

much more satisfactory method of dealing with the question than first to invoke a presumption of a general partition which was never intended, and then to superimpose upon it the second legal fiction of a reunion, which never in fact took place."

2 P.M.

Sir, that is the position on which I took my stand and that is why the Bill was drafted in this way.

Shri N. C. Chatterjee: The question is, when there is statutory severance effected by the language of section 18 or 19, can this principle be enforced?

Shri Biswas: Suppose it is raised in the Supreme Court, raised by my hon. friend there, there is nothing to prevent that. I am only giving you the intention which I had in view while framing this. Suppose there is a different decision by the court on it, if I am here, I will myself come forward with an amendment and make the position perfectly clear.

Sir I have already exceeded my time by ten minutes. I need not say anything more. I only say that the Bill has been accepted by all sections of the House. I hope the Bill will be worked in a satisfactory manner and all parties interested will see that the Bill becomes a success which it is desired to be.

Before I conclude, with your leave, I would like to move a verbal amendment. Sir, I beg to move:

(1) That the re-numbering and re-lettering of the clauses and sub-clauses consequential on the amendments made by the House be carried out together with correction of cross references,

(2) That the various definitions in clause 2 be re-arranged according to alphabetical order, and

(3) That the word "and" occurring in clause 16 in page 6, line 28, be omitted.

Mr. Deputy-Speaker: Before placing the Bill, as amended, before the House. I shall place the verbal amendment as moved by the hon. Minister.

Amendment moved:

(1) That the re-numbering and re-lettering of the clauses and sub-clauses consequential on the amendments made by the House be carried out together with correction of cross references,

(2) That the various definitions in clause 2 be re-arranged according to alphabetical order, and

(3) That the word "and" occurring in clause 16 in page 6, line 28, be omitted.

Pandit Thakur Das Bhargava: Sir, only the last portion may be put to the House. The other portion is only a matter of routine.

Shri Sadhan Gupta (Calcutta-South-East): Sir, it is not yet 2-30. Will you put the amendment to vote now? That is the point.

Mr. Deputy-Speaker: Is it the desire of the House that I should put it off for the present?

Sardar A. S. Saigal (Bilaspur): The Speaker has already decided that voting may be done at 2-30.

Mr. Deputy-Speaker: If the Speaker has already decided, then this will stand over till 2-30. Now we will take up other business.

INDIAN INCOME-TAX (AMENDMENT) BILL

The Deputy Minister of Finance (Shri M. C. Shah): Sir, on behalf of Shri C. D. Deshmukh I beg to move:

"That the Bill further to amend the Indian Income-tax Act, 1922, to provide for the assessment or re-assessment of persons who have to a substantial extent evaded payment of taxes during a certain period and for matters connected

[Shri M. C. Shah]

therewith, be taken into consideration."

Sir, the object of this Bill is to provide in the Indian Income-tax Act itself the machinery of investigating into substantial evasions of tax on the profits relating to the war period. Soon after the war the Government was faced with this problem and a separate law called the Income-tax Investigation Commission Act was enacted in 1947. One of the functions of the Commission appointed under that Act was to investigate into cases of tax evasion which may be referred to it by the Central Government under Section 5(1) of that Act, before the 1st September, 1948. The cases to be referred were only those in which the Central Government had *prima facie* reasons for believing that a person has to a substantial extent evaded the payment of taxation on income. There was another provision in that Act, namely, Section 5(4) under which the Investigation Commission itself may, without any time-limit require the Central Government to refer to it for investigation the case of any person other than the person whose case had been referred to it under section 5(1) and was being investigated by it. The validity of this provision under the Constitution was challenged by the Supreme Court which delivered its judgment on the 28th May, 1954, holding that Section 5(4) of the Income-tax Investigation Commission Act and the procedure prescribed thereunder, in so far as it affects the persons proceeded against under that sub-section, which might have been a good law before the Constitution bring a piece of discriminatory legislation, offended against the provision of article 14 of the Constitution and was therefore, void and unenforceable. The result was that the Commission could no longer proceed with the pending cases under Section 5(4) and assessments already made on the basis of the Commission's report under that sub-section became void.

After the Supreme Court's judgment, Government gave anxious considera-

tion to the problem whether Section 5(4) of the Income-tax Investigation Commission Act should be amended so as to remove its constitutional defects, or a provision be made in the normal law which has to deal with the investigation and assessment of these cases. The Supreme Court's judgment had held not only Section 5(4) to be invalid, but the whole procedure relating to the investigation and assessment of the cases thereunder. Government was, therefore, advised that if the Investigation Commission Act were to be amended it would require a complete overhaul tantamounting in fact to its re-enactment, and as such our enactment would only be prospective and not retrospective. The whole procedure of referring the cases afresh to the Commission and their investigation would have, therefore, to be gone through. The result would be, that a body like the Commission which was meant only for a short period to deal with a limited number of cases of substantial evasion will have to continue for a far much longer period. The other alternative was to make a provision in the normal Law itself, namely, the Indian Income-tax Act, 1922, for the investigation of cases in which there was substantial evasion of tax on the profits of war period and not necessarily confine to those cases which were referred under Section 5(4). The Income-tax Act already contains—as the House knows—a provision, namely, Section 34, under which, income escaping assessment can be assessed or re-assessed. The period of limitation for initiating assessment proceedings in such cases is four years, where the under-assessment or allowance of any excessive relief was not due to any fault of the assessee, and eight years, where the evasion or concealment of income on the part of the assessee was deliberate. The cases of substantial tax evasion on profits of the war period from 1st September 1939 to 31st March 1946 were, however, beyond the time-limit laid down in this provision. If the time-limit was waived for these cases, they could be investigated and

assessed or reassessed under this section. Hence, Government thought it advisable and proper to amend this provision of the normal law, and this was done on 17th July 1954, by means of Ordinance No. 8. The present Bill seeks to replace that Ordinance.

[SHRI BARMAN *in the Chair*].

Coming to the provisions of the Bill, clause 2 inserts four new sub-sections in section 34 of the Indian Income-tax Act. New sub-section 1A deals with the assessment of income which has escaped tax. To avoid harassment to small assesseees, a number of safeguards has been provided in the proposed new sub-section. These safeguards are as follows. First, the time-limit is waived only in respect of cases in which the income escaping assessment for the war period, i.e. from 1st September 1939 to 31st March 1946, is substantial; that is to say, the income-tax officer must have reason to believe that it exceeds Rs. 1 lakh for the whole or part of this period. Secondly, the income-tax officer must record his reasons for the belief that the income escaping assessment exceeds Rs. 1 lakh, and the Central Board of Revenue should be satisfied on such reasons recorded, that it is a fit case in which proceedings should be started by the issue of a notice under section 22(2) of the Indian Income-tax Act. Thirdly, there is no time-limit for completing an assessment falling under this sub-section, when once the proceedings have been started. But there is a time-limit up to 31st March 1956, before which the proceedings have to be started. No proceedings can be initiated after that date. With these safeguards, the scope of the new sub-section 1A is very much circumscribed, and nobody can object that the Government should not widen the scope of section 34 for a limited period to bring under assessment large incomes which have escaped assessment.

New sub-section 1B enables an assessee, on whom a notice for assessment is served under sub-section 1A, to apply to the Central Board of

Revenue for settlement of his assessment. The period within which he can apply for settlement is six months from the date of the receipt of the notice, or before the actual assessment is made, whichever is earlier. The power of the Central Board of Revenue to accept the terms of the settlement offered by the assessee is subject to the approval of the Central Government. On the settlement of a case, the Central Board of Revenue will determine the amount of tax payable by the assessee. Invariably, a settlement will be made for all the years for which notices have been issued, as it would be impracticable to settle assessments for one or more years, and leave the others for investigation and regular assessment.

New sub-section 1C provides for the recovery of the settled amount, and new sub-section 1D provides that the settlement would be conclusive as to the matters settled therein, and the assesseees will not be entitled to call it into question before any court. This provision is essential, as matters must reach a finality at some stage.

Cases in which settlements are not offered by assesseees will be assessed to income-tax and to excess profits tax in the ordinary course, on the basis of income determined on investigation. There is no time-limit under the Excess Profits Tax Act for starting assessment proceedings.

Clause 3 of the Bill makes a consequential amendment to section 35, enabling the income-tax officer to rectify the assessment of the partners on the assessment or reassessment of the firm or of the shareholders on section 23A being applied to the private company. The time-limit of four years for such rectification is to be counted from the date of the final order passed in the case of the firm or the company as the case may be.

I have explained very briefly the provisions of the Bill, and I now move.

Shri T. N. Singh (Banaras Dist.—East): May I ask one question? Why was it not possible for Government

[Shri T. N. Singh]

to widen further the provisions of sub-section 1A? The hon. Minister stated earlier that these are not so wide, and therefore, nobody need have any apprehension. Is it for fear of apprehension that it has not been widened further?

Shri M. C. Shah: We wanted to assess the profits made during the war period, which escaped assessment. That is what I have stated, and that is the reason why it has not been widened.

Shri T. N. Singh: There are not wide enough powers under the earlier section, and that seems to be a protection to the assessee. That is the one consolation being offered to the assessee.

Shri M. C. Shah: I do not quite follow.

Mr. Chairman: Let me place the motion before the House first. Motion moved:

"That the Bill further to amend the Indian Income-tax Act, 1922, to provide for the assessment or reassessment of persons who have to a substantial extent evaded payment of taxes during a certain period and for matters connected therewith be taken into consideration."

Shri K. K. Basu (Diamond Harbour): May I ask one question?

Shri M. C. Shah: I think it will be better if I reply after all the questions have been raised by the hon. Members. It will be better to reply to all the questions instead of replying to one question after another.

Shri K. K. Basu: I only wanted to know this. After all, this Bill is not going to be over today, for we can discuss it only up to 2-30 P.M.

Could the hon. Minister give us an idea of the number of cases still pending and the amount involved therein, due to the invalidation of section 5(4) of the Income-tax Investigation Com-

mission Act by the Supreme Court's judgment? The hon. Minister did not state that in his speech. This will give us an idea as to the necessity for this legislation.

Shri M. C. Shah: The number of cases, under section 5(4) of the Income-tax Investigation Commission Act, was 369. 26 cases were disposed of before the Constitution came into force, i.e. before 26th January 1950. In all, 224 cases were either settled, or reports were made in respect thereof; that means 224 cases were disposed of, and 145 cases remain for disposal by the Income-tax Investigation Commission. Excepting these 26 cases, the judgment or settlement or whatever it may be, in respect of the other cases became void and unenforceable. The total amount involved in these cases is Rs. 5.81 crores. Out of this the amount collected is Rs. 2.42 crores. A sum of Rs. 34 lakhs was assessed before 26th January 1950. That is not affected by this judgment. Out of these Rs. 34 lakhs, we have already collected Rs. 24 lakhs.

Shri Asoka Mehta (Bhandara): I welcome the introduction of this Bill. It tries to make good or fill up the deficiency that has been created by the judgment of the Supreme Court.

I have only one or two minor observations to make. My first observation is that so long as the Commission was there, there was a kind of protection to the assessee whose cases were to be reopened. In the case of the Commission, two Judges were included in the Commission, and besides the income-tax officer's opinion, the cases passed through their review. In this case, no such independent or judicial review would be available. I wonder if it would not be possible to have some kind of a consultative judicial opinion before either any settlements are made or any final disposals are made. Particularly in the case of settlements, I think it is wise—it is necessary—to have some kind of an independent

opinion being obtained and independent scrutiny being made available. There has been a number of settlements in the past, a number of settlements that was made under a particular scheme, with which the name of Shri Tyagi was associated. He had gone about inviting those who had evaded payment of tax deliberately either because there was a foreign Government and they thought that it was a patriotic duty to do it, or because they thought that it was profitable to do so. Mr. Tyagi had gone round inviting them to review and reconsider the position. As a result of that, a number of settlements was made.

I have heard, and I am sure Members of the House have also heard, that some of these settlements were such as left a certain amount of dissatisfaction around. There was a feeling that the settlements were not made in as dispassionate and as objective a manner as they should have been made. I hope that there will be no scope for such criticism once these amendments are adopted. Care should be taken to see that there will be no room for similar criticism again.

Then, I do not know whether these amendments are introduced only for the purpose of disposing of those cases that were brought up by the Income-tax Investigation Commission and referred to the Central Government. If the purpose of these amendments is merely to dispose of those cases, I think it would unnecessarily limit the scope of investigation. I would like to know from the Government whether there is any desire to limit the scope of investigation. I would know as far as the scope of the amendments, legally speaking, is concerned, it would be comprehensive. But what are the intentions of the Government? Are these amendments being brought in only to get over the difficulty that has been created by the judgment of the Supreme Court or through these amendments it will be possible for the income-tax authorities to review and to open up all cases where there is

a feeling that there has been substantial evasion?

I would only add one more word. Fortunes made during the war years were substantial. A long period has passed since these fortunes were made. I do not know why between the achievement of freedom and today, all these cases were not thoroughly gone into. What was the reason? Why is it that there has been this delay? Why is it that so many cases are still pending? After all, this machinery should have been strengthened. I wonder if some of those who had made fortunes in those days would be in a position today to pay whatever assessment is levied on them. The income-tax machinery at least should have functioned at a brisker pace. The Government should have organised the machinery in such a way that these large fortunes that had been made, the large-scale evasions that have taken place, would have been looked into. They should have been tapped and these evasions should have been checked and controlled. I hope at least by 31st March 1956 this work will be completed and it will not be necessary for anyone to complain after 31st March 1956 that there have been any cases of evasion which have escaped notice or scrutiny. By 1956 a period of ten years would have passed since the end of the war. Ten years is a long enough period and I hope and trust that after these amendments are accepted, the scrutiny will be properly carried out and whatever work that remains will be completed, all evasions will have been thoroughly looked into, income-tax payments that have escaped will have been drawn into the net and no impression will be permitted to be created that there has been any desire for a settlement which is not fair to the Government, which is not fair to the income-tax department.

I have been told by some of those who are connected with the income-tax department that there is a desire for

[Shri Asoka Mehta]

interference in the collection of income-taxes. I hope that the Government will be careful enough to see that no such impression is created. The morale of the income-tax department is of the highest importance. In the past under the British Government, the most important source of revenue used to be the land revenue and the Collector of Land Revenue was a man of crucial importance in the administrative set-up. Today the officers of the income-tax department occupy a similar position as far as the collection of our revenues is concerned. It is absolutely necessary that their morale should be maintained. No settlement should be entered into where a feeling is created in them that either they are by-passed or that the general rules that have been laid down and the procedure laid down are being overlooked in one form or another. In the past, there have been occasions where such feelings have been created. Particularly during that great scheme when people were called upon to repent and open up their purse and asked to come clean, that kind of impression was widely created. I hope and trust that the same will not be repeated and that in future at least the morale of the income-tax department will be fully maintained and the officers of the income-tax department will see that in that department rules, laws and procedures are supreme.

Shri T. N. Singh: Mr. Chairman, I have listened to the speech of my hon. friend who preceded me and I have also heard patiently what our Deputy Minister of Finance said while introducing this measure for consideration. I was surprised at times to listen to my friend on the right who probably cannot get out of the Bombay atmosphere and the feeling that somehow or other the assessee has been victimised here and there. When dealing with this Act or other previous amending Acts, my feeling has been that the assessee is clever enough to protect himself from any victimisation.

[Mr. DEPUTY-SPEAKER in the Chair.]

As a matter of fact, he has fully protected himself not only by his own experience but by the galaxy of legal talent also.

Mr. Deputy-Speaker: The hon. Member may continue later.

SPECIAL MARRIAGE BILL—Concl'd.

Mr. Deputy-Speaker: Now, I shall put the Special Marriage Bill to the vote of the House. But, before doing that, I will put certain consequential amendments that have been moved by the hon. Law Minister. Clauses (1) and (2) are not necessary but there is no harm in including them in the text.

The question is:

"(1) That the re-numbering and re-lettering of the clauses and sub-clauses consequential on the amendments made by the House be carried out together with corrections of cross-references.

(2) That the various definitions in clause 2 be re-arranged according to alphabetical order."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That the word 'and' occurring in clause 16 in page 6, line 26, be omitted."

The motion was adopted.

Mr. Deputy-Speaker: Now, the question is:

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

The motion was adopted.