PUBLIC ACCOUNTS COMMITTEE

TEWNTY- FIFTH REPORT
(2001-2002)

(THIRTEENTH LOK SABHA)

CASE OF M/S PILCOM

Ministry of Finance
(Department of Revenue)

Presented to Lok Sabha on: 04 Dec 2001
Laid in Rajya Sabha on: 04 Dec 2001

LOK SABHA SECRETARIAT
NEW DELHI
December, 2001 / Agrahayana, 1923 (Saka)

CONTENTS

COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(2001 - 2002)

Shri Narayan Datt Tiwari - Chairman

LOK SABHA

2. Shri Adhi Sankar
3. Shri M.O.H. Farooq
4. *VACANT
5. Dr. Madan Prasad Jaiswal
6. Shri M.V.V.S. Murthi
7. Shri Rupchand Pal
8. Shri Prakash Paranjpe
9. Shri Chandresh Patel
10. *VACANT

11. Shri N. Janardhana Reddy
12. Shri C. Sreenivaasan
13. Kunwar Akhilesh Singh
14. Shri Chhattrapal Singh
15. Shri Prabhunath Singh

RAJYA SABHA

16. Shri S.R. Bommai
17. Shri Anantray Devshanker Dave
18. Shri K. Rahman Khan
19. Dr. Y. Radhakrishna Murty
20. Shri Onward L. Nongtdu
21. Shri Satish Pradhan
22. Prof. Ram Gopal Yadav

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2. Shri K.V. Rao - Joint Secretary
3. Shri Devender Singh - Deputy Secretary
4. Shri R.C. Kakkar - Under Secretary
5. Shri B.S. Dahiya - Under Secretary

INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to present the Report on their behalf, do present this Twenty-Fifth Report on Paragraph 3.4 of the Report of C&AG of India for the year ended 31 March 1996, (No. 12 of 1997), Union Government (Revenue Receipt – Direct Taxes) relating to "Case of M/s PILCOM".

2. The Report of the C&AG for the year ended 31 March, 1996 (No. 12 of 1997), Union Government (Revenue Receipt – Direct Taxes) was laid on the Table of the House on 19 March, 1997.

3. The Committee took the evidence of the representatives of the Ministry of External Affairs on the subject at their sitting held on 1 December, 1998. The Committee considered and finalised this Report at their sitting held on 28 November, 2001. (*) Minutes of the sitting form Part II of the Report.

4. For facility of reference and convenience, the observations and 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 Appendix* to the Report.

5. The Committee would like to express their thanks to the Public Accounts Committee (1998-99) for recording oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on Paragraph 3.4 and obtaining information for this Report.

6. The Committee would like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

7. 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.

NARAYAN DATT TIWARI,
Chairman,
Public Accounts Committee

NEW DELHI;
28 November, 2001
7 Agrahayana 1923 (Saka)

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* Shri Vijay Goel and Shri Annasaheb M.K. Patil ceased to be member w.e.f. 01.09.2001 on their becoming Ministers.

REPORT

INTRODUCTORY

M/s PILCOM (Pakistan – India- Lanka Joint Management Committee) was a body formed by the representatives cricket boards of India, Pakistan and Sri Lanka to jointly stage World Cup Cricket during February- March 1996. These countries, as joint bidders had secured, from the International Cricket Council (ICC), the right to stage World Cup cric India, Pakistan and Sri Lanka. The bid amount was five million pound sterling.

2. The objects of PILCOM included formulation of rules for the conduct of the matches, appointment of umpi individual matches, disposal of representations made by the players, representatives etc. and the regulation of their comn aspects. For this purpose, it was authorized to receive money by way of :

a) corporate sponsorship of the event ;
b) international T.V rights for telecasting the matches; and
c) merchandising rights from companies for advertising their products and vending them in the venues for the matches.

Accordingly, M/s PILCOM had received money from the following sources:

I. 8 million pound sterling from ITC (Indian Tobacco Ltd.) for the sponsorship of the event;

II. US$ 10 million from World Tel for exclusive rights to telecast the event;

III. US$ 3,69,000 from Coca Cola for the right to vend the drink at various centres;

IV. 0.55 million pound sterling from National Grid Power for meeting the expenses on neutral umpires;

V. Rs.1 crore from Air India for designating them as "International Travel Agents" of the Tournament;

VI. US$ 520,000 from VISA for rights given to them for "Financial Supplier" status;

VII. US$ 288,000 from Half Moon SRL for laser and animation work for the opening ceremony; and

VIII. Certain moneys were to be received from Wimpy for declaring them as "official caterer" (0.5% of the turnover).

The approximate aggregate amount of receipts I to VII above in Indian rupees was 84.35 crore. Information of any receipts of M/s PILCOM was not available with the Central Board of Direct Taxes (CBDT).

3. Another agency called INDCOM was also formed by the Board for Control of Cricket in India (BCCI) to condu Indian leg of the tournament comprising 17 matches and to receive guarantee money from state cricket associations for c of matches and certain other receipts similar to those received by M/s. PILCOM for selling merchandising rights. The s income in respect of M/s INDCOM has not been made available by the department. Details of receipts of INDCOM we verifiable in the absence of accounts except the following two receipts by INDCOM: (I) Rs. 15 Lakh from Fujifilm (ii) lakh from Perfetti India Ltd. for merchandising rights of chewing gum/bubble gum.

4. The expenditure on this account incurred by M/s PILCOM included guarantee money paid to both participating an participating member-countries of the International Cricket Conference (ICC), international travel expenses, payments m umpires, players for various awards and money paid to contractors etc. The surplus generated by M/s PILCOM was agr be shared equally among the Cricket boards of India and Pakistan. The Sri Lanka Board was to be paid a compensati having lost two of the four matches allotted to that country.

II. AUDIT REVIEW

5. On the basis of information received by Audit in June, 1996 that the Central Board of Direct Taxes had inte with/obstructed the assessment proceedings initiated against M/s. PILCOM by the Income Tax authorities at Calcutta, the examined all relevant files of the Board as well as of the departmental authorities at Calcutta. The observations of the have been given in paragraph 3.4 of the Report of C&AG of India for the year ended March, 1996, No.12 of 1997 wh reproduced as Annexure to this Report.

III. RENDITION OF ACCOUNTS

6. According to the Audit Paragraph the entire M/s PILCOM account and the INDCOM account reflecting the total r received/payments made and the surpluses gained should be rendered by M/s PILCOM to the Income Tax Department as legal entity formed in India.

7. On being asked by the Committee whether M/s PILCOM and INDCOM have rendered their accounts to the Income Tax Department reflecting the total money received/payment made and the surpluses earned by them, the Ministry of Finance have stated that despite issue of notice to furnish accounts neither M/s PILCOM nor INDCOM have furnished complete account of income and expenses as on date.

IV. INCOME TAX PROCEEDINGS INITIATED AND ABORTED

A. Proceedings Initiated

8. According to the Audit Paragraph, a summon was issued under section 131 of the Income Tax Act on 31 January by DC Range 21, Calcutta making enquiries on the status of M/s PILCOM, amount received from the sponsors, M/s. IT and others, deduction of TDS etc. The case was fixed for hearing on 2 February, 1996 wherein the Convener/Secretary o PILCOM was asked to produce books of account and bank accounts. M/s PILCOM responded to the notice on 8 Feb 1996 by giving details of bank account, composition of M/s PILCOM etc. However, in response to the survey ordered b Range-21, Calcutta on 31 January 1996, the Convener/Secretary of M/s PILCOM informed the department that all boo accounts of M/s PILCOM, are maintained by the treasurer of M/s PILCOM who belonged to the Pakistan Cricket Board. has further stated that he refused to produce any document and also did not sign the survey proceedings. Audit paragrap reveals that the income tax authorities had issued summons under section 131 (date not specified) to the convener o PILCOM to furnish the details of Tax Deductible at Source (TDS) by M/s PILCOM and, on non-compliance to this n proceedings for default in payment of TDS under Section 201(1)/201(1A) of the Income Tax Act were initiated.

9. The Committee wanted to know the exact details furnished by M/s PILCOM to Income Tax Department and the taken by the Department thereon and, whether any return of income has been filed by them. The Ministry of Finance in reply stated:

> *"PILCOM filed the minutes and the resolution of the meetings for its formation and the name and addresses of bank accounts. It claimed that PILCOM could not be treated as an Association of Persons (AOP). The Depa have taken a consistent stand that PILCOM is legally an AOP liable to tax in India. However, the ITAT, Calcutt Order dated 30.3.98 in ITA No.1144 (Calcutta) of 1997 for Assessment Year1995-96 has held that PILCOM could considered as an AOP. The Department has filed a reference before the High Court u/s 256 of the I.T. Act. Fu notice u/s 142(1) of the I.T. Act was issued on 18.02.1997 to M/s. PILCOM for filing its return of income and a accounts. Return has been filed on 7.1.99 declaring income as "NIL" and status as 'NIL'. Assessment has not ye completed as per the directions of High Court. "*

B. PILCOM's representation and CBDT's directive

10. The Audit Paragraph has revealed that proceedings were also initiated on M/s PILCOM under Section 175 of In Tax Act (Assessment of person likely to transfer property to avoid tax) by issue of a notice dated 5 February, 1996 Assistant Commissioner, Circle-3(1) to Shri Jagmohan Dalmiya, Convener/Secretary, M/s PILCOM, under which M/s PIL was required to file its return of income within a week.

11. Audit scrutiny of CBDT's files further revealed that the Board for Control of Cricket in India (BCCI) on 2 February had represented to the Chairman, CBDT on the issue of Tax deductible at source (TDS) on payments to various Cricket B of foreign countries. On the same date, the Convener/Secretary of M/s PILCOM had also represented to the Chairman, C on the enquiries/proceedings initiated by the Calcutta Income tax authorities on M/s PILCOM. Audit has further observe subsequent to the issue of notice to Convener/Secretary M/s. PILCOM, a meeting took place between the Chairman, CBD Board members with the representatives of M/s. PILCOM/BCCI, wherein M/s PILCOM/BCCI had represented tha PILCOM was only a committee meant jointly to stage the World Cup and it consisted of representatives of Cricket C Boards of India, Pakistan and Sri Lanka. They also stated that whatever may be the status of M/s PILCOM (i.e. Associat Persons or otherwise) regarding the taxability/exemption, there was no question of M/s PILCOM purchasing or s transferring, disposing of or otherwise parting with any of its assets with a view to avoiding payment of tax liability and h was totally improper for Income Tax authorities at Calcutta to issue notice u/s 175 asking for filing of return "in or complete an accelerated assessment." Audit has observed that it was agreed by M/s PILCOM that deduction of tax at s will be made by them in respect of payments to contractors and others for work done for staging the tournament and tha promised to furnish further details to the Board regarding exemption of M/s PILCOM from the levy of income tax an exemption from TDS in respect of payment of guarantee fee to the ICC.

12. Audit has pointed out that after due consideration of the arguments of M/s PILCOM, the Central Board of Direct issued a directive on 20 February 1996 under section 119 of the Income Tax Act, 1961 instructing the income tax auth (CIT – IV, Calcutta) in Calcutta to withdraw the notice served upon M/s PILCOM by AC Circle 3 (1) dated 5 February under section 175 of the aforesaid Act. The aforesaid directive further sought to prevent initiation of coercive measures a M/s PILCOM such as attaching its bank account pending detailed instructions from the Board. This direction was con through a fax message signed by the PS to the then Member (Legal) CBDT.

13. On being asked by the Committee whether it was proper to send the message signed by P.S. to the Memb Secretary (Revenue) stated during evidence:

"Sir, I must be candid that it is perhaps not proper."

14. Audit has observed that the afore-mentioned directive issued by the CBDT amounted to gross interference assessment proceedings and that Section 119, under which the directive was issued, did not permit or envisage any ord instructions from the Board to the assessment authority to do assessment of a particular case "in a particular manner" ar the Board had thus exceeded its powers under the Income Tax Act. Further, Audit has pointed out that had the Boar interfered with the assessment proceedings, M/s PILCOM would have discharged their liability under Section 194 C Income Tax Act regarding tax deductible at source on payments made to contractors etc.

15. On being queried by the Committee regarding the legal basis of and the rationale behind the direction issued CBDT, the Ministry of Finance (Department of Revenue) in their reply stated that they had issued a general instruction (N dated 22 November, 1974) during 1974 after consultation with Ministry of Law clarifying the powers of the Board in the c of Section 119. The Ministry have cited and relied upon the aforesaid general instructions as the basis of issuing the dir under Section 119. The instruction no. 796 dated 22 November, 1974 clarifying the scope of Board's power under Sectio of the Income Tax Act has been reproduced by the Ministry as under:

> "The Board have recently examined the question regarding the scope of section 119 in consultation with the Minis Law, with particular reference to the power of the Board to give advance rulings/directions/instructions in indi cases. Section 119 prohibits the Board from issuing orders, instructions or directions so as to require any incor authority to make a particular assessment or to dispose of a particular case in a particular manner. In view there Board has decided that it will not issue any advance rulings/directions/instructions in individual cases to any incor authority or to any querist. However, the Board would continue to oversee administratively the functioning of the formations and give advice in individual cases if the facts of the case so justify. Such an advice may also be gi respect of references from the Commissioners only in respect of any difficult proposition of law or fact. Such an will not be in the nature of directions or instructions and it would be for the authority concerned to come to a decis the merits of the case in the light of its individual judgment. As a corollary, it would be necessary to ensure th income-tax authorities refrain from quoting or referring to the advice or guidance given by the Board in any passed by them. Of course, ;there would be no objection to their adopting the reasonings contained in the adv guidance given by the Board. "

16. The department have further expressed the view that under section 119, the Board is precluded only from giving decision about how an assessment is to be completed and that it did not prevent the Board from intervening in those cases during the course of assessment proceedings, the assesees feel aggrieved and approach the Board for relief. The depar thus, asserted that the directive was only an interim measure as the Board had accepted the plea of M/s PILCOM that they not in a position to file an accurate return under Section 175 as they could not make an estimate of the amount of gate r they may collect and expenses that may be incurred. The department felt that It was premature to issue a notice to M/s PIL under Section 175, since it was impossible to assess as to how much income would flow in at that stage and the surplus or accruing from the tournament would be assessable in Assessment Year 1996-97 only. The department have also averred th World Cup Cricket would have been put in jeopardy if the Board had not intervened under Section 119.

17. Further, in response to the Committee's query on the scope and amplitude of the Board's powers to issue directions Section 119 of the Income Tax Act, the department have enumerated the scope of Board's powers under Section 119 Income Tax Act as re-produced hereunder :

> *"The power to issue instructions to Subordinate authorities under Section 119 of the Income Tax Act is of two kind under sub-section (1) general powers to issue orders, instructions and directions is given to the Board for the p administration of the Act. Orders and instructions issued under this sub-section are binding on the subor authorities. However, under this sub-section, the Board is precluded from issuing any directions requiring any i tax authority to make a particular assessment or to dispose a particular case in a particular manner. Further, orde instructions under this section cannot be issued so as to interfere with the discretion of the Commissioners (App Under this sub-section, generally matters involving interpretation of substantial provisions of law or any other ma importance is covered. A Public circular or a departmental instruction is issued under this section with the appro the Board. Such circulars and instructions are considered jointly by all the members of the Board before finalisatio Besides, the above general powers, the Board has been granted specific powers to relax the provisions of certain se contained in the Income Tax Act. The specific powers are again of three kinds:*
>
> *(a) With respect to any class of income or class of cases, the Board can issue any direction or instruction by relaxation of the provisions of certain sections of the Income Tax Act for the purpose of proper and ef management of the work of collection of revenue. These orders can be passed with the approval of the cons member or if the member is of the opinion that the matter should be discussed by the entire Board, then it is up for discussion by all the members.*

(b) Board is also empowered to issue direction in individual cases as well as class of cases if it is cons desirable for avoiding genuine hardship in such cases. This power can be exercised to condone the de making an application or a claim for any exemption, deduction, refund or any other relief under this Act af expiry of the time specified for making such application or claim. The concerned member within jurisdiction the issue falls exercises the power of condonation.

(c) The Board is further empowered to issue directions or order in any case or class of cases for relaxation requirement contained in Chapter IV and Chapter VIA of the Act. This power can be exercised subj fulfillment of two conditions, namely, default in complying with the requirement was due to circumstances b the control of the assessee and the assessee has complied with the same before the completion of assessm any case. Every order passed by the Board in exercise of this power is required to be placed before each Ho the Parliament".

18. When the Committee desired to know whether the provision of Section 119 permitted the Board to interfere particular assessment on a particular case in a particular manner, the Chairman, CBDT conceded during evidence that th the dilemma which the Board faced from time to time. He further stated that they were getting numerous requests representations from the members of the public that "such and such thing is happening" and that the Board should interven

19. The Committee desired that a list of cases wherein directive under Section 119 of the Act was issued by the Bo furnished. Secretary (Revenue) during evidence promised to give a note in this regard. Accordingly, the departmen furnished a list of cases. A perusal of the list shows that the cases related to condonation of delay in filing Audit Re extension of time for filing return, scheme of reconstruction/rehabilitation approved by the BIFR, selection of cases for scr prompt refunds etc.

C. <u>Remittances by M/s PILCOM subsequent to Directive</u>

20. On a specific query by the Committee as to whether any remittances were made by M/s ITC Ltd. abroad or any transferred abroad by M/s PILCOM subsequent to the issue of the directive in question and whether the TDS wa deducted therefrom, Chairman, CBDT sought to explain that neither the notice served upon M/s PILCOM under Sectio nor the Board's directive to withdraw this notice had any bearing on TDS deductible from the remittances made fro country. However, Secretary (Revenue) assured the Committee that particulars of transfer of funds from the country subs to the date of the directive will be furnished to the Committee after the evidence. Accordingly, Ministry of Finance (Depa of Revenue) have furnished in their reply that the total amount of money transferred abroad by PILCOM was to the tune $ 1,52,000 on 18 July 1996 from Bank of Rajasthan, Calcutta to their London Account They have also furnished det receipt and payment in respect of the London account of PILCOM.

D. <u>Revenue implications of the Directive</u>

21. The Committee sought to know whether there has been any loss of revenue owing to the directive issued by the B The Secretary (Revenue) while reiterating that the directive in question issued by the Board was only in the nature of an i measure, assured the Committee that the department has been fully secured and M/s. PILCOM has been ordered to pro bank guarantee for Rs.2.27 crore. Further, an amount of Rs. 71.41 lakh has been attached from the account of M/s PILC secure against claim of income tax on M/s PILCOM when the assessment is finalised.

22. The department have cited section 177(3) of the Income Tax Act 1961 to assure the Committee that even association of persons stands dissolved and the department makes a claim subsequently, it becomes the liability components of that association of persons. According to the Ministry, the department's claims of tax will be recoverable the assets of M/s BCCI, and BCCI has adequate assets.

V. <u>M/s. ITC's omission to Deduct TDS</u>

23. Audit Paragraph, while mentioning the sequence of events relating to the proceedings initiated upon M/s PIL refers to the letter dated 8 November 1995 wherein the DC Range 16, Calcutta made enquiries with M/s PILCOM remittances made by ITC Ltd., which was replied to by the Convener/Secretary of PILCOM on 12 December 1995 pro nature and composition of M/s PILCOM and the amounts received till then from M/s ITC Ltd. etc. Audit has further re that similar information was called for by ITO Company Ward 1 (3) Calcutta during January 1996 (date unspecified) ar CCIT II *<u>vide</u>* his letter dated 9 February 1996 also directed M/s ITC Ltd. to deduct TDS on the payments made t PILCOM. Audit has further stated that there was an agreement signed on 12 May 1995 between M/s PILCOM and M/ the sponsor of the World Cup stipulating that M/s ITC shall pay M/s PILCOM a fee of 8 million pound sterling – 55% of shall be paid in pound sterling and the balance in Indian rupees and out of the 55%, 45% was to be paid to Pakistan C

Board and the remaining 10% to M/s PILCOM's London Account. It was further stipulated that TDS would be deducted laws in force and that the sponsor would provide TDS Certificate.

24. The Committee, specifically asked for the particulars of remittances made by M/s ITC Ltd. abroad to M/s PILCO whether TDS was deducted from these payments as per law. Secretary (Revenue) promised during evidence to give a n this aspect. Accordingly, the Ministry of Finance (Department of Revenue) have furnished information wherein they inter-alia stated as follows:

"M/s ITC Ltd. had entered into a sponsorship agreement with PAK-INDO-LANKA COMMITTEE (PILCOM), Inc sponsoring the 1996 World Cup series for a total sponsorship fee of Pound Sterling 8 million. In this connectio ITC Ltd. had filed an application dated 21.06.95 before the DCIT, Spl. Range-16, Calcutta for issue of No Obj Certificate (NOC) to pay Pound Sterling 19,25,000 to PILCOM in India in the latter's foreign currency acco Calcutta as per the Seventh Schedule to the Sponsorship Agreement. In its application, M/s ITC Ltd. submitte since PILCOM was a resident in India and its Headquarters was located at Dr. B.C. Roy Club House, Eden Ga Calcutta, no tax was deductible u/s 195/194E of the I.T.Act, 1961. On the basis of this application, NOC 22.06.1995 was issued to M/s I.T.C. Ltd. allowing it to make the aforesaid payment without deduction of tax. Sim another NOC for payment of Pound Sterling 15,40,000/- to the foreign currency account of M/s. PILCOM at Co was issued on 8.11.95.

Thus both the NOCs were issued to ITC Ltd. on the basis of the information provided by them regardi residential status of M/s PILCOM and that the money was to be paid into the foreign currency account maintai India. Subsequent enquiry revealed that ITC Ltd. in effect, remitted the aforesaid amounts abroad using M/s. PIL only as a mode of disbursement of money abroad and this arrangement was approved by the Reserve Bank of Indic ITC ltd. did not render any services either to PILCOM or any other third party. M/s ITC Ltd. was the sponsor World Cup for the purpose of deriving advertisement mileage therefrom. This shows that the PILCOM was only u a means to remit money abroad by M/s ITC Ltd., which attracted TDS Provisions. As soon as it was detected tha misrepresented the facts before the assessing officer, the CIT, West Bengal-III, Calcutta vide his letter dated 1 directed the DCIT, Spl. Range-16, Calcutta to revoke the NOCs granted by the latter in June and November, 199 also advised him to direct M/s I.T.C. Ltd. to deposit tax deductible u/s 195 on the remittances already Consequently, vide letter dated 11.04.96 NOCs dated 22.6.95 and 8.11.95 were revoked and M/s ITC Ltd. was direc deposit the tax deductible u/s 195……."

25. On being queried as to what action was taken against M/s ITC Ltd. for not deducting TDS on the payments made t PILCOM and as to why there was delay in this regard, the Ministry of Finance (Department of Revenue) have stated in reply, furnished to the Committee, as follows:

"Notice u/s 195 was issued to ITC Ltd. and it deducted tax (Rs.2,64,30,312) on the entire payment made to M/s PIL including payments made earlier and there has been no loss of revenue. The proceedings u/s 201(1A) for de deduction and deposit of tax and penalty proceedings u/s 221 were initiated and interest and penalty amount Rs.10,79,562/- and Rs.1 crore respectively have been levied."

26. In reply to a pointed question of the Committee as to whether any responsibility has been fixed for the la granting NOCs to ITC Ltd, the Ministry of Finance (Department of Revenue) stated that NOCs were issued due t representation of facts by Ms ITC Ltd. As such there has been no lapse on the part of the officer concerned and his actio bonafide based on the facts on record and as per law.

27. When the Committee enquired whether Reserve Bank of India Offices at Calcutta, Madras, Mumbai, and New allowed any remittance outside India by M/s ITC or M/s PILCOM without a "No Objection Certificate" from the Ass Officer, the Ministry of Finance (Department of revenue) have stated that as per the reply received from RBI, Calcu remittances were allowed by the RBI without a "No Objection Certificate" from the department.

VI. INCOME-TAX STATUS OF PILCOM

(A) Board's instructions on taxability of PILCOM

28. Audit has pointed out that M/s. PILCOM had promised to furnish details to the CBDT regarding exemption PILCOM from the levy of income tax and also for exemption from TDS in respect of payment of guarantee fee to ICC.

29. The Committee enquired whether M/s PILCOM had furnished details to the Department in this regard. The M of Finance (Department of Revenue) while referring to the instructions issued by the Board on the taxability of M/s. PIL and on the question of Tax Deductible at Source (TDS) in respect of various payments/remittances made by M/s. PILCOM stated as follows:

"The Board had issued instructions on 17th May 1996 declaring that M/s PILCOM would not be liable to incor being "not an association of persons". Instead they would be subject only to Tax deductible at Source (TDS) Section 194 C of the Act for payments made to contractors etc. and for remittances made from India. It further cl that M/s. PILCOM will not be liable to deduct any TDS in respect of guarantee money paid to those partici countries with whom double taxation avoidance agreements existed. Further, tax liability would not arise in resp those countries which played only the Pakistan leg of the tournament and did not visit India. The payments made 16 countries which did not participate in the event would be outside the scope of section 115 B BA of the Act a entire payment would be free from tax in India. Guarantee money paid to Pakistan and West Indies who played in would, however, suffer taxation under Section 115 BBA as there was no double taxation avoidance agreement in with them. For this purpose, BCCI may be treated as an "agent" under Section 163 of the Act. This principle n extended to payments in the nature of Man of the match, man of the series awards etc. as well. BCCI would a liable to deduct tax at source (TDS) on remittances made from India since the payments were on the account of a behalf of BCCI which is a resident association under Indian tax Laws. Thus BCCI would be liable to deduct source on payments made to non-residents – viz. Umpires, players etc. BCCI would also be subjected to the prov of section 194-C of the Act for TDS in respect of payment of money to contractors etc. Further, Air India and I.T. liable to deduct tax (TDS) on payments made to PILCOM/BCCI."

(B) Revocation of earlier instructions and re-commencement of assessment

30. Audit has brought into light the fact that CBDT was informed in September 1996 by Audit that the decisions CBDT on the taxability of M/s PILCOM and guarantee money paid to the participating countries were not in accordanc the provisions of the law. In response, CBDT stated to Audit in their reply in November 1996 that the Board had recons the instructions issued earlier to the field authorities on taxability of BCCI and PILCOM and other related matters and have withdrawn the instructions and advised the field authorities to take necessary action in accordance with the law.

31. Further, on being queried by the Committee, the Ministry of Finance (Department of Revenue) have confirme CBDT had issued another instruction on 21st November 1996 nullifying their instructions dated 17th May 1996 whic directed to be treated as "withdrawn" and instructing necessary follow-up as per law. This was stated to be issued consideration of the matter in the light of difficulties pointed out by income-tax authorities at Calcutta.

(C) TDS on M/s. PILCOM's Payments

32. According to the Audit Paragraph, M/s PILCOM had agreed that deduction of tax at source (TDS) would be ma them in respect of payments to contractors and others for work done for staging the tournament. When queried by the Com on this matter, the Ministry of Finance (Department of Revenue) have stated as follows:

"M/s PILCOM has not filed any annual return for deduction of tax at source nor have they applied for TAN. In r of payments made to non-resident contractors etc., some deduction of tax at source was made which does not cov full liability. Since M/s PILCOM has filed income tax return declaring NIL income and no accounts were filed with the return, it cannot be ascertained whether M/s PILCOM had deducted tax on every payment. However, basis of information collected from bank accounts of M/s. PILCOM, two orders u/s 201(1)/194C and 201(1)/194I been passed for short/non deduction of tax on (i) payments to Indian contractors, professional, payment of rent an payments to non-resident Cricket Associations/Players, respectively. The total demand raised was Rs.28,63,438 Rs.2,18,29,300/- respectively. However, in appeal, the CIT(A) reduced the first demand to Rs. 2.10 lakh and conf the other demand. The ITAT deleted the entire demand raised u/s201(1) in respect of non-deduction of tax u/s19 and remanded the other demand u/s 194 E to the CIT with directions."

VII. INCOME-TAX STATUS OF BCCI

33. Audit has referred to the decision of the CBDT regarding the income tax exemption enjoyed by M/s BCCI under S 10(23) of the Income Tax Act. The Committee sought to know the income tax status of BCCI and whether they were exe from tax. The department have furnished a copy of the internal note of Member (Legal), CBDT dated 19 February preceding the Board's directive in question dated 20 February 1996. It has been recorded in this note that the representati M/s BCCI had submitted to the Board that M/s BCCI was enjoying exemption from income tax under Section 10 (23) of t up to assessment year 1992-93 and their application for exemption for subsequent assessment years was under considerat DG (Exemption).

VIII. TAXABILITY OF AD-HOC BODIES

34. The Committee expressed their anxiety during evidence that the ambiguity in determining the income tax statu liability of ad-hoc bodies like M/s PILCOM which get dissolved after the purpose for which they are constituted gets fu

may result in huge loss of revenue to the government. The Committee sought to know from Secretary (Revenue) as to hov bodies will be treated for income tax purposes. Secretary (Revenue) could not give any specific answer to this query Committee on the larger question of taxability of ad-hoc bodies constituted for events like musical-nights and beauty pag He rather sought the guidance of the Committee on this weighty issue.

IX. LATEST POSITION OF THE CASE

35. According to the Audit review the CBDT had reconsidered the instructions issued earlier to the field authorities taxability PILCOM and other tax related matters. They have since withdrawn the instructions and advised the field auth to take necessary action in accordance with the law.

36. The Committee enquired about the steps/action by the Department in the case of M/s PILCOM subsequent to the r instructions of the Board in November 1996. In their reply, the department have provided certain information on the sta the assessment proceedings in respect of M/s PILCOM as under:

> *"A notice under Section 142(1) of the Income Tax Act was issued on 18.2.97 to M/s PILCOM for filing its ret income and audited accounts. However, M/s PILCOM did not submit their complete audited accounts. They hav only some details of receipts and disbursements. They have instead submitted that the audited accounts were finalised in Pakistan. Furthermore, M/s PILCOM have disputed its status as "association of persons" and claime it was not a taxable entity. ITAT, Calcutta have held that M/s PILCOM is not an "association of persons" f purpose of income tax. The Department have filed a reference application against the order of the ITAT in the H High Court, Calcutta and the matter is sub Judice. Besides, M/s BCCI & M/s PILCOM have filed a writ petition the Hon'ble High Court Calcutta on 30-11-1998 against the assessment proceedings initiated in the case o PILCOM. The Hon'ble High Court passed an interim order on 8-12-1998 directing M/s PILCOM to file their retu also directed the department to continue the proceedings but not to pass the final order without the leave of the Court. As per direction of the Hon'ble High Court, M/s PILCOM filed their return for assessment year 1996-9 January 1999 showing income as "Nil" and status as "nil". Assessment has not yet been completed. The ass officer had written to the Ministry of Law to move the Hon'ble High Court, Calcutta for granting permission to pa assessment order for assessment year 1996-97. This case has been mentioned in the High Court on 17th March 199 the prayer of the department was not accepted. The department have been advised by the Senior Counsel, Governm India that the assessment order may be passed even after 31st March 1999 in the light of the directions of the Court."*

Conclusions and Recommendations

37. M/s PILCOM (Pakistan – India- Lanka Joint Management Committee) was a body formed by the represent of the Cricket Boards of India, Pakistan and Sri Lanka to jointly stage World Cup Cricket during February- M 1996. These three countries, as joint bidders, had secured from the International Cricket Council (ICC)- the ri stage World Cup Cricket in India, Pakistan and Sri Lanka. The bid amount was five million pound sterling. mandate of this Committee included formulation of rules for the conduct of the matches, appointment of umpir individual matches, disposal of representations made by the players, representatives etc. and the regulation of commercial aspects. The approximate aggregate amount received by PILCOM in Indian rupees was 84.35 crore. expenditure incurred by M/s PILCOM included guarantee money paid to both participating and non-particip member-countries of the International Cricket Council (ICC), international travel expenses, payments made to um players for various awards and money paid to contractors etc. The surplus generated by M/s PILCOM was agreed shared equally between the Cricket Boards of India and Pakistan. The Srilanka Board was to be paid a compen for having lost two of the four matches allotted to that country.

38. The Committee note that an authorisation under section 133 A of the Income Tax Act was issued by the In Tax Authorities on 31 January 1996 to conduct a survey on M/s PILCOM. During this survey, the convener o PILCOM refused to produce the requisite documents on the ground that all the books of accounts of M/s PILCOM maintained by the Pakistan Cricket Board. The Convener also refused to sign the survey proceedings. There summons were issued under section 131 to M/s PILCOM to furnish details of TDS and on non-compliance, proce for default in payment of TDS under section 201(1)/201(1A) were initiated. It was against this backdrop of compliance and non-cooperation that the notice under section 175 was issued upon M/s PILCOM on 5 February 19 the Assistant Commissioner, Circle 3(1), Calcutta under which M/s PILCOM was required to file its return of incor Assessment Year 1996-97 within a week. The Committee find that M/s PILCOM, instead of responding to this n made a representation to the Board, which directed the assessing authority to withdraw the notice. Keeping in vie material facts and the conduct of M/s PILCOM, the Committee conclude that the notice issued u/s 175 for accele assessment by the Income Tax Department at Calcutta was a necessary recourse under the law to realize the rev The Committee are unable to accept the contention of CBDT that the World Cup Cricket would have been j jeopardy had the Board not intervened by way of its directive to the Income Tax Authorities in Calcutta to withdra

notice. The Committee find this plea rather specious and far-fetched as the directive, in effect, impeded the due p of law and gave a handle to M/s PILCOM to delay the assessment.

39. The Committee find that Section 119 of the Income Tax Act, which enumerates the grounds under instructions may be issued by the Board to subordinate authorities, categorically stipulates *vide* sub-section 1 (a) such orders, instructions or directions shall not be issued so as to require any income-tax authority to make a part assessment or to dispose of a particular case in a particular manner. Further, this section precludes instructi individual cases except under two contingencies, namely, (i) those relating to applications for any exemption, dedu refund or any other relief under the Act made after the expiry of the period specified under the Act, that is, pray condonation of delay and (ii) relaxation of any requirement contained in any of the provisions of Chapt (Computation of total income) and Chapter VIA (Deductions to be made in computing total income) where the as has failed to comply with any requirement for claiming deductions, provided the central government shall cause order issued under this clause to be laid before each House of Parliament. The Committee are of the considered that the impugned directive issued by the Board in the case does neither fall under the exceptions provided for indi cases nor does it come within the purview of the general instruction issued by the Board during the year 1974 (N dated 22 November 1974) and relied upon by the Board in the instant case. This general instruction issued with refe to Section 119 clearly prohibited advance rulings/ directions by the Board in individual cases. Undoubtedly, Sectio only empowers the Board to give advice in individual cases either *suo-motu* or on reference from Commissioner when difficult propositions of law or fact are involved. Such an advice will, however, be non-binding on the ass officers. The Board could not adduce a single precedent where the Board had earlier issued similar directive imp the due process of law. The Committee, therefore, come to the inescapable conclusion that the impugned directive 20 February 1996 which was in effect nullified by the Board on 21 November 1996 not only impeded the due proc law but also aborted the income tax proceedings by usurping the statutory power of a subordinate autho Surprisingly, the Board could not adduce any tangible evidence as to the deliberations in the Board with regard decision voiding the directive of 20 February, 1996. The Committee hope the Board will draw suitable lessons fro incident so that its discretionary powers as stipulated u/s 119 are exercised in a manner as not to oust the sta powers of the subordinate authorities unless so provided in the Act itself. The Committee also desire that the Minis Finance, formulate guidelines within the framework of the Income Tax Act to consider and dispose of all represent made by the assesses in case of perceived hardship to the Board.

40. Audit has referred to the agreement between M/s ITC and M/s PILCOM wherein the former was required t 10% of the sponsorship money in pound sterling into the London account of M/s PILCOM. However, the Ministr conceded that M/s ITC Ltd. misrepresented before the Department for securing No Objection Certificates for ma payment in foreign currency in the Calcutta account of M/s PILCOM amounting to pound sterling 19,25,000 wi deducting tax at source. The Ministry conceded further that the department have since revoked the NOCs on 11 1996 and that M/s ITC have subsequently deducted TDS on the entire payment made to M/s PILCOM. Such inci only reinforce the conclusion of the Committee that action u/s 175 of the Income Tax Act initiated by the Asse authority at Calcutta was timely and appropriate in view of the dubious conduct of the parties involved and that was bonafide apprehension that funds may be transferred abroad by M/s. ITC using M/s PILCOM as a conduit . Committee, therefore, recommend that conclusive action may be taken for recovery of tax which ought to have deducted at source by M/s ITC alongwith interest and penalty thereon.

41. The Committee do not view the conduct of the concerned officials of Income Tax Department beyond repr being responsible for granting NOCs to M/s ITC without perusing the sponsorship agreement and the terms of pay stipulated therein. The Committee, therefore, recommend that responsibility should be fixed on the negligent offi responsible for issuing the NOCs to M/s ITC. The Department also owes explanation as to the delay in revokin NOCs and initiating proceedings against M/s ITC, stating clearly as to when and how they discovered the of committed by M/s ITC and, when they initiated corrective action in the matter.

42. On the question of taxability of M/s PILCOM, the Committee were informed that the Board had issued two of instructions; the first issued on 17 May 1996 declared that M/s PILCOM would not be liable to income tax being an association of persons". It further stated that M/s. BCCI, which was a constituent of M/s. PILCOM, may be tre as an "agent' of M/s. PILCOM under Section 163 of the Act for the purpose of deducting tax at source (TDS) in re of : (a) payments made to contractors etc. ; (b) payments in the nature of Man of the match/series awards etc guarantee money paid to those countries who played in India and with whom India did not have a double tax avoidance agreement and; (d) remittances made from India like payments made to non-residents, namely, ump players etc. The CBDT, subsequently, issued another instruction on 21st November 1996 nullifying the ea instruction of 17th May 1996 by directing the field authorities in Calcutta to treat it as "withdrawn" and to necessary follow up action in accordance with law. The Committee find that the Board did not treat this iss income –tax status of M/s PILCOM with clarity or conviction. This ambivalence, in the considered opinion o Committee, only resulted in undue and unwarranted delay in initiating assessment proceedings against M/s PILC Curiously, the income tax authorities eventually issued notice to M/s. PILCOM to file income tax return under se 142 of the Act only during February 1997. The Committee are anguished to note that the intervening period

marked by total inaction on the part of the Board which prevented the field authorities to proceed with assessme The Committee, therefore, seek explanation as to the delay in deciding the taxability of M/s PILCOM and the basis for issuing instructions on 17 May 1996 and the voiding instruction on 21 November 1996.

43. The Committee observe from the record placed before them that M/s. PILCOM had agreed that deducti tax at source (TDS) would be made by them in respect of payments to contractors and others. The Ministry how informed the Committee that since M/s. PILCOM had filed Income Tax return declaring "Nil" income and no acc were filed, it cannot be ascertained whether M/s PILCOM had deducted TDS on every payment made by them. Ministry have further stated that on the basis of information collected from bank accounts of M/s. PILCOM Assessing Authority at Calcutta had passed two orders for short/non-deduction of TDS amounting to tax demanc Rs.28,63,438/- and Rs. 2,18,29,300/-, but the Income Tax Appellate Tribunal (ITAT) have deleted the entire dema one case and have remanded the matter to the CIT with directions in the other case. The Committee desire to k the latest position on the issue of TDS in respect of all the payments/remittances made by M/s. PILCOM and whether the orders of the ITAT on the assessment made by the department in regard to TDS have been appe against or not and what steps have been taken to protect the Revenue.

44. Audit has referred to the decision of the CBDT regarding the income tax exemption enjoyed by M/s BCCI u Section 10(23) of the Income Tax Act which is intended specifically to provide tax exemption to established sports b in the Country. However, the Committee have observed from the note of Member (Legal), CBDT dated 19 Febr 1996 preceeding the aforesaid directive issued by the Board that M/s BCCI was exempted from income tax u section 10(23) only upto assessment year 1992-93 and their application for exemption for subsequent assessment y was under the consideration of DG (Exemption), Income Tax. The Committee would like to be apprised wh exemption has been subsequently granted to M/s BCCI under Section 10(23) for the assessment years in question.

45. As regards the taxability of ad-hoc bodies constituted for short duration or particular events, the Ministry stated that, as of now, they are not treated as taxable entities. The Committee are seriously concerned that bodies as M/s PILCOM which are constituted for specific events or purpose and stand dissolved on the completion o event will escape income-tax liability by claiming that they do not constitute an "association of persons". Such ad bodies, which mushroom overnight for organizing special events or occasions like beauty pageants, music sh sporting tournaments etc. may increasingly become the order of the day and merrily escape income tax if not treat taxable entities. The Central Board of Direct Taxes do not seem to have come to grips with such an emerging scer wherein huge amount of potential income tax escapes assessment. The Committee, therefore, consider it desirabl widen the scope of Section 10(23) or insertion of a suitable provision in the Income Tax Act so that all such or sin bodies are brought within the ambit of the Income Tax Act.

46. The Committee are surprised that M/s. PILCOM have not furnished to the income tax authorities their com audited accounts so far on the plea that their accounts are being finalised in Pakistan. The Committee further obs that even though proceedings against M/s. PILCOM were initiated by the income-tax authorities as long back a January 1996 when summons were issued under Section 131 of the Income Tax Act, complete audited accounts other books of account have still not been furnished to the department by M/s. PILCOM. The Committee also fi their dismay that the income tax authorities issued a notice U/s 142(1) of the Income Tax Act to M/s. PILCOM for t their return only on 18 February 1997. Intriguingly, M/s. PILCOM did not respond to the notice until the Hon'ble Court at Calcutta directed them to file their return. In compliance to the High court directive, M/s. PILC eventually filed their return only on 7 January 1999 by declaring their status as 'nil' and income as 'nil'. Committee have also been informed by the department that they have filed a reference application before the Ho High Court on the fundamental issue of the taxability of M/s. PILCOM against the order of the Income Tax Appe Tribunal (ITAT) dated 30 March 1998 which held that M/s PILCOM being not an Association of persons (AOP) wa liable to tax in India. The Committee seek a comprehensive report explaining the unusually long intervening between the dates of the proceedings initiated by the department against M/s. PILCOM, the inordinate delay in iss notice to M/s. PILCOM for filing return and the reasons for inaction on the part of the Ministry allowing fu compounded delay by M/s PILCOM to actually file their return as late as 7 January 1999. The Committee would like the Government to bring into sharp focus the revenue implications if bodies like PILCOM are not treate AOPs. The Committee would like to be apprised of the outcome of the reference application and the follow-up a taken by the Ministry in this regard.

47. The Committee were informed that the Hon'ble High Court, Calcutta while directing the departme continue the assessment proceedings has asked them not to pass the final order of assessment without the leave o Court. In view of the inconclusive status of the assessment, the Committee refrain from commenting as to the rev loss to the Government but recommend that income tax due should be recovered, if necessary, from the In constituent of M/s. PILCOM, namely M/s BCCI as per provisions of the Income Tax Act and as per the assurance g by the Secretary (Revenue) to the Committee. The Committee also desire that a detailed report on the assessme taxable income of M/s PILCOM be furnished by the Ministry indicating both the components of TDS and incom assessed including the amount of interest and penalty levied on M/s PILCOM and also in respect of M/s INDC

which was formed by the BCCI to conduct the Indian leg of the World Cup and to receive the gate money and earnings from the State Cricket Associations.

NARAYAN DATT TIWARI
Chairman
Public Accounts Committee

NEW DELHI;
28 November, 2001
7 Agrahayana 1923(Saka)