THE

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PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

HOUSE OF THE PEOPLE

Saturday, 25th April, 1953

The House met at a Quarter Past Eight of the Clock.

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

QUESTIONS AND ANSWERS

(*No Questions: Part I not published*)

INDIAN INCOME-TAX (AMENDMENT) BILL

The Minister of Finance (Shri C. D. Deshmukh): The first point that I should like to deal with is the general point made that deliberately dilatory tactics are being adopted in bringing forward, or promoting, a comprehensive Income-tax (Amendment) Bill. That point was made by Shri V. P. Nayar and various other people.

Well, I can honestly claim that so far as the state of business in the House permitted, we did make attempts to get that comprehensive Bill through and that, I might point out, included most of the recommendations of the Income-tax Investigation Commission. As you will recall, Sir, that Bill was introduced in June 1951, but it was crowded out of the Provisional Parliament and subsequently it lapsed. Now, this kind of charge is made generally not only in connection with the Income-tax (Amendment) Bill, but also with regard to the Estate Duty Bill and the hon. the Deputy Leader of the Communist Party, I think, twitted me with the prospect of failure to have the Estate Duty Bill gone through all its stages in the present session.

Well, as you are aware, the business of the House is entirely in its own hands and is regulated by it and there has been a Business Advisory Committee at work allotting priorities. With regard to this particular Bill—the Estate Duty Bill—most of the parties, barring I might say a few individuals or a few interests, are agreed that it should be carried through, and yet it has not been possible to allot more than five days for it in the current session. I might add, although it is really expatiating on one single point, that so far as I am concerned, I am still prepared to sit till the middle of August if there is any prospect of the Estate Duty Bill being passed, but I cannot do it by myself. I should be very happy to do it, but I must have the support of the rest of the House and I believe that Members of all parties, or representatives of all parties have definitely announced that they will not sit beyond the 15th of May. So, I think, I have cleared myself of the charge of any *mala fides* in regard to the comprehensive Income-tax (Amendment) Bill.

Now, the present Bill itself, which primarily contains non-controversial provisions, has been before the House for eleven months and although the Select Committee reported more than five months ago, it has been possible to take it up only now.

The next point I should like to take up is this very vexed question of the transfer of the Assistant Commissioners of Income-tax from the control of the C. B. R. to that of the Appellate Tribunal. That point was raised by Shri N. C. Chatterjee and Pandit Thakur Das Bhargava, neither of whom I see is here. There was a great deal of legal learning displayed in this matter, but I think myself, with very great respect, that it was misconceived. We really are not dealing with the broad principle of the separation of the executive from the judiciary. So far as the disposal of income-tax appeals is concerned, the real stage is that at which questions of fact as well as of law arising in appeal do go to

[Shri C. D. Deshmukh]

the judicial tribunal, so that it would not be fair to say that this principle has not been adopted. The question then arises why at a lower stage it is not possible, in our opinion, to provide for a fully judicial appellate authority. Now, the reasons are:

Firstly that the I. T. Os. are administrative revenue officers and what are called appeals to the Appellate Assistant Commissioners are in effect administrative reviews. Now, I would like to quote some authority for this statement of mine. In the first place, I am sorry the hon. Member is not there and these tomes would be wasted. There is support for this doctrine in the judgment of Sir Cecil Walsh and Iqbal Ahmed in *re.* Baghat Halwai (I. T. C. Page 51), which, with your permission, I shall quote. It says:

> "They are judicial proceedings in the colloquial sense"—

I am reading from the judgment—

> "because the Income-tax authorities have to make up their minds judicially with fairness to the public and to the assessee, between whom they stand, after taking all the facts or such facts as they can into account, but they are not judicial proceedings in the strictly scientific sense of the term so as to raise questions in appeal to some higher tribunal as to whether the gentleman making the assessment has decided against the weight of evidence, or decided a fact of which there is no evidence, or has disregarded evidence which he ought to have taken into account. To open the door for one moment to such a contention would turn this court into a court of appeal of fact with regard to every assessment in which the assessee was dissatisfied with the decision."

Then they go on to say:

> "We should be inundated or the Commissioner would be inundated with applications to state cases."

Later on they say:

> "No question of law arises and, therefore, we ought not to issue notice."

That is one authority.

Then, there are also some observations by Lord Hanworth, Master of Rolls in the Commissioners of Inland Revenue *v.* Sneath (as Committee for D.G.M.) (T. C. XVII, page 161.). He goes on to quote a previous observation of Lord Herschell and says:

> "The decision related, it is true, to the question of the refusal of justices to renew a licence. He (Lord Herschell) says: 'There is, in truth, no *lis*, no controversy *inter partes*, and no decision in favour of one of them and against the other, unless indeed the entire public are regarded as the other party.'"

Here, the State represents the so-called other party which is accused of being both the judge and the prosecutor at the same time. But the distinction is that, where the State is concerned, it has necessarily to be represented by some administrative organisation. It cannot be said, however, that it is a dispute between two parties. I am sorry that I interrupted the quotation to make these comments of mine, but I shall resume the quotation, and here follows a very important observation:—

> "There is no interest in the Surveyor except to bring before the court all facts relevant to the assessment. The decision does not inure in his favour, unless he is to be treated as representing the tax-payers at large exclusive of the one upon whom the assessment in question is made."

That, I consider, is a very sound principle and indeed an essential principle.

I should like to point out that the practice in most other countries, as we would expect, is the same, because it flows from the same principle, and the first appeal is to the revenue authorities direct. I have got here a long list of authorities to whom the appeals are made, but I do not wish to take the time of the House by reading out the whole of the statement. It is a long list and consists of sixteen countries including Australia, Cuba, Canada, France, Luxemburg, Pakistan, South Africa, Turkey etc., and the authorities to whom the first appeal goes are as follows: Australia—the Commissioner of Taxation; Cuba—the Ministry of Finance, Canada—the Ministry of National Revenue; France—Fiscal Administration; Israel—the Minister of Finance; Pakistan—I will not mention, because they model their law on the old Indian law; and South Africa—I will not mention. The point is, no matter where you look, the practice is the same. There may be one or two exceptions. Sometimes, they

:e appointed by the Minister of Fin-ıce. Sometimes, there are lists of :rsons approved by Parliament—lay-en with knowledge of legal condi-ons as in the U. K. The point is that you look at the different countries, ıere would hardly be any example in hich the first appeal lies to the judi-al officers as such.

This practice is supported by well-ıown authorities in public finance, ıd I would like to read from a well-ıown book on public finance by arley Leist Lutz. He has studied ıe theory of taxation much more ıan people in most other countries. ere is what it says:

"Two methods have been followed in establishing a review procedure. One is administrative or quasi-judicial. The other is judicial, *i.e.* the appeal may go to some higher administrative authority as the State Tax Commission, or it may go to the courts. In hearing appeals, the Commission is functioning in a quasi-judicial, *i.e.* capacity, but it is not limited to the methods customarily observed by the courts in seeking the facts."

And that is very important.

"If it is a question of property values, for example,..."

I may say that this is a point which e discussed when we were discussing e Estate Duty Bill—

"... the Commission may go to the locality involved, make personal examination of the facts, draw upon the services of other assessors or upon its accumulation of statistical data, and thus arrive at a decision. In general, administrative review of the factual issues of taxation is preferable to judicial review, although the strict legal issues must go to the courts for determination..."

—as they do under our law—

"...The tax administrator is engaged continuously with the concrete aspects of taxation and is better qualified to ascertain the facts than are the judges who deal with such matters only in cases brought before them. Further, the administrative review can be conducted in a less formal and therefore less expensive way than the judicial review."

And this question of expense has a aring on the total relief granted, ıich was miscalculated by someone. hether it is Rs. 200, or Rs. 750 as we claim, per person, the cost of it would probably increase if people have to go through a more elaborate judicial process. To continue the quotation:

"Individuals are not permitted to state their own case before a court but must engage attorneys authorised to practise law."

I might say that in our income-tax law administration, we allow lawyers to appear freely where the clients require them. To resume the quotation:

"Enlightened Tax Commissions..."

This is very important, because we claim to be in this category—

"Enlightened Tax Commissions encourage informal appeal procedure..."

We not only encourage, but we fight for it—

".....and permit property owners to appear in person, thereby lessening the expense of review proceedings. Under any review procedure, the basic requirement of 'due process', namely, notice to the parties interested and opportunity for hearing, must be observed."

I think that I have made out a very clear case as to why the Assistant Appellate Commissioners—apart from the administrative difficulty which I have not mentioned—must continue to be under the Commission.

In this connection, I would like to commend the point that Shri T. N. Singh made. It is a very valid point, namely, that the next demand would be to take the initial assessment itself, if we were to yield to this, to the court with the I. T. O. as one party and the assessee as the other. In that case, you can imagine how much delay would take place in completing assessments. As I pointed out, the question of fact can be taken in appeal to an independent body in the shape of the appellate tribunal and the question of law can go right up to the Supreme Court. I would also like to give some statistics. They show that, of the appeals disposed of by the Appellate Assistant Commissioners, only about 13 per cent. go higher up to the tribunal, which means that 87 per cent. of the appellants have no grievance against the Appellate Assistant Commissioner's decision. Of the 13 per cent. that went to the tribunal, only about one-fifths were successful; two-fifths were unsuccessful and two-fifths were partially success-

[Shri C. D. Deshmukh]

ful. In 1951-52, the amount of tax and penalty remitted by the Appellate Assistant Commissioners amounted to Rs. 4,78,00,000. So, we do not understand how a reduction of only Rs. 200 per assessee has been computed. The reduction of this amount was in 33,450 appeals, which means a reduction of over Rs. 1,400 per assessee, and I am sorry that as usual I underestimated the facts. On the basis of the total number of appeals filed, the average would be Rs. 700 and that is the figure which I had in mind. The average amount of assessment was taken by me as only Rs. 3,500. In the light of the figures which I have now quoted, I claim that the reduction is very appreciable.

Now, as has been pointed out in the extract from Lord Hanworth, if Appellate Assistant Commissioners are not subordinate to the Department, then the practice regarding the admission of evidence and the burden of proof will necessarily be more rigid. Lastly, there is this administrative difficulty, *viz.* in the present shortage of staff, a sufficient number of officers is not available for manning both the Income-tax Assistant Commissioners and the Appellate Assistant Commissioners as rigidly separate cadres. The answer to that argument, of course, is that, "If you do not do it now, please admit it in principle and then you can carry it out in three years' time or four years' time, as the staff situation permits". But I do not wish to give that kind of answer, because I am quite convinced that in principle the practice I am urging is right in the interests of the assessee himself.

Having thus disposed of the first of the few important points that were raised in the debate, I turn next to the question of the restriction of exemption regarding income from business carried on by charitable institutions. A large number of hon. Members were interested and weighty observations were made again by Shri N. C. Chatterjee, Shri Avinashilingam Chettiar and various other speakers. In this matter, according to the amendment proposed by one hon. Member, incomes derived from business of trusts which are wholly for religious or charitable purposes would be exempt from tax, even though such businesses do not satisfy the conditions laid down in section 4 (3) (ia). These conditions restrict the scope of the business whose income is entitled to exemption. If we were to accept this kind of amendment, then business run by religious or charitable trusts will have an unfair advantage over those run by the ordinary business people. Apart from this consideration, I think it necessary to go into the reasons for inserting this provision 4(3)(ia) a little more fully.

'Section 4 (3)(i) of the Income-tax Act, conferring exemption on income from property held in trust or other legal obligation for religious or charitable purposes, has been a part of the statute for a long time. The Department construed the word 'property' in a wider sense to include securities and business. The Income-tax Enquiry Report of 1936 made the following recommendation, based on the position under the United Kingdom law:

> "If however, any limitation is desired, we suggest (i) that private religious trusts which do not enure to the benefit of the public should not be exempt, and (ii) that business carried on by the trustees of a religious or charitable trust should be exempt only when the business activities are in themselves the primary purpose of the charity, or when the work in connection with the business is mainly carried on by the beneficiaries. (See section 24, United Kingdom Finance Act, 1927.)"

Government accepted the recommendation and, accordingly, clause (ia) was inserted in section 4(3), the idea being that section 4(3)(i) would cover property while section 4(3)(ia) would cover business.

In the Charitable Gadodia Swadeshi Stores case the tribunal decided the question in favour of the Department and held that the juxtaposition of the new clause (ia) to the existing clause (i) had the effect of excluding business from the word 'property' used in clause (i). The Lahore High Court, however, took another view and observed as follows:

> "Clause (ia) as it stands cannot in any way derogate or subtract anything from clause (i). It rather adds to the list of exceptions and provides immunity for a certain kind of business which in the view of the Legislature had not already been provided for. A new clause inserted by the Legislature cannot be presumed to be inconsistent with or repugnant to a foregoing clause in the same sub-section unless it is so expressly provided. Viewed in its proper perspective, therefore, clause (ia) can be taken to apply only to such business as is carried on on behalf

of religious or charitable institutions which were not held under trust and, not to such business as was itself held under trust or was conducted by or on behalf of such charitable or religious institutions as were held under trust. If it was intended to narrow down the scope of clause (i) so as to withdraw the exemption enjoyed by a business held in trust or conducted by or on behalf of a religious or charitable trust, the new clause should have been added as a proviso to the old clause."

As the original intention of the amendment was not carried out according to this judgment, the Income-tax Investigation Commission, in its recommendation No. 54, suggested that clause (ia) should be made as a proviso to section 4(3)(i). And this is what has been done in the Bill as it has emerged from the Select Committee.

So my point is that this stems from the recommendations of the Committee made as long ago as 1936. What is now being proposed is, therefore, nothing new. But it merely clarifies what had always been intended. And we have always held that if we find that our drafting is proved by a judicial decision not to have carried out the original intention then it is permissible for us to try and draft it again so as to be able to carry out the original intention.

As regards charitable purposes outside India, in the present amendment of clause 4(3)(i) another condition has been specifically added, namely, that the charitable purpose must relate to something done within India. This also is based on recommendation No. 52 of the Income-tax Investigation Commission's Report, having regard to certain observations made by Lord Hobhouse in Webb *versus* England (1898 A. C. 758).

It is possible to say that such condition is implicit that is the point—in the exemption given. But the Department had not adopted a restricted construction in the past during the previous regime. These are the observations of Lord Hobhouse. These are very important points. I have a small quotation again:

> "It can hardly be that the Parliament of Victoria has such great regard for social and industrial combinations and efforts all over the world that it should offer to the Jesuits' Society in Rome, to the Amalgamated Engineers and the Athenaeum Club in England, and to the Witwatersrand Company in Africa, exemption from income-tax if they choose to invest their funds in Victorian land, or in mortgages upon it, or, it would seem, in the purchase of Government stock. It would require a much clearer expression than can be found in the general words of these heads of exemption to induce their Lordships to infer any such intentions on the part of the Victorian Legislature. It seems to them much more reasonable to suppose that in framing heads (c), (d) and (h)" —we do not know what these heads are—the Legislature was speaking of bodies acting in or for Victoria and the same reason applies to head (e)".

Now, the condition which is incorporated, therefore, makes explicit the position which should be regarded to have been implicitly there. It may be noted that in section 15B the exemption applies to donations made to charitable institutions established in India. That is a parallel provision which the House has approved.

Then I pass on the question of application to purposes other than charity. The other provision, which withdraws exemption and makes income chargeable to tax if it is applied for other purposes or ceases to be accumulated or set apart for charitable purposes, is, in our opinion, necessary to offset the exemption wrongly given in earlier years. This is apart from any consequences which may follow under any other law for breach of trust. So, that is the second important point that was raised.

Now, the third one was in regard to the interest payable by Government on tax paid under section 18A. This, again, was referred to by Shri N. C. Chatterjee, Pandit Thakur Das Bhargava and others. Here, section 18A was inserted in 1944 as complementary to section 18 which deals with deduction of tax at source on certain types of income, for example, salaries, interest on securities and other interests which are *prima facie* income at the time of payment. The opening words of section 18A are.

> "In the case of income in respect of which provision is not made for deduction of Income-tax at the time of payment."

Now it is clear that in essence the scheme of section 18A is complementary to that of section 18 and the object is to secure the payment of tax

[Shri C. D. Deshmukh]

on current income on the 'pay as you earn' or 'as you go' basis, though incidentally, the scheme also helped to counter inflation caused by the large war profits. As in the first year of the inception of the scheme, assessees had to pay two taxes, one on the current income and another on the income of the previous year, an inducement of two per cent. simple interest was given which might have been justified then, it is no longer justified now. Now really, the scheme is in no way different from that in vogue under the Act of 1918. For a proper appreciation of the scheme, it may be useful to set out briefly the change in taxation structure made in the Income-tax Act, 1922. Under the Act of 1918, the tax was on the basis of income of the current year but the provisional measure was the income of the last year. Thus, in the first year of assessment of a business, it had to pay two taxes, one a final tax on the basis of the income of the previous year and another a provisional tax on the income of the current accounting year, to be adjusted in the coming year when the income of the current accounting period was determined. This basis was changed in the Act of 1922 and the tax is now charged on the income of the previous year as is well-known though, of course, it forms the revenue of the financial year in which it is charged. The adjustment system of the 1918 Act was continued for the first year 1922-23 when the Act of 1922 came into force and was discontinued subsequently except for a final adjustment to be made. I refer here to section 25(3) and (4) when a business assessed under the Act of 1918 is discontinued or succeeded by another person. Thus, the scheme of section 18A is not materially different from that in vogue in 1918 and the main object is to safeguard the loss of revenue which may accrue on account of the time-lag between the date of the earning of the income and the date of the assessment.

Let us consider what the basis of assessment in the United Kingdom is. The basis of assessment in the United Kingdom is the current year's income. Section 1 of the U. K. Finance Act lays down that "where any Act enacts that income-tax shall be charged for any year at any rates then, subject to the provisions of this Act, the tax at those rates shall be charged for that year in respect of all property, etc."

This completes the quotation. Even any business has practically to pay two taxes, one for the previous year and the other for the current year, the latter being finally adjusted on the discontinuance of the business.

Now having regard to this background and the tax structure, the question is whether the tax paid under section 18A is an advance tax at all. Those who call it an advance tax base their claim on section 3 of the Income-tax Act which lays down that:

> "..where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in respect of the total income of the previous year."

The tax is thus on the income of the previous year and is chargeable in the next following financial year. On this basis it is urged that this is an advance tax and this claims is reinforced by the recommendations, Nos. 57 to 59, of the Investigation Commission.

Now it may be stated that the tax under section 18A though loosely called advance tax, is not 'advance' in the sense that it is paid before it is actually due. That is the sense in which this word is used because the tax is due under section 18A but advance tax in the sense that it is provisional and is liable to adjustment on regular assessment. That is the important distinction. Now, therefore, viewed in this light, the deductions at source under section 18 and under section 18A are similar because both are made at the current rates of tax and both are adjustable on regular assessment with this difference only that the tax in respect of section 18A income is to be adjusted with reference to the rates applicable to the relevant financial year and get the benefit or the disadvantage of the decrease or increase in rates while the tax on salaries, etc., is adjusted at the rates in force in the year of deduction.

Finally, this question of whether higher rates of interest should be paid can only arise if on the adjustment, the assessee has made a larger declaration than would events prove. Now, the choice is entirely before him. He might, if he likes, pay a smaller sum than what is the event is found to be assessable on him. Therefore, this is a provision to meet a very rare class of case indeed and viewed in the light of that, I do not think that there is any case for increasing this rate of interest.

Now, I dealt with the three important points that were raised. I

shall deal with many of the other points that were made as they were raised.

Before I close the last point, I might say that the interest paid amounts to Rs. 1½ crores to assessees whose income is more than Rs. 6,000 and there is no justification for this gift to richer classes.

Now, something was said in regard to the continuance of evasion of taxes by big assessees. This point was made by Shri Chatterjee, Shri Bogawat and others. Now, the first point is that the Income-tax Investigation Commission is still functioning and has already reported in 860 cases involving incomes of over Rs. 40 crores and a tax of about Rs. 20 crores of which I think about Rs. nine crores have already been collected and the total expenditure on the Income-tax Investigation Commission would be, I think, less than Rs. 50 lakhs so far.

Secondly, there is a separate Directorate of Investigation attached to the C. B. R. since October, 1952 to deal adequately with big cases of evasion and complaints of corruption against officers. I am inclined to think that this system is gradually establishing itself and increasing its usefulness to the public although it is too early to take a view since it was only established in 1952.

Thirdly, what it boils down to is the really large question of staff. We have been for many years short of staff and that shortage came very much to prominence during the war years when there was a sudden expansion of income. Also there is a limit within which we can recruit and train men. All officers are trained in advance accounts, including—I may say in reply to some hon. Member who wanted Income-tax Officers to be familiar with accounts in the various languages and with dialects—Marwari and local languages. To enable them to scrutinise accounts properly, they have got to pass an examination in which they must show their familiarity and their ability to cope with all these complicated accounts. The amending Bill of 1951 which lapsed contained provisions for investigations on the spot, power to search and seize books and documents. Now, if the charge that we are deliberately delaying that Bill is disproved, then I think I can claim as proof of our desire still to tighten up the administration. This provision, being highly controversial, was not included in the present Bill in order to save time. The old Bill also contained a provision restricting the representation of assesssees by unqualified persons, and in particular by retired persons of the department. I think this question was raised by Mr. T. N. Singh why they were allowed to practise. If they are otherwise qualified, we can only place a restriction for a limited period but not for all time, on such men. That is to say, we can say that for the first two or three years after retirement they shall not practise. It seems very hard to say that for the rest of their life they shall not be able to earn their livelihood in the only way that is known to them.

There was another question which exercised hon. Members, and that was tax clearance certificate to be obtained by persons leaving India, and the ancillary questions of the responsibility of the carriers and the inconvenience to travellers were also raised. This was raised by Shri Avinashilingam Chettiar, Shri Raghavachari and others. The provisions are practically similar to those in some other countries such as Pakistan, Australia, etc. Carriers are therefore not likely to be unfamiliar with them. When they go to the other end, they have, any way, to comply with these requirements. Some amount of inconvenience, I admit, is inevitable. But, as I said, the two parties being the assessees and the State, I think the House which represents the people and the State will admit that this is necessary in the interests of revenue which must be the primary consideration. We are not a court of law here. Already, more than ten crores of rupees, outstanding against people who have left for another country or other countries, are there, and there are no assets available in India to cover those outstanding taxes due from them. Therefore, sufficient damage has already been done by the absence of any legal provisions to stop this. Further, we are prepared to issue rules which will give the maximum exemption possible and to make administrative arrangements to ensure the expeditious issue of tax clearance certificates or the 'No objection' certificates. So, I think, with this assurance and in the light of this explanation, hon. Members will see their way to accept this particular provision.

Then, there was some question about concessions to life insurance companies. I think it was taken up by Shri V. P. Nayar, who said that much of this went to companies and not the policy holders, and he wanted to be enlightened. It is well-known that you can enlighten only those who wish to be enlightened. He probably

[Shri C. D. Deshmukh]

knows—he will excuse me if I am wrong—there is a proverb:

Orangadavine oikapitaku prayasamane

Shri V. P. Nayar (Chirayiukil): What is the English translation of that? We are not able to understand Telugu.

Shri C. D. Deshmukh: This is supposed to be Malayalam.

Shri V. P. Nayar: What? Malayalam is not read in this way.

When you read, I thought it was Telugu!

Shri C. D. Deshmukh: If he wants in Telugu, it is:

Nidrapotunnavadini leputamu sulabhamu; melukonna wadini leputam kashtamu

Shri V. P. Nayar: What does it mean?

Shri C. D. Deshmukh: It means in Bengali:

Jege ghumale take jagano jaena

Some Hon. Members: What about Hindi, Marathi?

Shri C. D. Deshmukh: Almost every language and every people seem to have this kind of experience.

Coming to the substance of the matter, in the first place, the concessions to life insurance companies are based on the recommendation of the Income-tax Investigation Commission itself, paras. 42 to 50. They were modified in consultation with the Controller of Insurance. The Income-tax Investigation Commission found that owing to the raising of the scales of salaries in recent years, management expenses had increased. The rise in expenditure is carefully watched by the Controller of Insurance who reviews the situation periodically.

9 A.M.

The increase in the allowance of bonus reserved for policy holders is based on the principle that this represents merely the return of extra premia charged to the participating policy holders, which is not actually income of the company. That is the important point. We cannot allow the whole of the bonus reserved for policy holders as the balance of 20 per cent. represents the yield on investment and is not a return of the extra premia charged. In the United Kingdom, the whole bonus reserved for policy holders is allowed. But, there, the rebate in Income-tax allowed on insurance premia is at a lower rate. The mere fact that insurance companies are controlled by big assessees is not therefore a good reason why they should be denied this relief which is due to them.

There was another point raised by Mr. Altekar that mutual insurance companies should be treated like co-operative societies. There is no difference between life insurance business carried on by a proprietary concern and a mutual insurance company except that while the former are required to reserve 90 per cent. of the surplus for bonus to policy holders and the latter reserve the entire surplus for bonus. The mutual insurance companies also pay a lower tax than the proprietary concerns, inasmuch as they get a reduction of two annas in the rupee, in super tax—I think that was provided by us two years ago—while the proprietary concerns get a reduction of 1½ annas in the rupee. Also, while out of a surplus of 100, the proprietary insurance companies will get a reduction of 80 per cent. of 90 for bonus reserved for policy holders, that is 72, the mutual companies get 80 per cent. of 100; or 80. Thus this taxable income is eight per cent. less than that of a proprietary concern, which is already an appreciable advantage. Therefore, there is no room for further concessions. In fact, it may be recalled by you, Sir, that the proprietary concerns, at that time, protested against what was regarded as preferential treatment accorded to mutual companies. They considered that these concessions to the mutual companies are not justified.

Then, there was a suggestion that the non-scheduled banks should be allowed tax free reserves up to the extent of the paid up capital and that they should be exempted from corporation tax when the capital is less than 25 lakhs. I am afraid that is a suggestion which cannot possibly be accepted. Tax free reserves cannot be allowed to non-scheduled banks as it is not permissible to make such a discrimination in favour of concerns which, apart from anything else, also are under-capitalised and require a great deal of supervision. In the case of companies whose income is below Rs. 25,000, they already get a rebate of three annas and many non-scheduled banks probably fall in this category. They get a rebate of three annas in the super tax, and pay super-tax only at Rs. 0-1-9. In the light of

this graded scale, it does not seem that there is a case for any *ad hoc* concession.

There was a charge that concession —again it proceeded from Shri V. P. Nayar—given to repatriate capital from abroad enabled black-marketers to bring back their Indian profits hoarded abroad. From the fifth proviso inserted by clause 3(1) (a) of the amendment, the concession applies only to so much of the income, profits and gains as accrued or arose to him without India and were not chargeable under this Act, unless brought into or received in the taxable territories.

Virtually, the concession is applicable only to profits earned before 1939 because till then tax was charged only on the basis of remittance from abroad, and not on the basis of accrual abroad. Before exemption is allowed, the assessee will have to prove that the profits remitted were foreign profits and related to the period in which his income was not chargeable on an accrual basis. Now, blackmarket, to my knowledge, is a post-war phenomenon. Therefore.....

The Minister of Defence Organization (Shri Tyagi): It is income-tax free!

Some Hon. Members: A war phenomenon.

Shri C. D. Deshmukh: I mean post-1939 phenomenon, including the period of the war. Therefore, there is really no danger of any blackmarket money being brought into India as a result of the concessions that we have given. *Satyameva Jayate.* The hon. Member has written a letter to me in which he says, "Please remember 'Satyameva Jayate'." So, I now ask him to accept this explanation.

Now, I come to this question of delays in assessment. There is no doubt that during the war years the Department accumulated heavy arrears on account of the inadequacy of the staff to cope with the unprecedented volume of work. One must remember that one lived in unplanned days and if one had the wisdom which a historical retrospect always gives us, one should have felt that the administration of that time failed in not providing for a staff sufficient to cope with the increased volume of work that was inevitable during a war period. I suppose the reason is that when a war starts, every party thinks it will be a matter of only a few months and that they will be the victors. Now, since 1947 when we started to be responsible we have taken active steps to meet the situation. Up to date about 350 extra officers have been recruited. Even now, the U.P.S.C. are in the process of recruiting 215 more Income-tax Officers. Secondly, instructions have been issued to deal with petty cases without very meticulous examination. And then, as the House is aware, the recent raising of the maximum exemption limit from Rs. 3,600 to Rs. 4,200 would reduce the number of assessees by 70,000 and therefore, more time can be devoted to the other cases. Further, quite often delays are due to the obstructive tactics—this is a point which I would like the House to remember—adopted by assessees. For getting adjournments, I am afraid, the *munim's* mother is always known to die. Perhaps estate duty may check this tendency for the *munim's* mother to die a number of deaths! And lastly, it takes time to train income-tax officers. Nowadays, it looks easy to us to prepare ourselves for shouldering any kind of burden in life, but even those who take that view. I think, will concede that income-tax is a very complicated business. Even the law is very complicated apart from the accounts, and it takes time, as I said, to train Income-tax Officers, and there is a limit to the speed with which we can find officers. Now, delay in assessment means that the assessees do not know their liabilities, and quite often, by the time the assessment is made, the money is frittered away. So far as the assessee is concerned, he need not be under any difficulty in paying his tax to the extent he considers it due. If he is a wise man, he will make as exact an estimate as he can, because section 18A permits him to make advance payment of 80 per cent. of his tax on the basis of his own estimate, and under section 23B he can have a provisional assessment made by the Income-tax Officer, get an assessment made in a summary manner. If his returns are correct, there is no reason why he should be required to pay any more at the time of the final assessment.

Then, somebody made, I think lightly, the remark that the Income-tax Officers do not do enough work, attend office late, and are in a hurry to attend the club. I think it was Mr. Bogawat. He is not here either. He is perhaps at a club! Now, the standards of work have been prescribed for Income-tax Officers and a careful and systematic watch is maintained on their output against these standards. This system of prescribing standards has been

[Shri C. D. Deshmukh]

criticised on every ground, but never on the ground that it does not give sufficient work to the Income-tax Officer. In fact, in paragraph 401 of their report, the Income-tax Investigation Commission have said:

> "In defining the charges and in allocating work on the time factor, sufficient allowance should be made for all the different facets that the I.T.O.'s work presents. This we think is not being done now, at least adequately."

Shri Bogawat suggested that the duties of inspectors should be prescribed statutorily and they should be given the right to attach accounts. The purpose of bringing inspectors within the definition of income-tax authority is to make them statutory officers. They are intended to perform a variety of duties, and it is for this reason, that details of such duties have not been prescribed in the statute. They will be performing such functions as are assigned to them by their superiors. After all, the duty of an inspector is to inspect. The right to impound accounts while on survey was not recommended by the Income-tax Investigation Commission, and the matter was not considered for purposes of this Bill which is confined, as far as possible, to non-controversial matters—at least that was the original hope.

There was also some observation in regard to the inequity of imposing a penalty for non-payment even though the tax was reduced or remitted in appeal. I think the point was made by Pandit Thakur Das Bhargava. In this regard, we issued instructions in October, 1949, that when the tax was remitted in appeal, it would not be equitable to recover any penalty for non-payment of the tax and that the Commissioners should revise the penalty order under section 33A. Obviously, some stray individual case has come to the notice of the hon. Member. If in any case our instructions have not been carried out, then, I should be very grateful—the hon. Member is not here, but I may write to him about this matter—if he brings that specific case to our notice.

So, I have now dealt with all the important points—most of the points—that have been raised in this debate, and I therefore commend my motion.

Mr. Deputy-Speaker: The question is:

> "That the Bill further to amend the Indian Income-tax Act, 1922 as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.—(*Amendment of section 4 etc.*)

Shri V. P. Nayar: I beg to move:

(i) In page 17, line 6, after "who" insert "was ordinarily resident, but."

(ii) In page 17, line 16, after "person" insert "ordinarily".

(iii) In page 17,

(a) line 24, for "(i)" substitute "(ii)";

(b) line 27, for "(ii)" substitute "(iii)"; and

(c) line 34, for "(iii)" substitute "(i)".

(iv) In page 18, for lines 4 to 12, substitute:

> "(i) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under a trust or other legal obligation, whether solely or in part, for religious or charitable purposes, in so far as such income is applied for such purposes only or is finally set apart for application thereto."

(v) In page 18, line 25, after "wholly" insert "or finally set apart".

(vi) In page 19, line 41, add at the end:

> 'and the words "which does not ensure for the benefit of the public" shall be omitted'.

(vii) In page 17, after line 38, insert:

> "Provided further that the concessions in tax under this section, shall not be given to persons having business or interests in business in India and interests in branches of such business organisations in which they have direct or indirect connection functioning in foreign countries."

Shri Nambiar (Mayuram): I beg to move:

(i) In page 18, line 39, add at the end:

'and the following proviso shall be added, namely:—

"Provided that the house is built to be rented out for industrial labour, lower middle class people, clerks and peons and the rent whereof is fixed by the Government." '

(ii) In page 18, omit lines 42 to 49.

(iii) In page 19, omit lines 1 to 14.

(iv) In page 19, omit lines 15 to 23.

Mr. Deputy-Speaker: Amendments moved:

(1) In page 17, line 6, after "who" insert "was ordinarily resident, but".

(2) In page 17, line 16, after "person" insert "ordinarily".

(3) In page 17,

(a) line 24, for "(i)" substitute "(ii)";

(b) line 27, for "(ii)" substitute "(iii)"; and

(c) line 34, for "(iii)" substitute "(i)".

(4) In page 18, for lines 4 to 12, substitute:

"(i) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under a trust or other legal obligation, whether solely or in part, for religious or charitable purposes, in so far as such income is applied for such purposes only or is finally set apart for application thereto."

(5) In page 18, line 25, after "wholly" insert "or finally set apart".

(6) In page 19, line 41, add at the end:

'and the words "which does not ensure for the benefit of the public" shall be omitted'.

(7) In page 17, after line 38, insert:

"Provided further that the concessions in tax under this section, shall not be given to persons having business or interests in business in India and interests in branches of such business organisations in which they have direct or indirect connection functioning in foreign countries."

(8) In page 18, line 39, add at the end:

'and the following proviso shall be added, namely:—

"Provided that the house is built to be rented out for industrial labour, lower middle class people, clerks and peons and the rent whereof is fixed by the Government." '

(9) In page 18, omit lines 42 to 49.

(10) In page 19, omit lines 1 to 14.

(11) In page 19, omit lines 15 to 23.

Now, whichever hon. Member wants to speak may speak. If there is nobody who wants to speak, I shall call the hon. Minister.

Shri V. P. Nayar: I shall speak on my last amendment.

Mr. Deputy-Speaker: He may speak on all the amendments together. I will not give him a chance later.

Shri V. P. Nayar: I want to speak only on my last amendment. The hon. Finance Minister told us just a few minutes ago that I referred to money made in blackmarket. I do not remember that I myself used the expression 'black-market money.' It is open to him to verify the uncorrected report of my speech, and if I have not used the word 'blackmarket money' let him not impose the anachronism which he alleges.

I wish to point out that the purpose of this amendment is to prevent a possible malpractice. I understand that there are certain firms in India, having their branches in the United Kingdom, the United States of America, or every other country, under real or pseudo-names. I shall explain my point better by illustrating a particular case. Supposing A, a firm in Calcutta has a branch in the U.S.A. That branch purchases a consignment of, say, lead pencils, at the rate of three dollars per gross or something like that. The branch sends the consignment to the firm A in Calcutta, at

[Shri V. P. Nayar]

an inflated price at five dollars a gross. This occurs very often, and in some cases, I know the prices are 100 per cent. more than what they are, so that they draw their bills on the Indian head office, and get some more money, which they keep with them in foreign banks—in foreign currency. On the money which Indian traders have been able to keep in the United States of America there has been a consistent systematic blackmarketing in India. That is what I said.

Shri C. D. Deshmukh: In exchange?

Shri V. P. Nayar: Yes. I think it is known by some name like *bhatta*. The Government of India may feel difficulty in getting exchange and shortage. But some of the merchants do not find any. Supposing I am a dealer, and I want to go to America and purchase some goods, it is enough if I go to a place like the Royal Exchange Place at Calcutta, contact a broker there, get into touch with some firm which has a branch in America, pay the *bhatta* rate at Calcutta, and then take a chit. That chit will give me as many dollars as I want, from the money which is in the blackmarket. I do not say, the money earned by the blackmarket, but the money in blackmarket. This is made good in India. There seems to be a very nefarious trade going on in this, and under the present rules, the Government cannot do anything in the matter.

They are in conference, Sir, and I thought I would better stop.

Mr. Deputy-Speaker: But they have pledged their ears to the hon. Member.

Shri T. N. Singh (Banaras Distt.—East): In the meantime, may I ask the hon. Member what he means by chit? Does it mean that some parties have got extra or surplus dollar reserves in the United States of America, so as to adjust the account? If so, how did they get this extra dollar reserve?

Shri V. P. Nayar: Certainly that is one business. There is another business from India also. Supposing you consign 1,000 or 2,000 tons of jute, and your own firm is there in America, then you consign it under that name. While the market rate for a particular quantity is, say, Rs. 100, you consign it to America and draw a bill only for Rs. 30, while in the United States of America they sell it at Rs. 100, and take Rs. 70 on that, but send Rs. 30 only to India, thus keeping all the rest of the money in America.

Shri T. N. Singh: But I think the hon. Member is not aware of the fact that the Reserve Bank is fully seized of the position, particularly in regard to under-invoicing and over-invoicing, and wherever they are able to do so, they are pursuing these matters.

Shri V. P. Nayar: I can only point out to my hon. friend, Mr. T. N. Singh, that the details of the *modus operandi* of such nefarious transactions are given in the famous book *Mysteries of Birla House* written by Prof. Debajoti Barman. It is a well-documented version of certain malpractices in regard to income-tax evasion. If my hon. friend reads that, he will know. I hope he has read it, but he is likely to forget. The entire details of the *modus operandi* of such nefarious transactions are there. I put this to the Finance Minister—it is again open to him to say if I am right. I do not know much about the Reserve Bank; he may be knowing much better. My hon. friend said he was in the trade. He was quoting to me a Malayalam proverb. I wrote to him immediately for that because from the way in which he quoted it, I thought it was either Greek or Telugu; it was not Malayalam. I could quote to him. There is a proverb in our language:

Cheruppa kalangalil ulla sheelam
Marakumo manushan ulla kalam

It means—such things which you have imbibed in your childhood you are not likely to forget in your old age till you die. If the hon. Minister was in the Reserve Bank for a long time, he knows what it is. Let him tell us what is the possibility of such transactions, as I say, in both this and also in *bhatta*. I understand that in *bhatta* there is a very big trade going on both in Calcutta and in Bombay, and I would like to know from the hon. Minister how this particular aspect is guarded against. I am sure, that he is going to give me an assurance in this respect in consultation with the Minister of Commerce who must be knowing *bhatta* better. I have nothing more to add in this.

Shri Nambiar: There are certain amendments in my name, but I want to stress on my first amendment.

Mr. Deputy-Speaker: I heard the hon. Member, Mr. Nayar, conclude by saying: 'I have nothing more to add in this'. I want him to conclude on all the amendments. If he wants to speak on any of the other amend-

ments, I am not going to call him again.

Shri V. P. Nayar: It is not easy for us to go through the amendments as you read the number.

Mr. Deputy-Speaker: I want to know if he has finished with all amendments.

Shri V. P. Nayar: There is some difficulty also. The page numbers referred to in the list printed seem to be.....

Mr. Deputy-Speaker: I will not allow him to speak again. I have told him many times. Either he has to speak on all the amendments or he does not speak at all. I will not call him again.

Shri V. P. Nayar: That is all right. I will have many more opportunities later.

Shri Nambiar: The construction of houses, of course, is a good thing. But the construction of houses for what purpose? Anybody who builds a house should not be given the benefit of the exemption of income-tax.

Mr. Deputy-Speaker: What is the amendment he is referring to?

Shri Nambiar: No. 44, List No. 5. What I have to submit is this. In the case of those persons who construct houses for the purpose of habitation of ordinary people, I can understand, but not those who construct palaces for the purpose of luxury and to see that someway or other income-tax is to be evaded. Such persons should not have the benefit. That is why I wanted it to be put here very specifically—houses constructed for industrial labour, lower middle class people, clerks and peons and the rent whereof is fixed by the Government. Ordinary people must have the benefit. Otherwise, it will be at the cost of the ordinary people and those persons who want big palaces built for themselves will have the benefit. So, will the hon. Minister distinguish between these two classes of construction of houses and see that such of the houses which are under certain conditions or certain limitations, for the purpose of the common man will have the benefit, and the others will not have it? If he can satisfy me on that or if he will accept my amendment, the problem will be solved. That is what I have to submit. I hope the hon. Minister will bear this point in mind and will do justice.

Shri C. D. Deshmukh: There are two points raised. One was by Shri V. P. Nayar about consignments to branches. Now, as he has appealed to my experience of what happens, I am free to admit that this is going on all the time in the sense of accumulation of foreign exchange by the under-invoicing of exports or the over-invoicing of imports, the idea being to take a slice and to keep it in the foreign country, not to make payment, because the payment due is either less or more, as the case may be. Recently there has been a practice even of under-invoicing of imports because perhaps the licensed quantities are not sufficient and they want to import more than what the amount would indicate.

Now, this problem came to the notice of the Reserve Bank many years ago and we have gradually been tightening the machinery for trapping these amounts. I do not think there is any country which has succeeded in entirely eliminating these practices. That just is not possible. The lawbreakers are far too ingenious and the variety of methods available to them is very large. That is one of the difficulties of the sterling area, the problem of cheap sterling, and arbitrage operations of all kinds go on all the time. I should not like to make a guess what our loss is, but that loss occurs, of course, primarily in a field which is still more important to inland revenue, and that is foreign exchange. As far as lies in our power, we certainly are taking steps to minimise the extent of damage done. The customs appraisers, for instance, are able to exercise a certain amount of check. Recently my hon. colleague has established an 'intelligence unit' and it would be its function to keep a watch on just this kind of abuse. But I doubt whether for that reason—because we are not able to stop such loopholes—we should take the extreme step of stopping the ingress of capital which is so badly needed in this country. So it is really a question of a sense of proportion, and I myself would not accept the position that because we have not been getting hundred per cent success in dealing with the situation which Shri Nayar has described, therefore, we ought to modify the salutary provision that we have introduced. That is why I am not able to accept his amendment.

Then there is amendment of Shri Nambiar. The object is that the exemption should be given only to houses built for poorer classes whose rent is fixed by Government. Now, the exemption is given to induce construction of houses with a view to reducing shortage, and it is really not possible in the economic sphere to classify shortages as shortages for the poor and shortages for the rich. The

[Shri C. D. Deshmukh]

situation is very fluid. When more houses become available, then we find that rents come down, and no matter that the houses have been built even for the richer classes of the community, because there is a movement—those who have sufficient purchasing power move into these higher-priced houses and certain other houses become available—and in that general movement, I am quite sure that the poor would also participate. In any case, the regulation of houses and the construction thereof cannot be achieved through the Income-tax Act, and if the problem does exist, in spite of what I say, then we should have to adopt some other legislative course in order to cope with it. I think that this amendment in this particular form—omitting this concession—would be ill-advised in the interests of the community at large, and therefore, I am unable to accept it.

Shri Nambiar: May I know how the poor can go to Baroda House, Mandi House and other houses of that type? I do not understand how the poor man will benefit with respect to such houses.

Shri C. D. Deshmukh: I say in all scarcities—to the extent to which a scarcity is corrected to that extent prices fall. If prices fall, then the whole of the community shares it. One does not say that a particular amount of additional gain comes only to the rich. This adds to the total stock of living space available. That is the sense in which the poorer people are bound to benefit, although, as I say, the process will not be direct. It has to be spread over a period of time and if one has any objection to big houses and so on, as I say, there should be other direct methods which should be adopted if that is considered desirable for planning purposes.

Shri V. P. Nayar: Is there any maximum amount prescribed which will not be taxable and which can be spent on buildings?

Shri C. D. Deshmukh: There is no maximum.

Mr. Deputy-Speaker: I will now put the amendments to the vote of the House.

The question is:

In page 17, line 6, after "who" insert "was ordinarily resident, but".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 17, line 16, after "person" insert, "ordinarily".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 17,

(a) line 24, for "(i)" substitute "(ii)";

(b) line 27, for "(ii)" substitute "(iii)"; and.

(c) line 34, for "(iii)" substitute "(i)".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 18, for lines 4 to 12, substitute:

"(i) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under a trust or other legal obligation, whether solely or in part, for religious or charitable purposes, in so far as such income is applied for such purposes only or is finally set apart for application thereto."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 18, line 25, after "wholly" insert "or finally set apart".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 19, line 41, add at the end:

'and the words "which does not ensure for the benefit of the public" shall be omitted'.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 17, after line 38, insert:

"Provided further that the concessions in tax under this section, shall not be given to persons having business or interests in business in India and interests in branches of such business organisations in which they have direct or indirect connection functioning in foreign countries."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 18, line 39, add at the end:

'and the following proviso shall be added, namely:—

"Provided that the house is built to be rented out for industrial labour, lower middle class people, clerks and peons and the rent whereof is fixed by the Government."'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 18, omit lines 42 to 49.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 19, omit lines 1 to 14.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 19, omit lines 15 to 23.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4.—(*Amendment of section 5 etc.*)

Shri Banerjee (Midnapore-Jhargram): I beg to move:

In page 21, after line 4, add:

"(i) Appellate Assistant Commissioners of Income-tax shall be subordinate to the Appellate Tribunal within whose jurisdiction they perform their functions;"

Shri S. V. L. Narasimham: (Guntur): I beg to move:

In page 21,

(a) line 29, for "may demand" substitute "if demands",

(b) line 32, after "he" insert "shall",

(c) line 32, for "re-heard" substitute "heard *de novo*".

Mr. Deputy-Speaker: Amendments moved:

(1) In page 21, after line 4, add:

"(i) Appellate Assistant Commissioners of Income-tax shall be subordinate to the Appellate Tribunal within whose jurisdiction they perform their functions;"

(2) In page 21,

(a) line 29, for "may demand" substitute "if demands",

(b) line 32, after "he" insert "shall",

(c) line 32, for "re-heard" substitute "heard *de novo*".

Shri S. V. L. Narasimham: My amendment speaks for itself and it does not require any speech from me.

Shri Banerjee: The hon. Minister said that the Income-tax Officers are executive rather than judicial officers. From his speech, as I have come to know, the real trouble arises when they are the persons who assess primarily and against their decisions the Appellate Assistant Commissioner gives a decision. There is a proviso to sub-section (8) of section 5 which says:

"Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions."

Though there is this order, still the trouble arises because these appellate officers are under the direct control of the Central Board of Revenue and their future depends upon the Central Board of Revenue. Sub-section (8) declares the over-riding power of the Central Board of Revenue to issue instructions and directions to all officers of the Government. So, it is very difficult for such officers to discharge their duties with impartiality and independence as long as their future depends upon the Board of Revenue. So, it is desirable that when it really goes to the Appellate Assistant Commissioner, there is some decision. What I mean is, that though the ideals are just, how many

[Shri Banerjee]

people have funds to approach the Tribunal. So, the matter ends there, the curtain is dropped. How many people have got the funds—no matter even if they have a mind to go. My amendment is that they be taken away from the control of the Board of Revenue and may be placed under the Tribunal.

Shri C. D. Deshmukh: There are only two points. The first one is about the assessee demanding that he shall be heard *de novo*.. As the Bill stands, an assessee may be re-heard by the existing authority and, if he so demands, I think *a fortiori*, there can be no doubt that the Income-tax Officer shall give him a hearing, as he cannot brush aside the right given to the assessee by the statute. I do not think this amendment is necessary.

Regarding the other point, I have made my observations at some length and I deny that there is any interference with the Appellate Assistant Commissioners in the discharge of their judicial functions. There is actually a provision, section 5(8) of the Income-tax Act in this regard, and I can claim that it is being scrupulously observed. Therefore, I am not able to accept both these amendments.

Shri Barman (North Bengal-Reserved—Sch. Castes): The Income-tax Investigation Commission in their report in recommendation No. 148 said, in the last sentence: "Their leave, transfers and postings should be in the hands of the Tribunal". Why something could not be done so that most of the misgivings in the minds of the public may be lessened to a great extent?

Shri C. D. Deshmukh: I understand the Tribunal has no administrative connection with the officers of the Income-tax Department. Once we concede the major premise that their work cannot be transferred—the work that a man does has a vital connection with his leave, transfer, promotion etc.—you cannot give only that kind of authority to another power which is entirely outside the whole range of this administrative structure. That is the reason why we cannot accept that kind of very unsatisfactory solution of the problem.

So far as the recommendation of the Income-tax Investigation Commission is concerned, all I can say is that either we failed to place all the facts and considerations before them or they did not see them. I cannot now go into the history of it; but, we did place all our considerations now before the new Commission and they have come to the conclusion that what we say is correct.

Mr. Deputy-Speaker: The question is:

In page 21,

(a) line 29, for "may demand" substitute "if demands",

(b) line 32, after "he" insert "shall",

(c) line 32, for "re-heard" substitute "heard *de novo*".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, after line 4, add:

"(i) Appellate Assistant Commissioners of Income-tax shall be subordinate to the Appellate Tribunal within whose jurisdiction they perform their functions;"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5.—(*Amendment of section 5A etc.*)

Shri V. P. Nayar: I beg to move:

In page 21, line 40, omit "civil".

Mr. Deputy-Speaker: Amendment moved:

In page 21, line 40, omit "civil".

Is any other hon. Member moving any amendment?

Shri Nambiar: The pages given in the book supplied to us are different. It is said, in page 25 and then we look to that page, we do not see it there.

Mr. Deputy-Speaker: I can understand other hon. Members not being able to follow, but the hon. Members who have tabled the amendments have got the books.

Shri V. P. Nayar: We have referred to certain pages, but in the books that we have now there are certain other pages.

Mr. Deputy-Speaker: Why not bring that to my notice?

Shri V. P. Nayar: We ourselves are not able to locate the root of the trouble, yet.

I would only submit my amendment for the consideration of the hon. the Finance Minister. Let him think whether my amendment will not be desirable.

Mr. Deputy-Speaker: Does the hon. Member want a magistrate to decide this mater? A magistrate is not expected to know much about income-tax.

Shri C. D. Deshmukh: The interpretation of the income-tax law also involves interpretation of many questions of civil law; it has really no connection with criminal law.

Mr. Deputy-Speaker: I do not think the hon. Member is pressing it.

Shri V. P. Nayar: I beg to leave to withdraw the amendment.

The amendment was, by leave, withdrawn.

Amendment made:

In page 21, after line 46, insert:

"(c) in sub-section (4), after the word 'shall' the word 'ordinarily' shall be inserted."

—[*Shri C. D. Deshmukh.*]

Mr. Deputy-Speaker: The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause5, as amended, was added to the Bill.

Clause 6.—(*Amendment of section 7 etc.*)

Shri Banerjee: I beg to move:

In page 22, line 3, after "State Government" insert "or of any local authority or recognised private institution".

I appeal to the hon. Minister to give some attention to this amendment and see whether he can accept it.

96 P.S.D.

Shri C. D. Deshmukh: I am afraid I cannot accept it, because the conditions of service of employees of local authorities and private institutions are not identical and their salaries are in no way regulated by Government. Therefore, we cannot accept parallelism between those and Government employees.

Mr. Deputy-Speaker: The question is:

In page 22, line 3, after "State Government" insert "or of any local authority or recognised private institution".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7.- (*Amendment of section 9 etc.*)

Amendment made:

In page 22, lines 29 and 30, for "it shall be lawful for the Income-tax Officer to revise it" substitute "the Income-tax Officer concerned shall revise it."

—[*Shri V. P. Nayar.*]

Mr. Deputy-Speaker: The question is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clauses 8 to 11 were added to the Bill.

Clause 12.— (*Amendment of section 18 etc.*)

Shri Tulsidas (Mehsanan West): I beg to move:

In page 25, lines 49 to 51, omit 'after the words "Any deduction made" the words "and paid to the acount of the Centarl Government" shall be inserted'.

Mr. Deputy-Speaker: Amendment moved:

In page 25, lines 49 to 51, omit 'after the words "Any deduction made"

[Mr. Deputy-Speaker]

the words "and paid to the account of the Central Government" shall be inserted'.

Shri Tulsidas: I wish to explain why my amendment is necessary. The hon. Minister has no doubt clarified the position this morning during the course of his speech. He said that they are going to adopt a revised way of assessment, namely, the current income will be assessed. Therefore, he does not feel it necessary that the interest should be allowed to continue to be paid. The most important reason why the Income-tax Investigation Commission has recommended an increase in the rate of interest is not based on this question of assessing the current income or previous income. According to the amendment made by the Select Committee, interest will not be paid any more except for certain specified amounts. I would like to point out, when the Finance Minister says that the delay in assessment is not due to his Department but to other causes also, that there are many examples where once the amount is recovered by the Department, no interest is paid. Even today, a lot of delay takes place, because once the amount is recovered, the Department feels that after all the money has been recovered. A lot of delay occurs in finalising the assessment. This is so even in the case of public limited companies. I know of instances where assessment for the year 1940 or 1941 has not been completed. In such cases, due to the E. P. T. Act there are complications and the Department feels it quite in order to see that the assessment is not finalised. The recommendation of the Commission was based on the fact that if more interest has to be paid for advance payments, the Department would be more alert and complete the assessment early. That is the point which I also wish to stress. It is not merely a question of revising the way of assessment. I would like the Finance Minister to look at the question from this point of view.

Shri C. D. Deshmukh: We are on clause 12 and I do not understand how this point arises here.

Shri Tulsidas: I am sorry that I have begun to speak on clause 13, to which only my next amendment relates and not this one.

Now, coming to clause 12(c), it is said that while according to the law an employer may deduct the income-tax from the salary of the employee, yet if the employer does not in his turn pay the deducted income-tax to the Government, the employee is responsible. I think the employer deducts the income-tax as an agent of the Government, and therefore, if he fails to pay the amount to the Government, why should the employee suffer? I do not see any reason or logic in it.

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): It is a simple matter of law, and not of logic.

Shri Tulsidas: It may be so to him, but to me it looks that we are very hard on the employees. The employee has already paid the amount, and the law permits deduction at source. Why should he again be held responsible, because the employer who has deducted the amount does not pay it to Government?

Shri T. T. Krishnamachari: There is another section to protect the employee.

Shri T. N. Singh: I feel that for a proper consideration of the point raised by my hon. friend Mr. Tulsidas, we should know that when an income-tax is assessed on an assessee and he enters into a dispute about the amount and the whole thing drags on for three or four years, the assessee can get away by paying only the undisputed amount and the disputed amount may not be paid.

10 A. M.

Shri Tulsidas: You are again referring to section 18A, which arises only on the next clause.

Shri T. N. Singh: Well, then, regarding the other point raised by my hon. friend, namely, about the employees, I am in sympathy. I know of cases where the employers have actually deducted income-tax from the employees and they have failed to pay the amount to the Government. The employee has paid the amount knowing that the employer is acting as the agent of the Government; otherwise, he would object to the deduction of the amount from his salary. Once the deduction has been made and the employee has agreed to it in all good faith, why should he be held responsible if the other party fails to pay?

Shri T. T. Krishnamachari: He need not labour that point, because the third proviso to section 7 looks after that.

Shri Tulsidas: But if you read clause 12(c), it is clear that if the amount is not paid to the Government by the employer, the employee will be liable, even though the

amount has been already deducted from his salary by the employer.

Shri T. T. Krishnamachari: He does not seem to bear in mind that this is a matter *inter se* between the Government and the employer. If the employer who shows the deduction in his books does not actually pay, he does not get the benefit of the deduction, but whereas, as far as the employee is concerned, here is the proviso to section 7 which says:

> "Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction."

The employee is covered there. This amendment is only to see that an employer who fraudulently withholds payment to the Central Government but merely makes a deduction in his books does not get the benefit of the deduction.

Mr. Deputy-Speaker: Does Mr. Tulsidas want me to put his amendment to vote?

Shri Tulsidas: No, Sir. I beg leave to withdraw it.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

> "That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

Clause 13.— (*Amendment of section 18A etc.*)

Shri Tulsidas: I beg to move:

In pages 26 and 27, omit lines 44 to 48 and lines 1 to 9 respectively.

I spoke on this clause by mistake during the previous clause.

Mr. Deputy-Speaker: I would, if he likes, ask the Reporter to transpose his speech from there to this clause.

Shri Tulsidas: No, Sir. I would explain it in a few words. The Finance Minister stated that his Department is now considering a revision of the method of assessment. He quoted the example of Britain and said that only the current income is assessed there, whereas here we tax even previous years' income. The recommendation which the Income-tax Investigation Commission has made in regard to increasing the rate of interest for advance payment was made not merely from the point of view as to whether the income should be assessed on the basis of the current year's income or it should be assessed on the basis of previous year's income. But the reason why they recommended it was that a lot of assessments are delayed. And once the tax is collected by way of advance payment under section 18A the tendency in the Department is that they are not in a hurry to make the assessments. I know in several cases assessments are delayed even from 1941. In regard to public limited companies where there is the question of law it is a complicated matter because of E. P. T. In any case the assessments should have been over now. I find once the money is collected this is the tendency of the Department, which is the experience of most of the assessees. If the interest were kept, even if it is not increased, then it would be at least something as it will make the Department alert, so that as soon as the assessment is over the assessee knows what the assessment will be and knows his responsibility. At least the rate of interest should be kept, even if it is not increased. The Investigation Commission asks for an increase. That is the point I wanted to make.

Shri C. D. Deshmukh: I have given an elaborate explanation of the whole situation. So far as the salaried person is concerned he does not get any such advantage. There is no reason why any one else should get it.

Mr. Deputy-Speaker: The question is:

In pages 26 and 27, omit lines 44 to 48 and lines 1 to 9 respectively.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

> "That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clause 14 was added to the Bill.

Clause 15.— *Amendment of section 24 etc.*)

Shri C. D. Deshmukh: I beg to move:

In page 28, line 16, after "substituted" add: 'and for the words "the

[Shri C. D. Deshmukh]

portion not so set off" the words "so much of the loss as is not so set off or the whole loss where the assessee had no other head of income" shall be substituted'.

This amendment has become necessary in view of certain observations contained in the Supreme Court judgment in the case of the Anglo-French Textile Company. I referred to it in my general observations. The view taken was that the carry forward should be admissible only if the assessee had set off loss in the first year against any other head. The assessment is in favour of the assessee and as I have already given the justification for it in my speech, I now commend the amendment to the House.

Mr. Deputy-Speaker: The question is:

In page 28, line 16, after "substituted" add::

'and for the words "the portion not so set off" the words "so much of the loss as is not so set off or the whole loss where the assessee had no other head of income" shall be substituted'.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 15, as amended, stand part of the Bill."

The motion was adopted.

"That clause 15, as amended, stand part of the Bill."

Clauses 16 and 17 were added to the Bill.

Clause 18.- (*Amendment of section 34 etc.*)

Amendment made:

In page 28,

(1) line 45, after "shall be omitted" add:

'and for the figures and word "66 and" the figures and word "66 or" shall be substituted'

(2) line 47, for "the word 'section'" substitute:

"the words 'section limiting the time within which any action may be taken or any order, assessment or re-assessment may be made'."

[*Shri Pataskar*]

Mr. Deputy-Speaker: The question is:

"That clause 18, as amended, stand part of the Bill."

The motion was adopted.

Clause 18, as amended, was added to the Bill.

Clauses 19 to 31 were added to the Bill.

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

Shri C. D. Deshmukh: I beg to move:

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

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

CINEMATOGRAPH (AMENDMENT) BILL

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): Sir, if you would be kind enough to permit me, I would like on behalf of my colleague Dr. Keskar to move the motion standing in his name.

I beg to move:

"That the Bill to amend the Cinematograph Act, 1952, be taken into consideration."

The Bill itself is fairly simple and the Statement of Objects and Reasons gives a clear picture of what the Bill is. It is largely due to certain defects that have been noticed in the actual administration of the Cinematograph Act, 1952, which re-enacted the provisions of the 1918 Act, in regard to sanctioning of cinematograph films for exhibition. Under the proviso to section 6 of the Act notice has to be given to the person to show cause why the film should not be uncertified by the Central Government. This provision is not serving any useful purpose. On the other hand it entails a lot of delay and the very object of uncertification is defeated. Therefore, this proviso is sought to be deleted. A number of cases in which films have been exhibited with portions not passed by the Central Board of Film Censors has been brought to Government's notice. Such interpolations are all too easy in the case of films. It is therefore found necessary to recast the penalty clause so as to cover