P. A. C. No. 687

PUBLIC ACCOUNTS COMMITTEE (1978-79)

(SIXTH LOK SABHA)

HUNDRED AND TWENTY-FIRST REPORT

INCORRECT VALUATION OF ASSETS

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action taken by the Government on the recommendations of the Public Accounts Committee contained in their 29th Report (Sixth Lok Sabha) on Incorrect valuation of assets].

Presented in Lok Sabha on 9 April, 1979
Laid in Rajya Sabha on

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI
April, 1979/Chaitra, 1901(S).
Price : Rs. 1·45

CORRIGENDA TO HUNDRED AND TWENTY-FIRST REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (SIXTH LOK SABHA)

Page	Para	Line	For	Read
(v)	2	2	apponted	appointed
1	1.2	3	respet	respect
2	1.4	32	meeti g	meeting
2	1.5	3	Atoney	Attorney
3	1.6	4	(of	(c.f.
3	1.7	11	priniple	principle
3	1.7	2nd from bottom	and	Board and
5	1.10	last line	Delete "informed that"	
6	1.10	1	Delete "the valuation of .....also been"	
11		last line	als	also
22		4th from bottom	malafides	no malafides

PUBLIC ACCOUNTS COMMITTEE
(1978-79)

CHAIRMAN

Shri P. V. Narasimha Rao

MEMBERS

Lok Sabha

2. Shri Halimuddin Ahmed
3. Shri Balak Ram
4. Shri Brij Raj Singh
5. Shri C. K. Chandrappan
6. Shri Asoke Krishna Dutt
7. Shri K. Gopal
8. Shri Kanwar Lal Gupta
9. Shri Vijay Kumar Malhotra
10. Shri B. P. Mandal
11. Shri R. K. Mhalgi
12. Dr. Laxminarayan Pandeya
13. Shri Gauri Shankar Rai
14. Shri M. Satyanarayan Rao
15. Shri Vasant Sathe

Rajya Sabha

16. Shri Devendra Nath Dwivedi
17. Shri M. Kadershah
18. Shri Sita Ram Kesri
19. Dr. Bhai Mahavir
20. Smt. Leela Damodara Menon
21. Shri B. Satyanarayan Reddy
22. Shri Gian Chand Totu

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary.*
2. Shri D. C. Pande—*Chief Financial Committee Officer.*
3. Shri Bipin Behari—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Twenty-First Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Twenty Ninth Report (Sixth Lok Sabha) on Incorrect Valuation of Assets commented upon in paragraph 70(i) of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes relating to the Ministry of Finance (Department of Revenue).

2. On 31 May, 1978 an 'Action Taken Sub-Committee' consisting of the following Members was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports:

1. Shri P. V. Narasimha Rao—Chairman
2. Shri Asoke Krishna Dutt—Convener
3. Shri Vasant Sathe
4. Shri M. Satyanarayan Rao
5. Shri Guri Shankar Rai
6. Shri Kanwar Lal Gupta

} Members

3. The Action Taken Sub-Committee of the Public Accounts Committee (1978-79) considered and adopted the Report at their sitting held on 23 March, 1979. The Report was finally adopted by the Public Accounts Committee (1978-79) on 2 April, 1979.

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

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

NEW DELHI;
April 2, 1979
Chaitra 12, 1901 (S).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1. This report of the Committee deals with the action taken by Government on the Committee's recommendations/observations contained in their 29th Report (Sixth Lok Sabha) on Incorrect Valuation of Assets commented upon in para 70(i) of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.

1.2. The 29th Report was presented to the Lok Sabha on 19 December, 1977 and contained in all 21 recommendations/observations. The Action Taken Notes in respect of all the 21 recommendations/observations were received from Government on 1 March, 1979 and these have been broadly categorised as follows:

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

Sl. No. 20.

(ii) Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from Government.

Nil.

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

Nil.

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

Sl. Nos. 1—18, 19 and 21.

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

Incorrect valuation of the property owned at Mt. Napean (Paras 1.81 to 1.98—Sl. Nos. 1 to 18)

1.4. The Committee had, in paras 1.81 to 1.98 of the Report analysed and evaluated the action taken by the Department of Revenue in the matter of valuation and assessment for wealth-tax in respect of

property known as 'Mount Napean' owned by one Ardeshir B. Dubash, and had made certain observations pointing out legal flaws therein resulting in incorrect valuation of the property causing substantial loss to revenue. Indicating the action taken so far on these recommendations, the Department have, in a note furnished on 1 March, 1979, stated as follows:

> "Paras 1.81 to 1.98 of the 29th Report of the Public Accounts Committee (1977-78) have raised certain legal issues which, the Honourable Committee recommended, should be reconsidered by the Ministry of Law. Soon after the representatives of the Ministry of Finance and Ministry of Law gave evidence before the Public Accounts Committee in November, 1976, the file was referred to the Ministry of Law on 21-12-1976 setting out the issues which arose during the discussion in the meeting of the Public Accounts Committee, for advice of the Ministry of Law. The Law Ministry decided on 8-6-1977 that it would be advisable to obtain the opinion of the Attorney General of India. Accordingly, the Law Ministry prepared a statement of case for reference to the Attorney General and sent the same to the Ministry for comments on 9-6-1977. The Ministry's comments on this statement were sent to the Ministry of Law on 4-8-1977. The Law Ministry sent a revised statement after taking note of the Ministry's comments on 19-10-1977. As desired by the Ministry of Law, the revised statement was sent to the office of the C&AG for perusal and comments of the Audit on 27-10-1977. After some correspondence, the Audit prepared a statement of the case afresh and sent it to the Ministry on 30-1-1979. The Audit has suggested that as a consequence of the consideration of this statement, the Ministry of Law may like to convene a tripartite meeting for discussion and for being referred to the Attorney General. The file has been sent to the Law Ministry with the statement as prepared by the Audit for advice of the Ministry of Law on 22-2-1979. The Ministry will take action in conformity with the advice which will be given by the Law Ministry."

1.5. The Committee regret that though their report was presented to Parliament on 19 December, 1977, the revised statement of the case for reference to the Attorney General of India, drawn up in the light of findings and observations of the Committee, could be sent to the Ministry of Law only on 22 February, 1979 i.e. after a lapse of about 14 months. As the delay in such cases is not desirable and a substantial revenue realisation is at stake, the Committee

would like the Ministry of Law to finalise the statement for reference to the Attorney General expeditiously. The Committee trust that the Department of Revenue will also take prompt action in accordance with the advice of the Attorney General in the matter as soon as it is received.

1.6. In the course of the examination of the Audit paragraph, the Committee were given to understand that the Commissioner of Income-tax, Bombay had been requested by the Central Board of Direct Taxes in March 1977 to take protective measures (of Paragraph 1.97). The Committee would like to be assured that the Commissioner of Income-tax has in fact taken protective measures so that in case an upward revision of the assessment is made in accordance with the advice of the Attorney General, additional tax could be realised.

Directions by the Central Board of Direct Taxes to the assessing officers (Para 1.99—Sl. No. 19)

1.7. Expressing displeasure on the issue of orders, instructions or direction by the Central Board of Direct Taxes to the assessing officers at the time of making assessment of the property, the Committee in paragraph 1.99 of the Report, had observed:

> "This case also raises a serious question of principle and propriety. The Committee are of the view that even if more than one interpretation of the trust deed were possible, the correct and proper course of action would have been to allow the law to take its own course instead of the Central Board of Direct Taxes interfering, on the assessee's initiative and in clear violation of the statutory principle enshrined in Section 119 of the Income Tax Act which prohibits, *inter alia*, the issue of orders, instructions or directions by the Board requiring any assessing officer to make a particular assessment or dispose of a particular case in a particular manner, with the jurisdiction of the Wealth-tax Officer by issuing an advance ruling on the case. The Supreme Court had clearly held in Sirpur Paper Mills Ltd. *Vs.* Commissioner of Wealth-tax (1970) 77-ITR(6), that it was not open to the Board to issue any instructions or directions to the Wealth-tax Officer or Commissioner in the exercise of his quasi-judicial functions. The Committee are concerned to find that despite the fact that the property had been valued at a much larger amount by the Valuation Officer, the Wealth-tax Officer appears to have been in a pathetic quandary, over ruled as she was by the Board and prevented from performing her legitimate duties and completing the assessments according to her own

judgement. The Board's instructions in regard to this case, on the basis of which the assessments were completed, also appear to have been issued on 18 January, 1973 and 26 February, 1973, after the Wealth-tax Act, 1957 had been amended, with effect from 1 January, 1973, by the Taxation Laws (Amendment) Act. 1972, making the acceptance of the valuation by the Valuation Officer mandatory under Section 16A(6) of the Act. It is also significant in this context that the assessee trust had obtained opinions from its legal adviser only after it has approached the Central Board of Direct Taxes. All this naturally give rise to serious suspicion in the Committee's mind which needs to be allayed. The Committee are, therefore, firmly of the view that the manner in which the Central Board of Direct Taxes has interfered with the jurisdiction of the Wealth-tax Officer and the handling of the case by senior officials of the Board call for a principled and thorough probe of the circumstances in which the property in this case had been under-valued with a view to ensuring that no mala-fides were involved. They accordingly recommend that such an investigation should be undertaken forthwith and its outcome intimated expeditiously."

1.8. In their Action Taken Note dated 1 March, 1979, the Department of Revenue have stated:

"The recommendations made by the honourable Committee are under consideration of the Ministry. Further reply may be awaited."

1.9. The Committee regret that the Department of Revenue have still "under consideration" the recommendation of the Committee desiring "a principled and thorough probe of the circumstances under which property in this case (Mount Napean) had been under-valued with a view to ensuring that no mala-fides were involved." The Committee would like the Ministry to take suitable action in pursuance of this recommendation and intimate the final outcome of the investigation to them expeditiously.

Under-valuation of 4 other properties owned by the Dubash family (Para 1.101 Sl. No. 21)

1.10. Pointing out the under-valuation of 4 other properties, namely, Hamilton Villa, Romana Villa, Rughby House and Belmont,

belonging to the Dubash family and located near 'Mount Napean' on Napean-sea Road, Bombay, the Committee had observed as follows:

"The Committee note that apart from the heavy under-assessments in respect of "Mount Napean" reported in the Audit paragraph, four other properties ("Hamilton Villa", "Romana Villa", "Rughby House" and "Belmont") belonging to the same family and located near "Mount Napean" on Napean-sea Road Bombay, had been grossly under-valued by ignoring the very high land values comprised therein. While the value of the land on which 'Mount Napean" is located was adopted by the Valuation Officer at Rs. 550 per square yard as on 31 March 1963, 31 March, 1964 and 31 March, 1965, at Rs. 350 per square yard as on 31 March, 1966, 31 March, 1967, 31 March, 1968 and 31 March, 1969 and at Rs. 390 per square yard as on 31 March, 1970 and 31 March, 1971 and in the valuation relating to "Belmont" as on 31 December, 1969 and 31 December, 1970, the value of the land was taken into account at Rs. 400 per square yard, the value of the land comprised in the three other buildings had been accepted at Rs. 100 per square yard only in the assessments completed up to 1971-72. Further, though the area of the land with the property "Belmont" was 3068 sq. yards and the value of the land alone, computed at the rate of Rs. 400 per square yard would, therefore, work out to Rs. 12,27,000 the value adopted was only Rs. 6 lakhs. Unfortunately, the assessment records do not indicate any reason for the adoption of different values for the land comprised in these buildings. While the Committee can understand marginal difference in the land values they are, however, not prepared to believe that there could be such wide variations in respect of properties located at the same place. Moreover, it is a matter of common knowledge that prices of land have over the years increased manifold. The Committee understand that if the value of the land adopted by the Valuation Officer in respect of "Mount Napean" were also to be adopted in respect of the other three properties ("Hamilton Villa", Romana Villa" and "Rughby House"), the under-valuation of the land comprised in these three properties would amount to Rs. 25.70 lakhs for the assessment years 1963-64 to 1971-72. They have also been informed that the valuation of these three properties has also been informed that

the valuation of these three properties has also been referred to the District Valuation Officer on 22 September, 1975 and that the concerned Wealth-tax Officer has been requested to look into the question of under-valuation.

The Committee desire that while apprising them of the further developments in this regard, the Department should review carefully the assessments relating to these three properties as well as "Belmont" and reopen them, wherever found necessary, so as to recover the tax correctly leviable. The circumstances in which different values were accepted by the Department in respect of these properties should also be gone into in detail with a view to ensuring that no *mala-fides* were involved. The Committee would await a detailed report in this regard."

1.11. In their Action Taken Note dated 1 March, 1979, the Department of Revenue have stated:

"The requisite information is being gathered from the field officers. Further reply may be awaited."

1.12. The Committee are surprised that even after a lapse of over 14 months after the presentation of their report Government have to report to the Committee that the requisite information is being gathered from the field officers in respect of four other properties (Halmilton Villa, Romana Villa, Rughby House and Belmont) belonging to the same Dubash family and located near "Mount Nepean" on Napean-sea Road, Bombay. They feel that the Department of Revenue have not taken the recommendation of the Committee seriously and have avoided taking action thereon for so long. The Committee would like concrete action to be taken on their recommendation and reported to them without any further delay.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

What causes greater concern to the Committee is the admission during evidence by the Chairman of the Central Board of Direct Taxes that "it was quite a common practice" for the Board to give advance rulings as well as to deal with individual petitions of assesses, though it was contrary to provisions of law. The impropriety of such a practice had also been criticised earlier by the Public Accounts Committee. Now that instructions are stated to have been issued, although belatedly, that the Board shall not interfere in individual cases, the Committee expect that these would be followed scrupulously by the Central Board of Direct Taxes.

[Sl. No. 20 (Para 1.100) of Appendix VII to the 29th Report (Sixth Lok Sabha)]

Action Taken

The observations made by the honourable Committee have been noted by the Ministry.

[Ministry of Finance (Department of Revenue) O.M. No. F. No. 241/6/77-A&PAC-I dated the 1st March, 1979]

CHAPTER III

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

—NIL—

CHAPTER IV

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

—NIL—

CHAPTER V

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

Recommendation

1.81. According to Section 7 (1) of the Wealth-Tax, Act, 1957 the value of any asset other than cash shall be estimated, for purposes of the Act, to be the prices which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. Various judicial pronouncements have also held that the words "if sold in the open market" used in this Section contemplate only a hypothetical case and not any actual sale or the actual state of the market, and, therefore, the tax officer must assume that there is an open market in which the asset can be sold and proceed to value it on that basis. In the present case under consideration relating to a family trust, however, the Committee are concerned to find that despite this clear and unambiguous decision of the courts and in spite of the fact that the Department's own valuation officer had also determined the value of the property at nearly a crore of rupees, the value of a palatial property, located in a posh residential area of Bombay, had been adopted, for purposes of wealth tax, at the ridiculously low figure of Rs. 8 lakhs only. After a study of the evidence tendered before the Committee, the conclusion that this case with large revenue implications was not given the thought and attention that it deserved is fairly inescapable. The case also reveals, *prima facie*, certain suspicious features which have given rise to serious misgivings in the Committee's mind.

1.82. The Committee note that the property in question known as "Mount Napean" formed part of a family trust created in 1928 by one Ardeshir B. Dubash in respect of his immovable properties and that by a supplementary trust deed dated 2 August, 1945, the settler had made certain separate provisions in regard to the benefits accruing from the said property, its sale under certain conditions, the mode of distribution of the corpus of the trust, etc. While a clause (clause 6) in the supplementary trust deed provided that the property could be sold free from the trust and rights of residence created therein if the settler so directed, or after his death with the written consent of all the beneficiaries or a majority of those per-

sons with the sanction of the Court, the settler, by another clause (clause 4) in the trust deed, had also made certain other provisions for the sale of the property at a fixed price to certain specified members of the Dubash family. Under this clause, the settler had declared that after the death of the last survivor of his three sons, the property shall be offered for outright sale for Rs. 8 lakhs to his grandson (Behram K. Dubash) from his first son (Kaikhushru A. Dubash) and if he be not alive, then to his great grandson (Ardeshir B. Dubash) and if he be also not alive, then to the eldest male child of the youngest son (Bomanji A. Dubash) as may then be alive. For purposes of wealth-tax, the property had initially been valued at Rs. 4,21,500 for the assessment years 1963-64 to 1966-67 and at Rs. 6,92,000 for the assessment years 1967-68 to 1969-70. Apprehending that the property was being considerably under-valued, the Department had referred the case to the Valuation Officer (Executive Engineer, Valuation Cell), a statutory official employed by the Department itself, who, in his report of 26th July 1972, had determined its value at Rs. 1,03,60,000 for the years 1963 to 1965, at Rs. 67,15,000 for the years 1966 to 1969 and at Rs. 74,45,000 for the year 1970-71. Strangely enough, however, the values as determined by the Valuation Officer were not adopted in the relevant assessments, re-opend under section 17 (1) of the Wealth-tax Act, as the assessee had in the meantime approached the Central Board of Direct Taxes who held that clause 4 of the trust deed relating to the sale of the property at Rs. 8 lakhs only to a beneficiary in the course of distribution of the corpus of the trust was a restriction or encumberance on its sale to outsiders at the prevailing market price This view appears to have been taken on the advice of the Ministry of Law who had examined the case on the basis of certain legal opinions (including one from a retired Chief Justice of the Supreme Court) obtained by the assessee trust.

1.83. On a scrutiny of these opinions, the Committee consider it significant that the initial opinion (30 October 1972) made available by the assessee's legal adviser had not taken into account the fact that under clause 6 of the trust deed, sale of the property was possible during the settler's life time, if he so desired, and after his death, with the consent of all the surviving beneficiaries or with the consent of the majority of the said beneficiaries with the sanction of the Court. Instead, this opinion had confined itself only to an examination of the implications of clause 4 and it was only subsequently (21 November 1972) presumably on the omission being pointed out by the Central Board of Direct Taxes/Law Ministry that a supplementary opinion covering this aspect als was

made available by the assessee trust. The Law Ministry's advice dated 10 January, 1973 also appears to have been influenced largely by the opinion obtained by the assessee from his legal adviser.

1.84. In his opinion of 30 October, 1972, the assessee's legal adviser drew attention to an earlier judgment of the Supreme Court in the case of Ahmed G. F. Ariff and Other *Vs.* Commissioner of Wealth-tax, Calcutta (76 ITR 471) that the words "if sold in the open market" used in Section 7 (1) of the Wealth-tax Act once not predicate actual sale or an actual market but only enjoins that it should be assumed, that there is an open market and the property can be sold in such a market. He had nevertheless, observed that any restrictions and covenants as reduce the value must be taken into account in valuing the property and had said as follows :

"The right which Behram K. Dubash has in the property will arise only on the death of all the three brothers, this right is contingent; this right to purchase property at the price fixed by the settler cannot, however, on that account be ignored; for the trustees must hold and apply the property according to the directions of the settler because any purchaser of the property from the trustees will take the property subject to the restriction imposed by the settler. In my opinion the value of the property in the hands of the trustees in no circumstances can exceed Rs. 8 lakhs."

1.85. Again, in his supplementary opinion of 21 November, 1972 furnished on his attention being drawn to clause 6 of the trust deed, the legal expert had held that though there was a possibility of sale of the property under this clause, the right vested in certain specified persons to purchase the property for a fixed amount of Rs. 8 lakhs after the death of the last surviving son of the settler must also be taken into account in considering whether there was any reasonable possibility of obtaining the consent of all or a majority of the surviving beneficiaries. Pointing out in the context that it was difficult to believe that any of these persons would agree to the sale of the property to his or her own detriment or to the detriment of his or her children and close relatives, he had gone, on to observe :

> "Granting that in certain circumstances the property may be sold at the market price with the consent of the persons named in cl. 6 but that consent is not in the existing circumstances capable of being obtained. The valuer accordingly cannot ignore the restrictions which are inherent in the right of the trustees to sell the property at the market value. The market value of the property, it may be repeated is that amount which the property, subject to the

restrictions, encumbrances and limitations may fetch, and so long as the restrictions under cl. (4) remain there is so reasonable possibility of the property being sold for a price exceeding Rs. 8 lakhs. The mere circumstances that the settler envisaged a situation in which the property may be sold free from the restriction and which situation is impossible to be achieved, is in my opinion, not a ground for holding that the value of the property is more than the value at which the property would be offered for sale by the trustees on the death of the last son of the settler."

1.86. Endorsing these views in their advice of 10 January, 1973, the Law Ministry had observed, *inter alia*, that in the event of the trustees offering to sell the property, the prudent buyer would know that the trustees were under an obligation to offer it for sale to certain named persons for Rs. 8 lakhs and, therefore, even assuming that the trustees sold the property in breach of trust, the purchaser would hold the property subject to the same obligations of the trustees and in the event of any of the named beneficiaries exercising his option, the purchaser would be compelled to part with the property to him for Rs. 8 lakhs. Dealing with the implications of clause 6 of the trust deed, the Ministry had opined as follows:

"The question whether the necessary consent of all the parties or a consent of the majority of the persons concerned and the sanction of the Court would be forthcoming are, however, matters, on which it is not possible to speculate.

Till such consent or sanction is forthcoming, the possibility of a sale without the restriction of having to offer the property to the named individuals for prior purchase would merely be hypothetical and would not be relevant in determining the market value which the property in question would fetch in the open market on the valuation date. On this aspect of the matter, I am in agreement with the views expressed in the opinion of Shri..... (the assessee's legal adviser). The opinion would appear to set out the correct principles with regard to the manner in which the property has to be valued."

1.87. The Committee are, unfortunately, unable to appreciate these arguments. Looking at the trust deed of 2 August, 1945 in its entirety and not at clauses 4 and 6 in isolation as the Law Ministry appear to have been done, the Committee found that in terms of the provisions of clause 1(b) (vii), the property could be sold to Behram K. Dubash for Rs. 8 lakhs only if it had not already been sold under clause 6. Thus, the so-called "encumbrance" or

"restriction" in clause 4 is subject to a possible sale under clause 6 and such a sale would also be more beneficial to all the beneficiaries who under the instrument were fully competent to arrange the sale. In these circumstances, it would appear that there would always be a greater presumption of a sale under clause 6 than that of a sale under clause 4. A sale under clause 6 would also not involve any breach of trust as contended by the Law Ministry since the sale would have been effected only in accordance with the testator's intentions with the consent of the serviving beneficiaries or of a majority of them with the Court's sanction. By presuming that the possibility of a sale under clause 6 would be merely hypothetical and would not be relevant in determining the market value of the property till the necessary consent of all the beneficiaries or of the majority of the persons concerned and the sanction of the Court were forthcoming, the Law Ministry appear to have committed the very error against which various judicial pronouncements have cautioned, namely, assuming the sale to be an actual sale in an actual market. Instead, the Ministry, following the judgements in the case of Ahmed G. H. Ariff and Other *Vs.* Commissioner of Wealth-tax, Calcutta (76 ITR 471) and Purshottam N. Amarsey and Another *Vs.* Commissioner of Wealth-Tax, Bombay City II (88 ITR 417), ought to have assumed that on a hypothetical sale, the necessary sanction and consent of the beneficiaries would be available and proceeded to determine the value of the property on that basis.

The Committee's attention has also been invited by Audit to P. 573 of Dymond's Death Duties for the citation of House of Lords decision in Lord Advocate *V.* Wood's Trustees (1910) ISLT 186 under the provisions in English Law similar to the provisions in section 7(1) of the Wealth Tax Act, 1957, according to which 'The price or the value which a testator may have given by his will to a particular person the option to acquire property is not a test of its market value'.

1.88. On a reading of the deed as a whole it is clear that provisions of clause 4 of the trust deed could not be considered a charge, debt or encumbrance depressing the market value of property. The trustees, under the vesting declaration, hold the property for the purposes of the trust and though the title to property rests, for the time being, with them, they are not owners of the property, the beneficial ownership resting only with the beneficiaries. Keeping this in view, the Committee feel that it would not be correct

to conclude that the manner of distribution of the corpus of the trust after the date of distribution (date of the death of the last surviving son of the settler), namely, offer for sale of a property worth nearly a crore of rupees at Rs. 8 lakhs only was a debt or encumbrance. In view of the fact that the provisions of clause 4 amount, in effect, to a situation where the sale is effected by the trustees, in the course of distribution of the corpus of the trust, at the going market value of Rs. 1 crores and Rs. 92 lakhs are given to one particular beneficiary, the balance of Rs. 8 lakhs being finally distributed to all the beneficiaries of the trust, the Committee feel that clause 4 should have been construed merely as an adjustment of the rights of the beneficiaries *inter se* in the course of distribution of the corpus of the trust and not as restriction or encumbrance.

1.89. In any event, it would be amply clear from the subsequent course of events that in this case, the provisions of clause 7 had been misapplied to the detriment of revenues. The Committee find that in contravention of these provisions, the property in question had been offered for sale at Rs. 8 lakhs in 1973 to Behram K. Dubash even while the settler's last surviving son (Bomanji A. Dubash) was still alive, which was clearly against the settler's intentions and, therefore, irregular. Apparently with a view to landing a semblance of regularity to an otherwise irregular sale, Bomanji A. Dubash and his wife, Jean, had relinquished, on 5th February 1973, their right or interest of residence in the property. This relinquishment cannot, however, be taken as the death of the settler's last surviving son and, in any case, there was also no provision in the trust deed for such renunciation. This particular transaction as well as the subsequent lease of the property by Behram K. Dubash to M/s. Napean Estate (P) Ltd., whose shareholders were all significantly members of the Dubash family including himself, only serve to reinforce the Committee impression that whatever might have been the settler's intention in stipulating in 1945, that the property should be sold to certain named beneficiaries for Rs. 8 lakhs, the beneficiaries had cleverly utilised, to their own advantage, clause 4 of the trust deed as an instrument of tax-avoidance and deliberately and grossly under-stated the value of the property with a view to reducing the tax liability.

1.90. The incorrect valuation of the property apart, the Committee's attention has also been drawn to a number of other omissions irregularities in the assessment of the trust and its beneficiaries, which are indicated below:

(a) The value of the vested interest created by the settler in favour of his grandson, Behram K. Dubash, and of the contingent interest created in favour of the great grandson, Ardeshir Behram Dubash, and the other grandson, Ardeshir Bomanji Dubash, though correctly includible in their net wealth were not so included.

(b) Exemption of Rs. 1 lakh under Section 5(I) (iv) of the wealth-tax Act had been incorrectly allowed to the trustees in each of the years 1968-69 to 1970-71 while the said exemption was not allowed in the year 1971-72.

(c) The release relinquishment by Bomanji A. Dubash and Jean of their right of residence in "Mount Napean" had not been subjected to Gift-tax under Section 4(1) of the Gift-tax Act, 1958.

(d) As property admittedly worth several times more was sold only for Rs. 8 lakhs, capital gains tax leviable under Section 52(2) of the Income-tax Act, 1961, had not been levied.

1.91. The Committee find that the Law Ministry, which had also examined the question of assessing to tax the value of the vested and contingent interests of the beneficiaries, had opined that no assessment of the value of the rights of these beneficiaries could be made as these rights could arise only after the happening of the contingencies mentioned in clause 6 of the trust deed. The Committee understand in this connection that it has been held by the Bombay High Court (71 ITR 180) and approved by the Supreme Court (76 ITR 471 and 88 ITR 417) that when Section 3 of the wealth-tax Act imposes the charge of wealth-tax upon the net wealth, it necessarily includes property of any and every description of the assessee, barring the exceptions stated in Section 2(e) and other provisions of the Act. Besides, the Bombay High Court has also held that the provisions of Section 7(I) of the Act could not be utilised to nullify the provisions of Section 3 and that the mere fact that a property was not capable of being transferred was not a consideration which ought to prevail. Again, clarifying their decision in the case of Ahmed G. H. Ariff and Others *Vs.* Com-

missioner of Wealth-tax, Calcutta, the Supreme Court, in their judgement in the case of Purshottam N. Amarsey and Another *Vs.* Commissiontr of Wealth tax, Bombay City II (88 ITR 417), had held that even if a property was incapable of being sold, being a personal estate, in that event also the interest of the assessee had to be valued by the Wealth-tax Officer. In yet another case Commissioner of Wealth-tax *Vs.* Smt. Rani Kaniz Abid (93 ITR 332), the Allahabad High Court had also held that even if on account of the peculiar incidents of a property or because of statutory or contractual restrictions, the potential right of the owner of the property may be abridged or excluded altogether, what remains none the less property and merely because the right of transfer is absent, it does not mean that the other incidents of ownership do not continue in the property.

1.92. In terms of Section 21(I) of the Wealth-tax Act, wealth-tax, in the case of assets chargeable to tax under the Act held by any trustee appointed under a trust, shall be levied upon and recoverable from the trustees in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held. Section 21(2) further provides for the direct assessment of the person or persons on whose behalf or for whose benefit the assets are held or for the recovery from such person(s) of the tax payable in respect of such assets. However, where the shares of the persons on whose behalf or for whose benefit such assets are held are indeterminate or unknown the wealth-tax is to be levied upon and recovered from the trustees, under Section 21(4) of the Act, as if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for purposes of the Act. The Committee learn that the Bombay High Court has held (71 ITR 180) that under section 21(I) read with Section 21(2), the assessment can be made in the hands of the trustee or the beneficiaries according as the interest of revenue dictates, and that the effect of Section 21(4), which creates an exception to this choice given to the department, is that sub-section (2) would not be available to the department where the shares of the person(s) on whose behalf or for whose benefit any assets are held are indeterminate or unknown. In the light of these provisions and the judicial pronouncements, it would appear that the vested|contingent interest of the beneficiaries in the present case who had a pre-exemption right under clause 4 of the trust deed was to be valued and included in their wealth-tax assessments and that the provisions of Section 21(4) would be applicable to the case

in view of the fact that the shares of the beneficiaries both as to life-interest and on distribution of the corpus of the trust are unknown and unascertainable on account of successive life-interests ad interests of remaindermen. The Committee, however, note that the applicability to this case of Section 21 of the Wealth-tax Act was not at all considered, which is regrettable.

1.93. As regards the exemption available under Section 5(1)-(iv) of the Act in respect of a house or part thereof belonging to the assessee, the Committee find that though the Law Ministry had initially held, in October, 1975, that as the property in question did not "belong" to a beneficiary, the exemption was not allowable to him and the exemption under this Section was accordingly not allowed in the assessments for the assessment years 1968-69 to 1970-71, that Ministry had subsequently (October, 1976) reconsidered their earlier opinion and advised that the exemption would be allowable in respect of a beneficiary's interest in the property subject to certain conditions. On a scrutiny, however, of the revised opinion of the Law Ministry, the Committee observe that the Ministry had not expressed any categorical views on this question but had merely pointed out that the admissibility of the exemption would depend upon the facts and circumstances of each case whether or not a beneficiary had "an absolute right of user or a life-interest in the property" and that "if it could be said that in view of such interest, the house belongs to him, then, it would be reasonable to exempt the same under Section 5(1)(iv) of the Act". The circumstances in which it becomes necessary for the Law Ministry to reconsider their earlier views on the question are also not very clear to the Committee.

1.94. The Committee have bene informed that the question whether the release relinquishment in February, 1973 by Bomanji A. Dubash and his wife of their right of residence in "Mount Napean" constituted a gift within the meaning of Section 2(xii) read with Section 2(xxiv) of the Gift-tax Act, 1958, was referred to the Bombay Branch of the Law Ministry who, in their opinion of 16 September, 1976, had advised that this release might not amount to a gift and that even if it were to be treated as a gift, it could not have any ascertainable value particularly because all the rights of residence of Bomanji A. Dubash were not affected. The Committee are unable to appreciate the rationale behind this opinion, particularly in view of the fact that a similar relinquishment by Bomanji A. Dubash, in November, 1962, of his right or interest in the share of the net income and reserve fund in respect of three other trust properties ("Hamiltan Villa", "Romana Villa" and "Rughby

House") belonging to the Dubash family in favour of his three children had been treated as a gift and assessed to Gift-tax for the assessment year 1963-64. It is also evident that the release in the present case had been resorted to solely with a view to facilitating the sale of this property at Rs. 8 lakhs to Behram K. Dubash and cannot, therefore, be considered bonafide. It would, therefore, appear that the provisions of Section 4(1)(c) of the Gift-tax Act would be attracted in respect of this transaction. The Law Secretary was also good enough to admit during evidence that the opinion of the Bombay Branch of the Law Ministry on this question "requires a second look" and to state that he would "personally have no objection" to re-examine this transaction.

1.95. The Bombay Branch of the Law Ministry had also examined, in September, 1976, the question whether there were any capital gains, under Section 52(2) of the Income-tax Act, 1961, in this case a property worth several times more had been sold only for Rs. 8 lakhs. While opening that the sale of "Mount Napean" to Behram K. Dubash for Rs. 8 lakhs was "a bonafide transaction in pursuance of the Trust Deed which had been drawn as far back as in 1945" and Section 52(2) of the Income-tax Act could not, therefore, be invoked, the Ministry had, however, held that this Section could be resorted to in respect of the lease of the property, after Bomanji A. Dubash and Jean had executed the Release Deed giving up their right of residence in the property, to M|s. Napean Estate (P) Ltd. by Behram K. Dubash. Dealing further with the question whether Gift-tax or Capital gains tax would be attracted in respect of the difference between the capitalised market value of the lease and the capitalised value of the lease as actually given, the Bombay Branch of the Law Ministry had also advised that since it could not be said with certainty whether the transaction would be treated as gift, the Department might resort to proceedings under both the Acts so that one of them would ultimately sustain and that the case for capital gains should, however, be made out strongly.

1.96. The Committee are, to say the least, surprised that the settler in this case, by stipulating that the property should be sold to certain specified persons only for a specified amount when it was in fact capable of being sold for a much larger price, as well as the beneficiaries should have been able to bind the State for all time to come. If this position were to be accepted, it is not unlikely that other wealthy assessees might also follow suit and create similar trusts in respect of their properties stipulating that they should be sold only to a specified person or persons at prices that have no relevance whatsoever to their market value and thereby reduce

their tax liability and defeat the very purpose of Section 7 of the Wealth-tax Act. The Finance Secretary was also good enough to concede during evidence that he did not think that this case had "really been treated in the right way" and that "it seems amazing that it should be possible to arrange things in such a manner that property once valued at Rs. 103 lakhs should be valued at Rs. 8 lakhs and Government asked to accept such a position." He also offered to look into the matter afresh and the representative of the Central Board of Direct Taxes has also agreed to re-examine the case in its entirety and to give afresh look where assessments have already been settled.

1.97. The Committee have been informed subsequently by the Department of Revenue & Banking that a detailed note incorporating therein the various issues arising out of the transaction relating to "Mount Napean" had been referred for advice once again to the Ministry of Law on 7th December, 1976 and that their advice was awaited. Meanwhile, the Commissioner of Income-tax, Bombay, is also understood to have been requested by the Central Board of Direct Taxes, in March, 1977 to take protective measures. The question of valuation of the property afresh also appears to have been referred, on 12th August, 1975, to the District Valuation Officer (Superintending Engineer, Valuation Cell) and his report was stated to be awaited. Considerable time having elapsed since these steps were initiated, the Committee would like to be apprised in detail of the outcome of these efforts and of the action taken thereafter to revise all the relevant assessments under the various Direct Taxes enactments. Delay being undesirable in such cases, the Committee would urge the Department to proceed with the utmost expedition in regard to these matters.

1.98. Incidentally, the Committee note that in view of the fact that this property had apparently been sold for a consideration which was less than the fair market value as determined by the Valuation Officer, the feasibility of acquiring the property, under the provisions of Chapter XXA of the Income-tax Act, 1961, had also been considered by the inspecting Assistant Commissioner (Acquisition Range) and the Commissioner. However, here again on the basis of the Law Ministry's advice, which in turn was based on the opinion of the assessee's legal adviser, that in view of the restrictive clauses in the trust deed, the market value of the property could not exceed Rs. 8 lakhs, the department had concluded that there was no ground whatsoever to hold that the consideration for

the transfer had not been truely stated in the instrument of transfer and there was, therefore, no case for starting acquisition proceedings under Chapter XXA of the Act, in view of the fact that the Law Ministry's views in regard to the fair market value of the property themselves are open to question and that Ministry has also been asked to reconsider the entire matter afresh, the Committee are doubtful how far the decision not to go in for acquisition of the property was a sound one. They, therefore, desire that this should also be re-examined with a view to taking necessary action.

[S. Nos. 1 to 18 (Paras 1.81 to 1.98) of Appendix VII to the 29th (Sixth Lok Sabha)]

Action Taken

Paras 1.81 to 1.98 of the 29th Report of the Public Accounts Committee (1977-78) have raised certain legal issues which, the Honourable Committee recommended, should be reconsidered by the Ministry of Law. Soon after the representatives of the Ministry of Finance and Ministry of Law gave evidence before the Public Accounts Committee in November, 1976, the file was referred to the Ministry of Law on 21-12-1976 setting out the issues which arose during the discussion in the meeting of the Public Accounts Committee for advice of the Ministry of Law. The Law Ministry decided on 8-6-1977 that it would be advisable to obtain the opinion of the Attorney General of India. Accordingly, the Law Ministry prepared a statement of case for reference to the Attorney General and sent the same to the Ministry for comments on 9-6-1977. The Ministry's comments on this statement were sent to the Ministry of Law on 4-8-1977. The Law Ministry sent a revised statement after taking note of the Ministry's comments on 19-10-1977. As desired by the Ministry of Law, the revised statement was sent to the office of the C. & A. G. for perusal and comments of the Audit on 27-10-1977. After some correspondence, the Audit prepared a statement of the case afresh and sent it to the Ministry on 30-1-1979. The Audit has suggested that as a consequence of the consideration of this statement, the Ministry of Law may like to convene a tripartite meeting for discussion and for finalisation of the queries which may be found necessary for being referred to the Attorney General. The file has been sent to the Law Ministry with the statement as prepared by the Audit for advice of the Ministry of Law on 22-2-1979. The Ministry will take action in conformity with the advice which will be given by the Law Ministry.

[Ministry of Finance (Department of Revenue) O.M. No. F. No. 241/6/77-A&PAC-I dated 1st March, 1979]

Recommendation

This case also raises a serious question of principle and propriety. The Committee are of the view that even if more than one interpretation of the trust deed were possible, the correct and proper course of action would have been to allow the law to take its own course instead of the Central Board of Direct Taxes interfering, on the assessee's initiative and in clear violation of the mandatory principle enshrined in Section 119 of the Income Tax Act which prohibits, *inter alia,* the issue of orders, instructions or directions by the Board requiring any assessing officer to make a particular assessment or dispose of a particular case in a particular manner, with the jurisdiction of the Wealth-tax Officer by issuing an advance ruling on the case. The Supreme Court had clearly held in Sirpur Paper Mills Ltd. *Vs.* Commissioner of Wealth-tax (1970) (77-ITR 6), that it was not open to the Board to issue any instructions or directions to the Wealth Tax Officer or Commissioner in the exercise of his quasi-judicial functions. The Committee are concerned to find that despite the fact that the property had been valued at a much larger amount by the Valuation Officer, the Wealth-tax Officer appears to have been in a pathetic quandary, overruled as she was by the Board and prevented from performing her legitimate duties and completing the assessments according to her own judgement. The Board's instructions in regard to this case, on the basis of which the assessments were completed, also appear to have been issued on 18th January 1973 and 26th February 1973, after the Wealth-tax Act, 1957 had been amended, with effect from 1st January 1973, by the Taxation Laws (Amendment) Act, 1972, making the acceptance of the valuation by the Valuation Officer mandatory under Section 16A(6) of the Act. It is also significant in this context that the assessee trust had obtained opinions from its legal adviser only after it had approached the Central Board of Direct Taxes. All this naturally give rise to serious suspicion in the Committee's mind which needs to be allayed. The Committee are, therefore, firmly of the view that the manner in which the Central Board of Direct Taxes has interfered with the jurisdiction of the Wealth-tax Officer and the handling of the case by senior officials of the Board call for a principled and thorough probe of the circumstances in which the property in this case had been under-valued with a view to ensuring that malafides were involved. They accordingly recommend that such an investigation should be undertaken forthwith and its outcome intimated expeditiously.

[Sl. No. 19 (para 1.99) of Appendix VII to the 29th Report (Sixth Lok Sabha)]

Action Taken

The recommendations made by the honourable Committee are under consideration of the Ministry. Further reply may be awaited.

[Ministry of Finance (Department of Revenue) O.M. No. F. No. 241|6|77-A&PAC-I dated the 1st March, 1979]

Recommendation

The Committee note that apart from the heavy under-assessments in respect of "Mount Napean" reported in the Audit paragraph, four other properties ("Hamilton Villa", "Romana Villa", "Rughby House" and "Belmont") belonging to the same family and located near "Mount Napean" on Napean Sea Road Bombay, had been grossly under-valued by ignoring the very high land values comprised therein. While the value of the land on which "Mount Napean" is located was adopted by the Valuation Officer at Rs. 550 per square yard as on 31st March 1963, 31st March 1964 and 31st March 1965, at Rs. 350 per square yard as on 31st March 1966, 31st March 1967, 31st March 1968 and 31st March 1969 and at Rs. 390 per square yard as on 31st March 1970 and 31st March 1971 and in the valuation relating to "Belmont" as on 31st December 1969 and 31st December 1970, the value of the land was taken into account at Rs. 400 per squire yard, the value of the land comprised in the three other buildings had been accepted at Rs. 100 per square yard only in the assessments completed upto 1971-72. Further, though the area of the land with the property "Belmont" was 3068 square yards and the value of the land alone, computed at the rate of Rs. 400 per square yard would, therefore, work out to Rs. 12,27,000 the value adopted was only Rs. 6 lakhs. Unfortunately, the assessment records do not indicate any reason for the adoption of different values for the land comprised in these buildings. While the Committee can understand marginal difference in the land values they are, however, not prepared to believe that there could be such wide variations in respect of properties located at the same place. Moreover it is a matter of common knowledge that prices of land have over the years increased manifold. The Committee understand that if the value of the land adopted by the Valuation Officer in respect of "Mount Napean" were also to be adopted in respect of the other three properties ("Hamilton Villa", "Romana Villa" and "Rughby House"), the under-valuation of the land comprised in these three properties would amount to Rs. 25.70 lakhs for the assessment years 1963-64 to 1971-72. They have also been informed that the valuation of these three properties has also been referred to the District Valuation Officer on 22nd September, 1975 and that the concerned Wealth-tax Officer has been requested to look into the question of under-valuation. The Committee desire that

while apprising them of the further developments in this regard, the Department should review carefully the assessments relating to these three properties as well as "Belmont" and reopen them, wherever found necessary, so as to recover the tax correctly leviable. The circumstances in which different values were accepted by the Department in respect of these properties should also be gone into in detail, with a view to ensuring that no malafides were involved. The Committee would await a detailed report in this regard.

[Sl. No. 21 (Para 1.101) of Appendix VII to the 29th Report of the Public Accounts Committee (1977-78) (6th Lok Sabha).]

Action Taken by the Government

The requisite information is being gathered from the field officers. Further reply may be awaited.

[Ministry of Finance (Department of Revenue) O.M. No. F. No. 241/6/77-A& P.A.C.-I dated March, 1979]

NEW DELHI;
April 2, 1979.
Chaitra 12, 1901 (S).

P. V. NARASIMHA RAO
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions/Recommendations

Sl. No.	Para No. of the Report	Ministry Concerned	Conclusions/Recommendations
1	2	3	4
1	1.5	Finance (Deptt. of Revenue)	The Committee regret that though their report was presented to Parliament on 19 December, 1977, the revised statement of the case for reference to the Attorney General of India, drawn up in the light of findings and observations of the Committee, could be sent to the Ministry of Law only on 22 February, 1979 i.e. after a lapse of about 14 months. As the delay in such cases is not desirable and a substantial revenue realisation is at stake, the Committee would like the Ministry of Law to finalise the statement for reference to the Attorney General expeditiously. The Committee trust that the Department of Revenue will also take prompt action in accordance with the advice of the Attorney General in the matter as soon as it is received.
2	1.6	—do—	In the course of the examination of the Audit paragraph, the Committee were given to understand that the Commissioner of Income-tax, Bombay had been requested by the Central Board of Direct Taxes in March 1977 to take protective measures (cf. Paragraph 1.97). The Committee would like to be assured that the Com-

1	2	3	4
			missioner of Income-tax has in fact taken protective measures so that in case an upward revision of the assessement is made in accordance with the advice of the Attorney General, additional tax could be realised.
3	1.9	Ministry of Finance (Deptt. Revenue)	The Committee regret that the Department of Revenue have still "under consideration" the recommendation of the Committee desiring "a principled and thorough probe of the circumstances under which property in this case (Mount Napean) had been undervalued with a view to ensuring that no mala-fides were involved." The Committee would like the Ministry to take suitable action in pursuance of this recommendation and intimate the final outcome of the investigation to them expeditiously.
4	1.12	—do—	The Committee are surprised that even after a lapse of over 14 months after the presentation of their report Government have to report to the Committee that the requisite information is being gathered from the field officers in respect of four other properties (Halmilton Villa, Romana Villa, Rughby House and Belmont) belonging to the same Dubash family and located near "Mount Napean" on Napean-Sea Road, Bombay. They feel that the Department of Revenue have not taken the recommendation of the Committee seriously and have avoided taking action thereon for so long. The Committee would like concrete action to be taken on their recommendation and reported to them without any furher delay.

GMGIPMRND—LS II—77LS—5-5:79—1200.