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JOINT/SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY - 1926

The Indian Income-Tax (Amendment) Bill

3624 (4)
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Act & Bills section

FB-60, PLB

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1926.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Indian Naturalization (Amendment) Bill.	28.1.26.	
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3.	The Indian Registration (Amendment) Bill by Dewan Bahadur T. Rangachariar.	9.2.26.	
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5.	The Legal Practitioners (Amendment) Bill.	9.2.26.	
6.	The Hindu Religious and Charitable Trusts Bill by Dr. Hari Singh Gour.	10.2.26.	
7.	The Coparceners Liability Bill. by Dr. Hari Singh Gour.	19.2.26.	<i>Copy not available.</i>
8.	The Indian Tariff (Amendment) Bill.	23.2.26.	
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10.	The Indian Factories (Amendment) Bill.	8.3.26.	
11.	The Indian Income-tax (Amendment) Bill.	8.3.26.	
12.	The Indian Bar Councils Bill.	18.8.26.	

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes was referred, have considered the Bill, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have discussed very fully the provisions of clauses 2 and 5 of the Bill and have decided not to make any material alteration therein. Although it must be admitted that some increase will be involved in the work which principal officers of companies have to perform in aid of the income-tax authorities, we do not think that this consideration or the argument that in some cases the approximate Indian income of a non-resident person may become known through the communication to principal officers of companies of the appropriate rate of super-tax should weigh against what appears to be the only possible method of preventing evasion of super-tax by non-residents.

The other alterations we have made in the Bill are in regard to the provision for an appeal. In the first place, we have suggested that an appeal should lie not in every case in which a substantial question of law is involved, which would be a large majority of the cases in which references are made under section 66 of the Act, but only in cases which in the opinion of the

High Court are fit cases for appeal. The actual words of our amendment follow those of clause (c) of section 109 of the Code of Civil Procedure, 1908, which clause refers to cases in which an appeal ought to lie irrespective of the monetary value of the subject-matter and the proper construction of which is well settled by numerous High Court decisions. Secondly, we have by a majority decided to provide that a certificate should, in the case of an appeal by the Government, only be given on the condition that, if the respondent does not appear and costs are awarded to the Government, the costs shall not be recovered from the respondent. A minority of the Select Committee, including the official members, are of opinion that the insertion in an Act of the Legislature of such a provision is inadvisable without much greater consideration than can be given to it in connection with the present Bill. Finally, we have proposed the addition of new sub-sections (3) and (4) to the new section 66A to make it clear that the procedure laid down in the Code of Civil Procedure, 1908, as regards appeals to His Majesty in Council shall apply to the appeals provided by the Bill.

3. The Bill was published in the Gazette of India, dated the 6th February 1926.

4. We think that the Bill has not been so altered as to require republication, and we recommend that it be passed as now amended.

BASIL P. BLACKETT.

H. TONKINSON.

T. RANGACHARIAR.

M. RAMACHANDRA RAO.

K. C. NEOGY.

R. K. SHANMUKHAM CHETTY.

HUGH G. COCKE.

DEVAKI PRASAD SINHA.*

W. S. J. WILLSON.*

The 6th March, 1926.

* Subject to note of dissent.

I entirely disapprove of the proposed sub-sections (2) and (3) of section 57 in clause 5 of the Bill in present form and disagree with para. 2 of the Select Committee's Report.

The amount of work and responsibility it is sought to cast upon principal Officers of Companies goes far beyond what ought to be asked of or imposed upon them unless they are specially paid for it.

I do not agree that this Bill "appears to be the only possible method of preventing evasion of super-tax by non-residents." The word "evasion" itself is probably incorrect, but no other method was suggested to us for consideration at all. We had merely the *ipse dixit* of Government that they had considered all other methods.

I consider that these clauses are largely unworkable and they cannot achieve the purpose of bringing within the grasp of the super-tax law such persons as are admittedly outside of it. For those who may wish to remain so, avoidance is easy; shareholdings can be split up. Debentures are commonly "payable to bearer," with interest coupons attached and would not come under the provisions of this Bill, nor would Deposits at Mills nor Loans.

I consider that these clauses where they operate will cause endless unnecessary annoyance and worry to the honest super-tax paying non-resident, who (with certain residents also) will not be spared from the vagaries of principal Officers of different Companies applying different interpretations of clause 5, sub-section (3), in regard to the same shareholder's residence or non-residence.

The clauses either will not operate or only with considerable difficulty and inefficiency, especially in cases where shareholdings stand in the names of nominees, Solicitors or Bankers, etc. A Bank, or non-resident Trustee, might draw a single dividend warrant in respect of shareholdings which would apparently justify a deduction of super-tax at source, yet if the shares belonged to several different Trusts there might be no liability at all to super-tax. The trouble of explanations, proofs and adjustments would be endless, and a principal officer should not be asked to deal with such cases.

The practice of appointing Bankers as Trustees is growing and there are many other reasons, entirely unconnected with taxes, which render it desirable and necessary for a shareholder to remain anonymous for a time.

The difficulties of getting refunds of overdeducted taxes are already a byword and would be worse on behalf of a non-resident.

The assessment and payment of Income-tax and Super-tax should remain a private matter between the State and the individual alone. Our law has never permitted disclosure on the part of the State. This clause 5(2) violates that principle by authorising the Income-tax Officer to notify an unlimited

number of Indian public companies upon what grade of super-tax the individual stands. This discloses the approximate amount of his Indian income, which information would be conveyed to all through whose hands the dividend warrant passes. So far as I know no such practice prevails in any other country.

After experience has been gained of the working of the proposed section 19A in clause 2 of the Bill it will be possible to form some opinion whether the amount at stake is considerable or not, at present I am informed no idea exists.

For these and other reasons I recommend that clause 5, section 2, and sub-sections (2) and (3) be omitted.

W. S. J. WILLSON.

On one point I do not agree with the majority of members of the Select Committee. I object to the insertion of the proviso to sub-clause (2) of clause 8 of the Bill (new section 66-A). I do not see any justification for discriminating between Government and a private person appearing as appellant before their Lordships of the Privy Council. Ordinarily no court whether it is the Privy Council or a High Court allows cost to the appellant where the respondent does not appear. It is only in exceptional cases where the appellant has been subjected to unjustifiable harassment that cost is decreed to the appellant, in spite of the non-appearance of the respondent. In such cases where the State, acting as appellant, has suffered botheration and incurred heavy expense, there is no reason why cost should not be decreed merely because at the last stage the respondent finds it tactical and convenient not to appear. Money that is spent by the State is contributed by all citizens—rich and poor. As such, it should be the anxious care of every citizen to see that this money is not uselessly spent. It is in the nature of a public trust—more valuable than the property of the private individual. This proviso introduces an altogether novel principle of jurisprudence. So far no distinction is made between a private person and the State by the courts of law. It would be very dangerous to admit of any such distinction.

Besides, I am doubtful how far the proviso would be workable at all. If cost is awarded by the Privy Council, how can it be controlled by the High Court being "satisfied that, if the respondent does not appear at the hearing of the appeal", the appellant (*i.e.*, the Secretary of State) will not realise costs? This matter should be left entirely to the good sense of the Government, and I have no doubt that in fit cases, the Government would be willing to forego costs.

DEVAKI PRASAD SINHA.

The 5th March, 1926.

[Words printed in italics indicate the amendments suggested by the Select Committee.]

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BILL

Further to amend the Indian Income-tax Act, 1922, for certain purposes.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes XI of 1922. hereinafter appearing ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Income-tax (Amendment) Act, 1926.
Short title and commencement.

(2) It shall come into force on the 1st day of April, 1926.

2. After section 19 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), XI of 1922. the following section shall be inserted, namely :—

“ 19A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and, so far as they are known to such principal officer, the addresses of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.”

3. In clause (c) of section 51 of the said Act, after the words “ mentioned in ” the word and figures “ section 19A ” shall be inserted.
Amendment of section 51, Act XI of 1922.

4. In section 52 of the said Act, after the words “ mentioned in ” the words and figures “ section 19A or ” shall be inserted.
Amendment of section 52, Act XI of 1922.

5. (1) In sub-section (1) of section 57 of the said Act, for the word “ assessee ” the word “ person ” shall be substituted.
Amendment of section 57, Act XI of 1922.

(2) For sub-section (2) of the same section the following sub-sections shall be substituted, namely :—

“ (2) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in

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writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(3) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (2) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder."

(3) Sub-section (3) of the same section shall be re-numbered as sub-section (4), and in that sub-section for the words "an assessee" the words "another person" and for the word "assessee", where it occurs for the second time, the word "person" shall be substituted.

6. To sub-section (1) of section 58 of Amendment of section 58, Act XI of 1922. the said Act the following proviso shall be added, namely:—

"Provided that sub-sections (4) to (9) of section 18 shall apply, so far as may be, to the assessment, collection and recovery of super-tax under sub-section (2) or sub-section (3) of section 57."

7. To section 66 of the said Act the following Amendment of section 66, Act XI of 1922. sub-section shall be added, namely:—

"(8) For the purposes of this section "the High Court" means—

- (a) in relation to the North-West Frontier Province and British Baluchistan, the High Court of Judicature at Lahore;
- (b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and
- (c) in relation to the province of Coorg, the High Court of Judicature at Madras."

8. After section 66 of the said Act the following section shall be inserted, Insertion of new section 66A in Act XI of 1922. namely:—

“66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, *so far as may be*, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force. *V of 1908.*

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council:

Provided that no such certificate shall be granted on an application on behalf of the Secretary of State for India in Council, unless the High Court is satisfied that, if the respondent does not appear at the hearing of the appeal and the judgment of the High Court is varied or reversed, the right to recover any costs which may be awarded by the order of His Majesty in Council to the appellant will not be exercised.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, *so far as may be*, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court: *V of 1908.*

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66:

Provided, further, that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's

pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee."

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill further to amend the Indian
Income-tax Act, 1922, for certain
purposes.

(With Bill as amended.)
