bring in as many commodities as possible which could be taxed so that this cess may be leviable and income augumented. But these are things which would require deeper examination and therefore I would request the Hon. Member to withdraw his amendment. He will look into this subject with other commodities at a letter stage.

MR. CHAIRMAN : I will now put amendment No. 2 of Shri Jha to the vote.

Amendment No. 2 was put and negatived.

MR. CHAIRMAN : The question is :

"That clause 7 stand part of the Bill".

The motion was adopted.

Clause 7 was added to the Bill.

Clause 1, the Enacting Formula

and the Title were added to the Bill.

SHRI ANNASAHIB SHINDE : I beg to move :

"That the Bill be passed".

MR. CHAIRMAN : Motion moved :

"That the Bill be passed".

श्री शिव नारायण (बस्ती) : अध्यक्ष महोदय, जिस बात के लिए यह बिल लाया गया है उसके लिए बिल पहले से मौजूद है और 4 हजार रुपये के लिये गवर्नमेंट 50 हजार रुपये खर्च कर रही है बिलकुल अननेसैसरिली । सरकार को चाहिये था कि ऐग्रीकलचरल के डेवलपमेंट में मदद करे, पैदावार इस देश में बढ़े देश के एक कौने से दूसरे कौने तक अनाज पहुंचे, तो आप को तो इसमें मदद करनी चाहिये जिस से कि किसान अपनी पैदावार कौर बढ़ाए और आप जो अमेरिका से गेहूँ और बर्मा से चावल मंगाते हैं वह मंगाना बन्द हो। इतना वेस्ट क्यों कहते हैं ? इतना मनी अननेसेसरी खर्च कर रहे हैं। 500 मेम्बरों की तनख्वाह और भत्ता जोड़िये कितना होता है। गवर्नमेंट को सोचना चाहिये। यह अननैसैसरी बिल यहां क्यों ले आई ? इस तरह इतना टाइम वेस्ट करते हैं, मनी का लास करते हैं, यह अननैसैसरी वर्डन आन दि कन्ट्री है। इस लिए मैं इसका विरोध करता हूं और मैं चाहता हूं कि वह इस को विदड्रा करे।

SHRI ANNASHIB SHINDE : Is there any need to reply to these points ? I have already explained and covered all these points.

MR. CHAIRMAN : The question is :

"That the Bill be passed".

The motion was adopted.

16.58 hrs.

Taxation Laws (Amendment) Bill.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI VIDYA CHARAN SHUKLA) : I beg to move :

> "That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958 and the Companies (Profits) Surtax Act, 1964, as reported by the Select Committee, be taken into consideration."

This Bill was introduced in the House during the monsoon session of 1969, and this House is in its wisdom referred this to the Select Committee. The report of the Committee was presented to the House by the Chairman on the 3rd August. The Committee held about 31 sittings, examined a larger number of memoranda, I think, about 88, and about 42 institutions and individuals were examined as witnesses, and they went into this Bill in great detail. I must congratulate the Select Committee for the very thorough work that they have done as regard this very important Bill. The Select Committee has made good many changes in this Bill. Rather than tire the House with the details of the Bill which containing about, 74 clauses. I would only in brief indicate the changes that have been made by the Select Committee.

सभापति महोदय : मैं एक सूचना देना चाहता हूँ। प्रधान मंत्री जो पांच बजे स्टेटमेंट करने वाली थीं वह अब 5 बजकर 55 मिनट पर करेंगी।

SHRI VIDYA CHARAN SHUKLA : I would like to draw the attention of the House to the reasons that have been given by the Select Committee and the changes made by the Select Committee.

The Bill as introduced in this House last year was drafted on the basis that it would be enacted into law before 31st March, 1970. Several provisions in the Bill which provided for tax concessions and relief in certain directions or impose additional obligations or liabilities on tax-payers were accordingly proposed to be made effective from 1st April 1970. Since, however, the Bill could not be passed during the financial year 1969-70, the Committee has recommeded that the provisions of the Bill should, unless otherwise specified, come into force on 1 April, 1971.

The effect of this change would be that the provisions of this Bill will apply generally from the assessment year 1971-72.

The one important change that has been made by the Select Committee relates to the restoration of the procedure for registration of partnership firms for the propose of assessment of income-tax.

As hon, members are aware, firms which get themselves registered under the special procedure laid down in the Income-tax Act are accorded preferential treatment as compared to firms which are not so registered. Now the Bill as originally introduced sought to replace the procedure by a new procedure of recognition. The change was proposed on the basis of the recommendations of the ARC and of Shri S. Bhoothalingam.

During the evidence of various witnesses and other peoples who came before the Select Committee, they almost unanimouly disapproved of this recommendation and this provision in this Bill, and the majority of the Members were also not in favour of incorporating this new provision. Therefore, we thought it might result in hardship to certain partnership firms, and the Select Committee, after careful consideration, restored the original procedure for registration of firms. I think the amendment made by the Select Committee is healthy one and we should all accept it.

The Bill, as originally introduced, contained a provision that firms will not be entitled to recognition under the Income-tax Act if any of its partners was a benamidar of any other partner in relation to his share in the income or property of the firm. This conditlon was however not applicable as between partners of a firm related to one another as husband and wife or parent and child where the child was a minor. As a result of the restoration of the old procedure of recognition of partnership firms, the Select Commitsee has transferred the above provision to the cxisting provision in the Income-tax Act relating to the registration of firms. I think this recommendation of the Select Committee should be welcomed to all members of the House. But Shri N. K. P. Salve has appended a Minute of Dissent as far this particular matter is concerned. He has expressed the view that the general law of the land which allows *bona fide* transation through benamidaracts should not be disturbed.

Now this is not an argument which can easily be accepted. There might be certain provisions or certain or certain laws under which certain benamidars may be able to function, but as far as the income-tax law is concerned, I do not think the House or Government can allow benamidars to function, particularly in partnership firms where the partnerships are formed or registered only to distribute profits. Here if the partners know that a particular partner has got another partner as a benamidar and thus help him to reduce his tax liability, it would not be proper to relieve them of the additional tax liability which we have provided for in this Bill. Shri Salve's argument is that it is likely that in certain cases all the partners may not know that one of the partners has introduced a benamidar in the partnership. This is very difficult to understand as to how it could happen, because mostly in partnership firms the partners know each other very well. The number of partners is also limited ; if there are 6 and 7 partners, they know each other, how much share each

holds and whether the shareholding is genuine or through benamidar. Therefore, I do not think any genuine difficulty would be caused by introducing this reform which the Select Committee has suggested. Hence I think it would be batter if the provision that has been made, which will act as a deterrent provision, is accepted by the House.

The Select Committee has also recommended certain change with a view to removing some practical difficulties experienced in the operation of the scheme of registration of firms. I will not go into the details of it, but this, I am sure, will relieve the difficulties experienced by the partnership firms and should be welcome to all.

The Select Committee has also recommended a few changes in the provisions of the Bill relating to tax exemption and the remuneration of foreign technisians employed in India. Under one of these changes, the business and industrial management experts or technicians having specialised knowledge and experience in the distribution of electricity or other forms power or in poultry forming will not be entitled to exemption under the Income-tax Act on their remuneration.

Another change is that the period of exemption on the Income-tax of the remuneration upto Rs. 4000 per month in the case of other techincians will stand reduced from 36 months provided in the Bill to 24 months.

These changes have been made on the consideration that while in our present stage of Industrial development it is not possible to dispense with foreign technicians altogether, the concessions admissible to them act as an in-built incentive to employ foreigners without due efforts to replace them by our own technicians who have the requisite training and experience. I welcome these changes and commend them to the House.

One of the provisions in Clause 8 of the Bill seeks to provide for amortisation of certain preliminary expenses incurred by Indian companies. It was represented that the benefit of this provision should be extended to all other categories of resident texpayers. The Select Committee has accepted this view, but in order to prevent misuse of this concession, it has suggested that in the case of taxpayers other than companies or co-operative societies, the concession would be available only if the accounts for the relevent period have been audited by a Chartered Accountant.

As the Hon'ble Members are aware, under the provisions of the Bill, as introduced, the expenditure qualifying for amortisation was subject to a ceiling limit $2\frac{1}{2}$ per cent of the "capital employed" *i. e.*, the aggregate of the issued share capital, debentures and long terms borrowings. In the context of extension of the benefit of amortisation of preliminary expenses to non-corporate resident taxpayers, the Committee has recommended an alternative ceiling equal to $2\frac{1}{2}$ per cent of the "project cost" *i. e.*, the actual cost of the fixed assets, being lands, buildings, lease-holds, plant, machinery, furniture, fittings and railway sidings. Indian companies will, however, have the option to choose either the "capital employed" or the "project cost" as the basis for determining the ceiling applicable in their case.

In his Minute of Dissent, Shri Salve has suggested that the Committee should have decided upon the further items of expenditure qualifying for amortisation and not left this for determination by the Central Board of Direct Taxes. Looking to the particular position and the situation as it exists, I think it would be better that this matter is left to the Central Board of Direct Taxes rather than spelling out everything in the law itself. Hon'ble Members will appreciate that in the context of the complexities of economic opertions in a developing economy, it is not possible to foresee all situations that may require the enlargment of the scope of this clause. Therefore, I think that the situation should remain as it is.

[MR. SPEAKER *in the Chair*.]

Sarvashri Salve, Dandekar and Somani have also objected to the proposal that amortisation of Preliminary expenses in respect of feasibility reports, project reports, market survey or other survey reports or in respect of other engineering services should be subject to the condition that the

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services in connection therewith are rendered by a concern which is approved by the Board. They have suggested that the requirement of approval of the concern by the Board should be dispensed with. I do not think this view is correct, as far as the present situation goes.

I think the provision that this should be subject to approval by the board should bs retained. Shri Dandekar and Shri Somani have suggested that the celling of 2.5 per cent on capital employed or the project cost over the preliminary expenditure with will qualify for amortisation is unrealistic ; they have suggested that either there should be no ceiling at all or it should be raised to five per cent of the project cost in the case of companies five per cent of the capital employed, whichever is greater. Further where the total amount of qualifying expenditure does not exceed Rs. 2 laks, the whole amount should be allowed to be amortised even if it exceeds the aforesaid percentage limits.

This point was gone into in great detail by the Select Committee and studies made for the purpose showed that the proposed celing would not be disadvantageous in the large majority of cases. As the House is aware, amortisation of perliminary expenses represents a new area of tax concessions to businesses. It is therefore necessary to proceed cautiously and guard against the provision becoming a tax shelter. I would therefore commend the majority view of the Select Committee in this matter.

Another provision in clause 8 of the Bill as introduced sought to provide for amortisation of expenditure incurred in the shifting of industrial undertakings. The Select Committee felt that the shifting of factories from one State to another with a view to avoid the application of local laws should not be encouraged through the grant of tax concession and has therefore recommended that the provision should be omitted from the Bill. Shri Dandekar and Shri Somani have in their minute of dissent objected to this omission. In their view the misuse of this concession could be avoided by making a further provision, that the consent of the State Government should be taken. Our view is that rather than making this matter complicated by making such a provision, the recommendation of the Select Committee that this provision should altogether be omitted from the Bill is a right one and we should agree with the majority recommendation of the Select Committee.

The last provision in claute 8 of the Bill which sought to provide for amortisation of expenditure on prospecting for and development of specified minerals in the case of Indian companies has also been modified by the Committee. The benefit of amoritisation of such expenses will now be available not only in the case of Indian companies but also in the case of other resident non-corporate taxpayers. As in the cace of preliminary expenses, this tax concession will in the case of resident non-corporate taxpayers other than co-operative societies be subject to the requirement that the accounts of the taxpayer for the relevent period have been audited by a chartered accountant. This provision has been further liberalised in another direction. Under the original provision the qualifying expenditure was allowed against profits arising from the commercial exploitation of the mineral of minerals in respect of which the expenditure was incurred and could not be set off against profits derived from commercial production of the same mineral or minerals already established by the taxpayer. The amended provision would permit the setting off of the qualifying expenditure against the profits of an already estabilshed business in respect of the same mineral or minerats.

In this connection, I should like to point out that as a result of another amendment in clause 58 of the original Bill, the benefits of amortisation will also available with reference to the expenditure on prospecting for and development of bauxite and other aluminium ores. In their minutes of dissent Shri Dandekar and Somani have suggested that the benefit of the proposed concession should be extended to foreign companies companies, especially those qualifying as domestic companies for purposes of income-tax. This point was carefully considered by the Select Committee who came to the conclusion that it

would not be justifiable to encourage foreign companies to enlarge their operations in mining industry in India through the grant of a tax concession. I am in full agreement with the majority view of the Select Committee on this point.

Another clause which has been modified by the Select Committee is the original clause 14 which sought to provide that the income derived from property converted into joint family property would be deemend to be the income of the transferor to the extent it was attributable to the share see of the individual transfering the property and the shares of his spouse of minor sons.

This is rather technical, but this is important because under the hindu law, an individual being a member of Hindu undivided family can impress his separate or self-acquired property with the character of joint family proeperty or throw it in the common stock of the joint family. Further, the self-acquired property thus converted into joint family property may be partitioned among the members of the family including the spouse or minor sons of the individual. This affords scope for reduction of tax liability by claiming separate assessments in respec of income from the property in the name of the family when joint and of the individual members after a partition. The provision in this clause seeks to put a curb on the practice of reducing the liability by individuals through this device and would be applicable regardless of whether the converted property continues to remain the joint family property or is partitioned among the members of the family.

Under the bill as introduced, these provisions were to apply in relation to income derived from property converted at any time after 31st March, 1965, but the assessment of such income as the income of the transferor was to be made only for the assessment year 1970-71 and subsequent years. There was also a provision that the new clause would not apply where the income-tax officer was of the opinion that such a course was not likely to result in a benefit to the revenue.

The Select Committee has recommended some modifications in this provision. One of these is that the provision should apply only with reference to property with his converted into joint family property after 31st December, 1969. The Committee has suggested that the income from converted property covered by the provisions should be charged to tax as the income of the individual in all casses, regardless of the position whether or not this would be beneficial to the revenue. The Committee has further recommended that the provision should apply prospectively from the assessment year 1971-72 instead of from the assessment year 1970-71.

Some Members of the Select Committee have recorded Minutes of Dissent on the above proposal. Shri Tenneti Viswanatham, Shri N.C. Chatterjee, Shri Beni Shanker Sharma, Shri Y.N Kushwaha, Shri Kanwar Lal Gupta and Shri J.J Shinkre have suggested that the proposed provision would mean unnecessary interference by Government with the laws of the Hindu community as such and the best course would be to omit the provision altogether. In their opinion, the minimum that should be done is to restrict the operation of the provision only to such cases where the converted property is partioned among members of the family thus resulting in an indirect transfer of a part such of property to the spouse and minor sons of the transferor, Shri Tenneti Viswanatham and Shri N.C. Chatterjee have further suggested that, in any case, the operation of the clause should be confined to cases of conversion of property taking place after the date on which the present Bill becomes law.

The criticism that the propsed provision would amount to unnecessary interference with the personal law of Hindus does not appear to be well-founded. The clause does not seek to bar the conversion of separate property owned by members of the family into joint family property but would only regard the income from such property, to the extent specified, as income of the transferor. The acceptance of the suggestion that the provision should apply only with reference to conversions made after the present Bill if enancted into law, would defeat, at least

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in part, the objective behind the Bill. An anti-avoidence measure like this should necessarily apply with reference to a past date, as otherwise, it would give an undue advantage to persons who, being in the know of the impending change, arrange their affairs so as to reduce their future tax liability. An indication that a provision on the lines of this clause would be made in the Income-tax Act was given by the Finance Minister in his budget speech for 1969-70 on 28-2-1969.

On a balance of considerations, I feel that the proposals made by the Select Committee in this behalf are reasonable and would, therefore, commend the same to the House.

Clause 34 of the Bill, as introduced, sought to make some important changes in the procedure for completion of regular assessment. Under the original scheme, the Income-tax Officer was empowered to make a summary assessment. Under sub-section (1) of section 143 of the Income-tax Act on the basis of the return and the accounts and documents accompanying it, after making adjustments for arithmetical errors and for obviously admissible or inadmissible items and after giving effect to be brought forward loss and unabsorbed depreciation on the basis of the past record of the taxpayer. Such summary assessment could be made without calling the taxpayer or asking for the production of books of account, and would have been final exept where it was taken up for further scrutiny and, on hearing the taxpayer and examining the evidence, it was found that the assessment made originally was incorrect, incomplete or inadequate in material respects. In the latter case, the Income-tax Officer could make a fresh assessment during the normal period of limitation of two years. An appeal was also provided against the summary assessment made in the manner aforesaid.

The Select Committee has made some important modifications in the scheme. It has now been provided that in a case where a summary assessment is completed without requiring the presence of the assessee or the production of any evidence by him in support of the return, it would not be open to the Income-tax Officer to initiate proceedings for examination of the accounts and other evidence and to make a fresh assessment on the basis of such examination. In other words, a summary assessment made under sub-section (1) of section 143 would be final and would not be reopened except under the existing provisions of section 147 of the act; that is to say, only in cases where the Income-tax Officer has reason to believe that the income has escaped assessment or has been under-assessed. In this connection, it has been pointed out that the Income-tax Officer can under the existing powers available to him, call for the books of account in respect of the relevant account year as well as for three earlier years and if, on the basis of such examination, he comes to a finding that the income for the earlier year has escaped assessment, he will be in a position to initiate re-assessment proceedings under section 147 and section 148. In order to guard against a situation where the taxpayer may withhold the accounts of the earlier years so as to frustrate initiation of re-assessment proceedings, the Committee has, however, suggested that the punishment on conviction before a court for such default should be rigorous imprisonment upto one year and also fine.

Shri N. K. P. Salve has expressed serious doubts about the effectiveness of the provision as proposed by the Select Committee. In the first place, he has argued that it would be unjust to hold a taxpayer liable for meeting the tax liability which is determined by the Income-tax Officer without giving him an opportunity of adducing evidence in support of his return. Secondly, he feels that in actual practice, the Department may not be able to initiate re-assent proceedings under sections 147 and 148 in the case of dishonest and fraudulent taxpayers, in view of the serious limitations placed on the applicability of those two sections by judicial pronouncements. The essence of his proposal is that the summary assessment made under section 143(1) should not be a final assessment and a taxpayer who disputes such assessment should in fairness, be given an opportunity to be heard by the Income-tax Officer. In the meanwhile. the taxpayer should be liable to pay tax only the undisputed income. Likewise, according to Shri Salve, the Income-

tax Officer should also have the option to take up the summary assessment for review without resorting to the strict provisions of section 147.

I feel that there is considerable force in the arguments put forth by Shri Salve, I would, thorefore, particularly like to seek the guidance of the House in the matter.

The Select Committee has substantially modified the provision relating to prosecutions for tax offences. The Committee has recommended that failure to furnish the return or to produce documents would be punishable only when such failure is wilful.

The Committee has also recommended that the punishment for failure to furnish return of income, whether voluntarily or in response to a notice issued by the Income-tax Officer, should be either rigorous imprisonment upto one year or fine ranging between a minimum of Rs. 4 per day of the default and maximum of Rs. 10 per day, or both, according to the discretion of the court. As regards defaults in furnishing the return of income voluntarily, the Committee has recommended that these should not entail prosecution unless the net tax payable on the total income as determined in the regular assessment exceeds Rs. 3,000. In regard to defaults in producing the books of account and other documents called for by notice, the punishment recommended by the Committee is rigorous imprisonment up to one year or fine or both. However, in cases where the account books called for by notice relate to an earlier year for which a summary assessment has already been made under section 143(1), the punishment for failure to produce such accounts should be of a more deterrent character, namely, both rigorous imprisonment upto one year and fine. The last mentioned recommendation of the Committee will have to be viewed in the light of the decision that this House may be pleased to take in regard to the Minute of Dissent of Shri N.K.P. Salve on the new scheme of regular assessments.

The Select Committee has liberalised some of the provisions of the Bill granting tax concessions and relief in certain directions. I would not tire the House by going into these provisions in detail. The object behind these proposals is laudable and I hope these will be welcomed by all sections of the House With these observations I move :

> "That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958 and the Companies (Profits) Surtax Act, 1964, as reported by the Select Committee, be taken into consideration."

MR. SPEAKER : Motion moved :

> "That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958, and the Companies (Profits) Surtax Act, 1964, as reported by the Select Committee, be taken into consideration."

SHRI S. M. BANERJEE (Kanpur) : It is a long speech. It should be circulated to us so that we are able to speak on this tomorrow.

MR. SPEAKER : The Minister has only summarised the Report of the Select Committee.

SHRI N. DANDEKER (Jamnagar) : Mr. Speaker, Sir, I agree with the Minister that the Bill has come out of the Select Committee with considerable improvements in many directions and if I criticise some of the provisions, as they have now emerged, it is only in an endeavour to improve the Bill further, having regard to the main objectives of the Bill, namely, on the one hand rationalisation and simplification of law and procedures and, on the other tightening up against tax avoidance and, certainly, against tax evasion.

The observations made by the Minister lead me straigtway to deal with only some of the more important matters arising out of the Bill, as reported upon by the Select Committee. There are many others which I shall not touch upon now, but I shall take the liberty, in the course of the clause-by-clause consideration, to deal with them, because they are comparatively matters of detail. It is therefore only the more important things that I am now going to talk about.

[Shri N. Dandeker]

I will go straightway to the question of greater restrictions intended to be placed on the emoluments of foreign technicians by the provisions contained, by some of the provisions contained, in clause 3 of the Bill. The main object is one with which I am in whole-hearted agreement. But I think we ought to keep in mind that whereas, on the one hand, there is much to be said for restricting the field of technical competence, concerning which we need to have technologists coming in from outside for assisting the industrial growth and development of this country, there is equal need on the other hand, for us not to be foolish by refusing to pay to the technicians the kind of salaries and perquisites that are today the level of emoluments upon which alone they will be attracted to come to this country for the reduced period of 24 months that is now intended. I had occassion only some weeks ago to go abroad ; and among the various things that I concerned myself with was, in fact, this question of availability of competent personnel within the restricted fields we intend to employ them in future on the basis of tax concession and the kind of remuneration that they would expect they ought to get before they would come over and thereby accept an interruption in their career in their own country. I think the Government has not appreciated the fact that if we want really competent men to come over, those men must necessarilly be competent in their country where, therefore. they command considerable salaries, perquisites, allowances and so on. I am sure the Minister agrees that we do not want incompetent or even second-role men to be brought over ; we want men who are really competent. If so, we should be prepared to pay them a salary that ought to be paid to competent men, such as will be paid to them in their own country *plus* a little more for two reasons. Firstly they naturally expect a little more for coming over to India, because it is natural for anyone who is offered employment outside his own country that he intends to get a little more abroad than in his own country.

The Second reason is even now important in the case of really Competent men. I had, in fact, talks with several technicians with in the age groups of 40 to 50 ; and they all said that it was just the time when they would not like to leave their country because a gap at that stage in their career could have very serious adverse repercussions upon their prospects in their own country. The maximum period during which they could be employed in India wholly free of tax is 24 month plus another short period when the employer could pay their tax so that so for as the employee is concerned, the extended period is also free of tax. The period in my judgement is long enough but from their point of view, if you are wanting a competent man to come out, not only must you pay an adequate salary and a little more but you must take it worth his while to take the risk of a break in his career and prospects in the country from which he comes. Today Rs. 4,000 p.m. is approximately equal to £2,500 per annum and you cannot get a competent person on £2,500 in UK, USA, France, Germany or anywhere else that matters. I stress the word, 'competent'. You can get technicians of a sort, third or even recond raters, without much difficulty. But if we are going to make this concession for tne perfectly legitimate reason that within a certain narrow scope of technology we want to have really competent men coming over, this sort of salary is by no means the kind of salary upon which they will be attracted to come. 29 repeat I agree that the field of technology in which we want to import men should be restricted and the period for which we import these gentlemen should also be restricted because we must keep our own technological men on their toes, get them trained and get them to take over. But granting all that, for heaven's sake, let us make it worth their while and persuade really competent foreign technicians at the proper level of age and experience to come out to this country and take jobs of the kind that is intended here.

Now, Sir, I will turn to clause 8 and to the new section 35D that is proposed to be introduced in the Income-tax Act. It is an admirable provision. The purpose of it is also admirable. Quite briefly, for those who are not connected with either industry or accountancy, the clause is this : that Preliminary expenditure concerned with the examination of a business proposition, setting up of an undertaking, formation of a

company, etc., a whole range of such expenditure is involved which was hitherto regarded as of a capital nature, but was not however, chargeable either at once or over a period of time against revenue. The intention now is to amortise it over a period of time against revenue. I agree, it is a perfectly good provision but like all good things that the taxation department ventures upon, they do so in such a slow and halting way that a good deal of the intended benefit does not accure. There are two or three directions of a major kind in particular in regard to which, I feel, this proposal does require relaxation a little further.

But before I deal with these, I would like to take exception to the provision requiring the approval by the Central Board of persons of professional competence rendering services. Whether it is in the preparation of a feasibility or an "economics" report on the project, whether it is on the technical study of the project, whether it is for preparing a market survey or research report on the project, technical people wili not be allowed to do this unless they go to the Central Board of Direct Taxes which knows nothing at all about these matters, nothing whatsoever and seek their approval as regards their competence to handle this particular matter. It seems to me a ridiculous thing and we are making ourselves a laughing stock in the world when we stipulate that a firm of consulting engineers needs to be approved by the Board of Direct Taxes as to its competence to undertake a consultancy assignment of a technical nature in regard to the engineering or technical feasibility of a project. Even a firm of Chartered Accountants or Cost Accountants would need the approval of the Central Board of Direct Taxes before it can undertake a feasibility study, a financial feasibility study, a study on profitability etc. for a particular factory and so on. I do suggest that this is non-sense, no less than complete nonsensc, to incorporate this kind of provision regarding these technical reports in different branches, technical feasibility, market survey and research, financial feasibility and profitability—I myself undertake profitability and financial feasibility studies fer persons who care to consult me. I am a Character Accountant ; nevertheless. I am supposed to go to the Central Board of Direct Taxes and seek their approval that I am competent to undertake these assignments surely it is my customer, it is my client, who is really going to decide it. It is the man who is going to pay me—he is not going to pay me for nothing—he is going to engage and to pay only the person who he thinks is competent to undertake these particular technical studies, whether it is market research or whatsoever sir I do suggest that this provision requiring the prior approval of the Board of Direct Taxes to employ a particular consultant so that that consultant must first be an approved person is meaningless nonsense of a kind that we ought to be including in in our taxation laws in this year 1970.

As regards the content, the things that go to make up these preliminary expenses which have to be amortised—there are a number of matters of detail upon which I will touch now but in the course of clause-by-clause oonsideration ;—but what I am concerned with now is the overall limit, the ceiling upto which alone the expenses or the expenditure will be allowed to be amortised against revenue. The Central Board of Direct Taxes undertook a study of a number of large coneerns in this regard ; and I am quite convinced that their arithmetic is right. They have come to certain conclusions over a certain number of concerns as to what is the proportion, expressed either in terms of capital employed or in terms of project costs, of preliminary expenditure that needs to be amortised. But I wonder how many cases they have examined of the small fellows. The policy of the Government of India, tom-tommed about for the past 9 months, if not longer, is to say, 'We do not want these big industrialists in India. We are going to circumscribe the area in which the big industries will operate.' I am not going to into the merits of that. But I am fully in agreement with the positive side of this picture, namely, that the Govt. are out to encourage the middle and small scale, industrialists, the self-employed engineer, the businessman who is prepared to take the risk to put up a little plant of Rs. 10 or 15 lakhs. Within the limit of $2\frac{1}{2}\%$ of Rs.15 lakhs you cannot cover the small man's preliminary expenses,

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embracing any kind of technical examination of the project or any kind of financial study or market study. I must warn the Minister that most of the small industries fail because of the lack of these early studies. Slowly they are begining—I again speak from my experience—slowly they are beginning to consult technical people before they set up an industry. They have even started consulting technical people either in regard to an engineering study or in the lay-out of the project or in the profitability study or market research, more especially as regards the requirments of fixed and working capital, and how to raise it, any number of such things ; the omission to undertake such technical studies is now begining to be well known as the main reason becuase of which small industries fail in this country.

These small units will get little benefit under this provision—at least, not the benefit that they ought to get. That is why, Sir, I have said in the Minute of Dissent that the ceiling must be raised at least up to 5 per cent of the capital cost of the project or 5 per cent of the captial employed in the project or an amount not exceeding 2 lakhs, whichever of these is the greater sum. This will remove the small industries from the grip of 2½ or 3 or 5 per cent or whatever it is, and it will make it possible for them to really employ competent persons to advise them before they start setting up the industry in the wrong way and suffer for the rest of their lives.

Next, Sir, I would like to deal with another new provision, a very fine one ! This too is Clause 8, which proposes to introduce a New Section in the Income-Tax Act, 35-E for Amortisation of Expenditure incurred in prospecting, surveying and proving mineral resources. An excellent clause! But again, Sir, they have so devised this clause that some of the largest operators in our country will not get the benefit. They have got an admirable definition in the Indian Finance Act of 1970 to secure that if there is not to be discrimination between an Indian Company and a foreign company that is called a 'domestic company' as there so defined, then that company even if it is foreign, whether American or of any other country, provided it complies with certain conditions, would be treated in the matter of taxation in exactly the same way as an Indian company. Now, Sir, my submission is this, that a domestic company, as so defined, ought to fall within the purview of this desirable new provision. It is not as if our minral resources are being exploited to the full. The capital involved is colossal ; the prospecting, proved and other abortive expenditure is considerable and so on ; at least I know of one such instance—though there may be half-a-dozen others, of which I don't know. It is not as if this country is so well developed in regard to its mineral resources that we can ignore some of the big operators in this field. And therefore it is, Sir, that I would say that there is no justification whatsoever for discriminating against such development, when undertaken by such companies except only on the principle of cutting one's nose to spite one's face.

This question of the treatment of foreign companies operating in India in regard to taxation matters has presented considerable difficulty in the past ; and this excellent formulla of a category of companies called "domestic companies" was devised by the Central Board of Direct Taxes, which set out the condition which the foreign company must conform to, if it expected to get the same sort of taxation treatment as an Indian company under the Indian Finace Act. I think it it Section 2, subsection (6) and perhaps Clause (b) of that sub-section of the Finance Act.

Now, having found this way of making it possible,—if the foreign company will comply with our necessary pre-conditions,—of making it then possible to treat it as an Indian company. I see no reason whatever for the discrimination that is intended here.

Now, Sir, I would go on to the much-debated Clause of this Bill Clause 16. This is about Hindu Undivided Families. To begin with I think even those who are not technically informed ought first to know, in the simplest words that I can muster, what the problem is. The problem is simply this. There is a procedure for tax-avoidance by which a person can first impress upon his separate property the character of Joint Hindu Undivided Family, where upon it

becomes the property of Joint Hindu Family, and then subsequently the person partitions that family property so that he and his wife and his minor children (or she and her husband and the minor children) get a share of what this person has put into it, thereby doing in a round about manner what for taxation purposes this person cannot do directly, namely, transfer his property to his or her spouse and minor children. There already exist provisions in the Income-tax Act by which if a person transfers to his spouse or to his minor children any property without adequate consideration the income of such property is assessed in his hands. Many assessees have been getting round this by first impressing upon their property the character of the Hindu undivided family property and then partitioning it and thereby getting that property in the end where they wanted it without its income being aggregated with their own income. I agree that this ought not to be allowed. One is clear about the principle that transfers of property one way or another to one's wife and minor children with a view to avoiding taxes and so on ought to be inhibited and the tax consequences of it ought to be neutralised.

But the provision that is proposed have stops half way. It does not say that if a property goes to the Hindu undivided family and we the family to the wife and children, then the income of such property shall be aggregated with that of the transferor. If it said that, then I would have no quarrel with it. But what it says is that when this property goes into the undivided family, regardless of whether there is any subsequent partition or not the share of the income from that property attributable to the husband the wife and children shall be included in the income of the transeferor.

Sir, in the first place, in the case of a Hindu undivided family, no part of the income to attributable to any one individual member. It is a complete misunderstanding of the law relation to Hindu undivided family to speak about the share of income or share of the property attributable to any one particular member of the coparcenary. There is on such thing. In the money or the income and the property belong to the Hindu undivided family the individual coparceners have only a contingent share (equal to a certain proportion) if and only if a partition takes place but not otherwise.

But, sir there is even more to it than more it technical objection. It is going to take years in this country before we can provide the kind of necessary amenities to the public, at public expense which we all agree are desirable, such as pre-natal care, child birth, care of children at state expense, education of children, unemployment benefit, widows' pension old age pension, and a whole lot of necessary social security benefit which, if the country could afford it, we should have and which those countries that can afford do have; it is going to take many years before this country can afford it. Let me not go into the reasons for it. But today what is the substitute for all those things? Who provides maternity welfare? Who provides child welfare and education? Who provides hospital expenses? who provides marriage expenses ? Who provides old age pension ? Who provides widows' pension ? Who provides all those things ? In India, at any rate, so far as the Hindus are concerned, the Hindu Undivided family is the biggest insurance society or cooperative insurance society, multipurpose mutual insurance society that exists in this country. Suppose X or Y or Z, a member of such a co-operative society or multipurpose co-operative society says ; "I am going to put some of my wealth into it in the hope that the other members will also come in with whatever they can afford, in the hope that this pool, the insurance fund of this group may swell", what is wrong with it ? The wrong begins only when this is done for the purpose of subsequent partitioning and partition takes place actually. I say I have no defence for that sort of case. But so long as there is an impressing of "joint Hindu family property" charactar upon separate properties of members, so that this co-operative insurance society and its funds grow, and so long as the State cannot do a thing to offer substitute services of that kind, to object to this is quite undefensible. I think this is the most remarkable example of being unable to see the

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true character and the true worth of this Hindu joint family system in this country. Therefore, Sir, I have very strong objections to this clause as it stands.

Finally, I come to clause 30 which is concerned with the introduction of the summary assessment procedure. When I first saw this, I rather liked it. I felt it would loosen up the time limitations on the taxation machinery so that where obviously there were honest assessees and on the whole their record seemed to be all right, the returns seemed to be all right, the I.T.Os could go ahead and make an assessment with reference to the record, return and any statement of account filed with the return. But the more I have studied this, the more I am inclined to agree with the very clear Minute of Dissent on this particular matter appended by Shri Salve. The consequence of this summary procedure will be that you will have an enormous number of appeals because of the temptation of the ITO for every conceivable reason he can find in the records. You cannot get a way from this that there is a certain character, certain trend which income-tax authorities have acquired in recent years in this country, reinforced by recent developments arising out of audit of income-tax revenues. I have talked with a number of ITOs. They say, 'To hell with it ; we are not going to risk being accused by audit, accused by inspection, accused by the Appellate Asstt. Commissioner, accused by everybody all round, of being either stupid or corrupt or both'. Every Income Tax officer, with whom I have discussed this I know a lot of them ; I was myself in the department—feels this way.

Therefore, even on the basis of the return and accompanying statements and the record if they make an assessment, many more assessments will go up in appeal. But that perhaps would not matter. But what will matter is that the Appellate Asstt. Commissioners will in these cases become the assessing officers, because assessees who are shabbily treated or feel they are wrongly treated, will require the Appellate Asstt. Commissioner to look into their accounts, to look into the balance sheets, to look into a whole lot of things, all the evidence which they could have proposed before the ITO but did not have the opportunity produce. The Appellate Asstt. Commissioner will in fact become the first assessing officer. In every case where an assessee disagrees with the I.T.O. because the assessment is ex-parte,—the assessment is in his absence, the assessment is summary,—every assessee who is dissatisfied will take the matter in appeal and he will make the Appellate Asstt. Commissioner the taxing authority. This will happen, and it is in that light that I hope the Minister will consider the further comments of Shri Salve. You are going to find it very difficult to reopen assessments under sections 147/148 for any reasons different from the sort of reasons for which you could have reopened those assessments under the present law.

I have very little else to add except to say that subject to these observations and some amendments which I shall put in at the appropriate stage, I think the Bill is a good one.

MR. SPEAKER : We will continue with this tomorrow. The Prime Minister will now make a statement.

17.53 hrs.

STATEMENT *RE.* STATEHOOD FOR MEGHALAYA

THE PRIME MINISTER, MINISTER OF ATOMIC ENERGY, MINISTER OF HOME AFFAIRS AND MINISTER OF PLANNING (SHRIMATI INDIRA GANDHI) : As the House is aware, some time ago we reorganised the State of Assam and constituted the Garo Hills and the Khasi and Jaintia Hills districts into the autonomous State of Meghalaya within Assam. This arrangement took into account the need to provide adequate scope for the political aspirations of the people of this area while preserving the overall unity of the State of Assam. The decision to grant Statehood to Manipur and Tripura, however, necessitated a fresh look at the status of Meghalaya. The Chief Minister of Meghalaya also urged that in the changed situation, Meghalaya should be made a separate State. Later, Shri K. C. Pant visited the north-eastern region and discuesed this