

INCOME ESCAPING ASSESSMENT

MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

**PUBLIC ACCOUNTS
COMMITTEE
1992-93**

TENTH LOK SABHA



सभा संघ

LOK SABHA SECRETARIAT
NEW DELHI

FORTY-FIRST REPORT PUBLIC ACCOUNTS COMMITTEE (1992-93)

(TENTH LOK SABHA)

INCOME ESCAPING ASSESSMENT

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action taken on 136th Report of Public Accounts Committee
(8th Lok Sabha)]



सत्यमेव जयते

*Presented in Lok Sabha on 4.3.1993
Laid in Rajya Sabha on 4.3.1993*

LOK SABHA SECRETARIAT
NEW DELHI

February, 1993/Magha, 1914 (Saka)

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THE COMMITTEE ON PUBLIC ACCOUNTS
(1992-93)

CHAIRMAN

Shri Atal Bihari Vajpayee

MEMBERS

Lok Sabha

2. Shri Girdharj Lal Bhargava
3. Shri Nirmal Kanti Chatterjee
4. Shri Z. M. Kahandole
5. Shri Vilas Muttemwar
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12. Shri N. Sundararaj
- *13. Shri K. V. Thangka Balu
14. Kumari Uma Bharati
15. Prof. (Dr.) Sripal Singh Yadav

Rajya Sabha

- £16. Dr. Abrar Ahmed
17. Shri R. K. Dhawan
18. Shri J. P. Javali
19. Shri Murasoli Maran
20. Shri Viren J. Shah
21. Shri Ish Dutt Yadav
22. Shri Ram Naresh Yadav

SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Smt. Ganga Murthy — *Deputy Secretary*
3. Shri K.C. Shekhar — *Under Secretary*

* Elected w.e.f. 23 July, 1992 vice Shrimati Krishna Sahi ceased to be a member of the Committee on her appointment as a Minister.

£ Ceased to be member of the Committee consequent upon their appointment as Ministers w.e.f. 18 January, 1993.

§ Ceased to be member of the Committee consequent upon his appointment as Minister w.e.f. 19 January, 1993.

INTRODUCTION

1, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Forty-first Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 136th Report (8th Lok Sabha) on 'Income escaping assessment'.

2. In their original Report, the Committee had observed that the absence of definition of the expression 'industrial undertaking' in the Income Tax Act had given rise to doubts as to its real connotation in the context of Section 10(15)(iv)(c) and the slightest misinterpretation thereof might lead to loss of considerable amount of revenue to the exchequer. The Committee had strongly favoured incorporation of an appropriate definition of the term 'industrial undertaking' in the relevant provisions of the Act. In this Report, the Committee have appreciated the incorporation of the definition of the term 'industrial undertaking' for the purposes of Section 10(15)(iv) of the Income Tax Act though belatedly. The Committee have also emphasised that the Ministry should undertake a review of the other provisions in the said Act containing the term 'industrial undertaking' and if the review reveals any lacunae in the applicability of the relevant provision, suitable legislative measures should be taken as early as possible in consultation with the Ministry of Law.

3. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 28th January, 1993. Minutes of the sitting form Part II of the Report.

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

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

NEW DELHI;
February 26, 1993
Magha 7, 1914 (Saka)

ATAL BIHARI VAJPAYEE
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 136th Report (8th Lok Sabha) on Paragraph 2.42 (i) of the Report of the Comptroller and Auditor General of India for the year 1985-86, Union Government (Civil), Revenue Receipts, Volume-II, Direct Taxes relating to Income escaping assessment.

1.2 The Committee's 136th Report (8th Lok Sabha) was presented to Lok Sabha on 29 April, 1988. It contained three recommendations/observations. Action Taken Notes on all these recommendations/observation have been received from the Ministry of Finance (Department of Revenue). These have been broadly categorised as follows:

(i) Recommendations and observations which have been accepted by Government:

Sl. No. 3

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

NIL

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

Sl. No. 1

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

Sl. No. 2

1.3 The Committee emphasize that final action taken on the recommendation contained in Paragraph 9 of the Report should be furnished to them expeditiously.

Definition of the term "Industrial Undertaking" in Income Tax Act, 1961

1.4 In para 8 of the 136th Report, the Committee had observed:

"There are several provisions* in the Income Tax Act, 1961 containing the term 'Industrial Undertaking' which is nowhere defined except for the purposes of Section 33B. The absence of definition of the expression in the Income Tax Act, 1961 has given

*Sections 32, 32A, 33B, 80HH, 80HHA, 80I, 80J and 280ZA.

rise to doubts as to its real connotation in the context of section 10 (15) (iv) (c). What had added to the confusion was the meaning given to the term in the Industries (Development and Regulation) Act, 1951 and classification of 'Shipping' in the Seventh Schedule to the Constitution of India where it appears under Entry 30—'Carriage of goods and passengers by rail, sea or air or by national waterways in mechanically propelled vessels' and not under Entry 52—'Industries'. The Ministry of Law and the Attorney General were also moved to find out appropriate meaning of the expression as appearing in the impugned section and they gave their opinions after scanning variety of judicial pronouncements and English dictionaries. Section 10 (15) (iv) (c) of the Income Tax Act, 1961 is one of the very important provisions of the Act and the slightest misinterpretation thereof may lead to loss of considerable amount of revenue to the exchequer especially because the foreign lenders are involved. The Committee feel that such a term should not be left undefined. The Committee therefore, strongly favour incorporation of an appropriate definition of the term 'Industrial Undertaking' in the relevant provisions of the Act so as to avoid its misuse or misinterpretation and consequent litigation."

1.5 In their Action Taken Note, the Ministry of Finance (Deptt. of Revenue) have stated:

"An explanation at the end of Section 10 (15) (iv) of the Income-Tax Act, has been inserted to define the term "Industrial Undertaking", through the Finance (No. 2) Act, 1991. The term "Industrial Undertaking" has been defined to mean any undertaking which is engaged in—

- (a) the manufacture or processing of goods;
- (b) the business of generation or distribution of electricity or any other form of power; or
- (c) mining; or
- (d) construction of ships; or
- (e) the operation of ships or aircrafts.

The definition of the said term has not been inserted in Section 2 of the Income-Tax Act regarding definitions common to the provisions of the Income tax Act as the said term has also been used in Section 80-IA of the Income tax Act. In the said section, it has been used in a context different from that of section 10 (15) (iv) as therein separate references have been made to the business of an industrial undertaking and the business of operation of a ship. The then Attorney General in his opinion dated 15.11.1989

also had opined that it would not be desirable to prescribe a common definition of the term "Industrial Undertaking" for the purposes of all the sections of the Income-tax Act etc. It was further stated by him that the definition would have to depend upon the scope of the relief sought to be granted and the object sought to be achieved."

1.6 Finding several provisions in the Income Tax Act, 1961 containing the term 'Industrial Undertaking' which was nowhere defined except for the purposes of Section 33B, the Public Accounts Committee had in their 136th Report (8th Lok Sabha) observed that the absence of definition of the expression in the Income Tax Act had given rise to doubts as to its real connotation in the context of Section 10(15)(iv)(c). Since this Section of the Income Tax Act is one of the very important provisions of the Act and the slightest misinterpretation thereof might lead to loss of considerable amount of revenue to the exchequer especially because the foreign lenders are involved, the Committee had felt that such a term should not be left undefined and they had, accordingly, strongly favoured incorporation of an appropriate definition of the term 'Industrial Undertaking' in the relevant provisions of the Act.

In their Action Taken Notes, the Ministry have stated that an explanation at the end of Section 10(15)(iv) of the Income Tax Act had been inserted to define the term 'Industrial Undertaking' through the Finance (No. 2) Act, 1991. However, the definition of the said term has not been inserted in Section 2 of the Income Tax Act relating to definitions common to the provisions of the Act as the said term has also been used in Section 80-IA of the Income Tax Act in a context different from that of Section 10(15)(iv). The Committee's attention has also been drawn to the then Attorney General's opinion expressed on 15.11.1989 that it would not be desirable to prescribe a common definition of the term 'Industrial Undertaking' for the purposes of all the sections of the Income Tax Act etc., and that the definition would have to depend upon the scope of the relief sought to be granted and the object sought to be achieved.

The Committee appreciate the incorporation of the definition of the term "Industrial Undertaking" for the purpose of Section 10(15)(iv) of the Income Tax Act though belatedly. They, however, feel that the Ministry should undertake a review of the other provisions in the said Act containing the term 'Industrial Undertaking' so as to find out whether the objective sought to be achieved by extending a particular relief has actually been achieved. If the review reveals any lacunae in the applicability of the relevant provision, suitable legislative measures should be taken as early as possible in consultation with the Ministry of Law. The Committee would also like the Ministry to take appropriate steps in future to ensure that such a term is invariably defined in tune with the objectives sought to be achieved in extending a particular relief while making a fresh provision in the Income Tax Act so that the chances of misuse and misinterpretation of the statute and consequent litigation may be avoided.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

In reply to a question, the Ministry of Finance (Department of Revenue) have stated that they have no information about the shipping concerns or other industrial undertakings who had claimed exemption earlier under Section 10 (15)(iv)(c) of the Income Tax Act 1961 as the approvals are given by the Department of Economic Affairs in the Ministry of Finance and the other concerned Ministries. However, subsequently, the Department of Revenue collected information from the Ministry of Shipping and Transport and furnished the same to the Committee. It is disquieting to note that the Ministry of Finance who are charged with the responsibility of administration of Income Tax Law are not aware of the cases of exemption having bearing on revenue. The Committee have also been informed that the opinion of the Attorney General of India is being sought for through the Ministry of Law regarding the propriety of the practice of giving the tax concession under Section 10 (15) (iv) (c) of the Income Tax Act 1961 by the administrative Ministries instead of the Ministry of Finance (Department of Revenue) who is responsible for the administration of Direct Tax Laws. The Committee are of the opinion that a procedure should be evolved under which the Central Board of Direct Taxes should invariably be involved before the sanction granting exemption from payment of Income Tax under Section 10(15) (iv) (c) *ibid* is accorded. This will facilitate uniformity and the Ministry of Finance will also be aware of financial implications of such exemptions. The Committee would like to be apprised of further developments in this regard in the light of advice of the Attorney General of India.

[Sl. No. 3, Para No. 10 of the 136th Report of the Public Accounts Committee (1987-88) (8th Lok Sabha)]

Action Taken

A reference was made to the Attorney General of India for his opinion on the following points:—

“The propriety of the practice of giving tax concessions under section 10(15)(iv)(c) of the Income-tax Act, 1961 by the administrative Ministries instead of the Ministry of Finance (Department of Revenue) which is responsible for the administration of Direct Tax Laws”.

2. The Attorney General of India has opined as under:

“It is highly desirable that the Ministry of Finance (Deptt. of Revenue) which is responsible for the administration of Direct Taxes should alone grant tax exemption and not other administrative ministries. The administrative ministries should put up the notes to the Finance Ministry and after both have discussed and coordinated the matter, the Finance Ministry should grant the exemption. This will be a very healthy practice to be followed”.

3. Earlier, it was decided with the approval of the then Finance Minister not to accept the recommendation of the PAC and the Action Taken Note on this para was sent accordingly. Subsequently the C & AG of India in their vetting comments *inter-alia* raised the question as to how far Government is bound by the Attorney General's opinion. The matter was referred to Ministry of Law and Justice who advised the Government to follow the opinion of the Attorney General of India. The Government has, therefore, accepted the recommendation of the PAC and the opinion of the Attorney General thereon. The exemption u/s 10 (15) (iv) (c) will now be granted by the Ministry of Finance (Department of Revenue).

4. This has been approved by the Finance Minister.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/1/88-A&PAC II,
File No. 463/5/86-FTD]

CHAPTER III

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

—NIL—

CHAPTER IV

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

Recommendation

There are several provisions* in the Income Tax Act, 1961 containing the term 'Industrial undertaking' which is nowhere defined except for the purposes of Section 33B. The absence of definition of the expression in the Income Tax Act, 1961 has given rise to doubts as to its real connotation in the context of section 10(15) (iv) (c). What had added to the confusion was the meaning given to the term in the Industries (Development and Regulation) Act, 1951 and classification of 'Shipping' in the Seventh Scheduled to the Constitution of India where it appears under Entry 30—'Carriage of goods and Passengers by rail, sea or air or by national waterways in mechanically propelled vessels' and not under Entry 52—'Industries'. The Ministry of Law and the Attorney General were also moved to find out appropriate meaning of the expression as appearing in the impugned section and they gave their opinions after scanning variety of judicial pronouncements and English dictionaries. Section 10(15) (iv) (c) of the Income Tax Act, 1961 is one of the very important provisions of the Act and the slightest misinterpretation thereof may lead to loss of considerable amount of revenue to the exchequer especially because the foreign lenders are involved. The Committee feel that such a term should not be left underdefined. The Committee, therefore, strongly favour incorporation of an appropriate definition of the term 'Industrial Undertaking' in the relevant provisions of the Act so as to avoid its misuse or misinterpretation and consequent litigation.

*Sections 32, 32A, 33B, 80HH, 80HHA, 80I, 80J and 280ZA

[Sl. No. 1, Para No. 8 of the 136th Report of the PAC (1987-88) (8th Lok Sabha)]

Action Taken

An Explanation at the end of section 10(15) (iv) of the Income-tax Act, has been inserted to define the term "industrial undertaking", through the Finance (No. 2) Act, 1991. The term "industrial undertaking" has been defined to mean any undertaking which is engaged in:

- (a) the manufacture or processing of goods; or
- (b) the business of generation or distribution of electricity or any other form of power; or
- (c) mining; or
- (d) construction of ships; or
- (e) the operation of ships or aircrafts.

The definition of the said term has not been inserted in section 2 of the Income-tax Act regarding definitions common to the provisions of the Income-tax Act as the said term has also been used in section 80-IA of the Income-tax Act. In the said section, it has been used in a context different from that of section 10(15) (iv) as therein, separate references have been made to the business of an industrial undertaking and the business of operation of a ship. The then Attorney General in his opinion dated 15.11.1989 also had opined that it would not be desirable to prescribe a common definition of the term "industrial undertaking" for the purposes of all the sections of the Income-tax Act etc. It was further stated by him that the definition would have to depend upon the scope of the relief sought to be granted and the object sought to be achieved.

[Ministry of Finance (Deptt. of Revenue) F.No. 241/1/81-A&PAC II
F.No. 154/8/88-TPL (Pt.)]

CHAPTER V

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

Recommendation

The Economic Administration Reforms Commission (1981-83), while dealing with the 'Problems relating to Legislative drafting'* did not find uniformity in definitions given, language used and terms appearing in the Direct tax laws. They also observed that even within the same statute the same term had different meanings for different purposes and different words were used in different sections, even though meant to convey the same sense. In view of the fact that a greater measure of uniformity would make the law more elegant and intelligible and less prone to distortions in interpretation and consequent litigation, the Commission recommended that a conscious effort should be made to impart greater uniformity to the definitions and procedures in the different direct tax laws. The aim should be to evolve a common code of definitions and procedures applicable to the administration of all direct taxes except where the special purpose of a particular Act or provision warranted a departure. The Commission therefore, considered it necessary to have uniformity in the language used in the various provisions in the different tax laws when the intention was the same.

The Committee hope that the Ministry of Finance (Deptt. of Revenue) would act promptly on the above recommendation of the Commission. They would like to be apprised accordingly.

*Vide EARC Report No. 24 (30.6.1983).

[Sl. No. 2, Para No. 9 of the 136th Report of the PAC (1987-88) (8th Lok Sabha)]

Action Taken

With a view to achieving simplification and consistency in Direct Tax Laws, the task of drafting a single direct taxes code was entrusted to an expert. He has completed the task of drafting the single direct taxes code and has submitted his report. This report is being processed by the Central Board of Direct Taxes in consultation with the Ministry of Law. The Ministry of Law has raised number of queries on the draft submitted. This will have to be discussed by the expert with the Law Ministry.

In the meantime, the Finance Act, 1992 has introduced for reaching changes in direct tax laws especially in the fields of taxation of firms, capital gains, presumptive assessment and wealth tax. These along with other decisions in respect of recommendations of Tax Reforms Committee

(whose final report is expected shortly) will also have to be incorporated in the draft code. Hence, the finalisation of uniform tax code will take some more time.

[Ministry of Finance (Deptt. of Revenue) F.No. 154/8/88-TPL (Pt.)
F.No. 241/1/88-A&PAC II]

NEW DELHI;
February 26, 1993

Magha 7, 1914 (Saka)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

APPENDIX
Recommendations and Observations

Sl. No.	Para No.	Ministry / Deptt.	Recommendation / Observation
1.	1.3	Finance	The Committe emphasize that final action taken on (Renenuue)the recommendation contained in Paragraph 9 of the Report should be furnished to them expeditiously.
2.	1.6	-do-	Finding several provisions in the Income Tax Act, 1961 containing the term 'Industrial Undertaking' which was nowhere defined except for the purposes of Section 33B, the Public Accounts Committee had in their 136th Report (8th Lok Sabha) observed that the absence of definition of the expression in the Income Tax Act had given rise to doubts as to its real connotation in the context of Section 10(15)(iv)(c). Since this Section of the Income Tax Act is one of the very important provisions of the Act and the slightest misinterpretation thereof might lead to loss of considerable amount of revenue to the exchequer especially because the foreign lenders are involved, the Committee had felt that such a term should not be left undefined and they had, accordingly, strongly favoured incorporation of an appropriate definition of the term 'Industrial Undertaking' in the relevant provisions of the Act.

In their Action Taken Notes, the Ministry have stated that an explanation at the end of Section 10(15)(iv) of the Income Tax Act had been inserted to define the term 'Industrial Undertaking' through the Finance (No. 2) Act, 1991. However, the definition of the said term has not been inserted in Section 2 of the Income Tax Act relating to definitions common to the provisions of the Act as the said term has also been used in Section 80-IA of the Income Tax Act in a context different from that of Section10(15)(iv).The Committee's attention has

Sl. No.	Para No.	Ministry / Deptt.	Recommendation / Observation
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also been drawn to the then Attorney General's opinion expressed on 15-11-1989 that it would not be desirable to prescribe a common definition of the term 'Industrial Undertaking' for the purposes of all the sections of the Income Tax Act, etc., and that the definition would have to depend upon the scope of the relief sought to be granted and the object sought to be achieved.

The Committee appreciate the incorporation of the definition of the term "Industrial Undertaking" for the purpose of Section 10(15)(iv) of the Income Tax Act though belatedly. They however, feel that the Ministry should undertake a review of the other provisions in the said Act containing the term 'Industrial Undertaking' so as to find out whether the objective sought to be achieved by extending a particular relief has actually been achieved. If the review reveals any lacunae in the applicability of the relevant provisions, suitable legislative measures should be taken as early as possible in consultation with the Ministry of Law. The Committee would also like the Ministry to take appropriate steps in future to ensure that such a term is invariably defined in tune with the objectives sought to be achieved in extending a particular relief while making a fresh provision in the Income Tax Act so that the chances of misuse and misinterpretation of the statute and consequent litigation may be avoided.

PART II

MINUTES OF THE 20TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 28 JANUARY, 1993

The Committee sat from 1100 hrs. to 1200 hrs. on 28 January,
1993. PRESENT

CHAIRMAN

Shri Atal Bihari Vajpayee

MEMBERS

LOK SABHA

2. Shri Girdhari Lal Bhargava
3. Shri Pratap Singh

Rajya Sabha

4. Shri R.K. Dhawan
5. Shri J.P. Javali
6. Shri Viren J. Shah
7. Shri Ish Dutt Yadav

SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Smt. Ganga Murthy — *Deputy Secretary*
3. Shri K.C. Shekhar — *Under Secretary*

REPRESENTATIVES OF AUDIT

1. Shri P.K. Bandopandhyay — Pr. Director (Indirect Taxes)
2. Shri A.K. Banerjee — Pr. Director (Reports)
3. Shri T.N. Thakur — Pr. Director
4. Shri Kulvinder Singh — Director (DT)
5. Shri Aditya Prasad — Director (Indirect Taxes)

2. The Committee considered the following draft Action Taken Reports:

(i) Income Escaping Assessment [Action taken on 136th Report
of the PAC (8th Lok Sabha)]

(ii) xxx xxx xxx

(iii) xxx xxx xxx

3. xxx xxx xxx

The Committee adopted the draft Reports at Serial Nos. (i) above without
any amendment.

4. The Committee authorised the Chairman to finalise the draft Action
Taken Reports in the light of the verbal and consequential changes arising
out of factual verification by Audit and present the same to Parliament.

5. xxx xxx xxx

The Committee then adjourned