIRMAN: Mr. Thakar, before you commence your evidence, I would like to read out the Direction of the Speaker which governs your evidenc. It says:

"The witness may kindly note that the evidence that 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 L. G. THAKAR: Sir, ours is an Income Tax Bar Association. Our Association consists of advocates, chartered accountants and income tax practioners. Our membership is about 250. Hon. Membebrs of the Select Committee know that at present, the income tax proceedings are being attended to by lawyers, chartered accountants and income tax practioners, who are all duly authorised under Section 288 of the Act. Under the existing tax laws, they are entitled to practice and are rendering a useful service to their clients and to the department. The framers of the proposed amendment Bill seem to be of the view—our main concern is against the introduction of Section 139 (1A) for compulsory audit—that the audit by a qualified chartered accountant would be helpful in relieving the assessing authority of the need to make routine checks and enabling them to concentrate on the broader aspects of assessing correctly the liability and thereby detect the evasion of tax. It seems, they are of the view that the services of auditors should be harnessed for obtaining facts and figures which could be relied upon. To the extent the time and effort of the income tax officers now spent on gathering the requisite information and verifying the correctness could be saved, it is presumed that the income tax officers would be able to

apply the same time more fruitfully to the complicated aspects of law and evidence. Though the object of the proposed amendment seeking compulsory audit is laudable, apart from the fact that it may result in complete taxation of two categories of the present agencies, namely, advocates and income tax practitioners from the field of direct taxation, it will be very difficult to implement this objective because at present there is paucity of chartered accountants. They are mainly concentrated in big cities like Bombay, Madras etc. It will be very difficult for the small business men who are in the villages, removed far away from the big cities, to go to these chartered accountants, and get the accounts audited. It is also not possible for these chartered accountants to undertake this additional duty because the number of the chartered accountants is very limited at present. The nature of business is also such—for example, contractors, grocers, chemists and druggists, sweetmeat dealers—that it will be difficult for them to maintain proper books of accounts, as could be verified by the chartered accountants. The report of the chartered accountant will also be a qualified report.

MR. CHAIRMAN: You are confusing the issues. We are on the question of principle, whether or not compulsory audit should be introduced. On that, you have said that the object is laudable. You have pointed out certain difficulties in the implementation of that particular objective. First one is, which you have said, there is dearth of auditors and that because of paucity of auditors, the rural areas would be left uncatereed to. I would like you to enumerate the further limitations. You are going into the details. It is not only the small people, the type of businessmen which you have mentioned, who might have accounts which may need qualification. Even the best people have their accounts maintained in a manner, which need qualification. I would like you, before you divert on to the details, to enumerate the further

limitations in the introduction of compulsory audit. As you have said, first is, paucity of auditors and their inability to cater to the rural areas.

SHRI L. G. THAKAR: What I am trying to arrive at is, there are limitations. It is very difficult to implement this principle. There are no chartered accountants in the remote parts of the country.

MR. CHAIRMAN: You have made that point.

SHRI L. G. THAKAR: At present, the chartered accountants are heavily engaged in the audit of companies, cooperatives etc.

MR. CHAIRMAN: This is the same thing.

SHRI L. G. THAKAR: Even the nature of business is such that if this audit is carried out, it will be a qualified report. It will not serve the purpose, as proposed in the amendment. When a person goes to an auditor, he will take time to audit the accounts. What will happen? There will be delay in submission of returns. This will run counter to the aim of the Government that there should be quick collection of taxes. By introducing compulsory audit, submission of returns will be delayed and this will consequently result in delay in payment of taxes. The work on the department will also increase. I would like to point out another thing. In the case of a limited company, there is a statutory requirement that the accounts should be audited. But, there, the public funds are invested. In such case of a limited company, there is to the public at large. Here, in this case, audit has got a limited purpose, namely, tax audit. So, the audit which has been introduced in the companies, should not be made compulsory in the case of a non-corporate assessee. The purpose which is served in the case of companies, will not be served here. Here, the purpose is very limited. So far as only the income tax department is concerned, the purpose is a good one.

MR. CHAIRMAN: You have yourself said that one of the objectives is to relieve the income tax officer of his burden of going through the books of accounts etc. as an expert guarantee as regards the verifiability etc. The income tax officers cannot be relieved from their liability to investigate from their liability to make assessment, but certainly, they can be relieved of the onerous and cumbersome responsibility of examination of books of accounts.

SHRI L. G. THAKAR: Even in that case, the books of accounts are never rejected on the ground that they are not properly maintained. Even sales are mostly vouched. By introducing this additional element for audit, the purpose will not be served. Even at present, the accounts are never rejected by the department by resorting to Section 145.

SHRI H. M. PATEL: What the witness is leading us to is this. A chartered accountant's type of activity is quite different. So far as this is concerned, income tax practitioners and advocates should be the persons. If you have this provision of audit, they should be asked to represent.

MR. CHAIRMAN: Do you suggest that there should be compulsory audit?

SHRI L. G. THAKAR: No. We do not suggest compulsory audit. But what we suggest is, if the department wants that a particular information should come in a particular.....

MR. CHAIRMAN: Mr. Thakar, you are a lawyer. You understand the position of a Bill before a Select Committee. Parliament is not wanting to do anything. We are only deliberating. We have called you to place your views before us. If you think the existing provisions in the Bill are in any way not fully rational or if you think they need certain modifications, you can persuade this Committee with the help of your evidence. But, do not run away with the impression that Parliament or Government or the department wants to do something.

We are not worried about what the Government or the Department wants. We are at the moment worried about, what ought to be the reasonable and rational law that we should recommend to Parliament. So, do not beat around the bush. Please clearly say 'yes' or 'no'. Do you think compulsory audit should be introduced?

SHRI L. G. THAKKAR: No.

SHRI P. G. MAVALANKAR: The witness started by saying that the principle is laudable. I would like to know, what is laudable about the principle.

MR. CHAIRMAN: You started by saying that the principle is laudable. We were under the impression that while you welcome this, you want that this should be in some modified form, as Mr. Patel has suggested. If it is not acceptable to you in principle, what are the other points which you would like to make?

SHRI L. G. THAKKAR: The principle of Audit is laudable, so far as it is a principle; but there are many limitations. At this stage, it is not practicable to introduce compulsory audit.

MR. CHAIRMAN: Do you mean to say that because of the presence of practical difficulties, this particular clause in regard to compulsory audit should not be there? It means that you do not agree with that principle.

SHRI L. G. THAKKAR: Suppose the framers of the Bill want that there should be some check; and that the Department should be benefited by the filing of correct returns. They may then utilize the advocates and income-tax practitioners who are practising for so long. This is an alternative suggestion. If the Department wants that their time may be saved, they may achieve it by amending this bill and ensuring that these two agencies are not disqualified. These agencies are even now qualified to practise income-tax cases. As the Wanchoo Committee had also suggested, a certificate can be prescribed, which can be given by these agencies. In

this manner, the advocates and income-tax practitioners who have worked since long would not suffer.

SHRI VASANT SATHE: Do you mean to say that first, there should be no compulsory audit, as it is a very impracticable proposition; and secondly, if at all we want to have a system of compulsory audit, let it be shared with the income-tax practitioners also, so that their bread is not snatched?

SHRI H. M. PATEL: He says: "Let there be no compulsory audit because it is not practicable; but you can have a shorter cut and prescribe a form of certificate on the various points that you might think fit."

MR. CHAIRMAN: It is a tribute to the manner in which you are putting up your case that we are speculating as to what your idea is. Are you saying that the certificate should be given without audit?

SHRI L. G. THAKKAR: Yes, Sir.

SHRI H. M. PATEL: Lawyers will help in shortening the process.

SHRI L. G. THAKKAR: After all, Sir, the Department wants a certain information in writing.

MR. CHAIRMAN: Please do not be obsessed with what the Department wants. Tell us your opinion.

SHRI VASANT SATHE: We thought that we would be reducing the work of the Income-Tax Officers by putting certain responsibility on the qualified auditors who can do the job of examining the accounts and certifying, and taking responsibility for so certifying that it is correct. If the account is found false, we may provide sufficient correctives. Do you suggest that lawyers who are practising, should give some sort of certificate? What would be the sanctity of that certificate? Would the lawyers take the responsibility for the correctness or otherwise; if the account is found false, should the lawyers be penalized for giving false information?

SHRI L. G. THAKKAR: Yes, Sir. The Bar Council provides for it. We cannot certify wrong things.

SHRI VASANT SATHE: The Chartered Accountants would examine the vouchers produced and say that they are satisfied. Auditing means that the people doing it would be responsible for giving all the figures in the return as well, and to see whether the income was actually made. Will you take up that responsibility also?

SHRI L. G. THAKKAR: Yes, Sir.

SHRI VASANT SATHE: Then it would become full audit.

SHRI P. G. MAVALANKAR: Accepting his argument for the sake of understanding him better, does the witness want any and every income-tax practitioner to be included, or only those with some standing?

MR. CHAIRMAN: Does the witness want every B. Com. or a graduate to be made eligible?

SHRI L. G. THAKKAR: Any person who is qualified under the Income-Tax Act.

MR. CHAIRMAN: Any other point?

SHRI L. G. THAKKAR: Just to round up my arguments, I want to say this in regard to the sanctity of the certificate. Even the Wanchoo Committee wants certain information. It says, in page 47 of its Report:

"Auditor's report should include, among other things, pertinent information like the following:

1. Scope of examination-- whether full check, test check or mere reconciliation --in order to satisfy that purchases, sales, income and expenses are properly accounted for and balanced-sheet is properly drawn up.

2. Nature of security offered for obtaining secured loans. Particulars of security not recorded or accounted for in the books to be stated.

3. Computation of admissible allowance by way of depreciation.

4. Brief particulars of expenditure on entertainment, advertisement, guest house, etc. and the amount, if any, disallowable under section 37 of the Income-tax Act, 1961.

5. Particulars of expenses in respect of which payments have been made to directors, partners or persons substantially interested in the concern and their relatives. The amount, if any, not deductible under sections 40 and 40A of the Income-tax Act, 1961.

6. Particulars of amounts, if any chargeable as profits under section 41 of the Income-tax Act 1961.

7. Particulars of payments in respect of which income-tax has not been deducted at source and paid in accordance with the requirements of sections 192-200 of the Income-tax Act, 1961."

My submission is this: an advocate or an income-tax practitioner is also furnishing all these points. There is nothing more which is required for the purpose of finalization of assessment; these things are so primary to us who are practising income-tax law that even at present, we furnish all this information, mostly with our return of income. If the framers of the bill want that some information is required on these lines, either the form of the return may be amended accordingly, to enable this information to be supplied with the return of income, or a proforma for a certificate may be prescribed, which can be issued by an advocate or an income-tax practitioner or a chartered accountant. So, at present, in the corporate sector, where most of the taxes are collected, the audit is there. This is only for the non-corporate assesseees that the audit is required. In the case of above a sum of Rs. 50,000 or Rs. 5 lakhs as income, the books of account are regularly maintained by them.

SHRI VASANT SATHE: Let us not call it audit *per se*, as required by the chartered accountants. Do you call

it audit. We can call it something a semi-audit and allow the income-tax practitioner to certify the requirements.

SHRI V. J. SHAH: Any chartered accountant can do this. A lawyer or an income-tax practitioner also can do this.

SHRI L. G. THAKKAR: There is nothing which is so technical in this. The purpose of the law will also be served by giving such information either by a return of income or a special certificate prescribed under the rules. In 1961 or 1962 some sort of certificate was prescribed, but that was deleted, and that was to be certified at that time also by a chartered accountant or a lawyers or an income-tax practitioner.

MR. CHAIRMAN: Take the first para only of the report of the Wanchoo Committee in this respect. "...the scope of full examination in order to satisfy that the purchases, sales, incomes and expenses are properly accounted for and the balance-sheet is properly drawn up." Can this be done without the entire gamut of audit?

SHRI L. G. THAKKAR: Yes, Sir. What the suggestion seeks to have is that when you present a book of accounts before the income-tax officer, certain information is required by the income-tax officer before he applies his mind to the case; whether the book of accounts is vouched or unvouched or is partly vouched. We submit the return of income. They ask questions. Even today, when we appear before the income-tax officers, they ask a few questions in the beginning and we reply. If the law requires that it should be done in writing, we are prepared to put it in writing.

MR. CHAIRMAN: Will this process involve totalling and posting of the books of original entries, that is, cash book and journal, and the principal books which means the ledgers? Will it or will it not involve?

SHRI V. J. SHAH: It will.

MR. CHAIRMAN: Will it involve checking up all the vouchers and detailed verification?

SHRI V. J. SHAH: Yes.

MR. CHAIRMAN: Will it entail going into separating all the vouchers and the classification of the various items into different groups, and will it determine all cases of excess of assets over liabilities in an understandable form? What else is audit?

SHRI V. J. SHAH: This very thing can be done by practitioners of income-tax law and other lawyers. You may prescribe that it should be done by practitioners of five years' standing. That will be better than fixing a chartered accountant for it.

MR. CHAIRMAN: We are not on the question of ability. We are on the limited question, as he was trying to make out a case that without audit we can do all this. It is not possible to comply with what the Wanchoo Committee wants without there being an audit. According to you, it is not only the chartered accountants but also the ITPs of some standing and advocates of some standing should be given the same authority and power. That is your final case.

SHRI V. J. SHAH: I meant advocates who are attending to tax matters, because they are specialists in it. They never go to civil courts or criminal courts.

MR. CHAIRMAN: Not all advocates; only those attending.

SHRI VASANT SATHE: If I understand you aright, Mr Thakkar, a B. Com. graduate who is entitled to practise at the income-tax tribunal, should be allowed to give this certificate in terms of our requirements. This is tax audit. He said that it should be allowed to be done by everyone who is entitled to the practise before the income-tax authorities. Are you putting your case on that ground,

or, are you putting certain qualifications or limitations?

SHRI V. J. SHAH: If necessary, you may prescribe some limit, say, five years.

SHRI VASANT SATHE: According to you, is it necessary?

SHRI V. J. SHAH: According to me, it is necessary; five years' standing as an income-tax practitioner or an advocate appearing on the taxation side. The company law people do not also know much about the income-tax law. Hardly about 30 per cent of the chartered accountants are practising on the income-tax side. They do not know much about income-tax.

SHRI L. G. THAKKAR: Those who serve as chartered accountants somewhere do not know about the income-tax law. Even at present, the income-tax practitioners require special training in income-tax law to practice income-tax law.

SHRI V. J. SHAH: Advocates or practitioners who are appearing in income-tax matters for the last five years should be allowed in this case; whether he is a chartered accountant or an income-tax practitioner.

SHRI L. G. THAKKAR: Whether it is a chartered accountant or any other, he may be allowed.

SHRI V. J. SHAH: A fresh chartered accountant is not competent to do this type of audit.

Now, regarding the anonymous donations.

MR. CHAIRMAN: We have heard so much evidence about that.

SHRI V. J. SHAH: If proof of payment is to be given, my suggestion is this. They give us a token and it has to be taken after 15 days or one week. We have to file a return. If we do not have the challan, we cannot send a return, and the return could not be sent in time. So, a certificate stating that the tax has been paid should be treated as sufficient evidence.

(The witnesses was called in and he took his seat).

MR. CHAIRMAN: We will consider it.

SHRI L. G. THAKKAR: The bank issues a chalan on the same day. In other cases it is not given on the same day.

MR. CHAIRMAN: We will consider it.

SHRI L. G. THAKKAR: There is some amendment in the law about the payment of tax before filing the appeal. Our submission is that it should not be there. It should be as it is.

MR. CHAIRMAN: Don't make any *ad hoc* suggestions. If you study it properly, you will find that there is a proviso.

SHRI L. G. THAKKAR: There is a proviso. In that case, there will be two hearings. Supposing I file an appeal before the A.I.C., then he will call me to find out whether the tax is paid according to this provision or not. That will be a preliminary hearing.

MR. CHAIRMAN: Only according to the return. Mr. Thakkar, if it is really something worthwhile, you kindly let us know in writing about it.

SHRI L. G. THAKKAR: Yes, Sir.

MR. CHAIRMAN: Thank you very much.

SHRI L. G. THAKKAR: Thank you, Sir.

[The witnesses then withdrew]

III Shri G. P. Kapadia, Chartered Accountant, Bombay.

MR. CHAIRMAN: Mr. Kapadia, according to the convention, I draw your attention to one of the Directions of the Speaker, Lok Sabha which governs the evidence tendered before the Committee. The Direction is that the evidence that you give will be treated as public and is likely to be published unless you specifically de-

sire all or any part of your evidence tendered by you to be treated as confidential. Even though you may desire your evidence to be treated confidential, such evidence is liable to be made available to Members of Parliament.

Now, before you start, after making general observations, if I might suggest, you may take up some of the more important clauses that you have dealt with in your Memorandum. We would like you to tell us specially about compulsory audit and such other matters. Then, you come to trusts if you also think that you should make your submissions before the Committee. On trusts, we have already gathered sufficient evidence.

SHRI G. P. KAPADIA: I shall start with general observations, focussing attention on certain fundamental matters. After I have done that, instead of going in the order in which my comments have been made. I will be selective.

I am grateful to this august body for the opportunity given to me. I consider it a privilege to be of a little assistance to the Committee.

Regarding the general approach, everyone in the country is worried about the colossal evasion that is taking place. It has become rampant. One of the causes has been rightly removed by the authorities by lowering of the personal rates of taxation. Here, I may refer to the approach made to this vital problem by late Shri T. T. Krishnamachari, who during the course of my discussions with him had the intention of bringing down the maximum rate not to 77 per cent but as low as 60 per cent. Because he was impressed with the argument that human nature is human nature and you cannot remedy the human defects. Everyone of us is dead against the evil of evasion. We say, it must be curbed. But at the same time, we should not lose sight of the fact that honest citizens as a result of these measures suffer more because the evader has his own

methods of doing things and he wants to get away with it.

In the case of the highest rates of taxation prevailing in the country, the evaders consider the honest elements as stupid and foolish as to what they are doing. Here, I would like to make a distinction between what is called avoidance and evasion. Evasion is something which has to be detested by one and all. So far as avoidance is concerned, the word "avoidance" is also not properly used because you must distinguish between tax planning and avoidance as such. If you arrange your affairs in such a way that you pay the minimum under the law and the State also looks after the fact that not a rupee more is taken, there will be no discontent.

Incidentally, I may refer to the question of matters about interpretations and other things agitated at the level of High Courts and the Supreme Court to such an extent that there is a first-class litigation and, with utmost respect, I must say that the tendency is to interpret the statutes in a particular manner and, if the decision of the judicial authorities is adverse, there is an attempt to go higher and higher and, ultimately, in a number of cases it happens that to sustain the original interpretation of the Department, attempt is made to amend the law. This sort of process which goes on in a continuous manner creates a sense of frustration.

I do admit that in respect of this matter, the representatives of the assesses also are a party to this sort of thing, taking the matters to the High Courts and giving legal interpretations which were never intended. From that angle, I would very strongly advocate the examination of the issue and would suggest that under the statute itself or through circulars we spell out the items of income which are definitely assessable and also which are not assessable. The result would be that the tax approach will not remain a closed preserve of the

professionals but it will open up for the lay-man also.

In the United Kingdom they have taken pains to make a rational analysis of all the decisions of the Courts and even of the House of Lords and the analysis of these in some of the books which are available runs into as many as 14-15 printed pages. In our country also we can certainly make an effort to go through the decisions at the various levels including those of the Supreme Court and the Board can spell out the items which are assessable and which are not assessable and expenditure which is deductible and expenditure which is not deductible. If this is done, all these difficulties about interpretation and other things will disappear. As early as 1969, I actually spelt out a scheme but that was not considered. Regarding expenses, there should be no difficulty in stating that the allowance should not relate to a particular head of income but the allowance should be considered under any head of income collectively with the stipulation to the effect that it should not be personal expenditure and it should not be capital expenditure. Actually, in the Administrative Reforms Commission the Study Group has accepted my recommendation in this behalf and stated that there is a tendency to inflate the expenses because a part would be disallowed and from that angle also it is desirable to spell out this.

Then, coming to the question of the general lay-out, I am speaking with a little hesitation. I must say this. Take the question of registration of firms. Invariably in a number of cases registration is refused on flimsy grounds and ultimately it is not sustained. I would like to know as to what is the recovery in respect of the firms treated as unregistered. It would not be a sizeable amount, according to my own estimate. In a like manner, in respect of Sec. 104 controlled companies, the decisions of the higher tribunals and the high courts are not adverse. What is it

that we are trying to achieve if there is no sizeable gain to revenue? Then why all this? My considered submission would be that in respect of the latter category, to enable ploughing back of profits and not squandering them away, it would be a healthy procedure to balance the provisions of Sec. 104 or even abolish them as recommended by the Wanchoo Committee. In respect of registered firms, I would advocate registration to be granted straightaway with a positive stipulation that the Department will have a claim against the partners and the liability will be joint and several and in respect of special cases the Department will have the inherent right to probe into the composition of the firm, whether it is a genuine or a *benami* firm. If these things are done, unintended interpretation cannot be given. One of the interpretations made according to the dictum of one particular High Court in this country is that while clubbing the income of the wife losses cannot be allowed to the husband. Now, under the statute itself, Sec. 67(1)(c) spells out that if there is a loss against which other items are adjusted, the resulting figure will be taken as the income of the partner. Now, in spite of this the assessment takes place ignoring the loss of the wife and it would be indeed a very difficult thing for these people. The honest person will remain honest under all circumstances and the result of colossal evasion and corruption which is there would be that ultimately the honest element will get ostracised. I would also very strongly advocate for your consideration a general observation that you would find that a day will come down in the learned profession the honest elements and men of unimpeachable character will get eased out. They would rather prefer to be extinguished than do wrong things. The problem is a national problem and we must approach it in such a way that every positive step may be taken not only to reduce further the personal rates of taxation but also reduce the rates in respect of other

direct tax levies so that the total collection in respect of these levies is limited to a particular limit. We have an example in Sweden which is a country with an avowed socialist policy. Now, the result of that would be that people will not be tempted to evade and if there is a fair deal available, it will percolate to the lower levels also. Taking these factors into consideration, I would strongly advocate a re-orientation of the whole policy so that the honest elements are fully encouraged.

Now with your permission, I will quote from the Parliamentary debates and these are very pertinent.

MR. CHAIRMAN: You may treat it as read by us.

SHRI G. P. KAPADIA: Mr. T. T. Krishnamachari discussed the registration of the firms also. He referred to a question where it was stated that they would not recognise this profession because he would not recognise an association of shop-keepers. Here, as an incidental remark, I might mention that so far as the profession of accountants is concerned, I have always held the view that we should not take the measure of compulsory audit as a measure of some sort of a benevolence to the profession.

MR. CHAIRMAN: No.

SHRI G. P. KAPADIA: I said, 'No'. I do not want to tell the authorities that you accept my certificate. Let us ourselves reach a stage when the authorities tell us, 'We have to rely on your certificate.' That stage has come. In that respect, I will give you my positive remarks a little later.

Incidentally, I might also refer to the various disclosure schemes. I express my personal view to the effect that these disclosure schemes are nothing but a premium on dishonesty. An evader should have no leniency from the authorities and he should be punished. The approach of the authorities should be to the effect that they will nurse and encourage the honest people and punish the

evader and in a ruthless manner and no mercy should be shown to him.

MR. CHAIRMAN: The only thing is that he made the comments before he became the Finance Minister.

SHRI G. P. KAPADIA: Even after that, I had the privilege of sharing my thoughts with him. He said that with higher and higher taxes, dishonesty would thrive in this country. That was his considered view. Why is it that in spite of the terrific power which has been vested in the State, the Department is unable to tackle the question of evaders. The simple reason, to my mind, is that the evading forces are becoming so gigantic that it is beyond anybody's capacity to deal with them. Therefore, the only solution would be to encourage the honest assesseees by resorting to reduction in tax rates and to punishing the dishonest people. My suggestion is that in a new Cell you please take people like lawyers and Chartered Accountants as full-time employees. They should sit with the Members of the Central Board and assist the Department in asking the assesseees to pay off the department's dues. If such a step is taken, it would considerably enrich the talent in the Department. This would give them the personnel to deal with the people with efficiency.

MR. CHAIRMAN: Eminent men from the profession of Chartered Accountants and Accountants do not like to join the Department.

SHRI G. P. KAPADIA: For that my humble submission is that to take in these people in these positions, the emoluments must be of a higher order. In respect of the Members of the Income-tax Appellate Tribunal, when I come to the clauses, I shall comment. My personal view is that looking to the value of the rupee as it is to-day, the salary paid to the Members of the Tribunal is not adequate. Unless you convert them into High court judges and you increase their emoluments to a higher order which are equivalent to the salaries and emoluments of the

High court judges, you will not be able to reap considerable advantages from them.

SHRI VASANT SATHE: Advocates themselves find it too low and they have resigned.

SHRI G. P. KAPADIA: I entirely agree with you. We have gone into the vicious circles and we must get out of that.

MR. CHAIRMAN: Looking to the present position, top legal and accountancy professionals are in the private sector. Some of them are known taxpayers and other are tax-evaders. The services are made available to them but they are not available to Government. As you rightly pointed out that is because the emoluments offered to this profession are not lucrative.

SHRI G. P. KAPADIA: That is the position and that is the matter for the authorities at higher-levels to examine.

MR. CHAIRMAN: Your view is that for the purpose of having a more effective expertise, we must harness the talents of the accountancy and legal profession.

SHRI G. P. KAPADIA: Yes, Sir. Actually I had to persuade a number of Chartered Accountants to opt for the Tribunal Membership but the complaint is that they do not go in.

It is a reflection on the profession that they do not offer the services to the nation. What are we doing. I was higher able to persuade two of them to accept the position. This is the real problem. I shall make one more observation in respect of the character of the country. The trend of thought among a particular section of the legal profession is that they give advice to a person even though he may be a murderer, and he can still defend him. They owe a duty to defend him. In the case of accountancy profession. I expressed a view and I say that should be the view of the profession as a whole. If I find that a person is evading taxes, unless

he comes out with a cleanest and fullest disclosure to the Central Board of Revenue (now Direct taxes) I refuse to attend to his case. I should inculcate this sort of quality among the learned professions. Then only we shall derive a great deal of advantage. I am putting this suggestion because this is a common endeavour and we are bound to do it.

MR. CHAIRMAN: Will you persuade your Institute to accept this?

SHRI G. P. KAPADIA: Yes, with all humility. So far, whatever I have stated has been acceptable to my Institute. Actually in the Companies Bill also in respect of the representation theory they have accepted my humble advice and I do not think my profession will disown me in that respect. They will not do something which is opposed to my way of thinking.

MR. CHAIRMAN: You are considered in the Accountancy profession as a father. I am not talking about that. When you come to the clause, I shall put to you. When examining the Institute of Chartered Accountants we put it squarely and fairly to them that here is a clause brought in by Parliament in the midst of which they expect the profession to discharge certain social obligations. To the extent possible is the profession willing to take the responsibility? I am afraid from the answers which came from them, they were not very encouraging.

SHRI G. P. KAPADIA: I am expressing my personal view before you. You can then decide. I straightway go to the question of maintenance of compulsory accounts and compulsory audit. I am in entire agreement with the proposal for the maintenance of particular types of accounts. But the provisions of this rule in this behalf should not go beyond the provisions of the Act.

The existing section would enable the Income-tax Officer to determine the assessable income. The requirement under the rules should not be

rigid so that the assessee find it difficult to comply. That is the only observation that I have to make regarding the question of maintenance of accounts.

MR. CHAIRMAN: Therefore, do you think it is safe that we just say that the maintenance of accounts is compulsory and leave it to the assessee to evolve their own system. So far as the department is concerned, they may give broad guidelines. That is all.

SHRI G. P. KAPADIA: These must be maintained according to the accepted accountancy and commercial principles.

MR. CHAIRMAN: We should leave it to the assessee.

SHRI G. P. KAPADIA: That is my request.

MR. CHAIRMAN: In other words, there should not be a section which should lay down a rule in terms of which it should be prescribed. About the requirement of compulsory maintenance of accounts, if general guidelines are issued by the Board, do you think that would work?

SHRI G. P. KAPADIA: It would work. Regarding the compulsory audit, there was a time when I myself said that this may not serve any useful purpose. Now a stage has been reached that the department itself is prepared to repose its confidence in us. I do not want them to enter into a certification of a true and fair view and in getting one counsel's opinion and another counsel's opinion to get out of it. If I certify something I must accept in a square manner the responsibility. There should be no ambiguity about it. I quoted in the memorandum the position obtaining in Southern India years ago when they had the voluntary system of having the accounts accepted if they were audited and if a certificate was given in a particular form. That provision was observed more in its breach rather than in its acceptance and performance with the result that in 99.9 per cent of the cases, the audited accounts were rejected. In between

came a disciplinary complaint against a Member. It is reported in a company case, Vol. 22 and the disciplinary committee's report and its finding also appear in the printed volume of the disciplinary cases published by the Institute and I happened to be the President of the Institute at that material time. I know that a plea was advanced that 'I am not responsible to the department because I have given a certificate to my client and therefore there should be no proceedings against me.' The Disciplinary Committee and the Council took the view that when a Chartered Accountant appears on the scene, he has a dual function to perform—one is that of a representative under Sec. 288. The other is that he is acting as a financial expert and to whatsoever I may give a certificate almost after the assumption of the responsibility, it is a certificate given by an expert which could be relied upon by somebody and therefore I cannot get away from it. We took that decision and found that the member was guilty. The result was that the High Court acquitted that member on a technical ground. The matter was not taken up by the Government to the Supreme Court of India. That is why I go by the approach made by the Wanchoo Committee and moderate it to some extent. Let it be a report on specific items and let particularised information be categorically and specifically certified. By this method, we can achieve the objective. Because I have found that this true and fair interpretation has become an apparatus for some industrial units and other people who go to counsel for opinion and many times I have pointed out that in respect of certification of accountancy statement and report, it is the opinion of the C.A. that should prevail. Now, the question arises whether this certification should be allowed to be obtained from persons other than CAs. I understand that there is a strong plea that law-years and ITPs would be affected by this. I totally disagree with this for the simple reason that in this respect a uniform right has been given to all

type of representative that is, law-years and the CAs to represent. This is a right of representation. As you know, in the case of CA he possesses that expertise. He can be hauled up by a disciplinary action if he has appended his signature to something which is not true. According to the various sections of the Income-tax Act reliance is placed on the certificate of a CA. Therefore, this would be one additional measure where reliance is being placed on him as a financial expert. That is why, I would say that the certification should not be related to an authorised representative. Let that category remain as it is. It should be by a CA and that will solve the entire problem.

So far as the form of certification is concerned, I have tried to spell out something in the memorandum on page 20.

MR. CHAIRMAN: Before you come to this, I would like to ask you one question. You have stated that accountancy profession should be given a proper responsibility so far as this audit business is concerned and CA being duly qualified in matters of accounting, etc. be able to certify that it would be necessary in this connection. We should spell out these things clearly so that if there is anything wrong tomorrow, he should be able to face the same responsibility squarely and fairly and no loophole is left. This presupposes a degree of responsibility on the CA to share. If it presupposes such a responsibility, my question to you is, will it not form part of the colour and character of discharging a part of this obligation, which, in fact, in the normal course, an ITO was doing, namely, the examination of books of a/cs, etc.?

SHRI G. P. KAPADIA: I will divide this question into two parts. (1) The aspects which the CA can touch and give information in the form of a certificate to the officer on which he can rely. (2) The auditor must state clearly and categorically that these are the particulars.

MR. CHAIRMAN: If this principle is acceptable to you, then I will accept your form. But it can only be acquired in a manner so as to reduce the working of the ITO. Is this a hypothetical approach?

SHRI G. P. KAPADIA: This is correct. Supposing, in respect of vital particulars, a responsibility is put on him. The officer can accept the certification provided on the basis of that certificate, he can dispense with examination by him.

MR. CHAIRMAN: It is a certification of vital particulars.

SHRI G. P. KAPADIA: In the case of a charity trust certificate, they wanted particulars under section 13 to be certified by an auditor. I took up the matter in Bombay and the Commissioner told me that this was something which was beyond my control. It is only the assessee who knew about it. So, I prepared a workable formula and suggested that I would make the trustees declare solemnly and adopt it at their meeting. In spite of this, when the rules were made, the same thing, the same mistake was repeated. It is still a part of the statute, under the rules. If you want the chartered accountant to certify the accounts in respect of a company, there is a fiduciary relationship of the Director to the shareholders and the State. In like manner, in respect of these charity trusts, there is also a fiduciary relationship under the Trust Act. But, in respect of an individual, as I mentioned in my memorandum, there is no such thing. He is a law to himself. He may not reveal all the information to me. He may keep back some information vital to me. How can I certify that? In certifying the particulars and making them more specific, you pin down the responsibility on the chartered accountant. The effort should be to get the maximum advantage out of it and we should not make it unworkable. Otherwise, it would come to this.

Every report of the auditor would be qualified. There will be no meaning in such a certificate. I would strongly urge upon the authorities to insist on a certificate in the form....

MR. CHAIRMAN: If at all a provision has to come, it has to be a workable provision.

SHRI G. P. KAPADIA: It has to be a workable provision and items should be specified clearly and squarely. You will notice that in respect of the contents of profit and loss account, I have referred to the purchases....

MR. CHAIRMAN: Shall we examine your certification? Books of account maintained: Give details.

SHRI G. P. KAPADIA: In addition, the chartered accountant should certify that proper books of accounts have been maintained. Apart from giving details, he must say this.

MR. CHAIRMAN: Scope of examination—Full check, test check and mere reconciliation.

SHRI G. P. KAPADIA: The Officer will know how much relevance should be placed.

MR. CHAIRMAN: Mere reconciliation will be no audit, Mr. Kapadia?

SHRI G. P. KAPADIA: I may mention this that in respect of a number of cases, which many eminent chartered accountants have been handling, even without these requirements, if mere reconciliation is given, they are relied upon taking into consideration the past record of the assessee and the person who represents the case. So, the question of spelling out in what form it has to be given should be left in this particular category and the chartered accountant will certainly take care to see that it does not result in mere reconciliation.

MR. CHAIRMAN: This is what I was having in mind. Either test check or full check. He will just say mere reconciliation and get out.

SHRI G. P. KAPADIA: Mere reconciliation has been useful.

MR. CHAIRMAN: In certain cases, yes.

SHRI G. P. KAPADIA: You confine yourself to certain items. There is nothing beyond that. This is also reflected in the balance sheet. The balance sheet under the various heads reflects all the items which are in the books of accounts. I have stated it. If you spell out the certificate in this particular form, and even if it is mere reconciliation, you leave it to the good sense of the income-tax officer. Sometimes, the income-tax officers ask me 'have you gone through it?' and I say, 'I have not gone through it; if you want me to go through it, I shall do so'.

MR. CHAIRMAN: But, for this, let him go through it and report.

SHRI G. P. KAPADIA: My point is, you do not rule out reconciliation completely.

MR. CHAIRMAN: We will consider that. We now come to balance sheet. This is most important. You have said here:

"The annexed Balance Sheet authenticated by the assessee and signed by us for the purposes of identification correctly shows the various items under different heads on the basis of the books of account and the information and explanations given to us."

SHRI G. P. KAPADIA: This is a complete reproduction of what is contained under the different heads. What is genuine, can be checked. The entries in the books are reflected here.

MR. CHAIRMAN: You mean to say that there is no manipulation?

SHRI G. P. KAPADIA: Exactly. In the case of companies, there is a general tendency of showing a provision under reserves. This is not a healthy practice and a chartered accountant will not append his signature to a document which completely does away with the healthy principle of accounting.

MR. CHAIRMAN: Such reserves have come in for a whole lot of manipulation in regard to payment of sur-tax.

SHRI G. P. KAPADIA: I feel very sad to say this. But, in respect of matters clearly affecting the ethics of accountancy profession, the chartered accountants should be allowed to evolve their machinery and to express their opinion. There should not be somebody to impose counsels opinion upon them.

MR. CHAIRMAN: But, there has to be some homogeneity about it. Everyone being allowed to have his own opinion will also create tremendous complications.

Now, we come to profit and Loss Account. Here also, you have said:

"The Profit and Loss Account authenticated by the assessee and signed by us for the purposes of identification correctly shows the various items under different heads on the basis of the books of accounts and the information and explanations given to us."

SHRI G. P. KAPADIA: The last para is crucial.

MR. CHAIRMAN:

"On such premises the purchases, sales, income and expenses stand properly reflected."

SHRI G. P. KAPADIA: He certifies all these items. This has been referred to in the Wanchoo Committee Report. Then, Item No. 5: Nature of security offered for obtaining secured loans—Full details to be given. Item No. 6: Computation of allowance by way of depreciation: Statement should be enclosed. Here, you may make a provision that the statement should be enclosed duly certified by the chartered accountant.

MR. CHAIRMAN: All these will be certified.

SHRI G. P. KAPADIA: Brief particulars of expenditure on entertain-

ment etc. Here, I have said that full particulars should be given. I have also said that the matter of disallowance is a subjective matter for the income-tax officer. It is not for me to say everything is allowable. This is subjective matter. I have mentioned it. Item No. 8: Particulars of expenses in respect of which payments have been made to partners or their relatives. Here also, particulars should be given in full.

MR. CHAIRMAN: That applies to companies.

SHRI G. P. KAPADIA: The disallowances if any, under section 40 and Section 40A of the Income Tax Act is a matter for subjective decision by the Income Tax Officer. He must give full details. He cannot assume full responsibility. He cannot say 'It is not claimable according to me and so I will not claim it.'

MR. CHAIRMAN: Let him point out that.

SHRI G. P. KAPADIA: In respect of item No. 9, particulars should be given and the question of subjective examination, whether or not it should be treated as income, should be left to the officer. In respect of item No. 10 also, the chartered accountant should give full particulars. If the assessee has given an explanation, he should also record it in his certificate.

SHRI VASANT SATHE: This form which you have given, why can't it be compiled with by practitioners who have fulfilled certain minimum requirements, say 5 years practice. You have said that you are opposed to it. It has been canvassed before us that the number of chartered accountants in this country is very limited and that sufficient number of them may not be available in the rural and semi-rural areas where there will be a large number of small assesseees, and that, therefore, it will be practically impossible for all the assessee to get their accounts properly audited and certified by chartered accountants. Therefore, would you be satisfied if we lay down certain

qualifications, not mere representation, as you said, who just represent the case of the parties and do not take full responsibility. But if we place the responsibility in the same manner as it would be on the chartered accountants and also put certain qualifications as a condition, how do you think that the requirements of this form cannot be complied with by an experienced practitioner?

SHRI G. P. KAPADIA: I have already mentioned that the expertise required is possessed only by the chartered accountants.

SHRI VASANT SATHE: All chartered accountants may not be experts in taxation law. They may know about auditing *per se*; but they may not know everything about taxation law.

SHRI G. P. KAPADIA: The basis of having qualifications of such a nature is whether he attends to company auditing or taxation, he is competent enough to render such services. Here is a body incorporated by an Act of Parliament, which has been recognized for the purposes of various statutes, as a body whose members are competent to do the job. This sort of expertise cannot be expected to be possessed by other categories for the simple reason that financial accounting and reporting is something very special and it pertains to this very profession.

SHRI VASANT SATHE: Let us forget companies. Most of them have their own chartered accountants and people of this profession are available on demand. We are having in mind individuals who may be having their own businesses, with a turnover, in rural areas, which will bring them within the compass laid down here. He may not be an expert, because the maintenance of accounts by him will be according to the peculiar practice of such persons and not as laid down under the Company Law. Therefore, would that practitioner not be able to verify the particulars and give all these categories you have enumerated

here, satisfying himself to the extent as you have laid down and giving a certificate?

SHRI G. P. KAPADIA: I will raise a poser, *viz.* "why is it that in respect of various sections of the Income-tax Act, only the profession of chartered accountants is recognized, despite the presence of representatives of other professions?"

SHRI VASANT SATHE: Uptill now, we had never thought of having a certificate in this form, done by way of compulsory audit.

SHRI G. P. KAPADIA: On the contrary, there is a lot of improvement in this item; and in spite of a true and correct representation, if this sort of financial certification is to be there, it would entail the utilization of the expertise of the chartered accountant; in my humble opinion, no other person whether he belongs to a profession or otherwise, can aspire to do it.

SHRI VASANT SATHE: Can you tell us about an item which an income-tax practitioner will not be able to do?

MR. CHAIRMAN: I will pose it in a different form. Do you think person who does not know anything of income-tax law can do it?

SHRI G. P. KAPADIA: It is a certification involving financial data: it is my humble opinion that only a chartered accountant—and none else—is competent to do it. If we talk in terms of giving this right to other entities, whether belonging to the legal profession or other types of practitioners, would mean that by circumvention we are recognising a talent which is not recognizable under the Income-tax Act. The other difficulty is that in respect of a chartered accountant, he has got to be specific and to spell out things according to the concept of chartered accountancy, as understood by the Institute of Chartered Accountants of India. The other entities will not be bound so, they would say: "we have done it according to our concept." Will the authorities be prepared to be satisfied with it?

SHRI VASANT SATHE : Why do you say this? Even the type of certificate given by the chartered accountant under the law relating to their profession, is not specific.

SHRI G. P. KAPADIA : Let me correct you, Sir. I had said that you cannot have the quality of the Companies Act or Trusts Act where it involves a fiduciary relationship. In the case of individuals, that question does arise. It is to be treated differently.

SHRI VASANT SATHE : That is why you had said that something more must be laid down even for chartered accountants, in the form of a certificate.

SHRI G. P. KAPADIA : I wanted it to be specific. I want the compass of certification to be expanded. I wanted to pin down the responsibility to specific items; and if there is a specific certification on specific points, he will be bound totally; and if he fails in his duty, he will be liable to disciplinary action. That is the distinction between the chartered accountant as an expert and others who are not such experts.

SHRI VASANT SATHE : Supposing that we lay down in this law itself, that persons with such-and-such qualifications will be dutybound to give a certificate in this form and be liable what would you say? To-day they may not be liable. A practitioner to-day may say : "I have done according to the best of my knowledge." If we make the provision as I had said just now, what is the difficulty then? Why should so much sanctity be attached to chartered accountants?

SHRI G. P. KAPADIA : At the risk of repetition, I would say that the chartered accountant is using his expertise. In the case of others, even if you have to proceed against him, he would say, "I have certified according to my experience." It does not improve the position.

SHRI VASANT SATHE : That will not help him to get away.

SHRI G. P. KAPADIA : One other observation I would make. How would this provision of certification by a chartered accountant enable the authorities to tackle the question of tax evasion? I have given my answer in para 6.10 at page 21. In respect of companies, there is a method of stock-taking at the end of the year. This method may not be useful in tracking down the question completely; but the very idea of stocktaking and checking by the auditors at the end of the year puts the management in the alert. Here, we will be achieving much more. This is a positive provision under which the chartered accountant will certify particular items in a categorical form. If he does not find the records to be all right, he will not have any option but to say so. A client will very well know that to get an adverse report from the chartered accountant is not at all desirable. Therefore, this very idea of a compulsory audit and certification of vital particulars will be in the interests of the authorities and be a very great factor in tackling the question of tax evasion.

MR. CHAIRMAN : To fix this liability fairly and squarely on the auditor should commend itself to the Committee and Parliament, but do you think it is necessary to vest specific powers on the auditor under the Act itself? Under the company law, auditors have certain powers and obligations which are relateable to examining certain things in a fiduciary capacity. They are responsible primarily to the shareholders for what they certify. But in this case, in view of what you are telling us, when you are examining the books of an individual or of a partnership, they alone know what the real state of affairs is, and you have given the authority only for auditing. Do you think we should provide that an auditor should have certain authority and powers?

SHRI G. P. KAPADIA : I have first stated that the profession should be able to assume responsibility and for

discharging that responsibility he should seek enabling powers.

MR. CHAIRMAN: We should in the section provide for some enabling provisions.

SHRI G. P. KAPADIA: It should be helpful for the chartered accountants to perform their functions.

MR. CHAIRMAN: Would you read the provisions and let us have a written draft as to what you think should be proper?

SHRI G. P. KAPADIA: This is a little intricate question and I should like to have time.

MR. CHAIRMAN: You can send it to us in 10 to 15 day's time.

SHRI VASANT SATHE: Should the auditor have the power to find out in the case of individual firms or partnerships, what the actual production was? Today he goes by the vouchers produced before him, which show that so much is the raw material used and there is so much of finished product. Many times we have seen that something is hidden. So, should the auditor have the power of actually pointing out as to what the real production has been or whether anything has been hidden or not. Today, a chartered accountant has not got any such powers.

SHRI G. P. KAPADIA: This would be workable in the case of companies where the fiduciary relationship is there. The question in respect of this sort of power to be given is, how will it be exercised by the chartered accountant and what will he do?

SHRI VASANT SATHE: What does the income-tax officer do today?

MR. CHAIRMAN: The powers of an income-tax officer cannot be given here, but certainly powers giving him authority to have access to all the books of accounts and documents which are necessary for the purpose of verification should be given.

SHRI G. P. KAPADIA: I would like to spell out, as I understand it, what is workable and feasible.

MR. CHAIRMAN: Yes. Next point.

SHRI G. P. KAPADIA: I would refer to the settlement machinery. I will divide it into two parts; cases where there is no evasion and cases where there is evasion. Let a separate consideration be given by the authorities.

MR. CHAIRMAN: It is a very big classification.

SHRI G. P. KAPADIA: Yes. In respect of a number of vital issues, matters are pending before the courts for years and years. We must have the last word about it, and for that purpose, I am reminded of the case where the eminent authority took a very practical view of matters in those days. If there was a litigation pending, he would call the assessee and say, "This is a difficult question. If I win, I get Rs. 100 and if you win you get Rs. 50. So, why can't we sit together and call it off?" In a like manner, the Central Board may be authorised to go into those cases where there is no evasion and end the litigation.

The other suggestion is, in respect of many pending issues where there is a decision of the lower court, say, a high court, and an appeal has been filed before the Supreme Court, the existing decision should be allowed to prevail as if it is the last decision, and there should be the right of reopening given to the authorities on rectifying and deciding it in favour of the assessee if the Supreme Court decides in a different manner.

MR. CHAIRMAN: When the court decision is against the assessee or in favour?

SHRI G. P. KAPADIA: In both cases, that should be done.

MR. CHAIRMAN: You are suggesting that when there is no evasion, the Central Board should be given the authority.

SHRI G. P. KAPADIA: Certainly. What is wrong with it?

SHRI VASANT SATHE: To say whether there is evasion or not is precisely the point which is in dispute.

MR. CHAIRMAN: It is a new idea that he has mooted out. Please explain it, Mr. Kapadia.

SHRI G. P. KAPADIA: I will put it this way. There might be cases of pure interpretation where there cannot be any question of evasion being there. Supposing there is a question whether section 104 is applicable or not, or registration should be granted or not. What should be the interpretation of section 64 of the Act also? Such matters can certainly be treated as matters which are not cases of evasion—

MR. CHAIRMAN: How can be the Board the final authority? The Supreme Court can be the final authority.

SHRI G. P. KAPADIA: But before the matter gets decided by the courts, the positive result should be obtained.

MR. CHAIRMAN: How can it be made a little more practicable? If in a particular matter, the question involved is not of evasion but the question is purely one of interpretation, what happens? Assessee 'A' comes to the Board of Direct Taxes and an interpretation is given Assessee 'B' says no. The Public Accounts Committee holds the Central Board of Direct Taxes to ransom!

SHRI G. P. KAPADIA: It should apply to the department as well as the assessee because you cannot have one criterion for the department and another for the assessee.

MR. CHAIRMAN: If I understand you correctly, the usual procedure has to be given the go-by and the Central Board be given the authority to adjudicate upon certain matters which involve interpretation and thus avoid litigation. If that is so, this suggestion is a new one. It should be examined, but it must be practicable and workable. The basic difficulty which

arises here is, this sort of interpretation given by the Central Board of Direct Taxes will never be binding and the other man will go to the Supreme Court

SHRI G. P. KAPADIA: In the case of settlement proceedings, the settlement should be terminated.

MR. CHAIRMAN: Supposing the Supreme Court gives a decision contrary to that given in some other case, what happens?

SHRI G. P. KAPADIA: It is something like interpretation being given by the Central Board for tentative queries. That may hold good for a particular period of time till the contrary is spelt out by the Board itself or by the courts.

SHRI H. M. PATEL: What is proposed is this. There are two types of cases which call for settlement. One is settlement in which there is no interpretation involved. The suggestion is that we by law vest in the Central Board the authority finally to terminate these matters of settlement. When that is done there is no question of anybody else coming along at all.

MR. CHAIRMAN: On a similar point the other party is not prevented from going to the Supreme Court on an interpretation of the same law.

SHRI VASANT SATHE: What about audit?

SHRI H. M. PATEL: The audit cannot come in.

MR. CHAIRMAN: The audit will not come in, in what you are suggesting.

SHRI H. M. PATEL: If this proposal appears acceptable, then it will have to be given legal sanctity. When the legal backing is given, then there can be no question of going in appeal by either party because that is by definition, final. Your second point was about audit that it may say that it strikes it as not a very good settle-

ment But it is not supposed to go into that because you have done it under the law.

MR. CHAIRMAN: If what you say is accepted, audit part may be taken care of. But the second fundamental objection remains.

SHRI H. M. PATEL: You are setting up a tribunal or whatever you call it. Under this Bill that body is given the final power to settle the issue. It is exactly the same. Instead of coming into this new body, it will vest with the Central Board itself.

MR. CHAIRMAN: There is a basic difference. What is contemplated by the settlement machinery under the existing provision is, in a particular dispute the settlement machinery or the settlement commission will hear them, hear the dispute, decide upon the issues involved and quantify. That is the end of the matter. If Shri Kapadia's suggestion has been understood by me correctly, he is suggesting that the Central Board of Direct Taxes by law should be made the arbitrator on matters of law where a person wants quick disposal on certain matters. If, along side, we make the Supreme Court an arbitrator on the same point, simultaneously two authorities will be functioning. That is not so in a settlement commission, because the settlement commission is with reference to a particular assessment.

SHRI H. M. PATEL: In regard to the Supreme Court reference, if there is a reference pending with the Supreme Court, then that decision of the Supreme Court will be binding upon those references.

SHRI G. P. KAPADIA: I am sure you remember the well-known case regarding the inclusion of jewellery as an item of personal effect. A lot of controversy has gone on with regard to this matter. Now the general policy of the court is, if I understand rightly, that in respect of matters where you have agitated the issue in a particular manner before any authority and you are the appellant, you

along get the benefit. If the Department wants to take a different view of the matter, or reopen or add or rectify, the other people will not get the advantage of the Supreme Court decision. Then, with regard to interpretation, if the Board has given a particular interpretation, this has the authority or the sanctity of law, according to the Supreme Court dictum in jewellery case. In a like manner, if the settlement is effected, what prevents the Central Board of Revenue from taking a particular stand in a vital matter and issuing a circular to that effect so that this circular would be taken advantage of by other people who have gone to the Supreme Court. But the fact would remain that a settlement you come in a particular case will not certainly be binding either on the assessee or on the department for all cases.

MR. CHAIRMAN: In other words, it really mean this. For purposes of expeditious disposal of matters and to avoid delays finally, in certain disputed matters the Board should be compelled to take some interpretation and on that basis issue circulars, which should have some sanctity of law. That is presenting the same difficulty as in section 119.

SHRI G. P. KAPADIA: Section 119 applies to the intervention of the Board in respect of a particular matter which is pending for assessment, not a decided case. It cannot apply to cases which are pending before Tribunals and courts. In fact, my personal view would be to the effect that unless the highest authority of the land has the full power to deal with this matter, this sort of consideration that under section 119 he cannot interfere is not at all relevant.

MR. CHAIRMAN: A more effective way would be to insert a section that in certain disputed matters the Board will interpret it and that interpretation will prevail until reversed by the Supreme Court. Is that correct?

SHRI G. P. KAPADIA: I was not thinking of the Central Board being

asked or compelled to give an interpretation. If a reference is made, the Board would give a decision. But to say that the law should provide that the Central Board should be competent to give an interpretation every time is something different.

MR. CHAIRMAN: If you refer the matter to them, they will be under compulsion to give an interpretation.

SHRI G. P. KAPADIA: That would not be interpretation; that would be a part of the settlement machinery.

SHRI H. M. PATEL: The point is I have understood is this. This is a settlement machinery, an additional machinery than the one provided in this Bill. The one that is provided in this Bill should be confined to the question of tax evasion, where that does not come into the picture. Here it is a question of interpretation. The assessee wants a settlement. The Central Board shall have power to take a decision. In doing that, they will necessarily take one interpretation or the other. Whatever they have interpreted should have a binding force on others of a similar nature. I think that is the position.

SHRI G. P. KAPADIA: Provided the Board are convinced that a general principle is involved.

MR. CHAIRMAN: Will this be binding on the assessee also, or can he go to the Supreme Court?

SHRI G. P. KAPADIA: No, he cannot go to the Supreme Court. It is a prerequisite condition.

MR. CHAIRMAN: Do you think then many people will go to the Board if the Board is the final authority?

SHRI G. P. KAPADIA: I have every hope that people do want to avoid litigation. I want you to examine this from this angle.

MR. CHAIRMAN: If the board is made the final authority for interpretation do you think that many people will go to the Board?

SHRI G. P. KAPADIA: Yes, Sir.

SHRI VASANT SATHE: Is it being suggested that the settlement machinery which we are having in mind should also be empowered to settle cases pending before the Supreme Court on technical interpretation, where no evasion is involved, if the party agrees that they need not wait for the decision of the Supreme Court. In that case, that matter ends there once the interpretation is given. I do not understand why it should be made mandatory even for the Board that the settlement or interpretation given in that case is binding in all other cases, either on the department or on the parties, if they want to go to the Supreme Court?

SHRI G. P. KAPADIA: If a general principle emanates from this settlement which is being effected, the Board might at their discretion issue a circular to that effect. But to expect the Board to issue a circular in respect of every settlement is not proper.

MR. CHAIRMAN: This is a new suggestion that you are making. We are trying to comprehend it. I would be grateful to you if along with other notes you could give us a note on this also. We will examine it.

SHRI G. P. KAPADIA: Yes.

SHRI H. M. PATEL: I think, Mr. Sathe's point is that whenever the matter is referred for settlement to the Central Board of Revenue under this kind of arrangement, automatically whatever the basis of principles they may have followed in bringing about the settlement should not be made binding. Mr. Kapadia's point is that it should be left to the Central Board of Revenue itself to decide whether any particular interpretation that they have made shall be binding so far as they themselves are concerned.

MR. CHAIRMAN: It is binding on the Department only; it is not binding on anybody else.

SHRI G. P. KAPADIA: They are entitled to issue a circular.

MR. CHAIRMAN: They may or may not. We are anxious not to make the law more cumbersome and complicated.

SHRI G. P. KAPADIA: I have always thought of complete simplification of procedures.

MR. CHAIRMAN: That is a new idea. All of us are interested in examining it and seeing to what extent it helps us. You may send a note on that.

SHRI G. P. KAPADIA: I shall do it.

As regards the cases covered by evasion, the way the clause is provided, I believe, that very few people would be coming in for a settlement because the sword is kept hanging on him in respect of punishment and penalty. There is no protection as such given. If you want the scheme to be effective at all, let it be a very specific scheme stating that in respect of the cases of evasion, if the party comes out with this sort of settlement—the settlement may, in the first instance, be worked out in an informal manner because no assessing authority will make a commitment with an assessee in advance—if some sort of a settlement machinery is evolved as a result of which, in the opinion of the Board he is trying to reveal everything to the Department, he is giving full cooperation to the Board, the provision for prosecution should not be there. Penalty may be a matter to be spelt out. If you keep the prosecution also pending, nobody will be interested in this sort of a settlement.

MR. CHAIRMAN: Are you suggesting immunity from prosecution? In other words, once he has entertained the person, he is exculpated from the liability of prosecution.

SHRI G. P. KAPADIA: In case there is a settlement arrived at. It

should be so. In the Tyagi Committee, I put a question to the ex-Chairman of the Investigation Commission. He said:

“This is a taxation statute. We are not interested in prosecuting people and sending them to jail. What I want is the monetary part of it, a very sizeable and a substantial part of it.”

If you keep the sword of prosecution pending, I do not think the people would volunteer to come for a settlement.

MR. CHAIRMAN: After a preliminary scrutiny, if the Board is of the view that in a particular case they should not proceed with settlement, they should send it back. So, it should be the authority of rejecting that sort of settlement. Just because he has come with a petition, it cannot be imposed on the Board. Is that what you are suggesting?

SHRI G. P. KAPADIA: What I am suggesting is that if you want the scheme to be a success, the settlement machinery itself should provide that in case there is a settlement, it should provide immunity from prosecution.

MR. CHAIRMAN: At what stage? When should they be able to say, no settlement?

SHRI G. P. KAPADIA: That should be the privilege of the Board. In respect of evasion cases, the authorities have to be very careful. They cannot afford to be lax.

MR. CHAIRMAN: They have to be very careful. First, they should entertain him; they should examine him and decide whether they should proceed with the settlement or not. Then, before a Commission, they should examine him. After examination, they can say, “We do not want to proceed with the settlement.”

SHRI VASANT SATHE: So, there will be two stages.

SHRI G. P. KAPADIA: Both the stages may be combined. Suppose he comes with a petition. After examin-

ing the petition and weighing the pros and cons, if the Board comes to a conclusion that it is not a fit case of settlement, let them reject it. If they find that it is a fit case of settlement, there should be negotiations and discussions as a result of which if some sort of settlement is arrived at, that settlement may certainly include the element of penalty because the evader must pay the penalty but not face prosecution. If you do not provide immunity to prosecution, what is the attraction even to this questionable element in society?

SHRI VASANT SATHE: If the petitioner finds at the preliminary stage that there is likelihood of the settlement being rejected, is he allowed to withdraw from that?

SHRI G. P. KAPADIA: I do not think once he has submitted to the settlement jurisdiction, he should not be allowed to do that.

MR. CHAIRMAN: Before or after rejecting it?

SHRI G. P. KAPADIA: Is it suggested that in every case of settlement concerning evasion, the Board must be compelled to entertain the application?

MR. CHAIRMAN: No.

SHRI G. P. KAPADIA: Then, it is very simple.

MR. CHAIRMAN: As the Section is framed, if the case falls under this Section, they are bound to entertain him.

SHRI G. P. KAPADIA: My personal view is that if you do not provide for immunity from prosecution, the settlement machinery may become a dead letter. In respect of the settlement machinery, where the general re-opening is spelt out, I would rather leave it to the general re-opening Section instead of putting it in the settlement machinery itself because, once you go in for a settlement, the question of re-opening unless something extra ordinary arises, does not

arise. You have got the inherent power to re-open any particular type of cases even upto 16 years.

MR. CHAIRMAN: The basic difficulty that I see is that we are making more and more stringent provisions of prosecution. There is a more stringent provision for punishment with 7 years RI. All these people will evade tax and make a petition to the Board and say, 'These are the circumstances and we fall within these circumstances.' And the moment we entertain their petition, they are immune from prosecution.

SHRI G. P. KAPADIA: I am not wanting immunity from prosecution in that sense.

MR. CHAIRMAN: I ask you. Suppose you entertain the petition. You go through the whole gamut and examine and decide that this should not be entertained. I ask that question.

SHRI G. P. KAPADIA: The question of immunity does not survive when the settlement does not survive.

MR. CHAIRMAN: Therefore, they should entertain and if the settlement is arrived at. . .

SHRI G. P. KAPADIA: Then only, there is immunity.

MR. CHAIRMAN: We will consider that. Then it will be added protection for a person who comes with larger taxes and larger penalties and get the settlement done.

SHRI G. P. KAPADIA: My impression is this: that an evader comes only when he is already found out or about to be found out. That is my personal view. Regarding prosecution, when you touch that aspect, I have gone through the literature regarding USA and UK and I quoted chapter and verse in the memorandum to the Tyagi Committee where I have shown that it is only in a microscopic percentage of the total number of cases prosecutions have been launched. The department's reputation is at stake and it is difficult to establish and carry

the charge. Therefore, the statute should rightly look to the collection of the money part of the penalty rather than think in terms of prosecution. There may be some evaders who may like to say, 'It is a good thing to evade Rs. 20 lakhs and be a guest of the Government of India.' But in the UK a very careful examination is made.

MR. CHAIRMAN: It is much better that we take 40—50 big cases and send them to jail and it will be a much bigger deterrent than prosecuting 1,000 cases.

SHRI G. P. KAPADIA: They must be very very selective.

SHRI H. M. PATEL: This Bill provides that on receipt of an application the income-tax authority concerned on the basis of the materials may arrive at a settlement. The income tax authority must first consider whether on the basis of the reports submitted to the income tax authority the application should be entertained. . .

MR. CHAIRMAN: That is the preliminary stage.

SHRI H. M. PATEL: If he is satisfied that any person who has made an application for settlement has in the proceedings before it made a full disclosure, it may grant immunity from prosecution subject to such conditions as it may deem fit.

MR. CHAIRMAN: That he says should be automatic. Once a settlement is ordered, then this should be automatic. Immunity should be automatic.

SHRI H. M. PATEL: Some such thing should be put in—suppose he makes an application but he refuses to co-operate.

MR. CHAIRMAN: This should be a pre-condition for settlement and once settlement is made, then the immunity should be automatic, if we accept Mr. Kapadia's suggestion.

SHRI H. M. PATEL: If a person has co-operated, then the Settlement Committee may say that it is satisfied, but that immunity may be subject to such conditions which he has to fulfil later on in regard to the same settlement.

SHRI S. R. MEHTA: It is just like this. There are two stages. And it is, before a settlement application is accepted or entertained, the committee has to satisfy itself whether there was a *prima facie* case of concealment before the income-tax authorities or not. So, if they are satisfied that the income-tax authorities had not found the act of concealment, then they can go into the settlement application. There would be many things involved in that application and one of the most important features would be the co-operation of the assessee. But there would be many other features in the settlement where the committee may feel that we would like to give you this type of treatment. One of the treatment that the committee could impose is prosecution also as the wording of the section goes. Now, if Mr. Kapadia's suggestion is accepted, then the committee, if it enters into a settlement, shall be debarred from directing institution of prosecution.

SHRI H. M. PATEL: In fact, the only difference is: what Mr Kapadia wants is that once the settlement committee has come to the conclusion that he has co-operated and they reach a settlement, that settlement shall provide him complete immunity from all prosecution.

SHRI S. R. MEHTA: But the words are not that 'He shall get immunity'. They may give him immunity. That is that they have the power of ordering prosecution. Mr. Kapadia says that this power should be taken away. If the settlement is arrived at, there should be no question of prosecution at all.

MR. CHAIRMAN: If these conditions do not exist, they have no right to exercise the discretion. But if these conditions do exist, then they have a right to exercise the discretion and waive the prosecution completely.

SHRI H. M. PATEL: The way it is worded, 'may' may mean 'shall'. The point here we have to understand is that if his co-operation is there and if the settlement is reached, then that settlement must provide also immunity. It is only then that people will come forward.

MR. CHAIRMAN: Mr. Kapadia, you have made your point. If it comments to the committee that the two should be co-terminus, settlement and immunity, it will consider it.

SHRI G. P. KAPADIA: Otherwise, there will be no settlement.

SHRI H. M. PATEL: The safeguard is that it is upto the Settlement Committee to accept the application for settlement.

MR. CHAIRMAN: That is the preliminary thing. In other words, he should come at the preliminary stage. It should be entertained. Then he must co-operate and then there should not be fresh efforts for concealment. If these conditions exist, there shall be a settlement and there shall be immunity.

SHRI H. M. PATEL: I know that a person who wants a settlement and once he comes there and he fulfils these conditions, he should get immunity.

MR. CHAIRMAN: The idea is to strike a balance somewhere. If anyone goes into the provision he may say this is one-sided. And you make the other provisions also stringent. It is for us to decide. You make your point.

SHRI VASANT SATHE: I would like to know from Mr. Kapadia one thing. If in 245H, for the word 'may', 'shall' is substituted and the sub-clause

(2) is retained. will it serve the purpose? It says:

'The immunity granted to a person may, at any time, be withdrawn by the settlement Committee if it is satisfied that such a person has not complied with the immunity so granted.'

Will this serve the purpose?

SHRI G. P. KAPADIA: Instead of attempting at drafting changes, I would be in favour of a positive amendment. In case a settlement is effected, there will be immunity from prosecution. This is a case where a settlement cannot be there. Under Sec. 64 we are now trying to rope in also the income of the assets transferred. If the condition is made prospectively, I would beg of the Committee to examine this aspect. Under 16(1)(c) and Sec. 16(3) of the old Act, clubbing of all the income was not permitted. The assets transferred are the property of the transferee. When income arises, it may not have relationship to the assets that were transferred, as also to the income of assets transferred. We are here trying to plug the so called loopholes. There is another aspect of it. HUF is a natural creation not an artificial execution throwing into the hotchpoch of the so called family and starting another unit. In my humble opinion, this is a case of full avoidance for the reason, that after the passing of the Hindu Succession Act, there is nothing like the natural Hindu Families surviving. H.U.F. is the creation of a natural process under the tenets of Hindu Law then prevailing and you cannot bring into existence a Hindu family by an artificial process.

I am raising a fundamental issue. After the Hindu Succession Act was passed, what is the position of co-parceners? Co-parcener can make a will of his property. This is the tenet of the Law. This is the aspect which the Committee should independ-

dently examine and come to a conclusion. Here a lot of advantage has been unnecessarily taken by creation of units like a created Hindu Undivided Family. They must have common character of worship and messing. Does it obtain in the present day? You cannot create an artificial unit. The position as it existed prior to the passing of the Hindu Succession Act is that Hindu Family is a natural creation. It should be recognised as such. But, hereafter, in respect of the H.U.F. created by this sort of putting into the hotchpoch should not be recognised and whatever may be the legal interpretation or decision at some level, this is the vital aspect. Coming to the last point, I want to make one small observation with regard to the trusts and donations of an anonymous nature.

MR. CHAIRMAN: We have heard enough of it.

SHRI G.P. KAPADIA: I have a small suggestion with regard to particular associations. Offers made into the charitable boxes, hundies etc. in a temple should not be brought into the ambit of the law.

Hindustan is not a mere religion. It is a way of life. They can profess Hinduism and be Aryans in thought as Prof. Max Mueller put it. They have managed to form themselves into trusts. The maximum advantage can be reaped out of the assets only if they are regulated. We should have a uniform Public Trust Act as we have got in Maharashtra. If you have something of that model and if the people are made to comply with that, that would be good. Similarly there are some investments, such as *corpus* investments and so on and so forth which are being brought within the purview of this Bill. It would only create a condition of distrust and therefore I submit that such rigid conditions should not be there.

MR. CHAIRMAN: Now I want to ask one or two questions. So far as

corpus incomes are concerned they are exempt from taxation. The idea is that extra incomes must not be allowed to be able to build up larger economic empires. If the law were to provide that incomes made out of the earnings of the *corpus* are exempt, they enjoy tax free privileges and benefit. That means they can do whatever they feel like so far as *corpus* income is concerned. What do you say to this? Do you think that they should also come under the purview of the taxation?

SHRI G. P. KAPADIA: If you think in terms of removing the rigid conditions, why in this Bill you should not rope in the existing investment of the *corpus* and make the legislation prospective. It would then be very just to say that in respect of any investments made after the new Bill is passed, they ought to be either in trusts or in securities recognised by the Bombay Charity Commissioner or by the Income-tax Department. Let it be prospective in the law because, otherwise, you would be throwing out of gear the existing machinery. To-day as it is you have got the necessary power through the Public Trustee to deal with the matter if there is something wrong.

MR. CHAIRMAN: We shall consider it.

SHRI G. P. KAPADIA: Suppose there is a private sector concern which is capable of earning huge dividends which gets the benefit out of the number of charity trusts.

MR. CHAIRMAN: We do not want a large number of trusts with a large number of incomes. What we are interested in is for doing away with the utilisation of income exempted for building large empires.

SHRI G. P. KAPADIA: That could be done by a prospective legislation. But, after the Bill comes into force, no investment should be made excepting in authorised securities.

MR. CHAIRMAN: Your experience in the matter is unique. You have a tremendous experience. Leave it to us. You will tell us what we should do which would be to the larger welfare of the country. There is one question I want to ask. In the earlier days, trusts were formulated purely as a device not to cater to the society, but to have extra income by acquiring large shares out of the income and to form a large empire. Is there moral justification to allow them to go on untouched?

SHRI G. P. KAPADIA: That is already controlled by the existing legislation.

MR. CHAIRMAN: Nothing please.

SHRI G. P. KAPADIA: A fair solution will be an enactment of an All-India Trust Act which should provide for all these things which will take care of them. Do not do it merely by taxation laws. Do it through some other legislation. Let there be an all-India Statute taken up by various States. We have been thinking about it for a long time.

MR. CHAIRMAN: If this is an All-India Statute what will happen? I personally feel that there should not be any restriction on charity. Let charity be for charity only with one condition that the income should be utilised for investment purposes, for corpus use. If someone utilises the capital on shares, give it by all means. We have nothing to say to utilise the incomes that are tax-free. We are against building up empires out of the incomes whether in the past or in the future. What justification is there to leave the incomes for tax purposes? Unless you give some special reason why it should be left out, how can we do it? You kindly tell us some via media.

SHRI G. P. KAPADIA: Any radical change will completely upset the working of the very charity trust, it will also defeat the objective.

MR. CHAIRMAN: We are not really satisfied with the existing state of law.

SHRI VASANT SATHE: Can you suggest any method of distinguishing a genuine trust from a non-genuine trust so that we can exempt the genuine one and penalise the non-genuine one even as far as past is concerned?

SHRI H. M. PATEL: The point as I understand what you call a middle way is that according to Mr. Kapadia that middle way is the formation of an all India Trust based on some kind of a legislation on the lines of the Maharashtra State Act. You say that it leads to plenty of loopholes. Well, it is up to us to think of avoiding loopholes.

MR. CHAIRMAN: I am talking about principle.

SHRI H. M. PATEL: You have asked him to suggest some via media.

MR. CHAIRMAN: Mr. Patel, you have misunderstood me. In the past, he says "leave them as they are."

SHRI H. M. PATEL: In regard to past, he says whether we have any effective trust act.

MR. CHAIRMAN: How can we have a trust act in respect of past?

SHRI H. M. PATEL: In regard to past, if you make an act today giving the charity commissioner certain types of powers, he will have the right to go even into the past. I am afraid, I do not know, Mr. Chairman, whether we have complete information regarding this charity commissioner act which is obtaining in Maharashtra and Gujarat. I think that requires a certain amount of examination regarding its functioning effectively or not. Even that examination shows that these acts are capable of being effective. I think this should be considered for the whole of India.

MR. CHAIRMAN: Mr. Patel, we will consider it. At this stage, I just want to understand what Mr. Kapadia has to say. You have understood and we have understood those points. You have made a very important point. Kindly let us have your supplementary notes on both the points. This is a very complicated piece of legislation and we are having considerable difficulties.

Mr. Kapadia, we are very thankful for enlightening us on some of the very complicated sections of the Bill. Thank you very much.

SHRI G. P. KAPADIA: I convey my grateful thanks to you and other hon. Members of this Committee for this opportunity that is given to me. I consider myself to be fortunate in being of at least some service to this August Body. Thank you very much.

SHRI P. G. MAVALANKAR: Mr. Kapadia, while mentioning about the various financial aspects of the trust matter has said in so many words that he is in favour of continuing the communal trusts. Do I take it from him that he does not consider them as an obstacle?

MR. CHAIRMAN: He has explained that they are not really communal; they are public. He has also mentioned about Hinduism.

SHRI P. G. MAVALANKAR: Is he for all communal trusts to be continued as they are?

MR. CHAIRMAN: What he said was, communal trusts created before 1-4-62 were given exemption. Only after 1.4.62, communal trusts, as such, were not given exemption. An artificial definition was given. In fact, trusts created for the betterment of the Sikh Community or Jain Community or Hindu Community or Christian Community or Muslim Community are perfectly public trusts. But, by an artificial definition they were called communal trusts. What Mr. Kapadia says is, the law should remain as it is, because, in reality, they are not communal. They cater to a very wider public interest. That is what he has said.

SHRI G. P. KAPADIA: Kindly read my memorandum. My stand is quite clear.

MR. CHAIRMAN: Thank you.

[The witness then withdrew]

III. Institute of Cost and Works Accountants of India, Calcutta.

Spokesmen:

1. Shri M. R. S. Iyengar—President.
2. Shri V. Kalyanaraman—Vice-President.
3. Shri G. K. Abhyankar
4. Shri S. K. Mitra
5. Shri S. N. Ghose—Secretary.

MR. CHAIRMAN: Mr. Iyengar, before you commence your evidence, I would like to read out the Direction of the Speaker which governs your evidence. It says:

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless the 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."

Mr. Iyengar, you may confine your observations to the supplementary memorandum. We have heard you once in Calcutta. You may make your submissions on the supplementary memorandum.

SHRI M. R. S. IYENGAR: First of all, I would like to convey the thanks of our Institute for the opportunity given to us to hear us on some of the points which we have tried to convey in our supplementary memorandum. We, perhaps, would not have thought of giving a supplementary memorandum. But, in view of the conditions that were prevalent in the country, subsequent to our submitting the first

memorandum, from the point of view of finding ways of stamping out the accumulation of black money and also curbing the practice of tax evasion, we thought we could make some useful suggestions. That is how, it stands as the background to our submitting the supplementary memorandum. Two of our suggestions, which have been made by us, cover Clause 39 and Clause 12 of the Amendment Bill. Two other suggestions are more or less departmental or procedural and the third suggestions, of course, does not relate to any of the clauses of the Amendment Bill. We are urging it upon as a major tax reform. Coming back to clause 39, on which we have submitted a supplementary memorandum, we have made a suggestion that the process of certification of the returns submitted by the people who have annual incomes of about Rs. 5 lakhs or assessable income of about Rs. 50,000 and more, should also be done by cost accountants. You will ask a question as to why the Institute of Cost and Works Accountants of India should press for their inclusion, as a party for doing this audit. In this connection, I may state that the objective of the Government or the Parliament in bringing in some of these provisions has been, as we understand, to see that the audit procedure wherever it is applicable assists the Government in more efficient tax collection, meaning thereby that it would ensure that the returns submitted by the assesseees could reasonably be considered as to contain complete data, meaning also thereby that it would contain expense elements only which could be attributable to the operations in question. As you are all aware, the process of formation of black money in this country, or for that matter wherever it is, arises in two ways. One is in the case of corporate sector, where many of the companies try to show up their expenses by including in the Profit & Loss Account exaggerated items of expenditure and also by manipulation of stock valuation showing a different type of stock valuation, than what it should be. With due respect to the

procedures that have been in vogue in our country and the auditing process which has been there-I am referring to the process of audit of financial accounts-and in spite of it being well established, the accumulation of black money or tax evasion has been very pronounced. Therefore, it is our view that a similar process of auditing without going into the details of the expenses attributable to the process of operations, in the same manner as it has been obtaining so far, might not give the results as envisaged in this measure. It is in this context we are suggesting that the audit of the accounts of those people who have a turnover of its 5 lakhs and over and whose assessable income is Rs. 50,000 and over, could be done, with advantage, by the cost accountants. In this connection, I would like to give a brief background of the Institute. It is purely from the point of view of giving a different basis against which or the background from which the cost accountants are functioning. Compared to other disciplines, cost accountants are more heterogeneous, by discipline. By using the training and other facilities provided by the Institute, persons can become qualified accountants by a process of learn while you earn. The persons who are in employment can avail of the facilities provided by the Institute and become cost accountants. We have been able to draw into our field people from discipline like mathematics, engineering, economics etc. The advantage of these types of people coming into our field, instead of pure commerce graduates, has been that they have not only been able to impart into the profession the benefit of their practical experience in the various units in which they have been working, but, when they become cost accountants and when they go in for practice, they have also been able to make use of the training received by them for the purposes of auditing or consultancy. This is where exactly lies the real advantage of a cost accountant doing auditing. I would, in fact, say that here the word 'auditing' is a mis-nomer: I would call it 'cost relevance analysis':

While making provisions under Clause 12 and Clause 39, the auditing process that is covered therein, should highlight as to whether the expenses that have been shown there are more relevant for the operations. Cost relevance analysis can be better done by a person competent to look into the details of each and every item of expense and to point out how relevant they were for the operations. I do not want to go into the details. One aspect of the cost accounting system is this that if there is an expense in an organisation, it is always judged against a norm or a process, as to what should have been the expense pattern or what should have been the value of production etc. From this angle, our submission is, the cost accountants should also be considered along with other documents that may enable the Now, Clause 12 says:

"Every person carrying on any business or profession shall keep and maintain such books of account and other documents as may enable the income tax authority to determine the tax payable by him and the exemptions, deductions and other allowances permissible to him under this Act.

We would like to submit that whereas every company has been maintaining relevant books of accounts, they have to maintain detailed statements about the methodology they have adopted in the process of stock valuation and they should maintain stock records etc. Perhaps, you would be aware that Sections 209 and 233B provide that certain industries should maintain cost accounting records as well as get them audited, which we now refer to as cost audit. In the process of cost auditing, each one of the companies will have to prepare various kinds of records. These would give the cost auditor an opportunity to verify the efficiency of the operations in question. The documentary procedure would also be taken as a conclusive evidence as to how the company has functioned. We would urge that the cost accounting records and the cost auditor's certificate which would be in operation in

respect of certain of those companies could be taken as supplementary evidence for the purpose of the income tax authority in accepting the income-tax return filed with him. We would also request you to include the cost accountants in the Income-Tax Settlement Committee referred to in Clause 58 of the bill and in the Wealth Tax Settlement Committee under section 22(B) of the Act as provided in the bill. These two committees are competent to consider such cases. It would be helpful if the parliamentary committee would make a recommendation suggesting the inclusion of members both of Institute of Cost and Works Accountants of India and the Institute of Chartered Accountants of India into these Committees. My last point is about the recommendation relating to the adoption of the Value Added Tax. This is a very sweeping change needed in the country. It is being done by 8 countries, among whom the latest is the United Kingdom. They have adopted this from various angles viz. that (1) it can be a very buoyant source of revenue;

(2) by inclusion of the retail and services sectors in VAT, the tax base is very widely increased and this allows substantial revenues to be raised at relatively moderate rates;

(3) its introduction can provide for a major restructuring of taxation;

(4) it provides to help exports at competitive prices to improve balance of payments; and

(5) it stimulates to place the proper emphasis to maximise the profit earnings.

More than anything else, our point is that the system of corporate taxation, since it is related to the profits, generally induces the under-statement of taxable surplus created in the business. This is done by the entrepreneur, within the permissiveness of the tax law by exaggerating the expense side of the transactions or his being indifferent to efficiency stimulating as-

pects of the management operations by effecting cost reductions. The more efficient one is as reflected by the size of the profit, the more he has to pay taxes. Here lies the utility of the Value Added Tax. I am not going into details. The aim of the VAT is to tax the product as it changes hands and as the value gets added to it. It is a multi-point tax and is primarily resorted to by the Common Market countries. From the point of view of our country, it will be a great help for stimulating exports and improving the balance of payments position.

MR. CHAIRMAN: As a theoretical proposition, the VAT is interesting. As far as our bill is concerned it is completely outside our purview. If it is within it, I would have considered it as germane. It is in the nature of an indirect tax. It is rather aimed at replacing both the indirect tax and the direct tax. I cannot allow even any question on it. But whatever you have written about it in your memo. is interesting. The other two points that you had made are germane, viz. about cost accountants being considered for auditing purposes and as members of the committees.

SHRI M. R. S. IYENGAR: I am making it (VAT) as an outside suggestion.

MR. CHAIRMAN: The Finance Minister would not like us even to talk about it.

SHRI VASANT SATHE: Would the VAT in any way enable to unearth black money; can it in any way be related to the objectives of this bill?

SHRI M. R. S. IYENGAR: Yes, Sir; very directly so. That is what I was trying to explain.

SHRI VASANT SATHE: If so, can it, in any way, be incorporated into this bill even by the addition of certain sections?

SHRI M. R. S. IYENGAR: It would not be possible to do it in such a simple manner, because it is a major tax reform by itself. I entirely agree with the Chairman that it can be a different process of replacing both direct and indirect taxes.

MR. CHAIRMAN: It would need the scrapping of the Income-tax Act and the Central Excise Act. A new law will have to be written from A to Z. This law will have to be scrapped completely.

SHRI M. R. S. IYENAR: My only point is that sooner or later, maybe after 10 years, we have no option but to go towards it.

MR. CHAIRMAN: I entirely agree with you. It will be the privilege of some other select committee to study how the existing system of taxation is. I do feel that it is anachronistic in many ways; but certainly the VAT is not withing the scope of this Committee's deliberations. We will consider the other two points whch you have made. All the same, you are entitled to make a representation to the Finance Minister or the Prime Minister. Please don't mistake us. That point is purely of academic interst to this Committee. Thank you very much.,
(*The Committee then adjourned*)

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

Thursday, the 11th July, 1974 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. Baperjee
7. Shri Dharnidhar Basumatari
3. Shri Tridib Chaudhuri
9. Shri K. R. Ganesh
10. Shri Mani Ram Godara
11. Shri Maharaj Singh
12. Shri P. G. Mavalankar
13. Shri Amrit Nahata
14. Shri H. M. Patel
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri Bhola Raut
17. Shri Vasant Sathe
18. Shri Satyendra Narayan Sinha

LEGISLATIVE COUNSEL

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

REPRESENTATIVES OF THE MINISTRY OF FINANCE

1. Shri S. R. Mehta, *Chairman, CBDT.*
2. Shri C. C. Ganapathy, *Joint Secretary*
3. Shri S. Narayan, *Joint Secretary.*
4. Shri S. I. Tripathi, *Deputy Secretary.*
5. Shri K. N. Balasubramanian, *Officer on Special Duty.*
6. 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 S. G. Jaisinghani

3. Shri M. C. Joshi
4. Shri G. C. Agarwal
5. Shri P. Srinivasan
6. Shri B. Gupta

II. Dr. Bihari Lal Kanaiyalal, Ahmed abad.

III. Gandhi Peace Foundation, New Delhi.

Spokesmen:

1. Shri V. Ramachandran, Secretary, Sarvaseva Sangh, Khadi Gramodyog Samiti, Coimbatore.
2. Shri A. C. Sen, Secretary, AVARD, New Delhi.
3. Shri Rameshwar Thakur, Chartered Accountant, New Delhi.
4. Shri S. D. Nargolwala, Delhi Parsi Anjuman, New Delhi.
5. Shri Devendra Kumar, Secretary, Gandhi Smarak Nidhi, Delhi.
6. Shri Rup Narayan, Secretary, All India Prohibition Council.
7. Shri A. K. Karan, Secretary, U.P. Gandhi Smarak Nidhi.

I. Indian Revenue Service (Income-tax) Association, New Delhi.

Spokesmen:

1. Shri P. S. Bhaskaran—President.
2. Shri S. G. Jaisinghani
3. Shri M. C. Joshi
4. Shri G. C. Agarwal
5. Shri P. Srinivasan
6. Shri B. Gupta

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

MR. CHAIRMAN: Before you commence your evidence I may point out to you the Direction by the Speaker which governs your evidence. It says:

“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.” please proceed.

SHRI P. S. BHASKARAN: We understand this Direction. We do not want any part of our evidence to be treated as confidential. At the outset, we would like to thank you for giving this organisation another opportunity to appear before this Committee and give our evidence. On the last occa-

sion, there was a lot of discussion on whether problems of administration are within the scope of this Committee and I am glad that the Committee has now decided to head us on the problems of administration.

MR. CHAIRMAN: The Committee has decided nothing so far. The Committee wants to hear your views on certain matters which have come up before them relating to seniority rules specially. The Committee thought that your organisation must be heard again, after we heard the promotees. No decision has been taken whatsoever. But, we want to hear your views on this matter.

SHRI P. S. BHASKARAN: We are almost groping in the dark as to what exactly the Committee would like to hear from us.

MR. CHAIRMAN: I have asked the Lok Sabha Secretariat to inform you precisely what the promotees

had given and told us and if you feel there is nothing on that for you to mention, well and good, but if you think you have something to mention on that, you may do so. Have you received Lok Sabha Secretariat's letter dated 8th July 1974?

SHRI P. S. BHASKARAN: We received it on 9th July, 1974. So, we did not get time to prepare a written memorandum on this point. But, in the course of this oral evidence, we will try to make our points as far as possible and subsequently we will try to supplement that by a written memorandum, if you permit us.

MR. CHAIRMAN: If necessary.

SHRI P. S. BHASKARAN: May I proceed on the basis of this letter? Before I deal with these points, it will be necessary to give a background of the creation of Class I Service in this Department, the things that have happened from 1944 till 1974—these are still happening today. Till 1944, there was no Class I Service in the cadre of Income-tax officers. This was created in 1944 with mainly two objects in view. First was to improve the morale and the efficiency of the department and the other was the Administration's view that the then prevailing system of having a Class II Service did not produce sufficient officers of the requisite calibre. These were the two reasons—existing system did not produce sufficient officers of the requisite calibre and they wanted to tone up the morale and efficiency of the department. In the initial stages, when the Service was introduced, they decided to fill up the Service from two sources, direct recruitment and promotion: 80 per cent of the posts were to be filled by direct recruitment and 20 per cent by promotion. This was the decision taken by the Government after taking all the facts into consideration. There were representations that the quota of 20 per cent was not sufficient for promotion and that it should be increased. The Government said 'No, we think that the quota of 20 per cent for promotion is quite

sufficient and there is no need to increase this quota'. They took this decision. But, the way the decision was implemented, is something surprising. From 1944 to 1950, they took 132 officers by direct recruitment and in the same period they took 142 officers by promotion. If the quota had been observed, against 132 direct recruits, only 32 promotees should have been taken. But, this was 142, that is, about 110 more than prescribed legal quota for promotion.

MR. CHAIRMAN: Between 1944 and 1950?

SHRI P. S. BHASKARAN: Yes. In 1952, the seniority rules which were manifestly unjust to the direct recruits were promulgated. In 1952, 8 years after the creation of the Service, seniority rules were promulgated. According to those rules a promotee promoted in a particular year, say, in 1974, will be senior to the direct recruits who joined in 1974, 1973, and 1971—the year of promotion and three earlier years. A promotee gets a weightage of seniority over four batches of direct recruits. These rules were promulgated in 1952 and they were applied retrospectively from 1944. Against the quota of 32 promotees, weightage was given to all the 142 promotees, with the result an illegal group of 110 persons were placed on the heads of other direct recruits. In 1951, the promotion quota was raised to 33 1/3 per cent initially for a period of five years. I gave you the figures up to 1950. In 1951, the quota was raised to 33 1/3 per cent initially for a period of five years and there was a lot of dispute, whether it was 33 1/3 per cent for all time to come or it was only for five years. From 1951 to 1956, when the ratio was 66 2/3 per cent 33 1/3 per cent, 581 promotions took place and about 579 direct recruits were taken. You will see this is almost 50:50. Three years weightage was given up to 1956. Thereafter, a note was added. 'The question of seniority is under consideration.' From 1952 onwards, direct recruits were representing to the Government that

the seniority rules were loaded against them; that they were making it worse by promoting people for in excess of the prescribed quota. But, during all these years, the promotees were in control of the department. They were the top officers in the department and we got no relief; not even a satisfactory reply from the Administration. We approached the Finance Minister in 1960. The then Finance Minister Mr. Morarji Desai, called both the organisations, the organisation representing the direct recruits and the organisation representing Class II promoted officers. They were heard in the presence of each other. He listened to what each group had to say. The Chairman of the Board and the Finance Secretary were also there to clarify matters. After hearing both sides, Mr. Morarji Desai said 'I am convinced that the rules have not been followed.' He also mentioned that the violation of the rules has resulted in disadvantage to one group of officers and utter benefit to another group of officers. This was the finding of Mr. Morarji Desai.

MR. CHAIRMAN: When was this?

SHRI P. S. BHASKARAN: January, 1961.

MR. CHAIRMAN: In what connection, did he give this?

SHRI P. S. BHASKARAN: In response to our representation.

SHRI VASANT SATHE: Was this finding given in writing?

SHRI P. S. BHASKARAN: We have put in affidavits before the High Courts and the Supreme Court on two or three occasions. Government has not repudiated that statement.

SHRI VASANT SATHE: Has he put his finding in writing anywhere?

SHRI P. S. BHASKARAN: I am not aware whether he has put it in writing, but we have put it in our affidavit.

Now, we said that the quota rules were violated and the weightage rules were unjust. The other side clamoured for more promotions. So, he decided to hear the grievances of both sides in the presence of each other so that any wrong statement of fact could be pointed out by the other side. It was almost like a judicial proceeding that took place, in the presence of both the sides and in the presence of the Chairman and Mr. Dehejta, the Finance Secretary at that time. In the presence of the officials of the two associations, it took place. Mr. Desai said, "you discuss it and come to an amicable settlement. In the alternative, I will give an award. I would not allow the *status quo* to remain." This was in January, 1961. Till April, 1962, about 15 to 17 months later, nothing happened and the Government went ahead with promotions on the basis of the existing seniority rules. The direct recruits were left with no alternative but to go to the court for getting redress.

After having come to the finding that the rules have been violated and injustice has been done to one group of officers, we could not get any relief, and we had to go to the High court with a writ of *mandamus*. It was in April, 1962. The Government went ahead with promotions and we obtained a stay from the high court against the promotions. The Government gave an undertaking that all those promotions would be provisional subject to the final outcome of the writ petition with the result that from 1962 onwards...

MR. CHAIRMAN: Who gave the undertaking?

SHRI P. S. BHASKARAN: The Union of India represented by the Central Board of Direct Taxes.

MR. CHAIRMAN: Did they give it on oath?

SHRI P. S. BHASKARAN: It is in the court records.

MR. CHAIRMAN: They gave an undertaking before the court that

pending the decision on the writ, whatever promotions took place would all be provisional?

SHRI P. S. BHASKARAN: Yes. They said it was subject to the final orders of the court. The writ petition was heard by a Division Bench in 1963, and they admitted that injustice had been done, but on the question of relief the matter was referred to a Full Bench. The Full Bench heard the matter afresh in 1964 and they dismissed the writ petition. The Division Bench differed on the question of relief only, and referred the question of relief to the Full Bench. The Full Bench however heard afresh and then dismissed the writ petition.

MR. CHAIRMAN: What was the basis of the rejection of the petition by the Full Bench?

SHRI P. S. BHASKARAN: The main contention was that the quota rule was not a statutory rule and we are not bound by the quota rule. That was upheld by the Full Bench. We went in appeal and the appeal was heard by a Bench of five judges. We brought up mainly two aspects of the seniority rule. One was that the quota rules were violated, and the second was about the seniority and weightage rule which gave four years weightage being given to promotees. The Supreme Court held that the weightage rule was all right, since persons were being promoted formed a very small percentage—20 to 33 $\frac{1}{3}$ per cent. So, in the context of the small percentage, 33 $\frac{1}{3}$, the weightage rule was justified and they upheld it. Regarding the quota rules, the Supreme Court said that this is a statutory rule because under the rules you have to determine the quota for promotion and direct recruitment. You have made a determination that 33 $\frac{1}{3}$ per cent will be by promotion and 66 $\frac{2}{3}$ will be by direct recruitment. This determination, though not couched in a statutory form, would still be in exercise of the powers under the rule, and so you are bound to follow that. So, the finding of the Supreme Court was that promotions made in excess of the quota

from 1951 to 1956 and onwards are illegal and the relief granted to us was this; instead of throwing out the illegal promotees, they said, "adjust the promotees from 1951 to 1956 and onwards in accordance with the quota rule."

Then, in the context of the provisional promotions to the cadre of Assistant Commissioners, they said that the seniority also has to be re-fixed in the cadre of Assistant Commissioners. This was in February, 1967. Till April, 1968, the judgment was not honoured by the Central Board of Direct Taxes and nothing was done to implement it.

MR. CHAIRMAN: What do you mean by "honoured"?

SHRI P. S. BHASKARAN: Nothing was done.

MR. CHAIRMAN: The Supreme Court's judgment is binding on the Central Board of Direct Taxes as it is on any other agency.

SHRI P. S. BHASKARAN: But it was not implemented. A fresh list was not drawn up. The consequential seniority in the cadre of Assistant Commissioners also was not given. On the other hand, they made some promotion on the basis of the old seniority list.

MR. CHAIRMAN: After the judgment?

SHRI P. S. BHASKARAN: Yes. In November, 1967. That was clearly dishonouring the Supreme Court's judgment.

MR. CHAIRMAN: Is it your view of the matter or they made promotions in violation of the directions of the Supreme Court?

SHRI P. S. BHASKARAN: They made promotions in November, 1967 on the basis of the old seniority list. It was in violation of the Supreme Court's order, because unless you draw up a new list, it is a clear violation. We were advised to file a contempt petition in the Supreme Court against

the inaction of the Central Board against these orders. When the petition came up for hearing sometime during the last week of April, the Government undertook to file a seniority list by the time the court reopened after summer vacation and on that undertaking the court did not pass any orders on the petition. On 15-7-1968, the seniority list purported to be in accordance with the Supreme Court's judgment was published. But it was made clear that this was only a revision of seniority in the cadre of ITOs and "we are not going to revise the seniority in the cadre of Assistant Commissioners." We went again to the court with this list, and said that it did not give us relief and even the undertaking given in the high court was not honoured and the decision on the writ of mandamus of the Supreme Court was not being honoured. So, we amended our contempt petition and said that the list was not in accordance with the judgment of the Supreme Court.

In November, 1968, the Supreme Court said that if the list was not in accordance with the mandamus, steps should be taken in other places and it was not the forum to get the issue agitated there, and so they dismissed our petition. Again, we filed a petition in the Supreme Court itself under its inherent jurisdiction to clarify the judgment and see that it was properly implemented. That also was dismissed some time in 1969 saying that the proper forum was the high court. When we found that they were not inclined to accept it, we withdrew the petition and again filed a petition in the Delhi High Court for the proper implementation of the Supreme Court's judgment. That was in May, 1970. We had mainly three grievances against the seniority list.

The first grievance was that with the quota of 66-2|3 and 33-1|3, that is, two direct recruits and one departmental promotee, so against 600 direct recruits only 300 promotees could be adjusted; not more than that. But the Government had adjusted more than that number. The second contention

was that we should be given seniority in the cadre of Assistant Commissioners because all promotions are provisional. We wanted them to honour their undertaking. The third contention was that the case proceeded in the Supreme Court on the basis that direct recruits come within the permanent vacancies. So, the quota rule should be followed for the permanent vacancies. The High Court fully accepted the first two contentions. As against 600 direct recruits only 300 promotees could be adjusted. This was accepted fully. Then they directed that seniority in the cadre of Assistant Commissioners should be given to these officers in accordance with the new seniority list. Regarding the third point, we withdrew that in the High Court. We did not press the point regarding the permanent vacancies because the court gave the plea "We do not have the figures of vacancies".

One fundamental point is that different standards are applied by the administration *vis-a-vis* direct recruits and promotees. When the Government was contesting our claim that seniority should be given in the cadre of Assistant Commissioners the very government was giving consequential seniority to promoted officers in the cadre of Commissioners. As a result of the Supreme Court judgment the seniority of certain promotees improved in the cadre of Assistant Commissioners. The Board of its own revised their seniority in the cadre of Commissioners, refixed their pay and gave them all the benefits flowing from that. At the same time, regarding similar relief to the direct recruits they were contesting the claim in the High Court with the help of the Attorney-General and Solicitor-General. This was the double standard always adopted by the Board in dealing with the claims of direct recruits.

The judgment was delivered on 25-3-71. Immediately, the Government applied for a stay of the judgment. The Court refused to stay the judgment. Then the Government made a

written application "we have to fill up 130 or some number of vacancies in the cadre of Assistant Commissioners, failing which the entire administration will come to a halt; so, we should be allowed to make promotions". The court said "we will not stay the judgment; you can make a new seniority list and then make promotions". This was in March 1971. In March 1972 an appeal was filed in the Supreme Court and a stay was obtained. For a period of one year, they did not fill up 120 vacancies in the cadre of Assistant Commissioners. So, public interest suffers only if the vacancies are not filled up by promotees; it does not suffer if it is not filled up by direct recruits. They were keen on helping the departmental promotees. I will have to refer to this later on.

In March 1972 the stay was granted. They moved an appeal which was heard in April 1972. In August 1972 the first judgment was delivered by the Supreme Court. I want to remind you that this judgment is about the implementation of the earlier judgment; it is not a question of any adjudication of right. They held that upon 16-1-59 the seniority list prepared by the Government was correct, subject to the addition of 32 more names of excess promotees. On 16-1-59, the quota rule ceased to have application. So, the court directed the Government to have a seniority rule from 16-1-59. Under this judgement of 16-8-72 six months' time was given to frame the new seniority rule and the list. The Supreme Court also directed that consequential seniority in the cadre of Assistant Commissioners has to be given to these officers.

I will now deal with rule-making. The Board sometime in September 1972 called for representations from both associations regarding their suggestions on how the rules should be made. We gave a written representation as to how in our view the rules should be made. I understand the Federation also gave a written representation regarding the manner in which the new rule should be made.

After hearing both the sides, the rule was framed, we understand, at a meeting presided over by the Cabinet Secretary, attended by the Finance Secretary, Personnel Secretary and the Law Secretary and the Chairman of the Board of Direct Taxes. It was approved by the UPSC and was promulgated in the form of a presidential order in February 1973. The revised seniority list in accordance with the new rule was also framed and filed in the Supreme Court. The parties were given opportunities to file objection against the revised seniority list. Both sides filed their objections to the new list prepared by the Government. We replied to the objections of the promotees and the promotees replied to our objections. Thereafter, there was a hearing extending over 10 days before the Supreme Court by a Constitution Bench of five Judges after which the Supreme Court held the new rule as fair and just. In the meantime, in March 1973 they made a number of *ad hoc* promotions on the basis of the Supreme Court stay order. In March 1973 after the new rules were promulgated. About 59 promotions were made on the basis of the interim order of the court. It was made clear to the officers that these promotions are *ad hoc*, purely temporary, they will be reversed or revised on the basis of the final judgement of the Supreme Court on the validity of the rules. In the promotion order itself this was made clear by the Government. They were promoted without consulting the UPSC. They are bound to be reverted in any case because no consultation with the UPSC has taken place. These promotions continued even after one year, which is an illegal thing. They have to be reverted. Unless the UPSC approves them in accordance with the rules, they have to be reverted. Much is made of this reversion. It was made clear in the promotion order itself.

MR. CHAIRMAN: The UPSC will go by the seniority rule.

SHRI P. S. BHASKARAN: That is the grievance of promotees. If

you want the rule of law it should have some sanctity. I want to say one thing more which makes the position very embarrassing for me. In March 1973, 59 promotions took place on the plea of public interest. We concede there may be public interest. In November 1973 the Supreme Court fixed a date for hearing on 19th November, 1973. The promotees wanted adjournment for three weeks. It was fixed on the 10th December, 1973. The case would have come up for hearing on the 19th November but for the request of the promotees. Between the fixing of the case and the actual hearing another batch of 48 promotions were made by the Government; again purely *ad hoc* purely temporary, without consulting the UPSC. We were really agitated that these promotions are not in the public interest. While the hearing was taking place on the 10th some persons 400 places below me were promoted on an *ad hoc* basis. We suggested, "If you want to make *ad hoc* promotions, why don't you make on the basis of seniority list so that there will not be reversions?". We protested to everybody, the Chairman, the Finance Secretary, the hon. Minister for Revenue and Expenditure and the hon. Finance Minister. The Finance Minister called us and said, "Yes, I see the problem. But there is a certain commitment. So we may have to make these promotions. But once the judgment comes, your rights will be protected." We made clear our apprehensions that once the promotions were made, the relief will never be given to us. So, we said, don't make promotions. In 1971, the promotions were held back for more than one year because the promotions would have benefited the direct recruits. In 1973, could not they hold back the promotions for two weeks?

Still, there was the threat of agitation, work to rule by promotees and all that. Mr. R. D. Shah, the then Chairman of the Board called us and

discussed it with us. I should like to read the minutes of that.

MR. CHAIRMAN: You summarise it.

SHRI P. S. BHASKARAN: I would like to read the whole thing to give you the background of this. It reads:

"I called for Shri P. S. Bhaskaran and other representatives of the I.R.S. (Income-tax) Association for a meeting this morning. I explained to them how it was decided in the interest of work to make *ad hoc* promotions to the grade of Assistant Commissioners and I.T.O. Class I. I made an appeal to the sense of loyalty to the service and the interest of the country and sought their cooperation in making the working of the Department a success.

They appreciated the spirit in which the appeal has been made and assured that they would call on all their units and members of the Association to extend full cooperation in the implementation of the task before us. They reiterated, however, that an assurance should be taken from the Federation representatives not to seek any adjournment of the hearing before the Supreme Court and it should also be made clear to the Federation that once the court delivers the judgment, it shall be implemented within the shortest possible time.

They stressed that they were extending the cooperation despite openly expressed fears in the minds of members that once the promotions are made, the officers promoted on *ad hoc* basis will not be reverted and that, therefore, their assistance and cooperation is subject to the clear understanding that in the event of the Supreme Court upholding the new seniority rules, consequential reversions shall be made forthwith.

They also desired that having regard to their spirit of cooperation,

the Federation should be asked not to cite the possibility of reversions from the proposed *ad hoc* promotions as an argument in their attack on the seniority rule. . . ."

We wanted them to give an assurance that the threat of reversions will not be used as an argument in the Supreme Court. It says further:

"In any case, the Government Counsel will be instructed to oppose any move for adjournment and he would also clarify the circumstances in which it became necessary to make *ad hoc* promotions. I have given them the assurance and I thanked them for the cooperation which they have extended and expressed my appreciation to the spirit in which they responded to my appeal to their sense of responsibility.

The Association promised to make an appeal to the members to ensure that the Department's work will not be allowed to suffer and it will be carried on with full vigour."

Then, I read this:

"Later, Shri R. C. Pandey, (the Secretary General of the Federation saw me in response to my invitation to him. I told him the fears in the minds of the I.R.S. Association which have been mentioned above. He promised to instruct their Counsel not to seek any adjournment of the hearing of the case before the Supreme Court. He also assured me that his Counsel will support the Government Counsels effort to ensure that the hearing does not get postponed.

He further stated that the Federation understands fully that once the Supreme Court judgment is announced, it will have to be implemented forthwith and that such implementation might involve reversion of the officers who were proposed to be promoted *ad hoc* on a purely temporary basis."

This note, we understand, was submitted to the Minister for Revenue

and Expenditure and the Finance Minister and they approved this note. It is thereafter that the promotions of 48 officers on an *ad hoc* basis took place. I am mentioning these facts just to show in what circumstances the *ad hoc* promotions took place and a clear undertaking was given to us that once the Supreme Court upholds the seniority rules, the judgment will be implemented forthwith and reversions will take place.

It is now about three months—the judgment as given on 16-4-74 and today it is 11-7-74—and till today a person 400 places below me is working as Assistant Commissioner and I am still working as Income-tax Officer. The Government has not taken any single step to implement the judgment of the Supreme Court. And you want to hear us as to why the reversions should take place? Should I say anything more on these reversions?

SHRI AMRIT NAHATA: I just want to know how many associations there are in the Income-tax Department of the I.R.S., Class I?

SHRI P. S. BHASKARAN: The direct recruits have got one Association, the Indian Revenue Service Association. It has got branches. We call them units. They are all over the country wherever direct recruits are there in sufficient numbers. But there is a central executive committee and a local executive committee for each unit.

SHRI AMRIT NAHATA: In your Indian Revenue Service, the Income-tax Department, amongst Class I officers, how many associations there are.

SHRI P. S. BHASKARAN: For Class I direct recruits, there is one Association. The Class I officers and Class I promotees have got another Association. I would call it another association because, structurally, each unit in a State, say, the Bombay Gazetted Officers' Association is an independent entity. They have got an

all-India Federation which affiliates all the local organisations. So, really there are mainly two Associations, one for the direct recruits and the other for Class II officers and Class I promotees, from Class II to Class I.

SHRI VIRENDRA AGARWALA: What is the percentage of direct recruits in the whole organisation?

SHRI P. S. BHASKARAN: In the whole organisation, I think we must be about 30,000 or 35,000. The direct recruits will be about 800. I am talking of officers upto the level of peon.

MR. CHAIRMAN: Take this way from the direct recruits to promotees, whether Commissioner or Assistant Commissioner or Inspecting Commissioner or the ITO. Take the aggregate number of officers and promotees as against the direct recruits.

SHRI P. S. BHASKARAN: We have been able to get the figures from the Pay Commission's report which we take as authentic. The figures are under Income Tax—Class II—1738 Class I—1293 and this 1293 includes both the direct recruits and promotees.

MR. CHAIRMAN: About 50-50 approximately.

SHRI P. S. BHASKARAN: Yes.

MR. CHAIRMAN: You have explained the entire gamut of the litigation. The other people have also been unhappy with the Board and they have been even more unhappy with the Board. I do not know what the Board has to do.

We are concerned with a limited purpose and it is this: to be able to bring about the streamlining of the administration. In that context, this sort of discontent and rancour between the direct recruits and the promotee is something extremely un-

healthy. The committee is not the forum to go minutely into all these matters.

One simple question I want to ask you. Whatever may have been the cause for the Government to remain sleeping, having made the quota, once 80-20 and then 67:33, etc., if they only have changed the rule in time, nothing could have prevented them from changing the rule.

SHRI P. S. BHASKARAN: They tried and they failed. That is our grievance. In 1960 they tried it. They tried it from 1957 onwards. The UPSC said, 'No. We will not allow because there is a general Government policy regarding direct recruitment and promotion and there are quotas fixed. It is not for income tax services alone, it is applicable for all the services.' If you kindly see our memorandum, we have appended an annexure. I have the percentage for promotion for about 15-20 Class I Services. 50 per cent is the highest and that is in the Income Tax Department.

MR. CHAIRMAN: Even if the Department thinks that it should not be 50 per cent, it cannot do?

SHRI P. S. BHASKARAN: Unless it falls within the overall policy of the Government.

SHRI H. M. PATEL: I think you would not wish to go into the merits of the matter. Even if you do, I would like to say that it is said that the Government has not acted even in accordance with their own policy pronouncements. Therefore, for us to say that the Government had certain rights and that it could have done certain things and would not have had no options, etc. is not really the material question at all.

MR. CHAIRMAN: I was actually seeing it from a different angle. Since this question of their internecine conflict is going into the root of the administration and it is killing the administration, I was thinking whether we can recommend to the Government to reconsider the rule. Whether it is

necessary—that is what I was thinking.

SHRI H. M. PATEL: In fact we are all interested in these matters because these are the officers on whom depends the efficiency and improvement and if this kind of inter-relationship exists and if there is perfect justification on both sides which may feel that the law exists on its side, I think either the Central Board of Revenues or its Chairman should call a meeting to-day and it is their duty to settle this matter and if they have not done, it seems to me that the Central Board of Revenue should be taken to account as to why they are not settling it. Have they made any proposal to the Central Government to bring about a settlement which the Central Government has not accepted? After all this matter is going on—I do not know—for how many years. They must be concerned about it.

MR. CHAIRMAN: From 1962 it is going on.

SHRI P. S. BHASKARAN: From 1950.

SHRI H. M. PATEL: Therefore, the Central Board also is deeply concerned.

MR. CHAIRMAN: We will ask them and they will reply to us. So far as Mr. Bhaskaran is concerned, it is this that the other people feel very seriously aggrieved on account of the rule as interpreted by the Supreme Court and one of the grievances was that they have been promoted and worked for so many years and now they will have to go back. It is a human problem.

SHRI P. S. BHASKARAN: I told you the circumstances in which they became Asst. Commissioners. Would you tell me that they should not go back on the facts? You consider it as a human problem. The same human problem applies to me also. Injustice has been done to me. A man 400 places below me has been promoted over me. We pleaded with the Chairman, 'Don't make the promotions. There is a human problem. How will these officers face their sons and fami-

lies? You have waited for one year. Please wait for one month more.' I also made an appeal to the Chairman and MRE also.

MR. CHAIRMAN: We leave it at that. They have made a case.

SHRI H. M. PATEL: You put this point also from a human angle. But Mr. Bhaskaran, I think, has correctly replied that the human angle applies on both sides. I think the fact must not be overlooked that what we are concerned about is the implementation of the Supreme Court's decision. Even if in the implementation certain hardships arise, then that can be resolved by well-wishing persons intervening and bringing about a settlement. First of all, they must be assured that the Supreme Court's judgment will be honoured. You did not like the use of the word at one stage. I do say honouring the judgment does arise. Therefore, if there is anything at all to be done by the Government, we shall say that the Supreme Court's judgment must be honoured in letter and in spirit and having done that, in which case if certain practical difficulties arise for individuals, I have no doubt even Mr. Bhaskaran and company, despite their hard feelings, will also agree, should be corrected.

MR. CHAIRMAN: Ours is a very limited purpose. As a Committee looking into the problem of streamlining the administration, if there was anything, we should recommend to the government to bring about some sort of a rapprochement between the two sets of officers. That was the possibility we could explore.

SHRI VASANT SATHE: In this annexure you have also given the figures of percentage of IAS, ICS, Customs and Central Excise. In Customs and Central Excise we find that the percentage is 50 per cent as in Income tax. When was this percentage in Central Excise and in Income Tax brought to 50 per cent.

SHRI P. S. BHASKARAN: In 1973 it was brought in Income-tax to fifty

per cent but with retrospective effect, with effect from 1959. The Supreme Court struck down the seniority list from 16th January, 1959. In the judgment of August, 1972 they directed them to make a fresh seniority list from 16th January 1959. The fifty per cent was introduced in 1973 with effect from 16th January, 1959.

SHRI VASANT SATHE: Has that been struck down?

SHRI P. S. BHASKARAN: That has been upheld by the Supreme Court.

SHRI VASANT SATHE: You have no grievance about that?

SHRI P. S. BHASKARAN: We have grievance but we have accepted the inevitable.

SHRI AMRIT NAHATA: Does he not realise that this is internecine civil war going on between two classes of officers in the same department over a pretty long period? Is it conducive to efficient tax administration?

SHRI P. S. BHASKARAN: This internecine fight has been there because of the wrong policies of the Central Board of Direct Taxes. The administration in the Board acts as a super power over the department; it is not responsive and it is wooden. That is responsible for the ills of the department.

MR. CHAIRMAN: What is to be done?

SHRI P. S. BHASKARAN: I demonstrated to you that an inspector could become chairman, not because of the rules but because of the wholesale, deliberate violation of the rules. Against 32, 142 persons were promoted and given weightage. Can any rights be based on such wholesale violation of rules? What about my rights? 110 persons illegally sit over me. Is it not injustice? It is an act of extreme cruelty. Any day Government will issue promotion order where a person 100 places below me is being promoted

as Commissioner. Why? Because the Supreme Court denied me relief. They said: you came late. Is that administration? You talk of human problem. Is there not a human problem if a person 100 places below me is promoted as Commissioner while I am still an assistant commissioner?

SHRI P. G. MAVALANKAR: Perhaps this is not the place where it could be discussed at length. We all agree that the writ of the Supreme Court should be honoured in letter and in spirit. From what has been said now, it appears that the writ of the Supreme Court had not been honoured. We must have from the Government an explanatory note with regard to the points made out by Mr. Bhaskaran and his colleagues, what the Government point of view is.

MR. CHAIRMAN: We will ask them to give us a note on that.

SHRI P. G. MAVALANKAR: Could we not include this matter in the general compass of efficient tax-administration.

MR. CHAIRMAN: We could refer to this matter generally in our report because it directly affects tax administration; if two classes of officers quarrel, it is not going to benefit the exchequer or the assessee.

SHRI P. S. BHASKARAN: On 17th November, 1972 the Finance Minister addressed a meeting of the federation of the promotee officers; it is here in the memorandum and I want to read two paras from it.

MR. CHAIRMAN: You have sent us that.

SHRI P. S. BHASKARAN: May I refer to a statement which I have given as annexure II. These figures were taken on the basis of cadre strength of 1972.

MR. CHAIRMAN: Today the percentage may vary and because the percentages may vary, the chances of promotion may also vary. The statement is here.

SHRI P. S. BHASKARAN: It will depend upon the number of Class I posts.

SHRI VASANT SATHE: Supposing, in future, two persons are recruited one directly and the other through departmental promotion. When they become Class I Officer from Class II, they should be on par from the date of their appointment. What have you to say about this?

SHRI P. S. BHASKARAN: The date of appointment had never been the basis of seniority in this department. If you apply 33-1/3 and weightage instead of the other method i.e., roster, the promotees would not get any advantage as a class.

SHRI VASANT SATHE: You cannot have it both ways.

SHRI P. S. BHASKARAN: So, up to 1966, you give them from the date of appointment. Because date of appointment benefits them upto 1966; thereafter, date of appointment does not benefit them. The judges have observed in the judgment that the promotees have not given any rational alternative.

MR. CHAIRMAN: You please leave it at that.

SHRI AMRIT NAHATA: Apart from all these rules and regulations, policy of the Government as well as of the UPSC, would you please tell me what advantages or superiority

does a directly recruited officer has over a promotee?

SHRI H. M. PATEL: It is the Government which gives them certain rights, not that they have assumed any right.

MR. CHAIRMAN: Whatever may be the position, they seem to say that they should be given a chance according to the quota and the rules established.

SHRI P. S. BHASKARAN: If you permit I can only read out the speech of the Finance Minister.

MR. CHAIRMAN: He wants your opinion.

SHRI P. S. BHASKARAN: This is the policy which applies to all Central officers.

SHRI AMRIT NAHATA: We know that policy. But I know of a person in a railway who has proved himself to be far more efficient than many directly recruited all India Service offices.

MR. CHAIRMAN: We will consider whatever you have stated. Our opinion on this matter will be confined to a very very limited issue. We are not sitting on judgment. It is for them to administer the law. If there are certain principles to be evolved which would smoothen their relations, the Committee would be happy to do so.

(The witnesses then withdrew)

II. DR. Beharilal Kanaiyalal, Ahmedabad.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Before you commence your journey, I may point out to you the Direction by the Speaker which governs your evidence. It says—

"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."

Please start your evidence.

DR. BIHARILAL KANAIYALAL: Mr. Chairman, Sir, and hon. Members, I am grateful to you for giving me an opportunity to submit my views on this Bill. As far as the objective of the Bill is concerned, I don't think there may be any difference of opi-

nion, I would only say that there will be far-reaching effects on the administration of the direct taxes in the country. I would straightway come to the various aspects of the Bill. The first one would be about the black money. Sir, it has been felt that black money has caused an adverse effect on the economy of the country though we are not certain about the quantum of black money. But we can certainly say that the quantum is definitely of that magnitude that can put the economy out of gear. As far as estimates are concerned, they vary substantially. The estimate of Prof. Kaldor in 1956 was of the value of Rs. 200|300 crores in 1953-54, whereas that for the Central Board of Revenue was much lower.

If I come to causes of creation and proliferation of black money, they are manifold. I would only refer to 4-5 of them. The first one is the high rate of taxation. It was as much as 97.75 per cent for a certain period. Next is, continued shortage of raw materials, fuel and finished products ultimately resulting into extensive policy of control, licensing and permits which have led to malpractices. Next would be, because of shortages, the supplier would try to dictate the price and the mode of payment. I would illustrate this. Let us say, there is a factory owner who has already got the quota and permit of coal but has not received the coal. Then, to keep the production going, he will be forced to buy in the open market. But, then, the supplier will dictate the mode of payment, which obviously would mean that he would accept part of the price in cheque and part of it in cash. To keep the production going, he will be compelled to do this and he will be driven to this position. When he makes such payment in cash, he has to obtain cash and this he does, when he sells his finished product. This creates a vicious circle of dealing in black money. Furthermore, because of continued rise in prices which has been there for some time and be-

cause of the inflationary pressures which are mounting, it has become difficult for men of moderate means to make both ends meet and they are driven to the position of avoiding taxes. There is one more point. Smuggling has posed a big problem. Until it is substantially checked, somebody has got to make payment in foreign exchange for these smuggled goods. It seems, this is being done by over-invoicing the imports and under-invoicing the exports. These are generally the main features of the creation and proliferation of black money.

I appreciate that the Government of India, on the recommendation of the Wanchoo Committee, have reduced the income-tax rates at the highest slab from 97.75 per cent to 77 per cent. I am of the opinion that this would result in increase in revenue; there will be push in the economy and that the urge to avoid taxes will be reduced. I am also of the opinion that there will be a good response to this action. I would submit and urge that a fair trial may be given to this action, because there is a bound to be a time lag between the reduction of taxes and increase in revenue. I would like to illustrate this. In the USA, when they reduced the income tax rates from 91 to 77 per cent in 1964, the revenue started increasing only in 1966. Again, when they reduced the rates further to 70 per cent in 1965, the effect of increase in revenue was felt in 1967. If a fair trial is given, I am sure there will be a good response. While I am on the subject of taxes at the highest slab, I may also add that there is a need to link the rise in cost of living with the exemption limit. I welcome the raising of the limit from Rs. 5,000 to Rs. 6,000. But, this is not commensurate with the increase in cost of living. There are two options for the same. One is to raise the limit of Rs. 6,000 to a particular higher figure or keep this Rs. 6,000 as exemption limit, but instead of giving at the first slab it may be given in

the final slab of an assessee's income. I would illustrate this.

MR. CHAIRMAN: You are speaking on rationalisation of the law. Has it any direct bearing on the question of tax evasion?

DR. BEHARI LAL KANAIYALAL: No.

MR. CHAIRMAN: I would request you to come to the question of tax evasion.

SHRI P. G. MAVALANKAR: While welcoming the reduction of tax rates from 97.75 per cent to 77 per cent, he mentioned that certain time lag was necessary before we can get the results out of it. How much time lag does he suggest, two years or three years? He mentioned the US example. I think he said two years.

MR. CHAIRMAN: What, according to you, should be the reasonable time?

DR. BIHARI LAL KANAIYALAL: Past experience shows that it should be about two years.

SHRI P. G. MAVALANKAR: If after two or three years the experience is that the measure does not pay in terms of higher revenue, would the witness suggest further reduction in the rates or would he suggest that we should go back to the higher rate of taxation?

DR. BIHARI LAL KANAIYALAL: I do feel that that eventuality may not arise. I think there will be an increase in revenue.

SHRI P. G. MAVALANKAR: In other words, would he still want that we should go down from 77 per cent.

MR. CHAIRMAN: Mr. Mavalankar, he says that a fair trial should be given. He is sure and he is optimistic about human nature also in this country. He feels that they are bound to respond to this reduction in taxes.

DR. BIHARI LAL KANAIYALAL: The second aspect of the Bill is about charitable trusts. It has been con-

templated that the relief will be withdrawn for those trusts who were created on the basis of caste and community before 1st April 1962. I would say that they were formed by the settlers in view of the conditions prevalent then. It would be appropriate if the effect is given not retrospective but prospective. Sir, human nature being what it is, a person first thinks about his family. We say 'Charity begins at home'. Then, gradually, he thinks about his neighbours, his township, his community, his village, his State, his country and then mankind as a whole. This is human. Voluntary service organisations have their role to play in almost all democracies of the world. It has been accepted that they have played a useful role, more particularly in times of natural calamities. Most of our leaders have paid handsome tributes and compliments to such institutions. The Direct Taxes Enquiry Committee in Para 3.48 of their report have said that by tradition, private philanthropy has catered to the educational, medical, socio-economic and religious needs, of our people. I also feel that voluntary organisations sustain democratic processes and help the people to acquire a habit of self-reliance and not rely upon the Government for everything. The said Committee, in Para 3.50 of their Report, have also quoted the observations of the Public Accounts Committee (121st Report—1966-70), wherein, the PAC observed that the laws should be so drafted that they create a congenial atmosphere for the growth of such institutions.

MR. CHAIRMAN: Therefore, what is your suggestion?

DR. BIHARI LAL KANAIYALAL: There should not be any enactment that would cripple such institutions. But, they can purposefully....

MR. CHAIRMAN: Which clause you have in mind, that would cripple such institutions?

DR. BIHARI LAL KANAIYALAL: I am coming to it immediately. Gov-

ernment had recognised the utility of such institutions and they have also said that they were generous in tax treatment. The position is two-fold here. One is about ban on investment of moneys of the trusts.

MR. CHAIRMAN: You are on clause 6?

DR. BIHARI LAL KANAIYALAL: Yes, Sir. It is about the total ban on investment of trust moneys in companies. I can appreciate the anxiety that the trusts should not be allowed to misuse the money to acquire control over the companies through the money of the trust. I appreciate that position. There are no two opinions on the same. But, as we know, the prices are increasing and the inflationary pressures are there, and if the trust would like to continue the same activities as they are doing today, they will have to curtail it. Therefore they would like to invest it in a manner which could give them a good return.

The same could be done excluding the possibility of the trustees to acquire control over any companies. The Bombay Public Charitable Trust Act, 1950, section 35, provides for the norms of investment by the trusts. I say from the experience that we have in Gujarat and Maharashtra that the Charity Commissioner does not permit any investment in any of the companies without prior permission. They do take care that the investment is allowed in good companies in which the trustees are not interested even as directors. A provision could also be made that the voting right of such shares remains with the charity commissioner.

I have with me here two letters from the Charity Commissioner to the trusts where permission is given under a specific condition. So, due care is taken to see that moneys are not misused and a cushion is provided for a better return for maintaining the same activities.

If the underlying idea is not to allow the flow of trust funds to the private sector industries, if that is so, then there are two points of view.

SHRI VASANT SATHE: Not at the cost of the society. Why do you want any concession if investment is made in the private industry of your choice? That is the basic principle.

DR. BIHARI LAL KANAIYALAL: I would say not of the choice of the trustees but of the choice of the Charity Commissioner.

SHRI VASANT SATHE: Even with the choice of the Charity Commissioner, why should you be given an advantage of concession by way of being a trust to an investment in the private sector? Why should they not utilise the fund as any other private sector would do?

DR. BIHARI LAL KANAIYALAL: To carry on the same activities as they have been hitherto doing, and just because of the price rise they have to curtail their welfare activities. I would also add that if the LIC and the Unit Trust are also allowed to invest in the private sector industries for better returns why should that benefit not be extended to the trusts?

SHRI VASANT SATHE: Do the LIC and the Unit Trust have the same concession?

DR. BIHARI LAL KANAIYALAL: They do not have. Their sphere of work is different. The LIC and the Unit Trust have a different role to play. The charitable trusts are working solely for the purpose of welfare activities. This is also for assisting the activities of the Government.

SHRI VASANT SATHE: The Government will take care of itself in regard to the welfare activities. Why do you want to pay a premium on a so-called charitable trust for utilising its money to help the private sector getting easy money? Our main grievance is that the private sector creates a trust. This is an ingenious media of creating trust, getting concessions and

getting the money for their benefit and avoid taxes. How will you prevent that?

DR. BIHARI LAL KANAIYALAL:
If the new companies are being started, and if finances are being provided to the new companies, for financing the project, that is one thing. But if the company is standing on its own, and has a good standing, the trust buys it for a better return. The finance is already with the new company, when the company was first formed and when the shares were first subscribed. The sole idea is, a better return and for a cushion against the price rise.

When I was saying about applying the provision prospectively, and if the Committee is not of that view, I would only request that you may at least show one concession or one exemption as far as such trusts are concerned. In so far as the hostels for the students are concerned, I would request a change to be made that instead of section 13, section 10(22) be applied.

If the Committee decides not to change its mind and apply the provision as it is, I would still submit and urge that at least a change be effected so far as the hostels for the students are concerned and that the hostels be governed by section 10(22) of the Income-tax Act instead of section 13, inasmuch as such trusts can be allowed to get the expenditure incurred on these hostels deducted while the computation of income is calculated, because a good number of hostels do exist, and if the provisions made applicable as it is in the Bill, probably, a substantial number shall have to close down, and that would only result in a further youth unrest which, I believe, is not very desirable. So, I would request that if such trusts are not allowed any deduction in commuting the taxes and the income-tax is levied at 65 per cent, at least this exemption should be allowed.

I would further say that if the Committee is of the opinion that the provision should be kept as it is, then all

those trusts who are based on caste and community before 1-4-1962, if they are willing to come within the mainstream of thought prevailing today and who are not permitted to do so because of the duty cast by the settlers decades ago, some provision may be so made that this Committee should make recommendations to the appropriate authorities that such willing trusts be allowed to come within the mainstream and change the character of that trust into a secular one. For doing this, the existing procedure today is that the trusts have got to move the court. The court in turn puts out an advertisement, asking for any objections from the public. This is a long process and it causes a lot of delay. When this provision will be made applicable, even those trusts which would like to move with the times, with the thoughts of the Government, they would not be able to do it immediately. I see no reason why there should be any time lag for such trusts which would like to come to the mainstream. There should be a recommendation from this Committee to the appropriate authorities that some shortest possible methods may be devised, like the trusts passing a resolution, so that they can become secular. This may be filed with the income-tax authorities or the Charity Commissioner. This should be treated as a change in the character rather than the present dilatory procedure. I would request that there should be some recommendation about such trusts which are willing to come into the mainstream of life.

I now come to anonymous donations to the trusts which, according to the contemplated provision, would be taxed at 65 per cent. I do not defend black money at all. But there are some points which we have to consider for practical purposes. Suppose a person has donated anonymously Rs. 10,000 to a charitable trust. Had he shown this Rs. 10,000 in his income, he could have retained Rs. 2,300 assuming his tax is at the highest slab, and he would have paid income-tax of Rs. 7,700. In this case, he parts with the entire Rs. 10,000 retaining nothing with him. Had he

paid Rs. 7,700 as tax to the government, that would be used for welfare and administration. Now he has paid the entire Rs. 10,000 to be used for welfare activities. Here we must remember that perfect and ideal conditions do not exist in practical life. The Government of India even during the past had dealt with such cases on 60:40 scheme. Now if a person donates the entire Rs. 10,000 without retaining Rs. 2,300, let the law allow him to repent for the wrong he has done to the society.

MR. CHAIRMAN: Do you realise that by this method he would take full credit? Under the 60:40 scheme he does not take credit. I think it is an arguable point.

DR. BIHARI LAL KANAIYALAL: According to me, he does not get any credit. If he wanted, he could have retained Rs. 23,00.

SHRI P. G. MAVALANKAR: Even if it is anonymous, would it be ethical to allow that money to come into the charitable trust?

MR. CHAIRMAN: The witness says that it can be taken as expiation for the past sins.

DR. BIHARI LAL KANAIYALAL: There is one more point. There are quite a few limited companies which are giving donations to trusts, which are of course exempted from income-tax, in which the directors of the companies are interested. Law are provided for that.

SHRI P. G. MAVALANKAR: The point that the witness is making is that according to the present law it is permissible for the Managing Director of a company to give donations from the profits of the company to the various trusts in which he is interested. Of course, it is made public. Most of these trusts are not public trusts but family trusts created by the Managing Director. The question is whether that is ethical.

MR. CHAIRMAN: This Bill proposes to tackle it to some extent.

DR. BIHARI LAL KANAIYALAL: There are some small points about the collection of taxes. Funds for TB seals or for jawans' fund, or for the annual fetes or fund-raising programmes of the voluntary service organisations may also be exempted from this provision. Similarly, small denominational notes and coins offered to the temples may also be exempted from the provision of incomes from anonymous sources.

Then I come to clause 36, searches and seizures. The question is whether the present powers are adequate or inadequate. Is it the inadequate or injudicious use of the same which is not giving the desired results? Sometimes more powers may not be necessary.

As far as searches are concerned, a provision has been made that certain entries in the account books or certain receipts found at the premises of the assessee for which no proper explanation has been given will be treated as concealment for which they are liable for prosecution and penalty. This is fraught with some danger. Suppose there are some dissatisfied employees. The books of the assessee are written by them. Suppose they make some fictitious entries even if the assessee is honest, he will be put to hardship and harassment and even to blackmail. I am referring to the entries in the account books and receipts made by the employees in their own handwriting for which naturally the assessee would not be able to give any explanation. Once he cannot give an explanation he will be deemed to be at fault.

MR. CHAIRMAN: Is it about presumption?

DR. BIHARI LAL KANAIYALAL: I am referring to account books and documents found at the premises of the assessee. The onus is on them. My accountant or an employee may do it. The handwriting will be the

same; the signature will be the same. If they are dissatisfied for one reason or other, they can post a fictitious entry or receipt of which I may not have any knowledge because I will not be writing books of accounts everyday, or having a look at them everyday. There is a presumption which I will be never able to explain.

MR. CHAIRMAN: It is a rebuttable presumption.

DR. BIHARI KANAIYALAL: But the handwriting will be the same; the person's signature will be the same because he will be duly authorised persons by me.

MR. CHAIRMAN: Are you suggesting that the law should not provide for such a presumption?

DR. BIHARI KANAIYALAL: The onus should be on the Department to prove that. How am I to prove something of which I have no knowledge? I will be open to black-mail by me employees.

Then, I would only request that the Income-tax authorities should give at least a substantial proof before they start the search of an assessee. It should not be on basis of flimsy reasons or any anonymous letter.

MR. CHAIRMAN: "If he has reason to believe"—that provision is already there. There are the conditions prescribed and he must have the reason to believe that those conditions exist.

DR. BIHARI KANAIYALAL: Sir, let it be judiciously applied.

As regards the concurrent jurisdiction, I understand, it is provided for utilisation of the services of an officer who has presently finished the job and who is likely to be given some other job. He can ask the other ITO to deal with the case. This would create hardship to an assessee. The assessee will have to go from one ITO to other ITO and may be then to another ITO. As far as part-heard cases are concerned, these should be completed by one ITO. If at all, this provision has

been put on the assumed relationship between an assessee and the ITO, I think, the corollary can be extended further and there could be an assumed relationship between an assessee and more than one ITO. No machinery based on distrust of the Government officers and the assesseees can ever succeed. The only alternative is to improve the national character. If at all this is the basis of putting the provision, it will not serve its purpose.

As far as the penal provisions are concerned, I would say that linking of penalty to tax rather than income and wealth is a good suggestion. But as far as the penalty for late returns in the case of new assesseees is concerned, I believe, it is very harsh. The late submission of returns will be treated as concealment. Here again, the danger lies that there may be certain allowables and certain disallowables. In that case, the new assessee may not know his exact position. It will be deemed to be a concealment and the penalty is very harsh. I have no defence to the *mala fide* defaulter. I would suggest that such a provision should not be used for augmenting revenues but as a deterrent to a *mala fide* assessee.

As far as the automatic lien of tax is concerned, it may create serious working difficulties. Suppose I am going to buy shares of somebody else which are either in his name or a bank or a company. I do not know whether there is an automatic lien. Then there should be a clearance certificate for the sale of each and every share, it will not probably be possible. Hence there seems to be the need to make certain changes in this provision. I think, it is not workable.

As far as the tax avoidance by way of employing one's spouse is concerned, I would only say that if the spouse has acquired a recognised degree or she is duly qualified, one should be allowed to employ one's spouse in the company. Suppose my wife has acquired a recognised degree, she can

join my Company. Why should she go to somebody else's Company and not help me?

MR. CHAIRMAN: If they have recognised university degrees, then only they should be considered. We will consider it.

DR. BIHARI KANAIYALAL: There should be some norms provided. If an authority like the Company Law Board has already granted that, why should not that be granted here also?

As far as the provision regarding failure to deduct the tax is concerned, I can very well understand that if I have deducted the tax and I have not paid it, I may be subject to punishment. But if I have inadvertently failed to deduct the tax, then the provision is very harsh.

MR. CHAIRMAN: If you have failed to deduct the tax deliberately or there is a negligence on your part to deduct the tax, what about that?

DR. BIHARI KANAIYALAL: There should be continuous negligence. Often it is done by duly authorised persons, like, an accountant or the secretary. Suppose my accountant may have forgotten. Then, I am sub-

ject to very stringent penalty and prosecution. Once in a way, it may happen.

MR. CHAIRMAN: We will consider it.

DR. BIHARI KANAIYALAL: About the aggregation of gifts, it will be better if the provision is not made with retrospective effect but with prospective effect.

As regards the compulsory audit, with the rise in prices, with the figure of Rs. 50,000 for income and Rs. 500,000 for sales, there will be quite a level number of such assesseees....

MR. CHAIRMAN: What should be the figure?

DR. BIHARI KANAIYALAL: At least, it should be doubled. Then, the number of assesseees will also come down. Then you may be able to find require chartered accountants in all the areas.

MR. CHAIRMAN: We will consider that.

DR. BIHARI KANAIYALAL: That is all.

[The witness then withdrew]

III. Gandhi Peace Foundation, New Delhi, Spokesmen:

1. Shri V. Ramachandran, Secretary, Sarvaseva Sangh, Khadi Gramodyog Samiti, Coimbatore.
2. Shri A. C. Sen, Secretary, AVARD, New Delhi.
3. Shri Rameshwar Thakur, Chartered Accountant, New Delhi.
4. Shri S. D. Nargolwala, Delhi Parsi Anjuman, New Delhi.
5. Shri Devendra Kumar, Secretary, Gandhi Smarak Nidhi, Delhi.
6. Shri Rup Narayan, Secretary, All India Prohibition Council.
7. Shri A. K. Karan, Secretary, U.P. Gandhi Smarak Nidhi.

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

MR. CHAIRMAN : According to the convention, I have to draw your attention to the Direction of the Speaker of the Lok Sabha which governs your evidence before this committee. The Direction says :

"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 the evidence tendered by you is to be treated confidential and 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."

SHRI DEVENDRA KUMAR : We have no desire to keep anything confidential. Every thing we say is public.

We fully appreciate the need of having laws made in regard to public trusts. But the difficulties we are feeling is that institutions primarily engaged in the rural welfare and the welfare of the weaker sections of the community mainly according to the Gandhian concepts and programmes, find that there are three kinds of resources on which they have to depend for such activities. The basic resource is the need of personnel who have some sense of dedication and sincerity of purpose, a mission, so to say, to work for our institutions. In a welfare State Government give substantial grants for such activities but still there are areas where the Government grants may not be possible to reach. Moreover, there are new areas where pioneering activities are necessary before any Government grants can come.

Secondly, there are public donations for recurring annual expenses and current donations received every year. Thirdly, over and above that, it is found necessary that if an institution is to have some continuity, there should be some corpus with it. The basis of such gifts is not always possible, but it is desirable that if the voluntary efforts are to be channelised on sound lines, there should be some basic funds available by

public donations which may be kept as the corpus. It is here that the new Bill impinges upon some of the activities that we are carrying out. The particular fund I am representing, viz. the Gandhi Smarak Nidhi was collected after Mahatmaji's demise over a short period of say between 30th March, 1948 and March 1950. That corpus has been used for the specific programmes by which Gandhiji wanted to bring about an alternate new society based on truth and non-violence, mainly, to serve the lowest man in the country. Various institutions in the country in all the States have been assisted with this fund and the work continues.

What applies to the Gandhi Smarak Nidhi applies to many institutions which are able to collect some initial funds in the beginning or at some particular stage where it is possible to collect some funds and then create a corpus. Having a corpus for their activities and having no need to collect funds afterwards is not a very healthy practice. A public institution should like to go to the public again and again for the work they are doing.

MR. CHAIRMAN : Where do you find the difficulty? If you collect donations by way of corpus, that will remain corpus. That is the law.

SHRI DEVENDRA KUMAR : My submission is that since this corpus has to be invested . . .

MR. CHAIRMAN : Are you on the question of accumulation of the corpus or are you on the question of its disbursements?

SHRI DEVENDRA KUMAR : If it is a corpus, it has to be invested and from the dividends and interest from the corpus, the activities are to be run.

MR. CHAIRMAN : Firstly, you have no difficulty in collecting money by way of corpus and accumulating it. That is the law.

SHRI DEVENDRA KUMAR : The difficulty comes in the investment part. Since this particular fund was collected long back—other bodies also have collected their own funds and

are doing public utility works—if any law comes which impings upon the already invested funds, meaning specifically the funds invested in public companies, their activities will suffer. The present law would make it incumbent on the charitable institutions to withdraw these investments and re-invest them in Government-controlled bodies.

MR. CHAIRMAN : On a point of information, do I understand that the Gandhi Smarak Nidhi would be hit by Sec. 13 (e) if it is enacted in the form as it is?

SHRI DEVENDRA KUMAR : Certainly.

MR. CHAIRMAN : That means you have investments in shares of private companies which are not Government-controlled.

SHRI DEVENDRA KUMAR : Yes. Public limited companies in the private sector have also been recipients of Gandhi Smarak Nidhi's funds.

MR. CHAIRMAN : There are two types of things. You have created a certain corpus by somebody donating you Rs. 2,00,000 out of which you acquired some shares. Then you have incomes from the trusts which are exempt and utilised these exempted incomes for acquisition of shares in companies in the private sector. Your suggestion relates to the first category or also to the second category?

SHRI DEVENDRA KUMAR : Primarily it relates to the first category. We say this because, if there is disturbance of income, the programmes which have been taken up will suffer greatly. Secondly, there is to be some distinction between public bodies which have chosen fields of activity which would otherwise not have been served by any governmental or business agencies. In those areas the resources available both in men and material, are difficult to mobilise. Once that is done, Government should see that they are encouraged to the extent possible because people will not otherwise come to these areas. Take for instance, medical relief. There is some exemption. Medical in-

stitutions working in the medical field are exempt for many purposes. But the same does not hold good for adivasi work that is done in a particular area or work done in specified villages. Medical and educational fields are fields in which are already some exemptions from taxation. But take the economic activities among the landless labour, work in a particular village, removal of untouchability, etc. through institutions which are working among them. There are social welfare activities like this; there may be many more. There should be some discretion allowed to somebody somewhere to make a distinction between various purposes of the charitable institutions. All the bodies should not be brought under the same purview. If this principal is agreed upon, there are certain areas of social service which are difficult to be reached. Certain people are doing this kind of work through voluntary agencies and some assistance ought to be provided to such agencies.

MR. CHAIRMAN : In other words, even in the realm of relief to the poor, medical relief, etc. there are areas which are so neglected and uncatereq for and if in respect of such fields some agencies go and work there should be a clause for their exemption? Have you made that point in your memorandum anywhere ?

SHRI DEVENDRA KUMAR : In our memorandum we have pointed out how Gandhiji wanted to serve the last man. An illustrative list of things which the institutions do to serve the last man is given. It has to be considered as a category by itself. This august body could consider some criteria defining the kind of institutions which serve the last man.

SHRI DHARNIDHAR BASUMATARI : The question of taxing money entrusted for development of backward areas and backward people does not arise. But if the money set apart for the development of Harijans and Scheduled Castes is misused, then only this question arises.

SHRI DEVENDRA KUMAR : Welfare of tribals is one of the activities; a large amount is kept for that purpose. Assistance is being given through a number of centres. But when the expenditure is taken, it is one body and therefore in the case of this particular body there would be no distinction between welfare work done for tribals or for other people.

SHRI DHARNIDHAR BASUMATARI: Can you cite any instance where money set apart for the development of Harijans or adivasis was taxed by the Government?

MR. CHAIRMAN : If I have understood his contention, he wants only this. Just as there is exemption under relevant sections of income of a university or educational institution or hospital, there should be a similar exemption for institutions which will undertake the service of Harijans.

SHRI DHARNIDHAR BASUMATARI: I have examined many of the institutions run by them. I do not see any institution where this kind of thing comes in.

MR. CHAIRMAN : If they have no corpus and they work under the Government grants, the amendment is not going to affect them. But if there is a corpus under which they are working, this law will affect them, whether they are working for the adivasis or Harijans. That is my understanding. According to what you have stated regarding hospital and university income, we should have another exemption category provided and according to that all the institutions which are working in the Adivasi and Harijan areas should have the benefit of their income being outright exempted.

SHRI DEVENDRA KUMAR: Certainly, Sir.

MR. CHAIRMAN: If you are serious about your suggestions and if you want us to apply our mind, you must give them in writing to us.

SHRI DEVENDRA KUMAR: For example, we made a survey of the hill districts where the income was the

lowest. In UP, it was the lowest. We made special efforts in that particular district for the distribution of land to the landless labourers. All our activities under the Gandhian programme are aimed to find out where the poor people areas are and then to create agencies for their assistance. In the hill border districts of India, from Nagaland in the east to the J&K in the west, we have about 250 such institutions created.

MR. CHAIRMAN: I would like the Committee to consider this point very seriously. It is a new line and you have mentioned so many aspects. But if you want us to apply our mind objectively, you will have to give us something in writing. Because by and large, we are not meant for that. Our aim is to find out how these institutions are misusing the fund therefore we want to plug the loopholes.

SHRI DEVENDRA KUMAR: My submission is that if an attitude is taken that all these agencies should be considered on one category because of the danger of misusing the fund it will not be doing justice to those institutions which are working in difficult and important areas.

MR. CHAIRMAN: Let us be clear about it. We are entrusted with the task of working upon a line which is supposed to arrest the generation and proliferation of black money. Kindly do not work out an assumption that we have one way or the other to do this thing or that.

SHRI DEVENDRA KUMAR: My submission is that these agencies are decentralised in nature and not more than 30 people will be working in them and they are working independently in their own way. We feel that if the submission of annual return is required through the act, then they will certainly find it difficult. So, those things will also come in the way of efficiency of these institutions one way or the other.

MR. CHAIRMAN: Is a trust clearly exempted to file a return or not?

SHRI S. D. NARGOLWALA: We welcome the amendments proposed in clause 5(1) section 11. The only point is about the option to be exercised in time. I particularly feel that in the smaller trusts in the backward and rural areas, these legal technicalities have not been followed scrupulously. I therefore would not insist on this option being exercised, being put in the law. What the law should provide is that if the income has not been spent for the purpose as defined in the Act and as laid down in the charter of the trust, then the ITO can charge income-tax on that. Therefore, I make this very humble suggestion that this legal technicality of an option may not be made mandatory. Even if it is made mandatory, I would say that right upto the stage of the assessment, not by filing a return or extending the time for filing a return, an assessee should have the right to tell the ITO that he is exercising this right of accumulated income for a purpose of the trust. We welcome this law. But it should provide that if one object of accumulated income fails, then another object of the trust can be substituted for the spending of the accumulated sum. This is my submission on this point. If there are any questions, I would be glad to answer.

MR. CHAIRMAN: We have understood. You may mention other points.

SHRI S. D. NARGOLWALA: Now, Sir, the second point is a very complicated one, about this activity for profit. We have had cases. You, Sir, as a tax expert, know about the All India Spinners Association going to the Privy Council and the Tribune case. We have had hundreds of cases, trying to define charitable purpose and also what is an activity which sub-serves the main purpose of the trust. I think, in trying to catch a few business people who are unscrupulous, the law has gone to the other extreme. The proposed law has gone to the other extreme of preventing the carrying on of legiti-

mate business activity by really genuine charitable trusts. Trusts may run vocational centres where they teach apprentices how to learn a trade. Trusts may run various types of institutions which, by legal fiction, be deemed to be business activities, though they are really charitable activities. I, therefore, would say that instead of going into this sort of complex or complicated definition, it would be much better again the same principle—if we leave this to the income tax officers. They should see whether the business profits have been employed for the charitable purposes of the trust. In fact, I think that the....

MR. CHAIRMAN: If they carry on speculation business and earn some income, that should also be exempt?

SHRI S. D. NARGOLWALA: It is not that it should be exempt. If....

MR. CHAIRMAN: If it is applied for charitable purposes, it should be exempt?

SHRI S. D. NARGOLWALA: I would not go to that extent. I would go back to the decision which was given in the Tribune case where it was held that a newspaper which was run for the general public, profits of which were employed for the charitable purposes of the trust, was exempt. This was the decision of the Privy Council. I would not go into speculation, etc. I am referring to the business where the main object is public utility.

MR. CHAIRMAN: Where a business activity involves some nexus with the objectives of the trust.

SHRI S. D. NARGOLWALA: In the Tribune case, it involved no nexus.

MR. CHAIRMAN: How do you say that?

SHRI S. D. NARGOLWALA: The Privy Council held that this is an object of public utility because it spread education among the people. It was not propagating the view of a

particular political party. To that extent, I will agree to nexus. But, I would not stretch the idea of nexus to the point, say that it must be closely connected with the objects of the trust like the running of a school or hospital etc. It may be a genuine business, though not of a speculative type or a shady transaction. But, it may be, for example, owning of property. It may be owning of a small cooperative store which is run to give employment to the uneducated or the semi-educated or the poor people. I would say that instead of making the law more complicated, it should be that the business should have some nexus with the objects of the trust. What is more important, the business profits must be wholly and solely used for the purposes of the trust. Even if 2 per cent or 3 per cent of the profits are diverted to any other object, which is not a charitable object, I would agree that the whole 100 per cent should be taxed. This is my second point. My third point is, identity of donors.

MR. CHAIRMAN: There is only one question, which I would like to ask you on this. Are any of these august institutions which are represented here before us, likely to be hit by clause 6 enacted in this manner?

SHRI S. D. NARGOLWALA: Anjuman is not an august institution. It is a poor Anjuman. I may tell you, Sir, that the income-tax officer who assessed my Anjuman has taken even the running of a *dharamshala* to be business.

MR. CHAIRMAN: And that is not income from property?

SHRI S. D. NARGOLWALA: No. We run it ourselves. We charge a nominal amount for the maintenance of the *dharamshala*. We provide food at a concessional rate. But, it is treated as business.

MR. CHAIRMAN: Food at a concessional rate plus lodging?

SHRI S. D. NARGOLWALA: Boarding and lodging and other welfare

activities and the ITO treats it as business.

MR. CHAIRMAN: Is that exempt or not?

SHRI S. D. NARGOLWALA: It is exempt because we spend all the money we get from the *dharamshala* and more than that.

MR. CHAIRMAN: In that way, there is no exemption. There is no income.

SHRI S. D. NARGOLWALA: There is income, but, it is absorbed by depreciation and other things.

MR. CHAIRMAN: My question is something different. Are any of these institutions present here, likely to be hit by this clause?

SHRI DEVENDRA KUMAR: There are activities, connected with the objects of the trust, but, they are treated as business activities. For example, there is a Gandhi Book House, which is a public activity of the *Gandhi Smarak Nidhi*. Propagation of Gandhian ideals is one of the primary objects. But, it is a business activity.

MR. CHAIRMAN: Then, it will be exempt.

SHRI S. D. NARGOLWALA: In many cases, clarity in the objects of the trust may not be very specific. Of course, no activity should be undertaken by a charitable institution unless and until it is covered by the objects of the trust. There is no doubt about it. Therefore, business activity by implication should be an activity which performs some part of the objects of the trust. But, it may not be mentioned in the objects of the trust.

MR. CHAIRMAN: It may not be a primary object.

SHRI S. D. NARGOLWALA: It may be a primary object. But, the income-tax officer may think otherwise.

MR. CHAIRMAN: If the income-tax officer does not administer the law properly, we cannot help it.

SHRI BHAGWAT JHA AZAD: The witness was mentioning that we should leave it to the discretion of the income-tax officer. I would like to ask, is it proper to leave it to the discretion of the income-tax officer or should we lay down guidelines? What would be prefer? The witness referred to the *dharamshala* which his institution is running, the Tribune case, etc. But, we also know that there are many institutions which in the name of running business, do not employ the profits for the primary objects of the trust. So, we would like to know, should we leave it to the discretion of the income-tax officer or should we amend the law to give guidelines, to give benefit to good trusts and to punish the bad trusts? We would like to have his opinion.

SHRI S. D. NARGOLWALA: My point was exactly the same, as the point made by the hon. Member. I am saying that the law must be easy to understand and must be easy to administer. You, Sir, have on many occasions said how complicated the income tax law is and how difficult it is for most of the accountants to understand it. You have made the point. We had a simple law in the beginning. Then, the law was amended. General public utility portion was amended. Businesses were taken out of it because of the Tribune case. We are also adding a third rider. It must be activity carried on in the course of carrying on of the primary purpose of the trust. What is the primary purpose and what is the secondary purpose? A trust may have ten purposes. Who is to decide? Take the example of a book publishing house which was mentioned just now. Somebody may say it is a primary purpose, and somebody else may say that it is a secondary purpose.

SHRI BHAGWAT JHA AZAD: Let there be no confusion. There are certain primary objects laid down. Let the law say what the journalists actually are doing in the name of the

primary object. Otherwise, one can go on widening the propose.

SHRI S. D. NARGOLWALA: I suggest at least the word "primary" should be deleted. Let it be the object of the trust, and not "in the course of the actual carrying out of a primary purpose" and so on, provided it is within the objects of the trust. And this is very important, "provided it is satisfactorily proved that the income has been wholly used;" not even one per cent should go elsewhere.

MR. CHAIRMAN: You do not get into the section unless you do not comply with it.

SHRI P. G. MAVALANKAR: Do I understand from Mr. Nargolwala that the Parsee Anjuman and the other trusts which are represented here want in the name of the trust to augment the resources of the trust and not have hindrances in the day-to-day work of the charitable activities, and that they want a number of business activities to be also considered as part of the legitimate activities of the trust under the guise of "primary" object even if the word is dropped? I want to be very clear whether this is what the witness has in mind. Where do you draw the line?

MR. CHAIRMAN: In other words, what is going to be the ultimate limit to which we are going to confine the business activities of a trust?

SHRI S. D. NARGOLWALA: So long as these speculative activities are ruled out—because it is never the object of the trust—and so long as the trust prescribes certain objects, it should be exempted. For example, if a trust says that a printing press will be run and it will be run to train illiterate people or semi-literate people in working in the press, and it gives vocational training and guidance and earns some profit which profit is used entirely for the purpose of the trust, then I would say that it should be given legitimate scope for doing so.

SHRI P. G. MAVALANKAR: Does that fall within the terms of the chari-

table trust? Do their objects, the objects of charitable trust allow them to do it?

SHRI S. D. NARGOLWALA: According to them, if they say that they should provide employment to those who are indigent and poor, and if in a press, I am providing employment, I am carrying on a business activity which is in tune with the objects of the trust. Take the motor garage. I would like to train apprentices in automobile engineering and run service stations and train them there, the profits from which I will again use in helping them in setting up their own garages. Surely this is a laudable object.

MR. CHAIRMAN: Is it charity at all?

SHRI S. D. NARGOLWALA: It is the best charity; to make the man stand on his own legs.

MR. CHAIRMAN: Does it come within this?

SHRI S. D. NARGOLWALA: Yes; it is education.

SHRI BHAGWAT JHA AZAD: At this rate, running a press, a pumping station, motor garage—nothing can be left from the purview of a charitable trust. Let us go to the next point.

SHRI DEVENDRA KUMAR: I completely agree with the hon. Member's contention that unless and until the kind of activity, which comes under the purview of business activity as secondarily a business, and is primarily meant for some social action, it should not be regarded as coming within the purview of a trust. It is only a secondarily a business; primarily it has to fulfil some of the objects for which the institution is meant. Otherwise, it has been rightly said that in the garb of an institutional activity, business activity may proliferate and everything should be done to curb such kind of action by the trusts. At the same time, full regard should be given to the activities of the trust which may look as business

activities in form but in content they are meant to fulfil the objects.

MR. CHAIRMAN: I can understand a charitable trust serving the poor by running a shop to sell medicines; there is an immediate nexus for the cause you have, and the trust is for the relief of the poor, such as a charitable hospital which is running a *dava khana* and is running a chemist's shop. But in such cases, the activities are so interwoven and dovetailed and interlaced in a manner that one interposes on the other. But about printing presses or any other institution, it is business activity as has been legitimately pointed out. For instance, I can start a factory and say, "In my factory only those who are unemployed will come," but it may serve a general purpose. We will have to avoid anything being done in such a circuitous manner.

SHRI S. D. NARGOLWALA: The next point is about identification of donors. It is said that for a charitable trust, if the identity of the donor is not disclosed, the tax will be levied at 65 per cent. I am not able to understand why only charitable trusts should have this penalty and not religious trusts. If in the case of anonymous, donation, the amount is given to a religious trusts, the whole donation is exempt, whereas if it is made to a charitable trust, 65 per cent tax is deducted. That is my point.

MR. CHAIRMAN: That is why we want to leave places of worship completely out of these provisions.

SHRI S. D. NARGOLWALA: I am not pressing a demand, but I am saying that there is some sort of contradiction.

MR. CHAIRMAN: There is a rationale. They want to leave the places of worship completely out of it. For places of worship there is anonymous donation. They must be left out according to our view of life and living.

SHRI S. D. NARGOLWALA: In the charitable trusts also we have donation boxes and we have periodically annual fete or some sort of charity.

shows by which we collect donations and these donations are anonymous because it is not possible to keep track who has put what money in the box or who has purchased what ticket for a charity and so on. We have given examples of the Teachers' Day, Red Cross Day, Sarvodaya Patra, etc., and of donations in the boxes kept at charitable institutions. We feel that some consideration should be given for this.

MR. CHAIRMAN: We will consider about the box collections.

SHRI S. D. NARGOLWALA: One last point is this. It is about the definition of a substantial donor. We feel that Rs. 5,000 limit which is the absolute limit of donation that a man may make throughout his lifetime is too small, particularly in these days of inflation when the value of the rupee has gone down so much, and we feel that some higher...

MR. CHAIRMAN: In relation to the corpus?

SHRI S. D. NARGOLWALA: Yes; some percentage of the corpus.

MR. CHAIRMAN: What is the percentage you have given?

SHRI S. D. NARGOLWALA: We have given 20 per cent in the preceding three years.

MR. CHAIRMAN: We will consider it.

SHRI S. D. NARGOLWALA: The last point is about the investment of the trust funds. Where the corpus is very small, the trust should have the right to invest the funds in high-yielding shares and securities even prospectively.

MR. CHAIRMAN: I hope you are aware of the circumstances in which this provision has been made. There were big trusts whose tax exempted incomes were utilized for building huge economic empires. We wanted to curb it. I would be very happy if we could make separate laws for honest trusts.

SHRI H. M. PATEL: Suppose we put a limit on the amount of the trust the small trusts would be covered.

SHRI BHAGWAT JHA AZAD: How can we differentiate between honest and dishonest trusts?

SHRI S. D. NARGOLWALA: My point was slightly different. Let me elaborate it. The law insists that you spend 75 per cent and accumulate only 25 per cent. If any portion of the 25 per cent is invested it has to be in government securities. That was the law and that remains the law even under this amendment. So, the maximum that you can invest in shares of public limited companies even for a small trust is 25 per cent. I would hedge this concession with two or three conditions. One condition could be that the trust would not have voting rights in that company. The public trustee or the Charity Commissioner may exercise the voting rights. I would also say that the trust would not have any right to appoint any director, managing director or official in that company. Then, even an upper limit can be fixed, saying that a trust having so many lakhs of rupees of income can invest so much in shares of public limited companies. It is very vital for the smaller trusts to get the maximum income from its corpus. Then, a small trust is ineffective, so far as controlling big business is concerned.

MR. CHAIRMAN: What is your definition of a small trust?

SHRI S. D. NARGOLWALA: I would say that a trust with a corpus of Rs. 10 lakhs to 15 lakhs and with an income of less than Rs. 50,000 should be considered a small trust.

MR. CHAIRMAN: What is the corpus of your Anjuman?

SHRI S. D. NARGOLWALA: It is Rs. 7 lakhs to 8 lakhs, part of it in temple and part in other funds.

My last point is about communal trusts.

MR. CHAIRMAN: We have heard on this point extensively. We thank you for coming here and giving us the benefit of your views.

[The Committee then adjourned]

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

Wednesday, the 11th September, 1974 from 15.00 to 17.30 hours in Committee Room, J. and K. Legislative Assembly Building, Srinagar.

PRESENT

Shri N. K. P. Salve—*Chairman*

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Bhagwat Jha Azad
4. Shri Tridib Chaudhuri
5. Shri Mani Ram Godara
6. Shrimati Sheila Kaul
7. Shri Maharaj Singh
8. Shri S. B. P. Pattabhi Rama Rao
9. Shri Bhola Raut
10. Shri R. V. Swaminathan

LEGISLATIVE COUNSEL

Shri Harihara Iyer—*Joint Secretary and Legislative Counsel.*

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

1. Shri S. R. Mehta, Chairman, CBDT.
2. Shri C. C. Ganapathy, Member, CBDT.
3. Shri S. Narayan, Member, CBDT.
4. Shri R. R. Khosla, Director.
5. Shri S. I. Tripathi, Deputy Secretary.
6. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri K. D. Chatterjee—*Deputy Secretary.*

WITNESSES EXAMINED

I. Tax Practitioners Association, Srinagar.

Spokesmen:

1. Shri B. R. Bhasin, Advocate.
2. Shri Subash Dutt, Advocate.
3. Shri M. A. Bakhshi
4. Shri A. Rehman
5. Shri O. P. Sahney
6. Shri S. K. Kaul
7. Shri Mairajuddin
8. Shri Ali Mohd. Raja
9. Shri Hafiz-M-Umail

II. Tax Consultants Association and Chamber of Commercial and Industrial Undertakings, Ludhiana.

Spokesmen:

1. Shri S. R. Mittal
2. Shri B. B. Jain

III. Viyaparik Association Mandal, Shree Ganga Nagar, Hanumangarh Town, Rajasthan.

Spokesmen:

1. Shri Pyare Lal Gupta, President.
2. Shri Prem Sukh Aggarwal

I. Tax Practitioners Association, Srinagar.

Spokesmen:

1. Shri B. R. Bhasin, Advocate.
2. Shri Subash Dutt, Advocate.
3. Shri M. A. Bakhshi
4. Shri A. Rehman
5. Shri O. P. Sahney
6. Shri S. K. Kaul
7. Shri Mairajuddin
8. Shri Ali Mohd. Raja
9. Shri Hafiz-M-Umail

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

MR. CHAIRMAN: Mr. Bhasin, before you proceed, I would like to read one of the directions of the Speaker, Lok Sabha for your information. It is like this:—

“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 B. R. BHASIN: We want that our evidence should remain as confidential.

MR. CHAIRMAN: Alright.

[The entire evidence tendered by the representatives of the Tax Practitioners Association, Srinagar has been treated as confidential at their request. Two copies thereof have been kept in Parliament Library for reference by the Members of Parliament only.]

II. Tax Consultants Association and Chamber of Commercial and Industrial Undertakings, Ludhiana.

Spokesmen:

1. Shri S. R. Mittal
2. Shri B. B. Jain

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

MR. CHAIRMAN: Mr. Mittal, for your guidance I would like to read the direction of the Speaker, Lok Sabha governing the evidence. It 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 S. R. MITTAL: Sir, I would like to submit that memorandum has been submitted by us already but I want to highlight a few points before this Hon'ble Committee. My first submission is that Wanchoo Committee was constituted to examine the problem of black money including un-taxed money in the society and what I find is that no concrete proposal or measures have been suggested to take out the existing black money. There is only one measure suggested regarding this and that is “settlement machinery”. This is a fact that black money is existing in the society and the problem is how to unearth it. We have to examine the classes with whom black money exists. There are various classes including higher income group persons having black money. My submission is that in the case of higher income group people the Government should allow utilization of black money in putting up industries in backward areas. We are presently providing various facilities including interest at concessional rates, electricity rebate, sales-tax rebate and other facilities. These benefits may be withdrawn where black money is allowed to be invested in rural industrialization. Presently Exchequer is spending money in the form of various concessions as mentioned here-in-above and as per my proposal this

expenditure will be reduced at the cost of non-collection of tax on this black money. The Exchequer will not be looser. The second alternative should be a disclosure scheme at the rate of 60 : 40. Referring to second category of persons having black money, disclosure schemes at low rate of tax be announced. Another category of persons having black money are persons who are in service. They should be allowed to deposit the money with banks or post offices without any interest. This way over a period of 8—10 years Exchequer would be saving payment of interest approximately Rs. 100|- and the depositor would be putting up the money into circulation. Now I would like to suggest that the persons starting the industry should be given all sorts of facilities so that this black money could be used for the betterment of the country.

We are referring to compulsory audit of accounts. My submission in this respect is that the ceiling of 5 lakhs should be increased. It should be of 15 lakhs turnover.

MR. CHAIRMAN: It is an alternative. Anyhow, how much ceiling do you want?

SHRI S. R. MITTAL: It should be more than 10 lacs. As regards compulsory audit, my submission is that it should be made compulsory.

MR. CHAIRMAN: Before your evidence started we were hearing Jammu & Kashmir Tax Practitioners. According to them they do not have sufficient chartered Accountants in the J. & K. State. Do you want that in such States also compulsory auditing should be allowed?

SHRI S. R. MITTAL: In such cases exemptions have to be provided in the Bill. But there should be ceiling in the number of audits where chartered accountants are available.

MR. CHAIRMAN: But in Jammu & Kashmir we are told that chartered Accountants are available?

SHRI S. R. MITTAL: According to my information there are 5 chartered accountants in service and three in practice.

MR. CHAIRMAN: Two or three years experience has been prescribed for the chartered accountants. What is your view about it?

SHRI S. R. MITTAL: It is good thing. But my submission is that ceiling should be prescribed for auditing accounts also.

MR. CHAIRMAN: What should be ceiling in this respect?

SHRI S. R. MITTAL: It should be 50.

MR. CHAIRMAN: You mean maximum ceiling should be 50 including the company auditing?

SHRI S. R. MITTAL: Yes, Sir.

MR. CHAIRMAN: It means that maximum tax audit ceiling would be 30.

SHRI S. R. MITTAL: Yes, Sir.

MR. CHAIRMAN: We will consider that.

SHRI S. R. MITTAL: There is general view that auditors help in correct assessment of the income. As far as my information goes the returned incomes are by and large correct when these are submitted after audit.

MR. CHAIRMAN: It means that the auditors cover the mistakes.

SHRI S. R. MITTAL: My submission is that the auditors are submitting correct statements only. This benefits the society and the country as a whole. Whatever returns are filed by the auditors, the Department accepts them by and large.

Another point is that so far the Department is concerned an allegation is made that certain points are not reported in the audit report. My submission in this respect is that auditors have to take balanced view and have to report only those things which are necessary to be reported.

However, the audit report as proposed should not be extremely comprehensive and the Department should not be given exhaustive powers.

MR. CHAIRMAN: We don't leave it to the auditors only. They have to certify in a specific manner.

SHRI S. R. MITTAL: I would now submit about clause 49 Section 176. In this respect my submission is that the loss should also be included under Section 176 and be assessed, set off and carry forward.

MR. CHAIRMAN: What should be the extent to carry forward losses?

SHRI S. R. MITTAL: It should be the same as provided in the Act as if business is continued. In respect of Section 180A my submission is there are other class of people which equally suffer due to harshness of the legislation. Certain remedies have to be provided in this respect. My submission is that certain provision should be made in Section 89.

MR. CHAIRMAN: You are referring to general law.

SHRI S. R. MITTAL: I am referring to Section 89 applicable in the case of Salaried Class. My submission is that like the actors and film stars this section 180(A) should be extended to others as well I am talking of Clause 180(A) under which the actors have been given the privilege to receive the money in the form of annuity over a period of time.

MR. CHAIRMAN: Section 89 is already there. And you can also buy or sell annuity. For this there is no restriction.

SHRI S. R. MITTAL: But we have to consider clause 180(A) also.

MR. CHAIRMAN: They are not one.

SHRI S. R. MITTAL: But Clause 180A is already there. The benefit allowed to the film actors should also be allowed to other people of the country.

MR. CHAIRMAN: But the Section 89 is applicable to salaried classes only. How are the two linked?

SHRI S. R. MITTAL: My suggestion is that Clause 180(A) should be made applicable to other people of India also so that whenever there is all of sudden income they also get the benefit of Clause 180(A) or 89. My submission is that the Clause 180(A) may be made applicable to other people also so that persons whose income fluctuates for one reason or the other may also get the same benefits as are being availed of by the actors and film stars

MR. CHAIRMAN: But you are fully aware that Clause 51 is already there. There is no restriction on buying or selling of the annuities.

SHRI S. R. MITTAL: I am drawing your kind attention to the section 180(A) whereunder the film stars are entitled to receive the money in the form of annuity over a period of time. My submission is that likewise salaried people, film stars, other people should also be entitled to these benefits in the case of fluctuating their incomes.

MR. CHAIRMAN: We shall consider this. Now you may proceed further.

SHRI S. R. MITTAL: I would draw your attention to clause 58: Settlement cases. In this connection my submission is that the application once made should not be rejected, as far as possible and should be entertained sympathetically. The rejection order of the settlement committee should be appealable before the Income-tax Appellate Tribunal. In case of settlements, the immunity from prosecution should be provided in all cases. And finally scheme of settlements be simplified

MR. CHAIRMAN: We shall think over it.

SHRI S. R. MITTAL: Then we come to Clause 64 Section 271: Concealment of Income. My submission in this

respect is that penalty to concealment of income and wealth is too harsh. This should be amended with retrospective effect i.e. 1-4-64.

MR. CHAIRMAN: How is it possible to amend it retrospectively?

SHRI S. R. MITTAL: We had been amending the law with retrospective effect whenever it is favourable to revenue. Recently we have amended the provisions of Section 271(1)(a) with retrospective effect. We have appreciated the hardships of the penalty provisions and for this reason have decided to amend the law. In this respect my submission is that we should take some recourse by which penalty provisions may be amended and all such difficulties are avoided.

Another point is with regard to the late filing penalty. My submission to this point is that late filing penalty should be re-drafted. The Act should be divided in three parts. The advance compliance for which cash discount should be provided; timely compliance no discount and late compliance penalty be imposed. However all penalties should be consolidated in one. Also, I suggest that Income tax, Wealth-tax and Gift-tax be combined into one Act, one return, one assessment, one appeal, one collection, etc.

MR. CHAIRMAN: I feel this aspect pertain to some other committee, therefore we do hope that some day some other committee will come and will discuss this aspect in detail in order to avoid all these difficulties being encountered by you people here.

SHRI S. R. MITTAL: Sir, I would like to take up for elucidation clause 6 section 13(1)(d) and (IA). This is with regard to 65 per cent tax on voluntary contribution. This clause has been introduced which is more or less at par with existing section 68 of the Income Tax Act, 1961. Under Section 68 of the Act, if any cash credit appears in the books of a person and the explanation in respect of that cash credit is either found to be un-

satisfactory or no explanation is submitted, that is deemed to be income of the person in whose books the amount stands credited. The object of clause 13(1)(d) is to cast responsibility on charitable institutions and trusts. Now the question arises, will it be possible to Trust to enquire the whereabouts of the persons giving donations to the trust? Therefore, I submit that clause (d) and clause (IA) are unwarranted keeping the social requirements of the country as a whole.

SHRI BHAGWAT JHA AZAD: Could you please tell us the number of such institutions?

SHRI S. R. MITTAL: Sir, these institutions include running of hospitals (a) at various places (b) schools and colleges (c) eye relief camps (d) institutions for mentally retarded people and so on.

Section 64 of the Bill provides clubbing of the income with the spouse having substantial interest in the concern whereas Section 40A of the existing Act provides disallowance of expenditure which has resulted in preferential treatment to any relation including spouse. As a result there is ample safeguard provided in section 40A to check diversion of income and, therefore, section 64 as proposed to be amended is unwarranted and will result in double addition.

MR. CHAIRMAN: Mr. Mittal here we say that it is outright clubbing and there is discretion of disallowance.

SHRI S. R. MITTAL: Yes Sir, and in case no attention is paid to this important aspect, double taxes will be levied. In the meantime, we shall have to safeguard the Government revenue.

MR. CHAIRMAN: So proceed to next clause.

SHRI S. R. MITTAL: Sir, here it is clause 15 Section 69(c) regarding un-explained expenditure. In this

context it is submitted that the words used 'an assessee has incurred any expenditure' be substituted by an 'assessee has incurred any expenditure which is proved by the Income Tax Officer.' In section 68, the cash credit stands and therefore the assessee is supposed to give explanation thereto whereas in section 69 the investment has to be proved by the income tax department and once it is proved only thereafter the explanation can be called for. To avoid this controversy in respect of expenditure, it is suggested that the words given hereinabove be substituted.

Estimate should be there.

MR. CHAIRMAN: These are inherent.

SHRI S. R. MITTAL: Then clause 25 section 80, the expenditure on income tax is proposed two thousand rupees. The Wanchoo Committee itself suggested that one of the reason of black money is artificial ceiling on expenditures which, according to the Committee, should be done away with.

MR. CHAIRMAN: We will consider it.

SHRI S. R. MITTAL: Now I would like to submit with regard to clause 27 section 109 regarding declaration of dividends. This has also been suggested by Wanchoo Committee that provision for compulsory distribution of dividend in trading companies should also be withdrawn. However, the bill provides compulsory distribution of dividend even for manufacturing companies. This too has been accepted by the Wanchoo Committee also.

MR. CHAIRMAN: We will consider it also.

SHRI S. R. MITTAL: Sir, I would also submit before the Hon'ble Committee that in respect of clause 43 section 141A it should be reduced to one month instead of six months and so far as the assessing authority is

concerned, he has to do nothing except refunding the tax due as per return filed.

MR. CHAIRMAN: We will find out from the department what is the necessity of this provision.

SHRI S. R. MITTAL: Now I would also like to submit with regard to clause 65 regarding nonmaintenance of accounts. My submission in this behalf is that penalty should be provided but it should not be deemed to be concealment of income. So far as Section 40(b) is concerned the Wanchoo Committee has recommended that no salary is allowed in the case

of working partner. These recommendations are on para 5. So far as provision 212 section 3(A) is concerned it should not be applied to other than companies. In addition to this we have already submitted a detailed memorandum to the Committee and we hope that the Hon'ble members of the Committee will consider our view points. I would further submit that the whole act should be modified.

MR. CHAIRMAN: We will certainly consider your view points. Thank you very much.

(The witnesses then withdrew)

III. Viyaparik Association Mandal, Shree Ganga Nagar, Hanumangarh Town, Rajasthan.

Spokesmen:

1. Shri Pyare Lal Gupta, President.
2. Shri Prem Sukh Aggarwal

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

MR. CHAIRMAN: Will you please introduce yourself and your colleague?

SHRI PYARE LAL GUPTA: I have come from Rajasthan and I am President of Beopar Mandal and then my colleague Mr. Aggarwal is Secretary of Iron Merchants Association.

MR. CHAIRMAN: I will read out the direction of the Speaker, Lok Sabha, which governs your evidence:

"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 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 PYARE LAL GUPTA: Our evidence would be public and not confidential one.

MR. CHAIRMAN: Mr. Gupta, if you have any other point in addition to your written memorandum you can put the same.

SHRI PYARE LAL GUPTA: I have about eight points and I may be allowed to read the same.

सेवा में निबंदन है कि हम कुछ आयकर व बिक्री कर के अव्यवहारिक एवं समाजवाद विरोधी व अनिवार्य भ्रष्टाचार फैलाने वाले कानूनों की ओर आपका ध्यान आकर्षित कर कर उनको सुधारने का आपसे अनुरोध करते हैं। इन निम्नलिखित कानूनों से देश का निम्न व मध्यम वर्ग बेहद परेशान है और सरकार को भी लाभ नहीं मिल रहा है।

1. फर्म पर आयकर केवल दस हजार रु० पर लागू कर देने से लाखों ऐसे व्यक्तियों को आयकर देना पड़ रहा है जिनकी आय मौजूदा आयकर की छूट सीमा से कम होती है जिससे लाखों गरीब व्यक्ति अपने बुनियादी अधिकारों से वंचित तो रह ही जाते हैं, बल्कि उनको हिसाब किताब रखने व वकीलों के खर्च भी आयकर से काफी अधिक और लग जाते हैं। इधर सरकार को भी इन छोटे छोटे

किन्तु कई लाखों व्यक्तियों से यह आयकर बसूल करने पर जो खर्च आता है वह लगभग इस टैक्स से अधिक ही आता है। इस उपरोक्त कानून के बनने ही पहले वर्ष में सप्ताईस लाख आयकरदाता बड़ गये। ऐसा तत्कालीन वित्त राज्य मंत्री श्री प्रकाश चन्द सेठी ने कहा था यदि केवल आयकरदाता की संख्या मात्र ही बुढानी है तो इसकी सीमा पांच हजार रुपये कर देने से पहले वर्ष में करोड़ों आयकरदाता बढ सकते हैं, जबकि आयकर की दरें भी हमारे देश में काफी ऊंची हैं जिस पर फर्म टैक्स लगाना और वह भी अत्याधिक निम्न स्तर पर किसी भी हालत में मुनासिब नहीं है, तीन या चार भाई फर्म में भागीदार बनते हैं तो उनको आयकर की सीमा से काफी कम आय होने पर भी आयकर देना पडता है, यदि वही फर्म भागीदार न बनाकर उनके हिस्से का उतना ही धन तनख्वाह बोल कर दे देती है तो आयकर की सीमा से कम आय होने पर उनको आयकर नहीं लगता है इसलिए यह उपरोक्त कर नैतिक व कानूनी दोनों ही तरह से बाजिब नहीं है।

MR. CHAIRMAN: What ceiling do you want now?

SHRI PYARE LAL GUPTA: We have suggested one lac in our memorandum. But we leave it to you.

2. जिन जिन वस्तुओं पर उत्पादन कर लगता है उन सभी वस्तुओं पर चीनी व कपड़े की तरह बिक्री कर की बजाये अतिरिक्त उत्पादन कर लगा दिया जाये तो मौजूदा बिक्री कर से जो आय होती है उससे दोगुना से अधिक आय होगी और बिक्री कर प्रणाली से जो देश में भारी भ्रष्टाचार है वह भी खत्म हो जायेगा और करोड़ों खदरा बिक्रेता इमानदारी का जीवन व्यतीत कर सकेंगे। मौजूदा बिक्री कर प्रणाली में यदि 10 प्रतिशत दुकानदार बिक्री की चोरी करते हैं तो बाकी को भी कम्पीटीशन की मार्केट में टिकने के लिए अनिवार्य ही बसा ही करना ही पड़ेगा या

घंघा ही छोडना पड़ेगा। इस कानून को बदलने में बाधक केवल राज्य सरकारें ही हो सकती हैं यदि केन्द्र राज्य सरकारों को बिक्री कर से जाँ आय होती है उससे कुछ अधिक की गारंटी दे देने व अपने प्रभाव से इस कानून को बदल देवे तो सरकार को तो कर अधिक मिलेगा ही राज्य सरकारों को करोड़ों रु० बिक्री कर बसूल करने में प्रतिवर्ष खर्च आता है वह भी बचेगा। ध्यान रहे कपड़े पर जब बिक्री कर की बजाये अतिरिक्त उत्पादन कर लगाया था तो पहले वर्ष में यह कर तीन गुणा अधिक सरकार को मिला था।

3. दो हजार पांच सौ रुपये से अधिक खरीदे हुए माल का नकद भुगतान करने पर उस रकम को आय में माना जाने का कानून बनाया गया था। वह कानून अपने आप में कतई दोषपूर्ण, अव्यवहारिक व अविबेकशील है जिसको तुरन्त रद्द किया जावे

4. वर्तमान मंहगाई को देखते हुए प्रयकर छूट की सीमा दस हजार रु० निर्धारित की जावे, इससे आयकर विभाग की शेष शक्ति व समय बड़े-बड़े उद्योगपतियों व पूँजीपतियों तथा कर की चोरी करने वालो पर केन्द्रित हो सकेगी। आयकर की ऊँची दरें जिन रकमों पर लगती हैं वह रकम बढ़ाई जाये या वे ऊँची दरें घटाई जावें क्योंकि रुपये की क्रय शक्ति काफी घट की है।

5. सैन्ट्रल सेल टेक्स कानून में बुनियादी रूप से कमी रह गई है जिससे बड़े व्यापारियों व उद्योगपतियों को इस गल्ल कानून से भारी अनुचित लाभ हो रहा है और नुकसान केवल उपभोक्ताओं व सरकार को उठाना पड़ रहा है, कोई भी बड़ा व्यपारी व उद्योगपति जिसकी शाखायें चाहें जितने प्रान्तों में हा एक प्रान्त से दूस प्रान्त में माल भेजने पर टाक ट्रांसफर के नाम पर यह 3 प्रतिशत सैन्ट्रल सेल टेक्स अदा नहीं करना पड़ता है जबकि यह स्टाफ ट्रांसफर नहीं बल्कि स्टाफ एक

प्रान्त से दूसरे प्रान्त में आकर बिकता है । जबकि परचून दुकानदारों को जो कि दूसरे प्रांतों में अपनी शाखायें नहीं खोल सका है उनको यह 3 प्रतिशत सेंट्रल सेल टेक्स दूसरे प्रांत से माल मंगाने पर देना पड़ता है, व्यवहार में यह कर केवल परचून दुकानदार एवं उप भोक्ताओं को लगता है और बड़े व्यापारियों व उद्योगपतियों को यह नहीं देना पड़ता है बल्कि उन्हें इस गलत कानून से 3 प्रतिशत का अनिवार्य लाभ हो रहा है । ध्यान रहे थोक व्यापार में अधिकतर वस्तुओं पर एक दो प्रतिशत लाभ पर काम हो रहा है, और देश के लगभग 75 प्रतिशत उत्पादित माल पर स्टॉक ट्रांसफर के नाम पर सरकार को यह 3 प्रतिशत सेंट्रल टेक्स न मिलकर केवल बड़े-बड़े व्यापारियों व उद्योगपतियों को ही इसका अनुचित लाभ मिल रहा है और उपभोक्ताओं को देश के प्रायः सभी उत्पादित माल पर 3 प्रतिशत यह कर देना पड़ रहा है । यदि इस 3 प्रतिशत से घटा कर 1 प्रतिशत कर दिया जाये और सभी से लिया जाने का नियम बनाया जाये तो सरकार को मौजूदा 3 प्रतिशत की अपेक्षा अधिक आय होगी और उपभोक्ता को भी अधिक लाभ होगा ।

6. चार सौ रुपये से अधिक किसी को ब्याज के देने पर उस फर्म को ब्याज की रकम पर 10 प्रतिशत से जो बने वह आयकर विभाग में जमा कराने का भारी कठोर कानून बनाया हुआ है, यह कानून अपने आप में एकदम दोषपूर्ण अव्यवहारिक व अविबेकशील और निरुद्देश्य है इस कानून के बनते ही जब बैंक वालों ने बैंक से ब्याज लेने वाले व्यक्तियों से ब्याज पर 10 प्रतिशत काटना शुरू किया तो प्रायः सभी लोगों ने जिनका ६० बैंक में जमा था, वह वापिस लेने लग गये तब बैंक वालों ने सरकार से इस गलत कानून का विरोध किया, तब सरकार ने केवल बैंक के लिये यह कानून 400 ६० के बजाये 3000 ६० से ऊपर पर लागू करने का सुधार किया, परन्तु बाकी

सभी लोग इस गलत कानून के शिकार बने हुए हैं, ऐसा क्यों ।

7. कितनी विडम्बना की बात है कि पार्टनर के रुपये यदि किसी दूसरी फर्म में जमा हों तो उस रुपये की ब्याज की आय उसकी व्यक्तिगत मानी जाती है और यदि वही रकम उस फर्म में जमा हो जिसमें वह भागीदार है तो उस रकम का ब्याज फर्म की आय में गिना जाकर फर्म टेक्स लगाया जाता है । इस तरह से उस भागीदार को अपने अर्जित ब्याज पर दोहरा टेक्स देना पड़ता है किन्तु दूसरी फर्म में रुपया जमा करवा कर बच भी सकता है इसलिये यह उपरोक्त कर नैतिक व कानूनी दोनों दृष्टि से वाजिब नहीं है और कतई दोषपूर्ण व अव्यवहारिक है ।

8. चोरी रोकने और गलत नियमों को सुधारने के लिये एक स्थाई कर अधिनियम प्रवर समिति बनाई जाये जिसकी शाखायें सभी प्रान्तों में हों तो सरकार व जनता को भारी लाभ मिलेगा । उदाहरणार्थ पिछले साल राजस्थान से चना बाहर जाने पर पाबन्दी लगी हुई थी जिस पर भी राजस्थान का करीब 80 प्रतिशत चना तस्करों व भ्रष्ट अधिकारियों की मिली भगत से लगातार कई माह तक राज्य से बाहर जाता रहा । जिससे किसानों को पड़ोसी प्रान्तों की अपेक्षा 40 रुपये प्रति क्विंटल के हिसाब कई करोड़ रुपया कम मिला और इसी माजिन को भ्रष्ट अधिकारी व तस्कर हड़प कर गए । इसके प्रतिरिक्त राजस्थान को बिक्री कर के रूप में तथा केन्द्रीय सरकार को आयकर के रूप कई लाख रुपयों से वंचित होना पड़ा ।

MR. CHAIRMAN: Thank you Mr. Gupta.

(The committee then adjourned)

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

Thursday, the 12th September, 1974 from 09.30 to 12.30 hours in Committee Room, J. and K. Legislative Assembly Building, Srinagar.

PRESENT

Shri N. K. P. Salve—Chairman

MEMBERS

2. Shri Syed Ahmed Aga
3. Shri Bhagwat Jha Azad
4. Shri Tridib Chaudhuri
5. Shri Mani Ram Godara
6. Shrimati Sheila Kaul
7. Shri Maharaj Singh
8. Shri S. B. P. Pattabhi Rama Rao
9. Shri Bhola Raut
10. Shri R. V. Swaminathan

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer—Joint Secretary and Legislative Counsel.

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

1. Shri S. Narayan, Member, CBDT.
2. Shri C. C. Ganapathy, Member, CBDT.
3. Shri R. R. Khosla, Director.
4. Shri S. I. Tripathi, Deputy Secretary.
5. Shri S. C. Grover, Under Secretary.

SECRETARIAT

Shri K. D. Chatterjee—Deputy Secretary.

WITNESSES EXAMINED

I. Kashmir Chamber of Commerce and Industry, Srinagar.

Spokesmen:

1. Shri Dharambir Singh Oberoi, President.
2. Shri P. N. Puri, I.P., President.
3. Shri G. Rasull Khan, Sr. Vice-President.
4. Shri Vijay Dhar, Jr. Vice-President.
5. Shri M. Amin Trambo, Secretary-General.

II. Beopar Mandal, Srinagar.

Spokesmen:

1. Shri Om Parkash Kapur, General Secretary.
2. Shri Mohd. Yasin
3. Shri Ashok Kumar

I. Kashmir Chamber of Commerce and Industry, Srinagar.

Spokesmen:

1. Shri Dharambir Singh Oberoi, President.
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3. Shri G. Rasull Khan, Sr. Vice-President.
4. Shri Vijay Dhar, Jr. Vice-President.
5. Shri M. Amin Trambo, Secretary-General.

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

MR. CHAIRMAN: Before you proceed further it is customary to make it known to you the Direction of the Hon'ble Speaker, Lok Sabha which governs the working of this committee. I shall read it out—

“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”.

Now do you want to treat this as confidential or public.

SHRI D. S. OBEROI: Let it be made public.

MR. CHAIRMAN: You want to make it public.

SHRI D. S. OBEROI: Yes, Sir. Should we read out the comments that we have already furnished to the Committee...

MR. CHAIRMAN: If it is purely reading the comments then we have got your memorandum. We want to know if you want to highlight any other point in relation to your area or the region etc. etc.

SHRI D. S. OBEROI: The Senior Vice President will give out the views:

SHRI G. RASULL KHAN: Hon'ble Chairman and the Members,

I would like to submit that our state is a backward state. This has already been admitted by the different committees which happened to pay a visit to this place. There are no industries and as such no industrial activity is going on in the state. The reasons are well known to you all. This has resulted in not making

any headway in the industrialisation of the State. We have in our State mainly the handicrafts industry. For this even we depend for raw material on the exports. There is difficulty of the transport, difficulty of the terrain—this fact is also well known to you all. Since there has been no industrialisation, we do not have any chartered accountants here nor the book-keeping system is in vogue here. The 99 percent of the population of our state is illiterate. As regards tourism this also received set back from the strikes of railways, then the airlines and then as you are well aware international pressures are also working. All this puts our industry of tourism in great hardship. We are just passing through what is called a transitional period. The tax authorities of the State are well aware that 99 per cent of our population is illiterate who do not know book-keeping and all that. Therefore, my humble submission is that most of these amendments will not bring us any fruit but on the contrary these will put us to many difficulties. As I have already submitted that our State is still to run on the path of progress in respect of industrialisation I mean to say, Sir that we are still unindustrialized. The Government of India provide us 15 per cent subsidy and at the same time the cost of production is very high here. To give an example I would like to submit sir, that the cost of one ton of coal is Rs. 450/- here whereas it is Rs. 50/- per ton there at pathankot. Even if we intend to have 50 per cent subsidy in this respect, I don't think that our manufacturers can carry on their business quite smoothly, may be that we have some potentiality here but we cannot compete with our neighbouring manufacturers in Amritsar, Jaipur, Agra etc. because we have high cost of production here. The cost of raw material as submitted earlier is also high here in our State. We have to face with other competitors of neighbouring countries like Iran, Pakistan and Afghanistan.

In view of the above-mentioned submissions, I would humbly like to place these points before your good-self for favour of favourable consideration. With these submissions I thank you very much, Sir.

MR. CHAIRMAN: Mr. Khan we are appreciating the difficulties you have pointed out here before this Committee. We feel the difficulties of the traders, manufacturers and other industrialists of your State. In view of that we wish that you could have come forward with some suitable and just suggestions to be considered by the Committee while amending the Act. You could have told us some specific laws which could avoid all these difficulties encountered by your traders and other industrialists here. You see this region of yours has got its own rich natural resources. And at the same time we have to go ahead by adopting modern techniques and other scientific methods.

SHRI VIJAY DHAR: Sir, so far as Accountants are concerned, we are already short of professional Accountants here. Besides we have to pay four to five hundred rupees to an Accountant per month here and the Accountants are not available here. I would, therefore, like to submit that the limit of 25,000 rupees should be enhanced and put at Rs. 50,000.

MR. CHAIRMAN: What should be the turn over ?

SHRI VIJAY DHAR: It should be 7 lac 50 thousand. Because as you know the Handicraft attract very less margin of profit, therefore, it should be considered with the profit of 50,000 rupees and turn over should be 7½ lac rupees.

MR. CHAIRMAN: Alright. We will consider it.

We should now proceed further and take up these clauses one by one.

SHRI MOHD. AMIN TRAMBOO: Sir, I would like to submit something about clause 6. Here the levy of tax

at the rate of 65 per cent on donations of Charitable Trusts where the identity of the Donor is not established is bound to cause hardship as well as deter the useful work being done by the Charitable Trusts.

MR. CHAIRMAN: We can examine such of the donations as come under this Law.

SHRI G. R. KHAN: Sir, so far as trusts are concerned, we have got very few here at Srinagar...so that they may come forward with their money for a noble cause. This is our humble submission to you sir.

MR. CHAIRMAN: We will consider it.

SHRI G. R. KHAN: Now we will come to clause 14. According to this the provision is bound to cause great hardship in genuine cases, clubbing of income arising directly or indirectly to the spouse by way of salary/commission/fees and other forms of remuneration in case or kind from a concern in which the individual has a substantial interest is uncalled for. A wife can render adequate help in the management of a profession/business. The relation between the wife and husband is due to the marriage contract and she is not the shareholder of the husband when the separation takes place. She at that time only gets Rs. 600/-. If this provision is kept in the bill I think it is an encroachment to the fundamental rights. When the marriage contract takes place, the total amount to be paid is 900 but 300 hundred are taken as *Bakshish* and the husband has to pay only 600 rupees at the time of separation.

MR. CHAIRMAN: We will consider this also.

SHRI TRIDIB CHAUDHURI: This is a new point for we people.

MR. CHAIRMAN: There is no reason according to this why the income should be 'clubbed' and we will consider this point.

SHRI G. R. KHAN: Sir, for the first time in the history of Kashmir the girls and women have come forward in receiving the training in various handicrafts. It was previously in vogue in Persia and Afghanistan where women were working.

MR. CHAIRMAN: Do you have any cottage industry here?

SHRI G. R. KHAN: Sir, we have got these industries over here and women are receiving training in embroidery and other work etc.

SHRI MOHD. AMIN TRAMBOO: Now we want to submit something about section 14(b). This clause provides that income of a minor arising from admission to the benefits of partnership is to be clubbed with the income of parents who have higher income, even in cases where their parents are not partners. This clause seems to have been inserted under the assumption that the minors are taken into partnership only for the purpose of avoidance of Tax. I think if there may be two different concerns by this Act only one establishment will exist while the other will vanish.

MR. CHAIRMAN: I would like to know how the minors get the money to establish or to become shareholders of any concern.

SHRI G. R. KHAN: The amount they get by way of gift or by ceremonies. They get rupees hundred, two hundred from each person and these ceremonies take place four or five times. In this way they collect 10, 15 thousands. The last date for the transfer of property in the case of a Hindu with that of the properties of Hindu Undivided family was December, 1969. So far as this clubbing of income is concerned, date should have been fixed. I think it may be fixed as 1st April, 1974.

MR. CHAIRMAN: What you have suggested is that minor's income should not be clubbed with father's income. This seems to be reasonable to us and we will consider it.

SHRI BHAGWAT JHA AZAD: What should be maximum limit say 10 thousand or 15 thousand in case of those people whose grand-father transfers the property to minor.

SHRI G. R. KHAN: It varies from family to family. For argument sake it can be fixed at 50 thousand.

SHRIMATI SHEILA KAUL: What should be the exact limit in such cases in your view?

SHRI G. R. KHAN: It is very difficult to suggest at this stage. Besides, we don't have share capital to that extent that our youngsters can go into the business. It is a backward state as already submitted by us.

MR. CHAIRMAN: We will consider that. The basic point is where the capital flows from the hands of minors by way of customs or otherwise, it would be unfair if the income is clubbed with father's income.

SHRI G. R. KHAN: We now take up clause 15.

SHRI MOHD. AMIN TRAMBOO: In this respect our submission is, it should be allowed to real expenses and not upto the limit of two thousand only.

MR. CHAIRMAN: We will consider that.

SHRI G. R. KHAN: We go to clause 39.

SHRI MOHD. AMIN TRAMBOO: This is very important clause. In this respect our submission is that while in other parts of the country accounting system was introduced in the year 1924 but in our State it was introduced in 1954. That is why our accounts are not maintained in a standard manner as these should be maintained. Besides, we don't have chartered accountants in a sufficient number in this State. We have only a few chartered accountants here and those too have been engaged by one or two firms. This State is back-

ward to such an extent that one part of it i.e. Ladakh has been exempted from taxation completely. Kashmir region is more backward than Jammu region because due to connecting Jammu by rail it is more developed area. Therefore, we are not in a position to maintain our accounts properly. Our accounts are not according to the auditing standard.

MR. CHAIRMAN: What should be limit of income?

SHRI MOHD. AMIN TRAMBOO: It should be 50 lacs because in handicrafts out of sales of 50 lacs margin of profit comes to only about 50 thousand rupees.

SHRI G. R. KHAN: So far as the industry is concerned our main industry is the cottage industry that is the handicrafts.

MR. CHAIRMAN: You want it to be 50,000. What would be capital investment required?

SHRI G. R. KHAN: We may call it distribution trade. There has been a little confusion. We said that it should be 5 lakhs and not 50,000. Our worker is able to finish a carpet of 24 sq. feet in 5 to 6 months.

MR. CHAIRMAN: How much will it fetch?

SHRI G. R. KHAN: For finishing the 24 sq. feet of the carpet I need 5 to 6 months. It is mainly an export trade and he earns only 15 percent of the profit less by the 8 to 10 percent interest that he has to pay on the borrowed money from the bank.

MR. CHAIRMAN: What is the amount of borrowed money? Unless you make a reference to the balance sheet, we cannot make out anything.

SHRI G. R. KHAN: I shall refer it to the medium quality of the carpet 100 sq. feet fetch 24,00 rupees. In this connection I should like to mention that the turnout is limited because of the fineness and the other intricacies in weaving.

MR. CHAIRMAN: That is general. What about the turnover of 50 thousand rupees?

SHRI G. R. KHAN: Sir, I stated corrected. I have mentioned 5 lakhs and not 50,000 as has been misunderstood here. This is for distribution.

SHRIMATI SHEILA KAUL: Now that you are discussing the handicrafts I would like to know the state of hotels business in the State. What do you think of the hotel business; are you better off in this business. What would be the turnover of the hotel.

SHRI G. R. KHAN: My other colleague Shri Dhar will answer this question. But I may add here that the hotels remain closed here for 3 months in a year. There is only traffic for 4 months for the visitors.

SHRI VIJAY DHAR: Hotels and Houseboats carry their business for 3 to 4 months only. That is to say hardly for 90 or 120 days in a year. The number of visitors is very small in comparison to other States of the country.

SHRIMATI SHEILA KAUL: But the hotels are always booked. Whenever we ask for the accommodation it is said that there is no accommodation available here.

SHRI VIJAY DHAR: That is for a limited number of days say 90 or 120 days.

SHRI SYEED AHMED AGA: I want to know whether you want to make a special proviso in this clause with regard to Kashmir province when you say that the handicrafts here has very limited turnover because of the fineness and other intricacies in its weaving.

SHRI G. R. KHAN: We would be thankful if it is done. That is what we are trying to make out.

SHRI MOHD. AMIN TRAMBOO: I would like to know what is meant by the audit?

MR. CHAIRMAN: The purpose is very simple. We want that instead of the department, the audit should conduct the verification and then give a certificate to that effect. The responsibility of the department would not be there then. About Mr. Khan suggestion that the valuable suggestion made by the M.P. should be considered, I would say that we shall consider it.

SHRI G. R. KHAN: Then we would also suggest that the income tax practitioners should also be allowed to conduct audit after they have qualified experience of 10 years at their credit.

SHRI TRIDIB CHAUDHURI: Mr. Chairman, in view of the present discussion, could the witness concerned i.e., Chairman of the Organisation give some elucidation in respect of assesseses?

MR. CHAIRMAN: Yes if the Chairman comes here we can get this point elucidated. So we will take up next point.

SHRI G. R. KHAN: Sir, it is clause 42. This clause is concerned with the retention of 30 days. It is relief for the tax payers of this backward State. As per suggestion made here in the agenda, this clause should be amended suitably, as the tax payer cannot make any appeal if some injustice is done to him.

MR. CHAIRMAN: But for purposes of making an appeal there is a separate proviso. However, we will consider it. So we shall proceed to the next clause.

SHRI MOHD AMIN TRAMBOO: Sir, it is clause 38. It is regarding the powers to be given to Survey Inspectors. But in view of these powers which are proposed to be given to these Inspectors, people are facing lot of hardships while paying their taxes to the Department. These difficulties could be elucidated in detail, but here I don't think it proper just to save the precious time of the august Committee. Therefore, I would only submit that these powers should be given to Deputy Commissioners. I would further submit that this aspect should come under the Revenue Department as they are more independent.

MR. CHAIRMAN: In fact the Commissioners are themselves independent. However, we thank you very much.

SHRI G. R. KHAN: Mr. Chairman we are more grateful to you sir, for the patient hearing. We thank all the Hon'ble members of this august Committee for their patient hearing and do hope that the Committee would consider our humble suggestions favourably.

MR. CHAIRMAN: Yes we shall certainly give sympathetic consideration to your suggestions.

(The witnesses then withdrew)

II. Beopar Mandal, Srinagar

Spokesmen:

1. Shri Om Parkash Kapur, General Secretary.
2. Shri Mohd. Yasin
3. Shri Ashok Kumar

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

MR. CHAIRMAN: Before we take your evidence, I may point out to you the Direction 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 specifi-

cally 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.” Please proceed.

SHRI O. P. KAPUR Mr. Chairman, before we put our suggestions before the committee, I would humbly submit that I may be permitted to submit our suggestions before the Committee in Hindi language.

MR. CHAIRMAN: Yes you can put forth your suggestions in Hindi.

SHRI O. P. KAPUR: Sir, my submission is that most of the members of our Association belong either to middle class income group or to Lower class income group. So far as Section 44(b) of the Act is concerned, we are bound to maintain the accounts of the person who is having income of Rs. 25,000. As you know, Sir, our State is backward and most of people are un-educated. No doubt there is a free education in schools but on the contrary most of the people are illiterate. Besides the rate of profit earned by the people in their respective business lines is very low. On the other hand huge amounts of expenditure is to be incurred by the poor people when we take into account the dearness of the present period. While maintaining the accounts in respect of income-tax many cases come up in the shape of non-scrutiny.

In view of the humble submissions briefly submitted. I would humbly suggest that the limits should be increased.

MR. CHAIRMAN: What is the average income?

SHRI O. P. KAPUR: Sir, it is Rs. 25,000 to Rs. 30,000.

MR. CHAIRMAN: What should be the limit now?

SHRI O. P. KAPUR: Sir, it would have been favourable if it could be extended to five lac rupees.

MR. CHAIRMAN: Allright we will think over it.

SHRI O. P. KAPUR: So far as clubbing of income is concerned, to some extent it is justified but with regard to other reasons it is not justified. If a person expires, his minor son runs the business and this is done simply to make both ends meet. This

exception should be provided in the Act. So far as section 64 is concerned in this respect I would like to submit before the Hon'ble Committee that according to Hindu Law a grand child can have much more share of the property of his grand-father.

MR. CHAIRMAN: Under which Hindu law it is provided.

SHRI O. P. KAPUR: If a father deprives his son from his property then the transfer of the property is justified. Now I will come to the clause 25 section 80(b). In this provision expenses are kept 2,000. In this respect my suggestion is that it should be admissible according to the proper receipt and the expenses should be given to a person according to actual expenses whatever it may be.

Now I would like to come to clause 39 regarding compulsory auditing. The proposed amendment to section 139 is unjustified in as much as it would create difficulties for the assesseees in our State. The limit fixed up for compulsory audit at rupees five lakhs sales and Rs. 50,000 as profit seems to be very low and it is felt that the purpose behind this amendment will not be achieved. It would only create burdens on small assesseees due to their backwardness and illiteracy for the requirement of maintaining accounts. After the integration here the people started to maintain proper accounts to some extent but we are facing one difficulty that the requisite information should have been sent to the Department in English. The proposed amendment calls for efficient and experienced Accountants who are hardly available in our State.

MR. CHAIRMAN: But the taxation officers over here can understand the Urdu language. Do you refer to the cases of small assesseees?

SHRI O. P. KAPUR: Yes Sir, I would like to submit that this should be left at the discretion of the Income Tax officers.

MR. CHAIRMAN: No, this is to be decided by the Parliament and not by the Taxation Officers, I would like to know what should be the limit.

SHRI O. P. KAPUR: This should be ten lacs and net income should be fixed at 75 thousand.

MR. CHAIRMAN: We will consider this.

SHRI O. P. KAPUR: Clause 55 regarding the recoveries. Provision has been made to attach the property which has been transferred. My submission is that if a girl is married and property might have been transferred that should not be attached.

MR. CHAIRMAN: Alright we will consider these points.

Thank you.

(The Committee then adjourned.)

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