He also enquired why all the loans that are given to the States are being charged on the Consolidated Fund of India. Article 266(3) says that all loans given to State Governments must be charged and not voted by Parliament. It is stated there that the loans must be charged on the Consolidated Fund of India.

With regard to the sum of Rs. 13 lakhs due to enhancement of pension and superannuation charges, of course, we could not anticipate it quite correctly. Also, there was a little enhancement of pensions in the course of the year especially in respect of low-paid pensioners. That is why it came to something more than the estimated amount.

With regard to Shri Panigrahi's point, he has been raising it for a long time. He wants that all loans to State Governments with regard to irrigation and power should be interest-free. I do not know whether it can be done because the Government of India are paying roughly about Rs. 140 crores as interest every year We have to pay interest when we borrow from the market and we cannot be going on giving interest-free loans to State Governments. Anyhow, the point is being considered in consultation with the Planning Commission, and the loans may be consolidated and there may be some little relief given to them ultimately. But, I cannot give the assurance that they will be interest-free altogther on the irrigation and power projects. As I said, the Government of India themselves are roughly paying about Rs. 140 crores as interest charges. We cannot be generous at our own cost. We have to stabilise ourselves before we can be in a position to help the State Governments. These are the points which I have to state and I think I have nothing more to say.

**Mr. Deputy-Speaker:** I will now put the cut-motions of Shri Supakar to the vote. He is not here.

**Shri Tangamani:** Sir,. . .

**Mr. Deputy-Speaker:** We have already taken one hour and 5 minutes beyond the scheduled time. I will now put these two cut motions together.

*The cut motions were put and negatived.*

**Mr. Deputy-Speaker:** I will now put the Demands to vote.

The question is:

That the respective supplementary sums not exceeding the amounts shown in the third column of the Order Paper be granted to the President to defray the charges which will come in course of payment during the year ending the 31st day of March, 1959, in respect of the following demands entered in the second column thereof—

Demands Nos. 1, 5, 8, 18, 32, 35, 37, 40, 58, 67, 69, 70, 72, 79, 84, 88, 95, 96, 97, 106, 112, 117, 119, 130, and 134.

*The motion was adopted.*

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**16.08 hrs.**

## INDIAN INCOME-TAX (AMENDMENT) BILL

**Mr. Deputy-Speaker:** Now, we will take up the Indian Income-Tax (Amendment) Bill.

**The Minister of Finance *(Shri Morarji Desai):** Sir, I beg to move that the Bill further to amend the Indian Income-Tax Act, 1922, be taken into consideration.

This Bill seeks to replace the Indian Income-Tax (Amendment) Ordinance I of 1959 which was issued on 17th January, 1959. I have already explained in a separate statement which I have placed before the House the urgency which necessitated the promulgation of an Ordinance by Government. Briefly, a judgment of the Supreme Court delivered on 19-11-58 rendered void and unenforceable settlements in regard to concealed incomes which had been completed under the Investigation Commission Act on or after 26-1-1950. Consequently the recovery of the outstanding amounts of tax in respect of these settlements could not be proceeded with. Also, even the amounts which had already been collected from the assessees concerned were open to the danger of being claimed back by the assessees. Indeed, some claims had already been made. The total demand involved under both these counts was of the order of over Rs. 17 crores, covering over 500 cases. The only way to regularise the situation was to reopen the cases and complete the assessments under the normal provisions of the Indian Income-Tax Act, i.e., under section 34 which deals with assessment of escaped incomes.

At this stage one other difficulty supervened. As hon. Members are aware, until 1956, there was a time limit of eight years for reopening cases under this section. But in 1956, the section was amended to remove this time-limit for re-assessing cases involving substantial tax evasion. The hon. Members may recall that this amendment was made under circumstances somewhat similar to the one we are having now. The Supreme Court had delivered a judgment by the end of 1955 declaring invalid all the cases disposed of by the Investigation Commission after 26-1-1950 on what may be called 'investigation' basis, i.e., where the assessees had not agreed to the determination of their concealed income by the Commission and consequently the concealed income had to be assessed by resort to regular assessment proceedings. By the time this judgment was delivered, the report of the Taxation Enquiry Commission had also come out and that Commission had recommended that there should be no time-limit to reopen cases involving deliberate concealment. Both these factors led to the amendment of section 34 in 1956, by which it was laid down that in cases where the concealed income was Rs. 1 lakh or more, the time-limit of eight years should not operate against the Income-Tax Department proceeding against the assessees. It was felt that the amended provision would enable the Department to re-assess all the cases affected by the Supreme Court judgement, but the Calcutta High Court has held recently that in the absence of express provision for giving retrospective effect the amendment made in 1956 does not empower the Department to re-open cases which had become more than eight years old on 1-4-1956. In view of this decision the Government was advised that before issuing notices under section 34 in the settlement cases affected by the Supreme Court's judgment of November last mentioned by me, it would be necessary to make it clear in express terms that the provisions of section 34 as amended in 1956 have in fact been intended to apply to all such cases. Clause 2 of the Bill which seeks to insert a new sub-section (4) in section 34 clarifies this position. Further clause 4 of the Bill also validates the proceedings which might have already been initiated in such settlement cases under section 34 as it stands now.

The second main provision of this Bill is Clause 3 which inserts a new section, namely, 49EE in the Income-Tax Act. The object of this section is to enable the Government to retain the moneys and securities which are

*Moved with the recommendation of the President.

already with the Government in partial or full satisfaction of the demands arising from the settlement cases The General position is that about 50 per cent of the tax amounts covered by the settlement cases have been realised, and for some part of the balance, securities have been deposited with Government by the assessees These monies and securities relate admittedly to income concealed from the Income-Tax Department. In the fresh proceedings to be completed under section 34, the resulting liability will relate to more or less the same concealed income as formed the basis for the settlements that have been rendered null and unenforceable by the Supreme Court's judgment and hence it is necessary to provide for the retention of these monies for being set off against the demand to be created afresh, and to retain the securities to enable the Government to realise the outstanding demand. And this is what the new section 49EE seeks to do Government is empowered to retain monies and securities until the completion of assessments in cases where notices under section 34 have already been issued and for two years in other cases This latter provision of two years enables Government to complete departmental examination of all the affected cases in connection with the issue of notices under section 34 in those cases. As a safeguard to the assessees, however, suits or legal proceedings which could have been filed within these two years but for the provision under the proposed Bill will get the benefit of automatic extension by two years of the period of limitation These matters have also been provided for in the new section 49EE.

With these words, Sir, I commend the Bill to the House for consideration.

**Mr. Deputy-Speaker:** Motion made:

"That the Bill further to amend the Indian Income-Tax Act, 1922, be taken into consideration."

The time allotted for this is four hours and the Business Advisory Committee made that allotment.

**Shri Bimal Ghose** (Barrackpore): Why? It will collapse of itself

**Mr. Deputy-Speaker:** We had that resolution also, disapproving of the Bill That is withdrawn. Therefore, we have got only this Bill I was about to suggest that if we could save that one hour extra which was allotted to the supplementary Demands

**Shri Bimal Ghose:** It will be saved

**Shri Morarji Desai:** I think it will be saved I do not know.

**16.15½ hrs.**

**Shri Easwara Iyer** (Trivandrum): Mr Deputy-Speaker, Sir, it is indeed with a sense of disappointment that I am welcoming this Bill Not that we are against the position taken up by the Finance Minister to enable him to recover all the Rs 70 crores odd which have escaped assessment, but we find that the Income-tax Act, having gone through a certain amount of surgical operations every now and then, ultimately has reduced itself to a position, if I may with respect say so, where it has undergone a series of plastic surgeries, that the law on this subject has become a cumbersome machinery and, if I may use a Latin expression, it has become just confucio or, law has become confused

With respect to the Taxation on Income (Investigation Commission) Act, 1947, as series of judgments of the Supreme Court have given it a burial The last funeral note, if I may say so, has been sung by the decision of the Supreme Court in what is known as Bisheshwarnath Income-tax Commissioner in a recent judgment reported in the February, 1959 issue, I think, of the AIR

When the Taxation on Income (Investigation Commission) Act, 1947 came into the picture, we did not have the Constitution Subsequently, the

[Shri Easwara Iyer]

Constitution came into force in 1950, and a challange to the various provisions of that Act has been taken by various quarters, particularly by those persons who have been fortunate enough to escape taxation. The first challenge came up with respect to section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947. That has been taken up under article 32 of the Constitution. That was taken up by a number of persons, and when the matter reached the Supreme Court under article 32, it was declared to be void by the Supreme Court. It was, I think, Surajmal's case. It was in connection with section 5(4) of the Taxation on Income (Investigation Commission) Act. When that was declared invalid, the Finance Ministry thought it fit that another surgery may be made to the income-tax enactment for the purpose of enabling assessment. So, an amendment came into the picture in 1954.

**Shri Bimal Ghose:** There was an ordinance again.

**Shri Easwara Iyer:** Yes The Act was amended by an amendmenting Act XXXIII/1954 to enable assessment on the amount that had escaped. Again, the procedure was not properly kept in view. Probably the department might not know the ambit or the impact of article 14 of the Constitution. But they rushed through this enactment with the result that what happened was, paradoxically enough, although they wanted to save section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, a subsequent decision of the Supreme Court declared section 5(1) of that Act *ultra vires* of the Constitution. So, section 5(1) collapsed and then later on, while this Investigation Act had a chequered career like this, one gentleman thought it fit to challenge section 8(2) of the Investigation Act, by which an assessment could be made. The matter arose like this. The Income-tax Investigation Commission made a report to the Central Government that he had escaped income-tax and the Central Government directed the income-tax department to take such appropriate proceedings under section 8(2) of the Act. That was promptly challenged before the tribunal. The matter went to the High Court and from there to the Supreme Court, which declared section 8(2) *ultra vires* of article 14 of the Constitution.

Then, now we find the question arising in the case of settlement made under section 8A; that is to say, it is open to a person against whom investigation is proceeding under the Taxation on Income (Investigation Commission) Act of 1947, to settle the dispute between *himself and the Government* and come to a compromise—an unhealthy compromise or a healthy compromise. If on the basis of the settlement that is being made, the Central Government proceeds to recover the tax, he may be allowed to pay the tax in instalments or as a lump sum. In the case which had just come up to the Supreme Court and which has caused this ordinance and this enactment, he was paying the settlement amount in instalments, but later on, he found it would be better for him to make the challenge under article 14 of the Constitution. It was held by the Supreme Court again that even in the case of a settlement that has been made, it is *ultra vires* of the Constitution. In spite of the able argument put forward by our Attorney General that the fundamental right of an individual could be waived, with great respect, I would say that it has not found acceptance by the Supreme Court.

So, we are in this nebulous state. We are performing operation after operation, giving a sort of artificial respiration to the income-tax enactment to meet the challenge of the so-called evaders, but with what results? Every now and then, the matter is taken to the Supreme Court and section after section has been declared *ultra vires* either validly or invalidly. I have nothing against the

Supreme Court, certainly one's fundamental rights have to be protected But what is it that prevents the department from forestalling this event and coming to a correct perspective regarding the taxation laws? Why not codify the entire Income-tax Act instead of giving it an operation here and an operation there, removing a limb here and putting on a limb there, and again leaving us in a nebulous state, so that the evaders might escape with Rs 700 crores?

The Investigation Commission, I believe, has submitted its report in 1959 wherein it has been said that the entire law requires a restatement We have restatement of laws in America In the light of the Constitution which we have imbibed and in the light of the experience which we have gained regarding the challenges made under fundamental rights or otherwise, why should we not look into the income-tax laws through a body of experts and suggest ways and means by which the entire law can be codified, so that these evaders who have been a threat and a menace to society could be hauled up for proper payment of the income-tax? That is one aspect of the matter I would respectfully commend to the Finance Minister to be looked into

Regarding income-tax arrears, I believe that we have found—I am speaking subject to correction—that about Rs 280 crores have yet to be collected Some big bosses have been escaping I am speaking of cases where there has been an assessment of the income, but there has been no recovery and the arrears amount to the huge figure of more than Rs 280 crores, speaking subject to correction Is there anything wrong with the machinery for recovering the arrears? I would respectfully submit that we must find out some machinery by which we must be able to recover the income-tax from persons who are evading it It may be pleaded that whenever we seek to recover this by a process, either under the Revenue Recovery Act or other processes or machinery available to us, then again it can be taken up to the High Court or the Supreme Court under either article 226 or article 32 of the Constitution Sometimes one is led to feel are we preserving these extraordinary remedies under article 226 or article 32 for the purpose of preventing our national income which is due to our State and which is necessary for our developmental activities? Why not think urgently of amending article 226 and article 32 for the purpose of preventing the abuse of powers under the extraordinary powers or jurisdiction of the High Court so that whenever there is a question of recovery of arrears or tax due to the Government, either under the income-tax Act or under the Sales-tax Act or any Act in which provision for taxation has been made, there is no jurisdiction to the High Court or Supreme Court either under article 226 or article 32? I am referring to the writs of *certiorari*, *prohibition* or *Mandamus* or whatever they may be I wish no interim stay is given in such cases where there is recovery of tax or alternatively, an undertaking or security deposit is asked for the amount that may have been due to the Government Let the deposit of money be a condition precedent for such stay being given

I would also suggest for the consideration of the Finance Minister that let us enact a provision that in cases where tax is due to the Government, let the court send a notice to the Attorney General or the Solicitor-General regarding the matter before the stay is granted If the Attorney-General or the Solicitor-General is objecting to the issue of a stay, let no stay be granted I am only suggesting certain constructive points for the consideration of the Finance Minister

We often find big businessmen evading recovery How is it done? When the time of recovery comes his entire assets are transferred in the name of some other person It has happened in our State also After the assessment of tax which may come to

[Shri Easwara Iyer]

only a lakh or two in our State, the entire assets of the businessmen goes into the hands of his near relatives. There are no assets in his name from which any recovery can be made. When the income-tax officer goes to the bank to freeze his accounts, he will find an overdraft of 25 with the result the income-tax machinery is helpless. I would suggest that strict instructions should be given to the income-tax officers that in such cases the Provisions of the Insolvency Act have to be resorted to.

The income-tax officer may well proceed under the Insolvency Act and declare him to be an insolvent and set aside all transactions on the ground of insolvency. That is not being done. I made this suggestion to the Income tax commissioner as an advocate that such recoveries could be made when a person is declared insolvent even though he has been transferring his assets to the near relatives by benami transactions. But it has fallen into deaf ears. He has power even under the present Act. So, I would suggest that strict instructions be issued on this matter.

Coming to the senior officers of the income-tax department, we find that all the senior officers of the income-tax department who are about to retire or about to get superannuation have an eye on their private practice. The senior officers, immediately on their retirement, go to practise income-tax cases. The result would be this. Before retirement he will be hobnobbing with big businessmen so that he may be on good terms with them so that he may be able to build up a good clientele on the eve of his retirement. We must by law prohibit all these senior officers or any officer serving in the Income-tax department on retirement practising before the Income-Tax Authority. You will say that it would be against the fundamental right to carry on profession. Let there be reasonable restraint on his fundamental right because he has been knowing the secrets, defects or loopholes in the department by serving in the Government and it will be against the public interest to practise that profession. These are things which must come before the Finance Minister for his consideration.

He has come forward with this piece of legislation called the Income-tax Amendment Act. In 1956 we passed an enactment like this. In 1959 we are passing another enactment. Where is the guarantee that this will not also have the same fate as the Income-tax Investigation Act at the hands of the Supreme Court? I have grave doubts and I do not want to indulge in legal jargons with my friend there whether this is open to challenge. That is my belief. We shall not argue this matter because he is going to press for this enactment and I also want some sort of a measure by which this money may be recovered for our development programme. We also agree that this lay should be passed. But, as I said, it is with a deep sense of disappointment that we are welcoming this. Because, the Finance Minister has not yet chosen to come forward with a comprehensive Bill whereby the entire machinery could be codified. We want the machinery to be so simple, less cumbersome so that recovery may be made as easily as possible.

Look at the Income-Tax department itself. I would invite the Finance Minister to go to any Income-Tax office. If he goes on a surprise visit to the Commissioner's office at any place, he will find, if he goes on tour, there will be a number of cars waiting for him. How is it possible? However the car is placed at his disposal. The Income-tax officer is able to get a number of cars to be placed at his disposal.

**Shri Morarji Desai:** At whose disposal?

**Shri Easwara Iyer:** I have seen at the disposal of the Commissioner so that he may tour from place to place:

I am only submitting this as an instance to show—this may not amount to grave corruption in the sense that nothing is being lost there—that he is hobnobbing with big businessmen with a favourable eye may be on these persons.

What is section 34 of the Income-Tax Act? This has been put in for the purpose of assessing those persons who may escape assessment consistently. But, we find a misuse of this section 34 also In our State we have passed the Debt Relief Act in which we have defined an agriculturist We say that an agriculturist who has been paying Income-tax three years prior to the coming into force of that Act will not get the benefit of the exemption under the Debt Relief Act. So that, those persons even though they are agriculturists who have been paying Income-tax within three years of the coming into force of the Debt Relief Act will not be exempted Then came promptly a number of applications for assessment under section 34 Then also, I believe,—I am submitting subject to correction—persons who have never been hauled up till now, persons who have never been thought of as running any business or having big capital are served with notices under section 34, for the purpose of assessment or re-assessment are proceeded against on the ground that he has escaped Income-tax, so that he may escape the Debt Relief Act Money lenders are at the door of the Income-tax Officers to prompt them to send notices under section 34, and collect Rs. 2 at least as escaped tax Is this the way of utilising section 34 whereas big bosses of industry are escaping? I am only submitting that the other day I was reading a newspaper report that the late Agha Khan owed to the Income-Tax Department Income-tax to the extent of Rs 1 crore. What is it that has been done by the Government to recover that? His successor is there and I am told that his assets are liquidated into money and somehow or other it disappears into foreign countries Is this newspaper report correct? If it is true, what action has been taken by the Income-Tax Department to get Rs. 1 crore which is legitimately due to the department. We hear of persons dying pauper although they were millionaires just the moment before death to escape estate duty The Income-Tax department with its staff has now to do Income-tax work, estate duty work, wealth tax work and the expenditure tax work. The staff has not been planned and co-ordinated. The Income-Tax Officer either does estate duty work or sometimes Income-tax work or sometimes, keeps quiet and sleeps under the fan. There is no plan All this has to be looked into As a person who used to have some acquaintance with income-tax practice—of course, I have given it up as useless—I am saying that there are a number of rules, notifications, circulars and other things coming month after month which makes the whole law cumbersome Even the sections of the Act are not understandable. One section runs into three or four pages I invite the hon Finance Minister to read the Income-Tax Act as we have got it What is it we have got here? Section 49EE It has 49C, 49E and it goes on, and we have come to the stage of 49EE when we have exhausted "Z" This is the type of Income-tax Act we are asked to deal with I am not saying anything in a humorous vein. I am sorry for the present state of affairs Why have Rs 70 crores not been collected from 1950 to 1959? Is it because the Supreme Court has been giving judgments that these are *ultra vires* of article 14 or article 19 whatever it may be? It is because, I would respectfully submit, of a lack of absolute planning on the part of the persons who want the taxes to be collected We must have thought of amending the Act, subsequent to the coming into force of the Constitution, in 1950, in a manner consistent with the Constitution or the fundamental rights that have been declared in the Constitution This is the state of affairs we are finding ourselves in

A number of persons have escaped income-tax The other day we found

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in the newspapers a report that one Shri S P Jain has been found with a colossal amount of foreign exchange in his hands Is his case investigated? It is a fit case for investigation How was this income coming to him, this concealed income either in foreign banks or otherwise? These are matters that require investigation For the purpose of such investigation an efficient machinery must be envisaged by a proper enactment instead of coming up with piecemeal legislation again and again, an amputated piece of legislation which is not going to serve the purpose

**Shri Bimal Ghose.** I am not a lawyer I shall not go into the legal implications of this The previous speaker has gone into the Income-tax Act and its defects

To a lay man it does appear that in this legal battle with tax-dodgers Government always seems to get the worst Why should it be so? The laws appear to be defective And not only in the matter of this law, but other laws also, amendments come in galore in this House It is necessary to ask Government to do something about the draftsmanship of the laws that are brought forward in this House so that so many amendments may not be necessary and the time of the House may be better utilised for the purpose for which the House meets

I endorse the suggestion which was made by the previous speaker that it should be seriously considered whether the Constitution really requires amendment so that tax-dodgers may not get away under certain laws or under the Constitution We have amended the Constitution many times for many purposes, and this purpose is certainly a very laudable one, because it seems to me to be a very absurd situation that under the Supreme Court judgment we cannot collect taxes that the assessee has agreed to pay on his admitted concealed income, because that is the effect of striking down section 8A of the Income-tax Investigation Commission Act Even assessees who have agreed to pay concealed income are not being permitted to pay it Legally, we are unable to collect it That position requires examination

Sir, the two things I want to say on this—not bearing on the law of income-tax—are as follows The first is about concealed income What are we going to do about it? The main purpose of the Income-tax Investigation Commission Act was to get the taxes that were evaded during the war period But it is well known that a lot of tax is evaded What are we going to do about it?

Certain suggestions were made There was a suggestion by Prof Kaldor about a comprehensive return What has become of it? It is not merely Rs 70 crores If it is true that, say, Rs 100 or Rs 200 crores or even Rs 50 crores annually are being evaded by way of tax, that is a very serious matter What can be done about it? How can it be evaded if we cross check incomes from all sources That was the purpose of the comprehensive return which Prof Kaldor had suggested What has been done about that? Although we have accepted most of the taxation measures recommended by Prof Kaldor, yet it is clear that we are not getting the revenue that he had expected Most of the new-fangled tax measures we have are non-existent in many other countries, but still our revenue from taxes is very low Why should it be so? It is, necessary therefore, that the avenues by which this income is concealed should be closed so that there may be no concealed income One of the measures suggested was this comprehensive tax return I should like to know what has happened to it

Another point, which is rather ticklish, is one that was raised during the discussion in this House in 1951—how long Government want to keep upon the provision enabling inquiry

into concealed incomes in the past. I say this because a point of view was put forward that this might have a bad effect on investment, on this income coming up in the open market That was in 1951. Now we are in 1959 We are still continuing that Act. Of course, there is argument on both sides. I can quite see that if a man evades income-tax, he should be caught and made to pay his income-tax But should there not be something in the nature of a law of limitation? The original period dated from 1941 We are now in 1959 Will this go on so that it means that the income-tax officer can open up the case of any period, whether it is 20 years past or 25 years past as years roll on Should that be so or should there not be a certain period of time after which we shall say that we shall not open up cases? Of course, there is the question: why should we do it if a man has concealed his income? I concede if there are grave cases which come to notice, one might inquire into them There might be a provision in the law to that effect, to cover exceptional cases with the sanction of the Ministry and so forth But this is a point which requires consideration, as to the period upto which really this provision should be kept open so that a concealed income made upto a certain period of time can be inquired into

**16.44 hrs.**

[MR SPEAKER *in the Chair*]

Otherwise, this may function as an engine of oppression. I do not say that it does, but it might, and that might have a bad effect also

So far as concealed incomes are concerned, the income-tax department should be in a position to find out if there has been concealed income, say, within 8 or 10 years—in a reasonable period of time. I believe that point requires examination

I have nothing against the contents of the Bill. I support the Bill But it is rather surprising, if not annoying, that such amendments have to be brought forward from time to time because the law is found to be defective and struck down by the Supreme Court

**Shri N. R. Munisamy** (Vellore): I welcome this Bill for one reason, namely, that we are preventing a huge sum of Rs 70 crores being claimed by the assessees because the judicial pronouncements happen to be in their favour or because article 14 or 19 has been interpreted in their favour So, it is a timely amendment that has been brought forward with a view to ensure that this amount is not refunded With this end in view, it has been proposed to introduce new section 49EE

Though this section has been worded in all perspective, yet I have got my own doubts I feel that still it suffers from certain lacunae I hope the Finance Minister will see that there is substance in what I propose to say It is true that it has been very well worded to ensure that no refund is made, if any demand should be made, but it covers only two types of cases One case is where a notice under section 34 in respect of the income, profits or gains relating to the settlement aforesaid has been issued before the 17th day of January, 1959, and the other is 'in any other case, for a period of two years from that date' and if during the period of the said two years any notice under section 34 is issued, etc If any suit or any application is filed in such case, it will not lie in any court

But I would point out that a lacuna is there Take a case where a suit has already been filed, where no notice has been issued before the 17th day of January, 1959 Such a case will not be covered by this amendment I shall make the position still clearer Suppose a particular assessee files a suit for the recovery of a certain amount which he has paid, but which is now declared to be invalid on account of the Supreme Court's decision Even

[Shri N. R. Munisamy]

though no notice may have been issued under section 34, still that suit may not be registered in court because there is always some lacuna between the plaintiff-assessee and the court in respect of certain relief and in respect of some court fee, and it takes about five to six months before it is registered After the suit is registered, notice is sent to Government. In such cases, when the notice is received, Government will be made to pay the amount that he has claimed, and Government may have to fight out the case on merits

So, I would say that there may be cases where even without our knowing it, the suits may have been filed, but no notices may have been issued from the courts to the Government for refunding the amount. Such cases have not been covered by the proposed section 49EE. That section covers only two types of cases, cases where notice under section 34 has been issued, and in other cases, where within two years such notice is issued But the case that I have pointed out may not be covered by this section I hope the House will kindly consider whether this section covers the case which I have pointed out or not

The first speaker has been very pertinent in bringing up analogies from surgical terminology As a relief he suggested that we must amend articles 226 and 32 of the Constitution We are all aware that the government of a country is carried on not only by the judiciary but also by the Executive and the Legislature The three wings function together for the purpose of running the government So, if there is any lapse in our legislation, that has to be remedied by an amendment of the legislation or by the judiciary bringing to our notice that there is a defect in our legislation, through their judicial pronouncements, and then we come forward with amendments. It is not by just amassing wealth or money that we run our government, but through the harmonious functioning of the legislature, the executive and the judiciary. So, I do not agree with my hon. friend Shri Easwara Iyer that we must amend articles 226 and 32 of the Constitution. It is not by curbing the power of the judiciary that we can get money for the running of the Government All the three wings together form the government, and therefore wherever we go wrong, things have to be remedied and wherever they go wrong, that is to say, wherever our intentions are not carried out by the judicial pronouncements, we come forward with amendments. Therefore, I do not think that the remedy lies in the amendment of the Constitution

Sir, the other point which I wish to bring to the notice of this hon. House is this With regard to the financial memorandum wherein it is stated that a sum of Rs 4.81 lakhs is needed because there is a heavy load of work for this organisation in respect of the fresh cases of resettlement and all that, I find from the same memorandum that there is already in existence a special organisation with the Director of Special Investigation to which this portion of the cases invalidated by the previous judgment of the Supreme Court have been entrusted It is said that they need extra staff.

I would respectfully submit that this may not involve any extra cost because the cases which have been taken up by them have been now thrown out by the Supreme Court They have to work once again the cases which they have already finished. That is why I say they do not need extra staff, and if they need, it would be only temporary, say, for a month or two But here I find several persons are mentioned, Inspectors, Assistant Commissioners, Income-tax Officers, Class I and Class II and so on. All these are given in the memorandum and the estimate is about Rs 4,81,000

We are now thinking of cutting down expenditure and we want to effect economy and I do not think he

is justified in having this amount of Rs. 4,81,000 for this extra work.

**The Minister of Revenue and Civil Expenditure (Dr. B. Gopala Reddi):** The entire life of the Commission will have to be extended by one year. Their terms expire by the end of February or March and they are being extended for another year.

**Shri N. R. Munisamy:** That is with regard to the Commission. I say with regard to the staff needed for re-assessing work. The work has already been done by the department; but because of the judicial pronouncements these cases have to be worked again.

**Shri Morarji Desai:** All this work will have to be redone.

**Shri Bimal Ghose:** Is that your intention?

**Shri Morarji Desai:** That is not a question of intention; that is the law.

**Shri Bimal Ghose:** Settlement cases also?

**Shri Morarji Desai:** We will see what can be done.

**Shri N. R. Munisamy:** I can only bring to the hon. Minister's notice that this can be done with the existing staff. But, I do not know. The man on the spot alone knows the real difficulty of doing things. At this distance we may not be able to know the real workload for the staff. I only say that this could be possible with the existing staff.

The other point which I wish to place before this House is this Section 18 of the Finance Act of 1956 has sought to introduce some amendment with regard to the main Income-tax Act. That has been attacked by the Supreme Court. I have seen that Finance Acts are introduced in this House wherein amendments to the main Income-tax Act are also brought in. It does not confine itself to modification or changes of rates. For amending the sections we must have separate amending Acts. We have to get money for which we have to change the structure of the rates. If it is one rupee and we want to change it to two rupees or if it is 4 annas and we want to change it to five annas we can do that. Even prior to section 18 of the Finance Act of 1956, I have seen that this is resorted to to change the main Act. Therefore, I would say that the Finance Act should not be resorted to to effect any substantial change in the very Income-tax enactment. Another thing has been suggested by my hon. friend, Shri Bimal Ghose and that is with regard to the composite or comprehensive return. That has exercised my mind for a long time. We are having various direct and indirect taxes and they are ten or fifteen in number. So, I ask you whether it would not be possible to have one single tax which should cover all the possible and existing taxes that we now have. Instead of these several taxes, there should be one tax alone which should be comprehensive. After collection, we can distribute it between the States and the Centre. It may look ludicrous but there is some substance in it. When he says that we should have a comprehensive overall return, he visualises this type of thing. He wants a big form with several columns: a column for the gift tax, another for the expenditure tax and so on. I am only saying that instead of such returns, if the Finance Minister could think of having one single type of a tax by which we can embrace all the existing taxes, people could not easily escape. Supposing a person now escapes income-tax, he also escapes the other Gift tax and the expenditure tax. The ingenuity of human beings is such that whatever may be done, they find loopholes whereby they can escape and then we have to come with several enactments like this. Thus, the result is that you are not able to go ahead of them. Even if we chase them, we have to remain behind them.

[Shri N. R. Munisamy]

I have stated with regard to the proposed section 49EE that there is a lacuna which must be covered. Otherwise, it is quite possible that crores of rupees might be asked to be paid by the Courts to the assessees.

The last point is with regard to the method of collection of the income-tax. In the mofussil area, we find there are various types of persons who have their own ways of escaping income-tax.

**Mr. Speaker:** Does it arise out of this? The Bill has got a limited scope.

**Shri N. R. Munisamy:** The Finance Bill has been referred to in the Statement of Objects and Reasons. Section 34 of the Income-tax Act has been amended and I am saying this only in connection with that. It says here:

> "The objects of the Bill are two-fold.
>
> (1) to make it clear that section 34, as amended by section 18 of the Finance Act, 1956 applies to all escaped incomes relating to any year commencing, from the year ending on 31st March, 1941; ...".

Because section 34 has been amended I am saying that. I am saying that the Finance Act ought not to tamper with the Income-tax Act.

**Mr. Speaker:** But this is not the Finance Act. As I understood it, the Finance Act has amended section 34. When was it passed?

**Shri N. R. Munisamy:** It was passed in 1956.

**Mr. Speaker:** But how are we concerned with it here?

**Shri N. R. Munisamy:** We are basing our argument on the Finance Act of 1956 wherein they have given jurisdiction which a Finance Act ought not to have given. I am simply saying that the method adopted by the Government is always to amend such sections through the Finance Act. That method ought not to be resorted to.

**Mr. Speaker:** I am afraid that the hon. Member is three years late!

**Shri Bimal Ghose:** That is a fair proposition.

**Mr. Speaker:** It may be so, but it does not arise out of this.

**Shri N. R. Munisamy:** The whole Statement of Objects and Reasons starts only with that. The first sentence is ...

**Mr Speaker:** What is the substance of it?

**Shri N. R. Munisamy:** The substance of it is that we shall hereafter not do .

**Mr Speaker:** The hon Member may have an opportunity in the Finance Act.

**Shri N. R. Munisamy:** It will come very shortly, and we will have again an opportunity to speak on that

**Mr. Speaker:** I cannot guarantee opportunities to every hon Member; possibly he may get Let him proceed to any other point. He said he was coming to the last point. He has already taken 15 minues.

**Shri N. R. Munisamy:** No, Sir.

**Mr. Speaker:** Very well; he may continue tomorrow.

**17 hrs.**

*The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, the 24th February, 1959/Phalguna 5, 1880 (Saka)*