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LOK SABHA

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
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WITNESSES EXAMINED

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961.

Monday, the 19th June, 1961 at 08·05 hours

PRESENT

Shri Mulchand Dube—*Chairman*

MEMBERS

2. Shri K. R. Achar
3. Shri P. Subbiah Ambalam
4. Shri Amjad Ali
5. Shri Premji R. Assar
6. Shri Bahadur Singh
7. Shri Prafulla Chandra Borooah
8. Shri M. L. Dwivedi
9. Shri Bhausaheb Raosaheb Mahagaonkar
10. Shri Mathew Maniyangadan
11. Shri Radheshyam Ramkumar Morarka
12. Shri Narendrabhai Nathwani
13. Shri C. D. Pande
14. Shri Naval Prabhakar
15. Shri Ram Shankar Lal
16. Shri Shivram Rango Rane
17. Shri Jaganatha Rao
18. Shri K. V. Ramakrishna Reddy
19. Shri Laisram Achaw Singh
20. Dr. Ram Subhag Singh
21. Shrimati Tarkeshwari Sinha
22. Shri Radhelal Vyas
23. Shri Morarji Desai

DRAFTSMAN

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri V. T. Dehejia, *Secretary, Ministry of Finance. (Deptt. of Revenue,)*

Shri V. V. Chari, *Senior Member, Central Board of Revenue.*

Shri J. P. Singh, *Member, Central Board of Revenue and Ex-officio Joint Secretary, Ministry of Finance.*

Shri I. P. Gupta, *Deputy Secretary (Deptt. of Revenue), Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Bar Association (Income-Tax) New Delhi.*

1. Shri R. K. Gauba
2. Shri J. P. Gupta
3. Shri P. L. Juneja

II. *The Indian Merchants' Chamber, Bombay*

1. Shri Vallabhdas V. Mariwalla
2. Shri Pravinchandra V. Gandhi
3. Shri M. A. Master
4. Shri G. P. Kapadia
5. Shri C. L. Gheevala
6. Shri S. K. Aiyar

I. BAR ASSOCIATION (INCOMETAX) NEW DELHI

Spokesmen:

1. Shri R. K. Gauba
2. Shri J. P. Gupta
3. Shri P. L. Juneja

(Witnesses were called in and they took their seats

Chairman: You may start on the assumption that the memorandum submitted by you has been studied by us. In case you want to add anything to it or if you want to elaborate any point that you have already mentioned in you memorandum, you can do so.

Shri R. K. Gauba: My first submission is that my association represents lawyers who are exclusively practising before the income-tax authorities or before the tribunal or before the High Court only in respect of income-tax matters. Although certain points that the Association wanted to bring to your kind attention have been mentioned in the memorandum, the purpose of this personal interview which we have sought with the Select Committee is to bring to your notice certain provisions in the Bill which fundamentally affect the professionals I have in mind particularly provisions laid down in clauses 275 and 288 of the proposed Bill . . .

Shri Morarji Desai: What are they? Is it about abetment that you are speaking?

Shri R. K. Gauba: That is right.

Shri Morarji Desai: Shall we first of all see what points you have raised so that we confine ourselves to those points? If you want to raise any other point which you have not raised in your memorandum you can do it.

Shri R. K. Gauba: We have no other points . . .

Shri Morarji Desai: Then let us confine ourselves first of all to those points that you have mentioned. The first question that you have raised is about the definition of "relatives". Then there is the question of charitable trust about which you raised some points. You have said something about deduction in respect of entertainment allowance. Then you have raised a point about development rebate under hire purchase system. That has already been granted and instructions have been issued.

Shri R. K. Gauba: Instructions may have been issued. But unless some statutory provision is made, there are apprehensions . . .

Shri Morarji Desai: You can elaborate it later on. Then there is the clause about partners and there is the question of wife, spouse, husband, etc.

Shri R. K. Gauba: I would like to elaborate that point.

Shri Morarji Desai: You may do it later on. You have said something about discretion to levy penalty. Then there is the question of punishment for abetment. You have mentioned many other points but these are the main points. Let us confine ourselves to them.

Shri R. K. Gauba: Of course, penalty subject to the approval of the Inspecting Assistant Commissioner.

Shri Morarji Desai: Is there any other main point?

Shri R. K. Gauba: No, these are the main points.

Shri Morarji Desai: Shall we confine ourselves to these points?

Shri R. K. Gauba: Yes. With your permission, I will first refer to clause 64. There, instead of the word "spouse", the word "wife" may be inserted.

Shri Morarji Desai: You want to start with "spouse"?

Shri R. K. Gauba: Retention of the word "spouse" may lead to many complications.

Shri Morarji Desai: Marriage is always a complicated thing.

Shri R. K. Gauba: But all the same it is an inevitable evil.

Shri Morarji Desai: Why do you want to call it an evil?

Shri R. K. Gauba: It is inevitable in our present structure of society.

Shri Morarji Desai: But why do you want to call it an evil? We will not exist if it is considered an evil and done away with.

Shri R. K. Gauba: My submission in regard to this is that the use of the word 'spouse' is likely to lead to complications in the sense that 'spouse' may mean both wife and the husband. If wife and husband are partners in a certain firm and both have separate sources of income, there is no statutory restriction imposed on the authorities to include the income of either for purposes of assessment of income-tax. Similarly, suppose in one year the husband's income is more than that of the wife or *vice versa*. In order to collect the maximum revenue the Income-tax Officer would include the income in the hands of either for purposes of assessment. Next year the wife may have more income. What I want to say is there is no consistency and every year you will have to change the principle.

Shri Morarji Desai: There is no consistency in tax gathering. The only consistency in tax gathering is to receive the maximum revenue.

Shri R. K. Gauba: But it should be consistent with certain facilities. It should not lead to odd results. In this case odd results are very likely . . .

Shri Morarji Desai: If it is only one, then there will be manipulations, and you know there are many agencies to help people in this manipulation.

Shri R. K. Gauba: We are probably starting with certain assumptions.

Shri Morarji Desai: This is not assumption. This is every-day experience, rather every year's experience.

Shri R. K. Gauba: When we are going to have a permanent statute for all time to come, we have to foresee certain complications.

Shri Morarji Desai: Where the wife has a share, the money originally belonged to the husband and that is transferred to her. So what is the difference there?

Shri R. K. Gauba: There is a difference altogether.

Shri Morarji Desai: Where the wife is a lawyer or a doctor and the husband also is a lawyer or a doctor, and both have separate incomes, that is a different matter. Otherwise, what is the difference?

Shri R. K. Gauba: The wife can have *stridhan* which she might have received from her parents, or she can have some other source of profit. She might be a working lady, she might be employed or might be carrying on some business or might be a director in a company.

Shri Morarji Desai: Very much the same company as the husband!

Shri R. K. Gauba: Not so. And the income accumulates.

Shri Morarji Desai: It accumulates from the original income which is the same source.

Shri R. K. Gauba: So far as the income that arises to a lady from her own personal income by virtue of her having some shares in a business or being a director in a certain company or by certain accretions to the capital assets which she might have acquired in the form of dowry or *stridhan* is concerned, if she has a separate income, it should be treated as her separate income altogether. If, for the matter of that, the income of the husband is going to be included in the income of the wife, it would be rather inequitable.

Shri Morarji Desai: This is what you have stated in your memorandum. There is nothing new.

Shri R. K. Gauba: Yes, we have stated it in our memorandum. The point is, what is the safeguard against double taxation in case the Income-tax officer chooses to assess the income both of the husband and the wife.

Shri Morarji Desai: There are appeals—appellate tribunals and courts.

Shri R. K. Gauba: These remedies are, of course, there.

Shri Morarji Desai: And it is good for the lawyers that they are there!

Shri R. K. Gauba: Well, from that point of view.

Shri Morarji Desai: And that will mean treble taxation.

Shri R. K. Gauba: Once in the hands of the lady and then in the hands of the husband....

Shri Morarji Desai: Once by Government, and next by law!

Shri R. K. Gauba: That is my submission about that.

Shri V. T. Dehejia: Kindly read clause 64. It says: "In computing the total income of any individual, there shall be included all such income as arises directly or indirectly (i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner". So that, when you talk of the independent income of the spouse, would it be included by this clause?

Shri R. K. Gauba: Very true. It envisages the circumstances of a case where both the husband and the wife are partners in a firm of which there are so many other partners already. In that case, when you are computing the income of the husband or the wife, the Income-tax officer may include the income of the husband or the wife in the income of the other spouse. In that case, the difficulty arises if the husband and the wife have both separate incomes.

Shri V. V. Chari: The only point is with regard to the apprehended fear of double taxation. That is a matter to be taken care of by executive instructions.

Shri R. K. Gauba: As well as the inconsistency in the assessments year after year.

Shri V. V. Chari: You want clarity with regard to the person? That also can be taken care of by executive instructions.

Shri R. K. Gauba: This is as a result of the interpretation of the word "individual" in the Supreme Court judgment. That is how the word "spouse" has been used. But this is the first clause. If this first clause were to be taken as a separate section, that difficulty will stand obviated.

Shri C. D. Pande: Suppose the wife has got her own funds from her dowry or from funds given by her father, or even by her husband as annual gifts. She keeps them as her own. When you have allowed gifts under the Company Law, up to Rs. 5,000 or Rs. 10,000, is it now desirable to include them in the income of the husband for the purposes of taxation?

Shri Morarji Desai: Gifts are very desirable to be included.

Shri C. D. Pande: Why?

Shri Morarji Desai: Because they are the husband's money. Otherwise there will be room for escape from taxation.

Shri C. D. Pande: If the gift is valid, a gift is a gift, and the property belonged to her; and she can own her father's property. Therefore, it will be for the woman to be taxed in addition to the husband.

Shri Morarji Desai: Are they not joint until they are divorced?

Shri C. D. Pande: Even then they have a right to separate property.

Shri V. V. Chari: Her separate income is not added.

Shri C. D. Pande: If property is owned by her separately, the gains from that should not be taxed.

Shri Morarji Desai: Where the income can be proved to be separate, there is no question. But where it cannot be proved to be separate, the question arises.

Shri C. D. Pande: If it is proved that she has got her own assets either from her father's side or from her own earnings or from gifts from her husband—which are allowed by the Company Law—it should be treated as separate.

Chairman: We can discuss this when we meet among ourselves.

Shri Morarji Desai: We are not deciding anything just now; we are only taking evidence.

Shri K. R. Achar: You say that you have a Bar Association separately for Income-tax practice. Is that so?

Shri R. K. Gauba: Yes.

Shri K. R. Achar: What is the strength of that?

Shri Morarji Desai: It is 130. I am meeting them, and so I know!

Shri K. R. Achar: I would like to refer to some of the paragraphs in your memorandum. For instance, the first item is with regard to compensation paid to zamindars.

Shri Morarji Desai: We had agreed to confine ourselves to the main points that I read out.

Chairman: As the evidence proceeds point by point, questions may be put. Let the witness come to that particular point and then the question may be put.

Shri Morarji Desai: Otherwise there will be overlapping. Let us dispose of point by point.

Chairman: He has made one point now. Let him make his second point.

Shri R. K. Gauba: The second point which, of course, stands associated with this very clause is in regard to the inclusion of the income of the wife or minor child which arises to her or him or it by virtue of his or her or it being a partner in a firm. This particular point was referred to by Shri C. D. Pande. The income of a wife or a minor if it arises by virtue of their investments in a firm and these investments are avowedly independent investments, independent of the husband, even then, by virtue of this clause, the income of the wife or the minor shall be included in that of the husband.

Shri Morarji Desai: Personally, I feel that all people living together should be lumped together and the whole income should be taxed as one. These are various measures to dodge income-tax.

Shri Narendrabhai Nathwani: May I know from the hon. witness this? You said, even apart from membership of a firm, if the wife or minor child gets any other income—suppose she or he has advanced money to the firm and interest is due to the wife—will that also be included?

Shri R. K. Gauba: That is not envisaged. The only thing is, by virtue of the minor or wife being partner in the firm. That is the only condition which has been laid down here. My objection was, if a minor or wife has separate income and separate assets, and on the basis of certain capital investments, the partner is entitled to a share in the profits or loss of the firm. He may not be a working partner.

Shri Narendrabhai Nathwani: Your case is, even apart from moneys which she may have received from her husband, she may have independent moneys.

Shri R. K. Gauba: Independent. Cases are there where there are working partners, where there are investing partners. Investing partners may invest capital and be entitled to a share of the profit. In this case, even if the wife or minor child has separate assets of hers and it is on the basis of that capital investment that she claims interest in the share, she is denied that.

Shri Morarji Desai: What is the present position?

Shri R. K. Gauba: The present position is the same as it is. There

are certain difficulties in regard to the use of the word 'spouse'.

Chairman: Next point.

Shri R. K. Gauba: In fact, I went a few sections ahead. My attention has been drawn to certain other sections which I had to discuss. If the Chair permits me, I could make a reference to them.

Shri Morarji Desai: Why not finish the points which I mentioned as the main points?

Shri R. K. Gauba: I will confine myself to the main points. I refer to the definition of the word 'previous' which is based on the old definition. I refer to page 2 of my memo.

Shri Morarji Desai: This is not included in the points which I mentioned. Let us finish those points first. We started with 'relatives'!

Shri R. K. Gauba: In regard to 'relatives', there could be possibly no objection to lineal ascendants or descendants. But, there should be some restriction as to what degree.

Shri Morarji Desai: There is nothing new in this. What is provided in the new Bill is the same as that contained in the existing law.

Shri R. K. Gauba: This new Bill is supposed to be an improvement over the last.

Shri Morarji Desai: It is an improvement. But, an improvement does not mean finding out mere loopholes. Improvement means plugging loopholes, from the point of view of public good.

Shri R. K. Gauba: My submission is that it is a very cumbersome definition which will lead us nowhere unless it is restricted. After all, we have to keep in view the present expectation of life.

Shri Morarji Desai: Has there been any difficulty encountered by this definition? I have not come across any. Have you come across any in your practice?

Shri R. K. Gauba: This word 'relatives' has come here. There was nothing before.

Shri Morarji Desai: It was there before.

Shri R. K. Gauba: I switch on to the word 'previous'.

Shri Morarji Desai: So, 'relatives' is left.

Shri R. K. Gauba: Yes.

Chairman: Any questions on this point? None.

Shri R. K. Gauba: I come to the definition of the word 'previous', which is the same as adopted in the previous Act. This difficulty always existed. It is based either on the circulars of the Central Board of Revenue or the instructions of the executive. But, the fact stands that the business community as a whole, generally, I should say, adopt various types of accounting periods, Deepavali to Deepavali or Asarh to Asarh. Now, there is the second Chet. Previous year will automatically be extended to the 13th month. According to the strict definition of the word 'previous year' if it were to be strictly restricted to a period of 12 months, in that case, the assessee may be deprived of the right to maintain his accounts on the basis of the account books maintained by him. The law says that if an assessee has an accounting period of 12 months and maintains his account books, there is the option. The accounting period adopted by him can be accepted by the department. If it exceeds a period of 12 months, in that case, the Income-tax officer must necessarily assess him on the basis of the financial year.

Shri Morarji Desai: Why should everybody not conform to one year?

Shri R. K. Gauba: I would be very glad if that were to be made by statute.

Shri Morarji Desai: If you agree, we will do it.

Shri R. K. Gauba: I will not have the least objection.

Shri Narendrabhai Nathwani: There will be difficulty.

Shri Morarji Desai: They are agreeable.

Shri Narendrabhai Nathwani: Some industries, like the sugar industry, would like to have a year ending with a certain period.

Shri Morarji Desai: Advantage in having a uniform year would be very large, whatever year they choose.

Shri Narendrabhai Nathwani: Take, for instance, the sugar industry. We were told that there are difficulties and you cannot split a running season. A particular period may be taken, and exceptions may be made.

Shri Morarji Desai: What is the year in the maximum number of cases?

Shri V. V. Chari: The present Act provides for such situations: Deepavali year, Samvat etc.

Shri Morarji Desai: I was only thinking of making a change and making it uniform.

Shri Narendrabhai Nathwani: They might feel inconvenient.

Shri Morarji Desai: They are willing. Suppose you keep the year from June to May or from 1st July?

Shri V. V. Chari: For Budget purposes, April to March would be convenient.

Shri Morarji Desai: That would disturb the sugar factories.

Shri R. K. Gauba: My submission was only this.

Shri Radheshyam Ramkumar Morarka: This would take away the right of companies to have the year of accounting of their own choice. Do you propose to have two years, one for Income-tax purpose and one for financial accounting?

Shri Morarji Desai: No. It would be the same thing. Whether we have the right to take away is one question. Whether it is proper to take it away is another question. Whether it would be advantageous to take it away is another question.

Shri Radheshyam Ramkumar Morarka: Advantageous to whom?

Shri Morarji Desai: For all. I am not saying it only from the point of view of Government.

Shri Ram Shankar Lal: For the general public, if there is a uniform year, it will be better.

Shri Morarji Desai: For the interpretation of sections and rules, it becomes easier. If this had been so, what he said about the question of 'previous year' would not arise. This arises because there are 13 months sometimes and then they say that that ought to be taken as a year of 12 months. How can that be done?

Shri R. K. Gauba: Generally the accounting period which is adopted by people in the various trades is that which is convenient for the particular trades.

Shri Morarji Desai: That is traditional.

Shri R. K. Gauba: For instance, in the cloth trade, it starts from a particular season; from Diwali afterwards, people start buying cloth. Then as regards having the year start from Baisakhi, it has something to do with the harvesting of crops.

Shri Morarji Desai: Every change means some difficulty. The trade is done throughout the year. Take the sugar factories and the mills. They do their business. If in the case of a sugar factory it is split up somewhere where it is in the midst of its business, it is the same thing as the mill.

It is a question of whether we should do it or not. Take the metric system which we have introduce. Even though now there is some difficulty, after ten years, it will be the easiest.

When one has learnt only one system, it becomes difficult. But one

has to introduce it sometime in order to make a change. We should consider whether we should make a change or not. I do not want it just because it should be done.

Shri K. R. Achar: What should be the year?

Shri Morarji Desai: First of all, the question is whether we should have one year for all. Then we can consider what it should be. It is better to have a uniform year. The view urged by the witnesses is that it may not be convenient.

Shri R. K. Gauba: My submission is that in order to obviate the present difficulty, the only thing that we require is to put in a certain clause saying that if on the basis of the accounting period adopted by the assessee, a certain year exceeds 12 months, then it should be considered as a period of 12 months.

Shri V. V. Chari: That is already there in clause 3(c).

Shri R. K. Gauba: That is a different thing—it relates to new business.

Shri V. V. Chari: I can convince you after the meeting. It is already there.

Shri R. K. Gauba: As regards 'entertainment allowance', it only requires a change in the wording. I leave that for the consideration of the Select Committee. It does not need any elaboration. When the word 'exclusively' is used, the question of 'actually' does not arise. When it is meant exclusively for entertainment, the question of allowing it to the extent it is actually incurred does not arise.

Shri V. T. Dehejia: It is given exclusively for that, not for anything else.

Shri R. K. Gauba: When it is being expended exclusively for entertainment, the question of its being allowed to the extent actually incurred does not arise.

Shri Morarji Desai: That is the purpose of it. Otherwise, there is no purpose in making it. We should not have devices whereby we can add to the income-tax free income.

Shri R. K. Gauba: Then the word 'exclusively' becomes redundant.

Shri Morarji Desai: Then the Select Committee will have to consider removing that.

Shri V. T. Dehejia: Does the word do any harm?

Shri R. K. Gauba: It is self-contradictory.

Shri Morarji Desai: Then it will be a section of which advantage can be taken by you. Why are you bothered?

Shri R. K. Gauba: We will wait for that.

Shri R. K. Gauba: The new addition to this clause (clause 11(1)(i)(a)) is that so far as accumulations are concerned, the income so accumulated is not to be in excess of 25 per cent of the income from the property.

Shri Morarji Desai: That is, 75 per cent of the income must be spent in the same year for those charitable purposes. If 25 per cent or less cannot be spent, it can be accumulated. That is all that it means.

Shri R. K. Gauba: There are small trusts which I know have been established for religious or charitable purposes. If their small income is frittered away in small charities, that will not help.

Shri Morarji Desai: In that case, let us not perpetuate such trusts. That will allow them to utilise the money as they like.

Shri R. K. Gauba: Small trusts have become big trusts by accumulation.

Shri Morarji Desai: They may have become big. But they have not been 'charitable' in that case. How are they charitable if they are not using their income but are accumulating it?

In other countries, this figure is only 5 per cent—in one or two countries, that is the figure.

Shri R. K. Gauba: That is true.

Shri Morarji Desai: Therefore, it is more liberal here. The question is: are we interested in seeing that a charity is proper charity and it is utilised properly as it is intended to be utilised? That is the intention with which this is done.

Shri R. K. Gauba: This only visualises disbursements of the charity in the very same year. It does not take into account accumulation of charities. Charities might be used later on for a better purpose.

Shri Morarji Desai: I am against all accumulation of wealth wherever it is. I am against accumulation of wealth even in Government.

Shri R. K. Gauha: Clause 17(1)(v). With regard to this, we have actually felt some difficulty. According to the definition in the present Act and also as proposed in the Bill, loans taken by salaried persons from the employer are treated as income.

Shri V. V. Chari: Advance of pay is treated as salary.

Shri R. K. Gauba: It is not advance of pay; it is a loan. The difficulty arises this way. The employee has taken a loan and that loan is adjusted later on, not from the salaries that become due this year but from the salaries of the subsequent year. In that case, that loan has been included as the income of the employee. That is the practical difficulty.

Shri V. V. Chari: If anything more than 12 payments, either in the form of loan or salaries, are received, they are always adjusted under section 62.

Shri R. K. Gauba: That is true.

Shri Morarji Desai: Why should a loan be included as an income?

Shri V. V. Chari: The relation between the employer and employee is such that payments given by the one to the other are always treated as remuneration. That is the basis of all taxation systems.

Shri Morarji Desai: Not all—only those to which you have been accustomed. That does not mean that we should not make any change if it is necessary.

Shri V. V. Chari: To the extent there is a hardship, it is mitigated by section 62.

Shri R. K. Gauba: Attention has been drawn to section 62, under which there is a certain power of the Central Board of Revenue to intervene and mitigate certain hardships that might arise out of receiving accumulated salaries or advance by way of loans, but the applications made under this section are not decided before a year or so.

Shri Morarji Desai: Why should there be such loans from salaries?

Shri R. K. Gauba: An employee is in urgent need of money. He wants to marry off his daughter, or undergo treatment. The employer is munificent enough to advance him some loan. It does not mean that he should be penalised.

Shri Morarji Desai: But he does not pay income-tax from the next salary from which it is deducted.

Shri R. K. Gauba: That is not so. This will be considered to be his income in the year in which he receives it.

Shri Morarji Desai: Supposing a man is receiving Rs. 1,000 as salary per month. He is advanced Rs. 12,000 a year, to be paid back in twelve years. In that case, there will be a deduction every month from his salary from the next year, and no income-tax will be paid on the salary deducted.

Shri V. V. Chari: When there is a refund of loan, the deducted portion is not taxed.

Shri R. K. Gauha: For that I do not find anything here.

Shri C. D. Pande: We cannot understand the logic of adding loans as part of salary. If a man takes a loan of Rs. 15,000 for purchasing a car....

Shri V. V. Chari: That is not an advance of salary at all.

Shri C. D. Pande: If he takes a loan for his daughter's marriage, or purchase of a car, is that to be taxed in that year?

Shri V. V. Chari: No.

Shri C. D. Pande: Then, what is the purpose of including the loan? A loan is a loan.

Shri V. V. Chari: I will give you an instance. When a Government servant is transferred from one place to another, he is given an adavnce of pay, and also an advance of travelling allowance. With regard to the advance of pay at that point of time, it is taken as pay for that year. Next year, when he refunds it, or even in the same year if it is refunded, it is deducted from the total income. With regard to the loans for purchase of car, house etc., it is not deducted.

Shri Morarji Desai: When a lump sum is received, it increases the tax rate, and then when it is deducted, the tax rate is different, it is less. The man pays more income-tax because he takes a loan. I think it is inequitous.

Shri Narendrabhai Nathwani: Suppose an employee receives a loan, but does not describe it as advance payment of salary; he takes a loan and agrees it should be deducted from salary.

Shri R. K. Gauba: The wording is like this:

"For the purposes of sections 15 and 16, of this section,—

(1) 'Salary' includes—

.. .. ..

(v) any adavnce by way of loan or otherwise of salary;"

Shri Morarji Desai: "Otherwise of salary", but not a loan advanced for a house or a car. That is not advance of salary. That can be clarified.

Shri R. K. Gauba: That needs clarification.

Shri C. D. Pande: When a loan is taken, it is likely to be treated as income.

Shri R. R. Morarka: When there is a loan given against salary, or advance payment of salary, it becomes taxable income.

Shri V. V. Chari: Unless it is salary which is received in advance, it is never taxed. A loan as a loan is never taxed.

Shri Morarji Desai: This is only an instrument in the hands of the income-tax officer. I do not thing it should be kept. We will consider it.

Shri R. K. Gauba: The next point is about clause 23(2) in regard to the payment of an allowance of Rs. 1,800 or one half of the assessment for the residential portion of the property occupied by the assessee. Suppose a building is owned by two persons and there are definite shares of that building. What happens? The assessment is made. One portion of that building is occupied by one owner, and the other portion by the other owner. When completing the assessment in respect of the income from that property, the computation is made by making an allowance in the case of one person only, that is one of the portions occupied, not in respect of both, even though the property may be owned by two persons. That has been the practical difficulty. The object of the statute is of course to allow in the case of each owner a certain deduction for personal residence. That must be clarified in the statute, so that no ambiguity exists.

Shri Morarji Desai: That can be considered.

Shri R. K. Gauba: Then I come to litigation charges in regard to the

realisation of income from property. At present litigation expenses are not allowed in the matter of computing income from the property. There is no statutory provision.

Shri Morarji Desai: Why should there be?

Shri R. K. Gauba: The man has to spend something to realise the income, and his income is therefore actually less.

Shri Morarji Desai: Then, by collusion, he will show that he has spent the whole of it.

Shri R. K. Gauba: It has to be proved.

Shri Morarji Desai: It can be proved by collusion.

Shri R. K. Gauba: In income-tax also, legal expenses are allowed, to the extent they are proved to have been incurred.

Shri Narendrabhai Nathwani: Whether there is any statutory provision for allowing expenses incurred for recovering rent or not, in practice is any allowance made or not?

Shri R. K. Gauba: No. Litigation expenses are not allowed. Legal expenses for the recovery of the rents are not allowed. There is no such residuary clause providing for these deductions where the income-tax officer may be authorised to give such other deductions which he thinks reasonable. Certain things are specified and the income-tax officer has to strictly abide by them.

Shri Narendrabhai Nathwani: Will he kindly look at page 28? Why does he say that nothing is allowed by way of collection charges?

Shri R. K. Gauba: Collection charges are treated as something different from litigation charges. Litigation charges do not have any claim whatsoever on collection charges.

Shri V. V. Chari: Legal charges, if they are incurred in the course of recovery of rent, will be allowed as collection charges subject to a maximum of 6 per cent provided in the Act. In this connection this Bill does not introduce anything new: it is only a reproduction of the existing Act.

Shri R. K. Gauba: I am not saying whether it is new or old. These are the practical difficulties and they should be removed.

Shri Morarji Desai: I am afraid the whole rent will be debited against these charges in some cases.

Shri C. D. Pande: Is it absolutely necessary that people should go in for litigation for getting exemption under the Act, even if they know that the rent is not likely to be recovered? Is it that if you do not realise the rent after going to the litigation only then you are likely to get exemption?

Shri R. K. Gauba: We start with the presumption that anybody with a brain in his head would not throw away good money after bad. If a person has no chance of recovery, he will not file any suit just for the matter of incurring certain litigation expenditure.

Shri Morarji Desai: The defendant will have to pay the cost. I do not see how this arises.

Shri C. D. Pande: I am told by certain assessees that the income-tax officer does not admit that such and such rent is not likely to be realised unless they go to litigation and it is settled there that it is not realised.

Shri R. K. Gauba: That is the next clause and I am coming to it.

Shri Morarji Desai: That can be safeguarded.

Shri C. D. Pande: The Income-tax officer must have the authority and will to help the assessee in cases it was found that it was not possible to realise some rent and he need not be asked to go to litigation.

Shri Morarji Desai: He has to go to the court to evict him.

Shri C. D. Pande: The income-tax officer does not allow the exemption because it has not been proved in a court of law.

Shri Morarji Desai: If he does not go to the court of law for eviction, it means there is collusion. If a man does not pay rent, he has to be evicted. Unless he is evicted, I will not believe that rent is not realisable.

Shri C. D. Pande: There, you force a man to go to the court of law.

Shri Morarji Desai: There also the costs are awarded by the court to them. If they cannot recover it from the other side, why should I pay for them. Courts always award costs if the plaintiff wins. If the plaintiff does not win, there is no case. Therefore, should it be recovered from the Government?

Shri R. K. Gauba: Then, there is the next clause.

Shri Morarji Desai: You can suggest in what way it should be safeguarded. We can consider that.

Shri R. K. Gauba: There is this question about unrealisable debts. The income from the property is to be assessed on a national basis, that is on the basis of annual letting value, whether the rent is realised by him in that year or not. But in respect of unrealisable rents, a certain deduction is allowed under certain rules, not under the statute. There are certain conditions provided. One must file a suit for eviction and so on. But in the meantime, litigation might prolong for over a year and the rent might fall in arrears. In that case, the statute restricts my claim for allowance on unrealisable debts for one year alone.

Shri Morarji Desai: How can it go on for a year? All exceptions cannot be provided, just as all exceptional abuses cannot be guarded against. How many cases are like this? I do not think that it can be done.

Shri R. K. Gauba: So far as eviction is concerned, every step must be taken. In the matter of unrealisable rents, it is restricted to one year alone.

Shri Morarji Desai: Let us go to the other point.

Shri Narendrabhai Nathwani: May I submit this? If for no fault of the landlord, the litigation drags on, why should that not be allowed to him?

Shri Morarji Desai: We can discuss it: it cannot be decided now. We can hear the other side and then we can see at that time.

Shri R. K. Gauba: I come to page 7. There is no statutory provision in regard to the allowance of development rebate on hire purchase machine.

Shri V. V. Chari: It is not necessary. Instructions have to be given.

Shri Morarji Desai: Instructions have to be given as to how it is to be given. They cannot be provided in the statute.

Shri R. K. Gauba: Until the last instalment is paid . . .

Shri Morarji Desai: The law does not say that it is paid in a lump sum and then and then only it should be given.

Shri R. K. Gauba: The law says that the person entitled to claim development rebate shall be the owner. In this case, he does not become the owner till the last instalment is paid.

Shri Morarji Desai: For everything which is mortgaged?

Shri R. K. Gauba: Well, for that matter, of course, I am given to understand that instructions are there.

Then I come to page 6. Bad debt has been provided only in the case of . . .

Shri Morarji Desai: You told me that you would just confine yourself to the points which I had mentioned. Now you are going through the whole thing.

Shri R. K. Gauba: I shall confine myself to the points you mentioned. Now, I am referring to a point which is very important for the purpose of the business community. Nowadays, so far as bad debt is concerned, it is allowed only if it is a loss of money in the case of a person who carries on any banking or money-lending business. It is common experience that the assessee, in the course of his business activities, has to borrow money and advance loans. In the usual course of business activities, if such money is lost....

Shri Morarji Desai: I do not know why it should be confined only to banking and money-lending business. If there is something to be done about this, we can consider it.

Shri R. K. Gauba: Very well. Now, at page 7, regarding clause 37(2), I have simply referred to the learned Finance Minister's own observations in the Finance Act of 1961, where, of course, they have provided that this entertainment allowance in the case of companies should be restricted, and a measure has been provided to determine what amount shall be allowed in the hands of the companies, to use the words of the Finance Minister, "to curb the tendencies to ostentation and extravagance" on the part of the companies. But in this case, if you read the relevant provision in the Bill, you will find that the entertainment expenses have to be considered only in the hands of the companies and to any other private individual or business, . . .

Shri Morarji Desai: This was published before the amendment was made. You can mention it the other way round but not in this way! You will want me to extend it beyond what I have done in the budget but you do not want me to go back on what has been done already.

Shri R. K. Gauba: Yes; now, about the remuneration of the members of the Hindu undivided family, we have yet to know of cases where a member of the Hindu undivided family has been allowed remuneration for services to the business. Even according to the judicial pronouncements, it is not the concern of every member, and as regards the Hindu undivided family, after all, the scope is not limited. The family may consist of several members, and....

Shri Morarji Desai: If it is a genunie service performed, then it should be allowed. Supposing a property is to be managed, when an outsider is appointed, we may allow a salary, but if a member of the family is allowed to manage, then we do not allow. In genüine cases, we have got to do that. That will be considered.

Shri K. R. Achar: What will be the reasonable amount?

Shri Morarji Desai: We shall have to find out and see.

Shri R. K. Gauba: Now, another important matter where practical difficulties have been experienced is this. I am referring to page 8, clause 54, about exemption. Supposing a person makes a capital gain by selling a certain residential property, and after selling it, if he purchases another property for residence, then that capital gain has not to be taken into consideration. But the wordings used are: "purchased a new property." Purchase does not mean constructing a new property or acquiring a new property. You may purchase a property and until and unless you do it, you are not allowed that exemption. This is a practical difficulty. If he purchases a land, and immediately, within the statutory period, six months or a year, constructs a house with the money that

he realised by the sale of the old property, he should also be taken in that exemption clause.

Shri V. V. Chari: If you build a house, it should be covered by the existing provision.

Shri Morarji Desai: It should be a reasonable period, and we can provide a reasonable period.

Shri R. K. Gauba: Then, at page 10, clause 67, either it is printing or some other mistake. We are not much concerned with it. Then, I come to page 11, clause 68. It is about the omission of the words "unexplained investment". That may be considered by the Select Committee. Then, about clause 72, about the carry forward of losses, it is being allowed year after but the set-off is restricted to the profits or gains on business or profession. It has happened that losses can arise also in the case of property. I will not very much press the point.

Shri Morarji Desai: I think we can change this. Otherwise, we will have to go in for an amendment afterwards. We must consider every clause anew, except where, when the existing practice is all right, the clause concerned need not be changed.

Shri Amjad Ali: We can read every section of the Bill when we go through the Bill. In some cases, we might not come forward with amendments.

Shri Morarji Desai: Yes; but there are certain things which do not require any change. We need not spend time on them. We go on clause by clause. We do not take something from the middle, so to say; we take some important things first and decide on them. Then we can take up every clause. It all depends on what and how we do. It is all in the hands of the Select Committee.

Shri R. K. Gauba: Another important matter is with regard to clause 113(3), at page 11 of the memorandum. Practical difficulties have arisen in cases where a person is a partner in a certain business. Either for health reasons or for study reasons, he has to go abroad and he stays out for a period which takes him out from the definition of the word "resident".

Shri Morarji Desai: What is the period?

Shri R. K. Gauba: The essential condition for being a resident is, besides other things, that he must be there in the year of assessment at least for sometime before he can claim the status of resident.

Shri Morarji Desai: What happens if they are abroad for three or four years for study?

Shri V. V. Chari: We give them the option. Sometimes, it may help them not to exercise the option, because the rate is lower.

Shri Morarji Desai: We need not give them the option.

Shri V. V. Chari: Then it would be too high in the other case.

Shri Morarji Desai: They are only students. They must be treated as residents. It is wrong to consider them as non-residents. I do not think we should allow them the option at all. They are residents. We should simplify these things. They are residents; they have gone out temporarily for a particular purpose.

Shri C. D. Pande: If a man goes abroad for study and is treated as a non-resident, what is the difference? Will he pay more or less tax?

Shri V. V. Chari: He will not pay more.

Shri R. K. Gauba: It depends on the income he has.

Shri Morarji Desai: Why should the option be given to the assessee? Why should not the Government have the option? The Government, *i.e.* the public should have the option.

Shri R. K. Guaba: I agree. Here the option has to be exercised once in his life-time. If he is an old assessee, he may not exercise that option, because the necessity to exercise that option does not arise. But when that necessity comes, if he is told, "You are not an assessee for the first time; you cannot exercise that option", then the difficulty arises.

Shri V. V. Chari: There is some misunderstanding, because till he becomes a non-resident, the question does not arise at all.

Chairman: He may go to his next point.

Shri R. K. Gauba: I come to clause 114. Here a right which existed has been taken away. Under the existing Act, if a person makes a capital gain below Rs. 5,000, that is not liable to tax. But under the new proposed clause, this right has been taken away, and any capital gain becomes liable to tax.

Shri Morarji Desai: Why should it not be?

Shri R. K. Gauba: When the limit of Rs. 5000 was fixed in the present Act, it was made with a view to avoid all types of unnecessary formalities and complications that are likely to arise.

Shri V. V. Chari: His apprehension is unfounded, because there is proviso (ii) in clause 114 (b).

Shri R. K. Gauba: That is in regard to computation.

Shri V. V. Chari: Its net result will be that capital gains below Rs. 5000 will not be taxed.

Shri R. K. Gauba: It is a question of drafting.

Shri Morarji Desai: What is the intention? Is it the intention to keep the Rs. 5000 limit?

Shri V. V. Chari: Yes.

Shri Morarji Desai: Then we should make it clear. They are also lawyers and we must take that into consideration. This is only a question of drafting.

Shri R. K. Gauba: Clause 139 deals with interest payable on accounts of delayed filing of returns. The clause provides that 6 per cent per annum interest shall be charged in case the assessee files returns beyond the specified date. But in the case of advance tax and refunds, the interest payable by Government is only 4 per cent.

Shri Morarji Desai: Here the intention is that the return must be filed by a prescribed date. I would like to make it even 12 per cent. Why should people not file returns quickly? Why should it be delayed?

Shri R. K. Gauba: There should be reciprocity.

Shri Morarji Desai: There is no reciprocity in everything.

Shri R. K. Gauba: I come to clause 146.

Shri Morarji Desai: It is a matter for the administration, which cannot be in the Act, that a specific period may be provided.

Shri R. K. Gauba: It is a matter for Members of Parliament to go into the question as to what should be the time-limit so far as escaped incomes or under-assessed incomes are concerned. My submission is, if there is an escaped income of Rs. 50,000, say, in any year, then there is no time-limit absolutely. If you expect the assessee to produce evidence in his support, that evidence may not be available after a lapse of a certain time.

Shri Morarji Desai: It will be a matter of judgment. If you leave it to Parliament, it will be made stronger and not lighter. That is the opinion in the Parliament.

Shri R. K. Gauba: Regarding clause 149, my only objection is that the word "issued" has been used instead of the word "served". That means

extending the limitation to a period already specified in the Act. The Income-tax Officer may issue a notice or show it as having been issued on, say, 31st March, and it may not be served even for a period of six months after that.

Shri V. V. Chari: This only codifies a High Court decision.

Shri Morarji Desai: I think "serve" is the proper word.

Shri V. V. Chari: But there is a practical difficulty.

Shri Morarji Desai: To remove your practical difficulty, please do not increase the practical difficulty of the assessees. It is a wrong thing to do that. This sort of attitude has got to be changed. The liberty of the individual is far more important than anything else, than your convenience at any time.

Shri R. K. Gauba: Then we come to page 16 of the Memorandum—clause 150.

Shri Morarji Desai: This is also about escaped income.

Shri R. K. Gauba: But in a case where even the limitation is expiring, if the Commissioner of Income-tax or the Appellate Assistant Commissioner takes it into his head, when a case goes to him, and says that the income was to be assessed not in that year, it becomes difficult.

Shri Morarji Desai: He is not an irresponsible person. He does not take it into his head like that. The case goes to the Tribunal, to the court and all that. And I have now decided that if the courts pass strictures against the officers concerned I will take action against them.

Shri R. K. Gauba: They are very responsible persons. My submission was only that if the Commissioner of Income-tax or the Appellate Assistant Commissioner gives a finding that it does not fall within a particular limitation period for which the proceedings have been started and that it falls beyond that period, then that further period is also brought in.

Then we come to 153(3). As we find from the Bill, the legislature intends putting limitation for all things, for granting of refunds, for assessment, for re-assessment and all those things. But where—it is our common experience—an appeal goes to an Appellate Assistant Commissioner, he sends the case back to the Income-tax Officer for re-assessment and there is no time limit for such re-assessment. The re-assessment in such cases may hang on for a year.

Shri Morarji Desai: Why not provide a limitation?

Shri V. V. Chari: There is a limitation now.

Shri Morarji Desai: He says there is none. Better consider that. It is better to provide a limitation.

Shri R. K. Gauba: Then we come to clause 221 on page 17—penalty for non-payment of tax. There seems to be some mistake in the drafting of it; probably it is not the intention. In cases where the assessee is found to be in default for payment of a certain amount of tax then, as the law exists now, the Income-tax officer has a discretion to keep him not as an assessee in default and not to impose any penalty. According to the provision here, if once an assessee is in default, the Income-tax officer is not left with that discretion and he must of necessity impose a penalty. I think that is not the intention and that is a mistake in drafting.

Shri Morarji Desai: Where an assessee is deemed to be in default in making payment of tax, he is given a chance to explain. Then the Income-tax Officer can hold that he is not in default. The discretion has not been taken away. Merely saying "in his discretion" does not give him more discretion.

Shri R. K. Gauba: Where an assessee is in default in payment of

income-tax, the Income-tax Officer may in his discretion direct that in addition to the amount of arrears a sum not exceeding the amount shall be recovered from the assessee by way of penalty. That first stage is gone, where the Income-tax Officer may say, in his discretion, that no penalty need be imposed. According to the provision here once an assessee is in default the Income-tax Officer is not left with any option but to impose the penalty.

Shri Morarji Desai: He need impose the penalty only if he holds that the assessee is in default, not otherwise. There is also an appeal provided. I do not think this suggestion should be accepted. That also is an instrument of corruption.

Shrimati Tarkeshwari Sinha: We will certainly first issue a notice and ask him to show cause why a penalty should not be imposed.

Shri R. K. Gauba: That is what I submit. If that is so, I have no grievance. But the wording is likely to be mis-interpreted.

Shri C. D. Pande: Before imposing a penalty, there should be a show-cause notice served on the assessee concerned.

Shri Morarji Desai: It is there. Without that we cannot do anything. It is provided for.

Shri R. K. Gauba: Then we go on to page 18 of the Memorandum—243—granting of refund. This suggestion also arises out of the practical difficulties that we experience in the day-to-day working of the department. Orders are issued that refund may be issued to a person but the actual issue of the refund voucher takes place long after that. There should be a limitation placed for that also.

Shri V. V. Chari: The date of issue of the refund voucher is there.

Shri Amjad Ali: Substitute service is done only when the direct service fails. That is a little hard. That will be the last resort.

Shri Morarji Desai: That should not be the first thing. Only if the man refuses to take the service you have got to do it. If it is proved that the man concerned does not take the service, only then the other method must be resorted to.

Shri R. K. Gauba: The next point is very important from our point of view—clause 275. First is about penalty. The ITO himself can consider . . .

Shri Morarji Desai: There is no encroachment on fundamental rights. I refuse to believe that there is any fundamental right for any legal practitioner or chartered accountant to abet in cases of default of payment.

Shri R. K. Gauba: There is the question of the fundamental right. If there is an allegation against me, I should be proceeded against in a judicial manner.

Shri Morarji Desai: Why? Why should another person not be proceeded against in a court of law and you alone should be proceeded against only in a court of law? On the contrary, you are to be more strictly dealt with because you are instruments of the public, not merely of your clients. But, generally, you are only instruments of the client. That is a fact.

Shri R. K. Gauba: If any action is to be taken against a lawyer, after all, he must be proceeded against in a judicial manner.

Shri Morarji Desai: This is judicial. If your point is accepted, then every assessee should be dealt with only by the judiciary and the penalty should also be left to the judiciary. How can that be done?

Shri R. K. Gauba: It is not for the income-tax officer to decide.

Shri Morarji Desai: It should be for him to decide.

Shri Amjad Ali: Then there will be witch-hunting.

Shri Morarji Desai: There will be no witch-hunting.

Shri Amjad Ali: Under other laws, legal practitioners are never dealt with like that.

Shri Morarji Desai: Which other laws?

Shri Amjad Ali: I do not mean the income-tax law; I mean other laws.

Shri R. K. Gauba: My objection is strengthened by the Report of the Direct Taxes Administration Enquiry Committee, on the recommendations of which this new provision is proposed to be enacted. They have stated that in the matter of abetment or such other activities it should be left to the judgment of the High Court and they should be proceeded against through proper disciplinary committees which are appointed either under the Indian Bar Councils Act or under the Indian Chartered Accountants Act.

Shri Morarji Desai: The Select Committee will consider your point.

Shri R. K. Gauba: This is very important.

Shri Morarji Desai: This is not a matter for discussion. This is a matter for decision.

Shri Amjad Ali: He is arguing whether a reference could be made to the High Court.

Shri Morarji Desai: It is a question for the Select Committee to decide whether you want to leave it to a court of law or the taxation department. It is more a matter of decision than discussion. Therefore, more time taken on this is not going to be useful.

Shri R. K. Gauba: I am not arguing it: I am inviting your attention to page 249.

Shri Morarji Desai: We have not taken everything they have said as gospel truth.

Shri R. K. Gauba: They have laid great emphasis on this.

Shri Morarji Desai: But we may not agree. Now it is for the Select Committee and, finally, for the House to decide. Your point will duly be taken into consideration.

Shri R. K. Gauba: I only want to point out that the recommendations of the Direct Taxes Administration Enquiry Committee support my point.

Shri V. V. Chari: Will you please refer to pages 173-174, paras 772 and 773 of the same report?

Shri R. K. Gauba: I feel that pages 238-239 are very important.

Shri Morarji Desai: In UK also the position is the same.

Shri Amjad Ali: In UK only certain experts are practising income-tax cases.

Shri Morarji Desai: Here also some lawyers practise only income-tax cases.

Shri Amjad Ali: In England some are experts in income-tax cases and some in accident cases.

Shri V. T. Dehejia: Would that make any difference to the responsibility?

Shri Amjad Ali: In India the legal system is not developed to such an extent that lawyers can specialise in certain lines.

Shri V. T. Dehejia: The first question is whether abetment should be made an office or not. Secondly, if a barrister commits an offence, we have to consider whether he can be tried only by a court.

Shri Morarji Desai: Here is a recommendation on page 174 where they have stated:

> "We are of the considered opinion that evasion of tax has to be effectively checked."

Shri R. K. Gauba: Basically, we agree with that view.

Shri Morarji Desai: If "abetment" should be made punishable under the taxation laws, why should it be taken to a court? You want it to be an offence and you want it to be part of the law. Now what you say is that it should be made punishable by a court of law and not by an income-tax officer.

Shri R. K. Gauba: My submission is different. If a lawyer or a chartered accountant, in the course of his professional engagement . . .

Shri Morarji Desai: I am not going to leave it to your association.

Shri R. K. Gauba: My suggestion has nothing to do with my association.

Shri Morarji Desai: That is what you are pleading for—it should be dealt with by a court of law and not by the income-tax officer.

Shri R. K. Gauba: If I had committed some offence, it should be investigated and the income-tax officer should give his finding and pass it on to the inspecting assistant commissioner. He should pass his verdict and pass it on to the Bar Council.

Shri Morarji Desai: I am not going to leave it to the Bar Council. There is no control over the Bar Council. Whatever they may do will be final. I have instances where both the chartered accountants and barristers have acted wrongly. Otherwise, how can wrong practices go on and how is justice denied? It is more through these people than through anybody else. Let us be very clear about it. The fraternity works even there because it means a blot on the whole profession. Therefore, they do not want to do anything. Therefore, what I say is that this will be a matter for the Select Committee to decide. This is not a matter for discussion here now. We will consider this point. It comes in only when wrong statements are made deliberately. It is not for pleading that anybody is going to be punished. Punishment for abetment applies where a wrong account is drafted by the person concerned and where he knows it. When it cannot be proved that it is deliberate, where he does not know that they are wrong and he has done so on instructions and had no reason to believe them to be false, I do not think a man can be punished or will be punished. It is for the Select Committee to consider. But this much is certain that we do not want inquisitions to take place in this country. About that I am very clear. That I do not want.

Shri Amjad Ali: It requires a little bit of rethinking.

Shri Morarji Desai: We shall consider it. We cannot decide it today. In the meanwhile let all of us apply our minds to it.

Shri Amjad Ali: But let us hear him. Let him say the way he feels about it and let him give the details if he has got to give any.

Shri Morarji Desai: They are given in the memorandum and there are no other details to be given.

Shri R. K. Gauba: The recommendations of the Direct Taxes Inquiry Committee are not at page 174 as has been referred to just now but they are at pages 238 and 239.

Shri V. V. Chari: That is on a different matter altogether.

Shri R. K. Gauba: They say that punishment should be provided for and we agree that it must be provided for, but how the matter should be dealt with, that is, the method and manner in which they should be dealt with is the point we are making. The first paragraph on page 239 says . . .

Shri Morarji Desai: This is only for him.

Shri R. K. Gauba: Then kindly read paragraph 238 also. The second part of the paragraph on page 238, that is, paragraph 8.135, says:

> "The report of the enquiry in either of these cases should be sub-

mitted to the President of the Income-tax Appellate Tribunal, who will pass orders after hearing the complainant, the respondent and the Council of the Institute of Chartered Accountants or the Bar Council as the case may be. This procedure is suggested subject to our recommendation about the appointment of a High Court judge as the President of the Income-tax Appellate Tribunal being accepted. Any appeal from the decision of the President of the Income-tax Appellate Tribunal will go to the respective High Courts."

Shri V. T. Dehejia: Will you kindly read the paragraph as a whole?

Shri R. K. Gauba: It reads:

"If any question of professional misconduct necessitating the removal from the register of a lawyer or chartered accountant arises, the Central Board of Revenue should first consider whether the complaint is such as requires disciplinary enquiry."

Shri Morarji Desai: This is about taking disciplinary action against the person concerned. That certainly will go to their respective bodies. This is not the question under issue. The question is about levying of penalties which is quite a different thing. They have no relation to each other. I am afraid, you are misquoting.

Shri Amjad Ali: He is only pointing out.

Shri Morarji Desai: It is not that. This is where we have to guard against. The Committee may be misled by quoting in a clever manner. This does not apply.

Shri R. K. Gauba: But look at the effect of it under clause 288(4).

Shri Morarji Desai: This is not the Bible nor a statute which we are bound to follow. This is a matter which will be decided by the Select Committee.

Shri Narendrabhai Nathwani: May I ask the witness as to what the report of the Income-tax Investigation Commission which was presided over by Shri Varadachari, an ex-Judge of the Supreme Court, has said on this point?

Shri Morarji Desai: They have said very strongly about it.

Shri Narendrabhai Nathwani: But may I know whether the witness is aware of the recommendation made by the Income-tax Investigation Commission on this part of their representation?

Shri Morarji Desai: That is not very convenient to quote.

Shri R. K. Gauba: That is a matter requiring a long discussion which, I am afraid, cannot be done here.

Shri Morarji Desai: Because that discussion does not help. But all that is before the Select Committee.

Shri R. K. Gauba: That is a matter which I would not touch. I am just referring to the salient issues that are before the Select Committee. I was referring to the effect of clause 275 which is provided in clause 288(4). Clause 288(4) debars the lawyer or the chartered accountant on whom in respect of him or in respect of another person a penalty is imposed from carrying on in the profession. Penalties may arise from various circumstances. Those circumstances are dealt with in clause 271. Penalties can arise, for instance, for failure to furnish returns under section 139 by the 30th June, or for failure to furnish a return or for late filing of the return, or for failure to pay the tax in time. All these circumstances give rise to a penalty. Suppose, there was a delinquency on my part in filing the return for one reason or the other and I am penalised . . .

Shri Morarji Desai: That is what the Direct Taxes Inquiry Committee has said on page 174. It has said that these people ought to be punished far more severely than anybody else

because these people ar tax experts. They ought not to default.

Shri R. K. Gauba: That is about concealment.

Shri Morarji Desai: That is what that page says. Why do you not see that? Why quote one and not the other? They show no sympathy there.

Shri R. K. Gauba: This thing can happen in the case of any individual.

Shri Morarji Desai: 'Any individual' is different from an expert. If, suppose, I commit a defalcation, I think I am far more liable than anybody else, being the Finance Minister.

Shri R. K. Gauba: For a minor issue?

Shri Morarji Desai: Maybe the most minor issue. I must be sacked. That is what I feel. Otherwise, I have no business to occupy a high position. You cannot claim the privileges of an expert as also the frailty of the common man. Both the things cannot be claimed.

Shri R. K. Gauba: These delays in the filing of a return can occur.

Shri Morarji Desai: Are you going to excuse Shri Chari if he defaults?

Shri I. P. Gupta: That depends on the nature of the offence.

Shri R. K. Gauba: That is my grouse. If Shri Chari delays the filing of the return, he will still be kept in his present post.

Shri Morarji Desai: He would be sacked immediately.

Shri R. K. Gauba: There is no provision for that.

Shri Morarji Desai: No provision is required.

Shri I. P. Gupta: The fact that a penalty has been imposed on some one either in his own case or in respect of other person is a very serious thing. That delinquency can arise. The Income tax Officer imposes a very heavy penalty on him.

Shri V. V. Chari: It is not a permanent disability. It is only for a temporary period, only for two months or for two weeks.

Shri R. K. Gauba: That is a slur.

Shri V. V. Chari: Now penalties are going to be published in the Gazette. That will be a much greater slur.

Shri R. K. Gauba: That punishment may be there, but he should not be disqualified. So far as publication in the Gazette is concerned, it is in regard to concealment and not in regard to delayed filing of returns.

Shri Morarji Desai: Please read paragraph 8.137 of the Tyagi Committee's Report. It says:

> "We regard it of considerable importance that tax experts should themselves have a clean record in regard to the discharge of their own tax liabilities. Failure in this respect should be construed as gross professional misconduct. If a tax expert is finally convicted for evasion of tax..."

Of course, that is a different thing altogether.

Shri R K. Gauba: For minor offences, such as, delayed filing of returns or delayed payment of income-tax, he may not be penalised.

Shri Morarji Desai: It is also stated:

> "....we also feel that any tax expert who is penalised under the direct taxes Acts for concealment of income, wealth, estate, gift or expenditure should be disqualified from representation after the penalty proceedings have become final."

Shri R. K. Gauba: We entirely agree with that. But for these minor offences he should not be penalised.

Shri Morarji Desai: That will be considered by the Select Committee.

Shri R. K. Gauba: So far as the major offences are concerned, that is, concealment of income or abetment and all that, he must be hauled up.

Shri Morarji Desai: That will be considered by the Select Committee.

Then, you say something about Clause 288(3).

Shri R. K. Gauba: Yes. We propose that the words "not below the rank of Assistant Commissioner" be deleted as such, as otherwise the very object for bringing about this new provision in the proposed Act would stand defeated.

Shri Morarji Desai: This is a thing where there is no question of agreement. Income Tax Officers should also be debarred. Why should Income Tax Officers be excluded? All of them should be there.

Shri R. K. Gauba: Then there is clause 288 (4) (b). I was submitting that the lawyer or the chartered accountant can be debarred from apearing before the Income-tax authorities if any penalty is imposed on him for any cause.

Shri Morarji Desai: You only want that the cases of delayed filing of returns should be exempted.

Shri R. K. Gauba: Minor offences.

Shri Morarji Desai: I do not know why the cases of delayed payment of taxes should be exempted.

Shri R. K. Gauba: There are practical difficulties. Suppose I am assessed with a heavy figure. I have got the right to appeal, to go to the Appellate Tribunal.

Shri Morarji Desai: There is the order of stay.

Shri R. K. Gauba: The Tribunal does not have the order of stay. I have got the right of appeal to the Tribunal and then to the High Court.

Shri Morarji Desai: It is after that you will be disqualified, not before that. It is only the final decision which will be effective and not the middle decision. On that score I have not doubt in my mind.

Shri R. K. Gauba: Here the things are not clear.

Shri Morarji Desai: There is no question of that. It is ordinary common sense. When there is the right of appeal, it is only the final decision which will be effective. If there is no right of appeal, then it is a different thing. If there is the right of appeal, it is after the right of appeal is exercised that you will be disqualified; not before that. If you do not go in for appeal, that is a different matter.

Shri R. K. Gauba: Delayed payment is a minor offence.

Shri Morarji Desai: Delayed payment is not at all a minor offence.

Shri R. K. Gauba: There may be a delay for a week or so. There may be various circumstances under which delay may occur.

Shri Morarji Desai: Delayed payment is not a minor offence.

Shri R. K. Gauba: He may be rather keen to collect more taxes for the Government from other assessees.

Shri Morarji Desai: He may be rather keen to collect less taxes from the assessees. Otherwise, how will he be able to get fat fees?

Shrimati Tarkeshwari Sinha: Clause 288(6) reads:

> "(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;
>
> (b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and
>
> (c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until, the disposal of the appeal."

All that is provided here.

Shri R. K. Gauba: That is a reference to the order disqualifying the person.

Shrimati Tarkeshwari Sinha: This is the safeguard which is being provided.

Shri Morarji Desai: Let us go to another point.

Shri R. K. Gauba: Clause 296—There should be some rules made by the Central Board of Revenue in the matter of inspecting files and furnishing of copies or orders and other documents to the assessee.

Shri I. P. Gupta: The power is not given to the Central Board of Revenue to frame such rules.

Shri Morarji Desai: This could be done.

Shri V. V. Chari: We shall do that.

Shri Morarji Desai: So, we have finisher now.

Shri K. R. Achar: I want to put one general question re: Chapter XX. The Law Commission has pointed out that the Appellate Tribunals are not giving findings properly and that there are delays. The High Court Judges also said so. Now, you must have observed the working of the Tribunals. May I know what is the opinion of the Bar Association on this?

Shri Morarji Desai: What is your question?

Shri Amjad Ali: We have not followed his question.

Shri Morarji Desai: That is why I have asked him to repeat.

Shri K. R. Achar: The Law Commission has suggested.....

Shri Morarji Desai: Are you thinking of the abolition of the Appellate Tribunal? Why ask that question to them?

Shri Jaganatha Rao: You ask the Government.

Shri Morarji Desai: This is a matter on which I am not going to compromise. Please understand that and save your energy.

Shri K. R. Achar: I wanted to know the reaction of the Bar Association. If you think so, then I do not want to put that question.

(The witnesses then withdrew)

II. The Indian Merchants' Chamber, Bombay

Spokesmen.

1. Shri Vallabhdas V. Mariwalla
2. Shri Pravinchandra V. Gandhi
3. Shri M. A. Master
4. Shri G. P. Kapadia
5. Shri C. L. Gheevala
6. Shri S. K. Aiyar

Witnesses were called in and they took their seats

Shri V. V. Mariwalla: On behalf of the Chamber, myself and my colleagues, I thank you to have given us an apportunity of meeting you today. The memorandum of the Chamber has been already sent for the due consideration of the Select Committee.

I will just make a few preliminary observations on the memorandum in general and particularly on important points contained in the memorandum. At the outset.....

Shri Morarji Desai: If I may interrupt you, may I ask one question? How much time do you propose to take?

Shri V. V. Mariwalla: I will not take more than 10 minutes.

Shri Morarji Desai: I am speaking of the whole examination. How much time will satisfy you?

Shri V. V. Mariwalla: In view of the very short time given to us for preparing out memorandum I would request you to give us at least three hours.

Shri Morarji Desai: Because we are closing at one.

Shri V. V. Mariwalla: I have covered this point in our memorandum. The time available to the Chamber for preparing the memorandum was very short because the copies of the Bill were not available till the third week of May. Therefore, we were under great stress to study all the clauses of this important Bill with 298 clauses and make our observations within the time prescribed. In view of that, three hours may be given to us.

The existing Income-tax Act of 1922 has been on the statute Book since the last forty years and during these last forty years series of amendments and changes have been introduced from time to time with the result it has now become a complex Act. It is good that this opportunity is being taken to introduce a new Bill with a view to simplify it. But as you might be aware simplification cannot be attained without disturbing the tax structure of the Act. That is the observation made by the Law Commission and it is the view of the Chamber also. We feel that as much simplification as possible should be attained and it is with this view in our mind that we have drafted our memorandum.

Our memorandum can be divided into two parts. Pages 1 to 23 of our memorandum contain some of the fundamental issues in respect of which specific provisions should be contained in the Act. The remaining pages consist of the second part dealing with several clauses where the Chamber has made observations and suggestions regarding some modifications in some of the clauses of the Bill.

Dealing with the first part of the memorandum I might say that we have suggested several changes that are reqired to be made in the law in order to achieve simplification of the law and also to remove several hardships to the assessees as well as for the smooth working of the law. For example, we have suggested that an inclusive, detailed definition of the terms "income" and "expenses" might be made. It is possible to give such a definition, based on the decisions taken by some of the highest authorities, that is judicial authorities, in India, so that in future any litigation on this subject can be easily avoided.

The other two suggestions are about the raising of the minimum taxable limit and the abolition of the Expenditure Tax.

Shri Morarji Desai: That is not relevant. Abolition of the Expenditure Tax is not relevant to plead in this Committee. Therefore, please leave it alone.

Shri V. V. Mariwalla: All right. Then, we have raised the point about raising of the minimum taxable limit. I think I can speak on that. It might reduce, I think, much of the pressure of work of the Income-tax officers, and that time can be better devoted to collection of taxes from the higher income assessees. That is our belief, and we have made a plea about that in the memorandum.

The other thing is about restriction of prosecution and settlement of cases on a money penalty basis. And then, simpler provision for taxing undistributed profits, for taxing firms, mutual and other Associations, and non-residents. For taxation, only the real income should be taken . . .

Shri Morarji Desai: May I say that the question of fixing the limit of income is more a budget matter than a matter of law? So, I do not think that that is also a matter which we could consider here.

Shri Amjad Ali: It is more an annual affair.

Shri V. V. Mariwalla: We have also referred in the Memorandum to three other important recommendations of the Direct Taxes Administration Enquiry Committee, and these are as follows. One is that an amendment of the Income-tax Act should be by a specific amending Act, and not through

the Finance Bill. The other is about placing the Appellate Assistant Commissioners under the Ministry of Law.

Shri Morarji Desai: That, again, is not a matter for the Select Committee to decide.

Chairman: The principal of the Bill has been accepted. So, this cannot be brought in here.

Shri V. V. Mariwalla: There is one thing more—I do not know whether it will be valid or not—that is, statutory provision for passing of order and copies being given to assessees within thirty days of the last hearing. That also we have included in our memorandum.

Shri Morarji Desai: That is relevant.

Shri V. V. Mariwalla: About the other part of the memorandum, it relates to the clauses: for instance, about withdrawal of full exemption relating to charity trusts—from page 23 onwards the memorandum deals with the clauses.

Shri Morarji Desai: Are we taking up the clauses at random like this?

Shri V. V. Mariwalla: I am only giving a broad summary, a resume, of the whole thing. After that I will request Shri Kapadia to take up the clauses.

Shri Morarji Desai: I do not think we can go on like that. We should take up your objections one by one If you go on giving a resume, we will be taking up the time only on that.

Shri V. V. Mariwalla: I will not enumerate all the points. I would request Shri Kapadia to take up the clauses of the Bill and explain to the Committee, because, as everybody knows, he has helped us, and he has got a wide knowledge of the subject.

Shri Morarji Desai: He has also got knowledge which should not have been brought in here. We have deliberately not taken Shri Tyagi in the Select Committee, because we did not want these opinins which formed the basis of the discussions in the Direct Taxes Administration Enquiry Committee to come again into this Committee.

Shri Narendrabhai Nathwani: So far as Shri Kapadia is concerned, it may be that the Indian Merchants Chamber has adopted certain view of his. But he comes here representing the Indian Merchants Chamber. Therefore it will not be quite inappropriate.

Shri Morarji: Desai: Iam not saying so; he cannot be debarred.

Shri M. A. Master: May I be permitted to make one observation? We want the Chamber to take full advantage of the knowledge and experience of any of our members And that is the only reason why our friend Shri Kapadia is here and we are requesting him to explain the points.

A Member: It would have perhaps been better if Shri Tyagi had also been here.

Shri M. A. Master: That is not within our competence.

Shri Morarji Desai: Of course not.

Shri Amjid Ali: At a certain stage we might examine Shri Tyagi also

Shri Morarji Desai: If it becomes necessary.

Shri G. P. Kapadia: I may crave your indulgence regarding this memorandum. Pages 1-23 of the memorandum contain certain fundamental suggestions which do not figure in the Bill, and it would be the endeavour of the Chamber to bring these to the notice of the Select Committee for its consideration. Because, this Bill, the Chamber considers, is one which is introduced once in a life-time. When the Statement of Objects and Reasons itself states that it is not only a Bill to modify and consoldiate but also to amend the legislation regarding Income-Tax, all the fundamental issues

which, in the humble opinion of the Chamber, should figure in the Bill require consideration at the hands of the Select Committee. And that is the reason why we have made an attempt in the first twenty-three pages of the memorandum to cover some of the issues which do not figure in the Bill at all.

Coming to the general issues, I would like to state on behalf of the Chamber, the reasoning behind some of the fundamental suggestions which have been made. The first fundamental suggestion that has been made is that changes in the Income-Tax Act should not be brought through Finance Bills.

Shri Morarji Desai: Again you are going out of the purview. It is no use taking up time on a matter which cannot be considered by this Committee. Then you will have less time for the more important items. This is not a matter on which this Select Committee will give a decision. It is not prescribed in the Income-Tax Act as to how the Act is to be changed. That is more a matter for the Government and Parliament on which to come to a conclusion.

Shri Narendrabhai Nathwani: It appears that their suggestion is that a provision should be made in this particular Bill about it.

Shri Morarji Desai: How can that be done?

Shri G. P. Kapadia: Our submissions is that the Income-Tax Act or the concerned Direct Tax Act should contain this provision.

Shri Morarji Desai: This is what created unpleasentness in that Committee. I hope you won't repeat it here in this Committee.

Shri G. P. Kapadia: There are certain views which I hold personally. I am not expressing them here, because I am here as a representative of the Indian Merchants Chamber. I am expressing only the views of the Chamber.

Shri Morarji Desai: You have stated them here in the memorandum. Why repeat them? Have you anything new?

Shri G. P. Kapadia: I was trying to put the reason before the Committee. After considering the reason it is for this hon. Committee to decide whether the reason is correct or not and then take a decision. My reasoning is this...

Chairman: The Select Comittee has been appointed after the principle of the Bill had been accepted. So we cannot go beyond the principle of the Bill. We must confine ourselves to the Bill; we cannot go outside.

Shri G. P. Kapadia: Take, for example, the question of raising the minimum taxable limit. There, the Chamber's suggestion would be a suggestion falling within the orbit of taxation. Because, a number of statutes in this country, while trying to impose taxation or trying to bring them within the purview of taxation, limit the income or limit the amount of wealth. Take, for example, the Bombay Trusts Act. The Act does not apply to all charity trusts. It applies to certain trusts having a certain income. The Chamber's suggestion is that this Act should have a section stating that it shall apply only to such cases where the income in respect of a Hindu undivided family is more than 10,000 and more than 5,000 in the case of other categories. That is the reasoning.

Shri Morarji Desai: May I say, this is debarred? This is a matter which has to be decided in the Finance Act? This is a matter for the Budget, and not for the Income-tax law now to specify. The Budget has already been passed. You cannot make a Budget here.

Chairman: We cannot change the Finance Act.

Shri Ram Shankar Lal: We are committed to the principle of the Bill. We can only go into details.

Shri C. D. Pande: In the case of income, the Act can go into that question. It is not possible to take Rs. 200 or 300 as income.

Shri Morarji Desai: I know your views in this matter. Your plea has not been accepted.

Shri C. D. Pande: You will never accept one rupee as income. Up to Rs. 5000, you can say.

Shri Morarji Desai: How can you change the Finance Act? I cannot disturb the Budget like that.

Shri C. D. Pande: You are not disturbing the present Budget. This is for the future.

Shri Morarji Desai: The moment you pass this law, it will affect.

Shri M. A. Master: May we seek a clarification on a very fundamental issue? As we read the Act, we may be wrong in our interpretation, the desire is to codify, consolidate and amend the law. If from our side any proposition is put forward which means, in effect, a change, shall we be within our rights? If you give a direction, we will abide by that.

Shri Morarji Desai: So far as the Budget is concerned, it is not a matter which can be decided here. Any other section, you can change completely. You can suggest a change which is the opposite of the provision. That is my view.

Shri Narendrabhai Nathwani: We have noted the point of view which they want to put forward.

Shri Morarji Desai: I have a fundamental objection which I am submitting to the Chairman. I have a right to do so. I am not denying anything. I am only submitting that this is a matter into which we cannot go. Why spend time over it?

Shri K. R. Achar: May I suggest one thing? No doubt, what should be the minimum must be for the Budget only. When the Income-tax law is being codified, the point is whether, as a general principle, we cannot lay down that the minimum should be so and so?

Shri Morarji Desai: Is it argued that when this law is enacted, I cannot change it the next year in the Finance Act? The limit cannot be fixed here. The limit has been fixed in the Budget. It can be changed the next year. Parliament may or may not accept my limit. It is not in this Select Committee that that can be fixed.

Shri Radhelal Vyas: I would like to know whether there is any law which prescribes that it should be fixed in the Budget? The propriety may be there that it should be fixed only in the Budget. When there is no law prohibiting it, it cannot be irrelevant if we discuss it here.

Shri Morarji Desai: Can you do it here? Can you change the Budget here?

Chairman: Can we repeal the Finance Act?

Shri Radhelal Vyas: Not the present Budget. We can do something to restrict or limit the future Budget.

Shri Morarji Desai: That also you cannot do. Parliament can change that law in the next Budget.

Shri C. D. Pande: We are saying that it should not be so.

Shri Morarji Desai: How can any Budget be framed? Then, there can be no Finance Minister and there will be no Budget. How can there be a Budget?

Shri K. R. Achar: When the next Finance Bill comes, you will be entitled to say what will be the minimum. As a general rule, in the Income-tax law, it can be said.

Shri Morarji Desai: It is always a matter of adjustment every year. It is not a matter of principle where it will be fixed once for all that this will be the minimum. In no country it is done. It is only a budget measure; it is not a measure of law.

Shrimati Tarkeshwari Sinha: The limit of taxation depends on so many other factors. We cannot lay down a rigid formula in the Act itself.

Shri Morarji Desai: Still, if it is the pleasure of the Select Committee, they may go on with it. I have stated my view. They want a separate Act, a change of the whole structure of the Budget. I think, the Budget will never be passed if we have to have a separate Act for changing the Excise law or every other law. How can it be done? It has been stated a number of times that the Finance Act is not the way to do it and that it should be done by a separate legislation. That has been rejected by Parliament. I do not know why.

Shrimati Tarkeshwari Sinha: It is Parliament which can re-open the question of fixing of the limit of taxation. Parliament has got full right to levy any amount of taxation.

Shri M. A. Master: There is no desire whatsoever, of course, to re-open what has been decided in the Budget. You will appreciate that there are certain broad principles which govern taxation in any country. If we were to submit to you the broad principles in regard to what should be done for the upper-middle classes or lower middle classes—we are not re-opening the Budget . . .

Shri Morarji Desai: It is not a principle. It is a matter of utility. There is no principle involved in this.

Shri M. A. Master: I stand corrected. Instead of principle, we will say utility. If we make a submission which will be of utility to the upper middle classes or lower middle classes, I hope you will give us the indulgence.

Shri Morarji Desai: Any submissions that you make must be capable of implementation by the Select Committee. If it is not a submission which can be implemented at any time, should we spend time over it? That is all.

Shri Ram Shankar: It must be relevant.

Shri Morarji Desai: You have given your views in the memo. Where is the point in taking one hour over it except for the pleasure that you have done so.

Shri M. A. Master: I submit, that is the only thing we can say.

Chairman: We will go to the clauses.

Shri Radheshayam Ramkumar Morarka: As the witness pointed out, they have divided their memo into two parts. The first part is pages 1 to 23. There, they have suggested certain basic points. Some of the points, as the hon. Finance Minister said, do relate to the Budget. But most of the other points are germane and relevant to the present Bill. On those points, the witnesses may be heard and asked to explain. The Expenditure Tax or the minimum exemption limit cannot be discussed. The other points like penalty, definitions, etc. can be discussed.

Chairman: They will come up and we will consider whether they are relevant or not.

Shri G. P. Kapadia: I will now take-up the Chamber's suggestion that the terms 'income' and 'expenses' should be properly defined. This suggestion has been made with a stipulation that the concept of income or expenses as it is understood should not be affected at all. After enumerating the items which should be treated as income or items which must be treated as expenses, the general concept of the tax, income and expenses should not be affected at all. This suggestion has been made with a view to simplifying the taxation structure to a degree. The taxation legislations of various foreign countries contain exhaustive definitions of the term income. They also define gross income, net income, and enumerate the items of expenses. They also enumerate the items which are not to be treated as income and items which are not to be treated as allowable expenses. For this purpose, as has been mentioned in the memoran-

dam itself, we have taken extracts from the legislations of some of the foreign countries, and stencilled copies of these have been brought with us today; and at the end of the interview, we shall hand over copies of these to you. The request made there in is this that to some extent this principle stands translated into the Income-tax Bill, but if we can enumerate all those items which can be considered as income, based on concepts which emanate from the legislations of the various countries and the judicial decisions of the highest authorities in this land, and thus leave no room for doubt about these items. Similarly, there are various items in respect of which the highest judicial authorities have pronounced their opinion that they are not income. Why not take them into consideration along with the items which also emanate from the legislations of the foreign countries?

Then, let us go to expenses. In UK, there is a long list of allowable expenses, laid down by way of a schedule. In addition, there are certain expenses which are clearly allowable according to such principles, whether they emanate from judicial decisions or they emanate from other legislations. If this is done, then much of litigation whcih is going on in this country would disappear. Even a layman will be able to see from the Income-tax Act that these are the items of income which will be taxable in his hands, if he earns them, these are the items of income which will not be taxed, these are the items of expenses which will be allowed, these are the items of expenses which will not be allowed and so on.

Shri Morarji Desai: May I know whether you have read what the UK Royal Commission has said, and what the Taxation Inquiry Committee has said? After deliberating widely and considering all things they came to the conclusion that it was impossible to give a definition of 'income'. Have you suggested any definition just now? I should like to have a concrete definition given by you. Then, we might consider it. What is the use of merely giving a philosphy of it? I should be very happy if a proper definition of income and also expenses could come in, but let me warn you that the moment I define expenses, it is you who are gong to suffer and not anybody else. If you want to do that, you can do it, you may give me the definition, and we shall do that, and we can go on varying it whenever it suits us.

Shri G. P. Kapadia: At the outset, I say that the general concept as to the allowance of expenditure and the treatment of income should not stand affected, that is, that the definition which will be given in the legislation should not be treated as exhaustive and all-embracing.

Shri Morarji Desai: Then, how could it be done?

Shri G. P. Kapadia: The legislations of other countries provide a list, and the extracts which our Chamber would be submitting will give an indication, and if it is desired, the Chamber will be ready and willing to prepare a concrete list of items of income which should not be treated as income, items of expenses which should be allowed, and items of expenses which should not be allowed, which should merit consideration at the hands of the Select Committee. We did not attempt this for the simple reason that studying the legislations and the extracts which we are submitting, the Departmental authorities might themselves have a certain view regarding these allowable items and the disallowables, and they might be in a better position to give the necessary guidance to the Select Committee. That is the reason why this sort of attempt has not been made. But if it is desired, we are ready and willing to undertake that give our concrete suggestions immediately after we go back to Bombay.

Chairman: They are not with you today?

Shri G. P. Kapadia: We have taken extracts from the legislations of other countries and the concepts emanating from the judicial decisions of this country. Those statements are ready, and they would be submitted to you, as I told you already, at the end of this interview.

Regarding the exhaustive definition to be attempted and to be put in the form of a definition in the statute itself, if that is the desire of the Select Committee that the Chamber should attempt it, we are ready and willing to do it. We thought that the Department would be in a better position to do that. Still, if it is felt that the Chamber should make an attempt and submit it for the consideration of the Select Committee, we shall be ready and willing to do it.

Shri Morarji Desai: May I say that I did not suggest that it was our desire? If you want us to consider it, then it is your function to do so, and you may do so if you want to. That was what I meant. I did not mean that I was requesting you to do so.

Shri Amjad Ali: Do they offer any correct definition of 'income'?

Shri Morarji Desai: They do not; they say that if we desire, they will give it. Why should we desire? It is their function to give it, if they want us to consider it.

Shri Amjad Ali: We are finding it difficult to understand what is income.

Shri Ram Shankar Lal: We shall consider it.

Shri Morarji Desai: Certainly, everything that is put before us will be considered.

Shri G. P. Kapadia: Regarding the UK Royal Commission, they went to the extent of even stating that if an attempt were made to simplify the tax structure by the necessary definitions, all the court decisions would become obsolete. That is the pertinent observation made by the UK Royal Commission.

Shri Morarji Desai: They have also said that no particular advantage would accrue by defining the word 'income'. That is the conclusion to which the Royal Commission have come.

Shri G. P. Kapadia: But in the other paragraph they have gone to the extent of stating what I have stated and the legislations of other countries do contain these provisions.

Shri Morarji Desai: That is all right. You can give your suggestions.

Shri Amjad Ali: The Tyagi Committee had also experienced the same difficulty.

Shri Morarji Desai: That is why he has given his dissenting note.

Shri G. P. Kapadia: I am reading from paragraph 1083.

> "A real codification would make the existing case law in effect obsolete and lead to much simplification in expression.".

Shri Morarji Desai: But they have come to the conclusion which I have mentioned. Why should you not read that also?

Shri Narendrabhai Nathwani: That is very specific about defining income. But this is only a general observation.

Shri Morarji Desai: They say that it is not possible to do so, and it is not useful to do so. This is the conclusion to which they have come. I myself would say that if it were possible to codify it, it would certainly be easy and it would simplify matters. Anybody can say that. But it is not possible to do so.

Chairman: Now, the witness may proceed to the next point.

Shri G. P. Kapadia: The next point is that in respect of various matters, there must be statutory provisions, instead of leaving the matters to be dealt with by executive action.

Chairman: What are they?

Shri G. P. Kapadia: The particular items relate to the allowance in respect of speculation losses, and the question of treating the cases of assessments of non-resident, having positive provisions about avoiding double taxation, having a specific provision about apparent over-assessment, removing the rigidity about the heads of income and the allowance of expenses etc. These are some of the items, and I shall start first with the question of the rigidity of the heads of income.

Today, we have got enumerated heads of income, and an item of expenditure has to be related to a particular head of income. There are several cases where an establishment expenditure is incurred, where a person might have income from several sources. He might have a house property, he might have shares of joint-stock companies, he might have Government securities, or he might have business. It is very difficult to identify or relate each particular expenditure item to a particular activity. A person employed as an employee may be in charge of collecting rents, or he may be collecting dividends, or he may be looking after some part of the business and so on. The real test, in the opinion of the Chamber, should be whether an item of expenditure, if it is related to any one of the activities, is of a personal nature or of a capital nature. If it is of a personal nature or of a capital nature, you must certainly disallow it. But, if you introduce an element of rigidity in the allowance of expenses, and then say, 'No, this is the maximum that you are allowed under the existing section 9, this is what you will get against interest on securities and so on', then it will become very difficult. Instead of that, the charging section enumerating heads of income, should specifically say that the heads of income have been enumerated for the purpose of defining what are the sources of income which are brought within the purview of taxation, but so far as the allowance of expenditure is concerned, it will not be related to particular heads of income, but will be treated on the concept whether any item of expenditure is of a personal or capital nature. If it is not so and if it is shown to the assessing officer that it relate to any one of these activities, it should be allowed. That is the concrete suggestion made and the Chamber requests that suitable amendment should be made in the relevant sections of the Act.

Shri Morarji Desai: This is completely in contradiction to the plea for defining what is expenditure.

Shri G. P. Kapadia: With the greatest respect, the other suggestion for defining expenditure was that there are certain items of expenses which have to be allowed or not, irrespective of whether they relate to one particular had of income or not. That is a general concept which does not at all affect the other suggestion that there should be no rigidity, because the other suggestion is with a view to enumerate what are the items of expenditure allowable and disallowable. If it falls under the category of disallowable expenses, the question of treating it under a rigid head does not arise at all.

Shri Amjad Ali: Do you not consider that what is stated in pages 8 and 9 of your memorandum goes beyound what we are considering just now?

Shri G. P. Kapadia: The two items are totally different. That has nothing to do with the consideration of the expenditure tax discussed at pages 8 and 9.

Shri G. P. Kapadia: The concrete suggestion that the Chamber has to make in this behalf is for the revival of sub-sections (3) to (5) of the then existing section 23A which were

deleted by the Finance Act of 1957. These sub-sections provide:

"where on an application presented to him in this behalf by a company within the period of twelve months referred to in sub-section (1) or within the period of three months referred to in sub-section (2), the Commissioner of Income-tax is satisfied, having regard to the current requirements of the company's business or such other requirements as may be necessary or advisable for the maintenance and development of that business, the declaration or payment of a dividend or a larger dividend than that proposed to be declared or paid would be unreasonable, he may reduce the amount of the minimum distribution required of that company under sub-section (1) to such figure as he may consider fit an further determine the period within which such distribution should be made";

"if....an Indian company engaged in the manufacture or processing of goods or in mining or in the generation of or distribution of electricity or any other form of power is dissatisfied with the decision of the Commissioner of Income-tax under sub-section (3), it may be application in the prscribed form made within thirty days of the date on which such decision is communicated to it accompanied by a fee of Rs. 100 require the Commissioner of Income-tax to refer the matter to a Board of Referees . . ."

This formula worked very satifactorily, and in fact the position was that in respect of companies which contributed to the production effort of the country, this difficult position did not arise. Suggestions have been made times out of number for a total abeyance of section 23A as it at present obtains for the period of the Plan effort, but that is the not the suggestion which the Chamber is making now; the suggestion it is making is of a limited nature, that the scheme visualised by these sub-sections which were deleted should be revived with a stipulation that there should be a reference straightway to the Commissioner and the Board of Referees should not be there. The Commissioner should be the deciding authority, and on the Commissioner passing a suitable order in respect of these matters, an appeal should directly lie to the Income-tax Appellate Tribunal. Because of the want of such a healthy provision, what happens is that in respect of certain companies where the statutory percentage has not been declared and no opportunity has been given for that, a penal position obtains for no fault of those companies. A provision of this nature is bound to simplify the procedure completely. In arriving at the distributable surplus, the Chamber has enumerated 8 items which have been given on page 12 of the memorandum which would be taken into consideration, because these are items according to correct accountancy concepts which must figure also in determining the true and fair position of a company even under the Companies Act. It is the humble view of the Chamber that if the formula which was obtaining under sub-sections (3) to (5), to which I have referred, is re-introduced by abolishing the Board of Referees and retainnig the Commissioner and a specific provision is also made by enumerating these items, which must figure as items for deduction in arriving at the distributable profits, much of the unnecessary hardship which at present obtains will disappear, and to that extent, it would simplfy the procedure considerably.

Shri Morarji Desai: This point was considered by the Tyagi Committee and rejected.

Shri G. P. Kapadia: Yes.

Shri G. P. Kapadia: It is no doubt true that the difficulties experienced regarding renewals are being moved. That is a distinct improvement. But

the Chamber would suggest for consideration the issue whether the proposition whether every firm should be treated as registered or not. A firm after all is no legal entity. It is made up by the partners. That is, the partners constitute the firm, and not being a legal entity, the laws of other countries provide clearly that there is nothing like registered firm or unregistered firm. This is the position in many other advanced countries. The legislation clearly provides for a direct assessment on the partners of the firm, and if every firm is treated as a registered firm and this taxing statute fiction removed, the effect would be that all unnecessary litigation that comes in respect of these firms would disappear.

Today there are cases of *bona fide* firms existing which, because of some delay in applying for initial registration, may lose the right of registration through no fault of their own. There are cases of firms, deeds of which may contain some clauses; take for example, a clause about a minor having been introduced as a partner. The partnership law says that he is a partner only in the profits and not in the losses. That overriding clause might be there, but because in the distribution of profits as well as losses, his share has been shown, deeds have been rejected.

Shri Morarji Desai: How many cases in number—are there like that?

Shri G. P. Kapadia: The Chamber has come to know about a score of them. In one particular case—I need not mention it by name—it is a very big firm of attorneys. Their registration application was rejected on technical grounds. There have been cases of this nature. As a safeguard, in the interest of revenue, the Chamber would submit that the statute should provide that the department should inherently have the right of going behind the deed of partnership to determine whether a genuine partnership exists or not. This should be done, and the liability of every partner in respect of the partnership profits and the tax relating to those profits must be joint and separate. If these two safeguards are provided, there is no risk that the department woud be running, and there would be total simplification of procedure relating to the firms. As I said in the beginning, the firm is not a legal entity as such. It is made up of the persons who constitute it, and that is why we would very strongly urge the Select Committee to examine this suggestion, and say that every firm should be treated as a registered firm, and having treated it as such, the inherent right of the department to go behind the partnership at any time it likes should not be affected; at the same time, there should be joint and several liability of every person in relation to the partnership profits.

Shri Amjad Ali: You want us to do away with the question of registration altogether.

Shri Morarji Desai: Even when the registration is rejected, he says it should be taken as registered.

Shri G. P. Kapadia: Perhaps I did not make myself clear, but my suggestion was that the procedure for registration should be totally done away with.

Shri Narendrabhai Nathwani: Under the existing law, every year a firm has got to be registered. but you say even initially there should be no registration.

Shri G. P. Kapadia: And the obligation to pay the tax on behalf of the firm and the partners should be introduced in the statute itself. If there is failure to submit a return or declare the profits, all the consequences should follow.

Shri Amjad Ali: Apart from the question of income-tax, under section 72 of the Partnership Act, there are obligations on the part of the partners which they have got to fulfil. How do you meet them? It is

not income-tax alone that matters, it is the question of the other obligations of the partners also. Registration gives you a very clear idea as to how to do it. If you do away with registration, these complications will arise, and we are not prepared for that at this stage.

Shri G. P. Kapadia: Perhaps he refers to registration of firms with the Registrar of Firms, which is a totally different matter from the registration with the income-tax authorities. I am not at all hinting that the Partnership Act should be affected and there should be no registration with the Registrar of Firms. That is not the suggestion of the chamber.

Then, the other important issue, contained in pages 9 and 10 of our memorandum, relates to remittances of Indian nationals and taxation in respect of the same. Our suggestion is this. Today we are abolishing the category of not ordinarily resident. We have no objection to this.

Shri Morarji Desai: We have received a lot of objections aginst this from Indians overseas. They seem to be in a fright. So, I want to understand this position.

Shri G. P. Kapadia: We have commented on that also in connection with section 6. We have also taken into consideration the suggestion of the Taxation Enquiry Commission. Taking the position as visualised by the amending Bill, the non-resident who happens to be an Indian national, may, when he comes over to this country, not be conversant with the legal requirements, and may straightway become a resident, and as a result of that, he may become liable in respect of the remittances that he might get in this country.

Shri V. V. Chari: No, please.

Shri G. P. Kapadia: Supposing an Indian national staying in a foreign country has earned income over a period of years, becomes resident here. He has not been able to keep a detailed record of his earnings in the past. He cannot identify them with particular years, because he did not come within the purview of the taxation of this country. He comes over here, and receives the monies into India, and the experience of the Indian Merchants' Chamber of such cases is that the remittance made would invariably be taxed, leaving the Indian national who has come and settled here to try and prove that he did not earn the income during the partirular years during which he became a resident. The limited plea we are advancing is this. We do not want you to consider the persons who are resident and who had their income abroad and who want to take advantage of this without accounting for those profits. We only want to consider the proposition from the point of view of attracting these foreign resources to this country. That is the limited objective, and we want a clarificatory section to be introduced that where an Indian national who has been a non-resident for a number of years becomes a resident and brings his life's earnings, he will not be taxed.

Shri Morarji Desai: They are not taxed.

Shri G. P. Kapadia: That is a matter of administrative action.

Shri Morarji Desai: It is all clear. I want to know yet a case where he is taxed.

Shri V. V. Chari: In the present Bill there is no provision at all or taxing remittances. That is the way in which the object is sought to be achieved.

Shri Morarji Desai: The moment you put it on the statute-book, it will also attract legal action by the other people there. I do not know how you can do it.

Shri Narendrabhai Nathwani: Is it the suggestion that the resident who brings moneys from abroad should not pay income-tax even on foreign income

earned during the period he was a resident here?

Shri Morarji Desai: That is the suggestion which is being made by the people. I have had important discussions with them. They want profit both ways. I will not allow that.

Shri C. D. Pande: There are some Indians who have gone abroad, who are not likely to come back at all. They have earned fortunes. If some Indian wants to come back after ten years stay abroad, having earned some money, you ask him for the accounts for the 10 years?

Shri Morarji Desai: We do not. He comes with all his money here, and we take it as his capital. We do not take it as his income at all. What they want is that from the next year onwards, they should still continue to be partners in the foreign firms, and if they receive income, that also must not be taxed. There are two or three things. They want to bring machinery or gold here. I cannot allow that.

Shri V. V. Mariwala: Is there any limit to their bringing their earnings into this country?

Shri Morarji Desai: No limit. He may bring any amount of money. Nobody is going to ask from where he has brought it. We were formerly asking people coming with foreign currency. I say: let him bring it and deposit here, why bother about it? If he brings rupees, I will not allow him. That is all.

Shri G. P. Kapadia: In view of the clarification given by the hon. Minister, I do not think that any further discussion should ensue from our side.

Regarding the other suggestion of the overseas people wanting exemption in respect of income which they earn even after becoming residents here, the Chamber is not at all for it. It cannot be justified and it would be a discrimination against our own nations resident in this country.

Shri Narendrabhai Nathwani: It is not the desire of the Indians abroad that while they become residents here, they should not pay tax over their foreign income there. They are at present exercised over the deletion of that while they become residents here, residents but not ordinary residents.

Shri Morarji Desai: If we find that it acts adversely against them, we can consider it, it is a matter which requires very careful consideration.

Shri Narendrabhai Nathwani: I want to dispel this impression that they do not want to pay income tax even after they become residents here.

Shri Morarji Desai: I had discussions with them personally in Hong Kong and in London and I have been told that it is the position.

Shri Narendrabhai Nathwani: So far as I have been able to gather from the letters received by me, this is the only aspect.

Shri Morarji Desai: There is no difficulty about that. Formerly, the Reserve Bank was asking them about the details of their capital. They found it difficult and I can understand it. We have said that it should not be done. But you cannot make here a statutory provision about it because that will immediately attract action by those Governments against them.

Shri G. P. Kapadia: By way of clarification, I may say this. A non resident becomes a resident but is not able to bring all his income. If he brings in any moneys later, which are unrelated to the earning of income they should not be taxed.

Shri Morarji Desai: How can I make a distinction. If he satisfies me that all these moneys were his past accumulations, I am prepared to consider it. I cannot do it automatically. The position should be clear. A man in another country has earned money and accumulated money. But he has some outstandings which he could not collect when he comes over here. Then those outstandings are collected and they are brought in. I am prepared to exempt him. But he must prove that it is so. Otherwise, he will go on having an income and will say that it is all his past accumulations.

Shri M. A. Master: Your clarification, Sir, is this. Immediately he becomes a resident, he is liable to tax. But if the proves satisfactorily that the money that he brings at a subsequent date was not earned and is not related to this period, you are quite prepared to consider it.

Shri Morarji Desai: Certainly. But there too it would not be advisable to put it on the statute.

Shri G. P. Kapadia: I will consider the consequential clause relating to clause 6 in the Bill about the overseas residents when we are on this issue. The period mentioned here is thirty days while the taxation enquiry commission had recommended a period of 90 days. This period may be suitably increased.

Shri Morarji Desai: You are referring to the thirty days in sub-clause (1) (c).

Shri G. P. Kapadia: There is another suggestion, if you will kindly bear with me. There is an ancestral house which they cannot sell off. Because of that, should he be deemed to be resident? It will be tantamount to maintaining a dwelling house. Should he sell it off? This is some hardship which merits consideration at your hands. These are two issues relating to the case of overseas residents.

Shri Morarji Desai :They will be considered.

Shri G. P. Kapadia: May I invite your attention to pages 10 and 11 of our memorandum relating to exports and taxation of non residents through residents? Simultaneously, I may consider pages 14 and 15 relating to the assessment of non residents. In respect of the assessment of the non residents the positive sections of the Act are of such wide nature. Ti give an example of an extreme nature, if I import a dozen fountain pens from abroad from a manufacturer, I can be treated as an agent. That is the logical meaning of the provision. But there are a number of circulars which the Central Board of Revenue have issued regarding the assessment of profits in respect of the exjort activities as well as import activities. A number of cases of hardship are also brought to the notice of the Central Board of Revenue and they are dealt with from time to time. But there is a general complaint that without having a statutory provision in the Act itself about assessability in the case of persons who are to be treated as agents of non residents, a real difficulty survives and that is a great handicap to the Indian national because what happens is this. According to the terms of the agreement between the non resident and the resident, the liability for tax, if any, is on the resident and if any proceedings are started against an agent who is treated as such under the Act, the position of the resident becomes so difficult that at times he may make a loss as a result of these provisions. The principal is a non resident. Therefore, the Chamber has suggested that in respect of the non-resident we should either have the formula which obtains in sections 368 to 375 of the UK legislation where the transaction between a principle and a principal is exeluded and unless a person acts as a defacto agent of a foreign principal and acts for him and on his behalf, he will not be taxed. These suggestions have been continuously made right rom 1938 and inspite of these representations from practically all sources, the matter has been dealt with every time by Board circulars. The concrete formula of the Camber, as suggested with regard to the assesment on non-residents, appears on pages 14-15, and the whole formula within inverted commes appears on page 15. It runs as follaws:

> "If the dealings between a non-resident and a resident are on the basis of transactions between principal to principal, irrespective of the mode or place of payment, such cases shall not be brought within the purview of sections 42 and 43 and shall not be construed as amounting to business connection unless the resident has the legal authority and as a result thereof actually exercises such

authority to enter into contracts on behalf of non-residents or maintains stock of goods on behalf of the non-residents with a view to enable him to execute orders from the customers . . . . "

Then we have excluded the cases of brokers which is so according to the present legislation and then in the end we say:

"The liability of an agent for taxes due by the non-resident principal should be confined to the amount of tax actually due from the non-resident. Further, the amount as paid by the agent by way of tax on behalf of the principal should be allowed as a business expense in the assessment of the agent."

This suggestion has been made with a view to provide a remedy for the reason that the Supreme Court judgement says that if there is a bad debt arising as a result of the payment of tax on behalf of non-residents, it is not allowable. It would be a real hardship, and in the opinion of the Chamber if the principles which are enunicated in the Board's circulars are accepted, there should be no reason why they should not be embodied in a suitable form in the statute itself, because that will completely abolish all sorts of controversy and difficulties.

Shri Morarji Desai: What about the collusion?

Shri G. P. Kapadia: I do not think there could be any sort of collusion between a resident and a non-resident.

Shri Morarji Desai: I think there is far more collusion between resident and non-resident in this country than between resident and resident. The less I say about it, the better.

Shri Amjad Ali: This was canvassed before the Tyagi Committee and rejected.

Shri Morarji Desai: It was not considered by the Tyagi Committee, and that is why he says that the note should be accepted.

Shri G. P. Kapadia: The Chamber mentions that this is not the view given in my individual capacity, but that it is the Chamber which represents the views.

Shri Morarji Desai: The question is whether the view, by itself, is weighty or not: not from where it comes.

Shri G. P. Kapadia: This view has accepted in foreign countries. In the United States and in the United Kingdom, these principles have been accpeted.

Shri Morarji Desai: We need not compare ourselves with the others. It is not going to be a very happy thing. Let us stand on our own.

Shri G. P. Kapadia: The next point is regarding the question of re-opening an assessment and our observations are contained at page 16 of the memorandum. According to the provisions of Section 209 (4)(a) of the Companies Act, books of account have to be kept only for eight years.

Shri V. T. Dehejia: Is there anything in the Companies Act which says that these records cannot be kept longer?

Shri G. P. Kapadia: When the legislation asks for keeping the books, and imposes a statutory requirement, does it not follow by implication that a person who does not keep accounts for more than eight years will be under no disability and no penalty?

Shri Morarji Desai: No penalty for the honest man. But any dishonest man must suffer and undergo penalty.

Shri G. P. Kapadia: The point raised by the Chamber is that a provision like this for an indefinite re-opening, will result in a greater hardship to the honest assessees who might have dealt with such persons who might be the evaders and because the books are not available their case is also likely to be reopened.

Shri Morarji Desai: That is why we put a liability on every citizen not

to deal with evaders and dishonest people. Then only we will become all right. Not that you do not know it; you know it very well, more than anybody else.

Shri G. P. Kapadia: I could not know, because my clientele are of a very different type.

Shri Morarji Desai: No client is above it. One cannot make a sweeping statement like that!

Shri G. P. Kapadia: Well, I for my part, would not make a statement as the Hon. Minister makes it.

Shri C. D. Pande: The hon. Finance Minister said that in respect of those who keep accounts, their books can be re-opened even after eight years. But there are a large number of people who are salary-earners and who have no books and who have no accounts. We should make some sort of allowance for that aspect of the matter.

Shri Morarji Desai: How many people are they?

Shri Amjad Ali: In the case of salary-earners, there is no difficulty.

Shri Morarji Desai: At present, you can open at any time. Even in 1970, you can open for 30 years. The present provision restricts it only to 16 years at any time, and that too if the income is more than a particular amount.

Shri C. D. Pande: Before the war, it was four years. After the war, it was extended. Otherwise, 16 years is an abnormal thing. It is too long a period. Even for ordinary commercial people like shopkeepers. it becomes almost impossible to keep books for 16 years. It should be eight years only.

Shri Morarji Desai: Well, those who want to keep it like that will keep. Otherwise, they need not keep it.

Shri M. A. Master: I want to make one submission. I fully appreciate what the hon. Minister has said in regard to collusion. But what the Chamber has in view is, there are also honest men and so we believe that they require protection.

Shrimati Tarkeshwari Sinha: The department must have evidence to reopen any case.

Shri Morarji Desai: All honest men must be given protection. I am prepared to make that categorical statement. I want to see a day in this country where everybody will be honest and Government will not suspect anybody.

Shri Amjad Ali: Let us know from them what kind of difficulty is visualised by them.

Shri M. A. Master: We have to deal with the world as it is, and we cannot expect the world to be different.

Shri Morarji Desai: I am trying to proceed in that direction and see that the Government should make a beginning. I do not say that the other men should make a beginning. I should make a beginning; we have already made a beginning in the matter, namely, incomes not exceeding Rs. 75,000, not being examined every year; we want to extend it further provided we are enabled to extend it. I would not like to challenge anybody's account; but I should not be made a fool for trusting a man!

Shri M. A. Master: If you pardon me for saying it, your position is, you are not looking to all the things. There are a number of people who are honest.

Shri Morarji Desai: Well, the income-tax officer has got to be protected. Will you trust an income-tax officer if he trusts every-body? You will then say, "No, there is something, hankey-pankey about it." The poor man is in a difficult position. It is very easy to have a go at Mr. Chari, but it is very difficult for him to defend himself. That is the position in which he is.

Shri G. P. Kapadia: I want to make another observation that the Direct Taxes Administration Enquiry Committee have not recommended changes of this nature at all. I will now proceed to the next issue.

Shri Morarji Desai: I would not like to go beyond what Parliament likes to. I cannot plead for a thing which I know Parliament does not support. Then they will suspect me!

Shri G. P. Kapadia: For smaller people, the total limit laid down is Rs. 1 lakh, and the assessment period is 16 years. That would cover even very small cases, because dividing Rs. 1 lakh by 16, it comes to about Rs. 6000 per year.

Shri C. D. Pande: Is it the sum total of all the 16 years together?

Shri V. T. Dehejia: Sum total of escaped income.

Shri G. P. Kapadia: The escaped income should be of the order of Rs. 1 lakh in the aggregate in a period of 16 years. Will it not rope in very small people?

Shri V. T. Dehejia: The period is 8 to 16 years.

Shri V. V. Chari: The present position is much worse; it is not 16 years but without limit of time as at present.

Chairman: What is your specific proposal?

Shri G. P. Kapadia: My specific proposal is, to keep out the cases of small people, the aggregate limit should be increased.

Shri Morarji Desai: By how much? I do not want one man to be harassed even if 100 people escape, but I do not want to be stupid. What is your suggestion? We will consider it.

Shri G. P. Kapadia: The aggregate may be of the order of Rs. 5 lakhs or the period may be reduced.

Shri Morarji Desai: It is the concealed income and not the total income.

Shri V. T. Dehejia: Clause 149(1)(iii) says, the period is 8 to 16 years.

Shri G. P. Kapadia: It says not more than 16 years. It can as well cover 16 years. I think there is a total misunderstanding in debating this clause. When the clause says it is to be more than 8 years and not more than 16 years, the whole period of 16 years has to be taken into consideration. There is no question of taking the difference between 8 and 16 years.

Shri V. T. Dehejia: The last line of the clause says "within the aforesaid period". So, 8 to 16 means it will apply to 9, 10, 11, 12, 13, 14, 15 and 16, but not to 1, 2, 3, 4, 5, 6, 7 and 8.

Shri G. P. Kapadia: That cannot be the interpretation. 1 to 8 are already included.

Shri Morarji Desai: If it is not clear, we will make it clear.

Shri Radhyeshyam Ramkumar Morarka: There seems to be some misunderstanding about this point. If Shri Dehejia is correct, it means, for the last eight years, you can reopen an assessment if in one year the escaped income is Rs. 50,000 or more. If you want to go up to 16 years, you can reopen only from the eighth year up to 16 years provided the aggregate escaped income in that period is Rs. 1 lakh. What happens in a case where the income escaped during the first 8 years is about Rs. 60,000 and in no year it is Rs. 50,000 and again during the period between 9 and 16 years, the escaped income is Rs. 40,000? The aggregate for the 16 years comes to Rs. 1 lakh, but it does not come under sub-clause (ii).

Shri Morarji Desai: We will give more thought to it and find out. There are two question. One is whether you want this re-opening or not. If the Select Committee does not want any reopening, it is a different matter.

Shri Amjad Ali: The Select Committee wants reopening.

Shri Morarji Desai: If reopening is to be made, under what conditions it should be made should be carefully considered by us and laid down, so that there is no harassment. We will consider it at that stage.

How do you come to the conclusion that the income invaded is Rs. 50,000 or more without examining the accounts? Is it only presumption or does it require proof before it is re-opened?

Shri V. T. Dehejia: The reasons have to be recorded.

Shri G. P. Kapadia: The only concrete suggestion the Chamber wants to make in this regard is this. As I said, the Direct Taxes Enquiry Committee has not recommended reopening. If there is going to be reopening . . .

Shri Morarji Desai: You can take it for granted that there is going to be reopening.

Shri G. P. Kapadia: Then the period which is too long may be suitably reduced or the income figure may be suitably increased. I would not specify the exact figure.

Shri Morarji Desai: The present period is indefinite. We are limiting it now. By how much it should be limited is a matter for the Select Committee to decide.

Shri Amjad Ali: Some drafting changes also should be made.

Shri V. T. Dehejia: Shri Kapadia said that the Direct Taxes Enquiry Committee has not recommended any change. But the present position is much worse.

Shri G. P. Kapadia: That is limited to the period 1939 and 1947.

Shri Morarji Desai: This is an improvement upon the present position. But Shri Kapadia wants further improvement. The Direct Taxes Enquiry Committee has not recommended any change. It means they do not want it to be made easier. It does not help you at all.

Shri V. T. Dehejia: In other countries like U.K., USA and Canada, there is no limit.

Shri G. P. Kapadia: In other countries, there is a clear distinction made between cases of fraud and cases which do not involve an element of fraud. There is no time-limit in respect of cases where a fraud could be proved, but in respect of cases where fraud could not be proved, the period is not more than six years.

Shri Morarji Desai: That also is an assumption. The fraud has to be proved after examination.

Shri G. P. Kapadia: For that, if I may remind the members of the Committee, old section 34 said that there should be definite information before the assessing authorities for reopening a matter.

The next item relates to beneficial and real income. In this connection, may I invite your attention to the observations made by the Income-tax Investigation Commission?

Shri Morarji Desai: How is the real owner to be found out? It has to be attached to the property.

Shri G. P. Kapadia: The Act may take the power to find out the real owner.

Shri Morarji Desai: You are making it more cumbersome.

Shri G. P. Kapadia: Not at all. Kindly refer to paragraph 185 of the Report of the Income-tax Investigation Commission. Ultimately they recommend: "The shareholder is the person beneficially entitled for the time being for the share or dividend payable in respect thereof". According to the Income-tax Act there are provisions even for the directors and others to disclose the beneficial holdings and also *de facto* holdings in respect of which there would be beneficial holdings would have to be stated. It is only a side issue that has been considered by the Income-tax Investigation Commission. Is it the real income of a person that is

attempted to be taxed or is it something else that is to be taxed under the Income-tax Act? Is the Income-tax Act a taxing statute on notional income or is it a taxing statute on beneficial and real income of a person?

Shri Morarji Desai: The attempt is to tax the income received by a person, neither notional nor beneficial nor anything else. We do not want to tax any income which is not received by a person.

Shri G. P. Kapadia: If that principle is accepted, as it has been in respect of a number of cases, recently some High Courts have decided and that principle has been enunciated by the Privy Council in the Bejoy Singh Badhuria's case where the dictum laid down is that it is what reaches the individual as income that is actually intended to be charged. There are a number of cases where a notional charge has been made.

Shri Morarji Desai: Courts do not lay down the principles, they only interpret the law that is made. That is not relevant in framing an Act. What is relevant here is that we have to find out the language which conveys our intention correctly and which is not liable to several kinds of interpretation. We should also try to see what our intention is in levying a particular tax. These two things have to be clarified. High Courts only interpret what is said. They cannot say that we cannot impose a tax in a particular way. They can say if it is against the Constitution, but then the Constitution can be amended. You cannot say that the decision of a High Court is binding on Government for all future purposes; it is binding for all past purposes. After all, Parliament is supreme, not the High Courts.

Shri G. P. Kapadia: Is it the intention to tax what does not reach a person as income?

Shri V. V. Chari: Under certain circumstances.

Shri G. P. Kapadia: What are those circumstances?

If it does not reach him, how can you change?

Shri V. V. Chari: In legal avoidance cases we have to.

Shri Morarji Desai: We should provide for that.

Shri V. V. Chari: Shri Kapadia does not say to which particular provision he is referring. He is saying in a general way.

Shri G. P. Kapadia: The dividend income continues to be taxed in the hands of the shareholders because the purchasers would not have transferred the shares to their names.

Shri Morarji Desai: How do we know?

Shri G. P. Kapadia: Is it the fault of the seller that the purchaser does not transfer it in his name?

Shri Morarji Desai: It is the business of the registered shareholders to pay the tax. If the registered shareholders do not want to pay the tax they must see that the shares are transferred in proper time to the persons they want to transfer.

Shri G. P. Kapadia: They have no control over tranfers. They simply sell and deliver the shares. It is for the purchasers to get them transferred.

Shri Radheshyam Ramkumar Morarka: Before they part with the dividend they can make it a condition that the purchasers must have the shares transferred in their names.

Shri Morarji Desai: The dividend is received by the registered shareholders. They need not part with it without deducting the income-tax. How am I to locate the man? I am to locate the actual man and not a person who is in somebody's imagination. It is the actual income that is being taxed.

Shri G. P. Kapadia: An actual example is dealt with on page 18, and

that relates to assessment relating to ownership flats. Here, the real income or use of the flats in question is within the entire purview of the person who has bought the flat and it does not belong to the company. The company has parted with it and it has taken valuable consideration for it. In a number of cases assessments have been made both on the company which acquired the initial lease in its name and also every flat owner—under section 9 on the company and every flat owner under section 10 or 12. That is a clear case of double taxation.

Shri Morarji Desai: Send me those cases, I will set them right.

Shri G. P. Kapadia: I feel grateful to you for that. But the concrete suggestion of the Chamber would be that in respect of ownership flats, if they have been acquired by a company if not by a co-operative society—the statute exempts a co-operative society—

Shri Morarji Desai: We cannot consider a company on those lines. You send me the cases and I will set them right immediately. I do not think there are cases like that. It is obviously a wrong thing to charge the company for the whole rent and unless also charge the individual owners. How can it be rectified by any provision in the law?

Shri G. P. Kapadia: The department requires that there should be regular transfers executed, under the Transfer of Property Act, by the company to the flat holders. They are all done on leases. The main lease remains with the company and the sub-leases are executed on the same terms.

Shri V. T. Dehejia: How do you call them ownership flats?

Shri G. P. Kapadia: Because the right to use the flat or let it out rests with them. The landlord himself is a lessee, he is not a proprietor. The owner will be the Government.

Shri Morarji Desai: Then the landlord can transfer the lease.

Shri G. P. Kapadia: The lease transfers have been made. But they have not been recognized. That is to say, the sub-leases have not been recognized.

Shri Radheshyam Ramkumar Morarka: The lease cannot be transferred to one person when there are 50 persons in the building. A part of it can be transferred.

Shri G. P. Kapadia: A part of it is transferred.

Shri Morarji Desai: Then it is a matter of rectification; not a question of law.

Shri G. P. Kapadia: I know at least three such cases.

Shri Morarji Desai: Send them on to me. I will look into them carefully.

Shri G. P. Kapadia: With regard to recovery proceedings, on page 19 we have stated that the financial implications may be considered. They will, of course, be considered by Government. We have nothing to add.

Then I come to the question of bar on double taxation, pages 19-20. I am referring to a general bar to double taxation. We want a positive provision in the Act to say that there will not be double taxation in respect of any income. This particular issue emanated as early as 1938 when the late Shri Bhulabhai Desai submitted a concrete proposal to have a section in the Income-tax Act itself to prevent double taxation.

Shri Morarji Desai: Because he said it, it does not become law. He was also a large income-tax payer. When the interests are conflicting, one cannot take, or be guided by, the views of one party alone. If a company is taxed and its individual member is taxed, that is double taxation and it should not be there. But if you bring in many things, double taxation cannot be avoided. I am levy-

lng excise duty on raw materials and then on finished products. It is double taxation. Sometimes there is even treble taxation.

Shri G. P. Kapadia: I am quoting a very limited issue before the Select Committee and I am requesting for a positive provision on the lines of similar provision in the United Kingdom, which reads as under. It may merit your attention. The section itself indicates the position. When, on the one hand, an attempt is made to re-open assessments for an indefinite period, for a very long period, as a counterpart of it, there must be protection for the tax-payer, by having statutory provision for a bar against double taxation. There should be no objection to having such a provision in the statute book. Section 65 of the UK Income Tax Act reads as follows:—

"(a) A person who, either on his own account, or on behalf of another person, has been assessed to tax, and is by any error or mistake again assessed for the same year for the same cause and on the same account, may apply to the General Commissioners, acting for the division in which the erroneous assessment was made, for relief, and the Said Commissioners on proof to their satisfaction of the double assessment, shall cause the said assessment, or so much thereof as constitutes a double assessment, to be vacated.

(2) If it appears to the satisfaction of the Commissioners of Inland Revenue that a person has been assessed more than once for the same cause and for the same year, they shall direct the whole, or such part of any assessment as appears to be an overcharge to be vacated, and thereupon the same shall be vacated accordingly.

(3) If it is proved to the satisfaction of the Commissioners of Inland Revenue that any such double assessment as aforesaid has been made, and that payment has been made on both assessments, they shall order the amount of the over payment to be repaid to the applicant."

Shri Morarji Desai: Have you any one case in mind?

Shri G. P. Kapadia: In the past there have been cases where because they did not appeal in time, they were time-barred. There one has no remedy.

Shri Morarji Desai: The question of time bar should not be brought in here. I do not want double taxation and I do not think Government should plead limitation in this matter. After all, Government can recover their money at any time, because there is no limitation for Government.

Shri G. P. Kapadia: If the principle is correct, what is the harm in giving limited relief of this nature by having a positive provision in the Income-tax Act?

Shri Morarji Desai: If you send us a concrete case between now and the next few months, we will consider it.

Shri G. P. Kapadia: I am very happy to hear it. The size of our country being what it is, the necessity for such a clause need not be over-emphasized. In England they have already incorporated such a provision.

Shri Morarji Desai: We know how assessments are made in England. They are not contested as much as you contest them here. They do it summarily. Appeal is also disposed of summarily. Therefore, they have provided for this. We do not do that here.

Shri G. P. Kapadia: With great respect, I may say that it applies both to the tax-payer and the tax-gatherer.

Shri Morarji Desai: I did not say that it applies only to one. I never said that.

Shri M. A. Master: If greater indulgence is shown to the assessees, it will make a lot of difference.

Shri Morarji Desai: What is the indulgence shown to the tax-gatherer

Shri M. A. Master: If I have to pay some income-tax in England and if I carry my form, I will receive all possible help from the authorities. If I could get the same amount of help in my country, it will make a lot of difference.

Shri Morarji Desai: Here also we should give immediate relief. Here also we are trying to see that the references are disposed of quickly and nothing is kept pending for more than three years. In most of the cases we have been doing that.

Shri G. P. Kapadia: The next issue is double taxation on registered firms, which has been commented upon on page 20. The Law Commission have recommended that registered firms should not be taxed separately. If the extensive observations which I have made earlier about the automatic registration of firms is accepted by the Select Committee, then all non-registered firms would automatically disappear. In this context, we fully endorse the views of the Law Commission.

Then, apparent over-assessment has been referred to on page 20.

Shri Morarji Desai: How is it double-taxation?

Shri G. P. Kapadia: When two partners constitute a firm, that firm as such is not a legal entity.

Shri Morarji Desai: Why should it not be?

Shri G. P. Kapadia: That is the present law.

Shri Morarji Desai: Then we should change the law. I do not want such a sort of law. I do not know why it should be so. Joint firm income should be taxed at the higher rate.

Shri Radheshyam Ramkumar Morarka: In the case of registered firms, for income above Rs. 40,000 they have to pay about two annas in the rupee.

Shri V. V. Chari: Because they get the benefits of registration, as compared with other businessmen.

Shri G. P. Kapadia: There is no question of benefit. This income is of the partners and should be taxed in their hands.

Shri Morarji Desai: When was this tax imposed?

Shri G. P. Kapadia: It was introduced in the 1957 Budget. You may kindly consider it.

The next point is about apparent over-assessment. Here I am not discussing the question of double taxation. Suppose, some over-assessment is found out, either through a mistake or through an oversight an item of income which was not taxable was accounted for wrongly. Then for such a case we suggest that a positive provision be made on the lines of section 66 of the UK Income-tax Act.

Shri V. T. Dehejia: We have a provision.

Shri G. P. Kapadia: We do not have it.

Shri Morarji Desai: Over-assessment should be set right. My instructions to the officials now are that they should tell the assessees if something is wrongly put. They must take it out.

Shri G. P. Kapadia: For want of a provision we have no remedy now.

Shri Morarji Desai: The Income-tax Officers' business is not only to find out the deficiencies but that also and if the assessees get their forms filled up by the Income-tax Officers and not by the experts, this could be more easily done. But they want to do the other things.

Shri G. P. Kapadia: Expert is a designation of a different nature. We do not claim to be experts.

Shri V. T. Dehejia: If you will refer to clauses 154 and 265, you will find that both of them provide for correcting the mistakes.

Shri G. P. Kapadia: That is a counterpart of the existing section 35. It relates to a mistake apparent from record. It does not embrace an apparent over-assessment or inclusion of a wrong item of income.

Shri Morarji Desai: We can word that section like this.

Shri G. P. Kapadia: The Select Committee may kindly take into consideration the phraseology of section 66 of the UK Act.

Coming to gratuity payments, there is a bit of discrimination in favour of the Government employees.

Shri Morarji Desai: This is a matter which is being considered very carefully. That is all that I can say.

Shri G. P. Kapadia: Then I will not comment upon it.

Shri Morarji Desai: It is difficult to say beyond that because I have not yet come to a conclusion.

Shri G. P. Kapadia: We do not want indiscriminate relief. That may be on the same basis. A ceiling may be laid according to the Government rules.

Shri Morarji Desai: It is not exactly discrimination. Nobody should escape this. Therefore this has got to be considered very carefully.

Shri G. P. Kapadia: You may put a ceiling according to Government rules and that ceiling may be allowed and nothing more.

I will then pass on to the next item about the Appellate Assistant Commissioners being put under the Minister. According to the hon. Minister the question may not come within the purview of the Committee, but if you permit me.....

Shri Morarji Desai: I did not say that this does not come within the purview of the Committee. I said that my mind is made up about this. When I say 'my mind' it means that a Cabinet decision has been taken already. It is not strictly my mind, because if it is my mind the Cabinet can set it aside. It is a matter which has been examined in all its aspects. The Law Commission has said certain things about this and then this thing or that thing has said about it. All that was put before the Cabinet and after that the Cabinet has come to a decision.

Shri Kapadia: I would rather leave it then. It is no use taking the time of the Committee over that.

On pages 22 and 23 we have made a specific suggestion about a statutory provision for the passing of an order and copies being sent to the assessees within thirty days.

Shri Morarji Desai: I think this ought to be done. Why should this not be done? Why not make it statutory?

Shri V. V. Chari: Why do you want a statutory provision?

Shri G. P. Kapadia: For the reasons stated in the memorandum. Orders are passed even months after the demand is made. We want to put a stop to that.

Shri Morarji Desai: Why should it not be made statutory?

Shri V. V. Chari: Suppose, the case goes to the High Court or to the Supreme Court. Then, for this technical thing that we did not give the copy of the assessment order within thirty days, the whole proceedings will be declared void.

Shri Morarji Desai: Then I will sack the Income-Tax Officer.

Shri V. V. Chari: But meanwhile Government revenue may be lost.

Shri Morarji Desai: Today they do not mind if time is taken. They give an explanation saying that this could not be done or that could not be done.

Shri V. V. Chari: There is a danger to the revenue of the State.

Shri Morarji Desai: There is no danger to that. The danger is only to the officer concerned.

Shri G. P. Kapadia: How does he arrive at the demand without passing an assessment order?

Shri Morarji Desai: Why should he not give it within 15 days or 30 days, I do not know?

Shri V. T. Dehejia: Here the thirty days mean thirty days from the date of last hearing.

Shri Morarji Desai: Thirty days is not the criterion. The point is that there must be a limit within which this should be done. There should be a statutory limit. What that limit should be we should carefully consider. We do not decide that today. But they should be pinned down.

Shri Amjad Ali: Are you having difficulties about copies?

Shri Morarji Desai: Why should there be any difficulty about copies? Is not the assessee entitled to receive an order? On what basis has he to pay? He has to pay on the basis of that order. Within what period that order should be given we should consider carefully.

Shri G. P. Kapadia: Then regarding definitions, I have a general submission to make. The definitions relating to business have now been put under clause 43. I would request that they be transposed to clause 2 because all definitions must appear at one place.

Shri Morarji Desai: That may be considered.

Shri G. P. Kapadia: We have requested for non-taxation of bonus shares issued to preference shareholders as preference shares.

Shri Morarji Desai: Preference shareholders are not entitled to anything more than what is prescribed When they get the bonus they must pay.

Shri G. P. Kapadia: The Taxation Enquiry Committee has very strongly opined that there is no increase.....

Shri V. V. Chari: About ordinary bonus shares and not preference bonus shares.

Shri G. P. Kapadia: They do not make any distinction at that time between a preference shareholder and an ordinary shareholder.

Shri Morarji Desai: The only distinction is whether the person who is taxed is capable of paying it not only during that year but from year to year. I have three criteria, namely, that the person should be able to pay, that it should increase every year and that the person concerned must be in a better position to pay every year. That is my criterion. Otherwise what is justified? Nothing is justified.

Shri G. P. Kapadia: Possibly in your view the preference shareholder is a dignified debenture holder.

Shri Morarji Desai: Then let him be a debenture holder.

Shri G. P. Kapadia: That is why you want to tax him. Then let me go to the next point regarding withdrawal of the full exemption relating to charity trusts. It has been commented upon on pages 24 to 27.

Shri Morarji Desai: There are two points. One is about 25 per cent. What is the other?

Shri G. P. Kapadia: One is about 25 per cent and the other relates to the enabling clause for making the charity available to the relatives also or to the members of the family also.

Shri Morarji Desai: Then it is not charity. On that score I do not think it can be called charity.

Shri G. P. Kapadia: Even the Supreme Court has held that if it is an enabling clause only.....

Shri Morarji Desai: The present law enables that. Therefore, we are changing it. That is how things are escaping.

Shri G. P. Kapadia: Would there be any objection to not to disturb the position relating to the trust already executed.....

Shri Morarji Desai: There also no such thing can be done. All trusts must be covered.

Shri G. P. Kapadia: I am adding a proviso here: provided they regularise the provisions, delete the relevant clauses so that they could be effective at all times.

Shri Morarji Desai: Let them do it. Let them do so before this Bill is passed. Then the matter gets finished.

There is one thing which I want to understand. There is a little confusion in my mind which I want to clarify. Is it not intended by this clause to give exemption to a charitable trust which earns its income from the activities which relate to the charitable purposes as specified in the Income Tax Act? If the activity from which it earns its income is not related to the purpose of the charity, then it is wrong. Then, what is the meaning of the charity? I do not understand that. Why should that be so? That is entirely wrong. If all the companies turn into charitable trusts, I shall be happy.

Shri V. V. Chari: If only some companies turn into charitable trusts, then there will be unhealthy competition.

Shri C. D. Pande: The trustee should have no connection with the management of the trust.

Shri Morarji Desai: That should be provided. The trustee or the beneficiary or the person who has made the trust should have nothing to do with the management.

Shri C. D. Pande: They should not draw any advantage out of it.

Shri Morarji Desai: You could put a Government nominee there. We should safeguard against the misuse. When the trust is exempted from income-tax, they can make all sorts of payments, salaries and other things. They would escape everything. That must not happen. That we should safeguard. We must safeguard its misuse because it can be properly misused.

Shri G. P. Kapadia: There is another side-issue. In considering the criteria for earning business, if it gets advertisements for a brochure or holds a promise to collect funds then that would be treated as business. Actually, cases have occurred when proceedings were started.

Shri Morarji Desai: Whatever income it gets for its charitable purposes ought to be exempted. But the charitable purposes must be such as are specified in the Income Tax Act.

Shri Amjad Ali: Clause 11(1) (i) (a) reads:

> "income derived from property held under trust wholly for charitable or religious purpose....."

That income you are going to exempt. But, if a part of it is not for charitable or religious purposes, then you are not going to exempt it.

Shri Morarji Desai: Then, it will not be exempted.

Shri Amjad Ali: Why punish the 'whole' for the sake of the 'part'.

Shri Morarji Desai: Because it is not for charitable or religious purposes. Let them take out that part from it. Why should they benefit at the cost of charity?

Shri Amjad Ali: We are going to penalise the 'whole' for the sake of the 'part'.

Shri Morarji Desai: There is the obvious remedy. Let them make a separate trust. I do not see why the trust should be mixed up. Anyway, we will consider at that stage.

Shri Amjad Ali: There are two clauses 11 and 12.

Shri Morarji Desai: We will consider it.

Please do not take it what I have said now is going to be accepted.

Shri G. P. Kapadia: No, no. This is only a discussion.

Shri Morarji Desai: My view is just that of a Member of this Committee. Nothing more than that.

Shri G. P. Kapadia: Now, about accumulations, I would like to say this. If a part of the income is not allowed to be accumulated, bigger schemes cannot be evolved. There are hospitals and other institutions to be built and they cannot be built if every year's income is spent away. Bombay has made a start by having the Bombay Public Trusts Act.

Shri Morarji Desai: I know that. That is a different thing. We can say here that trusts which are allowed to accummulate their income for a specific purpose will not be debarred.

Shri G. P. Kapadia: If you permit me, may I read a relevant portion of that Act.

> "If upon an application made to him or otherwise the Charity Commissioner is of opinion that—
>
> (a) the original object for which the public trust was created has failed,
>
> (b) the income or any surplus balance of any public trust has not been utilised or not likely to be utilised,
>
> (c) in the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object.
>
> the Charity Commissioner shall require the trustees to apply within the prescribed time for directions to the court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situated."

We could have a legislation of this nature.

Shri Morarji Desai: You don't want this to be incorporated here? We are trying to do it. But, that is about only Hindu Endowments, not for all.

Shri G. P. Kapadia: I was suggesting an all-India statute for public trusts of this nature so that it will be applicable to the whole of India, instead of the taxing department doing it.

Shri Morarji Desai: That is different. Here all those public trusts are not free from taxation. Religious trusts are also public trusts. But they are not free from taxation. Therefore, it has its own place.

Shri Amjad Ali: On page 21, sub-clause (3) it is stated that 'any income of a trust for charitable or religious purposes or of a religious or charitable institution, derived from voluntary contributions and applicable solely to charitable or religious purposes, shall not be included in the total income....'. What is this voluntary contribution?

Shri G. P. Kapadia: Voluntary contribution is something which we give by way of help to the trust or an institution as a donation ourselves as citizens.

Shri Amjad Ali: That will be in accumulation also?

Shri Morarji Desai: That can be accumulated. It will not come in the total income. It has a regular business and a regular income. For instance, there are shares and all that.

Shri Amjad Ali: But in the explanation you say that property does not include business. This is on page 20.

Shri Morarji Desai: That is because we are considering the other thing.

Shri G. P. Kapadia: The general proposition which hon. Minister has mentioned will cover all these things.

Shri Morarji Desai: One view is that there should be no charity trust with any business which is outside its activity. Then it will mean that the trust can be properly done if only a lot of money is given to that, or, if there are only shares without going into business.

Shri Amjad Ali: Then how can they maintain themselves?

Shri Morarji Desai: Suppose there is a company. They run a mill. Shares will be held. The dividends will be exempted. But the profit will not be exempted.

Shri Amjad Ali: I will take you to another instance.

Shri Morarji Desai: There is a second view also. I personally feel that both should be exempted.

Shri Amjad Ali: Suppose a trust ic created out of a *Davakhana*. Unless they go for selling medicines or go in for business or for manufacture of medicines.....

Shri Morarji Desai: But it is not charitable.

Shri Amjad Ali: It is charitable all the same. But it is not exempted.

Shri Morarji Desai: Therefore I have given the other view. We have to consider all these.

Shri G. P. Kapadia: May I proceed? Regarding allowance for speculation losses, may I draw your attention to pages 28 and 29 of our memorandum? On page 29, in the closing part we have stated as follows:

> "The objective of making a distinction between speculative and other transactions, when the then Finance Minister introduced the Amending Bill, it was stated, was to check the buying and selling of business losses and so long as the transactions in question do not pertain to or have any element of buying and selling of losses, there is no reason why they should be artificially brought within the purview of disallowance and an artificial liability established on the assessee".

The point I am raising is this: Supposing a person is having a mill and he purchases raw-material. The Department is satisfied that they are hedging transactions in respect of the commodity that is going to be purchased. In spite of that, because of the particular decision of the Tribunal, the Department will rule: "No, it is a speculative transaction...."

Shri Morarji Desai: In spite of the officer being satisfied for various reasons, the Tribunal can be satisfied that it is speculative.

Shri G. P. Kapadia: The Tribunal has taken a technical view of the wording of the section.

Shri Morarji Desai: When there is speculation they pocket the profit. There is no way of finding it out. When losses take place, they are always shown. I know of some cases intimately.

Shri G. P. Kapadia: I have no sympathy with those cases. I am talking of genuine hedging transactions.

Shri Morarji Desai: They will always be considered.

Shri G. P. Kapadia: The tribunal consider that because of the phraseology of the section they cannot come within the purview of allowance by way of hedging transactions. The existing Act contains differentiation between stocks and shares and other commodities. For stocks and shares they say "in respect of stocks held"; but the words "stocks held" do not figure in respect of other commodities. I want the Committee to make the two categories identical and amend the Act suitably, so that hedge transactions

made in respect of other commodities are also permissible. Then the difficulty would disappear.

Really speaking, the objective you have in mind could be achieved by having sections corresponding to sections 10 and 10A of the EPT Act regarding artificial transactions and transactions to evade EPT. Why tax people who are having *bona fide* transactions of a hedging nature? But because of the phraseology of the section, the tribunal can rope them in and the assessee has no remedy.

Shri Morarji Desai: I feel that all forward marketing should go. It is so much abused everywhere. I want to stop this abuse. Yet I am hesitating to do it because it will create great difficulties for several honest persons. But it is so much abused. It is so much responsible for soaring prices in this country, especially in oil.

Shri G. P. Kapadia: The next item is about development rebate (pages 30-32 of the memorandum). There is one issue to which I would invite the attention of the Committee. I shall not be able to comment on all the aspects, but the limited point is this that the Direct Taxes Administration Enquiry Committee, in paragraph 3.28, has clearly expressed the opinion that the development rebate should be related to the year of bringing the asset into use and not the year of installation. But even in drafting the section again the word "installed" has been used. I want that to be clarified by an amendment of the Bill that the development rebate should be related to the year of bringing the asset into use.

Shri Morarji Desai: Is it not used immediately it is installed?

Shri G. P. Kapadia: No, because the factory takes a long time to be installed, even two or three years.

Shri Morarji Desai: But when it is installed, "installed" means finally finished.

Shri G. P. Kapadia: That is not the legal interpretation.

Shri Morarji Desai: If it is said "being installed" I can understand.

Shri C. D. Pande: What you mean is, put into use.

Shri G. P. Kapadia: Yes.

Shri Morarji Desai: We will consider it.

Shri G. P. Kapadia: Otherwise it creates complications.

Shri Morarji Desai: We want to do it where it can be done.

Shri V. T. Dehejia: It has already been done by a circular.

Shri G. P. Kapadia: By a circular.

Shri Morarji Desai: We will consider it—not merely by a circular.

Shri G. P. Kapadia: The next is relating to the introduction of the word "necessarily" in the context of allowing expenses—clauses 37 and 57 of the Bill, pp. 32 and 33 of the memorandum.

Shri Morarji Desai: What do you want there?

Shri G. P. Kapadia: Here, all along the test has been "wholly and exclusively". Now the word "necessarily" is being introduced with the result that there will be a complete circumscribing of the expenditure, and I must show that it was unavoidable and that I had no alternative but to incur the expenditure. That sort of rigidity would create a very difficult position.

Shri Morarji Desai: Otherwise, even expenditure on pilgrimages is included there.

Shri G. P. Kapadia: Why should it not be penalised?

Shri Morarji Desai: It is not included as expenditure on pilgrimages.

Shri G. P. Kapadia: In that case there is a fraud on revenue.

Shri Morarji Desai: That is why this has got to be done.

Shri V. T. Dehejia: How would it be a fraud? I would like to understand from the other side of the case.

Shri G. P. Kapadia: The question is, if he puts pilgrimage expenses as "incurred expenses" it is playing a fraud.

Shri Morarji Desai: Would anybody put it as pilgrimage expenditure?

Shri G. P. Kapadia: Does it become an incurred expenditure if it is put in the books? He has to show that he has incurred it.

Shri Morarji Desai: He shows it under some other item.

Shri G. P. Kapadia: It has to be proved that he has spent it for that purpose.

Shrimati Tarkeshwari Sinha: He might say that he did it for promoting the business. How can you prove it? Suppose he says, "I have gone to promote the business."

Shri G. P. Kapadia: Promoting business is altogether another test. Then you have to find out whether he went for that purpose or on pilgrimage. I do not mind your enquiring into that.

Shri Morarji Desai: "Necessarily" does not mean unavoidably.

Shri G. P. Kapadia: I can quote High Court decisions in this matter which are of a very clear nature.

Shri Morarji Desai: You want the word "necessarily" to be removed?

Shri G. P. Kapadia: Yes, because this word appears nowhere and not in any legislation.

Shri V. V. Chari: It appears in section 7.

Shri G. P. Kapadia: Section 7 relates to salary.

Shri V. V. Chari: You said that the word "necessarily" does not occur anywhere.

Shri G. P. Kapadia: I am talking of the business income.

Shri Morarji Desai: In his context it does not appear.

Shri V. V. Chari: You want a uniform expression everywhere.

Shri Radheshyam Ramkumar Morarka: If you want uniformity, why not delete section 7

Shri V. T. Dehejia: Let us discuss the word "necessarily" on merits. Should expenditure be incurred if it is not necessary? Let us consider it on merits. I think that there is a very strong case for keeping it. I should like to understand it.

Shri G. P. Kapadia: The words "wholly and exclusively" are the real test.

Shri V. T. Dehejia: Suppose a person is given Rs. 50,000. All that is shown as expenditure for the purpose of the business. But the work could have been done in Rs. 10,000. That is "wholly and exclusively".

Shri K. R. Achar: Suppose it is a matter of advertising. It is very difficult to decide as to what is necessary and what is not necessary.

Shri V. T. Dehejia: That goes to the tribunal.

Shri G. P. Kapadia: Suppose a technician is appointed on Rs. 1,500. The Income-tax officer will say, "This technician is no use, why did you appoint him on Rs. 1,500?"

Shri V. T. Dehejia: His word is not final.

Shri G. P. Kapadia: It will be final if you introduce the word "necessarily".

Shri Morarji Desai: Suppose you pay a man Rs. 5,000 . . .

Shri G. P. Kapadia: Suppose we appoint a man of straw, a man without qualifications, and he is paid Rs. 5,000. Even today the Department disallows in that case.

Shri V. V. Chari: Because there is a separate provision for it.

Shri G. P. Kapadia: Then why not be satisfied with that provision?

Shri V. V. Chari: This is a residuary provision after exhausting all that.

Shri Morarji Desai: You may spend in so many ways.

Shri G. P. Kapadia: This was considered in an English case . . .

Shri V. T. Dehejia: Can you point out any case where an Income-tax officer's opinion on the point of necessity has been set aside?

Shri G. P. Kapadia: In the opinion of the judicial authority it is for the businessman to run his business and not for the Income-tax officer.

Shri V. T. Dehejia: So you have got it.

Shri G. P. Kapadia: That is because the word "necessarily" is not there.

Shri Morarji Desai: The business of the accounting officer is only to see that the accounting is correct. The accounting is not done correctly, and that is why all this difficulty arises.

Shri G. P. Kapadia: I was referring to the English case. In 34 Tax Case 508, at page 561, (Lomas *vs.* Newton) from the concept about this word "necessarily" which obtained under the section corresponding to our section 7, that is section 618 of the U.K. Act, this is what the Judge said:

"Before coming to the particular items I would observe that the provisions of that rule are notoriously rigid, narrow and restricted in their operation. In order to satisfy the terms of the rule it must be shown that the erpenditure incurred was not only necessary but wholly and exclusively incurred in the performance of the relevant official duties. And it is certainly not enough merely to assert that a particular payment satisfies the requirements of the rule without specifying the detailed facts upon which the finding is based. An expenditure may be 'necessary' for the holder of office without being necessary to him in the performance of the duties of that office; it may be necessary in the performance of those duties without being exclusively referable to those duties; it may perhaps both be necessarily and exclusively, stringent and exacting; then still not so wholly so referable. The words are indeed stringent and compliance with each and every one of them is obligatory if the benefit of the rule is to be claimed successfully. They are to my mind deceptive words in the sense that when examined they are found to come to nearly nothing at all."

These are the observations.

Shri V. V. Chari: The objection is to wholly and exclusively.

Shri Morarji Desai: Has the law been amended in England?

Shri G. P. Kapadia: This applies to salaried people and salaries. In England, they do not apply this 'necessarily' test to business.

Shri Morarji Desai: Even in England, have they amended the law?

Shri G. P. Kapadia: I am trying to point out that they have made a distinction between the test for allowances of expenses for business and the test for allowance of expenses for employees. That distinction still remains in the well known case Atherton *vs.* British Insulated and Helsby Cable Co. Ltd., (10 Tax Cases-p. 155). Viscount Cave, an eminent Judge has laid down the dictum that an item of expenditure, although incurred voluntarily out of business expediency, is yet an expenditure wholly and exclusively laid out for the purposes of business. That should be the test. The test should not be a rigid one to find out whether it was unavoidable. The test is whether it is related to the business, whether it is incurred in the ordinary exercise of the business and for the business itself. The test should not be the 'unavoidable' test. That is the distinction. The introduction of the word 'necessarily' is bound to create a lot

of complications and the result would be that most of the expenditure would be disallowed.

Shri V. T. Dehejia: Was he laying down the principles or was he interpreting a clause?

Shri G. P. Kapadia: He was interpreting a clause corresponding to our clause 7. The principle has been enunciated by the U. K. Royal Commission. Their clear-cut verdict is that the concept about unavoidability or necessity of incurring expenditure should as well be forgotten and the test laid down by Viscount Cave should be the real test and we should have a declaratory section of the Finance Act, that the test should be wholly and exclusively and not a question of 'necessarily' or unavoidability. That is what the U. K. Royal Commission have stated.

Shri V. V. Chari: You should realise what the consequence will be. All unnecessary expenditure will be allowed. In other words, an expenditure which is not necessary will be allowed.

Shri Morarji Desai: It will only mean that what the assessee says is wholly and exclusively for the trade must be allowed.

Shri G. P. Kapadia: This has been tested by the authorities.

Shri Morarji Desai: How?

Shri G. P. Kapadia: There are a hundred and one cases. "Wholly and exclusively" are sufficient tests.

Shri Morarji Desai: They are not sufficient tests.

Shri G. P. Kapadia: They are sufficient. The introduction of the word 'necessarily' would create complications.

Shri Morarji Desai: I would rather keep the word 'necessarily' and remove 'wholly and exclusively'. I am prepared to do that.

Shri Radheshyam Ramkumar Morarka: It was asked whether the English law has been amended. One of the judges said that all the judicial pronouncements are falling on deaf ears. The Select Committee may kindly take note of the judicial pronuncements. In desperation, one of the English judges had said so.

Shri V. V. Chari: Not in this country.

Shri M. A. Master: There is one point. Supposing a company wants to send officers abroad for negotiations. Of course, the expenses are quite in order. But the officer decides, not necessarily incurred. That means that instead of the directors runing that concern. you are passing on that discretion to the officers, to decide about negotiations, whether they are proper or not or necessary or not.

Shri Morarji Desai: He cannot decide about negotiations.

Shri M. A. Master: I am saying, ten times, the officers went for carrying negotiations. The officers say it was only necessary five times.

Shri Morarji Desai: Many a time, it is not the officer who is sent. It is only the other people who are sent. They go with their wives. Everything is debited. I am also saying what is happening. That is also there. The other thing is also there.

Shri G. P. Kapadia: All that is being disallowed. Expenditure on taking wife also cannot be for promotion of business.

Shri Morarji Desai: They have got to see that.

Shri C. D. Pande: In my opinion, the criterion should be whether it improves business or whether it gives more facilities or improves the dignity of the person, whether it leads to betterment of the business. An officer coming and spending Rs. 10/- in a hotel does not cut much ice.

Shri Morarji Desai: Really speaking, the question is whether the expenditure is genuine. I am not bothered about anything else. How to

bring it here is the main question. I am not concerned whether the negotiation is necessary.

Shri G. P. Kapadia: It would be a good test whether the expenditure is genuine. 'Necessarily' becomes rigid. I agree with this test that it must be genuine.

Shri Morarji Desai: You cannot put in 'genuine' here.

Shri G. P. Kapadia: 'Wholly and exclusively', in all humility, are sufficient. You may kindly examine it.

Shri Morarji Desai: We will examine it.

Shri Radheshyam Ramkumar Morarka: In the example given by Shri Achar, the company comes before the Income-tax officer and says that it was spent for advertisement. It is not for him to say whether the advertisement is necessary or not.

Shri Morarji Desai: Advertisements are necessary. A person earning Rs. 1 lakh spends Rs. 2 lakhs on advertisement. Certainly it will be considered whether it is proper or not.

Shri Radheshyam Ramkumar Morarka: How to check?

Shri Morarji Desai: It is spent for advertisement and not given for advertisement. It would not even be genuine. It is only receipts obtained by collusion. Tell me, otherwise, how the fantastic thing has happened. You take the amount of taxes taken from all incomes. Still personal wealth has increased several times during the last 10 years. How has it happened?

Shri C. D. Pande: The country has prospered.

Shri Morarji Desai: It is only taken out like this from profits and never-shown. We won't be able to stop all that. This is only some attempt to stop that. I agree, in the process, honest men suffer.

Shri G. P. Kapadia: Kindly try to find a solution to this, considering all the observations.

Shri Morarji Desai: I am trying to find out what I can do to help honest-men.

Shri G. P. Kapadia: That would be satisfying. Next comes the formula in respect of right shares. The Direct Taxes Enquiry Committee in para 3.99 have suggested a specific formula. Suppose a person receives a right share by way of bonus and that share is disposed of. Today, some of the officers take the entire proceeds of that bonus share as his gain in his hands whether it is for capital gains or profits. This has been done in a number of cases. The Central Board of Revenue has also issued a circular dated 18-10-49 which appears not to be respected. It should have been respected by the assessing officers. In spite of the circular, this sort of indiscriminate assessment of the entire surplus has taken place in a number of cases.

Shri Morarji Desai: Bring such cases to my notice. I will punish the officers concerned.

Shri V. T. Dehejia: Do you say that in the Act?

Shri G. P. Kapadia: I am only wanting this formula to be laid down in the Act. Where the right share or bonus share has been sold, the profit should be worked on it in the following manner. The U.K. Act contains so many formulas.

Shri Morarji Desai: What is wrong in putting it in a sensible formula? You are making it more complicated, instead of simplified.

Shri G. P. Kapadia: It would simplify matters.

Shri Morarji Desai: On your side, it is simplified; on my side, it becomes complicated.

Shri G. P. Kapadia: If what is being directed is not implemented, why not put it as an annexure to the Act?

Shri Morarji Desai: How many annexures can be put like that?

Shri G. P. Kapadia: Cases of this nature may be brought to the notice of the authorities.

Shri Morarji Desai: Please do. I will see that the officers concerned are punished.

Shri G. P. Kapadia: Then I go to the next point. In regard to recovery of taxes in respect of assets relating to transfer, here the Chamber has suggested a positive amendment of the Act by introducing the provisions identical to sections 374|5 of the U.K. Income-tax Act where there is a right of reimbursement of the tax relating to the income of the transferred asset by the transferor. If you have a provision of this nature, you will automatically get the right of attachment. Then you need not take a seperate right, because the transferor himself has the right of reimbursement.

Shri Morarji Desai: What is wrong with the present provision? It is much simpler.

Shri G. P. Kapadia: Today a dishonest assessee might claim that that property is his and he might identify the property of someone with whom he is not on good terms as his.

Shri Morarji Desai: But he will have to prove it.

Shri G. P. Kapadia: You are doing two things. One is that you are acquiring right in respect of transferred property. The other is that you are assuming a right in respect of property standing in the name of another person, if in the opinion of the assessing officer, it is the property of the other person. Now here a rightful owner may be allowed to have the property. What you do is that you want the rightful owner, because of a superstitious person, to defend his legal right to that property.

Shri V. V. Chari: That is not the purport of this provision.

Shri G. P. Kapadia: This has emanated from the drafting of the Bill. Kindly take this into account and modify the language accordingly.

The next point is in regard to loss carry over not permissible if return not filed in relevant assessment year. It is a contradiction in terms to the provision in clause 139(1). How can you expect a person who is not liable under section 139 to submit a return of income and loss?

Shri Morarji Desai: But he is not liable to anything.

Shri G. P. Kapadia: I want a positive provision. Amend section 139 to say that even in cases where there is a loss it will be competent enough for an assessment to submit a voluntary return of income which will be taken cognisance of. Today what happens is that there is no provision in the Act to call for loss return. You are out of court. You will not be allowed.

Shri V. V. Chari: Please see clause 139(3).

Shri G. P. Kapadia: It does not speak of a return being submitted. How can a loss be determined without a return being submitted The technical consideration will be that no return arises to be submitted. I want that clause to be modified to say...

Shri V. V. Giri: Return of loss.

Shri G. P. Kapadia: I want it to be made crystal claar. A return of loss will be the proper return submitted and all the advantages that flow from a submission of that return for carryover loss will be made permissible.

Shri V. V. Chari: It is crystal clear.

Shri Morarji Desai: It is stated here: 'may furnish within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed....' So it is provided for here. Why do you say that it is not?

Shri G. P. Kapadia: The other suggestion is that in cases where such a return has not been submitted and the liability arises for the first time, just because for some unavoidable reasons, the return was not submitted, the return should be allowed to be submitted when the first liability arises.

Shri Morarji Desai: You cannot provide for everything.

Shri G. P. Kapadia: The next point is regarding declaration in respect of a non-resident. I am referring to clause 113, sub-clauses (3) and (5). This has not been covered in our memorandum, because this came to our notice after the memorandum was submitted.

Shri Morarji Desai: What about the other clauses mentioned in the memorandum?

Shri G. P. Kapadia: I am skipping through them for want of time. In sub-clause (5) of clause 113 on page 87 of the Bill, the words are: 'in relation to the assessment for the year *in which* the declaration is made.' The words should be '*in respect of which* the declaration is made'. Otherwise, it will not apply to the earlier years.

Shri V. V. Chari: That takes away the whole object of this clause. He must make it within the proper time; if he delays it, naturally he must suffer the consequences.

Shri G. P. Kapadia: Take the case of a firm. You will send a notice treating it as a resident firm. The other partner who was a non-resident becomes liable. What is the time within which he should make the declaration?

Shri Morarji Desai: It ought to be 'for the year in respect of which the declaration is made'. That seems to be the object.

Shri G. P. Kapadia: The other clause we have commented on is clause 133 (6) of the Bill—page 38 of our memorandum. There is a provision that the income-tax officer can ask for information to be given in a verified manner. Take the case of a very huge concern, a manufacturing unit, where there are thousands and thousands of persons working, and information has to be collected not from one or two persons but from 20, 30 or 100 sources. In such cases this provision will create practical difficulties in working. The present provisions are all right. Whatever information is asked for in respect of company assessment and other assessments is readily given. Why create a position of verification and all that? The difficulty would be particularly felt in the case of banking companies. I would request the Select Committee to consider this.

Chairman: Is it generally agreed that 15 minutes more should be granted, and we sit up to 1.15.?

Hon. Members: Yes.

Shri G. P. Kapadia: Regarding the filling of the returns, it is the humble view of the Chamber that the introduction of the element of interest calculation for three months will create cartloads of work for the lower division clerks. The provision should be that the return should be allowed to be submitted by the 31st July, or within six months of the close of the accounting year, whichever is later; thereafter, three months time should be available at the discretion of the assessing officer, if there are circumstances warranting it. Thereafter, if there is special need, the Commissioner of Income-tax may grant . . .

Shri Morarji Desai: The only difference is that you want to change four into six. We have already provided four.

Shri G. P. Kapadia: I am requesting the elimination of interest calculation, because it will create so much work.

Shri Morarji Desai: There will be proper pressure.

Shri G. P. Kapadia: Again, you have not provided for calculating interest on the net amount, but the whole amount. You will say that in working you will do it, but the statute provides for the whole amount of the returned income. There is no mention that the tax paid under section 18A, under the provisional assessment, will be deducted.

Shri Morarji Desai: But the tax must be on the entire amount minus the tax paid.

Shri G. P. Kapadia: The legislation does not say so.

Shri Morarji Desai: We will provide it.

Shri G. P. Kapadia: If you make the time-limit rigid, is it possible for the assessing officers to handle all the assessments if all the returns come?

Shri Morarji Desai: Yes. Today, what is happening is that they sit idle for some time. Let the returns come, and I will ask them to finish in time.

Shri G. P. Kapadia: The next point is regarding the amendment deleting the exemption now obtaining under sections 25(3) and 25(4). No reasons have been assigned even in the Statement of Objects and Reasons as to why it has been done.

Shri V. T. Dehejia: It is no longer necessary now.

Shri G. P. Kapadia: Concerns which were charged under the 1918 Act may yet be discontinued today. How has it become obsolete? You may kindly look into it, because the exemption now available has been taken away without any reasons being advanced.

Shri Morarji Desai: All exemptions which become redundant should be taken away. They do not require to be explained. Exemptions are not permanent exemptions. Even the development rebate we are giving is periodical; that does not mean they will be entitled permanently to it.

Shri G. P. Kapadia: About advance payment of tax, the submissions are contained in pages 42 to 44. The clear suggestion is that there should be no penalty related to advance tax payment, except in cases where advance notice was not given in respect of the liability. Once an assessee has been taken on record, just because he has paid a lesser tax, on which you already recover interest, where is the question of penalty, where is the concealment, where is the deliberate action? Why penalise him doubly?

Shri Morarji Desai: Because he does not pay in time, he will pay interest.

Shri G. P. Kapadia: There have been cases where penal interest has been Rs. 500 and a penalty of Rs. 10,000 imposed, but the tribunal has reduced the penalty to a token of Rs. 50.

Shri Morarji Desai: If the payment is more, he is given interest. If it is short payment, why should he not pay interest?

Shri G. P. Kapadia: There is no objection to payment of interest, but in addition to that, there is a provision to impose penalty. There should be no penalty for late or short payment.

Shri Morarji Desai: On late payment there should be, for short payment there may not be.

Shri V. T. Dehejia: Supposing he goes on paying less?

Shri G. P. Kapadia: How much? You realise interest. Do not delay the assessments and collect all the tax from him, but do not impose penalty. In respect of advance tax payments, there is no penalty levied in any interest. It is only interest.

Shri Morarji Desai: We may consider it.

Shri G. P. Kapadia: Regarding attachment of shares in joint account,

I invite attention to clause 226(3)(vi). The concrete suggestion made in the Dissent memorandum has been implemented, and in the light of that, I would request the Select Committee to use the same device. Do not indiscriminately attach joint accounts. Take a denial from those persons, and if they have wrongly denied, make them equally liable as you have made the Garnishee liable. The next item is regarding the provision for Pakistan dues from Indian nationals. This provision would be to the greatest detriment of our own nationals. It is a matter of experience to all concerned in this country that even the two man committees have not functioned and the Pakistan authorities have sent notice of attachment to the CBR who have sent them to the assessees, as to why action should not be taken. These matters have been brought to the notice of the department as well as the Direct Taxes Enquiry Committee. If we have a provision of this nature, it will create disabilities for our nationals as against the benefit to the Pakistan nationals. We should not have any such provision in this.

Shri V. V. Chari: Has any recovery been made?

Shri G. P. Kapadia: That is a matter of detail.

We would advocate the following items: that the provisional assessments made in clause 14 should be appealable, that the provisional assessments should relate only to the return of income and not of the accounts and statements as had been now drafted. Refusal to pass order under clause 154, 155 should be appealable. The order under clause 191 for tax relief should be appealable as also the penalty imposed under section 131. There are others which are not covered by either section 246 or 277. There must be an overall provision that where any order prejudicial to the interest of the assessee has been passed the same should be the subject-matter of appeal. Let it be decided by the appellate authorities. Why should the department feel shy about it?

Shri Morarji Desai: It is not a question of feeling shy: it is a question of increasing the work unnecessarily.

Shri G. P. Kapadia: On technical grounds the department has taken exception before the tribunal that the right of appeal does not exist; on these technical grounds real relief has been denied. Supposing there is a case of rectification of mistake.

Shri Morarji Desai: Rectification of mistake should be appealable.

Shri G. P. Kapadia: Previously the remedy was to take a writ petition. I am saying that other should be examined on merit and should be included.

Shri Morarji Desai: We would see what appeals are required.

Shri G. P. Kapadia: Regarding the varying interpretations, the suggestions are contained in page 48 of the memorandum. It is not only the President of the tribunal only who should make a reference to the Supreme Court. There are the recognised chambers of commerce which should be able to do so on some points of legal issue. Such references to the Supreme Court will curtail a lot of litigation and so we have suggested an expansion of such a provision.

Shri Morarji Desai: I do not think it would be right.

Shri G. P. Kapadia: Then, penalty should not be imposed on the difference between assessed income and the return income but it should be only on the income that is evaded.

Shri Morarji Desai: Penalty would be on the whole income. Evasion is evasion. If it is a *bona fide* omission, unintentional omission, it should not be penalised but if there is a deliberate evasion, then there should be punishment.

Shri G. P. Kapadia: Rgarding clause 275, we have submitted our point of view. Take the case of a

profesional man, who, through some oversight submits a return five days late or even one day late.

Shri Morarji Desai: There is no oversight for an expert. He will ask for extension of time. If the return is not submitted in time he is delibrately doing so. Expert is not a layman. He is supposed to know the whole law.

Shri G. P. Kapadia: The main culprit must be punished first.

Shri Morarji Desai: The main culprit in my view is the abettor.

Shri G. P. Kapadia: This casts its reflection on the other clause 288 and we have dealt with it on page 51 automatic disqualification. If there has been abetment and if some penalty has been imposed, it is a matter which must be judged by the disciplinary bodies of the respective professions because there is something like the breach of moral turepitude.

Shri Morarji Desai: This is a matter which the Select Committee will consider.

Shri G. P. Kapadia: One more thing. You have withdrawn the recognition to persons other than those belonging to the legal or accountancy professions. Our submission is that every society cannot afford the service of a lawyer or a chartered accountant. We would, therefore, request the Select Committee to examine the question and at least permit bachelors of commerce or persons who have passed the intermediate examination of the Institute of Chartered Accountants of India to take up small cases at least. Otherwise, it would be difficult for small assessees to do this.

Shri Morarji Desai: I am prepared to direct the income-tax authorities to advise on this. The small people will not be put to difficulties.

Shri V. V. Mariwala: I thank you and the Members of the Select Committee for giving us indulgence. I am really sorry to have kept you waiting till 1.15, although we have asked for time till 1 O'clock only. I thank you all for having given us a patient hearing.

Shri C. D. Pande: You have been very useful.

Shri Morarji Desai: We must thank you for not having hurried even when we hurried you!

(The witnesses then withdrew)

The Committee then adjourned.

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961.

Wednesday, the 20th June, 1961 at 08.00 hours.

PRESENT

Shri Mulchand Dube—*Chairman*

MEMBERS

2. Shri K. R. Achar
3. Shri P. Subbiah Ambalam
4. Shri Amjad Ali
5. Shri Premji R. Assar
6. Shri Bahadur Singh
7. Shri Prafulla Chandra Borooah
8. Shri M. L. Dwivedi
9. Shri D. A. Katti
10. Shri Bhausaheb Raosaheb Mahagaonkar
11. Shri Mathew Maniyangadan
12. Shri Radheshyam Ramkumar Morarka
13. Shri Narendrabhai Nathwani
14. Shri C. D. Pande
15. Shri Naval Prabhakar
16. Shri Ram Shanker Lal
17. Shri Shivram Rango Rane
18. Shri Jaganatha Rao
19. Shri K. V. Ramakrishna Reddy
20. Shri Laisram Achaw Singh
21. Dr. Ram Subhag Singh
22. Shrimati Tarkeshwari Sinha
23. Shri Radhelal Vyas
24. Shri Morarji Desai

DRAFTSMAN

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri V. T. Dehejia, *Secretary, Ministry of Finance (Department of Revenue).*

Shri V. V. Chari, *Senior Member, Central Board of Revenue.*

Shri I. P. Gupta, *Deputy Secretary, Ministry of Finance (Department of Revenue).*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. *All India Sindwork Merchants' Association, Bombay.*

1. Shri H. M. Thadhani
2. Shri Gobindram Hassaram
3. Shri Jhamatmal T. Wadhwani

II. *Indian Chamber of Commerce, Calcutta.*

1. Shri B. P. Khaitan
2. Shri R. Singhi
3. Shri A. L. Goenka
4. Shri S. K. Ayyer
5. Shri B. Kalyanasundaram

I. ALL INDIA SINDWORK MERCHANTS' ASSOCIATION, BOMBAY.

Spokesmen:—

1. Shri H. M. Thadhani.
2. Shri Gobindram Hassaram.
3. Shri J. T. Wadhwani.

(Witnesses were called in and they took their seats)

Chairman: If you want to elaborate any particular point you have mentioned in your memorandum, you may do so. If you want to add anything, you may also do so.

Shri J. T. Wadhwani: Under the present law, there are three classes of assessees on the basis of residence. The first class is resident and ordinarily resident; the second is resident but not ordinarily resident and third is non-resident. Under the amending Bill, it is proposed that there should be only two classes of assessees—resident and non-resident. The category of resident but not ordinarily resident is proposed to be abolished. This category of not ordinarily resident or casual resident or irregular resident or semi-resident was introduced in 1939 when the whole basis of taxation was changed from remittance basis to accrual basis. Prior to 1939, when persons doing business outside India used to remit money to India, they were taxed only on that remittance.

In 1939, the basis was changed and income accruing whether in India or outside India was taxed. This new class, which is defined in section 4B was created to give some concessions to them in view of their hardships. Persons who do not come to India regularly, who have business or other income outside India, who come to India for some time to meet their relatives, to look after their family affairs, for pilgrimages and for various other purposes because of their attachment to their home country, were given some concessions, *viz.*, in regard to the income accrued to them outside India, only if remittances are made to India, those remittances will be taxed. If the income outside India was Rs. 50,000 outside India in the case of a resident but not ordinarily resident and if he brought Rs. 10,000 with him or remitted Rs. 10,000, he will be taxed only on that Rs. 10,000, unlike a resident who will be taxed on the entire Rs. 50,000. On account of that, people developed attachment to India and invested money in India. They had some small incomes in India and on those incomes residents but not ordinarily residents were taxed at ordinary rates.

Shri Morarji Desai: Now are the remittances which are sent by people outside India to their people here taxed?

Shri V. V. Chari: Remittances are not taxed unless they are made to the wife.

Shri Morarji Desai: Now remittances from outside are not taxed. What is taxed is income here. For residents, suppose they have an income here and they have an income outside. Both the incomes are joined together and they have to pay tax on both. In the case of non-residents, if they have an income here and an income outside, their income outside is not taxed. But that income is added as world income and taxed at the higher rate that we have fixed.

Shri J. T. Wadhwani: That is only partially correct. If a non-resident has income in India and also income outside India, there are two methods of taxing. Supposing a man has Rs. 10,000 as income here and Rs. 50,000 outside, either the income in India is taxed at the maximum rate or . . .

Shri Morarji Desai: Yes; the option is given to him.

Shri J. T. Wadhwani: But there are practical difficulties in exercising the option. That is another point which we have dealt with in our memorandum. Either he is taxed 49 per cent on the income here. . . .

Shri Morarji Desai: He has to pay 49 per cent on the income here if he does not want the world income to be joined. If he wants the world income to be joined, he has to pay tax on the total income at the rate we have fixed. If that is less, he may not want to pay 49 per cent.

Shri J. T. Wadhwani: Even if it is less, people still pay 49 per cent, because they do not want to be bothered about their income abroad; otherwise, they have to bring the balance sheets, prove their income and so on.

Shri Morarji Desai: In the case of the resident but not ordinarily resident, their income here is taxed on that basis and no account is taken of any income outside. Remittances sent by them here are not taxed.

Shri J. T. Wadhwani: Today the remittances are not taxed.

Shri Morarji Desai: They would not be taxed even after the amendment.

Shri J. T. Wadhwani: Today it they have an income in a particular year in India and outside India, their remittance out of the income of the previous year is being taxed.

Shri Morarji Desai: The remittances that they send from outside are not taxed.

Shri J. T. Wadhwani: No, Sir; it is only remittances out of past profits.

Shri V. V. Chari: If in the current year itself he makes profits in India that is taxable.

Shri Morarji Desai: Does he say that the amount he remits is from his past years' profits?

Shri J. T. Wadhwani: Supposing I am in service outside India and my salary is Rs. 1000. If I remit Rs. 5000 out of that it will be taxed. Supposing I serve there from February to April and I come to India sometimes in the month of March, still I do not become ordinarily a resident. If I remit Rs. 500 out of my salary to my mother, brother or wife or even to my savings bank account here, it will be taxed.

Shri V. V. Chari: How do we know that it is from the current year's profits when the year itself is not over.

Shri J. T. Wadhwani: As I said, if I get a salary of Rs. 1000 per month outside and I remit Rs. 500 out of that salary, it will be taxed. If I have a house here and I come even for a single day, I will not be ordinarily a resident.

Shri Morarji Desai: Then you are not in that category; then you are either a resident or non-resident.

Shri J. T. Wadhwani: If I have a residence here and I come here even for two days, I will still be "not ordinarily resident".

Shri Morarji Desai: Then you are in either of the other two categories. You will have to be in one of the three categories. When you say that you are not "ordinarily resident", then you are in the other two categories.

Shri J. T. Wadhwani: I will be a resident.

Shri Morarji Desai: And you will be charged accordingly.

Shri J. T. Wadhwani: Under the present law I will be "not ordinarily resident" even if I come for two days, but after the amendment of the Act I will be treated as "resident."

Shri Morarji Desai: That is a different thing altogether. Do not mix up the two things. You can say what is happening now and what will happen after the amendment is passed. What do you want?

Shri J. T. Wadhwani: We want that this third category should still remain, because of the difficulties that will arise.

Shri Morarji Desai: Why should people who are outside be superior to "residents" and even 'non-residents? I do not understand that kind of thing. What is this sort of patriotism attached to this country? They want better treatment than Indians, better treatment than all others, even though

they stay outside and never come here. What is this sort of emotional attachment?

Shri J. T. Wadhwani: Non-residents do not come.

Shri V. V. Chari: Their foreign income is included for taxation rate purposes. The Finance Minister's point is, why is it that neither for rate nor for taxation purposes you should not be included.

Shri Morarji Desai: Let them pay 49 per cent.

Shri J. T. Wadhwani: Sometimes that is preferable. The question is, those who happen to come will now be "residents".

Shri Morarji Desai: If they so desire, I am prepared to treat them as "non-residents".

Shri J. T. Wadhwani: That will hamper the country's interest.

Shri Morarji Desai: How is the country's interest going to be hampered? How is the country to profit by people outside?

Shri J. T. Wadhwani: After all, they have attachment to this country.

Shri Morarji Desai: What is this attachment, I do not understand, when they do not want to pay some more tax? Their attachment is that they must profit by this country.

Shri V. V. Chari: Foreign income is not earned here. But why should your Indian income not be taxed at the global rate because it satisfies the criterion of "ability to pay". Why should they not be treated either as Indians or non-Indians? Why is this intermediate category asked for, which is not there anywhere-else in the world?

Shri J. T. Wadhwani: In other countries the total world income is not taxed, excepting in a few countries.

Shri Morarji Desai: May be in Africa.

Shri Narendrabhai Nathwani: You were asked as to why you should be treated in a better position than "non-residents" or even "residents". Your reply was that even though you may not have any income whatsoever here, merely because you own an ancestral home after the amendment is passed you will be treated as a "resident".

Shri Morarji Desai: We will consider them as "non-residents", if they so prefer. We are only saying that this third category is not justified on any moral ground. I am prepared to show as much concession as possible consistent with the other two categories.

Shri Narendrabhai Nathwani: I am only stating what would be their case at the highest. Supposing a provision is made here that merely owning a home or maintaining a house in the form of an ancestral home here would not make one a resident here, will that satisfy you?

Shri J. T. Wadhwani: Under certain circumstances, that will be all right. But as I pointed out, people may not like to invest and earn income in India.

Shri Morarji Desai: Let them not. After all, how does it benefit me, benefit the country? They may earn all the income here.

Shri J. T. Wadhwani: They will pay tax on whatever they earn at the proper Indian rates.

Shri V. T. Dehejia: I think we are talking of Indian nationals abroad, people who have business connections outside and who have settled outside India.

Shri Morarji Desai: It is only those people who are to be considered, not those who go outside temporarily.

Shri V. T. Dehejia: They have certain benefits by their being Indians. Being Indians, they have certain amenities and advantages. The question is, being Indians should they claim that they should be better of than foreigners in India?

Shri Morarji Desai: Is it proper that those people of Indian origin—I cannot call them ndians because they are not, really speaking, citizens of this country; they have taken residence in other countries—should be treated in a better way in this respect than both Indians and foreigners? Why should they be in a superior category? They may be a little better than foreigners—I am prepared to consider—because thy are nearer to me and I am also emotionally attached to them. But are they not also prepared to give up something to the country? Otherwise, what is their emotional attachment; only earning in both the places?

Shri Narendrabhai Nathwani: We have read your memorandum very closely. Suppose this category of "resident but not ordinarily resident" is to be maintained as you are asking for, will you agree that for the purpose of calculating the rate you will be agreeable to include your world income, because just now it has been pointed out that you are enjoying this concession, namely, that even for the purpose of determining the rate to be applied to your Indian income the world income is excluded.—even a non-resident does not enjoy this concession? Will you be agreeable to accept that your rate on the Indian income should be calculated taking into account your foreign income also?

Shri H. M. Thadhani: Then they will be considered on the same footing as "non-residents" and pay tax on the world income. Our practical difficulty is this. Suppose a man stays outside India for five years. For that period of five years he is considered as a non-resident and he pays tax on his income in India either at 49 per cent or at the rate which applies to his total world income. After five years he comes to India to meet his family or friends and stays for more than 182 days in India. Under the present amendment, he will be a resident for that one year and he will have to file his balance sheet of world income.

Shri Morarji Desai: I am prepared to consider all that. I can provide that such people may not have to do so. That will be more rational and it will also be explainable to everybody. Even if they come here and stay for a year, I am prepared to consider their case and not to subject them to the residence law. I have no objection to that. But, if they have some business contacts during that one year, why should they seek to profit more than a non-resident? If they are not having business contacts, then, of course, this question does not arise.

There are three categories. In the first category there is only remittance and there is no question of earning anything. When remittances are made from the income outside India, they are not taxed and they will not be taxed. We do not want to tax them because that is an addition to the country. If they do so, it is good to the country and I would not like to tax them at any cost. I would say that even their wives should not be taxed. I am prepared to exempt that category.

Now I come to the second category. They may not carry on any business here but they may have invested some money here and they get dividend or interest on that investment. Why should they not pay tax on that here as non-residents? I am prepared to make some concession to them also, some small favourable consideration than the foreigners, because they are semi-foreigners.

Then there is the third category of people who carry on business both in India and ouside India. Why should they be treated better than non-residents? I should like people to invest here because that benefits the country. I am prepared to pay the price for it, if I may say so. If you do not want to pay a price for your attachment, I am prepared to pay a price to attract that capital, and that is why I say that I will make a distinction between them and non-residents. But the third category of persons invest

money here, carry on business and earn money out of it. Why should they be treated as a superior category to both Indians and non-Indians. I do not understand that. Is it justified?

Shri C. D. Pande: Suppose an Indian has settled down in Nairobi and during one year he has earned one lakh rupees there and ten thousand rupees here. Would he be taxed on his total income?

Shri Morarji Desai: I want him to pay only on his ten thousand rupees which he has earned in India.

Shri C. D. Pande: Then he will transfer his business to his cousin.

Shri Morarji Desai: Let him do so. We do not mind. Then there is no difficulty about it. But they do not trust their cousins. Now if they do not choose to get their outside income mixed up with the income here, they have to pay 49 per cent. I say that they may not pay 49 per cent or super-tax. They can pay less.

Shrimati Tarkeshwari Sinha: The non-residents will have to pay only on their Indian income.

Shri Morarji Desai: But they do not want to do that. They want to pay only at the rate which is available at present.

Shri J. T. Wadhwani: I think it will be reasonable if casual residence of that category is considered on the basis of non-residents, so far as taxation is concerned—per cent or the total world income. But then the question is: what will be the position about the wealth tax?

Shri Morarji Desai: For non-residents there is no wealth tax.

Shri J. T. Wadhwani: It does affects those persons who become residents, because the definition is the same in the Wealth Tax Act also.

Shri Morarji Desai: You will have to pay wealth tax on whatever investments you make in India.

Shri Narendrabhai Nathwani: I was pursuing this point. Suppose this category is maintained, will you agree to the rate being applied which is now being applied to non-residents?

Shri J. T. Wadhwani: That will be reasonable.

Shri Narendrabhai Nathwani: Because it would not be the same thing as treating them as "on-residents". Though they become residents for that paticular year, for other purpose you enjoy this facility of treating them as "not ordinarily resident".

Shri J. T. Wadhwani: If the rate of non-residents is applied, it will be reasonable either 49 per cent or the rate on the total world income, whichever he chooses.

Shri Morarji Desai: Then there is no third category.

Shri Narendrabhai Nathwani: I am proceeding on the basis that the third category has to be maintained because they can maintain more contacts than it would be otherwise possible for them, because if they are willing to give up the concession at a reduced rate.....

Shri Morarji Desai: It simplifies matters if you keep only two categories and not the third category.

Shri Narendrabhai Nathwani: Then what about wealth-tax and expenditure tax?

Shri Morarji Desai: We do not make them residents at all. We treat them all the while as non-residents. Even if they come and stay here for five years, I am not going to consider them as residents.

Shri Narendrabhai Nathwani: Then the definition of "resident" has to be changed.

Shri Morarji Desai: We will have to consider what we can do.

Shri Narendrabhai Nathwani: That definition will have to be liberalised.

You will have to consider in what way you would like it to be liberalised.

Shri J. T. Wadhwani: That we will have to consider. Whoever is not ordinarily resident will be considered as non-resident so that they will be residents only if there is a period of 180 days of stay during the previous years plus this year's stay.

Shri Narendrabhai Nathwani: Probably you are aware that the Income-tax Investigation Commission abolished thais third category. At that time did your association make any representation?

Shri J. T. Wadhwani: No.

Shri Narendrabhai Nathwani: Did your association make any representation to the Taxation Enquiry Commission?

Shri J. T. Wadhwani: No. At no stage has it appeared.

Shri Narendrabhai Nathwani: Not even before the Tyagi Committee?

Shri J. T. Wadhwani: No.

Shri Narendrabhai Nathwani: So, your case has gone by default?

Shri J. T. Wadhwani: Yes.

Shri Amjad Ali: They have taken the earliest opportunity of coming before this Committee.

Shri Subbiah Amabalam: Suppose, you accept what Shri Nathwani says, that is, you accept to disclose the foreign income for the purpose of taxation at this rate, that means that this third category of resident not ordinarily resident would go. Then you would come under the category of non-residents.

Shri J. T. Wadhwani: Yes.

Shri Morarji Desai: Whenever they come and stay for 180 days, they will be considered as residents. That is their worry. How that is to be overcome is the question. They have not only to pay full tax but have also to submit a return in that year. The income-tax authorities will not let them alone once that is made the law. Therefore we have got to provide for some stratagem whereby this does not happen.

Shri Subbiah Amabalam: So the duration of stay of residents has to be liberalised.

Shri Narendrabhai Nathwani: We will have to confine it only to persons of Indian origin.

Shri Morarji Desai: Will it be wise to put that in our law? Then the foreigners will have a grouse.

Shri Narendrabhai Nathwani: There are millions of Indians abroad who still want to come to India.

Shri V. T. Dehejia: They are a category of citizens. They are Indian citizens.

Shri Morarji Desai: Have they got Indian passports?

Shri J. T. Wadhwani: In some cases they have British passports and in some cases Indian passports.

Shri V. T. Dehejia: Would there be a case of having neither, that is, neither a British nor an Indian passport?

Shri J. T. Wadhwani: I do not think so.

Shri Morarji Desai: Have all these who have settled elsewhere not got passports of that country?

Shri J. T. Wadhwani: People have been coming and going off and on.

Shri Morarji Desai: There are two categories of Indians abroad. One is of people who have taken the citizenship of the other country and who come here occasionally. Even if they come to India frequently, they are citizens of the other country. They have no vote here. Then there are other category of people who are still nationals of this country but who largely stay outside the country. They come here only once in a while. Their families stay here or their families

come here from time to time. Those people have the intention of returning in the end. They do not want to be citizens of the other country. They maintain their voting rights here.

Shri J. T. Wadhwani: Even if there are some class of people who have become citizens outside and are having British passports, why should we cut them off?

Shri Morarji Desai: I do not want to cut anybody off. I would like to accommodate them provided I can do it justifiably.

Shri J. T. Wadhwani: There may be quite a number who may be having British passports and may be staying in the Dominions.

Shri Morarji Desai: Because you are in the Commonwealth you may have a British passport . But here there is no question of having a British passport. Indians do not get British passports just like that because we are a republic.

Shri J. T. Wadhwani: Suppose in 1947 they remained outside and had a British passport. That has continued.

Shri Morarji Desai: That has continued, but a passport will not be a relevant thing.

Shri J. T. Wadhwani: Suppose you define Indian origin and try to make a distinction. Then a practical difficulty may come in the way.

Shri V. T. Dehejia: They will have to be treated at par with other non-residents.

Shri J. T. Wadhwani: Yes, provided those concessions are given.

Shri Morarji Desai: Anyway, we are not going to decide it just now. We have got to consider this very carefully. We are now considering the various possibilities and alternatives so that it will be easier for us to decide. It is not that we are deciding anything today. I only want to know the minimum that will satisfy you. I do not want to hurt you in any way. After all, what do I gain by hurting you?

Shri J. T. Wadhwani: Then there may be another class of people, namely, foreigners who come here for giving collaboration. Suppose, a man is a Director here and he remains here for one year. Then he will be considered as an ordinarily resident. Under the Bill he will be liable to pay income tax on his income outside India and wealth tax on his wealth outside India. Possibly, it may deter the foreigners from coming.

Shri Morarji Desai: About that you need not bother.

Shri J. T. Wadhwani: I am only bringing it to your notice.

Shri Morarji Desai: We will give them special concessions if we require them. If we do not require them, let them go away. Why are you anxious about the foreigners?

Shri J. T. Wadhwani: So many people are going in for collaboration from Germany, Japan etc.

Shrimati Tarkeshwari Sinha: For foreigners six months' leave is allowed.

Shri J. T. Wadhwani: That is only for technicians. Suppose, a man who comes here as an executive director. He is not a technician.

Shrimati Tarkeshwari Sinha: We have given them that facility in case they are also technicians.

Shri J. T. Wadhwani: If a man comes only for one year, he will have to submit a return of foreign income even if he has no income in India Anyway, I only wanted to bring it to your notice.

Shri H. M. Thadhani: There is another point. That also is applicable to non-residents. Under section 17 of the present Act a non-resident, when he first becomes assessable in India, has got the option to pay at 49 per cent, that is, the maximum rate, or at the rate which applies to his total world income. But in practice we have seen some difficulties. There are so many people, ladies and others, who

come here and make little investments out of their remittances. They deposit money in a bank or with some friend, or they buy a little flat or a little movable property and let it out on rent. At that time they are not conscious sometimes of all those provisions. When one comes back after five years one comes to know that there is income-tax liability. Then he files a return as also a declaration. But that declaration cannot be applied to the past five years. It is applicable only to the year in which it is made and unfortunately the Income-tax Officer, even the Assistant Commissioner, has no power to condone that delay and make it applicable right from the first year onwards. So, they have got to file a revision petition before the Commissioner of Income-tax for making it applicable to all the previous years. For that we have made a submission so that when such a person is first assessed as a non-resident this difficulty will be obviated and he can make a choice whenever he is assessed for the first time. This should be applicable to all the years in which he is assessable as a non-resident.

Shri Morarji Desai: That means he has not paid income-tax for those five years.

Shri H. M. Thadhani: Some people do not know much about the law.

Shri V. T. Dehejia: How will you provide anything in the law which will apply to those who do not know the law?

Shri H. M. Thadhani: He has got a small income here. But, he is outside India and has not paid the income-tax. He comes here after five years.

Shri V. T. Dehejia: He can send a return from the foreign country.

Shri H. M. Thadhani: He has the option to exercise. He exercises the option after five years when he comes here.

Shri J. T. Wadhwani: Supposing he has an income of, say, one thousand rupees, he is liable to be assessed under the law as a non-resident.

Shri Morarji Desai: Then, he must pay.

Shri J. T. Wadhwani: The question is: he has to exercise the option. He has either to pay at the rate of 49 per cent or exercise the option.

Shri Morarji Desai: Let him exercise the option during the very first year.

Shri J. T. Wadhwani: He is out of India for five years. He does not know much about the law.

Shri Morarji Desai: Let them apply their minds. As soon as this Bill was published, you applied your mind.

Shri J. T. Wadhwani: Those provisions are there in the existing Act itself. These difficulties have arisen.

Shrimati Tarkeshwari Sinha: Why should the Government lose anything?

Shri V. T. Dehejia: Let them exercise the option at that time.

Shri J. T. Wadhwani: Under the law, the option has to be exercised within three months of the close of the year.

Shri Morarji Desai: Anyhow, this will be considered.

Shri V. T. Dehejia: Once you provide it in the law that the option can be exercised at the end of five years or at any period, that will be taken advantage of by multi-millionares. In the name of ignorant people, if this concession is provided in the law, the multi-millionaires will manipulate their incomes.

Shri J. T. Wadhwani: Why should it be presumed that there will be manipulations in the incomes? The question is whether the option is to be exercised within three months of the close of the year, or after two years.

Shrimati Tarkeshwari Sinha: They will exercise their option only when it suits them.

Shri J. T. Wadhwani: If and when the option is exercised, it is applicable always. That we do not mind.

Shrimati Tarkeshwari Sinha: For five years they did not file the returns. They will file the returns when it suits them.

Shri J. T. Wadhwani: A man having a large income will not take that risk of non-filing the returns. If they are caught, they will be penalised.

Shri Morarji Desai: That is only if they are found.

Shri J. T. Wadhwani: That is applicable to all. The question is: if there are genuine cases, they may be sympathetically considered.

Shri Morarji Desai: We will consider that.

Shri J. T. Wadhwani: This only covers persons having small incomes in India. It would not benefit others. You can say: persons having incomes below the taxable limit of, say, Rs. 3000 can exercise option at any time. That is all.

Shri C. D. Pande: Mr. Chairman, this suggestion is reasonable one. Suppose a lady member of the family does not know much about the law. He does not know the income abroad. Now, the man comes after five years and then within a months or two he files the returns. Till that time, the non-filing of the return by this lady here should be condoned provided they file the returns.

Shri Morarji Desai: We will consider that. Then non-resident has to pay income tax on every pie that he earns here. Even the lady, a member of the family, has to pay income tax if she is a non-resident. If she is a resident, then she has not to pay any income tax upto a limit of Rs. 2000. In that case the question does not arise.

Shri C. D. Pande: What happens to a lady whose husband has gone out? She is here; she does not know here husband's income. She is earning an income of Rs. 1000 a year here. Will she file a return?

Shri Morarji Desai: She should not. Even after five years, she should not do it.

Shri C. D. Pande: After five years, when her husband returns, this income will be taxable.

Shri Morarji Desai: Yes, That is a different thing. We will consider this problem.

Shri H. M. Thadhani: There is one point more. Under the present Bill, when the *karta* of a joint family is not here, the return of income can be signed by any attorney on his behalf. That provision has been made in the Bill. That is perfectly all right. Similarly, we suggest that the forms of appeal or registration application forms also could be signed by an attorney in the absence of the *karta* of joint family or an assessee.

Shri Morarji Desai: That is all right. That could be done.

Shri Amjad Ali: I want to put only one question. You say, "mentally incapable of attending the affairs". That means, insane or half-sane. What is the category that you mean thereby?

Shri J. T. Wadhwani: This is provided in the Bill. The Bill provides that in the case of a person who is either out of India or is insane his attorney can sign the return. We want that this should be extended to registration application forms and appeal forms and all that.

Shri Amjad Ali: Would that be acceptable in the case of an insane person?

Shri J. T. Wadhwani: They have made the provision in the Bill itself. I think, if an insane person earns his income, he should himself submit a return.

Shri V. V. Chari: Then the guardian of the insane person comes in.

The witnesses then withdrew.

I. INDIAN CHAMBER OF COMMERCE, CALCUTTA

Spokesmen:

1. Shri B. P. Khaitan
2. Shri R. Singhi
3. Shri A. L. Goenka
4. Shri S. K. Ayyer
5. Shri B. Kalyanasundaram

(*Witnesses were called in and they took their seats*)

Shri C. D. Pande: On a point of information, Sir. The gentlemen who have come here to tender evidence on behalf of the Chamber must have consulted their colleauges and others before coming here. Suppose they divulge what happens here?

Chairman: That assurance has already been given. Now, you may proceed.

Shri B. P. Khaitan: So far as our memorandum is concerned, we had to rush through, but still we have tried our best to offer as many suggestions as possible in the short time at our disposal.

Chairman: Your memorandum has been studied by us. You can either elaborate any points contained there in or if you like, add anything to it.

Shri B. P. Khaitan: We had very little time to prepare our memorandum....

Shri Morarji Desai: Your memorandum has 56 pages. How could you then say that you had not enough time to prepare it.

Shri B. P. Khaitan: We have a large number of members to be consulted. After all the object of making suggestions is to remove drafting lacuna and things like that which it is not possible to do within the short time at our disposal. Of course, you will all apply your mind and try to remove the drafting lacuna. We have tried to do our best (Some points have occurred to us after we have submitted our memorandum and on some we have not been able to lay as much emphasis as we would like them to be emphasized. There are some points which we feel should have been included in our memorandum, but were not included.

Chairman: First you may begin with your memorandum. After you finish that, you can deal with the rest of the points.

Shri B. P. Khaitan: So far as the memorandum is concerned, I would like to lay emphasis on the provisions dealing with charitable trusts.

Shri Narendrabhai Nathwani: Please refer to the page.

Shri B. P. Khaitan: I am now talking in general terms.

Chairman: Still you might quote the pages.

Shri B. P. Khaitan: These are my introductory observations. This won't take more than five minutes. After that I will refer to specific points with refereene to pages.

Chairman: It will be much better if you begin with your memorandum. After that you can raise other points.

Shri B. P. Khaitan: In the introductory part of our memorandum, that is on page 1, we have tried to focus attention to some of the far-reaching provisions which have been made in the Bill. One of them relates to the liability of directors and shareholders of private companies with regard to taxes. In the case of a private company, under certain circumstances, it has been provided that a director can be held liable to an unlimited extent for the tax liability of the company. Similarly the Bill provides that shareholders having mort than 10 per cent shares in a private compan may be liable personally to pay the taxes of the company.

Shri Morarji Desai: It is one provision.

Shri B. P. Khaitan: There are two provisions. One is that the director of a private company is personally liable. The other is that the shareholder, if he is holding more than 10 per cent shares, is personally liable.

Shri Morarji Desai: But he is not liable if he is holding less than 10 per cent shares.

Shri B. P. Kaitan: No. But there are two provisions.

Shri Morarji D sai: Generally they coincide.

Shri B. P. Khaitan: A director may hold only nominal shares.

Shri Morarji Desai: Not in a private limited company. In a private limited company there are only a few sharers: a private limited company is only for the managing directors and people like that.

Shri B. P. Khaitan: There may be directors holding substantial shares and there may be directors holding only a few shares. Here you say 'directors'. I know of many cases where the directors are holding only a few shares.

Shri Morarji Desai: In public limited companies.

Shri B. P. Khaitan: Also in private limited companies.

Shri Morarji Desai: Let them not be directors then.

Shri B. P. Khaitan: The private limited company has its own separate legal entity and we should not be debarred from having professional and other directors.

Shri Morarji Desai: We want to deter people from being lightly directors of anything. They must be responsible for what they are doing.

Shri B. P. Khaitan: This is the view which we would like to express

Shri Morarji Desai: This is the reason why it has been put like that.

Shri B. P. Khaitan: You could consider in the case of misfeasance or other dereliction of duty. But, otherwise, why should shareholders and directors be liable—unless there has been an act of misfeasance or any specific acts for which personal liability could be attracted? To attract the liability as a matter of course, simply because a person is a director or a shareholder, is, I thing, a very far-reaching provision.

Chairman: *Prima facie* the liability has to be there.

Shri B. P. Khaitan: Our case is that it should not be there. Since it has come from the hon. the Finance Minister that the liability should be there, I say that in that case certain safeguards should be provided, namely, that it should be there only when there is an act of misfeasance or a dereliction of duty, that is, some dishonesty should be there and not in every case as a matter of course.

Shri Narendrabhai Nathwani: Can you illustrate the kind of case in which, though a private limited company makes profits, still a director is not able to arrange for payment of the Income-tax?

Shri Radheshyam Ramkumar Morarka: The position will be known only when the company goes into liquidation; so there is no question of making profit or loss.

Shri Narendrabhai Nathwani: I am speaking of a company which has already made profits, still it has not been able to pay the tax due from it.

Shri B. P. Khaitan: If it has made profits and if it does not pay tax, it means that the funds have been, either by some act of misfeasance or otherwise . . .

Shri Morarji Desai: . . . embezzled.

Shri B. P. Khaitan: And therefore the directors or shareholders who are guilty of misfeasance should be held liable.

Shri Morarji Desai: All the members are guilty, because they have not taken care to see that the embezzlement does not take place.

Shri B. P. Khaitan: Sometimes it may not be be possible for a director or a shareholder, and therefore such a sweeping provision should not be there.

Shri Morarji Desai: It is not a sweeping provision.

Shri B. P. Khaitan: That is a matter of view, Sir.

Shri Morarji Desai: Why do you want to save crooks?

Shri C. D. Pande: The number of shareholders in a private company is limited to forty-nine—it is not more than fifty. So any shareholder who is not a director should not be held responsible for any non-payment of tax if his share is negligible. For instance, every shareholder is not a managing director.

Shri Morarji Desai: Every shareholder is not liable; a shareholder is liable only if he holds more than 10 per cent. A director is held liable because he is in a key position.

Shri C. D. Pande: Some of the directors are sleeping.

Shri Morarji Desai: Let there be no sleeping directors in future.

Shri C. D. Pande: The mere fact that one is a director should not make him responsible for the non-payment of the tax or the non-observance of the rules by the company.

Shri Narendrabhai Nathwani: In a private limited company it is not so. It is a kind of partnership, where the director happens to be in the position of a partner.

Shri Morarji Desai: When the clause comes we will consider it.

Shri Narendrabhai Nathwani: The shareholders are his wife and children generally.

Shri B. P. Khaitan: If it is a partnership it is a different matter. Otherwise, there may be extenuating circumstances both as regards shareholders and directors, and some protection should be there.

Shri Morarji Desai: Are you taking up your memorandum page by page?

Shri B. P. Khaitan: I understood that to be the wish of the Members, and so I am proceeding like that.

Shri C. D. Pande: In fact we have discussed a large number of points yesterday. So when we come to the points we will say that "this has been discussed and has not been conceded". So you may put forward the most important and salient points which you want to place before the Committee.

Shri Morarji Desai: May I make a little correction to that statement? We have not conceded anything, we have only conceded consideration.

Shri K. R. Achar: Some you have conceded.

Shri C. D. Pande: For example, charity.

Shri Morarji Desai: I am afraid it is not so; we have only left a favourable impression. How can we concede?

Shri B. P. Khaitan: And you may get rid of the concession on the floor of Parliament. We do not know what the last thinking will be.

Shri Morarji Desai: When we consider clause by clause in the Select Committee, then only we can come to a conclusion. Here we can only say that "this will be considered". We leave an impression on your mind that there is likely to be a favourable consideration or you have an impression that it is likely to be rejected. These are the only two impressions we want to make.

Shri B. P. Khaitan: Dealing with the company group of clauses, at page 2 of our memorandum we have invited your attention to the carry-forward

of losses by companies. Clause 79 provides that if there has been a change of 51 per cent of the shareholders, then the benefits of the carry-forward of losses will not be allowed. Possibly this provision has been made having regard to certain block of shares undergoing change of hands. There, this change of shareholdings may be due, apart from the circumstance of sale of block shares, to death in the family or to partition or to other natural causes also.

Shri Morarji Desai: We have therefore said only fifty per cent, not all the shareholders.

Shri B. P. Khaitan: Suppose one shareholder is holding 51 per cent shares.

Shri Morarji Desai: The others should not get the benefit.

Shri B. P. Khaitan: And his heirs are the succeeding shareholders.

Shri Morarji Desai: The shares will be considered the same. Are you distinguishing between original shareholders and succeeding shareholders?

Shri V. V. Chari: It is a case of the assessment of the company itself. And when it is liquidated, you can take it by that time that there is no interest of the small shareholders of the company.

Shri Morarji Desai: This is about clause 79. Supposing some shareholders are there and their heirs have come in?

Shri V. V. Chari: In a case where one of the share-holders dies and his place is taken by his legal representative, that situation will have to be taken care of.

Shri B. P. Khaitan: That is what I am suggesting.

Shri Morarji Desai: There is a case of inheritance.

Shri B. P. Khaitan: Inheritance or partition, I would like to add.

Shri Morarji Desai: It is the same thing.

Shri V. T. Dehejia: That is, by devolution by the law of inheritance.

Shri B. P. Khaitan: Partition in the case of joint family shares or devolution of interest by death.

I am taking the company group of clauses first. In the same page, you will find, we have referred to clause 178.

Shri Radheshyam Ramkumar Morarka: Before you go to the next clause, I would like to seek a clarification about clause 79. Clause 79 would be applicable not only to private companies, but companies in which the public is also not substantially interested, that is Section 23A companies. The definition in the proposed Bill is, if the management of any company is in the hands of five or less persons, it would be considered to be a company in which the public is not substantially interested. Most of the companies the management of which is in the hands of five or less persons would come under clause 79. If they come under clause 79 and if 51 per cent of the shares of the company changes hands for any reason whatsoever, the right of set off or carry forward of losses of such companies is taken away. In other words, if a majority of the shares changes hands, 49 per cent of the shares would stand to lose. They would suffer. Why? In what way is this justifiable? You have given the example of a private company. I can understand that. There is the case of companies in which the public is not substantially interested.

Shri Morarji Desai: How is it? Almost all companies are in the hands of five or less persons. That definition will have to be changed.

Shri V. V. Chari: This is in accordance with the Tyagi Committee Report. This is also in consonance with the practice in Australia.

Shri B. P. Khaitan: We have taken this point in page 35 of our memo. About clause 178, it prohibits the liquidator from making any payment out of the funds in his hands until the taxes have been paid. No safeguard has been provided with regard to secured interests. I do not think that is the intention.

Shri Morarji Desai: Tax is more secure than secured creditors.

Shri B. P. Khaitan: That cannot be so. That principle, I hope you will not introduce.

Shri Morarji Desai: Why not?

Shri B. P. Khaitan: Somebody has lent money to the company on the mortgage of the assets of the company. Debentures have been issued. Banks have advanced moneys. If tax which becomes due afterwards is to have priority over secured interests, that would be a dangerous position.

Shri Morarji Desai: I do not think so. Government dues have priority.

Chairman: Government dues have priority always.

Shri B. P. Khaitan: Under the Public Demands Recovery Act, once you have taken a certificate, a charge is effected. It is subject to prior charges. I hope hon. Members will consider it very seriously. Otherwise, trading will become impossible. No banks would then be safe.

Shri Morarji Desai: Why should the tax be such a large amount pending in arrears? I do not mind if it dampens them. Government dues have to be safeguarded. This is the first charge. It should be known to all lenders.

Shri B. P. Khaitan: Take the Industrial Credit institutions advancing crores of rupees to industrialists.

Shri Morarji Desai: This happens when they go into liquidation.

Shri B. P. Khaitan: I am also talking of liquidation. No bank lends to one who goes into liquidation. I advance moneys. After five years, the company goes into liquidation. The tax will be paid in priority.

Shri Chari: There is a mistake. They are staying distribution of the proceed of the liquidation until this is settled. The existing rights of secured creditors is not disturbed.

Shri Morarji Desai: It means, he cannot pay.

Shri V. V. Chari: He is prevented from parting with the assets until the assessment is known. The existing secured rights are not affected.

Shri Morarji Desai: If it has no prior claim, why should others not be paid?

Shri V. V. Chari: Suppose we get a notice of liquidation. Notice is sent to the liquidator that till he hears from the Income-tax department, he should not part with the assets. Immediately, some estimated amount is claimed and he is told, to this extent, you do not part with the assets, the balance may be given.

Shri B. P. Khaitan: Tax has the first priority. Outside liquidation proceedings, I agree, the secured creditor is not postponed. Suppose a secured creditor does not realise his security outside liquidation proceedings, this clause takes away his right to be paid.

Shri V. V. Chari: This applies only in the case of liquidation.

Shri C. D. Pande: Does it apply only in the case of liquidation or also in the case of change of hands of management? For example, the B.I C. was under a certain management at one time. Later on, it changed hands. Suppose 51 per cent of the people are not the same as they were in the previous company. Will this new company totally deny all the obligations of the old company?

Shri V. V. Chari: That does not arise out of this clause. This clause relates to liquidation only.

Shri C. D. Pande: Are you satisfied that it applies only to liquidation?

Shri B. P. Khaitan: This applies only to liquidation.

Shri Morarji Desai: How long do you propose to take?

Shri B. P. Khaitan: I am entirely in your hands. I can emphasise on some important provisions.

Shri Morarji Desai: I hope you will finish by 12.30.

Shri B. P. Khaitan: That should be more than enough.

Shri Radheshyam Ramkumar Morarka: Kindly see clause 178(3).

Shri Narendrabhai Nathwani: It creates indirectly a charge.

Shri V. V. Chari: This relates to freezing of assets.

Shrimati Tarkeshwari Sinha: He cannot disburse the amount.

Shri Morarji Desai: What is the intention of holding this up? If it has no priority of charge, why hold up the secured creditors? We should provide a time-limit. You cannot go on indefinitely assessing the whole thing. This clause will have to be gone into more carefully. Better provide a precise thing.

Shri Narendrabhai Nathwani: That is the point.

Shri B. P. Khaitan: It is a fundamental principle.

Shri Morarji Desai: We will consider it.

Shri B. P. Khaitan: The next point concerns the group of clauses corresponding to section 34 of the present Act, where a period of four years is provided in case of *bona fide* omissions....

Shri Morarji Desai: You will agree that this is an improvement on the present position.

Shri B. P. Khaitan: So far as the proposed Bill is concerned, certain provisions are an improvement.

Shri Morarji Desai: I am talking of this particular provision. This matter was discussed with the Indian Merchants' Chamber yesterday. We have agreed to consider that.

Shri B. P. Khaitan: We would like to draw your attention to the fact that even under the present Act you do not go beyond 1939.

Shri Morarji Desai: Now it is 16 years only.

Shri V. T. Dehejia: 16 years and beyond when in any year....

Shri Morarji Desai: We ought to put a stop to going on indefinitely. We should put a limit to it. The department people are not the only honest people in the world. We shall put a limit on it.

Shri B. P. Khaitan: The Tyagi Committee had suggested that the assessee should be given an opportunity of showing cause against notice under certain circumstances.

Shri Morarji Desai: It is said to be on 'revenue' consideration. I do not know what is the meaning of that. I do not think this sort of autocratic power in the hands of the department is required. We must give notice to explain why it should not be done. That we must provide. We will consider that.

Shri B. P. Khaitan: The next point is dealt with in page 5 of our memorandum. Preference bonus shares have been subjected to tax, but not the ordinary bonus shares.

Shri Morarji Desai: That is because in the other case they are not entitled to anything more than interest. When preference shares get this advantage, they are bound to be taxed. It is a very simple proposition.

Shri B. P. Khaitan: A safeguard may be provided. I do not think it is intended that bonus shares should

be taxed on realisation. For example, take the definition of 'dividend'. If I redeem preference shares, I get money from the company. Redeemable preference shares are taxed at the time of issue. At the same time, when I get money from the company in redeeming preference shares, that will be a dividend in my hands.

Shri Morarji Desai: His point is that there should not be double taxation. That will be taken care of.

Shri B. P. Khaitan: Towards the end of page 5 of our memorandum, we have referred to carry-forward of losses.

Shri Morarji Desai: Why should they be carried forward indefinitely? This is the worst loophole left. It cannot be done.

Shri B. P. Khaitan: Then I come to clause 2(18). If in a particular company 5 or less persons who are relatives hold shares, that has been laid down as the test for it being a company in which the public are not substantially interested, even though the relatives may be living separately and may be on very inimical terms. In my submission, some safeguard should be provided, where if it is shown that the relations in question are really separate, they should be treated as independent units and not as one unit for the purpose of substantial interest.

Shri Morarji Desai: Simply because they are relatives, you cannot club them together. We should find out a criterion. We should not lump them at the cost of everybody.

Shri V. V. Chari: The companies Act goes much further.

Shri Radheshyam Ramkumar Morarka: That is only for regulation and management. Here it is taxation law.

Shri Morarji Desai: We will have to consider it. The point of the witness is that if 50 per cent voting power is held by 5 or less persons and if those people are relatives—any one of them —they will be considered as one person; he says that is not fair. I am inclined to agree with it. We will have to consider it.

Shri B. P. Khaitan: Then I come to page 8 of our memorandum—clause 2(22) of the Bill. Dealig with pref. shares, I have already emphasised this point.

Shri Morarji Desai: That is about bonus preference shares which have been taxed at the time of issue not being subjected to tax again. That will be clarified.

Shri B. P. Khaitan: In this you have abolished the category of "not ordinarily resident".

Shri Morarji Desai: That we are considering. There are special representations, and we are considering it, but it is considered only from the point of view of Indian nationals or nationals of Indian origin, not foreigners. Foreigners will be taken care of separately.

Shri V. V. Chari: It will have to cover foreigners also.

Shri Morarji Desai: We will have to give the concession to everybody in that case. We will have to see.

Shri B. P. Khaitan: Coming to Clause 10, I would request that tax-free salaries paid to foreign technicians may be exempted from the operation of section 200 of the Companies Act. It is only a suggestion that it should be on the lines of the Finance Act.

Shri V. V. Chari: The Bill was introduced earlier than the passing of the Finance Act. So, whatever is there in the Finance Act will be incorporated here.

Shri B. P. Khaitan: In Clause 10, you have extended the period to five years. But power should be reserved for the CBR, in fitting cases, to extend it further.

Shri Morarji Desai: I do not want any such power. The exercise of it becomes very difficult.

Shri B. P. Khaitan: Clauses 11 to 13 relate to charitable trusts. Provision has been made that at least 75 per cent of the income must be spent in the year in which the income has been earned. Suppose a trust has all its investments in Government securities or preference shares, and the dividend is received on the last day of the financial year. The entire income is deemed to be the income of that year.

Shri Morarji Desai: Why should it be received on the last day?

Shri B. P. Khaitan: Suppose my financial year is 31st March, and the annual meeting of the company is held on 29th March.

Shri Morarji Desai: You better hold it early.

Shri B. P. Khaitan: I am only a shareholder in the company. It is not in my power to hold the meeting of the company earlier.

Shri Morarji Desai: When they declare a dividend, take it a day after the year is over. Then it will be in the next year. It is for you to draw the dividend, it is not sent to you by check. Even if it is sent by cheque, you need not draw it. If it is received in the last few days, you see that you draw it in the next year. This argument does not hold good.

Shri V. V. Chari: You say you receive it on the last day of the financial year and therefore you cannot spend it on that day, but correspondingly on the previous 31st March, you would have received an equivalent amount which would have gone into the previous ear's income and still you have spent it this year.

Shri Morarji Desai: Why receive it on 31st March? Receive it on 1st April.

Shri V. V. Chari: It is the same thing.

Shri Morarji Desai: If it is received on 31st March, the previous year also, it will be included in the previous year, and there your 25 per cent. will operate. Therefore, for not allowing the 25 per cent. to operate, you receive it on 1st April. What prevents you from doing it on 1st April.

Shri B. P. Khaitan: May I draw your attention to clause 8 of the Bill, which reads:

> "For the purposes of inclusion in the total income of an assessee, any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause 22 of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be."

The expression "declared, distributed or paid" has been held by the High Courts to mean the date of the declaration. Therefore, it will be treated as income of that year.

Shri Morarji Desai: Then, I think we will have to clarify it.

Shri C. D. Pande: How is it possible for a company or a charitable trust to spend the money in the year in which it has been earned, because the accounts are not ready, and they will not know whether there is profit or not till the meeting is held in the following year. What we can say is 75 per cent. of the income must be spent in the year in which the dividend has been declared, rather than in the year in which it has been earned.

Shri Morarji Desai: Then, how do we frame our budgets? The mistake is not on 25 per cent, but in your estimates.

Shri C. D. Pande: Supposing till 31st March, you have no knowledge or idea whether there is any profit to accrue or not.

Shri Morarji Desai: Why should you not have any knowledge? You will have an estimate of it.

Shri C. D. Pande: There is no harm in saying "in the year in which the dividend has been received".

Shri Morarji Desai: We are trying to see if we can clarify it.

Shri B. P. Khaitan: The same objection applies to interest on securities.

Shri Morarji Desai: But the interest on securities is received in time, that does not depend on any declaration. They are prescribed rates, they are not rates which are not known.

Shri B. P. Khaitan: I am told by my colleague that similar provision exists with regard to interest on securities also.

Shri Morarji Desai: That we will consider.

Shri B. P. Khaitan: There may be some endowments for schools or hospitals or other charitable institutions.

Shri Morarji Desai: The intention should be declared and they should say that they want to accumulate this for so many years for this purpose. In those cases we will see what could be done. The amount will also have to be spent on that. Let there be a commitment.

Shri Radheshyam Ramkumar Morarka: Suppose one charitable trust gives a donation to another charitable trust, then in the hands of the receiving trust that income would be free from tax and at the same time the trust giving donation would be deemed to have spent 75 p.c. of its income as envisaged by this Bill. The point is that the provision as it stands in the Bill does not meet the requirements or the intentions of the framers. In the hands of the receiving trust it is not a taxable income.

Shri V. T. Dehejia: If there be such a provision, a remedy could be found.

Shri Morarji Desai: When we come to the clauses, we will see whether it requires any remedy and how it could be remedied.

Shri B. P. Khaitan: I am coming to claus 12 of the Bill and I refer to page 12 of our memorandum. With regard to the business income, a distinction has been made between business held as trust and business carried on in execution of the primary object of the trust. So far as the first class or category of income is concerned, that is taxable but so far as the income from business in execution of the primary object of the trust is concerned, it has been exempted.

Shri Morarji Desai: That will be covered by the other clause if that is so. Why are you thinking of accumulating wealth personally and through these trusts? Why should anything be accumulated?

Shri B. P. Khaitan: I am trying to bring out the lacuna. It is provided that the income from business must be wholly spent in the year of accrual of income. That is to say, you must be able to estimate beforehand what the total income will be. Some provision, say, 75 per cent. of the income or something like that can be there. You cannot estimate beforehand the entire income, cent per cent. The estimate may be on the basis of the previous year's income.

Shri Morarji Desai: If it says that the whole amount has to be spent, it will have to be clarified. We will see what could be done about this. If we say 75 per cent, perhaps there will be no difficulty about it.

Shri B. P. Khaitan: Clause 13 provides that a relation however remote he may be can under no circumstances have any benefit whatsoever.

Shri Morarji Desai: On this question, there will be no compromise. No relation could profit by the trust. Otherwise, it is not a charitable trust. But remote relations are not debarred.

Shri B. P. Khaitan: You can define relations to include any descendant in the male line or female line.

Shri Morarji Desai: The definition is already there. But I think we have to widen this definition of relation. As the clause stands at present, brother's son or sister's son can be given help. They should not be given. We will have to restrict this further. Otherwise, they will go on giving to their relatives and it will not be charitable.

Shri C. D. Pande: Suppose there is a trust of Rs. 2 or 3 lakhs. If a certain relation does some work in that trust and gets a salary of Rs. 100 or so, I do not think it is debarred.

Shri Morarji Desai: If he is a servant of the trust, that is a different matter. If he is doing some actual work, he may be paid salary. We are not debarring the engagement of servants. I am saying about relatives being the beneficiaries of the trust.

Shri Amjad Ali: In the Companies Act, there is a definition of relatives.

Shri Morarji Desai: We will define the word separately for the purpose of this Bill.

Shri Amjad Ali: At page 11 of the momorandum, at the bottom, in the explanation they have given, they have said that property does not include business. In the Bill also it occurs in the last line. We have to consider it. They have not amplified their views about it. Should we not be profited by their advice? There are several High Court rulings on this point. In the existing law, it is something different.

Shri Morarji Desai: We are considering it ourselves. We have said we will consider that.

Shri B. P. Khaitan: Then I come to clause 15. Clause 15 provides that loans or advances towards salary will be treated as income.

Shri Morarji Desai: Advance of salary; not loans.

Shri B. P. Khaitan: For example, the social customs being what they are, if an employee applies for loans for marriage and other things.

Shri Morarji Desai: If it is loan which is given, it is deducted by instalments. That is not included in this. That will not be taxed. But if it is an advance of salary, then it will be taxed.

Shri C. D. Pande: May I put one small question? For example, if a person in a certain firm takes a loan against his salary, what will be the position? After all, no company is going to give a loan against anything else.

Shri Morarji Desai: What is done is, loan is given on condition that he returns it from his salary. That is not advance of salary.

Shri C. D. Pande: What is advance of salary then?

Shri Morarji Desai: If a person draws three months' salary in advance for a particular purpose, it is not a loan. Loans are taken either for marriage or for building a house or for buying a car and so on. These loans are distinct from advance of salary which may be given on transfer. These loans will not be taxed. What is taxed, is, the advance of salary for two months, for example, to which a Government servant is entitled to on his transfer elsewhere. If he draws it, it will be considered for taxation in that year.

Shri C. D. Pande: After all, there is no other way of getting it back except by readjustment.

Shri Morarji Desai: We can consider it.

Shri Radheshyam Ramkumar Morarka: The clause says, "any advance by way of loan or otherwise." If it is loan, it presupposes repayment. Advance of salary does not presuppose repayment. When you say 'loan'. it implies that something is to be repaid.

Shrimati Tarkeshwari Sinha: Repayment by adjustment only.

Shri Radheshyam Ramkumar Morarka: Then it is an advance. You then say, "advance of salary."

Shri Narendrabhai Nathwani: If the employee is just authorised by the employer to draw an advance of salary, will it be covered by loan? I submit not. What is the purpose then?

Shri Morarji Desai: A person may draw an advance of salary—one year's salary is drawn—which is given to him by the employer, and then the person retires. Then, next year, he does not draw any salary.

Shri Narendrabhai Nathwani: He has received some amount by way of advance of salary, and he does not work in the next year. Then there is a liability to return it.

Shri Morarji Desai: He retires.

Shri Narendrabhai Nathwani: That would create a liability.

Shri Radheshyam Ramkumar Morarka: If he retires, the amount will be adjusted.

Shri Morarji Desai: We will consider this. But what the witness says is, income-tax is levied on salary due. The salary due is, for example, Rs. 1,000. That is deducted in instalments. That will not be liable to deduction for income-tax purposes. The salary due is Rs. 1,000, and it is not minus instalment. According to the terms of this clause, it will be so.

Shri V. T. Dehejia: He does not pay twice. That is clear.

Shri P. C. Borooah: Does not an advance of loan have the same effect as salary advance? It will have to be paid back in any case. The difference is only in nomenclature.

Shri Morarji Desai: Let us examine it carefully when we come to the consideration stage. It is no use disposing of it just now.

Shri B. P. Khaitan: Shri Morarka has drawn your attention to the language of clause 17(1)(v) wherein the language used is: "any advance by way of loan or otherwise of salary;"

Now, another item which requires your attention is in the same clause: it is sub-clause (3) of clause 17 dealing with profits in lieu of salary.

Shri Morarji Desai: Whatever is paid will come in profits. For example, if a donation is received for expenses, is that not part of the income. Even beggars should pay income-tax if we can catch them!

Shri B. P. Khaitan: The point which I wish to bring forward is that though the services of the man are terminated, when the employee is ill, he is given some money. This is done in the case of those who are in indigent circumstances.

Shri Morarji Desai: You pay the doctor. Do not pay to the ex-employee.

Shri B. P. Khaitan: If you pay in kind, that will not be treated as income.

Shri Morarji Desai: Is this a new provision? No. Nothing has happened so far.

Shri B. P. Khaitan: It is a new provision. After the termination of services or employment, any gratuity paid to the person is not taxable at present. After ten to 15 years, if some employee falls ill and payment is due to him . . . .

Shri Morarji Desai: It is an old provision. Nothing has happened so far.

Shri B. P. Khaitan: It is a new provision.

Shri C. D. Pande: I think there is a distinction between the government servant and the private employee in this matter.

Shri Morarji Desai: That is being considered. That requires very careful consideration.

Shri C. D. Pande: There is difference between a government employee and a private employee. Moreover, a government employee generally gets a pension, and also a gratuity at the time of retirement, after a long period of service. Therefore, when anybody gets at the time of retirement, 15 months' salary as a maximum amount of gratuity, it is not an inordinate amount.

Shri Morarji Desai: Pension is liable to tax.

Shri C. D. Pande: In the case of persons who are getting pension as well as gratuity?

Shri Morarji Desai: Gratuity is part of pension.

Shri Morarji Desai: We will consider it when the section comes. This is not the time to consider it. Retirement benefits cannot be called capital gains. Let us go to another clause now.

Shri B. P. Khaitan: Clause 24—page 14 of our memorandum—deals with the question of repairs. But business houses have to incur special expenses for depreciation and other purposes. So, the question arises whether they are repairs.

Shri Morarji Desai: I do not think so. There is a law for business houses and if it covers depreciation allowance, it is all right.

Shri B. P. Khaitan: That should be treated as business expense.

Shri Morarji Desai: I do not agree.

Shri B. P. Khaitan: Clause 27—page 15 of our memorandum—requires some clarification. In sub-clause (i), after the words "for adequate consideration", the words 'or in connection with an agreement to live apart" have been omitted. That should be corrected.

Shri Morarji Desai: That seem to be an omission. That will be set right.

Shri B. P. Khaitan: Sub-clause (vi) says:

> "taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property".

In the case of jute and cotton mills in Calcutta, a levy is paid for fire services. That has to be treated as business expense.

Shri Morarji Desai: I do not know how you want insurance to be included in that. If fire service tax is levied by a local authority, that is included in this.

Shri B. P. Khaitan: It is not levied by local authority.

Shri Morarji Desai: Municipality is a local authority. Who else can levy it?

Shri B. P. Khaitan: Clause 33—page 17 of our memorandum—deals with development rebate in the case of amalgamation of companies. It provides that the benefit will be given only if all the shareholders of the amalgamating companies become shareholders of the amalgamated company. There may be a small minority—4 or 5 per cent—who are dissentient shareholders. Sometimes one or two shareholders may not be traceable. So, the benefit should be given if 90 per cent of the shareholders of the amalgamating companies become shareholders of the amalgamated company.

Shri Morarji Desai: In the case of shareholders who are not traceable, it will be allowed. We will find out if that can be done, but I do not think that is necessary.

Shri B. P. Khaitan: I come to clause 34—page 18 of our memorandum. The 75 per cent referred to in sub-clause (3)(a) is after all to be made by estimate. Sometimes we do not know what the assessed income will be, because it generally takes place after two or three years. With all the expeditiousness which may be provided under the Act, there will be a time lag of two or three years. That should be provided for.

Shri V. V. Chari: That is covered by the existing law.

Shri B. P. Khaitan: While on this clause, Sir, I would like to invite

your attention to clause 34, sub-clause (2). Sub-clause (2)(ii) says:

> "nothing in clause (i) or clause (ii) of sub-section (1) of section 32 shall be deemed to authorise the allowance for any previous year of any sum in respect of any building, machinery, plant or furniture sold, discarded, demolished or destroyed, in that year."

Even in the case of new constructions, you know, temporary structures are to be built during the construction stages and sometimes they have to be destroyed, when the construction work is finished, within six months or eight months. Expenses incurred on these temporary structures should either be allowed as revenue expenses or, if they are treated as capital expenses, depreciation should be allowed.

Shri Morarji Desai: Nobody pays it from his pocket. Has anybody done it? On the contrary, they take interest, compound interest and all that.

Shri B. P. Khaitan: We are talking of the statutory provision, not what happens. My only submission is that these structures are of a temporary nature and by their very nature they are revenue expenses and should be treated as such.

Shri V. V. Chari: They are allowed under the existing Act. Where it is not a case of depreciation of 100 per cent, it does not apply to temporary structures but to bigger structures.

Shri B. P. Khaitan: Supposing a contractor gets a concrete mixer and it gets worked out in six months. During the course of construction it may have to be discarded.

Shri V. V. Chari: There are two things. Temporary structures are treated as revenue expenses. But where a big building is constructed for Rs. 10 lakhs and it is sold out in that very year, in that case no depreciation will be allowed.

Shri Khaitan: We are, again, an what should happen, and, therefore, my submission is that it should be clarified.

Then I come to page 20 of our memorandum—clause 36. With regard to bonus paid to employees we would like to have it clarified that where bonus is paid under statutory awards, orders of wage boards or any other statutory authorities, it should be allowed.

Shri V. T. Dehejia: Have they been disallowed so far?

Shri B. P. Khaitan: We are now discussing the Bill.

Shri V. T. Dehejia: An industrial award can be even by consent. If you provide that all industrial awards will be allowed as a reduction, then there may be consent awards of even six months' bonus.

Shri B. P. Khaitan: If you are visualising that the employers and the employees will, a sort of, collude together and make a special award, I am afraid that stage has not yet come when the employers will be so generous as to collude with the employees.

Shri V. T. Dehejia: It is a matter of co-operation—45 per cent they will get from Government and the remaining 55 to be found by them.

Shri C. D. Pande: What is the position if some bonus is paid to the workers and there is no award as such by any official body?

Shri Morarji Desai: That is allowed. There is no question about it. I do not think there would be any perverse income-tax officer who will not allow it. Even Tribunals are not keen on making a provision here.

Shri Narendrabhai Nathwani: Has there been any case?

Shri Morarji Desai: How can there be any? It is devoid of commonsense if anybody does that. Really speaking, bonus comes from profits. Whey it be treated as expenses?

Shri B. P. Khaitan: Bonus never comes from profits.

Shri Morarji Desai: When there is no profit, no bonus is given.

Shri B. P. Khaitan: Bonus is based on profit, but it does not come out of profit.

Shri C. D. Pande: Bonus is deferred payment of wages.

Shri A. L. Goenka: Profits will be reduced to that extent.

Shri B. P. Khaitan: In clause 37 of the Bill, the word "necessarily" has been introduced. The words previously were "wholly and exclusively".

Shri Morarji Desai: I am prapared to remove the words "wholly and exclusively" and retain the word "necessarily".

Shri B. P. Khaitan: My submission is that the word "necessarily" should be removed. That will lead to perversities.

Shri V. V. Chari: There are remedies for perversities.

Shri B. P. Khaitan: We have enough experience of perversity and also goodness.

Shri Morarji Desai: There is perversity on the side of the management for spending money. Then the income-tax officers can never catch them.

Shri B. P. Khaitan: The word "necessarily" will lead to a lot of uncertainty at the time of planning expenses.

Shri Morarji Desai: Then they will be more careful.

Shri B. P. Khaitan: Our submission is that the word "necessarily" is not necessary.

Shri Morarji Desai: No honest man will suffer on this account.

Shri B. P. Khaitan: Personally, I would submit that the word "necessarily" will be a source of lot of inconvenience and will result in assessment injustices.

Coming to entertainment expenses, my humble submission is that the amount should be raised beyond Rs. 5,000, particularly for bigger concerns and managing agency houses.

Shri V. V. Chari: But Rs. 5,000 is the minimum.

Shri Morarji Desai: Why should the minimum be raised? For bigger business houses it is one per cent of the profits.

Shri B. P. Khaitan: Suppose there is a loss?

Shri Morarji Desai: Then why should they spend so much?

Shri B. P. Khaitan: In the earlier years, particularly when there is no profit, the expenses are quite high.

Shri Morarji Desai: Then they should not entertain at the expense of the company.

Shri B. P. Khaitan: Clause 39 is borrowed from the present section 12A. At that time, the institution of Secretaries and Treasurers was not there. So, I would submit that a similar provision should be made with regard to Secretaries and Treasurers also, as that is another version of managing agents.

Shri Morarji Desai: Then why not keep managing agents? Why have we removed managing agents?

Shri B. P. Khaitan: You have introduced the system called Secretaries and Treasurers. If you had estated only ten managing agents and no more . . .

Shri Morarji Desai: I am prepared to consider that. Because we have made a little concession, it does not mean that should be stretched in a manner that managing agency is restored by another law.

Shri B. P. Khaitan: For adequate consideration managing agents pay a portion of their allowance.

Shri Morarji Desai: Secretaries and Treasurers are officials. No commission need be paid to them.

Shri B. P. Khaitan: They work for the benefit of the company.

Shri Morarji Desai: The company can engage another person.

Shri B. P. Khaitan: I thought it was a very very nominal consequential amendment which should be incorporated.

Shri Radheshyam Ramkumar Morarka: I should like to know whether this declaration is to be made once only or every year.

Shri V. V. Chari: There is no particular rule about it.

Shri Radheshyam Ramkumar Morarka: Suppose there is a written agreement under which the managing agency commission has to be shared with a third party and the agreement is for a period of five or ten years, has this declaration to be filed every year?

Shri V. V. Chari: So long as you prove that the original agreement stands, that will do.

Shri B. P. Khaitan: Coming to clause 40, item 2 in sub-clause (a) provides that any sum paid on account of any cess, rate or tax, levied as a proportion of the profits, will not be allowed to be deducted in computing business income. I submit that it should be clarified. Take, for instance, the cess on coal. That should be deducted in computing business income.

Shri Morarji Desai: We will consider this.

Shri B. P. Khaitan: Then, sub-clause (b) of this clause provides that no allowance will be made in the assessment of a firm in respect of interest, salary, bonus etc. paid to partners, or in the case of Hindu undivided families, to members of the family. If a salary is paid to a partner, considering the nature of the services rendered by him, and if that is disallowed in the assessment of the business of the firm, it would be inequitable. Since, in any case, the salary is taxed in the hands of the recipient as his income, if it is disallowed in the assessment of the firm, there will be double taxation. If the partnership deed provides that a partner should be provided a certain allowance plus a share of the profits, that salary should be assessed to the partner and not to the firm.

Shri Morarji Desai: That will be considered.

Shri B. P. Khaitan: In sub-clause (c) of clause 40 it is stated:

> "In the case of any company—
> .....if in the opinion of the Income-tax Officer any such expenditure or allowance as is mentioned in sub-clauses (i) and (ii) is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing in sub-clause (i);"

When you say "in the opinion of the Income-tax Officer", it is not justiciable. Therefore, a happier expression should be used. Probably, I have not mentioned this clearly in the memorandum.

Shri Radheshyam Ramkumar Morarka: The wording of the provision is:

> "..if in the opinion of the Income-tax Officer any such expenditure or allowance as is mentioned in sub-clauses (i) and (ii) is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing to it therefrom.".

All these appointments, remuneration, perquisites etc in case of public companies have to be sanctioned by the Company Law Administration. So, why should the phrase 'in the opinion of the Income-tax Officer' be there? The opinion may be arbitrary.

Shri B. P. Khaitan: Yes, his opinion may be arbitrary. That is our point.

Now, I come to clause 41. Profits on assets disposed of after the business has been closed have been brought under assessment, but losses carried forward, that is, incurred before the closing of the business but carried forward, or incurred in the winding up are not allowed. I submit that profits in disposing of the assets should be allowed to be set off against losses. That is the suggestion that we have made in our memorandum.

Now, I come to clause 42 at page 26 of our memorandum. Certain concessions have been made in this clause. We submit that the concession should be extended to all extracting business producing other minerals also of a wasting nature.

Shri V. V. Chari: It is a question of Government policy, not of taxation.

Shri B. P. Khaitan: Now, I come to clause 43, and I would invite your attention to para 2 at page 27 of our memorandum. This relates to speculative losses.

Shri Morarji Desai: Why should speculative losses be allowed?

Shri B. P. Khaitan: I am not submitting that they should be allowed, but I want that there should be certain clarifications. Sub-clause (5) (a) reads thus:

> "(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him.

shall not be deemed to be a speculative transaction;".

This does not cover hedging against unsold stocks.

Shri V. V. Chari: You are referring to some isolated case. It is not any general principle.

Shri B. P. Khaitan: The object of the legislation is to provide for all contingencies.

Sub-clause (5) of this clause reads thus:

> "'speculative transaction' means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or tansfer of the commodity or scrips;".

Shri V. V. Chari: Every forward market has got a settlement date. So, it must be periodically settled. So, what is wrong about it? So, why do you want the word "periodically' to be omitted?

Shri B. P. Khaitan: It should be 'periodically and ultimately'.

Shri V. V. Chari: It should be 'periodically or ultimately'.

Shri B. P. Khaitan: It should be 'and' and not 'or'.

Shri V. V. Chari: That is not how speculation is done.

Shri Morarji Desai: The profits of hedging are never shown, but only the losses are shown. Generally, that is what happens.

Shri B. P. Khaitan: I do not know about the exact details of the business, but I know this much.

Shri Morarji Desai: Therefore, we should not include it here. Hedging means that there is neither loss nor gain. That is the purpose of hedging. The purpose of hedging is to see that when you have to buy a large amount of raw material, if the prices go down, then you do not suffer. That is why hedging is allowed. If proper hedging is done, there is neither loss

nor gain. But when hedging is done under cover of this only for private gain, then loss may come in; then, the loss must not be debited to the income.

Shri B. P. Khaitan: So far as hedging is concerned, that is covered by clause (a) of the proviso, but the hedging is not only with regard to goods actually sold but also with regard to stock held but not sold.

Shri Morarji Desai: It is a very thin line of demarcation between hedging and speculation. Unfortunately, at present, all hedging is going into speculation.

Shri C. D. Pande: If hedging is done in respect of the goods used for that industry, then, to the extent of the quantity or the material used in that industry, it should be allowed.

Shri Morarji Desai: Then, there is no loss. There can be no loss and no gain, and, therefore, nothing is to be debited.

Shri C. D. Pande: But, supposing there is a cotton mill, and they require 500 tons of cotton....

Shri Morarji Desai: The purpose of hedging is to see that there is no loss or gain.

Shri C. D. Pande: To the extent used in the industry, it should be allowed.

Shri Morarji Desai: But there is nothing to be allowed. The purpose of hedging is to see that there is no loss or gain. It is only when the man goes into speculation, that there are losses or profits. We do not want him to go into speculation.

Shri Radheshyam Ramkumar Morarka: There is, however, one possibility which has to be taken into consideration. Suppose I purchase shares worth Rs. 2 lakhs, and I do not have liquid cash in the first two settlements, and, therefore, I carry it forward, and in the third settlement, I take delivery. My intention is one of genuine investment, but I am not able to pay in the first two settlements, so, I pay only in the third settlement and take delivery, and start holding the shares. But, according to this definition, the first two transactions which I carry forward may be treated as speculative.

Shri Morarji Desai: It is bound to be treated as such. Why should you not pay in the first instance?

Shri Radheshyam Ramkumar Morarka: I bought in the first instance . . .

Shri Morarji Desai: Why did you not take possession?

Shri Radheshyam Ramkumar Morarka: I could not take possession, because the money which I was expecting did not come.

Shri Morarji Desai: Then, you should not have entered into that transaction. Why should you purchase shares, if you do not have money in your hands?

Shri Narendrabhai Nathwani: Let him take delivery on the first occasion itself.

Shri Radheshyam Ramkumar Morarka: On the first occasion, I might not be able to take delivery because I had no liquid cash with me.

Shri Morarji Desai: After all, when a man goes to the market to purchase something, he must have cash in his hands.

Shri Subbiah Ambalam: When a contract is entered into in a speculative market, there is a specific indication whether the goods will be delivered or will be settled periodically.

Shri Morarji Desai: That is not there. That also is a nebulous thing. They are very clever about it. They provide for that.

Shri Narendrabhai Nathwani: In the articles of association there is a provision that delivery will be taken.

Shri Morarji Desai: But it is never taken.

Shri B. P. Khaitan: Suppose, you have sold against your unsold stocks and the market goes down. Then you have to buy back and cover your sale. Then there will be a loss.

Shri K. R. Achar: A speculative transaction is defined here. Have you got another definition for it?

Shri B. P. Khaitan: Delivery should cover delivery by documents of title also.

Shri S. K. Ayyer: Then caluse 46 on page 28 talks about capital gains tax payable by a shareholder on the assets that he receives from a company which goes into liquidation. As the clause stands at present, the shareholder is taxed immediately when he gets the distribution of the shares and not at the time when he actually sells the shares.

Shri Morarji Desai: Why should he not be taxed at that time?

Shri S. K. Ayyer: It is unrealised capital gain. He does not realise the capital gain until he gets the money.

Shri Morarji Desai: But he gets it anyway.

Shri S. K. Ayyer: He gets only the shares. When he sells, exchanges or transfers those shares to someone else, capital gains tax should be imposed. It should not be imposed at the time of distribution of shares by the company in liquidation.

Shri V. V. Chari: Does he not realise the capital gains at the time of distribution?

Shri Morarji Desai: I do not know why should it wait till he sells those shares.

Shri S. K. Ayyer: Because he has not received any money.

Shri Morarji Desai: But he gets a value which is larger than the value which he had paid earlier. Whether he gets it in rupees or in shares of other companies, it is all the same.

Shri S. K. Ayyer: It should be made clear that again at the time of selling he is not charged tax on capital gains.

Shri Morarji Desai: If it has again appreciated, he will be charged. Afterwards he will be charged only if there is appreciation not otherwise.

Shri S. K. Ayyer: Then we go to clause 49 on page 29. At the time of acquisition by partition or by gift the market value as on 1st January, 1954 should be taken, but as the clause stands now on a division of the family if the assets have been purchased, say, about 25 years ago, that cost will come into play.

Shri Morarji Desai: Even then it will be as on 1st January 1954 and not that.

Shri V. V. Chari: We have made the provisions for all partitions, either of a family or of a firm, uniform.

Shri S. K. Ayyer: We want it to be clarified. Here it is put 'as on the date of acquisition'.

Shri V. V. Chari: You must see the other clauses also. Kindly see page 52, item (ii). It is clear.

Shrimati Tarkeshwari Sinha: The option has been given to the assessee.

Shri S. K. Ayyer: But in the clause the date of acquisition is given.

Shrimati Tarkeshwari Sinha: Please see item (i) as also item (ii) on page 52.

Shri C. D. Pande: May I draw the attention of the Finance Minister not to what they have to say about it but to some doubt which is there in my mind about the year in which the capital gains would be computed? Suppose, my father purchased about 30 years back a house worth Rs. 5,000 which is today worth Rs. 30,000/-. Though the value of the house has appreciated, the value of money has also gone down meanwhile.

Shri Morarji Desai: That cannot be taken into account. The value is now taken as on 1st January, 1954.

Shri C. D. Pande: I may suggest that capital gain should be limited to a period of five years. Today it is 1961, so the period should be 1956 to 1961. Next year it will be 1957 to 1962 and so on.

Shri Morarji Desai: How can that be like that?

Shri C. D. Pande: After ten years the price of 1954 will be a nominal price.

Shri Morarji Desai: No capital gains tax is paid unless you sell the property. How can there be a period of five years there? Suppose, you have a property acquired either before 1954 or after 1954. Now, if it is a property acquired before 1954, we are entitled to take the earlier value also. But we are simplifying it and are saying that whatever may be the thing we will take only the value as on 1st January, 1954. If it is a later date then the value will be the value on the date on which it is acquired.

Shri C. D. Pande: All capital gains should be limited to a period of five years.

Shri Morarji Desai: What happens if you acquire the property today and sell it after, say, 20 years? How can it be only five years?

Shri C. D. Pande: It should be only if it is sold within five years.

Shri Morarji Desai: If the capital gains are in 20 years time, it must be 20 years.

Shri C. D. Pande: Suppose the property is purchased in 1954 and is sold in 1970. By that time the money value goes down and the price goes up.

Shri Morarji Desai: The money value may even go up. Who knows? But whatever happens, you also pay the same way. No taxes are paid otherwise. The money that is paid as tax is the money at that time and not the money of 1954.

Shri S. K. Ayyer: Then I come to clause 57 on page 30.

Shri Radheshyam Ramkumar Morarka: We may shift the position of clause 55 to come after clause 50. At present clause 51 qualifies only clauses 48, 49 and 50. Perhaps most of the arguments could have been been avoided if this clause were there.

Chairman: That we will take up later on.

Shri S. K. Ayyer: Coming to clause 57, we want development rebate in respect of plant and machinery which has been purchased and let out on hire.

Shri Morarji Desai: That is included. Circulars have been issued about it. That has already been granted.

Shri S. K. Ayyer: It is not provided for in the Act.

Shri V. V. Chari: He refers to buying machinery and giving it on rent.

Shri Morarji Desai: How can that be included in it?

Shri S. K. Ayyer: This is an incentive.

Shri Morarji Desai: There is no question of such incentive. You have already charged heavy interest and you want to take away development rebate. Do I give development rebate to machinery sellers? I give it to purchasers, not to persons who sell.

Shri S. K. Ayyer: They are not selling.

Shri Morarji Desai: They are selling. You either let it out or sell.

Shri S. K. Ayyer: *Clauses* 62-63 This is withdawal of exemption from 1-4-1961 in respect of revocable transfers which are more than six years old. We submit that this should also be retained.

Shri Morarji Desai: I do not think that is necessary.

Shri S. K. Ayyer: *Clause* 64. This is about drafting.

Shri V. V. Chari: This point was considered yesterday.

Shri Morarji Desai: We are considering that.

Shri S. K. Ayyer: *Clauses* 68-69 This is regarding unexplained Investments. More powers have been given to the Income-Tax Officers. There may be arbitrary rejections by the Income-Tax Officers.

Shri V. V. Chari: They are only codifying the existing law.

Shri S. K. Ayyer: There may be arbitrary rejections by the Income-Tax Officer.

Shri Morarji Desai: There can be an appeal. There is always an appeal on that.

Shri S. K. Ayyer: Apart from the question of appeal, the Income-Tax Officer can arbitrarily reject the explanation.

Shri Morarji Desai: He is bound to give reasons.

Shri S. K. Ayyer: He should state the reasons.

Shri Morarji Desai: He is bound to give reasons. If he does not give any reason, then you make an appeal and his cause will be lost. He is bound to give reasons.

Shri S. K. Ayyer: *Clause* 72. This is about carrying forward of business losses. Our first submission is that this should also be carried forward and set off against incomes from other sources, such as, dividend, income from machinery and plant lay-out on hire, etc. We are suggesting that business losses should be set off against other incomes also.

Shri Morarji Desai: If there is no income, you do not pay income tax during that particular year. What are other incomes?

Shri S. K. Ayyer: The Company may have some income from dividends.

Shri Morarji Desai: If the income does not come, they would not be charged.

Shri S. K. Ayyer: At the moment, it is only set off against business income.

Shri V. V. Chari: The business losses can be set off against the same business income, not against some other business.

Shri Morarji Desai: It cannot be set off against some other income.

Shri S. K. Ayyer: We want to submit this. Sometimes there are losses in a particular business. It may not be prudent for the businessman to continue in that business. He may go in another line. Then, this should be carried forward in another line.

Shri Morarji Desai: "Heads I win, tails you lose" is the maxim you follow.

Shri S. K. Ayyer: It often happens that in some cases there may be losses in one particular line of activity.

Shri Morarji Desai: Let him go in another line. Why should that loss be carried forward in another line?

Shri S. K. Ayyer: That will lead to great difficulties for the businessman. Then, I submit, Sir, that the business losses are carried forward only for eight years.

Shri Morarji Desai: They will not be carried forward for more than eight years. Even this period of eight years is very long.

Shri S. K. Ayyer: The income is assessed at any time.

Shri Morarji Desai: That has no relation to this. The loss cannot be carried forward for more than eight years.

Shri C. D. Pande: Mr. Chairman, in that case, nobody will be enabled to change the line of business. You are forcing him to remain in one line.

Shri Morarji Desai: I may tell you even if he enters into another line, he will show loss. Again, if he enters into another line, he will show loss. Every time, he will show loss and I will not get anything.

Shri C. D. Pande: One man has got many lines; he may sell iron ore and he may also deal in cotton.

Shri Morarji Desai: That is not changing the line, if he continues all the while. It should be continuous. If he enters into a new line, it cannot be set off against that. How can you set off the loss against the new line?

Shri S. K. Ayyer: Clause 79 has already been dealt with by Shri Khaitan. Then, I come to *clause* 80.

Shri B. P. Khaitan: One point I would like to add here. It provides that carrying forward of loss will be allowed only if it is determined in accordance with Section 39. Now, under the existing provisions of the Act, there is no method by which you can determine the loss. Therefore, so far as the assessments and returns prior to the passing of this Act are concerned, an opportunity should be given to assessees to file returns and have their losses determined.

Shri V. V. Chari: There is a provision to this effect even now.

Shri S. K. Ayyer: *Clause* 84. The Central Government have the powers under Section 15(c) to withdraw the exemption which is fixed for a period of five years for new undertakings. The exemption should not be withdrawn to the detriment of a particular industry. If abruptly the exemption is withdrawn, then they will not be enjoying exemption for the unexpired period. This should not be done.

Shri Morarji Desai: I can withdrawn exemption from any Company at any time. This is not a right.

Shri S. K. Ayyer: If you withdraw it abruptly....

Shri Morarji Desai: You would not have started the Company if I had not given the concession. If I find the Company is earning profits, I can withdraw the concession.

Shri S. K. Ayyer: There will be abrupt termination of the exemption. In the case of new companies which are started after that notification is issued, the concession need not be given.

Shri Morarji Desai: Why should there not be the termination of the exemption if the Company is making profits during the very first year? I would like to make a provision like that.

Shri S. K. Ayyer: They would have published the prospectus.

Shri Morarji Desai: There was no intention of doing it. Now, you have put that in my mind. Why should not I withdraw the concession when the Company is getting profits during the very first year? Why should I exempt them for five years? We have also mentioned that it is subject to all laws of the Government.

Shri S. K. Ayyer: In case such a notification is issued, it should be given only prospective effect.

Now I come to clause 87. Though this has not been included in the memorandum, I would like to say something on this clause. This is on page 66 of the Bill. Under this clause a rebate is given on insurance premia. Sub-clause (a) says:

> "Where the assessee is an individual, any sums paid in the previous year by the assessee out of his total income...."

We suggest that the words "out of his total income" be deleted.

Shri Morarji Desai: Why? Why should it not be total income?

Shri B. P. Khaitan: The financial year of the assessee is from the 1st of April to the 31st of March. Now the

life insurance premium becomes due on the 15th of January. Now he pays that premium in the month of January even before his salary becomes due on the 31st of January. That means the ITO will hold: "You have not paid the premium out of the total income of the year and therefore you are not entitled to the rebate which is allowed only against the total income of the year".

Shri Morarji Desai: I do not quite follow your point. What is the point?

Shri B. P. Khaitan: If you pay life insurance premium a rebate is allowed. You may pay that premium out of your bank balance before you receive your salary at the end of the month. In such a case the income-tax people have held that since it was not paid out of the total income the rebate would not be allowed.

Shri V. V. Chari: That is not the meaning. I will illustrate.... ..

Shri B. P. Khaitan: Mr. Chari, I have got an assessment on that basis.

Shri Morarji Desai: You send that assessment to me before the 10th of July.

Shri B. P. Khaitan: I will send that assessment to the hon. Minister. But I may submit that there is a ruling of the High Court in the Shamnagar case.....

Shri Morarji Desai: You have a total income of business. You have paid your life insurance premium from your bank balance. What happens in that case?

Shri B. P. Khaitan: The ITO says that I have not paid it out of my total income.

Shri Morarji Desai: I would like to punish this particular ITO. You will please send this case to me. He seems to be a cussed Income-tax Officer.

Shri Amjad Ali: He did not apply his commonsense.

Shri Morarji Desai: I will give him a rap.

Shri Amjad Ali: Please don't.

Shri Morarji Desai: Otherwise he will persist. Please send the case to me.

What do you mean by the words "out of his total income"? I do not think those words are necessary.

Shri V. V. Chari: Suppose there is a non-resident who has got some income and who is all the time living abroad, say an Englishman. He takes a policy in England out of his funds which are not subject to tax in India. He pays insurance premium. That will not qualify for the rebate. That is the only case.

Shri Morarji Desai: This is liable to be interpreted in the other way also. We will consider this. You please send me that case.

Shri Radheshyam Ramkumar Morarka: Why not we delete the word "total"?

Shri Morarji Desai: Even that will not be helpful because bank balance is not income.

Shri Radheshyam Ramkumar Morarka: At the time of payment of premium it is difficult to estimate the total income. Therefore you can say "out of his income".

Shri Morarji Desai: We will consider this.

Shri S. K. Ayyer: Now I come to clause 88, page 37. This clause says that a rebate in income-tax will be allowed on donations paid to charitable institutions. The wording of sub-clause (5) of this clause may be suitably changed because the donor cannot be expected to know.

Shri Morarji Desai: This is very natural. The donor must be expected to know.

Shri S. K. Ayyer: Because of clauses 11 and 12, if 75 per cent of the income is not spent by the particular institution receiving the donation....

Shri Morarji Desai: That does not make you liable to pay.

Shri S. K. Ayyer: That is all the clarification we want.

Shri Morarji Desai: What is the clarification needed? The institution does not cease to be a charitable institution.

Shri S. K. Ayyer: Then I come to clauses 90 and 91 (page 38 of our memorandum) dealing with double taxation relief. We submit that after the word "income-tax", the words "other taxes on income" may be added.

Shri Morarji Desai: Why? What are the other taxes?

Shri S. K. Ayyer: Super-tax and sur-charge; and there may be some other taxes on profits, like Business Profits Tax in other countries.

Shri Morarji Desai: Why should they be considered? It should be only income-tax and nothing else.

Shri S. K. Ayyer: Income-tax and super-tax.

Shri V. T. Dehejia: "Income-tax" includes super-tax.

Shri S. K. Ayyer: In other countries, as for instance in Pakistan, we have got the Business Profits Tax.

Shri Morarji Desai: That cannot be included. That way even municipal taxes should be included!

Shri S. K. Ayyer: It is a tax on income.

Shri Morarji Desai: Why should it be included?

Shri S. K. Ayyer: Tax on income or profits.

Shri Morarji Desai: Then you can include Sales Tax also. How can that come?

Shri S. K. Ayyer: The second point is this. By the Finance Act, 1958, the basis of residence of companies has been changed in India. In the Double Taxation Avoidance Agreement with Pakistan it is provided that the agreement will hold good so long as the basis of residence is the same in both the countries. Now, since this has been changed in India, a company may not be allowed the unilateral relief provided in clause 91, as the Income-tax authority may say that there is a Double Taxation Avoidance Agreement with Pakistan, and so unilateral relief will not be available.

Shri Morarji Desai: What is the change?

Shri V. V. Chari: Now the definition is: one which is registered in India.

Shri Morarji Desai: How does it make a difference in double taxation?

Shri V. V. Chari: There is one clause in the Agreement. The present agreement continues so long as the basis of residence remains the same. They have not refused...

Shri Morarji Desai: Then you must either clarify it with Pakistan or we should clarify it here.

Shri Amjad Ali: Pakistan is not the only country.

Shri V. V. Chari: This relates only to Pakistan.

Shri Morarji Desai: We shall see about this.

Shri V. T. Dehejia: The section says where there is an agreement, if by some clause or some default that agreement ceases to exist, then section 91 does not apply. Today we know the clause. If an agreement has come to an end.....

Shri Morarji Desai: Then it will not apply. Either it exists or it does not exist. If it is in operation you get the benefit of it.

Shri B. P. Khaitan: It is in operation, but it does not apply to companies, and therefore, as Mr. Chari suggested...

Shri Morarji Desai: That can be clarified by instructions.

Shri S. K. Ayyer: Then I come to clause 99 (page 40 of our memorandum). In this, besides what we have

stated, there are some cases where no super-tax is payable. For example, under the notification issued under the existing section 60, investment companies are exempted from super-tax on their dividends. There are certain conditions for an investment company, that it should be a public company, that it should not have any controlling interest in any other group of industries and such other things. That provision should be brought out in the statute itself.

Shri Morarji Desai: How many investment companies are there here? Not many, I think.

Shri S. K. Ayyer: There are several investment companies.

Shri Morarji Desai: They are only banks.

Shri V. T. Dehejia: There was a Reserve Bank review about this, there are quite a number of them.

Shri S. K. Ayyer: So we submit that that clause should be brought out in the statute itself instead of its being in the notification as at present.

Shri Morarji Desai: That may be considered. You might note that.

Shri V. T. Dehejia: As regards those investment corporations from which the dividend is exempted, they are notified. It is already there.

Shri S. K. Ayyer: There is a notification..... It is under the existing section 60. But now that we are consolidating the whole statute, it can be brought in here under the exemptions.

Shri Morarji Desai: Why leave " to a notification? Put it here. If there is a notification, you can cancel it at your sweet will. If it is in the Act you cannot do it. So put it here. All right, you may proceed.

Shri S. K. Ayyer: Then I come to clauses 104 and 105 (page 40-41 of our memorandum). Section 23A companies are dealt with here. The Law Commission have stated in their recommendation that an Income-tax Officer should not pass an order under Section 23A where the declaration of a dividend or larger dividends would be unreasonable on account of current business requirements. There was a provision similar to this before 1955. There was also a provision that in such cases an application could be made to the Commissioner of Income-tax to determine how much dividend is to be distributed. There was also another provision that if there is an excess dividend distributed, it could be carried forward to the succeeding years. We submit that this provision may also be brought into the present statute.

Shri C. D. Pande: I think it would be better if you confine yourself to important clauses. Otherwise, there will be no time.

Shri S. K. Ayyer: We assure you we will finish in time. We are leaving some clauses.

Shri B. P. Khaitan: In clauses 104 and 105, the suggestion which we have made is of importance, namely that for the current business requirements, it is necessary to plough back the profits. It could be done with the permission of the Commisioner. In the corresponding clause 23A, before 1955, there was provision that you could apply to the Commissioner and get exemption.

Shri Morarji Desai: Before 1955. It is not there now.

Shri B. P. Khaitan: It has been amended by the amendment of 1957.

Shri Morarji Desai: Why do you want us to restore it?

Shri B. P. Khaitan: We want restoration because in the Third Plan, we will have many expansions and it will perhaps be better if profits are ploughed back with the permission of the Commissioner. It was recommended by the Law Commission also. It might at least be kept up for your consideration.

Shri Morarji Desai: The Law Commission's advice is only an advice.

Shri B. P. Khaitan: We are also making a suggestion reserving it for your consideration.

Shri Morarji Desai: This reasonable recommendation of the Law Commission.... I call it unreasonable and so it was not incorporated.

Shri S. K. Ayyer: I come to page 42. Depreciation reserve is being considered as general reserve for purposes of section 23A. Depreciation is what is written off in the books. It is not anything out of accumulated profits. It is not a reserve like general reserve credited out of profits.

Shri Morarji Desai: Why should depreciation be considered as general reserve?

Shri V. V. Chari: It is a complicated technical point. I will explain it to him. Depreciation can be claimed in two ways. Either you debit the profit and loss account straightaway and credit the asset account in which case, the book value of the asset will go down, profits will go down and there will not be any reserve account. Another method would be, you keep the asset account at the same figure, you debit the profit and loss account and credit the reserve account. Then only, there will be a figure on the reserve side. In the first case, when you compare the total reserve, you take the written down value of the asset. In the second case when you compare the total reserve, you take the enhanced value of the asset. Therefore, correspondingly, depreciation reserve will have to be taken. It is all right.

Shri S. K. Ayyer: For the purpose of clause 109, you are taking the original cost of the asset.

Shri V. V. Chari: You have to compare the like with the like.

Shri S. K. Ayyer: Depreciation is credited only because it is provided in lump sums and not on the assets. It does not make any difference for accounting purposes whether it is shown on the credit side or as a reduction.

Shri V. V. Chari: The question is with what do you compare the value of the assets shown on the assets side of the balance sheet. Do you compare with the depleted figure or do you compare it with the inflated figure? If it is the inflated figure, the depreciation reserve is there. If it is the deflated figure, the asset will automatically be lesser than the original value. This is a technical point.

Shri S. K. Ayyer: I want only one clarification, because it says cost of the fixed asset and not written down value. Whether I show it as a reduction of the asset or on the credit side of the balance sheet, it does not affect the position.

Shri V. V. Chari: To clarify the position, this provision has been made. Otherwise there is no meaning. You are allowed to accumulate reserve only to the extent it is necessary to replace the original asset. I hope I have convinced you.

Shri S. K. Ayyer: This has been upheld by the Bombay High Court also. Then, I go to clause 113. In sub-clause 5, there is a drafting mistake. For 'in which' it should be 'in respect of which'.

Shri Morarji Desai: That we can do.

Shri S. K. Ayyer: I take clause 139 about the filing of returns. This is at the bottom of page 42.

Shri Morarji Desai: Why should it lead to harassment?

Shri S. K. Ayyer: I have left clause 131. I have taken up clause 139.

Shri B. P. Khaitan: As regards clause 131, it provides a fine for non-production of books. It is a very stringent provision introduced in the present Act for non-production of books. Firstly, the assessee will be assessed and adverse inference will be drawn. On top of that, I do not think it is necessary that there should be a fine for non-supply of information. If

the assessee does not supply, he does so at his own risk. Why should there be a fine on top of that? That is our submission.

Shri S. K. Ayyer: Clause 139 deals with filing of returns. Four months have been given from the expiry of the accounting year. Our point is this. Normally, the Companies Act allows six months time under the amended Act for the completion of the accounts and laying before the share-holders the final accounts, balance sheet, profit and loss account, etc. We want that in the case of companies at least, the time should be fixed at six months instead of four months.

Shri Amjad Ali: And without interest?

Shri S. K. Ayyer: If the company closes its accounts on the 31st of March, it has to file the return on 31st of July. But, the company will be finalising its accounts and laying them before the share-holders by the 30th of September.

Shri V. V. Chari: We will give time till 30th of September—days of grace.

Shri S. K. Ayyer: There is one thing more. In the case of some companies, the Registrar of Companies may allow some time in some exceptional cases. There also the time should be extended.

Shri Morarji Dsai: You must take time from the Income-tax officer. You cannot go from one Act to another.

Shri C. D. Pande: If the time is two months after the share-holders' general meeting, that would serve their purpose. The meeting is to be held within 6 months.

Shri Morarji Desai: That would take it to 8 months.

Shri C. D. Pande: They are paying advance tax, they are paying interest. The Government does not lose anything.

Shri Morarji Desai: It is not advance payment. Income-tax is accruing at the time. They pay in time. I pay income-tax on my salary every month. I deduct it before I receive it. It is belated payment and not advance payment. We have to put them on the same line as the salaried people.

Shri Radheshyam Ramkumar Morarka: Business firms incur losses also.

Shri Morarji Desai: Therefore, they pay according to their own estimate.

Shri Radheshyam Ramkumar Morarka: The period of six months they are asking is reasonable. It is for two reasons...

Shri Morarji Desai: We will consider whether it should be 4 months or 6 months.

Shri B. P. Khaitan: The next point is on page 43 of our memorandum—clause 143. The clause permits the ITO to utilise or take into account 'all relevant materials which the Income-tax Officer has gathered'. I would like it to be expressly made clear that the assessee will be given an opportunity.

Shri Morarji Desai: That is bound to be given. If it is not given, the Assistant Commissioner will set it aside. This is ordinary commonsense.

Shri B. P. Khaitan: But elsewhere such commonsense matters have been provided.

Shri Morarji Desai: I cannot provide it everywhere.

Shri B. P. Khaitan: We have already dealt with clauses 147—153, and we hope it will receive your consideration.

Shri S. K. Ayyer: The next point is on page 47—clause 155 of the Bill, dealing with bad debts. One of our submissions is that no interest is sometimes charged in the account when it is considered doubtful of recovery. We submit that in such cases, the ITO should not take some notional interest and charge it, because when the principle itself is doubtful, the interest should not be treated as income.

Shri Morarji Desai: What is not received should not be treated as income.

That is obvious. He is referring to a bad debt which is carried on. It continues because they hope to recover it sometime. They also go on adding interest.

Shri V. V. Chari: A case like that was brought to my notice.

Shri Morarji Desai: They keep it alive, but they do not receive interest.

Shri V. V. Chari: They can write off the interest.

Shri Morarji Desai: Even if it is not received, it has to be added on in the books of account. What do you do to the interest? It has to be added on until it is written off.

Shri Narendrabhai Nathwani: Let them write it off in a particular year.

Shri Radheshyam Ramkumar Morarka: Even if it is written off, the ITO may not accept it; he may say it is premature.

Shri Morarji Desai: Before they write off, they have to make all attempts to see that the bad debt has really become bad and is not recoverable. Until then, interest goes on accruing, but that interest is not actually received by them. They have paid income-tax on it. How do they get it when they write it off.

What was happening in the Palai Bank was that they went on with bad debts and adding interest. On that interest, they went on paying dividends. That is, dividend was paid out of the share capital, out of deposits—which is absolutely against the law. They were stopped only in 1958-59 from doing that. When they were stopped, the whole thing came down.

Shri S. K. Ayyer: Another point in connection with bad debts is that in some cases it will not be desirable when proceedings are going on in the court to write off the amount in the books, although the assessee knows that it will be ultimately not recoverable in full. In such cases, a reserve for bad and doubtful debts is created from the profit and credited to reserve account.

Shri Morarji Desai: No, that will not be allowed.

Shri S. K. Ayyer: If a specific amount is set apart like that.

Shri Morarji Desai: This is 'heads I win, tails you lose'.

Shri V. V. Chari: There is no hardship now because ultimately when you write it off, you will get it.

Shri S. K. Ayyer: The next point is on pages 48/49—clause 175. Under this clause, the ITO can apprehend that a particular assessee is likely to part with any of his assets to avoid payment of tax...

Shri Morarji Desai: How will it be an instrument of harassment?

Shri S. K. Ayyer: We want that before he takes the initiative, it should be approved by the Commissioner of Income-tax.

Shri Morarji Desai: You can go in appeal.

Shri S. K. Ayyer: Before the ITO takes any initiative in the matter, it should have the approval of the Commissioner.

Shri Morarji Desai: By that time, everything will be finished!

Shri S. K. Ayyer: We have already dealt with clause 178 and also clause 179. As regards clause 182, we feel that there is no justification for recovery of the tax from the firm.

Shri Morarji Desai: Why not?

Shri B. P. Khaitan: Here individual partners' incomes are assessed.

Shri Morarji Desai: If the partners default, the firm has to pay. Are they partners only to enjoy profits and not meet the liabilities. The liabilities have to be met by the firm. Government have not made them partners; they are voluntary partners.

Shri B. P. Khaitan: There is only one point which we would like to make which is of some importance but which is not mentioned in the memorandum.

Clause 36(2) of the Bill reads:

"In making any deduction for a bad debt or part thereof for which provision is made in clause (vii) of sub-section (1), the following rules shall apply:—

(i) no such deduction shall be allowed unless such debt or part thereof—

(a) has been taken into account in computing the income of the assessee of that previous year...."

There are certain kinds of advances like advance of money to cane-growers by a sugar factory, or to supplies of stores or raw materials.

Shri Morarji Desai: We have said we will consider it. You want that it should apply not only to money-lenders. Others also had made that point.

Shri B. P. Khaitan: About gratuity, the private employers should also be placed on a par.

Shri Morarji Desai: That will also be considered, not that it will be given in the same way.

Chairman: Thank you very much.

(The witness then withdrew)

The Committee then adjourned.

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961.

Wednesday, the 21st June, 1961 at 08·03 hours.

PRESENT

Shri Mulchand Dube—*Chairman*

MEMBERS

2. Shri K. R. Achar
3. Shri P. Subbiah Ambalam
4. Shri Amjad Ali
5. Shri Premji R. Assar
6. Shri Bahadur Singh
7. Shri Prafulla Chandra Borooah
8. Shri Shree Narayan Das
9. Shri M. L. Dwivedi
10. Shri D. A. Katti
11. Shri Bhausaheb Raosaheb Mahagaonkar
12. Shri Mathew Maniyangadan
13. Shri Radheshyam Ramkumar Morarka
14. Shri Narendrabhai Nathwani
15. Shri C. D. Pande
16. Shri Naval Prabhakar
17. Shri Ram Shanker Lal
18. Shri Jaganatha Rao
19. Shri K. V. Ramkrishna Reddy
20. Shri Laisram Achaw Singh
21. Dr. Ram Subhag Singh
22. Shrimati Tarkeshwari Sinha
23. Shri Radhelal Vyas
24. Shri Morarji Desai

DRAFTSMAN

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri V. T. Dehejia, *Secretary, Deptt. of Revenue, Ministry of Finance.*

Shri V. V. Chari, *Senior Member, Central Board of Revenue.*

Shri J. P. Singh, *Member, Central Board of Revenue.*

Shri I. P. Gupta, *Deputy Secretary, Department of Revenue, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Tata Industries (Private) Limited, Bombay.*
Shri N. A. Palkhivala

II. *The Central Council of Indian Associations (Jinja, Uganda, and British East Africa).*

1. Shri N. A. Palkhivala
2. Shri C. D. Dupelia

III. *The Associated Chambers of Commerce of India, Calcutta.*

1. Mr. A. M. S. Fergie
2. Mr. J. Anderson
3. Mr. G. E. Solomon

I. THE TATA INDUSTRIES (PRIVATE) LIMITED, BOMBAY

Spokesman.

Shri N. A. Palkhivala.

(Witness was called in took his seat)

Chairman: You may start with the assumption that we have read the memorandum and if you think it necessary, you may adduce any more points.

Shri N. A. Palkhivala: I would just like to stress a few important points about the Bill and particularly those in which the Bill proposes to depart from the present income-tax law.

Shri Morarji Desai: Shall we start according to your memorandum, page by page?

Shri N. A. Palkhivala: Subject to your convenience, I may take up about twenty or so important clauses and speak only on them because they are more important than the others. Some of the others are minor points.

I shall first refer to clause 2(47). The definition of 'transfer' for the purpose of capital gains tax has included extinguishment. This is a departure from the existing law. Today, under the existing law, extinguishment does not result in liability to capital gains tax. My submision is that even if it is proposed to retain the enlarged definition of transfers so as to include extinguishment, the category of amalgamation companies should be excluded as it is proposed to be excluded for the purposes of development rebate. When you have *bona fide* amalgamation for commercial reasons, it is always in the interest of the industry that two or more industries may be combined and become one economical unit.

Shri Morarji Desai: You want to safeguard here the amalgamation of companies. Is that the only point? We can consider that.

Shri V. V. Chari: It will be helpful to know what particular types of difficulties are envisaged by him.

Shri Morarji Desai: If two companies are amalgamated and at that time you try to take capital gains tax from them because of the merger—that is his point.

Shri V. V. Chari: The law does not say that we should tax it.

Shri N. A. Palkhivala: He thanks that there is some ambiguity which should be removed.

Shri N. A. Palkhivala: He thinks of the definition of the word 'transfer' used in this clause in question. If no taxation is to be recovered, it can be covered in the taxation clause because an amalgamation can also, in abstract, amount to a transfer.

Shri N A. Palkhivala: If you do not define the word transfer for the first time as you propose to do to include extinguishment, extinguishment is the very contradiction of transfer. Transfer involves the existence of a right which is transferred from A to B. Extinguishment is different.

Shri V. T. Dehejia: Let us consider transfer a little further.

Shri Morarji Desai: If we agree that on amalgamation of companies, no capital gains tax will be charged, let us safeguard it and finish with it.

Shri V. T. Dehejia: We can take the instance of a large company with several assets merging with another small company. Thus an amalagamated company is created.

Shri Morarji Desai: That does not make a difference; the small one does not affect much the big one.

Shri V. V. Chari: The tax on capital gains comes in only if some consideration is recieved and from that consideration you are given some expenses. When there is an amalgamation there is no consideration received. How does the question arise at all?

Shri Morarji Desai: One thing might happen. If two companies are amalgamated and the shareholders of one are paid off, then certainly those people will have to pay capital gains tax.

Shri N. A. Palkhivala: The point is only this. In cases where nobody has paid anything and only shares are issued, what will happen? Today, under the existing law, such a case does not attract capital gains tax at all. Because of the incorporation of the word "extinguishment" in the definition of the word "transfer", such a case would be covered now.

Shri Morarji Desai: Supposing a higher value of the share is there.

Shri N. A. Palkhivala: Suppose company A amalgamates with company B, the shareholders of the A company get the shares of the B company. They only get the shares substituted.

Shri Morarji Desai: As long as the shareholder does not benefit from it, there is no question of capital gains tax. Supposing company A amalgamates with company B, and then company B's shares are smaller, and they amalgamate with company A, and company B shareholdes get higher shares of company A without paying anything extra, in that case, that would attract capital gains tax.

Shri N. A. Palkhivala: The shares of company A may be worth Rs. 500 of the shares of the company B. Since the amalgamation is by the order of the court—they will have to get the sanction of the court—and since the shares of company A are intrinsically worth Rs. 500, the shareholders of company A will not be allowed the shares of company B to the extent of Rs. 500.

Shri Morarji Desai: We have got to consider it from the point of view of taxation, whatever the court may do. The courts are not competent to realise this.

Shri N. A. Palkhivala: My point is, the shares which are received represent the same book appreciation which has already accrued to the shareholder.

Shri Morarji Desai: What can be the objection on your part if a person receives a higher share or a share which is valued at a higher amount than what he already possesses by the amalgamation, and if that is taxed? Why shculd not that man be charged capital gains tax?

Shri N. A. Palkhivala: To take an instance, in Madras, the Buckingham and Carnatic Mills are trying to amalgamate themselves with another textile company. It is in the economic interests of both the companies that they should be amalgamated. Under the existing law, there is no capital gains tax. Under the proposed law, such an amalgamation will not take place because 30 per cent would be paid by way of tax and the shares would not have risen even by a rupee.

Shri Morarji Desai: Supposing the shareholders of a textile mill are given the shares of the joint company, and their shares are valued say at Rs. 100. They get a new share. That might be sold at Rs. 200 each. Why should not that man be taxed? That is the only contingency in which they should pay. Otherwise they need not pay, if they have paid the value to the company.

Shri N. A. Palkhivala: If shares are Rs. 100 worth and on amalgamation you get Rs. 200 which is the market value, then undoubtedly there is a capital gain.

Shri Morarji Desai: That is what is contemplated. That can be clarified.

Shri N. A. Palkhivala: If on amalgamation, shares of a higher market value are received, than the market value of the shares which are extinguished, then alone capital gains tax can be leviable.

Shri V. T. Dehejia: Higher than the value paid?

Shri N. A. Palkhivala: No. That makes all the difference then. I said higher than the market value of the shares which are extinguished.

Shri V. V. Chari: It is somewhat like this: Suppose I spend Rs. 100 and get a share and after amalgamation I get a share whose market value is

Rs. 150, then the difference is Rs. 50. I mean the cost of acquisition.

Shri N. A. Palkhivala: Take a concrete case. A man pays Rs. 100 for the shares of company A. Today, the market value is Rs. 150. He does not want to realise this capital gain.

Shri Morarji Desai: But he gets it.

Shri N. A. Palkhivala: If he gets shares of the company B, shares worth Rs. 200 in value, you tax him on the amount of Rs. 150. But the department wants to tax him even on the Rs. 50 which is the increase in value which he has not realised.

Shri Morarji Desai: He would have got it if the companies were amalgamated. It is a windfall to him. Afterwards, when it is sold, it will not be charged again.

Shri N. A. Palkhivala: Amalgamation will be hampered.

Shri Morarji Desai: If it is hampered, I do not mind it. I do not know why it should be hampered.

Shri N. A. Palkhivala: It would be, because the people would not be willing to amalgamate uneconomic units if the result is that tax would have to be paid although not a rupee is realised by the shareholder. If there was no amalgamation the share would be still Rs. 150.

Shri Morarji Desai: It would not be. There are, for instance, two companies. The shares of one company are worth Rs. 100 and the shares of the other company are worth Rs. 150. They are amalgamated. Then the company whose shares are worth Rs. 100 only also gets shares worth Rs. 150.

Shri N. A. Palkhivala: We are talking of the word 'worth". If we talk of the face value and the market value let us consider what the position is. A man has a share of Rs. 100. The market value of it is Rs. 150. He does not want to realise capital gain because of the economic conditions, and....

Shri Morarji Desai: He may not want to do so, but I would not be able to charge him capital gains tax afterwards if he sells off.

Shri N. A. Palkhivala: Rs. 100 is the face value and Rs. 150 is the market value of the shares, and on amalgamation another share of Rs. 150 —that is the market value—is got.

Shri Morarji Desai: You are confusing the point.

Shri N. A. Palkhivala: I shall make myself clear.

Shri Subbiah Ambalam: Let me put it this way. One company is to be amalgamated with the other,—company A with company B. The capital assets of company A are Rs. 5 lakhs. That is the share value. Supposing company A is to be amalgamated with company B. You value the assets of company A whose capital value or the shareholder's contribution is only Rs. 5 lakhs. The assets are valued at Rs. 15 lakhs. Company B has to pay either in cash Rs. 15 lakhs or shares to the value of Rs. 15 lakhs. Company A gets Rs. 15 lakhs instead of contributing to a share capital of Rs. 5 lakhs. Instead of Rs 5 lakhs it gets, at the time of amalgamation, Rs. 15 lakhs. Now, is it your point that the Rs. 10 lakhs should not be taxed as capital gains?

Shri N. A. Palkhivala: The question will arise in the case of certain shareholders. Let me give one concrete instance.

Shri Morarji Desai: Only the shareholder; not the company.

Shri N. A. Palkhivala: The shareholders will oppose amalgamation.

Shri Morarji Desai: I do not mind if they oppose.

Shri N. A. Palkhivala: You may reject my submissions if you find them unreasonable. But let me put a concrete case. The face value of a share is Rs. 100 and its market value is Rs. 150.

Shri Morarji Desai: You are again confusing the issue. I am putting to you another case. That is a different case altogether. Today, the market value of the share of company A is Rs. 200 and that of company B is Rs. 100. They are amalgamated. Company B, whose shareholders have a share of Rs. 100—that is the market value today—gets a share whose market value is Rs. 200. Why should not those people pay?

Shri N. A. Palkhivala: If you say like that, I have no objection.

Shri Morarji Desai: I am not saying the other case, where the face-value can be Rs. 100 at that time and it becomes Rs. 150 now. That is not the idea because the person does not sell it.

Shri N. A. Palkhivala: I am in entire agreement with what you say. But the learned Central Board of Revenue wants to go one step further.

Shri V. V. Chari: I was exactly saying what the hon. Finance Minister is saying.

Shri Morarji Desai: Whose word is more valuable, his or mine?

Shri N. A. Palkhivala: Ultimately they will be doing the drafting.

Shri Morarji Desai: But it must be acceptable to me.

Shri N. A. Palkhivala: If you have understood the point, that is enough.

Shri Radheshyam Ramkumar Morarka: But take the reverse case. Suppose the face value was Rs. 100, the market value is Rs. 50 and the new share is issued for Rs. 50. Would you or would you not claim capital loss?

Shri N. A. Palkhivala: No; there is no capital loss.

Shri V. V. Chari: It is a matter of opinion. Shri Palkhivala is not the only assessee; there are other assessees also.

Shri N. A. Palkhivala: It has been accepted that under the existing law of amalgamation, there is neither capital gain nor capital loss. In fact, Shri Chari will remember what happened when he was there in Madras in connection with the Buckingham and Carnatic Mills.

Shri V. V. Chari: It depends on the particular form.

Shri Narendrabhai Nathwani: Suppose a person has got a share of the face value of Rs. 100. He has paid Rs. 100. Another shareholder buys at the market price of Rs. 150. On amalgamation, he gets share worth Rs. 200. According to you, the person who holds the original share of Rs. 100 should only pay the difference of Rs. 50 and not Rs. 100.

Shri N. A. Palkhivala: Yes.

Shri Narendrabhai Nathwani: Then the rise from Rs. 100 to Rs. 150 would escape.

Shri V. T. Dehejia: The old shares will be there and new shares will be issued. The new shares will have a face value. A person might have converted old shares. Some people will have new shares. When the shares are sold, do you think the history of each share has to be traced?

Shri N. A. Palkhivala: No; only the market value has to be considered.

Shri V. T. Dehejia: The market value on the date of sale is Rs. 250. On the date of amalgamation, the value is Rs. 200. The face value is Rs. 100. There will be some persons who will have Rs. 200 value of new shares and some persons Rs. 200 value of old shares. On a given date, say, 7 years hence, when they sell, they get Rs. 250. At the time of assessment, should you go into the history of each share and its face value has to be traced?

Shri N. A. Palkhivala: No; we should take the uniform overall market value.

Shri V. T. Dehejia: But some are new shareholders.

Shri N. A. Palkhivala: They cannot be new shareholders after the amalgamation. The position would be, to each according to his cost. That is the mandate. If a man purchases a share for Rs. 100 and another for Rs. 150, the principle is, to each according to his cost.

Chairman: Let us go to the next point.

Shri N. A. Palkhivala: The next clause is No. 9. There is no change in the law, but the doctrine of business connection is sought to be continued. No other country has such a law except Australia. I submit that we should make the concept a little more concrete as in England where they say, if you are trading in England you are taxable; if you are trading with England, you are not taxable. If that is done, the loss of revenue would be negligible and there would be greater precision and certainty about the law. As it is, so many propositions of export and import trade never come through because of this doctrine. A very large value of our import and export trade is today stifled at the source because of the pernicious doctrine of business connection.

Shri Morarji Desai: I am afraid you are using very harsh words. You may say it is bad, but not pernicious and things like that. We can also do the same thing and where shall we meet?

Shri N. A. Palkhivala: Let me withdraw that word. Because of the doctrine of business connection, a lot of our import and export trade is being hampered.

Shri Amjad Ali: Would you be satisfied if 'business connection' is defined clearly?

Shri N. A. Palkhivala: Yes; it should be defined as meaning trading in India and not merely trading with India.

Shri V. T. Dehejia: Will it come to you as a surprise if I were to say that the Federation of British Industries have written to us saying that they are completely satisfied with the way the phrase is being interpreted?

Shri Morarji Desai: You are afraid that those foreigners who buy here and take it to their country and do nothing else are being taxed. What you say has some truth because I have found that there have been cases where they have been taxed and it has created difficulties. There is no point in clarifying it merely by a circular, because that is not a safeguard. I have come across such cases in which this has happened and we have rectified it. But export trade is very touchy and we cannot afford to take risks in this.

Shri V. T. Dehejia: He was refering to the English practice. But that arises out of their own concept of income.

Shri N. A. Palkhivala: The concept of income is just the same.

Shri Morarji Desai: We can clarify it here. That is all that he wants. What is your suggestion?

Shri N. A. Palkhivala: It should be defined as meaning trading in India and not trading with India.

Shri Amjad Ali: That can be left to the Select Committee.

Shri Morarji Desai: That also does not become simple. We will examine it.

Shri Narendrabhai Nathwani: Would you give us a draft on this point?

Shri N. A. Palkhivala: All right. The next clause is sub-clause (10) of clause 10 which is a new clause.

Shri Morarji Desai: We are trying to find out a solution whereby the seeming discrimination is not there.

Shri Amjad Ali: Would article 14 of of the Constitution satisfy you?

Shri N. A. Palkhivala: The Supreme Court has laid down a well-settled principle that unless the discrimination is reasonable....

Shri Morarji Desai: I am not pleading for any constitutional protection. On the ground of equity, we will examine it.

Shri N. A. Palkhivala: Then, clause 11 deals with religious and charitable trusts. There, there is a new provision sought to be incorporated making a departure from the existing law. That is, if a trust is *bona fide* for charitable purposes and if its income is accumulated and applied to non-charitable purposes under the existing law you will tax it in the year in which it is applied to non-charitable purposes. Here the law goes a step further. Under the proposed Bill, if it is accumulated and applied ultimately for charitable purposes still the exemption is sought to be denied.

Shri Morarji Desai: Because we do not want there to be any sort of accumulation. But we are considering the case where a trust wants to accumulate its income in order that it may be applied lump sum later on. We are trying to find out a solution, whereby if a man declares his intention from the very beginning and specifies the purpose for which he wants to accumulate, then he may be allowed the benefit.

Shri N. A. Palkhiwala: If the learned Committee be pleased to put it this way, that so long as the accumulation is for a purpose authorised by the Trust....

Shri Morarji Desai: And also there is a declaration of the intention from the very beginning.

Shri N. A. Palkhiwala: Many of these trusts are generally for charitable purposes.

Shri Morarji Desai: But if they want to accumulate they must say so. What I say is that the trustees must declare from the very beginning the purpose for which they want to accumulate. If it falls within the Income-tax Act, then the 25 per cent will be allowed.

Shri N. A. Palkhivala: The next one is clause 13. This again is departure from the existing law. Sub-clause (a) is about relatives.

Shri Morarji Desai: You may make your submission about that, but there is no hope of it being granted.

Shri N. A. Palkhivala: I am not at the moment suggesting that the trusts created for poor relations be exempted. You agree that trusts are created for relief of poverty generally.

Shri Morarji Desai: If it is for relieving poverty generally and if it fits in with the provisions of the Income-tax Act, then the relatives can be given help and that is a different thing altogether.

Shri N. A. Palkhivala: The difficulty will arise like this. A trust is generally for relief of poverty, but you have a clause that preference be given for relatives.

Shri Morarji Desai: That also is vicious.

Shri N. A. Palkhivala: May I suggest one amendment? It may be said that income spent on relatives may be taxed.

Shri Morarji Desai: Then I consider that the whole trust will get vitiated. Let there be a separate trust. Let the trust be split up into two parts.

Shri N. A. Palkhivala: Otherwise, what will happen is, if the income of the truth is Rs. 50,000 and even if Rs. 100 is given to a relative the whole income is denied the benefit.

Shri Morarji Desai: Let them make some other provision. I find that lot of loopholes are made out of this. I know of many instances.

Shri N. A. Palkhivala: Then, Sir, the income which is applied to relatives may be denied exemption.

Shri Morarji Desai: There is ample time now. They know our intention. They can amend the trust deed.

Shri N. A. Palkhivala: Unless you give power to the courts, they cannot amend it. At least confer the power on the courts.

Shri Narendrabhai Nathwani: Do you think there is no such power now?

Shri N. A. Palkhivala: There is no power now.

Shri Narendrabhai Nathwani: Why can't it be amended in view of the law to be passed?

Shri Morarji Desai: A High Court has full powers as far as I know, to allow the alteration if all the trustees agree. If some do not agree then they do not allow.

Shri N. A. Palkhivala: We have had this difficulty in Bombay.

Shri Morarji Desai: In Bombay they have changed some trusts entirely. We are going to provide that they can be changed with the permission of the High Courts. We will say that if they change by orders from the High Court we will consider them.

Shri C. D. Pande: May I seek one clarification. Supposing there is a charitable trust but because of the inclusion of certain poor relations it is vitiated. Will the Government invalidate it only to that extent or is it that the whole trust will be denied the benefit?

Shri Morarji Desai: The whole trust. That is the intention of this amending Bill. But they can amend the trust and get the relief under this Act. Let the clause giving preference to poor relatives disappear. They can give to everybody.

Shri N. A. Palkhivala: With great respect, Sir, may I submit that unless the power is conferred by the statute no court will have the authority to do it.

Shri Morarji Desai: High Courts can give the permission. I have seen that they have given permission for changing trusts completely.

Shri N. A. Palkhivala: Unless the purpose of the Trust has failed, I again submit with great respect, that no civil court has the power unless you confer it expressly by the statute.

Shri Morarji Desai: The legal acumen of people is so great that they can always prove that the purpose has failed and therefore something else should be done. The law can always be utilised to the best advantage if the High Court allows it to be done.

Shri K. R. Achar: A High Court can only interpret the statute.

Shri Narendrabhai Nathwani: Whether we should have a specific provision here or not we will consider.

Shri Morarji Desai: We cannot say that we will enable the High Court to do that by a legislation. It has to be seen whether under the Constitution we can provide such a clause here.

Shri N. A. Palkhivala: Under the Constitution there is no bar.

Shri Morarji Desai: If the trustees do not give anything to relatives and declare their intention from the very beginning, it is all right.

Shri N. A. Palkhivala: They will not act upon the preference clause.

Shri Morarji Desai: As long as they do not act upon it, it is all right.

Shri Narendrabhai Nathwani: Suppose it is stated in the trust deed that, in the first instance, it shall be given to the poor relations. If there is such an obligatory clause then the trustees are bound by it. But if the discretion is given to them, certainly it is open to them to change it.

Shri N. A. Palkhivala: If there is an obligation then the trustees and the court are bound by it and it cannot be changed unless you give express statutory powers to the court.

Shri Narendrabhai Nathwani: I am not sure about it.

Shri N. A. Palkhivala: Otherwise, you can exempt trusts which were created before. I will give one concrete example. Take the Sasoon Trust, involving millions of rupees. Not a rupee goes to the relatives, as will be seen from the accounts submitted to the authorities.

Shri Morarji Desai: If nothing goes to the relatives, then we will exempt that. We will try to make that sort of provision.

Shri V. T. Dehejia: We have been talking of relations generally. But in clause 13 it is restricted to brothers, sisters, sons and father.

Shri N. A. Palkhivala: I have seen the definition of "relatives". In fact, that is discriminatory—total denial if it is given to my grandson and full exemption if it is given to my brother's grandson.

Shri Morarji Desai: We are going to widen that definition. I am prepared to abide by what the Select Committee decides.

Shri N. A. Palkhivala: Then I come to clause 23, which deals with house property. Under clause 23 half the municipal taxes are allowed as deduction, and not the whole, if the house property was constructed after 1950. That is not equitable.

Shri Morarji Desai: This was done only last year.

Shri N. A. Palkhivala: This will result in great hardship. Income from house property is restricted today because of the Rent Control Act throughout the country and one does not get a return of more than three per cent on most of the houses constructed before.

Shri Morarji Desai: This is a matter which shall be more relevant for the budget to deal with, not for this legislation.

Shri N. A. Palkhivala: Once this Bill is passed into a law....

Shri Morarji Desai: Even then we can go on changing it and you will not be able to do anything.

Shri N. A. Palkhivala: Since you have been good enough to consolidate the law.

Shri Morarji Desai: We are not trying to disturb whatever has been done. I do not want a different budget to be introduced here. This will amount to a different budget.

Shri N. A. Palkhivala: If you remove the limitation in respect of buildings constructed after 1950....

Shri V. T. Dehejia: That is a budget point

Shri Morarji Desai: I cannot do anything now. I can take it into consideration at the time of the next budget. If I grant this, everything else will come and the rate can also be altered. I do not say I will do it; I only say that I will consider it.

Shri N. A. Palkhivala: It works very serious hardship to those who own house property.

Shri Morarji Desai: You better give the whole case to me. I will consider it.

Shri N. A. Palkhivala: Then I come to clause 32, which deals with depreciation. There is no departure from the existing law. But there is a recommendation of the Taxation Enquiry Committee that in respect of short-term leases of mines or quarries for bricks or stones either the cost may be allowed or depreciation is allowed. That idea is not incorporated in clause 32. A man wants to get some stones. He goes to somebody who is the owner of the land and tells him "I will take this land on lease of Rs. 12,000". He pays the money and extracts stones. That Rs. 12,000 which is paid for the right to extract stone is not given to him, either as deduction or depreciation. My respectful submission is that on grounds of equity and fairness this should be allowed either by way of depreciation or by way of revenue expenditure. When the whole idea is to get raw material in the form of stones, bricks or earth, if a land is taken on a short-term lease of five to seven years and one pays annual rent to the owner of the land, now one does not get any deduction. There is no depreciation or revenue deduction. The Supreme Court looked at it this way: one has acquired the assets, namely, the right to excavate stones....

Shri Morarji Desai: That is only for particular year and the payment is made on that basis. It is finished.

Shri N. A. Palkhivala: If it is allowed to him as a revenue deduction, he will not claim depreciation allowance. In countries like United States and England one gets depreciation allowance in such a contingency. This question arose in the case of Pingle Industries.

Shri V. T. Dehejia: If I remamber a right, the Supreme Court held in that case that it is capital investment. The question is whether the payment in that case was annual or in instalments.

Shri N. A. Palkhivala: It was annual.

Shri V. T. Dehejia: So far as I am informed, it was held as payment in instalments.

Shri N. A. Palkhivala: But no deduction was given nor depreciation allowance. Here I am not criticising the judgment of the Supreme Court. He should be given either of the two. That case was in 1960.

Shri Narendrabhai Nathwani: We will read that judgment.

Shri Morarji Desai: We will consider this point.

Shri N. A. Palkhivala: In England, France and United States this expenditure is allowed to be depreciated.

Then I come to sub-clause (1) of clause 33, relating to development rebate, where there is a practical difficulty which arises this way. This is not a matter involving revenue but a matter of convenience and equity. Even if this clause is amended as I suggest, it would not involve any loss of revenue. In order that a man may get development rebate two cumulative conditions have to be fulfilled in a single year. Firstly, the asset must be installed in that year and, secondly, it must be used in that year. The practical difficulty arises in cases where the installation is completed, say, by the 28th March and its use starts four days later.

Shri V. V. Chari: This thing is covered easily by executive instructions.

Shri N. A. Palkhivala: It is not covered by executive instructions. The Department fought tooth and nail to deprive the assessee of that right. The assessee went to the court and lost.

Shri Morarji Desai: In a court the assessee would lose. He would not get it in the court, but the Department can give it. If the Department does not choose to give it, he has no remedy. However, this can be considered. We will try to clarify it.

Shri V. V. Chari: I was only trying to say that it is actually the present practice. I do not know how Shri Palkhivala got this idea.

Shri N. A. Palkhivala: It has happened in the National Manufactures case. It is a reported case.

The next point is about clause 33, sub-clauses (3) and (4) which, again, deal with development rebate. The principle of development rebate is that if you transfer the asset to anyone within ten years, you lose the development rebate to which you would be otherwise entitled. Only two exceptions to this are provided for. They are, firstly, amalgamation of two companies and secondly, transfer of the business from the partnership to a private limited company. Other cases of *bona fide* succession for commercial reasons arise. An individual may convert his business into a limited company for *bona fide* reason, or he may invite a public company. In such cases the benefit of the development rebate is completely lost though the case is absolutely *bona fide* and there is no idea of gaining on tax benefit. May I suggest that the restriction is a salutary one. You do not take your development rebate and then sell the asset within two or three years. That principle is healthy. It must remain in the Act. Wherever that healthy principle is not sought to be violated and there is a *bona fide* succession, for example, an individual selling his

business to a limited company or converting it in to a limited company or inviting a fresh company and so on, this benefit should not be lost. Under the Bill it is lost.

Shri Morarji Desai: Does an individual get this benefit?

Shri V. V. Chari: Development rebate is admissible to everyone but an individual scarcely gets it

Shri Morarji Desai: If it is an outright sale, how can it be allowed?

Shri N. A. Palkhivala: That is a transfer. If you find that there is a succession to business...

Shri V. V. Chari: How can a company succeed an individual?

Shri Morarji Desai: Succession is dependent on transfer of money.

Shri N. A. Palkhivala: Take this case which is provided for in the Act itself. If a partnership is succeeded by a private limited company, the rebate is not lost. But take the case of a partnership, say, of 18 persons which is permitted by law. If it is succeeded by a public company though the number of shareholders is 18, the development rebate is lost.

Shri V. V. Chari: The Tyagi Committee's recommendation is only in the case of amalgamations and firms which convert themselves into private companies. They have not gone further.

Shri Morarji Desai: Again, this thing concerns the Budget and I cannot change it now.

Shri N. A. Palkhivala: I am giving this concrete case instead of arguing merely on legal grounds. A partnership of 18 converts itself into a limited company. Now if it is a public limited company the rebate is lost even though the public limited company consists only of 18 persons and there are no outsiders in it.

Shri Morarji Desai: It is not a public limited company.

Shri N. A. Palkhivala: It is. If there are more than seven persons, it is a public limited company.

Shri Morarji Desai: Then why should it be lost?

Shri V. V. Chari: If the shareholders are exactly the same, it would not be lost. He is talking of imaginary cases.

Shri Morarji Desai: Then why not provide for it?

Shri Radheshyam Ramkumar Morarka: The provision only provides that those partners must be shareholders in the company. Besides the partners there may be other shareholders. Subclause (4), Explanation (iii) says:

> "all the partners of the firm immediately before the succession become shareholders of the company."

Shri Narendrabhai Nathwani: What is there to prevent these shareholders from transferring it once they get it? They can do it

Shri N. A. Palkhivala: Nothing at all. Shri Chari's point was that if it is a public limited company it would be allowed: otherwise it would not be allowed. It would be allowed if a firm is succeeded by a private company, but once you have a public company with the same shareholders development rebate is completely lost.

Chairman: Others can come in.

Shri N. A. Palkhivala: Even in a private company others can come in. Once you have a firm or a private company, next year you can take ten more people from the public.

Shri V. V. Chari: There is a restriction that the shareholders must be the same.

Shri N. A. Palkhivala: You may provide that restriction and apply it in the case of a public company where the shareholders may be the same.

Shri V. V. Chari: But is it likely to arise, that is, a case of a partnership becoming a public company with exactly 18 members?

Shri N. A. Palkhivala: We have a case in Bombay where this point has arisen. If there is no rational reason, why should it be confined to a private company?

Shri Morarji Desai: That can be considered later on.

Shri Amjad Ali: You have suggested the deletion of line 9 on page 33. You do not press it?

Shri N. A. Palkhivala: There is some mistake. It is not page 33, line 9. But I am not arguing all the points. I am only picking up the main ones. Now I turn to the next clause which is one of the very, very important clauses, that is, clause 37. To my mind it is the most important clause. It will revolutionise and upset the settled law of this country. I will quote chapter and verse for what is the settled law. Today the position is that if any business expenditure is incurred wholly for the purpose of business....

Shri Morarji Desai: Why have you introduced this word 'necessarily'? Why was it not there before?

Shri V. V. Chari: It has been done on the advice of the Law Ministry.

Shri V. T. Dehejia: The Law Commission has used the word in different sections.

Shri N. A. Palkhivala: In this particular clause it has not used the word 'necessarily' at all.

Shri V. T. Dehejia: The word 'necessarily' has been used in other clauses which are similar.

Shri N. A. Palkhivala: We have also used the word 'necessarily' in other clauses. I am not raising any objection to it.

Shri Morarji Desai: It does not mean that the word 'necessarily' should be used in all Sections.

Shri N. A. Palkhivala: Even under the existing Income-Tax Act, the word 'necessarily' is used in three clauses, but that is in a different context.

Shri V. T. Dehejia: Would you like to justify allowance of expenditure which is not necessary, as necessary?

Shri Morarji Desai: Even for my own Ministry I am not able to decide whether you require this or not. Before the man goes to the Tribunal, he is suffering a lot. I do not want the Income-Tax Officer to have many discretions. These are the instruments of corruption. I am afraid this will be the greatest instrument of corruption. I thought over it for the last two days. I feel that this would create difficulties. We must consider this.

Shri Amjad Ali: We are using a harsh word.

Shri Morarji Desai: We are using words which are capable of misuse. We must not have anything in the law which is capable of being an instrument of corruption.

Shri N. A. Palkhivala: There is no such precedent anywhere.

Shri Morarji Desai: If it is a thing which can become an instrument of harassment, we must get rid of that.

Shri V. T. Dehejia: Mr. Palkhivala, according to you, the sole judge of necessity should be the spender.

Shri N. A. Palkhivala: Necessity is not the criterion at all.

Shri Morarji Desai: How is the Income-Tax Officer able to say that this man is not necessary?

Shri N. A. Palkhivala: How can the Income-Tax Officer dealing with 20 industries have enough knowledge to say what is necessary here and what is necessary in another industry? Supposing a technician is employed on Rs. 3000, the Income-Tax Officer can say it is not necessary on the plea that the business was going on already without him. I may appoint a sales agent. The Income-Tax Officer can

say, "Without a sales agent how were you carrying on the business before?".

Shri Morarji Desai: He can say that. There will be some people who will not surrender. But many people will surrender. We will consider that.

Shri N. A. Palkhivala: I may say a word here. It has been stated that that is not the meaning of the word 'necessarily'. But that is the legal meaning of the word 'necessarily'. There was a case in England. The finding was given that this was not necessary and on that the House of Lords said, "You must allow the expenditure because necessity is not the criterion." In India there was a case which went to the Supreme Court where by the test of 'necessity' the assessee would have lost the case; but, then he succeeded.

Shri V. V. Chari: You said, it is in no other country's statute. But, it is there in Australian Act.

Shri Morarji Desai: We will consider this. Some change is necessary. There are people who utilise the Company's money as if it is their own.

Shri N. A. Palkhivala: We may say, "wholly and exclusively".

Shri Morarji Desai: Still the man is employed in the Company.

Shri N A. Palkhivala: Respectfully I may say, Sir, that such a case you have already provided for three years ago. In your budget you provided for this: in the case of any Company, public or private, though it is wholly and exclusively used for the purpose of business, still if it is not reasonable having regard to the interests of the business needs of the Company, it is disallowed.

Shri Morarji Desai: It may be disallowed. After that, the Appellate Tribunal allows it.

Shri N. A. Palkhivala: The law already provides for it.

Shri Morarji Desai: We will carefully consider it. We have got to remove its misuse. There is a lot of misuse.

Shri N. A. Palkhivala: For that taxpayers will be harassed.

Shri Morarji Desai: I do not want any instrument of harassment in this. From that point of view, we will consider it.

Shri V. T. Dehejia: Just now you referred to the judgement where unreasonable expenditure has been disallowed. Here it is:

> "If in the opinion of the Income-Tax Officer any such allowance is excessive or unreasonable having regard to the legitimate business needs....."

As you know, this phrase "having regard to the legitimate business needs" has been interpreted to me according to the spender himself.

Shri N. A. Palkhivala: The point is: can the ITO decide how to run the business?

Shri Morarji Desai: We have only to see that there are no malpractices. We will consider that.

Shri N. A. Palkhivala: Now, I come to clause 62; sub-clauses 1 and 2. That is the clause which corresponds to the present section 16(c). Today the position is that if a trust is created which is revocable only after six years, in other words it is irrevocable for six years, the income of the trust is not included in the total income. It says that the provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer made before the 1st of April, 1961 which is not revocable for a period exceeding 6 years.

Shri Amjad Ali: How does it help you?

Shri N. A. Palkhivala: Under the existing law, if a trust is irrevocable for six years, you do not include the income for 6 years in the total income of the settler. When it becomes revocable, the income becomes includable. For the period that it is irrevocable, you do not include the trust income. That is the existing law.

Now, if trusts are created which are irrevocable for 20, 30 years, still the income of the trust will become includable in the settler's total income.

Shri V. V. Chari: If it is irrevocable, it would not be.

Shri N. A. Palkhivala: I say, 20 or 30 years. Suppose a man creates a trust for 20 years. He says, for 20 years, I am going to be in business and I hope to continue in business. If it is not *bona fide* it is includable. We are not dealing with *benami* transactions. *Benami* transactions are always taxable under the general law. We are dealing with *bona fide* transactions.

Shri Morarji Desai: Why are these words necessary?

Shri V. V. Chari: Trusts already made before 1-4-61 are not affected.

Shri N. A. Palkhivala: A man makes a trust tomorrow irrevocable for 10 years.

Shri V. V. Chari: You mean to say that the Act should not be amended at all?

Shri Morarji Desai: He says that the words 'made before the 1st day of April 1961' should be omitted.

Shri N. A. Palkhivala: The rest will remain. In other words, the existing law may be continued.

Shri Morarji Desai: Income arising from transfers which are irrevocable for a period exceeding 6 years is not included in the total income. Why should it not be included?

Shri N. A. Palkhivala: If I may explain the law as it is today, if a trust is irrevocable for 6 years at least, for the period that it is irrevocable, you do not include the trust income in the settler's income because he has no power over that income at all. If he has any power to enjoy the income, you tax the settler. I have nothing to say. We are dealing with a case of *bona fide* settlement. If it is irrevocable for 6 years, during the period of irrevocability, you do not tax him. When it becomes revocable, you tax. What is sought to be done by the Bill is that here after if a trust is made irrevocable for 20 years and revocable after a certain lapse of time, although the settler does not get any benefit out of the trust, still you propose to tax the settler in respect of the trust income. My submission is only this. Let the existing law be continued that the trust must be irrevocable for six years. If it is irrevocable for less than 6 years, you tax the settler. If it is irrevocable for at least six years, for the period that it is irrevocable, and the settler does not get any benefit at all, for that period, he is not taxed because it is not his income at all. That law has not led to abuses. You may have two kinds of abuses. One is *benami* trusts. You tax that uner the general law.

Shri Morarji Desai: Is this a new provision?

Shri N. A. Palkhivala: Yes. Sub-clause (1) is not new. In sub-clause (2), the words 'made before the 1st day of April, 1961' are new. The rest is the old law.

Shri V. T. Dehejia: The point is, what was in force up to 1-4-61 has been continued. I am not an Income-tax Administrator, if my point is not correct, you may correct me. Suppose a man creates a trust. It is irrevocable for 10 years and afterwards, he can revoke. During the ten years, the trust has earned income. That income has remained in the trust. It started with Rs. 1 lakh and it has become Rs. 1½ lakhs in 10 years. At the end of 10 years, he revokes. That money of Rs. 1½ lakhs comes to the hands of the man. Will the difference of Rs. 50,000 be taxable in any way?

Shri N. A. Palkhivala: It will be taxable in the hands of the trustees. In the case of accumulation, you tax. I have no objection. In order to tax 1 per cent of cases, 99 per cent of *bona fide* trusts are to be taxed in the hands of the wrong man. I say straightaway, I do not plead the case of the man who has accumulated the

amount. Tax the settler. In the example given now, you will tax the trustee, not the settler. Suppose you decide to tax the settler, out of 10,000 trusts in India, you will hardly have ten cases of this type. Nine thousand cases will be *bona fide* trusts which are irrevocable, where the settler does not get a rupee. In the subsequent provision, accumulation is provided. If he gets any income or directly or indirectly if he has any power over the income or corpus, it is revocable. That is also there. Where the settler gets one rupee by way of income, that you will always tax. We are dealing with *bona fide* cases. This is a far-fetched case of accumulation. How many cases have the Income-tax department administered and how many cases there have been of accumulation? If you want to safeguard the revenue against accumulation, tax the settler where there is accumulation. I have nothing to say. For the sake of 1 stray case out of 10,000, are you denying the exemption for the *bona fide* trusts?

Shri V. T. Dehejia: I will mention a sort of a trust that I know of not in this connection, but outside. A father creates a trust—irrevocable trust—in favour of the sons of Rs. 5 or 7 lakhs. He says, for that period, the income will be given to the sons. Normally, in the hands of the father, the income would have been taxable. By creating the trust, he escapes the income tax. Would you consider it *bona fide*?

Shri N. A. Palkhivala: It is *bona fide*. The sons enjoy the income. The father has no power over the income. What is *mala fide*?

Shri Morarji Desai: Is it not liable to Gifts tax?

Shri N. A. Palkhivala: It is liable. The Gifts-tax Act, in terms provides that the creation of a trust shall be treated as a transfer. There is no doubt about it.

Shri V. T. Dehejia: He has transferred the income to the son.

Shri N. A. Palkhivala: If the father takes back a single rupee, you tax the whole income. The father would have maintained his sons and educated them. He says, my son's expenses will be met from this.

Shri V. V. Chari: May I explain my point of view? Really, it should not be taxed in the hands of the settler. if the trust is a *bona fide* irrevocable trust. But, when the trust is really revocable, simply because it continues for 6 years, you say it is irrevocable. Where is the justice in giving the benefit of a provision which is applicable to irrevocable trusts. If you think 6 years is long enough, there will be, I think, violent difference of opinion. If it is irrevocable for 20 or 30 years, I have no objection. Irrevocable for 6 years is practically revocable.

Shri Morarji Desai: We will devote more time when we consider this clause.

Shri Radheshyam Ramkumar Morarka: I want to understand one point. The example which Shri Dehejia gave....

Shri Morarji Desai: I have not understood it at all.

Shri N. A. Palkhivala: I may be allowed a couple of minutes to explain it. It is a matter of very far-reaching importance. Suppose there is a trust which is a *benami* trust; thesettleris always taxed. If it is for his minor children, if the trust is irrevocable the settler is taxed. If it is for his wife, the settler is taxed. If there is a trust which is for somebody else but a rupee goes to the settler, the whole income is taxed. If no part of it goes to him but if he has some power to alter it or to make a deviation, then also the settler is taxed. I have no quarrel with it.

My only submission is, suppose there is a case where the man makes a *bona fide* trust for his grown up children, twenty or twenty-five year old. The father says: I have Rs. 5 lakhs, I give it as a *bona fide* trust to my sons. And

he pays a gift tax on it. If the income goes to the children and they enjoy it, why should it be included in the father's income?

The point made is that if it is irrevocable for six years, why not treat it as the father's income. He does not know how the children will shape. He does not know which one will turn out into a good son and which one into a bad son.

Shri V. V. Chari: So he does not want to trust the money with them for more than six years.

Shri N. A. Palkhivala: Yes. But has the law been abused in this respect?

Shri V. V. Chari: Yes, that is why it has been put like this.

Shri N. A. Palkhivala: Can you give those instances?

Shri V. V. Chari: I cannot give you all the instances.

Shri N. A. Palkhivala: The abuse is that the man gives it to his own grown-up sons? If a father cannot give it to his own grown-up sons....

Shri Morarji Desai: These are all easy stratagems.

Shri N. A. Palkhivala: This is a *bona fide* trust.

Shri Morarji Desai: Why not give Government its share? He must pay the Government a share. This applies only to persons who have money, not to people who may not have much capital.

Shri N. A. Palkhivala: The whole Act applies like that. The point is, are you not going to permit what is permitted in England and other foreign countries?

Shri Morarji Desai: In other countries many things are permitted. India is a unique country!

Shri N. A. Palkhivala: We have permitted irrevocable trusts to be created. Where the settler does not enjoy any part of the income, should he be taxed? I have a fair amount of experience of these things. Multi-millionaires are not worried about the wealth tax, but even honest citizens cannot make a *bona fide* trust under this.

Shri Morarji Desai: What is the dishonesty here?

Shri N. A. Palkhivala: You are taxing the settler in respect of an income which is not his income. He has created a *bona fide* trust.

Shri Morarji Desai: Why has he created the trust? Only in order to pay less Income-tax, and for no other purpose.

Shri V. V. Chari: Legal avoidance.

Shri Morarji Desai: It is a legal avoidance which I don't want to allow.

Shri N. A. Palkhivala: It is a sound proposition borne out by one's knowledge that trusts are created for six years....

Shri Morarji Desai: Why for six years? If it is permanent, I do not mind.

Shri N. A. Palkhivala: Many do not make it permanent.

Shri Morarji Desai: Are irrevocable trusts only for a period of years?

Shri N. A. Palkhivala: If he finds that the beneficiary is not behaving properly he runs the risk for six years.

Shri Morarji Desai: Let him give that gift to them and be done with it. I do not prevent him from giving the gift. What is the catch behind this? I am afraid of the catch.

Shri N. A. Palkhivala: He wants to make a trust.

Shri Morarji Desai: Because he wants to retain the power.

Shri N. A. Palkhivala: Undoubtedly. But when it comes back to him, he is taxed.

Shri Morarji Desai: Why not now, in the larger income? He only wants to evade, by this stratagem, paying

the higher tax, because his slab will go higher. Therefore he sets aside something which goes to the sons who will pay a lower tax.

Shri V. V. Chari: He can directly maintain the sons. Why should he create a trust?

Shri N. A. Palkhivala: It is a trust for anybody.

Shri Morarji Desai: An honest man pays all the Income-tax due from him.

Shri N. A. Palkhiwala: This is a legitimate creation of a trust.

Shri Morarji Desai: I do not think so.

Shri N. A. Palkhivala: You may restrict it to the children. You may say....

Shri Morarji Desai: Even in respect of grown-up sons, let him make a gift to them. I do not prevent him. He can make a gift of his whole property to them.

Shri N. A. Palkhivala: Suppose the learned Member says "If you create it for your adult sons", even that I can understand. But this applies to all persons.

Shri Morarji Desai: What is the meaning of these trusts. There should be no trusts except charitable trusts.

Chairman: I think we have sufficiently discussed this point. You may go to your next point.

Shri N. A. Palkhivala: The next one is about clause 64(v). The words "immediate or deferred" have been added. Suppose an irrevocable trust is created. It may be to some poor relatives. After they are all dead, the man's wife may become the ultimate beneficiary. It is taxed. The point is, the wife does not get a rupee, the husband does not get a rupee. If a rupee comes to the wife, let the husband be taxed.

Shri Morarji Desai: You are representing both the Associations, Tatas and the Central Council of Indian Associations?

Shri N. A. Palkhivala: Yes.

Shri Morarji Desai: So both may be taken together.

Shri N. A. Palkhivala: There is only one point concerning the Central Council. I was referring to clause 64(v). Today the law is that if you create a trust out of which any income goes to your wife, it is taxed in your hands, rightly. Because, after all, you are bifurcating it in favour of your wife. That is all right. But what is sought to be done now is, if you create a trust of which not a rupee goes to your wife—and in all probability not a rupee will ever go to your wife any day—still, because after the death of the four or five nephews or nieces your wife is the ultimate beneficiary,—unless your wife survives all those four or five nephews or nieces she will never get any benefit—still it is sought to be included in the husband's income. It is not justifiable on any ground of fairness or justice. Because, the income comes neither to the husband nor to the wife: it goes to a third party. If it is a revocable trust you have already caught it under clause 62. Here it is only an irrevocable trust. You have provided for some poor relations, nephews and nieces. But you say that after they are all dead the wife will take the corpus and therefore it should be taxed.

Shri V. V. Chari: Is it likely to happen, that all the other people die and the wife alone survives? The first beneficiary is the wife generally.

Shri N. A. Palkhivala: Then you are taxing the husband under the existing law. You don't need this.

Shri Morarji Desai: Therefore no stratagem is necessary.

Shri N. A. Palkhivala: Whatever income goes to the wife you want to tax in the husband's hands. What is the basic principle behind this?

Shri Morarji Desai: If it goes to the minor children?

Shri N. A. Palkhivala: Then also there is no quarrel. If it is a revocable trust you have caught it under clause 62. Suppose you create an irrevocable trust. You say "I have a poor nephew, I give him so much for life". It goes to your wife if she survives after his death. Today the husband is not taxed because no income goes to the wife. When that man dies and the income goes to the wife, you undoubtedly tax the wife. I do not dispute that. For the period that the wife does not get any income at all, is the husband to be taxed in respect of that?

Shrimati Tarkeshwari Sinha: All these years the husband will be taxed?

Shri N. A. Palkhivala: Yes.

Shri V. V. Chari: The case to which it is supposed to refer is one which has arisen as a result of a court decision. The trust was like this. For five or six years, you accumulate money and in the 7th year, you pay it to the wife. It is an extraordinary case to say that A, B, C, D will be the beneficiaries and after the death of all the wife will get. I do not think in this world any such trust exists but if you want that such a trust should be exempted it can be done.

Shri N. A. Palkhivala: I am not quarrelling with that but in the clause you are using words which will cover 100 other cases. This case of that accumulation is one case in the Bombay High Court but there are hundreds of cases of other types. You tax the accumulations when the wife benefits.

Shri Morarji Desai: We will find out. You can suggest a draft and we will consider it.

Shri N. A. Palkhivala: Then I come to clause 67(3). This is again a departure from the existing law. For instance, a partner of a firm earns some income as his share and he is required to attend to the affairs of the firm. He may be an invalid and so may have to appoint a manager to look after the firm's affairs because it is his duty under the partnership deed to attend to them. Under the existing law, if he has *bona fide* appointed somebody wholly and exclusively for that purpose, the amount paid to him is allowed as a deduction. Now that is sought to be changed. Only the interest on moneys borrowed to finance the firm is allowed to him as a deduction and all the other deductions are not allowed. If it is not *bona fide*, even under the existing law the deduction is not allowed. There have been cases in the Bombay High Court. A man was required under the partnership deed to attend to the affairs of a company. After five years of the date of the deed, one man, because of his old age, could not attend and he appointed a person on Rs. 350|- salary. When he attended to the affairs of the firm with the consent of the other partners, that partner claimed his deduction in respect of his share. The *bona fides* were not disputed. The High Court said that he should get a deduction in respect of that amount. The law does not allow that now.

Shri Morarji Desai: This is the Law Commission's draft which we have adopted here.

Shri N. A. Palkhivala: I have no clear idea of what had been put in there. But I had opposed it even in that stage. Anyhow, you may consider whether it is worth accepting.

Shri Morarji Desai: There are three or four kinds of partners. There is a sleeping partner. He provides money or he may not even provide money. There are cases like this. Clearly that man has to be allowed no deductions. There may be a partner who does his work. But the firm has got its own establishment. Why should the other partner's establishment not be covered by that? Why should he have a separate establishment? There are cases where the cars which are required for the children going to school are put in the accounts of the firm. I am thinking very hard on this because I find that this expenditure business is becoming terrible day by day.

Shri N. A. Palkhivala: I would ask your honour to consider one thing. Are we not having the tendency to make laws only for dishonest people? The honest people are suffering in the process.

Shri Morarji Desai: Let me assure you that my intention is even more clear than yours. I want that every honest man should be encouraged to maintain his honesty and nobody should be thrown into dishonest paths by law. But in the society in which we live, honesty is considered stupid today. If there is a person who behaves honestly, by all successful people he is considered stupid. That is unfortunately the standard which we have got now. So the law has also to provide in such a manner that the dishonest man does not remain dishonest. We distrust each other in every transaction that we do and we must dispel that feeling.

Shri N. A. Palkhivala: Will such laws ever dispel it?

Shri Morarji Desai: Whether this law does it or not, we must also not immediately begin to trust everybody. We cannot also do that.

Shri N. A. Palkhivala: The net result of all these laws is, from my experience I can say, that the dishonest people are still able to manipulate while the honest people suffer.

Shri Morarji Desai: Who enables them to do that? It is the professionnal people who do that; otherwise they may not be able to do it. If the professional people can help me in this connection and do not allow them to take advantage of the loopholes, I am prepared to have as many loopholes as you want.

We have our different conceptions of lawyers and judges also. A lawyer considers it his sacred duty to help his client under all circumstances. To my mind the sacred duty of a lawyer is to help the cause of justice and not the cause of wrong. How would then murderers escape murder and thieves escape punishment?

Shri Amjad Ali: To that I will answer. I do not go to a lawyer for a moral lecture but for his advocacy.

Shri Morarji Desai: But what is justice if it is not the establishment of truth?

Chairman: Let us confine ourselves to the subject-matter.

Shri N. A. Palkhivala: If I may answer Shri Nathwani, the position is this. Under the existing law, if a *bona fide* partner appoints a manager to look after his interests in the firm, so long as it is a *bona fide* business purpose, he gets a deduction in respect of the salary. He pays the manager from his share of profit.

Shri Morarji Desai: Where a partner has to maintain one, he is bound to do. That case ought to be provided.

Shri N. A. Palkhivala: Under the present Bill it is not provided. If a man is in ill-health and cannot therefore attend to the work, you deny him the deduction for what he pays. The manager who *bona fide* looks after the business.....

Shri Morarji Desai: The purpose of the Law Commission was to see how the objects which you have pointed out should be carried out.

Shri K. R. Achar: We are not accepting all that the Law Commission has said.

Shri Morarji Desai: There should be no suspicion that the department is trying to do something which will have a stranglehold on them. I do not say that the Law Commission is infallible. We have not accepted everything that it has said. I am only looking into this from a limited point of view.

Shri K. R. Achar: Supposing there is a loophole, it should not be left as it is.

Shri N. A. Palkhivala: When one talks of the purpose, it is not really a business purpose. Forgetting that

it is so, even under the existing law, he is not allowed a deduction.

Shri Morarji Desai: We will consider it.

Shri N. A. Palkhivala: In almost all the cases which have come to our knowledge, no partner maintains a separate establishment. He has only one paid employee but because the premises have to be kept and are to be looked after, some salary is paid. We have never had a single case where a partner has a big establishment. I submit that this provision would work as a pinprick to the honest taxpayer. Under the present law, there is no such provision, and there is nothing corresponding to section 567(3) of the Income-tax Act. This particular sub-clause may be deleted.

Shri Morarji Desai: How long would you like to take?

Shri N. A. Palkhivala: About half an hour more. The other case which I have in mind is only a matter of policy. I want to make a submission only in regard to that matter of policy.

I now come to clause 79, which deals with companies in which the public are not substantially interested. Today, the loss incurred by a limited company, like the loss incurred by any other assessee, is allowed to be carried forward. What is now provided by clause 79 is a departure from the existing law. It is now sought to be provided by clause 79, unsettling the present law, that hereafter, a limited company, continuing as a limited company, will yet be deprived of its right to carry forward the loss if the shareholding has changed hands in the meanwhile. My submission is that this particular provision would again work as a serious hardship in *bona fide* cases. It is not as if it is restricted in any manner. It is not as if these words are added, namely, "If the transfer was going on and the ITO was of the opinion that the transfer was with a view to get a tax benefit", etc. If such words were included, I have no objection. If you insert the words, "If, in the opinion of the ITO, the transfer of shares was effected to get a benefit of tax," it may be all right. Without that, to apply this rule to all companies where *bona fide* transfer of shares is effected, would be really penalising the honest tax-payer and depriving him of the right to carry forward the past losses. There is no limitation at all. 50 per cent has been hit upon, and once it has changed, never mind how remote the idea of any tax benefit, the carry forward loss is disallowed, to the limited company.

Shri V. V. Chari: It is only in case of private companies.

Shri N. A. Palkhivala: It can be a public company.

Shri V. V. Chari: During the discussions yesterday, we thought of the possibility of restricting it to private companies.

Shri C. D. Pande: A corporate body has got a continuous existence and a change of shares—50 or 100 or whatever it is—has no relevance to the continuity of its existence. So, if the losses are likely to be recovered by the future management, it should always be allowed, because the management is immaterial so far as the corporate body is concerned.

Shri Morarji Desai: We will consider it. So far as the private companies are concerned, he does not mind.

Shri C. D. Pande: There is no difference.

Shri Radhashyam Ramkumar Morarka: Private companies should be on the basis of partnership. Here, it goes against it.

Shri Morarji Desai: We will consider it when the time comes—at the consideration stage.

Shri N. A. Palkhivala: If at all it has to be retained, I submit, that it has to be in relation to one private company only, and to the extent to which the shareholding has changed

hands. Here, the entire loss is disallowed and not to the extent to which shareholding has changed hands. The total loss is different.

Shri Morarji Desai: Loss for what?

Shri N. A. Palkhivala: Loss incurred by the limited company which continues to incur loss. These losses are disallowed to the limited company.

Shri Morarji Desai: We have limited it to eight years.

Shri N. A. Palkhivala: This is within the eight years.

Shri Radheshyam Ramkumar Morarka: This is quite different. Even that does not apply. Supposing in a private limited company, 45 per cent of the shareholders transfer their shares to another company, then the total loss of the company would not be carried forward to the next year. The losses would disappear at that stage and the shareholders will suffer.

Shri N. A. Palkhivala: It would lead to blackmail. People having 50 per cent shares will transfer the shares to their cousins, and the poor shareholder will suffer.

Shri Morarji Desai: It can easily happen.

Shri N. A. Palkhivala: Either we go on the basis of the honesty of the tax-payer, or we do not. The present law is there; for eight years the losses are carried forward.

Shri Morarji Desai: If it is fraudulent, we prosecute them. Anyway, we will consider it.

Shri N. A. Palkhivala: Then I come to clause 84(4). Apart from the constitutional validity, one should go by justice and equality first, and then by the Constitution. On the grounds of justice, I submit it is not fair to make this departure from the existing law. Clause 84(4) says that newly established undertakings which are today entitled to the benefit of exemption.....

Shri V. V. Chari: It is not a departure from the existing law.

Shri N. A. Palkhivala: If you will refer to the existing provision, there are no such words.

Shri V. T. Dehejia: Are you saying whether it is constitutional or not?

Shri V. V. Chari: The existing clause is more detailed, but in order to remove the defect in the existing clause, we have made it more acceptable, in order to meet your objection. It says—provided that the Central Government may, by notification, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

Shri Morarji Desai: There is no constitutional question in this. This is not a fundamental right of any undertaking. This is a concession given by Government.

Shri N. A. Palkhivala: No, Sir.

Shri Morarji Desai: It exists in very few countries.

Shri N. A. Palkhivala: Suppose a new undertaking is started. The field is so wide. If you say that to the shareholders at the very beginning that there will be no tax holiday, I can understand it. Now, what is sought to be done is that after the shareholders have invested the money on the footing that there will be a tax holiday, Government issues a notification saying that they will be deprived of the tax holiday.

Shri V. V. Chari: The Central Government may, by notification, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

Shri N. A. Palkhivala: Here the words are 'shall cease to apply'.

Shri Morarji Desai: 'Shall not apply' has also the same meaning. We will keep those words if that will satisfy you.

Shri V. V. Chari: The Bill, as it is, is more advantageous to Shri Palkhivala.

Shri Morarji Desai: They are better judges of their interests.

Shri N. A. Palkhivala: Nobody has quarrelled with the existing provision.

Shri Morarji Desai: We can continue that.

Shri V. V. Chari: The existing words are arbitrary.

Shri Morarji Desai: No, We might keep the existing provision.

Shri N. A. Palkhivala: Clauses 86 and 182. This is about tax on registered firms. These are two clauses under which in the case of a registered firm, the same income is taxed twice over in the hands of the same individual. The well-settled law in this country throughout has been—and there is no departure anywhere under our income tax law; this is the solitary departure—that income is taxed only once in the hands of the same individual, never twice. In the case of an unregistered firm, you ask them to pay tax at the rate applicable to the total income. In the case of a registered firm, you ask the individual partners to pay a tax on their respective shares. The income is divided among them. On every rupee, the firm has to pay income-tax. In 1956, for the first time, a departure was made and it is sought to be continued by the Bill. I submit that this may not be continued. The departure was that you ask the individual partners to pay tax on their respective shares of the firm's income and on the same income of the same firm, the registered firm will also be asked to pay a separate tax which is not very high, but it is 3 annas in the rupee.

Shri V. V. Chari: Not three annas.

Shri Morarji Desai: That is paid from the common income. When you say that there is no parallel, you are forgetting all companies and shareholders. The shareholders own all the profit. Income tax is paid on that. Then the dividend which the shareholders get is taxed.

Shri N. A. Palkhivala: Here there is no legal entity.

Shri Morarji Desai: They all collect together. Let them be collectively taxed and severally taxed.

Shri N. A. Palkhivala: Then what happens to considerations of justice and equity?

Shri Morarji Desai: What is justice in a tax? Justice in a tax is a very nebulous thing.

Shri N. A. Palkhivala: I proceed from a different approach. If you ignore the element of fairness, you will not have the citizen co-operating with you. That has been my limited experience.

Shri Morarji Desai: That has been your dictum. When I ask what is justice in a tax, I do not mean that there is no justice in a tax. What I mean is that if you examine it from an absolute point of view, no tax will be justified. But justice lies in the fact that it is necessary for the common good, that it is payable by people who can pay and then it is also payable by persons whose condition will not worsen as a result of the tax. These are the three conditions which justify tax—to my mind.

Shri N. A. Palkhivala: Is it right, however large the needs of the country, to depart from the principle of no-double-taxation? A partnership is not even a legal entity. You ask the firm to pay tax and again ask the individual partners to pay tax on the same thing.

Shri Narendrabhai Nathwani: Does it not make a difference in taxation as between registered and unregistered firms? It does. The income is split. Because the one has

certain advantages, why not pay something for getting that concession?

Shri Morarji Desai: It is fully justified, if any tax is justified.

Shri N. A. Palkhivala: Take what are called the Section 23A companies. They do not declare a certain amount as dividend. They are asked to pay penal super tax which is very high. It comes to 6 annas in the rupee. There are two qualifications only, when the company will not be asked to pay that penal super tax. One is if there are past losses. The other is, if the commercial profits are not large. In England, there are the other words 'if the other business requirements justify'. If the ITO is satisfied, not the businessman, that the other business requirements justify no payment of dividend—payment of certain liabilities—he will not pass the order. That is the law in England. That is what the Law Commission recommended should be done. But that has not been done here. It was done for some time. Under our Income-tax Act, the Commissioner was given the power to do it. That led to a number of applications to the Commissioner. A Board of Referees was appointed. But that was a cumbersome procedure. I do not want that. Let the ITO be satisfied. We know cases which arise; they are not stray cases. A company had arrears of Rs. 5 lakh tax to be paid. It had not paid it. In one year, it wanted to pay it out of current profits and it actually paid. But it did not declare a dividend. The law was applied and the company had to pay penal super tax, because arrears are not past losses and they do not come under the words 'smallness of commercial profits'. Therefore, however urgent, however crying the *bona fide* needs of the business, you cannot keep the money and discharge liabilities.

Shri Morarji Desai: But why did they not pay the taxes earlier?

Shri N. A. Palkhivala: Because the tax assessments were made later.

Suppose that company had not paid the dividend. You might say that the approval of the Inspecting Assistant Commissioner has to be taken. But I have not seen one single case in my experience where the Inspecting Assistant Commissioner has refused approval.

Shri V. T. Dehejia: In that case, every year, in the balance-sheet, some money should be set aside for payment of tax. Had the company done so?

Shri N. A. Palkhivala: The company had made a provision which was less than the tax ultimately assessed, because many expenses were disallowed.

Shrimati Tarkeshwari Sinha: Why should they not calculate that their liability will be so much, and accumulate that much of reserve?

Shri N. A. Palkhivala: It is extremely difficult to ascertain that.

Shri Morarji Desai: They did not know that all these expenses would be disallowed.

Shri N. A. Palkhivala: It is extremely difficult to ascertain that.

Shri Morarji Desai: His point, is that the company cannot know exactly what the tax would be.

Shrimati Tarkeshwari Sinha: Certainly, they can calculate, and there might be a variation by just a small percentage.

Shri N. A. Palkhivala: It was Rs. 1·50 lakhs, but we did not know that expenses up to the order of Rs. 1·20 lakhs would be disallowed. In fact, we went right upto the tribunal, and even in the tribunal we rightly lost, because the law is very clear on this point.

Shri Morarji Desai: Do you want the present law to be changed?

Shri N. A. Palkhivala: Yes, I want it to be changed and restored to what it was some time ago, but in this way. I would only suggest the addition of these words.

Shri Morarji Desai: When was this change made?

Shri N. A. Palkhivala: That law was in force from 1953 to 1956 or so, that is, for about three years.

Shri Morarji Desai: What was the reason for that change?

Shri V. V. Chari: As Shri Palkhivala has pointed out, the whole thing was such a cumbrous procedure, involving references to the board of referees and the commissioner and so on, and the assessments used to be held up for years together. Therefore, what was done was that a lower rate of distribution was fixed. Originally, it was 60 per cent.; later on, it was reduced to 45 per cent. Since a lower percentage, namely 45 per cent, was fixed, there was no need for further concessions.

Shri N. A. Palkhivala: It is already 60 per cent, if you would kindly see.

Shri V. V. Chari: We are only talking of industrial companies which require the amount for their first business requirements, not non-industrial companies. It was 45 per cent., but later on, it was raised to 50 per cent., because the rate of company taxation had gone down from 51:5 per cent. to 45 per cent.

Shri N. A. Palkhivala: What happens in cases like this is this....

Shri V. V. Chari: Here, I would like to correct a statement made by Shri Palkhivala. He said that even though the tax provision might have been made, some expenses might have been disallowed, and, therefore, the provision might have been inadequate. But that would create only a small amount of difference. It is only for that purpose that a latitude of about 20 per cent. is given. That has been increased by a further 5 per cent. in the present Bill, to provide for all the possibilities of inaccurate assessment of tax. What further concessions can be given?

Shri N. A. Palkhivala: The differrence becomes large in cases where what is regarded as revenue is treated as capital. The income-tax officer is powerless to do anything, in the face of the law. And it is also so difficult to determine it. Even when the matter goes to the court, there is difference of opinion, as happened in the case that I mentioned, where two persons hold one way, and three persons hold another way. That makes all the difference. Out of a sum of Rs. 1·50 lakhs, Rs. 1·20 lakhs was disallowed. So, the 20 per cent. margin would not cover such cases.

I may make one simple suggestion here which I submit is fair and equitable. The earlier procedure was very cumbersome, we had to go to the Commissioner, then in appeal to the board of referees, and the whole assessment was held up. I suggest that you may leave it to the income-tax officer to be satisfied whether having regard to the current business requirements, a larger dividend declaration would be unreasonable; let him be satisfied on this point, because he can be satisfied today about two other things, about past losses etc.

Shri V. V. Chari: It is very difficult in practice.

Shri N. A. Palkhivala: But in England it has worked for nearly thirty years satisfactorily.

Shri V. V. Chari: Here also, the system has been there. The English system was introduced in 1939 or so that is about 22 years ago. Do you want to revive it here now?

Shri N. A. Palkhivala: If justice requires it, why should it not be done? There is no escape from the tax in a matter like this. After all, you are levying a penal tax; this is not a case of an ordinary tax.

Shri Radheshyam Ramkumar Morarka: This is one of those clauses where we have to apply our mind very seriously. On the one hand, there is the question of hardship, and on the other, there is the question of evasion of real tax. We shall have to balance these two considerations very carefully. It would be worth the while having all the information on this point made available to the committee, because it is not an easy thing to decide the one way or the other, because both the considerations are equally important.

Shri Morarji Desai: The Law Commission has not suggested any alternative.

Shri N. A. Palkhivala: It is suggested in the report. In the draft itself it could not come, because the view was that the incidence of tax should not be disturbed. But in the note it is expressly mentioned that current business requirements should be taken into account, and the law should be amended. In the body of the report you will find a recommendation. But I am putting this before the Committee for the consideration of hon. Members. I am not saying that any assessee, because he pleads business requirements, must be allowed not to declare the requisite percentage of dividends. What I am saying is that if the Income-tax officer is satisfied, it may be allowed. But today, even in a case where the income-tax officer is satisfied, he is powerless to do anything; he has no power to exempt the company from penal supertax.

Shri V. T. Dehejia: But, is that correct? When a case is taken up under section 23A or the present clauses 104 to 109, can the income-tax officer say 'I do not propose to apply this power'?

Shri N. A. Palkhivala: No, he cannot say; in fact, in the very case which I mentioned, we pointed out to the Inspecting Assistant Commissioner that there were *bona fide* arrears of tax unforeseen, but he said, 'No, the law has to be applied, and you must pay the tax'.

Shri Morarji Desai: We shall consider this point.

Shri Amjad Ali: How do you differ from the draft submitted by the Law Commission?

Shri N. A. Palkhivala: In the draft, the Law Commission could not make any changes which would affect the incidence of tax, because the terms of reference were that we were only to codify the Act without affecting the incidence of taxation. That was why in the Law Commission, the Central Board of Revenue's representative Mr. Narayan Rao was very insistent that in our draft, there should be no change. That is why this matter has been referred to in the body of the report.

Shri Morarji Desai: That was why I was also pleading with you not to press anything which will change the present structure.

Shri N. A. Palkhivala: After all, this is one chance which the Parliament of this country has to make the law a little more humane.

Shri Morarji Desai: It can be done every year.

Shri N. A. Palkhivala: But this chance may not come again, because in Parliament you are so hard pressed for time.

Shri Morarji Desai: Every year, there is the budget discussion which goes on for two or three months.

Shri N. A. Palkhivala: At the time of the budget, there are so many other important factors and you may not be able to consider this. Today, there is a little leisure, and you would have time enough to consider it. After all, we all work under limitations. You have some time today to consider this.

Shri Morarji Desai: I have never refused to give any amount of time required by you.

Shri N. A. Palkhivala: I know that that is our privilege, and we are very proud of it. But the point is that today you are codifying the law, and, therefore, you might consider it now.

Shri Morarji Desai: I do not say that this is not the proper time, but I am saying that even in future, there is time to consider this question. We can always reconsider and reconsider and reconsider; for five times, one may say, no, but on the sixth occasion, one may say, yes. Therefore, that attempt should never be given up.

Shri N. A. Palkhivala: Thank you.

Shri V. T. Dehejia: I do not know whether you have noticed that this point was considered by the Taxation Enquiry Commission and they have said that this provision is not necessary.

Shri N. A. Palkhivala: No, in fact, after the Taxation Enquiry Commission's report, the power was given to the commissioner to consider this.

Shri Morarji Desai: Let us consider this.

Shri N. A. Palkhivala: The report of the Taxation Enquiry Commission was made in 1949, and this amendment was made in 1953, by which power was given to the commissioner to consider all this.

Shri V. T. Dehejia: So, the commission proved right.

Shri N. A. Palkhivala: The procedure was cumbersome; it was not the principle that was wrong. The procedure was cumbersome, since it involved going up to the commissioner, the board of referees and so on.

Shri Morarji Desai: I would tell Mr. V. V. Chari that this is not the remedy if the procedure was cumbersome.

Shri V. V. Chari: That is why we have reduced the percentage.

Shri Morarji Desai: That is also not much. How does it meet the exceptional cases that have been mentioned by Shri Palkhivala? I think we must consider this point.

Shri K. R. Achar: At page 73, in para 22 of the Law Commission's report also, there is a reference to this, and they have recommended that a provision should be added.

Shri N. A. Palkhivala: With your permission, I would like to touch some points in the public interest.

I take up clause 159(4), about legal representatives. No doubt, to the extent to which the legal representatives have misapplied the assets and not paid the tax, you can ask them to pay out of their own pocket, but as it is drafted, even if the assets left are only Rs.1,000 and the taxes are Rs. 5 lakhs, because he distributed the assets of Rs. 1,000, he should pay Rs. 5 lakhs out of his pocket. It may not be intended, but that is the legal effect.

Shri V. V. Chari: Actually, we incorporated whatever draft was given by the Law Commission. If there is any mistake, we will rectify it.

Shri N. A. Palkhivala: It makes the legal representative personally liable for all taxes, not limited to the extent of the assets. It is a drafting error, it could not have been intended.

Shri Morarji Desai: Let us rectify it. Otherwise, nobody will become a representative.

Shri V. V. Chari: Kindly read sub-clause (6).

Shri N. A. Palkhivala: In that sub-clause, the words "subject to the provisions of sub-section (4)" are used. These words have to be deleted.

Shri Narendrabhai Nathwani: Because sub-section (4) will over-ride what is contained in sub-clause (6).

Shri V. V. Chari: But you must give an interpretation which must be consistent.

Shri Morarji Desai: We have got to clarify it. It is a bit clumsy.

Shri N. A. Palkhivala: Then I come to clause 179, about a private company in liquidation. A large number of representations must have been received by you about making the

directors personally liable. I will give you an example as to how it will work. Under the Bill, reassessment can be made without any time limit if the amount involved is more than Rs. 1 lakh. Once a man has become a director of a private company, to the end of his life, and after his death also, he can never be sure as to what liability will fasten on him.

Shri Morarji Desai: Then he will act very carefully. This arises only in cases of misbehaviour when he was a director.

Shri N. A. Palkhivala: People are reluctant to get on boards even if there is one undesirable man there.

Shri Morarji Desai: That is a good thing.

Shri N. A. Palkhivala: But the result in practice is that only undesirable people constitute the board, because no honest man wants to come on the board.

In the case of the India United Mills, for instance, the department assessed Rs. 76 lakhs, as some directors made profit that never went into the books of the company. I straightaway concede, that you may have a provision that if a director is concerned with the earning of the income, he should be liable.

Shri Morarji Desai: It is a healthy provision, preventing a man from becoming a director of such companies. He should not become.

Shri N. A. Palkhivala: Very often, he will not know at the time he becomes a director.

Shri Morarji Desai: No strangers are ever invited as directors.

Shri N. A. Palkhivala: If today it can be done for income-tax, tomorrow, it can be done for excise, customs, sales tax etc.

Shri Morarji Desai: Not necessarily.

Shri N. A. Palkhivala: What will prevent the State legislature saying that sales tax will be recovered from directors and shareholders? That will cut at the very root of limited liability. A man's shareholding may be Rs. 100, he may have received a dividend of only Rs. 30 in his life, but he may have to pay Rs. 15 lakhs. That is in respect of shareholders. The first portion applies to directors.

Shri Morarji Desai: Directors are in a special position. Why do they want to become directors? One is a director of 20 companies.

Shri N. A. Palkhivala: Throughout Indian jurisprudence, the principle of limited liability has so far never been departed from. This is the first departure.

Shri Narendrabhai Nathwani: There is another departure. You can look behind a company to find out who constitutes it.

Shri N. A. Palkhivala: That is the general law even today. Where a man is really identified with a company, you hold the man responsible even under the general law today. Are you going to depart from the well settled law which has been consistently followed throughout jurisprudence for the limited purpose of one Act?

Shri Morarji Desai: It is limited to his life.

Shri N. A. Palkhivala: Even after his death, his estate is liable, when can reassess without a time limit.

Shri Morarji Desai: That would not be right. You cannot make his heirs liable.

Shri Narendrabhai Nathwani: That is the natural consequence.

Shri N. A. Palkhivala: Those who are dishonest will always be able to secrete their assets. This will cut at the very root of the basic legal concept of limited liability because you make individuals liable for the company's tax.

Shri Morarji Desai: We are not wedded to the concept of limited liability.

Shri V. T. Dehejia: This applies only to private companies. In respect of public companies, it can continue?

Shri N. A. Palkhivala: Yes.

Shri Morarji Desai: I shall be happy if they become public companies.

Shri N. A. Palkhivala: Therefore, why not restrict the application of the clause to cases where the directors or shareholders have had something to do with the earning of the income or the evasion of tax?

Shri Morarji Desai: Private companies are a closed preserve of a few people.

Shri N. A. Palkhivala: Very often, there are three or four people. If there is one family, I can understand. Three units may join together and do business. Suppose one unit makes a profit and keeps the other two in the dark. Not only the other never get their share of the profit, but they have to pay the tax for the entire group.

Shri Morarji Desai: Let them not join.

Shri N. A. Palkhivala: How would they know?

Shri Morarji Desai: They are bound to know.

Shri V. T. Dehejia: Would you not be more careful if you know there is such a liability?

Shri N. A. Palkhivala: The result will be that honest people will keep out and companies which would have a check by having honest men on the board will be without check.

Shri Morarji Desai: Under the garb of honest men, they do all sorts of things.

Shri N. A. Palkhivala: Those corrupt practices are not known to all the directors.

Shri Narendrabhai Nathwani: May I know whether this applies only to companies in liquidation or to all companies.?

Shri N. A. Palkhivala: The marginal heading is quite clear; it applies only to companies in liquidation. But the main clause says "before liquidation" and it may apply to companies which are still going also. That might be clarified.

Shri Morarji Desai: It must be clarified.

Shri N. A. Palkhivala: The next clause is 197. If there is a trust which is entitled to exemption or a petty shareholder whose annual income is Rs. 3,000, under clause 197 he cannot get a certificate from the ITO for exemption or deduction of tax at lower rate, because sub-clause (1) (a) of clause 197 says:

> "(a) income-tax or super-tax is required to be deducted at the time of payment at the rates in force under the provisions of sections 192, 193 and 195".

Section 194 is not mentioned here at all. 80 per cent of our shareholders are people who get Rs. 5000 or Rs. 3000 per year as income.

Shri V. V. Chari: Is there any drafting mistake?

Shri N. A. Palkhivala: Yes; section 194 should be included, so that middle class shareholder is not affected. Under the Bill as it is, he will not get a certificate. It is a marked departure from the present law.

Shri Morarji Desai: We should give them a certificate. Why not send a draft on this?

Shri N. A. Palkhivala: Very well. Then, I come to clause 254. For the first time, the appellate tribunal is given the power to enhance the assessment. The ITO can rectify the assessment; he can reassess without any time-limit if it is more than Rs. 1 lakh up to 16 years. The Commissioner also

can do it. If I go in appeal to the Appellate Assistant Commissioner, he can also enhance my assessment. These are the existing provisions. Now for the first time, the appeallate tribunal is given power to enhance my assessment even when there is no appeal by the department.

Shri Morarji Desai: What is wrong with that? Does not the High Court have the power to enhance the sentence?

Shri N. A. Palkhivala: In the first appeal it can, but not in the second appeal. In the case of income-tax also, in the first appeal the assessment can be enhanced. The ITO has the power to enhance it and the Commissioner and the A.C. also have that power.

Shri Radheshyam Ramkumar Morarka: The appellate tribunal is the final appellate authority. After that, there is no appeal; there is no remedy.

Shri N. A. Palkhivala: The department has the right to go in appeal to the tribunal. But if the department itself chooses not to appeal, why should the tribunal enhance the assessment?

Shri Morarji Desai: We will consider that.

[The witness then concluded the evidence for the Tata Industries (Private) Limited, Bombay]

II. THE CENTRAL COUNCIL OF INDIAN .. ASSOCIATIONS AJINJA, UGANDQ Q—D BRITISH EAST AFRICA)

Spokesmen:

1. Shri N. A. Palkhivala
2. Shri C. D. Dupelia

(*Shri C. D. Dupelia was called in at this stage and he took his seat*)

Shri N. A. Palkhivala: As regards the other representation of the Central Council of Indian Associations, there is one point. Under the existing law, there are three categories of assesses—resident, non-resident and resident but not ordinarily resident. It is suggested in the Bill that there should be only two classes of assesses—resident and non-resident. The category of resident but not ordinarily resident is to be abolished. Our plea is either for the retention of the existing law or for some suitable relief being given to persons who are not ordinarily resident in this country, but who otherwise become assessable in respect of their world income.

Shri Morarji Desai: We are considering that.

Shri N. A. Palkhivala: In actual practice, from Africa a very substantial block of income keeps on coming year after year. One single family has brought Rs. 2½ crores during the last 7 year. Today these people bring substantial money and invest in small industries. They are residents of Africa, but they come here for one or two months to look to their business. If a man comes this year, next year, he may not come, but his brother may come.

Shri Morarji Desai: We are proposing to consider them as non-residents.

Shri N. A. Palkhivala: In that case, I having nothing more to say. Today these people have their ancestral home in this country and as the Indian nation is attached to sentiment—it is really the salt of life—they do not try to get rid of their ancestral home; they come to the place of their forefathers.

Shri Morarji Desai: We do not want them to get rid of it.

Shri N. A. Palkhivala: If they come and stay here for 90 or 120 days, even then they can look after their business and go back. Under the Bill they will be terribly hit, and as a result their world income would become taxable. The result would be that many people who are today rendering service even in the technical field would hereafter, when they know that they would become taxable on their world income, may not come. Therefore, it may be fair and just from the point of view of the individual, but it is not fair in the interests of the country.

Shri Morarji Desai: I hope you do not object to our taking 49 per cent from them.

Shri N. A. Palkhivala: It is for the hon. Finance Minister to decide the rate.

Shri Morarji Desai: They do not become residents on account of their coming here; will that satisfy you? There is no justification for treating these people in a superior way compared to both residents and non-residents. That is what is happening today.

Shri N. A. Palkhivala: That can be remidied without depriving them of the benefit of exemption in respect of their foreign income.

Shri Morarji Desai: That is what we are trying to see.

Shri Narendrabhai Nathwani: May I clarify this a little? Supposing the existing classification is to continue, will they accept that for rate purpose their world income may be included?

Shri Morarji Desai: There is one difficulty. They may not want to show their world income, because the moment they show their world income they will have to give accounts and all that. Why should they want to do that? That will create more complications for them.

Shri N. A. Palkhivala: Under the existing law non-residents are given the option. If they do not declare the world income the rate of 49 per cent is applied and they are charged at the world income rate if they declare the world income.

Shri Morarji Desai: If we keep them as non-residents and do not treat them as residents because they come and stay here even for 180 days in a year, will that satisfy you?

Shri N. A. Palkhivala: That will be quite enough. They will have to pay at the rate the hon. Finance Minister decides. They may have to pay more. The fight is not about the rate but about the world income.

Shri Morarji Desai: What happens is, this third category pays incometax—only on the income here and nothing else is taken into account.

Shri N. A. Palkhivala: With great respect, Sir, I submit that today, those who are residents but not ordinarily residents pay tax on the rate applicable to residents, but the point is that they are not covered by section 17.

Shri Morarji Desai: Residents pay tax on the world income also. Non-residents pay tax only on their income here at the rate which is applicable on the common total income. But this third category of people pay tax only on their income here and at the rate applicable to that.

Shri N. A. Palkhivala: I am not pleading for continuation of that. I concede that it is not fair.

Shri Morarji Desai: Will they prefer the option of inclusion of world income or 49 per cent, or will they prefer a fixed rate on their income?

Shri N. A. Palkhivala: A fixed rate would be better, a fixed rate applied to their Indian income or they may be treated as non-residents.

Shri Morarji Desai: We will treat them as non-residents. Then they will have the option of world rate or 49 per cent.

Shri N. A. Palkhivala: On the whole that would be the best solution. That will eliminate the present anomaly which you have been good enough to point out.

Shri Morarji Desai: We do not want them to dispose of their houses. We do not want to treat them as residents because they come and stay even for a year once in five years. I do not want to step them from coming here. Because of their coming here if they have to pay a penalty and they are asked to send returns etc., that is certainly not fair. We do not want to do that. We will try to provide a remedy But the third category is not justified.

Shri N. A. Palkhivala: The solution which you have been good enough to suggest seems to be the best. Treat them as non-residents.

Shri Narendrabhai Nathwani: You want the position which you have expressed now or the one which you have expressed in the Commission's Report?

Shri N. A. Palkhivala: To treat them as non-residents is the best one.

The Law Commission has recommended abolition of this category. At that time the Law Commission did not take into consideration this aspect.

Actually, if the present position is maintained it has worked satisfactorily I would rather have it.

Shri Narendrabhai Nathwani: Only have the change that for the purpose of rate this option should be given.

Shri N. A. Palkhivala: If that is done, if the present categories are retained, with this change that option be given for inclusion of world income for rate purposes or to have the rate of 49 per cent, that will be very fair to all parties.

Chairman: Thank you very much Shri Palkhivala.

Shri N. A. Palkhivala: Thank you, Sir, and the members of your committee for the very patient hearing that you have given.

(*The witnesses then withdrew*)

III THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA

Spokesmen:

1. Mr. A. M. S. Fergie
2. Mr. J. Anderson
3. Mr. G. F. Solomon.

(*Witnesses were called in and they took their seats*).

Chairman: You may take it that the memorandum submitted by you has been read. If you want to elaborate any point, you may do so now.

Mr. A. M. S. Fergie: First of all, Sir, we should like to thank you and members of your Committee for the opportunity you have given us to appear before you today and to give evidence on the Income-tax Bill. The Associated Chambers of Commerce of India have submitted to you a memorandum in which they stressed the urgency of more time being given for the examination of the Bill. In that memorandum they have submitted their viewpoint on some of the more importnant provisions contained in the Bill. We fear that the Bill has gone beyond its objectives by the introduction of some principles which affect other legislation. Further, the national requirements have not been given sufficient thought. Examples of both these aspects are contained in the memorandum of the Chamber. There are several clauses which conflict with the Company Law. For example, clause 79 deals with the carry forward of losses in the case of a company in which the public are not substantially interested. It provides that a loss may not be carried forward and set off against the profits of a subsequent year unless 51 per cent or more of the voting power of the company was held by the same persons on the last day of the year in which the loss was incurred and on the last day of the year in which it is sought to be set off. This seems to be a wholly undesirable innovation, since it disregards the position of a company as a separate entity from its shareholders and it has the objectionable feature of being retrospective.

Shri Amjad Ali: On page 2 of your memorandum you have referred to case laws and stated that the proposed legislation is not up to the mark. Possibly you do not favourably react to the proposed legislation. Is that your view?

Mr. A. M. S. Fergie: I am sorry, I could not get the point.

Shri Amjad Ali: On page 2 of your memorandum, you have stated:

> "The Chambers consider it most desirable that changes of wording without a change of substance should be avoided where there is any possibility of such changes upsetting the case law which has been built up over many years."

So, you have laid more stress on case laws which, of course, we have also in view when we are considering this matter.

Mr. A. M. S. Fergie: Yes, Sir, I am unable to give examples now. It seems that such examples will arise in practice and we think it most desirable that nothing should be done which will upset the substantial body of case law which has been built up.

Shri Amjad Ali: How do you substantiate your remark that by this legislation we are going to upset the existing case law.

Shri Morarji Desai: If we depend on case laws, we can never change any law.

Mr. A. M. S. Fergie: I agree. But I think the Chamber's point is that if there is any change of wording without change of substance that should be avoided.

Shri Morarji Desai: When we want to make a change of substance, what happens?

Mr. A. M. S. Fergie: Then you cannot help it.

Shri Morarji Desai: That is what is being done. I think you would better speak on the merits of the change rather than on the general concept that the case laws should be maintained.

Mr. A. M. S. Fergie: I was trying to you and your committee examples of changes of substance....

Shri Morarji Desai: There are such changes.

Mr. A. M. S. Fergie: .. which conflict with the existing company law in principles and some changes which, acacording to us, come in conflict with governmental poilcy, to some extent, I have given you one example about clause 79. I shall give you two more, if I may, which seem to us to come into conflict with the Companies Act.

Shri Morarji Desai: We have heard from other people also on clause 79. We are going to reconsider it.

Mr. A. M. S. Fergie: Then I will say no more about it.

Shri Morarji Desai: Since we are going to reconsider it, you need not spend more time on that.

Mr. A. M. S. Fergie: I understand. The next clause is 178. It says that the liquidator of a company shall, within thirty days of his appointment, give notice of the fact to the income-tax officer. The income-tax officer is required, but not within any specified period, to advise the liquidator of the amount which will be sufficient to provide for any tax then or likely there after to become payable by the company. On being so notified by the income-tax officer, the liquidator is required to set aside that amount and until he has done so he is debarred from parting with any of the assets or properties of the company.

Shri Morarji Desai: That is also being considered.

Mr. A. M. S. Fergie: We are glad that we are not the first to make this objection.

The third clause to which I shall refer is clause 179. That clause provides that in the case of private companies in liquidation, where income-tax cannot be recovered from the company, it shall be recovered from those persons who were directors at any time during the relevant previous years. Where such tax cannot be recovered from the directors, it is to be recovered in proportion to his share-holding from each shareholder who is the beneficial owner of shares carrying not less than ten

per cent of the voting power at any time during the previous years in question. This clause, in our opinion, strikes at the very root of the concept of limited liability. Again, as clause 79, this seems to us to be retrospective in action.

Shrimati Tarkeshwari Sinha: It will apply only to those concerns which are under liquidation or going to be under liquidation.

Mr. A. M. S. Fergie: Yes, I agree. But under the existing company law, the liability of shareholders is still limited. Now that is being extended to directors and some shareholders.

Shri Morarji Desai: Only for those shareholders who hold more than ten per cent of the shares.

Mr. A. M. S. Fergie: Yes and all directors.

Shri Morarji Desai: Should not the directors be held responsible for the actions of the company?

Mr. A. M. S. Fergie: That is a very broad question. If a director knowingly and wilfully does a thing, that is a different matter.

Shri Morarji Desai: But is he not supposed to apply his mind all the while? If he does not do that would not Government be justified in levying a penalty on him? He does not become a director for the fun of it.

Mr. A. M. S. Fergie: That is so. But there are technical directors in many companies who are not connected with the day to day management.

Shri Morarji Desai: But they are as good directors as other directors. If not, let them not be directors. Otherwise, how is this going to be safeguarded? When money is frittered away, it cannot be recovered from the company.

Mr. A. M. S. Fergie: If there is a general need for safeguarding, some provision should be made for it. But I think this is too wide.

Shri Morarji Desai: The recovery will be made from those persons who are actually managing the company. If it cannot be done, then we will go to the directors. If it cannot be recovered even from the directors then we will go to the shareholders. Also, it is only for private companies, which are the closed preserves; not for public limited companies.

Shri C. D. Pande: A company will go into liquidation only if it incurs losses for years together, in which case there will be nothing to recover the tax. So, neither the apprehensions of the witness, nor the anticipations of the hon. Minister, are likely to come true. They are more academic.

Shri Morarji Desai: I have no hopes.

Shri C. D. Pande: When the company itself is running at a loss, from where can you recover the taxes?

Shri Narendrabhai Nathwani: In some respects we tried to get relief or advantage for a private company on the basis that it was a semi-partnership. Then why should liabilities also not be fastened upon it on that basis?

Shri Morarji Desai: We will see that this is considered by the Select Committee.

Mr. A. M. S. Fergie: A number of companies go into liquidation for reasons other than that of substantial loss.

Shri Morarji Desai: Most of them always go into liquidation for bad management. But there are some companies which go into liquidation for perfectly *bona fide* losses and where there is nothing wrongly done. But they are very rare. However, we see the point which you are making.

Mr. A. M. S. Fergie: With respect to Government's policy, there are two particular points which are in the memorandum and which I should like to mention now. The first is the abolition of the status of the resident but not ordinarily resident. It seems to us that at a time like this when

there is increasing foreign investment and collaboration in India any measure which may discourage the recruitment of technical and other personnel must be considered undesirable.

Shri V. T. Dehejia: You refer to 'resident but not ordinarily resident' and to technicians. Suppose, technicians are kept out of it, would that make a difference?

Mr. A. M. S. Fergie: That would help but the definition of a technician does not cover all cases. There are specialists also who come to this country.

Shri V. T. Dehejia: Apart from technicians and management specialists there will be others who come here to negotiate deals etc.....

Shri Morarji Desai: Or to invest here.

Shri V. T. Dehejia: There are various types of people who con from other countries. How are they to be treated?

Mr. A. M. S. Fergie: One way to treat them would be to give them the status of resident not ordinarily resident.

Shri Morarji Desai: Technicians do not come under this category of not ordinarily resident. They are staying here all the while.

Mr. A. M. S. Fergie: They are here only for a short time.

Shri Narendrabhai Nathwani: They would not become residents but, according to the present classification, they would become resident but not ordinarily residents.

Shrimati Tarkeshwari Sinha: Technicians get a tax holiday already.

Mr. A. M. S. Fergie: Yes, so far as their salary in this country is concerned.

Shri Morarji Desai: Will it do if they are considered as non-residents? What we are considering is whether the third category is justified. The residents and the non-residents have certain liabilities. This third category is treated as much superior to both the residents, that is, the Indians and the non-residents, that is, the foreigners. Therefore why should we not have only two categories and they may be fitted into one or the other as is suitable? Those who come from outside and invest money here, naturally, should not be made to pay on their income earned outside? But why should they not pay as non-residents pay? Non-residents do not pay income-tax on their income outside but they pay 49 per cent or at the rate which is applicable to their total world income, as they choose. The option is there. Suppose, that option is given and that category covers all those who have so far been covered by the third category, will that meet the situation?

Mr. A. M. S. Fergie: I do not really think so. It may have occurred to you that the provisions regarding the status of a resident not ordinarily resident are fairly generous. Government might perhaps consider a man being in that state if he has been resident in four out of the last five years instead of nine out of the last ten years as it is at the moment.

Shri V. V. Chari: Does the Finance Minister's offer meet your case? In the case of a technician his Indian salary is exempt from tax and even if he is treated as a non-resident it means no great hardship to him because there is nothing to be taxed even if the foreign income is included.

Mr. A. M. S. Fergie: I suppose it would depend to some extent on the extent of the foreign income.

Shri V. V. Chari: It is only in the case of a non-technician, if he has got some Indian income, that his total world income will be taken into consideration.

Mr. A. M. S. Fergie: We have no objection to taxing all the Indian income of the technicians other than salary. It is the foreign income that we are concerned with.

Shri V. V. Chari: Anyhow, the Act already gives you that concession. Technicians are given a tax holiday.

Mr. A. M. S. Fergie: Only on their Indian salary.

Shri Morarji Desai: But they are not taxed on the foreign income. If we treat them as non-residents for this purpose, they will not be taxed. If we provide a suitable thing to cover all these people saying that even when they are staying here we will consider them as non-resident, they do not have to pay on their foreign income.

Shri Narendrabhai Nathwani: It is only for the purpose of calculating the rate on the Indian income.

Mr. A. M. S. Fergie: I think if they are treated as non-residents that would probably cover the case. But the specialist personnel, as the law stands at the moment, are resident but not ordinarily resident and if they become resident their foreign income comes in.

Shri Morarji Desai: Suppose, all those who stay here temporarily for five to ten years are considered non-residents. Of course, those who stay longer than that are residents and they ought to pay more. Those who are staying for 20 or 25 years are paying full even though they are not Indian nationals. Because they stay here for their whole life, they pay like a resident.

Mr. A. M. S. Fergie: They pay like myself.

Shri Morarji Desai: You cannot be exempted, nor are you asking for it. But if they are treated as non-residents, then what they will pay is 49 per cent on the income here, or at their option, at a rate on the world income. Will that meet the situation?

Mr. A. M. S. Fergie: I think, yes.

Shri Morarji Desai: We are considering on those lines; not that we have come to any conclusion. We do find that some relief is necessary. The present change does involve a lot of hardship. We want to change it. We also want to see that justice is done and that nobody is put in a superior category. That is the idea behind it.

Mr. A. M. S. Fergie: The other point which I want to mention is clause 2(18) which defines a company in which the public are substantially interested. This point is mentioned in our memorandum.

Shri V. V. Chari: That point has been noted and the proper changes are being made.

Shri Morarji Desai: The company should be a public company as defined in the Companies Act.

Mr. A. M. S. Fergie: The type of company with which we are concerned is the Indian subsidiary company of a foreign company which under the existing law is a company in which the public are substanially interested. Now, under this new definition, a foreign company cannot be treated as a company in which the public are substantially interested.

Shri Morarji Desai: We have covered with one sweep all of them.

Shri V. V. Chari: It is a peculiar situation.

Shri Morarji Desai: That will have to be carefully considered. If you can suggest a draft, we might consider that.

Shri C. D. Pande: In the case of foreign holding companies, if they have a subsidiary company here, the subsidiary company here should be held as a public company.

Shri Morarji Desai: We will have to draft it suitably later.

Shrimati Tarkeshwari Sinha: That will have to be done.

Shri Morarji Desai: There was no intention of converting all the foreign companies into companies in which the public are not substantially interested. There was no such intention. It is here the intention is good, but the result is bad.

Mr. A. M. S. Fergie: There are no more points which I have to raise here. But I would be very happy to discuss the points which are contained in our memorandum if the Committee would like me to do so.

Shri Morarji Desai: If you would like to emphasize anything in particular, you can do so.

Mr. A. M. S. Fergie: I would like to do that.

Shri Morarji Desai: You can certainly do that.

Mr. A. M. S. Fergie: The first item dealt with clause 2(18), that is, defining companies in which public are substantially interested. We have dealt with that.

Item No. 2—I do not think that calls for any particular comment.

Item No. 3—This is regarding the status of 'not ordinarily resident'. We have dealt with that also.

Item No. 4—Clause 33(3): This sub-clause deals with development rebate on the amalgamation of companies. It seems to us that this subclause requires careful examination and, I think, it needs an amendment.

Shri V. V. Chari: The particular cases which you are thinking of are already covered by the existing Act and clarificatory instructions have already been issued. The Chambers has also got a copy of the instructions.

Mr. A. M. S. Fergie: Is it a question of issuing instructions, or is it a question of amending the Act?

Shri V. V. Chari: The Law Adviser says that the existing Act covers that type of cases where one company absorbs the other company.

Mr. A. M. S. Fergie: We differ with that.

Shri Morarji Desai: The budget provision can be incorporated. Try to do that,

Shri V. V. Chari The point has been noted. But, we have already taken action on these lines.

Shri Morarji Desai: That was done during the last budget. Instructions were issued.

Mr. A. M. S. Fergie: I appreciate that. But this does not cover all the cases.

Shri Morarji Desai: It has not covered all the changes. Those changes will be covered. That is being done.

Mr. G. E. Solomon: In our opinion, the Finance Act 1961 does not cover the cases where the one company absorbs the other company.

Shri Morarji Desai: Does it not cover it?

Mr. G. E. Solomon: The Finance Act 1961 does not cover the points that we have raised here.

Shri Morarji Desai: Does that circular which has been issued cover all that?

Mr. A. M. S. Fergie: I have not seen the circular.

Shri Morarji Desai: Have you got it here?

Mr. A. M. S. Fergie: It seems to me that the position is such that it requires an amendment.

Shri Morarji Desai: If the instructions that have been issued are found satisfactory by you, we can put them here. If that is not satisfactory and still you have to say something, then we have to consider something else. I am only trying to help the process of consideration. What exactly do you want to be done?

Mr. A. M. S. Fergie: I will put it this way. For example, one of the conditions is that the share-holders of the amalgamating company become the share-holders of the amalgamated company. Now, company 'A' amalgamates with its wholly owned subsidiary company 'B'. Then, the company 'B' share-holders *i.e.*, 'A' would not be the share-holders in company 'A'.

Shri Morarji Desai: How? The company 'A' holds company 'B' and the company 'A' has share-holders. Then, the company 'B' has no share-holders. Some share-holders are there.

Mr. A. M. S. Fergie: Same ultimate share-holders are there. But the share-holders of company 'B' do not become share-holders of company 'A'.

Shri Morarji Desai: But, there are no share-holders of company 'B'. When you say that Company "A" holds Company "B", how are there separate shareholders of Company "B"?'

Mr. G. E. Solomon: The company itself.

Shri Morarji Desai: The shareholders of Company 'A' ultimately hold Company 'B'. Company 'A' is held by the shareholders of Company 'A'; Company 'A' holds Company 'B'; that means, as a company, it holds the shares here. Do not all those shares belong to Company 'A'?

Mr. A. M. S. Fergie: Indirectly.

Shri Morarji Desai: Why indirectly? Directly. Who are the owners of Company 'A'?

Mr. A. M. S. Fergie: The shareholders.

Shri Morarji Desai: The shareholders hold Company 'A'. It is on behalf of its shareholders that Company 'A' holds Company 'B'. Therefore, the shareholding in Company 'B', which is of Company 'A', belongs to the shareholders of Company 'A'.

Mr. A. M. S. Fergie: Indirectly.

Mr. G. E. Solomon: It rests on the technicalities.

Shri Narendrabhai Nathwani: Technically it is so.

Shri Morarji Desai: There are no other shareholders. In my mind there is no difficulty. There is no other shareholder. Suppose five of us hold different shares in Company 'A'. The five of us together jointly hold the shares in Company 'B'. How is it different?

Mr. A. M. S. Fergie: It is a technicality.

Shri Morarji Desai: It is only a technical device for keeping accounts separate, for keeping other things separate and for seeing that these shareholders do not dabble in the management of the other company.

Shri Radheshyam Ramkumar Morarka: For the purpose of tax law it is not merely a technical position. Suppose Company 'A' makes a profit of Rs. 5 lakhs and Company 'B' makes a loss of Rs. 5 Lakhs. It may be that the entire share capital of Company 'B' is held by company 'A' yet the company making the profit will have to pay tax or the company suffering the loss would be allowed to carry forward the loss. The profit of 'A' would not be set off against the loss of 'B'.

Shri Morarji Desai: That is not done to dodge the tax. Therefore, that is not a wrong thing. That does not affect this amalgamation. When the amalgamation takes place, it should not affect the development rebate, because the shareholders are the same. In substance, in fact, it makes no difference. That is what should be clarified.

Mr. G. E. Solomon: Yes.

Mr. A. M. S. Fergie: Thank you, Sir.

There is the other point and that is, if there is an amalgamation between two companies, Company "A" and Company "B",—Company "A" taking over Company "B"—in case there is a dissentient shareholder in Company "B", provision should be made for acquiring his share in cash. That should be covered.

Shri Morarji Desai: We are considering that. We do not know what conclusion we will come to, but that point has been before us.

Mr. A. M. S. Fergie: Then there are some general points about this. This clause seems to visualize the formation of a new company. Most amalgamations take place by the amalgamation of two or more existing companies. Again, the clause seems to provide for the amalgamation of two companies but not more than two companies. There are cases where several companies are amalgamated.

Shri V. V. Chari: I think these are all further refinements.

Shri Morarji Desai: I do not think it is prohibited.

Mr. A. M. S. Fergie: There is the danger of the rebate being withdrawn.

Shri V. V. Chari: You can always bring in more and more refinements. No statute can provide for everything.

Shri Morarji Desai: You can say "If two or more companies amalgamate".

Mr. A. M. S. Fergie: Income-tax laws must be interpreted very literally and it seems to us that the contingencies should be mentioned exactly.

Shri V. V. Chari: Can four companies be amalgamated?

Mr. A. M. S. Fergie: Yes.

Shri Morarji Desai: You must say "two or more". That we will see.

Mr. A. M. S. Fergie: Thank you, Sir.

Shri Morarji Desai: You see, whether it is in the Ministry or in your company, one is always averse to making changes of a constitutional nature. They always want to do it in an executive manner. That is the position of my Ministry!

Shri V. V. Chari: It is, word, a copy of the Australian Act.

Shri Morarji Desai: They want that it should be in the law.

Mr. A. M. S. Fergie. The next is clause 36, and our comments with respect to it are important ones. The position regarding allowance of bad debts has been clarified. But the position of irrecoverable trade advances is not covered.

Shri V. T. Dehejia: Would you consider all advances in that category?

Mr. A. M. S. Fergie: The trouble is that before you are allowed a bad debt, it must have formed part of the income of the previous year.

Shri V. T. Dehejia: There may be trade advances, capital advances.

Mr. A. M. S. Fergie: I am talking about ordinary trade advances, such as advances to cane growers.

Shrimati Tarkeshwari Sinha: Advances that are incidental to the business.

Mr. A. M. S. Fergie: Unless a bad debt has formed part of the income either in that previous year or some other previous year it cannot be allowed. That is fair enough. But an irrecoverable trade advance can never form part of income.

Shri V. V. Chari: This is connected with the present section 10(2)(xv).

Mr. A. M. S. Fergie: It should be allowed specifically. We have dealt with clause 79.

The next clause about which I would like to say a few words is clause 84 (page 5 of our memorandum) which corresponds to existing section 15C. In our view the main criterion should be the setting up of a new industry. At the present time relief under this section is allowed to a new industry which has new plant and machinery and new buildings.

Shri Morarji Desai: I am sorry this cannot be done. Five years tax holiday is a long enough period.

Mr. A. M. S. Fergie: We did suggest the relief

Shri Morarji Desai: You are trying to extend it. It will throw open the flood gates.

Mr. A. M. S. Fergie: Are you talking about the five years, or are you referring to the second point?

Shri Morarji Desai: You say that the five years should begin from the time it begins to make profits.

Mr. A. M. S. Fergie: Yes.

Shri Morarji Desai: Why should it be? Five years are given because in the first one or two years they may not be able to pay.

Mr. A. M. S. Fergie: It is no relief at all.

Mr. A. M. S. Fergie: The second point under this clause is contained in the second para of our memo. Relief is granted, at the moment, only if a new industry is set up in a new building with new plant and machinery. It seems to us that the criterion should be the fact that there is a new industry. If such an industry can function in a building which was previously used for some other purpose and which is no longer required for that purpose, and if you could get re-conditioned machinery, especially imported machinery, there should be no bar to granting relief under the clause.

Shri V. T. Dehejia: The whole idea of the holiday is to create something new: not to divert energy. To open a new undertaking means an undertaking with a new building.

Shri Morarji Desai: That is not a new undertaking if it is provided from depreciation allowance. I do not know if that can be called a new undertaking. I will have no tax accruing from any company if I go in this way.

Mr. A. M. S. Fergie: I do not know if I have made myself clear. May I give an example? In Calcutta, in recent years, there has been a concentration of jute mill undertakings. A company owns two mills. It concentrates production in one mill. It puts in new machinery and works 2 or 3 shifts in that one building. The other building has become redundant. It could be sold; or probably it is sold. If a new undertaking can operate in that old building, that should get relief under this clause.

Shri Morarji Desai: If it is a completely new undertaking, it will certainly come in. Whether it puts up a new building or uses an old building is not the criterion of a new undertaking. It only means that you are not putting up a new building and you are utilising an old one. That does not change the character of a new undertaking. Starting a new industry in an old building does not affect the position.

Mr. J. Anderson: That does exclude relief under this clause.

Mr. A. M. S. Fergie: May I quote? Clause 84(2): "This section applies to any industrial undertaking which fulfils all the following conditions, namely:— . . .

Shri V. V. Chari: The whole idea is that you should create new industrial assets, you must build something new which is not there. If they are only diverting the existing sources, it does not require any incentive. That is the object.

Mr. A. M. S. Fergie: It is your wish to manufacture a new product. You should give relief even though that product is manufactured in an old building with re-conditioned machinery imported from abroad.

Shri V. V. Chari: When machinery comes from abroad, so far as this country is concerned, it is new. We do not know whether it is re-conditioned or new. It must be an addition to the assets of the country.

Mr. A. M. S. Fergie: If the Income-tax officers are prepared to subscribe to that view.

Shri Narendrabhai Nathwani: I think that is covered by the provision here. "it is not formed by the

transfer to a new business of a building, machinery or plant previously used for any purpose".

Shri V. T. Dehejia: Suppose that building has enjoyed a tax holiday? After three years, that building is used by another industry.

Shrimati Tarkeshwari Sinha: Suppose we import tankers. They are probably second-hand tankers.

Shri V. V. Chari: For us, it is new.

Mr. A. M. S. Fergie: It is the Income-tax officer who has to interpret this provision.

Shri V. V. Chari: Some years ago, we did not get absolutely new ships. We got second-hand ships which had plied in foreign waters. They were treated as new.

Shri Morarji Desai: If you have a new factory with second-hand machinery, that does not become an old undertaking. It is not brand new machinery that is put everywhere. The wording, formed by the transfer of a building, machinery or plant previously used seems to create a doubt. We have got to consider that. Suppose they have two jute mills in the same company and one jute mill has gone into the other. The other jute mill is being sold away to another concern.

Shri A M. S. Fergie: Probably.

Shri Morarji Desai: Without that it cannot be done. If you merely transfer the machinery and start some other industry, it does not become a new undertaking. If you give it to another company for a different purpose and not a jute mill but another factory is started there by a different company, it becomes a new undertaking.

Shri V. V. Chari: Not under the existing Act.

Shri Morarji Desai: It should become a new undertaking.

Shri V. V. Chari: The object is to give incentive for bringing new assets. The assets is already there.

Shri Morarji Desai: It is not an asset. The asset has gone out of action. Do you want it to be wasted?

Shri V. V. Chari: It is not wasted. It is only a question of tax holiday.

Shri Narendrabhai Nathwani: The idea seems to be new machinery.

Shrimati Tarkeshwari Sinha: How does it conform with the policy?

Shri Morarji Desai: What he says is, the spirit is that. The spirit of this tax holiday is to create new assets.

Shrimati Tarkeshwari Sinha: Assets of the business?

Shri Morarji Desai: Assets which are not there in the country.

Shri Radheshyam Ramkumar Morarka: In most of these new big companies assets are mostly acquired with borrowed capital. In order to enable these companies to repay and rehabilitate, this tax holiday was given for the initial period so that the profits may not be absorbed in taxation.

Shri Morarji Desai: Not only rehabilitating, the cost of acquiring becomes high. In the initial years, there is no profit. We have given 5 years so that the losses in the initial years may be made good in the subsequent three years. That is the purpose of this section. A sweeping provision like this not allowing at all a new undertaking formed by old assets may not serve exactly the purpose which we have in view. Two factories are amalgamated into one factory. The building of another factory becomes redundant. Another undertaking is formed. It is not a jute mill. It is for manufacturing something else—completely different—not jute—something else. If this is formed, if that building is only utilised and new machinery is installed,—jute machinery will not do—instead of putting up a new building and wasting some

money, they utilise that building—why should that undertaking not be encouraged to do that by giving a tax holiday? That is the question.

Shri Radheshyam Ramkumar Morarka: But as Shri Dehejia put it, what happens if the old building had already enjoyed a tax holiday?

Shri Morarji Desai: That part of it may not be allowed.The building may cost 10 per cent. The other things cost 90 per cent. Because of the transfer of one building or one motor or one electric installation, if you do not allow rebate for anything. that would not be correct.

Shri V. V. Chari: That is not being done.

Shri Morarji Desai: We must clarify that.

Shri Amjad Ali: Shri Chari is on a different point. He says that it must be an entirely different thing which is non-existent now.

Shri Morarji Desai: That is his interpretation. When this was given, that was never the intention.

Shri V. V. Chari: This was laid down in 1948.

Shri Morarji Desai: I would like to see the wording of it and then interpret it accordingly. The idea was to encourage new industries coming up. New industries are difficult to create so that they should be given more encouragement. Whether this conforms with that idea is to be considered 84(2) requires to be considered. Nothing else requires to be considered in that section.

Shri V. T. Dehejai: A little while ago we were talking about a subsidiary merging with the parent company, and you said that the circular had not come to you. If you like, we can read it out.

Shri A. M. S. Fergie: Could we have a copy of it?

Shri V. T. Dehejia: Yes.

Mr. A. M. S. Fergie: Clause 109. This deals with companies in which the public are not substantially interested. Here the point is again a matter of interpretation.

Shri V. V. Chari: Your interpretation is correct. Depreciation reserves mentioned here are what one understands under the Companies Act. That is true.

Shri A. M. S. Fergie: Clause 139. This deals with the time-limit within which assessees must file their returns of income. Under the Bill, assessees are required to file such returns by the 30th June or within 4 months of the close of the accounting year, whichever is later. There is discretion with the ITO to extend the period upto 30th September, and after that interest is imposed. It seems to us that particularly in the case of foreign companies, it will be quite impossible to adhere to this very tight schedule.

Shri Morarji Desai: We are going to consider whether it should be 4 or 6 months. You want six months?

Mr. A. M. S. Fergie: At least. The company is given six months to hold its annual general meeting.

Shri V. T. Dehejia: Will there be many companies which close the accounts on 31st March?

Mr. A. M. S. Fergie: Very many.

Shri V. T. Dehejia: Many companies close their accounts on 31st December and many in Divali.

Shri Morarji Desai: The foreign companies close their accounts on 31st March.

Mr. A. M. S. Fergie: Very many Indian companies also.

Shri V. T. Dehejia: On the 31st March. Interest will accrue only after 30th September. That gives 6 months.

Mr. A. M. S. Fergie: That is not much time.

Shri V. T. Dehejia: All the work of foreign companies is done here.

Mr. A. M. S. Fergie: Yes, but there is always information required from home before the income-tax return is prepared. We should suggest that it should be at least until 31st December.

Shri V. T. Dehejia: Most of the companies have current audit also going on here.

Mr. A. M. S. Fergie: They are all audited here.

Shri V. T. Dehejia: When expenditure is incurred abroad, it is intimated from time to time. If payment falls in another year, it would be included as expenditure of the following year.

Mr. A. M. S. Fergie: I still think that foreign companies would find themselves in great difficulty. It will be a great hardship also on Indian companies. For example, Mr. Adersons mentions that Tata companies and Indian Iron and Steel close accounts on 31st March. They are required to file their returns by 30th September. It is not a practical proposition. The general meetings are not held. They do not have to be held until the end of September.

Shri V. T. Dehejia: The Income-tax return is tied up with the meeting of the shareholders?

Mr. A. M. S. Fergie: Yes, no returns would be submitted until the accounts have been passed.

Shri V. T. Dehejia: But the accounts will be ready with the auditors and they will be put before the shareholders within six weeks.

Shri Radheshyam Ramkumar Morarka: Six months from the end of the financial year. Before, that, the shareholders have to be given 21 days. Suppose there is a company for which the year ends in July. According to this Bill, you will be giving that company 11 months time and the company having year ending on 30th June would get 12 months.

Shri V. V. Chari: That is incidental. We cannot ask for their return before the commencement of the financial year in any case.

Shri Radheshyam Ramkumar Morarka: The point is that there must be a uniform period fixed for all companies.

Shri Morarji Desai: Why not ask them early?

Shri V. V. Chari: Parliament must pass the Finance Act.

Shri Morarji Desai: That can be passed. I do not want that for some it should be 11 months and for others it should be 4 months.

Shri V. T. Dehejia: The rate of tax changes in the budget.

Shri Morarji Desai: That does not matter.

Shri V. T. Dehejia: The previous budget year is July to next July. The Budget is passed in March. For the previous year July to next July, the rate will be as enforced from 1st April of the next year.

Shri Morarji Desai: I think the same rate should apply for the whole year.

Shri V. T. Dehejia: The year of the company is say, from 1st July 1960 to 30th June 1961. That is the previous year for the purpose of taxation in 1962-63. The rate to be applied comes into force on 1st April 1962. If we apply the rate as enforced on 1st April 1961, the company will gain in a lot in comparison with other companies.

Shri Morarji Desai: Why should we not allow them to send their returns early. The period allowed for submission of returns must be the same for all. It cannot be different just because they have different financial years. That is very wrong. If it is 11 months, it should be so for all. But I do not think that that was the idea.

Shri Radheshyam Ramkumar Morarka: Under the Bill, if a company's financial year ends in July, it will get 11 months.

Shri Morarji Desai: We can change it from four to six months.

Mr. A. M. S. Fergie: We strongly urge that special consideration be given to foreign companies.

Shri Morarji Desai: After six months, there is three months grace period. It becomes nine months.

Mr. A. M. S. Fergie: So, that is, in effect, for 31st March closing, up to 31st December.

Shri Narendrabhai Nathwani: We will have to provide six months or within one year of the assessment year, whichever is earlier, so that those companies which have their year ending July, will file within one month from the next year.

Shri Morarji Desai: Why mention that? Six months from the end of their year.

Shri Narendrabhai Nathwani: It would necessitate many necessary consequential amendments, because the assessment year would begin from 1st April next year.

Shri Morarji Desai: Is that for all people?

Shri Narendrabhai Nathwani: That is for all. That is why I am suggesting this.

Shri Morarji Desai: It would mean a great deal of confusion.

Mr. A. M. S. Fergie: I have nothing further to say about any of the other items in our memorandum. We would like to say that we think more time should be given for the consideration of this Bill, because, it is, we are sure, intended to stand the test of time.

Shri Morarji Desai: If there are any new points that strike you, you can send a memorandum until 10th July, but we would not hear you again.

Mr. A. M. S. Fergie: To the Select Committee?

Shri Morarji Desai: Yes.

Thank you very much. You have taken the shortest time.

(The witnesses then withdrew).

The Committee then adjourned.

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961.

Thursday, the 22nd June, 1961 at 08·00 hours.

PRESENT

Shri Mulchand Dube—*Chairman*

MEMBERS

2. Shri K. R. Achar
3. Shri P. Subbiah Ambalam
4. Shri Amjad Ali
5. Shri Premji R. Assar
6. Shri Bahadur Singh
7. Shri Prafulla Chandra Borooah
8. Shri Shree Narayan Das
9. Shri M. L. Dwivedi
10. Shri P. Kunhan
11. Shri Bhausaheb Raosaheb Mahagaonkar
12. Shri Mathew Maniyangadan
13. Shri T. C. N. Menon
14. Shri Radheshyam Ramkumar Morarka
15. Shri Narendrabhai Nathwani
16. Shri C. D. Pande
17. Shri Naval Prabhakar
18. Shri Jaganatha Rao
19. Shri K. V. Ramakrishna Reddy
20. Shri Laisram Achaw Singh
21. Shri Radhelal Vyas
22. Shri Morarji Desai.

DRAFTSMAN

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*

Shri V. V. Chari, *Senior Member, Central Board of Revenue.*

Shri J. P. Singh, *Member, Central Board of Revenue.*

Shri I. P. Gupta, *Deputy Secretary, Department of Revenue, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. *The Tax-Payers' Association of India, Ltd., Bombay.*

1. Shri V. D. Muzumdar
2. Shri B. C. Shah

II. *Federation of Indian Chambers of Commerce and Industry, New Delhi.*

1. Lala Karamchand Thapar
2. Shri Shriyans Prasad Jain
3. Shri B. P. Poddar
4. Shri K. N. Mookerjee
5. Shri J. J. Ashar
6. Shri H. D. Varma
7. Shri G. L. Bansal
8. Shri B. K. Madan.

I. THE TAX-PAYERS ASSOCITION OF INDIA LTD., BOMBAY.

Spokesmen:

1. Shri V. D. Muzumdar.
2. Shri B. C. Shah.

(*Witnesses were called in and they took their seats*).

Chairman: You may start on the assumption that we have read your memorandum and if on any main points you want to elaborate you may do so.

Shri V. D. Muzumdar: In the preliminaries, I have made one or two remarks . . .

Shri Amjad Ali: Sir, our accoustics are so bad that something should be done about it. They may be improved or there may be a rearrangement of the seats so that we may be able to hear what is said here.

Shri Morarji Desai: You may raise your voice so that it is audible.

Shri V. D. Muzumdar: In including these preliminary remarks the idea is that because this is a Parliamentary Committee, the Members of Parliament may have these points in view when they consider the Income-Tax Bill. Probably the Select Committee is seized only of this Bill and some of the things mentioned as preliminary remarks are beyond the purview of the Bill but I thought that it might be useful to give you certain ideas which might be before you when the Bill is being considered. I do not want to go over them again here. I will go over the various points that arise out of the Bill itself.

Shri Amjad Ali: What are those points?

Shri V. D. Muzumdar: I have said that two clauses from the British Act may be introduced in the Indian Act, that an investment allowance may be allowed as a deduction against profits as is being done in Sweden and in Pakistan and that instead of following the depreciation method of written down value, you may follow the straight line method.

Shri Morarji Desai: That would have been more relevant in the Companies Law.

Shri V. D. Muzumdar: As I was asked about them, I explained them.

Shri Morarji Desai: He was a tax gatherer who has become a tax payer now.

Shri V. D. Muzumdar: My experience of tax gathering is rather old; there are others who are here and who have recent experience.

Shri Morarji Desai: Tax-gatherers have been the same from times immemorial. It is only that they forget, when they cease to be tax gatherers, what they did in the past.

Shri V. D. Muzumdar: I have not forgotten anything.

First, I have begun with the word 'assessee'. There was the case of the Accountant General, Baroda where the High Court held that in the case where a refund was involved, no refund could be granted because he was not an assessee. The definition here reverts to the old wording: by whom the tax is payable. If a person *ab initio* is not taxable, the question is whether he should come under the definition of assessee.

Shri V. T. Dehejia: Our definition does not follow that.

Shri V. D. Muzumdar: Your definition is: 'a person by whom tax is payable'.

Shri V. T. Dehejia: .... 'from whom any amount is due under the Act'.

Shri V. D. Muzumdar: That makes matters worse because it means paying is different from receiving and refundee is not the person by whom the money is paid.

Shri Morarji Desai: It does not cover every contingency. When it is refundable, it cannot be given to somebody else. It would have been more profitable if you had suggested an alternative. What is the use of merely

pointing out that this is not satisfactory.

Shri V. D. Muzumdar: What I am saying is that this was there before and the Bill now is seeking to change it. You are now going back to the old one.

Shri Narendrabhai Nathwani: Could you see sub-clause 7(a) last two lines?

Shri V. V. Chari: Actually it is an improvement on the old one.

Shri V. D. Muzumdar: I will go to the word 'dividend'. It will result in double taxation. The bonus of the preference shareholder is taxable as dividend but as it is a bonus it will also be taxable in the hands of the company.

Shri Morarji Desai: That can come later on; why do you want to bring it in here? You may provide for its not being taxed twice.

Shri V. V. Chari: That would be provided in the Finance Act, not here.

Shri Amjad Ali: By being bonus, it does not cease to be dividend.

Shri V. V. Chari: That is a very subtle and vulnerable point. When a company issues bonus shares, super-tax at 12½ per cent is levied. He wants that it should not be taxed again as dividend. That is a thing which can be covered only in the Finance Act.

Shri V. D. Muzumdar: You have now included in the definition of 'transfer' both extinguishment and relinquishment. That would mean if a person receives compensation on extinguishment or relinquishment of certain assets, it will come under transfer. Transfer is considered also for the purpose of capital gains.

Shri V. V. Chari: Where it has already received compensation and it is exchanged, your point is that it should not be subsequently subject to capital gains tax. We are already aware of that.

Shri V. D. Muzumdar: So far as sub-clause 5 (1) (c) is concerned, the question about not ordinarily resident has been a matter of controversy for a number of years. This was introduced in the British regime.

Shri Morarji Desai: We are considering what is to be done about this.

Shri V. D. Muzumdar: It should be retained for the sake of technicians. Or, it may be provided that where big business wants services of technicians, they should be given certain concessions.

Shri Morarji Desai: Technicians are income-tax-free for five years. They need not remain after five years. Indians can take their place.

Shri V. D. Muzumdar: People will be kept here only if they are absolutely necessary. Government should take power to extend the period.

Shri Amjad Ali: What about managerial persons who come from abroad and get employed here? They are not technicians.

Shri V. D. Muzumdar: Some Indian nationals sometimes keep their families here because of difficulties outside. Even if they visit India for a day, the family becomes taxable on the income.

Shri Morarji Desai: That is being taken care of.

Shri V. D. Muzumdar: I come to charitable trust—page 7 of the memorandum.

Shri Amjad Ali: He has not mentioned about transfer in the memorandum.

Shri V. D. Muzumdar: I have not because it has struck me only thereafter. About charitable trusts, there are two points to be considered. One is about the taxation of excess over 25 per cent. of the accumulation. I am quite in sympathy with the object of the recommendation, if it is to provide against money being withheld from the purposes of the charity for no reason whatever. But at the same time, it is likely to work very harshly in practice. Apart from the fact that

these trusts will suffer, there will be difficulty about administration.

As you are aware, trusts get their income from dividends also. Dividends are income when they are declared. A dividend can be declared in one year and received in the subsequent year. Therefore, as you are providing on the basis of 25 per cent. of the income, it would be impossible for the trust which gets income from dividend to spend 75 per cent. of the income from that year.

Shri Morarji Desai: That will be taken care of.

Shri Amjad Ali: In page 8, last line, he has challenged our scheme by saying:

> "The provision, if introduced, would make the poor poorer without affecting the riches of the rich."

Would he like to support his statement?

Shri Morarji Desai: This is a fashionable slogan. It has affected even the person who has done it. It is not relevant to the issue.

Shri Subbiah Ambalam: You have stated that the purpose of the trust will be achieved by prescribing a certain number of years within which the trust income could be spent or utilised. What is your suggestion regarding the number of years?

Shri V. D. Muzumdar: My suggestion is at least three years should be allowed. I am a trustee of the Dadabhai Naoroji Memorial Trust for scholarships. For instance, one endowment is for the benefit of persons who have during the last five years written a book on economics of outstanding merit. For this, we could not get persons qualified as required last years and in others scholars of the right type.

Shri Morarji Desai: Is it for the members of a particular community?

Shri V. D. Muzumdar: No.

Shri Morarji Desai: You can give it for some other purpose if you cannot find a person of that type.

Shri V. D. Muzumdar: We have to give it alternatively but we cannot go beyond the categories mentioned. I am just giving you an example. If we are forced to spend all the 75 per cent. of the income in one year, we may be wasting our money. So, it should be made possible to spend over a certain number of years.

Now I proceed to the provision relating to Business. This accumulation clause applies to property. It does not apply to business. Now, the profits of the business can be ascertained only after the year is over.

Shri Morarji Desai: That will come next year.

Shri V. D. Muzumdar: The income is assessed in the subsequent year. Here you are talking about accumulation of that particular year.

Shri Morarji Desai: If it is not received in that year, how can it accumulate in that year?

Shri V. D. Muzumdar: I shall make my point clearer. For 1960-61 you earn certain income which is taxable for the next financial year. But in 1960-61 you will not know what your income is till after the end of the year and therefore, you will not know what 75 per cent. of it would be. You come to know of it only in the subsequent year.

Shri V. T. Dehejia: Supposing it is stated that a person is paying in a year 75 per cent. of the income of the previous year, will all those points be covered? The whole point is that there should be no accumulation.

Shri V. D. Muzumdar: That is all right. I only want that they should know what their income is.

The other portion of the clause is about the relatives. Where there is a trust specifically for the purpose of relatives and others it should be debarred from income-tax exemption but the Act should not debar a person, merely because he happens to be a relative, from the benefit of a trust

to which he is otherwise eligible. Unfortunately, the wording used is that if any part of it is reserved for any of its relatives the whole will be denied the benefit.

Shri Morarji Desai: That is not unfortunate, that is deliberate. You may call it unfortunate, but the wording has been put in deliberately; it is not a slip.

Shri V. D. Muzumdar: I think it will work harshly.

Shri Amjad Ali: You have said, Sir, that you are going to examine this. I agree with it.

Shri Morarji Desai: We are going to examine it.

Shri C. D. Pande: The Finance Minister was pleased to say the other day that he would consider this point, this as well as the other point about 25 per cent.

Shri K. R. Achar: Do you mean to say that the relations should be put on the same footing as others?

Shri V. D. Muzumdar: They should not be considered in the capacity of relatives but against their other qualification.

Shri C. D. Pande: If the Government agrees to consider a trust to be vitiated only to the extent that it has certain aberrations and the remaining part of it to be genuine, will that satisfy you?

Shri V. D. Muzumdar: Yes.

Shri Morarji Desai: But I do not agree to it at all. I want to widen the definition of relatives.

Shri C. D. Pande: If 90 per cent. of the funds are genuinely used for purposes of public charity and only 10 per cent. go in the name of relations . . .

Shri Morarji Desai: Let the whole of it be given to relatives. Let there be a separate trust for it, for all poor relations. A trust money going to relatives is not charity.

Shri C. D. Pande: That is true. If a trust has been created ten years back,—at that time this clause did not exist—and for all these years 90 per cent. of its funds used to be given for public purposes and 10 per cent. for relatives, under the provisions contained in this Bill what will happen is that the genuine charity will also be affected.

Shri Morarji Desai: To save that, what they can do is not to use the 10 per cent. in the name of the relatives.

Shri C. D. Pande: Can that be done?

Shri Morarji Desai: Unless it is so mandatory.

Shri C. D. Pande: I only want that genuine purposes should not be affected.

Shri Morarji Desai: But if genuine purposes are bogged down by ingenious things, we have to withdraw the concession. If it is genuine we are always prepared to consider that. We are going to consider this point and recast this. At that stage we can consider all this.

Shri V. D. Muzumdar: On this question as to whether a part of it can be charged and a part cannot be charged, the High Court of Bombay has given a decision in the case Chaturbhuj Vallabhdas *vs.* C.T. There they say:

> "Residuary estate is recognised as property in law. If so, a clearly defined portion of the residuary estate is equally property within the meaning of law. In the present case by clause 15 the testator had directed his trustee to utilise three-fourth of the income of the residuary estate for charity. That clearly falls within part I of clause (i) of sub-section 3 of section 4 of the Act."

Therefore, they have said that even where one-fourth is given for relatives, three-fourths should be exempted.

Shri V. V. Chari: That is after the residuary estate is determined.

Shri Morarji Desai: That does not prevent us from making a law. We are making a law.

Shri V. D. Muzumdar: But make a law in order to provide for this contingency.

Shri Morarji Desai: That is what you suggest. That may be borne in mind. You should not take that it will be granted.

Shri V. D. Muzumdar: There is one small point about interest on securities. A reasonable method of allocating expenditure attributable to interest on securities is prescribed in the case of banking companies. But co-operative banks are also doing banking business. Why are they not treated like companies for this provision under the Indian Income-tax Act?

Shri V. V. Chari: It is only so far as the banking companies are concerned that the method of allocating expenditure attributable to interest on securities has been mentioned in the Act. So far as co-operative societies are concerned they are enjoying a greater benefit under the orders passed long ago. If we apply this to them they will actually suffer adversely. Now they are getting a better concession in the sense that the interest is distributed on the basis of capital.

Shri V. D. Muzumdar: Their income is divided as "exempt income" and "income from interest on securities. Then a difference is made as to what is co-operative income and what is non-co-operative income.

Shri V. V. Chari: For that purpose, the allocation which is already being made is more in favour of co-operative societies than this particular method.

Shri V. D. Muzumdar: I have not worked it out.

Shri V. V. Chari: I can show you that.

Shri V. D. Muzumdar: There is another aspect of it. Let us take the case of trusts. Trusts are permitted only to invest in securities and government bonds. They appoint their clerks and others in order to do the job. But when they go to the Income-tax Officer he allows only a paltry amount. His argument is that it does not require much labour to collect it. But you must consider that when a clerk is appointed for collection of interest on securities, he is appointed because he is a reliable man and some payment has to be made for the reliability of that man. Therefore, you cannot go by the amount of expenditure of energy only.

Shri V. V. Chari: You are talking of public trusts or private trusts?

Shri V. D. Muzumdar: I am talking of private religious trusts. In the case of public trusts which are not taxable the question does not arise at all. I am only pointing out the difficulties. I do not know whether it is permissible to say that in the case of house property you will grant depreciation. At present, most of the house property owners are finding it difficult . . .

Shri Morarji Desai: It is a matter for budget proposal.

Shri V. D. Muzumdar: Then I come to bad debts. Clause 36(1)(vii) reads:

> "subject to the provisions of sub-section (2), debt, or part thereof, which is established to have become a bad debt in the previous year;"

Sub-clause (2)(i) reads:

> "no such deduction shall be allowed unless such debt or part thereof—
>
> (a) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, . . .".

The words "taken into account" require an explanation. Suppose an income-tax officer rejects the account and makes an estimate, will that mean the debt is taken into account or not?

Shri V. V. Chari: This is entirely in a different context. Suppose there

is a bad debt and it is stated that it does not belong to this year but to a period three years ago. This provision says that assessment for three years will be re-opened.

Shri V. D. Muzumdar: I am referring to the allowability. No such deduction shall be allowed unless such debt has been taken into account in computing the income of the assessee of that previous year.

Shri V. V. Chari: A bad debt allowance will not be given unless in a certain year a certain amount has been taxed as profit and afterwards the profit is not realised and, therefore, deduction is claimed. This is a new principle which has been introduced. Unless it was actually taken into account in the sense that a certain amount of income was taxed and that income later on became a bad debt, it does not arise.

Shri V. D. Muzumdar: In the Australian Act it is stated . . .

Shri Morarji Desai: Let it say anything. Why should we bother?

Shri V. D. Muzumdar: I am referring to a case where an estimate is made by the income-tax officer. It can be argued that when an estimate is made, sales that he might have made or presumed to have been made is taken into account. Therefore, it is possible that any sales of which recovery was not made in the subsequent year can be taken as a bad debt. That is one view. But, on the other hand, the income-tax officer might say "in this book it does not occur; therefore, I am not prepared to allow it".

Shri V. V. Chari: When the accounts themselves are disputed, the application of this provision will never arise. This is incorporated on the basis of the recommendations of the Law Commission.

Shri V. D. Muzumdar: The Income-tax Officer is supposed to take into account all the business done by the assessee and, therefore, all sales made by him. Suppose he does not take into account such debt because he does not accept the accounts, not because they are not complete but because the accounts indicate only the cash sales . . .

Shri V. V. Chari: It depends upon the circumstances in which the accounts were maintained and the manner in which they were maintained.

Shri Morarji Desai: If you say that the judgment of the officer is wrong, that is a different matter.

Shri C. D. Pande: Bad debts include debts which cannot be recovered or rent and advances which cannot be realised.

Shri V. D. Muzumdar: Dues which cannot be recovered will be taken as bad debt only according to the method of accountancy. Suppose you bring into account only cash realisations on sales, then what is not recovered cannot be allowed as a bad debt. But if you take the accrual basis, whether you receive the cash or not, when the money is not recovered it is a bad debt.

Shri C. D. Pande: Bad debt will depend on the possibility of recovery or not.

Shri V. D. Muzumdar: That is the second consideration.

Shri C. D. Pande: That is the only consideration.

Shri V. D. Muzumdar: Which are the things to be allowed and which are the things not to be allowed should be taken into account.

Shri C. D. Pande: To a layman's mind bad debt is a debt which cannot be recovered.

Shri T. C. N. Menon: Could you give us an instance of a bad debt, for which allowance is made, which is not taken into account in any previous year for the purpose of calculation of income-tax?

Shri V. D. Muzumdar: Suppose a loan is given to a friend. That is not "in the course of business" and, therefore, will not be allowed. There are cases like that. Then, there are cases

where the accountancy method is on the cash basis. That is to say, you take into account what you actually receive and not what is receivable. In that case, what is receivable is not brought into account and, therefore, no allowance will be made for bad debt out of that.

Shri T. C. N. Menon: Apart from the receipt of cash, that will be shown in the accounts of the assessee.

Shri V. D. Muzumdar: That depends upon the method of accountancy which he follows.

Shri C. D. Pande: What is your experience so far? Suppose you have house property and you let it out for five years and you do not realise any rent in spite of serving notice on him. Does the income-tax officer give you benefit?

Shri V. D. Muzumdar: That comes under house property and not under business. Now they have provided for irrecoverable rents.

Shri C. D. Pande: Rents, loans and advances are in the same category.

Shri V. D. Muzumdar: Under the Income-tax Act, taxation is by compartments. Property is taxed separately and business separately. Therefore, irrecoverable rent stands on a different footing.

Shri C. D. Pande: As far as bad debt is concerned, whether it is in relation to loans, rent or advances made for supply of goods, if you cannot recover it in spite of going to a court, it should be allowed. You should convince the income-tax officer that you have done your best, it is not realisable and, therefore, should be allowed. If it is collusion, you should be taxed; but if it is genuine, you should be given deduction.

Shri V. D. Muzumdar: Then I have to refer to clause 37. In the present Bill the words are "wholly, necessarily and exclusively". The word "necessarily" has been introduced and it should be dropped because it will be a matter to be judged according to the nature of the business and it is for the assessee to say whether it is necessary or not. In the English Act also they have not got the word "necessarily".

Shri Morarji Desai: We are going to consider this.

Shri V. T. Dehejia: According to what you say, the person who spends is going to be the sole judge.

Shri V. D. Muzumdar: He will be one of the judges.

Shri V. T. Dehejia: Who is the other judge?

Shri V. D. Muzumdar: The Income-tax Officer.

Shri V. T. Dehejia: If you like, you can leave out the Income-tax Officer. Then leave out the spender also. It will have to be some third party.

Shri V. D. Muzumdar: But what is the necessity for having the word "necessarily" when you have already used the words "wholly and exclusively"?

Shri V. T. Dehejia: I will give you an example. Suppose a person is given Rs. 20,000 for coming to Delhi. He will spend it exclusively for coming to Delhi and for staying in Delhi. He will also spend it exclusively for that purpose because during that period he will not devote any minute of his time to any other work. But was that money rightly spent?

Shri V. D. Muzumdar: The words "wholly and exclusively" are to be read with for the purpose of the Business." If I come here and spend that money, it does not mean that it is for the purpose of business. But here when you take the words "for the purpose of business" along with the words "wholly and exclusively", it can only mean that it is in the course of business. If you accept that, is there any reason why you should also say that it must necessarily be for that business?

Shri V. T. Dehejia: In the illustration that I gave the whole amount has been spent for business.

Shri V. D. Muzumdar: In England this position was considered.

Shri V. T. Dehejia: But I am sure you must be aware that England, America and all other countries are highly worried about the Expense Account and unnecessary expenditure. It is not as if they have accepted it wholeheartedly.

Shri Morarji Desai: 90 per cent. of the expenses of a dinner come out of the Income-tax Department.

Shri V. D. Muzumdar: If I were an Income-tax Officer and if you spend, say, Rs. 5,000 on a dinner, I will say that this expenditure was not necessary.

Shri Morarji Desai: The purpose was propaganda for the business.

Shri V. D. Muzumdar: If you think that it is for the purpose of the business, it should be allowed.

Shri Morarji Desai: How many members have you got in your Association?

Shri V. D. Muzumdar: 150. Most of them are companies.

Shri V. T. Dehejia: There is a lot of ostentious living going on in the country. Some people live in a most ostentatious way. Is it in the interest of the taxpayer that they should continue to live in this way? What do you think as a taxpayer and not as a representative of business because you represent the general taxpayer?

Shri V. D. Muzumdar: That can be disallowed under the present words.

Shri V. T. Dehejia: But in spite of that over the years it has continued.

Shri Morarji Desai: Anyway, I have said that we are going to give further thought to this.

Shri Amjad Ali: In your memorandum you have said:

> "Yet there may be difference of opinion as to whether such expenditure is 'necessarily' incurred for business. To bring it under the description of 'necessarily' Labour may have to get an Award from an Industrial Court . . ." etc.

Why do you enumerate this? All other things are provided for.

Shri V. D. Muzumdar: Because creches and other things are not necessary for the purpose of business. They might say that this welfare expenditure is not necessary for the business. You can carry on business without them. Such expenditure will be disallowed.

Shri V. V. Chari: Welfare expenditure is not at all disallowed.

Shri V. D. Muzumdar: At present welfare expenditure is being allowed, but it may be disallowed.

Shri Amjad Ali: He says that without an award of the industrial tribunal it cannot be implemented.

Shri K. R. Achar: I would like to draw your attention to one aspect. Business generally spends thousands of rupees on advertisement. He wholly and exclusively spends this money for business. But it is not really necessary. Should not the Department have some scope to decide that matter?

Shri V. D. Muzumdar: How do you say that it is not necessary?

Shri K. R. Achar: For instance, a person is interested very much in a particular paper and wants to help that paper. If you look into it, you will find that it is absolutely useless. The advertisement is given to a paper which does not go to an area where the particular article manufactured by that firm is wanted. If you look at it from a commonsense point of view, the whole thing appears unnecessary but it is wholly and exclusively spent for business. Should not the Income-tax Officer have some discretion to control that?

Shri V. D. Muzumdar: That means that you want the Income-tax Officer to control this.

Shri Morarji Desai: To some extent we do want to see that the money is properly spent.

Shri V. D. Muzumdar: That purpose is being served today by the words "wholly and exclusively". The word "necessarily" is not necessary.

Shri C. D. Pande: Is not Government aware that advertisements worth lakhs of rupees are being given by the Government itself for the steel plants and for these bridges, like, the Mokameh Bridge and that not one of these advertisements is necessary? But we have to do this for the sake of public interest.

Shri Morarji Desai: If they are given wrongly then those also should not be given.

Shri C. D. Pande: There is a monthly magazine which is not read by anybody where advertisements and notices of tenders appear every day.

Shri Morarji Desai: That has to be done. A notification has to be issued. That is not advertisement.

Shri C. D. Pande: You can have them hung on the walls of the office verandah.

Shri Morarji Desai: We have been discussing this for the last three days. Why do you want to repeat the same thing every day?

Shri Radheshyam Ramkumar Morarka: But one thing you must concade and that is this. When a question is put to the witness by the Government officials, we get the impression that the Government bias is lying that way.

Shri Morarji Desai: We have not decided yet. I have said that this is a point which requires consideration.

Shri Radheshyam Ramkumar Morarka: But one example was given by Shri Dehejia to the witness. He said that suppose a businessman comes to Delhi and spends Rs. 20,000 for his visit to Delhi. Though that was wholly and exclusively spent for business, it may not necessarily be for the business. That indicates the line on which the mind of the officers is working. Therefore it should be open also to the members of the Committee to give other examples to the witness to elucidate their point of view on that. Either we all keep quiet and hear the witness or we put both the sides of proposition.

Shri Morarji Desai: But both the sides are before us and it is for the Select Committee to decide. When we are going to consider this, the officers are not going to influence the Committee.

Shri Radheshyam Ramkumar Morarka: Shri Muzumdar is a very knowledgeable person in the sense that he was an officer and is now a taxpayer. He represents the Taxpayers' Association. Later on it may be said that these were the views of Shri Muzumdar and that he could not be contradicted nor any other case was put to him.

Shri Morarji Desai: If they quote like that, I will stop them from doing that. We have to decide on the merits and not on what somebody has said or has not said. You seem to have forgotten what I said about this "necessarily".

Shri Radheshyam Ramkumar Morarka: I very much remember it.

Shri Morarji Desai: There are both sides in it. We have to consider it very carefully. I was earlier putting the other side also. Therefore this can be considered.

Shri V. D. Muzumdar: Then I will suggest that words relative of a director should be omitted. It is true that this sort of thing lends itself to misuse, but at the same time it might be carried too far because the relative is defined very widely in this Bill.

Shri Morarji Desai: A relative is not a very wide term.

Shri V. D. Muzumdar: It includes ascendants and descendants.

Shri Morarji Desai: Of himself. They are not remote persons. They are near relatives.

Shri V. D. Muzumdar: For instance the brother may be separate.

Shri Morarji Desai: Still he is a brother. Because he is separate he does not cease to be brother. In fact all brothers are separate for the purpose of income-tax.

Shri V. D. Mazumdar: I am speaking of the equity of it. If he is separate he is like anybody else.

Shri Morarji Desai: No; he is not like anybody else.

Shri V. D. Muzumdar: All right. I am not going to press that point.

Shri T. C. N. Menon: Are you dropping that point?

Shri Morarji Desai: It is for us to decide and we do not decide it at the evidence stage.

Shri V. D. Muzumdar: Now I come to clause 40(c). The explanation given here says that the provisions of this clause which disallows an expenditure shall apply notwithstanding that the expenditure is included in the total income of the director or his relative. All that I say is that although it is included in the total income it should not be taxed again.

Shri V. V. Chari: The whole object of this provision is to put an end to the wrong practice under which people who have got considerable influence in a company take advantage of this and take for themselves extraordinary remuneration and other privileges. While in the hands of the company it is disallowed, there should be no bar for it being taxed in the hands of the recepient because so far as he is concerned he has enjoyed it. Unless this double taxation is there this abuse could not be stopped. In fact, it is not a new provision. If this object is accepted as good then this double taxation must be there.

Shri Morarji Desai: There is no question of double taxation. The man has spent the money for a cause which is not allowed. Therefore it does not go to expenditure. If it is an income it is bound to be charged. It is already paid to the other man and the other man's income has increased. Why should it then escape income-tax? He has taken the profits of the company. The company has paid income-tax on those profits and shareholders are given dividend. That dividend is also taxed. According to you that is also a double taxation. In fact there is no double taxation difficulty.

Shri V. D. Muzumdar: It is not that it should not be taxed. In one case it should be taken as the total income only.

In clause 41 it is now provided that the provisions regarding "balancing charge" will apply even after the business to which the assets belonged was no longer in existence. My point is that there may be some bad debts also arising out of that . . .

Shri V. V. Chari: That is a drafting point. We have noted that.

Shri V. D. Muzumdar: Clause 61 replaces 16(1)(c) especially the part included in the third proviso. It is regarding revocable trust. The period of six years in the existing Act has been changed into life time of the beneficiary or the donor. That is quite right and personally I think this is a fairer classification than the one in past. But what about trusts which have already been made? I am only saying that revocable trusts which are already in existence should not be brought under this.

Shri V. V. Chari: They won't be affected.

Shri V. D. Muzumdar: Thank you.

Then what I have to say is about the word "spouse" in clause 64.

Shri V. V. Chari: This has been noted.

Shri Morarji Desai: This is going to be considered.

Shri V. D. Muzumdar: What I have to say is not what I have mentioned here. "Spouse" means husband or wife. Both may be assessees. It may

be the income of the wife that may be taxed in the husband's hands. Therefore, it is likely to lead to double taxation. It should be taken as one.

Shri Morarji Desai: That is correct. It should not be taxed twice.

Shri V. D. Muzumdar: In clause 67 the word "bonus" appears to have been omitted although it has been included in clause 40.

Clause 68 deals with cash credit. Under the present system it is left to the Income-Tax Officer to spread over the cash credit for a period during which in his opinion the income is earned . . .

Shri V. V. Chari: If he is satisfied that it is earned over a period of years . . .

Shri V. D. Muzumdar: All I say is that the word "credit" should be given some latitude as otherwise . . .

Shri V. V. Chari: What you say is the intention.

Shri V. D. Muzumdar: Clause 79 is likely to cause considerable hardship in the case of Hindu undivided family, etc. because of this 51 per cent. . . . .

Shri Morarji Desai: It may lead to blackmail also?

Shri V. D. Muzumdar: Yes.

Shri Morarji Desai: That is going to be considered.

Shri V. D. Muzumdar: Then I have dealt with clause 80 on page 12 at the bottom. This has to be considered in connection with 139(3). There also it is said that the loss cannot be considered without a return. And the return has to be made within the time allowed. The result will be that if a person has incurred a loss for the preceding year he will be debarred from claiming that loss. In the case of profit the Income-tax Officer can re-open it. I merely suggest that the same latitude may be given here also.

Shri V. V. Chari: That will lead to abuse. If a person has incurred a loss at the earliest possible opportunity he should intimate it . . .

Shri V. D. Muzumdar: I am afraid I have not made myself clear. I am referring to this as an Indian citizen. We have to take all Indian citizens as honest people. Of course, you will have to provide for contingencies where people are dishonest. Our Income-tax Act must be such that the world should not gather a bad impression about us, that we are tax evaders, and so on . . .

Shri Morarji Desai: It is not said so in any of the clauses.

Shri V. D. Muzumdar: I am only saying this. Why should a man who has suffered a loss be deprived of the benefit of that clause only because somebody else who is a rogue is going to take benefit out of it.

Shri V. V. Chari: He is asked to file a return of the losses.

Shri V. D. Muzumdar: Only for one year, not for all the years. He should be allowed to file the return for four years.

Shri Morarji Desai: Why not file every year if he had a loss?

Shri V. D. Muzumdar: Sometimes, when one has some loss, one does not mind.

Shri Morarji Desai: If he does not mind it, why should he expect any benefit? These are temptations to manipulations and they should not be left there.

Shri V. T. Dehejia: On the question of honesty and dishonesty, am I right in remembering that your association has said at a certain time that there is nothing wrong in tax avoidance?

Shri V. D. Muzumdar: We have never said that. If the law permits, then it can be done.

Shri V. T. Dehejia: If avoidance has to be prevented, the law has to be there.

Shri V. D. Muzumdar: The law should not be at the cost of equity.

As a general proposition, what I am saying is that the law should be framed not only for tax-evaders but also the general public and secondly, it should also be considered how your taxation laws are likely to reflect on the minds of the others.

Now, I go to section 81 on page 13. I have nothing to say about the co-operatives. Then I come to 82. This is a reflection of the old section 15(c). There is a change in the Bill. If having regard to the circumstances relating to an industrial undertaking it is no longer necessary in the public interest to continue the exemption. This means that having given exemption in the first instance, it may be possible for you to withdraw it at a later stage.

Shri Morarji Desai: That is under consideration.

Shri V. D. Muzumdar: I am now going to clauses 105, 106 and 109 on page 14 of our Memorandum. Under the Act of 1955 it was possible for the assessee to go to the Commissioner and request him to consider current requirements etc. and also there was adjustment for distribution in excess of the statutory percentage in earlier years. I think, the latter, and also the former, are very desirable and equitable. Supposing a company had distributed more than 60 per cent. in the earlier year and in the second year distributes 50 per cent. the benefit of this excess in the earlier year should be given in the next year. That, I think is quite reasonable. Secondly, so far as 109 is concerned, distributable surplus has been dealt with. In that distributable surplus we would like to have the following reductions also to be considered, the losses suffered in the past, that is, speculation losses not deducted from total income. We had taken into consideration the ordinary losses under the Income-tax Act. Then, secondly the notional or deemed income not available for distribution, thirdly, the inter-corporate dividend from companies as mentioned in section 99(1)(iv).

Shri V. V. Chari: After the change of the company taxation system it is not only the super tax but income-tax also is taken into consideration.

Shri V. D. Muzumdar: Then, the income from abroad of which remittance is prohibited by the law of the country and also the provisions made compulsorily either by statute or by courts and then the depreciation reserves such as utilised for reducing cost and development rebate reserve. I think that these should be included in the definition of distributable surplus as reductions.

Under the proposed Bill as well as under the Indian Income-tax various powers are given to the income-tax officers for collection of information and so on. These include collection of information and discovery and so on. In this connection, I may point out that some of the powers are in excess of what appears to have been given elsewhere and I have quoted here those relevant provisions and I need not read them again. I have quoted verbatim the powers that are considered to be sufficient by the Radcliffe Commission on page 16. I can say as a tax gatherer that I do not mind these powers being given. All that is necessary is that they should be used with discrimination and sympathy.

Shri Amjad Ali: Would you consider one thing? In the Civil Procedure Code, there is a Chapter for Inspection, Discovery, etc. How does it differ from the Inspection here? Does it also conform with the provisions of the C.P.C.? Do you say that inspection should not extend to going to the house and examining the records. Under the C.P.C., inspection is of those papers which are filed into court. When they are acting as a court, they can inspect and discover. Discovery and inspection do not extend to going to the house, etc.

Shri V. D. Muzumdar: Under this Act, they have given special powers to the Income-tax officers to visit, etc.

Chairman: And issue commission.

Shri Amjad Ali: Issuing commissions is a different thing. Are they in addition to power of inspection? Inspection is of those documents which are produced. He is commenting upon one thing that it is like the inspection of police officers going to investigate some crime. I think the officers might explain the provisions. What do you mean by inspection?

Shri V. V. Chari: Inspection of documents.

Shri Amjad Ali: Which are filed?

Shri V. V. Chari: Yes.

Chairman: Allowed under the C.P.C.

Shri Amjad Ali: Only of those documents which are produced before the court; not going house to house for inspection. Here he is claiming secrecy.

Chairman: He will be called upon to discover on oath. He will be asked to produce documents. That is meant by discovery and inspection.

Shri Amjad Ali: Would you read the comments?

Chairman: I do not know the comments. I am looking at the clause.

Shri V. D. Muzumdar: So far as clause 136 is concerned, as it has been contended that the proceedings before Income-tax officers are judicial proceedings, for the purpose of collection of information, etc., I think there should be insistence on the rules of the Evidence Act also being observed. If you are going to make it a court, let it be a full court.

Shri Amjad Ali: That is perfectly justifiable.

Shri T. C. N. Menon: What is your real objection to making the definition wide enough to bring all proceedings before Income-tax officers as judicial? What is the particular implication which you feel objectionable?

Shri V. D. Muzumdar: There are certain matters. A revenue court is different from ordinary courts. In so far as revenue courts are concerned, they must have certain powers of collecting information confidentially which is not necessary in the case of others. Therefore, all over the world, revenue courts are given special prerogatives for collection of information.

Shri T. C. N. Menon: What is the particular objection that you have to clause 136?

Shri V. D. Muzumdar: If you make a public enquiry, it will be impossible for the Income-tax officers to function.

Shri T. C. N. Menon: My question is, if any proceeding before the Income-tax officer is brought under the connotation of judicial proceedings, what is the particular implication that is taken objection to?

Shri V. D. Muzumdar: It imposes obligations on the witnesses.

Shri T. C. N. Menon: To speak the truth?

Shri V. D. Muzumdar: Yes. That is one; but there are others.

Shri T. C. N. Menon: That is the implication?

Shri V. D. Muzumdar: Yes.

Chairman: Contempt of court.

Shri V. D. Muzumdar: Coming to clause 139, at present, the time limit for making returns is four months. I am suggesting that it may be six months.

Chairman: That is being considered.

Shri V. D. Muzumdar: So far as clauses 147 to 149 are concerned, these are practically repeated from the old Act, of course, with certain changes. In 1956, when the amendment of section 34 was made; introducing abolition of the time limit so far as issue of notice under section 34-1-(A) is concerned, there was an assurance given on the floor of the Lok Sabha by the then Finance Minister that it would be utilised only in

the case of fraud. In this context, Shri C. D. Deshmukh said:

> "It has been stated to me by Shri Pande that in any case, before the cases are re-opened, an opportunity should be given to the parties to be heard. That is a suggestion which will receive my consideration."

He said:

> "The wording of the clause certainly comprises cases other than fraud. But, we can only announce what our intention is and that I have announced that it is cases of fraud, particularly cases which have been dealt with in accordance with another procedure that probably the Central Board of Revenue will consider as fit cases to be dealt with under this extended power."

That is an assurance given by the Finance Minister on the floor of the House. If that time limit is to be abolished, I blieve that it will be in the fitness of things that the Bill should say that it is only in the case of fraud.

Shri V. V. Chari: It is only in case of fraud.

Shri V. D. Muzumdar: You have not mentioned it.

Shri V. V. Chari: Fraud is not a happy term. Concealment is mentioned.

Shri V. D. Muzumdar: In conseal-ment, it is 6 years.

Shri C. D. Pande: There are two different things. Deliberate concealment is one thing. That is re-openable. Inadvertant omission is another thing. It may be considered leniently. Suppose. today, you make a return for about Rs. 10,000. Five years hence, it may be found that Rs. 500 has been omitted inadvertantly. It could be re-opened. That should not happen. In the case of inadvertant omission, you can say, I am sorry. If there is deliberate concealment of income for the purpose of defrauding the department, it could be re-opened. Even when there is concealment, 8 years should be enough.

Chairman: It is a question of *suppressio veri and suggestio falsi.*

Shri Amjad Ali: Fraud has not been defined in the Income-tax Act.

Shri V. D. Muzumdar: I will not trouble you with small things. In this particular case, I may incidentally point out that the danger of raising the time limit is that the assessee is in difficulties about producing documents. Therefore, when the time limit is made *ad infinitum* or where it has been beyond 8 years, the Income-tax department should consider the advisability of issuing instructions to the effect that in case where Books of account are not available, except primary books, due consideration should be given to that.

Then I want to say something in connection with the words "business connection" used in clause 163(1)—page 18 of our memorandum. The words have not been defined, and the interpretation given by the courts is so wide that it might cover anything under the sun. Therefore I think it should be specified that the connection should be that of a factor, a representative authorised to enter into contracts and others. That only should come under the definition of "business connection".

Shri T. C. N. Menon: You have said in your memorandum:

> "It should be made clear that to attract the provision, the relationship should be that of a factor, a representative authorised to enter into contracts etc."

Could you clarify that a little?

Shri V. D. Mazumdar: It means, so to say, that there must be an office in India, generally speaking, from where the business has been conducted, of the non-resident. Otherwise, even purchase might be a business connection. In England and elsewhere, they have the merchant's profits, manufacturing profits and purchasing profits

and so on, and they tax only a certain amount that is attributable to the particular process attributable to that country.

Then I want to seek only a clarification with respect to clause 168. It is said that the Executor shall be deemed to be a resident or non-resident according as the deceased was resident or non-resident "during the previous year" in which his death took place. In that year I can understand. But what will be the position for the future? Will the Executor be considered a non-resident even thereafter?

Shri Morarji Desai: That will depend upon what he does.

Shri Muzumdar: The man can die only once. He might have nothing outside when he dies. But he happens to go there—for medical aid or something. The result of the provision will be that for all time his estate will be assessed as non-resident.

Shri V. V. Chari: If he is treated as a non-resident it may be to his advantage. The foreign income may not be taxed.

Shri V. D. Muzumdar: The Indian income will be taxed at a higher rate.

Shri V. V. Chari: If there is no foreign income, it is a matter of no consequence whether he is a 'resident' or a 'non-resident'.

Shri V. D. Muzumdar: In the case of a non-resident don't you prescribe higher rates?

Shri V. V. Chari: 49 per cent.

Shri V. D. Muzumdar: But his income might be less.

Shri V. V. Chari: The world income rate is the same whether he is a 'resident' or a 'non-resident'.

Shri V. D. Muzumdar: If he has world income. But suppose I became ill; I find there is not adequate medical aid here and I go.

Shri V. V. Chari: In the case of human beings, as distinct from companies, it does not matter whether it is Indian or non-Indian. The rate is the same; the world income rate is the same. The 'resident' is always taxed at the world income rate. A 'non-resident' has this additional advantage that, if he wants, he can be taxed at 49 per cent. So, if a person goes outside India and dies there and his status is taken as that of a 'non-resident', it is actually an advantage to him.

Shri V. D. Muzumdar: I do not know.

Shri V. V. Chari: He has got his option.

Shri V. T. Dahejia: It is worth while dying like that!

Shri V. D. Muzumdar: Then I would like to say something about clause 179 which refers to the liability of directors to pay the tax in respect of a company under liquidadation. I would like to make it clear in the Bill itself that this method should be tried only after the liquidator has been found unable to meet the tax requirements. Today the Income-tax officer might ask him to pay even if the liquidator is able to find funds.

Shri V. V. Chari: If the liquidator is able to pay why should he go to the directors?

Shri V. D. Muzumdar: If they find that a partner in a firm is rich they go at him, even when the other partners can pay. Therefore, all that I want is that the assets must pay.

Shri V. V. Chari: The first charge is on the assets. Then only he goes to the directors.

Shri V. D. Muzumdar: Therefcre, only after satisfying that the liquidater has no funds . . .

Shri Morarji Desai: It says "where any tax....cannot be recovered from the company". The liquidator here is the company. What is the liquidater otherwise? He has no position there.

Shri V. D. Muzumdar: He is in charge of the assets of the company.

Shri Morarji Desai: The liquidator becomes the company at that time. That is very clear. How can you go to the directors straight? That is very obvious.

Shri V. D. Muzumdar: Then I come to clause 199. I have not mentioned it here in the memorandum. But the word used here is "shareholder". Credit for the tax is to be given, to the shareholder and the owner of the security. That is what is said here. You have used the expression "owner of the security"; but the word "shareholder" is retained. As most people know, there has been a lot of controversy about this. The shares are transferred, and by the time the dividend is declared, there is a transfer of the share. Therefore, if you use the words "beneficial owner of the shares" it is enough.

Shri V. V. Chari: Credit can be given to him in whose hands the assets are assessed.

Shri V. D. Muzumdar: Suppose somebody else purchases it.

Shri V. V. Chari: The market practice is that you get a dividend and pass it on to the other man. Till such time it can be taken as . . .

Shri V. D. Muzumdar: It will be wrong to assess it in his hands.

Shri V. V. Chari: It will ultimately depend in whose hands the income is assessed.

Shri V. D. Mazumdar: If you go by the assessment, I have nothing to say. But the word "shareholder" has been used. The Income-tax officer may assess the man in whose name the share is registered in the company. That should be avoided. That is all.

Shri V. V. Chari: The Company Law does not recognise any other person.

Shri V. D. Muzumdar: Therefore I say "beneficial owner".

Shri V. V. Chari: If you are able to tax the beneficial owner, and he accepts, then only it comes. But suppose you give him a refund and the registered owner asks for a refund?

Shri V. D. Muzumdar: He will produce the voucher.

Shri V. V. Chari: How can the beneficial owner produce the certificate given by the company? The company gives it only to the registered holder.

Shri V. D. Muzumdar: The registered holder certifies.

Shri V. V. Chari: Our attitude all along has been, in spite of the decision in the case of *Shakti Mills*, that if there is no tax evasion and if there is no controversy, the benefit of refund is given to the person in whose hands it was taxed.

Shri V. D. Muzumdar: I want the practice to be mentioned in this. I am aware of that practice and that is why I make the suggestion that it should be brought into this legislation.

Shri V. V. Chari: That will be ultra *vires* the Companies Act.

Shri V. D. Muzumdar: Clause 220. Here the ITO is given discretion to treat an assessee as not in default pending decision on an appeal to the AAC. This is all right, as it is in the present Act, but when it comes to refund under section 241, the ITO can withhold refund 'until further proceeding or where any other proceeding under this Act is pending'. This will cover not only the AAC but also further proceedings. I suggest that here also the same wording should be used.

Shri V. D. Muzumdar: Clauses 225/226. I suggest that the proceedings for recovery, particularly distraint, should not be finalised until the appeals are decided. There have been cases where because the appellate decisions were delayed, the distraint had been completed and the poor man has suffered. I suggest that in such cases the final distraint and sales should not be effected till all the proceedings are over.

Shri T. C. N. Menon: Is it your contention that whenever a dispute is pending, it should be finally settled by the Supreme Court? What is the stage you have in view?

Shri V. D. Muzumdar: Logically it may lead to that.

Clause 241. I have already dealt with it.

Clause. 275. Here the abetment offence is to be judged by the ITO and the penalty is also to be levied by him. That looks rather invidious—the same person being the accuser and the judge. As penalties are going to affect even the vocation of certain practitioners, I would suggest that it should not be decided by some court but by senior officers. If we decide to have a Board, I would suggest that the President of the Appellate Tribunal, an advocate and a chartered accountant should constitute it. They will decide all these matters like abetment which have to be penalised and which may result in the loss of vocation.

Shri V. V. Chari: It is subject to appeal even now.

Shri V. D. Muzumdar: It may be.

Shri V. V. Chari: It will go to the tribunal, and nothing can happen till they decide.

Shri V. D. Muzumdar: The procedure I have suggested will save a lot of time. If you decide it in this way, it can be decided in one stretch. Otherwise, the man will remain without practice till the appellate tribunal and the court decide.

Shri T. C. N. Menon: Do you mean to say that the decision of the Board will be again subject to appeal?

Shri V. D. Mazumdar: No.

Shri Morarji Desai: There should be an appeal on these things. Therefore, it is not safe to leave it to the tribunal.

Shri V. D. Muzumdar: There can be an appeal. I am referring to the time lag.

Shri Morarji Desai: That can be taken care of.

Shri V. D. Muzumdar: If you do that, I am satisfied.

Shri Morarji Desai: We will have to consider this because there have been several representations to the effect that it should be done by court, by this and that. We will have to consider it in full committee and decide.

Shri V. T. Dahejia: Suppose the abetment penalty is decided by the Commissioner.

Shri V. D. Muzumdar: There is no harm; only there should be an appeal. My point is that the Income-tax Officer being a junior officer should not be the final authority on this.

Shri K. R. Achar: I want your opinion on one thing. On questions of fact, is it your view that the final decision should rest with the tribunal or subject to appeal to the High Court?

Shri Morarji Desai: How can we take away the power of the High Court? It is given in the Constitution. It is a question of law. We cannot decide it. You cannot detract from that power.

Shri K. R. Achar: As it is, on questions of fact things are barred.

Shri Morarji Desai: Where are they barred. They are not appeals; they are revisions.

Shri Amjad Ali: We have not been able to define the words 'business connection'. You have also alluded to it. Would it be possible for you to send us a draft?

Shri V. D. Muzumdar: I will try That is an expression which has troubled the heads of even lawyers and judges.

That is all I have to say.

(The witness then withdrew.)

II. FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY, NEW DELHI.

Spokesmen:

1. Lala Karamchand Thapar
2. Shri Shriyans Prasad Jain
3. Shri B. P. Poddar
4. Shri K. N. Mookerjee
5. Shri J. J. Ashar
6. Shri H. D. Varma
7. Shri G. L. Bansal
8. Shri B. K. Madan.

(*Witnesses were called in and they took their seats*).

Chairman: It may be taken that we have read the memorandum that you have submitted. Now you can proceed with the evidence.

Shri Morarji Desai: I take it only those who are in the front will speak.

Shri S. P. Jain: We have divided the subjects among ourselves. Particular persons will speak on particular subjects, but only one at a time.

Shri Morarji Desai: How long will you take?

Shri S. P. Jain: That depends on what you want to know from us.

Shri Morarji Desai: We are not going to raise anything, unless you raise something. The best way to proceed will be to go from page to page of your memorandum. I hope you will remember we have already heard several people.

Shri C. D. Pande: If there are any points which they think are very important from their point of view, they should concentrate on them, so that we may have better light on them.

Lala Karamchand Thapar: We do not know what points have been dilated upon by others.

Shri C. D. Pande: We will let you know from time to time.

Shri Morarji Desai: I would suggest that the points to which you attach the greatest importance may be emphasized more. The other points are mentioned here. Then, time will be better utilised, and we will also be better impressed.

Lala Karamchand Thapar: I thank you on behalf of my colleagues and myself for giving us this opportunity to express our views before the Select Committee. It is good that the income-tax law is now being codified, and at the same time every effort is being made to simplify it, so that it may be helpful to the hundreds and thousands of assessees of our country.

We would also like that when the law is being consolidated, opportunity should also be taken to remove some of the basic inconsistencies and defects in our income-tax law and structure.

For example, in our country, the incidence of taxation is such that in some cases the tax burden is more than the total income. Such a thing does not exist anywhere in the world. Even in the most socialised countries like Norway and Sweden, the limit prescribed is 80 per cent.

Shri Morarji Desai: This is a matter for the Budget and not for this law. You may confine yourself to only what we can do in this law and not what can be done in the Budget, because nobody can and will reply to you here on that.

Lala Karamchand Thapar: We want to express ourselves.

Shri Morarji Desai: You may make a representation to me at the proper time.

Shri S. P. Jain: We are making this submission only from this point of view, that if you agree to our suggestion, you can provide it in the Act itself.

Shri Morarji Desai: Impossible. I will never do it.

Shri S. P. Jain: That is up to you.

Shri Morarji Desai: It cannot be done. That means the Budget is made in this Act.

Shri S. P. Jain: We want to suggest that the taxation should not go beyond the income.

Shri Morarji Desai: That has to be taken up at the time of the budget. I am clarifying this in the beginning so that we do not spend time unnecessarily. You may say, vary the rate of the tax. This is on the same lines as that. You are trying to prescribe and limit the scope of the tax. That cannot be done now. It is to be considered at the time of the budget.

Lala Karamchand Thapar: The basic principle that income should not be taxed twice should be specially incorporated in the Bill.

Shri Morarji Desai: All that you have written. What is the use of reading that? Let us go clause by clause.

Lala Karamchand Thapar: You wanted us to emphasise our special points. One point is double taxation.

Shri Morarji Desai: If you take it clause by clause, you can have your full say. Of course, I do not want to come in the way of your general observations.

Shri Amjad Ali: In page 3 of the memorandum, it is said that in a number of cases this principle has been violated in this Bill. Let him indicate the sections.

Shri Morarji Desai: That will be stated when the clauses come. These are general observations.

Shri J. J. Ashar: Clause 2(2)—page 7 of the memorandum. This gives a wider definition of the term 'dividend'. This is included in the issue of bonus shares to preference shareholders. Once a company issues a bonus preference share to a preference shareholder, there is incidence of taxation. The company will have to pay bonus tax in the first instance. Secondly, the shareholder who receives the preference bonus shares will have to pay tax on that as dividend. Thirdly, on the liquidation of the company, when the shareholder is repaid that amount, he will have to pay tax on that as dividend on liquidation. Therefore, it is a question of not only double, but triple taxation: twice in the hands of the shareholder and once in the hands of the company. So, this aspect of the matter might receive reconsideration.

Shri Morarji Desai: On liquidation, of course, he will have to pay nothing. That can be clarified.

Shri J. J. Ashar: If that is clarified, one aspect is decided. Even then the company pays tax as bonus tax and the shareholder pays tax as dividend.

Shri Morarji Desai: Preference shareholders are glorified debentureholders.

Shri J. J. Ashar: The preference shareholder will not get back his capital unless the shares are redeemable. It is difficult to issue preference shares in the market.

Shri V. T. Dehejia: When you sell preference shares, you fix the interest.

Shri Morarji Desai: Preference shares cannot be withdrawn. Why do you want to give them any temptation?

Shri S. P. Jain: They are redeemable.

Shri Morarji Desai: Preference shareholders are not allowed anything more than the dividend. This is another way of giving them more dividend and that has got to be taxed several times, because we want to discourage that.

Shri S. P. Jain: By virtue of this clause, even the capital is taxed. That is why I want to explain it. Suppose there is a redeemable share of a particular company and that share has been given for cash. Suppose the shares are redeemed out of the accumulated profits of the company. By virtue of this clause, that redemption will be deemed as dividend in the hands of the recipient, though he will be getting only the capital and not more than the capital. One can understand if he is taxed when he

gets more than the capital, but when the capital is taxed, it would be a very great hardship.

Shri V. V. Chari: If a Rs. 100 preference share is repaid for Rs. 100, there is no capital gain and there cannot be any tax.

Shri S. P. Jain: If it is redeemed out of the accumulated profits?

Shri Morarji Desai: It can be paid out of anything. There is no question of its being taxed.

Shri S. P. Jain: The clause says that any amount which is paid out of the accumulated profits—though it may be capital—will be treated as dividend in the hands of the recipient. That may be clarified.

Shri V. V. Chari: Anything which he receives for the face-value of his shares is capital and not dividend. That is absolutely clear.

Shri J. J. Ashar: The next clause is clause 10(10)—page 13 of our memorandum. It is with regard to death-cum-retirement gratuity.

Shri Morarji Desai: This is a point which we are considering.

Shri S. P. Jain: In between, Sir, there is clause 2(24)—page 8 of our Memorandum. This clause says that if any value of any benefit or perquisite is received by a relative of a director of a particular company it will be taxed in the hands of the recipient. A situation may arise when a particular relative might have received some benefit or some perquisite in the interest of the company. For example, if a particular relative is an employee of a company and he is sent somewhere for the purpose of the company's business, then the emoluments he receives, his hotel charges, taxi fare etc., will be taxed.

Shri Morarji Desai: He does not receive that from any director.

Shri S. P. Jain: From the company.

Shri Morarji Desai: As a servant of the company he is entitled to receive that. This clause does not apply in that case. A relative who is allowed to be a servant of the company does not fall in this category. It is only relatives who are outside the service of the company and who receive something from the directors who are covered by this clause. When something is given by the company to any of its servants it is a different matter. One cannot be a relative of the company, one can only be a relative of any director. If any servant of the compay receives aything from the company during his service, even if he happens to be a relative of any director he is not covered by this. You are unnecessarily getting worried about it.

Shri H. D. Varma: Then take clause 6—page 9 of our Memorandum.

Shri Morarji Desai: That is a clause which is being seriously considered in all its implications. The objection is that if the third category is removed then some people who send money from outside are going to be put in a difficult position. At the same time, it is also difficult to justify giving a superior position to a resident but not ordinarily resident over both residents and non-residents. They must fall in one category or the other. If these people are kept in the category of non-residents and they become residents on account of some technical difficulty, we are going to see that they are not put to any hardship, they are not to sell out their residence etc. That we are going to provide.

Shri H. D. Varma: Then there is the question about maintenance of houses.

Shri Morarji Desai: The change will only mean this. Today, whereas a person under this category pays income-tax only on his Indian income at the rate which will be applicable only to that income, in future, when this is applied, he will have to pay 49 per cent. or a rate which is applicable to

the world income according to his choice.

Shri H. D. Varma: That would be hardship.

Shri Morarji Desai: Why should he pay less than both residents and non-residents. Why should he be considered superior even to Indians.

Shri H. D. Varma: This will keep away technical people and others.

Shri Morarji Desai: Technical people are also going to be taken care of.

Shri H. D. Varma: I am referring to collaborators.

Shri Morarji Desai: They are a different category altogether.

Shri Narendrabhai Nathwani: May I inform the witness that the representatives of Indians abroad, Sind Merchants, Calcutta Associated Chambers of Commerce and others are all agreeable to this suggestion?

Shri Morarji Desai: They have said that if we made a change like this they would be satisfied.

Shri H. D. Varma: Then about the question of maintenance of dewelling houses.

Shri Morarji Desai: That also will be covered. We will try to cover it.

Shri B. P. Poddar: Clause 8 provides for taxation on dividend income on the basis of declaration. As you are aware, a shareholder comes to know of the dividend declared only after receipt of the amount. Therefore, in all fairness, we would suggest that the dividend should be taxed only on the receipt basis.

Shri Morarji Desai: He will pay only once. It will apply from year to year. He will not be asked to pay twice on the same amount.

Shri B. P. Poddar: Here it is said that taxation will be done on the declaration basis.

Shri Morarji Desai: Supposing tax is collected on declaration basis and the shareholder actually receives the income in the next year, he is not going to be taxed again on the same amount.

Shri B. P. Poddar: As a shareholder I do not know what amount I am going to get. The present Company Law does not provide for that.

Shri V. V. Chari: If you do not know, how does the Income-tax Officer know?

Shri Morarji Desai: We will try to see that only income received and not income accruing but not received is taxed.

Shri S. P. Jain: There may be some income which is receivable but which has not actually been received.

Shri Morarji Desai: If it is on account of his own fault?

Shri S. P. Jain: Supposing a company after declaring the dividend goes into liquidation before paying the dividend.

Shri Morarji Desai: It is just like income from Pakistan. We do not charge you for it. Has anybody paid income-tax on the income from Pakistan?

Shri S. P. Jain: I am talking of Indian companies. There might be some eventuality like that. Apart from dividend, I may have to receive some interest from somewhere or something like that.

Shri V. V. Chari: A company in liquidation does not declare any dividend.

Shri S. P. Jain: It may go into liquidation after declaring the dividend and before actual payment of the dividend.

Shri V. V. Chari: That is an extraordinary case. We are thinking of normal cases.

Shri Morarji Desai: Is this not the position today?

Shri S. P. Jain: Yes.

Shri Morarji Desai: There is no difficulty. What is the loss? Who has suffered because of this? Has anybody suffered on account of it?

Shri S. P. Jain: Somebody must have suffered.

Shri Morarji Desai: You have no proper reason to give.

Shri H. D. Varma: For the last two years some people must have suffered.

Shri Morarji Desai: Has it caused any inconvenience to any people known to you? Why do you not give concrete cases? Have you got any such case? If there is no change in the law, how does it affect you? It does not affect you adversely at all.

Shri H. D. Varma: It should be on dividend received and not on dividend accrued.

Shri Morarji Desai: Suppose we make it on dividend received instead of on dividend accrued, what will be the difficulty? What is the complication?

Shri Radheshyam Ramkumar Morarka: It may make some difference. If it is calculated on the basis of dividend received, it would be possible for the assessee to transfer the income from one year to another. Suppose for example the income is more in one year. He may receive it next year when the income is likely to be less, in order to pay a lesser rate.

Shri H. D. Varma: Suppose the dividend is declared on the 29th March.

Shri J. J. Ashar: If it is declared on the 29th March, even though the payment is received in May, it will be taxed in the previous year. It is all right for big shareholders. But the small shareholders will be obliged to include it in the previous year's income.

Shri Morarji Desai: Small shareholders do not pay income-tax.

Shri J. J. Ashar: When I say small shareholders I refer to those people whose income is Rs. 4,000 to 6,000. They do not always know when the dividend is declared. Therefore, in our humble opinion, it would be more equitable if the date of receipt is taken into account.

Shri Morarji Desai: In any case, you do not pay income-tax in the same year.

Shri J. J. Ashar: We have to pay.

Shri Morarji Desai: Where do you pay? Suppose dividend is declared on the 29th. March. How are you going to pay it in the same year? Do you pay advance in March? You pay in April.

Shri J. J. Ashar: We should have to include it in the return for that year.

Shri V. V. Chari: You file the return after six months by which time you would have received the dividend.

Shri Morarji Desai: So, it is more imaginary than real. You are not able to cite a single instance.

Shri J. J. Ashar: Anyhow, that would be a simplified procedure.

Shri Morarji Desai: No, that would be more complicated than the present arrangement.

Shri H. D. Varma: Then I come to clause 9, business connections.

Shri Morarji Desai: If you would send us a draft, we will consider it. We are finding it difficult to have a draft. Those who have told us about that are not able to suggest to us a draft. We will sit in judgment over your draft.

Shri H. D. Varma: We have attached to our memorandum the provision in the U.K. Act.

Shri V. T. Dehejia: Is the basis of income-tax in United Kingdom the same as in India? When it is not, what is the good of quoting that section?

Shri Morarji Desai: There can be marriages of the same species, not of different species.

Shri J. J. Ashar: Then I come to clauses 10, 14, 37 and 48(1) which use the expression "necessarily".

Shri Morarji Desai: We are considering it very carefully. Probably, your argument is that it gives tremendous power to the income-tax officer. As it is an instrument of corruption, we have to consider it carefully and yet keep the power with the department to see that something wrong is not committed. That is what we want to achieve.

Shri V. T. Dehejia: There are two parts. One is how it should be expressed and another is one of substance. Is your point about substance?

Shri Morarji Desai: There is no intention to interfere with honest people. We do not want to do it. We do not want to give a power to the income-tax officer to sit down on the assessee and make him submit to his will. That also we do not want to do. At the same time, we want to safeguard that any sort of expenditure is not debited to it. So, we want to punish a person who is going astray and safeguard a person who is honest. We are trying to do both the things.

Shri J. J. Ashar: Then I will come to clause 10(1).

Shri Morarji Desai: That is being considered.

Shri J. J. Ashar: If you allow us to make some observation on that point . . .

Shri Morarji Desai: We do not want to leave any scope for discrimination. That is how we are going to consider it.

Shri H. D. Varma: Then I take up clause 10(6)(vii). Under the existing law salary due to technicians is exempt but now it is being provided only for salaries received and not salary given.

Shri V. V. Chari: That is a drafting mistake and is being rectified.

Shri J. J. Ashar: Then I will take the batch of clauses dealing with trusts, namely, clauses 11, 12, 13, 61 and 62. Clauses 61 and 62 are about revocable trusts and I would like to say a few things about revocable trusts also.

Shri Morarji Desai: Can they not be taken separately?

Shri J. J. Ashar: We can take them up separately. About clauses 11, 12 and 13 dealing with trusts, there is a distinction between income from property and income from business. So far as income from property is concerned, 75 per cent of it shall be spent and only 25 per cent can be accumulated every year.

Shri Amjad Ali: Do you agree with the change over to the new definition of business? The definition has been changed saying that property does not include business.

Shri J. J. Ashar: I am coming to that. So far as income from property is concerned, it can be accumulated and so far as business is concerned, it must be carried on in the course of the actual carrying out of the primary objects of the trust.

Shri Morarji Desai: That also we are considering. But under the Income-tax Act we do not want to exempt any charity which is sectional.

Shri J. J. Ashar: I am not pleading for sectional charities at all.

Shri Morarji Desai: We want to put a stop to sectional charities.

Shri J. J. Ashar: So far as income from business is concerned, because nothing is mentioned and because only 25 per cent of the income from property can be accumulated, presumably it is the intention that the whole of the income from business should be spent in the same year or is it that that restriction with regard to 25 per cent does not apply to

income from business. That distinction can be removed. Also, the presumption is that the accumulation is in respect of 25 per cent of the income of each year. It is for the business as well as property income.

Shri Morarji Desai: That will be the ultimate solution.

Shri J. J. Ashar: Then there is the question of a relative of a settlor benefiting. I do not say that the relative should benefit, but if it is the intention that he should not have any benefit at all, the question arises about the existing trusts in which some provision is made for that.

Shri Morarji Desai: They should not carry it out. Then it is all right. If nothing is given to relatives, we are not going to bother. If the Deed prevents them from doing so then they will have to change the Deed. If the Deed is explicit and mandatory, they will have to change it. But if it is not mandatory, they may cease to give it.

Shri S. P. Jain: Suppose it is not possible to change the Deed because one will have to go to the court for that and the relative may object to it or may not agree to that change. In that eventuality, will it be possible or not to exclude the income being derived by the relative?

Shri Morarji Desai: Then they will go on merrily.

Shri S. P. Jain: To a change that relative should agree when he is getting a particular advantage or benefit out of that.

Shri Morarji Desai: Let him not agree and pay the tax.

Shri C. D. Pande: If there are certain trusts where the major portion of the income goes to charities and a certain portion is left to the relations, the share going to the relatives should be deducted from the income exempt from tax.

Shri Morarji Desai: If that is going to be the pleasure of the Select Committee, we can certainly consider it. It is a matter for the Select Committee to consider. It is not for me to lay down the law. We are going to consider it and it will be whatever way the Select Committee decides. We cannot tell them just now what is to be done and what is not to be done. It is only evidence and not a judgment.

Shri C. D. Pande: But they should have some indication.

Shri Morarji Desai: We cannot give an indication of our decision. If we had taken a decision, we might give an indication. But we have not decided anything. It is for the Committee to decide.

Shri T. C. N. Menon: Moreover, we are yet to hear some more witnesses.

Shri Morarji Desai: Not only that, we have got to discuss this among ourselves. That we have not done yet. Unless we do that, none of us can say that this will be done or that will be done. We must be very correct not only with regard to the procedure but also with regard to what we say, specially myself. It applies more to me than to anybody else.

Shri J. J. Ashar: Then there is the question of outstanding debts of the trust. Presumably they will be considered as part of 75 per cent of the income expended in that year if that part of the debt is repaid in that year. Actually the debt may have been incurred for starting some scheme of a capital character.

Shri S. P. Jain: Will that be considered from within that 75 per cent or over and above that?

Shri Morarji Desai: If it is paid from the revenue, it is bound to be from within the 75 per cent.

Shri H. D. Varma: There may be difficulties about altering the trust.

Shri Morarji Desai: The difficulty can be obviated by paying income-tax and benefiting the public.

Shri H. D. Varma: Or by making a declaration that they will not use it.

Shri Morarji Desai: If they do not use, it is enough. We are considering as to how best it can be done. I do not know whether it can be done or not.

Shri T. C. N. Menon: Do you not think that unless the charity is universal in its application it should be applicable?

Shri Morarji Desai: That is what I said. I said just now that we are going to see that only universal charities are exempted and not sectional charities.

Shri C. D. Pande: The two considerations are universality and that it goes to the common man.

Shri Morarji Desai: It is very difficult to say as to who is a common man and who is not.

Shri C. D. Pande: For example, you may say that the Parsi Trust is limited to Parsis, but all the same it has got some salutary effect.

Shri Morarji Desai: But we want to remove that salutary effect of maintaining communities. The past things can go on, but not the future things. If we are sincere in believing and in meaning that we want to do away with all sectional thought in this country, then we shall have to do several things like that, even if it hurts many people.

Shri S. P. Jain: But, sometimes, sentiments and emotions are attached to a particular trust, and, therefore, the human aspect should not be ignored.

Shri Morarji Desai: We do not want any human aspect which vitiates human relations.

Shri T. C. N. Menon: But meritorious feelings are not confined to communities only.

Shri Morarji Desai: It is only on considerations of real human aspect and real human emotions that we want to take this step.

Shri C. D. Pande: There is also another difficulty. For example, a trust may be named after some community, say, the Marwari Trust and so on.

Shri Morarji Desai: The name does not matter.

Shri C. D. Pande: Supposing the hospital opened by them is open to all, then, the name alone should not be an impediment.

Shri Morarji Desai: The name does not matter. But there also, hereafter, we should insist that there should not be such names. Why should they name it after some community?

Shri C. D. Pande: Then, many institutions will be rendered helpless.

Shri Morarji Desai: What I am saying can be applied to the future, but not to the past, because, so far as the past is concerned, there are scores and scores of these institutions; how are we going to change the names of all of them?

Shri J. J. Ashar: The income of the trust which is applied for scholarships to Indian students abroad also disqualifies the trust.

Shri Morarji Desai: How are they disqualified?

Shri J. J. Ashar: Because the amount must be spent in India.

Shri V. V. Chari: Where is it said that it should be spent in India?

Shri J. J. Ashar: You are limiting the scholarships to USA or to UK.

Shri Morarji Desai: That is a lacuna which can be cleared.

Shri V. V. Chari: There is no lacuna. If you want that it should be clarified, then it can be done.

Shri J. J. Ashar: But you have said that the amount should be spent in India; so, the term used is a geographical expression. It means 'in India' and not 'on Indian students abroad'.

Shri Morarji Desai: But you would not get foreign exchange for that.

Shri J. J. Ashar: We are only talking of cases where foreign exchange is granted.

Shri Morarji Desai: Then the question does not arise. That is not debarred.

Shri V. V. Chari: There is no change of law in that regard.

Shri Morarji Desai: Which is the clause to which you are referring?

Shri J. J. Ashar: Kindly see sub-clause (2).

Shri V. V. Chari: The clause to which you are referring is something different. Suppose you make a charity to the Oxford University; then, that would not be covered. Charitable purpose outside means Indian students getting a scholarship in UK or anywhere else.

Shri H. D. Varma: We have approached the Central Board of Revenue in this matter. They say that because it contains a clause for spending money outside . . .

Shri Morarji Desai: But it has to be recognised. If it is a new trust, it has to be recognised.

Shri H. D. Varma: It has already been recognised.

Shri Morarji Desai: But it has not been recognised for exemption from income-tax.

Shri H. D. Varma: It is recognised for exemption from income-tax and it has been allowed the benefit of that exemption, but now the clause says that the money should be spent in India.

Shri Morarji Desai: That is all right. Nobody is going to say 'No' to it.

Shri S. P. Jain: But the clause gives a somewhat different meaning.

Shri Morarji Desai: We shall see if we can make it clearer.

Shri H. D. Varma: Now, I come to clause 26. This provides for entertainment allowance up to one-fifth of salary Rs. 5000 whichever is less in the case of a Government servant, and in the case of any other assessee it is allowed only if he has been getting such allowance from a date before 1st April, 1955.

Shri Morarji Desai: We do not propose to alter it. There is no discrimination. You can also spend on all sorts of things, but you have an expense account, and you spend from it. Why do you want to do this? Government servants are never given lavish allowances as are given in the companies.

Shri H. D. Varma: Here also, there are restrictions which are being imposed.

Shri Morarji Desai: We do not propose to remove those restrictions, but we are suggesting that you may have an expense account from which you can spend.

Shri K. N. Mookerjee: Now, I come to clause 24 with regard to allowances against income from house property. Under the provision in the Bill, we are allowed only one-sixth of the annual value. The cost of repairs, materials and other things has now gone up, with the result that one-sixth of the annual value is considered to be sufficient for repairs. I would like to suggest that some sort of depreciation should be allowed on house property. That is my first submission.

My second submission is that there are companies managing properties, and their income is only from house rent. Those companies have got other expenditure to incur, such as audit

fees, filing fees, electrical charges, posts and telegraphs charges, telephone charges and so on, which any public or private limited company has got to incur. There is no provision to give them any exemption in this respect, except to the extent of one-sixth of the annual value.

Shri V. V. Chari: There is also 6 per cent by way of collection charges.

Shri Morarji Desai: That ought to be enough.

Shri K. N. Mookerjee: That covers individuals as well as companies, whereas in the case of a company, it would not be sufficient.

Shri Morarji Desai: Why should a company have to spend more? Companies should have to spend less. An individual landlord may have difficulties in collecting rents etc., but a company will have more people, and their expenses will be less.

Shri K. N. Mookerjee: But there are certain statutory obligations which the company will have to fulfil, which the individuals do not have to.

Shri Morarji Desai: Which are the companies which are solely owning houses only and having no business?

Shri K. N. Mookerjee: There are certain companies owning only houses or property.

Shri J. J. Ashar: As, for instance, the property companies in Calcutta.

Shri Morarji Desai: In other words, individuals have formed themselves into companies now, to take advantage of the law.

Shri K. N. Mookerjee: What I suggest is that depreciation at least should be allowed, and the income should be treated as business income and not as property income. If that change is made, it would be better.

Shri Morarji Desai: It is property income. So, how can it be exempted?

Shri Mookerjee: How are we to cover the other expenditure?

Shri V. V. Chari: 6 per cent should be enough.

Shri C. D. Pande: Supposing there is a company managing house property and also a jute mill. Why not put it on the jute mill, for instance?

Shri K. N. Mookerjee: In England they are treated as real estate companies, and the income is treated as business income.

Shri T. C. N. Menon: You have pointed out in your memorandum certain expenses in connection with repairs and so on, and stated that one-sixth would not be sufficient to cover the expenditure. But can you point out a single instance where a landlord who has let out a house has spent more than two months' rent for annual repairs?

Shri K. N. Mookerjee: In some cases, they have spent.

Shri T. C. N. Menon: That may be in exceptional cases.

Shri K. N. Mookerjee: Because of the Rent Control Order, in the case of the old houses, the tenants have to pay only the old rent, but when there is a question of repair, unfortunately, we cannot carry out repairs on the basis of the old cost.

Shri Morarji Desai: That is because the landlords have not kept the buildings in a state of good repair regularly. Otherwise, this sort of thing would not happen. Let them pay the penalty, and the land will be sold and new buildings will come up in their place.

Shri T. C. N. Menon: Is it not possible that during all this period, they would have collected the entire value of the building, because the building has become so old?

Shri Morarji Desai: It is not so in every case. It is only in Delhi that has happened.

Shri C. D. Pande: People are not going in for property these days as they used to do before, because it is not a paying concern.

Shri K. N. Mookerjee: When a company deals with only houses, then the income should be treated as business income and not as property.

Shri Morarji Desai: The Select Committee can consider it.

Shri K. N. Mookerjee: My submission is that it is a company out and out.

Shri Morarji Desai: The ultimate idea is that we do not want one man to have many houses.

Shri K. N. Mookerjee: When it is a company fulfilling all its obligations under the Companies Act, it should be treated as business and not as property.

Shri Morarji Desai: It is very difficult.

Shri H. D. Varma: When a managing agency receives compensation at the termination of the management etc. under clause 28(ii) that amount is also made liable to be taxed . . .

Shri V. V. Chari: This point was discussed. When compensation is already taxed, there will not be a further tax on that.

Shri J. J. Ashar: Clause 28(iii) says that income derived by a trade, professional or similar association for specific services performed will be taxable. They receive subscriptions for services rendered . . .

Shri Morarji Desai: But they make profits.

Shri J. J. Ashar: If they make profits, by all means tax them. If it is a deficit . . .

Shri V. V. Chari: Subscriptions are not taxed at all. If they provide certain services, the money received for those services will be treated as income . . .

Shri J. J. Ashar: If they are allowed all other expenses and if there is a net income . . .

Shri V. V. Chari: All expenses connected with the services.

Shri J. J. Ashar: I might mention that other expenses are incurred in the Chamber in the course of carrying out its duties.

Shri Morarji Desai: There is subscription.

Shri J. J. Ashar: They should spend all the subscriptions which they realise. If there is a deficit it might be set off against income received from landed properties etc.

Shri V. T. Dehejia: For the free services if the subscription is not enough, the subscription can be raised. Why should you incur a loss on that account?

Shri J. J. Ashar: You take the overall income and the overall expenditure. If there is surplus, then of course it may be taxed. Ours is not a profit-making body. They do not distribute surplus to members even at the time of liquidation, merger or dissolution. So, the members are not going to benefit at all. In order to facilitate the work of the chamber it is very desirable that they should not be burdened with this tax unless they have a surplus.

Shri V. V. Chari: Tyagi Committee has suggested that so far as Chamber of Commerce is concerned some *ad hoc* assessment should be made taking into consideration its special features etc. Action is being taken by the Board of Revenue in this connection and I think that should meet this particular difficulty.

Lala Karamchand Thapar: Page 22, clause 32. There are wasting assets like pits in a mine on which no depreciation is allowed. The money spent on them go to waste and we do not get any allowance. So far the expenses in these mines were limited

to a few lakhs. Now they are going to be millions because pits are going to be 1,500 ft. deep. Depreciation should be allowed on this expenditure which is now treated as capital expenditure.

Shri V. V. Chari: The present policy is to give depreciation allowance only in the case of oil exploration. For that there is a provision in the Act. If in the case of other industries there are certain types of intangible expenses on which no depreciation allowance is allowed, that point will be taken into consideration. This point has been made by some other association.

Shri B. P. Poddar: Under clause 33, page 24, development rebate is not admissible to road transport vehicles and office appliances . . .

Shri Morarji Desai: I believe you remember that this has been done deliberately by an amendment at the time of the budget. It is very unlikely that it is going to be changed.

Shri H. D. Varma: Page 25, item (iii) the Explanation to sub-clause (3): I am referring to the second paragraph. This is about amalgamation and lays down that all the partners should become shareholders of the amalgamated company. The Company's Act provides that it is enough if 90 per cent of the shareholders agree to it.

Shri Morarji Desai: This will have to be considered.

Shri H. D. Varma: Suppose Companies "A" and "B" whcih have been amalgamated into Company "B" want to amalgamate into another company, Company "C".

Shri Morarji Desai: The amalgamated company is not prevented from further amalgamation. Either "A" and "B" become "A" or "B" or they become "C". What is in a name?

Shri J. J. Ashar: As regards this firm, it can transfer its assets only to a private company. But if it forms into a public company and its assets are transferred to that public company, there is no provision.

Shri Morarji Desai: In the public company it is transferred to many shareholders.

Shri J. J. Ashar: They can form a public company with seven members. The benefit of the unabsorbed development rebate will not be permissible to the public company. Whether it is private or public, the same benefit should be available.

Shri V. V. Chari: If you maintain the same shareholders in the form of a public company, there is no objection to that.

Shri Morarji Desai: On the contrary I should think that if it is transferred to a public company it should get and if it is transferred to a private company it should not get.

Shri V. V. Chari: The idea is that the ownership is exactly the same. Only the form of the ownership is changed—partners and shareholders.

Shri Morarji Desai: In any case, it will be considered.

Shri J. J. Ashar: If an individual transfers the assets to a private or a public company, should not there be a provision for the benefit of the unabsorbed development rebate?

Shri Morarji Desai: If he remains the sole shareholder it is all right. But if he transfers to others, why should there be a provision?

Shri Radheshyam Ramkumar Morarka: An individual can get.

Shri Morarji Desai: Theoretically an individual can get; but it is not possible. There may be some cases.

Shri Narendrabhai Nathwani: An individual may convert himself into a private limited company and indirectly he can transfer his shares.

Shri Morarji Desai: Indirectly he can do that. What is the next one?

Shri H. D. Varma: Clause 39. This corresponds to the existing section 12A. Provision has not been made here in respect of Secretaries and Treasurers as in the case of managing agents.

Shri Morarji Desai: The intention is not to make Secretaries and Treasurers like managing agents.

Shri H. D. Varma: They are more or less doing the same thing.

Shri Morarji Desai: They are not. They cannot share with the others.

Shri H. D. Varma: They have certain responsibilities, like managing agents.

Shri Morarji Desai: They utilise the office of the company. They need not have their own establishment. Then it becomes a separate managing agency. They do not have any responsibility for providing funds and other things. Managing agents do some good: they provide for raising money and all that. But the Secretaries and Treasurers do not have any such responsibilities. They are chosen as technicians or experts. They are not promoters. I do not think we can give them the same treatment. Then it will mean only a change of name.

Shri H. D. Varma: The next one is about clause 40(a)(2)—page 28 of our memorandum. Our point is that the calculations on profit basis have to go as in the case of the coal industry in Bengal.

Shri Morarji Desai: That will be considered.

Shri H. D. Varma: Thank you.

Shri J. J. Ashar: The next one is clause 40(b). If there is a Hindu undivided family carrying on business, and if a member of that family is an employee, he is not allowed deduction on account of the salary payable to him.

Shri Morarji Desai: If it is a genuine case of incurring expenditure and he is a real servant, managing it, then we ought to consider it. We are considering how it can be done.

Shri S. P. Jain: The next is clause 40(c). Any remuneration, benefit or amenity which is being paid to a relative of a director will be taxed in his hands, and at the same time it will be disallowed in the hands of the company.

Shri Morarji Desai: I think we have discussed this already—no, not with you. You may proceed.

Shri S. P. Jain: Under section 314 of the Companies Act, no remuneration can be allowed to a relative of a director unless the remuneration is Rs. 500. If the remuneration is more than Rs. 500, then, apart from the permission of the special body of that company, Government permission under section 316 has to be taken. Therefore, when the permission of the Government has already been obtained, or will be obtained, not allowing that remuneration in the hands of the company . . .

Shri Morarji Desai: This will not apply to a servant of the company, this should not apply. This applies to somebody else who is not a servant of the company but is still paid by the director.

Shri S. P. Jain: If that point is clear, it is all right.

Shri V. V. Chari: We started discussion with this point.

Shri S. P. Jain: That was in connection with another clause, the perquisites clause. Here it is the remuneration clause.

Shri Morarji Desai: That is all right. If he is a servant of the company he is bound to pay for the company, because he is not a relative. Once he is allowed as an official of the company, whatever he gets from the company is of the same nature as in the case of other servants of the

company. There is no difficulty about that.

Shri Radheshyam Ramqumar Morarka: This clause requires a change. The operative force is on 'in the opinion of the Income Tax officer . . .

Shri Morarji Desai: We will have to put it right.

Shri Radheshyam Ramkumar Morarka: Even if a person is an employee of the company, . . .

Shri Morarji Desai: We will have to clarify it and put it right.

Shri Radheshyam Ramkumar Morarka: I want one clarification. Even if a person is an employee of the company, whose appointment has been sanctioned by the Company Law Administration, if the remuneration of the person is in excess taking into consideration the circumstances of the particular case in the opinion of the Income-tax officer, he has the right to disallow it.

Shri Morarji Desai: I do not think that should be so. That should apply to all people where it is excessive. Suppose somebody is paid Rs. 10,000, the Income-tax officer can say, this is all wrong.

Shri Radheshyam Ramkumar Morarka: It would have to be allowed by the Company Law Administration.

Shri Morarji Desai: On the basis of relatives, they may have said.

Shri Radheshyam Ramkumar Morarka: There are three categories: relative of the director, a director or a person who has a substantial interest in the company.

Shri Morarji Desai: That would have to be carefully worded.

Shri H. D. Varma: In the case of Directors, they are all approved by the Company Law Administration.

Shri Morarji Desai: Suppose they get something other than that, that would have to be disallowed.

Shri S. P. Jain: No relative can draw any remuneration unless it is approved by the Company Law Administration.

Shri Morarji Desai: About that there is no difficulty. About travelling allowance, etc., according to rules, there is no difficulty.

Shri T. C. N. Menon: Is it your case that in the case of a relative who is not a direct servant of the company, even expenditure incurred by him or on him should be exempted?

Shri H. D. Varma: We are dealing with servants of the company. Clause 41 provides that remitted liability has to be treated as income whether the business is in existence or not. Subclause (2) says that any profits on the sale of machinery after the business has ceased would also be liable to tax. According to clause 72 subclause (1), no carry forward of loss is allowed unless the business for which the loss was carried on was, during that year . . .

Shri Morarji Desai: We are considering this.

Shri B. P. Poddar: I come to clause 343(5). It is not possible to expect delivery of the whole of the goods in hedged transactions at all times. With this in view, I would suggest that in the definition, the word 'or' should be substituted by the word 'and'. I can illustrate. Suppose I contracted to sell 10,000 bales of jute. I supply 5000 bales and make a profit of Rs. 5|- per bale, making a profit of Rs. 25,000. For obvious reasons, I am not in a position to supply the other 5000 bales.

Shri Morarji Desai: Why?

Shri B. P. Poddar: Wagon shortage. There are such instances in the case of jute particularly where you cannot get wagons then and there. I go to the buyer and settle with him to pay him compensation at the rate of Rs. 5 per bale, thereby making a loss of

25,000. This is almost everyday happening in commercial transactions. If you do not accept this amendment, the position will be that on Rs. 25,000 that I make, the profit would be taxed. The other Rs. 25,000 which I would have lost in the same transaction would be considered speculative.

Shri V. V. Chari: If you are a dealer in the particular commodity, suppose you have got a contract for 10,000 bales and actually deliver 9000 bales, and 1000 you are not able to supply, and you adjust paying damages, that won't be considered as speculative. As you know, as the Chambers of Commerce know, that does not become speculative.

Shri B. P. Poddar: It may be even 500. It need not be 5000 and 5000.

Shri Morarji Desai: The example which you gave is a speculative one: Rs. 25,000 profits; just to square it, a loss is shown.

Chairman: Next item.

Shri B. P. Poddar: I take up clause 73.

Shri J. J. Ashar: Clauses 61 and 62: With regard to irrevocable trusts for a specific period, the former position was, if it was irrevocable for 6 years and the income belonged to the beneficiary, and it did not belong to the settler, it was free. For several reasons it is necessary to have it. A settler may think that he might benefit some people by transferring the income, not transferring the assets. It may be a long time benefit for a certain number of years, for the education of children. If 6 years is not acceptable, it may be 10 years. To do away with that, to say that you may not have long term beneficiaries, it is taking it the other way round.

Shri Morarji Desai: Why?

Shri J. J. Ashar: If you want to give for a limited period, the period may be specified. Instead of 6 years, you can increase the period. It is not a question of the settler benefiting in any way. There is provision if the settler benefits. It will be taxed in his hands.

Shri Morarji Desai: Even if he does not benefit, he benefits indirectly. His rate of income-tax goes down.

Shri J. J. Ashar: No doubt, it goes down. But, the benefit is not to him, but to some other people.

Shri Morarji Desai: To his children; it is the same thing.

Shri J. J. Ashar: Relatives may be excluded. It may be a charity for a limited period.

Shri Morarji Desai: Why should it come back to him? Then, there is no charity.

Shri J. J. Ashar: I say, the relative may be excluded.

Shri Morarji Desai: For 6 years, you say, it may be 10 years.

Shri J. J. Ashar: It comes back after a limited period.

Shri V. V. Chari: On principle, the question is whether it is correct that an income should for a limited period be tax free.

Shri J. J. Ashar: It is not tax-free in his hands. It is not to his benefit.

Shri Morarji Desai: What about this 1st April, 1961?

Shri V. V. Chari: The reason is this. Those who have already made trusts before 1st April 1961, who are enjoying it for six years, they need not be suddenly deprived of it. That is all.

Shri J. J. Ashar: I am talking of the future: after 1961.

Shri V. V. Chari: The past is unaffected.

Shri V. V. Chari: At least in future, do not make such trusts. Sufficient notice has been given.

Shri J. J. Ashar: Suppose it is a good object.

Shri Morarji Desai: There is no law which can never be evaded.

Shri B. P. Poddar: Clause 73. This deals with set-off of speculation losses. It is almost impossible to draw a line between speculative losses and hedging transactions.

Shri Morarji Desai: Practically all hedging has become speculative today.

Shri B. P. Poddar: It is deemed as such.

Shri Morarji Desai: This is a very sweeping generalisation. But I am coming to that conclusion, that all forward contracts should be stopped. It is so abused. This is what is responsible for the rise in prices of many commodities.

Shri B. P. Poddar: This is causing great hardship.

Shri Morarji Desai: You are going to be desperate about it. It is one of the remedies not to be desperate.

Shri B. P. Poddar: Why not declare them as business profits at the same time?

Shri V. V. Chari: They are business profits, but under a special category.

Shri Morarji Desai: If I can locate the profits, I am prepared to do it. But profits are always kept away and losses are always shown. How can I tackle that? This is a most easy strategem.

Shri B. P. Poddar: The profits are also there.

Shri Morarji Desai: There are some who do not speculate. But there are very few like that.

Shri C. D. Pande: Suppose it is said that hedging is allowed only to the extent of meeting the losses in the commodity required for the year.

Shri Morarji Desai: Really speaking, the effect of hedging is neither profit nor loss. That is what hedging is meant for.

Shri C. D. Pande: Suppose one has a jute or oil mill. He purchases things to the extent of his requirements for the whole year. Then to set off against losses hedging is allowed, to that extent. If there is a loss, Government can look into it.

Shri Morarji Desai: Correct hedging involves no profit and no loss. That is the function of hedging. All other hedging is speculation.

Shri H. D. Varma: One may make mistakes.

Shri Morarji Desai: He must suffer for it. Who knows whether it is genuine.

Shri C. D. Pande: Hedging is an insurance against loss.

Shri Morarji Desai: Real hedging will be allowed, but speculation will not be.

Shri T. C. N. Menon: The question is of the motive.

Shri Morarji Desai: The motive is: if there is a profit, it goes to my pocket; if there is a loss, it goes to the company. We do not want that.

Shri S. P. Jain: That will be assessed at the hands of the individual.

Shri Morarji Desai: It is not shown, it is not known.

Clause 79. This is a difficult clause, liable to blackmail. Therefore, we are considering it.

Shri S. P. Jain: Is any elaboration needed?

Shri Morarji Desai: Enough elaboration has been made. But you may make your submissions. This is likely to lead to blackmail by those people who may say, 'unless you agree to give me something, I am not going to agree'. We do not want to allow that. That is not the intention.

Shri S. P. Jain: We want that the shareholder's entity should not be merged with the entity of the company. There is a company recognised as such with limited liability and all that. Therefore, whatever the losses and profits of the company, irrespective of the fact whether it changes hands or not, we should go along with the company and not with the shareholders.

Shri Morarji Desai: We have agreed to consider it and remove the mischief out of this clause, whatever mischief is there.

Shri H. D. Varma: Clause 80: This provides that the return of loss should be filed; otherwise the loss will not be allowed. My submission is that somebody has filed a return wrongly. He does not know where to file it.

Shri Morarji Desai: How is it that he does not know?

Shri H. D. Varma: He is a new assessee.

Shri Morarji Desai: If so, why should there be a previous loss?

Shri H. D. Varma: He has incurred a loss and he is likely to make profits.

Shri Morarji Desai: That means there is something. Such a man is bound to be very clever.

Shri H. D. Varma: He has started business. In the first year, he incurred a loss and he wants to file a return.

Shri Morarji Desai: In the first year, he must file the return.

Shri H. D. Varma: He does not know where to file.

Shri Morarji Desai: He can easily find out from the ITO of the place.

Shri H. D. Varma: He may send it to the wrong ITO. There may be more than one ITO there.

Shri Morarji Desai: The jurisdiction of ITOs is defined.

Shri C. D. Pande: Is it due to lack of knowledge on the part of the man or something else?

Shri H. D. Varma: Lack of knowledge.

Shri Morarji Desai: We will say any ITO. That ITO will send it to the concerned ITO. That satisfies you.

Shri H. D. Varma: Yes.

Shri J. J. Ashar: Clause 84: This deals with new industrial undertakings. The intention behind the exemption is excellent. It is a real boost to industrialisation. But I would like to point out certain matters in connection with that. If these can be provided in the Bill, they will go to strengthen the section and make it more effective.

Shri Morarji Desai: We are considering this clause with reference to old buildings utilised by a new company. That we are considering, but not the whole of it.

Shri J. J. Ashar: Only the old building part.

Shri Morarji Desai: We are considering what percentage it must be.

Shri J. J. Ashar: Also we would suggest that 6 per cent on the employed capital should be allowed to be set off against future profits.

Shri Morarji Desai: No, no. Do not try to stretch it. If you do that, it will shrink.

Shri J. J. Ashar: When the present exemption period is over, it is said the Government may extend the exemption to particular industries. I take it will apply to a class of industries, and not individual undertakings.

Shri Morarji Desai: Only class of industries.

Shri J. J. Ashar: But that is not the meaning of the clause.

Shri Morarji Desai: It will depend on the class, which is profitable and which is not. It is possible that an individual can make a losing undertaking a profitable undertaking from the beginning, but that cannot be taken into consideration. It should be according to the class of the industry.

Shri H. D. Varma: Once an exemption is given, after one year it should not be taken away.

Shri Morarji Desai: Why should one do it except in cases of gross misbehaviour?

Shri H. D. Varma: It is not provided there.

Shri Morarji Desai: It is the prerogative of Parliament to withdraw it any time it likes. I cannot take away that prerogative. Parliament may also act at my instance. This is the privilege of the Budget, this is not the privilege of the law. I cannot give you any promise on that.

Shri J. J. Ashar: Clauses 104 to 109. As you are aware, the majority of the companies, about 90 per cent, are those to which section 23-A applies. Therefore, corporate saving has to come from them in a big way. I am pleading for the restoration of the old sub-section (3).

Shri Morarji Desai: We are going to consider that, but in all these matters where I have said we are going to consider, do not go away with the feeling that the consideration may end completely to your satisfaction. It will depend upon the pleasure of the Select Committee.

Shri H. D. Varma: In order to encourage larger investment in business, we should reduce the percentage or do something.

Shri Morarji Desai: After all, what is purpose of encouraging business? Prosperity. Prosperity means more income to the Government. If that is lost, what is the good of encouragement?

Shri H. D. Varma: It may help in the matter of foreign exchange also, because foreign collaborators are all private companies.

Shri Morarji Desai: We are considering those foreign companies, we are finding out why we should consider them private companies. We will have a different category for them.

Shri J. J. Ashar: As regards a subsidiary company to which section 23-A does not apply, the provision is that it will also be taken to be a 23-A company provided all the shares in such a subsidiary are held by the parent company. There will be a little difficulty this way that some of the directors of the subsidiary company may be required to hold qualification shares. So, instead of adhering to the 100 per cent, it may be relaxed.

Shri V. V. Chari: If they are nominees.

Shri J. J. Ashar: Not nominees. They will be required to hold a small number of shares in their own name. It will not really affect the taxation position, but enable the directors to hold the shares.

Shri V. V. Chari: That is the existing law. No change has been made in this Bill.

Shri J. J. Ashar: I appreciate that it is the existing law, but we would like this small relaxation to be made so that 5 or 10 per cent of the shares may be held by the directors.

Then there is the question of speculative losses and capital losses being disallowed in computing income for the purpose of section 23-A. After all, the loss will be assessed in the name of the company; if it is assessed and capital loss takes place, then the company is depleted to that extent in the trading of that year. In applying section 23-A to such a company, this should not be taken into consideration.

Shri V. V. Chari: How can they speculate?

Shri J. J. Ashar: If it is permitted in their memorandum of association, they can do speculative as well as investment business.

Shri Dehejia: Let us understand the word "speculation". Having understood it, what are we going to do with it?

Shri J. J Ashar: The loss is assessed and allowed to the assessee by the income-tax department. The only question is whether it is to be taken out of the profit of that year. The company cannot be expected to have that profit in hand and pay the penalty in case the minimum or the residuary percentage is not distributed as dividend.

Shri V. V. Chari: If a textile mill makes a huge profit, it cannot be allowed. It may speculate, but from the point of view of the income-tax department, that speculation cannot be taken into consideration in applying section 23-A.

Shri J. J. Ashar: You assess it as a loss.

Shri V. V. Chari: But that does not mean that the consequences of section 23-A should also be abolished.

Shri J. J. Ashar: By implication you say that the money is not in their hands.

Shri V. V. Chari: Then, the whole purpose of section 23-A is defeated.

Shri S. P. Jain: When the money is not in its hands, it will be very difficult for the company to distribute the dividend.

Shri V. V. Chari: Why assume that the speculative loss is so great that all the other profit is wiped out? If the total commercial profits are very small, section 23-A will not be applied, but once section 23-A is applied, the natural consequences must follow, and the fact that there have been speculative losses cannot obliterate those consequences.

Shri J. J. Ashar: The question of the proportion of the loss does not arise. It is a loss in the hands of the company which you have assessed. If you have not assessed, I have nothing to say.

Shri V. V. Chari: There is a very big margin now allowed, 50 per cent retention.

Shri J. J. Ashar: My appeal to you is this, that it is obvious that the department itself has taken a certain action, and the result is that the company does not have the money to the knowledge and according to the assessment of the department. It would not be *prima facie* fair that that money which does not exist should be still brought into the balance sheet and profit and loss account of the company for distribution. The capital gains should not be included for the purpose of distribution under section 23(a). If you do that, you have to allow capital losses also because it cannot naturally be one-sided. Capital losses are ignored and capital gains are taken into consideration.

Shri Morarji Desai: We do not give any rebate on losses. You cannot set off capital gains for one item against loss on the other item.

Shri J. J. Ashar: Capital loss also will be assessed in the hands of the company. If there is a net capital gain or net capital loss by a company, we should look at the position. The penalty attaches to the company for non distribution.

Shri Morarji Desai: We will see what could be done.

Shri S. P. Jain: There are one or two more points. Suppose a company has a branch outside India and that branch is not remitting the profit to this country. Take for instance, Pakistan, Some of the people have got industries there and that profit is not remitted to India. That profit should not be taken into consideration while arriving at the profit figure of that company.

Shri Morarji Desai: That will be when you are not allowed to bring the profit from that place. But when you are allowed to bring it here but you do not bring it, then it is your fault.

Shri S. P. Jain: If a company has distributed more than what is required under 23(A) bonus in a particular year and if after two or three years.....

Shri Morarji Desai: It will not be set off against that one. It is your choice. Who asked you to do so? We did not ask you to do so? You do it for your own benefit. I am afraid it cannot be done.

Shri S. P. Jain: The profit is sometimes higher than what is anticipated.

Shri Morarji Desai: Even then, keep it and do not distribute it. This is what happened in most of our companies and that is why they are in a bad way. They earn profits but do not spend on their machinery and now they are asking for loans and this and that. Why should that happen because you received more profits. It is not necessary that it should all be divided.

Shri J. J. Ashar: About the depreciation reserve it will not perhaps be the correct term to use in that section.

Shri Morarji Desai: You are referring to sections 104 or 109? I do not know why you are harping on this. We can go to the next point.

Shri H. D. Verma: We come to clause 139 page 48 of our memo. The general notice clause has been deleted. I would submit that that clause should remain.

Shri Morarji Desai: No. Why should general notice be given? Everybody ought to send his return. It is his obligation. Why should there be notice for this. Is not payment of tax an obligatory duty on everybody? The moment the time comes, they should send it. Why should anybody want notice? If you like we will keep the returns saleable at certain places from where you can buy.

Shri H. D. Verma: The main point in this is about the time of filing returns before the expiry of four months.

Shri Morarji Desai: We are considering whether we should raise it from four months to six months.

Shri H. D. Varma: Then, the interest is chargeable at six per cent.

Shri Morarji Desai: It should be a made 12 per cent so that there is no default; there should be a proper deterrent.

Shri J. J. Ashar: I will now come to clause 147 to 153 referred to on page 50 of our memorandum.

Shri Morarji Desai: I hope you will grant that this is an improvement on the present position. We are trying to see what further improvement we can make. The Select Committee is going to consider it.

Shri J. J. Ashar: Only one or two observations. The four years period, 8 years period and 16 years period and indefinite period for different types of offences and things like that that is what I am referring to. Under the Companies Act you are required to keep eight years' books for the purpose of income tax after the assessment. If an assessment is reopened, old assessment, you will have to keep the account books and also the vouchers and sub-vouchers and things of that character so that you may satisfy the income tax officer that there has been no evasion in a particular case. Actually the proof required will be the same as if a new assessment is made. There is no difference in the degree of proof required. That will be a real and genuine hardship. Whether it should be for an indefinite period is a serious question.

Shri V. V. Chari: There is no indefinite period, I hope.

Shri J. J. Ashar: Yes; that is a separate category. You have practically closed all the assessments up to 1941. After that also, there has been a very intensive investigation by the Investigaton Commission and things like that up to 1947.

Shri Morarji Desai: As I said, we are considering these things.

Shri J. J. Ashar: In the case of very old assessments, if it is to be reopened, in order to enable the assessee to meet his case, not only notice will have to be given to him, but it must be a matter which has come to the knowledge of the income-tax officer and not merely the expression "reason to believe". There must be concrete and full proof.

Shri Morarji Desai: We are contemplating giving a notice to the person concerned to explain why it should not be reopened.

Shri J. J. Ashar: He should be heard before the Commissioner and not merely the ITO.

Shri Morarji Desai: He can go on appeal. I cannot say now what shape it will take; we are considering it.

Shri J. J. Ashar: Then, we suggest that reassessment should be completed in one year after it is reopened instead of two years.

Shri Morarji Desai: If the assessee co-operates, it can be completed in one year. If he does not co-operate, how is it to be done?

Shri J. J. Ashar: If he is not co-operating to finish it in one year, he will not co-operate for two years also.

Shri Morarji Desai: I think two years is a sufficient period.

Shri J. J. Ashar: Just as the department can reopen an assessment, the assessee can say "I have been overtaxed in a particular year and the assessment should be reopened for my benefit", so that there is some kind of mutuality.

Then, my colleague raised the question of returns not being filed with the proper officer. You have provided in this clause that if an assessment has been made by an officer without jurisdiction, it can be reopened by the competent officer later on. Please refer to clause 147(1).

Shri V. T. Dehejia: It does not refer to assessment being made by an officer without jurisdiction.

Shri J. J. Ashar: It refers to returns being filed with the wrong officer. If he does not proceed with the assessment, it is all right. But if he proceeds with the assessment, what happens?

Shri Morarji Desai: How can the wrong officer do that?

Shri J. J. Ashar: They have done it in some cases in Bombay. The Jurisdiction was challenged and the assessment was made void.

Shri Morarji Desai: You have done it; we have not challenged it.

Shri V. T. Dehejia: Suppose a firm in Bombay files a return in Assam. The Assam man proceeds with it because there is an office situated in Assam.

Shri J. J. Ashar: If the firm has got an office of business in Assam, the Assam officer can make the assessment.

Shri Amjad Ali: This does not seem to be the import of this section.

Shri V. V. Chari: This clause only says that if a person makes a return to a wrong officer or has made no return at all, then section 34 can be applied. It does not say that after the return is made to the wrong officer and an assessment has been made on that, it can be reopened.

Shri Morarji Desai: Then what relevance has this filing with the wrong officer? What is the purpose of this clause?

Shri V. V. Chari: Suppose you are to be assessed in Bombay and you have not furnished any return to the Bombay officer. He does not know about it. Five years afterwards, he comes to know about it and he asks you to file a return. You tell him, "I have filed the return with the Assam

officer". Suppose the Assam officer has not made any assessment. This clause will cover such a case.

Shri J. J. Ashar: For clarification, the words "who has not made any assessment" may be added.

Shri Morarji Desai: Suppose a man living in Delhi files a return in Calcutta and says he lives in Calcutta. He gets assessed in Calcutta. Why should not that be reopened?

Shri J. J. Ashar: Then it is a question of fraud.

Shri Morarji Desai: Frauds are not provable. In order to escape the proper implications, suppose he goes and gets assessed in Calcutta. Why should it not be reopened? You are trying to protect the wrong-doer. Is that the function. of the Federation?

Shri S. P. Jain: No, Sir. We are not protecting the wrong-doers.

Shri Morarji Desai: There is no reason why such cases should not be reopened.

Shri S. P. Jain: Then, we come to clause 179—page 56 of the memorandum.

Shri Morarji Desai: This is also being considered from the point of view of lessening the rigour of it.

Shri S. P. Jain: If it is a question of *malafide* it is all right. But if it is not *mala fide,* why should the directors and the shareholders be penalised?

Shri Morarji Desai: Why should the Government lose that tax? There can be no question of *bonafides* in this. It must be due to mismanagement. Otherwise, this will not happen. The company has been earning profits on which taxes have to be paid and they have not been paid. It means that they have deliberately avoided the tax and the company goes into liquidation. Why should the directors and major shareholders not pay in a private company?

Shri S. P. Jain: We have recognised the identity of a company and we have also recognised the limited liability of the shareholders and the directors.

Shri Morarji Desai: This is also a limited liability.

Shri S. P. Jain: In the case of the directors no limit has been provided here. Now there is a tendency to appoint technical directors and others. If this provision is incorporated then those people will not be willing to come and help in the affairs of the company. Therefore, there will be several ill-effects if there is this provision.

Shri Morarji Desai: On the contrary, it will make the directors apply their mind and see that things are not mismanaged.

Shri S. P. Jain: Directors do apply their mind and discharge their obligations.

Shri Morarji Desai: Then nothing will go into liquidation. When a company goes into liquidation, it means that there is something wrong.

Shri S. P. Jain: You are perfectly right. If there is a question of fraud etc., it should be applied. But genuine losses can happen.

Shri Morarji Desai: But that they always recover. They do not go into liquidation when there is genuine loss.

Shri S. P. Jain: When the capital has finished, there is no other option but to go into liquidation.

Shri Morarji Desai: As I have already said, we are trying to see how the rigour can be lessened.

Shri S. P. Jain: In the case of the directors....

Shri Morarji Desai: The directors are more liable than the shareholders. This will be recovered only when nothing can be recovered from the company. I can also promise you that we will collect it in the order of priority of the people. We will go to the richest man first.

Shri S. P. Jain: If the directors or shareholders have taken some benefit out of the company, then it is justified.

Shri Morarji Desai: Are not the directors there for receiving benefit? Are they remaining their for doing their duty only?

Shri S. P. Jain: The directors are also shareholders of the company.

Shri Morarji Desai: The shareholders are also there for benefit.

Shri S. P. Jain: The directors may be getting dividend out of their shares.

Shri Morarji Desai: This is not going to be given up entirely. That much is certain. We are going to provide some measure by which we can recover.

Shri S. P. Jain: Be sympathetic.

Shri Morarji Desai: We are.

Shri Narendrabhai Nathwani: Supposing the liability of shareholders who have got ten per cent of the shares in a private limited company is limited, will you be satisfied if we make it optional and make them liable according to the merits of the case? It may be that a person who has got ten per cent of shares has no voice in the management of the company.

Shri S. P. Jain: Then that poor fellow should not be asked to pay.

Shri Narendrabhai Nathwani: Supposing it is left to the discretion of the officer concerned to decide each case on its merits, will you be satisfied?

Shri S. P. Jain: It should not be left to his discretion. The question of option should not be there.

Shri Morarji Desai: What is a private limited company? Why is it called limited? Because it is limited to a few people who are closely associated with each other. The directors are also closely associated. Same is the case with the shareholders. Between them they make a mess and the Government is defrauded of its tax. Why should all of them not pay? I would like to make all of them severally and individually responsible.

Shri S. P. Jain: There may be a difference of opinion.

Shri C. D. Pande: If the minority shareholders of a company—49 per cent—inform the Company Law Administration before they are contacted by the Income-tax Department that the affairs of the company are not sound and they should be absolved from this liability, I think that should be done.

Shri Morarji Desai: How can we provide that here? We can say that the majority shareholders will be paying first—those who own the largest number of shares.

Shri Narendrabhai Nathwani: That is provided for by making the directors liable. The directors are the majority shareholders. That liability who want to keep.

Shri Morarji Desai: We are considering it. The directors cannot be let off.

Shri S. P. Jain: As a limit has been fixed in the case of the shareholders, some limit should also be fixed in the case of the directors.

Shri Morarji Desai: We can receive from all directors *pro rata*, not from one.

Shri C. D. Pandey: You can realise from the directors who mismanage the affairs.

Shri S. P. Jain: There may be a difference of opinion betwen particular groups.

Shri Morarji Desai: If any director exposes the misdeeds of his collegues we will reward him. Anyway, this will have to be considered.

Lala Karamchand Thapar: Then we come to clause 254—page 62 of our Memorandum.

Shri Morarji Desai: We are considering this point.

Shri H. D. Varma: Then I come to clause 271 relating to penalties. There may be some extraneous circumstances which every income-tax officer may not be able to appreciate.

Shri Morarji Desai: It is very very difficult to make distinction between people. Why should they become liable for penalty?

Shri H. D. Varma: There may be circumstances which can be explained.

Shri Morarji Desai: Then no penalty will be levied. Penalty means deliberate default. Why should there be softness about it? Why is the Federation so careful to save the defaulters?

Shri S. P. Jain: We are not advocating for the defaulters. That is not our intention.

Shri Morarji Desai: Generally that is what is happening. Till now I have not received one suggestion from the chamber to tighten the Income-tax Act.

Shri S. P. Jain: It is already so tight that there is nothing further to suggest.

Shri Morarji Desai: Everybody wants a concession. Nobody suggests that this or that tax may be levied.

Shri J. J. Ashar: About the jurisdiction of income-tax officers in respect of abetment or orders issued to a third party to produce documents and things like that, he has been given power to impose fine on a third party who, in his opinion, has intentionally failed to supply the document to the income-tax officer. This is a judicial power.

Shri Morarji Desai: We are going to consider that provision.

Shri J. J. Ashar: Then, when any professional man has been adjudged abettor, since it is a very important matter,.....

Shri Morarji Desai: We are going to consider it. You leave the professional men alone. They are competent to plead for themselves.

Chairman: On behalf of the Committee I thank you for giving your suggestions.

Shri H. D. Varma: Let me, on behalf of the Federation, thank the Committee for giving us an opportunity to present our viewpoint on this important Bill. Let me also thank the hon. Finance Minister for agreeing to consider some of our suggestions.

Shri Morarji Desai: Our consideration will be genuine. But that does not mean that it can end only as you desire. I thank you for being brief and to the point.

(The witnesses then withdrew)

The Committee then adjourned.

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

Friday, the 23rd June, 1961 at 08.04 hours.

PRESENT

Shri Mulchand Dube—*Chairman.*

MEMBERS

2. Shri K. R. Achar
3. Shri P. Subbiah Ambalam
4. Shri Amjad Ali
5. Shri Premji R. Assar
6. Shri Bahadur Singh
7. Shri Prafulla Chandra Barooah
8. Shri Shree Narayan Das
9. Shri M. L. Dwivedi
10. Shri D. A. Katti
11. Shri P. Kunhan
12. Shri Mathew Maniyangadan
13. Shri T. C. N. Menon
14. Shri Radheshyam Ramkumar Morarka
15. Shri Narendrabhai Nathwani
16. Shri Naval Prabhakar
17. Shri Ram Shanker Lal
18. Shri Jaganatha Rao
19. Shri K. V. Ramakrishna Reddy
20. Shri Asoke K. Sen
21. Shri Laisram Achaw Singa
22. Shrimati Tarkeshwari Sinha
23. Shri Radhelal Vyas
24. Shri Morarji Desai
25. Shri Bhausaheb Raosaheb Mahagaonkar.

DRAFTSMAN

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*

Shri V. V. Chari, *Senior Member, Central Board of Revenue.*

Shri J. P. Singh, *Member, Central Board of Revenue*

Shri I. P. Gupta, *Deputy Secretary, Department of Revenue, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Institute of Chartered Accountants of India, New Delhi.*

1. Shri S. N. Desai
2. Shri S. Ghose
3. Shri B. R. Malhotra.

II. *National Chamber of Industries and Commerce, U.P., Agra*

1. Shri Niranjan Lal Potdar
2. Shri Phul Chand Gupta
3. Shri Babu Lal Goyal

III. *Indian Federation of Working Journalists, New Delhi*

Shri C. Raghavan.

IV. The *All-India Manufacturers' Organisation, Bombay*

1. Shri Murrarji J. Vaidya
2. Shri S. M. Dahaunkar

I. INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, NEW DELHI SPOKESMEN:

1. Shri S. N. Desai
2. Shri S. Ghose
3. Shri B. R. Malhotra

(*Witnesses were called in and they took their Seats*)

Chairman: The Memorandum which you have sent has been studied and if you like you may elaborate any point.

Shri S. N. Desai: Sir, We are very grateful to you for giving us this opportunity. We have submitted this Memorandum only on certain important points. On reconsideration of this Memorandum we have found that there has been some misunderstanding in the interpretation of certain clauses and at the outset I would like to mention them so that the time of the Committee may not be wasted. We would not like to press for them. The first is clause 2(22) which deals with "dividend". Then there is clause 2(47); then there are clauses 22, 23; and finally there is clause 64.

Shri Morarji Desai: You go page by page. That will be much better and more easy to refer to.

Shri S. N. Desai: Yes. Page 1, para 3-*Clause* 9: We desire that provisions similar to those under Sections 42 and 43 contained in the Bill should be reworded and brought in line with the UK Act as we feel that with the industrialisation of the country and a lot of foreign capital coming here and the business being developed, it is very necessary that the term "business connection" is very clearly defined, so that non-residents are made to understand what their liabilities are instead of keeping them in suspense.

Shri Morarji Desai: You suggest an alternative draft. We will consider that.

Shri Amjad Ali: The Tyagi Committee and all others have gone into this question. They have found it difficult to define the term "business connection". Will you please attempt to define it and pass it on to us?

Shri Morarji Desai: You suggest an alternative draft and we will give very respectful attention to it.

Shri A. K. Sen: What is the objection to the decided interpretation of this expression?

Shri S. N. Desai: At times it is very difficult to decide the cases.

Shri A. K. Sen: Each case is decided on facts. I can tell you nobody will be able to give you a definition. You are professional men. All of you have had wide practice in this field.

Shri S. Ghose: The Tyagi Committee Report has suggested that this term should be taken as connoting only 'trading in India'.

Shri A. K. Sen: What is trading in India? There are so many things. Each case is decided on its merits. That does not solve the difficulty. Judicial interpretation on this is fairly satisfactory. By defining it, it will only create more difficulties.

Shri Morarji Desai: Let them suggest a draft. We are trying to do it, but it is not so easy. We will consider it.

Shri S. N. Desai: Clause 10(10) (Para 4). This clause deals with death-*cum*-retirement gratuity.

Shri Morarji Desai: We are going to consider this very sympathetically.

Shri S. N. Desai: Para 5, clauses 11, 12, 13: These provided that in a case where even a part of the income of a religious trust is utilised for benefiting a relative of the settler, the whole exemption would be withdrawn. Our suggestion is that such trust should be assessed only to the extent the benefit is granted to a relative. It may happen that the relative is only a clerk in the office of the trust. Such an intention of the law should be made very clear.

Shri Morarji Desai: If he s a clerk in the office, then he receives his salary. He does not receive any grant from the trust.

Shri S. N. Desai: This very thing requires clarification.

Shri Morarji Desai: It is only when he receives a donation from the trust that he comes in. If he is a clerk, then there is no bar for him.

Shri S. N. Desai: Supposing a trust grants a scholarship to a students who is a relative of the settler; in an ordinary course then student may be a bright one, but unfortunately he being a relative, would raise a difficulty to his receiving the scholarship.

Shri Morarji Desai: It is not unfortunate. If he falls in line with others, then he is not bothered. But if he is given a scholarship as a relative, then only it matters.

Shri V. T. Dehejia: If the relative happens to be a brilliant boy and gets a scholarship in line with others, that is not covered by this clause.

Shri A. K. Sen: It is quite clear.

Shri Morarji Desai: We want to widen the definition of 'relative' for this purpose. Sister's son can be given a donation; brother's son can be given a donation. We don't want all that.

Shri Amjad Ali: The term 'relative' has been defined in the Companies Act which may be adopted here.

Shri V. T. Dehejia: That is too wide .

Shri Morarji Desai: We will try to define it for this purpose only not for any other purpose.

Shri A. K. Sen: Under the existing Act, certain categories are already defined.

Shri S. N. Desai: Clause 18 (Para 6): It seems to change the basis of taxation of interest on securities from "receipt basis" to "accrual basis". We feel that that would cause a hardship. Suppose an assesse does not collect interest for a couple of years.

Shri Morarji Desai: Why does he not collect interest?

Shri S. N. Desai: Many times it happens that it cannot be collected from year to year.

Shri Morarji Desai: Why not? Is it to bring down the rate of taxation?

Shri S. N. Desai: My objection is not to its being taxed but to the same being taxed before it is collected.

Shri Morarji Desai: In a particular year if it is not collected that brings down the rate of tax. Why should I allow that?

Shri A. K. Sen: Are you thinking of collection not being possible on account of dispute regarding succession, etc?

Shri S. N. Desai: That happens in very rare cases.

Shri Morarji Desai: We might try to make some distinction between these two.

Shri V. V. Chari: Suppose it is not collected for two-three years because of a dispute regarding ownership or succession, and ultimately that dispute is resolved. Now he will receive three years' interest in one year which means the tax burden will be heavy for the whole amount. So, it will be in the interest of the assessee himself to distribute it in three years.

Shri A. K. Sen: That means you deem it to have been collected in the respective year.

Shri V. V. Chari: That is the intention of this provision. Suppose he receives Rs. 10,000/- in one year, the rate of tax will be enhanced, whereas if you spread it out over four years it will mean only Rs. 2,500/-.

Shri Narendrabhai Nathwani: But the assessee should be given the option to follow whichever system of accounting he likes.

Shri Morarji Desai: It is not very fair that a thing should be taxed when it is not received. If it is not received on account of the assessee's fault, then it is a different matter.

Shri A. K. Sen: Why not you follow the ordinary system of accounting under which the amount is liable to be taxed the moment it is due? Those who follow the mercantile system of accounting are liable to be taxed the moment their income is credited, whereas those who follow the cash system of accounting are not liable to be taxed until they receive the income. Shri Nathwani's point is why we should tax the income of the man who follows the cash system of accounting before he receives it.

Shri Morarji Desai: We will consider this.

Shri S. N. Desai: Clause 32 Paragraph 9. This provides that the loss that may be incurred on account of the assets sold or discarded within the same year will not be treated as revenue loss whereas clause 41(2) provides that if there is a profit on this account in the same year it will be taxed. Both things should be put at par.

Shri V. V. Chari: I will explain that point. If you buy a machinery for Rs. 2 lakhs in a particular year and sell it for Rs. 2 lakhs then the question of giving depreciation will not arise. If you buy it for Rs. 2 lakhs and sell it for Rs. 3 lakhs then there is no revenue gain because it is only a capital gain. If you buy for Rs. 2 lakhs and sell it for Rs. 1,80,000/- then it is a capital loss.....

Shri S. N. Desai: The postion is that if I buy a machinery and use it for four months I would be entitled to depreciation. Subsequently, when it is sold within the same year, at a loss, it would be treated as a capital loss.

Shri A. K. Sen: There may be depreciation in the legal sense for four months; but it is never apportionable to a month . . .

Shri V. V. Chari: Suppose you buy it for Rs. 2 lakhs and get a depreciation of Rs. 20,000/-. That means Rs. 1,80,000 is the written down value. Then you sell it, but this Rs. 20,000/- is taxable. What is the point in giving depreciation and taxing it? Now there is neither depreciation nor tax on it.

Shri S. Ghose: If I sell it for Rs. 1,80,000/- what happens?

Shri V. V. Chari: Then it is capital loss.

Shri S. N. Desai: Anyway I am not pressing it.

Clause 36, (Para 10), deals with bad debts. Sub-clause 2(i)(a) lays down that only such debts which have been taken into account in computing the income of the assessee are allowable as bad debts. We have set out various instances where advances made for the purpose of business, that though have not been incurred for the purpose of computing the income, still are advances for the purpose of business. These also should be taken into account as bad debts.

Shri V. V. Chari: They are to be treated as trade advances and are admissible as they constitute an expenditure incurred on business.

Shri A. K. Sen: Is there any substantial difference between the old expression and the new one?

Shri V. V. Chari: This is Law Commission's draft.

Shri Morarji Desai: That does not make it sacrosanct.

Shri A. K. Sen: Where an existing expression has a run without any difficulty, I am personally in favour of its retention. Is there any impelling reason for changing that expression? As Mr. Chari knows, this has had a very wide application. Why change it? That expression never created any difficulty.

Shri Morarji Desai: We will consider it.

Shri S. N. Desai: Then I come to Clause 40 (Para 12) which deals with the question of deduction of the salary paid to a member of the Hindu undivided family who actually works for the business.

Shri Morarji Desai: About that also we are considering as to what is to be done in respect of a member who actually manages the business. That we are going to consider. But without doing anything, nobody should get.

Shri S. N. Desai: That is not our case.

Shri Morarji Desai: Not simply because he is in charge. Suppose there are only securities and interest is obtained. What is he doing?

Shri S. N. Desai: The hardship comes only when the person is rendering service to the business and the salary or remuneration paid to him is not allowed to be deducted. If the work involved consists in collection of interest on securities or dividends. the question would not arise.

Shri Morarji Desai: They can have an internal arrangement by which there is a deduction of so much expenditure towards this salary, for the purpose of Income-tax. That will be an internal arrangement. We are trying to see that genuine cases are provided for.

Shri A. K. Sen: About clause 37(2) (Para 11) you are not pressing?

Shri S. N. Desai: No, because the Finance Act has already accepted that.

Shri Morarji Desai: We have accepted that, and that will be incorporated.

Shri S. N. Desai: Then I come to Clause 57(iii), paragraph 13. Our point is that any expenditure that an assessee has to incur on account of maintaining account books or for obtaining a representation of the case before the tax authorities should be allowed as a deduction. Today cost of maintenance of account books is being allowed as deduction in some cases. There is no reason why it should not be allowed in cases where the income is from property or from other sources; because, the assessee anyhow has to maintain the account books.

Shri V. V. Chari: You have the six per cent collection charges.

Shri S. Ghose: The main difficulty is on account of the wording "exclusively laid out for the purpose of making or earning income from other sources". That will not allow the expenses incurred for keeping accounts. So the wording may be changed.

Shri Morarji Desai: Why should we pay for all experts?

Shri S. Ghose: This is a fee for keeping accounts.

Shri Morarji Desai: This is governed by the six per cent maintenance. What else is it for?

Shri S. N. Desai: It is for collecting rent; remuneration of the man who goes round from door to door to collect rents.

Shri Morarji Desai: How is the rent collected without maintaining an account? What else is that six per cent for? If it is a large property then there is a large income, and the six per cent will become a large sum.

Shri A. K. Sen: That is a proportion determined by experience, covering all the reasonable expenditure.

Shri Morarji Desai: If you think that six per cent is small, then it is a different matter. Then it should be argued on facts.

Shri S. N. Desai: That is not our case.

Shri A. K. Sen: Even now it is six per cent or the actual. And six per cent is always better.

Shri S. N. Desai: Then I come to clause 67(ii), paragraph 15. This clause deals with allowances of interest paid on borrowed capital by a partner. We have made a suggestion that in addition if a partner has to employ a person to look after the

business on his behalf or has to enter into a sub-partnership, such an expenditure or sharing of profit should be allowed as a deduction.

Shri V. T. Dehejia: How can it be given in the case of sub-partners?

Shri S. N. Desai: Suppose I am joining a partnership firm and I am procuring money from somebody else. I enter into an agreement whereby I have to pay interest and share the profit which I get from the other firm.

Shri Morarji Desai: He must have some other business. If he has any other business it is covered by that. He should have a separate business esablishment. Otherwise, how is he a partner? What accounts does he keep if he receives only this sum? And this is the law so far. It has not changed. Why give a further advantage now?

Shri S. N. Desai: It has been changed in so far as it permits interest on borrowed capital as a deduction. Accordingly we thought that there are one or two other things which we should also point out.

Shri Morarji Desai: Because you are given one advantage, should there be another advantage given, and the door thrown open?

Shri A. K. Sen: Don't press all your points!

Shri Morarji Desai: We might be inclined to take away what is given.

Shri A. K. Sen: Press the good points.

Shri S. N. Desai: Then I come to clause 79 which is about the 51 per cent capital and the carry-forward of loss. Our suggestion is that the benefit of the carry-forward of loss should be there.

Shri Morarji Desai: That is being considered.

Shri S. N. Desai: Then I come to paragraph 17—clauses 104 to 109. We have made suggestions that certain deductions should be made in arriving at the distributable income, like foreign profits which it is not possible to remit from that country. It should be kept in abeyance. And about the property, the actual expenditure they have incurred should be taken into account and not what is a notional income. In any case, as the Companies Act prohibits . . .

Shri Morarji Desai: Foreign profits which are not capable of being received are not taxed at present.

Shri S. N. Desai: They are included, for the purpose of distribution of dividend in the accounts.

Shri V. V. Chari: In regard to Pakistan ample provision has been made . . .

Shri Morarji Desai: For not taking it into account. But if they choose not to bring it, it should be included.

Shri S. N. Desai: Income is kept out of the country only because of the restrictions.

Shri S. Ghose: When it is brought in India it should be included.

Shri Morarji Desai: If they don't bring it voluntarily, it should be included. Pakistan is provided for amply and there has been no complaint from anybody about it.

Shri A. K. Sen: I think Burma also is provided for.

Shri Morarji Desai: It is for Burma, Pakistan, etc.

Shri A. K. Sen: But if he does not choose to bring, then that is a different thing.

Shri Morarji Desai: Then it should be included.

Shri S. N. Desai: But where a country restricts repatriation of funds, it should not be included; it should be included only when it is brought to India.

Shri Morarji Desai: That has been provided.

Shri S. N. Desai: It is not there under the clause.

Shri Morarji Desai: There has been no complaint on this score. This came to my notice three years ago that this is what is being done. Then we issued orders that it should not be done. It is there. Those orders hold good.

Shri S. N. Desai: Another suggestion in this behalf is that in any case, as the Company Acts prohibits distribution of any dividend out of capital to the shareholders, the distribution under this clause should be restricted to the actual surplus that the company has disclosed in its accounts unless there has been a concealment of income or things like that. Under the Companies Act dividend cannot be paid out of capital.

Shri A. K. Sen: It is an illegal thing.

Shri S. N. Desai: In this connection, if we take the assessee into account, who might have earned higer profits previously, and from the past assessment, there is an overflow of tax liability, with the result that in actual practice the actual surplus with the company is very much shorter of the actual income assessed—to which section 23A applies—the company would not be able to declare any dividends.

Shri V. V. Chari: There is 50 per cent adjustment for all that.

Shri Morarji Desai: Is there any case? If you can give a case, we can consider that. So far there is no case, but if there is a tangible case coming up, we might consider as to what the difficulty is.

Shri S. Ghose: The assessment is made on the notional income. In the accounts we charge depreciation and other expenses with the result that the accounts may show a loss of Rs. 20,000 but according to the assessed income it might be a profit of Rs. 20,000/-.

Shri A. K. Sen: Even for the existing Section 23A?

Shri S. Ghose: Yes.

Shri A. K. Sen: Section 23A cannot be applied merely on a notional income. The decisions are quite clear. If section 23A is applied on a notional income, it will be upset immediately. Why are you taking up a case which is contrary to the existing law?

Shri S. Ghose: When we are having a comprehensive law, it is better to clarify.

Shri A. K. Sen: But as the Finance Minister is saying, is there an actual case? I think there is none. If an Income-tax Officer actually applies section 23A on notional income, it will be upset immediately.

Shri Morarji Desai: Better send it if you have a case.

Shri S. Ghose: I have got one.

Shri Morarji Desai: Please send it. If a wrong thing is done, we will clarify it further and see that it does not happen. Please let me know of the case so that we can ask that officer for an explanation. Then it will not happen.

Shri S. N. Desai: Then I take up clause 178 (paragraph 18). It provides for the Liquidator to give notice to the Income-tax Officer within 30 days of his appointment so that he may settle for the tax liability of the company in liquidation. Our suggestion is that there should also be a time limit provided for the Income-tax Officer to intimate to the liquidator the amount of taxes payable by the company, otherwise the liquidation proceedings would drag on for a number of months.

Shri Morarji Desai: Until this is done he cannot disburse anything. That is not right. We are going to provide for that.

Shri S. N. Desai: Another aspect of this matter is that the provision should be brought in line with that in the Companies Act because a Liquidator is not in a position to make any payment to the Income-tax Department irrespective of the provisions under the Companies Act.

Shri Morarji Desai: He cannot give preference to those who are secure. That is not the intention. The intention is not to give a higher priority by this Act. That is going to be considered.

Shri S. N. Desai: Then clause 179 (paragraph 19) deals with the liability of the Directors.

Shri Morarji Desai: This matter has been brought up by all the people. something has to be done, but we have to break the rigour of the clause, as it is, to some extent. So, we are considering that clause.

Shri S. N. Desai: We have made a suggestion that persons who are actually in control of the management should be made liable.

Shri Morarji Desai: But the persons actually in management may not be in a position to give anything. Why should a Director not pay? Why should I leave him out? The only question to consider is whether the shareholders should have a liability.

Shri Amjad Ali: He says that the very basis is wrong.

Shri Morarji Desai: There is no wrong basis. But it is going to be considered by the Select Committee.

Shri S. N. Desai: Then I come to Clause 182 (paragraph 20). It provides for the firm's liability to pay tax of a partner if it cannot be recovered from the partner. It is not proper to ask a firm to pay because it is not a debt incurred by the firm. If a partner does not pay the tax....

Shri Morarji Desai: The firm should pay. The tax is levied on the income from the firm.

Shri A. K. Sen: This separate liability of the partner to pay is for the advantage of the firm, otherwise it is for the income of the firm. The device of registration is made available to the partners and they are assessed separately. But that is notional. It is the income of the firm. So if the partner refuses to pay, why should the firm not pay?

Shri S. Ghose: The firm only can pay to the extent of the accumulations in his account.

Shri A. K. Sen: This is really an advantage given to the partners and if they do not choose to pay for the liability fixed on them, the partnership will have to find the money.

Shri S. N. Desai: Clause 252(2), Paragraph 21. It is regarding the Accountant-Member of the Tribunal. We feel that a period of ten years for a Chartered Accountant to be in practice before he can be appointed as a Member of the Tribunal, is rather long, as compared to the three year period that is provided for the Assistant Commissioners.

Shri Morarji Desai: Assistant Commissioner of Income-tax means that he has been an Income-tax Officer for more than ten years. So, practically it is 13 years or more.

Shri S. N. Desai: But the Assistant Commissioner may not be an Accountant.

Shri Morarji Desai: He need not be an accountant. He becomes an accountant the moment he becomes an Income-tax Officer. He passes an examination and then gets into it.

Shri A. K. Sen: By the time a man becomes an Assistant Commissioner he is fit to hear appeals.

Shri S. N. Desai: We do not doubt that. But on an Income-tax Appellate Tribunal you do require an Accountant-Member.

Shri Morarji Desai: A Chartered Accountant does not become very competent immediately he becomes

an accountant just as a lawyer does not become competent immediately he becomes a lawyer.

Shri A. K. Sen: I think a lawyer has also to put in ten years. Ten years is not a very long time to pick up the work. A Tribunal is the last body to find facts. I think this is a very healthy thing.

Shri S. Ghose: We only say that it should be reduced to seven years.

Shri Morarji Desai: Why put him so early in the Tribunal?

Shri A. K. Sen: The Tribunal must be composed of very responsible and experienced people.

Shri S. N. Desai: Our other suggestion is that those Chartered Accountants who have been for more than ten years in the Department itself but who have not become Assistant Commissioners should be considered entitled to be made Accountant-Members.

Shri Morarji Desai: They cannot be given preference over the non-Accountants. They have the same standing, whatever be the degrees that they may have.

Shri A. K. Sen: How is it that they have not become Assistant Commissioners? I suppose it is just because they have not been found as good as the others.

Shri Morarji Desai: Why do you want to have a caste? Caste seems to be in our blood.

Shri S. N. Desai: Paras 22 and 23. I would like to take clauses 275 and 288 together. About the penalties under the Act, it may be on various grounds. On a general criterion, that penalty has been left to.....

Shri Morarji Desai: This has attracted the attention of the Select Committee. It is going to be considered very carefully.

Shri S. N. Desai: As regards the Chartered Accountants.....

Shri Morarji Desai: Which should be the agency, who should give the punishment, what should be the criterion for disqualification, who should decide that, all that is going to be considered very carefully.

Shri S. N. Desai: One small point so far as our Institute is concerned. We have got nominated members on the Council. One Member has to be on the Disciplinary committee. Up till now, a C.B.R. Member has been on the Committee.

Shri V. V. Chari: Not for the last 6 years.

Shri S. N. Desai: It would be appropriate if this matter is left to be dealt with by the Disciplinary Committee and thereafter it should go to the High Court. The Government can nominate a Member of the C.B.R. to be on the Disciplinary Committee which power they have got already.

Shri V. T. Dehejia: After the conferment of such a power on the Lords to punish the Peers.

Shri Morarji Desai: On that point I feel strongly. Not only punishment, judgement is to be left to you. Why should that be so? Why should a person be judged by his own caste?

Shri S. N. Desai: The real position is that even after an enquiry is held by the Disciplinary Committee, the matter has to go to the High Court. It is the High Court which decides the matter finally and not we. We only make an enquiry into the matter.

Shri Morarji Desai: Why should you leave it to the High Court? An appeal can go to the High Court. We are not saying that an appeal should not go. Why should we go to the High Court in every case?

Shri S. N. Desai: When such a matter is taken up, it is bound to go to the High Court.

Shri Morarji Desai: When it goes in appeal, it is a different matter. When it goes in original, it is a different

matter. It takes more time. If it goes in original, then. there will be an appeal. It will be twice.

Shri A. K. Sen: What is suggested possibly is, if these matters go in original to the High Court, it would prevent frivolous and malicious complaints being agitated in the ordinary courts by any man. It is not a bad suggestion to have a Member of the C. B. R. in the Committee.

Shri Morarji Desai: We have already one. We nominated Shri Nargolwala. We are going to consider all that.

Shri S. N. Desai: At the same time, this power should not be entrusted to the department itself which is an interested party being a complainant.

Shri Morarji Desai: We are going to consider all that. Even if the power is with the department, if an appeal is provided, there will be no difficulty. We have kept our mind open.

Shri S. N. Desai: I have finished with my representation. If Members want to ask question, I will answer.

Chairman: Thank you.

(*The witnesses then withdrew*).

II. National Chamber of Industries and Commerce, U.P., Agra

Spokesmen:—

1. Shri Niranjan Lal Potdar.
2. Shri Phul Chand Gupta.
3. Babu Lal Goyal.

(*Witnesses were called in and they took their seats.*)

Chairman: With regard to the memorandum that you submitted, it may be taken that it has been read. You may concentrate upon the important points that you want to raise in the evidence.

Shri Morarji Desai: Yours seems to be the longest representation.

Shri P. C. Gupta: And the hardest worked. It has taken a lot of time and labour.

Shri A. K. Sen: How do you know what amount of work others have done?

Shri P. C. Gupta: I leave it to the Members to decide.

Shri Morarji Desai: It is more difficult to put the points concisely then to spread them out.

Shri P. C. Gupta: Unfortunately, the time at our disposal was rather short.

Shri Morarji Desai: If you could produce 70 pages in the short time, I do not know what would have been the case if you had more time.

Shri P. C. Gupta: We could have shortened the whole thing.

Shri N. L. Potdar: With your permission, I am first taking page....

Shri Morarji Desai: You may take page by page and concentrate on the most important things. We have already heard so many people and we have said that we are going to consider certain things. We will tell you when that clause comes, so that the discussion may be precise.

Shri N. L. Potdar: One point that we want to place before you is that there are many provisions in the law under which the I.A.C. or C.I.T. gives approval or determines the questions referred to him for decision or through the instructions of the C.B.R. At times, the Income-Tax officer refers many questions to the I.A.C. or C.I.T. for determination. I would request that in all these cases, the assessee must be given a hearing.

Shri Morarji Desai: I am sorry. Where it is necessary it will be given. Not otherwise. It cannot be provided in the law.

Shri N. L. Potdar: My point is this.

Shri Morarji Desai: Your point is seen. Sometimes, it is very confidential and private. How can it be referred to you?

Shri N. L. Potdar: We only want it where there is a question of penalty and the Income-tax officer recommends a particular amount. What we want to say is that in such a case, the assessee should be given a hearing by the I.A.C. so that he may know whether the particular penalty is proper or not, according to the circumstances and the facts of the case.

Shri Morarji Desai: Has not the ITO heard him and given him a chance?

Shri P. C. Gupta: Many times it goes by default, because the ITO thinks that this is a question to be decided by the IAC.

Shri A. K. Sen: So far as penalty is concerned, it is appealable.

Shri V. V. Chari: This particular situation has been met by actually amending the Act. So far as penalties are concerned, the ITO will deal with penalties upto a certain limit, the IAC of a higher magnitude. Each one of them will give the assessee an opportunity of being heard before the penalty is imposed. In fact, that is the whole basis of the new Act. So your problem is taken into account.

Shri P. C. Gupta: As a matter of fact, there are five or six points here where the permission of AAC has to be taken. Take for example, 23A, actions.

Shri Morarji Desai: When he asks for instructions, the IAC cannot call him for hearing. When the ITO is going to dispose of a penalty, it is his business to hear him, not the IAC.

Shri P. C. Gupta: But the law provides that he can take action only with the approval of the IAC.

Shri Morarji Desai: Even then, it will go in appeal to the AAC. Let him plead there.

Shri P. C. Gupta: The difficulty is this. When he goes to the Appellate Assistant Commissioner, he says, 'You are raising points which do not appear to have been considered by the I.T.O..

Shrimati Tarkeshwari Sinha: The ITO will consider those points.

Shri P. C. Gupta: The AAC says that this action has been approved by an officer of equal rank and he feels that his discretion is fettered.

Shri Morarji Desai: That is not so. We will tell them that.

Shri V. V. Chari: Kindly see clause 107. This point is met there.

Shri Morarji Desai: You take it up when that clause comes up and not by fits and starts.

Shri P. C. Gupta: Yes.

Clause 2(22)—There are two things we wish to submit: If a person has been advanced a loan, it is treated as income from dividend, during the year in which the amount is received. Firstly, sometimes advances are given to poor employees. I have no dispute so far as important shareholders are concerned, but it may create hardship if poor employees are given advance and the entire amount is treated as income of that person during the year in which they received the advance. Therefore, my submission is that unless and untill the person who has received an advance holds a substantial share in the company along with relatives, this provision should not apply. Otherwise, it will create hardship on the poor employees.

Shri V. V. Chari: How can advance to an employee be treated as dividend unless he is a shareholder?

Shri P. C. Gupta: He is a shareholder; he may hold two shares.

Shri V. V. Chari: This is for a private company, and the shoreholders will be substantial shareholders.

Shri P. C. Gupta: Not necessarily. Employees are sometimes taken as nominal shareholders.

Shri A. K. Sen: Employees are taken as partners also.

Shri Morarji Desai: You think only of exceptional cases and then want a provision to cover that; and then apply it to the other cases.

Shri Radheshyam Ramkumar Morarka: Under this definition, of control being in the hands of 5 persons or less, most of the companies would become private companies.

Shri V. V. Chari: They will not give big loans to employees.

Shri Radheshyam Ramkumar Morarka: Suppose only small loans are given. Take, for example, the Tata Iron & Steel company. Under this definition, of 5 persons managing the affairs, this Tata Company would also become a private company.

Shri V. V. Chari: It is not a private company.

Shri Radheshyam Ramkumar Morarka: It is not but I am giving an example which fits in with your definition. Take any other company. For example. the India United Mills. 5 persons are in the management of the company. Still that company has got 20,000 shareholders. But according to this new definition, because 5 persons are in management, it would be a private company.

Shri Morarji Desai: That should not be. Why should that be so?

Shri V. V. Chari: If the majority of shares is held by less than 6 persons, obviously it has got all the elements of a private company.

Shri Radheshyam Ramkumar Morarka: I agree.

Shri V. V. Chari: If any loan is given to one who is not one of these five, it should not be treated as a dividend in his hands.

Shri Radheshyam Ramkumar Morarka: That is the point.

Shri Morarji Desai: We will consider that.

Shri P. C. Gupta: My second submission in this connection is this. Any dividend paid by the company in subsequent years and adjusted towards this advance is excluded from the total income. So far so good. But suppose a man getting salary refunds the advance out of his salary, he gets no rebate on that.

Shri Morarji Desai: Why not? If the salary advance had been taxed, he is bound to get rebate. He cannot be taxed twice on the same part of the salary.

Shri P. C. Gupta: Let me give an example. I have taken an advance of Rs. 10,000 from a company. This is treated as dividend income.

Shri Morarji Desai: It won't be, if you are a salaried servant. If you have taken Rs. 10,000 for building a house or buying a car or something like that, then it is laid down that it will be deducted from your salary month by month on that basis. Then that will not be considered.

Shri P. C. Gupta: I may be a salaried person in company A, and I take an advance from company B.

Shri Morarji Desai: Then you are not a salaried servant in B. How is it to be deducted from salary? The question does not arise.

Shri P. C. Gupta: I have taken an advance of Rs. 10,000 which has been treated to be my income. Subsequently, I have got another source of income, that is, salary. Out of that, I return Rs. 5,000 to the company B from which I have taken the advance.

Shri Morarji Desai: That won't be given anything.

Shri V. V. Chari: One is dividend. and the other is salary. What is the connection between the two?

Shri P. C. Gupta: It is not dividend. It has been deemed to be dividend under the provisions of the law. Equity demands that when I refund the advance to the company, I should be given rebate.

Shri Morarji Desai: He cannot be given exemption in salary.

Shri P. C. Gupta: When I refund the money which has been taxed as dividend, although it was not a dividend, then the necesary rebate should be allowed to me.

Shri Narendrabhai Nathwani: You are reaping the advantage of the loan for that period.

Shri P. C. Gupta: Yes, I have taken the advantage.

Shri Narendrabhai Nathwani: You return that advantage of loan.

Shri P. C. Gupta: When I return it, I must be given rebate.

My point is this. I am an employee of a company and I am receiving Rs. 2,000 per month. For the marriage of my daughter I take an advance of Rs. 10,000 from company B. This Rs. 10,000 from company B is treated to be my income in the year in which I take the advance. Subsequently, in order to regulate the loan I take my income from the company...

Shri Morarji Desai: He will be given a rebate in his dividend and not in his salary. If he has received that advance from company B where he is not a servant but a shareholder, that means he has received an advance of the dividend that is taxed. In subsequent years if he pays it through further dividends, it will be given a rebate there but it cannot be given a rebate in his salary.

Shri P. C. Gupta: Supposing I had a fixed deposit or a treasury Bill which I had cashed and I refund the loan, should I not be given a rebate?

Shri Morarji Desai: Why pay that way? It cannot be done. This sort of strategem could not be provided for anybody. It is free for you not to take an advance. If you had a fixed deposit, take it to the bank.

Shri P. C. Gupta: The other point I want to refer to is about the words 'accumulated profits'. The definition of accummulated profits as given takes into consideration the profit up to the date of the advance. How is the income-tax officer going to determine the profits from the date of closing the account or to the date of the advance? It will be a leap in the dark. There appears to be no important reason as to why we must make that provision. My submission, therefore, is that the profits from the last date of the preceding year to the date of advance be ignored. It would mean that they should be confined only to the profits accumulated up to the last date of the preceding accounting year. We do not know the profits of the current year and the income-tax officer will have no ground to estimate the same.

Shri V. V. Chari: In the Jethalal case, the Bombay High Court told us about this loophole. If an income is made actually and it is out of the current year's dividend paid, they were treating as not accumulated profits. In order to get over this position, it was done deliberately some years ago. This was already there in the Act; it was deliberately put there.

Shri P. C. Gupta: You may consider the advantages as well as the disadvantages.

Shri V. V. Chari: It was a deliberate decision taken by the Government as a result of the Bombay High Court decision.

Shri A. K. Sen: I remember it now. This is put in here because everyone was doing it.

Shri P. C. Gupta: But the provision as it is will create hardship.

Shri Morarji Desai: He knows the law. He knows what will be the implication of his taking that loan. Let him take the loan in another way.

Now, you have taken one-fourth of the time in the first page itself.

Shri P. C. Gupta: I come to clause 4 and I refer to para 4 of our memorandum. It provides that 'income tax' shall be charged in respect of the total income of the "previous year or previous years, as the case may be".

Shri Morarji Desai: Does this clarify the intention?

Shri V. V. Chari: It is actually done at the suggestion of the Law Commission. A man may have several sources of income and he is entitled to

have different periods for different heads of income.

Shri Morarji Desai: Therefore, it should be confined to them.

Shri V. V. Chari: It is obvious that....

Shri Morarji Desai: What is so obvious to everybody is not so obvious many-a-time to the income tax officer and therefore, we have got to make it clear.

Shri P. C. Gupta: If the words 'falling within the same financial year' are added, then it will make it clear.

Shri V. V. Chari: We shall consider how we can make it clear.

Shri P. C. Gupta: Now, I come to page 4, clause 8. Here it is provided that dividend is deemed to be income of the previous year in which it is so declared, distributed or paid. It may be declared in one year and paid in another year.

Shri V. V. Chari: This is a bit complicated. Dividends are of three types. The first type is the dividend under the ordinary company law. It is declared periodically. The second type is distribution in kind, not in money in the form of shares of other companies that had been under liquidation or writing down of capital; it is not distributed periodically and it is not dividend in the company law sense. The third type of case had just now been referred to you. That is also not dividend in the company law sense. We want to have a definition which will comprehend these three types. If it is ordinary dividend, it is declared; if it is dividend in kind, it is distributed and if it is dvidend given in the form of cash but not real dividend in the company law sense, it is paid. It is to meet these three types of cases that it has been put here 'declared, distributed or paid'. But this is followed by a very significant phrase 'as the case may be'. If it is taxed on the basis of declared dividend, it cannot be taxed on the paid category next year. So, there is absolutely no double taxation.

Shri P. C. Gupta: I am in respectful agreement with what the hon. Member says. But we have got the unfortunate experience of the income-tax officer advancing an argument that because it is paid, I will tax it in the year in which it is paid and another officer saying I will tax it because it has been declared.

Shri Morarji Desai: It will be the same every year.

Shri P. C. Gupta: In the case of interest on Government securities, we had the unfortunate experience of the same income being taxed in a year because it has accrued and in the subsequent year it was again subjected to tax on the ground that it was received. I had to go to the Commissioner and he set it right.

Shri Morarji Desai: How can you provide for the idiosyncracies of some income tax officers? It can be provided for by bringing it to our notice and our punishing them.

Shri P. C. Gupta: It can be provided that income which has already been taxed shall not be taxed again.

Shri Morarji Desai: I am not prepared to have that clause. You may say income which has been taxed should not be taxed in the same form.

Shri P. C. Gupta: That is what we want. Page 5, clause 11(i) (a) provides that the income of a charitable trust derived from property if accumulated in excess of 25 per cent of income shall be subject to tax. I understand special consideration will be given to those cases where the accumulation is for special objects.

Shri Morarji Desai: That is what we are considering.

Shri P. C. Gupta: Then, a charity can derive its income from several sources—property, vountary contribution, etc. How is the Government

going to decide what portion of the expenditure is out of income is derived from property.

Shri Morarji Desai: We are going to simplify it. All of them should be lumped together. I do not know why there should be any distinction.

Shri P. C. Gupta: Page 7—clause 15(a) subjects to charge income from salary due to an employee. Clause 15 subjects to charge income from salary which is paid or allowed to him. Sometimes salary is in arrears for a number of years. It appears desirable that there should be a provision in the Act itself that in case the arrears are received in a particular year, the past assessment shall be reopened and the income will be taxed.

Shri Morarji Desai: That is what is done.

Shri P. C. Gupta: Page 8—clause 16(iv) provides that an assessee shall be entitled to the expenditure incurred by him in the 'maintenance' of a conveyance. Maintenance does not necessarily include 'running'. So, it should be 'maintenance and running' This is necessary because we have to deal with vigorous and very ingenious people in the income-tax office.

Shri Morarji Desai: They are ingenious on both sides; the ingenuity of the assessee is more than that of the income-tax officer.

Shri P. C. Gupta: I thank you for the compliment given to us.

Shri Morarji Desai: I do not mean it as a compliment. Let me make myself clear. So far as running expenditure is concerned, it is there continuing. Nobody has been disallowed petrol.

Shri P. C. Gupta: Clause 18(i) provides that interest which has become due shall be taxed as the income of the assessee. Unfortunately the Bombay High Court has given a different meaning to the word 'due'. It is regarded almost synonymous with 'paid'.

Shri V. V. Chari: His conclusion is acceptable, *viz.*, that no interest which has been taxed once shall be included in the total income of the assessee for a subsequent year.

Shri P. C. Gupta: Page 9—clause 22 deals with income from house property. If a businessman takes a property on rent, the law provides that he will be allowed repairs on those business premises only if he has undertaken to bear the cost of repairs thereto. As a matter of fact, no landlord will agree to it, because he will lose one-sixth of the income.

Shri Morarji Desai: Are you referring to two partners or owners of a house?

Shri P. C. Gupta: I am referring to a case where A and B are two partners and half and half owners.

Shri Morarji Desai: That is being considered.

Shri P. C. Gupta: Page 10—clause 29 says that the income shall be computed in the manner specified in sections 30 to 43. But sections 30 to 43 merely lay down the allowance; they do not lay down the manner.

Shri V. V. Chari: The draftsman will take care of it.

Shri Morarji Desai: Draftsman also have their own peculiarities. We pass it ultimately. We can say "in accordance with the provisions laid down in sections 30 to 43".

Shri P. C. Gupta: Clause 30(a)(i). If a businessman takes on rent a certain building, he is not allowed any expenditure on repairs unless he has undertaken to bear cost of the repairs. In actual practice, a part of the expenses are borne by the landlord, but a major portion is borne by the tenant.

Shri Morarji Desai: I should not be asked to give them rebate on that ground.

Shri P. C. Gupta: The, in clause 30(a)(ii), page 12. the word 'current' has been used. Today, the word

"current" has been interpretted by different High Courts in different ways. My submission is, let the Government remove this confusion either by changing this word or by clarifying their intention.

Shri V. V. Chari: "Current" is an expression well understood both in accountancy and in the legal world.

Shri P. C. Gupta: But unfortunately, there has been a wide difference of opinion between the Punjab High Court and the Allahabad High Court on this very word "current". The Allahabad High Court says that the word "current" is synonymous with "petty", while the Punjab High Court says that "current" means 'incurred during the current year and in any case do not mean petty".

Shri Morarji Desai: "Current" will only mean the expenditure incurred for maintaining the building properly throughout the year.

Shri N. L. Potdar: The intention should be clarified.

Shri Morarji Desai: How is it to be clarified. I do not think we can find a better word than "current". "Current" does nat mean "petty".

Shri P. C. Gupta: Current repairs are required in order to keep the building in its present working condition, that is what one court has said.

Shri Morarji Desai: A large expenditure may also be necessary to keep it in its present working condition.

Shri P. C. Gupta: As I said, there has been a lot of confusion and difference of opinion on the interpretation of this word by the different High Courts.

Shri Morarji Desai: "Current" is a very well understood term; I do not think it requires to be changed.

Shri Narendrabhai Nathwani: Can you give us the reference of those decisions?

Shri P. C. Gupta: I have not got them here; I will send you that information.

Shri Amjad Ali: Are you sure of the law; whether it is Tenancy Law or some other law?

Shri P. C. Gupta: It is the Income-tax Law itself.

Then I go to page 14—clause 32 (iii). The differnece between the written down value of a depreciable asset and its sale price is dealt with there. If the sale price is more than the written down value then the profits are to be taxed whether the business continues or has ended, while if there is a loss then the loss is to be allowed only if the business is carried on in the previous year. My submission is that both must be treated on the same basis.

Shri Morarji Desai: There is only capital gains tax, there is no capital loss reduction.

Shri P. C. Gupta: I have no objection if it is taxed as capital gains tax.

Shri Morarji Desai: That is how it will be taxed.

Shri P. C. Gupta: They have provided it as business profit, not as capital profit. I have no dispute if it is taxed as capital gains tax.

Shri V. V. Chari: Anything above the cost will be capital gains, not revenue gain.

Shri P. C. Gupta: At present it is taxed under section 10 as business profit.

Shri V. V. Chari: The difference between written down value and cost is revenue, and above cost it is always capital gains.

Shri P. C. Gupta: Page 18 of our Memorandum—clause 36(1). It provides for the deduction of a debtor part thereof which is established to have become a bad debt in the previous year. The use of the word"established" will bring in a very great

difficulty. It may be very difficult to establish that a debt has become bad althoguh we may be able to satisfy the Income tax Officer, that it is so.

Shri Morarji Desai: That is the meaning of "established". "Established" means "proved", and proved to the satisfaction of the Income-tax Officer, or established to the satisfaction of the income-tax officer.

Shri P. C. Gupta: My only submission is that this word may be replaced and it may be said: "to the satisfaction of the Income-tax Officer has become". "Established" imports a conviction greater than what can ordinarily be submitted in the normal course.

Shri Morarji Desai: We might say: "which in the opinion of the Income-tax Officer is proved". That will make it still worse for you.

Shri V. V. Chari: The word "established" is better than the word "proved".

Shri P. C. Gupta: Page 19—clause 37. This makes a general provision. We have introduced the word "necessarily". It is to be allowed only if the expenditure is wholly and necessarily.

Shri Morarji Desai: This is going to be considered very carefully.

Shri P. C. Gupta: Whether the word "necessarily" should be there or not?

Shri Morarji Desai: Whether it should be there or it should be replaced by some other word to see that the Income-tax Officer does not become the boss of the management.

Shri P. C. Gupta: That is all we want.

Then take page 21—clause 37(2). This provides that no entertainment expenditure will be allowed in any case (except that of a company).

Shri Morarji Desai: That has been changed. The Finance Act has provided that, and that will be provided.

Shri P. C. Gupta: Page 21—clause 40(a) (ii).

Shri V. V. Chari: That is also being considered.

Shri P. C. Gupta: Then I come to page 24, section 43(1). It is suggested that it should be made compulsory for an I.A.C. to give an opportunity of hearing the assessee before according his sanction. We have already discussed it.

Then I come to page 26, clause 54, which relates to certain concessions in the payment of tax on capital gains on buildings.

Shri V. V. Chari: That is also being considered. There may be a case where a person constructs a building instead of purchasing it.

Shri P. C. Gupta: Clause 55(1) (b) (i) uses the words "cost of any improvements". "Improvements" do not necessarily include additions and alterations. I think they should also go towards the capital cost.

Shri V. V. Chari: Certainly, repairs cannot be added to the capital.

Shri P. C. Gupta: I am not referring to repairs. There may be substantial improvements.

Shri Morarji Desai: How can "substantial improvements" be defined?

Shri P. C. Gupta: You can say "additions and alterations".

Shri Morarji Desai: If we say "additions and alterations", it will include all sorts of things.

Shri V. V. Chari: We have stated "all expenditure of a capital nature incurred in making any additions or alterations".

Shri P. C. Gupta: We say that "improvements and repairs" should be included. At least "improvements" should be included.

Shri V. T. Dehejia: Can there be an improvement without addition or alteration?

Shri P. C. Gupta: Suppose there is a boundary wall in a bad condition. I renovate the wall. It is neither addition nor alteration.

Shri Morarji Desai: But it is not an improvement either.

Shri P. C. Gupta: Then I come to clause 67(3). This clause provides specifically that except interest payable by a partner in respect of the capital raised by him, no other deduction shall be allowed in respect of the said share. In order to safeguard her interests, a purdah nashin lady may employ a gentleman to look into the matters of a firm in which she is a partner. It would obviously be unfair not to allow the salary of such a servant from the share to which the lady may be entitled. Here she is working through an agent.

Shri Morarji Desai: We want to remove purdah.

Shri P. C. Gupta: There will be hardship to such people.

Shri Morarji Desai: There is no hardship. Let purdah go.

Shri P. C. Gupta: Clause 77(1) provides that the loss of an unregistered firm can be set off only against the profits of that firm. The income-tax officer can very easily put the assessee to a disadvantage by registering him in the subsequent year so that that firm may not be able to set off its losses against the profits of a subsequent year. In case the income-tax officer wants to apply section 23B....

Shri V. V. Chari: What you want is already existing in practice. There is a circular on this subject. If you want that to be clarified in the Act, it could be done.

Shri Morarji Desai: It should be clarified.

Shri Amjad Ali: You have said "an I.T.O. can easily cheat the assessee" and "This almost amounts to dishonesty and has no justification in morals". Instead of using such language, you could have explained it in a different way.

Shri P. C. Gupta: I am sorry.

Shri Morarji Desai: You should not have used such words. How could you say that? you slap a person and then say "I did not mean any injury". This is the famous English example of excusing every fault by saying "Sorry".

Shri P. C. Gupta: Clause 80 provides that no loss shall be carried forward and set off unless it has been determined in pursuance of a return filed. No loss can be allowed unless it is determined by the income-tax officer.

Shri Morarji Desai: Naturally. How can it be allowed? You may claim any loss. Unless it is determined by the income-tax officer, it cannot be allowed.

Shri P. C. Gupta: We have heard I. T. O.s say that they are income-tax officers and not loss fixing officers.

Shri N. L. Potdar: The income-tax officer shall permit the loss if the return has been field.

Shri V. V. Chari: What you want is already there in clause 143.

Shri Amjad Ali: On page 32 you say:

> "Donations made to Aligarh Muslim University or Banaras Hindu University may very well be disallowed because these institutions are expressed to be for the benefit of a particular religious Community."

You are possibly misinformed. They admit students belonging to all communities.

Shri N. L. Potdar: Their memorandum and articles provide that they will be chiefly for the eduction of students of that community. So we say that even though there is a provision in the articles or memorandum of

association that it will be chiefly for the benefit of a particular religious community, other communities will also get the benefit.

Shri Morarji Desai: We do not want any particular community to benefit by this.

Shri N. L. Potodar: What we want is that the words 'religious community' should be deleted.

Shri Morarji Desai: If it is provided for a particular religious community, it will not be allowed. On the contrary, if you remove these words, it will be allowed.

Shri P. C. Gupta: Suppose, there is an educational institution which is primarily for the benefits of the Hindus.

Shri Morarji Desai: Then it will not be allowed.

Shri P. C. Gupta: Hindus is such a big class.

Shri Morarji Desai: It is a religious community. So, you want the Hindu religious community to be allowed exemption? No, not at all.

Shri Amjad Ali: Will he please please withdraw these remarks, namely, that these universities are catering only to a particular religion?

Shri Morarji Desai: That is wrong.

Shri Amjad Ali: He should withdraw that.

Shri Morarji Desai: We have corrected them. No word is to be withdrawn from here. That has been noted here.

Shri Radheshyam Ramkumar Morarka: They have been employing that type of language. First they said, "an ITO can easily cheat the assessee". Then on page 34 they say that their (*i.e.* the officers) opinions are "based only upon the noting of the interested ITOs and ignorant, narrow-minded and inefficient inspectors". All these things they say here. I find that their languages has been very unrestrained. An Association like this, when it is represented by professional educated people must have some retraint in the language they use.

Shri Narendrabhai Nathwani: It is a general statement. They are not saying that in some cases only it is so.

Shri Radheshyam Ramkumar Morarka: There are good and bad officers everywhere just as there are good and bad businessmen everywhere.

Shri Morarji Desai: This is going to have its reaction on the ITOs. Why do you write things like that? This can be said against you, against me, against everybody. Why do you want to abuse people? You have been completely unrestrained in your language.

Shri P. C. Gupta: My only submission is that that circular should be made available.

Shri Morarj Desai: But why do you write things like this?

Shri Radheshyam Ramkumar Morarka: All this is in bold letters.

Shri Morarji Desai: That is why this Sankrit *subhasitam* was said in India:

यथा यथा हि मुंचति वाग्वाणम्
तथा तथा हि प्रयच्छति कुल प्रमाणम् ।

That was what was said originally by us. As we use the words, we give the measure of our family. The measurement of our culture is the language that we use.

Shri Amjad Ali: Shri Phul Chand Gupta of Dayal Bagh, Agra, is responsible for making this draft. He might possibly say that.

Shri V. V. Chari: He is that gentleman.

Shri Morarji Desai: Is this the teaching of Dayal Bagh?

Shri P. C. Gupta: This is as a result of the meeting of the Association. But

if I have used these words inadvertently or in my displaced zeal, I am sorry for it.

Shri V. T. Dehejia: With your opinions you would like to provide that the Act should not be administered by any officer.

Shri P. C. Gupta: My only submission is that the officers who give the final decision or direction should give an opportunity to the other side also.

Shri V. T. Dehejia: But, according to you, people who decide do not know anything and do not read anything. You say that people. who write do not read or know anything. They They have no sense.

Shri Morarji Desai: Let us not pursue it.

Shri P. C. Gupta: Clause 131. No time limit is provided for the retention of the books. I would request you to consider whether it will be desirable. After all, the retention of books causes very great inconvenience.

Shri Morarji Desai: How can any time limit be fixed when they are required for a certain time?

Shri P. C. Gupta: You may provide six months or one year for that.

Shri N. L. Potdar: Instead of retaining them, they may be recalled whenever required.

Shri Morarji Desai: I think some time limit should be fixed.

Shri V. V. Chari: We may say 'till the case is settled'.

Shri Morarji Desai: The case may not be settled, say, for six years. What is to happen to the business?

Shri V. V. Chari: They are old books, not new books.

Shri Morarji Desai: But even old books may be required for some purpose. Why can you not take copies?

Shri V. V. Chari: They may be certified.

Shri Morarji Desai: That is what should be done. Take the copies at their cost. The books can be returned.

Shri B. L. Goyal: That will do.

Shri V. T. Dehejia: Actually in the Sales Tax Act we have provided that the businessmen should take copies.

Shri P. C. Gupta: Clause 139. This clause permits the filing of a return in the case of a loss only upto, say, 30th June. The time may be extended by the Income-tax Officer.

Shri Morarji Desai: Let all the *munims* go on leave and let the managing agents go to a foreign country, yet the return must be filed in time. If you are not able to do that, you must be penalised.

Shri P. C. Gupta: The income-tax-Officer may grant the extension.

Shri Morarji Desai: No.

Shri P. C. Gupta: Not even in the case of a reasonable cause?

Shri Morarji Desai: No. When the time is fixed it must be filed within that time.

Shri P. C. Gupta: Clause 147. It provides that if the return is not filed with the Income-tax Officer having jurisdiction over him, the assessee exposes himself to certain consequences. It is very often very difficult for the assessee to know as to who is the officer having jurisdiction over him.

Shri Morarji Desai: Why?

Shri P. C. Gupta: There are six officers in Agra itself.

Shri Morarji Desai: But they have all given their jurisdiction. You know whose jurisdiction it is. If you do not know even this or cannot find it out, it is your fault.

Shri N. L. Potdar: Most of the assessees who file their returns without a legal adviser will be put to a very great difficulty.

Shri Morarji Desai: Anyway, we are going to provide that it may be field with any Income-tax Officer. That would not invalidate the return. Wherever it is filed, the return will be sent to the proper officer.

Shri N. L. Potdar: That is all right.

Shri P. C. Gupta: Section 152(2). It provides that proceedings for reopening of an assessment shall be dropped if it is found that the assessee has been assessed on a sum not lower than that on which he is rightly taxable. My submission is: why should I be deprived of my opportunity if I have filed an appeal.

Shri V. V. Chari: No change has been made in the Bill. It is a very old position.

Shri P. C. Gupta: Now that we are amending it, we may see all the points.

Shri Morarji Desai: We may certainly give the benefit to the person who does not go in for an appeal, not the person who goes in for appeal. How can he have both the benefits. You want to challenge the decision and you want to be given the benefit of that decision. How can this be provided?

Shri P. C. Gupta: Sometimes, I may go in for an appeal on one point, say, income.

Shri Morarji Desai: Who wants to prevent you from going in for an appeal.

Shri P. C. Gupta: My income might have been over-assessed.

Shri Morarji Desai: You cannot claim the other benefit.

Shri P. C. Gupta: Page 47, Section 185(1)(b): There should be a provision in the Bill for granting a hearing to the assessee for submitting his case before refusing the registration.

Shri V. V. Chari: Sufficient opportunity is given to the assessee, of discussing with him and hearing him and then only the ITO passes an order.

Shri P. C. Gupta: I want to be sure of that.

Shri Morarji Desai: Natural justice is always there. It has got to be done.

Shri Amjad Ali: He wants a statutory obligation.

Shri V. V. Chari: It is not refused in a routine way. You are making a very serious charge that whenever there is a wrong assessment, registration is refused. That is not correct.

Shri P. C. Gupta: If that is not correct, then it may be provided for in the Bill.

Shri V. V. Chari: The assessee is to be heard. It is a very serious charge that you are making.

Shri P. C. Gupta: If there is an *ex parte* assessment, then the registration is always refused.

Shri Amjad Ali: Can you give any instance.

Shri P. C. Gupta: That is always done in almost all the cases.

Shri V. V. Chari: You are entitled to 14 days' notice.

Shri P. C. Gupta: That is about cancellation of registration already made. I am talking of refusal of registraton *ab initio*. If there is any *mala fide* intention, then the registration must be refused. But it should not be refused merely because I defaulted in filing the return.

Shri Morarji Desai: Non-filing of returns is not a small default. It is a major default.

Shri P. C. Gupta: It happens in spite of the best intentions. Section 186: It provides for the cancellation of registration after it has been made. And no time limit has been provided for the cancellation.

Shri V. V. Chari: That we will do.

Shri P. C. Gupta: Section 215. It provides for payment of interest in case advance tax paid on the basis of estimate by the assesste falls short of

75 per cent. Sir, the tax is not always proportionate to the income. As the income rises, the tax jumps up. I may have made a default of Rs. 2000 in assessing my income and yet the tax may have increased very considerably.

Shri V. V. Chari: The tax is raised on the previous year's income.

Shri P. C. Gupta: I am concerned with the year which is under consideration. I may file a return of, say, Rs. 10,000. On Rs. 10,000, the tax may be Rs. 500. Suppose the Income-Tax Officer raises it to Rs. 12,000. Then, there is the 20 per cent increase in the income, but the tax may go up by 50 per cent. I should be penalised only to the extent of increase in my income.

Shri Morarji Desai: That may be considered.

Shri V. V. Chari: That is of general nature. Suppose you are asked to pay a tax on the basis of the last computed assessment. You file an estimate of your income which is much less, say, Rs. 1 lakh. Actually, you yourself at the proper time showed an income of Rs. 2 lakhs. According to you, your income is Rs. 2 lakhs. Obviously, it is a wrong estimate.

Shri P. C. Gupta: I agree to it if I have shown that income. But it is the income computed by the Income-Tax Officer.

Shri V. V. Chari: It may have been estimated on the basis of your own books or on the basis of your own declaration.

Shri P. C. Gupta: My submission is that it should be based on the income, not on the tax.

Shri V. V. Chari: But the consequence of showing the lesser income is the payment of lesser tax.

Shri P. C. Gupta: The tax is not proportionate to the income.

Shri V. V. Chari: That is the structure of our taxation system. It is a progressive tax system; not the proportional tax system.

Shri P. C. Gupta: I am being penalised on the basis of progressive tax system. Income should be taken into consideration, not the tax.

Chairman: It is under-estimate by the assessee, not by the Income-Tax Officer.

Shri N. L. Potdar: The question is like this. The Income-Tax Officer sends a form filled up on the basis of the last assessment, saying that you have to pay so much as an advance tax. Supposing I find that my income is less. I file an estimate of a lesser income than the last year's assessment. If my estimate of income falls short by 25 per cent of the assessed income by the ITO then I am not penalised. But if it is still less, then I am penalised...

Shri V. V. Chari: If it falls below 25 per cent, at what rate it should be taxed; naturally at the rate applicable to income.

Shri N. L. Potdar: There is a lot of difference between the proportion of the income and the proportion of the tax.

Shri Morarji Desai: The income is computed less by the assessee deliberately in order to pay less tax.

Shri N. L. Potdar: For that he will be penalised. All that we say is that the penalty should be in proportion to the income that is shown. The Income-tax Officer may have found many items which he may disallow. In accordance with that assessment my tax liability may be very much increased....

Shri Morarji Desai: You are repeating the same thing. By repetition you do not make your case stronger. It is for the Select Committee to consider.

Shri P. C. Gupta: Clause 220: The assessee gets interest on refund only if the refund is not paid within six months whereas if the assessee does not pay tax within 35 days then interest begins to run against him. I think both should be put on a par.

Shri Morarji Desai: I think there should be the same period in both cases. It must be accepted.

Shri Amjad Ali: Provided timely application is made.

Shri Morarji Desai: They should refund it without any application consequent to the order passed. I have been very much worried about this. Whereas Government recover immediately by duress, they do not pay whatever they have got to pay....

Shri P. C. Gupta: I have another submission to make. In case of disputed amount sometimes we are made to pay the tax in spite of our protests. Subsequently as a result of our appeal if some amount is to be paid back to us, that amount should carry some rate of interest so that this arrangement is a safeguard against the arbitrary exercise of powers which are vested in the Income-tax Officer.

Shri Morarji Desai: That, I think is reasonable. We must consider this.

Shri Subbiah Ambalam: Suppose there is only a marginal difference between the two amounts.

Shri Morarji Desai: We can say provided it is more than 10 per cent, 15 per cent or 20 per cent. We can decide that. That will be a healthy check on the arbitrary use of assessment. We will consider this. Do not take it as granted.

Shri P. C. Gupta: That assurance will satisfy us.

Clause 224 provides that the Tax Recovery Officer shall not entertain any objection to the certificate on any ground. Supposing there is an error. Supposing instead of 2,000, it is put down as 20,000/-. Can't I raise even that objection?

Shri V. T. Dehejia: Not with the Tax Recovery Officer.

Shri Morarji Desai: You should go to the Income-tax Officer.

Shri P. C. Gupta: That will take a lot of time.

Shri Morarji Desai: That is not possible.

Shri N. L. Potdar: We have given to the Tax Recovery Officer powers of attachement, powers of sale, powers of arrest and powers of appointment of a receiver. I am actually deprived of all my assets, my own person is being arrested....

Shri Morarji Desai: If your person is arrested it is a liability to the Government. Why do you want to remain in arrears?

Shri N. L. Potdar: Even the worst offender should get justice.

Shri Morarji Desai: What is injustice here?

Shri N. L. Potdar: All these steps are being provided to be taken simultaneously, not one after the other.

Shri Morarji Desai: That is only in order that no step is taken. This is only to ensure that the assessee will pay it.

Shri N. L. Potdar: You are 100 per cent correct provided the business people have always got money at their disposal. The difficulty is that they do not have it always.

Shri Morarji Desai: When you have to pay to a Surgeon for an operation, you have no difficulty for money..

Shri N. L. Potdar: If we have no difficulty for money we would have made tons of money.

Shri Morarji Desai: A salaried servant pays the tax in advance. Before he receives his salary it is deducted. If the businessman does the same thing there will be no difficulties; because, on losses he does not pay tax, only on profits he pays tax. Therefore, when he makes profits let

him set aside the tax. Then he will not suffer.

Shri P. C. Gupta: Then I come to page 63 of our memorandum, clause 271.

Shri Radheshyam Ramkumar Morarka: Before the witness proceeds further, I wish to refer to what they have said on page 60 of their memorandum. It is a reflection on the members of the tribunal. They say that "briefless advocates" should not be appointed. According to them advocates getting below Rs. 18,000 a year should be considered as briefless.

Shri P. C. Gupta: The respectability is measured by the practice and experience of the person.

Shri Morarji Desai: Is money a criterion for respectability? What is the use of saying this? A man may be very brilliant and not have any practice. That is also possible.

Shri Narendrabhai Nathwani: And there is a sweeping charge made against Appellate Assistant Commissioners. They say that an Appellate Assistant Commissioner "cannot bring to bear upon a case an impartial mind." This is also on page 60.

Shri Morarji Desai: You say that "The appellate assistant commissioner is merely a senior officer of the Department, to review the working of the I. T. O., and rightly and naturally he is concerned with the department's point of view, he being a Department's man".

Do you mean to say that your tax work should be done by somebody outside the Department?

Shri P. C. Gupta: It has to be read in the context.

Shri Morarji Desai: And they you say, "He receives the instructions from the C. B. R."

Shri V. V. Chari: Absolutely false.

Shri P. C. Gupta: C.B.R. supplies them with copies of their circulars containing instructions.

Shri Morarji Desai: The circulars are general instructions, not about any particular assessee. They are bound to issue circulars. Do you mean to say that the Department is sitting here only as an ornament? These are all executive things, they are not judicial things.

Shri Narendrabhai Nathwani: They say. "and in spite of declarations to the contrary, he cannot bring to bear upon a case an impartial mind".

Shri Morarji Desai: And then "nor is in actual life his discretion unfettered".

Shri Radheshyam Ramkumar Morarka: There is another sentence on the same page: "Similarly no assistant commissioner of Income-tax should be taken on the bench as he will never be able to do justice in a case of appeal from another brother Assistant Commissioner, nothing to say of an appeal against the order of a Commissioner."

Shri V. V. Chari: Hundreds of crores of rupees have been given.

Shri P. C. Gupta: May I respectfully submit whether it is in conformity with human nature or not?

Shri Morarji Desai: It is not in conformity with human nature. It is all wrong. You do not seem to have any discretion in what you write. This ought not to be presented to Parliament, the whole thing.

Shri P. C. Gupta: Page 63 ....

Shri Amjad Ali: I may be permitted to read only one sentence. They say something about the Finance Ministry itself in page 51: "This again is one of those provisions which often creates an unfortunate mental annoyance, and supports an impression that even the Government is not being just or fair"—that is the Ministry of Finance—"but is considerably influenced by the consideration of quantum of tax or interest and does sacrifice justice and fairness at the altar of expediency".

Shri T. C. N. Menon: That can be an honest opinion, whether right or wrong. That is their way of thinking. They are entitled to hold their opinion.

Shri Morarji Desai: Everybody is entitled to. You can also borrow from them, if you like.

Shri P. C. Gupta: On page 63 . . .

Shri Amjad Ali: At least in India we are not used to this kind of expression.

Shri P. C. Gupta: In page 63, clause 271 . . .

Shri V. T. Dehejia: It is not your exclusive right to call us names. When a Member of the Committee is speaking, surely he has priority over the witness.

Shri P. C. Gupta: May I go to page 63, clause 271 at the bottom?

Shri Subbiah Ambalam: Sir, what has the witness got to say with regard to all these statements?

Shri Morarji Desai: Let him finish. We will come to that matter at the end.

Shri P. C. Gupta: Clause 271(1)(iii) provides that where a person has cancelled the particulars of his income or deliberately furnished incorrect particulars of such income, a penalty will be imposed upon him which is measured by the amount of the difference of tax between the tax determined and the tax which would have been payable on the return filed by him. The return filed by him and the income actually computed by the Income-tax Officer may differ on account of various reasons. My penalty should be confined only to items which I have tried to conceal and not to others. The measure of penalty is not quite correct.

Shri V. V. Chari: The difference between the return filed by you and the income assessed is the measure of your concealment.

Shri P. C. Gupta: That may be a small one, while the difference may be due to various causes.

Shri N. L. Potdar: There are many other grounds than the concealed income. My expenditure is such that you will not allow.

Shri Morarji Desai: You are deliberately showing it as an expenditure.

Shri N. L. Potdar: The Income-tax Act says that "wholly and solely" it shall be for business purposes. Suppose there is an expenditure which is mixed....

Shri Morarji Desai: But there is an appeal. In the appeal it will be seen whether it is so.

Shri P. C. Gupta: It may be taken into consideration to determine the priority, not otherwise.

Lastly, I come to page 70—clause 288(4)(b). It provides that no person on whom a penalty has been imposed under the Act in respect of his own assessment shall be qualified to represent an assessee for such time as the C.I.T. may order. Suppose an advocate makes a default in filling his return or in the payment of tax and a fifty-rupees penalty is imposed upon him. Would you suggest that he should be debarred from the practice altogether?

Shri Morarji Desai: I should like very much to suggest, but I do not know whether all this will be accepted by the Select Committee.

Shri Radhelal Vyas: If he does it knowingly.....

Shri Morarji Dsai: An expert has no business to treat his client in that manner. Then he ought to be punished much more. It is the help given by the expert which is responsible for a lot of evasion. Therefore he requires to be more severely punished. That is the basis of this provision.

Shri P. C. Gupta: I agree, but to the extent to which....

Shri Morarji Desai: If you agree, then it is all right.

Shri P. C. Gupta: I object to the extent, because the advocates may be very busy and the default may occur like that.

Shri Morarji Desai: Well, you have exceeded your time exactly by double the extent.

Shri N. L. Potdar: With your permission and indulgence.

Shri Morarji Desai: That is how your estimates work!

But what have you to say about all this intemperate language that you have used?

Shri N. L. Potdar: We wish to express our very deep regret for it. The thing is that it was drafted in a very great hurry.

Shri Morarji Desai: Hurry does not mean that such language should be used. These are deliberate things, and they are underlined. If you are in such a hurry, how can you underline these things?

Shri P. C. Gupta: The under-lining, capitals, this is all normal.

Shri V. T. Dehejia: Are the sentiments there correct?

Shri P. C. Gupta: Nobody can couchsafe for one's sentiments. They may be correct, they may be wrong.

Shri V. T. Dehejia: Are these your own views at least?

Shri Morarji Desai: They have expressed their regret.

Shri V. T. Dehejia: Are they justified?

Shri Morarji Desai: They are justifying the lapse on the ground of hurry. You have to be in a hurry if you want to abuse. That is what it means.

I hope you do not repeat it elsewhere. Then, the regret will be genuine. Otherwise it is not genuine.

Shri N. L. Potdar: We have learnt a lesson.

Shri Morarji Desai: I hope so.

(The witnesses then withdrew.)

III. INDIAN FEDERATION OF WORKING JOURNALISTS

Spokesman:—

Shri C. Raghavan.

(Witness was then called in and he took his seat).

Shri Morarji Desai: You are the sole representative?

Shri Raghavan: The Committee wanted us to come at 8 o'clock. So my colleagues could not come.

Shri Morarji Desai: You have only one point?

Shri Raghavan: One very small point about this question of gratuity.

Shri Morarji Desai: We are considering it very sympathetically.

Shri Raghavan: Not only that; I would like to refer to one or two additional points.

Shri Morarji Desai: When I say we are considering it sympathetically?

Shri Raghavan: I am willing to withdraw even.

Shri Morarji Desai: We concede sympathetic consideration to see that the discrimination is removed.

Shri Raghavan: I am not at all on the point of discrimination. If you will kindly go through the memo, we have tried to make out a case for exemption on merits and not on grounds of discrimination.

Shri Morarji Desai: There cannot be exemption of gratuity. You can plead if you like. One lakh cannot be exempted; Nor can Rs. 50,000 be exempted.

Shri Raghavan: May I make the position clear? What I have tried to point out is this. In fact, I was discussing on a previous occasion, two years ago, the administrative help that could be given. It was suggested by some official that it could be done by spreading it over three years. A case has come to my notice in which there

was correspondence between the Finance Minister and one of our Members. The three-year relief actually proved to be completely inadequate. Because, the three-year relief is spread over the last three years in which the income is supposed to be received or has been received. What happened was, the gentleman concerned retired in April. Ordinarily, if he did not get any gratuity at all, for his March and April salary, he would have had to pay no income-tax. It would have been below Rs. 3600 or whatever is the limit prescribed. Actually, gratuity was paid to him for 38 years' service. On that basis, he was paid 19 months' salary. It went to the super-tax level.

Shri Morarji Desai: How much did he get?

Shri Raghavan: Rs. 35,000. It went to super-tax level. He applied to the Finance Minister for some relief. The Finance Minister was kind enough to give the relief of spreading it over three years. What happened is, income which would not otherwise have been subject to income-tax, the salary for the months of March and April, was itself made subject to income-tax and on the salary alone, he had to pay an income-tax of Rs. 1400.

Shri Morarji Desai: What was his salary?

Shri Raghavan: Rs. 1800.

Shri Morarji Desai: How do you say it was not liable for income-tax?

Shri Raghavan: For two months...

Shri Morarji Desai: It cannot be two months only.

Shri Raghavan: I am sorry if I have not made my position clear. The person concerned retired in April. He had no other business or salary. For the period April 1961 to March 1962, the salary received by him comes to less than Rs. 3600. The Income-tax payable will be for the Income-tax year ending March, 1962. He would have had to pay no income-tax. The total income would be only Rs. 3600. But because of this gratuity being treated as income not only had he to pay tax on the gratuity but even on his small ordinary income which would have been completely exempt.

Shri Morarji Desai: You mean that he had to pay at a higher rate?

Shri Raghavan: He would have been liable to pay nothing for Rs. 3600.

Shri Morarji Desai: He would have been bound to pay, because the minimum now is Rs. 3000. Therefore, you cannot say that he is not liable to any income-tax. The only thing that might have happened is that he might have had to pay at a higher rate. Suppose the gratuity amount is Rs. 18,000, he pays income-tax on Rs. 15,000 at a very high rate. And out of that sum of Rs. 3600, he might have paid about Rs. 800 or Rs. 1000 by way of tax.

Shri Raghavan: The figures that he has submitted in the letter to the Finance Minister show that he had paid Rs. 1400 or so. It may be that there might have been some wrong calculations.

Shri Morarji Desai: I do not think so. If it were Rs. 15,000, it would have been less.

Shri Raghavan: I am prepared to place the letter to the Finance Minister before the Select Committee.

Shri Morarji Desai: It cannot be so.

Shri Raghavan: I have got the letter with me here.

Shri Morarji Desai: I shall get it examined.

Shri V. V. Chari: That is one way of showing the result.

Shri Morarji Desai: What do you want us to do under this Act? Do you want the whole of it to be exempted?

Shri Raghavan: I personally think that the whole of it should be exempted, and I shall point out why. If the Finance Minister would be kind enough to listen to me, I shall point out the reasons.

Shri Morarji Desai: We are listening to you.

Shri Raghavan: For example, in the railways, they take the average expectancy of life as ten years, after retirement, and on that basis they computed the pension value of the gratuity. If, likewise, the same basis of 10 years is applied to the gratuity that might be received by the journalists or by employees similarly placed, actually, the amount will work out to less than Rs. 3000 per annum, and no tax would actually be payable.

I would suggest that either the gratuity amount should be totally exempt, or, if you are not going to exempt it, you must spread it over a period of ten years, as has been done in the case of the railways for calculating the pension, when they converted the gratuity into a pension scheme; or, you must exempt a major portion of the gratuity, provided it is on an equal level.

I do not suggest that if any private employer gives gratuity merely by way of a gift to his employee it should be exempt. That is why we have suggested that the gratuity for exemption should be of three kinds; either, it should by under a statute or under a Labour Award where also it would be applicable to all the employees from the lowest to the topmost on the basis of a half a month's salary for every year of service or one month's salary for every year of service subject to a maximum of 15 months' salary; or the third type of gratuity which you can exempt is the one paid under a scheme framed by the employer and submitted to you for your approval so that you can go into it and decide whether it is a reasonable scheme, and whether it gives a reasonable gratuity as retirement benefit.

Till such time as the State is not in a position to give pensionary benefits to the ordinary employees in this country, I would submit that the least that the State can do is to grant tax relief in cases where some retirement benefit is being given.

Shri Morarji Desai: Would you be satisfied if they are treated just as the railway people are treated?

Shri Raghavan: I would be satisfied, but the railway people today are not being treated in this form, because the gratuity has been converted into a pensionary benefit. That was why I brought it in as an example that while converting the gratuity into a pensionary benefit, the railways assumed a period of ten years as the average life expectancy.

Shri Morarji Desai: They pay tax on pensions if they are liable. So, you cannot plead for exemption of all gratuity. If it is beyond a certain limit, it cannot be exempted.

Shri Raghavan: If, assuming a ten-year-period as the average life expectancy, one computes the value and finds...

Shri Morarji Desai: It is not possible to take that sort of view.

Shri Raghavan: The State has assumed it in respect of the Government employees themselves for the calculation of the pension or for the purpose of converting the gratuity into pension.

Shri Morarji Desai: Do you call it 'deferred salary'?

Shri Raghavan: I do not know by what technical name you call it.

Shri Morarji Desai: By what name are you calling it? Are you calling it 'deferred salary'?

Shri Raghavan: I say that this is the retirement benefit which I have earned over a period of years, which would enable me to carry on after I have ceased to be in service for the ten or fifteen years that I would live after retirement. After all, I get no pension, and I get no other retirement benefits.

Shri Radheshyam Ramkumar Morarka: Would you be satisfied if it is spread over ten years?

Shri Raghavan: Certainly.

Shri K. R. Achar: Would that period depend upon the number of years of service?

Shri Morarji Desai: How can that be? He might have served over a period of 38 years.

Shri K. R. Achar: What is the suggestion of the witness?

Shri Raghavan: The gratuity that comes under the three categories that I have mentioned would have been earned by the employee over a period of years for which he has served. If, for example, I am getting a savings wage or the employer has been giving me this gratuity benefit every year, and I actually put that gratuity amount in a savings bank account or in national savings certificates or some such account, then I would not have been liable to pay income-tax.

Shrimati Tarkeshwari Sinha: That is true.

Shri Raghavan: The difficulty arises in India because we are not having a savings wage, and I believe that the ideal time when the country would be in a position to give me a savings wage may not come probably for another thirty years.

Shri Morarji Desai: That will be the case of all the people, and not merely of journalists.

Shri Raghavan: Though I have come as a representative of the journalists, and I can speak now only on behalf of my organisation, whatever I am saying will apply to all employees similarly placed.

Shri Morarji Desai: We are considering the question of gratuity for all people; so it is not a question of journalists only.

Shri V. T. Dehejia: When you say ten years are the average life expectancy, that is at a particular age of retirement, say, at the age of 55. But people may retire at different ages. Some may retire at the age of 60 or 65. Surely, the expectancy at 65 will not be 10.

Shri Raghavan: I may point out that neither under the Labour Tribunal's award, nor under the Standing Orders by which people are made to retire, nor under the agreements is there any case that I know of people retiring at the age of 65 or so. The ordinary age of retirement is 55; in the case of *The Times of India*, it is 55 or 30 years of service, whichever is earlier, and I know of cases where people have been retired at the age of 50 because they have already completed 30 years of service.

Shri V. T. Dehejia: But I know of quite a few persons who are over 60 and who are still working.

Shri Raghavan: It is quite true that there are some people who have retired and who are being re-employed, but they are not entitled to gratuity for that service.

Shri V. T. Dehejia: If you refer to the provision in the Bill in respect of Government servants, you will see that gratuity is one-eigth of the pension, so that what is not taxed is one-eigth of the annual value of the retirement benefit. But, in your case, you are suggesting that the entire annual value of the retirement benefit should be exempt.

Shri Raghavan: I have worked it out. If you would kindly permit, I shall read it out.

Shri Morarji Desai: Would you consider it satisfactory, if gratuity up to a certain amount is exempted completely, and above that amount, it is spread over a number of years?

Shri Raghavan: Certainly. That will be satisfactory, but while fixing that ceiling, I would like you to take note of the fact that the employees who are receiving gratuity have no other retirement benefit. So, if you merely apply the Government servant's case and limit it to Rs. 25,000, then it will be hard on them.

Shri Morarji Desai: I cannot make you superior to Government servants. Please understand this once and for all.

Shri Raghavan: I am only asking you to make me equal.

Shri Morarji Desai: 'Equal' would mean Rs. 24,000. But then, you are saying that we must go beyond that.

Shri Raghavan: I am not saying that.

Shri Morarji Desai: But that was what you said just now.

Shri Raghavan: I am sorry I have not been able to express myself clearly.

Shri Morarji Desai: You are expressing yourself so fast that you are not remembering what you are saying.

Shri Raghavan: What I was trying to point out was that in the case of Government servants, Rs. 24,000 may be fixed as the ceiling, but the point may kindly be borne in mind that the Government servants get gratuity plus pension.

Shri Morarji Desai: But that is part of his pension. You are forgetting that.

Shri Raghavan: But I have no pension.

Shri Morarji Desai: That is not the fault of Government. Why did you choose this employment? That is your business, not the business of Government.

Shri Raghavan: If you take the view that everyone has to be a Government servant..

Shri Morarji Desai: I do not say that you should be a Government servant, but you cannot have the benefit of everything everywhere. Is it not a matter of ordinary equity that you cannot expect the benefit of every profession combined in every single profession?

Shri Raghavan: That was why I did not try to compare myself with Government servants in making my claim for exemption.

Shri Morarji Desai: If you had not become a government servant, you should have found the other service better. Therefore, you are treading on very dangerous ground when you say that you must be put on par with government servants.

Shri Raghavan: I do not plead that. I say that you must take an overall view. If you place me equal, even slightly inferior, to them, I have no objection. All that I say is that when the exemption of Rs. 24,000 is allowed, equating me to a government servant in that respect, I respectfully differ, because I do not have a pension. I am not blaming Government for it.

Shri Morarji Desai: If that is your stand, I am afraid I will not be able to help you.

Shri Subbiah Ambalam: You agree to the proposal of the Finance Minister that there should be some exemption limit.

Shri Raghavan: Certainly.

Shri Subbiah Ambalam: You suggest that it may be spread over a period of 10 years, or whatever it is. May I know what should be the limit, according to you, that will be reasonable so far as exemption is concerned?

Shri Raghavan: It has been fixed at Rs. 24,000 for government servants. In the light of the fact that the other employees do not get a pension, I suggest a slightly higher limit for them, whatever the Committee may in its own wisdom consider reasonable and fit to be fixed.

Shri Morarji Desai: You do not realise that government servants do not get as high salaries as others do in private business. Therefore, pension is given to government servants to compensate for the higher salaries received by people in private employment. You are only arguing from one angle, not taking into account all aspects. Please do not go on a lop-sided argument.

Shri Raghavan: If you take into account the salaries of the top group in the private sector, that argument may hold good. But if you consider

the salaries received at the lower levels, you will find that the private sector people are getting less. Take comparable posts. An Information Officer in Government is equated to a Correspondent by a Statutory Committee itself. I start on Rs. 500 whereas an Information Officer starts on Rs. 900.

Shri Morarji Desai: He has different qualifications.

Shri Raghavan: I am sorry, it is not so. The Central Pay Commission has equated them.

Shri Morarji Desai: If you go into a particular job, it means that you are attracted to it by other advantages.

Shri Raghavan: I have the advantage of appearing before this Committee. A government servant has not that advantage.

Shri Morarji Desai: Please do not go on like that. Let us argue both sides. You are excited.

Shri Raghavan: I am sorry if I am considered as excited. I apologise. It was far from my intention to get excited.

An Hon. Member: That is his way of talking. That is all.

Shri Morarji Desai: I am only saying that you should consider both things fully. I have no quarrel with your excitement.

Shri Raghavan: If you take the case of editors of first class newspapers, say, the *Hindustan Times* and *Statesman*, the argument may hold good there. I have not come to plead for them. I am pleading for the middle run of employees.

Shri Morarji Desai: The middle run must be taken as the middle run. They cannot be compared to superior people.

Shri Raghavan: If you compare the salaries of persons in comparable employment which the Central Pay Commission has treated as comparable or the statutory Wage Board has treated as comparable, you will find that it is wrong to say that people in private employment are getting more. Journalists have not got that advantage of more pay. They have a little freedom to say what they want.

Shri Morarji Desai: That is an advantage.

Shri Raghavan: That is true.

Shri Morarji Desai: You cannot get that advantage and the same monetary benefits as a government servant. A government servant gives up his liberty. You want your liberty, and at the same time you want that monetarily you should not suffer a little. You want your liberty. All right. That is your choice. But then you must not say that you must also get the same monetary benefits as a government servant.

I am only trying to persuade you to see the equity of what I am saying. By not taking all aspects into account, you are only losing your argument.

Shri Raghavan: It is because we saw equity in the Finance Minister's statement in Parliament that we have not raised it on the ground of discrimination...

Shri Morarji Desai: Well, I do not want to tell you anything on that now.

Shri T. C. N. Menon: You say that you are not prepared to accept a ceiling of Rs. 24,000...

Shri Morarji Desai: We have not put any ceiling. We are only going to decide.

Shri T. C. N. Menon: You are equating yourselves with government employees. When you speak of Rs. 24,000, you are referring to the group getting Rs. 1,500—2,000, and you say that that represents the middle group.

Shri Raghavan: I did not say that I am accepting that. I only said that in fixing the limit, the Committee might kindly take into account the ceiling of Rs. 24,000 fixed for government servants who have pensionary benefits also.

Shri Morarji Desai: The question of acceptance or non-acceptance does not arise. That is the privilege of Parliament to fix. It is the privilege of the Select Committee to consider and decide that. We are only trying to see if we can persuade him to see the equity of what we are considering. That would be more useful.

Shri Raghavan: I have agreed with the suggestion. There is no question of my considering it inequitous.

Shri Morarji Desai: If you say that only your argument must be accepted, there is no basis for discussion. This is all I want to point out.

Shri Radheshyam Ramkumar Morarka: He basically accepts the suggestion, but only tries to say that while fixing the limit we should keep in mind certain considerations and guiding principles.

Shri K. R. Achar: With regard to the spread of years, have you any suggestion as to the number of years?

Shri Morarji Desai: He says ten years is the expectation of life.

Shri Raghavan: Yes.

Shri Morarji Desai: He is entitled to plead for that. We have to consider whether ten years should be the proper period or not.

Shri Raghavan: Also, the spread-over should not be made over the last three years of the actual receipt.

Shri Morarji Desai: There is a lot of difference between 3 and 10.

Shri Raghavan: Probably I have not made myself clear. Suppose I retire in 1961. It should not be on the basis of adding it to my salary I received in the earlier years. Suppose the Select Committee gives me exemption for spread over of five years. It should not be done by calculating my income from 1956 onwards.

Shri Morarji Desai: It will be spread over afterwards, not in the first three years.

Shri V. V. Chari: There is no such thing as physical spreadover.

Shri Morarji Desai: Next three years.

Shri Raghavan: Actually, it has been the previous years.

Shri Morarji Desai: That is wrong. How can that be done? The income is received today. If you want to spread it over, do so in the next three years. You cannot do it in the previous years. That would not be equitable. That is a matter which has got to be considered.

Shri Raghavan: If you will allow me, I will place before the Committee a copy of the letter addressed by the Finance Minister, No. 895 FM|61 dated May 26 on this subject.

Shri Morarji Desai: That states only the present position. We are now considering an amendment of that.

Shri Raghavan: Under the present position, it is spread over the previous years.

Shri Morarji Desai: I have already said in Parliament that I am considering this question and we are trying to see that proper relief is given. What is the proper relief will be a matter of opinion for the Select Committee and the Parliament.

Chairman: Have you any other point?

Shri Raghavan: We have no other point. As an organisation, this is the only point that we have to put forward here.

Chairman: You have no objection to the evidence being published?

Shri Raghavan: Not at all.

There is one provision which I have not raised and if you will permit me I shall refer to it. It has happened to us in the past. An employer had been collecting the tax but did not

pay to the Government. After a few years, the income-tax officer issued a notice to the employee and said that he must pay the tax with penalty because he had evaded the tax. Fortunately for us the Central Board of Revenue interefered and issued orders setting right this position. I do not know whether there is any provision in the Act to prevent such a contingency in future.

Shri Morarji Desai: It is a wrong thing done by the employer and one has to proceed against the employer.

Shri Raghavan: I have no objection if you proceed against such an employer.

Shri Morarji Desai: If once it is deducted, you cannot be proceeded against and if some notice had been issued, it is a wrong thing.

Shri Raghavan: I do not know whether there is any provision to avoid such a contingency.

Shri V. V. Chari: There is a provision in the Act.

(The witness then withdrew).

IV. THE ALL-INDIA MANUFACTURERS' ORGANISATION, BOMBAY

Spokesmen.

1. Shri Murarji J. Vaidya
2. Shri S. M. Dahanukar

Witnesses were called in and took their seats).

Shri M. J. Vaidya: I tender my apologies to the committee. The plane was delayed.

Shri Morarji Desai: You are treating the Select Committee with scant respect. We have been waiting for 40 minutes only for your pleasure.

Shri M. J. Vaidya: I did not mean any disrespect to the committee. I tender my apologies.

Shri Morarji Desai: The best form of apology is to confine yourself to a short time. We have heard many witnesses and you have mentioned nothing new here in your memorandum. There are somethings which we have already said we are going to consider in the Select Committee. We cannot tell you what we will do or will not do ultimately.

Mr. Chairman: Your memorandum has been read. If you want to raise any important point, you may do so.

Shri M. J. Vaidya: First of all, we appreciate some of the changes that are proposed to be made by this amending Bill in accordance with several representations made by our organisation and similar organisations.

Shri Morarji Desai: Why should you presume it was in accordance with your representations? That was done independently.

Shri M. J. Vaidya: I said, in accordance with the representations made not only by our organisation but other organisations also, including the Law Commission, etc.

The first reference is to clause 2 regarding the definition of dividend.

Shri Morarji Desai: We are considering that there should be no double taxation.

Shri M. J. Vaidya: As the definition of dividend stands at present, if a repayment of preference shares is made out of the accumulated profits, it can be treated as dividend and taxed.

Shri Morarji Desai: When the preference share value is returned, it is not a dividend. It cannot be taxed.

Shri M. J. Vaidya: The language may be made clear to mean that.

Regarding the definition of assessees, there are three categories now—resident, resident but not ordinarily resident and non-resident.

Shri Morarji Desai: This is being considered very seriously whether it would not be desirable to keep only two categories—resident and non-resident—and the third category falls in the non-resident class.

Shri M. J. Vaidya: Clause 6(5) is also about the same thing. The next

important point is about the definition of the term 'business connection'.

Shri Morarji Desai: We find it is difficult to give any other definition. You can suggest a new definition in a draft which shall be considered.

Shri M. J. Vaidya: Then clause 10(5) relates to the visit to home town or village. It may happen that some people may come to India and will have no place of their own residence. So, the wording should be only 'in India.' This does not in anyway change the meaning.

Shri Morarji Desai: Why should the words 'home town or village' be there?

Shri V. V. Chari: In the case of Government servants, they were given the PTO for going to their home town and nowhere else. That we have made tax-free. A representation was received from the Chambers that they should have a similar privilege. That is the origin of this.

Shri M. J. Vaidya: What happens if a man does not have a place of residence?

Shri Morarji Desai: But he may have a town. I have no house, but I have a home town.

Shri M. J. Vaidya: In other countries, if a citizen comes back to his own country, no matter where he stays, he gets the benefit. Our suggestion is that the words 'in India' only need be there. The Select Committee may consider it.

Then in regard to clause 10(6), we do not know whether our presumption is right or wrong. At present there is exemption given to technicians.

Shri Morarji Desai: This was drafted before the Finance Act was passed. Therefore all that has been provided in the Finance Act will be incorporated in this. You can presume that.

Shri M. J. Vaidya: Regarding clause 10(10) the benefits are given to State Government servants or employees of the local authorities or corporations owned by Government. It should be extended to the private sector.

Shri Morarji Desai: We are very seriously considering giving appropriate relief.

Shri M. J. Vaidya: Then I come to Clause 10(15)(iv)(c). This relates to interest payable by an industrial undertaking in India on any monies borrowed or debt incurred by paying in foreign country in respect of purchases outside India of capital, plant and machinery. At present it applies to borrowings of plant. But, as you know, now the Government allows purchase of certain raw materials and components also on deferred payment terms and on loans from DLF. Therefore, where money is returned in this fashion outside India, we submit that the same concession may be applied.

Shri V. V. Chari: For plant and machinery Government themselves wanted these people to arrange on deferred payment terms. Anyway, it is a question to be considerd

Shri M. J. Vaidya: Where it is allowed by Government or suggested by Government themselves, the same benefit may be extended.

Then I come to clauses 11, 12 and 13. The definition as laid down in the amending Bill exempts charitable organisations where the business is carried on for the purpose of the objects of the trust and accumulation is not allowed to more than 25 per cent.

Shri Morarji Desai: That is being considered. That "25 per cent" provision will have to remain. But what can be provided is that if the Trust says in the very beginning itself that it wants to accumulate funds for a particular purpose, then it may be allowed.

Shri M. J. Vaidya: If I may be permitted to quote a recent instance . . .

Shri Morarji Desai: Recent instance will not do.

Shri M. J. Vaidya: Even though it was for the fulfilment of one of the objects of the Trust . . .

Shri Morarji Desai: That will not help. It must be for a specific thing. They must specify, say, that they want to build a hospital and for that purpose they want to accumulate funds. Only then it can be allowed.

Shri M. J. Vaidya: In the case I am referring to it was for the construction of a commercial college.

Shri Morarji Desai: That may be. If the intention is made clear in advance it will be allowed, not otherwise. We are considering that. It may or may not be done.

Shri M. J. Vaidya: So long as you have agreed to consider, we are happy.

Then turn to page 6 of our Memorandum—clause 16 (3). There is no mention about subscriptions for membership fees paid to professional bodies like industrial organisations, chambers of commerce etc. We submit that this should be allowed as a regular expense and should not be included in the total income.

Shri Morarji Desai: Subscription fees paid by whom?

Shri M. J. Vaidya: Paid by me.

Shri Morarji Desai: You may become a member of 100 institutions. If I become a member of a club, I have to pay for it. I don't think it should be allowed.

Shri M. J. Vaidya: If I am a member of, say, the Chamber of Commerce, I think it should be allowed. The Income-tax Officer may judge whether it is necessary or whether it is superflous.

Shri Morarji Desai: That is quite a different thing.

Shri V. V. Chari: Are you thinking of salaried employees?

Shri M. J. Vaidya: Yes.

Shri V. V. Chari: If according to his service conditions an employee is required to become a member of any professional body and he is expected to pay the subscription out of his salary, even today it is admissible.

Shri M. J. Vaidya: That is my only submission.

Similarly, income derived by a non-profit-making organisation, which is a public organisation open to membership by the public, that income also should not be treated as taxable.

Shri V. V. Chari: There is a contradictory term—income of a non-profit-making organisation.

Shri M. J. Vaidya: They usually spend the amount they earn

Shri Morarji Desai: If they do earn and make a profit, then that should be taxed. We are keeping you up in your principle. A non-profit-making organisation should not make any profit.

Shri M. J. Vaidya: If it has any surplus you may tax that.

Shri Morarji Desai: Then there is no profit.

Shri M. J. Vaidya: There have been instances where we have found that even though there was no surplus the party concerned were taxed.

Shri Morarji Desai: That only means their expenditure was not legitimate.

Shri M. J. Vaidya: I am talking of the Indian Merchants Chamber in Bombay. They have income from two sources—one is the membership fee and the other is the income that they derive from measurement fees in the docks. They were charged on the income they derived from these measurement fees although the overall expenditure of the Chamber far exceeded its income.

Shri Morarji Desai: That will be charged separately.

Shri M. J. Vaidya: But that is not distributed to members, that is spent on maintaining the Chamber. As a

matter of fact, the Chamber maintains itself only out of that income; otherwise it will have to close down.

Shri V. V. Chari: There is a proposal to have *ad hoc* assessments in the case of Chambers of Commerce.

Shri M. J. Vaidya: Regarding development rebate, our submission is that there should be no time limit writing off development rebate in future.

Shri Morarji Desai: That is not accepted. Development rebate may not last ten years. If you ask for more it will disappear more quickly. That is how you should consider it.

Shri M. J. Vaidya: Cause 79 makes a distinction as between public companies and private companies.

Shri Morarji Desai: That is being considered.

Shri M. J. Vaidya: Clauses 104 to 109 correspond to Section 23(a) of the present Income Tax Act with some suitable modifications. Our submission is that section 23(a) itself may be kept in abeyance under the present conditions with a view to ploughing back profits in the business. We have been making this submission for a long time. We do not know, however, the Government view on it. The Law Commission, apparently, had recommended it on the lines of the sections in the U.K. Act.

Clause 108 provides savings for a company in which public have substantial interest. It is suggested that all such subsidiaries of a public company where a few shares are not held by the public company for its own reason should be treated as a public company for operation of clause 104.

Shri Morarji Desai: That is under consideration.

Shri M. J. Vaidya: The time limit for issue of notice for re-opening assessment which has escaped assessment has been increased to 16 years. We submit that this will entail a lot of difficulty in maintaining records for a long time.

Shri Morarji Desai: You will agree that it is an improvement on the present position?

Shri M. J. Vaidya: No, this makes it more difficult.

Shri Morarji Desai: Shall we maintain the present position?

Shri M. J. Vaidya: It would be comparatively better.

Shri Morarji Desai: Would you prefer that?

Shri M. J. Vaidya: Yes.

Shri Morarji Desai: All right, we will consider it.

Shri M. J. Vaidya: The time limit for completing an assessment is proposed to be extended to four instead of one year.

Shri V. V. Chari: Today there is no time limit for completing assessments which involve concealment. Actually, this is a provision in favour of the assessee.

Shri M. J. Vaidya: Then we come to clause 163—Definition of "Agent". This again, is a subject on which representation have been made from time to time. A lot of difficulty has been evperienced because the xast definition of "Agnt" of a foreign company working here for securing orders or working as indenting agent or distributor has not been given. This causes a lot of confusion and very often assessment are made on agents, who get hardly two or three per cent commission, for imaginary profits made by companies overseas.

Shri V. V. Chari: "Agent" has been very clearly defined; there is no ambiguity about "agent".

Shri Morarji Desai: If they maintain a regular office here and keep an agent who does their business regularly, certainly that agent's income is bound to be considered.

Shri M. J. Vaidya: It often happens that an Indian agent of a foreign company is taxed for the imaginary

profits made by the foreign company. Many such instances have occurred.

Shri Morarji Desai: You can bring such instances to our notice.

Shri Dehejia: That is profits arising out of business connection. Now "business connection" is sought to be clarified.

Shri M. J. Vaidya: We will submit to you the instances. You can consider them. Then I come to clause 179 on page 9—recovery of tax from directors and shareholders of private companies.

Shri Morarji Desai: That is being considered as to how we can lessen the rigour of it. In any case, the directors will have to pay. Perhaps, the shareholders will not have to pay.

Shri M. J. Vaidya: Does it not nullify the limited liability of a joint stock company?

Shri Morarji Desai: It shall be limited to the directors.

Shri M. J. Vaidya: Does it not come in conflict with the Companies Act? This may be considered from that point of view.

Shri Morarji Desai: We are reconsidering it.

Shri M. J. Vaidya: Regarding partnership firms the present law envisages registration every year. That has been removed and now they have only to make a declaration. That is an improvement. We submit that the distinction sought to be made between registered and non-registered firms may be removed as far as the procedure for registration is concerned. In other words, the non-registered firms may also be permitted to make a declaration instead of renewing their registration every near.

Shri V. V. Chari: In fact, no declaration is to be made by a non-registered firm . So, there is nothing to be done about it.

Shri M. J. Vaidya: Clause 254 gives powers to the Income-tax Appellate Tribunal.

Shri V. V. Chari: That is under consideration.

Shri M. J. Vaidya: Clauses 270 to 276 relate to the penalties to be made. I am sure a great number of representations must have been received on those clauses. In some cases, the minimum penalty has been fixed. We feel that the rigours of those penalties should be reduced.

Shri Morarji Desai: I will suggest to the Select Committee to increase them.

Shri M. J. Vaidya: Clause 287 relates to publication of information regarding penalties in some cases. The Direct Taxes Administration Enquiry Committee has suggested that it should be published only after the appeals have been disposed of; not before that. While the case is under appeal or under consideration, it is not fair that the information should be given to the public. For all we know, the earlier decision may be reversed in appeal.

Shri V. V. Chari: In fact, no change has been made in this Bill in this respect.

Shri M. J. Vaidya: Suppose the earlier decision is reversed by the Tribunal. What happens?

Shri V. V. Chari: We will republish it.

Shri M. J. Vaidya: These are the submissions that we have to make. I again thank you for giving me this opportunity. I submit once again that no disrespect to the Committee was meant by coming late for reasons beyond my control.

(The witnesses then withdrew).

The Committee then adjourned.

SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE INCOME-TAX BILL, 1961

Monday, the 17th July, 1961 at 08.04 hours.

PRESENT

Shri Jaganatha Rao—*In the Chair.*

MEMBERS

2. Shri K. R. Achar
3. Shri P. Subbiah Ambalam
4. Shri Amjad Ali
5. Shri Premji R. Assar
6. Shri Bahadur Singh
7. Shri Shree Narayan Das
8. Shri M. L. Dwivedi
9. Shri D. A. Katti
10. Shri P. Kunhan
11. Shri Bhausaheb Raosaheb Mahagaonkar
12. Shri Mathew Maniyangadan
13. Shri M. R. Masani
14. Shri Radheshyam Ramkumar Morarka
15. Shri Narendrabhai Nathwani
16. Shri C. D. Pande
17. Shri Naval Prabhakar
18. Shri Ram Shanker Lal
19. Shri Shivram Rango Rane
20. Shri K. V. Ramakrishna Reddy
21. Shri Laisram Achaw Singh
22. Dr. Ram Subhag Singh
23. Shrimati Tarkeshwari Sinha
24. Shri Radhelal Vyas
25. Shri Morarji Desai

DRAFTSMAN

Shri G. R. Rajagopaul, *Special Secretary, Ministry of Law and Member, Law Commission of India.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri V. T. Dehejia, *Secretary, Department of Revenue, Ministry of Finance.*

Shri V. V. Chari, *Senior Member, Central Board of Revenue.*

Shri J. P. Singh, *Member, Central Board of Revenue.*

Shri I. P. Gupta, *Deputy Secretary, Department of Revenue, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

Central Council of the Indian Associations in Uganda

1. Shri R. J. Mehta
2. Shri C. M. Shah.

CENTRAL COUNCIL OF THE INDIAN ASSOCIATIONS IN UGANDA

Spokesmen:

1. Shri R. J. Mehta
2. Shri C. M. Shah

(The witnesseses were called in and they took their seats).

Chairman: You can proceed.

Shri Morarji Desai: Would you like to say everything yourself, or shall I tell you what has been done?

Shri R. J. Mehta: If you tell us what has been done, then that should save the time of the Committee and yourself.

Shri Morarji Desai: If you want to have the satisfaction of speaking yourself, then I am not prepared to say anything.

Shri M. R. Masani: I think you may tell them what has been done.

Shri Morarji Desai: The Select Committee has come to a decision on the point raised by you. We are now keeping the definition of the term 'resident' as it is without changing it. The change that has been made is being dropped, so that that will solve your problem. But what we are doing is to increase the liability to be taxed. We are keeping the tax as non-resident tax and not giving the superior postion which is given to the third category. You will be treated as non-resident so that you will pay either 49 per sent. or according to the total world income, at your option.

Shri R. J. Mehta: Thank you.

Shri C. M. Shah: We have to add something in connection with this Before I may commence, I thank you very much for not changing the definition of the word 'resident'. But as regards the rate of tax, that is 49 per cent, I beg to submit that....

Shri Morarji Desai: That we are not going to reconsider. Then I will have to reconsider the whole. thing. Please do not try to get everything.

Shri C. M. Shah: There are some other points about which I want to say. Clause 6(c), defining further the word 'resident,' says:

> "having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to thirty days or more in that year".

Here our request to you is to increase the number of days from thirty to either sixty or seventy-five for the following reason. A man who comes to India all the way from East Africa does so either for social reasons or in connection with the sickness of his parents or some such thing. In that case thirty days will be too short a period for him to stay here, obviously for the reason that sometimes there may be delay in the transport, or sometimes the sickness might be prolonged or sometimes the circumstances may be such that the purpose for which he has come might not be fulfilled. For instance, if I come for a marriage, naturally I can go only after the marriage has taken place. Therefore, the period must exceed thirty days in any case. Therefore, we request you to increase the number of days from thirty days to either sixty or seventy-five days, whichever is convenient.

Shri Morarji Desai: Naturally only sixty will be relevant, because when you accept the lower limit, where is the question of our accepting seventy-five days?

Shri C. M. Shah: Sixty will be all right. Thank you.

Another point that we want to emphasize is that many of the Asians or Indians from East Africa will be inhering dwelling houses. But the ten-

dency is to have a house in the native place. In this connection we request that such a case may be treated as under the U.K. practice where he is allowed to maintain a house in the native place provided he earns his income out of that country either from service or employment or business. Similarly, here also, such a person who maintains a house in India should be exempted unless of course he comes and resides here. If that is done, it will be a great relief to persons residing abroad.

Further, it is the desire of the members residing in East Africa to have some such exemption when they come to India with all their belongings. Their remittances should be exempted if they bring it within the first two years....

Shri Morarji Desai: If they come in the first year, then whatever they bring is exempted. But if it is a new income, then certainly that cannot be exempted....

Shri C. M. Shah: I agree with you. If it is a new income, we do not want exemption.

Shri Morarji Desai: The old things are exempted; that is the present position.

Shri C. M. Shah: Will a person be exempted from taxation on the income of the year in which he comes over to India?

Shri Narendrabhai Nathwani: Does the witness mean the income of the current year?

Shri C. M. Shah: Yes please; that is because of the peculiar circumstances we are passing through.

Shri Morarji Desai: He does not bring with him the current year's income. Whatever may be the peculiar circumstances you cannot have everything; you cannot run with the hare and also hunt with the hound. Why do you grudge some taxation?

Shri Narendrabhai Nathwani: Suppose he is compelled to leave from that place.

Shri R. J. Mehta: If I may be permitted to say something, in the case of political instability, if the situation is queer and something like what happened in Congo might happen in any other place—in such circumstances a refugee who is coming over here might be bringing with him last year's income.

Shri Morarji Desai: That is exempted; nothing is taken on that. Whatever he brings with him is not going to be taxed. Not only that. I have gone a step further. If he receives any of his arrears of the past that also I would not tax; but he will have to show satisfactory proof that they are arrears and not fresh income.

Shri R. J. Mehta: If a declaration is made prior to his coming over here, that would satisfy the authorities.

Shri Morarji Desai: That would be all right. But the current year's income will not be exempted.

Shri Narendrabhai Nathwani: If they are compelled to come over here due to unforeseen circumstances, they want exemption for the curent year's income also.

Shri Morarji Desai: They will be receiving the current year's income only next year. Then they become liable for taxation on that year's income. They are asking too much. Why do they claim better facilities than what are given to the people here?

Shri Narendrabhai Nathwani: It is only in extreme cases they want this.

Shri V. T. Dehejia: Where do they pay the tax then on that income?

Shri C. M. Shah: We are paying tax in that country.

Shri Morarji Desai: You have come away. How will you pay tax there? I don't think that is a matter for argument.

Shri C. M. Shah: Section 5(2) on page 12 of the Bill is not very clear to us—"Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—(a) is received or is deemed to be received in India in such year by or on behalf of such person; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year". We fell that it is worthwhile to explain in a note that it does not include income in overseas; otherwise the authorities may extend their imagination and try to extend this act.

Shri Morarji Desai: What about your imagination and putting the officer in the wrong? Please don't think that only the Income-tax Officer is the devil. The remittances are not taxed at all.

Shri C. M. Shah: What about the income in that country?

Shri Morarji Desai: For non-residents it is not taxed. He will be treated as a non-resident and therefore that income will not be taxed. The only thing is that he pays 49% on the income here; but he has the choice. If he thinks that this 49% is more, then by taking the world income he, will have to pay a lower rate; it is his choice. I cannot give you the choice and also everything else. Why do you want improvement over the existing position? It is very liberal already. Why imagine unnecessary things and give a clue to the Officers to do something?

Shri Narendrabhai Nathwani: You said something about dwelling houses, and wanted that we should adopt the U.K. practice. What are the provisions in U.K.?

Shri C. M. Shah: This is the provision—

> "If he works full time in a trade, profession or vocation no part of which is carried on in the United Kingdom or if he works full time in an Office or employment all the duties of which are performed outside the United Kingdom, his case will then fall to be considered solely under paragraphs (a) and (b) above, *i.e.*, as a resident, but not ordinarily resident."

Shri Morarji Desai: The working rule is different. We will see what can be done in this. Would it be better for you if we remove the words "resident but not ordinarily resident" and say "provided during the last 5 years you have stayed here for 500 days or something like that"?

Shri C. M. Shah: That will not be a very happy condition.

Shri Morarji Desai: If you don't like it, it is all right.

Shri C. M. Shah: If we continue to get the same status and the same liberal application, it is much desirable for us.

Shri Morarji Desai: We don't want you to get the feeling that you would be treated in any way differently from what we have been treating you so far.

(*The witnesses then withdrew*).

The Committee then considered the amendments and redrafts of clauses prepared by the draftsman according to the decisions taken by the Committee at their earlier sittings.

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