Ordinance, 1964 (No. 3 of 1964); the short title of the Bill is also the same. The long title for both are also the same. While introducing the Bill, the Minister in charge mentioned the long title. mentioned the short title. Otherwise, both the long title and the short title are identical and the reasons have been given.

Shri Hari Vishnu Kamath (Hoshangabad): By your leave, an important point arises out of the statement just now made, and that is this. As far as I am aware, the list of business or agenda is drafted, prepared and finalised in the Lok Sabha Secretariat and it bears the imprimatur of the Secretary. So, any error appearing in the agenda or the list of business will be laid at the door of the Secretary. It is not clear whether in this case it has been the responsibility of the Ministry or of this Secretariat. Where did the mistake creep in?

Mr. Speaker: He has stated that. So, he can only say that even if the mistake had been made in the Ministry, it ought to have been corrected by this Secretariat, our office.

Shri Hari Vishnu Kamath: Who made the mistake?

Mr. Speaker: The Ministry.

Shri Hari Vishnu Kamath: Let the Minister admit that. In one place the long title was quoted and in another place the short title.

Shri Hathi: I admit it I do not want to blame the Secretariat here.

Shri H. V. Kamath: Then it is alright.

12.52 hrs.

WEALTH-TAX (AMENDMENT) BILL—*contd.*

Mr. Speaker: The House will now take up clause by clause consideration. Out of 5 hours allotted, 3 hours and 40 minutes have been taken and 1 hour and 20 minutes now remain.

Clause 2.—(*Amendment of section* 2).

Amendments made

(i) Page 2,—

omit lines 7 and 8 (41).

(ii) Page 2, line 9,—

omit "(ii)". (42).

(*Shri B. R. Bhagat*)

Shri Man Sinh P. Patel (Mehsana): As my amendment No. 22 had been incorporated in the Government amendment, I am not moving it.

Mr. Speaker: The question is:

"That clause 2, as amended, stand part of the Bill"

The motion was adopted.

Clause 2, *as amended, was added to the Bill.*

Clause 3 *was added to the Bill.*

Clause 4.—(*Amendment of section* 4).

Shri N. Dandeker: I beg to move:

Page 4,—

after line 11, *insert*—

'(aa) the following proviso shall be inserted at the end, namely:—

"Provided that the provisions of this section shall not apply to any transfer made before the 1st April, 1964".' (23).

The object of this amendment, very briefly, is this. The present Act states that certain transfers of property by the husband to the wife, by the father to his children or by a male person in the long-term interests of his wife and children should be included in the wealth of the transferor. The new amendment applies this to an "individual" so that whether the transferor is a male or female, transfers by both are taken in. So far the principle is all right. Now I come to the amend-

[Shri N. Dandeker]

ment which I have proposed. At the time the Wealth-tax Act was passed, transfers made until the date on which that Act came into force were excluded. Correspondingly, the only object of the amendment that I have brought is to say that the provisions of this section, namely, transfer section whereby the transferred property would be included in the property of the transferor shall not apply to transfers made before the 1st April 1964. I hope Government will find it possible to accept it. It is exactly in accordance with the provisions of the Wealth-tax Act, at the time it was brought in, in relation to transfers which took place before the Wealth-tax Act came into force. My amendment aims at precisely the same thing.

The Minister of Planning (Shri B. R. Bhagat): We are not in a position to accept this amendment. The Wealth-tax Act has been in operation since 1957. In the other amendments that we have proposed we have already tried to give effect to some of the exemptions made applicable in the Gift Tax Act. This will be effective in respect of the transfers to which the increased rates of taxes introduced by the Finance Act, 1964 and the latter Act will be applicable. It will considerably mitigate the effect of section 4. Therefore, it is not possible to accept this amendment.

Amendments made:

(i) Page 3,

for lines 27 to 34, *substitute*,—

'(a) in sub-section (1)—

(i) for the words "there shall be included, as belonging to him", the words "there shall be included, as belonging to that individual" shall be substituted;

(ii) in clause (a)—

(A) for sub-clauses (i), (ii) and (iii), the following sub-clauses shall be substituted, namely:— (1).

(ii) Page 4,—

after line 11, *insert*—

'(B) the following proviso shall be inserted at the end, namely:—

"Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958) or is not chargeable under section 5 of that Act, for any assessment year commencing after the 31st day of March, 1964, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual.".'; (2)

(*Shri B. R. Bhagat*)

Mr. Speaker: I will now put amendment No. 23 of Shri Dandeker to the vote of the House.

Amendment No. 23 was put and negatived.

Mr. Speaker: The question is:

"That clause 4, as amended, stand part of the Bill".

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5.—(*Amendment of section* 5).

Shri N. Dandeker: I beg to move:

Page 5,—*after* line 6, *insert*—

'(iii) the following further proviso shall be inserted at the end, namely:—

"Provided further that the value of shares of a newly established Company held by the assessee shall not be assessed for Wealth-

tax for a period of five years from the establishment of the Company in question.".'. (24).

I would like to say just one word about this. The object of this amendment is the same as the one contained in the Principal Act, with purely a verbal change. When the Wealth-tax Act came in, investments in new industrial undertakings were excluded from the term "wealth". I am asking for a similar exclusion in this particular clause. The point I wish to make is this. I think there is every need to give encouragement for investment in new undertakings. I am sure the Government is aware that among the many reasons for the slackening of general industrial growth and for the extremely slack activity in the stock exchanges over the last year or two has been the fact that new investments are not coming in. Now, in the original Wealth-tax Act new investments in industrial undertakings were excluded precisely for the reason that investments in such undertakings should be encouraged. The amendment which I have moved is to the same effect. I have some knowledge of the effect which this sort of provision in the original Wealth-tax Act did have upon the extent to which private investors at all levels, whether assessees or not, were attracted to new industrial undertakings.

13 hrs.

I have also experience, particularly over the last two years, how company floatations have become increasingly difficult and how it is almost impossible to raise additional capital without going to institutional lenders. I do hope that Government will see the point that whatever may be the case for encouraging industrial development, an essential element in such industrial development is that investment for the first five years in it should be exempt from wealth-tax.

The reason for asking for that is not something theoretical but the practical fact that almost every company of any consequence that has been floated in recent years does not pay any dividend during the first four or five years. There may be exceptions, but in most cases, particularly in heavy engineering and in industry where the period of gestation and the period of initial development is long, there are no dividends in the first three to five years. The original provisions in the Wealth-tax Act whereby investments in new undertakings were exempted was, I think, very sound and the amendment that I have suggested is to restore that by way of a simple proviso such as I have proposed.

Shri B. R. Bhagat: I am sorry, I am not able to accept this amendment because, as the hon. Member has said, it will restore the original position of the Act when it was passed in 1957. It is true that at that time he Wealh-tax Act contemplated exemption, but in 1961 when the Income-tax (Amendment) Act was passed, section 84 of the Income-tax Act provided sufficient exemptions to new companies. Therefore, taking the two together, at that time it was considered that it will be a better way of providing relief.

Shri N. Dandeker: I have not told him about the income-tax at all; I have told him about the wealth-tax.

Shri B. R. Bhagat: I am giving the reason, namely, that in 1961 when the Income-tax Act was amended, section 84 provided similar exemptions to new undertakings. Therefore at that time it was felt that both these concessions were not necessary and this exemption under the Wealth-tax Act is being taken away. There is no case, according to me, for its restoration.

Mr. Speaker: I will put the amendment of Shri Dandeker (No. 24) to the vote of the House.

Amendment No. 24 was put and negatived.

Mr. Speaker: The question is.

"That clause 5 stand part of the Bill".

The motion was adopted.

Clause 5 was added to the Bill.

Mr. Speaker: I shall now put clauses 6 to 17 to the vote of the House. There are no amendments to them.

Shri N. Dandeker: Sir, I want to oppose clause 7, the whole of it. Clause 7 is concerned with the amendment of section 7 of the principal Act in a most important way and I will ask the indulgence of the House to allow me to expound why I think it is altogether wrong.

Section 7 of the Wealth Tax Act, which is basic to the charging of wealth-tax, is concerned with the manner in which the value of an asset for the purposes of wealth-tax computation is to be determined. The section reads as follows—I am reading sub-section (1) of section 7 of the principal Act, that is, the Wealth-tax Act:—

"The value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which is the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

Clause 7, sub-clause (a) of the amending Bill seeks to insert the words—

"Subject to any rules made in this behalf".

as the opening words of sub-section (1) of section 7 of the Wealth-tax Act.

I submit that this would virtually destroy sub-section (1) of section 7 of the Act completely. I cannot understand how the price of an asset which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date can be the subject of rules to be framed by the Central Board of Direct Taxes. What the section requires is the price which in the opinion of the Wealth-tax Officer, not of the Central Board of Direct Taxes or anybody else, that assets would fetch if sold in the open market. If one has some regard to the meaning of those words which still remain the principal provision in section 7 as regards valuation, the insertion of the words "Subject to any rules made in this behalf" seems to me somewhat ridiculous. But I do not merely want to say that it is ridiculous; I think, it destroys the whole section, the entire basis and it renders it infructuous.

However, I imagine that the constitutionality of it has been examined. Whatever may be the *ultra vires* or *intra vires* nature of the proposed rules according to which somehow the value at which the asset can be sold in the open market will be determined in accordance with the rules, it seems an incredible proposition that somebody can propound rules as to the value at which an asset can be sold in the open market. I myself think such Rules would be *ultra vires.*

But I do not wish to leave it at that; I wish to say that it destroys the entire fundamental basis for the valuation of assets in reference to which an assessment has to be made. Either the Government must say that the value of an asset should what they think it is and leave it at that; or they must say that the valuation of the asset shall be in accordance with the principles laid down in section 7 of the principal Act itself.

As I said yesterday, I am aware that in regard to certain specific assets there could be practical difficulties of ascertaining their value in accordance with this particular provision, namely, what they would fetch, in accordance with the opinion of the Wealth-tax Officer, if sold in the open market. And I would fully understand it, if

the proposal was for the removal of doubts in regard to such peculiar type of assets. I may mention, for instance the valuation of interest in expectancy in a reversionary estate; there is also difficulty, for instance, about the valuation of pensionary benefits where it is a commutable pension. I could name two or three other types of assets where there could be great difficulty in opinion about what they would fetch if sold in the open market. But in order that, in those particular cases, guidelines may properly be laid down by way of rules for the purposes of their valuation; the proposition that the entire net or gross estate minus debts of a person should be valued in accordance with executive rules while, at the same time, piously chanting that such value would be the price which it would fetch, if sold in the open market, seems to me to render the whole thing utterly meaningless.

I do feel that it is a very serious proposition. It is no more and no less than the proposition that the valuation of the net estate of a person for the purposes of assessment to wealth-tax shall be what the Central Government decides by framing rules on the subject.

Turning now to sub-section (2) of the principal Act, which is sought to be amended by sub-clause (b) of the proposed clause 7, the present sub-section (2) of the principal Act reads thus:—

> "Notwithstanding anything contained in sub-section (1)"—

which I have just now dealt with—

> "where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as the circumstances of the case may require;".

I think, this is an admirable sub-section. It gives to the Wealth-tax Officer adequate latitude in terms of the circumstances of the particular case to make adjustments to the net assets as shown in a balance-sheet drawn up by an assessee who maintains accounts regularly. It is now sought to amend it thus. Instead of the words "the circumstances of the case may require", they wish to put in the words "may be prescribed", that is to say, prescribed by rules

Here again, a perfectly good provision of law which may present some difficulties in practice,—I have no doubt that it does present difficulties and I should be very surprised if assessment of taxation, whether it is of income, wealth, expenditure, gift or estate duty, did not present difficulties—is sought to be amended in this absurd manner. To get over the difficulties by abandoning the principles, and by saying that the valuation in given circumstances shall not be dependent upon the circumstances of the case but shall be dependent upon some kind of rules that may prescribe the mode of valuation, it seems to me, is virtually throwing out of the whole thing completely and allowing the tail to wag the dog.

I strongly oppose this clause and I submit that the Minister should agree that it ought not to be there.

Dr. M. S. Aney (Nagpur): I entirely agree with what Mr. Dandeker has just placed before the House. By having this amendment, it comes to this. There is already a well-defined criterion in the old Act as to how the value of any asset can be determined and that practice is that it shall be in accordance with the estimate of the price which in the opinion of the Wealth-tax Officer would fetch if sold in the open market. The price prevailing in

[Dr. M. S. Aney]

the open market is there and the Wealth-Tax Officer is required to base the estimate taking into consideration the price in the open market. That is the criterion for assessing the value. Now, this amendment comes to this. It says, it will be subject to such rules that may be prescribed. I cannot imagine if they have got any other criterion in their mind. They should let us know that. What is going to be the criterion then? We are required to give assent to this Bill but we must know what is the other criterion. The assesses are ignorant of what is the criterion which the Government is going to adopt in regard to the valuation of the assets. I think this is an innocuous position, a very ambiguous position. The language which was quite unequivocal and well-defined in the original Act is, on account of the change which is being made, being made uncertain. I do not think it is an improvement on the position of the Law as it is.

Similarly, by taking away the words "the circumstances of the case may require", the Government is taking away the basis on which it is possible for the Wealth-Tax Officers to come to a conclusion as regards the matter covered by sub-section (2) of the Act. Taking away the words "the circumstances of the case may require", what is the basis on which he has to estimate? It is as may be prescribed by the rules. It is all left to be determined later on under the rules to be prescribed of which we have no knowledge. We are called upon to give a blank cheque so far as this matter is concerned. I think the better course for the hon. Minister would be to accept the amendment moved by my hon. friend. With these words, I oppose this clause.

Shri Nambiar: I am sorry I have to differ with what my hon. friend Mr. Dandeker has said on this question. Section 7 says:

> "The value of any asset, other than cash, for the purpose of this Act, shall be estimated to be the price which in the opinion of the Wealth-Tax Officer it would fetch if sold in the open market......".

It is not that it will be whatever the price that will be obtained if sold in the open market. Here, it says, ".... in the opinion of the Wealth-tax Officer..". His opinion is being considered as to what it would fetch if sold in the open market. Therefore ,that Wealth-Tax Officer is given a discretion to decide as to whether this would fetch such and such an amount. Here, by the insertion of the new clause, that opinion of the Wealth-Tax Officer is circumscribed by the rules to be framed thereunder. Therefore, he cannot have his own opinion. If the words "it would fetch if sold in the open market...." alone were there, then this amendment would be bad. If these words namely "In the opinion of the Wealth-tax Officer" continue to be there, then there must be an authority to qualify his opinion. Therefore, this amendment which has been brought in is proper. Otherwise, I would think the Wealth-Tax Officer would do things against the interest of the exchequer. That danger is there because he may be influenced by the assessee. In order to make it a little more strict and stringent, this amendment has been brought in.

With these words, I support this clause.

Shri B. R. Bhagat: Mr. Speaker, Sir, yesterday on the first-reading stage,this matter was raised and the Finance Minister elaborately dealt with this and, therefore, although the hon. Members have raised those points again, I would not like to go into elaborate details just repeating the arguments. But briefly, I would say that the con-

cept of market value in certain cases is difficult to determine. There are well-defined shares but they are private companies which are not quoted on the market and it is difficult to determine their market value. Even the market value as such fluctuates every day, from day to day, and, therefore, what is sought to be achieved is that instead of leaving any estimation of this market value to the valuers or the Wealth-Tax Officers who are guided by not well-defined principles but just by *ad hoc* basis and this basis may change from individual to individual, or from valuer to valuer, we will have the prescribed rules. What is being substituted is that a set of rules will be provided and the Finance Minister has assured the House that the rules will be equitable and fair and more than that these rules will be placed before the House and the Members can judge, before they are adopted, whether the rules are fair and equitable or not. This is a better basis of valuation.

Shri N. Dandeker: Not a basis at all.

Mr. Speaker: The question is:

"That clause 6 stand part of the Bill".

The motion was adopted.

Clause 6 *was added to the Bill*

Mr. Speaker: The question is:

"That clauses 7 to 17 stand part of the Bill".

The motion was adopted.

Clauses 7 *to* 17 *were added to the Bill*

Clause 18.—(*Substitution of new section for section* 18)

Mr. Speaker: Are there any amendments to be moved?

Shri V. B. Gandhi (Bombay Central South): I beg to move:

(i) Page 11, line 20—

omit "Commissioner or Appellate Tribunal". (5).

(i) Page 12, lines 4 and 5,—

omit "Commissioner or the Appellate Tribunal". (10).

(iii) "Page 12, line 39,—

for "two years" *substitute* "one year". (11).

Mr. Speaker: Any other amendments to be moved?

Shri N. Dandeker: My amendments are No. 25, 26, 27 and 28.

Mr. Speaker: Amendment No. 28 is the same as No. 11 which Mr. Gandhi has moved.

Shri N. Dandeker: That is right.

Mr. Speaker: Then, he may move Amendment Nos. 25, 26 and 27.

Shri N. Dandeker: I beg to move:

(i) Page 12, lines 4 and 5,—

omit "which shall not be less than ten per cent. but" (25).

(ii) Page 12, lines 10 and 11,—

omit "which shall not be less than twenty per cent. but" (26).

(iii) Page 12—

omit "lines 15 to 23" (27)

Shri V. B. Gandhi: I would like my two amendments No. 5 and 10 to be considered together for they deal with the same question.

13.19 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

The object of these two amendments is to vest the power to impose penelties only in the Wealth-Tax Officer and the Appellate Assistant Commissioner. In the existing Act, the authorities which are vested with this power are the Wealth-Tax Officers, the Appellate Assistant Commissioners and the Commissioner and also the Appellate Tribunal. So, in this Bill also the same list is continued. But actually it seems that there has been some rethinking on this subject, and we see that in the Income-tax Act of 1961 under section 271—this Act is the parallel legislation—the name of the

[Shri V. B. Gandhi]

Commissioner has been omitted. And also, later on the Law Commission recommended that the name of the Appellate Tribunal should also be omitted from the list of authorities vested with the powers to impose those penalties.

I am quite sure that the Government has considered this question, since they have disregarded this latter thinking on the subject and chosen to retain the original four names in the list. At least, if they have any good reasons, they have not been made known to us. I would urge upon the Minister to please inform this House exactly how and why Government decided to retain the four names—that is, the names of the Wealth-Tax Officer, the appellate assistant commissioner, the commissioner and the appellate tribunal.

Now, Sir, I would go on to my amendment No. 9. I do not propose to move this amendment for the reason that yesterday in the House the Finance Minister expressed the opinion that that amendment would have a nugatory effect, and I accept that opinion so far as this amendment goes.

Then I come to the last amendment, that is No. 11. This amendment has for its object the reduction of the period which should be taken for passing an order imposing a penalty. The facts in this case are that in the Bill they ask for a period of two years for passing an order imposing a penalty in proceedings that have already been completed. I do not know why exactly, when the proceedings have been completed, it should take such a long time to pass an order imposing penalty. Actually we find that the Direct Taxes Administration (Enquiry) Committee also had considered this aspect and had recommended that the period should be reduced to one year. I think one year is a reasonably long period, and I would urge that Government should reconsider this matter. At least let us try this period of one year for some time. If later on we find that it leads to difficulties and that the wealth-tax officers are not able to carry on their duties, we might consider changing it.

Shri N. Dandekar: Sir, I would like to say first of all one word in support of the amendments which Mr. Gandhi has moved, namely amendments Nos. 5 and 10 which go together. I think there has got to be really a limit to the number of officers from whom one can be expecting penalties being imposed. The proposal here would be that even if the assessee furnishes a satisfactory explation to the wealth-tax officer, he will be open to be assaulted by the appellate assistant commissioner. That is the present law. But now, even if he sometimes gets past him, there will be on the one hand the Commissioner and, on the other, the Appellate Tribunal to contend with. I think we are overdoing it.

The people who originally deal with assessment are the wealth-tax officers. Their work is guided and supervised by Inspecting Assistant Commissioners, and their work is further subject to appellate jurisdiction and scrutiny by the Appellate Assistant Commissioners. That should be enough, I therefore, agree entirely with Mr. Gandhi's amendments, Nos. 5 and 10, that in the particular places referred to the words "Commissioner" or "Appellate Tribunal" may be deleted.

Then I would take up three of my amendments together, that is Nos. 25, 26 and 27. Amendments Nos. 25 and 26 are simple enough. They are concerned with omitting, in the proposed new section 18, the minimum imposition of fines that have been prescribed at the particular places referred to, namely, at page 12, lines 4 and 5 where it is said minimum penalty "shall not be less than ten per cent", and at lines 10 and 12 where it is said minimum penalty "shall not be less than twenty per cent".

Everybody knows that in practice the Department, quite rightly, has a yard-stick of measurement in regard to imposition of panalties in different types of cases. Everybody knows too, and quite properly again, that in the executive instructions to their officers they have laid down explicitly and executively that, in proper cases a minimum penalty of this size should be imposed. It is not therefore as if they have neither got departmental instructions, nor that they have no power to impose the level of penalties which they think to be proper.

What they are seeking to do by this amendment, which I have challenged, is to fetter the discretion of the appellate authorities. I think this is bad,—this type of legislation, as I was saying yesterday, and I have spoken of on other occasions,—the fettering of the discretion of the appellate authorities is most improper. You might as well say, if there is a penalty of so much, there shall be no appeal. It really comes to that.

Circumstances of particular cases vary over a very wide range. And, therefore, I do submit that these minimum penalties ought to be excluded, so that while the Department on its own has a minimum scale of penalties which will be imposed, of course the assessee would have the right to ventilate the matter if he thinks the penalty is excessive, by appeal to the appellate authorities. I therefore press these amendments.

Then Sir, my amendment No. 27 is concerned with deleting the whole of the "Explanation" that appears in the middle of page 12. It is, as I said yesterday and I must repeat, an extraordinary provision imposing penalties "unless an assessee proves that the failure to return the correct wealth did not arise from any fraud etc." How is an assessee to prove the negative, that it did not arise from any fraud? I have been thinking over this since yesterday, thinking over the answers given by the Finance Minister, and over various permutations and combinations of the situation where a man may be suspected. It may be his valuation is wrong. But how is he to prove that this incorrect valuation did not arise from any fraud or any gross or wilful neglect on his part? But unless he does precisely that, he "shall be deemed" to have concealed the particulars of assets or furnished inaccurate particulars of assets or debts for the purpose of clause (c). But for the purpose of clause (c), what is really involved is that he "has concealed the particulars of any assets"—not value—"has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts".

I am entirely with the Government in their desire to slap down any attempt at concealing any assets or furnishing inaccurate particulars of assets. But when it is a question of valuation, I was told by the Finance Minister yesterday as well as today that the rules proposed under section 7 would not be rigid and are not virtually going to work out the valuation, but that they would merely provide guide-lines. There could, therefore, even when there are rules as to the mode of valuation, be differences of opinion as to the valuation, under particular rules, in relation to the facts of the case. It is obvious that an assessee, in the application of those rules, is going to take one view; and the Department, in application of those same rules, is going to take another view. This follows the natural course of events. But if the difference between the returned value,—I repeat, not the returned particulars of assets, not the returned quantum or number of assets or whatever it may be, but the value returned for disclosed assets,—happens to be less that the assessed value of the net wealth by more than 20 per cent, then this gentleman will have to prove, in order to get away the mischief of sub-section (3), such difference did not arise from any fraud and it did not arise from any gross or wilful neglect. I really do

[Shri N. Dandekar.]

not know how on earth anybody can proceed about establishing this sort of negative intention.

The second point that I would like to make is this. Repeatedly, yesterday it was pointed out or sought to excuse this "Explanation" by saying that this was on all fours with the provisions in the Income-tax Act. The Income-tox Act is concerned with ascertainment and assessment of income. But this Wealth Tax Act is concerned with two different things; one is the ascertainment of assets and particulars of assets, and the second is the valuation of those assets. In the Income-tax Act, where one is concerned with ascertaining the quantum income and nothing else, if it is stated that if one under-states his income by more than 20 per cent, one shall be deemed to have concealed his income, there is something to be said for it. I think that that is also going a little too far, but I am prepared to accede to the suggestion that there is something to be said for that. But in the Wealth-tax Act, when the assessee's return discloses the totality of his assets and the totality of his liabilities, and the man makes the best attempt in terms of stating their market value when he makes the best attempt to ascertain what might conceivably be the opinion of the wealth-tax officer as to the market value, and hereafter when the Rules come in he also makes his best attempt, erring on his own side.—(I would admit that), to value the assets in accordance with the rules that might be framed hereafter, if there turns out to be a difference of more than 20 per cent,—this could happen in regard to one building alone in a place like Bombay, the difference in valuation can easily result in 20 per cent difference between the valuation that which the wealth-tax officer (erring on the side of revenue) may be disposed to place upon it and which the assessee may be disposed to place upon it—then the man is to be deemed to have committed the grave offence of concealment of particulars of his assets or concealment of the asset itself; if he is unable to prove that this difference in valuation was not due to fraud or gross or wilful neglect. The analogy between the income-tax provision in that respect and this particular provision is totally devoid of any foundation. Therefore, I strongly urge this particular amendment for the deletion of the whole of this explanation at lines 15 to 23 at page 12.

Finally there is only one other matter dealing with clause 18 to which I must refer, and that is in regard to the amendment moved by Shri V. B. Gandhi, which reads thus:

Page 12, line 39, *for* 'two years' *substitute* 'one year'.

Just as I said earlier in connection with another amendment, that there has got to be a limited number of officers who can impose penalties on the assessees, similarly, there has got to be a limited period within which you can be exposed to penalties. You just cannot go on for two years. It is an intolerable position, with a longer period, on the one hand, and with whole lot of authorities reviewing this business over and over again, on the other and the assessee not being clear until all of them have had a go at it over a period of two years. As Shri V. B. Gandhi has explained, the Direct Taxes Administration Enquiry Committee, which particularly dealt with the administrative angle of this matter, and which is the angle now being pressed for asking for two years instead of one, clearly came to the conclusion that the period ought to be only one year. I, therefore, support the amendment which has been brought forward by Shri V. B. Gandhi.

Shri D. C. Sharma (Gurdaspur): I have listened to the speeches of the hon. Members, and after having

listened to them carefully I have come to the conclusion that they have some hypothetical cases in view while discussing these clauses.

Shri N. Dandekar: No, I have no case in view.

Shri D. C. Sharma: Or they have some cases in view which might arise in course of time to come. I feel that if the clauses are read as they are and if the words are construed as they are meant to be construed and if the intentions are understood as they are meant to be understood, there should be no difficulty in passing clause 18 as it stands. I feel that one of the fundamental principles in any taxation law everywhere is that penalty should be imposed for not giving returns in due time. I do not think that this amending Bill does anything unusual or preposterous in imposing a penalty like that. I feel also that in every Income-tax Act in every part of the world, penalty is imposed on those persons who do not reply to the notices in due time. That is what is being done here also. I do not think that any departure has been made in this clause 18 from the normal practices that pertain to incomes and assets in any part of the world. Therefore, I think that there should be no plea made in the interests of those who might be involved in this or who might not be involved in this.

Now, I come to the clause relating to penalty. The term 'penalty' is a very obnoxious one, and I agree with my hon. friend that the word 'penalty' should not be there. But can we think of any legislation which does not impose any penalty? I think that the Income-tax Act and all these Acts relating to taxation are slightly punitive in nature. if thev are not mainly punitive, and I believe that if the penalties have been graduated, they have been graduated in the interests of the assessee. I am very glad that Government have not imposed any blanket penalties on all those persons, but they have tried to adjust it to the circumstances of the case. I think that it is in the fitness of things that an adjustment has been made even in those cases where penalties are to be imposed. I feel that this has been done in the interests of the assessee. I feel that this clause is much more in the interests of the assessee than in the interests of Government. By looking at it from an impartial point of view, I can say that Government will suffer so far as revenue is concerned, but the assessee can have absolutely no fears on this score.

It has been said that so many authorities have been brought in. I myself do not like that so many officers should be brought in. But when I look at this clause, and I read it very carefully, I have to come to the conclusion that some of these officers are going to exercise what may be called appellate authority. Therefore, a wrong done by one authority can be undone by another authority. Though I do not like that their should be a multiplication of bureaucracy, and I do not like that there should be an addition to the force of Government servants in such numbers under every Bill, I think that this has been done here so that the assessee can seek justice from another person if he has suffered at the hands of one person.

Now, I come to the question of the period, It is said that two years have been given. After all, what are those two years? Assets are the result of accumulations of capital through long periods of time, and the longer the time it has taken for anybody to accumulate the assets, the easier it becomes for him to conceal those assets also, because all the assets are not like this hall which can be seen and which can be visualised. All the as-

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sets are not to be found in account books, not in the bank books nor in the lockers nor in the Godrej safes which some of these persons keep. Sometimes these assets become subterranean; the assets have a knack of going underground; they become like a nuclear submarine which disappears under the water.

I respectfully submit that the two years' time is equitable and fair. If it had been three or four years there would have been much trouble; but I think the Government has been very equitable in placing the limit of two years. Therefore, I support the clause as it stands wholeheartedly.

Dr. M. S. Aney: I fully understand the propriety of cl. 18 and the various penalties prescribed therein. But in the course of my speech yesterday during the consideration stage, I took exception to the explanation. My main ground of opposition was that in prescribing this particular explanation, a fundamental principle of jurisprudence was ignored, namely, that the accused who comes even before a court is presumed innocent until the contrary is proved. But here in this explanation, if the valuation of the assets as computed by the assessee is different from the valuation fixed by the officer to the extent of more than 20 per cent, the assessee is presumed to be guilty of having concealed his income, and then punishments are prescribed. My point is that in the absence of a clear test or criterion for the fixation of the value of assets, there is an element of discretion involved on the part of the assessee as well as the assessing officer. These two men can have their own discretion. It may be that the standards by which the assessee judges what may be the value of his property will be different from the standard employed by the officer in the same case. Take, for example, a house in a village. The owner thinks that its value is not much and it does not fetch much rent. In view of that, he has his own method of assessing its value. Whereas the other man may think that the house has a much bigger value and he applies his own artificial criteria and fixes the value accordingly. Therefore, it is possible that the two valuations may be different even to the extent of more than 20 per cent. But under this explanation, if the difference in valuation exceeds 20 per cent, the assessee is presumed guilty of having concealed his income. This, in my opinion, is a wrong presumption. Such an explanation which contains a wrong presumption which goes against the cardinal principles of jurisprudence should, I think, not find a place in the Bill. Subject to this, I am supporting the clause as it is which is based on normal practices in these matters.

Shri Gauri Shankar Kakkar (Fatehpur): I support the amendments moved by Shri Dandekar. Lately we have been noticing one trend. that our Government is drifting from established cardinal principles of jurisprudence. One of these principles is that unless a person is proved to be guilty, there should be no presumption of guilty. This clause is a departure from that principle. I fail to understand how the analogy of the Income Tax Act can apply. Here it is a case of valuation of property; the valuation differs from one property to another. It is unlike that of income where the valuation is based on a constant factor.

I would have welcomed a provision which would say that if there is a concealment of actual assets by the assessee, the property would be confiscated. But here is a case of a *bona fide*, innocent mistake. In calculatnig the value of assets, you sometimes include the buildings, other

immovable property and ornaments. The rules can never be specifically defined to cover all cases. Therefore, the valuation of these properties can be more or less than a certain amount which is arrived at by the assessing officer. That being so, it would be a very severe hardship if the explanation is allowed to remain in the statute book.

Mr. Deputy-Speaker: Shri Bhagat.

Shri Nambiar: I thought I would help the Minister in opposing the amendments.

Mr. Deputy-Speaker: He will reply.

Shri B. R. Bhagat: I am unable to accept the amendments for the simple reason that they will nullify the main effect of this Bill.

Apart from the merits, one of the reasons why some of these provisions have been put together is that there are similar provisions in the Gift Tax Act, and the Income-Tax Act. Correspondingly, it will serve two purposes. Administratively, it will be easier. Secondly, it will make more difficult fradulent activities by assessees who want to play ducks and drakes with the law.

Coming to the amendments—the amendments of both the Members are similar—I will group them in two or three categories. The first one is powers to levy penalty. It has been said that it should not be given to more than one person, that a number of people should not be given the powers. Here exemptions can be given or penalties can be reduced. So, there is nothing wrong in giving them more powers. In this case, it is necessary that the Commissioners as well as the tribunal should have the power to impose penalties in case of concealment if it is found at their level. The powers of enhancement of assessment will not be sufficiently effective if these authorities are not vested with these powers of levying penalties also. Therefore, I oppose the amendments in this respect.

Then, another category relates to the minimum penalty. For cases of failure to furnish the return or to furnish the required particulars, the minimum penalty is ten per cent which is the same as in the Income-tax Act. In the other case, it is 20 per cent for concealment of particulars of net wealth. This is the same as section 271 of the Income-tax Act. These minimum penalties are considered absolutely necessary because the penalties are reduced to such low figures by the appellate authorities that they become almost ridiculous or ineffective. Therefore, such minimum penalty is necessary.

Then I come to this question of the Explanation which was dealt with by a number of hon. Members. I must say to begin with that this Explanation merely draws a presumption in such cases. It is open to the assessee to rebut the presumption.

Shri S. N. Dandekar: That is precisely the point.

Shri B. R. Bhagat: That is why I say it cuts both ways, both in the hon. Member's favour as well as in mine. So, it is only a presumption, and it can always be rebutted by the assessee if the mistake is either innocent or *bona fide*.

Dr. M. S. Aney: You put the onus on the wrong side.

Shri B. R. Bhagat: As the hon. Member said, there can be a difference in the market value or the valuation of properties, a genuine difference of more than 20 per cent. In such cases, he says to have such a provision like that will be very hard. The effort in this scheme is that the valuation in such cases will be sought to be made more precise, and will not be dependent upon the circumstances, or by the *ad hoc* principles adopted by varying valuers or other Wealth Tax officers, but will be guided by certain principles adopted by the House. In such circumstances,

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from our practical experience, a variation of more than 20 per cent will not be *bona fide*. That is the rationale of keeping this 80 per cent. These sections are very substantial ones, and to reduce them would be defeating the purpose.

The last question is about the period. I agree with the hon. Member that in some cases the period of one year may not be absolutely adequate. So, 'two years' has been put in as a compromise, and it should be accepted.

Mr. Deputy-Speaker: I put amendments Nos. 5, 25, 26 and 27 to the House.

The amendments Nos. 5, 25, 26 *and* 27 *were put and negatived.*

Mr. Deputy-Speaker: I put amendments Nos. 10 and 11 to the House.

Amendments Nos. 10 *and* 11 *were put and negatived.*

Mr. Deputy-Speaker: The question is:

"That Clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 *was added to the Bill.*

Mr. Deputy-Speaker: The question is:

"That Clauses 19 to 25 stand part of the Bill."

The motion was adopted.

Clauses 19 *to* 25 *were added to the Bill.*

Clause 26— *(Amendment of section* **27**).

Shri N. Dandekar: I beg to move:

Page 19, line 27,—

for "sixty days" *substitute* "ninety days". (29)

The only reason for moving this amendment is that when matters have gone in appeal to the Appellate Tribunal, and from there one has to consider whether the matter should be taken to the High Court, there is a good deal of careful consideration required. One does not lightly jump into this kind of thing, and consequently, the amendment which I have proposed will give a period of 90 days, both to the department and to the assessee to consider whether they will require the appellate tribunal to refer a particular case to the High Court. In other words, I think 60 days is cutting it rather fine, and I think 90 days are necessary.

Shri B. R. Bhagat: This period of 60 days has been put in the Gift Tax Act, and the Income-tax Act, and therefore, for the sake of uniformity it is necessary that it should be 60 days.

Shri Hari Vishnu Kamath: Is it sacrosanct?

Shri B. G. Bhagat: Not sacrosanct.

Mr. Deputy-Speaker: I put amendment No. 29 to the House.

Amendment No. 29 *was put and negatived.*

Mr. Deputy-Speaker: The question is:

"That Clause 26 stand part of the Bill."

The motion was adopted.

Clause 26 *was added to the Bill.*

Clause 27— *(Insertion of new Sections 29A and 29B).*

Shri N. Dandekar: I beg to move:

Page 20,—

omit lines 22 to 25. (30)

The new clause 29A, sought to be omitted by this amendment, reads:

"Notwithstanding that a reference has been made to the High Court or the Supreme Court, or

> an appeal has been preferred to the Supreme Court, wealth-tax shall be payable in accordance with the assessment made in the case."

I am sorry I have only one word to describe this. I think this is monstrous. The case is so serious that the appellate tribunal, after having decided the case itself in appeal, considers it a fit case, either on a motion by the Commissioner or on a motion by the assessee, for reference to the High Court or the Supreme Court, or an appeal has been preferred to the Supreme Court. Nevertheless, it is suggested that the wealth tax shall be payable in accordance with the assessment made in the case. It seems utterly monstrous, and I hope that the House will approve of this amendment to delete this new clause.

Shri N. C. Chatterjee (Burdwan): I think there is good deal of force in the contention of my hon. friend who has just now spoken.

You cannot go to the High Court unless the tribunal has applied its mind to the propositions, and you cannot generally have a reference unless there are serious questions of law involved. Also, you cannot go to the Supreme Court unless the High Court certifies that the case is such that there are important points which require consideration and adjudication by the highest court in India. In such a case, I do not think it will be proper—I would ask the Minister to reconsider it—to levy a compulsory exaction of the wealth tax which has been assessed by the lower tribunal.

The new clause 29A says:

> "Notwithstanding that a reference has been made to the High Court....".

That is, notwithstanding the certificate granted by the appellate tribunal that this is a matter which requires consideration of the highest court in the State or of the Supreme Court, when the High Court has lifted the ban or the Supreme Court has granted special leave under article 136 because there are very important questions which require adjudication and final decision by the highest tribunal in India, or an appeal has been preferred to the Supreme Court, notwithstanding all this, the wealth tax will be payable in accordance with the assessment made in that case.

I submit that that should be left to the High Court or the Supreme Court. Trust the High Court, the highest tribunal in the State, or the Supreme Court, which has got seized of the matter.

Generally, there is a stay application made, but an appeal does not mean an automatic stay, and it only means that the assessee has to point out to the courts that there are sufficient and cogent grounds for granting a stay, pending the final decision of the court. That is the normal law even in income-tax and other cases. Why should there be a deviation in the case of wealth-tax? Let us leave it to the judgment of the High Court and Supreme Court. Usually it is very difficult to get a stay unless you furnish the security. To make it compulsory, to take away the jurisdiction of the High Court and the Supreme Court, I submit, is not correct. Not showing due deference to the highest courts in this country and having a provision not in consonance with the provisions we have adopted in other cases is not correct. There is too much of slavish imitation of the Income-tax Act. It should not be held to be *pari materia*. I support the amendment moved by the last speaker.

14 hrs.

Shri B. R. Bhagat: With due deference to the opinions expressed by the hon. Member who is an eminent lawyer himself, may I say there is no question of showing any lack of deference to the High Court and Supreme Court. The point is, in any case, we have accepted this principle that if a tax is due, an appeal

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is made and an order is passed, it has to be paid. It is for this reason that we have provided in the wealth-tax a relief that when the High Court orders the refund after due consideration, the refund will be paid immediately and if it is not paid within a period, Government will pay interest on it. When that concession has been given, if we provide that in such cases they may not pay the tax, it will make collection of taxes very difficult.

I shall assure the hon. Member that there is no lack of deference shown to the High Court. For the reasons I have explained, I am sorry I cannot accept the amendment.

Mr. Deputy-Speaker: I shall now put amendment No. 30 to the House.

Amendment No. 30 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 was added to the Bill.

Clause 28— (*Substitution of new sections for sections* 30, 31 *and* 32).

Shri Narain Dandekar: I have two amendments Nos. 33 and 34.

I beg to move:

(i) Page 21, *omit lines* 16 *to* 23. (33).

(ii) Page 22, line 16, *for* "may, in his discretion, and" *substitute* "shall". 34).

My first amendment is that lines 16 to 23 should be omitted. This is in line with my earlier amendment.

The proviso which I seek to amend reads:—

"Provided that, where the Wealth-tax Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty-five days aforesaid is allowed, he may with the previous approval of the Inspecting Assistant Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty-five days aforesaid, as may be specified by him in the notice of demand."

The short point is this. An assessment is made. The ordinary rule is that one gets 35 days within which to pay the tax. In the month of March, all the officers are naturally anxious that the money should come in before the 31st March. Not merely the assessing officer, but the Inspecting Assistant Commissioner and the Commissioner are all naturally anxious,—and I fully share their anxiety and desire—that if possible, with the co-operation of the assessee, the money should come in well before 35 days. But the provision here is "If the wealth-tax officer has any reason to believe that it would be detrimental to revenue". He says to himself, "if I do not get this money before 31st March, the whole Government of India's budget is going to be affected." And hence he will require the assessee to pay the assessed tax forthwith. He can make an assessment in the last week of March and ask the assessee to pay the money by 31st March. It is a most incredible provision that while the statute normally allows 35 days, because the wealth-tax office thinks this period is going to be detrimental to the revenues of the Government of India, he wants this money to be paid in less than a period of 35 days. I think there must be some consideration shown to the assessees, because these days you have to produce money for all kinds of tax demands—self-assessment, provisional assessment, regular assessment, advance payment

of tax, etc. and revision of all these every time a later pending assessment is made. Then on the top of all these, the Government now say that if the wealth-tax officer or income-tax officer thinks that it would be detrimental to the revenue, that is to say, that the Government of India's budget calculations would be upset, the officer can say, "pay up within 24 hours." The provision says "being a period less than 35 days". I do not think this kind of provision ought to be supported. Therefore, I have moved for the deletion of lines 16 to 23 of this clause.

So far as amendment No. 34 is concerned, it has been misprinted in the list of amendments. They have repeated the whole of the amendment of Mr. Masani. The amendment I handed over was merely for the deletion of the words "may, in his discretion, and". I have confirmed this with the office and they have agreed. If my amendment is accepted, this particular clause would read as follows:

> "Where an assessee has presented an appeal under section 23, the Wealth-tax Officer shall, subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of."

There are two points. One is that it is only the amount in dispute in appeal. Unless, therefore, the entire assessment is in dispute in appeal, it is not the case that the assessee will be in default "in regard to the whole of it;" he is "in default" only in regard to the amount that is in appeal. Whereas the section, as it is, gives to the wealth-tax officer a discretion—the words are "may, in his discretion and subject to such conditions",—I am suggesting, instead of "may", in his discretion, and" it should be "shall, followed by subject to such conditions he may think fit to impose". I agree he ought to have a right to impose appropriate conditions, according to the circumstances of the case so as to treat an assessee as not being in default in respect of the amount in dispute in appeal, even though the time for appeal has expired.

Shri B. R. Bhagat: Sir, I think the first amendment is entirely misconceived. It is not contemplated that in order to get the money before the 31st March, the wealth-tax officer will reduce the period of 35 days. It is meant for this case in which the wealth-tax officer has a *bona-fide* fear that the assessee will alienate the assets. Even in that case, he has to take the orders of his superior officer—the Inspecting Assistant Commissioner—and he cannot do it on his own. It is only to safeguard against alienation of assets by the assessee that this provision is meant.

Shri Narain Dandekar: I am happy to hear that.

Shri B. R. Bhagat: Regarding the other amendment, I cannot accept it, because he wants to take away the discretion of the Wealth-tax Officer. The effect of it will be that it will make it obligatory on the officer to treat the assessee as not in default in all cases in respect of the amount disputed in appeal. The amendment will enable assessees to delay payment of taxes by going on appeal on frivolous grounds. I am sorry I cannot accept it.

Mr. Deputy-Speaker: Shall I put the amendments to the vote of the House?

Shri Narain Dandekar: In view of the assurance given by the hon. Minister, I withdraw my amendment No. 34.

Mr. Deputy-Speaker: Has he the leave of the House to withdraw it?

Some hon. Members: Yes.

Amendment No. 34 was, by leave, withdrawn.

Mr. Deputy-Speaker: I will put amendment No. 33 to the House.

Amendment No. 33 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 28 stand part of the Bill."

The motion was adopted.

Clause 28 was added to the Bill.

Clause 29 was added to the Bill.

Clause 30— (*Insertion of new Chapter VIIA*)

Shri Narain Dandekar: I have two amendments Nos. 35 and 36.

I beg to move:

(i) Page 23, *omit* lines 20 to 26. (35).

(ii) Page 24, *omit* lines 3 to 10. (36).

My first amendment seeks to omit lines 20 to 26. It is a curious provision that is now proposed in the new section 34(2). It says:

"Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Wealth-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Wealth-tax Officer may, with the previous approval of the Commissioner, withhold the refund....".

In other words, it amounts to saying: to assessee "whether it is head or tail you lose". The earlier proposition was that an assessee should be required to pay the tax assessed, even when the matter is in appeal. Here it is the reverse. Where the assessee is due a refund but there are appeals, presumably by the department, or further proceeding or any other proceedings are pending under this Act and the Wealth-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue he may withhold the refund. I suggest this is really carrying this thing to a ridiculously savage level. I was regarded as one of the most tough Income-tax Commissioners; even so. If my officers had come with a proposal of this kind I would have said that it was a monstrous proposal. The man has got to lose his refund. He is entitled to the refund. The department may not agree with it, the department may have gone in appeal to the Appellate Commissioner, to the Tribunal, to the High Court or to the Supreme Court. But a refund due is a refund due, and it should be paid. That used to be my attitude. I see no reason why when a refund is actually due to an assessee, just because the department does not concede a particular point of law or a point of view on facts and the department is anxious to take the matter right up to the Supreme Court, the refund should be withheld. I put it to the Minister in the same way as he put it to me a little earlier when I withdrew one of my amendments to the earlier clause. Will not the Ministry or the department keep back the money belonging to the assessees by deliberately going up in appeal after appeal? I withdrew my earlier amendment when the Minister quite rightly pointed out that this is one way by which an assessee can abstain for a considerable period of time from payment of tax, by the simple device that he can go in appeal after appeal and postpone the payment of tax. I agree that that was a legitimate reason for that particular provision to be there in the earlier clause. Therefore, I withdrew my amendment. Here, I submit, this is an open invitation to the Wealth-tax Officers and Inspecting Assistant Commissioners,—one

knows that these days the Wealth-tax Officers hardly function or they funcion like puppets with the Inspecting Assistant Commissioners sitting at the back and pulling strings—to go in appeal and delay matters. If there is a big case of refund and the department feels that the amount is not to be repaid for as long as possible they can go on in appeal after appeal and stop the refund. I think this is a ridiculous if not an unjust clause and I do not think there can be any reasonable justification for a thing of this kind.

My other amendment, amendment No. 36, refers to page 24 and I am asking for the deletion of lines 3 to 10. It is concernd with sub-section (5) of the proposed new section. It says:

> "Where under any of the provisions of this Act, a refund is found to be due to any person, the Wealth-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund...."

This is another old gag that goes on.

> "..... in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable, under this Act by the person to whom the refund is due, after giving an intimation in writing to such person...."

There may be an item of tax outstanding—I am talking from personal experience—from an assessee to whom a refund is due. He may have gone in appeal on some ground or the other. This wretched man is going to have his refund struck off against the supposed amount due from him. Is it to be set off, say, against the first assessment stage or right upto the last stage, so that it would be adjusted against whatever is the ultimate net amount estimated due from him? If the latter, it is obviously a reasonable thing to do. But what it says is:

> ".... set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom refund is due, after giving an intimation.."

Why issue a notice about it at all? The wretched man cannot do anything about it. Therefore, Sir, I suggest that these lines alos should be deleted.

Shri N. C. Chatterjee: Sir, the first amendment suggested by my hon. friend is. I think, fair and I will request the hon. Minister to consider it. There should be no discrimination between the State and the citizen.

The revenue authorities are taking the power that even if there is an appeal pending or anything going on in the High Court or in the Supreme Court there shall be no stay, no question of any hiatus and no relief given pending that. But why should there be an invidious distinction made in favour of the revenue authorities? Here it says:

> "Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Wealth-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Wealth-tax Officer may, with the previous approval of the Commissioner...."

I think it will not be proper. It will be really something like expropriation, at least temporary. You have no business to retain the amount when the judicial authorities or quasi-judicial tribunal have held that the money should be paid to the citizen. It will not be fair to withhold it. You should not claim that power and make a discrimination of

[Shri N. C. Chatterjee]

this kind against a citizen who has got an order in his favour under appropriate law. That will be treating the order with scant courtesy. That should not be done. I would request the hon. Minister to consider this amendment favourably.

Shri B. R. Bhagat: With regard to the first amendment of the hon. Member, the principle of it has already been accepted by the House earlier when it passed the Income-tax Act in 1961 where a similar power is given. The rationale behind it is this. It does not give any absolute power to the officer. It is only an enabling provision. It gives him the discretion that in case he is satisfied, as is clearly stated, that the interest of revenue is likely to be prejudicially affected seriously he can act. It will be done only under exceptional circumstances. He cannot act indiscriminately, because he has to say that, say, in a particular case the refund will be withheld because later on there is no way of recovering it when he gets the order of the Commissioner. Therefore, it is only an enabling provision and not a substantive provision, and it will be used only in exceptional circumstances.

This second amendment seeks to remove a section which enables the Wealth-tax Officer to adjust the refund due against any other sum payable under the Act by the assessee. I think there cannot be any valid objection to adjust the refunds due against demands that become payable later on.

Mr. Deputy-Speaker: I shall put amendments Nos. 35 and 36 to the vote of the House.

Amendments Nos. 35 and 36 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 30 stand part of the Bill."

The motion was adopted.

Clause 30 was added to the Bill.

Clause 31—(*Insertion of new section 34B*).

Shri Narain Dandekar: Sir, I beg to hove:

Page 24, lines 22 and 23—

omit "and without notice of the penedncy of the proceeding under this Act". (37).

Sir, I am getting a little weary. In suggesting all these amendments, as I said yesterday, I expected it was going to be like hitting one's head against a brick wall. But I see now it is a stone wall. However, one has to do one's duty even if the Government would not accept it. I am proposing by way of an amendment to clause 31, to the new Section 34B, in the proviso, the deletion of the words:

"and without notice of the pendency of the proceeding under this Act."

Had it referred to immovable assets, I could have understood; because there is a necessity, in the first place compulsorily to have the stamped documents concerning them; and secondly in those documents the title of the conveyor has to be cited and he has to make solemn statements that there are no complications and things of an adverse kind pending against him and so on. But this proposed section talks of transfer of any of his assets of the assessee. Now, when one buys shares in the stock exchange, one just places an order with the broker. Now as most of the wealth-tax assessments are pending for three or four years, almost every seller of shares would be coming under that category. But if you purchase shares through a brother from such a wealth-tax assessee, that tran-

saction may be void, for the proviso says:

> "Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.".

I do not understand on whom is the obligation. Are you going to put an obligation on buyers of all sorts of assets and properties? The purchase of the property can be challenged as void by the tax authorities on the ground that wealth-tax assessment proceedings are pending against the seller. The principle about purchase in the open market is *caveat emptor*, the buyer beware. So, the buyer must look around and see whether there are any obligations or charges against that property. If you now say that the buyer has also to see whether any wealth-tax proceedings are pending against the seller, I think the working of stock exchanges they slow down or come to a standstill. All transactions in movable properties may slow down or come to a standstill. The difficulty has arisen because you are saying "all assets". If you restrict yourself to immovable property, then there is the protection to the buyer by way of solemn declarations in documents and averments of titles; and so, for anybody purchasing an immovable property the principle of *caveat emptor* is eminently applicable. But if this sort of legislation exists, making it applicable to movable property also, I think everybody who buys stocks and shares or other moveable property in the market should really make enquiries whether wealth-tax proceedings were pending against the seller. I think it is highly unreasonable, particularlly when the transaction is "for valuable considerations". I would say where a transaction is for valuable considerations, that should be the end of the matter so far as the buyer is concerned. For example, if I buy anything for valuable considerations, that should be the end of the matter, so far as I am concerned; having regard to the general law on the subject, I should not be asked to go and make enquiries whether any wealth-tax proceedings are pending against the seller, knowing fully well that two or three years wealth-tax assessments are usually pending against almost every wealth-tax assessee.

Shri B. R. Bhagat: I am sorry, I cannot accept these amendments. The hon. Member may describe me as a stone wall, but it is my duty to act according to the dictates of my own conscience. I am sorry there is complete disparity in the way of thinking between him and me. Therefore, he may think I am a stone wall and I may also think that probably he is not in line with current affairs.

Shri Hari Vishnu Kamath: A stone wall may speak for strength also.

Shri B. R. Bhagat: This amendment wants to remove one of the two conditions in which the transfer will not be void, the second condition, I may mention that similar conditions excist in the Income-tax Act. For the sake of uniformity and administrative convenience it is felt approprite to have it here also. Otherwise too, the transfer would not be void if the person is not aware that some wealth-tax proceedings are pending. For example, a notice for filing of wealth-tax returns might have been issued which might not have reached the assessee when the sale took place. In such a case the transfer would not be void. However, if knowing that wealth-tax proceedings are pending a person sells his property, such a sale would be void. According to the proposed amendment of the hon. Member, no transfer will be void if made for valuable considerations. This will only enable assessees to effect transfers in order to defraud revenue. I am sorry, I cannot accept the amendments.

Mr. Deputy-Speaker: I will now put amendment No. 37 to the vote of the House.

Amendment No. 37 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 31 stand part of the Bill."

The motion was adopted.

Clause 31 was added to the Bill.

Clause 32 was added to the Bill.

Clause 33—(*Amendment of section 36*).

Shri N. Dandeker: I beg to move:

(i) Page 26,—

omit lines 11 to 20. (38).

(ii) Page 26,—

(i) lines 28 and 29,—

for "with rigorous imprisonment for a term which may extend to two years:", *substitute*—

"with simple imprisonment which may extend to one year or fine which may extend to one thousand rupees or with both.".

(ii) *omit* lines 30 to 33. (39).

Now, the point here is just two-fold. Under the Bill the words "punishable with simple imprisonment which may extend to one year, or with fine which may extend to one thousand rupees or with both" are going to be substituted by "punishable with rigorous imprisonment for a term which may extend to two years, provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months". Really, are we not going too far in telling judges that they have to carry the burden on the question of considering whether the assessee ought to be imprisoned for less than six months? I thought we in this country at any rate believe that the punishment must be commensurate with the gravity of the crime. Virtually, what this means is this, that it is assumed *ex hypothesis* that the minimum punishment for this sort of offence is to be six months and the burden is on the magistrate, or the judge to record special and adequate reasons if he is to award imprisonment for a lesser period. Which judge will take the trouble of justifying punishment for a lesser period by recording in his judgment special and adequate reasons? So, the result of this is we are going to have a situation in which all shorts of people involved in such cases will be sent to jail for a minimum period of six months. It is another example of the monstrous legislation that we have been recently having. I have no other words to describe this. I say that this ought not to be there.

Then I come to the next amendment. The new clause says:

"If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to the particulars of any net wealth chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years."

I think the argument here is, if A gets it in the neck, surely B should also get it in the neck. Surely, there is difference between a person who commits an offence and a person who abets. Here we have reached a point where we are taking away completely the discretion of the judges in the judicial process, and I do think that this is really going beyond what it ought to be.

Shri B. R. Bhagat: I consider the punishment of fine and imprisonment

necessary for the administration of this Act, because it is necessary that a deterrent punishment should be there for offences under the wealth-tax Act.

Shri N. C. Chatterjee: May I ask for one clarification. I think there are similar provisions *pari materia* for the offenders in the Income-tax Act. Have you got similar provisions *pari materia* for abetment too in the Income-tax Act?

Shri B. R. Bhagat: I do not know. I think section 278 of the Income-tax Act is similar, so far as abetment is concerned. Abetment of an offence is considered as an equally serious offence. In other enactments like the Food Adulteration Act, Sea Customs Act and the Indian Penal Code the same punishment is given to the abettor. These punishments are necessary to make them effective and deterrent for the prevention of such offences.

Mr. Deputy-Speaker: I will now put amendment Nos. 38 and 39 to the vote of the House.

Amendments Nos. 38 and 39 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 33 stands part of the Bill."

The motion was adopted.

Clause 33 was added to the Bill.

Mr. Deputy-Speaker: I will now put clauses 34 and 35 to the vote of the House.

Shri N. Dandeker: Sir, I would like to say a word on clause 34 or; perhaps, I could ask a question and if the Minister gives the answer, then it will be quite clear.

Clause 34 which introduces section 36A in the Wealth-tax Act is concerned with those persons who evade or dodge taxes, come along, make a clean breast of it and want to get away with it. If you want to help them, I quite agree. Or, is it concerned with informants? It could quite as well read that it concerns those who have themselves dodged taxes, want to come clean, then only pretend to come clean and do not make all the disclosures that they ought to. If this kind of a thing is intended here, I entirely agree that they should not be helped. There cannot be any mercy for people of this kind.

Shri B. R. Bhagat: I think, informants do not come under this.

Shri Hari Vishnu Kamath: The Minister is not clear himself.

Shri N. Dandeker: This is with regard to the assessees?

Shri B. R. Bhagat: I think, the informant does not come under this.

Shri N. C. Chatterjee: I think, the hon. Minister is right. It does not cover informants. If you look at page 45, you will find that the note which is given says:

"Clause 34 introduces a new section 36A empowering the Central Government with a view to obtaining evidence of any person . . ."

Shri N. Dandeker: "Obtaining evidence" sounds to me doubtful.

Shri N. C. Chatterjee: "connected with concealment of particulars of net wealth or evasion of payment of tax on the net wealth, to tender to such person immunity from prosecution for any offence as also from the imposition of any penalty under the Act." The tender of immunity can be withdrawn if it appears to the Central Government that the person to whom the immunity was tendered has not complied with the conditions on which such immunity was granted...."

[Shri N. C. Chatterjee]

Of course, I agree that the language is rather comprehensive and may rope in all sorts of people.

Shri N. Dandeker: If this is concerned with informers and approvers....

Shri B. R. Bhagat: Abettors, not informants.

Shri N. Dandeker: Let us not hedge around with words. It concerns approvers, a fellow who has given information....

Shri B. R. Bhagat: I said, "Abettors".

Mr. Deputy-Speaker: Abettor and not approver.

Shri N. Dandeker: Abettor is a person, who is defined quite rightly, who could be accused. It is like a case of murder where a person commits murder and turns approver. So, it applies to approvers and main assessees but not to informers.

Shri B. R. Bhagat: Not to informers. I said, "Abettors".

Shri N. Dandeker: Then, I agree entirely.

Mr. Deputy-Speaker: The question is:

"That clauses 34 and 35 stand part of the Bill."

The motion was adopted.

Clauses 34 *and* 35 *were added to the Bill.*

Clause 36— (*Insertion of new section 37A*).

Shri N. Dandeker: Sir, I beg to move:

Page 29,—

omit lines 10 to 13. (40).

This clause introduces a new section, section 37A, and talks of the powers of Inspecting Assistant Commissioners, Wealth-tax Officers etc. to enter and search. On the whole, I agree, the section is administratively necessary. It has been the experience undoubtedly of the Revenue Department that even though they have got information they find it difficult to pursue it because of the lack of power. But when you read this thing, you find that it is going too far. It reads:

"Where the Commissioner, in consequence of information"—

not definite information—

"in his possession, has reason to believe that—"

then I read sub-clause (c)—

"any person is in possession of any articles or things including money disproportionate to his known assets, particulars of which will be useful for, or relevant to, any proceeding under this Act,"—

proceedings not necessarily my own, somebody else's assessment. It was says:—"If he is in possession of any articles or things"; in other words, the briefs of a lawyer or the accounts and so on of an accountant. Where the Commissioner has reason to believe that—

"any person is in possession of any article or things including money disproportionate to his known assets. particulars of which will be useful for, or relevant to, any proceeding under this Act,"

then he, that is to say, the Commissioner not necessarily in consequence of having definite information but in consequence of information in his possession:—

"may authorise any Inspecting Assistant Commissioner or any Wealth-tax Officer to enter and search, with such assistance as he

may deem necessary, any building or place" etc.

But before I make any comment on this, I know that the Department is exceedingly handicapped by the lack of powers to pursue the information in terms of actually going and seeing things for themselves. Sub-clause (a) is quite all right, but sub-clause (c) is, I think, going too far. An otherwise excellent provision intended to arm the Department with necessary powers has been rendered bad by this kind of a thing because it could be the subject of really dreadful situations in terms of offices and buildings and so on of lawyers, bankers, accountants and all other professional advisers could be searched because the Commissioner may think that he is in possession of any article or thing. An article would include account-books, briefs, counsel's opinions, solicitor's opinions, written statements of the clients and so on. It says:

"articles or things including money."

I think, this should have been drafted a little more carefully. But, as it goes, it goes much too far and, I am sorry, I am unable to support this particular thing in an otherwise very good clause.

Shri D. C. Sharma: Sir, I do not think that sub-clause (c) goes very far. The whole trouble is arising from the fact people do not understand the significance and the all-pervasiveness of, what are called in modern language, anti-social crimes. I think, this is only a concession to that tendency which is prevailing all over the world, the tendency of anti-social crimes. Suppose, I have something which can implicate me in the court of law and I pass it on to some neighbour; then, has the court no authority to get hold of that neighbour so that it can recover that document from him? Suppose, I have got some valuable thing which may incriminate me in a court of law and I pass it on to somebody else so that I escape from the clutches of law, should not the law have any power over that man who has got this kind of thing? Again, suppose, I have money and I pass that money on to somebody else and say, "If you keep this money, I will not have to pay so much of wealth-tax"; I do not think a person should be allowed to go scot-free if he can evade payment of due taxes by passing those things on to somebody else. These things are permitted in every kind of Code of Criminal Procedure; not only in any Code of Criminal procedure—I do not want to use the words 'criminal procedure' —in any code of anti-social laws.

Even those persons who assist or abet in this kind of a thing are as much liable to prosecution as anyone else. Of course, the hon. Minister used the word "abettor' and it may not be used here, but the fact of the matter is that there are some persons who will try to evade the provisions of this Act by taking shelter under some other person's umbrella. I think, those persons who give shelter under their umbrella to such persons should be as much liable to punishment as anybody else.

Shri H. N. Mukerjee (Calcutta Central): I have a feeling that this provision is rather important and Mr. Dandeker's objection should not be accepted by Government. I say this because if we err in this kind of legislation, it is better to err on the side of severity than on the side of leniency as it is in the implementation of whatever law we pass here that the real test will come and so far it has happened that in spite of provisions in the law being already there, the application has not been satisfactory. Therefore, it is rather better to have it put even in somewhat severe terms to which Mr. Dandeker takes objection.

I would not have intervened at this stage unless I had recently got to know of certain things which indicate how things are not pursued properly as far as the administration is concerned even when information is forthcoming

[Shri H. N. Mukerjee]

and large sums of money in the possession of certain people change hands and heaven knows what happens afterwards. Very recently, I had occasion to have information from very reputable sources that a very rich community of Daudi Bohras in Calcutta had their spiritual preceptor, a gentleman whom I need not name, who is very well known to the Finance Ministry and when he was in Calcutta, according to the practice prevalent in the Bohra community, this gentleman, the head of the community is invited to certain houses and there is a competition amongst the rich Bohras to find out who can have this person as his guest and if he cannot be sent to somebody's house, then he is given a *nazrana* and there is, of course, a samptuous dinner, and the *nazrana* is given in the shape of currency notes upto a very large amount, say Rs. 50,000 or even more in certain cases—it all depends upon the person who is involved. And the power of this person over his disciples extends so far that in Bombay some legislation had to be enacted because according to the order of the spiritual proceptor the body of a man who had been buried was exhumed because he was ex-communicated by some kind of peculiar spiritual process. This information came to us and the Income-tax Department also got intimation about it but I am sure that nothing seems to have been done. Very lare sums of money change hands and this community which is very rich has got some peculiar religious, quasi-religious and pseudo-religious, conceptions about paying money to the spiritual leader and this is sometimes blackmailed to this extent by so-called spiritual processes. This is one example which came to us recently. I do hope the Ministry takes more notice of it. It shows how in very devious way the people who run business have to transfer such large sums of money. This having come to my notice, I felt fortified in the conviction which I have had for a long time that in regard to this kind of legislation if we err, let us err on the side of severity and not on the side of leniency.

Shri N. C. Chatterjee: May I, sir, point out that Mr. Dandeker—and he has experience in this class of cases—recognises the necessity of conferring wide powers of seizures in some cases but the only apprehension he feels is, and there I think he is right, that it may lead to great abuse of power if it is uncanalised and the authorities have unfettered power particularly to make such an order to seize any papers from the lawyers' chamber, to enter into any chamber of any professional man, whether he be a doctor or an accountant or an advocate and to make a roving inspection of all things and so on. I do not think that is necessary or that is needed. I am not in favour of withholding the power. I am perfectly prepared to give reasonable and effective power. But at the same time I say that should not be abused. I shall appeal to the hon. Minister that when he frames rules under this clause a suitable indication should be made in the rules so that there should be no uncanalised, unfettered, power given to the authorities so that unnecessary harassment may not be caused. I have had the privilege to know about the Bohra prophet and it may be that in that case something has been done. Naturally, there has been some softness on the part of the department but only the enactment of a section will not do. It must be followed up by the effective steps to implement this Act.

Shri B. R. Bhagat: Mr. Deputy-Speaker, Sir, I think the power given is very precise. The main intention is that without any precise information there cannot be any search of this kind. It is not an unfettered power. The rules lay down the way in which the searches should be made. In this particular case, the Commissioner will not order for any search unless he has the precise information. This principle has been accepted in the Income-Tax Act and this is a very very valuable

provision of the Act particularly in the present situation when we have to check evasion, when we have to find out the undisclosed assets. This particular sub-section (c) refers to undisclosed assets. Unless we have this power, any detection of undisclosed assets which may have been the result of evaded taxes, will be very much difficult. But I can assure the House that the intention is being literally carried out that searches are not made in the briefs of lawyers or doctors. But certainly when a definite information is that they have large and undisclosed assets either in money or in some other form or accounts leading to the detection of those assets, in any profession, whether they are businessmen or lawyers or doctors, then the searches will be made and not otherwise.

Mr. Deputy-Speaker: I shall now put amendment No. 40 to the vote of the House.

Amendment No. 40 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 36 stand part of the Bill"

The motion was adopted.

Clause 36 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 37 to 41 stand part of the Bill".

The motion was adopted.

Clauses 37 to 41 were added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri B. R. Bhagat: Sir, I move:

"That the Bill, as amended, be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed"

Shri Narendra Singh Mahida: There is no quorum in the House.

Mr. Deputy-Speaker: The bell is being run....Now there is quorum. The question is:

"That the Bill, as amended, be passed"

The motion was adopted.

The Bill, as amended, was passed.

14.50 hrs.

STANDARDS OF WEIGHTS AND MEASURES (AMENDMENT) BILL

The Deputy Minister in the Ministry of Commerce (Shri S. V. Ramaswamy): Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill further to amend the Standards of Weights and Measures Act, 1956, be taken into consideration."

Sir, the Act when it was passed in 1956, defined the various standard units on the basis of the definitions prescribed for international adoption by the General Conferences on Weights and Measures. These general Conferences are held under an international agreement called the 'Metre Convention'. One of its functions is to lay down definitions of the various units of weights and measures for international use in science, technology and meteorology. These definitions are adopted by all signatory countries in their laws relating to weights and measures. India has signed the 'Metric Convention'. We have, therefore,