

C. B. No. 244

LOK SABHA

**SELECT COMMITTEE
ON
THE TAXATION LAWS (AMENDMENT)
BILL, 1969.**

EVIDENCE



**LOK SABHA SECRETARIAT
NEW DELHI**

July, 1970/Asadha, 1892 (Saka)

Price : Rs. 5.00

LOK SABHA SECRETARIAT

Corrigenda to the Evidence given
before the Select Committee on
the Taxation Laws (Amendment)
Bill, 1969.

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- Page 3, Col 1, line 12 from bottom for 'Changi'
read 'change'
- Page 7, Col 2, line 25, delete 'peace'
- Page 21, transpose line 37 after line 38
- Page 42, Col 1, (i) line 13, for 'commending'
read 'commanding'
- (ii) line 10 from bottom for
'perposes' read 'purposes'
- Page 43, Col 2, line 26 for 'Exen' read 'Even'
- Page 65, Col 2, line 21, for 'subm'
read 'submitted'
- Page 71, Col 1, line 10 for 'against'
read 'again'
- Page 75, Col 2, line 13 from bottom for 'scape'
read 'scope'
- Page 79, Col 1, line 15 for 'transfer'
read 'transferor'
- Page 82, Col 2, line 15 from bottom for 'gle'
read 'files'
- Page 87, Col 2, line 15 from bottom for
'gulfilled' read 'fulfilled'
- Page 92, line 19, for 'Janadan'
read 'Janardan'
- Page 94, Col 1, line 29, for '4(a)(v)'
read '40(a)(v)'
- Page 102, Col 1, line 32, for 'incured'
read 'incurred'
- Page 113, Col 2, line 4, for '85 F'
read '35 F'
- Page 117, Col 2, line 11, for 'explan'
read 'explain'
- Page 124, Col 2, for existing line 5 from
bottom, read 'but that limit is
out of proportion'
- Page 128, Col 1, line 9, for 'dinned' read
'dinner'

(ii)

- Page 132, Col 2, line 13, for 'Yoy' read 'You'
- Page 137, Col 1, line 17, for 'H.S. SHARMA'
read 'B.S. SHARMA'
- Page 141, Col 1, line 15 from bottom, for
'Tribinual' read 'Tribunal'
- Page 145, Col 1, line 19, for 'elecrolytic' read 'electrolytic'
- Page 148, Col 1, (i) line 4 for 'Develoment'
read 'Development'
- (ii) line 8 from bottom, for
'Comercial' read 'Commercial'
- (iii) line 5 from bottom, for
'seemes' read 'seems'
- Col 2, (iv) after line 1, insert
'it is then I shall not get any
benefit because my Company was
started in'
- (v) delete lines 5 and 6
- Page 155, Col 1, line 29, delete 'SHRI BANERJEE'
- Page 175, Col 1, lines 23 and 26, for 'randm'
read 'randum'
- Page 180, Col 1, line 19, for 'Yest' read 'Yes'
- Page 208, Col 1, lines 42-43 for 'landship '
read 'hardship'
- Page 231, Col 2, (i) line 1, for 'asseessees'
read 'asseessees'
- (ii) line 3 for 'best' read 'least'
- Page 247 (i), Col 2, line 12 from bottom, for 'once'
read 'one'
- (ii), Col 2, line 2 from bottom delete 'same'
- Page 257, (i) after line 4 insert 'Shri Chintamani
Panigrahi - Chairman'.
(ii) line 4 from bottom, for 'Manufacturs'"
read "Manufacturers'"
- Page 293, Col 2, line 2 from bottom, for '3' read '9'
- Page 299 (i) Col 1, line 1, for 'geunine' read 'genuine'
- (ii) Col 2, line 6, for 'fess' read 'fees'
- Page 300 (i) Col 1, line 4, for 'Copany' read 'Company'
- (ii) Col 1, line 10 from bottom, for 'epenses'
read 'expenses'
- (iii) Col 2, line 30 for 'workers' read 'works'
- Page 301, Col 2, line 19 for 'intention' read 'intention'

(iii)

- Page 302, Col 1, line 7, for 'anffluence'
read 'influence'
- Page 303, Col 2, line 11 from bottom, for
'rgister' read 'register'
- Page 304, Col 2, line 29, for 'recognisd'
read 'recognised'
- Page 305, Col 2, last line, for 'judment'
read 'judgement'
- Page 316 (i) line 2, add 'Taxation Laws'
before '(Amendment)'
(ii) after line 19 insert
"Legislative Counsel
Shri Marihara Iyer, Additional
Legislative Counsel"
- Page 325, (i) Col 1, line 1 for 'be more'
read 'before'
(ii) Col 1, line 18, for 'aded'
read 'added'
- Page 336, Col 1, (i) line 25, for 'ay'
read 'pay'
(ii) line 10 from bottom,
for 'apcals' read 'appeals'
- Page 351, Col 2, line 26, for "ything"
read "anything"
- Page 356, Col 2, line 12, for 'go' read 'got'
- Page 359, Col 1, lines 16-19 for 'nconfiscate'
read 'confiscate'
- Page 361, Col 1, for existing line 4, read 'be
allowed as deferred revenue ex-'
- Page 362, Col 1 (i), line 19, for 'extent'
read 'extend'
(ii), line 25, for 'hclpul'
read 'helpful'
- Page 371, Col 1, line 33 insert 'for' before
'amortisation'
- Page 393, Col 1, line 13 for 'statur' read 'status'
- Page 402, Col 1, line 12 from bottom, for 'han.'
read 'than'
- Page 412, Col 1, for existing line 15 read
'Direction 58 reads -'
- Page 419, Col 2, line 14-15, for 'adjourued'
read 'adjourned'
- Page 425, Col 2, line 23, after 'although' add
'it may be proper that certain
types of'

(iv)

- Page 434, Col 1, for existing line 20 from bottom, read 'possibility of having some winter'
- Page 445, (i) Col 1, for existing line 7 read 'to be permitted to offer comments on'
(ii) Col 2, line 13 from bottom, for 'the while' read 'why the'
- Page 447, Col 2, for existing line 2 from bottom read 'MR. CHAIRMAN: It is in the'
- Page 451, (i) Col 2, for existing line 22, read "say 'yes' and if Mr. Salve puts you"
(ii) Col 2, lines 27, 30 and 34 for 'assees' read 'assesses'
- Page 454, Col 1, line 15 for 'pread 'public'
- Page 455, Col 2, line 6 from bottom, for 'may' read 'many' and for 'Rarrassments' read 'harassments'

Composition of the Committee

Chintamani Panigrahi—Chairman

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Sardar Buta Singh
4. Shri N. C. Chatterjee
5. Shri J. K. Choudhury
6. Shri S. R. Damani
7. Shri N. Dandekar
8. Shri Pattiam Gopalan
9. Shri Kanwar Lal Gupta
10. Shri B. N. Katham
11. Shri Yashwant Singh Kushwah
12. Shri V. Krishnamoorthi
- *13. Shri P. Govinda Menon
14. H. H. Raja Yeshwantrao M. Mukne
15. Shri S. B. Patil
16. Shri Shiva Chandika Prasad
17. Shri R. Dasaratha Rama Reddy
- @18. Shri Bishwanath Roy
19. Shri N. K. P. Salve
20. Shri N. K. Sanghi
- **21. Shri Beni Shanker Sharma
22. Shri Yogendra Sharma
23. Shri Janardan Jagannath Shinkre
24. Shri R. K. Sinha
25. Shri N. K. Somani
26. Shri Tenneti Viswanatham
27. Shri Ram Sewak Yadav
- @@28. Shri Prakashchand B. Sethi

* Since died on the 23rd May, 1970.

@Resigned on the 22nd July, 1970.

** Appointed w.e.f. 24-12-1969 vice Shri Brij Bhushan Lal resigned.

@@ Resigned on the 31st July, 1970.

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram, *Legislative Counsel, Ministry of Law.*
2. Shri R. V. S. Peri-Sastri, *Addl. Legislative Counsel, Ministry of Law.*
3. Shri Harihara Iyer, *Addl. Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri P. Govindan Nair, *Secretary.*
2. Shri R. N. Muttoo, *Chairman, Central Board of Direct Taxes and Ex-cess*
Addl. Secretary.
3. Shri R. D. Shah, *Member, Central Board of Direct Taxes and Ex-*
cess, Secretary.
4. Shri V. Ramaswamy Iyer, *Deputy Secretary.*
5. Shri R. R. Khosla, *Deputy Secretary.*
6. Shri S. P. Chowdhury, *Under Secretary.*
7. Shri M. S. Moray, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Serial No.	Names of Witnesses	Date of hearing	Page
1.	The Institute of Chartered Accountants of India, New Delhi	31-10-69	2.
	<i>Spokesmen :</i>		
	1. Shri H. B Dhondy		
	2. Shri M. C. Bhandari		
	3. Shri P. Brahmaya		
	4. Shri C. Balakrishnan		
2.	Punjab, Haryana and Delhi Chamber of Commerce & Industry, New Delhi	31-10-69	31
	<i>Spokesmen :</i>		
	1. Shri Raghunath Rai		
	2. Shri Mohinder Puri		
	3. Shri S. Sundara Raman		
	4. Shri Onkar Nath		
	5. Shri M. L. Nandrajog		
3.	Delhi Hindustani Mercantile Association, Delhi	1-11-69	51
	<i>Spokesmen :</i>		
	1. Shri Brij Bhushan Sharan		
	2. Shri Ganpat Rai		
	3. Shri Kishan Lal		
4.	Bar Association (Income-tax), New Delhi	1-11-69	72
	<i>Spokesmen :</i>		
	1. Shri R. K. Gauba		
	2. Shri J. M. Bhatia		
	3. Shri L. D. Verma		
5.	The Associated Chambers of Commerce and Industry of India, Calcutta.	8-1-70	93
	<i>Spokesmen :</i>		
	1. Shri A. K. Sen		
	2. Shri S. Bhattacharya		

Serial No.	Names of Witnesses	Date of hearing	Page
3.	Shri P. K. Choksey		
4.	Shri M. H. Modv		
5.	Shri Mohinder Puri		
6.	Shri A. K. Sivaramakrishnan		
7.	Shri A. T. Robertson		
6.	Indian Chambers of Commerce, Calcutta	8-1-70	105
	<i>Spokesmen :</i>		
	1. Shri A. K. Jain		
	2. Shri B. P. Khaitan		
	3. Shri J. Singhi		
	4. Shri C. S. Pande		
	5. Shri B. Kalyanamdaram		
	6. Shri Manab Chaudhry		
7.	Indian Mining Association, Calcutta	8-1-70	112
	<i>Spokesmen :</i>		
	1. Shri H. C. Dass		
	2. Shri S. P. Saigal		
	3. Shri S. H. Utamsingh		
	4. Shri W. G. Macintosh		
8.	Charatered Institute of Secretaries India Association, Calcutta	9-1-70	124
	<i>Spokesmen :</i>		
	1. Shri L. R. Puri		
	2. Shri S. P. Acharya		
9.	Merchants Chamber of Commerce, Calcutta	9-1-70	133
	<i>Spokesmen :</i>		
	1. Shri B. S. Kothari		
	2. Shri S. N. Dalmia		
	3. Shri B. P. Agarwala		
	4. Shri H. L. Somany		
	5. Shri M. L. Saraf		
	6. Shri R. L. Sarangi		

Serial No.	Names of the witnesses	Date of hearing	Page
10.	Indian Copper Corporation Ltd., Calcutta	9-1-70	144
	<i>Spokesmen :</i>		
	1. Shri S. H. Utamsingh		
	2. Shri P. H. Bray		
	3. Shri S. K. Ghosh		
11.	Income-tax Bar Association, Calcutta	10-1-70	152
	<i>Spokesmen :</i>		
	1. Shri B. N. Banerjee		
	2. Shri M. Banerjee		
	3. Shri B. C. Pugalia		
12.	Bharat Chamber of Commerce, Calcutta	10-1-70	161
	<i>Spokesmen :</i>		
	1. Shri B. D. Kanoria		
	2. Shri R. R. Bhiwaniwalla		
	3. Shri R. N. Bangur		
	4. Shri K. K. Jain		
	5. Shri Shital Prasad Jain		
	6. Shri L. R. Dasgupta		
	7. Shri K. C. Mukherjee		
13.	Bengal National Chamber of Commerce and Industry, Calcutta	10-1-70	170
	<i>Spokesmen :</i>		
	1. Dr. B. N. Ghose		
	2. Shri Milan Kumar Mookerjee		
	3. Shri M. C. Poddar		
	4. Shri A. K. Chattopadhyaya		
	5. Shri R. Singhi		
	6. Shri A. R. Dutta Gupta		
14.	Shri H. R. Varma, Technical Adviser, Indian Electrical Manufacturers Association, Bombay	15-1-70	178

Serial No.	Names of witnesses	Date of hearing	Page
15.	The Hindustan Chamber of Commerce, Bombay <i>Spokesmen :</i> 1. Shri Nandlal Kejriwal 2. Shri Ramesh Chandra Rastogi 3. Shri Pannalal Sanganeria 4. Shri J. N. Gupta	15-1-70	183
16.	Indian Merchants Chamber, Bombay <i>Spokesmen :</i> 1. Shri J. R. Doshi 2. Shri Pratap Bhogilal 3. Shri C. C. Choksi 4. Shri V. R. Dalal 5. Shri C. L. Gheewala	15-1-70	197
17.	Shri N. A. Palkhiwala, Senior Advocate, Supreme Court, Representing Tata Sons and Tata Industries Pvt. Ltd. Bombay	16-1-70	216
18.	The Maharashtra Chamber of Commerce and Industries, Poona <i>Spokesmen :</i> 1. Shri G. L. Pophale 2. Shri M. S. Vartak 3. Shri V. G. Phide 4. Shri V. B. Kirtane 5. Shri Shantilal Shah 6. Shri Y. P. Pandit 7. Shri B. R. Sabale	16-1-70	240
19.	M/s. B. R. Hermanani Mohatta (India) Private, Ltd., Bombay <i>Spokesmen :</i> 1. Shri Brijratan S. Mohatta 2. Shri S. Srinivasan 3. Shri Rajendra Kumar Mohatta	16-1-70	249

Serial No.	Name of witnesses	Date of hearing	Page
20.	Tata Sons and Tata Industries Pvt. Ltd., Bombay . 1. Shri N. A. Palkhiwala <i>assisted by</i> 2. Shri S. D. Masani	17-1-70	257
21.	All India Manufacturers, Organisation, Bombay <i>Spokesmen :</i> 1. Dr. Pranlal Patel 2. Shri B. D. Somani 3. Shri Y .A. Fazalbhoj 4. Shri B. S. Mohatta 5. Shri M. R. Shroff 6. Shri P. A. Shah 7. Shri P. L. Badami 8. Shri S. P. Subramanian	17-1-70	265
22.	Shri V. P. Gupta, President, All India Federation, Income-tax Gazetted Services Association, Central Revenue Building, Delhi	New 31-1-70	277
23.	Indian Revenue Service (Income-tax) Association, New Delhi <i>Spokesmen :</i> 1. Shri P. S. Bhaskaran 2. Shri S. N. Mathur 3. Shri G. C. Aggarwal 4. Shri M. C. Joshi 5. Shri C. V. Padmanabhan	31-1-70	286
24.	Federation of Indian Chambers of Commerce & Industry, New Delhi <i>Spokesmen :</i> 1. Dr. Bharat Ram 2. Shri G. L. Bansal 3. Shri C. C. Chokshi 4. Shri R. Thakur 5. Shri O. P. Vaish	31-1-70	296

[Serial No.	Names of witnesses	Date of hearing	Page
	6.	Shri C. H. Hazari		
	7.	Shri M. N. Nagarajan		
	25.	Madura Ramnad Chamber of Commerce, Madurai <i>Spokesman :</i> Shri Peri Thiagrajan	5-2-70	316
	26.	Revenue Bar Association, Madras <i>Spokesmen :</i> 1. Shri T. V. Viswanatha Aiyer 2. Shri K. Srinivasan 3. Shri S. Swaminathan 4. Shri G. V. Mahalingam 5. Shri S. V. Subramanian	5-2-70	321
	27.	Andhra Chamber of Commerce, Madras <i>Spokesmen :</i> 1. Shri Rasiklal M. Mehta 2. Shri J. V. Somayajulu 3. Shri P. Brahmaya 4. Shri M. S. Sambasivam	5-2-70	328
	28.	Shri V. S. K. Duraiswamy Nadar, Commissioner of Income-tax (Retd.) Madras	5-2-70	333
	29.	Tamil Chamber of Commerce, Madras <i>Spokesmen :</i> 1. Shri V. S. K. Duraiswamy Nadar 2. Shri V. Ramchandran 3. Shri M. S. Swaminathan	6-2-70	341
	30.	The Southern India Chamber of Commerce and Industry, Madras 1. Shri P. Maruthai Pilai 2. Shri S. Narayanaswamy 3. Shri N. C. Krishnan	6-2-70	345

Serial No.	Names of witnesses	Date of hearing	Page
31.	Hindustan Chamber of Commerce, Madras	6-2-70	351
	<i>Spokesmen :</i>		
	1. Shri K. D. Shah		
	2. Shri R. Ramakrishnan		
	3. Shri V. Ramachandran		
	4. Shri G. Narayanaswami .		
	5. Shri R. Ananthakrishnan		
32.	The Indian Chamber of Commerce, Coimbatore	6-2-70	355
	<i>Spokesmen :</i>		
	1. Shri G. D. Naidu		
	2. Shri P. Rangaswami		
33.	The Madras Income-tax Employees Association, Madras	6-2-70	358
	<i>Spokesmen :</i>		
	1. Shri K. M. Kochukumar		
	2. Shri N. Sundarajan		
	3. Shri C. Subramaniam		
	4. Shri S. Raghavan		
	5. Shri G. S. Gnanam		
34.	Mysore Chamber of Commerce and Industry, Bangalore	7-2-70	366
	<i>Spokesmen :</i>		
	1. Shri C. M. Reddy		
	2. Shri M. K. Ramachandra		
	3. Shri M. R. Ranga Rathnam		
	4. Shri J. Srinivasan		
	5. Shri G. N. Krishnaa Murthy		
35.	New India Fisheries Ltd., Bombay	7-2-70	375
	<i>Spokesmen :</i>		
	1. Shri J. K. Munshi		
	2. Shri N. V. Shah		
	3. Dr. S. V. Gokhale		
36.	Shri R. N. Muttou, Chairman, Centra Board of Direct Taxes, Ministry of Finance, Department of Revenue and Insurance	7-4-70	382
37.	Ditto.	24-4-70	395

Serial No.	Names of witnesses	Date of hearing	Page
33.	The Kashmir Chamber of Commerce and Industry Srinagar	19-6-70	410
	<i>Spokesmen :</i>		
	1. Shri R. K. Sawhney		
	2. Shri P. N. Puri		
	3. Shri R. C. Gupta		
	4. Shri D. S. Oberoi		
	5. Shri K. K. Mehra		
39.	Group of small income-tax assesses, Srinagar	19-6-70	415
	<i>Spokesmen :</i>		
	1. Shri D. N. Madan		
	2. Shri N. K. Raina		
	3. Shri Mohd. Yusaf		
	4. Shri Niranjana Nath		
40.	The Institute of Chartered Accountants of India	15-6-70	418
	<i>Spokesman :</i>		
	Shri H. B. Dhondy		
41.	Beopar Mandal Kashmir, Srinagar	19-6-70	425
	<i>Spokesmen :</i>		
	1. Shri H. Abdul Aziz		
	2. Shri Noorudin		
	3. Shri O. P. Kapur		
	4. Shri Haji Kurshid Ahmed Martoo		
	5. Shri Lal Chand Mehra		
	6. Shri Mohd. Yasin		
	7. Shri Dharam Pal Mehta		
42.	Hotel Association, Pahalgam	20-6-70	431
	<i>Spokesmen :</i>		
	1. Shri D. M. Wazir		
	2. Shri Narinder Singh		
	3. Shri Satinder Singh		
	4. Smt. Iqbal Kaur		

Serial No.	Name of witnesses	Date of hearing	Page
5.	Shri Abdul Rehman		
6.	Shri Subhag Chand		
43.	Beopar Mandal, Pahalgam	20-6-70	412
	<i>Spokesmen :</i>		
	1. Shri Abdul Aziz Magrey		
	2. Shri Dina Nath		
	3. Shri Lal Mir		
	4. Shri Sham Lal		
	5. Shri Ravi Kumar J		
	6. Shri Amarjit Singh		
44.	All India Tax Advocates Association, New Delhi	21-6-70	413
	<i>Spokesmen :</i>		
	1. Shri G. C. Sharma		
	2. Shri D. P. Mahajan		
	3. Shri O. P. Dua		
	4. Shri Kewal Krishan Wadera		
	5. Shri S. Grover		
	6. Shri M. M. Khanna		
	7. Shri Prem Singh		
	8. Shri I. M. Bhardwaj		
	9. Shri A. C. Chawla		
	10. Shri R. C. Dhawan]		
	11. Shri S. K. Kakkar		
45.	Group of small income-tax assesses, Gulmarg	22-6-70	457
	<i>Spokesmen :</i>		
	1. Shri Aytar Krishen		
	2. Shri Ghulam Mohd. Kar		
	3. Shri Hirday Nath		
	4. Shri Gopi Nath Rai a		
	5. Shri Amar Nath		

COMMITTEE ON THE TAXATION LAWS (AMENDMENT) BILL, 1969

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE OF THE TAXATION LAWS
(AMENDMENT) BILL, 1969

Friday, the 31st October, 1969 at 10.00 hours and again at 15.00 hours

PRESENT

Shri Chintamani Panigrahi—*Chairman*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri N. C. Chatterjee
4. Shri J. K. Choudhury
5. Shri S. R. Damani
6. Shri N. Dandekar
7. Shri Kanwar Lal Gupta
8. Shri B. N. Katham
9. Shri Yashwant Singh Kushwah
10. Shri V. Krishnamoorthi
11. Shri Brij Bhushan Lal
12. Shri S. B. Patil
13. Shri Shiva Chandika Prasad
14. Shri R. Dasaratha Rama Reddy
15. Shri Bishwanath Roy
16. Shri N. K. P. Salve
17. Shri N. K. Sanghi
18. Shri Yogendra Sharma
19. Shri Janardan Jagannath Shinkre
20. Shri N. K. Somani
21. Shri Tenneti Viswanatham
22. Shri Ram Sewak Yadav.

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram, *joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. N. Muttoo, *Chairman, Central Board of Direct Taxes.*
2. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
3. Shri Harihar Lal, *Commissioner of Income-Tax, Delhi.*

4. Shri V. Ramaswamy Iyer, *Deputy Secretary.*
5. Shri R. R. Khosla, *Deputy Secretary.*
6. Shri S. P. Chowdhury, *Under Secretary.*
7. Shri A. Bagchi, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla *Deputy Secretary.*

WITNESSES EXAMINED

I. The Institute of Chartered Accountants of India, New Delhi.

Spokesmen:

- Shri H. B. Dhondy—*President of the Institute.*
 Shri M. C. Bhandari—*Vice-President of the Institute.*
 Shri P. Brahmayya—*Chairman, Taxation Committee of the Institute.*
 Shri C. Balakrishnan—*Secretary.*

II. Punjab, Haryana and Delhi Chamber of Commerce and Industry, New Delhi.

Spokesmen:

- Shri Raghunath Rai—*Chairman, Company Law and Taxation Panel of the Chamber.*
 Shri Mohinder Puri—*Member, Managing Committee.*
 Shri S. Sundara Raman—*Member, Company Law and Taxation Panel.*
 Shri Onkar Nath—*Member, Company Law and Taxation Panel.*
 Shri M. L. Nandrajog—*Secretary of the Chamber.*

I. The Institute of Chartered Accountants of India, New Delhi.

Spokesmen:

1. Shri H. B. Dhondy, *President of the Institute.*
2. Shri M. C. Bhandari, *Vice-President of the Institute.*
3. Shri P. Brahmayya, *Chairman, Taxation Committee of the Institute.*
4. Shri C. Balakrishnan, *Secretary.*

(The witnesses were called in and they took the seats).

MR. CHAIRMAN: We welcome you all. You can elaborate your views expressed in the Memorandum that you have submitted.

SHRI DHONDY: I would begin by thanking you and your committee for the opportunity given to us to appear before you and elaborate on the memorandum we have already submitted. I would like to preface our comments on individual amendments with a general observation that as representatives of the accountancy profession we are indeed very conscious of our important role in regard to the just

and efficient administration of the Direct Tax Laws, with due concern for the legitimate interests both of the Revenue as well as those of the taxpayer and the community at large. We are not only in full sympathy with the expressed objectives of the proposed amendments, but we have in fact been actively cooperating with the Tax Department, and I am sure that the representatives of the Department and the Chairman of the Board will confirm this. We have been actively cooperating with the Department in the advancement of those objectives. We would, therefore,

respectfully submit that a careful consideration of our Memorandum will show that we are not interested in just seeking to press for additional reliefs and concessions to assessees, but have examined the proposed amendments on which we offered our comments with the aim of considering how far they will achieve the objectives behind them.

We have, of course, confined ourselves to the specific provisions for amendment of the law, which are contained in the Bill. We realise that this is not a proper forum for commenting on the general tax policies of the Government. My remarks, Sir, would serve only to highlight what we consider to be our main suggestions. In doing so, we are completely in your hands and will take up as much of your time as you can conveniently spare for us.

The first consideration is in relation to the lack of uniformity in the commencement dates of the various amendments. We would submit for your consideration that possibly this lack of uniformity in different amendments — some retrospectively and some prospectively will not advance out of the stated objectives of rationalisation and simplification. Our remarks in this regard are at page 2, second paragraph.

I would like to say, Sir, that there are two issues involved here: Whether the overriding consideration is that of achieving some measure of rationalisation and simplification or whether the need for the Changi is so pressing' should be the criterion in deciding individual cases, wherein an exception should be made to the general date from which amendments become operative....

MR. CHAIRMAN: Do you mean to say that rationalisation and simplification are one and the same thing?

SHRI DHONDY: Not at all. What we would submit is that unless there is some over-riding criterion which

requires a contrary decision, the ordinary rule should be that all the proposed amendments in this comprehensive Bill be brought into effect, so far as possible, from one given time.

I refer to the Finance Minister's observations in 1967. In regard to a few amendments, this assurance appears to have been departed from. I would submit, Sir, that the proposed amendment to section 64 which is sought to be made in regard to Hindu undivided families is sought to be given retrospective effect. We are in entire agreement with the spirit behind the amendments and we welcome them indeed. But, we would beg to submit, that this is clearly a case where it should have prospective, and not retrospective, effect. Then, Sir, if I may turn to another major set of proposed amendments in regard to which we have certain views to express—these are contained in clauses 34 relating to proposed amendments to Section 143 in regard to the procedures for assessment.

The very first observation we have to make in this regard is that the proposed changes have obviously been recommended to achieve the objective of simplifying the procedures for assessment, but with great respect our opinion is that if they are enacted in their present form they may achieve just the opposite effect.

In this particular matter one of the proposed amendments is that where a return of income has been submitted by an assessee the Income-tax Officer even without giving the assessee an opportunity of being heard may proceed to make an assessment making what he considers *prima-facie* necessary adjustments to the return. With great respect our experience shows that in a very complicated subject like Income Tax Law what one person may consider *prima-facie* necessary adjustments on examination of the return, without full examination the person possessing the details

may not consider at all a necessary adjustment. So, this is likely to increase the number of appeals, causing additional unnecessary work both to the Department and the assessee. That is why we submit these proposed amendments may be re-examined to see whether they will achieve the object which they are sought to achieve.

Clause 43—proposing to introduce two new sections—186A and 186B into the Income Tax Act. This relates to the assessment of partnership firms registered and un-registered. Broadly speaking the intention appears to be to substitute for registered and un-registered recognised and unrecognised firm and make the registration with the Registrar of Firms prima-facie evidence of the genuineness of the firm. I do agree that the substantive requirement of the existing law, and presumably also of the amended law are that the firm should be genuine. The Income-tax officers should be satisfied that the firm is genuine and that the fact of existence of the firm is evidenced by a written partnership agreement in which the shares of the partners are specified. Those are the two substantial requirements under the existing law. They will continue to be the substantial requirements under the proposed amended law. The point is that in a matter like this it is obviously not possible for the Income Tax Officer to ascertain all the facts in regard to each partnership firm to come to a subjective assessment as to whether or not the firm is genuine. Therefore, the question arises that the law can only hope to set down certain procedures which if complied with would prima facie, in the ordinary run of things, lead the officer to the satisfaction that these two substantial requirements of both the present and the amended law are in fact being complied with. Now, the point that we make is, therefore, this is an area where the actual procedural requirements prescribed must be given paramount consideration. Today admit-

tedly there are areas in the procedural requirements which lead to complexity. For example, if a partnership has had a change and submitted an application for registration for a particular assessment year supported by the relevant new partnership agreement but the Income-tax Officer has not completed the assessment of that partnership for that year by the time before which the assessee has to submit its return for the subsequent year, it becomes a matter of considerable doubt whether one should apply again for registration (because registration has not been granted to the new firm) or one should apply for renewal of registration. I point this out as a result of the fact that we conceive that the present requirements involve procedural complexities which need to be ironed out, if I may use that expression.

There should be no requirement for registration with the Registrar of Firms within six months of the commencement of business by the firm.

The first point I may argue is that the proposed changes even in regard to the new procedure proposed, will not achieve their objective of simplification and avoidance of unnecessary hardship. On the contrary, with great respect we submit they will have the opposite effect.

Next, even if the present contains certain defects, at least the language of the law has remained settled, for a long period of time. It has been the subject of various judicial decisions and interpretation and some consensus has emerged. Therefore, to substitute altogether completely a new set of procedures, for trying to satisfy the Income-tax Officer will not achieve the objective. Our suggestion is rather, that effort should be concentrated on trying to see how the existing procedure could perhaps be streamlined and simplified.

SHRIN. K. P. SALVE: You stand for a change of procedure or not and

you are saying that it may be simplified. You seem to be in favour of a set of procedures which by itself *suo motu* establish genuineness of the firm. One stand has to be taken. You have virtually said that settled law is unsettled but procedural law is being changed. Whether you want a change in the procedure or not?

SHRI H. B. DHONDY: The point I would like to make is that, when I say substantive requirements of the law are not intended to be changed, I do not mean to convey that we are of the opinion that settled law will not be changed. The point I am making is settled law is largely procedural.

SHRI N. K. P. SALVE: In the settled law, as you said, there should be genuine partnership firm. Secondly that the existence of the partnership should be evidenced by the document which should specify the shares. These are cardinal requirements. What are the tests required from time to time?

The question is to establish genuineness. As we find that the procedure is being changed to facilitate establishing the genuineness of the firm to minimise the difficulties and hardships in proving genuineness.

SHRI H. B. DHONDY: We are of the opinion that the objectives would be more simply and more effectively achieved by making certain relatively minor amendments to the existing procedures, rather than completely scrapping the existing system.

SHRI N. K. P. SALVE: You want change but some other changes.

SHRI DANDEKAR: I take it that if registration of firms by the Registrar of Partnership was accepted by the Department as adequate in regard to their genuineness, you will be happy.

Another procedural defect is of course delays.

SHRI DAMANI: Whether so many firms at a time will be available for registration?

SHRI H. B. DHONDY: In that regard I want to clarify that it is a matter of relative detail. It has been pointed out on page 17 in the second paragraph that the Registrar of Firms is a State Government Officer assigned with several other responsibilities besides being the Registrar. Usually there is one Registrar of Firms in one State unlike the Income-tax Officer. In our considered opinion, far from simplifying the procedures, even that is not likely to help assessee by and large, or the Department. Inevitably, there will be delays.

SHRI DAMANI: I agree with your views that this clause requires some changes because it would create many hardships to assessee. I would like to know is amendment effecting the new partners or existing partners?

SHRI H. B. DHONDY: It will in point of fact be in regard to existing firms. It will bring additional duties on both assessee and the Income-tax Officers and therefore add to the work.

Sir, I am told, as regards practical difficulties, each State has only one Registrar of Firms. We have mentioned that in our Memorandum. It is at the Headquarters of that particular State. If the assessee himself is in a different area and the Income Tax Officer in yet another area, one can well see how it is going to affect the solution of practical difficulties.

We have had the similar experience of Recovery Officers. That resulted in lack of co-ordination and practical difficulties and additional work and so, that has also been given up. Similarly, I do not think that this proposed amendment, therefore, will achieve the objective for which it is being introduced.

SHRI N. K. P. SALVE: It is very important. This is what the Ministry has explained to us. They say: 'Registration of firms for purposes of assessment to income-tax requires subjective determination by the Income-tax Officer of the genuineness of the firm and leads to disputes, litigation and delays in the finalisation of the assessments of firms and their partners. The new procedure in Sections 186(A) and 186(B) is designed to considerably simplify the assessment of firms and their partners by eliminating requirement of separate registration for the purpose of assessment of income-tax and virtually recognising the registration under the Indian Partnership Act as being sufficient for the purpose of charge of income-tax as well. If one has to comply all the additional requirements that are enumerated in that, it may not lead to such a simple procedure.

SHRI DHONDY: What I meant was that the intention is quite genuine.

SHRI N. K. SANGHI: Mr. Dhondy, we have seen your Memorandum with great care. One of the objectives is also countering the avoidance and evasion of tax. I think, the Ministry feels that by the present procedure, proper justice is not being done in knowing the genuineness of the partnership of the firm. You are practising in this line. Could you suggest something? May I know if you have any other suggestion by which the Ministry could know the genuineness of the firm and also at the same time simplify the registration formalities of the firm, rather than just saying that the law that has been proposed here is defective and cumbersome?

SHRI DHONDY: I would suggest that would it not perhaps be better if we attempted to see what precisely, in the existing explicit language of the procedure as it stand in the Section, causes complexities and difficulties, and see what amendments

would overcome those difficulties? That would have an added advantage. And with respect to your observation, I think the Institute would consider it a privilege to come with concrete proposals for amendments in that direction. But we would request a little time.

SHRI N. K. P. SALVE: You can apply your mind. After all, the objective is to achieve a little simplicity. If not now, you can let us have what procedure will meet the ends. But there is one thing which I must caution you. The procedure over-simplified should not be misunderstood in the sense that it must not be one which would completely stifle the Income-tax Officer.

SHRI DHONDY: We are agreed as to the objective.

SHRI DAMANI: You have no objection to change the procedure, if the registration of a firm with the Registrar of Firms was *ipso facto* evidence of genuineness of the firm.

SHRI DHONDY: We would have no objection.

SHRI SALVE: Do I take you to say that the registration of the firm—you must not enquire into?

SHRI DHONDY: Since the Registrar of Firms also has to see that certain requirements, admittedly largely procedural, are fulfilled, this could be one of the alternatives. This is one of the alternatives where, in the absence of any circumstances leading the Income-tax Officer to doubt the genuineness of firm notwithstanding the fact that it is registered, he also could grant registration. I would also submit that there should be an alternative procedure more or less analagous with the present one, with the complexities ironed out.

MR. CHAIRMAN: For these new Clauses, the Ministry have taken into consideration the recommendations obtained in the Bhoothalingam Committee Report and the Report of the Administrative Reforms Commission on Central Direct Tax Administration. They have said, as Mr. Salve was pointing out, at page 138 that the "new procedure in sections 186A and 186B is designed to considerably simplify the assessment of firms and their partners by eliminating the requirement of separate registration for the purpose of assessment to income-tax and, virtually, recognising the registration under the Indian Partnership Act as being sufficient for the purpose of charge of income-tax as well". This is the Ministry's explanation. You look to page 138. The law is not so clear.

AN HON'BLE MEMBER: Registration does not *ipso facto* establish..

MR. CHAIRMAN: Then, it is a question of interpretation. There is no objection in so far as the principle is concerned.

SHRI DHONDY: I agree that it should be the aim. The only difficulty seems to be the language concerned. It will not achieve the objective. It was a very good intention. It has not been achieved by the language, and even by the scheme of substituting the present requirement for registration with the Department with a scheme for getting only recognition by the Department. I submit that the overriding criterion remains the same in both cases. We do not say that the genuineness of the firm is not important, far from it. On the contrary, we consider that is the paramount consideration. The law has to set out some procedure, and the simpler way of achieving the objective would be to try and streamline and iron out the practical difficulties in that regard, rather

than introduce a new set, which changes registration to recognition.

SHRI N. K. P. SALVE: Mr. Dhondy, something like this in the law that unless there are reasons to believe that the firm is not genuine, registration with the Registrar of Firms should be conclusive proof of the genuineness. Should such provision would satisfy the Institute?

SHRI DHONDY: That should be one of the alternatives. The Objects clause has mentioned that there is a particular State, Jammu & Kashmir, where there is no Registrar of Firms. It would not be so simple. We have also pointed out the practical difficulties for the assessee to have access to comply with this procedural requirement. Therefore, in such cases there should be an alternative yardstick which should be available in such cases.

SHRI SALVE: Registration of the firm should be an overwhelming piece of evidence for determining the genuineness of the firm.

SHRI DHONDY: Therefore, the language, which I suggested would help to meet that. But once again, I submit, that should be one of the alternative criteria on procedural matters and the others should be more or less on the pattern of the existing requirements, ironing out the practical difficulties.

SHRI N. K. P. SALVE: Mr. Dhondy, the existing procedure must go lock, stock and barrel and you will give us a procedure which will be so simple that a man who is average educated will be able to know what he has to do for purposes of registration. We are not satisfied with the existing procedure. It is extremely difficult to understand.

MR. CHAIRMAN: All the difficulties that you are anticipating, have all been taken into consideration. You can look to Section 186A also. 186A (1) "provides that a firm shall be recognised in relation to the assessment year 1970-71 and any subsequent year, if the following conditions are fulfilled." They have also tried to accommodate all the difficulties which you anticipate.

SHRI DHONDY: The point is that there are a number of requirements cumulatively put in, of which the registration with the Registrar of Firms is only one, and together they may amount, if I may use the word...

MR. CHAIRMAN: Delays due to good and sufficient reasons in effecting such registration may be condoned by the income-tax officer with the previous approval of the commissioner of income-tax in cases where the registration is effected before the due date or the extended date for furnishing the return of income for the assessment year for which the firm seeks to be assessed as a recognised firm.

SHRI N. DANDEKER: I think Mr. Dhondy's point is that this registration with the registrar of firms is not the only qualification required for recognition were it so, there would be no problem. But a new qualification is sought to be inserted which has its own procedural difficulties and delays and so on, and this will be there along with and additional the existing requirements which will continue. Therefore, his point is that this is not really simplifying the whole thing, but only complicating it by adding yet another procedural hurdle in the whole procedure.

SHRI DHONDY: That is precisely the point.

SHRI DAMANI: In the case of delay, the assessee makes an application to the registrar. In some cases,

it takes a long time. If we are not able to get it in six months, then what is going to happen?

SHRI DHONDY: I meant to elaborate this point when we were coming to section 186A.

In the same regard, in regard to section 186A we have a point at page 18 of our memorandum, apart from the one I referred to in the first paragraph regarding the Registrars being State officials and the practical difficulties that will arise therefrom.

SHRI N. K. P. SALVE: We are not quite clear about what is sought to be achieved by the insertion of clause (c) read with the proviso to it under section 186A (2).

SHRI N. K. SANGHI: Could you elaborate these two points with regard to 186A (1)(c) and 186A (2)(c) and also the paragraph above that? From your memorandum, it is not clear what your point about this is. This looks to be a really complicated affair. Unless we understand what is at the back of your mind, together with all the details, it will be very difficult for us to know what you are driving us to. We would very much like to have detailed explanation from you on these points.

SHRI N. DANDEKER: I think he can go on with his main argument now and deal with this further when he comes to section 186A.

SHRI N. K. P. SALVE: May we request the Chairman of the Board of Direct Taxes to tell us what exactly the intention is, because it is not clear to us from our brief? What is the purpose for which this clause (c) has been introduced?

MINISTRY REPRESENTATIVE: We have introduced clause (c) and the

proviso to avoid benamidars coming into the picture, as recommended by the ARC.

SHRI N. K. P. SALVE: According to my understanding of clause (c), only a benami of a partner is contemplated here.

MINISTRY REPRESENTATIVE: Only benamis of the partner.

SHRI N. K. P. SALVE: What about benamis of non-partners? Then he will be out of it?

MINISTRY REPRESENTATIVE: Then he will be out of it.

SHRI N. K. P. SALVE: Suppose there are five partners and the fifth is a benami of the first partner, then this clause will operate and not otherwise. You are not eradicating the institution of benami by this clause. But if there is a benami of some outsider, then what happens? What exactly are you going to achieve by inserting this clause?

MR. CHAIRMAN: In that case, the person in whose name the benami transaction has been done will be assessed; that is, the partner in whose name it has been done will be assessed.

SHRI N. K. P. SALVE: That is the existing law. Even as it stands, if I remember aright, if in a partnership one of the partners happens to be a benami of another partner, if he happens to hold a beneficial interest other than the one which is stipulated in the deed of partnership, then the registration will not be given. What do you seek to achieve by this?

SHRI MUTTOO: So that the shares in partnership may not be split up.

SHRI N. K. P. SALVE: It does not split up.

SHRI MUTTOO: He is reducing the share by having a benami partner.

SHRI N. K. P. SALVE: The income is always assessed in the hands of the beneficial owner. How does it split up?

SHRI MUTTOO: In the case of the firms, say, A, B, C, D,—D, according to this provision, would be what we call the benami of A. So, we propose to cover that situation in this.

SHRI N. K. P. SALVE: Under the existing law, if D is the benami of A, A will be assessed to income which is ostensibly derived by D.

SHRI MUTTOO: Under this, we are not going to allow registration. That is a further penalty.

SHRI N. K. P. SALVE: What do you achieve? What are you trying to prohibit and forestalling?

SHRI DAMANI: In the case of the registered firms which are already recognised by the Income-tax Department as registered firms, what will be the advantage of your further asking them to have them registered with the Registrar of Firms?

SHRI KANWAR LAL GUPTA: That is a separate question. Let this part be clarified: whether the non-genuine firms are covered under section C.

SHRI MUTTOO: Non-genuine firms do not get the benefit of registration. The basic fact that they are not genuine firms does not make them eligible to get it. They are not firms at all.

SHRI N. K. SANGHI: Mr. Dhondy gave us some examples in this particular matter.

SHRI N. K. P. SALVE: I wanted to know what the Ministry contemplated by the scope of this section, and what it has sought to achieve by this. Frankly speaking, it has been double-touched, both in terms of the precise manner of what it seeks to achieve

and the achievement if any. As you said, the section is confined to preventing a partner from having another partner. Today, 'A' is a benami of partner 'D'. The assessment is in the hands of the beneficial owner and not in the hands of the benami. What do you achieve? Are you prohibiting any malpractice?

SHRI MUTTOO: It would mean prohibition of malpractice.

SHRI N. K. P. SALVE: Do you think benami is not the law of the land? Is it not the moral law of the land?

SHRI MUTTOO: We are concerned only with the revenue aspect.

SHRI N. K. P. SALVE: How does the revenue aspect suffer? Assuming partner 'A' is only having a six annas share, where as 'D' says he has only four annas share, so long as he has only six annas share, you will book him at six annas and not four annas. How is the revenue suffering?

SHRI MUTTOO: We want to discourage it.

SHRI N. K. P. SALVE: Why? When you are getting due taxes, why?

SHRI MUTTOO: Just getting the taxes is not sufficient. We should discourage and stop that: stop the benami getting into the picture.

SHRI N. K. P. SALVE: Where you know, to your knowledge, there is a benami, and some other partner holds beneficial interest you are going to come back to the beneficial owner and not the ostensible owner.

SHRI N. K. SANGHI: There is a lot of confusion in my mind. Let it be cleared. Well, Mr Dhondy gives a proposal and tells me, "I will take you to my firm. You bring Rs. 10,000. I think it is going to be a good concern."

Then I join him. I do not have Rs. 10,000. I go to a friend of mine and get it, telling him that I am getting a golden opportunity to join a firm and it is a good offer. My friend gives me the money, and I become a partner in Mr. Dhondy's firm. In such circumstances, I would like to understand what is going to be the fate of that partnership, because I have certainly borrowed the money, with or without interest, from XYX and I have joined Mr. Dhondy's concern. I would like to know how this section 186C is going to hit me. What is the view of the Ministry in this particular matter? Are they going to say it is refused merely by the fact that I have taken this money from a friend of mine, or are they going to grant registration when all the other formalities are completed?

SHRI N. K. P. SALVE: This section does not apply here.

SHRI SHAH: As the section stands, the position as apparent from it is that it applies to a partner who is the benamidar of another partner and not to the partners who are benamidars of outsiders. The point raised by the hon. Member is, what purpose does this clause serve, or, what is the advantage. If 'A' were the benamidar of partner 'B', obviously, his income would be taxed in the hands of partner 'B'. And, therefore, there is no tax effect, and there is no gain to the revenue. The only consideration which appears to have weighed with us is that this is a major provision incorporated in the section itself, that no partner should be a benami of the other; there should be a verification, a certificate, which will be filed with the Income-tax Officer to that effect. Therefore, if 'A' is the benamidar of 'B', *prima facie*, because, as Mr. Slave would know, it is certainly not so obvious for the Department nor is it so patent on the face of the deed, that 'A' is a benamidar of 'B' partially or wholly, and we know that a number of employees are brought into the partnership firms and are given

complete status apparently as partners of the firm, while in fact the position may not be so. So, the rationale for this section is that when he categorically states that none of the members of the firm are benamidars of other partners, he is making a verification, which, if proved to be wrong, would make him open to the consequences of a false verification. Therefore, it is a disincentive to such firms.

SHRI N. K. P. SALVE: You are taking a case where a person makes somebody else as a benami: the partner brings an employee fraudulently in partnership; shows him to be a partner, and gives a share of profit to him, and on the sly, keeps it away from him. You are contemplating a case where a benami is going to be a concealed secret when the department will not know. In such a case, the verification itself will not be enough because 'B' also gives a verification. He would be fraudulent here also. What will happen is, if you think that simply because there is going to be an additional verification, and a greater honesty among assesses, it would be extremely remote; that is what I think. You put too much premium on human demeanour.

I would like really to be told, in case where you know the benami under which guise alone this section will come into operation, what will be the benefit. Please say yes or no.

SHRI MUTTOO: I will give you a note, why we are following this, for your consideration.

SHRI N. K. P. SALVE: You should be able to tell us what is the purpose of this enactment at this stage.

SHRI KANWAR LAL GUPTA: When you put this clause, what was the idea of the department? When the witnesses are here, you must be clear in your mind as to what is the background of this clause.

MR. CHAIRMAN: In the report on the Direct Taxes Administration also; recommendation No. 16 reads as follows:

"We recommend that partnership may be recognised for the purpose of income-tax assessment if—

- (a) it is evinced by an instrument of partnership specifying the shares of partners.
- (b) None of the partners is a nominee or benamidar of any other."

SHRI N. K. P. SALVE: That is a different recommendation which can be gone into separately. But I really do not see one good reason why this clause should be there in its present form.

SHRI DAMANI: At present many firms are also registered with the Registrar of Firms and also with the income-tax department. But still this malpractice is continuing. Some years ago, the income-tax department introduced such a compulsory registration but afterwards, they had to withdraw it.

SHRI SHAH: Mr. Salve has pointed out very rightly the departure from the recommendations where it stops at "any other" and does not say "any other partner". The reason why the section is restricted to benamidars of partners is, if we had stopped at "any other" and not extended it to "any other partner", it would have meant that some of the partnership where one of the members of the HUF is a partner would not be entitled to registration and it would have caused enormous difficulties.

SHRI DHONDY: One can see the origin of this particular clause in subsections (1) and (2) of section 186A. It was intended to defeat attempts at tax avoidance through income-splitting. But this clause will not achieve

that objective and as it is worded now, it could result in injury to innocent persons. Under the general law today, the fact of benamidar ownership is permissible and it is recognised in certain circumstances. It is not considered improper. Are we going to depart from this situation, if so, I am afraid this particular clause is neither here nor there. A more sweeping change would be needed for that.

Coming to partnership, Mr. Shah has clarified that this is confined only to the situation where one of several partners is a benamidar of some other partner. Now, suppose we have five partners A, B, C, D and E. A is the grandfather and not the father of B. B happens to be a major and a partner in his own right. A happens to be the *karta* of the HUF of which B is an undivided partner. In such a circumstance, they will be benamidars of each other and registration will be refused according to this clause. I am sure this is not at all the intention.

Apart from HUF, take the position where only two of the same five partners A, B, C, D and E are benamidars *inter se*. Under the agreement, they are supposed to have equal shares of 20 per cent each. In point of fact, A takes an additional 10 per cent out of B's share and his share becomes 30 per cent; B's real share is 10 per cent. A and B may be doing this without the knowledge of the other partners C, D and E. The consequence of what you are providing here is that registration will be refused to the firm as a whole. Besides A and B suffering, C, D and E will also suffer.

SHRI MUTTOO: About the illustration of grandfather and grandson you gave, registration would not be refused because we have used the words "as such" as well.

SHRI N. DANDEKER: What does "as such" refer to, any way?

SHRI SHAH: I may try to clarify the importance of the words "as such".

If A is a partner of a firm, the share of A as such, if the other partner has a share in it, will be governed by this provision not because of any other capacity of his as a representative or member of the HUF but only as a partner.

SHRI N. DANDEKAR: A has a share as such in the property of the firm and, representing the family, tries to do away with the family share in the firm, this man, apart from the fact that he is a partner, can interfere and say that he cannot do this.

SHRI SHAH: The partners are individual partners so far as the firm is concerned; therefore the share of A in the firm, whether he represents the HUF or a company or somebody else, is evidenced by the deed.

SHRI N. DANDEKER: But qua property that is family property and the share in the partnership, though represented by an individual A, is family property.

SHRI SHAH: When A is representing the HUF, the share of A in the firm will be the property of the HUF represented by the partner A. That is a separate aspect. But, suppose, in A's share in a firm B, who is also a partner in that firm, has a share or interest not because of his status as a member of the HUF or as a representative in some other capacity. You can visualise any number of such situations where persons are introduced as partners when in reality they do not have any share in the property of the firm.

SHRI N. DANDEKER: If the expression "as such" is used in the manner explained now, why is the proviso to sub-clause (c), which says that this condition shall not apply as between partners of the firm who are related to one another, necessary? And even if this proviso exempts, it exempts only these relationships and not other relationships, such as that between the member of the HUF.

SHRI MUTTOO: This word "as such" was put in by us at the instance.

of the Law Ministry. If it is found not to convey our object, we will bring in a revised draft.

SHRI N. K. P. SALVE: If the interpretation of "as such" brought out the meaning provided by Shri Shah the proviso would have been wholly redundant. "As such" governs right, title or interest; it does not govern one of the partners. I think, let us have a note on this. What precisely will you achieve by this?

SHRI N. DANDEKER: I suggest, we postpone discussion of this clause.

MR. CHAIRMAN: The reason for emphasizing the contractual nature of the relationships becomes manifest when distinction has to be drawn between partnership and certain other relations, particularly when the partnership has to be distinguished from the relation which subsists between members of a joint Hindu family business. The members of a joint Hindu family carrying on a business as such are not partners because their relations arise not from any agreement but from status. In case of members of a joint Hindu family business, their relations with each other as also their rights and liabilities are substantially governed by Hindu law and not by the general law of partnership.

SHRI KANWAR LAL GUPTA: Let us have a detailed note on this.

SHRI DHONDY: I was on clause 43 insofar as it seeks to insert new sections 186A and 186B. Two principal points in relation to section 186A were set out in our Memorandum at page 18 in regard to the general procedures (where you have been kind enough to ask us to come back with some suggestions for ironing out difficulties in the present law) and the precise implication of clause (c). At this stage I will not go in detail into the other points in regard to section 186A which you will find at page 18 of our memorandum about the six-month period from the commencement of a new partnership within which it

has to be registered and the practical difficulties that may arise in such a case; and also a suggestion for discontinuance of applications for renewal of registration in form number 12. These are also found on page 18 and we will elaborate them when we come to clause-by-clause consideration. I would now turn to the provisions in Clause 8 . . .

SHRI N. C. CHATTERJEE: About Clause 3, you have said that the proposed ceiling of Rs. 4,000 is much too low and you recommend that there should be no ceiling or in the alternative the ceiling should be a much higher sum . . .

SHRI DHONDY: The main reasoning is that in any case the contract of the foreign technician is to be approved by Government. You may see our remarks on page 3 of our Memorandum in the second para.

SHRI N. C. CHATTERJEE: You are not quite consistent. You say that, in the alternative, the ceiling should be a much higher sum.

SHRI DHONDY: I agree that this could have been more happily worded.

Under the Company Law you have an overall ceiling in relation to profits as a general yardstick, but even that yardstick is permitted to be varied by Government when individual applications are made to Government for approval of individual contracts. Here also there is a requirement, apart from any ceiling which may be in the Act, for general approval by Government which will be based on the criterion basically as to the essentiality or otherwise of the services of the foreign technician to the interest of the Indian economy. There should be no ceiling fixed in the law. That is our submission. This should be a matter where, in one case taking into account the individual circumstances, Government may come to the conclusion that a sum of Rs. 4,000 is too high

and in another case they may consider a sum of Rs. 4,000 to be not at all high. Therefore, since the approval of Government is required, it should be left to them to go into the facts of each case.

SHRI N. C. CHATTERJEE: Now look at the second para. About the period, you say:

"We, therefore, feel that the condition should be revised to read that the application for approval for the contract of service should be furnished to the prescribed authority in the prescribed form within six months of the commencement of the service. As an alternative, we would plead for the retention of the existing period of 12 months."

SHRI DHONDY: The present requirement is that Government's approval should be obtained within the prescribed period. It is not possible for the applicant to determine the point of time within which Government will grant the approval or withhold the approval. What he can do is to see that the application for approval is made within a certain time. Therefore, the time limit should be determined in relation to the point of time at which he applies for approval. That should be specified in the Amendment. I would highlight that the whole provision only refers to foreign technicians.

SHRI S. R. DAMANI: Regarding foreign technicians, if the definition is narrowed down as, for instance, the management technicians are omitted and the definition is made more exclusive, and the quantum of Rs. 4,000 is increased to Rs. 6,000 or Rs. 7,000, will they help the industry? What I want to say is this. For management, in our country we have got ample talents; we do not require foreigners to teach us about management. We should restrict it only for technical purposes where there is less talent.

If Government takes that view and increases the quantum from Rs. 4,000 to Rs. 6,000, I think, your purpose will be served

SHRI DHONDY: We do not agree. Besides being an Accountant, I have been a Manager. 'Management' is a science which, as you are aware, is not static in India or anywhere else in the world. This is one of the most rapidly advancing disciplines which are essential for promoting economic growth. The fact that this is so is evidenced by the example of a country which is considered relatively more advanced by us, i.e., the U.K. After the War, the U.K. did not hesitate to import managerial techniques from the U.S.A., particularly in relation to our area of operation, financial management, accounting management, where there was evolved a whole new concept; it was almost imported verbatim through the aegis of Marshall Aid Plan with a view to helping the U.K.'s economy to recover from the effects of War more rapidly and to improving the rate of economic growth. I, therefore, submit that we need not, to use Gandhiji's words, shut our windows to winds that may blow from any direction. We need not be swept off our feet. It is open to Government to refuse to permit a particular foreign technician to be brought in at what is considered a disproportionately high salary or to the detriment of our interests. Once we say that the law should be amended, we will be shutting for all time the possibility of taking advantage of new developments which are proved to be successful.

MR. CHAIRMAN: You are looking at it only from the sphere of Chartered Accountant. You have perhaps not examined in detail as to what is the foreign exchange that is drained out from India and to what extent we have been successful in achieving a self-reliant economy. You have not studied the aspect of the growth of the Indian economy.

SHRI N. C. CHATTERJEE: On page 4 of your Memorandum you have stated:

"The provision that exemption will be given only when the specialised knowledge and experience of the person concerned are actually utilised appears to us to be superfluous. Such a provision will tend to vest discretion in a particular officer to assess whether a specialist is doing a specialised job or some other job. Vesting of such a discretion in an officer, who cannot always be expected to possess adequate knowledge of the functions of the specialists, does not appear to be appropriate."

SHRI DHONDY: We considered this in the context of genuine hardships which are felt by the companies after having obtained the approval of one governmental agency in regard to this particular matter, namely, whether the foreign technicians should be permitted to be brought in. The Ministry of Industrial Development and Company Affairs considered these matters and gave permission in the broad terms of the collaboration pattern. Even so, that is not considered under the present law adequate for fulfilling the requirements of this particular clause and a separate application is to be made. The procedure for making this application is not set out. The procedure for making application under the other provisions is not at all embodied in the income-tax law. What we have said is that basically for the purpose of benefit under the income-tax law, the application should be to the income-tax authorities who in turn may go to the Ministry of Industrial Development or whatever area is involved; this would avoid the assessee having to make two applications to the same Government and possibly getting two different answers.

SHRI N. K. P. SALVE: I entirely agree that management technique is

a fast growing science; specially for sophisticated technology, we will have to import the knowhow. Ceiling is not a ceiling on the salaries that you pay to the technicians.

SHRI N. K. P. SALVE: Ceiling is only with respect to the exemption. You may still pay him a larger salary, but the ceiling is with reference to the exemption. If I may put it in slightly different words, what the respected Chairman has put is that while we want to import sophisticated technology which is not here in our country, we certainly do not want to put a premium on the same. You certainly referred to U.K. law. But I wonder whether the U.K. law is so liberal. I wonder whether they give an added premium for imported technology. Is there any other developing country which is giving such lavish facilities? What I really want you to enlighten this committee is: the law as it stands now does not, in my opinion, achieve this purpose. It is this. Assuming you pay a technician over and above the amount that is exempt in his hands, for the rest of the salary the company is nonetheless allowed to make good the payment and pay the taxes. That is the company's expenditure itself. So, by and large, I would like you to enlighten this committee. Firstly, what measures should be adopted by us to ensure that we do not put a premium. After all we have to keep the foreign exchange expenditure as low as possible. What steps should be taken to ensure that we do not import experts in areas where we have local expertise? To what extent this provision is going to be a real deterrent?

MR. CHAIRMAN: Here we have to give due regard to the interests of Indian economy. You will agree that there should not be an unfair burden on foreign exchange. The point Mr. Salve made is: for example if a foreign technician is paid Rs. 10,000

only Rs. 4000 is exempt. We are considering here a provision where basically the salary of a technician is exempted from tax. It appears under Sec. 10 among the general exemptions and that is the background in which we have to view this provision. The salary is exempt. Over a certain ceiling the company is entitled to pay instead of the technician. What is the effect of this? Take a case where the salary is 10,000. The foreign technician bears tax on Rs. 4000 and on the rest the company pays the tax.

SHRI DHONDY: He does not pay tax on Rs. 4000.

MR. CHAIRMAN: At that stage he is exempt. Initially he does not even bear that. So the company in turn pays the tax on Rs. 6000 which the company claims as a deduction in its own taxes. Therefore, really speaking what is happening is: putting up a particular ceiling is not avoidance effectively of the drain on the foreign exchange. This is the safeguard which we want. It is only a question of how much will be the incidence on the exchequer. The safeguard that we want basically is to make sure that we do not want foreign technical expertise in areas where we have our own expertise and we should not put a strain on the exchequer and our foreign exchange. Would you say that before the foreign technical expertise is obtained, any such proposal should be vetted by a competent Ministry?

SHRI KANWAR LAL GUPTA: You know the Government machinery. If you open this gate that you have to apply to the Government before engaging foreign technician, what I am sure is that in 90 per cent cases permission will be granted. The very idea behind this clause is that we want to discourage importing foreign technicians in order to encourage our own people. That very purpose will be defeated. I say we are very crazy for foreign experts and everything

foreign. This is the general argument advanced by the Britishers that Indians are not even competent to rule. So I appreciate the idea behind this clause very much and I think if you are so much pressed and are in need of foreign technicians there is no ban. You have to pay a slightly more tax. If you are keen and if the need of the industry is such, naturally the industries would like to pay a little more. Why do you want any change in the present clause?

SHRI N. K. P. SALVE: There is a built-in restriction on this which will discourage import of technicians in areas and fields where we can do without them.

SHRI KANWAR LAL GUPTA: Yes.

SHRI DHONDY: With respect to the first point, I submit that we have to consider this in the set up of a section where it appears to-day, i.e. Section 10, clause (6) sub-clause (3), which is aimed at giving an exemption from Indian income-tax for what is considered by Parliament in its wisdom to be an economically desirable objective. This is the setting in which this provision appears. There is an existing clause. Under our existing general law, apart from the Income-tax law a company wanting to employ such a technician has to take the permission of the Government. It is not that we are asking now for a new provision. The practical solution in fact would be available even to-day to such companies. The point is that a company presumably operates as a commercial organization. It does not waste its resources unless it gets some value in return. It may be that in certain areas there is a disproportionate emphasis on the value of foreign expertise in comparison with local expertise. If that is so and if Parliament in its wisdom wants to encourage local expertise, I would suggest that this is not the provision we should consider at all. There should be another clause to be introduced

under Sec. 10 whereby tax exemption would be given to Indian nationals who possess certain technical qualifications which are valuable to Indian industry. I am not at present commenting on such a proposal. We are at the moment examining a proposal for amendment of the existing provision in one regard only that you have a ceiling arbitrarily fixed beyond which the salary would not be taxable in the hands of the technicians but the company would bear it. What will be the effect of such an amendment in relation to the objective of this particular old provision of Sec. 10? Will it achieve the objective or will it go against that objective? I am not for a moment suggesting that we must wholly import foreign experts in any and every situation. There are certain sectors of Indian business where we put a wrong premium merely because it is foreign, it should be imported. There are safeguards to see that we do not over do this. Therefore, I would suggest that our comments are aimed at slightly different objects from the comments which you made and they do not at all conflict with each other.

SHRI N. C. CHATTERJEE: May I now take up Clause 5(a) (1) (a). You said this is welcome provision. You have also said 'This may, in many cases, be a matter of dispute between the land-lord and the tenant'. Then you say in the last lines "The phrase 'but in respect of which the assesses held a lease of other right of occupancy may be deleted'".

SHRI N. K. SANGHI: I would like to have a clarification from Mr. Dhondy on the provisions relating to foreign technicians. The underlying idea of the Government is that we do not want to encourage unnecessarily foreign technicians coming here when we have that sort of people here itself. We do not want the industry to be extravagant and to pay them fabulous salaries. The third point is that we should not lose our revenues un-

necessarily. Keeping these three points in view you said that the technician is given an advantage of Rs. 4000 and when he is paid more, the company pays it. The basic point is that the revenues of the Government are not wasted unnecessarily. Would you prefer that limit be raised slightly and any salary above that limit should be made taxable and not allowed as part of the expenses in the hands of the company? Would you prefer such a situation or the present situation?

SHRI DHONDY: If that is the whole idea, why don't you have one of these alternatives? You agree that some incentive should be given but you want to limit these areas.

MR. CHAIRMAN: So far as the salaries are concerned, how much should be exempted and how much the companies should pay, they have made an assessment. Every developing country has different stages of industrial growth. In 1945 when we took up the question of giving concessions to foreign technicians, that stage of development is little different than 1969 or 1970. Therefore, whenever any Government or any country wants to consider giving any exemption for foreign technician, they take into consideration the growth pattern of their economies in subsequent years. On that basis they have calculated and say if a monthly salary of a foreign technician is Rs. 5000, Rs. 4000 is exempted and ultimately the net additional cost to the employer comes only to Rs. 421. If it is Rs. 6000, the net additional cost to the employer is Rs. 1837. As Mr. Salve pointed out, there is no bar also. There is no limit now. But the question is: how far it has been acting as an incentive?

SHRI N. C. CHATTERJEE: Deterrent to them and incentive to us.

MR. CHAIRMAN: Any suggestion so that we can improve this?

SHRI DANDEKAR: If that is the argument, abolish the whole thing.

MR. CHAIRMAN: I hope it will not be surprising if India someday abolishes it.

SHRI N. K. P. SALVE: When you are dealing with this matter, the whole thing needs a constructive approach. Either the whole thing or nothing is neither here nor there. After all some Ministry is going to determine the genuineness and requirements of importing foreign expertise and it is for that Ministry which should see whether it is necessary or not. That is one of the safeguards. What I want you tell us is: in addition, while we are on this question, whereas the question of foreign exchange and allowing remittances of the foreign technician would be dealt with by the appropriate Ministry, we in the Parliament would like to demarcate the areas in which the exemption will operate without leaving it to any other Ministry. We would ourselves like to enumerate the circumstances where exemption can be given. You comply with these circumstances and here is the exemption. We do not want to make a law this time and again come for simplification and rationalisation subsequently. We want to demarcate areas in which this exemption will operate and operate automatically. Assesseees will know what are the circumstances under which they will be entitled to pay a foreign technician and without rendering the technician liable to such taxation. Please tell us whether it is possible for you to envisage, to postulate and demarcate such areas within which the exemption will operate and it is possible to indicate those areas and identify them in the law itself and simplify it.

SHRI DHONDY: We will certainly examine it and give you a note.

SHRI N. C. CHATTERJEE: 5(a)—you have said this is a welcome provision. Lastly you say “The phrase

‘but in respect of which the assessee holds a lease or other right of occupancy’ may be deleted.”

SHRI DHONDY: This is our suggestion basically. Of course, we know from our practical experience that it may not be disputed that the assessee is in point of fact carrying on his business or profession in premises which are bona fide in his occupation for the purposes of his business. Lease and right of occupancy is very often, for extraneous reasons, disputed,—particularly in big cities where office accommodation is very scarce. Here again, the underlying objective of the provision is a beneficial one and we welcome it. If the underlying objective is to give this benefit we feel this additional condition for legal proof of tenancy rights being forthcoming, to satisfy yourself that depreciation is being given in compliance with the main objective is not necessary. If the Income-tax Officer is to be satisfied that the business or profession is carried on in the building, notices may be addressed in respect of tax assessment to that building. The assesseees' addresses given on their letter heads. Income-tax Officers may send inspectors to serve notices at the premises. There will be ample proof to show that the assessee is in occupation of the premises for the purpose of his business. In that case this would be the justification for allowing depreciation, if you look to the underlying objective behind this amendment.

SHRI N. K. P. SALVE: It can be subjected to tremendous abuses. The person has no legal right. Expenditure is incurred on renovation. He is entitled to depreciation. It will lead to tremendous abuses. He asks for depreciation and that business is carried on by him. He will have no legal right. That is the point.

SHRI H. B. DHONDY: This is a provision intended to give relief in a circumstance where Government and Parliament feel that some relief is necessary which is not available under the existing law

If, in this background, you are trying to bring in a new provision to give concessions or relief; you have also to plug other loopholes that might be there by which a tax evader tries to get round and get an additional relief to which he is not entitled.

MR. CHAIRMAN: It is a subjective answer. And I believe that is from your experience.

SHRI N. K. P. SALVE: If we are giving concessions, the same will have to be given to everyone and not to those who are in adverse possession of a property. He should have some legal validity to possess the right to property. I would request you to consider this aspect of the matter also.

SHRI DHONDY: May I interrupt for a minute? In order to satisfy your objection you may prescribe a minimum period of occupation in every case.

Here it is a question of occupation and use for business of the premises, and not of the ownership, or the title to occupy these premises.

SHRI N. K. P. SALVE: Is it right to give any depreciation on it? I think this does not arise. If it does happen we shall have to consider whether we should give the concession or not.

SHRI DHONDY: That brings me on to another aspect—a very important aspect of the matter. You raised an issue of correct accountancy principles. If I may say so these are our suggestions with regard to some of the other provisions. In this connection I would like to talk a little more elaborately relating to the correct accounting principles involved.

SHRI N. K. P. SALVE: You need not rush here. Your evidence is very valuable. You are making very good suggestions. If necessary, we shall again call you. So don't rush through

SHRI DHONDY: Thank you, Sir. I was talking of the relevance of correct accounting principles which should not be completely strangers to the Tax Law.

SHRI N. K. P. SALVE: That logic is not completely a stranger to this taxation law.

SHRI DHONDY: Here I would like to quote what an Assistant Secretary of the Treasury in the U.S.A. who is responsible for taxation policy has said. He is associated with framing the taxation policy in that country. He laid stress on searching out the accounting concepts and standards applicable to the related non-tax setting and then harmonizing the tax rules with these concepts and standards" subject to some over-riding tax policy considerations. These are the words of the representative of the Tax Department in the U.S.A. I would like to add to our memorandum with your permission this "summary of conclusions" which was recorded by us in a recent seminar. The Department must have copies of it, wherefrom you will find some of these observations and conclusions relevant to the proposed Clause 35.

SHRI N. K. P. SALVE: Would you put it in a simple language?

SHRI DHONDY: Here I would request you to forget, for a moment, the Accountant's Jargon as to his treating a certain amount as capital or revenue etc. As far as a business man is concerned he starts his business with a certain amount of his own. He sinks his money into the business. When he has put it in, he has also to see that he recovers a part of it out of his earnings in that business. This is a fundamental businessman's principle of maintaining his initial capital intact. The accountant's job is to determine the working results accurately. If this

is a recognised concept and I submit it is not worth disputing this concept—it has to be honoured, whether you are operating a government owned company or whether you are a sole proprietor, or a small entrepreneur. But, still, you have used a certain amount of capital in your business. It is a hard cash. And so you must maintain it intact if you are to stay in business. And out of the earnings of the business you have to recoup that cash. You have to recover whatever expenses are incurred by you on the business—not necessarily immediately, but may be in part at a future point of time. You have to get back the cash out of the earnings in that business. Basically I think this is the most elementary thinking in regard to accounting principles for measurement of the results of the working of industrial enterprises anywhere in the world.

SHRI N. K. P. SALVE: You mean to say that the income as computed by an accountant would be considered to be an income for purposes of taxation?

SHRI DHONDY: The accounting principles lay down how to determine out of given sums of cash introduced and spent in a business what is the expenditure incurred and how much is to be charged the same year and how much to be carried forward to be charged against one's earnings from the operations of business in subsequent years. This is the test on which the accountants work out the results, profit or loss. Taking taxation of income, it should extend to income alone. Therefore it follows that what is to be taxed should be income and not capital. Secondly, allowance has to be made for all expenses which have been incurred for the purposes of business regardless of whether these extend to the immediate period only or also to a later period. At some point of time they must be allowed as expenses against income which has been earned before we start taxing that. That, I think, is some thing which cannot be disputed. You cannot forget

your capital that you have put in regardless of whether it is government company or a small entrepreneur. Here a basic principle is involved. And it is in this context that I would like to submit that Sec. 35D and 35E of Clause 8 of the Bill that are proposed to be introduced as new Sections are very well-intentioned.

SHRI N. C. CHATTERJEE: Anyway we are of the view that in the Income-tax Act there should include a provision for amortisation of all expenditure legitimately incurred for the purpose of business. Wherever the expenditure incurred is not of a revenue nature, that is not eligible for the allowance on depreciation. Do you therefore want Sec. 35E to be extended in any way? If so, what is your suggestion here? Do you want to delete any of these provisions? We have got here a memorandum from an expert who has given that to the Committee. He says that Sec. 35D and 35E should be deleted.

SHRI DHONDY: I basically agree with your approach. I am giving you the reasons. Firstly it is neither practical nor is it necessary to spell out in the Section each and every item of allowable expense of the type or kind for which the Section is intended. Your aim is for simplification of the law. As far as legitimate items of expenditure are concerned you are going to allow those as deductions. If you do try and list every item, that is going to lead to difficulties in regard to interpretation of the section. Having given a broad idea within which you want to allow deduction of all covered expenses if the purpose is defined specifically, there is no scope for evasion by claiming deductions for many items which would otherwise not come under the scope of the section. If this is done, then straightaway the need to list out exhaustively all the individual items that would come into that broad area vanishes. If you attempt such a listing you are forced to the expediency in sub-sections (2) and (3) of Sec. 35B of still adding a 'residuary' clause to cover further

items to be prescribed in rules. If you go on listing, then you have to start again the whole process of listing these things by prescription of rules. This, I should say, is a self-defeating exercise. This is a self-defeating exercise and I would submit the wiser thing would be to concentrate on what is the area within which in broad terms you wish to allow a relief which the law does not at present provide. The whole origin has been in Mr. Bhoothalingam's recommendations, to some extent that all outlay has to be recouped by the business out of its income before that income is taxed. Where there are expenses legitimately incurred for the business for which there is no specific exemption, you will allow those to be charged against the income to the extent of what is considered to be a reasonable charge. That is the attempt in Sections 35(D), 35(E) & 35(F) to cover three types of expenses.

SHRI SALVE: What is the safeguard you think we need to ensure that people just do not indulge in an expenditure which ostensibly is for purposes of business and still in reality it is something else. For example, it is the easiest thing for one to pay the solicitor a lakh of rupees where he could have paid Rs. 50,000 and other Rs. 50,000 is either patronage etc. Once it happens that way do you think the some sort of check in this abuse which concept of ceiling is not going to bring might be permitted.

SHRI DHONDY: Sir, the concept of ceiling will not bring this safeguard that you want, but what it will do, is that in a case where the level of expenditure required is higher than the arbitrary ceiling, that will be hit. Unfortunately, this has been the experience of legislation in every sphere.

SHRI SANGHI: We would like to know: have you prepared any statement of the companies that have been floated in the past year stating as to what preliminary expenses have been incurred by them in the past to give us an idea as to whether the figure of 2.5 per cent is reasonable or

warrants a change. Simply talking without facts will not help.

SHRI SALVE: When you reply to Mr. Sanghi, you may also tell us is there any nexus between the borrowed capital and the capital of the company and its preliminary expenses. Also tell us when a seven years term is prescribed for long-term borrowing—when banks give loans against gross holdings of the company whether they invariably take Demand Promissory Note by way of collateral security? And if they do take such promissory note by way of collateral security, can it be said that the loan is not repayable within this time?

SHRI S. R. DAMANI: There is force in his arguments. the ceiling of 2½ per cent will be disadvantageous to some concerns and will not be sufficient to meet the requirement of expenditure. The expenditures are either for capital or for revenue. Therefore, Government should clarify what expenditures are for capital and what should be allowed as a revenue expenditure, so that the expansion of the industry should not be held up and all the new and the old entrepreneurs can expand properly. That is the clarification required.

SHRI MUTTOO: This is a new provision which the Government has brought in as a measure to encourage the industry and give some sort of relief. This may please be appreciated and in this light the other points must be considered. Now, if we were to give a general sort of allowance for all expenditures, there are bound to be abuse. For example, there can be claim for goodwill, cost of land, etc. Now, reference has been made to the omnibus clause. The idea is that with the experience we gain we would be able to make rules to include items which should be brought in as genuine.

Regarding this rate of 2½ per cent, which has been objected to, we do feel somewhat exercised on this point. In future if our experience shows that it is not adequate, it can be considered.

SHRI DHONDY: I would like to begin by saying that we strongly welcome the objective behind these amendments where you are attempting to give relief where not presently available, although it should be. As far as we are concerned, you are bringing the taxable income concept nearer to the correct accounting income. Having said that, the point I am making does not detract from my appreciation of the move towards this end.

You made a point, Sir, that this new provision of general allowance would bring abuse. Now, if that is so, I would suggest that a more practical solution might be to attempt to specify something in respect of certain items say, goodwill, cost of land, etc. which would not be allowed to be deducted even if they fall within the type covered generally by the Section. If you consider it necessary, you can also bring that omnibus proviso in as a specific provision.

The second thing is that you said that the rate of 2½ per cent is based on certain studies that you have made. Now, Sir, I do not dispute the figure you arrived at by adopting a certain formula. The point I am making is this, that my answer to Mr. Salve's question whether there is nexus between the type of expenses and yardstick for the proposed ceiling on it is 'No, Sir', with respect. For example, one of the consequences of attempting to bring this ceiling this way will be to defeat one of the objectives of this Section. One of the objectives is to maximise the effective use of limited capital resources, in increasing production. Let us, say, there is a company, which has built up a very substantial profitable business, which has got its resources for new expansion, where it has to incur substantial expenditure. Let us say that this new expansion is very necessary for the country's economic development. There is a great risk involved in it. It is a highly advanced technology in a highly advanced field. In such a case, this company will have to incur considerable amount of initial expenditure on preparing

technical feasibility reports, on having an extensive market survey as to the likely alternative projects and so on. In such case, you will weigh the benefit to the economy from such a company's proposed project in relation to 2½ per cent of its issued capital and its borrowings. And, supposing it has been efficient and it has not had to borrow, and it is using its own money, you will allow nothing to it. On the other hand, take another company, which is extravagant, which is able to borrow money also, automatically, to such a company which has really damaged our national interest, you will allow a higher deduction. This is what I want to highlight.

SHRI DHONDY: At the moment reserves are not there.

SHRI SANGHI: Would you prefer a new formula that 2½ per cent be increased to capital and exclude the borrowings so that those companies who work in capital may also get advantage particularly, companies who have large borrowings over companies which do not have large borrowings. To equalise this sort of differentiation, would you prefer a solution by which you increased 2½ per cent and restrict it to the issued capital only.

Some advantage has been given by this Bill which was not to the companies before. Now the question is as you say it is not very handsome. Would you like to change the formula and give us an alternative formula. We would prefer some specific factors from the old balance sheet that you have of the companies as to what exactly has been debited in the form of amortization.

SHRI DHONDY: It would be based on own capital and reserves. Take the case of a small entrepreneur setting up a new industrial activity like this. Our recent economic measures are intended primarily to encourage that sort of a person who takes risk with his own capital which in absolute terms of requirements of that particular business may be small, but to him it is important. Say, it is his lifetime's earnings. Say for instance that he does so with one lakh of rupees.

He also manages in view of our progressive policies to take another lakh of rupees from the bank, and this total capital still does not suffice. He can get a certain amount of money by way of loan, say another lakh from his friend. In that case, for arguments sake, say Rs. 3 lakhs is the total capital requirement—of which one lakh represented the owner's life-time's savings, one lakh represented the States loan through nationalised Bank and one lakh of rupees which his friends have loaned to him.

The point I am making is that our intention is to afford an incentive to it which is worth while.....

MR. CHAIRMAN: May I interrupt. That is a general thing which is understood. Do not make it general. You give us 10 to 15 firms with which you are dealing. You give us a list of preliminary expenses. Let us see whether it varies from 2½ to 3½. It will be very helpful to us.

SHRI DANDEKER: Mr. Dhondy, the point was in relation to the enumeration of these expenses. And, of course, you have expenses which do not fall within these pre-enumerated categories secondly, a limit on such expenditure expressed as a simple proportion of expenditure to capital alone may not be adequate when related to capital and reserve or to capital and reserves, or to capital, resources and borrowings. If you give us figures of what is to be included in various categories of development expenditure and so on, it will help us to arrive at some conclusion whether there should be any enumeration or any limit at all, whether it should be related to capital or to capital and reserves or to capital and reserves borrowings and so on.

MR. CHAIRMAN: You give us clarification of what is pricing of the products, whether in pricing products they have included depreciation which you have enumerated. To what extent they are included in the pricing of the product?

SHRI DHONDY: We will attempt to give concrete cases where certain quantum of preliminary expense has

been incurred in relation to what would be the quantum allowable in that proposed ceiling that you have in the provisions of the Section were retained.

About pricing policy, I may submit, Sir, let us assume that these expenses, which are disallowed to the Company initially, in its tax assessment, are sought to be recovered by it by adding them to the price of its products. What will be the significance of this to the economy? Is it a good thing or a bad thing? The first thing is that the consumer whose interest we have to protect, will have to pay more. The second thing is that the Exchequer takes its share out of the increased price. Who is the person who loses in this? Basically it is the consumer who loses.

SHRI N. K. P. SALVE: The additional burden of taxation is there.

SHRI DHONDY: Logically, I would not say it is unreasonable from the businessman's point of view. Business has to recoup its outlays out of its income.

MR. CHAIRMAN: Supposing in advanced countries certain firms use its own techniques—latest renovation, scientific researches and introduce something new in product pattern which helps in reducing the cost of production. That is a novel experience so far as the Indian firms are concerned. The price never goes down. It always goes up.

Supposing a firm takes all these methods—having foreign scientists, know how and we invest in that. Supposing we give him exemption and the price goes down. Then that is a consideration which can be considered by this Committee. But supposing with all these things the country pays heavily again for the products which the factory manufactures, then what is the justification when they get more facilities. At least there should be some rationale.

SHRI DHONDY: Ultimately the community should also benefit from the allowance by the Revenue of this type

of expenditure to encourage this type of economic unit.

SHRI N. K. P. SALVE: You would accept 25 per cent of the curtailed expenses is reasonable after what the Chairman has suggested.

SHRI DHONDY: I sympathise with the objectives he has in trying to have a quantum ceiling. But looking at the problem rationally, we still have to consider whether this particular yardstick is the proper one.

SHRI N. K. P. SALVE: It has been suggested that the ceiling should be fixed with reference to the cost of the project. Secondly, why should there be 7 years? If an assessee is capable and efficient in production and productivity, let him pay in a year's time. It is better for the Revenue and for everyone concerned. One thing—in reality are not all the loans which are given on the Security bad?

SHRI DHONDY: It is possible for a very strictly technical person to say that, therefore, the loan will be payable on demand. Overdrafts are payable on demand.

SHRI N. K. P. SALVE: And to the best of my knowledge, even mortgage banks do not stipulate time. They always say on demand, though there is an understanding that it will not be asked.

SHRI N. DANDEKER: The long term loans from Banks are not payable on demand, but according to a time-schedule, which in practice extends over a long period of time.

SHRI MUTTOO: Sir, regarding this period of 7 years as we have proposed, we relied on the provision in the Surtax Act, 2nd Schedule. Such moneys are borrowed for the creation of a capital asset in India; and the agreement under which such moneys are borrowed provides for the repayment thereof during a period of not less than 7 years. This was our guideline for this provision.

SHRI N. K. P. SALVE: But here, for purposes of preliminary expenses, you may borrow money. Do you have objection if a very good businessman

returns his money in two years? Will you not allow preliminary expenses?

SHRI DHONDY: I would like to submit that in regard to some of the items of expenditure, which we are now talking about, there are already certain limitations under the Companies Act on certain items of such preliminary expenditure e.g. underwriting brokerage and commission. There are limitations under the Companies Act, that is one point. And also whether it would be equitable and fair to the less well-established Companies to have one and the same measure of ceiling in their case as in the case of the better-established ones? Because it is a well realised fact that a Company which is long established and with a very good market reputation may have to incur much less in the way of initial issue expenses to make, its capital issues a success than a relatively unknown undertaking. So, is this not another reason why you should consider whether the same ceiling would be equitable in regard to both cases?

Incidentally, I would like to point out an omission of three words in our Memorandum at page 6, para 1, in the sentence beginning with "Even in case...", after "we may point out that the", you may please add "effect of the", and then read, "omission of the lump sum payment for purchase of . . ." etc.

Then, coming to this quantum and the basis on which you work out the ceiling, please see the last 2 paras of page 6 and the first 2 paras of page 7 of our Memorandum; "In case the limits suggested in sub-clause (3) are to be retained...". The point here is this at what point of time do you consider this base, made up of issued capital and borrowings for working out this 2.5 per cent? Should it be of that particular year itself, or, at the option of the Company, that year or the next year? It may be that the actual issue takes place in the second year. But the expenses have to be incurred over two years, part in the year before the actual issue of capital

and a part also in the second year. And the capital is received only before the end of the second year. 2.5 per cent as a ceiling on the expenditure in the first year means you will not allow any expenditure in the first year. Therefore the point of time should be permitted to be either at the end of the first year or at the end of the second year, at the assessee's option.

SHRI SANGHI: These should be considered in case you come to the conclusion that 2.5 per cent is agreeable.

SHRI N. K. P. SALVE: How do you claim the expenses? You say that the basis has to be capital and loan of next year. That is a practical difficulty.

SHRI DHONDY: Sometimes, there will be an interval of only 3 to 6 months before the last date within which to file the Return. By the time the return is filed, you already know that the money has come in. So, the figure will be known.

SHRI N. K. P. SALVE: The laws are framed to see that there is no problem, but what you are suggesting would create problems.

SHRI DHONDY: It will be a matter of working out a formula. We shall bear in mind the practical difficulties in working it out of our Memorandum.

Then at page 8, in the very first paragraph there, we are talking of relatively a matter of detail in regard to consultancy fees for engineering services. We have suggested that the qualifying clause that the business of the consultant engineering firm should be approved for this purpose by the Central Government is really an unnecessary additional complication.

SHRI N. K. P. SALVE: There are solicitors, chartered accountants, consultancy engineers and so on, and if they are paid some money, should they be first approved by Government? What is the rationale behind this? Take, for instance, M. N. Dastur & Company. Suppose they happen to have certain technical expertise consultancy in a certain area, how will

it be possible for any income-tax officer or other Government officials to come to a judgment without further technical expertise in the special area in which M. N. Dastur are qualified, as to whether M. N. Dastur are qualified or not?

MR. CHAIRMAN: M. N. Dastur may be known to have special expertise but there may be others also who may have such expertise and who may not be so well known.

SHRI N. K. P. SALVE: Leave alone M. N. Dastur & Co. There may be lesser engineers who may be running their business, and who may be competent enough to do the job. After all, it is their business. Why should they have to come before Government for approval? What is the rationale behind it?

SHRI MUTTOO: The idea is to avoid mushroom consultants and thereby save this from being abused.

SHRI TENNETI VISWANATHAM: The result will be that Government will create a set of their own consulting engineers. You may prevent mushroom engineers but you will create a patronage.

SHRI DHONDY: Apart from that, will it not also defeat the general economic objectives of encouraging new people into areas of expertise?

SHRI N. K. SOMANI: I am surprised at this remark of the chairman of the board of direct taxes. I do not know what is going to be mushroom and what is going to be legitimate. I thought that it was the policy of the Government to encourage more and more engineers and consultants to come up instead of building up some kind of monopoly. There has already been some complaint about monopoly by auditors, that only about ten firms of auditors are having a monopoly of a large business in the proportional world, and, therefore, there is need to encourage more and more people to come up, and I cannot, therefore, see the point in their having to go to the

income-tax officers for purposes of recognition. If a client feels confident that in the interests of his company a particular individual or a new firm is capable of delivering the goods, I think that that should be a sufficient criterion.

MR. CHAIRMAN: In the course of these years, have you come across any such cases?

SHRI MUTTOO: This is a new provision and that is why we are taking this sort of protective measure.

SHRI N. K. P. SALVE: To the extent it is provided that it has to be given to a concern which is carrying on business it should be sufficient and that will prevent its being given to their nieces or nephews or cousins. It has to be paid to a concern which is a business concern. That provision should be enough. Why should there be this further requirement of Government approval?

SHRI N. DANDEKER: May I make an observation here? This is really a strange thing. We are talking about technological advance and so on, and everybody says that we want to encourage new concerns to come up. Every concern that is established always starts as a small concern and after some years it develops and becomes a firm of some competence. Mr. Muttoo may call them mushrooms, but they do grow like mushrooms but eventually they mature into something worth-while.

Our whole policy seems to be directed towards making it easy for the small industries and the small men and the small everything. All of them are not going to consult Dastur & Co. They are only going to consult the smaller consultants or those who are dealing with business of that kind.

I may tell you that in one of the companies of which I used to be a managing director, the most competent erection engineer had no qualifications at all. He was the most competent

erection engineer. Wherever there is any erection job to be done, I always recommend him because I know he is really a top class erection engineer. But if he is to be called as a mushroom engineer and if he is to seek approval from Government, then I do not know what will happen.

I do not think that we ought to have this provision. It is not the business of the Central Board of Direct Taxes to testify to the technical competence of people to be technical consultants or managerial consultants, financial consultants and what not. I, therefore, support what has been said here that this provision ought to be removed.

SHRI MUTTOO: So far as chartered accountants, lawyers and other consultants are concerned, there are some sort of regulations and there is some discipline. But so far as consultants as such are concerned, it is a new field, and there is no such discipline or regulation at present, and that is why it has been suggested that they might get themselves approved.

SHRI N. K. SANGHI: Have you laid down any yardstick by which you can approve them or not approve them?

SHRI MUTTOO: We have not prepared any yardstick at present.

SHRI N. K. P. SALVE: It will lead to a monopoly. If new people are going to be weeded out as being mushroom, then it will virtually mean the creation of some more monopolies.

SHRI N. K. SANGHI: The Central Board of Direct Taxes is doing a lot of work and I do not think that their work should be increased in this manner and this may not be adding to the revenues also.

SHRI N. K. P. SALVE: Yes, that is also another aspect.

SHRI DHONDY: I would wholly support this suggestion that there should not be any attempt to discourage new entrepreneurs in this consultancy field also. If they have the requisite competence to offer consul-

tancy service, then people will make use of them. If they do not have it, then automatically they would not be consulted. That is going to be the criterion on which their mushroom character will be decided.

MR. CHAIRMAN: What is the motive behind this provision? I think Mr. Muttoo has to explain it to the committee.

SHRI MUTTOO: The whole motive is that we want to see that it is not abused.

MR. CHAIRMAN: Supposing they get this advice from a consultancy firm in regard to amortisation, then are you going to accept it as it is, or are you going to scrutinise it again?

SHRI MUTTOO: It would be treated like other scrutiny of accounts.

MR. CHAIRMAN: If you have the freedom to scrutinise, then what is the use of restricting this only to certain firms which are recognised by Government?

SHRI MUTTOO: If a firm is not recognised, then that would not be allowed, according to the proposal.

MR. CHAIRMAN: The view of the members is this. Has sufficient thought been given to this matter when they wanted to have this provision?

SHRI DHONDY: I think it will require further thought and I hope that the thought will progress in the direction of not pressing this provision. It will be very difficult for people who are not technical experts to judge the technical competence of somebody who is. What is more, the judging officers may not have the facts as to the type of need felt. The man who has to pay the money will know he has to get the value of what he spends. If he gets just junk, there is not only that danger, but the advice given would be bad and it may ruin the equipment. The consequences will be much

greater than the initial outlay. So, they will not take irresponsible advice.

Now, about section 35E, this is in relation to the relief for expenses on shifting the location of an enterprise. The first point I would like to make (I may refer here to page 8 of our memorandum which goes on to page 9, fourth line) on this section is this. Once again, the requirement is laid down that there should be prior intimation to the Income-tax Officer before the industrial undertaking shifts from one locality to another. The point of this is not quite clear to us. It seems to be a technical condition which is not really necessary for determining whether the shifting has taken place. On the contrary, a man may give the intimation and not shift. It may be misleading the department. Supposing they shift without intimation, does that negative the value of the other location which is considered more desirable in general interest?

The next point is that in the event of a sale of the undertaking, after the shifting has taken place, you seek to withdraw the benefit of the relief that you have given in earlier years. Possibly, one consideration which weighed with you in bringing in this section was that you were trying to make out an analogy between this and the allowance of a development rebate. It may be that that is not at all at the back of the mind of the authorities. But the point is, going back to what I have said by way of preliminary remarks, here you have a case where there has been an outlay of expenditure for the purpose of business. This outlay is considered desirable in general terms. So, you are allowing a deduction for it. Why should that deduction be lost, if after shifting the firm, the owner . . .

MR. CHAIRMAN: What is the objection? Supposing he gives prior intimation before shifting, what is the point of objection?

SHRI DHONDY: Suppose he forgets to do it.

MR. CHAIRMAN: One it is there, why should he forget it? This is not understandable.

SHRI RAM SEWAK YADAV: What is the object of that provision?

SHRI MUTTOO: Sir, the idea is to have it as an administrative safeguard, we should have such a provision, so that such claims may not be made at a later date. If there are such safeguards, they will see that the claim is made and allowed. If the claim is made late, it will not be allowed.

SHRI DHONDY: If prior intimation is given, do you send a man every time, to verify whether the industry has shifted from the existing site to the other site?

SHRI MUTTOO: There is no question of everytime. The concerns will do it only once.

SHRI DHONDY: Shifting from one location to another?

SHRI MUTTOO: They are not shifting too frequently.

SHRI DHONDY: Is the Department's intention, once intimation is given, say, shifting from Bombay to Nagpur, that the authority will, as a matter of procedure, send its representative to see whether there was a unit in Bombay and it has moved to Nagpur?

SHRI MUTTOO: We will not send a man physically. We would rely on your report. But we will have some idea about the shifting.

SHRI DHONDY: If you do not intend to do this in every case, and if you are really trying to have a safeguard that a false claim is not made, there are umpteen ways of finding it out. Suppose it is made later, you

cannot physically relocate the whole plant in Nagpur without the building being there. It is very simple for the department to find out. Possibly, the assessing officers' jurisdiction will change.

SHRI MUTTOO: As the Chairman has asked, what is the harm in this? It is only a safeguard.

MR. CHAIRMAN: I have personal knowledge of this. Last year, the Estimates Committee was entrusted with the question of drums and barrels of certain industries, and to what extent corruption was there. We came to know by our examination that in almost all cases, those who were having the industries in Bombay acted in such a manner that they could shift the business, violating all the regulations of the Companies Act and the Industries (Regulation and Development) Act; they did it in such a subtle manner that it was found ultimately that they had withheld the licence; already three barrel centres could be set up in Calcutta. It is done in such a way that even the entire Industries Department was not aware of it in spite of the regulations. What is the harm in giving prior intimation?

SHRI N. DANDEKER: What is the harm in giving notice of all sorts of things that I am 60 years old, that I am residing here, that I have shifted my office from here? It is a meaningless proposition.

SHRI MUTTOO: Regarding the withdrawal of the amortization we have relied on section 280ZA (4) of the Income-tax Act. Therein, it relates to tax credit certificates for shifting industrial undertakings from an urban area to another place.

SHRI N. K. P. SALVE: There is where you get a tax credit on capital gains. On that, it will not be allowed.

SHRI MUTTOO: We have relied on this for withdrawing.

SHRI N. K. P. SALVE: This clause deals with tax credit certificate on capital gains for shifting of industrial undertakings. How is that relevant for this intimation? There, you are giving a tax credit.

SHRI DHONDY: The question is whether this additional requirement will achieve the objective in your mind or not. On the contrary, it may serve as an instrument of unfair deprivation of relief to somebody who has genuinely not known about this.

SHRI N. K. P. SALVE: Before we close, since you are representing a profession which carries very serious responsibilities, both to the exchequer and to the successful administration of the tax laws, I want to know one thing. Very rightly, your memorandum has not been a catalogue of demands and concessions. But you have stated in the preliminary introductory paras that many of the major recommendations of the Public Accounts Committee and the ARC have not been incorporated or implemented. When you come again here, we will be grateful if you point out the major recommendations which want to be incorporated within the framework of this Bill. So, if you do that, we shall be glad. Your view is that we will not be travelling beyond the present proposals, but within the proposals, let us know what are the major recommendations. You have made a categorical averment to that effect. Please tell us which are those major recommendations. We expect to hear you in detail when you come next time. Your elucidation has been very brilliant.

SHRI DHONDY: Would you wish us to continue this afternoon?

MR. CHAIRMAN: No; it will be some other time.

In regard to section 35E, I submit that this technical condition may not be strictly necessary for achieving the objective in view. As regards the withdrawal of relief in the event of sale, we felt this was not a justifiable provision. Since the outlay had been made, if there was some unallowed outlay at that point of time, there may be a case for allowing the balance to be written off in the last year of the business. Nobody closes his business just for avoiding paying taxes. The analogy of development rebate provision is not at all applicable.

Then, there is a printed error we have pointed out at page 10.

MR. CHAIRMAN: That has been accepted.

SHRI DHONDY: Thank you. As regards the proposed new section 35F, we already have a fifth and sixth schedule in the Income-tax Act. Now a seventh schedule is proposed to be added to the Income-tax Act. But is it necessary and does it simplify matters? The Fifth Schedule is in regard to development rebate. The Sixth Schedule is about 8 per cent reduction of profits for priority industries. The Seventh Schedule repeats verbatim the list of minerals given in some other law for some other purposes. Is there a mineral which this country does not want to prospect for and develop? If there is any, exclude those by mentioning them in the section itself.

Then, why do you want to encourage prospecting only by Indian companies? There are a large number of assesseees other than Indian companies. It seems there is justification for giving this concession to all the assesseees. In regard to disallowing of certain specified expenditure, I am told there is no uniformity in legislation from State to State as regards the capital cost of acquiring the right to extract which is a wasting asset. In certain States, there are provisions

for paying *salami*. This is also an outlay for the same objective. On what logical ground can you say that it should not be allowed to be amortised? There is a strong case for allowing all expenditure incurred for promotional activity.

In regard to clause 30, there is no power for waiver of interest by the ITO even where he himself thinks it proper under the circumstances to allow extension of time for filing the return within the prescribed deadline. This does not seem to be logical.

Regarding the proposal to increase the duty of the assessee to make payment of tax on self-assessment as envisaged in clause 31, I submit that we have not reached the stage where the average tax-payer will be able to calculate his liability with any substantial accuracy. This is an exercise which is beyond the ingenuity of the average tax-payer. There is no justification for reducing the limit from Rs. 500 to Rs. 100. It does not bring in any substantial revenue also.

Regarding clause 35, we have a time-limit sought to be introduced for completing assessments which have been reopened as a result of appellate order or because originally there was an *ex parte* assessment. This would apply only to reopenings from the assessment year 1970-71 onwards. We feel there is a case for fixing a time-limit in regard to pending assessments relating to earlier years also.

We are of the view that the proposed increase in the fees for appeals to the Appellate Tribunal from Rs. 100 to Rs. 250 is too high, unless you introduce a provision giving the right to the Tribunal to award costs. In the interest of equity, we want to know whether the fee is chargeable to both the parties, because sometimes the Department may file an appeal.

There is a provision which takes away the power of the AAC to condone delays in filing the appeal. We

submit that this provision should be deleted and the AAC should continue to have the power to exercise his discretion and condone delays in submission of appeal for sufficient cause, even beyond 30 days.

In regard to clause 27, which seeks to amend section 89, we feel that the Income-tax Officer, instead of the Commissioner of Income-tax, should be given the power to allow this relief where the salary or the interest on securities is received in arrears. If you are now going to provide, as the amendment proposes, that there should be rules prescribed by the Central Board as to the circumstances in which this is to be done, then the officer merely has to follow the rules. Why do you then want to bring it again to the level of the Commissioner? That is the logic of this particular suggestion.

In regard to clause 29 amending section 119, we suggest that the rules that are proposed to be published should be given the widest publicity so that assessee do understand what is the present view of the department in regard to specific matters so that they do not unknowingly commit any default of the provisions.

Coming to clause 30, amending section 139(8), you have a provision here that if it is a registered firm which commits the delay in filing a return, even though it is going to be assessed as a registered firm, the interest should be charged to it as if it were being taxed as an unregistered firm. With respect, it may be a deterrent but it does not seem to be justified on the facts. You may allow extension and even then you are talking of charging interest for that extended period on tax which the firm never defaulted. This may have originated at a time when registered firms were not subject to any tax at all but now there is a fairly substantial quantum of tax on registered firms and this provision for interest, being calculated in respect of registered firms, which are late in filing

returns, on the basis of the tax they may have had to pay if they were treated as unregistered firms, seems a little unfair.

These are the main points. We are grateful to you for this opportunity.

MR. CHAIRMAN: We thank you and your colleagues for the valuable suggestions that you have given to this Committee. Please send us the second memorandum on the points that are outstanding. Then, we will fix the time and write to you again.

The witnesses then withdrew.

II. Punjab, Haryana and Delhi Chamber of Commerce and Industry, New Delhi Spokesmen:

1. Shri Raghunath Rai—*Chairman, Company Law and Taxation Panel of the Chamber.*

2. Shri Mohinder Puri—*Member, Managing Committee.*

3. Shri S. Sundara Raman—*Member, Company Law and Taxation Panel.*

4. Shri Onkar Nath—*Member, Company Law and Taxation Panel.*

5. Shri M. L. Nandrajog —*Secretary of the Chamber.*

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Mr. Raghunath Rai, we welcome you and your colleagues to this Committee. I would like to bring to your notice the direction of the Speaker so far as the work of this Committee is concerned. It reads thus:

“Where witnesses appear before a Committee to give evidence the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witness that

even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament.”

I ask you to give a brief resume of the Memorandum that you have given us.

SHRI RAGHUNATH RAI: On behalf of the Chamber I express my grateful thanks to the hon. Chairman and the members of the Committee for having given us the opportunity of expressing our views and giving oral evidence on this Bill.

The aims of the Bill have been enunciated in the Bill itself. They are simplification and rationalisation of the tax structure. The Chamber, therefore, welcome the measures. We feel that, on the whole, the Bill is in that direction and if it is passed with whatever modifications the hon. members feel like, it is bound to give that effect.

We have submitted our Memorandum and, therefore, I would not like to take the hon. members' time in going into each and every clause but briefly would mention a few important provisions.

The Chamber feels that, with regard to the remuneration of foreign technicians, the existing provisions are quite adequate and need no change, and the time has not yet come when a limitation on the salaries that are to be paid to the foreign technicians should be placed.

In regard to Hindu undivided families also, we feel that the existing provisions are quite adequate and the fear expressed that large scale Hindu undivided families have been formed after 1965 as a result of the Gujarat High Court decision does not go to such an extent as to need amendment in the statute because in that High Court decision it has been mentioned that it is only the partition which is to be affected and not

throwing of the money into common hotch-poch. . . .

MR. CHAIRMAN: On what basis do you say that it should not have retrospective effect from 1965 onwards?

SHRI RAGHUNATH RAI: My submission is this. So far as throwing into the family hotch poch is concerned, those provisions were already there although it may not have been known to many of us. The provisions of the law say only with regard to those formations of Hindu undivided families which have been effected after 31st March 1965.

MR. CHAIRMAN: You mean to say what is the legal thing should not be. . . .

SHRI RAGHUNATH RAI: . . . should not be disturbed because even under the Hindu law it will lead to a lot of complications and the purpose of the simplification of the law would not be served.

With regard to registration of firms, the present provisions of the law have been very much clarified by numerous decisions of the High Courts as well as the Supreme Court. The purpose of registration is not to affect the genuineness or non-genuineness of the firm which the Income Tax Officer has got the power to go into the merits of the case and find out whether the firm is genuine or not. What has been incorporated in the Bill is a procedural one as to how the registration of a firm should be effected in a particular manner. In this our submission is that the existing provisions are quite adequate and any further provisions will rather complicate the matters because getting registration from the Registrar of Firms is not easy.

MR. CHAIRMAN: Existing provision is adequate?

SHRI R. N. MUTTOO: It was on the recommendation of the Administrative Reforms Commission and

Bhoothalingam Committee that we came out with the change. It was a general demand that the registration by the Registrar of Firms should be taken as final.

MR. CHAIRMAN: How far is it correct that the existing provision is adequate to meet this demand?

SHRI R. D. SHAH: There is a general feeling amongst those firms coming up for registration that the procedure is rather involved and, as expressed in the discussion this morning, there was a great deal of doubt as to what application should be filed and what not, with the result that there was a lot of public opinion which represented before the Bhoothalingam Committee and the Administrative Reforms Commission that the procedure for registration of firms should be rationalised and simplified. So, in this process, one of the recommendations of the Bhoothalingam Committee was that if a firm is registered with the Registrar of firms, that should in itself form the basis of registration by the Department. Previously the idea of registration was that the Income Tax Officer would look into the genuineness or non-genuineness of the firm. The present procedure as envisaged by the Bhoothalingam Committee and also attempted by the amendment proposed is that the registration with the Registrar of Firms will be *prima facie* evidence as to the genuineness of the firm. So it is felt that this provision is likely to simplify the vexed question of registration of firms. Now the Income Tax Officer would not have to look into and examine each and every case from this point of genuineness.

SHRI RAGHUNATH RAI: My submission only is this that so far as the procedure is concerned, the procedure was already there that the firm requiring registration has to file an application with the Income Tax Officer and the Income Tax Officer

goes into the question whether the firm is genuine or not. That power of the Income Tax Officer is still retained in the Act. Although my friend has said that normally the registration with the Registrar of firms will be taken as *prima facie* evidence as to the genuineness, still it would not in any way prevent the Income Tax Officer from going into that question. The procedure which has been prescribed is far more cumbersome than the procedure which is at present in vogue. The system under which the registration was granted by the Income Tax Officer is an additional procedure which has been prescribed. Through the Income Tax Officer he has got to give the application requesting for registration of the firm. My submission is that the law relating to registration of firms has become very clear on account of the numerous decisions of Supreme Court and High Courts. They have gone into each and every case and laid down the nature of the jurisdiction where he can get the genuineness or non-genuineness of the firm examined. Any more details about that will lead to more complication.

SHRI TENNETI VISWANATHAM: What is the effect of those decisions?

SHRI RAGHUNATH RAI: The effect is that so far as the future registrations and renewal of registrations are concerned, the law is clear. They are following the decisions of the High Courts and the Supreme Court and registration is being granted. So far as the procedure as to how the application is to be filed, it was only in particular circumstances that genuineness of the firm was affected because of certain provisions not being complied with. The decisions of the High Courts and the Supreme Court have clarified the whole thing. The difficulties on the part of the assessee are no longer there. My submission is that any further changes in this would lead to more complication.

SHRI N. K. P. SALVE: Apart from the question of the contemplated modification of the procedures, I actually fail to appreciate your apprehensions that the settled law on the point specially the law as it emerges after a decision in a number of cases about the determination of the genuineness of the partnership, is likely to be unsettled. I do not share that apprehension of yours because the law as contemplated now is not going to unsettle the settled law on that point. The modification of procedure, apart from any other procedures, is in point of fact simplified. The registration procedure is a different thing.

SHRI RAGHUNATH RAI: Perhaps I have not expressed myself clearly on the matter. What I submitted was that difficulties which would now be faced by the assessee in following the procedure as prescribed would be far more.

SHRI N. K. P. SALVE: We will come to that point whether the procedure now prescribed is more cumbersome than the procedure prescribed before. Do you concede that otherwise this law does not contemplate unsettling the established law as to the genuineness of partnership?

SHRI RAGHUNATH RAI: Yes, Sir.

SHRI N. K. P. SALVE: Therefore, we now come to the procedure. About the procedure the Department is saying that the Income Tax Officer has been so far getting along with the test which was not somewhat subjective, about the genuineness of the firm's registration. The largest amount of litigation under the income tax law is under Sec. 34, relating to registration of firms. Now the Department says 'We will accept your registration with the Registrar of firms as the *prima facie* proof of the genuineness of the partnership'. If this be correct, do you believe that

the added formality required to be complied with more than offsets the hardship which is being caused to the assessee to prove the genuineness without such a registration?

SHRI RAGHUNATH RAI: I agree. If the view of the Department is that once the registration is made with the Registrar of firms, it will be taken as *prima facie* evidence of the genuineness of the firm, that is an advance on the present situation. My only apprehension is that the procedure that has been prescribed is somewhat complicated.

SHRI N. K. P. SALVE: The only procedure is about getting it registered. The other procedure at present is filing of various forms for the registration of firms. When it is the case of renewal of registration, you file another form along with returns. What are the changes that you think are more cumbersome as compared to the existing forms?

SHRI RAGHUNATH RAI: The offices of the registrars are not so easily situated. There is this aspect of time-lag in getting registration done there. Also, for a number of times the applications are returned by the officers to the firms and such occasions are quite numerous. Tax officers are conversant with the details of the registration which the registrars are not so well-equipped at the moment. They are situated in the headquarters. It can be effective at the headquarters, where the assessee is being assessed. To that extent it is easier for him to approach and he can get them sorted out. In respect of 50 per cent of cases or half the number of assessee's the forms would be returned after lapse of time. Assessee's will be put to difficulties. There should not be procedural irregularities or inadequacies.

SHRI N. K. P. SALVE: Would you be satisfied with a situation where the genuineness will not be challenged or would you have the committee accept that we don't want this

difficulty, determine the genuineness in the normal course?

SHRI RAGHUNATH RAI: The requirements of the law are there with regard to the matter of details of registration which have to be stated in the application for registration and these are already given clearly there. If these very forms and regulations are provided even with I.T. Officers, then we have to give them those things, which have to be given to the Registrar, we will certainly welcome it. There is no difficulty. But if the Registrar becomes registering authority himself, it is different. We are going to third authority and that will lead to waste of time. That is all.

SHRI N. K. P. SALVE: You suggest registration with I.T. Officer should be *prima facie* proof of the genuineness. Is not that begging the question? With Income-tax Officer you seek registration.

SHRI RAGHUNATH RAI: Registrar of firms even to day has no authority to refuse registration. He is only to go by particular provisions of the form prescribed and if that is duly filled in and completed and supported by documentary evidence and all that he has to register that thing. He does not go into the genuineness of that thing. If it is desired that particulars should be given by assessee which are normally given to Registrar of firms I would submit that procedure should be changed in a way that the ITO are required to get that procedure to himself and as soon as those things are completed it should be treated as *prima facie* evidence of the genuineness of the firm. My difficulty is with regard to procedural delay and difficulties on the assessee and not with the forms and particulars which are required.

SHRI N. K. P. SALVE: Registration by itself does not establish genuineness as such—it is an official requirement, formality, without really helping the assessee.

SHRI RAGHUNATH RAI: The ITO can still go into that question irrespective of the assurances of the Department.

SHRI N. K. P. SALVE: If the provision is not in harmony with any assurance we get change of the section modified properly.

SHRI RAGHUNATH RAI: That be incorporated in the section itself.

SHRI N. K. P. SALVE: What do you think about it?

SHRI RAGHUNATH RAI: If it is incorporated in the section itself and modified it is welcome. Difficulties are created by procedural difficulties of registration with registrar of firms. I have no objection.

SHRI N. K. P. SALVE: Suppose the section incorporates a condition that unless there is reason for the ITO to believe otherwise, registration with the registrar shall be *prima facie* proof of genuineness of the firm.

SHRI RAGHUNATH RAI: There is provision made in the section itself. The ITO exercises independence with regard to the genuineness of the firm.

SHRI N. K. P. SALVE: Ultimately what will prevail is this: Registration with the Registrar should conclude the issue—unless there are reasons for the ITO to believe that the registration with the registrar of firms is merely a pretence.

SHRI RAGHUNATH RAI: It is a concession provided to ITO. He is not given too many powers to go into that authority.

SHRI N. K. P. SALVE: We are giving more powers to go into genuineness.

SHRI R. N. MUTTOO: The changes you know, are made as a result of the recommendations of the Bhoothalingam Committee. As far as the hardships are concerned, *vis-a-vis* procedural changes I have got two points to submit. One is that all the partnership firms, as the law exists have to get themselves registered with the registrar of firms in order to have the benefit under Section 69(1) and 69(2) of the Indian Partnership Act. Non-registration bars the right of any person who is a partner in a firm to enforce certain rights against the firm or any person alleged to be a partner therein. And secondly it bars enforcement of certain claims by a firm against third parties. So the question of going to registrar of firms is not something new. They have got themselves registered already with the registrar. Regarding practical hardship the position is this. They are now required to be registered with the registrar of firms. There is a proposal for consideration that all firms which are already registered with income-tax department need not get themselves registered with the registrar of firms for getting benefit of renewal of registration in the Income-tax Act, unless the constitution changes. These are the points.

SHRI N. K. SANGHI: One of the objects of the Bill is to remove certain malpractices and lacuna in the provisions. Some firms are not genuine. They get themselves registered. Can you suggest steps to be taken by the tax officers concerned to determine the genuineness of the firm.

I am drawing your attention to this fact that this requires registration by the Registrar of Firms. It is possible that the agreement form might have been purchased and made use of after some time. In the meantime there might be change in the partnership. This requires registration of a firm.

SHRI RAGHUNATH RAI: With regard to the registration with the Registrar of Firms, the time factor uptill now was not there. According to us it can only be settled by the partners themselves. With regard to registration by the I.T.O. the time factor is very important. You say that the firms partnership deeds are purchased but they are executed later. To that extent the time factor does come under the law. I do not know whether any procedure can be attempted by which this can be obviated. If I purchase the partnership deed to-day and I execute the deed before the end of the financial year I have got to indicate therein the number of shares held, names of partners etc., supported by my account books for registration purposes. If proper account books are maintained, these will all be clearly shown according to the deed. To that extent I do not think it will make any material difference.

SHRI SANGHI: The procedure is that the firm has to be registered with the Registrar of Firms. If the firm is registered by the Registrar that means he is satisfied himself as to the genuineness of the firm. Don't you think that there is a marked improvement now than the previous provision?

SHRI RAGHUNATH RAI: I submit that it is a marked improvement but with a proviso that the process of registration with the Registrar of Firms is also accelerated. Here the time factor comes in. If I do not send by application within the financial year to the I.T.O. it means that I do not register myself with the Registrar of Firms within the financial year as my application is not going to be considered within time. If the Registrar himself takes three, four or six months' time to reply my letters how can it be registered within the financial year. If there are procedural irregularities in my application, to that extent, I lose my right to get the firm registered with the Registrar and to produce a certificate of

registration before the I.T.O. That is my difficulty.

MR. CHAIRMAN: Under the law you have to send up the application to the Registrar of Firms. What is the difficulty?

SHRI RAGHUNATH RAI: I have to get it registered before this is accepted by the I.T.O. that it is duly registered. This takes six months time.

SHRI N. K. P. SALVE: What does it matter?

SHRI RAGHUNATH RAI: Because the application for registration has to be put in before the close of the financial year.

SHRI N. K. P. SALVE: After all it is put in for the previous year. Suppose you enter into partnership from to-day. You have one year from to-day.

I think you are talking of registration certificate.

SHRI RAGHUNATH RAI: I am talking of registration of firms.

SHRI N. K. P. SALVE: I am not able to understand it. On your application for registration of firm, the Registrar communicates to you that you are registered. That relates to the date of application. In the form you will give the requisite particulars. If you receive your certificate much later because of the delay on the part of the Registrar that is not going to debar your claim for registration.

SHRI RAGHUNATH RAI: My submission is that this should be clarified in the Act. Sending the application to the Registrar of Firms will be treated as the final date of registration and if I take the case to the I.T.O. he has to accept that.

SHRI N. K. P. SALVE: Please bear with me for a while. Suppose you constitute a firm to-day and you

apply to the Registrar of Firms for registration. Your accounts are closed on 31st March. In that case your application is valid and even if the Registrar does not send you the certificate before 31st March but in April, the firm will be entitled to registration according to law. That is for the year ending 31st March, 1970. If that is the position in law, is it all right?

SHRI RAGHUNATH RAI: My submission is that the filing date should be the date when it is issued by the Registrar.

SHRI N. K. P. SALVE: Suppose the accounts of the firm are closed on 23rd October, 1969. Even then you can get the firm registered.

SHRI RAGHUNATH RAI: All I want is that it should be mentioned in the certificate. I have no objection to this.

MR. CHAIRMAN: All those procedures are there.

SHRI RAGHUNATH RAI: The procedure is there. It does not give me the right or an opportunity as to the date from which the firm is registered.

MR. CHAIRMAN: The I.T.O. may entertain an application and condone the delay even if it is made after the end of the previous year if he is satisfied about the registration of the firm. It is all there.

SHRI RAGHUNATH RAI: It is not applied in practice. It hardly satisfies the I.T.O.

MR. CHAIRMAN: Do you mean to say that the I.T.O. is not satisfied with the case? Is there any such case?

SHRI RAGHUNATH RAI: There are so many cases.

SHRI N. K. P. SALVE: Do you think that the I.T.O. will not condone the delay if there are valid reasons?

SHRI RAGHUNATH RAI: I cannot say what he would do.

SHRI N. K. P. SALVE: We want to tell you one thing. It is to be made clear to you. The Committee would not certainly deprive the I.T.O. of the right of going into the genuineness of the case before registration of the firm. We want to simplify the registration of firms with the Registrar by consensus of opinion. Can you suggest anything else which can really be taken as a conclusive proof of the genuineness of the partnership of the firm under the law?

SHRI RAGHUNATH RAI: I submit that every application which is filed for registration of a firm before the Registrar should be taken as a *prima facie* evidence of the genuineness of the firm by the Income-tax Department.

SHRI N. K. P. SALVE: That is our intention.

SHRI RAGHUNATH RAI: It may be your intention. You just now mentioned that you would not take away the power of the I.T.O. to go into that question.

SHRI N. K. P. SALVE: Our intention is to make this as a *prima facie* proof. It should be taken on the face of it. But, certainly, if there are reasons for the I.T.O. to believe that it is an unreal document, he can go into it. There are so many complaints made as to the formality that is to be gone into for registration of the firms with the Registrar. The I.T.O. will have to satisfy himself before he accepts the genuineness or otherwise of the partnership of the firm. If the registration is all right you get the certificate.

SHRI RAGHUNATH RAI: My submission was that these are filed with the Income-tax Officers in the normal

course. They can take the evidence. My submission is only procedural. It will simplify the laws more for the assessee.

MR. CHAIRMAN: The Income-tax Officer should be the registering authority?

SHRI RAGHUNATH RAI: So far as income-tax is concerned.

MR. CHAIRMAN: But how to know whether the firm is registered?

SHRI RAGHUNATH RAI: The Registrar of Firm does not go into the genuineness of the firm. He only sees to the procedure, whether it has been complied with, and whether there are papers to that effect. The Registrar of Firms has absolutely no authority to reject an application and say that the firm is not genuine. This is my submission.

SHRI N. K. P. SALVE: You say instead of the Registrar, it should be the I.T.O.?

SHRI RAGHUNATH RAI: Yes. *Prima facie*; unless he has reason to believe otherwise.

SHRI N. K. P. SALVE: That means we will be where we are. Is it not the law today?

SHRI RAGHUNATH RAI: Will the assessee avail himself of such a procedure which is more complicated?

SHRI N. K. P. SALVE: Do you mean to say that the existing procedure is less cumbersome than the one contemplated?

SHRI RAGHUNATH RAI: That is what we feel.

SHRI R. D. SHAH: I may spell out the intention of this. I appreciate the apprehension on the part of Mr. Rai, that difficulty will arise primarily because the registration is with the Registrar of Firms which is a State authority. You also made out that

the Registrar is not going to look into the genuineness of the firm because he will see whether certain formalities prescribed by the Partnership Act are complied with or not. But there is a fundamental difference between the registration with an Income-tax Officer and with the Registrar of Firms, and it is this that it is a public document, to which every one has an access. The fact that anybody could have an access to a certain document is in itself a certain amount of restraint. It does happen that a person is shown as a partner in a firm, though he may not be aware of its business. I know a number of such examples. When we cross-examine partners, we find that they are sometimes absolutely ignorant of the business of the firm.

What I am trying to indicate is that if it is a public document, anybody could have an access to it.

The difference is this, that in the first alternative we accept it as genuine, unless we have very good reasons to the contrary. Contrasted with the present, we have to judge the genuineness every time.

MR. CHAIRMAN: Do you mean to suggest that the new procedure is going to be cumbersome as compared to the existing procedure?

SHRI R. D. SHAH: If I may express my opinion, I share the misapprehension of Mr. Rai, so far as the Registrar of Firms may be concerned; otherwise, as Mr. Salve has pointed out, it is simple enough for all purposes.

SHRI N. K. SANGHI: I want a clarification. It was stated by the Chairman of the Board of Revenue that all those firms which are already registered and are working will not be required to take this certificate of the Registrar of Firms. This is not provided in the present law. Shall

we take it that this point has been accepted by Government?

SHRI MUTTOO: This is only a proposal for the consideration of the Committee. If it were accepted, it would mitigate hardship in a majority of cases and save unnecessary workload for the Registrar of Firms.

We will consider that and let you have our views.

MR. CHAIRMAN: Let us go to other questions.

SHRI RAGHUNATH RAI: The next point is in regard to the raising of the limit for the purpose of amortisation of preliminary expenditure from 2.5 to at least 5 per cent of the capital expenditure, which is incurred in raising the capital. Our submission is that we go by the statistics. This expenditure is actually more than 4 or 5 per cent. Our submission was that if it is intended that this concession should have a real effect on the assesseees, then this limit of 2.5 should be raised to at least 5 per cent.

SHRI N. K. SANGHI: I would like to have a clarification. Your memorandum has given certain figures. But it is not known whether it is a mathematical figure or it comes from an authenticated balance sheet.

SHRI RAGHUNATH RAI: These figures come from a few balance-sheets.

SHRI N. K. SANGHI: We would like to know the names of the companies whose figures they represent; otherwise it will not be feasible.

SHRI RAGHUNATH RAI: We have taken a few companies. Because they are public companies, it will not be improper in any way disclosing any of their secrets.

SHRI N. K. SANGHI: I think there should be no objection...

MR. CHAIRMAN: In the case of 'A', your paid-up capital is 30 lakhs and preliminary expenses 12.5 per cent.

SHRI N. K. P. SALVE: You are only mentioning the paid-up capital. What about the long-term borrowing? What is the percentage?

SHRI RAGHUNATH RAI: My submission is that in so far as the proportion between the capital borrowed and the own capital is concerned, in the beginning the companies usually spend their own capital and they go for borrowing at a later stage. Even where it is done simultaneously, it should be on issued capital as well as borrowings. But it is never done that in the beginning a company would be issuing only borrowed capital and not equity capital.

SHRI N. K. P. SALVE: That is a different aspect. We are now on the question of percentage. You seem to support the case of the department. Assuming there is equal amount of borrowings as paid-up capital, the percentage will come to only about 2½ per cent everywhere, except in regard to (a).

SHRI RAGHUNATH RAI: When we talk of borrowings, there are two types of borrowings; one is normal borrowings in the course of business from the banks; there is also borrowing from specified institutions where it is considered as capital, like debentures and long term borrowing against fixed block assets....

SHRI N. K. P. SALVE: I am talking of borrowings against the gross block. This is invariably the case in industrial units these days.

MR. CHAIRMAN: You may give us a supplementary memorandum giving the names of those companies.

SHRI N. K. P. SALVE: You may compute according to the law, and let us see how it works out. You seem to substantiate what the department has done and you seem to support it, and you seem to say that what they have worked out is correct.

SHRI RAGHUNATH RAI: It is only a question of calculation. I shall submit the detailed calculation later.

SHRI N. K. P. SALVE: Do you have any grievance about the basis or do you accept the basis which is there now?

SHRI RAGHUNATH RAI: We have not discussed every single aspect of this very point in our Chamber, but personally I would say that if it is fixed purely on the basis of the paid-up capital, that would be better, whatever percentage will be used.

MR. CHAIRMAN: So, you suggest that it should be only on the basis of the paid-up capital.

SHRI RAGHUNATH RAI: That will be better than trying to incorporate along with it the borrowings and lowering the percentage.

SHRI N. K. P. SALVE: Supposing a company wants to have a larger loan and lesser capital, and supposing another company wants the whole thing to be out of capital, why should their preliminary expenses be different?

SHRI RAGHUNATH RAI: My submission is this. Normally, it means that a company is not well formed if there is not a certain proportion between borrowings and equity? If it is thought so, then that will not be correct. A company which depends mainly on borrowings is not considered to have a good issue even by bankers. Therefore, most of the capital is issued in the form of equity and less is issued in the form of long-term borrowings.

SHRI N. K. P. SALVE: Does it mean that a company which may not have the entire capital cannot go to the bankers and get any long-term loans?

SHRI RAGHUNATH RAI: If there is a choice between the two, then the choice of the capital is better than the choice of the borrowed capital. My submission was only this that the expenses incurred in raising the borrowed capital are less than those incurred in raising the equity capital. To that extent, the proportion has to vary, and if a company goes in for more borrowed capital and less of equity capital and the percentage remains the same, they will be the sufferers. . .

SHRI N. K. P. SALVE: Supposing no further capital is raised; then under preliminary expenses, none of the expenditures contemplated is to be allowed?

SHRI RAGHUNATH RAI: They would not be there.

SHRI N. K. P. SALVE: Supposing it is partly borrowed capital and partly equity capital, then what is to be the percentage that is to be allowed?

SHRI RAGHUNATH RAI: Our submission is that it should be treated as revenue expenses incurred in the course of business. Even some of the court decisions have also been on this very issue; they are taking this debenture issue as in the normal course of business and the expenditure incurred is being allowed as revenue. Our submission is that the expenditure incurred after the company has commenced business and production, should be treated as revenue expenditure.

SHRI N. K. P. SALVE: The dispute is not about those items of expenditure which will be treated as revenue. That will be treated as revenue expenditure, but such of the expenses as are not revenue are to be amortised. Assuming that an indus-

trial unit is put up without raising any capital, then how do you determine the ceiling? Since you say that it should be only paid-up capital, how will you determine the percentage? Have you applied your mind to this?

SHRI RAGHUNATH RAI: My submission would then be to have two percentages, one for equity capital and another for borrowed capital.

SHRI N. K. P. SALVE: We are simplifying the law and not complicating it.

SHRI RAGHUNATH RAI: There is no complication; it is only a question of calculation.

SHRI N. K. SANGHI: You are representing a very important region, namely Delhi and its neighbourhoods where some of the biggest industries have come up in the northern region. What is your experience? What is the average percentage of equity capital in relation to borrowings? Is it not your experience that most of the industries that have come up during the last ten years have practically done with 20 to 25 per cent of equity capital and the balance has been taken by them from financial institutions in the form of borrowings to make the industry go along. If that be the case, do you not think you will be hurting the cause of the companies which have larger borrowings to start industries because they will be getting less for amortisation expenses?

SHRI RAGHUNATH RAI: It is correct that in these days they are going in for more borrowed capital, because these financial institutions would like to give funds more in the form of loans than in the form of equity capital.

SHRI N. K. P. SALVE: That is there no doubt, but to that extent, an entire percentage is bound to be harmful to one of the categories.

MR. CHAIRMAN: From your observations now, it becomes clear

that you are not very sure about percentages.

SHRI RAGHUNATH RAI: We have studied only four or five cases; we shall study more details from the company law administration file and then give you the details.

MR. CHAIRMAN: You may submit a second memorandum mentioning the names of these companies and also give a break-up as between borrowed capital and paid-up capital.

SHRI RAGHUNATH RAI: We shall furnish the information.

SHRI N. K. P. SALVE: If you are serious about the point raised, then some rational basis has to be there to link it up with paid-up capital; then let us have some more reasons for your averment.

SHRI RAGHUNATH RAI: My next point was regarding mining expenses under section 35. A number of our members have also represented to us in this regard. The Bill is confined to limited companies only. But there are a number of cases where mining operations are done by assesseees who are not companies and by partnership firms that may be even foreign companies. My submission is that this concession should be given to all.

MR. CHAIRMAN: Your point is that this concession should be given to whosoever has been granted a licence to go in for mining and prospecting, if the expenditure is incurred in the normal course of business of the mining operation.

SHRI N. K. P. SALVE: Otherwise, you are satisfied with the scheme of amortisation?

SHRI RAGHUNATH RAI: I am coming to that. My second point is that amortisation has been confined only to certain types of expenses. Take, for example, capital expenses incurred in acquiring mines. For a

number of years, we have been pressing that if machinery could be depreciated, if buildings could be depreciated, our capital which has gone into purchase of mining rights and which is being treated as capital and not as a revenue item should also be allowed to be amortised.

SHRI TENNETI VISWANATHAM: It has been said that mining is a continuous process. Please enlighten us on this point.

SHRI RAGHUNATH RAI: Mining is a continuous process in this sense that under the various State laws, before mining operation is started, the applicant has to get the prospecting licence; the prospecting licence is for a duration of three to six months and it is for a maximum period of two years. It is only when the person has succeeded in prospecting, that he goes in for the lease of the particular mining area and then he goes in for mining operations. In normal practice, once a person has selected the business of mining, he has got to go in search of raw materials from place to place. But even the normal expenditure like travelling expenses, petty wages and even prospecting fees for a period of three to six months are not being allowed; in several cases we have gone to the courts higher up also, and in some cases, we failed, and in some cases we have succeeded.

SHRI N. K. P. SALVE: Have you succeeded in getting prospecting expenses allowed?

SHRI RAGHUNATH RAI: The prospecting expenses in the nature of prospecting fees are of the order of about Rs. 250 to Rs. 500 on a particular area or mileage basis, and we have been allowed travelling allowances at the Tribunal stage.

SHRI SALVE: To whom?

SHRI RAGHUNATH RAI: To the assesses.

SHRI SALVE: Provided he is already in the mining business.

SHRI RAGHUNATH RAI: Yes.

SHRI MUTTOO (Official): We have provided this facility only for companies for the following reasons. Companies are subject to discipline of company law their accounts are statutorily audited and then companies have greater potentiality for commending large amounts of capital needed for mining on large scale. Companies can provide institutional management on scientific lines. These were the factors which we have taken into account and first two being most important we have confined this benefit to the companies only.

SHRI SALVE: In the same business. If he has a mining business and he seeks to prospect a mine of the same mineral and he fails to find then I understand the rationale of your contention that prospecting expenses even if they are found to be infructuous should be allowed.

SHRI RAGHUNATH RAI: The same type of mineral which is being exploited under different areas the expenditure which is useless in a particular area should be allowed to be merged in an area which has proved useful.

SHRI MUTTOO (Official): Sir, in this connection I would invite your attention to sub-section (5) (a) of section 35F which provides: "For the Purposes of this section—(a) operation relating to prospecting means any operation undertaken for the purpose of exploring, locating or proving deposits of any mineral and includes any such operation which proves to be infructuous or abortive." We have made, Sir, this provision.

SHRI RAGHUNATH RAI: The next point that I was trying to make

is amendment suggested in Section 143.

The addition of this sub-clause (3) where it gives power to the Income-Tax Officer to re-open his own assessment. We feel, sir, that this will lead to a dangerous situation, particularly because firstly there is no time limit that has been given to re-open his own assessment in the manner it is desired.

SHRI N. K. P. SALVE: It is subject to limitation of 2 years.

SHRI RAGHUNATH RAI: Two years is for assessment and not for re-assessment. Once he has opened his own assessment, there is no period fixed for it as to when he can re-open.

MR. CHAIRMAN: 143 (1) (a)—certain procedure has been prescribed. They say time limit of 2 years continues to apply.

SHRI RAGHUNATH RAI: He has to complete his assessment within 143(1). Now he is re-opening it in 143(3) having found some reasons. There is no time limit.

SHRI MUTTOO: The re-opened assessment would have also to be completed according to the existing provision, within 2 years.

MR. CHAIRMAN: Two years from the end of the assessment year in which the income was first assessable. You refer to 153(3)—the time limit is there.

SHRI N. K. P. SALVE: The bar—153.1 (a) would still apply. Shri Muttoo I want to ask, is the time limit really two years or 4 years.

SHRI MUTTOO: It is 2 years.

SHRI N. K. P. SALVE: If that be so, would you be so kind as to refer to 147(b) read with 149(b)—re-open assessment without any fault on the part of the assessee—4 years. For-

merly the limitation for complaint was 4 years and also assessment could be re-opened in 4 years time.

Now whereas an ITO will complete assessment within 2 years, but without any fault of the assessee the assessment can be opened in 4 years

Virtually the limit is 4 years.

SHRI MUTTOO: But he would re-open the assessment if there is some short fall.

SHRI N. K. P. SALVE: Earlier the limitation was 4 years and the assessment could not have been opened beyond 4 years after the relevant assessment order. Now even if there is no fault, omission or failure on the part of the assessee as is there under Section 147(a), he is none-the-less exposed for no fault of assess. The assessment limit is 4 years by the I.T.O.

Virtually it is 4 years.

SHRI MUTTOO: Yes, it is 4 years in this case.

SHRI RAGHUNATH RAI: Even the period of 4 years in the case of assessment 143(1) may be considered as too long a period.

SHRI N. K. P. SALVE: That does not cover, Mr. Rai. For purposes of 143 the limitations are prescribed in 153(1) (3)—it is 2 years. That was a different question, I asked him. So far as this amendment is concerned you still have the limit prescribed by 153(1) (3)—2 years from the end of the assessment year in which the income was first assessable.

SHRI RAGHUNATH RAI: Next point was, Sir, ordinarily there is a power with the Commissioner of Income Tax to re-open it. *Suo-motu* under 260. it is 2 years. These existing provisions are too inadequate and the power has been given to the Income-Tax Officer to revise his own assessment even within a period of 2 years.

Is it justice to the assessee because it would lead to lot of complications? The reasons have not been stated.

SHRI N. K. P. SALVE: The scheme is according to the Boothalingam recommendation. An assessee after filing the return without being required to be present is given an assessment order made by the I.T.O. after making routine assessment and only if he finds something more than what is necessary, he will send for the I.T.O. and complete the assessment. What is the hardship?

SHRI RAGHUNATH RAI: After he gives reasons while sending the notice that these are the reasons which prompted him under power given by 143(3), I would certainly submit that he has applied his mind. But I fear that these notices are issued without applying the mind.

SHRI N. K. P. SALVE: You read the Section carefully. Section 3 says— if he finds afterwards that it is not adequate or something is wanting, then he will call the assessee concerned and complete the assessment.

SHRI MUTTOO: Sir, let me give the background of this whole thing. The new procedure envisages completion of assessments on the basis of returns after making arithmetical adjustments to the returns of income and on points which are obvious on the face of the returns. Such assessments will be made without calling the assessee in the bulk of cases, which do not involve any dispute. Income Tax Officer is to make supplementary assessments in cases where he finds on a scrutiny of the return and accounts that assessment already made on the basis of the return is incorrect, incomplete or inadequate in a material respect. This has been done because in a scheme in which the bulk of assessments are to be completed on the basis of the returns, it will be essential in the interest of revenue to make

a limited check of some of the cases. In fact this is being done at present under the small income scheme. The new provision for completing the assessment on the basis of the return after making routine adjustments apparent on the face of the return is in fact not materially different from the existing system of provisional assessments to demand tax. In fact, the new procedure is favourable to assessee because in the majority of the cases these assessments will be the final assessment whereas in the case of provisional assessments, every case has to be looked into by the Income Tax Officer again and a regular assessment made after calling the assessee and examining the evidence. Further, within the course of the next two or three years, the number of tax assessee on our registers is likely to increase considerably. With the reduced time limit of two years for completing income-tax assessments, the adoption of a simplified procedure for assessments as proposed in the Bill is inescapable in order that the Department may not be faced with the mounting arrears of assessments.

SHRI RAI: My fear is that the notices might be issued without applying any mind. My submission is that the notices should be issued only in genuine cases and not indiscriminately. Either the Officer should take the permission of the authority.

SHRI N. K. P. SALVE: That will make it very cumbersome. Sub-section 3 says, "on the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Income-tax Officer may require on specified points, and after taking into account all relevant material the Income-tax Officer shall in the case where an assessment has been made under sub-section (1)...."

SHRI RAI: My submission is, before making that assessment, he has gathered all the information and he is sup-

posed to have seen, and having made up his mind, he has authority. What is the material which has come to after the completion of assessment and before the issue of notice is a valid point.

MR. CHAIRMAN: Your anxiety is understood. Let us ask Mr. Shah.

SHRI R. D. SHAH: I may have to begin with a little introduction. As to the present position, under the present 143(1), it says, "if the Income-tax Officer is satisfied, without requiring the presence of the assessee, etc." Therefore, today even if we find a small mistake of Rs. 10/-, or there is the slightest variation in the figure returned by the assessee and in the figure assessed by the Department, the Income-tax Officer has to give a notice to the assessee and he goes through the procedure. Very often as everybody knows, obvious items are ignored for the purpose of additions in the return of income. Now, in all such large masses of cases, the Department desires to have the power to make those additions which could be made *prima facie* on the face of the return and documents. For example, the assessee has claimed depreciation which is not correct, or that he has under-claimed or over-claimed. It is something which is very patent on the face of the return. Therefore, the Department, without entering into a controversy, might be in a position to amend the figure of return and make an assessment so that all that procedure whereby he issues the notice to the assessee and the assessee is called upon to appear and then he examines him which for a small assessee mean unnecessarily lot of inconvenience, can be avoided. Therefore, this procedure will apply to a very large number of small cases. As you know, there are 17 lakhs of small cases. But still it might happen that out of these 17 lakhs of cases, there may be few cases in respect of which we have got some material which comes up later or we find that there is a material understatement, well we might subject

such cases to check. Here we are not going to reopen these cases because we would take them out of 17 lakhs and subject them to check and that is a different thing. Where the Department has sufficient material, then only the Department will have the power to reopen. And as you know the intention of the legislation being primarily to reduce work the Department is not interested in increasing its work by random re-opening.

MR. CHAIRMAN: That is a correct view. So far as this point is concerned, still this purpose will serve under Section 143(1)(a) "where a return has been made under Sec. 139, the Income-tax Officer may, without requiring the presence of assessee, make an assessment of the total income". If the income is not disputable and is acceptable to the Income-tax Officer, and if he makes an assessment under this Clause, I think you will have no objection.

SHRI RAI: Even under that Section, he has got the power to reopen.

SHRI N. K. P. SALVE: That is hypothetical and Sub-section 3, Cl. A. makes it clear. It says, "where an assessment is made under sub-section (1), if he is of the opinion that such assessment is incorrect, inadequate or incomplete in any material respect". There are two things. He has to be of the opinion that there is inadequacy, inexactitude and incompleteness in respect of any material respect. Personally I think the Department is taking tremendous risk. As soon as there is a notice, there will be a writ petition. In a total taxation of Rs. 20,000/-, there is a mistake of Rs. 500. Is it material respect? I think, in this Section we are trying to over-simplify the procedure—all out in favour of the assessee. The Committee will have to seriously consider whether we are binding our own hands. I would like to ask Mr. Shah to answer one point. Assuming on mathematical recomputation, there are disputes between the

assessee and the Income-tax Officer. What about the disputed assessment? He does not make a second assessment. I go in appeal. And what happens? I have known cases where rectification is made and it has showed that it is a mistake. Such cases are likely to arise. And where there is a variation in the total assessment, what is going to happen to the disputed assessment?

SHRI R. D. SHAH: In the disputed assessment, when the party goes in appeal stands but the assessee can request for stay of demand.

SHRI N. K. P. SALVE: Without calling him and without insisting his presence, you make an assessment and then you say 'you pay the assessment'. And that is enforceable in a court of law. There is a basic grave injustice is involved in this. But here, you do not call the man; you make your own computation and you create a demand and ask him to pay. Otherwise, he would put the assessee in default. What is this iniquity?

SHRI MUTTOO: So far as the party objects to the demand, he goes up in appeal, and he can ask for time from the ITO. So far as the amount is concerned.....

SHRI N. K. P. SALVE: There is a patent injustice involved.

SHRI MUTTOO: How?

SHRI N. K. P. SALVE: I will tell you. Where the assessee makes a return of Rs. 10,000 or Rs. 15,000, if it is Rs. 15,000 income and you want it to raise it to Rs. 25,000, even by way of mathematical calculation, you will have to call the assessee and give him notice. He will come and you will reject his claim and you will make it Rs. 25,000. He can go in appeal. I can understand. But here, you are assessing it and saying that this is purely a mathematical error.

SHRI MUTTOO: Here, what you call a *prima facie* case exists.

SHRI N. K. P. SALVE: Are there not a number of petitions in which the mistakes are corrected? If there are grievances coming up under section 154, I have no doubt that there will be a number of grievances coming up under this procedure too. I can understand the assessee being given an opportunity to extend, and you reject the application, but in his absence, you are going to do it and he disputes it. What happens then?

SHRI MUTTOO: There is provision for appeal. Why should he go in appeal when there is no dispute?

SHRI TENNETI VISWANATHAM: Pending the appeal, what is the position? Will coercive action be taken against him? You take an explanation and then reject the claim and pass your judgment. That is something understandable, but here is a case, as Mr. Salvé has pointed out, where you make your own assessment without that man knowing the assessment. You are also taking coercive action pending the action?

SHRI MUTTOO: We are not taking coercive action.

SHRI N. K. P. SALVE: If there is a dispute, the demand will be *suo motu* stayed. Is that so?

SHRI MUTTOO: It is implied. There is section 220, and the ITO will stay it.

SHRI N. K. P. SALVE: That is his discretion. We want it to be foolproof. It is a cardinal question of natural justice. We do not want our law to have a liability in the absence of the assessee. Nonetheless, as it is the department has authority to proceed against him with coercive measures.

SHRI MUTTOO: We shall consider it.

SHRI SHAH: May I try to clarify the doubt raised by the hon. Member?

The point is this. We should start with the first hypothesis that the department is going to make or invoke these powers as it is doing today in the case of small income cases on the same principle that the department is going to make assessments where the area of the probable dispute is the least where, to the best judgment of the ITO, there is no area of dispute. What we are trying to do is to put the scheme of assessment of small income cases on a legal basis, and our experience of the disposal of small income cases has not shown us that people are going in appeal.

SHRI BRIJ BHUSHAN LAL: Why don't you put it as "undisputed total income"?

SHRI SHAH: The position is that we start on the basis that this legal provision enables us to make those assessments which we are doing today, and our experience of 12 lakh assessments made last year shows that there are no cases of appeals primarily because we do not intend to make any controversial assessments under these powers. But we have seen a very large number of assessments and, whenever in cases where the assessee has appeared and we have heard and passed an order, or where he has not appeared, when a case goes in appeal before the AAC, it is his right, and the courts have laid down in no indefinite terms that the officer is required to use his judicial discretion for keeping the tax pending.

SHRI N. K. P. SALVE: I am sure we can count on the goodness of the department as we should count on human goodness, but the department is not running a branch of the Ramakrishna Ashram. We have to be obdurate men; they are going to levy the tax on people who are unwilling to pay. What I want you to consider is whether you have not entertained cases under section 35, in your tenure as Commissioner; there are petitions concerning assessments where there

are mistakes which are not really mistakes. Should there be any section which stipulates that an order could be rectified in respect of an error which is borne from the record? What is apparent from the law of the land has been a subject-matter of labyrinthine debates in the various high courts. If things could go wrong, the same human material is going into it. I am unwilling to accept that things will be so religious, so pious, so ethical that they are not likely to go wrong. My objection is that there is a principle of natural justice involved. In the absence of the assessee, you pass a judgment and impose a liability, which he disputes, and still he is at your mercy to keep the demand.

SHRI N. K. SANGHI: We would like to have a clarification from the Ministry. An assessment is made under section 143(1), and the person goes in appeal. In the meanwhile, the assessment is reopened and another assessment is made by the ITO under section 143(3). When the appeal is pending and opened up again, it is a situation which really is something funny and it makes a mockery of the whole law. This matter has to be thoroughly understood and the Ministry should be able to tell us what is the status of the appeal under section 143(1) and when the income-tax officer opens it again under section 143(3) and how the law is going to take shape in this matter.

SHRI N. K. P. SALVE: Even if it indicates that you apprehended that there is going to be a dispute about it.

SHRI SHAH: A right must be provided even if there is one dispute.

SHRI N. K. P. SALVE: The scheme there is one assessee, there must be a right not to be called upon to pay.

MR. CHAIRMAN: What is the idea of the Government in this matter?

SHRI MUTTOO: The idea was to speed up assessments on the basis of the record available. Previously we could not dispose of the assessments on the basis of the returns filed by adding obviously inadmissible things for income-tax. They could not have come under section 143(1) which requires, what we say, absolutely repeating the returned figures, without adding back inadmissibles which are available from the statement given by the assessee. To obviate that legal difficulty, we have introduced this, so that the assessments could be completed on the basis of the return filed and the documents attached with it.

SHRI RAGHUNATH RAI: Then, so far as the point of materiality is concerned, it is not properly defined what is materiality.

Clause 60 deals with imposition of penalties for concealment of income. The present power of the ITO to impose penalty is limited to Rs. 1,000 and for imposing a greater penalty, he has to take the permission of the I.A.C. Under this new clause, the ITO can impose penalties upto Rs. 25,000. This will really be a hardship on the assessee.

SHRI N. K. SANGHI: Do you think the senior officers will be more considerate than the ITOs?

SHRI RAGHUNATH RAI: By virtue of his power and his position of being not attached with the assessment himself, the senior officer is bound to take a better view of the case. It is quite possible that the assessee may be able to convince the I.A.C. Our submission is, Rs. 25,000 is too high a figure.

MR. CHAIRMAN: Rs. 25,000 does not refer to the penalty. It refers to the amount of income in respect of which particulars have been concealed.

SHRI RAGHUNATH RAI: There is a provision that the minimum penalty shall be equal to the amount of income concealed. If the income concealed is Rs. 25,000, the minimum penalty is also Rs. 25,000.

SHRI N. K. P. SALVE: Have you in your career come across a single case where under section 274 the penalty has not been levied because it was before the IAC and not before the ITO? Is it your experience that the Inspecting Assistant Commissioners of Income-tax really and factually act in a manner as would be expected of them and that it really makes a difference?

SHRI N. K. SANGHI: The ITO is in the know of the facts very well and knows what penalty is going to be levied but if the case is to be referred to the IAC, the ITO while sending the report makes the case look more serious so that the penalty looks very reasonable. In such a circumstance would you not like that the Income-tax Officer himself has the authority to levy the penalty because an officer who is doing so many cases and levying penalties in a number of cases will be more reasonable than the IAC to whom only a few cases are referred?

SHRI RAI: The apprehension is not about the imposition of the penalty but about the issue of notice of penalty and being dropped later on. When the Income-tax Officer wants to drop the proposal he will think twice before he goes to the Inspecting Assistant Commissioner of Income-tax. This is the type of difficulty which we are apprehending and which we want to avoid.

SHRI MUTTOO: The whole objection appears to be against trusting the Income-tax Officers for a little amount of penalty while we trust him with his assessments because his assessments are not to be reviewed by the IAC. That apart, what we are just

trying to do is to give some work to the ITO as in the past vis-a-vis the change in tax levels and penalty levels. The entire penalty proceedings in all cases are not to be handled by the ITO. Important cases and cases of higher amounts of penalty would be looked into by the IAC.

SHRI SHAH: With the changed standards of penalties if the law is not amended, it will lead to absurd results. Under the revised scales of penalties, for a penalty of Rs. 1,000 the concealment would have to be Rs. 1,000; which means that every case will have to go to the Inspecting Assistant Commissioner which is certainly not possible. Previously when cases of penalty of Rs. 1,000 and over went to the Assistant Commissioner, the concealment should ordinarily have been equivalent to Rs. 25,000 and tax was Rs. 5,000. Now when the penalty is equated to the amount of concealment, it would almost amount to every case having to go to the Assistant Commissioner, with the result that the volume of work from the Assistant Commissioner's point of view will be enormous. Then, you must devolve authority at the lower level also; you should not try to concentrate it higher and higher up. Therefore, from the practical point of view, the administrative point of view and as a natural concomitant of the change in law as to the quantum of penalty, this is an inevitable amendment.

SHRI RAI: In principle I would not mind giving the power to the Income-tax Officer even up to Rs. 25,000, but it is not only a question of imposition of penalty but also the consequences following the issue of notice. Even with a small addition of Rs. 2,000 made in some cash credit or other, the Income-tax Officer is bound to give immediately a notice of penalty. The notice of penalty will hang on the assessee till the last minute of appeal when the actual assessment is decided. In the mean time if the power is given to the Income-tax Officer, without any

right to the assessee to withhold the demand created out of that penalty till the decision of the appeal, it is bound to be more harmful and onerous on the assessee than with the present position.

The rest of the points are of a minor nature and we have submitted about them in detail. I would not like to take more time of the Committee on them.

MR. CHAIRMAN: Have you anything to say about self-acquired property in the Hindu undivided family?

SHRI RAI: We have already spoken about it.

SHRI N. K. SANGHI: You had so much to say about the penalties to be ratified. May we take it for granted that you have nothing to say about the proposed penalties, of rigorous imprisonment of six months, for failure to file the return?

SHRI RAI: We have taken into account the difficulties which are being experienced by the Government and as a Chamber we would certainly like the imposition of a certain discipline on assesseees. They must file their returns in time and if the failure lasts beyond a particular time, there must be deliberate failure. In such cases of deliberate failure we have no sympathies with assesseees.

SHRI N. K. SANGHI: The Committee is very happy to know your frank views in this particular matter.

MR. CHAIRMAN: We thank you very much for your kind and valuable suggestions to the Committee. Thank you.

SHRI RAI: Thank you.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE OF THE TAXATION LAWS
(AMENDMENT) BILL, 1969

Saturday, the 1st November, 1969 at 10.00 hrs. and again at 15.00 hrs.

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri N. C. Chatterji
4. Shri J. K. Choudhury
5. Shri S. R. Damani
6. Shri Kanwar Lal Gupta
7. Shri B. N. Katham
8. Shri Yashwant Singh Kushwah
9. Shri Yashwant Singh Kushwah
10. Shri Brij Bhushan Lal
11. Shri S. B. Patil
12. Shri Shiva Chandika Prasad
13. Shri R. Dasaratha Rama Reddy
14. Shri Bishwanath Roy
15. Shri N. K. P. Salve
16. Shri N. K. Sanghi
17. Shri Yogendra Sharma
18. Shri Janardan Jagannath Shinkre
19. Shri N. Dandekar
20. Shri N. K. Somani
21. Shri Tenneti Viswanatham
22. Shri Ram Sewak Yadav.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Addl. Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. N. Muttoo, *Chairman Central Board of Direct Taxes.*
2. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
3. Shri Harihar Lal, *Commissioner of Income-tax, Delhi.*

4. Shri V. Ramaswamy Iyer, *Deputy Secretary*.
5. Shri R. R. Khosla, *Deputy Secretary*.
6. Shri S. P. Chowdhury, *Under Secretary*.
7. Shri A. Bagchi, *Under Secretary*.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

WITNESSES EXAMINED

I. Delhi Hindustani Mercantile Association, Delhi.

Spokesmen:

1. Shri Brij Bhushan Sharan—*President*.
2. Shri Ganpat Rai—*Hony. Secretary*.
3. Shri Kishan Lal—*Member, Managing Committee*.

II. Bar Association (Income-tax), New Delhi.

Spokesmen:

1. Shri R. K. Gauba—*President*.
2. Shri J. M. Bhatia—*Secretary*.
3. Shri L. D. Verma—*Member*.

I. Delhi Hindustani Mercantile Association, Delhi

Spokesmen:

1. Shri Brij Bhushan Sharan—*President*.
2. Shri Ganpat Rai—*Hony. Secretary*.
3. Shri Kishan Lal—*Member, Managing Committee*.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we begin taking evidence, I bring to your notice that you will kindly note that the evidence you give will be treated as public and is liable to be published unless you specifically desire that whole or part of the evidence tendered by you is to be treated as confidential. Even though you may desire your evidence to be treated as confidential, such evidence is liable to be made available to the Member of Parliament.

We have received your Memorandum and we request you to give a brief resume of the Memorandum that you have given to us or any point you want to highlight before we ask you any question.

SHRI RAI: Actually we have given whatever we have to say. We do not wish to say much about it except the questions the Hon'ble Members might feel to put.

In the first instance clause 14 Section 2(b)—the proposed amendment says if an individual transfers his separate property to the common HUF property after 31st of March 1965, then the income derived from that property shall be assessed as in the hands of the individual who has so transferred his property.

In this connection as we have already said that this will be quite unfair on the part of the Department

to assess the income of the property in the hands of the individual while the benefits derived from the property shall belong to the HUF. That is our main objection to it. And we hope you see how far our objection is sustainable.

SHRI DAMANI: Your suggestion is to withdraw this.

SHRI RAI: As there was previously an act, it should remain as it is.

SHRI DAMANI: You agree with the prospective effect?

SHRI RAI: No, Sir. It should remain as it is.

SHRI N. C. CHATTERJEE: This Cl. 14 militates against the fundamental points. They say that you cannot do it, because large number of people in this country will be deprived as it is. Therefore, they attached this provision. Secondly, this has been attacked on the ground that it has been offending Art. 119.

SHRI RAI: I am sorry, I have not studied from those points of view, and I cannot say.

SHRI N. C. CHATTERJEE: Is it appropriate that it should be prospective and not retrospective? You know, upto 1965, there was no announcement by the Government that this should be done.

SHRI B. B. SHARAN: We do not agree even to that. It should not be accepted.

SHRI RAI: In any event it should remain as it is. We again impress upon you not that we do not want retrospection. It should not be accepted.

SHRI B. B. SHARAN: But in case the Government is going to amend it as it is, then, will it be proper at all in your opinion to give it retrospective effect i.e. from 31st March, 1965?

SHRI RAI: Our submission in this point is that such proposal should never be retrospective. Retrospective is most undigestable. But, we are not agreeable to this proposal. This may be withdrawn.

SHRI DAMANI: Mr. Rai, I think you have not mentioned about the limitation of amount for foreign technicians. I think you are in agreement with the Government proposal.

MR. CHAIRMAN: Let us first have their views on this. Regarding this, you are opposed to this kind of thing. But you must be aware that this has been included according to the recommendations of Bhoothalingam Committee, and, perhaps, it has not come. Have you gone through the observations?

SHRI RAI: We tried to go through them. But not completely.

MR. CHAIRMAN: Shri Bhoothalingam took into consideration all the difficulties before he suggested these amendments. So far as HUF is concerned, we all agree. What he has tried to make out is that HUF is essentially an involuntary association of members of a specified relationship, the management and control in the widest sense of word being in the hands of the Head of the family. While the members of the HUF have definite rights to property, their share to income of HUF is quite indeterminate as long as it remains HUF for tax purposes. It is treated like an individual, except that the exemption limit is higher. This is on the whole reasonable. There has, however, always been some scope to use this as a means of lowering the tax liability of individual. This has become somewhat wider since the Supreme Court upheld the right of individual to HUF. This enables the creation of a new HUF even by persons who had inherited no ancestral property. How do you explain this?

SHRI RAI: My submission is that Mr. Bhoothalingam has examined all these things strictly from the administration point of view. In HUF, nobody is deprived of his legitimate rights. The moment one is deprived, he breaks the HUF. Mr. Bhoothalingam has stated that the rights of the constituents of a HUF are not denied. It is probably, in his opinion, a whimsical thing. He says that taking advantage of these decisions in the courts, certain individuals having no ancestral property, are creating new HUFs. It is created according to the permission of law. If there is a scope of law to admitting it, it will be created. Why should he resent it?

MR. CHAIRMAN: So, if tax is evaded?

SHRI RAI: Using the word 'tax' is not a fair thing. Then it is not evasion. But this conception is a growing one.

SHRI N. C. CHATTERJEE: Before the Chairman's question is answered by you, I ought to read out to you one sentence from Shri Bhoothalingam's report where he says:

"In economic terms it would be justifiable to restrict or diminish the tax benefit...."

SHRI RAI: There can be many cases like that. Take, for instance, partnerships. Why do you allow partnership in such a case? If you say that partnerships should be there, then from the tax point of view, you will get lesser taxes; then even partnership may not be allowed. That question also would arise.

MR. CHAIRMAN: It is not a question of evasion. As Shri N. C. Chatterjee has pointed out, it is a question of restricting the tax benefits. Supposing he gets some benefit, then in the interest of the State we want to have a little more out of it. That is all.

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SHRI RAI: If you want to prohibit that, you may have to prohibit so many other things, as, for instance, partnership.

MR. CHAIRMAN: What was your suggestion regarding Hindu undivided families?

SHRI RAI: Our submission is that when the Hindu undivided family has been allowed to be formed, according to the law laid down,....

SHRI V. KRISHNAMOORTHY: Your point is that it should not be taken as a method of tax evasion.

SHRI B. B. SHARAN: Let us go into this term 'evasion'. What is evasion? Evasion arises when I am legitimately to pay something but I do not pay it or I do not want to pay it. But supposing a partnership is formed, or an association of four or five people forms a partnership, that too can be termed as evasion, if it is going to be interpreted like that. But it is not so. The Hindu undivided family is an institution of our society, and it should not be done away with by blow after blow being inflicted on it. The Hindu undivided family is perfectly in order.

MR. CHAIRMAN: Supposing we accept your suggestion or we consider your suggestions, but to avoid such things, supposing we decide to get more for the State out of the tax benefits, do you have any objection to it? Supposing we make it prospective and not retrospective, then do you have any objection?

SHRI B. B. SHARAN: We do not want it either prospectively or retrospectively.

SHRI DAMANI: Will you explain how the assesseees are going to be affected? Are they going to pay more tax or double tax?

SHRI RAI: It is a question of the rate of tax. As the income grows the amount of tax or the rate also grows up.

SHRI DAMANI: My point is whether there would be any double taxation.

SHRI RAI: What I mean is this. supposing my income is Rs. 20,000 the rate of tax might be 15 per cent. But if it is Rs. 40,000, then it might be 25 per cent. The tax increases that way.

SHRI DAMANI: There will be no double taxation?

SHRI RAI: I do not think so.

SHRI N. K. SANGHI: Whether this amendment is to be prospective or retrospective is a different thing altogether. But I would like to know whether this amendment hurts the Hindu law. Is it against the canons of Hindu law? Does it in any way vitiate Hindu law and particularly the Mitakshara law of Hindu undivided family? Does it affect Hindu law? That is the fundamental issue which we have to decide now.

SHRI RAI: We have already submitted that it does affect Hindu law. But I am not an expert of Hindu Law and so I cannot go into the details of how it affects it and the repercussions that it has on Hindu law. Under the Hindu law certain benefits are there for every member of the joint family . . .

SHRI N. K. SANGHI: I would like to give you a small instance. What is the status of that person who has grown up in life, leaves his father and goes out to another country and takes with him just a hundred rupees, and starts business there and he becomes richer and richer and his life goes on there? When it comes to the taxation laws, he files his return as an individual, because he is not conversant with the income-tax laws; suppose he files his return as an individual and he is taxed as an individual for a number of years; suppose, his family grows, and a male heir is born; originally he had come out

from the hereditary family with about a hundred rupees. In this case, what is the social code? What is the religious code? Will his property be the Hindu undivided family's property and will his sons be able to claim partition rights out of it or will it be considered as individual property, because he has been submitting his returns as an individual? Please clarify this particular aspect.

SHRI B. B. SHARAN: Before we answer your question, we would like to know one small thing from you. You have given the example of an adolescent or grown-up person of the Hindu undivided family going out, and not the *karta*.

SHRI N. K. SANGHI: Suppose a father has a number of sons. Suppose the sons grow up. Suppose one son leaves the family taking just a hundred rupees with him, or as we say in Rajasthan, with just a lotha and goes and settles down in a place like Assam and he does business there and he prospers in his business there; when he submits his return he submits as an individual, because he may not be conversant with the tax laws. I would like to know from you whether the property that he has built up and the status that he has built would be subject to partition by his family members as and when a dispute arises or as and when a partition arises or whether it will be determined on the basis of its being individual property?

SHRI B. B. SHARAN: It is his choice. If he wants his family to gain, well and good, but if he wants to treat it as his property, he can do so; it is his choice. If he wants to give back something to his Hindu undivided family, then it is his choice. Why should the family not gain out of him, simply because he has gone out of the family in adversity? Supposing everybody in the family agrees to it and says 'We two will remain here, you may go elsewhere and earn', then what is the objection to it? In fact, the whole family may be striving for it.

SHRI N. K. SANGHI: We would like Mr. Shah to explain this point, because unless my doubt is removed, I shall not be able to participate properly in the deliberations of the committee.

श्री राम सेवक यादव : अभी आपने कहा कि यह जो कानून है उसकी वजह से हिन्दू अविभाजित परिवार पर असर पड़ेगा। आप किस तरह से इस बात को उचित मानते हैं कि टैक्स की बचत नहीं होगी इसलिये हिन्दू अविभाजित परिवार पर असर पड़ेगा ? किस आधार पर आप यह कहते हैं ?

श्री गणपत सहाय : आपने उनके द्वारा जो टैक्स बचाने की कल्पना की है

श्री राम सेवक यादव : आपने कहा कि हिन्दू अनडिवाइडेड फेमिली पर असर पड़ता है। अगर कर देना पड़ जाये तो हिन्दू परिवार अविभाजित हो जायेंगे और कर देने से बच जाने पर एक बने रहेंगे, यह बात आप किस आधार पर कहते हैं ?

श्री गणपत सहाय : दर असल परेशानी यह है कि आप समझ रहे हैं कि एक आदमी जो भी काम करता है वह टैक्स बचाने के लिये ही करता है। अगर ऐसी धारणा बन गई है तो फिर कोई सवाल नहीं है।

श्री राम सेवक यादव : यह हमारी धारणा नहीं है बल्कि आपके उत्तर से ऐसा आभास हुआ।

श्री गणपत सहाय : प्रश्न यह है कि अगर यह मान लिया जाये कि कोई भी कार्यकर्ता टैक्स से बचने के लिये ही पार्टनरशिप करता है तब तो आप किसी तरह से भी अलग कर बिजुर लेकिन बात बनी नहीं है क्योंकि हर आदमी पर आपने विश्वास करना पड़ेगा और हर आदमी को गर्वनमेंट पर विश्वास करना पड़ेगा। कोई व्यक्ति अपनी प्रोपर्टी अपन

सभी भाइयों या अर्रोतों को देता है तो टैक्स बचाने के लिये ही ऐसा करता है, कम से कम हम इस बात को नहीं मानते हैं।

श्री राम सेवक यादव : मान लीजिये कुछ ऐसे लोग हैं जो टैक्स से बचने के लिये ऐसा करते हैं तो उसका क्या उपाय है ?

श्री गणपत सहाय : इसके लिये तो आप ही उपाय बतायेंगे। कोई चोरी करता है तो उसको पकड़िए।

श्री ब्रजभूषण शरण : कुछ ऐसे लोग हों सकते हैं लेकिन उसके लिये सारे उद्देश्य को विद्वंस नहीं किया जायेगा।

MR. CHAIRMAN: What Shri Yadav wanted to know is, whether you have any suggestion to that effect.

SHRI B. B. SHARAN: As my friend has already submitted, transfers are not necessary only with a view to avoiding any tax. Instead of helping himself, he may be doing it for his own family.

SHRI N. K. P. SALVE: The law as it stands does not seek to introduce any new impediment either in the way of putting it in the common property or of impressing it with the character of the joint family property. Why should there be any such difficulty? If one does it not for the purpose of taxation, he can do it. Is there any difficulty?

SHRI B. B. SHARAN: Your proposal, if accepted, will give the same result. He will not be able to transfer anything.

SHRI N. K. P. SALVE: Which law prohibits an individual from impressing it with that character?

SHRI B. B. SHARAN: This proposal which we have submitted,

SHRI N. K. P. SALVE: You have not understood the proposal. The proposal is that if you put this money into the common hotchpot of the joint family or you impress it with the character of the joint family property, notwithstanding such transfer, if the money is self-acquired money, the income will be assessed in your hands. There is no prohibition whatsoever in bringing about the transfer or the alienation which you contemplate.

SHRI B. B. SHARAN: While the property is that of the family, the income is with the individual. We do not agree to it. We do not accept it. Our submission is there. That is all.

SHRI N. K. P. SALVE: Is there going to be any reason for it? If you say that you are not accepting it, it is not the be-all-and-end-all of it.

MR. CHAIRMAN: It is a question of exchange of ideas. Suppose you have something better in your mind to suggest to this Committee, and supposing Mr. Salve wants to bring to your notice that this is the provision of the clause and if you have a certain misapprehension—you may not have read between the lines.....

SHRI KANWAR LAL GUPTA: Mr. Salve is a lawyer, and I am afraid the witnesses are not lawyers. They are representing the common man's point of view. What I understand from his evidence is that it will discourage the formation of HUF.

SHRI N. CHATTERJEE: This is what Mr. Palkhiwala says:

“The administration of the new provision is bound to create various legal complications and cause numerous hardships to a large number of small HUFs. If cash is thrown into the hotchpot, and some time later out of such cash, shares and agricultural lands are acquired and some business is

done, it will be impossible to ascertain which income from which source should be assessed under section 64 in the hands of the individual who initially threw the cash into the hotchpot. Clause 14 which seeks to amend section 64 should be deleted.”

SHRI N. K. P. SALVE: This is a common hotchpot of the joint family. What Mr. Palkhiwala is referring to is the legal complications which may arise.

SHRI KANWAR LAL GUPTA: In memorandum (6) you have said that this proposal will bring in unnecessary administrative expenditure and its retrospective effect will adversely affect the assesseees in general. So, you say the proposal is unjust. Will you explain what this means: “Administrative expenses”, and “it will adversely affect the assesseees?”

SHRI RAI: This is unjust up till now. I do not think we have any further thing to say.

SHRI KANWAR LAL GUPTA: You have referred to three points; rather, you have raised three points: that it is unnecessary administrative expense; that it will affect the assesseees in general, and it is retrospective. What are your concrete proposals?

SHRI RAI: I think we have already discussed it.

MR. CHAIRMAN: They said they are opposed to it fundamentally.

SHRI KANWAR LAL GUPTA: What are the administrative expenses?

SHRI RAI: By the changes you will have to make.....

SHRI KANWAR LAL GUPTA: What is the reaction of the Government to this? I want to know the Government's point of view. There should be some Minister to give us a clarification. There is no Minister here; this has not been the practice

in the Select Committees. I am sorry to say that this Committee is being treated so shabbily. The Finance Minister is not here; the other Ministers concerned with this are not here. If they are busy somewhere, it is better we adjourn the Committee.

MR. CHAIRMAN: This point has already been raised by Shri Dandekar and we have conveyed it to them also.

SHRI KANWAR LAL GUPTA: What is the effect of conveying this message to the Minister? He has not turned up.

MR. CHAIRMAN: When last time I explained it in detail yesterday, the Minister said that it is not convenient. Even then we wanted to meet and go ahead.

SHRI KANWAR LAL GUPTA: I am prepared to participate, but then, this matter which I have raised is important.

SHRI BISHWANATH ROY: Regarding the procedure in the past so many years in the Select Committee, when the witnesses are called into the Select Committee, discussion among the Members of the Select Committee does not take place. Only questions are asked of the witnesses, and discussion takes place with the witnesses.

MR. CHAIRMAN: We have discussed this point again and again. Even when you were not here, we decided that and Mr. Damani raised that point.

SHRI N. K. SANGHI: Now, I do not think a clarification has come from the Government side.

SHRI SHAH: I will try to explain it to the best of my ability. The point raised by you is that there is a HUF. Out of this, one of the members of the HUF goes out with a small

amount of Rs. 100, becomes a millionaire and amasses a lot of money. What will be the status of that member who has gone out of the HUF? The member concerned is A. A. continues to be a member of the HUF. The HUF has given him Rs. 100 and he earns a substantial amount. You can stress that but for the Rs. 100 given by the HUF, he would not have been able to embark on the venture and therefore, all his acquisitions would become part of the HUF to which he belongs.

SHRI N. K. SANGHI: Suppose he takes Rs. 100 from the HUF, goes to a different country, starts a business and builds it up in a couple of years. He starts submitting his return as an individual because probably he does not understand the Hindu law. Would his acquisition be called HUF property?

SHRI SHAH: The fact that he is submitting his return under a wrong impression or out of ignorance of law as an individual does not change the position *vis-a-vis* the department. While examining the case, if the department comes to the decision that this nucleus has been drawn from the bigger HUF, the department would be justified in including the income of that member A in the income of the HUF.

SHRI RAI: Clause 13 deals with the delay in filing return and interest chargeable thereon. Till now, with the permission of the ITO, an assessee could file his return late with the permission of the ITO, and no interest was chargeable. Now it has been suggested that interest at 9 per cent should be compulsorily charged if the return is filed late, even though it may be with the permission of the ITO. We submit that if the ITO is convinced that due to some circumstances the return could not be filed in time, there should be no question of charging interest.

SHRI N. K. P. SALVE: The ITO may find that there are circumstances for extending the time, but what is wrong in his enquiring the assessee to pay some interest on it? Otherwise, the person who takes the trouble to prepare his accounts and submit his return in time does not find a premium in comparison to those who delay the filing of returns.

SHRI B. B. SHARAN: This is purely academic. When we look into the practical working of the department, it is not at all up to the mark. We feel that so far as the working of the income-tax department is concerned, it is only one way traffic, only caring for its revenue and not bothering about its responsibilities.

SHRI N. K. P. SALVE: Mr. Chairman, we would request the witness to be coherent and not philosophise on the general working of the income-tax department.

SHRI B. B. SHARAN: Without going deep into it, we would submit that we oppose this provision. Suppose I am out of India or I am confined to bed with serious illness and I am not able to file my return. The ITO is convinced that extension of time may be given. Why should I be made to pay interest on it?

SHRI KANWAR LAL GUPTA: You are supposed to file the return within the prescribed period but, suppose, because your accountant is ill or because of other circumstances you are not able to file the return within the prescribed period; so, you ask for an extension. The Income-tax Officer gives you an extension. But you are supposed to pay income-tax on self-assessment. The ITO gives you one concession, namely, to file the return after the prescribed period so that penalty will not be imposed for late filing of return, but then you should either pay income-tax under the self-assessment scheme or you should pay

interest. They do not want to give you a concession for paying the income-tax late.

SHRI B. B. SHARAN: We submit that we do not appreciate this levy of interest and request that it should not be done.

SHRI KANWAR LAL GUPTA: Can you give some reasons for it?

SHRI B. B. SHARAN: We are here to express our views and we submit that we do not want it to be levied.

SHRI S. R. DAMANI: You have pointed out in your memorandum that it seems to be highly detrimental to treat the registered firm on the same footing as an unregistered firm and to penalise them for genuine difficulties. Will you please explain how it is going to affect them adversely?

SHRI RAI: There is a difference in the calculation of tax but for charging interest it will be the same; so, there will be an inequality.

SHRI V. KRISHNAMOORTHY: Can you suggest any way of avoiding intentional delay in filing returns by assessees?

SHRI B. B. SHARAN: When the ITO approves of the application for extension of time, it means that there is some valid reason for not filing the return in time and there is no intentional delay. Just because we gain something out of it, it is not intentional delay.

श्री राम सेवक यादव : आपने जो अभी इसके बारे में कहा तो क्या मैं यह समझूँ आपके कहने का मतलब है कि जो समय पर रिटर्न फाइल नहीं हुआ और उसके वैलिड रीज़न्स हैं और उस पर आपने जब फाइल किया तो जो सूद देना पड़ेगा उनको वह एक तरह से पैनाल्टी हो गयी आपकी दृष्टि में ?

श्री बृज कृष्ण : जी हाँ ।

श्री राम सेवक यादव : जब पैनाल्टी हो गयी तो आप इसका मतलब यह भी लगे कि चूंकि समय बढ़ा दिया गया वैलिड कारणों

से तो उनको तो छोड़ दीजिये लेकिन ऐसे लोग जिनके लिये कोई वैलिड रीज़न्स ही नहीं हैं उनको पैनाल्टी लगेगी ही ?

श्री बृज कृष्ण : लगेगी ही ।

श्री राम सेवक यादव : तो आप के कहने का अर्थ यह समझूँ कि वैलिड कारणों से जिन्होंने समय पर रिटर्न दाखिल नहीं किया उनको तो समय अगर समुचित कारण हैं तो दिया जाना चाहिये, लेकिन उनसे सूद लेना या और कोई तरह का दण्ड देना उचित नहीं होगा । यही मैं समझूँ ?

श्री बृज कृष्ण : जी हाँ ।

SHRI B. B. SHARAN: There is one more thing. The payment has to be made after the expiry of one year but it is being done within that very year. We are paying advance tax; so, the question of interest does not arise. You can demand interest if arrears are being paid when they are overdue.

SHRI N. K. SANGHI : Suppose, a new clause is added permitting the assessee to file the return after a delay of, say, three months and the assessee may *suo motu* pay interest at 9 per cent. Do you accept such a safeguard and do you think it will be beneficial to the business community?

SHRI RAI: We do not think it has any bearing on this. If the ITO is satisfied that because of very valid reasons I have been unable to file my return in time, he extends the time. Then why should he penalise me for this, whether in the form of interest or in the form of penalty? If the ITO is not satisfied, even today I am being penalised for not filing the return in time.

SHRI B. B. SHARAN: The return has to be filed for a period for which advance payment has already been made. For obvious or certain unavoidable reasons, there is some delay in doing that for which we seek permission. Now you want to impose this

interest, which amounts to penalty in our opinion, on account of the delay in formally filing the return. We submit that the question of interest does not and should not arise.

SHRI N. K. P. SALVE: The existing law plus the contemplated amendment would not bring about any liability of interest in case your advance tax covers the total liability of tax as would be determined on your filing the return; in other words, if you have paid your entire tax in advance, even if your time is extended for filing the return, there is going to be no levy of interest.

SHRI SHAH: I think, the point has been clarified. I would like to make a little addition to the explanations offered. If the return is justifiably delayed beyond a certain time which has been laid down statutorily, there would be no penalty but only interest. The question is why should there be interest where the delay is justified and accepted by the Department as such and the Department has extended the time for filing the return. The reason is obvious that for that period statutorily laid down, the assessee is utilising the government funds which otherwise would have been paid to the Government on self assessment. It is in a way interest on the amount of tax which is being utilised in the business. Likewise, may I make it clear, the Government also would be paying, as you will see in the legislation, interest on the dues to be paid by the Government.

SHRI RAI: At what rate?

SHRI SHAH: At the same rate, i.e., 9 per cent.

SHRI KANWAR LAL GUPTA: I want to know from the Government as to why they treat it as an unregistered firm instead of a registered firm. What is the basis?

MR. CHAIRMAN: I think that point can be discussed between ourselves.

SHRI KANWAR LAL GUPTA: It is an important point.

SHRI SHAH: The position as now brought out brings no change in the existing law.

SHRI KANWAR LAL GUPTA: That is true; there is no change in the existing law. But what is the basis of the existing law?

SHRI SHAH: I shall try to explain the rationale. Previously there was no tax on registered firms, but now there is, and that tax is very nominal, as the hon. Member would agree with me. The partners of a registered firm would be liable to pay tax on the basis of self assessment or on assessment under 143(1) or the provisional assessment, on the basis of the returns filed by them. If the registered firm makes delay in the submission of the return, naturally the assessment of the partners would also be delayed, and it is the experience of the Government and also of the members that the assessment made on the registered firm varies substantially from the income returned. In other words, the shares of the partners undergo a substantial change on the assessment of the firm. Therefore, the intention is that the firm should not delay the submission of the return and hence, this deterrent provision. Of course, it continues; it is not a new provision.

SHRI B. B. SHARAN: It has been said that the assessment is delayed because of the delay in filing the return. This is what I understood when he said that the delay in filing of the return was bound to result in delay in assessment. But in practical working we find absolutely no connection between filing and assessment. My submission is that filing has absolutely nothing to do with assessment. Assessment is done independently of the

date of filing of the return; it may be done whenever it suits the authorities.

SHRI N. K. P. SALVE: What about tax liability on self assessment? The filing of the return has an intimate nexus with the liability on the assessee consequent upon self assessment. What happens to that? Is not that postponed?

SHRI B. B. SHARAN: It is, of course deferred. It remains troublesome to the assessee also that he is not assessed.

MR. CHAIRMAN: Have you anything more to say on Clause 43?

SHRI RAI: Till now it was up to Rs. 500. Suppose my tax comes below Rs. 500, then I am not to pay at the time of self assessment but I pay when my assessment is completed.

SHRI B. B. SHARAN: Even this amount of Rs. 500/- is insignificant.

SHRI KANWAR LAL GUPTA: So, you do not want any change here?

SHRI RAI: We do not want any change.

MR. CHAIRMAN: What about Clause 34, reopening of the assessment?

SHRI RAI: Here they are taking powers to reopen their own assessment without any objection filed by the assessee. And they have done it according to their own views.

SHRI N. K. P. SALVE: You see the law now seeks to introduce this change in terms of which they first want to vest the authority and power in the Income Tax Officer to modify your return for an extremely limited purpose. Only mathematical and arithmetical changes are to be made. If you have indicated your profit in the return, the ITO is not going to bring it to the correct profits. He is only empowered under the first assessment to

make arithmetical changes. No further and no more. Thereafter he has to call the assessee, examine books of accounts, collect evidence in support of the return which an assessee has filed. Then if he finds that there is a material difference between the earlier assessment and the real assessment which needs to be made, then only he makes a second assessment. That is the position of the law.

SHRI RAI: Why should he make two assessments?

SHRI N. K. P. SALVE: I have explained you just now.

MR. CHAIRMAN: The present provision is like this. Under the present scheme of regular assessments, returns are classified into two categories, namely (a) those in respect of which the Income Tax Officer is satisfied that they are correct and complete, (b) those in regard to which he is not so satisfied. In regard to the returns in category (a), assessments can be completed under Section 143 (1) on the basis of the return without calling the tax-payer or requiring him to produce evidence in support of the return. However, in making such an assessment, no adjustment can be made to the returned income or loss even for obvious arithmetical mistakes or patently inadmissible expenses or for brought-forward losses or unabsorbed depreciation as computed in the past years' assessments. In regard to the returns falling under category (b), the Income Tax Officer has to call for the accounts and other evidence and also require the presence of the tax payer, if necessary, and complete the assessments only after considering the evidence. This is the procedure. What is your objection to this?

SHRI RAI: My suggestion is that when the ITO makes assessment himself without calling the assessee and without calling for any explanation from him and completes the assessment and gives the assessment order, then why without any petition from

the side of the assessee he should be allowed to re-open it by himself?

SHRI B. B. LAL: In this Bill the Government is going to abolish the problem of provisional assessment. You might have read in this Bill provisional assessment is going to be dispensed with. In view of that, when there will be no provisional assessment this new section is added that when the returns are filed and on the basis of those returns if the ITO, after considering all the mathematical and other points, assesses, what is the harm in that. Even if the assessee is not called for because the ITO finds on the basis of the return that the total income, whatever is mentioned in that, is reasonable and assesses, what is the harm? That is why no opportunity is being given. But, if there is any mistake or something like that, then the case is reopened. What is the harm there. It is to the advantage of the public.

SHRI BRIJ BHUSHAN: Is there any provisional assessment? I do not think there is any provisional assessment.

SHRI RAI: They are not doing it.

श्री कंवर लाल गुप्त : अभी तक प्रावि-
जनल असेसमेंट इसलिए करते थे ताकि
एडवांस टैक्स दिया जा सके क्योंकि असेसमेंट
को पूरा करने में दो-तीन साल लग जाते थे ।
जो छोटे छोटे असेसी हैं उनके सम्बन्ध में
गवर्नमेंट की यह पालिसी भी है कि उनको
कोर्ट में न बुलाया जाये । जो वह डेक्लेयर करते
हैं उसको मंजूर कर लिया जाये, अगर उन्होंने
करीब करीब ठीक चीजें दी हैं । उसमें बदल
करने की पावर लिमिटेड है—अगर कोई
अपेरेन्ट मिस्टेक है तो बदल कर सकते हैं
लेकिन उसके परे नहीं जा सकते हैं । उ नें
असेसमेंट करके आपके पास भेज दिया,
आपको बुलाया नहीं, वकील की जहूरत नहीं
ड़ी और समय भी बच गया । ऐसे लोगों की
तादाद भी लाखों में है जो कि दस हजार से

नीचे के असेसी हैं। इन का असेसमेंट तो वे कर देगे, जो फॅक्ट्स उन्होंने दिये हैं, उसकी बेसिस पर, लेकिन अगर यह पता लगता है कि उन्होंने कोई चीज छिपाई है तो उस स्थिति के लिये आप भी मानेंगे कि गर्वनमेंट को यह पावर होनी चाहिए कि उसके केस को खोल दे। लेकिन इस तरह के केसेज तो सिर्फ पांच सात परसेन्ट ही होंगे, बाकी 95 फीसदी लोग फिर भी उन सारी मुसीबतों से बच जायेंगे।

श्री गनपत राय : हर आदमी के असेसमेंट के लिए पहले फायदा था चार साल में कम्पलीट होना चाहिए। अब दो साल का कर दिया और उसके बाद ए टु जेड सभी के असेसमेंट करके एक या दो अप्रैल को उनके केसेज खोल दिए और उसके बाद फिर टाइम लिमिट भी नहीं रही।

श्री सालवे : यह उतना कष्टप्रद नहीं होगा जितना कि आप समझ रहे हैं। दूसरे कर निर्धारण कि पहले यह आवश्यक है कि वह इस बात की जांच-पड़ताल करके अपने आप को आश्वस्त कर ले कि दोबारा जो वह कर-निर्धारण करना चाहता है वह उन कारणों से है जिनकी वजह से पर्याप्त मात्रा में ट्रुटि रह गई थी प्रथम कर-निर्धारण में—लेकिन अगर कोई ऐसी ट्रुटि नहीं रह गई थी तो वह दोबारा कर-निर्धारण नहीं कर सकेगा। यह नहीं कि एक बार पहले कर-निर्धारण कर दे और अगली दफा अप्रैल में खोल दे। अगर कानून के बाहर जाकर वह करना चाहता है तो बात दूसरी है लेकिन अगर इस प्राविधान की तहत करना चाहेगा तो उसके लिए आवश्यक है कि इसमें जो कन्डीशन्स लगा दी गई हैं उसके अनुसार ही चले। इसके अन्तर्गत जब तक कोई जवर्दस्त ट्रुटि न रह गई हो तब तक दोबारा नहीं खोला जा सकता है। अब मैं जानना चाहता हूँ कि इस पर आप को क्या ऐतराज है ?

SHRI BRIJ BHUSHAN: My submission about this point is that the framers of the law have very good in-

tention. When they frame the laws, they have no intention that anybody should be pinched or anybody should be inconvenienced. It has also to be taken into account as to how the law is implemented. What we see is that whereas there is a provision that assessment must be done within 4 years, they are not done. Even now you are reducing it to two years. They have no other way but to take recourse to Sec. 143(1). What I am trying to submit to you is that all such assessments are not being done within time. While in some cases the assessments are most upto-date, in many cases the assessment are lying without being finalised.

SHRI B. B. SHARAN: Contd: In Delhi we brought these things to the notice of our commissioner and we found that he also was helpless. The thing is this. Within 2 years it is impossible to complete the business as is expected of them. They will have to fall back on this section 143(1).

SHRI N. K. P. SALVE: The final assessment is subject to limitation of 2 years. Will Shri Muttoo clarify?

SHRI R. N. MUTTOO: Firstly, suppose, 143(1) assessment is made, his apprehension is that on 31st of March just before closing of 2 years all the assessments would be reopened. The question is this, as to what is meant by reopening. Fresh assessment under 143(2) is possible provided that the time limit has not expired. He can't just start reassessment proceedings. I am distinguishing between reassessment proceedings and reopening. So far as reassessment is concerned they also become barred on completion of 2 years. The next question is about reopening of assessment. For that the time limit still remains 4 years. In fact, I am making a distinction between reopening and reassessment. For reopening the limit is 4 years, 8 years, etc. and the maximum is 16 years. There is no change in that. For reopening the law as it is has not been changed. It is quite

a stiff provision. The ITO has to comply with it. There is no change proposed in that law.

SHRI N. K. P. SALVE: Reassessment is subject to that. That is subject to the limit of 2 years.

SHRI R. N. MUTTOO: That is what I explained.

SHRI N. C. CHATTERJEE: In Mr. Palkiwala's note it has been stated like this: One of the most indefensible provisions of the amending Bill relates to Sec. 143. The proposed amendment only succeeds in making complicated and irrational what under the existing law is relatively simple and rational. The amendment to Sec. 143 in effect provides that an ITO may make an assessment—he allows certain expenses which in his opinion are *prima facie* and allowable without even calling for or hearing the assessee. Thereafter he can on the same return make a fresh assessment increasing the income or the tax. In other words the ITO can virtually make 2 assessment orders for the same year in respect of the same assessee on the same return.

Now, are you going to allow that on the same return? He makes the assessment without calling for the assessee. He makes a new assessment.

SHRI N. K. P. SALVE: Without calling the assessee second assessment will not be made.

SHRI N. C. CHATTERJEE: He says: Two assessment orders for the same year in respect of the same assessee on the same return of income.

MR. CHAIRMAN: Please see 143 (2).

SHRI TENNETI VISWANATHAM: The ITO makes the assessment. What is assessed is sought to be reopened by himself, without anybody else pointing out anything. Is that the point?

SHRI BRIJ BHUSHAN SHARAN: Yes.

SHRI TENNETI VISWANATHAM: We are not going to clause (2). We are on Clause (1). He makes his own deductions. He makes his own additions. That is sought to be reopened again.

SHRI N. K. P. SALVE: Shri Viswanatham said is correct; it will create a very great hardship. Proposed amendments are not like that. He cannot make it like that. Under (B) his hands are circumscribed.

SHRI TENNETI VISWANATHAM: Under Clause (1) he has got the right without calling for the assessee. He passes that order. That order is final, so far as assessee is concerned, so far as the department is concerned.

MR. CHAIRMAN: Please have the Bill before you.

SHRI N. K. P. SALVE: ITO receives the return from assessee. He scrutinises it on the basis of documents which are attached to the return. He corrects arithmetical errors.—deductions, additions, multiplications etc. He will under law allow whatever deductions are there which assessee may not have claimed. Insurance premia made on his life may be shown as expenditure in the P&L Account. He will take out as much out of the insurance premium as statutorily is to be disallowed, under clause (2).

SHRI BRIJ BHUSHAN SHARAN: In the first time he should have taken all these into account. After paying tax dues so many recovery certificates are issued. It is beyond imagination. Not one of them has been cancelled. The working of the Income-tax Department is like that.

SHRI N. K. P. SALVE: This Committee cannot redress your grievances for administrative lapses.

SHRI BRIJ BHUSHAN SHARAN: Sometimes it is said the file is not available. Sometimes it is said, assessment is not available. The

attachment staff goes on harassing people. There is no redress of grievances. My hon. friend says about the working in the way he has understood it. It is not that just as he has understood we have understood it. Our submission is that the ITO after going into the accounts generally comes out and says that he will reopen the assessment.

MR. CHAIRMAN: As you say there may be practical difficulties. We cannot go beyond the scope of the Bill. Our work is confined to the provisions of the Bill. They can be improved in any way. Have you any suggestions to make in this regard?

SHRI BRIJ BHUSHAN SHARAN: Some limitations should be there. But the assessment may be reopened within six months etc. should not remain.

SHRI N. K. P. SALVE: You may please answer one question. What have you to say with regard to provisional assessments made by the ITO?

SHRI BRIJ BHUSHAN SHARAN: I submit that since we have no experience about the provisional assessments, we cannot throw any light on that.

श्री कंवर लाल गुप्त : जो होता है इनकम टैक्स के केसेज में छूटमें और जो आप कह रहे हैं, दोनों में थोड़ा कम्प्यूजन है।

अभी भी कुछ केसेज में होता है। वह जब असेसमेंट कम्प्लिट नहीं कर पाते और टाइम निकल जाता है तो एक्स-पार्टी कर देते हैं और कह देते हैं कि बाद में रि-ओपेन करेंगे। दूसरे, यह होता है जैसा कि आप कहते हैं वह डिस्पोजल जितना मांगते हैं उतना नहीं होता तो वह पार्टनर्स का इस तरह से कर देते हैं, फर्म का नहीं करते। लेकिन जो यह प्राविजन है यह अलग है। इसमें वह रि-ओपेन तभी करेंगे जब उनके पास कोई मैटीरियल कलेक्ट होगा।

SHRI BRIJ BHUSHAN SHARAN: What I say is that the scope is very limited here.

MR. CHAIRMAN: He has come here with a definite suggestion.

SHRI BRIJ BHUSHAN SHARAN: My submission is this. If you want to retain this, some limitation must be put. Why should the period of six months remain? And why should the ITO have the power to reopen the earlier cases also?

SHRI N. K. P. SALVE: We shall consider your suggestion.

SHRI BRIJ BHUSHAN SHARAN: In regard to the recognition of the firm, our submission is this. You have already recognised some firms. And even if they have not completed some formalities which are required to be done they should be allowed to be continued as recognised firms.

MR. CHAIRMAN: Recognition of firms is a new provision.

श्री कंवर लाल गुप्त : आपका मतलब है कि जो ब्रालरेडी रजिस्टर्ड फर्म हैं उनको न छोड़ा जाय।

SHRI BRIJ BHUSHAN SHARAN: You can do anything for future.

SHRI N. C. CHATTERJEE: You say that the provisions may be applied only to future cases.

SHRI GANPAT RAI: For future they should go in for recognition. When they have already been registered with the Income tax authorities that is quite enough. Suppose there is no change in 'A' firm's constitution for five years. Why should the firm be asked to get itself registered and then apply to the ITO?

SHRI N. K. P. SALVE: Under the existing law even if you are a registered firm you have to comply with

certain formalities for renewal of registration with the ITO. To that have you any objection?

SHRI GANPAT RAI: We accept this on this condition. Instead of renewal of the firm every year it will be better if the firm is recognised once and then if there is a no change in the constitution, it should continue to be registered year after year.

SHRI N. K. P. SALVE: Registration of firm is governed by a certain procedure. You accept that for every one?

SHRI GANPAT RAI: Yes.

SHRI KANWAR LAL GUPTA: What about new applicants?

SHRI GANPAT RAI: They can go to the Registrar for registration.

श्री कंवर लाल गुप्त : क्या यह आप अच्छा समझते हैं कि फर्म जो है वह रजिस्ट्रार आफ फर्म के पास जाय रजिस्ट्रेशन के लिए जो कि स्टेट गवर्नमेंट का होता है और उससे कहे किारी फर्म का रजिस्ट्रेशन करिए।

सरा होता है और इनकम टैक्स डिपार्टमेंट में दूसरा कॅंसिडरेशन होता है।

क्या आप यह अच्छा समझेंगे कि नई फर्म भी किसी को बनानी हो तो वह वहां जाय या इनकम टैक्स डिपार्टमेंट को ही वह पार्टनरशिप डीड भेज दिया जाय और उनके द्वारा वह रजिस्ट्रेशन हो जाय ?

श्री गनपत राय : हमारा तो मेन आब-जैक्शन यह है कि हर साल जो रिन्युअल की बात होती है वह नहीं होनी चाहिए।

श्री कंवर लाल गुप्त : वह तो माना। नई रजिस्ट्रेशन के बारे में मेरा सवाल है।

श्री ब्रिज भूषण शरण : मैं आपकी बात से सहमत हूँ कि इनकम टैक्स डिपार्टमेंट का वर्किंग अलग है और रजिस्ट्रार आफ फर्म का कॅंसिडरेशन दूसरा होता है।

So we beg to submit that the Income-tax authorities should continue to register them.

SHRI KANWAR LAL GUPTA: And they should simplify this present procedure.

SHRI BRIJ BHUSHAN SHARAN: But they have to come up for renewal every year. I say that they need not go in for renewal unless there is a change in constitution of the firm.

SHRI N. K. P. SALVE: Do you want curtailment of the power of the I.T.O. to go into the genuiness of the firm?

SHRI BRIJ BHUSHAN SHARAN: There should be specific provisions. And they should be fulfilled before renewal of registration.

MR. CHAIRMAN: An application for registration should be subm. with a partnership deed within a period of six months or one year.

SHRI N. K. P. SALVE: In other words, the written application should be a conclusive proof for genuiness of the firm. You know there are honest and dishonest assesseees. Some may be genuine partnership firms while some others may not be so. Do you think that the law should not give them protection and that the ITO should be prevented from enquiring into the genuiness or otherwise of the partnership deeds of the firm?

SHRI GANPAT RAI: Today he has to enquire about the genuiness of the firm.

SHRI N. K. P. SALVE: You don't want any change in the law in that regard.

SHRI GANPAT RAI: Of course genuine partnership should be accepted.

SHRI N. K. P. SALVE: That is what is sought to be achieved. The Department can take that as a proof for genuineness of the firm if you go to Registrar of Firms unless there are strong reasons to the contrary.

SHRI BRIJ BHUSHAN SHARAN: Let it be laid down.

SHRI N. K. P. SALVE: That is what the Department has explained to us. A suitable amendment has to be provided with a proviso that registration and renewal of firms would almost ensure the registration unless there are reasons to the contrary.

SHRI BRIJ BHUSHAN SHARAN: Those reasons should also be given.

SHRI N. K. P. SALVE: I see your point that the law should be amended so as to include that.

SHRI BRIJ BHUSHAN SHARAN: Sir, one firm is not being registered because of the anomaly in the name. For instance, the name 'Bharat' will not be allowed . . .

श्री कंवर लाल गुप्त : मान लीजिये, किसी ने भारत नेशनल वर्क्स अपनी फर्म का नाम रखा है तो इन्कम टैक्स वाले तो इस नाम से उसे रिकगनाइज करते रहेंगे लेकिन रजिस्ट्रार आफ फर्म नहीं करेगा और अगर पहले भारत वाले को नाम हटाने को कहेगा तो उससे काम्प्लीकेशन्स पैदा होंगी । एक चीज मैं आप से जानना चाहता हूँ । आपने कहा कि इन्कम टैक्स में यह सब कुछ हो वह तो ठीक है लेकिन साल्वे साहब ने जो जेन्यूननेस मालूम करने के लिए कहा है, जेन्यूननेस को मालूम करने के लिए कोई हार्डशिप या हैरेसमेंट होता है उसको कैसे दूर किया जाए और इसके प्रोसीजर को किस तरह से सिम्पलीफाई किया जाए इस बारे में आप के क्या विचार हैं ? इसमें लेडीज पार्टनर हो सकती हैं यह ला है । किसी का इन्वेस्टमेंट हो या न हो या वह काम करता हो या न करता

हो वह भी पार्टनर हो सकता है लेकिन यह हो सकता है कि यह सब होते हुए भी आज हैरेसमेंट होता है फर्म रजिस्टर नहीं होती और मामला अपील में जाता है । तो मैं यह जानना चाहता हूँ कि जेन्यूननेस मालूम करने के लिए और क्या क्या प्रोवाइड करना चाहिए ?

SHRI SHARAN: It should be more than enough.

श्री कंवर लाल गुप्त : पार्टनरशिप डीड लेकर दरखास्त देना ही क्या काफी होना चाहिए ? कई बार ऐसा भी होता है कि लोग नौकर को भी पार्टनर बना लेते हैं लेकिन जेन्यूनली वह पार्टनर नहीं होता है ।

SHRI SHARAN: It should be enough.

श्री कंवर लाल गुप्त : टैक्स वचाने के लिए वे ऐसा करते हैं । अगर फर्म रजिस्टर हो गई, तो प्रोफिट्स उतने हिस्सों में बंट जायेंगे जितने पार्टनर्स हैं और प्राइवेट तौर पर वे लिख देते हैं कि हमें इतना हिस्सा मिलेगा । जिस नौकर को पार्टनर बनाया जाता है, पार्टनरशिप डीड में उसका हिस्सा प्रोवाइड भी कर देते हैं और उसको वांट लेते हैं । आपका क्या विचार है कि अगर इनकम टैक्स आफिसर को यह मालूम हो जाए कि यह बात सही नहीं है तो और सही बात और है और यह तो नौकर है और 500 रुपये लेता है, तो तो ऐसे केसेज में क्या इन्कम टैक्स आफिसर को उस फर्म को रिकगनाइज नहीं करना चाहिए ?

SHRI SHARAN: He has completed the formalities. The person whom you think is an employee is paying at least his income-tax dues. If somebody is trying to make use of this weapon, he is doing it legally. There is nothing wrong.

SHRI N. K. P. SALVE: It is not legal.

SHRI SHARAN: You are keeping too much in the inside of the story. I think that is not perfectly justifiable.

अब मैं चौथे पेज पर पांचवें आइटम पर आता हूँ ।

श्री कंवर लाल गुप्त : आपका मतलब यह है रिन्यूअल पर सिग्नेचर होने चाहिए ?

श्री बृज भूषण शरण : रिन्यूअल के अलावा डिजोलूशन के केसेज भी होते हैं । इसमें यह प्रपोजल है कि :

The Dissolution Deed should be signed by all the partners.

श्री कंवर लाल गुप्त : इसमें जेन्यून डिफीकल्टी हो सकती है । जब तक सब लिख कर नहीं देंगे डिजोलूशन नहीं होगा ।

श्री बृज भूषण शरण : अब तक हो रहा है वन हेज फालन ।

श्री गनपत राय : जब पार्टनर्स डिजोलूशन का नोटिस दें तो डिजोलूशन हो ।

श्री कंवर लाल गुप्त : आप का कहना है कि दूसरी रेमेडी होनी चाहिए ।

SHRI S. R. DAMANI: May I ask whether you feel that by compulsory registration the assesseees will be put into great difficulty on account of the time-limit. Are you objecting to the time-limit or the method?

SHRI SHARAN: Both the things we have submitted. We have suggested that the registration should be with the Income-tax Officer.

SHRI S. R. DAMANI: The time-limit can be extended.

SHRI SHARAN: Well, both the things have to be done.

SHRI GANPAT RAI: Now, we come to clause 43—sections 186(a) and (b)—cases of dissolution of the firm. In many cases when there is a difference among the partners, then it is difficult to get the signatures of all the partners. Actually, according to the law, if one partner does not want to remain in partnership, the partnership is supposed to be dissolved. Why should we insist that all the partners should sign and only then it should be considered as dissolved.

SHRI SHARAN: I think you must have come across such experience in several cases. Some partner may not agree to sign just because he does not suffer by keeping that pending. Because of one man, the whole group may suffer.

MR. CHAIRMAN: This is not a new thing, which has been brought in. That is the existing provision. This has been included here. This is a new one. This is in the existing Act.

SHRI SHARAN: Since this section is now open, we thought of pointing it out what we feel.

SHRI KANWAR LAL GUPTA: There should be no objection if the Commissioner is authorised to condone it.

SHRI SHARAN: That is what we beg to submit.

SHRI N. K. P. SALVE: We will consider your suggestion.

SHRI K. L. GUPTA: Clause 46—Section 21. Here you have given two suggestions. First is the notice for the payment of advance tax should be sent well in advance 30 days before. I think that is a good suggestion. Normally, what happens the notices are sent a day early. So, it should be obligatory on the Department. As regards the second point I agree with.

you there may be hardship but the solution is there he can file the estimate and suppose one is given to you then your problem is solved. It should be obligatory on the Department to send the advance notice at least 30 days before. In that case they can file the estimate.

SHRI CHATTERJEE: I think that is proper.

MR. CHAIRMAN: We shall discuss whether or not it should be 30 days.

SHRI B. B. SHARAN: Clauses 54 and 56. Apart from these clauses about the enhancement of fee we want to take clause 57—hearing of appeals by the appellants tribunals single board bench.

श्री कंवर लाल गुप्त : क्लाज 56 के बारे में कहा है कि 250 रुपये नहीं होने चाहिये । ट्रिब्यूनल के पास बहुत सी अपील जाती हैं । आपका कहना यह है कि सौ रुपया तो आपको एक देना पड़ता है और वकील की फीस वर्गैरह मिला कर काफी हो जाता है । गवर्नमेंट को कुछ नहीं देना पड़ता है । आपका कहना यह भी है कि गवर्नमेंट जितनी अपील फाइल करती है उनमें से साठ परसेंट फेल हो जाती हैं । क्या आपका कहना यह है कि गवर्नमेंट अगर ट्रिब्यूनल में जाना चाहे तो उसको भी सौ रुपया देना पड़े ताकि वह बेकार की अपील न करे ?

श्री बी० बी० शरण : विल्कुल सही बात है ।

श्री रामसेवक यादव : यह तो पेपर एकाउंटिंग ही होगा ।

SHRI B. B. SHARAN: The idea of this fees is not to collect any levy or it is not a revenue. If you make them costlier you are denying the benefit of being heard. They should be kept where they are.

We wanted to draw your attention to clause 57—hearing of appeals by

the appellate tribunals—single member bench. We want the limit of Rs. 25,000/-, should remain.

SHRI GANPAT RAI: We have proposed, upto 50,000 should go to a single person.

SHRI SANGHI: आप का सुझाव यह है कि डबल मॅम्बर बॅन्चेज अगर होती हैं तो उस में जस्टिस ज्यादा अच्छा होता है वजाय सिंगल मेम्बर के ?

You mean to say that the joint responsibility is better for the assessee.

श्री वृज भूषण शरण : जी हां ।

SHRI N. K. P. SALVE: You have stated that if it is single Member bench, it should be judicial, why not Accounts Member.

SHRI GANPAT RAI: We feel more secure.

SHRI N. K. P. SALVE: Does the Accountant Member not understand law?

SHRI BHUSHAN SHARAN: We have not said that. We have said because we may be heard correctly and sympathetically.

SHRI N. K. P. SALVE: If you are willing to give cogent reasons we will consider it.

SHRI GANPAT RAI: We should be more of judicial mind.

श्री कंवर लाल गुप्त : इनका कहना यह है कि दो तरह की अपिलें होती हैं, एक एकाउन्ट के बारे में और दूसरी साधारण न्याय के बारे में । इसलिए दोनों तरह के सदस्य रखने चाहिए ।

श्री वृज भूषण शरण : जी हां

श्री कंबर लाल गुप्त : आपका मतलब यह है कि अकाउण्ट के मामले में अगर अपील हो तो अकाउण्ट का मेम्बर हो और अन्य मामले के सम्बन्ध में हो तो जुडिशियल मेम्बर होना चाहिये ?

श्री बृज भूषण शरण : जी हाँ ।

श्री कंबर लाल गुप्त : मतलब यह है कि पहले ही पैनाल्टी क्लॉज हैं अगर कोई देर में फाइल करता है तो कई तरह की पैनाल्टी लगाई गयी है और काफी सख्त पैनाल्टी लगायी हुई है । अतः रिगर्स इम्प्रिजनमेंट या 10 रु० रोज की पैनाल्टी लगाना अनुचित होगा । इसलिये आप का कहना है कि यह नहीं होनी चाहिये ?

श्री बृज भूषण शरण : जी हाँ ।

SHRI BHUSHAN SHARAN: You have said fine of Rs. 10/- for late filing should be imposed. It is a clause absolutely mandatory. It is not fair. There are some times very valid reasons when return may not be filed in time.

SHRI KRISHNAMOORTHY: Have you read the clause below.

SHRI BRIJ BHUSHAN SHARAN: 'Without reasonable cause or excuse.' The safety clause should always be there.

Some light should be thrown on it. The person may be out of this country.

SHRI KRISHNAMOORTHY: We have pointed out-mistake due to oversight and being out of station. Out of station is a reasonable cause. If it is mistake or over-sight; ignorance of law is no excuse.

MR. CHAIRMAN: As far as we look to these provisions, under the existing provision in Section 276 of the Act there is no liability to prosecution in the case of a person who fails to fur-

1358 LS-6.

nish his return of income voluntarily as required under Section 139(1). A person who fails without reasonable cause or excuse to furnish the return of income called for by notice under Section 139(2) or fails to produce his books of Accounts and documents called for by notice under Section 142(1) is liable to prosecution but the punishment on conviction by court in such cases is only a fine of Rs. 10/- or every day during which the fault continues, etc. etc.

A person can evade tax with simply withholding his books of Accounts. Therefore, as you were suggesting it is not a kind of giving full authority exercise his power for vindictiveness. The intention is not like that..

SHRI GANPAT RAI: Intention is never there.

SHRI BRIJ BHUSHAN SHARAN: Implementation is different from what is there actually.

श्री कंबर लाल गुप्त : हमारे देश में लाखों लोग अशिक्षित हैं, समझते ही नहीं हैं, यहां तक कि पढ़े लिखे लोग भी नहीं समझते । तो इग्नोरेंस आफ ला इस नो ऐक्सक्यूज । ऐसे केस में आप पैनाल्टी लगायें या और कुछ करें यह नो ठीक है । लेकिन बेसिकली किसी को फ़िजिकल पनियामेंट मिले यह ठीक नहीं है ।

This may amount to bigger levy and punishment than the actual tax.

SHRI N. K. P. SALVE: Are you going to suggest that the very scheme is disproportionate to the lapse? Is it what you are going to say?

SHRI BRIJ BHUSHAN SHARAN: Yes.

SHRI N. K. P. SALVE: Then we appreciate.

श्री तंबार लाल गुप्ता : इनका कहना यह है कि इंगोरेस को जस्टीफाई नहीं करते हैं। लेकिन साथ ही इनका कहना यह है कि जो वास्तविक दिक्कतें हैं और जिस तरह से इसका दुरुपयोग होने की सम्भावना है उसका भी ध्यान रखा जाये।

SHRI SANGHI: Will the Government give us some idea about the percentage of the defaulters who came under Section 276?

MR. CHAIRMAN: We shall get it later.

We thank you and your colleagues Mr. Bhushan Sharan.

SHRI BRIJ BHUSHAN SHARAN: We thank you for giving us this opportunity.

(The witnesses then withdrew)

(The Committee then adjourned)

(The Committee re-assembled after lunch at 15.00 hrs.)

SHRI N. DANDEKER: I have written a note to the Secretary of the Committee about the absence of both the Finance Minister and the Minister of State in the Ministry of Finance. That means, we continue to deal with this matter in the absence of any representative at the ministerial level.

MR. CHAIRMAN: In the morning also we discussed this very point and you were not here. This is the second time we are meeting. He was present at the first meeting. When we decided to meet here on the 31st, the Minister said that though he was anxious to attend, he had his engagements fixed earlier and he requested the Committee to postpone. I was also inclined to it. You also wanted that the meeting should be little postponed, but the Members of the Committee wanted that we could hear the evidence.

SHRI N. DANDEKER: What is the point in hearing the evidence when none of them was present here.

MR. CHAIRMAN: Yesterday I explained the position to the Members. Today, in the morning, Mr. Gupta raised this point. Therefore, we have decided that from the next meeting onwards, the Minister should be present.

SHRI N. DANDEKER: Sir, I take very great exception to it. I do not know whether any question of privilege is involved in it. But I think it is certainly contempt of the Committee.

MR. CHAIRMAN: So, this is the position. When next time we meet, the Minister will be present.

SHRI N. DANDEKER: These witnesses are expected to be convincing not only the Members of this Select Committee, but also the final decision makers who will be at the ministerial level. These gentlemen come here. Yesterday we had an excellent exposition of the case by the Institute of Chartered Accountants. Whom are they going to convince? Eventually it has to be the Ministry. It is my experience that whatever we may wish to decide, it is the Minister who eventually decides and the majority of the Members here follow suit.

MR. CHAIRMAN: We all agree. Even in your absence, we discussed this point.

SHRI RAM SEWAK YADAV: We had already conveyed our feelings, not today but yesterday itself, but no notice whatsoever has been taken of it.

MR. CHAIRMAN: If Shri N. Dandeker suggests that any other Minister should be present, then we may perhaps get the Law Minister or somebody else.

SHRI N. DANDEKER: I am not talking of any other Minister. It must be some Minister from the Finance

Ministry. If they think that this is not important enough, then I certainly am not going to waste my time here . . .

MR. CHAIRMAN: I hope the Members would request Shri N. Dandeker to stay on.

SHRI N. DANDEKER: I feel that this is utterly contemptuous.

MR. CHAIRMAN: I would against request Shri N. Dandeker to be present here and give us his valuable suggestions, and we want his help.

SHRI N. DANDEKER: I come here to work, but apparently the Minister does not think that this work is important enough.

SHRI BISHWANATH ROY: As a matter of fact, the absence of the Minister here is due to our own decision. It was we who decided the other day that we would meet today, though the Minister concerned informed us that he would be going out of the country; still we the Members of the committee decided that we would hear evidence. So, if Shri N. Dandeker has any feeling against that, then it is really against ourselves and against the Members of the Select Committee. I do not know why the Minister or the Ministry is being accused of this.

SHRI N. DANDEKER: It is not a question of just any Minister, but a Minister from the Finance Ministry. In the absence of any Minister from the Finance Ministry, it is just a futile beating in the air to carry on discussions, to listen to evidence, to cross-examine witnesses and to elicit ideas from them before we make up our minds about something; because the one mind that has to apply itself to it and take decisions not at the administrative level, but at the Ministerial level is absent here. I have had the honour of being on Select Committees with which the Finance Ministry has been concerned, and I have always found a good deal of assistance

from the Finance Minister or the Minister of State in the Ministry of Finance, either Shri K. C. Pant or Shri Morarji Desai; very often during across-the-table discussions, we found it easy to convince them. But in the absence of any Minister here, we are just having a futile exercise of beating in the air. If it merely a matter of reaching the recorded evidence, I can also read the evidence just as they can.

MR. CHAIRMAN: I appreciate his difficulty. I would request him again to stay on with us, and we shall overcome this difficulty.

SHRI N. DANDEKER: You may have feelings on the subject, but I also do have certain feelings.

MR. CHAIRMAN: We shall discuss this point again. Now, let us hear the other set of witnesses.

SHRI N. DANDEKER: No, I feel I am not prepared to be treated in this fashion by the Finance Minister.

MR. CHAIRMAN: I would request Shri N. Dandeker on behalf of the Committee to be present.

SHRI N. DANDEKER: I know I am embarrassing you by saying all these things, and I would not like to do that. But I would like to express my feeling in the only way possible; if the Minister will be satisfied by reading the evidence, so will I be.

MR. CHAIRMAN: We are all agreed on this point. We have discussed this point already this morning when you were not here, and we also felt the same way. In fact, we not only discussed it, but we have recorded it also in our minutes.

SHRI N. DANDEKER: I apologise to the Committee, but I beg leave to withdraw.

(Shri N. Dandeker then left the room)

SHRI BISHWANATH ROY: I feel that injustice is being done to this committee.

SHRI N. K. SANGHI: A serious thing has happened by Shri N. Dandeker leaving the committee. I do not know what the constitutional propriety was. But I think that it is time that we discuss these things and see that something is done to remedy this matter. It does not look nice that we should have one Member of the Select Committee whaling out in this manner.

MR. CHAIRMAN: We shall discuss this afterwards.

II. Bar Association (Income-tax), New Delhi:

Spokesmen:

1. Shri R. K. Gauba,
2. Shri J. M. Bhatia, and
3. Shri L. D. Verma.

(Witnesses were called in and they took their seats).

MR. CHAIRMAN: We welcome you and your colleagues to the sittings of this committee.

SHRI GAUBA: We also express our gratitude to you for your having invited us.

MR. CHAIRMAN: The evidence that you give will be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence should be treated as confidential; even in that case, the evidence is liable to be made available to Members of Parliament.

We have gone through your memorandum, and if you want to highlight any points, you may do so.

SHRI GAUBA: Please permit me to introduce my association. It has a membership of 200 lawyers who are

practising exclusively on the original and appellate side of the income-tax department. What we shall be stating here will be in the background of the practical difficulties or the experiences that we have had in the course of our day-to-day professional activities.

First, I would start with the concessions proposed in the Bill. We always welcome any concession which is offered to the taxpayers who are groaning under heavy taxation, at any time and at any stage. However, I have made a mention at page 3 of our memorandum that there is an apparent lacuna. This relates to proposed amendment to section 23. There is a lacuna there . . .

MR. CHAIRMAN: That is being remedied.

SHRI GAUBA: Then, I would deal with the amendments which have been proposed in the field of avoidance or evasion of tax. As I have submitted in my memorandum, our association focussed its attention on the proposed amendments to section 64 of the Income-tax Act. That particular amendment proposes a change in the sense that if an individual transfers certain assets to a Hindu undivided family, then the income arising therefrom shall be treated as the income of that individual in so far as he is a member of the Hindu undivided family or in so far as it affects the interest of his wife or minor sons. There is already a provision in section 64 which deals with transfers effected in the case of minors or wives. Incomes arising therefrom are clubbed with the income of the individual. But the position in regard to the Hindu undivided family is altogether a different one. The Hindu undivided family, as it is known under the income-tax law or the Hindu joint family as it is understood under the Hindu law, is a unique institution, as the Supreme Court or every other High Court has said, in the sense that it does not have any characteristics either of an association

or a person or an individual or anything of that type. So much so that even in a couple of judgments. Their Lordships of the Supreme Court have held that transfers when they are effected in favour of a Hindu undivided family are not transfers in the strict sense of the term, because anything that is merged in the assets of the Hindu undivided family or blended with or even thrown into the common hotchpot of the existing assets of the Hindu undivided family or even otherwise, an individual thinks of throwing some of his individual assets into the common hotchpot which may not have existed before, even then, the assets transferred assume a special character of the Hindu undivided family. It is in respect of that unique institution of Hindu undivided family that the proposed amendments are suggested.

My submission is that this will create a lot of complications and a lot of difficulties, because we may assure you here that we are not against bringing in legislation which may have the desired effect of curbing the unsocial activities of the assesseees in so far as the avoidance of tax is concerned. Where a certain legislation eventuates into consequences which will result in a real, sincere intended effort to avoid taxation or curb the unsocial activities of the assesseees, we are with the Government. But where they create complications of the nature which will outbalance the collection of taxes, there, of course, we feel differently.

MR. CHAIRMAN: Have you calculated it?

SHRI GAUBA: I am mentioning the difficulties that are likely to arise in this matter.

MR. CHAIRMAN: Have you made any assessment?

SHRI GAUBA: It is not a matter of calculating things. It depends on the calculation of income of the Hindu undivided family or an individual who

transfers the assets. From that point of view, the department has properly covered itself, because it is only in cases where the revenue suffers that the department will interfere. So far as the department is concerned, they have very amply covered themselves. I am making it a point on behalf of the assesseees and also on behalf of the counsels who may be called upon to deal with such matters and also the department itself who may be called upon to administer these very provisions in a practical way.

The Hindu undivided family or the coparcenary property is any property that I may inherit from my father or father's father, or father's father's father. So far as this aspect of the property is concerned, the law leaves it as such, because the question of anybody transferring anything does not arise in the case of an individual particularly. If there is an ancestral property admittedly and avowedly as such, and in those assets I throw some into the common hotchpot, then it is on that part of the assets which I transfer and throw into the common hotchpot of the assets of the family that the mischief of the proposed amendment to the section lies. In that case, it will be held that the assets that I have to put into the common hotchpot of the family shall be mine in so far as it represents my individual interest in the transferred amount or it represents the interests of my wife or the interests of the minor sons. Insofar as the Hindu undivided family is constituted of members who are majors, there, I am not debarred from converting any individual property of mine into that of a Hindu undivided family; may be I have all the major sons. In that case, the only interest which will be deemed as mine will be that of my wife.

So far as this is concerned, we could see that these transfers, if they are effected, would affect only the individual concerned. If they were to an individual or an association of per-

sons, that can be understood. But then the Hindu undivided family which is a unit by itself and in which the interests of an individual, is not determined is different. It is only a fiction of law by certain deemed clauses which are being brought here that you are going to create the interests of an individual, the interests of a wife, so that at the close of a particular period, which means every year, you have to find out who are the members of the Hindu undivided family and what will be the pro rata share for that individual who transferred the assets, his wife and his minors. The situation may change year after year with the birth of one son or with the death of another. Year to year, there will be changes according to the number of members of the Hindu undivided family increasing or decreasing.

SHRI N. K. SANGHI: I think the work of this Committee would become simpler if you ask certain clarifications first. The Members have studied your memorandum. You also represent the Bar Association which possibly has friends on this side who have a feeling of responsibility for creating so many troubles between the tax-payer and the tax-gatherer! For the average man, it is very difficult to understand the legal complexities and you have very clearly clarified them and we have followed it.

Regarding the Hindu undivided family, there are three formulations that you have given. One is where there is a Hindu undivided family coming *ipso facto*, which may be in existence for the ancestral property. The second is that there may be others where it may be partly ancestral property and partly a property that may have been blended and thrown into the common hotchpot. The third is where the amount may have come into existence exclusively by the voluntary act of the caparceners concerned by throwing their individual properties. Could you tell this Committee whether any of these situations as envisaged by this new Act hurts the Hindu

law on which the fundamental basis of recognising the HUF as a unit has been there for ages? We have hurt the Hindu Code and the social aspect of the Hindu law. Do you think by legislating this, there can be no question of raid and there is no question of tinkering with the Hindu law? We would like to understand this particular position.

SHRI GUABA: It will hurt in the sense that it will create discrimination between the properties and the properties as I have discussed in the memorandum. May be I do not choose any particular occasion to transfer assets to the HUF as such, but I am living with the members of the HUF and the family exists as such. I have my personal income and I have income from family funds too. I keep on merging my personal income into that of the family and likewise I go on spending some of the funds belonging to the family. The merging and spending becomes so imperceptible and unpalpable that it would be very difficult for anyone to spot out at what particular stage and what particular amounts I have transferred into the assets of the HUF which should be treated differently.

SHRI N. K. SANGHI: Government do not want to have any loss of revenue by your individual income thrown into the HUF. To stop this, this legislation has been brought in. Does it hurt the Hindu law? If it does not, we can go into its merits and demerits.

SHRI GAUBA: One is a transfer which is palpable and so effected in favour of the HUF that it can be known as such by the ITO. But the manner in which I live is such that I do not discriminate between assets of the family and my own assets. In this section only one aspect of the matter has been dealt with. Day-to-day practical aspects have not been properly visualised.

A HUF consists of minors, myself as karta, my wife and major members of the family also. So far as the interest of the minors and wife is concerned, for purpose of taxation, it gets tagged on to my income. So far as the accumulation of assets are concerned, they still continue to be in the hands of the HUF. I do not spend anything out of it. I have transferred certain assets to the family and certain incomes arise out of the family's funds also. They go on accruing. The amending Bill does not say whether any income arising from those accretions shall also be tagged on to my income.

SHRI N. K. SANGHI: Possibly this is the first step that Government is taking to prevent loss of revenue by people throwing their income into the HUF. In future, Government may say that any individual earnings or properties will not be allowed to be thrown into the HUF property at all.

SHRI TENNETI VISHWANATHAM: To avoid all these complications, would you agree that the tax on the HUF may be raised a little so that Government may get some extra revenue?

SHRI GAUBA: So far as the structure of taxation is concerned, it is already so heavy that it hardly leaves a person enough amount to live a decent life in the present day economy. I do not know whether it would be possible for a man to live at all if more taxes are imposed. It is only with a view to get a breathing space or a breath of relief that people sometimes constitute a HUF. Sometimes you have to pay almost 80 per cent of your income as tax. But nobody throws something into the complications of Hindu law simply for the sake of avoiding tax.

SHRI TENNETI VISWANATHAM: In these days of developing economy, with the reduction in the value of money, Government also want more money. Therefore, they are suggesting that you should give

more. If as individuals you cannot give more, give us more as members of HUF. That is the suggestion. Possibly, your point of view is that if a little more is left in the pockets of the Joint Hindu family or the individuals, it will add to the strength of the nation itself as it will not go out of India.

SHRI GAUBA: You are visualising only HUFs consisting of the individual, his wife and minor children. That is not essentially so. The HUF may consist of major members also. Therefore will you not be creating discrimination between one family and another—between a family which has only minor members and a family which has all major members? I submit that that would not be a very desirable thing.

SHRI TENNETI VISWANATHAM: So, you want it to be dropped altogether.

SHRI GAUBA: In the fitness of things it will be better that this proposal is not brought on the statute book. It will only add to further complications. Year after year you will have to calculate the interest of the individual, the wife and the minor in a family which is recognised by law as a unit by itself.

SHRI TENNETI VISWANATHAM: Can you suggest any alternative?

SHRI GAUBA: Probably that is not within the scope of my being here. Given the occasion, I might.

MR. CHAIRMAN: If the individual converts his separate property into property belonging to the HUF of which he is a member, it is completely against Hindu law. How do you stretch it so much, I do not understand.

SHRI GAUBA: Hindu law does not know of any other type of HUF but one which may exist qua ancestral property though it may have been

inherited or may have been thrown into the common hotchpot or may have been merged with the existing funds of the HUF; otherwise, HUF will become three different type of institutions, namely, one which owes its existence to ancestors, the other to which some of the assets of an individual have been transferred and still another which may be the creation of anyone of the individuals. The ancestral property is not attracted because HUF has been recognised as a separate unit of assessment both in the statute itself and by judicial pronouncements. We are left with certain ancestral assets to which some of the individuals of that family have thrown all their personal assets or in the course of their living as members of the family as such some of their personal assets get merged and blended into that of the HUF. That is not envisaged here. Such like transfers should be left out because it might create complications. For instance, the HUF is inclined to purchase or construct a property or the property is already there and is in a very bad way; the family has some of its funds and goes on investing and improving the property. I as a member of the family contribute something from my own personal income but I do not keep any record of it. Now, these are transfers but of a very imperceptible nature and are indistinguishable. What is going to happen to such transfers? Is the Income-tax Officer going to estimate the extent of my contribution to repairs and improvement of the property or is he going to leave it at that and look only to amounts which have actually been transferred in bulk or in lump sum? Such like difficulties are likely to arise when we actually lead a life.

The third is, of course, one which is completely covered by this amendment in the sense that family does not have any ancestral property. Individually a Hindu in his own right is entitled to throw his individual assets into the common hotch-pot which also may not have existed

before because this has been recognised by judicial pronouncement; there is no necessity for a common hotch pot to exist before I add something to that.

SHRI SANGHI: Suppose there is a certain amount of imperceptible transfer from individually earned money in the repairs of a building. Do you think that the Income-tax Officer will be able to see the imperceptible transfer that is made in the repair of a property? Where it is perceptible, of course, that can be sorted out by the Income-tax Officer.

SHRI GAUBA: There is a very fine distinction between imperceptible and perceptible. 'Perceptible' is something which can be seen by the Income-tax Officer. Once he sees something coming up, say, a structure, or some improvements being made, then naturally he puts me the query, 'Where did you get the funds from?'. And I say that I am an earning member of the family, I have my personal income of Rs. 2000 or so, I spend something on my personal things and I put something on repairs or improvements...

SHRI SANGHI: The Income-tax Officer will have to undergo this difficulty. If he can readily sort it out, he would win his point, and if he is not able to prove it legitimately, possibly the assessee will win the case. If complication is there, it is for the Income-tax Officer to justify what he has done. Otherwise, taking the point of view of the Ministry, this has been done to avoid the little bit of loss of revenue. I agree with you that if this can be avoided, it will be very nice for every one. Suppose it cannot be avoided, can you give us a better solution by which the revenues frittered away can be taxed by Government and at the same time some of the difficulties that you or the assessee may face can be sorted out. Have you got any alternative suggestion in this matter?

SHRI GAUBA: So far as the ITO is concerned, I should say that he controls one side of the traffic in the sense that he must safeguard the revenue and make an estimate which is not an estimate which may be questioned by the higher authorities or by internal or external audit. But the matters will be finalised before the appellate authorities. This will lead to litigation—assessee being assessed on certain figures going in appeal and getting some relief at one stage and then going in another stage and getting some relief and so on. When I said that it would lead to complications, I meant this. The matters are not going to be settled so smoothly as we think at the level of ITO. After all, they are revenue authorities; their anxiety is to collect the maximum possible revenue and to determine the maximum income that they can possibly pay under the law in the sense that it can stand the scrutiny of law at higher levels.

MR. CHAIRMAN: From your discussions one can think that perhaps you are not opposed to the third category of HUF if this comes under the provisions of this Bill.

SHRI GAUBA: Where it is solely created by the efforts of an individual by putting avowedly his personal assets into a supposedly existing hotch pot...

MR. CHAIRMAN: You have no objection to that?

SHRI GAUBA: What I say is that it should be within the premises of the Hindu law itself. This is a matter of judicial pronouncement. So many rulings have come. There is no difference, whatsoever, between the first type of Hindu Undivided Family and the third type of HUF. That HUF has the same characteristics and enjoys the same privileges and has the same obligations.

MR. CHAIRMAN: Can you give us some important case law where this has been taken into consideration and he converts it again into HUF?

SHRI GAUBA: I can cite cases, but I do not have at the moment the reference. The law does not make a distinction between the first type of HUF and the last type of HUF because if the first type of HUF can claim the privilege of being assessed as a separate unit, so can the third type of HUF claim the right to be assessed as a separate unit. This is not a well settled law. There is no distinction so far as the Hindu law is concerned.

MR. CHAIRMAN: Here is the decision of the Madras High Court. 'A Hindu father can impress his self-acquired property with joint family character even where there is no nucleus of joint family property....'

SHRI GAUBA: That is a case in my favour. The Law as it exists does not discriminate. It is now by virtue of the proposed amendment that the distinctions are being created. This is what I submit.

MR. CHAIRMAN: We would like to have your lawyers' intelligence. The Bombay High Court also says that it is open to a member of Hindu Undivided Family to throw his self-acquired property into the family hotch pot even though there was no joint or ancestral property. Do you mean to say that this is justified?

SHRI GAUBA: The law permits.

MR. CHAIRMAN: Of course, you have your legal acumen to this. Suppose, law permits and in this process we find that many new mischiefs are created. What is your remedy to this? Will it be possible to amend the Hindu law to that extent?

SHRI GAUBA: I do not think so.

MR. CHAIRMAN: Is it your point that if we are going to bring this thing into the scope of the taxation

laws, then we can do it only by amending the Hindu Law and not by having this amendment in the taxation law?

SHRI R. K. GAUBA: Hindu Law cannot be amended. Either there should be an amendment to the Hindu Law itself because so far as the concept of the Hindu Law is concerned, that shall continue to remain there.

MR. CHAIRMAN: We want revenues to the State and we want your legal acumen to help us to see if we cannot go this way, which way we could go and how to improve upon this?

SHRI L. D. VERMA: So far as this concept of throwing the individual property into the joint family and so far as the concept of tracing the individual property into the hands of the wife and minor children is concerned, that was accepted long ago. I do not think there is any use going back on this thing. Parliament can tax income arising from that. But we have all seen that this new provision will result in so many complications in actual practice. How should we get over the difficulties? We all appreciate the difficulties that are going to crop up in the actual working of this. What I suggest here is to amend the definition given in Explanation (2) to this Clause 14 which defines the interest of the individual, the interest of the minor son or the interest of the spouse. It shall have to be worked out on the last day of each previous year for the relevant assessment year. Looking to the fluctuating nature of the family as it existed on a particular date, I submit that instead of making it change from year to year we should once for all fix that the individual's interest or the minor's interest or the spouse's interest be determined on the last day of the previous year in which the transfer takes place, that will solve the whole problem. In the case of minor, when he becomes major, his

share will get separated from the individual. So long as he remains a minor, his interest and also the interest of the spouse will go with the interest of the individual transferer and its income will be taxed in the hands of the individual. Whenever the individual transfers an asset to his wife or the minor, the Department taxes its income. They just keep a track of it. Similarly, you can keep a track of the interest of the minor or the spouse in the converted property. We can solve this difficulty only in one way i.e. if we define the interest of the individual once for all.

SHRI N. K. P. SALVE: What do you mean by 'once for all'?

SHRI L. D. VERMA: My submission is that once we determine the interest on the last day of the previous year during which the transfer takes place, that interest will be deemed to be determined for all times.

SHRI N. K. P. SALVE: Assuming in the previous year ending 31st March, 1966, A impresses certain property with the character of HUF, from the assessment year 1966-67 to 1968-69, there is going to be difficulty in the assessment year. As the law postulates in the assessment year 1970-71, in case there are minors and in case the properties are partitioned, difficulties are continuing. Whatever the income, that is attributable to that corpus, that is transferred on 31st March, 1966 would be included in the assessment of the transferor. What is exactly your suggestion? What do you want on 31st March, 1970 should be done?

SHRI L. D. VERMA: In the proposed amendment the interest of the individual or of the minor or of the spouse has to be determined year after year. Supposing an individual 'A' transfers his property worth Rs. 1 lakh into a family which has four members entitled to a share. The interest of the minor will be Rs. 25,000, the interest of the wife Rs. 25,000, the interest of the individual will be Rs. 25,000 and

the interest of the other minor son will be Rs. 25,000. Income attributable to these will be taxed at the hands of the individual.

SHRI N. K. P. SALVE: That is the contemplated law.

SHRI L. D. VERMA: No. In this law you say that the interest of the individual or minor sons or the spouse will be determined year after year, whereas the character and size of the family will be changing.

SHRI N. K. P. SALVE: Family size may change but the interest of the transfer so far as his assessment is concerned, clubbing only this property which is transferred and secondly only the income attributable to the corps and not income on income. Do you agree with that? Clause 14 read with Sec. 64 applies at the moment. I am unable to see the connotation which you have spelt out.

SHRI L. D. VERMA: In clause 14 you are proposing sub-clause (b) under sub-section (2) which reads as follows:

"The income derived from the converted property or any part thereof, in so far as it attributable to the interest of the individual in the property of the family, shall be deemed to arise to the individual and not to the family."

So you see in respect of the income derived from the "converted property" or any part thereof, so far as interest of the spouse or of the minor in the property of the family is concerned, the word 'interest' is defined.

SHRI N. K. P. SALVE: 'Interest' of the individual is defined.

SHRI VERMA: That is defined in explanation 2.

SHRI N. K. P. SALVE: If you read the entire clause together, on a simple reading, it means this that the

income of the family will be in respect of that income which is attributable to the transferred property. To use the language of the section, if it is partitioned, then to the extent the minor has interest or the spouse has an interest, the income only will be attached in the hands of the transferor. This is completely in harmony with Sec. 64 as it stands now.

SHRI VERMA: That is just an extension of that principle.

SHRI N. K. P. SALVE: What is your apprehension? What do you want to be determined once for all?

SHRI VERMA: What I apprehend is that there will be difficulty in determining the interest of the individual or the interest of the minor or the interest of the spouse year after year, because the size of the family may be changing, and or the nature of the property may be changing. There may be diminution of the property.

SHRI N. K. P. SALVE: At present how do they administer Sec. 64?

SHRI VERMA: Here, the interest will be fluctuating.

SHRI N. K. P. SALVE: It is fluctuating. Otherwise it would have gone by partition to the members then existing.

SHRI VERMA: It will be determined by the legal fiction of assuming that partition takes place on the last day of the previous year just preceding the assessment year.

SHRI N. K. P. SALVE: First there is no partition of HUF. Will there be any difficulty?

SHRI VERMA: There will be no difficulty?

SHRI N. K. P. SALVE: Assuming it is partitioned and it is given to the minor or the spouse....

SHRI VERMA: Partition will have to be supposed and not effected. Supposing a partition has taken place, then these two interests will go to the hands of the individual from the transferer. The main difficulty arises when you have to determine it.

SHRI R. K. GAUBA: What I was submitting is that another complication may arise in the matter of assessment of wealth tax, estate duty and all that. If a certain asset has been transferred by an individual, for the purposes of income-tax that is going to be treated as a converted asset so that any income that arises from that assets shall be added to the income of that individual. But if the asset starts having income year after year, that income goes on adding itself to the funds of the Hindu Joint family. Its value will appreciate or will go up. How are those funds or assets to be included in the wealth of that individual or the wealth of the Hindu undivided family? So also, in the case of that individual's death, how is that property to be treated? Is it to be treated as that of the Hindu undivided family? Or else, how much of that portion is to be treated as that of the individual?

The income from the property grows year after year; to the extent of the interest of the individual or to the extent of the interest of the minor or the wife, that has got to be clubbed with the income of that individual. But the fact remains that the property has been converted and now it enjoys all the characteristics of the Hindu undivided family property.

We now come to the wealth-tax assessments. We visualise how the difficulties in estate duty will arise. In the wealth tax assessment, if a certain property is treated as converted property for the purpose of assessing the income how is that property in its original form and in its grown-up form to be treated? Will that have

to be treated as the wealth of that individual or will a certain portion of the income which has been enjoyed by the Hindu undivided family go to increase the assets of the family?

MR. CHAIRMAN: No change has been made in wealth tax.

SHRI GAUBA: That is what I am submitting. It creates complications. I am only pointing out the complications that are likely to arise. If it is treated as converted property for the purposes of assessing that individual, then there is one picture of it under the income-tax law. On the other side, in the wealth tax case, there is a different picture. After all, these are all integrated taxes. Again, in the case of estate duty, how is that property to be treated? Will that converted property continue to be treated as that of the Hindu undivided family or a portion representing the interest of that individual or that of the minor?

SHRI MUTTOO: Under the Bill as it stands, wealth-tax has not been changed. The suggestion made now would lead automatically to some thinking on that.

SHRI GAUBA: This is not the way to raise taxes.

SHRI SHAH: May I just add a word? The proposed section refers to the income from the converted asset. It has no connection with the wealth. The wealth of the Hindu undivided family will remain as it is. Whatever income accrues to the individual or the spouse or the minor child will be taxed in the hands of the individual to the extent it is attributable to assets put in the hotch-pot, I do not know how this can lead to any confusion or complication.

I would like to clear the other point also about the partition and the fluctuations that go on....

SHRI GAUBA: If you would permit, I would like to say something on what Shri Shah has said just now.

He is talking of the income arising from the converted property. We should not suppose that that income would be spent away. Suppose it goes to add to the assets of the Hindu undivided family. While dealing with the wealth tax assessment, there is no such mention. God forbid that any further change should be proposed about it; but still as the things stand at present, I am talking of the converted asset itself and further assets which arise by accumulation of the income from the assets. So far as the income arising from that asset is concerned, since that has been treated as the income of that individual, then supposing there is any accumulation of that income out of which arises another asset, will that be treated as the asset of the individual who converted his property or will that be considered as the asset of the Hindu undivided family?

SHRI SHAH: This has been modelled on the existing section. I shall give a very simple example. Suppose the converted asset is of the value of Rs. 1 lakh and the total asset of the Hindu undivided family is Rs. 2 lakhs. If Rs. 1 lakhs is added as the converted asset, then the value of the Hindu undivided family's asset is Rs. 3 lakhs. Suppose in the first year, this Rs. 1 lakh yields an income of Rs. 10,000, the total wealth of the family will be Rs. 3,10,000. But what will be taxed in the hands of the individual in the first year, granting that there is only a spouse and a minor, will be the whole of Rs. 10,000. In the next year after it is converted, it does not become Rs. 1,10,000 but still remains only Rs. 1 lakh; the accrued income of the converted asset forms part of the Hindu undivided family's property; it does not go on changing. That is the present position.

SHRI GAUBA: That is not clear.

SHRI SHAH: That is the present position.

SHRI N. K. P. SALVE: According to Mr. Shah, I take it that the position is like this. To the extent the income is attributed to a certain amount, the income has to be taxed in the hands of the transferor, but for wealth tax purposes, it would none-the-less be taxed in the hands of the transferee; whereas the income would be taxed in the hands of the transferor, for purposes of wealth tax it would be taxed in the hands of the transferee. Since a valid point has been made, I would like to know why we should depart from the scheme of section 4 of the Wealth Tax Act in this respect. If we are to go by the rationale explained just now, then that would make section 4 of the Wealth Tax Act as it stands irrational.

MR. CHAIRMAN: We shall consider that point later.

SHRI N. K. P. SALVE: I hope I have appreciated Shri Gauba's point aright. While the income would be taxed in the hands of the transferor, the corresponding wealth would be assessed in the hands of the transferee.

SHRI GAUBA: That is right.

SHRI N. K. P. SALVE: The logical course would be to amend the Wealth Tax Act also.

SHRI GAUBA: Or to delete this.

SHRI N. K. P. SALVE: Why? You must answer one question. Why should this facility under Sec. 64 be given only to H.U.F. Are you absolutely sure that this is for anyone else prohibited?

SHRI GAUBA: So long we recognise the Hindu Law.

SHRI N. K. P. SALVE: We are not changing the Hindu Law. We are only saying that if they resort to this device then they shall not be able to get rid of this tax liability to which any other person would be liable to.

SHRI GAUBA : According to Hindu Law a Hindu in a family is nothing more or less than the mode of life which has been prescribed in the Hindu Law. And that mode of life permits me to live with the members of my family. Why should you convert what I earn as my personal income as the income of the family?

SHRI N. K. P. SALVE : Do you envisage that a meher is considered as an adequate proof in this regard?

SHRI GAUBA : Meher and Dowry may be recognised as such.

SHRI N. K. P. SALVE : They are to-day recognised as such for the purpose under Sec. 34.

SHRI GAUBA : True. So far as meher or dowry is concerned that will not be considered as an income.

SHRI N. K. P. SALVE : I am entirely on a different argument. You are saying that the Hindu Law permits this particular mode of living. That enables a person to put his self-acquired property in a common hotch-potch. That we are not at all touching. If it is so, I would request you to remove that impression from your mind. That is not at all being touched. If this is to be done for the purpose of taxation, then you have to carry a larger tax liability. That is all. Take for example any other community—Jains. They are not taken to be Hindus as such. Why should they be denied this facility? There is a judgment of the Supreme Court which says that they are not living the Hindu ways of living. They are living the way of life as any other citizen. Take Christians. It is very common in their community to give a gift to a minor daughter or minor son. Why should that facility be denied to them if only a higher tax liability is taken to be a measure which brings an affront to the mode of living. I can understand if you say that there is a possibility of a larger section of the community being allowed to get away with this tax liability. This is something which needs to be plugged. On

the question of the Wealth Tax which the witness has raised Mr. Shah, I want you to clarify.

SHRI R. D. SHAH : If you see Section 4(1), Proviso, of the Wealth Tax Act, it says :

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

MR. CHAIRMAN : Now we can go to the next point.

SHRI R. D. SHAH : In view of the Supreme Court's decision this is not considered a gift but in view of the deemed income this has been treated on par with Section 64. And therefore that has to be in line with this proviso.

SHRI N. K. P. SALVE : Therefore, for wealth tax purposes, it will be included in the hands of the transferee.

SHRI GAUBA : Now, Sir, I shall refer to clause 34 in relation to the changes which are proposed to Section 143 (1) of the Income-tax Act. Here is a considerable change to the provisions of Section 143 (1) as it exists now. Under Section 143 (1), when an assessee file a return, the Income-tax Officer, if he finds that the same is complete in all respects, accepts the declared income as such and determines the tax payable thereon. But, in the proposed amendment, the returned figure of the assessee is not to be accepted as such. But, the Income-tax Officer has been given the right to meddle with it in the sense that he can disallow a deduction on one thing or on the other thing as mentioned explicitly here so as to arrive at the figure of the total income. The very object with which

Section 143(1) existed so far, the present amendment defeats that. Here is a latest ruling of the Supreme Court in the case of Jaipur Udyog. Here an assessment has been completed under Section 141 of the Income-tax Act, 141 is a section which enables the Income-tax Officer to make a provisional assessment of the assessee on the basis of the return that he has filed. Of course in that particular case what the I.T.O. did was this. He altered the figure of his claims relating to a certain brought forward loss and all that. Their Lordship said that in a case where the enquiry is barred at the initial stages and the assessee makes an objection, it does not lay with the Income-tax Officer to complete the assessment on figures which are not returned by him.

So far as Section 143(1) is concerned, it postulates that certain returns which, on the face of them, are acceptable as such, should be accepted without calling upon the assessee to prove the returned figure. But, in this particular amendment, if I were to draw your kind attention to clause (b) of Section 143(1), the Income-tax Officer shall make the following adjustments to the income-tax or loss declared in the return. That is to say, he shall rectify any arithmetical error like any deduction or allowance, which, on the basis of the information available existed which, *prima facie* is admissible but is not claimed in the return, he can give effect to all these depreciations, losses, this and that. So, essentially the Income-tax Officer has the right to process the return in order to arrive at the assessable figure as against the practice of accepting the return as such. If the returned figure is an acceptable one under Section 143(1), he has to see that the returns are properly processed. The law has given the right to the assessee. And under Section 143(2), the I.T.O. has to call him to render such evidence as he may possess in support of his return. This is natural justice. This is what can

be expected, because the Income-tax Officer may complete the assessment. In the past assessments there may be disallowances. These disallowances might well be there in appeals, might not have been finalised.

Now, this being the position, the assessee has not been given a right. The only right that he has been given is to have it rectified or modified by the Income-tax Officer, by telling him, "Here is your mistake; since you are entitled to look into errors and mistake in the return or in the statement of accounts, will you please rectify it?" I have the restricted right to point out to the Income-tax Officer, "you have made a wrong assessment". For that I go to the appellate authorities to have a proper redress. In the meanwhile, supposing the Income-tax Officer has gone amiss, and he finds on one fine morning or next day that he made a mistake and that mostly has resulted in incorrect, inadequate and this and that assessment, he can reopen and re-assess the whole thing. But I am given the only right to go to the Appellate Assistant Commissioner. What will happen if I go to the Appellate Assistant Commissioner? He is not going to assume the role of the Income-tax Officer and look into what the Income-tax Officer should have done. He will mark it to the Income-tax Officer, saying, "Please look into this aspect of the matter". The matter again goes to the Income-tax Officer. The Income-tax Officer again looks into the whole thing.

What is the fun in making a provision of this kind, where it controls only one way traffic?

SHRI N. K. P. SALVE: My apprehension appears to be of a hardship which might come upon assesseees in so far as there might be disputed items.

The first part of the grievance is that the hardship might be caused to the assesseees, the computation made might be disputed by him, and the

only way out for him is to go in appeal. But the second part of the grievance is that you are making, I am not able to appreciate.

SHRI GAUBA : This is what I submit. What the Income-tax Officer has got to find, as a matter of fact, is whether the assessment which is already completed is wrong or inadequate in the sense that the revenue has suffered. If it has suffered, he can reopen the assessment, re-assess it. Now, there is no time-limit given here. I submit this will in fact be superseding the powers which are conferred on the Income-tax Officer to reopen the assessment under section 147. After all, there are certain conditions laid down there.

SHRI N. K. P. SALVE : When you come to limitation, you read Section 137, that is not abrogated.

SHRI GAUBA : That limitation applies to all and sundry. No exception to this.

MR. N. K. P. SALVE : That means, re-assessment has been completed.

SHRI GAUBA : Then, of course, the prescribed time was four years. Now it is two years. Section 147 there lays down certain conditions.

It is very much worse....

SHRI N. K. P. SALVE : How ?

SHRI GAUBA : You have a right to criticize it by making certain additions, by disallowing certain deductions.

It would not be the achievement of one of the objectives, which has been laid down for this legislation, namely, simplification. It may be one-sided. If the assessee feels aggrieved about it and then again by the ITO if the Appellate Asstt. Commissioner wants it.

SHRI SALVE : We have appreciated to the extent the assessee disputes

this clause is likely to cause hardship. We will consider that. Take the case of a small assessee who goes to an ITO and files a return—you know how returns are filed—and ITO wants to make a summary assessment without calling the man and that has to be final assessment. It often happens his personal expenses Dharmada is debited and he will sort out the items and make additions.

SHRI GAUBA : I appreciate it very much. To this extent I am one with you that small assessee whose returns are filed should be accepted as such but what is actually done is if in a particular year there was a cash credit and taking that into consideration the Income Tax Officer made an addition of Rs. 4,000 not because he found anything wrong about his accounts but since there was certain explained cash he made an *ad hoc* addition of Rs. 4,000. Without taking into consideration the circumstances under which that addition was made, the subsequent ITO does the same thing. This is being done.

SHRI MUTTOO : Mr. Gauba's apprehension that because 4,000 was added in 1968 it would be repeated in 1969 is not correct.

SHRI GAUBA : I may avail of this opportunity to point out that so many good instructions are issued by the Central Board of Revenue and they are hardly looked at—no question of being respected. I know there are instructions saying if there is small cash credit something below Rs. 500/- don't look into but I tell you from my own experience that for even cash credits worth Rs. 1000/- and 1200/- the ITO says call the assessee. I want to cross-examine him. I can cite hundreds of cases. This is what happens. So far as the instructions from the Central Board of Revenue they are in good faith issued but they are more for breach than for acceptance.

SHRI SALVE: Tell us Mr. Gauba assuming this is a salutary provision otherwise what would be the safeguard that you would want.

SHRI GAUBA: There should be a limit. If there are small assessee in their case the first thing to be insisted upon is that their returns should be supported with regular statement of accounts showing all allowables and dis-allowables so that the ITO if he has to process through he does not find difficulty and allow the items which are allowable and disallow the items which are dis-allowable. Then beyond that the ITO should not go. With reference to the past assessment or with reference to the amounts which are in dispute he should have no option. He should not use his arbitrariness to allow certain items and disallow certain items. That will lead to litigation and unnecessary complication.

SHRI SANGHI: We understand your point. I would like to draw your attention to your previous statement and find that the fundamental point is this—Amendment 143(1) (a)—you have said in which the judicial pronouncement that this assessment is not legally correct. I would like to know from you whether 143(1) (a) does not hurt the judicial pronouncement that has been recently expressed in Jaipur case.

SHRI GAUBA: It provides a guide.

SHRI SANGHI: Will it stand the test of the Law?

SHRI GAUBA: The judicial pronouncement postulates certain principles and those principles we must keep in view while making further enactments.

SHRI SANGHI: You have seen important cases. Similar facts are put in different ways. There has been a judicial pronouncement. Majority of the decisions have been one way and

what has really been pronounced by the Supreme Court is another way.

Whatever income tax officer is going to disallow should *prima facie* be according to Law. Taking all this where a man has claimed more depreciation and has large percentage is not allowed. Naturally the Income Tax Officer will allow what is there. Will it be drawn into the Court of Law keeping in view the case of Jaipur?

SHRI GAUBA: *Prima facie* allowable or disallowable things do not fit in because this is more or less a matter of opinion which can be argued both ways against the assessee, in favour of the Department, because as I submit disputed items are concerned, in them there is the inherent dispute of opinion, as I submitted one way or the other. Therefore, I submitted so far as disputed items are concerned, the decision depends upon the view you take. Views being two divergent views, such things should be left altogether. In that case, instead of invoking the provisions of Section 143(1) he should invoke 143 (2), send a notice to the assess, come forward, support your return or I reject it, but they essentially stick on to Section 143 (1) which involves disputed amounts.

MR. CHAIRMAN: I hope you have other points also.

SHRI MUTTOO: There are so many which come first under 143(2). The idea of having 143(1) is to dispose of bulk of the cases under that without planning to re-open them under 143(2) because basically, it would not be possible with the increase in the number of cases that we anticipate.

SHRI N. K. P. SALVE: This can only go with the departmental view.

Supposing there is a case of 4,000 rupees and there is a cash credit of Rs. 25 lakhs. The business income is only Rs. 4,000 and has cash credit of Rs. 25 lakhs. Therefore, it will have two departmental instructions and

they have discretion that the report they receive from the Inspector in which 143(1) should be in vogue, certainly it will permit the ITO to include disputed items without affording any remedy to the assessee concerned excepting the remedy of appeal which is little lengthy and difficult. Something should be done to minimise this possibility.

SHRI GAUBA: The other main point is registration of firms. That is a very important point. Well, Sir, at the outset, permit me to submit that what the change by this Bill is envisaged is first the nomenclature from registration to recognition. Shakespeare said in Romeo and Juliet, whatever name you may give to the rose, it will give the same smell. Why this fascination by this change 'recognition' which envisages additions and drafting changes at more than 30 places. Additions to the Sections 1,2,3,4,5,6,7,8 and then drafting changes about 16 or 17. I cannot find out how the word 'recognition' has been chosen in preference to the word 'registration' which has come to be known and understood by the Public and by the assessees for such a long time. This is what I have to say about the change in nomenclature.

Now this law relating to the registered firm has seen many vicissitudes I should also say to the disadvantage of the assessees. I am saying lot of rules and laws have been amended from time to time. So far as the judicial pronouncements are concerned they are liberal so far as granting of registration is concerned. Now I submit that it was now only in the enactment of the provisions of 1961 that the law relating to the registration has been properly rationalised and has come to be understood by the people. It is quite a simple way because now what is required under the existing law is that the firm is constituted under an instrument of Partnership

the individual shares are specified, application is made within the prescribed time that is before the close of the firms accounting period. That is the law now and if there is any change in the constitution of the firm that should be evidence again by an instrument of partnership and an intimation be given in the prescribed form to the Income Tax Officer concerned. The law is very simple and is being very much appreciated in so far as, once the Income Tax Officer grants registration, he grants registration for that assessment year and that registration continues to have an effect in the subsequent years provided along with the return the assessee files a declaration in the form No. 12 saying that there has been no change in the constitution of the firm. Law is so simple as it exists now. But now there is an effort to simplify with a view to create more and more complications. The citadel for claiming registration is now being shifted from income tax Office to that of Registrar of Firms Office. All of you know, Sir, that Registrar Office or registration is administered by the State Governments. They are not under the control of the Central Government and now what has been made a very essential and important condition precedent to claiming registration is that the firm should have been registered with the Registrar of Firm and within six months of its having come into existence. Not that the firms were not registered with the Registrar of Firms, because if it is a firm and if you do not have it registered with the Registrar of firms, the effect of non-registration will be that you cannot enforce your right as laid down in the Partnership Act. This is to the benefit of the assessee and he, generally, has the partnership registered. What makes the things difficult is that the Registrar's Office is so lethargic and dilly-dallying about things, that you never get a Certificate before a year and half. Now the condition being that I must have filed a certificate from the Registrar of Firms with the Income-tax Officer concern-

ed with 6 months from my coming into existence....

SHRI N. K. P. SALVE: No, No. You have to furnish it along with the return.

SHRI GAUBA: I would like you to read 186A-1(a)—“the partnership as in existence during the previous year, is evidenced by an instruments and the individual shares of the partners are specified in that instrument; (b) the firm is registered with the Registrar—(i) in a case where the firm was constituted at any time prior to the previous year relevant to the assessment year commencing on the 1st day of April, 1970, by the 31st day of March, 1970; (ii) in any other case, within six months of the commencement of the business or profession of the firm or by the 31st day of March, 1970, whichever is latter:”

MR. CHAIRMAN: You kindly read the proviso also.

SHRI GAUBA: “Provided that where such registration is effected after the expiry of the period specified in this clause, but before the expiry of the time allowed under-sub-section (1) or sub-section (2) of section 139 for furnishing the return of income for the assessment year for which the firm seeks to be assessed as a recognised firm, the Income-tax Officer may, if he is satisfied on an application made by the firm in this behalf that it was prevented by good and sufficient reasons from getting itself so registered within the time specified in this clause, condone, with the previous approval of the Commissioner, the delay in such registration, and, thereupon, the firm shall be deemed to have fulfilled the condition in this clause in relation to that assessment year and any subsequent year.

Delays are bound to occur as they occur now.

SHRI N. K. P. SALVE: Failure of the Registrar to do the needful within the reasonable period of time—Mr. Gauba, do you even for moment think that even in one case, it will not be condoned?

SHRI GAUBA: Practical experience shows that from the Registrar's office, we never receive the certificate. In every case, I have to make an application to the Income-tax Officer to condone the delay. Income-tax Officer, left to himself, has no discretion to accept the delay. He has to refer the matter to the Commissioner. Therefore, bottle-necks are there, one at the end of the Registrar's office and the second at the Income-tax Commissioner's office. I have to file the returns and that proviso has to be kept in mind—“where such registration is effected after the expiry of the period specified in this clause, but before the expiry of the time allowed under sub-section (1).” It may be that I may not file within

6 months, but must file before the time for filing the return expires either under section 139 (1) or (2).

SHRI N. K. P. SALVE: Assuming that this word ‘registration’ was substituted with the word ‘application’ filed before the Registrar..

SHRI GAUBA: Good enough. That will solve the problem. If I give a proof of my having filed an application with the Registrar irrespective of....

MR. CHAIRMAN: Submitting a mere application—these are the formalities which we have to comply in order to claim registration. The Income-tax Officer has to go into the question of genuineness. That by putting in the application within time and in the prescribed form does not entitle him to claim the right.

SHRI N. K. P. SALVE: This is what Ministry tells us. How it is going to help in the genuineness? This is what the Department says,

when they are adding this additional burden of formalities "The registration of firms for the purpose of assessment to income-tax requires a subjective determination by the Income-tax Officer of the genuineness of the firm, and leads to disputes, litigation and delays in the finalisation of the assessments of firms and their partners. The new procedure in sections 186A and 186B is designed to considerably simplify the assessment of firms and their partners by eliminating the requirement of separate registration for the purpose of assessment to income-tax and, virtually, recognising the registration under the Indian Partnership Act as being sufficient for the purpose of charge of income-tax." So, it virtually gets rid of your necessity of coming in for registration, and they virtually did recognise that registration as conclusive proof for purposes of being recognised.

MR. CHAIRMAN: What he points out is delay....

SHRI GAUBA: This is not a well-conceived notion about the thing. So far as the registrations are concerned, the essential thing for the Income-tax Officer to look into is that it is a firm, a genuine firm. It is for the sake of finding out whether it is a genuine firm or not that he makes certain enquiries, asks for the Bank certificate to show that the firm opened an account in the firm's name, asks for a certificate from the Registrar of Firms that it has been registered under the Indian Partnership Act, asks for certain certification from the Sales-Tax Department that it has been registered, and so on. These are the things which he enquires into in order to determine that the firm has been genuine and in respect of which a certain privilege is claimed in the form of registration or what you might call now recognition. So, he finds them out. And added to them are the formalities. And the Supreme Court has held that in a case

where certain formalities have not been properly adhered to or complied with, in that case the assessee forfeits his right. That is very essential because in spite of the fact that the firm is genuine, but if he does not make an application in the prescribed form and within the prescribed time, he forfeits all his rights of claiming benefits of a registered firm. And the law says, and the Supreme Court has held, that in such cases this is a special privilege.

SHRI N. K. P. SALVE: That is correct. That is a different aspect of the matter.

MR. CHAIRMAN: Supposing there is registration. You are bound to have under the Partnership Act.

SHRI GAUBA: We have it because it suits us.

SHRI N. K. P. SALVE: Therefore, you must comply and it should not cause undue burden. There might be difficulty in getting the registration, but application can be made. We would like you to tell us firstly if this view of the Department is a correct view.

SHRI GAUBA: The conditions that have been laid for claiming registration are evidence of partnership and all that. This may be included as one of the conditions that the firm should have been registered with the Registrar of Firms. There should not be any time limit. It should not in any way interfere with my right, with my obligation to file an application for registration, within a period of 6 months or before the close of the accounting period or along with my return. That is what I would like to submit. In respect of shares, you say, application should be filed within such and such a time; you can also say, he should also file a certificate from the Registrar of Firms.

SHRI N. K. P. SALVE: There is that in (e).

SHRI GAUBA: I have no objection.

SHRI N. K. P. SALVE: That is more reasonable. He can extend the time.

SHRI GAUBA: That is in a different context. That is not for claiming registration for the first time. (e) is more rational. I am objecting only to the preceding part. I say, you can make it a condition. You can make it, I am prepared for it.

SHRI N. K. P. SALVE: We duly take into account practical difficulties and delays involved in this. We appreciate it.

MR. CHAIRMAN: Is there any other point?

SHRI GAUBA: This is about the jurisdiction of the tribunals. The value was Rs. 25,000; now it is raised to Rs. 50,000. There should be no speeding up at the cost of justice. Tribunal is the only institution where the assessee feels he can get the desired relief.

SHRI N. K. SANGHI: The Ministry or Revenue Board are inspired by the high fees charged by your advocates. May I request you to see that the legal charges are kept as low as possible?

SHRI GAUBA: They pay more taxes than the assessee. I pay more tax than my assessee whom I charge a fee.

SHRI N. K. P. SALVE: And it is not allowed to them in their assessment.

SHRI GAUBA: That is right. Referring to Tribunal this is increased from 25,000 to 50,000. Regarding fee fixed for tribunal from Rs. 100 it is raised to Rs. 250 on the ground that number of appeals are multiplied. It is not because of assessee, it is because of the department. I was reading just today, when this tribunal came into existence—and Members

here will endorse me—there were instructions that for appeals involving tax liability of Rs. 500 or more no revision appeal should be filed to the tribunal but now you see so many appeals for small matters are coming before the tribunal. The department has not got to suffer payment of any fee. The appeals are fully free for them. So far as assessee are concerned they have to pay Rs. 100. I don't mind fee being raised to Rs. 250 or 500—provided provision is made that the assessee will get costs. Look at the high court. Have they got to pay that much fee? No. This is the final court of law. It is Rs. 50 that I pay. We are already paying Rs. 100. Even when it is accepted, no rebate is given to us.

SHRI N. K. P. SALVE: Do you say it should be Rs. 100 and the cost?

SHRI GAUBA: When they file an appeal, Government must pay the tribunal fee.

SHRI N. K. P. SALVE: That will be changing from Caesar to Caesar.

SHRI GAUBA: That will certainly be an adjustment; but that will apply the break.

SHRI N. K. P. SALVE: Do you think so?

SHRI GAUBA: I think so. He recommends something and the department has to suffer a fee of Rs. 100 or Rs. 250. He will think twice before he recommends it. He will think seriously about it.

SHRI N. K. P. SALVE: It will come about if costs are allowed?

SHRI GAUBA: That would be the best.

SHRI N. K. SANGHI: I want one clarification from our friends. Tribunal fees are not part of running expenses. What is the reason by which this particular fee or expenses are not allowed as part of revenue? Is

there any rationale, behind it, in the words of Shri Salve?

SHRI GAUBA: There is an English case where they have laid down that matters connected with the processes before the income-tax officer, are allowable, but when you have to go in appeal the appeal expenses are not allowed and that rule of law is being accepted as correct by all high courts and supreme court.

SHRI N. K. P. SALVE: Much water has flown under the Thames; but the old decision continues to hold good even today.

SHRI GAUBA: We have covered all the points. Then about 276, the provision is rigorous imprisonment for 6 months if I fail to file the return within the time allotted without reasonable cause. It is a subjective thing. It must be a justiciable thing before the appellate authorities.

SHRI N. K. P. SALVE: ITO is not sending you to jail; it is the magistrate.

SHRI GAUBA: He will not do it. Ultimately I have to go.

SHRI N. K. P. SALVE: ITO may be subjective; but he cannot write an order that you are sent.....

SHRI GAUBA: He can recommend.

SHRI N. K. P. SALVE: But the deciding authority will be the Court of Law.

SHRI GAUBA: All the conveyance and other things go along with it; they are rather prolonged. All this is in the throes of litigation.

SHRI N. K. P. SALVE: You think that punitive measures are disproportionate?

SHRI N. K. SANGHI: You want to suggest that it should be reduced; if the term of imprisonment should be

reduced, there could also be a dispute about the term of imprisonment for fault in the law.

MR. CHAIRMAN: The quantity of money is there.

SHRI N. K. SANGHI: There is delay in filing the returns.

SHRI GAUBA: There could be some rationale behind the suggestion that if a certain assessee is continuously disregarding the notice of the income-tax officer, you might provide a punishment, but not in the ordinary case.

SHRI N. K. P. SALVE: Another aspect strikes me when we are considering this. I do feel that the law, being as complicated and difficult as it is, all of us would not know the exemption limit. My postulation is: where the income is Rs. 50,000, and deliberately the assessee conceals, and with a view to concealing, he does not file a return and ultimately the tribunal says the income is Rs. 50,000, in such a case, the question is whether he can go completely scot-free. There will be no concealment under section 71(1)(c).

SHRI GAUBA: There is provision that in the matter of concealment, the minimum penalty will be cent per cent of the amount, not exceeding Rs 200. It will be a minimum of Rs. 100 but will not exceed Rs. 200. If you were to provide a punishment to him, then, he will probably take it as a relief, because he will be provided with meals.

SHRI N. K. P. SALVE: The case is a little different.

MR. CHAIRMAN: We will finish now.

SHRI N. K. P. SALVE: Say, the man has Rs. 50,000 as income. He does not return; that is, he does not make a return of the income, and ultimately,

the income is determined at Rs. 50,000. The ITO asks him to file a return, and he shows an income of Rs. 50,000. There is no concealment. What happens then?

SHRI GAUBA: Penalty for delay in filing a return.

SHRI N. K. P. SALVE: I am talking of imprisonment. Should not such a person be put in jail? He does not conceal the income and sits merrily for three or four years. When the ITO asks, he files a return and shows an income of Rs. 50,000.

SHRI GAUBA: If there is a contumacious disregard of the notice issued by the department....

SHRI N. K. P. SALVE: There is no disregard. Suppose his assessment is opened under section 147, after seven years, and he files a return in compliance with the notice, a return which he should have filed earlier.

SHRI GAUBA: It entails a penalty right from the day, when it was due.

SHRI N. K. P. SALVE: I am talking of prosecution. Will he go to jail under any other provision?

SHRI GAUBA: That a different question. It is a matter as to how people behave in society.

SHRI N. K. P. SALVE: It is so palpable, patent, recalcitrant, contumacious an attitude of an assessee who manages to get himself out of prosecution, by complying much later with the provisions of the law in respect of an income which he should have returned earlier. If you say that he would otherwise go to jail, this clause is really harsh. I think care has to be taken about this type of assessees.

SHRI GAUBA: I think he can go to jail. If he files a return in response to a notice under section 147, when you

are contemplating a case of an assessee who files a return much later, it postulates a case where essentially the proceedings have been initiated against him under section 147. Section 147 means he has concealed or....

SHRI N. K. P. SALVE: He does not conceal. In the return he shows it straightaway.

SHRI GAUBA: The filing of the return is there.

SHRI N. K. P. SALVE: Mr. Muttoo, I should like you to examine this matter and let us have a note from the Law Ministry; in a case like this, where he otherwise applies and does not conceal, and where the default is under section 139, can he be sent to jail? Such an assessee needs to be sent to jail, I think.

SHRI GAUBA: One point. It is in respect of the penalty under section 271(c)(iii). Previously, as under the law that exists, if it involves a penalty exceeding Rs. 1,000, the proceedings have to be referred to the Inspecting Appellate Commissioner. Now, it should be Rs. 25,000 irrespective of the fact that this amount may include concealed income; when it is a concealed income of Rs. 2,000, the minimum penalty to be imposed on him is Rs. 1,000. The penalty is Rs. 1,000, which is 100 per cent. So, in every case of concealment of income worth more than Rs. 1,000, it may be referred to the IAC. Perhaps, this aspect has been overlooked. Otherwise, the intention does not seem to be there.

MR. CHAIRMAN: I am much obliged to you for your valuable assistance. Thank you.

SHRI GAUBA: We are much obliged. Thank you.

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON
TAXATION LAWS (AMENDMENT) BILL, 1969

Thursday, the 8th January, 1970 at 10.00 hrs. and again at 15.00 in Council
Chamber, Calcutta.

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri N. C. Chatterji
4. Shri Kanwar Lal Gupta
5. Shri B. N. Katham
6. Shri Yashwant Singh Kushwah
7. Shri S. B. Patil
8. Shri Shiva Chandika Prasad
9. Shri Bishwanath Roy
10. Shri N. K. Sanghi
11. Shri Beni Shanker Sharma
12. Shri Yogendra Sharma
13. Shri Janadan Jagannath Shinkre
14. Shri R. K. Sinha
15. Shri N. K. Somani
16. Shri Tenneti Viswanatham

REPRESENTATIVES OF THE MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. *The Association Chambers of Commerce and Industry of India, Calcutta.*

1. Shri A. K. Sen
2. Shri S. Bhattacharya
3. Shri P. K. Choksey
4. Shri M. H. Mody
5. Shri Mohinder Puri
6. Shri A. K. Sivaramakrishnan
7. Shri A. T. Robertson.

II. Indian Chambers of Commerce, Calcutta.

1. Shri A. K. Jain—*President.*
2. Shri B. P. Khaitan—*Chairman, Taxation Sub-Committee.*
3. Shri J. Singhi—*Member, Taxation Sub-Committee.*
4. Shri C. S. Pande—*Secretary-General of Chamber.*
5. Shri B. Kalyanamdaram—*Deputy Secretary.*
6. Shri Manab Chaudhry—*Assistant Secretary.*

III. Indian Mining Association, Calcutta.

1. Shri H. C. Dass
2. Shri S. P. Saigal
3. Shri S. K. Utamsingh
4. Shri W. G. Macintosh.

I. The Associated Chambers of Commerce and Industry of India, Calcutta

Spokesman:

1. Shri A. K. Sen
2. Shri S. Bhattacharya
3. Shri P. K. Choksey
4. Shri M. H. Mody
5. Shri Mohinder Puri
6. Shri A. K. Sivaramakrishnan
7. Shri A. T. Roberston

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Sen, we welcome you and your colleagues to the sitting of this Committee today. You can enlighten us on the points that you want to bring to the notice of the Committee. I must let you know that your evidence would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire that your evidence is to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Now you can say on the points you want to place before the Committee.

SHRI A. K. SEN: May I at the outset express our gratitude to you for the opportunity that has been given to us for expressing our views before this Committee. A memorandum on the subject has already been submitted by the Associated Chamber of Commerce on the 15th July. I may highlight some of the points mentioned in the memorandum. The first point is that we would have liked to see some important provisions in Shri Bhoothalingam's Report to be incorporated in the Bill, for instance, abolition of inter-corporate dividend tax, abolition of additional income-tax on registered firms and so on. The second point is that in certain portions of the Bill a very wide discretion is given to Income-tax Officers. The broad approach of Assocham is to restrict discretion as far as possible so as to reduce the need of making frequent reference to income-tax officers. Thirdly in considering the amendments three main objectives, viz. simplification, rationalisation and promptitude should be borne in mind and fourthly while we appreciate and recognise that income-tax law should be amended and changed from time to time to keep pace with the changing circumstances, it may be pointed out that to frequent changes give rise to uncertainty and confusion. With these general remarks I shall now proceed to consider some of the specific proposals put forward by Assocham.

The first is under clause 3(d) which deals with tax free technicians. Here the main point is the ceiling of tax free salary that has been mentioned in the Bill. Our objections are two-fold—to the principle of ceiling as such because we feel that a flat and indiscriminating ceiling like this will defeat the very object for which tax free technicians' services are made available to the company and secondly, in any case the ceiling of Rs. 4000 per month is too small to serve useful purpose, bearing in mind that we want to attract the technicians of suitable qualifications and reputation and calibre. We would like to have elucidation whether Rs. 4000 per month includes perquisites or not. If it is inclusive of perquisites, then, of course, the effect will be much worse. There is another point also and that is in respect of tax paid by the employer on the amount in excess of Rs. 4000 per month. That, it appears, does not come within the mischief of section 40(a)(v); in other words, this tax is not regarded as perquisites for the purposes of section 40(a)(v). That seems to be the implication but requires clarification and confirmation. The third point on this is that under the Bill a technician employed on scientific research employed by the Government qualifies for exemption and similar concession should be given in the private sector also in order to promote research and development in the private sector; in other words, technicians engaged in scientific duties in any business in private sector should also qualify for exemption. So these are the main points in connection with tax free technicians considered in clause 3(d).

MR. CHAIRMAN: Mr. Sen, in your memorandum you have mentioned at one place that as the industrialisation of India progresses technicians will be needed for increasingly sophisticated industries and consequently a higher price will have to be paid to them. In support of your contention you have made this observation in your memorandum. Do you mean to say that the more you will have

sophisticated industries, the more you will have foreign technicians?

SHRI SEN: No, probably that is not the intention. What we meant is that as we are going in for more and more sophisticated industries, we would require more and more highly qualified people.

MR. CHAIRMAN: Do you mean to say that we cannot train these technicians here?

SHRI SEN: It all depends on the degree of sophistication as we progress in more and more sophisticated industries and therefore what was regarded as sophisticated two years ago will no longer be treated as sophisticated and will be manned by our own people.

SHRI VISWANATHAN: Mr. Chairman, I want to know whether he is trying to make any distinction between our technicians and foreign technicians and when our technicians develop sophistication they need not be entitled to as much salary as he suggests for the foreign technicians?

SHRI SEN: Yes, when that stage is reached. It is a process of sophistication. As you make more and more progress we become more and more sophisticated and so what was regarded as sophisticated two years ago will no longer be regarded as sophisticated two years after.

SHRI VISWANATHAN: And so you can pay them lesser salary?

SHRI SEN: It may be but that depends on the stage we are in.

SHRI CHATTERJEE: Mr. Sen, just look at page 2 of your memorandum. You have said that the salary which must be offered to induce a technician to come to India depends on his worth to the company, on the supply and demand and no prevailing rates of remuneration at the international level and as the industrialisation of India progresses, technicians will be needed for increasingly sophisticated industries and consequently a higher

price will have to be paid to bring them here. I don't think, it is your intention to have foreign technicians here for ever but you have got to have them for some time to come.

SHRI SEN: Exactly, Sir. Supposing the sophistication degree is A, at that stage we require no technician. Now, we come to the stage B, i.e. a little higher sophistication and then at that stage we shall need foreign technicians and after some time when we go to the still higher sophistication stage, say, stage C, we might require foreign technician for C stage but not for B Stage. So this is a continuous process and the more we progress in sophisticated industries, the more our dependence on foreign technicians go.

MR. CHAIRMAN: But who will decide that—whether the industry of the Government should decide whether technician A or B should be dispensed with and at what stage?

SHRI SEN: That is covered by an agreement of appointment approved by the Government.

SHRI SOMANI: I submit, Mr. Chairman, that let the witness be allowed to go on with his opening remarks and then we shall put questions to him. Instead of our putting questions to him now on the different clauses, it is far better if he completes his general observations first.

MR. CHAIRMAN: Yes, that is better. Mr. Sen, please continue.

SHRI SEN: We come to clause 3(f). There is a very short point. It requires confirmation and clarification. The scheme not only covers replantation but replacement of the bushes. Under clause 3(f), same type of concession should be extended the coal mining by way of sand stowing and difficult mining conditions because similar circumstances prevail there also.

Clause 4—property tax—First point is that there is a lacuna in the Bill in so far as building started before 1-4-69 but completed after 1-4-69—there is no provision. Second point is, some of the recommendations of Mr. Boothalingam have not been included in the Bill, e.g. no allowance for depreciation, cost of administration, maintenance cost and so on. The point mentioned at the end of clause 4 in our memorandum has already been taken care of by the Finance Act, 1969.

Coming to amortisation clause, there the items of expenditure qualifying for this should be enlarged in our view. We have given examples here of what these items may be—no mention is made of the items referred to in clause 8(4) of our memorandum. Similarly, no mention is made of expenses for the purchase of know-how and auditor's fees. More amortisation facilities should be given to the mining industry and in particular the allowance should be permitted on expenditure incurred on the acquisition of a site and of deposits of mineral. Moreover, the relief should be made available to all such assesseees both foreign and Indian.

One important is that the quantum of this amortisation which has been fixed as 2 per cent is very low for two reasons. One is, rate is very low according to the actual figures. Today the under-writing commission is 2½ per cent. On top of it there is 1 per cent brokerage. We have recent experience of Tribeni Tissues. The actual figure there comes to 6 per cent. I have the prospectus which gives all these details. So, the standard rate is 2½ per cent and brokerage 1 per cent. That alone makes it 3½ per cent. With expenses included it comes to 5 per cent. Second point is, the capital base itself is very narrow. It is 2½ per cent on the capital broadly defined as at the end of the previous year in which the business commences. At the end of the first

year of commencement of business the capital is normally small. We are hit in two ways. One, rate is too small and second, capital base is small. We should like to make a suggestion. The capital base should be related to the capital at the end of the year subsequent to the previous year in which business commences and in the second year this allowance should be adjusted.

There is one point about the cost of the issue of debentures. There we should bear in mind the decision of the Supreme Court in the case of India Cement where it was held that such expenses should be regard as revenue expenditure. So, in drafting this clause the decision of the Supreme Court in the case of India Cement should be borne in mind so as not to disturb the fundamentals of their decision.

In clause 21 there is a gross drafting error because the words, figures and letters "Section 80-L or" do not appear at all in section 80E. It is not clear to us.

MR. CHAIRMAN: It has been corrected.

SHRI N. C. CHATTERJEE: Since then we have rectified the mistake. We have accepted your suggestion.

SHRI SEN: Now, about clause 24 which deals with tax allowance. It is not clear however whether this deduction is available for one year only or for five years.

Then about clause 27—about relief. The principle of reducing references to income-tax officers to a minimum should be pursued by making it clear in the Bill that the paying authority will be allowed to grant the relief in accordance with the rules and without the need for an application being submitted to an income-tax officer. Secondly, the officers should grant relief

within six months of the submission of the returns.

Next is clause 30 and with it comes clause 59 which deals with penalty—sec. 271. In both these cases interest is charged (in accordance with sec. 139) and a penalty is imposed (under sec. 271) once on the firm and then on the partners.

SHRI K. L. GUPTA: Would you like penalty on the partner or on the firm.

SHRI MODY: Previously, under the old system it was on the firms. What we want now is that these should be done on a rational basis—so long it was done on an irrational basis.

SHRI SEN: Our point is that there should not be double taxation—first on the firms and then again on the partners. When you are charging a registered firm, you should not again charge their partners. That is our point.

WITNESS: We have another point to discuss in Clause 30, regarding the date for the submission of income-tax returns. In the case of tea companies whose accounting year ends on 31st December, sales are made right into the new year and it will not be practicable for them to submit the return by 30th September of the following year. So the date should be the 31st December of the assessment year and not the 30th September.

Next we come to clause 31 with regard to the self-assessment procedure. Here the lower limit has been reduced from Rs. 500 to Rs. 100. That will, in our view entail considerable hardship in regard to small assesseees who may not be conversant with the details and we therefore, suggest that the new proposal should preferably be withdrawn and if that is not possible it should be applicable to companies only and for the individuals the existing provision should continue. There is another small point in regard to Clause 31. There is re-

ference to Section 141(A) in our written memorandum. It should be Section 140(A).

Then we come to clause 43 regarding recognition of firms. Our view is that it does not satisfy us, it violates the main objective. It introduces complications and it makes the whole thing cumbersome and we do not see any reason why it is necessary to introduce a new procedure while the existing procedure is working satisfactorily. The new procedure will involve additional steps to be taken i.e. registration of the instrument of partnership with the Registrar of Firms.

Next we come to Clause 52 regarding granting of refund. It is suggested there that in the case of an assessee the time limit for payment of tax due after assessment is 35 days or earlier whereas in the case of refund it is three months. We do not find any reason why the two should not be placed at par.

Our next point is Clause 55. We should like to alter the reference and make it Clauses 56 and 58; these Clauses relate to appeals—Clause 56 relates to Tribunals and Clause 58 relates to High Court. Our remarks are more relevant to Clauses 56 and 58 than to 55.

Then we come to Clause 63 which deals with rigorous imprisonment. We think it is a very harsh measure and inflexible also. Some flexibility should be allowed and that can be done by substituting the word "shall be punished" by the words "may be punished". We also want that this provision should only apply to assessee's whose total income during the year exceeds Rs. 10,000.

SHRI BISWANATH ROY: But there are so many complaints of tax evasion which are known to the Government.

WITNESS: That I know but what I was suggesting was that equity and justice should be followed and this principle should also be observed. I think that there are enough powers at the hands of the Government to enforce upon those who do not pay tax in time without such inflexible course being included in the Act. There is interest, there is penalty and there are ample provisions in the Bill to enforce payment of tax in time without taking recourse to such harsh and inflexible course.

I have another point to suggest. In the Proviso, after the words, "under Sub-section (1)", the words "or sub-section (2)" should be added. These are not concessions exactly but provide some amount of flexibility which should be introduced. Provision should also be made in the Section to the effect that the penalties mentioned therein will not apply to cases where the returns are filed or the information called for is supplied with the extended time requested by the assessee, and that in any event the notice under Section 142 should provide for a minimum period of 28 days to the assessee within which the assessee can supply the information.

My last point is Clause 68 relating to Provident Fund. I think it is unnecessary and might make the operation of trustees difficult.

MR. CHAIRMAN: Now let us proceed clause by clause.

SHRI N. C. CHATTERJEE: Mr. Sen look at your first point i.e. Clause 3(d). It is not clear why you are saying that the limit of Rs. 4,000 inclusive of perquisites should not be fixed. What is your concrete suggestion? Is Rs. 4000 too low?

WITNESS: If you make it exclusive of the perquisites then also it will be low, and if you make it inclusive of the perquisites the position will be worse.

SHRI N. C. CHATTERJEE: What is your suggestion?

WITNESS: There should be no inflexible ceiling.

MR. CHAIRMAN: Have you got any figures to show that during the last 20 years you have reduced the number of foreign technician?

SHRI A. K. SEN: We have not got any definite figures on that.

MR. CHAIRMAN: You should also take into consideration the technical points. The point is whether one will be self-sufficient.

SHRI A. K. SEN: I do not think we will ever be self-sufficient. We should not be self-sufficient.

MR. CHAIRMAN: You know that technological independence and self-sufficiency are two different things. You can tell us about the technical know-how or the technical personnel that may be thought necessary with this regard.

SHRI A. K. SEN: It all depends upon the rate of our industrialisation, the rate at which we are making progress. We should not look at one side of the picture only.

MR. CHAIRMAN: One is to work out so many things. This may be with regard to the cost of production. The point is whether the cost of production is increasing or decreasing. You are to take all these things into consideration. Why do you object to a ceiling up to 20 years?

SHRI A. K. SEN: We consider that there should be no ceiling. What is necessary is that something concrete should be done to achieve the desired result. At the moment we have to get the approval of the Government in regard to certain matters. One may have to bring in foreign technician and we must be prepared to pay them their market value.

SHRI N. C. CHATTERJEE: What is wanted is that the ceiling should be made clear. Are you agreeable that in some cases a Company will be allowed to pay the tax on salaries in excess of Rs. 4000?

SHRI A. K. SEN: It is not clear whether the limit of Rs. 4000 would be inclusive of the value of perquisites. If perquisites are to be included, then the proposed amount of 4,000 is grossly inadequate, for, at the inflated prices which have to be paid today for such things as houses, servants and transport, the greater part of the tax-free salary will be accounted for by perquisites alone.

MR. CHAIRMAN: Do you think that in some cases you are to reduce the burden on the industry?

SHRI A. K. SEN: It is necessary that we should give them the market value as their knowledge is valuable. The point to be determined is to remove the hardship of the industry. We can bring foreign technician subject to the approval of the authorities concerned.

SHRI BISWANATH ROY: In case the price of a car is reduced, the quality of the car is different. I am not saying anything against the industry. I think some standard is required to be maintained.

SHRI SEN: The point that I was going to make is that we can employ foreign technicians or bring them into India only after the approval of the Government of India. If it is the intention of the Government that in a particular case the foreign technicians should not be brought to India, the easier thing would be not to approve of the employment of foreign technicians.

MR. CHAIRMAN: That is not the point. The point is that Government does not want to stand in the way but what Government feels after this enquiry that there are sufficient engi-

neers and technicians in our country. But it has been realised that there is a kind of built-in incentive to employ foreign technicians even without assessing whether such technicians are available in this country or not. In all such cases a built-in incentive is there and what has been calculated as remuneration to these technicians results in a massive drain on foreign exchange and a very substantial burden on the revenues of the Government.

SHRI GUPTA: After this clause you can employ highly foreign technicians but pay the tax. The point is that the tendency to employ foreign technicians should be discouraged and if a particular industry is forced to employ foreign technicians and give them more than Rs. 4000/-, it will have to pay more tax.

श्री योगेन्द्र शर्मा : अभी मिस्टर सेन ने कहा है कि 4,000 रु० की जो सीलिंग है उस के यह खिलाफ है। यदि मैं ठीक-ठीक समझा तो उन्होंने कहा कि वह सीलिंग के सिद्धांत के ही खिलाफ हैं। यह इन का आविर्ज्ञेकशन इस अमेंडमेंट के सिलसिले में इस प्रिन्सिपल के आधार पर है तो हमारी सेलेक्ट कमेटी और हमारी पार्लियामेंट असमर्थ है। क्यों कि हमारी पार्लियामेंट सीलिंग के प्रिन्सिपल पर कमिटेड है। हमने अपनी नेशनल लाइफ के बहुत से आस्पेक्ट में सीलिंग के सिद्धांत को इंट्रोडूस किया हुआ है, और शायद आगे भी करेंगे इसलिये यदि आप का आविर्ज्ञेकशन सीलिंग के जनरल प्रिन्सिपल के ऊपर है तब तो हमारी असमर्थता को आप माफ करेंगे। लेकिन यदि आप का एतराज खास तौर पर इस सीलिंग के बारे में है तो आप एक चीज साफ करें कि इस अमेंडमेंट के मुताबिक विदेशी टेक्नीशियन्स को लाने की कोई मुमानियत नहीं है, सिर्फ टैक्स का सवाल है। एक इंडस्ट्री किसी भी विदेशी टेक्नीशियन को ला सकती है। प्रश्न यह है कि उस को टैक्स रिलीफ मिलना चाहिये कि नहीं? टैक्स रिलीफ पूरी सोसाइटी की

कीमत पर देना होता है तो पूरी सोसाइटी को क्यों पैसेलाइज किया जाय टैक्स रिलीफ देने के लिये खाली इसलिये कि आप फ़ॉरेन टेक्नीशियन को किसी इंडस्ट्री में ला सकें? हमारी पार्लियामेंट ने इस नीति को निर्धारित और स्वीकार किया है कि हमें अपने जीवन, और खास कर के औद्योगिक जीवन के क्षेत्र में स्वदेशी को प्रोत्साहन करना चाहिये।

Why the whole society should be penalised or made to suffer for giving tax relief in order to bring in foreign technicians when there is growing number of Indian technicians so much so that already we have been faced with the problem of unemployment and that also goes against our national policy.

यह हमारी बुनियादी नीति है। क्या आप का सुझाव या संशोधन हमारी इस बुनियादी नीति का उल्लंघन नहीं करता।

SHRI CHATTERJEE: He should also tell us what should be the amendment made in the Taxation Bill having regard to this ceiling.

SHRI SEN: Sir, I would like to make one general remark in connection with the observation made just now. I am entirely in agreement with the view that foreign technicians should be brought in only when they are required for the benefit and interest of the country. That is accepted. But my plea is that already there is a machinery to scrutinise this. We cannot bring in foreign technicians without first getting the approval of the Government. Now, let the scrutiny, which is already there, be more rigorous—that either they are needed or they are not needed. At that stage the whole thing can be certainly scrutinised if they are really needed for the benefit of the country. We have an existing machinery to deal with that. But having recognised that

foreign technicians are necessary at a certain salary because the scrutiny covers the salary and service conditions suggested or recommended, what is the need for providing a sort of indirect deterrent through the Taxation Bill?

SHRI CHATTERJEE: You have not answered my question. My question is what is the view of your organisation as to what should be done with regard to perquisites or the extra salary. What should be the law, what change do you want?

SHRI SEN: If we have to provide for a ceiling under the tax laws, our broad suggestion would be to increase the salary, exclusive of all perquisites, from Rs. 4000 to Rs. 6000 per month and the technician should also be allowed to enjoy all other perquisites like housing, car, medical and one or two other things; also there should be no ceiling on the perquisites under section 40(a)(v) so far as the employer is concerned.

SHRI CHATTERJEE: Assuming there is a ceiling on the tax-free salary, you want that the perquisites should not be brought under that.

SHRI SEN: Yes.

SHRI N. K. SOMANI: There has been an opinion in this country that both the Indian and foreign employers have been making too liberal use of foreign technicians where it is not entirely justified. Would it not be worth while to put a restriction, of course, a tax restriction? But if the Chambers were particularly employing only sophisticated technicians, I am surprised they have not made any comment about the defining clauses. I would like to know why your Chambers did not say anything about the definitions.

SHRI SEN: These definitions have got to be wide because they have to cater for many varying circumstances. But it does not mean the Chambers are anxious to take advantage of this

wide definition. Of necessity the definitions included in the Act or the Bill should be wide. But what will be the particular application of a particular definition has to be decided by a particular organisation. I would like to see individual cases scrutinised more vigorously.

SHRI BENI SHANKER SHARMA: The main object of the amendments proposed in this Bill is rationalisation of certain provisions and simplification of procedure of collection of taxes, etc. How far you are satisfied that these provisions will go to simplify the procedure and rationalise the provisions.

SHRI SEN: Not in all cases, e.g. recognition of firms where instead of simplification, complication has been introduced. We do not see the necessity of a new procedure. The old procedure is, on the whole, regarded as quite satisfactory.

SHRI N. K. SANGHI: You represent a very important association and so many associations are connected with you. Can you give us a tabulated survey of a particular State or an industry where majority of these technicians are drawing more than Rs. 4,000? That would be very helpful.

SHRI SEN: All these reports should be available with the Government because we have to apply to Government to get their approval for employing these people.

MR. CHAIRMAN: Whenever they go in for collaboration with foreign firms they press for a foreign technician and they get it from the Government.

SHRI SOMANI: I think the department has got the information as to how many foreign technicians there are in India now—their salaries—if we can get this, it will be of great help to us.

MR. CHAIRMAN: Mr. Sen, you are pleading for the public sector and not for the private sector. Our statistics show that on 1-1-69 there were 1928 foreign technicians in India who were eligible for tax concession.

SHRI B. S. SHARMA: I think that figure is obsolete now.

MR. CHAIRMAN: No, no. Now, Mr. Sen, your quota is 129 and you need not worry about it.

SHRI R. K. SINHA: I would like to know what are their lines of specialisation for which the foreign technicians have come. We have to depend on them for everything. Even breeding of children is dependent on their advice. Then there are animal husbandry, poultry and so on and so forth. I think the Ministry concerned should make a study of this. However, my question to Mr. Sen is this: India is a poor country. Here there is a standard of living and considering that what Mr. Sen thinks should be the perquisites that should be made available to foreign technicians. Should they have a bungalow, a car and other facilities?

SHRI SEN: How much we should pay to a foreigner that will be governed by the level of payment outside. A foreigner is not concerned with the level of payment that is made inside India. If we have to attract good and efficient men we have to pay them on international level—salary and perquisites.

SHRI R. K. SINHA: But the industry should also come forward to pay the tax as they are being immensely benefited by these foreigners by their knowledge of know-how.

SHRI SEN: The question is that you have already fixed the ceiling of Rs. 4,000 and they pay tax on salary in excess of Rs. 4,000 and so this will be an additional burden on the industry if they are to pay again.

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SHRI VISWANATHAN: The point is how much the industry is paying—is it : 1 p.c. or : 02 p.c. They are gaining so much from their technical assistance—they are making cent per cent profit and there will be no harm if they pay a little more tax.

SHRI SEN: At the present rate of salary and perquisites, it is difficult to attract any foreigner.

SHRI S. B. PATIL: Instead of importing foreigners to get the know-how, will it be less expensive if we send our men to get experience from abroad?

SHRI SEN: We have got both the things—we import foreigners for a very short period—one, two or three years and we also send our men for getting training abroad.

SHRI N. C. CHATTERJEE: I am now going to Clause 8. You have said that the limitation of the amortisation allowance to 2½ per cent is quite inadequate. What actually do you want?

WITNESS: I think 6 per cent will be the reasonable figures I have already mentioned a case.

SHRI K. L. GUPTA: What is the basis of your suggestion?

MR. CHAIRMAN: Would you give us a copy of the balance sheet of the company in support of your contention?

WITNESS: Yes, Sir.

SHRI N. C. CHATTERJEE: You have said that the upper limit should be substantially increased. Why?

WITNESS: Sir, the brokerage is 1 per cent and other charges are 5 per cent. So we want that 6 per cent would be reasonable and this we have paid in the case of Tribeni Tissues and it can be taken as a representative case.

SHRI K. L. GUPTA: But under what basis. Unless you give us 10|12 cases you cannot justify your contention. There must be some basis. Let us know some figures. You may send the figures later.

SHRI N. K. SOMANI: This is a valid point because in the past we asked the Government to furnish to the Committee representative set of figures regarding the percentage *vis-a-vis* capital employed under the initial promotional expenses of a company. The department came out with certain figures which according to me were not representative at all. But this will support your case very much if you are able to furnish 10|15 such cases to the Chairman of this Committee. So far as this Tribeni Tissues case is concerned it may be more or less reasonable but at the same time we have to take into account what the government should have and what the Income Tax Department should have. I can quote an instance where 85 lakhs new capital is being issued by one of the companies who have not sought to under-write their issues. They have 2½ per cent straightaway. Therefore, extreme cases on both sides can be quoted. So it is better that you send a set of representative cases to the Chairman as early as possible.

WITNESS: Yes, Sir. We would prepare it and send it. But the Tribeni Tissues can be taken as a representative case.

SHRI N. C. CHATTERJEE: What is the capital basis?

WITNESS: One crores and 13 lakhs.

SHRI N. C. CHATTERJEE: Mr. Sen, you have dealt with the Supreme Court judgment in the India Cement case. Now, what is your concrete suggestion? Just look at item No. 2 at page 5 of your memorandum. It reads thus, "The proposal to permit the amortisation of expenditure incurred in the issue of debentures

should be carefully reconsidered, for the Supreme Court has ruled in the case of India Cement Ltd. that such expenses should be regarded as revenue expenditure." Now, what is your concrete recommendation?

WITNESS: They may be included in the Bill but the benefits of India Cement Ltd.'s case should not be disturbed.

OFFICIAL OF THE MINISTRY: What is admissible under the law is attempted to be taken away by this clause and what is not admissible is included for allowance under amortisation. That is a misgiving on your part to which India Cement does not come at all. What is admissible has been decided by the Supreme Court and will remain admissible. The decision of the Supreme Court is not negative by this.

WITNESS: That is our contention also that the benefits of India Cement case should not be disturbed.

SHRI N. C. CHATTERJEE: Then we come to paragraph 4 regarding omissions. You have said that no mention is made of the amortisation expenses incurred in amalgamating companies. Similarly no mention is made of expenses incurred by the purchase of know-how. There is also no mention of the fee which has to be paid for an auditor's report when a prospectus is under preparation. Would you give us your concrete suggestions? What should be done according to your view.

WITNESS: They should be included and amortisation should be allowed.

SHRI N. C. CHATTERJEE: Do you want separate clause for them?

WITNESS: It may be included in the concerned clause.

SHRI BENI SHANKER SHARMA: Do you think that the amortisation period of 10 years is sufficient? Do you want that it should be lesser or higher?

WITNESS: 10 years will be sufficient.

SHRI N. C. CHATTERJEE: With regard to amortisation of expenditure there is a suggestion by Mr. Tata that in the place of Indian Company it should be substituted by assessee. Do you approve of that?

WITNESS: Yes, Sir. There is no reason why distinction should be made. Now with your permission, Sir, may I revert back to the India Cement case? Could we from the Associated Chambers offer a draft wording of what should be included in the Bill?

MR. CHAIRMAN: Yes, you can do that and send it to us.

श्री योगेन्द्र शर्मा : श्री सेन साहव ने कहा था कि इण्डियन कम्पनी और बाहरी कम्पनी में भेदभाव नहीं करना चाहिए, तो मैं यह जानना चाहता हूँ कि क्या सेन साहव यह समझते हैं कि हमारी पार्लियामेंट को या हमारी सरकार को इण्डियन कम्पनियों को बाहरी कम्पनियों के मुकाबले में तरजीह नहीं देनी चाहिए? अगर तरजीह देनी चाहिए तो फिर इण्डियन कम्पनी और बाहरी कम्पनी के भेदभाव को हटाने की बात क्यों की जा रही है? इस के पीछे क्या बात है?

SHRI N. C. CHATTERJEE: Would there be comprehensive legislation to cover the partnership and other things?

MR. CHAIRMAN: We have discussed this point. There is difference between the Indian Company and this Company. We shall discuss that later on.

श्री योगेन्द्र शर्मा : इमॉर्टाइजेशन के जो विभिन्न आइटम्स हैं; उनके बारे में श्री सेन साहव ने बताया कि इन आइटम्स की संख्या

बढ़ना चाहिये। तो क्या इस बात का खतरा नहीं है कि इमॉर्टाइजेशन का दुस्प्रयोग किया जायेगा? हम लोग जानते हैं कि हमारे आर्थिक जीवन की यह वास्तविकता है कि बहुत सी चीजों का दुस्प्रयोग किया जा रहा है। ऐसी हालत में इमॉर्टाइजेशन के आइटम्स का दुस्प्रयोग न हो, इसके बारे में आपके सजेन्स क्या हैं?

SHRI A. K. SEN: If there is anything wrong, then we can take care of it through the legislation. What is not necessary should not be included in it.

SHRI YOGENDRA SHARMA: What will happen if there is any loophole.

SHRI A. K. SEN: If there be any loophole or lacuna that should be remedied.

MR. CHAIRMAN: What is actually done in some Companies will have to be looked into.

SHRI A. K. SEN: In some cases under-writing has become necessary and therefore all that is necessary should be taken into account. As a matter of fact, under-writing has become an absolute necessity because of the capital market and other things.

SHRI K. L. GUPTA: Relevant clauses should be dealt with first to make the position clear regarding the recognition of firms.

SHRI B. S. SHARMA: We are now to take up the section which deals with the assessment. You will see that so far as the particular section is concerned, it is working very harshly against the assessee. First the assessee is required to file a return. They are required to calculate their tax and further they are to pay tax within a certain period. Now they cannot pay the tax until the Income-tax Officer issues the challan.

SHRI A. K. SEN: We suggested deletion of what is unnecessary and

the facility should be extended to a place where it is dire necessity.

SHRI SHAH: Previously, as you know, there was provisional assessment but it is found in practice that the department does not have enough machinery for making an assessment because they have to go through a large number of cases. The department's intention is that in course of time the assessee would be able to calculate the tax and pay. This is a step towards self-assessment.

SHRI B. S. SHARMA: It is necessary that those who are connected with the matter should see that everything is done properly to avoid any difficulties in future.

MR. CHAIRMAN: I suggest that it should be the duty of the officer to issue the challan himself. Of course, I have got an alternative suggestion. But in the return something like a challan should be attached—that I admit—but the assessee should be helped in knowing his liability because the calculation is so complicated now-a-days.

SHRI SHAH: I welcome the viewpoints expressed by you and I will also partly share the views of the companies that we have received. But at the moment we are thinking of changes in the law. On these points we would certainly like to see that assistance is given to the assessees but we would also like to see that the administrative machinery should evolve the means to simplify the challans. We would also like to see that we provide the taxpayers adequate literature to train them up. There are various steps to be taken for the purpose. But at the moment we are thinking of the law. Training must be done by the Department no doubt and so far as the large number of small assessees are concerned, they should be trained and should be assisted and our fleet of Public Relations Officers should be increased. But the basic principle should be

borne in mind that the administration is possible—as is done in other countries—we have now today 30 lakhs and in course of time we will have 50 lakhs assessees unless a large part of it is done by self-assessment and voluntary compliance. The department is only moving in a small area where it is necessary but I agree that steps should be taken to educate the large number of assessees.

SHRI BENI S. SHARMA: My only point is that no penalty should be imposed for nonpayment of tax within thirty days from the date of assessment. If a person does not get the challan, how will he pay the tax? So I suggest that we may agree that penalty should start from the day on which the challan is issued and not from the date on which tax becomes due.

SHRI SHAH: That relates to administrative matters.

SHRI GUPTA: This problem cannot be solved only by educating the people. The administrative machinery is such that we don't get the challans unless we give something to the clerks and we know that in spite of their best efforts the assessees are being harassed, and the only solution is, as suggested by Mr. Sharma, that the Department should send the challan after due calculation and thereafter within thirty days the assessees will be asked to pay the tax.

MR. CHAIRMAN: These are points which we shall discuss amongst ourselves. Now, let us proceed with clause 43, Mr. Gupta.

SHRI GUPTA: I think, Mr. Sen, you prefer the *status quo* to be maintained?

SHRI SEN: Yes.

SHRI GUPTA: But why do you want it? Can't it be simplified? Why do you want renewals every year?

SHRI SEN: We are in favour of general simplification but our submission is that the procedure which has been suggested is introducing a lot of complications.

SHRI GUPTA: So you want the existing proceeding to remain?

SHRI SEN: Yes. If there is further simplification, then as regards renewals are concerned, no form should be prescribed for filing the return and that there should only be a form for the purpose of registration.

SHRI SANGHI: On clause 55, I personally feel that you are doing a little disservice to the taxpayers. You have suggested that when the Income Tax Department loses an appeal, it should not only pay all the fees involved but also the assessee's legal costs. Don't you think that if we have such a thing, the Department would be more resistant to giving judicious decision to the case? I would request you to consider this and give a little thought to it.

SHRI SEN: Our suggestion is that the Department should bear all costs.

SHRI GUPTA: In clause 63, you have suggested 'may be punishable' in place of 'shall be punishable'. In this clause the discretion regarding punishment is already there. Why do you want to change it?

SHRI SEN: But there is no knowing how the discretion will be exercised.

SHRI GUPTA: What is your suggestion regarding physical punishment?

SHRI SEN: It should not be made obligatory.

SHRI GUPTA: My last question will be, the Commissioner has not unfettered power to impose penalty under clause 274A—what is your reaction to that?

SHRI SEN: Let that remain. We would also like to have more extensive use of this power. When you give some discretionary power it is expected it will be used judiciously.

SHRI GUPTA: Do you want certain principles should be adopted and followed by the Commissioner?

SHRI SEN: We are confident that this power will be exercised judiciously.

SHRI GUPTA: We would like to know whether this clause exists in other countries.

MR. CHAIRMAN: We shall discuss that point in the Committee.

Thank you, Mr. Sen, and your colleagues for the valuable suggestions that you have made.

II. Indian Chambers of Commerce

Spokesmen:

1. Shri A.K. Jain—*President.*
2. Shri B.P. Khaitan—*Chairman, Taxation Sub-Committee.*
3. Shri J. Singhi—*Member, Taxation Sub-Committee.*
4. C. S. Pande—*Secretary-General of Chamber.*
5. Shri B. Kalyanamdaram—*Deputy Secretary.*
6. Shri Manab Chaudhry—*Assistant Secretary.*

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Mr. Jain, before we take up clause by clause discussion, if you like, you may highlight the points that you want to bring before the House.

SHRI JAIN: Thank you, Sir, for giving us this opportunity to place our views before this Committee. We have already sent our memorandum to you in advance. I would like to highlight only some of them. First of all, I would mention the case of foreign technicians. The amendment therein imposes a ceiling of Rs. 4,000 in salary and the period of tax free salary is reduced to three years and the approval period is reduced to 6 months. The changes sought to be introduced are all for promotion of Indian consultancy service. We feel restrictions imposed are unrealistic. The figure Rs. 4,000 is far too low for any highly qualified technician. It should be increased to Rs. 7,500. In order to encourage Indian consultancy service, we think some tax incentive should be given.

SHRI JAIN: I would like to point out that the remuneration of foreign technicians is subject to review by the Central Government for their approval and permission. In the long run it is felt that when foreigners are paid for their knowhow, it is much more than bringing foreigners on monthly basis, because our people work with them and got the experience quicker. So, this aspect should be kept in mind while considering the point.

SHRI B. S. SHARMA: Have you any idea as to how many industries are required to bring-foreign experts.

SHRI JAIN: Many important industries are bringing foreign experts. There are some industries which do not require them. Sugar industry does not require. So, it depends on the industries.

Next clause 8—35D—amortisation of certain expenses. I think this is a step in the right direction. Our Chamber has always been pleading that all expenditure incurred in the business is either revenue expenditure or capital expenditure. In the

amendment a list has been specified for five items but these items do not cover a large number of expenses legitimately required for business purposes. By way of illustration I would like to point out that certain items of expenditure necessarily required have neither been shown as revenue expenditure or eligible for depreciation. For instance, registration for mortgage of property when loan is given. Then there are certain trial period expenses, pre-incorporation expenses, pre-operational expenses on administration and accounts, expenses on plants before commission on a commercial scale—some raw materials are consumed—their charges etc. Those expenses if they are capitalised do not get depreciation facilities on those items. Payment for technical know-how—capital payments for patents are entitled for amortisation but there is no relief for capital payments on know-how. Travelling allowance for trips abroad and expenditure incurred over infructuous feasibility reports. Sometimes entrepreneurs take up three or four schemes—and only one scheme is finally taken up. These expenditures are neither allowed as revenue expenditure or capital expenditure for the purpose of depreciation. For all these cases, a scheme of amortisation should be introduced. I cannot enumerate all the items—but for genuine business purposes whatever expenditure is incurred should have the amortisation facility.

Instead of permitting amortisation of preliminary expenses incurred at any time after 31st March, 1969, it would be preferable if preliminary expenses are covered by the new section 35D if they are incurred at any time in any accounting year relevant to the assessment year 1970-71.

Then in the case of mines, particularly when the mines are abandoned or exhausted, expenses in connection with compensation paid to labourers should be allowed to be set off against income of earlier years. This system is prevailing in U. K. and U.S.A. In the case of mines there is infructuous

expenditure on prospecting. This should be allowed. On a perusal of the list of minerals in part A and B of the 7th schedule, it is found that bauxite which is essential for the production of aluminium is not in the list. It should be included.

Then new section 35E it is proposed that an assessee who has obtained amortisation allowances for shifting an industrial undertaking, if he sells the undertaking within 4 years, he shall not be eligible for the unabsorbed amortisation allowance and allowance already allowed should be added. My suggestion is that since the undertaking is continuing it should not be disallowed.

SHRI JAIN: Sir, if amortisation allowed is added back it means that the expenses incurred in shifting are not responsible when he sells it. Amortisation expenses are allowed as revenue expense. Expenses of shifting will be capital loss, and capital loss cannot be set off against revenue profit. This will create hardship to the assessee. Then Sir, the proposal that amortisation will not be allowed in case of sale within 4 years does not appear to us to have any particular reason for doing so. It does not provide any safeguard to the Income Tax Department but may be a hardship to the assessee. It should be deleted. Then we come to the amortisation period of 10 years. You know that any industry shifts only as a last resort when it cannot continue economically in a particular area for want of raw material or otherwise. The period of 10 years is too long and we suggest it be reduced to five years. Then we come to Section 35 (f) which relates to prospecting and mining. A gain this is applicable only to companies engaged in the mining industry. There is no reason why individuals and partnership firms should not also receive the same benefit. In fact the initial expenses for prospecting and mining is met by the individuals and partnership and later

when an application is made to the Central Government, the expenses are transferred to the Company. So this may add an additional difficulty. I have already dealt with the question of infructuous expenditure for prospecting etc. It may be mentioned here that these expenses will be allowed to be set off only when the income is derived from mining operation. A company may have mining operation and it may have other business also. It will unnecessarily complicate matters if the amortisation expenses are set off only against mining income. It should be set off against all incomes irrespective of the fact whether it is derived from mining or from other sources. Sometimes mines are acquired by the entrepreneurs by purchasing and sometimes by lease and payment of lump sum monies. These lump sum payments relating to the acquisition of the lease should also be given the same treatment as prospecting expenses. There is no specific provision in this regard. In this connection I would refer also to Section 42 of the Income Tax Act on mineral depletion allowance. Of course this is a special provision for the purpose of exploiting the oil resources of the country and it is available only where the agreements are approved of by the Central Government. But the same principles should be extended in the case of mines because this is also a depleting asset.

MR. CHAIRMAN: Do you mean to say that the mines also will have to be treated on the same footing as the mineral oils?

SHRI JAIN: I am not suggesting that but it should be treated at least on par with mineral oils. In the case of mineral oils the government is giving a special depletion allowance. We do not know how much oil remains under-ground. But the government is giving them the allowance.

MR. CHAIRMAN: You know that question of oil and that of mines should be treated on a different basis.

WITNESS: Sir, I am merely suggesting need for same kind of depletion allowance for mines for the same reason.

Regarding a proviso in section 35 (f), in this proviso there is a provision that in the case of amortisation expenses when it is being spread over, after debiting amortisation expenses over that particular year the income is reduced to nil, the unabsorbed amortisation expenses should be carried over to next year and would become a part of the expenditure for the next year. Likewise it will be carried for 10 years from the date of commencement of production. But we find in Section 35(D) there is no such clause. We are not in a position to understand why this is given in section 35(F) only and why not in Section 35(D). Our Chamber's suggestion is that this should be treated as part of the expenditure for the year like 35(B) and should also be treated as a business loss carried over and allowed to be adjusted in the future years as a part of the business loss, and for Section 35(F) no separate treatment should be given.

SHRI JAIN: Sir, I might clarify a little. I expect that this is the intention of the Committee that the expenses will not lapse at the end of the year.

Sir, then we come Clause 14 viz. clubbing of H.U.F. income with the income of the individual. Sir, I would point out that various assesseees have planned their business in accordance with the law which is uptill now prevailing. If it is found that it is not operating to the advantage of the Exchequer these are changed. But retrospective application to past transactions would create hardship to the assesseees who have planned their business in the manner which was then allowed by the law prevalent. So considering all these factors and in all fairness to the assessee we think

that such proposals of clubbing a portion of the HUF income with individual income should be dropped.

You will find that there is no gift involved in this matter. We would request you to see that there is no ambiguity in the matter. Complications will arise if there is any ambiguity and it should be avoided. We have placed our views in the memorandum that has already been submitted.

I refer to Clause 30 regarding interest for delay in filing returns. There should be a provision for payment of interest in case of delay in refunds also. Though there is no objection to the levy of interest in case of delay in filing returns we feel that the proposed provision may act harshly on the assessee. The anomalies that are there should be removed as far as practicable. The refund becomes due to the assessee from the date on which an incorrect assessment is made by the ITO and so interest on refunds should be paid from such date of assessment. This should be some sort of a check on unduly heavy assessments. It is suggested that interest payable by assesseees be reduced in all cases to 6 per cent against the existing rate of 9 per cent.

MR. CHAIRMAN: When the question of interest payable comes to you, you want to reduce the rate of interest.

SHRI JAIN: Reduction of interest should be from 9 per cent to 6 per cent is equitable since while the interest received by the assessee is taxed, interest paid by him is not allowed as deduction.

Many of the important points have been dealt with in the memorandum. So it is not necessary to dwell on them in details. Then we come to Clause 43 regarding recognition of firms. There is at present a considerable delay in the granting of registration by

the Registrar. We would also suggest that in the matter of assessment of firm incomes there should be no separate tax levied on the recognised firms.

SHRI KHAITAN: I would like to point out something here. The system of tax was introduced with a view to check avoidance. Here I think a change is necessary since in the case of professional firms the question of avoidance does not arise, as no person can be taken in such partnership unless he is professionally qualified.

SHRI B. S. SHARMA: So far as the partnership law is concerned, they can be admitted to the benefit of partnership. The thing is how you will safeguard that position. There is no distinction between professional firms and other firms.

SHRI KHAITAN: Mr. Sharma, that is not correct. So far as the solicitors are concerned, they cannot admit any person in the partnership who is not a solicitor. The High Court will not allow them to take in minor partners. Similarly the Chartered Accountants cannot admit somebody who is not a chartered accountant. Non-professional men cannot be admitted in such professional partnerships.

SHRI BENI S. SHARMA: So far as the Partnership Act is concerned, there is no bar in doing that.

SHRI KHAITAN: But you cannot ignore the other provisions of law.

SHRI JAIN: In the case of partnership, there is another difficulty. In the case of a partnership firm there is penalty or interest to be paid on account of late filing of returns. Now, it attracts double interest, double penalty, both in the hands of the partnership firm and in the hands of the individual partner. Something should be done to safeguard this. We feel that now that you are making this

change on recognised firms, this provision for separate taxation for registered firms should now be abolished. Although this is not strictly within the purview of this committee, still we are expressing our view on this with the hope that there should be no separate taxation on registered firms.

Now, about the other points which are mentioned here, I would not like to go into detail except that the provisions regarding penalties are very harsh and specially the provision for confinement. Here, if the assessee makes a mistake or delay in filing returns there should be provision for imposing pecuniary penalty but not for physical confinement. We are all aware of how these things occur. I think this requires some treatment which should not be so harsh as mentioned in the Bill. Our suggestion is that pecuniary penalties, and not physical punishment, should be imposed.

Then, I would just like to make one more suggestion with regard to clause 68. At present recognised provident funds and gratuities and superannuation funds are exempt from taxation. Now gratuity has also become a very vitally accepted principle and the Supreme Court has awarded gratuity in a large number of cases and many companies have started forming gratuity funds. If the gratuity fund is approved by the Commissioner of Income Tax, we suggest that the income of the gratuity fund should be exempt from taxation.

I have not dealt with all the points made out in the memorandum but I have just dealt with the more important points.

SHRI SOMANI: On the aspect of foreign technician, you have said that there should be no ceiling at all. Would you like to recommend any alternative ceiling?

SHRI JAIN: We have said that there should be no ceiling but if any ceiling is to be suggested, it should be Rs. 7,500.

SHRI SOMANI: Surely you can employ foreign technicians and pay the excess tax on the balance, there is no intention of proscribing the foreign technicians to be employed. In any case, there has got to be a certain ceiling. Rs. 4000 may be low but so far as the principle is concerned, what is your opinion about the ceiling?

SHRI JAIN: Except in a few cases the ceiling should be Rs. 7,500.

SHRI SOMANI: The fear of the private sector has been that foreign technicians might be banned and therefore their number should be exaggerated. The Department has given us figures as on January 1968 that out of 1920 technicians that are employed in this country a large majority, as many as 1500 are working in public sector undertakings and only about 129 are working in Indian companies. Therefore, I think the point has to be considered. On this a bit of sense of irresponsibility on the part of public sector undertaking and making use of foreign technicians in such a large scale has got to be curbed.

SHRI JAIN: As far as private sector is concerned, it is quite clear that we are doing our very best to train Indian technicians and take Indian technicians as early as possible.

SHRI SOMANI: We would like to have the operation of the cadre of foreign technicians as restricted as possible. Now, if you see the definition of this clause on page 5 of the Bill, you will find that the definition has been so enlarged that even constructional engineers or even business and management experts and several other categories of persons and even poultry farmers have been included in the definition. We do not certainly see any point in enlarging the definition. We do not certainly see any point in enlarging the definition as such. I would like to know your views

whether the definition of technician should be restricted. Of course there are certain special fields where technicians are required but don't you think that unless there is some sort of restriction every Tom, Dick and Harry would be coming to India?

SHRI JAIN: I agree, but there is a provision for Government's approval. In such cases Government will not give the approval.

SHRI SOMANI: I do not know how it will work out. Mr. Jain, would like to restrict the word 'technicians'?

SHRI JAIN: I would agree that in certain fields foreign technicians are not required. But it is difficult to define in that manner. This can be better controlled by a system of Government approval in order to achieve the purpose.

श्री योगेन्द्र शर्मा : क्या आप यह बतला सकते हैं कि हमारे देश में मुर्गी पालन करने के लिये और खेती करने के लिये विदेशी विशेषज्ञों की बहुत बड़ी आवश्यकता है ? आप का क्या बढ्दितगत विचार है ?

श्री जैन : मुर्गी पालन के बारे में तो मुझे कुछ नहीं मालूम है, लेकिन खेती के बारे में खास तौर से बीज और फर्टिलाइजर के सम्बन्ध में जो फॉरेन टेक्नीशियन्स हैं

श्री योगेन्द्र शर्मा : फर्टिलाइजर तो दूसरी चीज में आ जाता है ।

श्री जैन : फर्टिलाइजर के उपयोग के बारे में, और किस तरह से अच्छा बीज बनाया जाय, खासतौर से गेहूँ और मकई के क्षेत्र में काफ़ी काम हुआ है ?

श्री योगेन्द्र शर्मा : पूरा में जो हमारा अनुसन्धान केन्द्र है वहाँ देश के विशेषज्ञों द्वारा काफ़ी संतोषजनक काम किया जा रहा है । उस के लिए क्या आप समझते हैं कि विदेशी विशेषज्ञों को बुलाना चाहिये ?

श्री जैन : मेरी राय में शुगर के बारे में जो पूसा इंडस्ट्रीयूट में काम हो रहा है वह बहुत बढ़िया हो रहा है और उसमें कोई आवश्यकता नहीं है ।

श्री योगेन्द्र शर्मा : ऊन और रुई के बारे में आप का क्या विचार है ?

श्री जैन : इन के बारे में बहुत काम करने की काफी आवश्यकता है ।

श्री कंवर लाल गुप्त : जब रेस्ट्रिक्शन की बात करते हैं तो रीजनेविल रेस्ट्रिक्शन की बात समझनी चाहिए । कुछ इंडस्ट्रीज ऐसी हैं जहां बिल्कुल जरूरत नहीं है फॉरेन टेक्नीशियन्स की । हां, कुछ सोफ़िस्टीकेटेड इंडस्ट्रीज में जरूरत पड़ सकती है तो वहां आप रीजनेविल रेस्ट्रिक्शन लगाने की जरूरत आप क्यों ठीक नहीं समझते हैं ?

श्री जैन : सरकार का ऐंजुवल लेना जरूरी कर दिया जाय ऐसे मामलों में ।

श्री कंवर लाल गुप्त : हमारा तो अनुभव यह है कि जो इंडस्ट्री वाले या पब्लिक सेक्टर वाले लिख कर कारण देते हैं तो किसी न किसी तरह उसका ऐंजुवल मिल ही जाता है । और अगर फ़िगर्स मिल जायें तो आप देखेंगे कि शायद की कुछ केसेज़ में ऐसा हुआ हो कि फ़ॉरेन टेक्नीशियन के लिये परमीशन मांगी गयी हो न मिली हो ।

इसलिए अनएम्प्लायमेंट दूर करने के लिये क्या यह जरूरी नहीं है कि फ़ॉरेन टेक्नीशियन में कुछ रेजिस्ट्रेशन डाल दिया जाय ।

श्री जैन : मैं किसी भी रेस्ट्रिक्शन के खिलाफ़ नहीं हूँ ।

SHRI N. C. CHATTERJEE: Technician means a person having specialised knowledge and experience in constructional, manufacturing operation, or in mining or generation or distribution of electricity or other form of power, or agricultural, animal husbandry dairy, or poultry farming. Do you want this to be clarified.

SHRI JAIN: This is very wide. I do not know how it will be applied, but it is difficult to make it precise.

SHRI BISWANATH ROY: Whether invitation of foreign experts is to be encouraged or not. If it is essential, in that case, do you agree with the policy of ceiling or restriction?

SHRI JAIN: I am all for encouragement to Indian technicians. I think this should be done by promotional measures. On restriction I have already mentioned that the ceiling should Rs. 7,500.

SHRI S. B. PATIL: On what basis you suggested this figure of Rs. 7,500?

SHRI JAIN: It comes to 12,000 a year. This sort of salary is not unknown.

SHRI SANGHI: What is your suggestion about tax incentive?

SHRI JAIN: Lot of work is required in the form of technical consultancy service. They cannot easily compete with foreign firms. They have no capital assets of their own. Lower rate of taxation or development rebate may be allowed. We will give some more thought to it and give our views.

MR. CHAIRMAN: You have mentioned that when the country is trying to produce sophisticated goods and export them by competing in international markets. Have you any idea of any industry associated with your Chambar which is doing this with the help of foreign experts?

SHRI JAIN: Engineering industry has done exceptionally well in this field.

MR. CHAIRMAN: They have not done it with foreign technicians. They received incentives from Government.

SHRI JAIN: At the same time the quality plays a very important part.

MR. CHAIRMAN: Tell me of one instance where an industry has been able to compete in the foreign market because of foreign technicians. Can you give us any instance that foreign technicians have helped us to increase our production?

SHRI JAIN: Mr. Kargin, who was in Jessop and now with Government, is a very competent person.

MR. CHAIRMAN: If you have any specific instance in view of any particular industry who are competing with other countries, please give their names later on.

SHRI JAIN: All right, Sir.

SHRI B. S. SHARMA: Mr. Jain, you have given a very formidable list of expenses where amortisation benefit should be given and that list also I think is not exhaustive but only illustrative and there may be many more items. Now, I draw your attention to clause 8 (g) which says "such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed". There are two aspects of it. You have stated in your preliminary observation that the I.T.O. should decide whether an expenditure is capital expenditure or revenue expenditure. Now, here also should the I.T.O. be left to decide the matter himself or it should be left to the rule making authority.

SHRI JAIN: I have stated that all legitimate expenses for the purpose of business should either be revenue expenditure or capital expenditure and amortisation should be given. The I.T.O. disallows this in both the

places. So, our point is that we need this benefit, it does not matter who does it.

(The Committee then adjourned).

The Committee re-assembled after lunch at 15.00 hrs.

III Indian Mining Association, Calcutta.

Spokesmen:

1. Shri H. C. Dass
2. Shri S. P. Saigal
3. Shri S. K. Uiamsingh
4. Shri W. G. Macintosh.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: We welcome you all to this committee. Now, before, coming to the actual business we have a formality to be observed According to the rules of procedure evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. But even though you might desire that your evidence is to be treated as confidential such evidence is liable to be made available to the Members of the Parliament. Now, we have received your memorandum. If you like to highlight any of your points you can do so.

MR. DASS: Mr. Chairman, Sir, our appearance before the Committee is in the context of provisions which are sought to be made by section 8 of the amending Bill by introducing section 35(F). This is about deduction for expenditure on prospecting. Firstly it is about the allowance for prospecting etc. and secondly the allowance pertaining to the payment made for acquisition of mining rights etc. In this Bill provision has been made for allowing the former whereas in respect of the later specific provision has been made for not allowing it. The first point is that even in respect of the former namely the provision pertaining to prospecting etc. expenses the proposals do not go far enough. It may be submitted that such expenses e.g. prospecting etc precede setting up of a mine. First

thing is that prospecting is done, then shafts are set up and then plant and machinery etc. are fitted and then the raising start. On the plant, machinery and other equipments which are installed, depreciation is allowed and development rebate is also allowed which means in other words that the unit gets Rs. 135 against Rs. 100 spent and so our submission is that in case of mines and minerals the prospecting expenditure should be allowable in like manner. Therefore, firstly, our submission is that the proposal in this respect does not go far enough. Prospecting expenditure also should be eligible for similar treatment inasmuch as it is the first step towards setting up and fitting up of mines. It may be submitted that in tea gardens, for planting of tea bushes development allowance has been permitted. Regarding the second point namely allowance in respect of payments made for acquiring mining rights or the mineral deposits some type of amortisation of the expenditure should be permissible. Another point is that when a mine is ultimately abandoned, the buildings are to be discarded, the plant and machinery have to be discarded, and so there is a huge loss. This point should also be taken note of and some tax concessions should be made.

SHRI DASS: I would speak like this that all the working expenses direct or indirect should be allowable. On the drafting side, one point is that the provisions in the drafting have been made applicable to Indian Companies. This also means that certain companies which do not fall within the definition of the term of Indian Companies would not get the benefit of it. For instance Indian Copper. In some cases about 95 per cent of the capital is held by person inside India. I should point out that the terminology used may be something different so that the Companies like Indian Copper are not made to suffer. The provision should not be restricted only to companies. As a matter of fact, they should be applicable to all assessees. We suggest that the words

'Indian Company' may be replaced by the word "assessee" or the words 'domestic company.'

In section 85 F a new schedule has been incorporated. There are two Schedules in the income-tax Act—Schedules V and VI. There are three items—bauxite, mineral oil and aluminium. What we submit is this that it may not be necessary to have Schedule VII here. Schedules V and VI are there in the Income-tax Act. This provision can be made applicable to the items covered by them.

There are very serious handicaps which the mining industry has been suffering from for a long time. Those handicaps are required to be removed; if some effective steps are taken, they may be removed. There is some provision that tea garden would be exempt from tax. We feel that the same treatment should be given too in the case of coal mining and other industries.

MR. CHAIRMAN: That has been given just to meet the international competition.

SHRI DASS: We can also supply coal. Till 1965 the entire supply was made to Pakistan. Incidentally, I may point out that Burma was our market.

MR. CHAIRMAN: When Burma was our market, the market condition was quite different.

SHRI DASS: There is diversity of interpretation in some cases. All these need some scrutiny so that any difficulty does not arise.

MR. CHAIRMAN: Mr. Das, you have said that the word 'Indian' should not be included in the proposed section, and that should be substituted by the word 'domestic'.

SHRI DASS: Yes.

MR. CHAIRMAN: There is a section 80B which defines what is a domestic company.

At this point Mr. S. P. Saigal mentioned that in some cases "development expenses" were being allowed to be capitalised, for instance, as shafts

and inclines. In other cases, "development expenses" were considered as capital expenditure and not entitled to depreciation. He enquired why the practice of allowing depreciation allowance on such development expenses was not followed in all cases. The Chairman thereupon asked Mr. Shah and Mr. Dass for their views and Mr. Dass replied as under:

An Indian company or any other company which in respect of its income liable to tax under this Act has made the prescribed arrangements for the declaration and payment within India of the dividends payable out of such income. But the question is that Indian Copper is a company which is not registered here.

SHRI DASS: Sir, the Indian Copper Company is a company which has made the prescribed arrangements under the Indian Companies Act. They declare dividends within India, they pay dividends within India and they deposit the income tax with the Government of India.

MR. CHAIRMAN: There is a great deal of difference between a domestic company and a company in terms of the Companies Act. There is material difference.

SHRI DASS: The difference is like this. An Indian company is a company which is incorporated in India under the Indian Companies Act of 1956. The "Indian Copper" is not. It is incorporated outside India. A domestic company means a company which may not be necessarily an Indian company but if the company is subject to Indian Income Tax Act which Indian Copper is, that is No. 1; if it has made the prescribed arrangements for declaring dividends in India, which he has; No. 2, if the dividend is paid in India, which is being done, and No. 3 if that tax is deposited with the Government of India which is being done, then certainly it is a domestic company.

MR. CHAIRMAN: Why do you say that special exception should be made for Indian Copper Company?

SHRI DASS: Indian Copper is doing mining in India, it is paying dividends in India and also depositing the tax in India.

MR. CHAIRMAN: That is a different point. Now, we are on the point of company and domestic company.

SHRI DASS: The intention of this section is presumably that we do not want to give benefit to a foreign company. But if you register a foreign company in India with all the shareholders in India, it will still get the benefit of this section, because it is registered in India.

SHRI B. SHARMA: Sir, this is an academic discussion that we are having. I think if we agree to change the word company into the word 'assessee' the whole dispute will be solved.

SHRI DASS: That is our prayer.

MR. CHAIRMAN: That is not possible because that is not within the scope of this committee. The committee will have to discuss this point and then decide.

SHRI B. S. SHARMA: Mr. Dass, in your letter dated 7th July, 1969, you have stated in para 4 that as the last year of a mine's life is likely to have a very low level of profitability, in such cases mining companies should be permitted to reopen their income tax assessment for up to five years. Don't you think that the reopening of assessment is a dangerous thing and you may be involved in unwanted assessment? Or, is it that you want only for the purpose of adjustment for this relief.

SHRI DASS: Yes, Sir, this is only for the specific purpose of adjustment for affording tax relief, and nothing else. This should have been made clear in our letter.

MR. CHAIRMAN: You have said that section 8 of the Bill seeks to exclude from amortisation, expenditure on acquisition of the site and of the deposits of the mineral. You want that this should be included.

WITNESS: As I submitted, either this amount should be allowed to be amortised, or we should be allowed to write it off as revenue expenditure.

MR. CHAIRMAN: You have given two suggestions.

WITNESS: Yes, Sir. We would request you to observe the last paragraph on this page. With regard to the proposed deduction in respect of expenditure on prospecting incurred by Indian Mining Companies, it is submitted that the present proposals do not go far enough. Prospecting is essential for full exploitation of mineral resources for scientific mining. In the circumstances it would be reasonable for expenditure equal to 133½ per cent of the actual expenditure incurred on prospecting, to be allowed during the first year of commercial production, against the profits of that year. That meagre allowance of 1/10th of the expenditure in each of 10 years is by no means sufficient to encourage additional prospecting.

MR. CHAIRMAN: Is there any other point that you want to make?

WITNESS: This was the point I wanted to make.

SHRI SANGHI: If mining operation becomes uneconomic and on that ground it is given up, how do you expect that writing off should be allowed?

WITNESS: It only concerns the mining industry which has a wasting asset. A paper mill, or a sugar mill does not have a wasting asset. If a paper mill is closed down on grounds of economy quite a good part of the assets can be realised by selling the plant and machinery. If I give up a coal mine, or a copper mine I will not be able to sell anything. All that I want is that I should be placed at par with sugar industry, paper industry or textile industry where depreciation is allowed on all the years.

SHRI SANGHI: Can you give us some statistics?

WITNESS: Yes, as a matter of fact, in my group there were quite a few cases where mines have closed and they had to close the collieries.

MR. CHAIRMAN: Mr. Das, I hope you will agree that the persons who are engaged in mining industry, when they go in for deeper underground work, they must have sufficient reserve fund made out of the profits in the initial years for undertaking this expenditure further.

WITNESS: In so far as we are concerned, most of our coal is coming from underground. We do not get any surface coal.

MR. CHAIRMAN: Government of India appointed a Committee to enquire into your mining conditions in coal mines. They have said, it is most unfortunate that the labourers engaged in coal mines are the lowest paid.

WITNESS: It depends upon with what they compare. In that way, these workers are much more unskilled. There is another submission that I may make. Today, in the coalfield for very many years it is the family that works. It is not so in other industries.

MR. CHAIRMAN: When I had been to Dhanbad areas, some of the mine owners were found to have kept the mines for some years. Now they wanted to lease them out to others. A gentleman ran to Delhi to get the permission. Supposing they have kept the mines for 11 years and have not worked them out—what is the purpose?

WITNESS: There are something like mining rules and regulations. If somebody wants to do it at the cost of safety nothing can be done.

MR. CHAIRMAN: Are you not aware that all the benefits that the Government of India wants to give to the coal mining industry—as a matter of fact the money that was given to them was not utilised for the purpose for which it was given?

WITNESS: I am not aware of it. The position is that for sand stowing there is cess levied on coal. A fund is created. The total expenses are divided into two parts. One is direct expense and another is indirect expense. So far as indirect expense is concerned, it is not fully neutralised. It depends on the availability of the funds with the Coal Board and to the extent the funds are there, neutralisation of indirect expense is done. My submission is that so far as subsidy is concerned, it is given on verification of expenses incurred. Therefore, I am not aware if there could be a case of giving subsidy without sand stowing having been done.

MR. CHAIRMAN: Have you got statistics to tell us now, or can you send it later? Please check up all the Enquiry Committees which have been set up on the mining accidents during the last 5 years and find out their conclusion. In most of these cases it has been due to negligence.

WITNESS: That is true, negligence at any level.

MR. CHAIRMAN: Negligence more at the level of the mine owners.

WITNESS: My submission is that subsidy is received after the expenses have been incurred and Government department have verified those expenses.

MR. CHAIRMAN: What is your rate of profit in 1968-69 in any of the coal mines? Can you give us some figures about profit and investment? You must have started some mines for 10 years or 15 years. How much money you have invested and what is the rate of profit?

श्री योगेन्द्र शर्मा : आप ने माइनिंग और उसके भूतलिक उसी तरह के टैक्स कनसेशन की मांग की है जो कि दूसरी इंडस्ट्री में है और आप का तर्क यह रहा कि जिस तरह दूसरी इंडस्ट्री में करना पड़ता है उसी तरह से माइनिंग इंडस्ट्री में करना पड़ता है । मैं आप से इस

विषय में दो, तीन बात जानना चाहता हूँ । दूसरी इंडस्ट्रीज में, जैसे टैक्सटाइल या शुगर इंडस्ट्री में जो कपड़ा या शुगर तैयार होता है तो उस को मैन्युफैक्चर करने के लिये कैपिटल ऐक्सपेंडिचर प्लान्ट के रूप में लगाना पड़ता है तब मैन्युफैक्चर होता है उस पर जो खर्च होता है उस को आर्टिकिल की कीमत में उस को लगाया जाता है । क्या यह बात सच नहीं है कि इन के विलकुल विपरीत माइनिंग की हालत है क्योंकि माइनिंग जो आप करते हैं जैसे कोयला है तो उस को आप को मैन्युफैक्चर नहीं करना पड़ता है, उस में एक पैसा खर्च नहीं करना पड़ता है, वह तो जमीन में रखा हुआ है जिस को आप को निकाल भर लेना है, मैन्युफैक्चर नहीं करना है, जब कि दूसरी इंडस्ट्रीज में आप को मैन्युफैक्चर करना पड़ता है, जैसे एक रा मैटीरियल से दूसरी चीज बनाते हैं, यहाँ पर क्वालिटेटिव ट्रांसफोरमेशन नहीं होता है, वह चीज ज्यों की त्यों पृथ्वी के गर्भ से निकाली जाती है । यह बेसिक डिफरेंस है और इसीलिये जो सहायित्वें दूसरी इंडस्ट्री में है उन सब की जरूरत यहाँ पर नहीं होगी क्योंकि मैन्युफैक्चर के सिलसिले में जो खर्च होता है वह माइनिंग में नहीं होता है । यह बहुत बड़ा फर्क है आप इस से सहमत हैं कि नहीं ?

श्री दास : जी नहीं ।

श्री योगेन्द्र शर्मा : फर्क है । माइनिंग में आप को मैन्युफैक्चर की प्रोसेस में नहीं जाना पड़ता है और इसलिये जो कनसेशन आप ऐड-वोकेट कर रहे हैं उस का जस्टिफिकेशन नहीं रह जाता है ।

आप ने बहुत से ऐक्सपेंडिचर की मद में ऐमोरटाइजेशन की मांग की है, हम आप की बात समझना चाहते हैं इसीलिये यह सवाल पूछ रहे हैं ।

तमाम ऐक्सपेंडिचर को दो श्रेणियों में बांटा जा सकता है—एक तो कैपिटल ऐक्सपेंडिचर और दूसरा रेवेन्यू ऐक्सपेंडिचर । मैं नहीं समझता हूँ कि कोई दूसरा भी ऐसा कोई

एक्सचेंजिबल हो सकता है जिस को कैटेगरीज़ में नहीं बांटा जाये। यदि ऐसी बात है तो फिर एमौर्टाइजेशन का प्रश्न क्यों उठता है।

तीसरी बात में यह जानना चाहता हूँ कि जब हम इंडियन कम्पनी की बात करते हैं विदेशी कम्पनियों के मुकाबले में, और ऐज एं पोलिसी इंडियन कम्पनी को कन्सेशन देना चाहते हैं, यह हमारी ऐस्टैबलिश्ड पोलिसी है तो फ़र्क टेक्नीक नहीं है कि कौन यहाँ रजिस्टर्ड होती है और कौन बाहर होती है। मगर नेशनल इंटरेस्ट से बड़ा फ़र्क है और वह यह है कि आधा प्रॉफ़िट और इंटरेस्ट का कोई हिस्सा हमारे देश के बाहर जाता है कि नहीं। कोई कम्पनी का कुछ भी नाम हो, उस को इंडियन समझना चाहिये या नहीं उस का आधार यही होना चाहिए कि उस कम्पनी का कोई भी प्रॉफ़िट या इंटरेस्ट का कोई हिस्सा बाहर जाता है कि नहीं। आप के मुताबिक यदि किसी कम्पनी के प्रॉफ़िट और इंटरेस्ट का कोई हिस्सा हमारे देश के बाहर चला जाये या उस में जो कैपिटल लगी है उस कैपिटल का कोई हिस्सा रिट्रैडिबिल हो तो क्या उस को इंडियन कम्पनी की सङ्गलियत मिलनी चाहिये? यदि हाँ तो, क्यों मिलनी चाहिये? आप के मुताबिक कोई उस का जस्टिफ़िकेशन है कि नहीं।

श्री दास : नहीं है। वही तो मैं अर्ज करना चाहता हूँ, आप मेरी बात सुन लें।

SHRI DASS: I am answering your second point first. I am fully at one with you that there should be only two categories of expenditure, namely, capital expenditure and revenue expenditure. So far as the capital expenditure is concerned it should be spread over certain period. Unfortunately, this is not done. There are cases when no depreciation is allowed such as prospecting expenses are development expenses, nor are these allowed to be charged to revenue as in respect of salaries, wages, printing, stationery, repair, maintenance. But in other industries this situation does not

arise and we suggest that this point of ours should be kept in mind while considering this amortisation.

Then there is another difficulty. In other industries allowance for multiple shift working is made in the depreciation allowance but in case of mining this is not done.

SHRI B. S. SHARMA: For that you got special subsidy.

MR. CHAIRMAN: I can explain it in this way. Suppose I have an orchard and after 10 years it does not yield any fruit. Should I ask for compensation because the trees are not giving fruits?

WITNESS: You can certainly ask for some compensation for the trees.

MR. CHAIRMAN: You know U.K. is the biggest concern so far as coal is concerned and there no such wasting assets are allowed. So, I think no deduction can be claimed in respect of expenditure of the capital assets from which the income was derived.

SHRI SINGH: The real thing is that if the profit and benefit of a company do not go out of India then only that company should be treated as Indian company.

SHRI YOGENDRA SHARMA: What according to you as an Indian, looking after the interest of India, should be the intention?

SHRI SINGH: In that case my answer as an Indian would be different. I would rather say that if you want an industry to come here you will have to give that industry the mining and prospecting license, as also the mining lease. But no mining lease can be granted except by the Government of India under the Mines and Minerals Development Act which lays down that the mining lease will only be granted to an Indian citizen provided however the Central Government, may, if they think so, for special circumstances . . .

SHRI YOGENDRA SHARMA: That is the legacy we have inherited from the British Government.

SHRI SINGH: That is due to the definition.

SHRI YOGENDRA SHARMA: At the moment we are concerned with national interest. Don't you think that in the national interest this definition should be amended?

MR. SINGH: In the national interest you are inviting quite a number of foreign experts.

SHRI TENNETI VISWANATHAM: You said that the Taxation Enquiry Committee made certain recommendations. Will you be satisfied if the items recommended by the Taxation Enquiry Committee are included in this Bill? Secondly, could you give us a report as to what is happening in other countries with regards to the amortisation expenses—say, America, Canada, Australia, France and Belgium. If you are able to give us a small summary of the position it would be of much help to us.

SHRI DASS: We have submitted our proposals before you. If these proposals are not acceptable to you then the recommendation of the Taxation Enquiry Committee would be helpful. So far as other statistics are concerned we will compile that and send it to the Committee.

MR. CHAIRMAN: The proposals were also examined by the Committee which went into the incentives of mining industry. So they have gone thoroughly into these aspects about which you are referring. Ultimately they said that this depletion allowance is not to be allowed. We have also seen the report of the Bhootalingam Committee. Even he has not recommended it.

SHRI DASS: This is not a manufacturing industry. Mine is a wasting asset. It does not fetch profit like the manufacturing industries viz. paper

industry, sugar industry, and textile industry. Considering all these the mining industry should be treated on a different footing.

SHRI YOGENDRA SHARMA: Well, I know all this. I come from a place where there are plenty of mines.

SHRI DASS: There is also another factor. Frequently we have to go on with deep mining operations even as deep as 1,500 to 2,000 feet. This requires huge amount of money. So this aspect of the case has to be borne in mind while considering the case of mining industries.

SHRI DASS: Machinery and equipment in mines undergoes more wear and tear than in the case of paper mill or textile mill. The difficulty is that the mining has not been given the incentive as it requires, the result being that its development has been affected.

SHRI VISWANATHAM: If the proposals are not accepted, the mining industry has got to pay.

SHRI DASS: Unless some incentive is given its developmental work will be considerably affected.

श्री योगेन्द्र शर्मा : वेस्टिंग एसेट्स की बात आप ने कही। क्या वेस्टिंग एसेट्स के प्रिंसिपल पर उन मजदूरों को भी आप कोई खास सहूलियतें देंगे जो 30 वर्ष तक आप की खानों में काम करने के बाद अपनी जिन्दगी की आखरी मंजिल पर पहुँच जाते हैं और काम करते हुए मारे जाते हैं? मरने के बाद उन की पूरी एसेट ही खत्म हो गई। जब तक वे काम करने की हालत में हैं आप उनको पैसा इतना दें कि उन में ताकत रहे और वे आप का कोयला निकालते रहे, मगर जब वे मर जाते हैं तो उन की पूरी एसेट ही खत्म हो गई। तो मैं यह जानना चाहता हूँ कि आप उन को भी ज्यादा पैसा देने की सोचेंगे या नहीं?

श्री दास : इसी परपज के लिये तो प्रोविडेंड फंड की स्कीम बनाई गई है ? मैं आपको बताऊँ कि कोल माइन्स में जो मजदूर काम करते हैं उन को जो फैसिलिटीज मिलती हैं वे किसी दूसरी इन्डस्ट्री में काम करने वाले मजदूरों से कम नहीं है ?

श्री योगेन्द्र शर्मा : बोनस नहीं मिलता है :

श्री दास : ऐसी बात तो नहीं है । अगर कोई इन्फ्लैटिटी की है तो नहीं मिला होगा ।

श्री योगेन्द्र शर्मा : जब आप ने वेस्टिंग ऐसेट की बात उठाई है, तो मजदूरों को भी कुछ मिलना चाहिए ?

श्री दास : मजदूरों का तो कुछ वेस्ट नहीं जाता है ।

श्री योगेन्द्र शर्मा : मरने के बाद तो उस का पूरा वेस्ट है ?

श्री दास : वह तो हमारा भी है ।

श्री योगेन्द्र शर्मा : उन लोगों की जिन्दगी खत्म हो जाती है, उन के लिये आप कुछ नहीं चाहते हैं ?

MR. CHAIRMAN: I hope we shall now conclude. I thank you very much for giving us the valuable suggestions. These will be very helpful to us, but would you kindly send us within a few days as to the ratio of profits ploughed back to total profits?

SHRI VISWANATHAM: I also ask you to give us a summary of the methods followed in other mining countries also.

SHRI DAS: All right, we will give that also.

MR. CHAIRMAN: I thank you Mr. Dass, Mr. Mackintosh and other colleagues.

Evidence of the Indian Chamber of Commerce and Industry
Represented by Shri Jain and others,

SHRI B. S. SHARMA: Now, Mr. Jain, I come to clause 14. You have objected to this clause on two grounds—first in respect of its applicability with retrospective effect and another because it cuts at the very root of the system of Hindu Joint family. Are you only against the principle of application of the provisions of this Bill with retrospective effect or you object to this clause lock stock of barrel.

SHRI JAIN: We are opposed to retrospective effect because that will create great hardship to individuals who have at any time after 31st March, 1965 converted their self-acquired property into Hindu undivided family property of which he is a member.

SHRI B. S. SHARMA: Do you have any objection if prospective effect is given from 1970?

SHRI JAIN: We feel that the H.U.F. is a very good system and if this Bill is enacted it will cause disruption of many families. So we are opposed to it in principle.

MR. CHAIRMAN: Mr. Jain, I draw your attention to page 43 of the Bhootalingam Committee's report after which this Amendment Bill has taken into consideration this suggestion. They have said that there has always been some scope to use the institution of H.U.F. as a means of lowering the tax liability of the individuals. Don't you think this is a problem and how to tackle it?

SHRI JAIN: Sir, the problem is there but it is not so acute. If you see the tax collections from the H.U.F. you will see it is not really a serious problem to the tax authorities.

SHRI K. L. GUPTA: Have you got any figure of the H.U.F. collection?

SHRI JAIN: The figures that we have relate to the period 1950-51 and 1963-64. The income and the tax collected in those years were 11 per cent and 9 per cent and 6 per cent and 4.5 per cent respectively.

MR. CHAIRMAN: This is really a problem. The difficulties are there but we have to find out a via media to overcome this problem. Have you any suggestion to offer to us in this respect?

SHRI JAIN: The Supreme Court judgment was given on the 9th November, 1964. The Supreme Court has clearly laid down that on partition if any property was there, it is not to be transferred. So taking help of that judgment people have created H.U.F. and partitioned it. We know that but we were of the feeling that considering the moment of tax collection and the difficulties in keeping

MR. CHAIRMAN: But considering the tax collection before 1964, what will be the effect and if the decision of the Supreme Court is given effect to by law, what will be the effect?

SHRI JAIN: The feeling of the Indian Chamber is that the amount will not be very material. We do not have the figures but the Department may enlighten us on this point.

SHRI K. L. GUPTA: You are not basing your argument on the figures.

SHRI JAIN: We are basing our argument on the basis of income but how it will be calculated is very difficult.

MR. CHAIRMAN: We understand the difficulty and we understand that a new problem has cropped up.

SHRI GUPTA: This amendment is there because they want to check the loopholes. There are many other things where tax is evaded on a large scale—legally and otherwise. If you want to stop one, why should you not stop the other?

SHRI JAIN: We do not think that it is quite correct to say that there are many legal methods by which tax is evaded.

SHRI BENI SHANKER SHARMA: How do you expect that all the circulars should be made available to the assessee or the Chamber?

SHRI JAIN: If they are departmental circulars we do not want them. But we want that the circulars which affect the assessee should be sent.

SHRI GUPTA: Some years back there was a voluntary disclosure scheme. Under that scheme some disclosures were made by ladies and minors. Later on a circular was issued by the department that they were going to accept the disclosures so far as the adults were not concerned. But they were not going to accept the disclosures made by the ladies and minors. The ladies have paid the tax, the minors have also paid it and the department has accepted it. These types of things are very genuine and what they have said is right.

MR. CHAIRMAN: This point has been taken note of by the Ministry. They have informed the Committee also that they will consider this point.

SHRI GUPTA: Coming to para 30 on page 9—I think this is a very genuine demand. It is a good suggestion. I think in 90 per cent cases the application is neither accepted, nor rejected. That creates a problem.

SHRI K. L. GUPTA: If the I.I.O. does not reject or accept the application after some time it will be presumed that the application is accepted.

WITNESS: There is one point left which could not be included in our memorandum. This is regarding the registered Firms. When registered firm files a return and if it is delayed then the income is treated to be of an unregistered firm and the

total income tax is calculated and then interest is charged on that income. When the partners file their return if there is delay, the penalty is there. This is inequitable because if the firm has already paid the penalty why the partners will again be charged separately. This point should be taken into consideration.

SHRI B. S. SHARMA: You say that the firm if it commits default why the partners should pay the penalty. There should not be double charge.

WITNESS: Regarding the calculation of interest in case of the assessment of the registered firms, advance payment of tax is made but the tax is not deducted. This is a mistake. There should be a deduction on account advance payment and it should be deducted from the total tax in calculating the interest.

SHRI B. S. SHARMA: Now, Mr. Jain, I hope you welcome this change which we are making now in the matter of the registered firms. It has been enacted that every firm for recognition has got to be registered with the Registrar of firms. Do you think that only those firms which will come into existence thereafter should only be registered with the Registrar and not the old one.

SHRI JAIN: It takes a long time to get a certificate for registration.

SHRI B. S. SHARMA: What is your reaction about the new function of the Registrar of firms.

SHRI JAIN : It will be better if one person does both the work.

SHRI K. L. GUPTA: The difficulty is that the Registrar of Firms is under the State Govt. and the Income tax Officer is under the Centre. So the basis and consideration to register a particular firm is absolutely different. If somebody wants to name his concern as India House, you cannot register its name as National or Bharatiya etc. So, the basis is different. This problem will arise. I suggest you give the power

to a person and then after sometime if he does not reject or respond, you assume that it has been registered.

SHRI JAIN: The Registrar of Firms takes a very long time.

SHRI B. S. SHARMA: Come to clause 53. You know that there has been an anxiety on the part of the department to reduce the ever increasing number of appeal and that is why they have increased the fees. Do you think that this increase will be sufficient to reduce the pendency of appeals.

SHRI JAIN: I think mere increase of fees will not serve the purpose. The trouble starts at officers' level. Appeals arise because of unreasonable and heavy assessments by I.T.Os. In almost 2/3rds appeals. The decision is in favour of the assessee. Further a good deal of expenses are incurred by the assesseees in appeal and I think that expenditure should be allowed.

SHRI JAIN: That should be made part of the cost of appeal and the department should pay that amount to the assessee in case the assessee wins the appeal. I should also say that the Departments should be more realistic in making assessments.

SHRI N. K. SANGHI: That is a matter of discretion.

SHRI BENI SHANKER SHARMA: How to make the assesseees file the returns in time. That is the whole problem. What is your suggestion?

SHRI JAIN: I can only say that penalties should not be imposed.

SHRI BENI SHANKER SHARMA: What is your suggestion about rigorous imprisonment?

SHRI KANWAR LAL GUPTA: I think you are principally opposed to it.

SHRI JAIN: That is right. Another thing Sir, which I missed to point out in the morning is at page 2 of our memorandum. There is a proposal to limit the allowance to 2½

per cent of the issued share capital debentures and long-term borrowings. This ceiling appears to us to be inadequate. In several cases expenditure of this kind has been as much as 5 per cent. Capital issues control envisages underwriting commission of 2½ per cent for shares and brokerage of 1 per cent. The total project cost is much more than the issued share capital. Long term borrowing also take more than 7 years' time. Now, in many cases the banks do not lend money for more than five years. Considering all these factors the Chamber would urge that the ceiling be fixed at a higher figure, and further that it be related to the total project cost rather than to the issued capital.

MR. CHAIRMAN: Have you got any companies?

WITNESS: I am reading from an article which was published by Company Law Board, Ministry of Industrial Development and Internal Trade and Company Law Affairs. It was published in the 16th November, 1966 issue. They have published the article. Cost of raising capital in India—it is quite interesting. According to their own paper No. 3, they say that for raising debentures the cost is 5.4 per cent and for shares the cost is 3.4 per cent of the amount issued.

MR. CHAIRMAN: That is a general article they have written.

WITNESS: Yearwise statement is given here.

MR. CHAIRMAN: How many industries they have surveyed?

WITNESS: Total capital issued is 325 lakhs.

MR. CHAIRMAN: What are the industries they have surveyed?

WITNESS: There are various industries e.g. electricity, chemical products and various others.

MR. CHAIRMAN: Which time it referred to? Is it 1968 when it was surveyed?

WITNESS: It relates to 1967-68. We could not give more thought to it as we have received it only two days back.

SHRI JAIN: However, I will prepare a supplementary memorandum covering all the points and I will send that to you. Next Sir, I would like to draw your kind attention to page 23 of Bhootalingam Committee's Report. Of course I do not know the basis on which the department has taken out the items. Mr. Bhootalingam gave about seven items in the list.

MR. CHAIRMAN: We will check that up.

SHRI JAIN: There are some expenses which do not directly relate to the plant and machinery. There is some regular expenditure incurred by the companies up to the date of production and they are of general nature which cannot be allocated to any particular item. Our submission is that this kind of expenditure should be taken into account.

MR. CHAIRMAN: They are done from some regular sources. In some cases it may be more and in some cases it may be less.

SHRI JAIN: What is required it that only actual expenses be allowed.

MR. CHAIRMAN: You know there is some difference. It raises its finance from its own source. It does not borrow from the banking institution or from any other institution. It raises that from its own source. There is some unaccounted for money which is not in the accounts of the bank.

SHRI JAIN: We are asking for the actual expenses and nothing more than that. If there is any unaccounted for money, something should be done to check that.

MR. CHAIRMAN: Mr. Jain, thank you very much for the suggestions that you have made here.

(The Committee then adjourned)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE
TAXATION LAWS (AMENDMENT) BILL, 1969.

Friday, the 9th January, 1970 at 10.00 hours and again at 15.00 hours
in Council Chamber, Calcutta.

PRESENT

Shri Chintamani Panigrahi—Chairman.

MEMBERS

2. Shri Jahan Uddin Ahmed.
3. Shri N. C. Chatterjee.
4. Shri Kanwar Lal Gupta.
5. Shri B. N. Katham.
6. Shri Yashwant Singh Kushwah.
7. Shri S. B. Patil.
8. Shri Shiva Chandika Prasad.
9. Shri Bishwanath Roy.
10. Shri N. K. Sanghi.
11. Shri Beni Shanker Sharma.
12. Shri Yogendra Sharma.
13. Shri Janardan Jagannath Shinkre
14. Shri R. K. Sinha.
15. Shri N. K. Somani
16. Shri Tenneti Viswanatham.

REPRESENTATIVE OF THE MINISTRY OF FINANCE (DEPARTMENT
OF REVENUE AND INSURANCE).

Shri R. D. Shah, Member, Central Board of Direct Taxes and Ex-officio
Joint Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.
Shri S. P. Chowdhury, Under Secretary, Ministry of Finance, Deptt. of
Revenue & Insurance.

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

I. Chartered Institute of Secretaries Indian Association, Calcutta.

Spokesmen:

1. Shri L. R. Puri.
2. Shri S. P. Acharya.

II. Merchants Chamber of Commerce, Calcutta.

Spokesmen:

1. Shri B. S. Kothari—President.
2. Shri S. N. Dalmia—Sr. Vice President.
3. Shri B. P. Agarwala—Committee Member.
4. Shri H. L. Somany—Committee Member.
5. Shri M. L. Saraf—Committee Member.
6. Shri R. L. Saraogi—Chairman, Taxation Sub-Committee
7. Shri H. R. Bose—Executive Officer.

III. Indian Copper Corporation Ltd. Calcutta.

Spokesmen:

1. Shri S. H. Utamsingh—Business Manager.
2. Shri P. H. Bray—Asstt. Mine Supdt.
3. Shri S. K. Ghose—Taxation Executive.

I. Chartered Institute of Secretaries
India Association, Calcutta

Spokesmen:

1. Shri L. R. Puri
2. Shri S. P. Acharya

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: We welcome you to this meeting. Before we start taking evidence from you, may I just tell you that you will kindly note that the evidence that you would give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence you tender is to be treated as confidential. Even though you may desire your evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament. Now, Mr. Puri, you can highlight some of the points you have mentioned in your memorandum.

SHRI PURI: We are representing the Chartered Institute of Secretaries, India Association. This Institute is a professional body, the parent institute is in U.K. which was incorporated in 1891 and this Institute has members throughout the world—U.K., U.S.A., Australia, Canada, East Africa, India, Pakistan, Philipine—and we have over 30,000 qualified Fellows and Associates of the Institute. We have the India Association with its headquarters in Calcutta. This Association in India was formed only in 1952 and so it is almost in its teens but all our members are posted in bodies corporate or local authorities or public sector undertakings as Secretaries or other managerial positions. Now, with that background I would just highlight some of the points and I will not speak on all points. The first clause that I would like to take is the clause of the foreign technicians. We think that the

Income Tax Act is not the place where the salary limit should come in. Government approves the appointment of the technicians and considering the qualifications and experience of the technicians who will be coming Government should decide whether they are entitled to particular salaries. If the salary is to be given including the evaluation of the perquisites, I would say that house rent, for example, varies from place to place. You can have a technician in Calcutta and another in Bombay or Cawnpur and the house rent that you will pay him at a particular place will straightway disproportionately reduce his salary. Apart from that no very qualified technician will come on Rs. 4000— and it is our submission that only well qualified persons should come to India as technicians. Then the next point is that regarding foreign technicians employed for scientific research, wherever they are employed, whether in Government bodies or in private sector, the salaries of such persons should be exempted from tax and distinction should not be made whether a person is employed at this place or that place.

The next clause, on which I would like to speak is clause 38—amortisation expenses. Here I think the figure of 2½ per cent is out of all realities. If you consider a share issue, you will find that there are various expenses such as the printing charges, drafting charges, etc. and the total expenses come to atleast 4 per cent. For example, for an issue of shares of the Tribeni Tissues we expected about 20 thousand applications but actually we received 50 thousand applications and the expenses for issue of the shares came up to 2½ lakhs rupees. Of course, the Bill has mentioned that the expenses of project report and market survey report will be included within 2½ per cent but the figure of 2½ per cent which I 2½ per cent is the actual project cost but the figure of 4 per cent which I have mentioned is in relation to the share issue and debenture issue. There

may be loans on which 2½ per cent might be allowed but....

MR. CHAIRMAN: You mean that 2½ per cent is only the project cost?

SHRI PURI: Yes, the project cost would consist not only of the share capital and debentures but also borrowings either from companies or other institutions. So there is that margin but that margin is too small to include a part of the other expenses which I have mentioned.

The next point is that at present any company which makes a debenture issue is allowed to charge the expenses in the year in which the debentures are issued but under this new clause the expenses will be allowed in ten year's time. Therefore, instead of giving benefit, it is actually taking away the benefit. We are professional managers and we consider that all legitimate expenses which are incurred in business must be allowed—whether they are allowed in ten, five, twenty or thirty years' time.

MR. CHAIRMAN: Have you come across any industry which will say that the expenses incurred are not legitimate? Therefore, you leave that out to the rules of the income tax.

SHRI PURI: Sir, the expenses are audited expenses and they are seen by the Income Tax Officers, the Inspector sees them and I don't think it is possible for people to hoodwink them. For instance, the depletion of assets is not allowed with the result that the companies pay dividends out of inflated profits. No provision has been made in this Bill for replacement of assets. In U.K. depletion of assets is not allowed and I think our Act has been taken from the U.K. Act but, Sir, we are independent people and we must act logically.

MR. CHAIRMAN: You mean to say that when you want to give something to the industry, you want to be independent of the U.K.

SHRI PURI: No, Sir, take for instance, the subsidiary companies, in U.K. there is no double intercorporate tax but in India it is there. We are not representing any industry, we may be employed in any company....

MR. CHAIRMAN: But you should give a non-professional approach to the problem.

SHRI PURI: No provision has been made for the amortisation of certain expenses. There should be amortisation of expenses on amalgamation. Auditor's fees, etc. should also be included.

Next is clause 27. This is a relief on salary income or interest on securities received in arrears. The Association feels that with a view to reduce the paper work and expedite instead the proposed rules to be made by the Central Board of Direct Taxes, it should provide for an automatic relief by the Income-tax Officers.

The last one is clause 63.

MR. CHAIRMAN: Do you attach any importance to clause 31.

SHRI PURI: We have included clause 31 in our memorandum. These are the points which we want to highlight. It is a penal clause. We feel some limit should be laid down. We had thought Rs. 500 as the limit. We have made this suggestion with a view that the cost to the exchequer is not disproportionately higher in relation to the tax that is going to be collected.

SHRI GUPTA: I would like to ask only one question with regard to clause 63. Mr. Puri, do you agree with the principle that the person who have not filed a return in time should be physically punished?

SHRI PURI: I would say, it depends on the quantum and the person concerned. If the person is educated he should be more severely punished.

The law should be flexible. In our country a large number of the population is still uneducated.

SHRI GUPTA: Suppose a person does not file the return in time, or he does not file the return at all. There is a penalty which has been provided in the Income-tax Act. A particular amount is imposed as penalty. You may increase it or decrease it. Now, according to this amendment a person will be imprisoned. Do you agree with the principle?

SHRI PURI: We have not discussed this in the Association. This is my personal opinion. Anyone who is violating such laws and according to the seriousness of that law there should be physical punishment and publicised, so that, that acts as a deterrent. But there should be balance. I relate the quantum of the tax

SHRI GUPTA: Can you give a concrete suggestion?

SHRI PURI: We have said, if the tax evaded is Rs. 500, then a person should be punished.

SHRI GUPTA: You have not said anything about the recognition of firms.

SHRI PURI: This is a professional body which deals with corporate sectors, local bodies, public bodies, etc.

SHRI VISWANATHAN: He was referring to physical punishment. I suppose he includes whipping also. He is in favour of punishment. These are days when persons are thinking in a different way. These are civil debts. Do you say that by providing for this imprisonment for civil offences we are creating civil crimes? As civilisation is advancing, is it proper?

SHRI ACHARYA: My personal view, firstly, is that the word is 'rigorous'. If there is to be rigorous imprisonment, perhaps the discretion should be left to the Court. Personal-

ly, I think the publicity by listing the defaulters promptly in the newspapers, without having to punish, will probably bring the defaulters to heel even faster. Imprisonment quite often hardens criminals.

SHRI ACHARYA: Sometimes the prisoners are released and so that is not very deterrent. To my mind withdrawal of government patronage will have the desired effect. A person who is defaulter should not be for example invited to a Government Dinner Party. If the person approaches the government. He will be told that person of your character should not be honoured in any way.

MR. CHAIRMAN: Do you think we have developed that much of consciousness?

SHRI ACHARYA: Our civilisation is very old.

MR. CHAIRMAN: May be older than the moon but have we developed that consciousness to that extent as you are thinking.

SHRI PURI: My point is that some rich people live on such a small expenditure, say at a monthly expense of Rs. 50/- or 100/- and if they are put to prison, I think they will be living in a better standard than they are accustomed at home. So we should improve the moral tone and this can be done by not inviting them to any such parties and in this way I think they will learn the lesson.

SHRI VISWANATHAN: You mean to say that they will not be invited to Governors' or President's parties or that they will not be allowed to sit in the first row.

SHRI PURI: Yes, Sir. They will not be given any interview. They will be told that your character on such and such occasion was not good.

SHRI N. C. CHATTERJEE: There is a proposal for providing rigorous

imprisonment to non-salaried persons and small assesseees. The small assesseees you know are generally illiterate and so do you approve of this ?

SHRI PURI : Among the non-salaried persons may be people whose income from salary may be Rs. 5,000/- but they may have business fetching Rs. 5 lakhs and they will contend that their salary income was Rs. 5,000/-.

SHRI N. C. CHATTERJEE : But I think there is no justification for extending penalty to these small income employees whose income may be taxed at source.

SHRI ACHARYA : In practice it is generally not done. If tax is not deducted at power the employers ought to be liable to severe penalty.

SHRI CHATTERJEE : If a man has not filed his return but has paid his tax; should he be penalised ?

SHRI PURI : No, Sir.

श्री योगेन्द्र शर्मा : आप के बहुमूल्य विचार दो, तीन चीजों के बारे में जानना चाहेंगे। पहला तो यह है कि कर अपराधों के बारे में क्या दंड होना चाहिये। अभी जिस सवाल पर आपने अपने विचार प्रकट किये उस के बारे में आम तौर पर दो विचारधारायें हैं। एक तो इंग्लैंड में जिस का आम तौर पर हम लोग अनुसरण करते रहे हैं, दूसरी अमरीका में। और मिस्टर पुरी ने जो अभी बतलाया उस से मालूम हुआ कि कुछ अमरीकी पैटर्न की तरफ जाना चाहते हैं। अमरीका में कर दंडों के लिये न केवल अधिक दंड दिये जाते हैं बल्कि कड़े दंड दिये जाते हैं जिस की ओर इस बिल में अच्छी प्रगति की गयी है। और उस का बहुत अधिक सार्वजनिक प्रचार भी किया जाता है।

उद्देश्य यह है कि इन दोनों चीजों के जरिये से कर अपराधों को अधिक से अधिक सीमित किया जाय। आप क्या यह नहीं समझते हैं कि अमरीका जैसे देश में कर अपराधों के बारे

में दंड की जो यह विचारधारा है वह हमारे लिये ज्यादा उपयुक्त है क्योंकि हमारे देश में कर अपराधों की एक बड़ी समस्या है और हम लोग उस को जितना ही हल करने की कोशिश करते रहे हैं अपराध बढ़ते ही गये हैं और उस का एक प्रधान कारण यह है कि हमने इस सिलसिले में ब्रिटिश पद्धति अपनायी है। ऐसा मालूम होता है कि अमरीकी पद्धति हमारे लिये ज्यादा लाभदायक है और इसीलिये इस बिल में व्यवस्था की गयी है कि शारीरिक दंड देना चाहिये रिटर्न समय पर न दाखिल करने के बारे में।

दूसरी चीज यह है कि जब शारीरिक दंड की चर्चा होती है तो आम तौर पर ऐसा समझा जाता है कि गरीबों के लिये ही शारीरिक दंड होना चाहिये, अमीरों की नहीं मिलना चाहिये। कुछ ऐसा ब्याल है कि अमीर लोगों को आर्थिक दंड ही काफी है, और कुछ हमारे कर कानूनों में इस तरह की व्यवस्था है कि कुछ नाम के आर्थिक दंड दे कर के लोग बच जाते हैं। मान लीजिये 5 रु० फी दिन डिफाल्ट की पैनाल्टी देनी पड़े तो एक एक महीने में 150 रु० ही हुआ, और अगर इस समय में डेढ़, दो लाख रु० बचाने का सवाल है तो 150 रु० पैनाल्टी दे देने में क्या बिगड़ता है। लेकिन यदि इस तरह की चीजों को रोकना चाहते हैं तो शारीरिक दंड की व्यवस्था आवश्यक हो जाती है ताकि जिन लोगों को रिटर्न दाखिल करने का समय नहीं मिलता है तो वह समय उन को जेल में मिल जायगा और सुविधा भी मिलेगी और इस तरह से हमारा ब्याल है कि वह जो बीमारी फैल रही है उस को दूर करने में सहूलियत होगी। इसीलिये हम यहां अमीर और गरीब के दृष्टिकोण से शारीरिक और आर्थिक दंड का भेदभाव नहीं करना चाहते हैं। इसलिये यह सोचना है कि किस तरह से यह बीमारी रोकी जा सकती है, अमीर और गरीब की विचारधारा से यहां विचार नहीं करना चाहिए। एक ऐसी विचारधारा लोगों की है कि सिविल अपराधों में शारीरिक दंड नहीं होना चाहिये।

SHRI ACHARYA: There was a big gangster in Chicago who was put to prison on the ground of tax evasion—it was near about 1930 or 1931—but imprisonment on these people is not supposed to have any effect. So, my suggestion would be to make these people “non-persons”—they will not be invited to any dinner or anything and if they come for licences etc. they will be told that your conduct or character is not very desirable. So this non-recognition of their status will go a long way in reforming them.

WITNESS: For severe offences it should be 10 years and for light offences it may be a year. This is normally done throughout the country, at the State level, at the Central level and I think this will bring result fastest.

SHRI BENI SHANKER SHARMA: So far as the question of punishment is concerned I may say that there are some authorities who do not favour physical punishment for civil offences. But there are others also who believe in the theory of ‘Spare the rod and spoil the child’. So far as the physical punishment is concerned, will it cure the habitual offenders? There are also other aspect of the thing. These are civil offences but I will call it financial offences. Physical punishments should be awarded only in the case of mental aberration and not otherwise. Only for certain defaults which are of civil nature one should not be physically punished, for not submitting returns in time. You have also got your patrons and clients who do not maintain books of accounts in the same way as others do. So what do you think should be the remedy for this state of things.

SHRI ACHARYA: As I said previously the law should be flexible. It is possible that each person reacts separately to a dose of punishment and in certain cases the name may be most important, the status may be most important and in other cases going to the prison may be the most important. I do not think that it will be possible

to lay down and suggest in precise terms what should be the punishment for each.

SHRI BENI SHANKER SHARMA: You see in many cases the assessee are highly qualified and they know their responsibilities fully well. At the present moment we have approximately 30 lakhs of assessee. I think the assessee you represent would be not more than 50 thousand throughout India. We have got to deal with the remaining 29 lakhs and 50 thousand. The other day the Minister of State for Finance said that about 350 members of Parliament were in default for not filing their returns in time. They might have some income but they cannot be termed as criminal. At best you can term it as a serious lapse on their part but they cannot be called criminally guilty. However I fully agree with you that if the social status that one enjoys is taken away from such persons then it would have a great effect. The only thing is that if we can create an atmosphere in which the society will treat such defaulters as out castes then it will have some effect. As such we will have to take out the prestige and status from the persons concerned. In other words if we can make these greater number of assessee honest then the others will have to be honest perforce. By simply putting a man into jail you cannot change his habit. Our experiences show that after returning from jail the person becomes a greater criminal. What according to you would be the remedy?

SHRI PURI: The final solution in all these things is the improvement of character. I should say that this aspect is neglected throughout either in education or in any other matter everywhere, and unless that can be improved, you won't get a solution.

SHRI BENI SHANKER SHARMA: We have become independent, Let us try to improve our standard of honesty.

MR. CHAIRMAN: Mr. Puri, this point is very simple. The amendment has come after a great deal of experience, because you see the provisions are there for submitting returns. Sections 139 (1), 139 (2), 140 and 148 are there. Now it has been found that under the provisions of the Act there is no liability to prosecution in the case of a person who fails to furnish his return of income voluntarily as required under section 139(1). A person who fails without reasonable cause or excuse to furnish the return of income called for by notice under 139(2) or fails to produce the books of account and documents called for by notice under section 142(1) is liable to prosecution. But the punishment and conviction before a court in such cases is only a fine up to Rs. 10/-, and there is a very light punishment or conviction. It is not that summarily he is going to be punished or given imprisonment. Appeal is there. We want to mobilise the public opinion and we shall give some benefit if it is possible. Once you know a rich man was convicted and when the question of imprisonment came he was so much upset. He said—'how can I go to jail?' He went and appealed to his lawyers—can you not do something for me? So this is the case. He was put into difficulties. The rich man is really afraid of going to jail. He can give a heavy sum but he would not like even a day's imprisonment. That is a terrible thing for him.

SHRI N. C. CHATTERJEE: Will it do in the clause if the word 'shall' be substituted by the word 'may'.

SHRI ACHARYA: That is one part. It all depends upon the age and health condition of the culprit.

SHRI T. VISWANATHAM: Simple imprisonment is lighter than rigorous imprisonment. In simple imprisonment one will be confined to cell, but in rigorous imprisonment he will be able to go about and he will also get a better ration.

SHRI B. S. SHARMA: You are connected with a very big Association having valuable experience and you are representing, I should say, the topmost class of assesseees. The object of this Bill you know is to rationalise and simplify the provisions of the Act. Do you think that the provision which we are going to enact now are going to achieve this objective or these provisions are not sufficient and something more is needed to be done to simplify and rationalise the Income-tax Act. I say the Act has become very complicated and it is changing so often. Our anxiety is that it should be simplified. It should be done in such a way so that even a lay man can understand it.

SHRI PURI: There is great truth in what has been said just now. Our suggestion also would be to simplify it so that the people can realise what it is. There should not be anything complicated. The Act should be reduced in size and there should be some guidelines.

SHRI ACHARYA: I think that these rules be shortened subject to Central Government's approval or the Income Tax Department's approval so that people can understand them better and easily.

SHRI B. S. SHARMA: There are about 30 lakh assesseees in the country which comes to about 5 per cent of the total population and if our tax laws are simplified and made attractive more people shall be glad to pay their taxes. You know, formerly a boy did not like to go to school for fear of punishment but now-a-days a boy merrily goes to school because apart from reading he is able to play as well. That attracts him to the school. Our anxiety is that every man who has got sizeable income should pay his tax properly. Do you think that so far as the present Bill is concerned, it will go to that extent and achieve that object or do you think that we require further amendment of the clauses to achieve that end?

SHRI ACHARYA: I think if the clauses which deal with special of cases are relegated to schedules and the Act confined to broad chapters and sections to make them easily understandable by the people, that will serve the purpose.

SHRI B. S. SHARMA: So you agree that to that extent the Act is not simple and it should be simplified further. Now, I come to amortisation clause. So far as this Bill is concerned, there is provision that the Board of Direct Taxes will frame the rules and they may add further items but do you think that will achieve the objective you have in view. Would you like this matter to be left to the guidance of the Board of Direct Taxes or you would leave it to the discretion of the Income Tax officers?

SHRI ACHARYA: We would be happy with the Central Board of Direct Taxes to frame the rules and lay the guidelines.

SHRI SANGHI: Regarding clause 63 about imprisonment, I can assure you that we are not very keen for minor lapses and that imprisonment should not be given for minor lapses. But you know there are lots of cases of evasions and delay in filing returns. Can you suggest any alternative method by which people who delay in filing returns or producing books can seriously be brought to book without being sent to jail?

SHRI ACHARYA: I think if there is a sort of reward or a title or an award to people who contribute, let us say, the highest amount of tax, probably you will find there will be a race. This is particularly important. As Napoleon said that even generals liked ribbons and crosses, similarly I think we can also give ribbons and cross to our people.

MR. CHAIRMAN: But supposing if a person gets the award and thereafter does not pay the tax?

SHRI ACHARYA: The award can be only for one year and not permanently

SHRI SOMANI: Please refer to your representation on clause 3(d) on the subject of admissibility of foreign technicians into this country. I would like you to keep in mind that no businessman would call a foreign technician unless it is absolutely necessary. Secondly, he will only call for when a venture is a new one and consists of new and sophisticated technology about which nobody knows anything in India and by this argument this is bound to be a highly profitable venture. Now, there is absolutely no mention in the Bill that you will not be able to pay anything more than Re. 4000/- and that in excess of Rs. 4000/- the company should pay the taxes.

SHRI SOMANI: Apart from these considerations, even on a given situation where qualifications are equal we are not prone to pay Indians the same salary as we pay to the foreigners. I have several examples where Indian technicians have been giving expert advice to other countries. What I am trying to say is that I do not see, first of all, any justification for a liberal provision in respect of foreign technicians and as a body of professional experts you are expected to welcome this measure that we should henceforth be very restrictive and selective about foreign technicians. I want to know your specific approach.

SHRI ACHARYA: My submission is that we made the point quite clear that Government while giving approval should consider what sort of a person he is, whether he is required in India or not.

SHRI SOMANI: You pay whatever salary you like. Only Rs. 4,000 is exempted.

SHRI ACHARYA: Our point is why should there be a restriction on the salary?

SHRI SOMANI: I am sure you are aware of the mischief of the operation of this definition clause.

SHRI ACHARYA: In the case of my own company there is only one technician, who is in fact, a technician, putting up a plant.

MR. CHAIRMAN: You have not applied your mind to the definition clause. If you want to employ a foreign technician, you can employ him and you get the approval of the Government also. But keeping in view the natural growth of industrial development during the last 20 years we have placed a limit. We want to put some kind of restriction so that we can give some encouragement to our own technicians who are growing very fast. Our consultancy services are also growing faster.

You are aware, there is a loss of Rs. 2½ crores to the country and you are asked to pay a little tax. You must have to look to the gradual growth of industries in this country, how technical knowledge can be developed in this country.

SHRI SOMANI: These industries will be highly profitable industries in this country. Therefore, even from that point of view they should consider this. I would expect such professional bodies to seriously consider these things.

SHRI N. C. CHATERJEE: They should protest.

SHRI ACHARYA: We never realised that anyone would bring in experts in poultry farming into this country.

MR. CHAIRMAN: What we feel is that you have not given very much thought over this problem.

SHRI PURI: That arises from experience.

SHRI N. C. CHATERJEE: Only thing you are saying is that this is

grossly inadequate. What is the ceiling that you recommend?

SHRI ACHARYA: The technician is on a temporary assignment, anyway. He would normally except in hand something like Rs. 5,000 as minimum.

SHRI BISWANATH ROY: When the industry is making so much profit with the help of these foreign experts and technicians, should they have no contribution to the society. They should help the government by paying more tax out of the huge profits they make in their industries with the technical assistances of the foreigners.

SHRI PURI: They are certainly paying higher tax on their higher profits. By importing these technicians these sophisticated industries are making profits and they are paying for their excess profits—I think this is the yardstick of their payment of higher tax on higher profits.

SHRI N. K. SOMANI: You have said that 2½ p.c. is inadequate; have you made any alternative indication as to how much it should be or would you like it to be limitless?

SHRI PURI: We want that all legitimate expenses should be included at the time of tax rebate. If this is done then people will have an easier job and they would be able to devote their time in other gainful ways. If the machinery is made complicated, then they will have busy time.

SHRI SOMANI: Government have already conceded the preliminary expenditure and they have accordingly made provision for amortisation of expenditure. What else you want?

SHRI PURI: Some people might have abused the concession but for that government should not set up a machinery for holding everybody in penalty.

SHRI SOMANI: You show us what will be the cost of promoting or floating a company. You may just give us all the details—cross-sections of all actual expenditure. This will be very helpful to the committee. The figures that we have got from the Central Board are quite contrary to your point.

SHRI R. K. SINHA: Some of the industries are making huge profits with the help of the technical experts from abroad. So what is your objection in paying more taxes out of the excess profits that the industries are making ?

SHRI PURI: On the higher profits higher taxes—I mean income taxes are being paid. And it is better that the deduction is made at one place.

SHRI R. K. SINHA: Do you think that these experts from abroad should get more or much more than our Rashtrapati, senior Civil Service Officer. There is something of a morality and moreover it may be so much salary etc. are not perhaps needed by them.

SHRI PURI: If Rs. 4000/- is inclusive of accommodation, it will be very low.

SHRI N. C. CHATTERJEE: If we drop perquisites.

SHRI PURI: If it is Rs. 5000/- without perquisites, the company can pay tax on the excess over this salary.

श्री योगेन्द्र शर्मा : इमॉटाइजेशन के बारे में विभिन्न मुल्कों के टैक्सों के कानूनों में क्या स्थिति है, इस की जानकारी यदि हम लोगों को दे सकें तो हम लोगों को बहुत सहूलियत होगी, खास करके इंगलैंड के टैक्सेशन कानून में और स्वीडन के टैक्सेशन कानून में ?

श्री पुरी : इस का एक स्टेटमेंट हम आप को बना कर दे देंगे कि किस मुलक में कहां ज्यादा एलाऊ होता है ।

श्री योगेन्द्र शर्मा : स्वीडन का न भूलियेगा ।

MR. CHAIRMAN: You will please submit the information to us.

SHRI N. C. CHATTERJEE: Do you consider 2½ per cent to be too low?

SHRI PURI: Yes, Sir, we would ask for 4½ per cent.

श्री योगेन्द्र शर्मा : हमारे नेशनल्स जो दूसरे देशों में काम करने को जाते हैं टैक्सेशन के सिलसिले में उन की स्थिति क्या है , इस के बारे में भी जानकारी दे सकते हैं ?

MR. CHAIRMAN: You may give that information as to wherefrom you have got it.

SHRI VISWANATHAN: How much our Indians get abroad?

SHRI R. K. SINHA: Much more than in India.

SHRI ACHARYA: Sir, if you have a look at the advertisements appearing in the foreign papers you will have an idea as to how much a senior executive gets there.

MR. CHAIRMAN: You will also give us what a project costs on which amortisation is claimed. We have examined several balance-sheets from which we find that they include with the cost of products the price of the commodity. That means they spread over their products the expenditure that is incurred.

SHRI PURI: We arrived at the cost keeping in mind what a fair selling price would be and how much the consumer is able to pay.

II. Merchants Chamber of Commerce, Calcutta

Spokesmen:

1. Shri B.S. Kothari—*President.*
2. Shri S.N. Dalmia—*Sr. Vice President.*
3. Shri B.P. Agarwala—*Committee Member.*
4. Shri H.L. Somany—*Committee Member.*
5. Shri M.L. Saraf—*Committee Member.*
6. Shri R.L. Saraogi—*Chairman, Taxation Sub-Committee.*
7. Shri H.R. Bose—*Executive Officer.*

MR. CHAIRMAN: Mr. Kothari, before we proceed may I read the rules of procedure that the evidence you give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you has to be treated as confidential. But even though you might desire that your evidence is to be treated as confidential such evidence is liable to be made available to the Members of Parliament. So we have received your memorandum. Would you kindly highlight the important points.

SHRI KOTHARI: Mr. Chairman, Sir, I thank you very much for affording us an opportunity to represent our Chamber before this Committee. We have already submitted our memorandum but I will like to highlight some of the points. Our Chamber welcome the objectives of the Bill which are rationalisation of certain provisions, simplification of the procedure, amendment of certain clauses, removal of certain unintended hardships and checking of tax evasion offences. But our committee feels that the provisions as they have been introduced in the Bill will not be able to meet the objectives of the Bill. Although we welcome some of the provisions regarding amortisation of expenses we feel that

the other provisions particularly regarding the registered firms or the procedure for assessments and others will not meet the objective. In this connection I would like to point out that there is a provision for making penalty and interest on the registered firms as unregistered. If simplification principle is accepted then appropriate steps should be taken for removing such provisions in the interest of all concerned.

I would also like to bring to your kind knowledge that while we welcome the amortisation measure we also want that it should be the principle that whatever expenditure is incurred it should be either revenue expenditure or capital expenditure and on the capital expenditure depreciation or amortisation should be allowed. Another point Sir, which I submit is that amortisation has been limited to 2½ per cent of the share capital, debentures and long terms borrowings. There is no justification for keeping such a low limit. This ceiling is inadequate in view of the fact that for under-writing shares the financial institutions are charging 2½ per cent commission and brokerage of 1 per cent. Therefore this ceiling is very inadequate.

SHRI KOTHARI: Then regarding amortisation on shifting of industrial undertaking. There should be improvement in this provision if anything concrete is to be done. Now two conditions have been laid down. One is that the Income-tax Officer must be informed whenever shifting is made. It is necessary that any expenditure legitimately incurred for the purpose of business should be eligible for amortisation if the expenditure is not otherwise eligible for depreciation. Another thing is that the relief should not be given on the analogy of development rebate, and the shifting expenses should not be withdrawn as on that reason. Then, Sir, regarding expenses of prospecting of minerals. If they are not related to production, they will not be allowed. There is a

search for minerals. Some time the expenses may be infructuous. In such cases not to allow this expenditure will be not to encourage the risk taking for prospecting of the minerals. Then I will come regarding the assessment procedure. At present the Income-tax Officer has the power to make provisional assessment and on the analogy of that right is being given. That he can complete the final assessment. It has to be done in a proper way. Otherwise it will lead to more appeals. Appeal right has also been given for this assessment, but even if the appeal is pending before the Appellate Commissioner, the Income-tax Officer has been given right under section 143(2) to call for any books of accounts. In case he finds that it is inadequate or, incomplete, then he can make another assessment. If this provision is not properly utilised, it will lead to complication, and there will be more appeals. There should be a simplification of the procedure if any complexity is to be avoided. There is another clause 43—regarding recognition of firms. Discontinuance of the present system of registration of firms is not desirable. The amendment will not bring any simplification. It will not be a desirable thing to do away with it and invite more litigations. Simplification might be done by maintaining the present registration clauses. With so many amendments what will happen? It will bring more complications in the Act. May I further suggest that instead of the proviso that husband and wife will not be treated as relationship having right or interest within the term of proposed condition, there should be an explanation or clarification. Otherwise by presumption other relationship will come within the purview of the sub-clause. Some clarification should be given over there. Then I would refer to the clubbing of the H.U.F. income. I would suggest that some healthy principle should be followed in this case. There should not be any attack at the basis of the HUF. The retrospective effect of any of the provisions in

clause 14 will go against planning and equity. Now Regarding appeal fees. It may be said that fee of Rs. 10 for appeal to AAC is not a heavy sum. We will venture to say that the AAC's jurisdiction should be transferred to the Law Ministry jurisdiction. The idea is to reduce the pendency of appeals. Many of the appeals go to the Tribunal because assesseees feel that adequate justice is not being done. We will suggest that to bring down the pendency of the appeals, the control of the AAC should be transferred to the Ministry of Law. That will inspire more confidence among the assesseees.

Thank you, Sir.

SHRI N. C. CHATTERJEE: Look at clause 8 of your memorandum, page 2. All expenditure legitimately incurred for the purpose of business should be eligible for amortisation, if the expenditure is not otherwise eligible for an allowance of depreciation, or is not allowed as a revenue expenditure. What is the real grievance here?

SHRI KOTHARI: There is no specific provision for pre-production expenses.

SHRI N. C. CHATTERJEE: What is the rate?

SHRI KOTHARI: In our opinion it will be about 4 to 5 per cent. 2½ per cent is actually given on the capital. Here the formula which has been prescribed is paid-up capital plus debentures, excluding general reserves.

SHRI SOMANI: We have not worked out on this new formula as to how much the expenditure will amount to if this base is taken.

SHRI N. C. CHATTERJEE: Do you think 4½ per cent will be better?

SHRI SOMANI: Yes, it will be a good average.

SHRI CHATTERJEE: In the Indian Cement case the Supreme Court has laid down certain principle. You want to be retained?

SHRI KOTHARI: That is a very salutary principle which has been laid down by the Supreme Court. That should be retained.

SHRI CHATTERJEE: You are not challenging the judgment?

SHRI KOTHARI: No. We would like to submit that any type of expenditure whether it is capital or revenue must be entitled either for amortisation or depreciation or should be allowed for computing the income because a person should be assessed on his net income otherwise there will be great hardship.

SHRI CHATTERJEE: Supposing we make it at 4 or 4½ per cent, will that cover everything, will that satisfy you?

SHRI KOTHARI: We have not made different studies on the new base as to how much it will fall in certain cases. But my friend has suggested that it will be a good average.

MR. CHAIRMAN: We have worked it out at 2½ per cent. We have examined witnesses who say that 3½ will do and now you come and say that 4½ per cent will be good. Have you made any study?

SHRI KOTHARI: Sir, this is going to change from company to company. Whereas there are certain companies where the expenditure is not required in a large way, in certain new industries which are coming up the expenditure may be quite large.

MR. CHAIRMAN: That way you cannot argue it out. You see, for the last two days we have heard so many witnesses. When we have worked it out at 2½ per cent, it means that the Government has studied some 30 to 40 companies. After that study

they have found that somewhere it is 3 per cent, somewhere it is 3½ per cent but in no case it has gone beyond 4 per cent. We cannot go on acting like the school teachers who wanting to cross a river without a boat took the depths of the river at different places and were drowned.

SHRI SOMANI: On this point we are talking of the future and the industries that will come up in future will determine the cost. And, Sir, even if we have a boat to cross the river, the bed of the river is going to shift or the depths are also going to change.

MR. CHAIRMAN: But we must have some basis, some data to work on.

SHRI SOMANI: One thing has to be considered regarding foreign collaboration. In a foreign collaboration agreement, at the time of making the agreement we always try to protect ourselves as the other side also tries to protect itself. We always include secret formula. The expression secret formula is not secret at all, although in every agreement it is there. Now, when it comes to the I.T.O. he says that you have got (a) to (h) clauses, and we want to have the total amount to be split up into (a) to (e). Now, I say that (e) is the secret formula and I have to include it into the agreement. At the time of agreement a lump sum is always mentioned for the simple reason that the other side wants to capitalise or put into the revenue account some items of expenditure according to the available practice in that foreign country, whereas we have to do it according to the actual practice or to the best advantage of the assessee within the law. But that lump sum distribution to the satisfaction of the I.T.O. is most difficult.

MR. CHAIRMAN: Mr, Somani, perhaps you are aware that in Britain they do not pay this amortisation.

SHRI SOMANI: Yes, you are right.

MR. CHAIRMAN: Amortisation is the project cost that you want to get free from all these things. Now, when your factory goes into production, don't you take into consideration the entire project cost. Government has considered all aspects and they say that the industry must have its say, they must be encouraged. But for the last twenty years you are working in a sheltered market and when you sell your product the project cost itself forms part of the cost of the product. If there is competition, you decide how much to absorb in the cost and how much not to absorb in it. You are working in a sheltered market and now if you say that you want to get back all the project cost by way of prices that the consumers are paying and you also want the benefit of amortisation, that is not fair.

SHRI SOMANI: As far as this subject is concerned, it is a very very difficult subject and can be argued for hours and days together.

MR. CHAIRMAN: We want suggestions from you. Government is anxious to understand the point of view of the industry as to how much can be done and Government wants and the country wants to encourage industry. But all these factors should be taken into consideration. Some people come and say that 2½ per cent is enough, some others say that 3½ per cent is good and you say that 4½ per cent will be a good average. Now, whatever it is, there must be some basis for that.

SHRI SANGHI: What do you think is more important? Should the definition be broadly based, or keeping the same definition the amortisation should be slightly increased?

SHRI KOTHARI: These are based on two different things. If the base is kept as it is, a company which has got accumulated reserves will be discriminated. A company which has no accumulated reserve will be in a better position. This will be an

unintended sort of discrimination. A limit, taking the base as it is with the paid-up capital, reserves, long term loans, debenture—we are at the present time trying to assess whether that ceiling should be 4 per cent, or 3½ per cent or 5 per cent. We are not taking into consideration, I suppose, the reserves which will be available in the case of many companies.

SHRI SANGHI: Some relief has been provided by the Government, for the first time, to the industries. This is with regard to new industries. Would you prefer the definition to be broad based, or keeping the same definition, amortisation should be slightly increased?

SHRI KOTHARI: I would suggest that the ceiling should be raised from 3 per cent to 5 per cent.

MR. CHAIRMAN: We are not very much satisfied on this point. Please think over it and give your views later.

SHRI KOTHARI: We will try to do that.

SHRI B. SHARMA: Before I come to particular clauses, I would like to ask you one question. As you are aware, our anxiety and the main objective of this Bill is to simplify and rationalise the provisions of this Act. From the point of view of your members, is this Bill going to achieve that object of simplification and rationalisation of the Act?

SHRI KOTHARI: Particularly regarding section 143 and recognition of firms, even regarding appeals, where all the assesseees will be affected, whether middle class or small, I do not feel, and our Committee also did not feel that it will lead to any simplification. As I explained, there have been too many amendments. As I said, there are some clauses which will be with retrospective effect and some with prospective effect. There

is no uniformity of the clauses, operation.

SHRI B. S. SHARMA: I wanted to know whether these are the only issues as discussed in the clauses of this Bill which are to be simplified, or something is missing which should be supplemented in order to simplify the provisions of the Act? May I ask you to give us a note later which will contain your suggestion make it simplified and rationalised?

SHRI KOTHARI: If we are invited to apply our mind we will definitely like to submit an additional memorandum in this regard.

SHRI H. S. SHARMA: Please do that. Now, there is a specific provision in the Bill—please see page 3 of your memorandum on clause 14—you have said that you object to the retrospective application. That is, this clause should apply to the Hindu Undivided families which has come into being after the Supreme Court decision of 1965. I agree with you that the law should not be given retrospective effect. I personally think that giving retrospective effect will add to the difficulty of the department also. The ex-Finance Minister was also not in favour of retrospective effect as you know. Any new provision should be made with prospective effect only. But leaving aside this quarrel of retrospective or prospective application do you think that such a provision will strike at the root of this institution of Hindu Joint family?

SHRI KOTHARI: Our chamber has considered this aspect. We feel this as an interference in the personal law and strikes at the very basis of the Hindu Joint family and will lead to its disintegration. The snare of the co-parcener remains indeterminate until Hindu Undivided family is partitioned. It will create a lot of difficulties to determine the share flowing from the transferred property. Where money is thrown into the Hindu Un-

divided family hotch potch and has other income it will be difficult to determine as what is the income from money thrown into the family hotch potch for the purpose of this section. This will create difficulties in the administration and also for the assessee in submitting the details.

SHRI B. S. SHARMA: The department has its own arguments. It is not that people take recourse to legal avoidance always but to some extent it is true. There is another aspect of the change. There are genuine cases where an individual wants to have something in his joint family for the maintenance and other needs of the family. There are very few people who will take recourse to legal avoidance through the medium of this institution and the majority of the people have faith in the institution and they want to continue the system. How far do you agree with this?

SHRI KOTHARI: Even assuming that people are taking advantage of the legal avoidance, everybody is not doing so. Hindu undivided family is a very important system in India. We are following a sociological system although by now most of the people have become westernised in their outlook but there are still some who support this system and it should be our endeavour to see that this system is not disturbed due to the fault of some people who want to avoid tax.

SHRI B. S. SHARMA: So far as the concept of Hindu family is concerned, it is based on the principles of socialism. In a family there are some good earners and some bad earners. Every one tries to contribute according to his own right and is given according to his needs. We have been following this system for a very long time. Therefore, keeping in view the socialistic pattern of society which we talk so much now-a-days. It should not be disturbed. Do you agree with me?

SHRI KOTHARI: Many people still attach great value to this institution.

This has a sociological and historical background and this institution has his own guiding line. So, if we put it aside on account of tax evasion, that will be a great blow to this age-old institution.

श्री योगेन्द्र शर्मा : हम दो बातों की सफ़ाई चाहते हैं। एक तो इमॉटाइजेशन के बारे में अभी माननीय चटर्जी साहब ने आप का ध्यान आपके मेमोरेण्डम के इस पैरा की ओर खींचा था जिसमें आपने कहा है कि तमाम एक्सपेंडीचर जो कि कंपीटल एक्सपेंडीचर और रेवेन्यू एक्सपेंडीचर में नहीं आते हैं, उनका इमॉटाइजेशन मिलना चाहिए। यह आपका सुझाव है। हम आपके सुझाव के बारे में समझना चाहते हैं क्योंकि हम बिज़नेसमें नहीं हैं और इसलिए हमें समझने में दिक्कत हो रही है। हम लोग यह आपसे जानना चाहेंगे कि ऐसे भी एक्सपेंडीचर हो सकते हैं जो न तो कंपीटल एक्सपेंडीचर हों और न रेवेन्यू एक्सपेंडीचर हों। हमारी समान वृद्धि के अनुसार तो जितने भी एक्सपेंडीचर बिज़नेस के सिलसिले में होंगे वे या तो कंपीटल एक्सपेंडीचर होंगे या रेवेन्यू एक्सपेंडीचर होंगे और इसलिए या तो आपको डेप्रीशिएशन मांगना चाहिए, जो कि आपको मिल रहा है, या आपको इन्कम के कांयूटेशन में उसका हिसाब मिलना चाहिए जो कि मिलता है। तो फिर इमॉटाइजेशन की मांग कहां से पैदा होती है और उसका जस्टिफिकेशन क्या है। यदि कोई ऐसा कंपीटल एक्सपेंडीचर है, जो कि कंपीटल एक्सपेंडीचर में नहीं आता है और न ही वह रेवेन्यू एक्सपेंडीचर में आता है, तो आपकी सिफारिश यह होनी चाहिए कि उसको कंपीटल या रेवेन्यू एक्सपेंडीचर में शामिल किया जाए। यह आपका सुझाव क्यों होना चाहिए कि उनको इमॉटाइजेशन में लाना चाहिए। एक तो मैं आपके सुझाव को समझने के लिए यह सफ़ाई चाहूंगा।

दूसरी सफ़ाई यह चाहता हूँ कि जो एच० यू० एफ० के बारे में बातचीत चली थी

और आपने जो बात कही, तो उसको आपने नैतिक स्तर पर लिया है कि इस सिलसिले में भूतपूर्व वित्त मंत्री ने आश्वासन दिया था कि इसका रिट्रोस्पेक्टिव इफ़ेक्ट नहीं होना चाहिए।

श्री वेणी शंकर शर्मा : हरेक कानून की बात है, इसकी ही नहीं है।

श्री योगेन्द्र शर्मा : हरेक कानून की बात छोड़ दीजिए। यह जो खास प्रश्न है जिसके बारे में हम लोग चर्चा कर रहे हैं और जिसके बारे में आपने जो तर्क दिया वह एक नैतिक तर्क है कि भूतपूर्व वित्त मंत्री का आश्वासन है और उसके विपरीत यहां पर क्यों कानून बनाने की बात चल रही है। आप लोगों को मालूम होगा कि जिस आश्वासन की आप बात कह रहे हैं उस आश्वासन की अब कोई वैलीडिटी नहीं रह गई, इसलिए कि जिस वित्त मंत्री ने आश्वासन दिया था, वे 'भूत', हो गये और नीतियों का बहुत गम्भीर प्रश्न था और उन नीतियों से देश और पार्लियामेंट सहमत नहीं था, इसलिए उन्हें जाना पड़ा। ऐसे आश्वासन को आप अपने सुझाव का आधार कैसे बना सकते हैं जिसको हमारी पार्लियामेंट ने नीति के स्तर पर अस्वीकृत कर दिया ?

SHRI KOTHARI: You have raised two points. One is that the expenditure should be either capital expenditure or revenue expenditure. From the commercial point of view both the capital expenditure and the revenue expenditure are over a period of time written off whereas in Income Tax they do not allow any depreciation or any amortisation unless it creates any tangible asset.

श्री योगेन्द्र शर्मा : मुनाफ़ा और कर तो माया नहीं है, बहुत ही ठोस पार्थिक चीज़ है

SHRI KOTHARI: You see an artificial definition has been created.

श्री योगेन्द्र शर्मा : इसलिए मेरा प्रश्न यह है कि क्यों नहीं आप यह सुझाव देते कि आर्टिफिशियल डेफीनीशन को खत्म करके रियल डेफीनीशन होनी चाहिए ?

SHRI KOTHARI: That is what I suggested at first that all the expenses should be allowed. There is one sentence in our memorandum which Shri N. C. Chatterjee also referred to. It is, "The Chamber suggests that all expenditure legitimately incurred for the purpose of business should be eligible for amortisation, if the expenditure is not otherwise eligible for an allowance of depreciation or is not allowed as a revenue expenditure."

श्री योगेन्द्र शर्मा : कोई एक्सपेंडीचर जो कि कैपिटल एक्सपेंडीचर न हो और रेवेन्यू एक्सपेंडीचर भी न हो, तो फिर वह एक्सपेंडीचर कहाँ है, वह तो माया है और उस माया के बारे में आप कन्वेंशन कैसे चाहते हैं ?

SHRI KOTHARI: As I have said that the artificial definition should be corrected.

SHRI N. K. SOMANI: Mr. Kothari, you said in your memorandum that the ceiling of 2½ per cent in the case of amortisation as has been proposed in the draft Bill is too inadequate. Would you tell us as to what according to you should be the ceiling?

MR. CHAIRMAN: They have said that 4½ per cent would be a good average and if it is 5 per cent then it will be all right.

SHRI N. K. SOMANI: There is the question of capital, there is the question of initial expenditure on pre-production and they are bound to be a little higher than the large-sized companies. Would you give any specific suggestion on behalf of small scale industry in this particular field?

SHRI KOTHARI: The only thing is that there should not be any discrimination for firms. Nothing should be discriminated against if amortisation will be allowed to the companies, it should be allowed to firms as well.

SHRI N. K. SOMANI: There are incorporated companies. Would you not like to give them a little more percentage rather than taking an average because they are likely to suffer?

SHRI KOTHARI: It will all depend upon the size of the Company. It will depend upon the type of the Company and upon the type of manufacture. If something is not done in a proper manner, one or the other will suffer.

श्री कंवर लाल गुप्त : मैं आपका ध्यान क्लॉज 14 की तरफ दिलाना चाहता हूँ जो हिन्दू अनडिवाइडेड फ़ेमिली के बारे में जिसमें रेट्रोस्पेक्टिव इफ़क्ट की बात है। मैं सहमत हूँ कि यह नहीं होना चाहिये। लेकिन इसके साथ-साथ आप यह मानेंगे कि एच० यू० एफ० में फ़ेमिली कंसीडरेशन की वजह से कुछ हिस्सा अपनी कैपिटल का धरो कर सकते हैं, लेकिन प्रेक्टिकल ऐक्सपीरियंस यह है कि 1965 के बाद जब से सुप्रीम कोर्ट की रूलिंग आयी है तब से लोग ज्यादातर एच० यू० एफ० फ़ॉर्म कर रहे हैं और फिर तोड़ देते हैं। तो यह जो मिसयूज हो रहा है लार्ज स्केल पर इसको रोकने के लिए आप क्या चीज सजेस्ट करते हैं ?

SHRI KOTHARI: I would submit it may be taxable when it is partitioned instead of when it is thrown into the HUF. The intention is only to prevent it at this point of time. It will be rather difficult to determine the income from the money thrown into HUF.

श्री कंवर लाल गुप्त : यह जो क्लॉज 14 की बात अभी कड़ी थी एच० यू० एफ० बनाने में कोई दिक्कत नहीं है, फ़ेमिली कंसी-

डरेशन पूरा हो जाता है, एच० यू० एफ० बना लीजिये, सिर्फ दिक्कत यह है कि इन्कम क्लब हो जायगी इंडिविजुअल के साथ ।

दूसरी बात यह है कि आज जो रजिस्टर्ड फर्म है, अगर हस्बैंड और वाइफ़ दोनों पार्टनर हो जाते हैं, माइनर सन या मदर पार्टनर हो जाते हैं तो दोनों की इन्कम क्लब कर देते हैं । तो इसका आप क्या जस्टिफिकेशन समझते हैं ? अगर किसी एक की वाइफ़ दूसरे के साथ पार्टनर हो जाती है तो कोई दिक्कत नहीं है, लेकिन अगर किसी की वाइफ़ है, चाहे उसका पर्सनल घन हो, तो दोनों की कैपिटल क्यों क्लब होनी चाहिये पार्टनरशिप बनने पर ? यह निश्चित है कि जितनी अच्छी पार्टनरशिप हस्बैंड और वाइफ़ की चलेगी उतनी अच्छी किसी क्रोरेन एलीमेंट के साथ पार्टनरशिप नहीं चल सकती । तो यह जो क्लबिंग है इसका क्या जस्टिफिकेशन है ?

SHRI KOTHARI: This is a complicated matter. There is no justification morally or legally when one is competent for that. She may have got her independent wealth but taking in the larger interest and from the revenue point of view, it may be said to be utilised to a greater extent than perhaps when this clause was enacted. There is provision in U.K. and USA also for clubbing wife's income with that of the husband but actually here the case is different. So it should not be practised.

श्री कंवर लाल गुप्त : मैं ने वाइफ़ और हस्बैंड की क्लबिंग की जो बात कही थी, यू० के० में यह ठीक है कि वह जरूर क्लब करते हैं, लेकिन वहां की प्रैक्टिस फ़ौलो करना जरूरी नहीं है । अगर यह साबित हो जाता है कि वाइफ़ के पास अपना पैसा है, उसका स्त्री घन है, या माइनर सन के पास अपना पैसा है,

जो उसका अपना पर्सनल है, तो फिर दोनों की इन्कम क्यों क्लब होनी चाहिये ? उस का लीगल और मौरल ऐस्पेक्ट क्या है ? यू० के० में अगर कोई बेवकूफ़ी होती है तो उसको हम को ब्लाइंडली नहीं मानना चाहिये । मैं जानना चाहता हूँ कि मौरल या लीगल ऐस्पेक्ट आप उसका क्या समझते हैं ?

SHRI KOTHARI: So far as I feel, there should not be clubbing. We do not see any justification that the income of the husband and wife should be clubbed. In the case of benamdar it is a different matter. There is the power with the Income-tax Officer to see if there is any benamdar. He can take steps, if necessary, by virtue of the powers vested in him.

श्री कंवर लाल गुप्त : बेनामीदार में कोई और लेडी हो गई तब तो रजिस्ट्रेशन हो जायगा । लेकिन वाइफ़ नहीं होनी चाहिये ।

Here any other lady can also be the partner.

SHRI B. S. SHARMA: One of the objects of this Bill is for reduction of appeals. With that object the framers of the draft have taken it into their head to increase the fee from Rs. 106 to Rs. 250. Do you agree that this increase of fees will reduce the appeals?

SHRI KOTHARI: We do not feel that the increase in fees will be any factor though it is not desirable. It all depends upon the circumstances of the case. It requires some consideration before anything is done.

SHRI B. S. SHARMA: So far as the frivolous appeals are concerned, they do not come up before the Assistant Commissioner's stage because in 99 cases the assessee do not argue the cases themselves and they have to employ lawyers and accountants and so the process is rather costly. The frivolous appeals actually arise

after the Assistant Commissioner's stage. Personally I do feel that the assessee goes on in appeal generally not on any frivolous grounds but for redress of their grievances. It is the Department which files appeals on frivolous grounds because the Department does not have to pay any fees and incur any expenditure on that account. In answer to some questions of mine in Parliament the Department has said that in at least 65 to 70 per cent of the cases on appeal the department has lost. So instead of this clause would you like that the department should be made to pay fees of Rs. 100 and if the department loses and the assessee wins the cost should be made over to the assessee and that will be the real remedy for this malady.

SHRI KOTHARI: We agree with the suggestion that the Tribunal should have power to award the cost.

SHRI K. L. GUPTA: In other words, do you suggest that he who wins will get the cost?

SHRI KOTHARI: Yes.

SHRI SANGHEE: On the quantum of fees, Mr. Kothari, you are not averse to the fee of Rs. 10 for appeal before the A.C. but for appeal before the Tribunal you are opposed to the fee of Rs. 250. I may tell you that there are small assesseees who cannot pay even Rs. 10. However, would you agree that where the quantum of tax appealable against exceeds a lakh the fee should be Rs. 250 and below that there will be a lower fee because Government is now thinking of increasing its revenue apart from the question of taxation.

SHRI KOTHARI: We suggest that two slabs may be made in such cases—one for the bigger assesseees and one for the smaller assesseees.

SHRI CHATTERJEE: With regard to clause 14, I think you have relied on one principle. You are not depending on a Minister's statement or a Minister's promise with regard to retrospective application of this provision. You have said in your memorandum that it has been held by the highest judiciary in India that a person can arrange his affairs with the legal framework so as to attract minimum amount of tax. I think you are depending on this principle.

SHRI KOTHARI: Yes.

SHRI SOMANI: I gather this impression that on fair assessment of tax matters, if this were repealed from 1965 and that if it is prospectively applied, it will not attract objection from you. Is that correct?

SHRI KOTHARI: No, Sir. Retrospective effect will have a disastrous influence, we are opposed to it otherwise too.

MR. CHAIRMAN: But surely should you not oppose if somebody tries to evade the tax by taking recourse to an institution which you have built up for thousands of years?

श्री योगेन्द्र शर्मा : इस बिल के उद्देश्य को आपने पढ़ा होगा। तीन उद्देश्यों में एक उद्देश्य यह भी है कि टैक्स इवेजन् को रोकने की कोशिश की जाय। बिल में जो यह उद्देश्य है उसको सामने रख कर के क्या आप कोई सजेशन दे सकते हैं? यदि अभी आप तैयार नहीं हैं तो बाद में भेज दीजियेगा ताकि टैक्स इवेजन् को रोक सकें।

श्री कंवर लाल गुप्त : आपने क्लॉज 63 के बारे में कुछ नहीं कहा जिसमें यह कहा गया है कि अगर रिटर्न लेट भी फाइल किया जाय तो उसको कैद कर दी जाय। क्या आप यह समझते हैं कि लेट फाइलिंग आफ रिटर्न के लिये इमप्रिजनमेंट उचित है या जो रैनल्टिया हैं वही काफी हैं?

श्री योगेन्द्र शर्मा : आप शारीरिक दंड पसन्द करते हैं या आर्थिक दंड पसन्द करते हैं ?

श्री कंवर लाल गुप्त : क्रिमिनल गैक्ट्स के लिये ही इमप्रिजनमेंट दिया जाता है कुछ देशों में तो अब फांसी को भी हटाया जा रहा है और यहां हम सिविल कमीशन और ओमीशन के लिये क्रिजिकल पनिशमेंट करने की सोच रहे हैं। अब समाज में हर तरह की प्रीबलम आती है और अगर हर एक चीज के लिये क्रिजिकल पनिशमेंट करते जायेंगे तो उसका परिणाम क्या होगा सोसाइटी एज ए होल के लिये ? इसलिए मैं आपसे जानना चाहता हूं कि असेसी छोटा हो या बड़ा क्या उसको क्रिजिकल पनिशमेंट देना ठीक है ? रिकग्नाशन आफ फर्म्स के बारे में क्लॉज 4-3 में आपने जो कुछ लिखा है उससे यह तो पता लगता है कि जो कुछ हो रहा है उससे आप खुश नहीं हैं, लेकिन इसको और सिम्पलीफाई करने के लिये आपका क्या सुझाव है ? जैसा अभी आपने कहा कि रजिस्ट्रार आफ फर्म्स के पास जाइये रिकग्नीशन हो जायगा। लेकिन रजिस्ट्रार आफ फर्म्स स्टेट गवर्नमेंट के नीचे हैं और उनके रिकग्नीशन की बेमिध अलग है। मान लीजिये किसी फर्म का नाम आप इंडिया हाउस या भारत कैमि-कल्स रखना चाहें तो रिकग्नीशन नहीं मिलेगा। और इन्कम टैक्स विभाग के रिकग्नीशन का बेसिस अलग है। तो क्या आप और कोई चीज सुझायेंगे जिससे यह रजिस्ट्रेशन आफ फर्म्स का प्रोसीजर और ज्यादा सिम्पलीफाई हो जाय ?

SHRI KOTHARI: At the stage of partition it may be taxed.

MR. CHAIRMAN: We understand, as you have said, there will be so much difficulty to trace all these

things. But after the Supreme Court judgment, as Mr. Gupta pointed out, a new situation has arisen when certain people want to take advantage of H.U.F. so that they can evade their due taxes to the State exchequer. Even with these difficulties and other things, can you suggest any ways and means, again, so that these institutions may not be utilised as they are being utilised?

SHRI SOMANI: As previously pointed, if you take the statistics you will be able to find out how many of these have been made and how many have been broken. If the number broken is very small, don't you think that it is being exaggerated?

MR. CHAIRMAN: After 1955 we got some statistics. Though we are trying it has become very difficult to find it out.

SHRI YOGENDRA SHARMA: (In Hindi on Page 1).

MR. CHAIRMAN: Supposing, now the limit to the H.U.F. is perhaps Rs. 5,000. Would you suggest that this should be increased?

SHRI KOTHARI: H.U.F. is created by throwing self-acquired property in different ways. There have been some conflicting decisions whether gifts tax should be given on it. It is very high. No one would like to pay it. That is the greatest deterrent. If the idea of H.U.F. is ultimately disrupted and any advantage is taken thereby, it may be taxed at that point of time.

MR. CHAIRMAN: At the time of partition it should be done.

SHRI KOTHARI: Yes.

SHRI KANWARLAL GUPTA: (In Hindi on Page 1).

SHRI KOTHARI: This escaped our attention. We feel that this provision is very harsh, although we

agree to the principle of punishment for those who do not file their returns. At the same time there should be a criterion for a small man whose tax is deducted from his salary.

SHRI GUPTA: Do you agree with the principle that a person who has filed his return late should be physically, punished, or financially punished?

MR. CHAIRMAN: First of all, Mr. Kothari has made it clear that even a man with small income should be put to this position.

SHRI GUPTA: (In Hindi on page Q. 1 to 2).

MR. CHAIRMAN: Before you answer, Mr. Kothari, would you kindly enlighten whether a man who steals from one man commits greater offence than one man who steals from the nation?

MR. GUPTA: It is not a question of stealing. Here a man is being punished for late filing of returns.

SHRI KOTHARI: I would submit that the punishment should be proportionate to the degree of offence.

SHRI GUPTA: (In Hindi on page Q. 2).

SHRI KOTHARI: We feel that the existing procedure should be improved upon instead of changing it in toto. That will create more complications. And for renewal a simple declaration that there is no change in the constitution should be a sufficient compliance for granting renewal of registration.

SHRI KOTHARI: It should not be form No. 12. Now, so far as the linking it with Registrar of firms, this linking will create much complications.

SHRI B. S. SHARMA: I gather that you are against change in the nomenclature from registered to recognition and do you think that there is no difference in it.

SHRI KOTHARI: If I may be permitted to say if no difficulty is put to the assessee, I do not mind it.

SHRI B. S. SHARMA: About registration under the old system the signature of all partners is necessary at the time of renewal. Do you think that signature of one partner should be sufficient for renewal purpose?

SHRI KOTHARI: It may be done by one partner.

SHRI B. S. SHARMA: You know sec. 140A has been newly added. Now Sec. 141 is sought to be omitted. Under sec. 140A a person is asked to file return and calculate the tax pay to government the tax so determined. Now further two assessments have been provided under these new provisions, one practically provisional and the other final. Do you agree that other there should two assessments—one revisional and another final?

SHRI KOTHARI: So far as self-assessment is concerned, there are many initial difficulties which we have already represented. Of course there has been some improvement in the matter but I am strongly of the opinion that there should not be two assessments under 143 section. And the counting of dates within which the tax is to be paid should begin from the date of sending of the challan.

MR. CHAIRMAN: Thank you very much Mr. Kothari and others representing the Association.

(The Committee then adjourned).

The Committee reassembled after lunch at 15.00 hours.

III Indian copper corporation Ltd. Calcutta.

1. Shri S. H. Utamsingh—

Business Manager.

2. Shri P. H. Bray—

Assit. Mine Supdt.

3. Shri S. K. Ghosh—

Taxation Executive.

MR. CHAIRMAN: I welcome you all to this Committee. Now, before coming to the actual business we have a formality to be observed. According to the rules of procedure your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of your evidence is to be treated as confidential. But even though you might desire that your evidence is to be treated as confidential such evidence is liable to be made available to the Members of the Parliament.

SHRI SINGH: Firstly, I should mention that the purpose of the Indian Copper Corporation Ltd. to put forward their evidence was basically to highlight the problems particularly in connection with the non-ferrous metal mines specially where the mining has to go to a considerable depth. Taxation laws normally deal with coal mines and one does not think in terms of other metals specially when mining operation goes below the ground to a depth of 3,000/4,000 feet. Secondly the intention of putting this note was to draw attention to the proposed wording which in our opinion will not meet the requirements of this existing mining companies which have already established commercial production as against new ventures which might start mining industry for the first time. So the second purpose is purely to go into the draft wording. It is not our intention to seek any special concessions or incentives as such.

Further in the case of non-ferrous metals there is practically no mining

of any substantial nature at the present moment. For example the Indian Copper Corporation is the only company in India which produces copper and we only produce roughly 10 about 8 per cent of India's requirement.

MR. CHAIRMAN: What is the total requirement?

SHRI SINGH: Total requirement is about 70/80 thousand tonnes. and the rest is imported.

SHRI N. K. SANGHI: What about the Khetry Project?

SHRI SINGH: It has only started recently and it will be about 3/4 years before production of copper metal as such starts. Sir, this is with regard to copper. But there is no mining for such metals as lead, nickel, tin, all of which are of considerable importance for the economy as well as considering the general shortage of these materials throughout the world. One would think that special concessions are necessary to encourage mining of these metals. The government should give some special incentives to these non-ferrous metal industries, but this is a matter for Committee to consider as a specific issue.

MR. CHAIRMAN: What is the area that you have got?

SHRI SINGH: We have got about 10 Sq. miles.

MR. CHAIRMAN: When was the first lease given?

SHRI SINGH: That was in 1920. There were two Companies around the same area and they went bankrupt. We took the lease about four miles away and found some mines and we have survived.

MR. CHAIRMAN: What is the area that you have covered up?

SHRI SINGH: Very nearly 6 to 7 sq. miles.

MR. CHAIRMAN: What is the price that you have got for your copper during the last period of years?

SHRI SINGH: I have got all the facts about that.

MR. CHAIRMAN: What is the price today?

SHRI SINGH: We got Rs. 8,500 per ton as against a price of approximate 14000/- changed by MMTC for copper which is imported by Government and distributed amongst the rest of the trade. The scrap value of copper is 17,000 per ton.

SHRI S. B. PATIL: Is there any difference in quality?

SHRI SINGH: I am not aware about the quality of imported copper, but we produce electrolytic wire bar which is of 99.9 per cent purity. This perhaps is a special quality as the bulk of our copper is sold to Defence Department.

SHRI SINGH: The paid up capital is 5 crores. The total investment for day is about Rs. 11 or Rs. 12 crores. The expansion programme of 9 crores in hand mostly on the plant side. We hope to increase the production by about 50 per cent more.

SHRI B. S. SHARMA: What is annual requirement in India?

SHRI SINGH: That is around 70,000 tons.

SHRI B. S. SHARMA: In public sector there are two places where there is this metal is found i.e. Khetri and Rakha. I was told by the Minister that the Khetri Copper Project will be coming into production some time by 1970.

SHRI SINGH: I do not think that Khetri will be producing copper in 1970. It may be producing ore in

1970 as the Smelter is not as yet installed. The production of copper is expected in 1973/74 according to our information.

Rakha is next door to us. They are negotiating with us for smelting their ore at our Plant and they have indicated that the smelting facilities will be required from around 1973.

SHRI B. S. SHARMA: How much more can be produced.

MR. BRAY: That would depend entirely upon the exploration results. It would involve an expenditure from the extraction point of view.

SHRI B. S. SHARMA: As I told you we are very much in need of copper and we shall go from the side of the Government to any length to assist you. Now, if all assistance in the shape of capital, foreign exchange and other things, is given to you, how much extra production you will be able to have?

SHRI SINGH: Off hand I can say that we can produce at least 50 per cent more of what I am producing now. Recently we have asked for a lease of a land and the application is pending with the Government of India.

MR. CHAIRMAN: How much would be the area?

SHRI SINGH: It would be about 6. sq. miles.

MR. CHAIRMAN: What is the total reserve that you have estimated in this area?

SHRI SINGH: Those are all proved by geological means and we have yet to find that out.

MR. CHAIRMAN: How much extra copper can you produce from that area?

SHRI SINGH: In the present area we are producing 8000 tonnes which will be increased by about 50 per cent when our expansion programme is completed. The new area has yet to be surveyed and proved, but the expectancy is about 300 tonnes of copper per annum assuming normal conditions.

SHRI SINGH: The average is 2 per cent.

SHRI SINKRE: How does that compare with the Jharia mines, the Khetri mines?

SHRI SINGH: Their average copper content is lower than us—0.7 to 0.8 per cent, as we hear.

SHRI B. S. SHARMA: In Kotoham Mines of Khetri they have got something like as much as 20 per cent copper content. Of course, they are prospecting the whole area. The area is something like 60/70 square miles. In Khetri copper project, I was told we shall be getting to the extent of 32 thousand tons per year.

SHRI SINGH: That is right, we have also heard accordingly.

SHRI B. S. SHARMA: And then as bye-products we shall get something like 10 thousand tons of gold and sixty thousand tons of silver. In your mines, as bye-products, do you extract gold or silver?

SHRI SINGH: No, it is not producible.

SHRI B. S. SHARMA: Are you utilising the sulphuric acid?

SHRI SINGH: Sulphuric acid will come in the new process that we are putting up and is expected to be completed in 1971. The new process has been invented by Finland, we have taken that and I learn that Khetri is also going in for that plant.

MR. CHAIRMAN: How much money would you require to increase copper production to say, double your capacity?

SHRI SINGH: This is a difficult question and will depend on a number of geological and production factors. But on a very rough guess-work machineries and plants?

SHRI B. S. SHARMA: How much money would you require to modernise your machineries and plants?

SHRI SINGH: On a rough guess-work—over 100 crores.

SHRI B. S. SHARMA: We are all for helping you so far as this thing is concerned.

SHRI SINGH: I think I need more assistance in the price structure.

SHRI SHARMA: That is not in our hands.

SHRI SINGH: Any way, as I was saying, Sir, it is really heartening to know that the Government has accepted the allowance of expenditure which in any case has always been essential for the production of copper excepting that the Tax Department had taken the view that it does not qualify under the existing wording of Income-tax Act. I do not see in the present wording anything of the nature of incentive or something unusual done. The Bhoothalingam Committee mentions that there should be no doubt that in computing profits, all true costs whether immediately incurred or not, should be allowed against the profits before you are liable to tax. It is necessary that all expenditure legitimately incurred for the purpose of the industry or business should be allowed as a deduction either as a revenue expenditure or through depreciation for capital expenditure. Unfortunately not all capital expenditure qualifies for depreciation because, (this is my own presumption) the Income Tax Act restricts depreciation

only to physical assets like building, plant and machinery. A number of types of capital expenditure do not result in assets on which Depreciation is allowed under the Act but nevertheless they are necessary and legitimate expenditure of the business and particularly so in the case of mining. It is this kind of expenditure which is capital as far as the classification is concerned but does not produce which is now proposed to be of the classification on which Depreciation is allowed under the heading 'amortisation'. Amortisation is simply depreciation of expenditure on Prospering and Development of a mine.

As far as I am concerned, I may mention, that Indian Cooper Corporation Ltd.'s taxation position that right up to 1956 the Department has already allowed this expenditure. Thereafter they disallowed this both as revenue expenditure and also as not entitled to depreciation. The Appellate Assistant Commissioner decided in favour of the Company, but the Department has taken it up to the Tribunal. All subsequent assessments are in dispute on this point.

SHRI VISHWANATHAN: You have referred to Bhoothalingam report. Are you satisfied with the proposals?

SHRI SINGH: In my personal view, the principle is satisfactory; but as the clause is worded the benefit would seem to be available only to new companies. Not many new companies are coming up in mining. It is only the Government companies that are coming up.

MR. CHAIRMAN: Mr. Singh, when you will go in for opening new mines under section 35(f)(ii) you get the facilities. Why do you worry?

SHRI SINGH: What I suggest is that it should be allowed even otherwise.

MR. CHAIRMAN: Supposing, that is allowed to you.

SHRI SINGH: I get a little extra benefit. I will suggest a few amendments to ensure that the intention behind the section is correctly carried out. I will give my amendments now.

Now, coming down to the details of the thing, section 35(f), as it is worded, would hardly seem to achieve the purpose, particularly, for existing companies which have already established Commercial production long ago. The main point is that deduction should be applicable to all assesseees. We discussed this point in greater detail yesterday. But if any stress has to be laid, as Mr. Sharma has said that the intention is that the foreigner owned capital should not get benefit then the ownership capital of the company is more important. I may clarify that this purpose is hardly being achieved by the use of the word "Indian Company". According to definition of Indian Company, the word "Indian" only refers to place of registration and not to the ownership of capital. In my company 96 per cent of the shares are held by Indians, only 4 per cent shares are held by foreigners. Yet, I do not come under the definition of the word "Indian Company" because my place of registration happens to be U.K.

MR. CHAIRMAN: What is the value of that 4 per cent and how much repatriation do you pay?

SHRI SINGH: The value is Rs. 20 lakhs. We do not pay anything by way of repatriation. We only pay a dividend which for last few years has been at about 8 per cent. The Dividend remitted would amount to approximately Rs. 1.60 lakhs per annum.

MR. CHAIRMAN: Out of paid up capital who is your greater partner?

SHRI SINGH: It is a public limited company, not attached to any group, with over 26,000 shareholders. The biggest single investors are Financial institute like LIC.

MR. CHAIRMAN: Do you pay any royalty to any people?

SHRI SINGH: Not to any person. Royalty is paid to Bihar Government according to the Mines and Minerals (Regulation & Development) Act. The only payment made to the shareholders of capital is the dividend that is declared on the shares.

MR. CHAIRMAN: Why do you not request these people to transfer their shares? As Mr. Sharma has said that Government is also prepared to help you.

SHRI SINGH: That will come later I might take this up but individuals are involved as shares are not held by any group. Reserve Bank permission and other facilities have to be considered.

SHRI B. S. SHARMA: Which is the country producing biggest quantity of copper?

MR. BRAY: Maximum in South America.

SHRI B. S. SHARMA: If prospecting expenses are allowed to you, how much copper will you be able to produce?

SHRI SINGH: The allowance will reduce the tax burden and strengthen the financial position. To this extent one may consider further prospecting. However, it is not possible to connect the allowance of expenditure with production of copper. So far as allowing expenditure to Indian companies only is concerned we have made our position clear yesterday. Second point is that Clause 35(f)(ii) lays down that the expenditure that qualifies is to be incurred at any time during the year of commercial production and in one or more of the 4 preceding years immediately preceding. I do not know what is the reason for this. But this seems to indicate that the view is held that once the commercial production commences there is no more prospecting or development expenditure incurred.

SHRI SINGH: If the wording is as 1926. Because of this I say that the wording of the clause indicates that the benefit is sought to be given to a it is then I shall not get any benefit because my company was started in new company and not to the existing companies...

SHRI N. K. SANGHI: How can you ask for prospecting expenditure benefit when your company was started in 1926.

SHRI SINGH: Even after commercial production has commenced there is expenditure in mining industry which is technically classified as prospecting and development expenditure and the Tax Department at present also takes this interpretation and does not allow it for tax purpose although it is incurred wholly and exclusively for the purpose of business. If the expenditure is continued and the Department's view is what it is, it is only correct that the benefit under the present Amendment should be given to us since it specifically relates to amortisation of expenditure incurred on prospecting and development of the mine.

SHRI SANGHI: Can you give your prospecting expenditure for the last four years?

SHRI SINGH: Last year (1969-70) it was Rs. 4,68,000. I have not got previous years figures ready. Your idea cannot be that you want to give incentive to the new companies and not allow the same facility to the existing ones.

SHRI SANGHI: If it was of a prospecting expenditure nature then amortisation could be recommended.

SHRI SINGH: This is the point I am making. To a common layman's thinking prospecting expenditure is

only incurred before commercial production and once commercial production is established there is no prospecting expenditure. However as mentioned before there is expenditure being incurred after the commercial production has been established which is classified technically as prospecting expenditure. There is also expenditure after commercial production is established which is classified technically and by Accountants as "Development Expenditure". This expenditure in our case is being incurred from year to year even now. As the wording of the Section stands, since our commercial production started in 1926, we will not be able to claim the expenditure on prospecting and development even after the passing of the Amendment Bill.

MR. CHAIRMAN: Development is different from prospecting. But suppose you have taken mine which is 10 sq. miles; you start with 7 sq. miles and then when you start with the rest 3 sq. miles, you can claim prospecting expenditure benefit.

SHRI SINGH: Not according to the wording of the Section as it is given in the Bill. You are correct that we should be entitled to claim such prospecting expenditure, but since the commercial production commenced long ago, this will not qualify even under the working of the present Section.

Suppose we have a mine which has reached 3000 feet depth and after reaching this depth, we, next want to decide which way to go—sideways or further deep, it is an investigation and a certain amount of development work would need to be done before further actual production can be taken out. But this expenditure will not be allowed by the Income Tax Department although it is in the

nature of prospecting and development of mine. In actual effect the development work at a further depth is undertaken while production is being taken from a higher depth so that there is no disruption in production.

MR. CHAIRMAN: Mr. Singh, now the point very clear. It is now known as to what is prospecting and what is development expenditure. In the light of it could you prepare a draft and send the draft to us?

SHRI SINGH: All right Sir, I shall prepare the draft and send it to you. But I would request you to see the taxation clause of the Oil Industry.

MR. CHAIRMAN: We all know about the case. They have taken a lease of 100 square miles.

SHRI SINGH: But Sir, under the Mines and Mineral Development Act the Government does not want mines to take lease of more than 10 square miles.

MR. CHAIRMAN: Whatever it might be. We all know about the Oil India Case and I would request you to go into the Report of Estimates Committee in this regard. The Government of India has lost six crores of rupees for this. However, you prepare the draft then send it to us.

SHRI SINGH: Another point Sir. Our lease is approximately 26 square miles as Mr. Bray has just now corrected me. Previously I told that it was 10 square miles. I may be excused as I am only one year old in this Company.

श्री योगेन्द्र शर्मा : आप ने मैटीरियल इन्सेटिव की बात कही। बात विल्कुल ठीक है, और कोई दो रायें नहीं हो सकतीं कि लाइफ के हर पहलू में मैटीरियल इन्सेटिव मिलने से ही चीजें आगे बढ़ती हैं; हम यह जानना चाहेंगे कि कम से कम कितना और कैसा मैटीरियल इन्सेटिव मिलना चाहिये।

इसी प्रसंग में इंडियन कौपर कोरपोरेशन आता है। आपने कहा कि पिछले 50 साल से आपका यह कौपर कोरपोरेशन है, यानी उस समय से है जब कि हिन्दुस्तान में कोई भी दूसरी कौपर माइन नहीं थी और आपकी कौपर मैनुफैक्चरिंग फ़ैक्ट्री है। पूरे भारत में एक मात्र आपकी ही कम्पनी के पास कौपर माइन और कौपर फ़ैक्टरी है पिछले 50 साल से, और आप को कौपर माइन वहां मिला जो छोटा नागपुर कहलाता है और जो कि ज्योलाजीकल सर्वे अभी तक हुआ है उसके मुताबिक यह कहा जा सकता है और कहा गया है कि पूरा छोटा नागपुर जो है वह कैंडिल आफ कौपर है। आप मैटीरियल इन्सेटिव की जो बात करते हैं उसके पात्र आप तब हो सकते थे यदि पिछले 50 साल के भीतर आप इस चीज को दिखलाते कि जो भी सहूलियतें आप को मिली हैं उन सब का इस्तेमाल कौपर माइन के डेवलपमेंट और कौपर के मैनुफैक्चर में किया है। मेरी जहां तक जानकारी है, और आप ने स्वीकार किया है कि 1965 तक आप को सारी सहूलियत मिलती थी।

SHRI SINGH: Sir, I beg to differ.

MR. CHAIRMAN: But it comes to that.

श्री योगेन्द्र शर्मा : 1965 तक जो भी सरकार रही उसने आप को वह सब कुछ दिया जो आप ने मांगा। मैं तो यहां तक

जाऊंगा कि 1956 के बाद भी, सम्भवतः 1960 या 1962 में जब आप ने कौपर माइन एरिया बढ़ाने के लिये बात की तो विहार सरकार ने बहुत जनरल ट्रीटमेंट किया आपके साथ। लेकिन 50 साल बीत जाने के बाद भी जो परिणाम हैं वे बहुत ही डिस्करेजिंग हैं। किसी भी देश के लिये और खास कर हमारे देश के लिये जिस में कौपर के इतने रिच रिजोर्सेज हैं वहां पर सिर्फ आप 8 प्रतिशत ही देश की आवश्यकता का निकाल पायें, उस के बाद मैटीरियल इन्सेटिव की पात्रता के बारे में आप की कम्पनी के बारे में शक हो जाता है। जो सुविधायें आप को मिली हुई थीं उन को यदि आप इस्तेमाल करते तो आप की बगल में दूसरी कौपर माइन खोलने की आवश्यकता ही नहीं होती, मेरा मतलब राखा माइन्स से है। 50 साल तक आप ने उस का इस्तेमाल नहीं किया और अब जब राखा माइन वहां पर आ रही है और आप का उस से कम्पीटीशन भी होगा, तो पास्ट प्रैक्टिस जो आप की रही उस को ध्यान में रखते हुए मैटीरियल इन्सेटिव के आप पात्र हैं या नहीं इस को आप कैसे साबित करेंगे।

दूसरा प्वाइंट मेरा यह है कि कितना मैटीरियल इन्सेटिव मिलना चाहिए उस में अभी नहीं जा रहे हैं। यह बहुत ही टेक्नीकल सवाल है लेकिन किस रूप में मिलना चाहिए जहां तक यह विषय है, इस विषय में बार-बार कहा है कि 3,500 फुट तक आप को माइनिंग करनी पड़ती है। जहां तक मेरी जानकारी है डीप माइनिंग के लिए गवर्नमेंट की ओर से कुछ सब्सीडी की व्यवस्था है: यह सही है कि डीप माइनिंग के लिए कुछ न कुछ सहूलियत होनी चाहिए। सवाल यह है कि किस रूप में सहूलियत हो। टैक्सेशन के सिलसिले में जो बहुत सी विचारधाराएं हैं, उन में से एक विचारधारा यह भी है कि इन्डाइरेक्ट सहूलियत देने की बजाए, जिस की आप मांग

कर रहे हैं, विभिन्न रूपों में डाइरेक्ट सहूलियत देना ज्यादा भ्रच्छा है। आप डीप माइनिंग के लिए सम्सीडी लीजिए। मैं यह जानना चाहता हूँ कि सम्सीडी लेने की बजाए आप इन्डाइरेक्ट तरीके से सहूलियत क्यों चाहते हैं।

SHRI SINGH: To be more facile, I will be speaking in English. No special facilities or things like that have been given. It all depends upon the advantages that are available in a particular area. Chota Nagpur Mining area does not comprise only 26 Sq. miles, leased to us.

SHRI YOGENDRA SHARMA: You could have got it for a long.

SHRI SINGH: We may not have been interested. It is all a question of money. One cannot go beyond one's resources. I am not asking for any special facilities or any incentives or anything like that. That is for you to consider separately. My view is very simple. Whatever expenditure has been incurred legitimately and necessarily for the purpose of business should be allowed for tax purposes. There is on the same analogy of a manufacturing Company. Please allow me that.

SHRI B. S. SHARMA: The whole of Chota Nagpur is full of copper.

SHRI SINGH: That may or may not be.

SHRI B. S. SHARMA: Have you any knowledge whether there is any prospect of copper in that or any other area?

MR. BRAY: The Geological Survey of India has been extremely active both before and since independence and I think the Geological Survey of India can give the answer in a better way than we can. Copper was in fact, found due to the geological working. The survey was made by intelligent workers. The first report of the Chota Nagpur Copper was made by Mr. Jones in 1822 and the report was not officially published until 1833. It was in 1855 and from there until 1920 there were numerous companies.

SHRI UTAM SINGH: Something by way of amendment is necessary to the working of definition of "year of commercial production" as given in the Section to clarify the position of Companies who have already established commercial production prior to 31st March, 1969.

MR. CHAIRMAN: You can send that to us later on.

SHRI SINGH: Sir, we have brought a model as to the working of the mine. You all can see that.

MR. CHAIRMAN: Thank you all very much. We will see that.

(The Committee then adjourned)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION
LAWS (AMENDMENT) BILL, 1969

Saturday, the 10th January, 1970 at 10.00 hours and against at 14.30 hours in
Council Chamber, Calcutta.

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri N. C. Chatterjee
4. Shri Kanwar Lal Gupta
5. Shri B. N. Katham
6. Shri Yashwant Singh Kushwal
7. Shri S. B. Patil
8. Shri Shiva Chandika Prasad
9. Shri R. Dasarathy Rama Reddy
10. Shri Vishwanath Roy
11. Shri N. K. Sanghi
12. Shri Beni Shanker Sharma
13. Shri Yogendra Sharma
14. Shri Janardan Jagannath Shinkre
15. Shri N. K. Somani
16. Shri Tenneti Viswanatham
17. Shri Prakashchand B. Sethi

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. *Income Tax Bar Association, Calcutta.*

Spokesmen:

1. Shri B. N. Banerjee, *Advocate—President.*
2. Shri M. Banerjee, *Advocate—Committee Member.*
3. Shri B. C. Pugalia, *Advocate—Asstt. Secretary.*

II. Bharat Chamber of Commerce, Calcutta:

Spokesmen:

1. Shri B. D. Kanoria—President.
2. Shri R. R. Bhiwaniwalla—Senior Vice-President.
3. Shri R. N. Bangur
4. Shri K. K. Jain
5. Shri Shital Prasad Jain
6. Shri L. R. Dasgupta—Secretary.
7. Shri K. C. Mukherjee—Deputy Secretary.

III. Bengal National Chamber of Commerce and Industry, Calcutta:

Spokesmen:

1. Dr. B. N. Ghose, Messrs. Bengal Chemical & Pharmaceutical Works Ltd.
2. Shri Milan Kumar Mookerjee, The National Rubber Mfrs. Ltd.
3. Shri M. C. Poddar, Messrs. Saha & Co.
4. Shri A. K. Chattopadhyaya, Messrs. D. Basu & Co.
5. Shri R. Singhi, Messrs. Singhi & Co.
6. Shri A. R. Dutta Gupta, Offg. Secretary.

I. Income Tax Bar Association, Calcutta

Spokesmen

1. Shri B. N. Banerjee, Advocate—President.
2. Shri M. Banerjee, Advocate—Committee Member.
3. Shri B. C. Pugalia, Advocate—Asstt. Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Banerjee, you please introduce your colleagues to the members of the Committee.

SHRI BANERJEE: This is Mr. Pugalia and, a member of the Association and after him is Mr. M. Banerjee, also a member of the Association.

MR. CHAIRMAN: Now, before you start, I am reading out to you the procedure that we have to observe—that you will kindly note that the evidence you give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence

tendered by you is to be treated as confidential. Even though you may desire your evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament.

Now, we have received your memorandum. If you like, you can high light some of the points mentioned in your memorandum.

SHRI BANERJEE: Sir, before I begin, I offer my heartfelt thanks to the Chairman and the Members of the Parliamentary Committee for extending us an opportunity of placing our views before the Committee. Sir, before I begin, I will say that we want to make some observations about the Income Tax Act and whether any amendments are necessary at all and if so, on what lines those amendments should be made. Sir, income tax is an institution of taxation which is prevalent throughout civilised countries. When income tax was introduced in 1886 there was much row why the tax should be imposed. Then agitation went on for a long time. Ultimately both U.K. and India

settled to have income tax on income arising from source. Formerly it was a licence tax only on salary and some other income but now the scope of income tax has been extended so that we have to net anything which comes under the word 'income'. But the word 'income' has not been properly defined uptill now as to what is income. We have to depend upon the judicial interpretation and the commercial practices to arrive at what is income. Sir, income tax means that for the purpose of running the Government, for the purpose of defending the country we want contribution from everybody according to his mite. There are various forms of direct and indirect taxes and from morning till night and till we sleep we are subjected to tax. There are some indirect taxes which we cannot see directly but we feel. For instance, I am wearing this coat which is a part and parcel of my daily use and I am paying tax on it. There is an excise tax in the cotton mill, there is a tax on the cotton that is produced. Similarly there is a tax on lubricating oils and these taxes we do not see. But when it comes to direct taxes, that is, income tax, the Estate Duty Tax, the wealth tax, expenditure tax, gift tax and I do not know whether tax on keeping a servant may be imposed—we feel these taxes most. On this point income tax Act is a very complicated one. Already, Sir, both in England and America and in India we are ransacking our brains to make it easier, more comprehensible, more understandable to the public and to the layman without the help of experts guiding them. This touches both the stratas of the society—the lower strata and the upper strata and the corporate and the non-corporate.

MR. CHAIRMAN: I suggest Mr. Banerjee, you come to your points.

SHRI BANERJEE: Sir, when we make an amendment we have to think how far this amendment is necessary. I think these amendments are unnecessary except for some economic reasons. It is necessary that some

amendments should be made but not in this fashion as envisaged in the present Income Tax Bill. For instance, Now, if I come to clause 2, I will say that judicial decision laid down that the land assessed to land revenue outside India is not taxable. This is the practice we have been following and we welcome it. Then regarding the second proviso, it is putting a limit to the dwelling house. With the abolition of zamindari, the lands are not now assessed to land revenue but we are paying rent to the Government. Land revenues is something technical. It was in Bengal by Regulation I: of 1793 and revenue has got some particular adjective attached to it. These two are contradictory because now-a-days no land is assessed to land revenue. Land revenue is a different thing altogether from rent and license. Before the enactment of the Estates Acquisition Act land revenue has had attachment to the land we possess. We can alienate the land, we can sell the land for payment of revenue. When 1953 Estates Acquisition came in there was a notification that you cannot alienate the land. When one of the items it taken it is not a revenue at all. Practically speaking, we now pay rent to the Government and so it is not assessed to land revenue.

SHRI YOGINDRA SHARMA: I do not think that is the correct understanding of the position. Previously what was called rent is now called revenue.

SHRI BANERJEE: In 1886 this agricultural income was exempted. The same definition is continuing uptill-now. In a leading case of Bhabanath Sen the court held that it is not assessed to land revenue—the Dhapa Math case.

MR. CHAIRMAN: In this provision we are not taking into consideration the second item. Only the first item is there. It is only confined to the first provision.

SHRI SANGHI: Exemption is given for agricultural purposes and

is not given to building, or a dwelling house, or a store house. What is your view on that?

SHRI BANERJEE: The land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such, that is in this Bill. If it is used for agricultural purposes, then it become superfluous. The amendment is 'the land used for agricultural purposes'.

MR. CHAIRMAN: You mean to say, second proviso is not necessary.

SHRI BANERJEE: Yes.

SHRI N. C. CHATTERJEE: If you look to page 2, Government has made it clear. Secondly, the term agricultural income presently covers income attributable to a building or in connection, etc. It is proposed to amend the definition so as to cover buildings by the cultivator for his residence or in connection with agricultural operation even if the land is not assessed to land revenue. The new condition is an alternative and in addition to the existing.

SHRI BANERJEE: I can understand your saying that this clause should be made alternative.

SHRI SHANGHI: A little clarification is necessary from Government. The agricultural land should have some precise definition. It should not be one in one case and different in another. Then there is another difficulty. The distance of 8 kilo. is also going to hit hard the people. In a big city like Calcutta or Bombay the distance is not much but in small towns with a lakh of population it is great. So the distance should be decreased.

MR. CHAIRMAN: Yes, Mr. Banerjee, you go on.

SHRI BANERJEE: Sir, I will next come to the distinction regarding citizen and non-citizen. You know that

many of our students go to England and other places and if they remain there for near about 5 years they cease to be residual here. So, if you are rigid about the foreigners who come here for giving us technical know-how, the same would apply equally upon our students who go abroad for education. So, I think this clause should be deleted. There should not be any discrimination. Then relief is given about double taxation. These foreigners are coming here to give us technical advice and they should get some benefits by way of tax concession.

MR. CHAIRMAN: You are thinking of foreign technicians but this clause does not deal with them. It relates to other persons who come here.

SHRI BANERJEE: You know, Sir, a student who lives abroad for more than 5 years becomes a non-resident he should get the tax benefit like foreigner?

MR. CHAIRMAN: That is a different matter. There are also various foundations which are also asking there men to come here and work here. There it is written that where any amount of tax which the assessee is liable to pay under this Act is to be borne by the Government. These are persons who are not resident in India. Only for simplifying the procedure it has been introduced.

SHRI N. C. CHATTERJEE: This is not a taxable income at all.

SHRI N. R. SANGHI: I think that by this provision they are getting more and more advantages while the Central Board of Direct Taxation loses the money. So I personally feel that this should be deleted.

SHRI KANWAR LAL GUPTA: Mr. Chairman I would request Mr. Banerjee through you to take up such important points which have some bearing on the small assesseees. I think that would be better.

SHRI BANERJEE: Therefore, Sir, I may now come to the administration portion, amending section 143(1) that is the provision on taxation. It is in clause 34. Sir, before that there is clause 31, clause 32, and then Clause 33 and Clause 34. These may also be taken up. Sir, it is written in the marginal note of clause 31, "Substitution of new section for section 140A, Self assessment". Then there is Clause 32 amending section 141 that is making the assessments on the return. Sir, then I go to Clause 34, Section 143(1). Sir, then comes the substitution clause 143(3) in the Indian Income-tax Act. Sir, there are several stages in between the filing of return till the final assessment is completed. This will simply cause harassment to the assessee. Sir, if you read Clause 34 i.e. Section 143 that is at page 521 of the Gazette you will find, "Where a return has been made under section 139, and whether or not an assessment has been made under sub-section (1), if the Income-tax Officer considers it necessary

MR. CHAIRMAN: Mr. Banerjee, please state what exactly is your objection?

WITNESS: My objection is that after one assessment is made the assessee is again called for production of account books and various papers and fresh assessment is made. So from the filing of returns till finalisation there are four stages.

SHRI N. C. CHATTERJEE: But this has been done in the light of the report of the Administrative Reforms Commission.

SHRI KANWAR LAL GUPTA: I think Mr. Banerjee's objection is that why the Income-tax Officer will be given further powers to re-open the case. There is no finalisation so far as the assessee are concerned. Do you want that Section 143(3)(a) in Clause 34, which reads, "In a case

where an assessment has been made under sub-section (1), if he is of opinion that such assessment is incorrect, inadequate or incomplete in any material respect, by an order in writing, make a fresh assessment of the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment", be deleted?

WITNESS: Yes.

SHRI B. S. SHARMA: The correct procedure will be that 143(1) should be final assessment for all purposes. If the I.T.O. has something else, he should be allowed to reopen it in the usual manner under Section 147 and not under 143. 147 may be here. He must have information and there are some conditions under 147. The intention is that the assessment made in 143(1) should be final for all purposes and if the I.T.O. discovers anything else or if he has got any other information, that assessment should be reopened under 147.

MR. BANERJEE: Yes.

SHRI N. K. SANGHI: It is not possible for him to examine every assessment. Do you think that anything else would improve matter?

MR. BANERJEE: It is not possible to examine all. I agree with what Mr. Sharma has said.

MR. CHAIRMAN: Now under the present scheme returns are classified into some categories. Supposing at one point where the Income-tax Officer is satisfied you said it is final. Where the Income-tax Officer is not satisfied, he wants further arguments. What is point of objective at this stage?

SHRI BANERJEE: My point of objective is that it will simply make work-load both on the assessee and on the Department.

MR. CHAIRMAN: 143(1) is final. That should be final.

SHRI SHAH: The point is how this section is an improvement over the existing procedure. At the moment we have got section 140(a) wherein certain cases the Income-tax Officer can make provisional assessment. Now in a large number of cases 148 we had proposed to abolish. In a large number of cases out of 27 lakhs about 23 lakhs are small category cases. Today as the law stands, even if the slightest part is there between the return of income and the assessed income, the Income-tax Officer has to issue a notice. Here the party wastes his time and make assessment. What we propose to do in this section is that all those cases where there are those minor variations and only for adjustment of those minor variations, the Income-tax Officer has to issue a notice unnecessarily. The thing is that these notices may not be necessary. On the basis of the return and the statements and the documents—whatever items are to be added—the assessee has not made additions which he should make. The Income-tax Officer will make a complete assessment. This is not permissible under the present Act. Even if there is a variation of one rupee, he has to give in addition. So we will cover a very large number of those small cases. We have done it. Now those cases which otherwise even we would have issued notice and called for the accounts, we may not complete that under this proviso and we cannot do it. We are not going to make a double assessment in every case. We could complete the assessment on the basis of the returns and on this we would complete it. Those cases which cannot be completed under this category or that category may call for books. Between these two limits there can be a border line limit where in certain cases we find certain reasons. That is something whereby we could have issued a notice. One is—we are going to issue the notice and the other is where we are not going to issue notice

and the third is where on the basis of some data the Income-tax Officer comes to a conclusion that he should have issued a notice, and he issues the notice. So it is nothing else but an advancement over the existing conditions whereby 90 per cent or 80 per cent of the cases would be covered.

SHRI B. S. SHARMA: You say that out of 30 lakhs of cases, 23 lakhs or 24 lakhs are small cases and we are anxious to complete them without any scrutiny. That is very good. But those cases which you complete under section 143 should be treated as final. Our intention is that small cases should be completed once for all under section 143(1) and if later on any wide difference is found, then only the assessment should be reopened under section 147. The I.T.O. should not proceed to make reassessment without taking recourse to reassessment proceedings. Suppose there is a big difference of tax amounting to Rs. 1000, in that case we may give powers to the I.T.O. to issue notice to the assessee to open reassessment but for all practical purposes we should see that assessments are final after proceedings have been once taken under section 143(1) and they should be treated as complete and final for all purpose.

SHRI SHAH: Instead of two categories we are now contemplating three categories. We are not going to bother at all because there is no material. The other is that we are going to issue notice under section 139 and Mr. Banerjee knows very well that 147(A) and 143 will create a large number of complications.

SHRI BANERJEE: Sir, if you please look to clause 54. A case under section 143 (a) has been made appealable. Now, a provisional assessment is appealed against and nobody knows when it will be disposed of and in

the meantime the I.T.O. opens another reassessment case. What will happen then? There will be serious difficulty.

SHRI CHATTERJEE: Are you contemplating to give any notice under section 147?

SHRI SHAH: Some notice has to be given. If there is scope of reopening the cases, the I.T.O. will do that.

SHRI GUPTA: But in that case the reasons will have to be recorded. We should not give unfettered power to the officer at least in reopening the cases under section 147.

MR. CHAIRMAN: These are matters which we shall discuss at the committee stage.

SHRI VISWANATHAN: But we cannot put questions to the witness unless we know what is in the mind of the Government.

SHRI B. S. SHARMA: The purpose of 141 is very laudable but it will be defeated if we reopen cases under 143(a).

MR. CHAIRMAN: Mr. Banerjee, you please proceed.

SHRI BANERJEE: Sir, before I go to the next point, I will tell you the difficulties in a nutshell. Now, supposing the assessee has filed his return along with a balance sheet. He claims depreciation on the machineries which he states to be electrical machineries. But the I.T.O. says that not these are general machineries and he reassesses under 143(1). Then there might be an appeal and he will not know when the appeal will be disposed. Meanwhile the I.T.O. will again take up another case of reassessment and in this way heaps of cases will be piled on and nobody knows to what extent the harassment of the assessee will go.

SHRI SANGHI: What remedy do you suggest for that?

SHRI BANERJEE: Whatever be the provisional assessment, let it remain.

SHRI SANGHI: No, in case where an assessee has gone against the provisional assessment, what remedy do you suggest?

SHRI BANERJEE: We have not given thought to it.

SHRI BANERJEE: We welcome section 34B. Sir, I was asked to suggest an alternative. For the present we have not thought of any alternative suggestion. We suggest that the present provision should remain.

MR. CHAIRMAN: Please think over the matter and give your note to us later on.

SHRI BANERJEE: We will do that. There are other salient points which we would like to mention. Regarding recognition and registration of firms. Some new words have been coined—registered firms *versus* recognised firms. The provision for registration, as it is today, has practically been a settled law. If we look to clause 43—recognition of firms—before that there is clause 42. If this clause comes in, then that is a necessary amendment. We find here only two sections, but there are other sections also which should be amended *part passu*.

Coming to clause 43, there are three conditions. If we look to the existing Act, the first clause is not in so many words in the Act. But in the judicial interpretations we have known that the firm should be in existence. In the existing Act the officer shall enquire into the genuineness of the firm. That word has been deleted in the present amendment. The proviso is that the condition specified in this clause shall not apply.

as between the partners of a firm who are related to one another as husband and wife or parent and child (being a minor). This proviso is superfluous. The Supreme Courts of India and U.S.A. have held that the State should not be given the power to tag income of A with the income of B. We would suggest deletion of that section. In this connection I would refer you to the decision of the Supreme Court in 55 ITR.

MR. CHAIRMAN: You suggest that the sub-clause should be deleted and substituted by the words "notwithstanding that the firm has been registered the real owner will not be exempted on the plea that the benamdar has been considered to be a partner in the firm".

SHRI BANERJEE: Yes.

SHRI B. S. SHARMA: If that amendment is accepted that will serve the purpose.

MR. CHAIRMAN: Anyway, let us proceed.

SHRI BANERJEE: Under the Civil Code we cannot institute a case without having the company registered under the Indian Partnership Act. So this is normal registration or recognition whatever you might call it and this may be deleted. The Registrar of Firms has certain limits and every year that limit is varied. The department has got to calculate which way the tax would be greater and they try to get the tax more when it is not a registered firm. Therefore, I should suggest to take the law available in U.S.A.

MR. CHAIRMAN: If you refer to clause 43—about registration you will find it says only for the first year it may be needed for procedural matter. After that there will be no difficulty. So, it is for first assessment year.

SHRI BANERJEE: Benami practice has been accepted. And sec. 186(1) and (2) have been combined. It has been incorporated in one clause.

MR. CHAIRMAN: For the first year it will be necessary and for the subsequent years there will be no difficulty. Therefore, what is the complication—I want to know from you.

SHRI B. S. SHARMA: There are two specific questions here. Do you think that this nomenclature 'registration' should be retained or you want it should be replaced by 'recognition'. Recognition and registration are not the same. What is your view? There is a multitude of case law under registration and if you substitute 'recognition' for 'registration' then all those cases will be obsolete. Do you think that the firms already registered should not be disturbed and only for the new firms these new provisions should be applied retaining the old nomenclature.

SHRI BANERJEE: As I have already said what that has been prescribed under the Partnership Act should be applied to income tax case also.

SHRI K. L. GUPTA: Under clause 43 if you want registration or recognition of the firm you have to register your firm with the Registrar of Firms and he is under the State Govt. and not under the Central Govt. Now, there is some difficulty. If you want to name your firm as India House or Bharatiya or National Company they won't register your firm for reasons of their own. So, is it desirable for the income tax department to ask the assessee to register with them. What is the necessity of sending it to the Registrar of Firms? He might delay the matter.

SHRI BANERJEE: Moreover, he does not accept it. The income tax law should conform to the law of the land—there should not be one

law for one and another for the other. So I cannot object but there is no harm if it is registered with the Registrar of Firms.

SHRI K. L. GUPTA: You have not visualised by point—the Registrar of Firms will not register your firm if you want to give your firm the name of 'Bharatiya' or 'India House' and so on.

SHRI BANERJEE: But change in the name of the firm will not change the partnership. He can only change the name.

SHRI KANWAR LAL GUPTA: That means you cannot have that name.

SHRI BANERJEE: But the relation between the partners is all right.

SHRI KANWAR LAL GUPTA: Kindly answer my pointed question, you know that if any body wants to name his company as 'India House', 'Bharat House', or 'National House', he will not be permitted by the Registrar of Firms to use the names, 'India', 'Bharat' and 'National'. In that case what do you think to be the remedy?

WITNESS: I know of a case where the Registrar of Firms did not permit to use the name 'Royal Firm'.

SHRI K. L. GUPTA: So what is the remedy?

SHRI BANERJEE: It is not the name that is registered.

SHRI T. VISWANATHAM: Shri Banerjee seems to be working on assumption that what is accepted in one branch of law should necessarily be accepted in another branch of law. Take for instance the expenses which will be allowed by the Company Law Department may not be acceptable by the Income Tax Department. You may have a particular

notion in a Hindu Joint Family. The Income Tax Department is a Department by itself. It may not accept other Department's notions.

SHRI BANERJEE: I know it that when an expenditure is allowed under the Companies Act it may not be allowed under the Income Tax Act. This point is to be considered as fiscal policy of the Government. Then Sir, I come to Clause 43, i.e., Section 186 (A) (1) (ae) (iii) regarding declaration in the prescribed form. I do not know how the procedure would be followed. It will create complications.

SHRI BENI SHANKER SHARMA: Declaration of any one partner should suffice. I think that is your point.

MR. CHAIRMAN: But it is written in the section that, "a declaration in the prescribed form in respect of such matters as may be specified therein, verified in the prescribed manner by all the partners (not being minor) personally, or in the case of a dissolved firm by all persons (not being minors) who were partners in the firm"....etc....etc....

SHRI BENI SHANKER SHARMA: The words 'all Partners' should be replaced by 'any of the partners'. Any one of the partners can act on behalf of all the partners. My personal experience is that it is very difficult to make all the partners sign at the particular moment. Any one of the partners may be as good or as bad as all the partners.

SHRI KANWAR LAL GUPTA: If one of the partners dies and there is a dispute between the legal heirs and the other partners and if the legal heirs do not sign the renewal form then what is the remedy?

SHRI N. C. CHATTERJEE: The legal heirs will never sign.

MR. CHAIRMAN: This provision is already existing. No addition is being done. I hope it is working satisfactorily.

SHRI BENI SHANKER SHARMA: No, Sir. Not at all. It has been a source of hardship to the assesseees and also huge amounts remains due from the assesseees on this account.

MR. CHAIRMAN: Any way we shall discuss that point.

WITNESS: This word 'recognition' may be rejected and this clause may be deleted. Next I come Section 186 (b)(1). It is in the same clause.

SHRI BANERJEE: Now about the withdrawal of recognition. The Commissioner can only direct or reopen it. The clause says—if where a firm has been assessed as a recognised firm for any assessment, here the Income-tax Officer has in consequence in his possession the reason to believe any condition or conditions in sub-section (1). Sir, what are the conditions? If there is any technical difficulty, he can rectify it. All these require some clarification.

MR. CHAIRMAN: Mr. Banerjee, if there is anything more to be said, you can write a separate memorandum and send that to us in Delhi.

SHRI B. S. SHARMA: There is another concession under section 218(Z). There will be a sort of double relief to the assessee.

SHRI BANERJEE: I understand that some individuals transfer their property to Hindu Undivided Family just to avoid tax. The Supreme Court has also considered those points. The law is good but there are people who try to evade tax. What I want to say is that that particular section should not be inserted and even if it is inserted, retrospective effect should not be given.

MR. CHAIRMAN: You want to say there is nothing harm if it is there but not retrospectively?

SHRI BANERJEE: There is harm. The principles have been enunciated in Supreme Court case. The assessee will be called upon to make declaration whether there has been any transfer of property. If it is asked whether the Hindu Undivided Family has acquired property and wherefrom has it come and any other details, then that will make matters complicated. I do not think it is necessary to add anything more in regard to this matter.

SHRI B. S. SHARMA: The main purpose of the Bill is to simplify and rationalise the provisions.

SHRI BANERJEE: That is always necessary. The avoidance cannot be checked unless many things are changed and people understand what all these are. I think if it is there, then retrospectively that may not be given. One is to see whether this is necessary or that is necessary. I hope every aspect of the matter will be properly looked into. Then, the most important point is the raising of the tribunal fees. In this connection I would draw your attention to the speech of the late Bhulabhai Desai published in the Legislative Assembly Debates at page 3090 dated 21st November, 1938. What he said then still subsists. We think, Sir, there should not be any change or enhancement in the tribunal fees. We have seen in today's paper that the cost of collection of income-tax has risen substantially.

Then clause 271(4)(a) has also to be considered. The tax is becoming a matter of confiscation. The State has the right to taxation but not the right of confiscation.

SHRI YOGENDRA SHARMA: You mean to say that the assesseees have the right to evade the taxes but the State has not the right to punish them.

SHRI BANERJEE: The State will certainly punish them but not confiscation.

SHRI B. S. SHARMA: As a representative of a practising institution are you satisfied that the Bill in the way it has been framed fulfils the objects for which it is intended, namely, to rationalise and simplify the procedure of assessment and collection etc. Do you think that the amendments which are being made here will fulfil this object or some more amendments are necessary?

SHRI BANERJEE: More things are to be done.

SHRI B. S. SHARMA: Could you give us your suggestion—not now but at a later stage—as to the provisions you want us to include for the simplification of this Act? It has always been said that the Income Tax Act has been made very complicated by perfunctory amendments here and there and so in order to simplify and rationalise—that is the cry—what further amendments are necessary so that the main objective of the Bill is achieved?

SHRI BANERJEE: If the Committee so desires, we can do it.

MR. CHAIRMAN: You are always welcome to do that.

SHRI VISHWANATHAN: I suppose that in the administration of the Income Tax Act neither the practitioners nor the assesses have got any complaint with regard to the treatment meted out to them by the administration.

SHRI BANERJEE: The less said the better. I think there is a feeling that the assesses and the Department are two separate entities. Even during British time there was no such thing

श्री योगेन्द्र शर्मा : आप एक चीज बतलायें कि अभी जो टैक्सेशन ला है उसमें क्या लूप होल्स हैं जिनका इस्तेमाल आप या दूसरे लोग कोर्ट्स में करते हैं टैक्स एवॉइडेंस या इवेंजुन के लिए ?

MR. CHAIRMAN: The honourable member understands the loopholes.

SHRI BANERJEE: Sir, in all countries, specially in England and America, volumes and volumes are published on tax planning, how to save taxes. That is called avoidance. We never support tax evasion and I am giving an undertaking on behalf of the Income Tax Bar Association that we are one with the Government for checking evasion but avoidance we will always welcome.

SHRI YOGENDRA SHARMA: There is a practical difference between avoidance and evasion.

SHRI BANERJEE: That will be decided by judicial pronouncements.

MR. CHAIRMAN: Thank you Mr. Banerjee and your colleagues for cooperating with us.

SHRI BANERJEE: Thank you.

II. Bharat Chamber of Commerce, Calcutta

Spokesmen:

1. Shri B. D. Kanoria—President.
2. Shri R. R. Bhiwaniwalla—Sr. Vice-President.
3. Shri R. N. Bangur.
4. Shri K. K. Jain.
5. Shri Shital Prasad Jain
6. Shri L. R. Dasgupta—Secretary.
7. Shri K. C. Mukherjee—Deputy Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Now, Mr. Kanoria, before you start, I am reading out to you the procedure that we have to observe. You may kindly note that the evidence you give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you may desire your evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament. Mr. Kanoria, you have already submitted your memorandum. If you like, you may highlight some of the points mentioned therein.

SHRI KANORIA: Sir, we are thankful to you for the opportunity given to us for personal submission of our views before this Committee. I would like to tell you the history of our Chamber in brief. This Chamber was established in 1900. We have 600 direct members and about 1500 indirect members through affiliated membership, all types of big and small limited companies, firms and proprietorships. This means that ours is a composite Chamber having all types of membership who are very much interested in this taxation affairs. We have submitted a memorandum indicating our views and suggestions in the month of October last year. In that memorandum we had taken only 16 clauses, or sub-clauses, out of 88 clauses. There are two aspects. One is overall general approach and the other is the specific approach. I will take up the overall general approach first. We consider that the present Bill can serve only up to a limited extent. We find that rationalisation and simplification of procedure cannot be done unless the whole policy of direct tax system is reviewed once again. The system is too much complicated. Our view is that we want an overall review of the system to effect a complete change in the measures that are required to be brought in. The position is that, we feel, these simplification proposals

and the relief for which we are here today falls far short of expectation. The new Act 1961 had too many changes in a piecemeal manner and at short intervals there were amendments and changes. But they do not actually suffice for the purpose. Simplification should be in the real sense of the term. If we have these type of things, we feel, when in future the number of assessee will increase to a very large extent it will be very difficult for the department to cope with the difficulties. The assessee also would not like to go through those complex laws and would try to avoid. Take for example wealth tax, gift tax and estate duty. Many definitions had actually been taken from the Income-tax Act and in the Income-tax Act various amendments were made from time to time. These laws do not have these amendments. So, there is a difficulty, because they were taken from one place and now they do not exist. So, we feel a thorough review in this Income-tax Act should be done for the purpose of simplification and in a manner that it can serve the needs of the country much better. This is our submission regarding overall general approach.

Out of the memorandum that we have submitted I am taking five clauses which we feel very important. First clause is Clause 8—amortisation of certain preliminary expenses. Here, there is a ceiling of 2½ per cent which, in our opinion, is inadequate. It should be on the actual expenses incurred and not a ceiling. If there is to be a ceiling, it should be not less than 5 per cent because, Sir, we have seen from studies published by the Government.....

MR. CHAIRMAN: Are the studies made by the Government of India?

SHRI KANORIA: That is a study made by a man of the Company Law Board and this is a study made by the Research Department of the

Board. That is indirectly Government of India.

MR. CHAIRMAN: Please don't call it a study made by the Government of India.

SHRI KANORIA: I am sorry, Sir. But according to this study we find that it comes to 6 per cent. So, our submission is that either actual expenses should be allowed, or a ceiling should be put at 5 per cent and, in case of non-corporate section, the percentage should be on the actual cost of project. This is our submission in regard to this clause and this has been mentioned in pages 4 and 5 of our memorandum.

I next come to clause 14. This has been mentioned in pages 6 to 9 of our memorandum. We have put forth our reasons and our alternative suggestion is that gift tax may be levied on transfer of self-acquired property to wife or minor children.

In regard to clause 43—recognition of firms and registration—our submission is that the proposed new sections 186A and 186B should be thoroughly redrafted. We do not find any simplification except the change from the word registration to recognition. Our feeling is that the old system should continue and registration should only be at the hands of the income-tax authorities, not at the hands of the Registrar. That will complicate the matter and will take much longer time.

MR. CHAIRMAN: Why do you want redrafting? You want the *status quo*.

SHRI KANORIA: Yes.

We have dealt with clause 63 on pages 18 and 19 of our memorandum. This is in regard to penalty and rigorous imprisonment. This we consider to be very drastic. It should be done at a much later stage. The assessee must be given ample opportunity before action is taken against.

Imprisonment for non-production of documents is too much. In our opinion, if this is to be done it should be done at a very late stage after giving proper notices.

SHRI KANORIA: Lastly, Sir, clause 71—self-assessment of wealth tax mentioned in page 29 of our memorandum. Here, the officer has been given the power to impose 50 per cent penalty in default of payment of self-assessment wealth tax. How do you calculate it? The property may be in the town or in the mofussil—may be of a private company or a public company—then there may be partnership interest. So, it is very difficult to make self-assessment of these properties. Then there is penalty if the assessee cannot deposit the tax in time.

There is another suggestion. If the assessee cannot pay in cash, he may be allowed to pay in kind. The assessee may have some property and he might be allowed to part with some. The officer should have power to give him time. According to the present Bill he will not have any time. About wealth tax, the time-limit for completion of assessments should be as in the income tax at various stages. But here we do not have any time-limit. This is absolutely necessary. Now, these are my points. If you now put further questions I or my colleagues will reply to them.

SHRI SHINKRE: Now, you have suggested that the amortization ceiling should be 5 per cent. Should it be the same both in big industries and small scale industries.

SHRI JAIN: If the ceiling is to be applied irrespective of the quantum of actual expenditure then it will be 5 per cent otherwise it is the actual expenditure. If the intention is to determine the specified percentage irrespective of the expenditure then

the ceiling may be fixed low for the large. Otherwise 5 per cent. It all depends on how you take it.

MR. CHAIRMAN: The authority should have power to vary according to the actual expenditure and overall expenditure.

SHRI JAIN: If the Government want to be more realistic then the ceiling should be 5 per cent and not 2½ per cent.

SHRI SETHI: Mr. Jain wants 5 per cent ceiling.

SHRI SOMANI: If as has been suggested by the Hon'ble Minister the ciling is accepted at 5 per cent it is likely to go against the interests of the small entrepreneurs, small scale industries. It might satisfy the big industries. So the case of the small industries may also be kept in view while agreeing to the ceiling.

SHRI JAIN: There are two points—when we say we are not satisfied with 2½ per cent and ask for 5 per cent it does not mean that our case for small is quite beside consideration. Whatever is fixed it should not be related to the capital of the body corporate. There are loans, debentures, share capital etc. So if the ceiling is to be fixed, it should be fixed on a particular basis. It should also have some consideration for the capital expenditure.

SHRI BENI SHANKER SHARMA: In your memorandum you have said that your Association represents the majority of smaller businessmen. So far as the question of amortisation is concerned as in this clause 8 section 35(A) this benefit is only confined to companies. Do you want that all other assesseees, partnership firms and others should be benefited by this relief?

SHRI KANORIA: We want the benefit for all.

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SHRI N. C. CHATTERJEE: Should I take it that you want to delete Indian Company for the word assessee.

SHRI KANORIA: Yes.

SHRI BENI SHANKER SHARMA: From the evidence of several other organisations we had a list of items on which amortisation should be allowed. According to me if you want to include all these items that will be a huge list. Even then that will be only illustrative and not exhaustive. So I think either the I.T.O. should be left free to determine the amortisation expenses or the list should be more exhaustive. What do you think should be done?

SHRI KANORIA: The items should be specified which will go under the heading for promotional expenditure.

SHRI BENI SHANKER SHARMA: We have got different suggestions from different witnesses. It will be difficult to include them all. So you will have to leave it to the discretion of either the I.T.O. or the Board.

SHRI BANGUR: These (as in the Bill) are the expenses for which we suggested 5 per cent ceiling. We are not suggesting the ceiling of 5 per cent if the list is made further exhaustive. The position is this. After floating the company the business starts working within 2½ years. And within these 2½ years we are to incur commercial expenses, we are to incur interest of the loan which we have taken from the different institutions. Now they are to be capitalised. They should be made clear. For this purpose we suggest 5 per cent ceiling and if the intention of the Government is to bring further items then the ceiling should be further enlarged.

MR. CHAIRMAN: The intention of the Government is to give 2½%.

SHRI BANGUR: Our suggestion is that it should be 5 per cent if no further items are added on this. At the same time a clarification should be made that before the start of the production whatever the expenditure may be—it may be by way of commercial expenses, it may be by way of interest charges and other expenses—all these expenses should be capitalised and necessary depreciation should be allowed. Once you list the amortisation items the Income Tax Department might say that these expenses are of a capital nature and these are not to be allowed. So that point should be made clear otherwise the business community will suffer very largely.

SHRI N. K. SANGHI: At page 5 of your memorandum you have said that the entire amount of preliminary expenses should be allowed to be amortised without the proposed ceiling of 2½ per cent. How will you justify it?

SHRI JAIN: Several factors are to be considered for this. If the ceiling is retained, then the percentage should be increased to 5 per cent of the total capital expenditure on the project. Besides development is required in diverse industries and it is desirable that the people, the entrepreneur, should be encouraged to explore the possibilities. Therefore it is necessary that considering all these factors the entire expenditure should be admissible.

SHRI VISHWANATHAM: Amortisation expenses are allowed for particular industries in which certain preliminary expenditures are done but that is not clear in the case of other matters.

MR. CHAIRMAN: It is no good discussing further on this point. He has answered and we have understood the points.

SHRI DASGUPTA: We have suggested that all the preliminary expenses of all the experimenting

schemes are to be added. We have suggested for deletion of reference to one project or survey report in that clause.

SHRI N. C. CHATTERJEE: Supposing there are 5 per cent or six per cent, then what is the up? How much you pay to brokers?

SHRI BANGUR: As far as the debentures are concerned, 3 per cent stamp duty, 2 per cent brokerage, 1½ per cent solicitors and ½ per cent on other expenses. That means 6 per cent for debentures.

MR. CHAIRMAN: Have you got any other points to make?

MR. DASGUPTA: We have dealt with two important things in the memorandum. We have suggested about the project cost and the actual expenditure incurred. All these require careful consideration. Everything has to be done in such a way so that complication does not arise.

श्री योगेन्द्र शर्मा : आप ने कहा कि इमपोर्टाईजेशन के आइटम्स और परसेन्टेज को यदि नहीं बढ़ाते हैं तो विज़नेस कम्प्यूनिटी को सफर करना होगा। हम यह समझना चाहते हैं कि हमारे जो टैक्सेशन लाज हैं वे ग्रेट ब्रिटेन के टैक्सेशन लाज पर आधारित हैं लेकिन वहाँ की विज़नेस कम्प्यूनिटी यह शिकायत नहीं करती कि वहाँ पर क्योंकि इमपोर्टाईजेशन की व्यवस्था नहीं है, इसलिए उनको सफर करना पड़ता है। तो वहाँ की विज़नेस कम्प्यूनिटी हमारे मुल्क की विज़नेस कम्प्यूनिटी से मज़बूत है जो कि इमपोर्टाईजेशन के अभाव में भी यह शिकायत नहीं करती, तो हमारे देश की कम्प्यूनिटी जबकि हमारा टैक्सेशन ला उन के टैक्सेशन ला पर आधारित है, यह शिकायत करती है, तो इस का क्या जस्टीफिकेशन है?

दूसरा प्वाइण्ट यह है कि हमारे कैपिटल एक्सपेंडीचर में जितने आइटम्स आते हैं और ग्रेट ब्रिटेन में कैपिटल एक्सपेंडीचर में जितने आइटम्स आते हैं, टैक्सेशन ला के हिसाब से क्या उन में फर्क है? यदि फर्क है तो क्या फर्क है।

तीसरी बात यह है कि इंटेंजिबल एक्सपेंडीचर की बात कहीं जाती है। आप लोक अनुभवी आदमी हैं, बिजनेसमैन हैं, हमें उतना तजुर्दा नहीं है लेकिन आप के अनुभव से हम लोग सीखना चाहते हैं। क्या यह बात सच नहीं है कि इंटेंजिबल एक्सपेंडीचर जिसे हम कहते हैं वह ऐसे एक्सपेंडीचर हैं जिनको कि करने से हम जो कैपिटल बनाते हैं वह दरअसल कम कीमत का कैपिटल ज्यादा कीमत का हो जाता है। उसी के लिए इंटेंजिबल एक्सपेंडीचर होता है। अगर प्रोपर इवेल्यूशन हो, तो इंटेंजिबल एक्सपेंडीचर की जरूरत नहीं पड़ेगी। तो इस की भी आप सफाई करें।

SHRI DAS GUPTA: Sir, with your permission, I will take up the last one. The honourable member has asked for intangible expenditure. Intangible expenditure in commercial business has been defined as those expenditures which are very real but does not result in the creation of tangible physical assets. Therefore you will agree that there are expenditures like sending men or any other thing in connection with the project costing, promotion, procurment of machine which do not result in the direct physical creation of assets. Then intangible expenditures need not necessarily be interpreted to be those which have an appreciation in value. Sir, you will find even in our Income-tax Act some of the expenses resulting in the creation of assets are allowed to be added to those assets and which are eligible to depreciation. Some of the expenses which are considered to be necessary

were not allowed so long to be added to the total capital cost of those fixed assets. The intangible need not necessarily be taken and it has not been taken also as being undesirable or speculative for appreciation. Regarding the other countries' allowances and our country's allowances, my submission would be that which country gives which allowance for promotion or development depends upon the stage and circumstances of that country. After the last war both France and for a long time even Great Britain gave different allowances according to the circumstances of the country.

MR. CHAIRMAN: That is not to be explained so much.

SHRI YOGENDRA SHARMA:

मेरा कहना यह था कि ग्रेट ब्रिटेन की बिजनेस कम्युनिटी यह शिकायत नहीं करती कि उन के यहां इमपोर्टिजेशन की व्यवस्था के अभाव में उन को सफर करना पड़ता है। तो फिर क्यों हमारे देश की बिजनेस कम्युनिटी जिस के प्रवक्ता हो कर आप ने कहा कि हमें सफर करना पड़ेगा यदि इमपोर्टिजेशन के आइटम्स को नहीं बढ़ाया जाता है और जो परसेन्टेज है, उस को नहीं बढ़ाया जाता है।

MR. CHAIRMAN: Mr. Sharma, Mr. Das Gupta wanted to explain that the conditions in England and America are different from what they are here.

SHRI DAS GUPTA: Again, Sir, I would submit that if today we make adequate allowances for development rebate or ordinary depreciation or other depreciation, perhaps the business community will not require this new allowance.

MR. CHAIRMAN: Now, let us come to brass tacks Mr. Kanoria. We have studied reports of say 20 or 30 companies where the average comes to either 3 or 3 or 4. Whoever we have

asked for have gone by this kind of averages and the average began at 2½ to 3½ and now today we have come to 5 and we are not sitting tomorrow otherwise we would have probably come to 6 tomorrow. You have so many associates and so would you kindly work out and make a study and send us a report either today or tomorrow or any time in Delhi so that we can arrive at a correct decision. Whatever studies we have made up to now show that the average does not go beyond 4. If you have any such study you kindly furnish us. The second thing is that you can just let us know from your direct experience in how many years you recover the project cost which you incur for an industry which goes in for commercial production.

SHRI KANORIA: Sir, regarding the second point, I can say that it varies from industry to industry and it also varies according to the market conditions. The same industry may recover in five years, when the time is bad, it may recover in ten years if it has started well.

MR. CHAIRMAN: But in answering this question you must take into consideration that the country has provided you with a sheltered and protected market in almost all the commodities.

SHRI KANORIA: Sir, we will just study this point and whatever information we can get, we shall send you.

SHRI SOMANI: Mr. Chairman, I would like to shift the area of examination a bit. The Chamber in its memorandum on page 2 has made a significant remark when they say that the poor mutual understanding and positive mistrust between the Administration and the assesseees go unabated. It is a very interesting statement. I would ask Mr. Kanoria, what steps he would recommend so that this mutual mistrust and lack of understanding between the two is likely to go away. I am sure the officers and also the Hon'ble Minister would also be interested to know this.

SHRI KANORIA: We have a feeling that if there is some contact between the business community and the Department of Income Tax, it starts with a misconception. The officer always feels that on most of the items the expenditure is high; he starts with mistrust. The feeling is even found in companies where there are big profits and big amounts of income tax are paid. There also that feeling of mistrust is there. Even when we go over to the Government of India not only for income tax assessment but for other matters, for raw materials shortage, we are always looked with a mistrust and a decision is taken at a very late stage. If you want a specific instance, last year we had a serious raw jute shortage. Though this is out of the point here, yet I am explaining this to illustrate my contention. We went to the Hon'ble Minister for import of 5 lakh bales of raw jute from Thailand when the price there was low. Now, a decision for the import of the jute was taken but it was taken after four to five months since when we went for import with the result that we had to spend 50 per cent more in foreign exchange. So far any proposal that we send to the Government of India a decision is taken only after it is thoroughly examined.

MR. CHAIRMAN: That is not within the jurisdiction of this Committee.

SHRI SOMANI: Is it your contention that the proposals should not be thoroughly examined?

SHRI KANORIA: They should be examined in time, the time factor is most important.

SHRI SOMANI: What specific suggestion can you offer to do away with this mistrust?

MR. CHAIRMAN: The example that Mr. Kanoria gave was outside the scope of this Committee. He referred to the question of delay.

SHRI KANORIA: Let us not sidetract the thing. That was a question of delay all right, but in most cases there is want of confidence in us shown by the Departments.

SHRI B. S. SHARMA: I may say that this mistrust is going away gradually and things are improving. It is hoped that with the new Minister things will improve.

SHRI KANORIA: We feel that the climate should be improved if we have to do anything. There is lack of understanding everywhere.

MR. CHAIRMAN: Don't you feel Mr. Kanoria that the Members of this Committee want to know problems with understanding?

SHRI KANORIA: Sir, this is the general feeling. What we are facing today in the country is like this. Suppose we go to an I.T.O., he will look with mistrust that things are not in the right direction.

SHRI K. L. GUPTA: Well, both sides are to be blamed.

SHRI BISWANATH ROY: I want to know from you the reason why this sort of suspicion has been created in the business community and also in the Government officers. Are you able to point out the reasons for this?

SHRI JAIN: Mr. Chairman, Sir, I will try to bring two or three very small aspects. What happens is that somebody makes a deposit with us by cheque or in cash. We refund the money by crossed account payee cheque. Income-tax officers proceed with the assumption that it must be your money indirectly and because the assessment is completed 5 years later you should be subjected to tax and penalty. That is a matter of mistrust. In our opinion, when everything is done bonafide the Income-tax Officer think that because he may not have proper reasons for enquiry it is very difficult to assess and there are instructions. Therefore, he is helpless.

SHRI BISWANATH ROY: Do you think the suspicion of the officers is justified or unjustified?

SHRI JAIN: My submission is, whatever was possible by the assessee has been done and there is nothing to disbelieve him. I do not say that there is no malafide case. But that does not mean that an honest assessee should be made to suffer. When an assessee disclose the income and the source, merely because the Income-tax Officer considers that a particular expenditure is not admissible, or a particular income which has been claimed by the assessee as tax-free, should be taxed, it will be wrong to impose any penalty for non-payment.

SHRI GUPTA: There is another side of the picture also which should not be ignored. Is it not a fact that there are cases where the assessee receives money by cheque, he makes payment by cheque and still it is a bogus credit and it has connivance of the assessee with that bogus firm. What the Government should do? Both parties are to be blamed. The Income-tax Officer has to verify the cases.

SHRI JAIN: We do not deny that there is tax evasion or avoidance. We do not mind verification. But unless you have something positive to say an assessee should not be proceeded against on the basis of assumption.

MR. CHAIRMAN: Anyway, let us come to the point.

SHRI B. S. SHARMA: Mr. Kanoria, in your remarks about clause 43-186A and 186B—in reply to a question you perhaps hurriedly stated that you prefer the *status quo*. I draw your attention to page 16 of your memorandum where you have given a very good amendment and it is a positive scheme in lieu of the *status quo*. Would you revise your opinion as it is self-contradictory? This substitution contained in your memorandum is a good alternative and I think this should stand.

SHRI KANORIA: Yes, Sir, the position is what you have explained.

SHRI B. S. SHARMA: May I ask you to what extent that purpose of simplification and rationalisation of procedure has been achieved by this Bill. You cannot give the answer just now. You prepare a detailed answer and send it to us. You will give your suggestion of the exact provision which in your opinion will simplify the provision and remove the mistrust between the assesseees and the department and at the same time the assesseees will be in a position to pay their correct tax. If they do so, there is no reason why the department should harass them. So prepare a detailed note and send that to us.

SHRI KANORIA: All right, Sir.

SHRI SHINKRE: Now, the Board and the Commissioner have been given some discretionary powers what do you say about them.

SHRI DAS GUPTA: Our experience is that the I.T.Os are more powerful than the Board or the Asstt. Commissioners or Commissioner. So we consider that this delegated legislation has not much importance or effect. The C.B.R. interpret the law, issues notifications and circulars but the I.T.Os are the real persons who rule. So, whatever is enacted should be equally applicable throughout the country uniformly.

SHRI SHINKRE: The difficulty is that there may be some officers who may think that they are safeguarding the interest of the assesseees and others may think that if they take certain action the other officers may be suspicious about them.

SHRI DAS GUPTA: Local officers previously used discretionary powers with confidence but in recent years these powers are not being used by them. There is evasion of responsibi-

lity or shirking of responsibility due to many factors—by different interpretation of the laws etc. Ultimately there is delay. The assesseees have acquired some immunity, business men are suspected of doing something wrong and somebody taking advantage of this position. Of course thanks to our democratic discussion and interpellations in the legislative bodies.

SHRI K. L. GUPTA: Now, you have suggested that clause 14 should be dropped. About this retrospective effect, I agree with you entirely that it will be a great hardship on some. Then there is the question of security—I mean social security.

SHRI KANWAR LAL GUPTA: Can you suggest some remedy so that this avoidance may be checked?

SHRI KANORIA: We have suggested, as alternative, that gift tax may be levied.

SHRI KANWAR LAL GUPTA: That is already there.

SHRI DAS GUPTA: It may be legalised that gift tax should be levied on all transfers.

SHRI KANWAR LAL GUPTA: Then come to the case of H.U.F. In the case of H.U.F. even if it is disrupted income tax should be levied. Do you agree to this?

SHRI DAS GUPTA: Yes, Sir.

SHRI KANWAR LAL GUPTA: Then I come to the question of punishment. Suppose as assessee fails to submit his return in time and defaults for 3½ months. Don't you agree that physical punishment should be given for late filing or returns?

SHRI KANORIA: Here the position is that we consider this penalty to be very harsh. Compulsory imprisonment for late filing of returns is too much. Physical punishment is too harsh and it should not be given.

SHRI BENI SHANKER SHARMA: Would you prefer financial punishment to physical punishment.

SHRI KANORIA: Yes.

SHRI SETHI (Minister): Do you mean to say that he should be given proper opportunity?

SHRI DAS GUPTA: We would suggest that notice should be given to the assessee by the department indicating the consequences on his failure to comply with the filing of returns.

SHRI KANORIA: Along with this it should also be noted that physical punishment should not be there for non-filing of documents.

SHRI SETHI (Minister): What will be the case if the assessee does not submit the returns after getting due notice?

SHRI KANWAR LAL GUPTA: If there is a taxable income and the notice under section 139(1) has been given then the person has to file the return within the prescribed period. Even if he does not file it there is a provision for penalising him financially. A heavy penalty of 2 per cent per month is already there and there is no point in having physical punishment by putting the person behind the bars.

SHRI BENI SHANKER SHARMA: All assessees do not maintain their accounts and papers in the same fashion. So far as stock book is concerned, unfortunately, some of the assessees may not have stock books at all. If the I.T.O. wants such an assessee to produce the stock book it will be physically impossible for him to produce it. For this kind of defaults do you think it is highly improper to punish him.

SHRI BANGUR: People are affected adversely. Most of the people do not understand law, people are paying tax and some are paying wealth tax. Only one lakh and ten thousand people are now assessees for

wealth tax. It is giving an impression that the country is a poor people's place to live in, but once we go to towns or any part of the country, we find that development is there. People earn but the income is not going to be assessed. That part should be examined carefully and relief should be given where it is necessary to be given. The country is a very big country. There are so many towns and villages. Many people do not know the law and they do not understand what it is. They go to the officers, when required, to understand the law. With such a complicated case of the law and with such a vast country, I think it is the duty of each citizen and all law makers to see that the law should be made in such a manner that it could be implemented and people could understand that this is the law.

MR. CHAIRMAN: I thank you all for giving us your valuable suggestions.

(The Committee then adjourned for lunch.)

The Committee reassembled after lunch at 14.30 hours.

III Bengal National Chamber of Commerce and Industry, Calcutta.

Spokesman:

1. Dr. B. N. Ghose, *M/s. Bengal Chemical & Pharmaceutical Works Ltd.*
2. Shri Milan Kumar Mookerjee, *The National Rubber Mfrs. Ltd.*
3. Shri M. C. Poddar, *Messrs. Saha & Co.*
4. Shri A. K. Chattopadhyaya, *Messrs. D. Basu & Co.*
5. SHRI R. Singhi, *Messrs. Singhi & Co.*
6. Shri A. R. Dutta Gupta, *Offg. Secretary.*

(The Witnesses were called in and they took their seats.)

MR. CHAIRMAN: Dr. Ghose, we welcome you to this meeting. Will you kindly introduce your colleagues to the members?

(Dr. Ghose introduced his colleagues.)

Now, according to the rules of procedure I have to read out to you the relevant rule. You may kindly note that the evidence that you give would be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, we have received your memorandum. If you want to make any points out of your memorandum, you may do so.

SHRI CHATTERJEE: The first point in our memorandum is about clause 3(d) (iii), particularly the new sub-clause vii(a) in clause (6) of section 10—Income tax on remuneration of foreign technicians. So far as this Chamber is concerned, we have pointed out that it is now proposed to impose a ceiling of Rs. 4000 on the tax exempt remuneration of a foreign technician. The only point is this that while the Government has actually acknowledged that so far as the ceiling of Rs. 4000 should be taxed and that principle having been accepted, the quantum of Rs. 4000 is too low in our opinion. We cannot import any foreign technician at this rate minus all the expenses to be incurred over year. That is why it has been suggested that so far as the quantum is concerned, the quantum should be raised to make it more attractive or current market rate oriented. In this connection I would like to add one more point that the contract of service of a foreign technician should be approved within six months from the commencement of his service instead of within one year as at present. By the way it may be

mentioned that at the present market rate no foreign technician within duly qualified status is available below Rs. 7500 and the technical experts who are appointed here as managing directors with the approval of the Company Law Administration are being paid a remuneration of Rs. 7500 and so a foreign technician will not be agreeable to take much below Rs. 7500.

MR. CHAIRMAN: Do the foreign technicians have to be appointed as managing directors?

SHRI CHATTERJEE: They are technical people, technical experts, having specialised knowledge in certain fields and naturally we do not expect that they will accept any position subordinate to that of a managing director. They may not be managing directors but certainly they should not and cannot be given the status of below a technical director.

MR. CHAIRMAN: The members of your Chamber must have been connected with industries?

SHRI CHATTERJEE: Yes.

MR. CHAIRMAN: What industries they are connected with?

SHRI DATTA GUPTA: Practically all the industries.

MR. CHAIRMAN: For all industries you need foreign technicians?

SHRI DATTA GUPTA: No, not for all industries.

MR. CHAIRMAN: How many foreign technicians have you employed in your industries?

SHRI DATTA GUPTA: That is difficult to say off-hand. One of our constituents is the Incheck tyres about which Mr. Mukerjee can say.

SHRI MUKHERJEE: We have appointed a foreign technician and the salary that we are paying is much above Rs. 4000.

MR. CHAIRMAN: How much are you paying?

SHRI MUKHERJEE: I cannot tell you off-hand but it is near the figure of Rs. 7500.

SHRI B. S. SHARMA: So far as the remuneration of foreign technicians is concerned, the point is that up to Rs. 4000 it will be exempt from tax and the figure above that will be taxable. There is no bar that you cannot employ a foreign technician on Rs. 7500 but the only point is that you pay the tax. What objection do you have to that? What I mean to say is that this clause does not prevent you to taking foreign technicians on any salary you can afford to pay, but you have to pay the tax above Rs. 4000.

SHRI CHATTERJEE: With due regards to Mr. Sharma, I would like to mention that the cost of importing a foreign technician will be much more if that ceiling remains at Rs. 4000.

MR. CHAIRMAN: Why should you at all need foreign technician?

SHRI CHATTERJEE: There are certain technical and sophisticated industries which cannot be managed without foreign technicians. These industries are like the chemical and petro-chemical industries, rubber industries and things of the like which are rather extremely sophisticated.

SHRI DATTA GUPTA: In any case, Sir, import of foreign technician will require the approval of the Government of India.

MR. CHAIRMAN: And whenever you have gone to Government, have they disapproved of it?

SHRI DATTA GUPTA: That is for the Government to decide.

SHRI B. S. SHARMA: The only point that we want to say is that we want to make the foreign

technicians to be a little expensive than our indigenous technicians. We have here so much of unemployment and there are very efficient and competent people too in this country. We therefore want to make the foreign experts a little bit expensive. The provision herein is pinching to you but it is not pinching to the foreign experts but I think you will agree on this point that we should prevent this import of foreign technicians to the extent as it is possible to do so. Of course, where it is necessary, we have to get the foreign technician only when it is a must.

SHRI CHATTERJEE: The traditional industries do not require foreign technicians in any way. Only non-traditional industries will require technicians.

SHRI SHINKRE: What about the tyre manufacturing company?

SHRI MUKHERJEE: For the tyre manufacturing, we do not want to import foreign technician where one is not necessary and we have got our technical personnel whom we employ first. But there are some industries where we cannot do without foreign technicians. Those are special types of industries. For example, for industries like tyre manufacturing excepting foreign companies who are having their own foreign technical experts, ours is the only hundred per cent Indian company. So here is one industry and the only way for us is to depend on some foreign technician but not on foreign capital or foreign finance.

SHRI MUKHERJEE: We cannot discontinue the technicians because we do not want our quality to be deteriorated. We are also having our own technical people duly educated so that after a certain period we may do away with the foreign technicians. At the present moment it is not possible.

MR. CHAIRMAN: Even after 20 years it is not possible.

SHRI MUKHERJEE: It is not 20 years in our case. Our factory commenced production only 4-5 years back. Particularly after devaluation the amount of 4,000 is practically nothing in comparison to what they will receive at their end.

MR. CHAIRMAN: What is the membership of your Chamber?

SHRI DATTA GUPTA: Our Chamber has a direct membership of 308 in addition to 46 affiliated bodies.

MR. CHAIRMAN: What is the average number of industries, all categories taken together, that you are running?

SHRI DATTA GUPTA: More than 500 units.

MR. CHAIRMAN: What is the number of foreign technicians employed in these units?

SHRI DATTA GUPTA: It is difficult to say off-hand.

MR. CHAIRMAN: Why is it necessary to import foreign technicians.

SHRI CHATTERJEE: After all this will require the approval of Government.

MR. CHAIRMAN: You are running more than 500 units of industries and your Chamber is not in a position to let us know how many foreign technicians are employed in these units. Even then you have some forward with the argument that this 4,000 is nothing. As pointed out by Mr. Sharma, the Government has made provisions for you. Let us also get something for the exchequer.

SHRI PODDAR: So long it was not necessary. When the approval of Government is there, why do you import that point of 4,000 as a ceiling?

MR. CHAIRMAN: By putting that ceiling we put a kind of premium also so that you shall have to think again of paying some extra tax.

SHRI PODDAR: I am afraid, putting that kind of ceiling does not help us in any way because on all accounts we are to go to Government for approval.

MR. CHAIRMAN: Government also gives the approval.

SHRI PODDAR: We suggested withdrawal of ceiling.

MR. CHAIRMAN: Do you know, we are losing Rs. 2½ crores to the exchequer in that way?

DR. GHOSH: We would suggest that this facility should also be extended to Indian technologists who are at present staying abroad.

MR. CHAIRMAN: That is a very good suggestion. Have you looked to the definition in the Bill itself?

SHRI CHATTERJEE: No. Sir, Our second point is the concession which has been granted to the flats or to the buildings which begun and completed before 1969.

MR. CHAIRMAN: That has been noted.

SHRI CHATTERJEE: Next we come to amortisation clause. We welcome particularly the amortisation of these preliminary and other expenses for the development and formation of the company, but the limit of 2½ per cent is too low. That is why it has been suggested by the Chamber that the above limit is very inadequate considering the fact that the expenses on the capital issues are sometimes more than 5 per cent.

MR. CHAIRMAN: You are in favour of 5 per cent.

SHRI CHATTERJEE: Yes, in order to make it more rational and particularly factual, it should be made near about 5 per cent, so that it may be a real benefit.

SHRI SHINKRE: Have you made any study about certain companies in this regard?

DR. GHOSH: In a project of Rs. 1 crore the expenses go up to Rs. 20 lakhs.

SHRI SHINKRE: Have you made any study of a specific company? Can you give us some facts and figures?

SHRI B. S. SHARMA: You may give us the figures later after making the study.

SHRI CHATTERJEE: We shall submit the figures. We will establish it from the balance-sheets of the public limited companies.

SHRI B. S. SHARMA: Please make the study at random.

SHRI CHATTERJEE: All right, Sir, we will not pick and choose. We will make the study at random.

MR. CHAIRMAN: I think, so far as your memorandum goes, you have arrived at a rough calculation of 5 per cent.

SHRI CHATTERJEE: We welcome your amortisation for shifting of Industries from one place to another. This is a very welcome move.

Now, there is one thing, namely, prior intimation to the income-tax officer that one industry is shifting to another place. Now, in case of a big industry, well-established industry which is shifting within West Bengal or outside, this is well known to the government department. At that time the industry is not much disturbed about the intimation to the income-tax officers but they are more concerned as how to do the shifting.

So, if somehow they miss to inform the income tax officer then the industry ceases to get all the benefits. Perhaps that is not the intention of your amendment.

MR. CHAIRMAN: When you are informing 12 different places you can as well make another copy by cyclostyle and send it to the income-tax officer for information.

DR. B. N. GHOSH: Then there is another thing. Sale of an undertaking. Why should the undertaking be sold only to government and not to private or outside bodies.

SHRI CHATTERJEE: I come now to another important matter, namely, levy of interest for delay in filing of returns. There is levy of fine to recognised firms on the basis of a national idea. If I have avoided some amount of tax I may be penalised on a rational basis and not on a national basis. But why on unregistered firm basis in the case of registered firm. Then there is the time-limit.

SHRI B. S. SHARMA: There are two categories. One is recognised and the other non-recognised. Your point is that the partners of a recognised firm may be penalised and not the firms itself.

SHRI CHATTERJEE: If you tax me you tax me as a registered firm because I am paying tax. You cannot treat me as an unregistered firm so that you might get more taxes from me.

Then about clause 30—sec. 139, levy of interest in respect of submission of loss return for the purpose of carry forward. This section provides for submission of return of loss within the time allotted under sub-sec. 139(1). The I.T.O. has been given the right to give time in suitable cases and the only condition is that it should be done within the allowed time.

SHRI CHATTERJEE: While welcoming the amendment in respect of submission of loss return for the purpose of carry forward a departmental circular may be issued by the Central Board of Direct Taxes to allow the benefit the assessed losses to be carried forward if the returns showing losses are filed within the time under sub-section (1) of section 139. Section 139(3) provides for submission of return of loss within the time allowed under sub-section 139(1). As the I.T.O. is empowered to allow time in suitable cases, only point stressed up on its return of loss is required to be filed within the time allowed under section 139(1). It is an absurd proposition to hold that time allowed under section 139(1) by the I.T.O. who is the prudent authority, does not confer right on the assessee to get the benefit of loss to be carried forward under section 139(4) even though it is provided therein that "time allowed" under sub-section (1) of section 139. So it should be in the form of an amendment to give benefit to the assessee in the interim period.

SHRI CHAIRMAN: All right we shall consider that point.

SHRI CHATTERJEE: Then I come to the Clause 31 regarding self-assessment payment. I will suggest that Rs. 500 should be retained for the benefit of small assesseees. I will further suggest that for relief of assesseees, the I.T.O. should be authorised to allow instalment payment of the tax payable because as you know income-tax is payable on accrual basis and not on cash basis. The money might not have been received but still the money is accrued.

SHRI GHOSH: In this connection I may give an instance of a case in which I was personally involved. I used to get commission from a concern whose year ending was in the month of March but the balance sheet used to come out in August. So unless the

balance sheet was available after the general meeting I did not get the actual commission. But the Income Tax Officer said that I was legally entitled to that amount I would have to pay the tax. So I lost the case. Besides it will be very much hardship to the small assesseees if the amount is made Rs. 100.

SHRI SETHI (Minister): But if the accrued income goes to unaccounted for.

SHRI CHATTERJEE: There are five sections to take steps for that.

MR. CHAIRMAN: If the income accrues and the assessee never withdraws it, what would be the position then?

SHRI CHATTERJEE: That is a different matter. But what we want is that power should be given to the Income Tax Officers to grant instalments. Then I come to Clause 43 regarding recognition of firms. It relates to new Sections 186(A) and (B). In our note we have elaborately dealt with this.

SHRI BENI SHANKER SHARMA: It is a very good suggestion.

MR. CHAIRMAN: Your point is that there must be offices in the villages also.

SHRI CHATTERJEE: Yes, Sir. Then we come to the question of fees viz. Rs. 10 and Rs. 250. I think you will kindly consider our proposal.

SHRI KANWARLAL GUPTA: We agree to this point also. Now I go to the next question, What are your views about physical punishment?

SHRI PODDAR: There is section 144 for summary assessment. There are also provisions for non-submission of return in time viz. 271(1)(A) and for non-production of papers and other things viz. Section 271(1)(B). So there are three provisions by which financial panalties can be imposed.

There are lots of provisions and some application is being made of those provisions. I think in some cases the punishment is so heavy that it is more than a rigorous imprisonment. There are provisions for defaults and other things and for alleged evasions of tax. Of course, rigorous imprisonment provision is not there, but if all these punishments are compiled together, the punishment becomes so heavy that it is more than a rigorous imprisonment.

Thank you very much.

DR. GHOSH: Assesseees are not conversant always with the ever changing tax laws. We cannot follow it unless we take the help of a Chartered Accountant. Sir, I am grateful to you and your members of the Committee for giving us a patient hearing. I hope you will accede to some of our requests at least, if not all.

MR. CHAIRMAN: I think you all for giving us your valuable suggestions.

(The Committee then adjourned).

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION
LAWS (AMENDMENT) BILL, 1969

Thursday, the 15th January, 1970 at 10.00 hours and again at 15.00 hours
in Council Hall, Bombay.

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri S. R. Damani
4. Shri Kanwar Lal Gupta
5. Shri B. N. Katham
6. Shri S. B. Patil
7. Shri Shiva Chandika Prasad
8. Shri R. Dasaratha Rama Reddy
9. Shri Bishwanath Roy
10. Shri N. K. P. Salve
11. Shri N. K. Sanghi
12. Shri Beni Shanker Sharma
13. Shri Yogendra Sharma
14. Shri Janardan Jagannath Shinkre
15. Shri R. K. Sinha
16. Shri N. K. Somani
17. Shri Tenneti Viswanatham
18. Shri Ram Sewak Yadav
19. Shri Prakashchand B. Sethi.

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(*Department of Revenue and Insurance*)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

- I. Shri H. R. Varma, *Technical Adviser, Indian Electrical Manufacturers Association, 35, Himgiri, Pedder Road, Bombay-26.*
- II. *The Hindustan Chamber of Commerce, Bombay.*

Spokesmen:

- 1 Shri Nandlal Kejriwal—*Hony. Secretary.*
- 2 Shri Ramesh Chandra Rastogi—*Hony. Secretary*

3. Shri Pannalal Sanganeria—*Adviser*.

4. Shri J. N. Gupta—*Secretary*.

III. Indian Merchants Chamber, Bombay.

Spokesmen:

(i) Shri J. R. Doshi—*President*.

(ii) Shri Pratap Bhogilal

(iii) Shri C. C. Choksi

(iv) Shri V. R. Dalal

(v) Shri C. L. Gheewala—*Secretary-General*.

(*Shri H. R. Varma, Technical Adviser, Indian Electrical Manufacturers' Association, Bombay was then called in and he took his seat*).

MR. CHAIRMAN: Mr. Varma, we welcome you. Since you are all alone, there is no need of introducing anybody else. Now, before we proceed, according to our Rules of Procedure, I must read out the relevant rule so far as your evidence is concerned. It says:

"The witness may kindly note that the evidence he gives would be treated as public and is liable to be published, unless he specifically desires that all or any part of the evidence tendered by him is to be treated as confidential. Even though he may desire his evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

We have received your Memorandum. If you want to say anything more you can do so and you can elucidate the points that you have mentioned.

SHRI H. R. VARMA: The only thing that I would like to impress upon this Committee is this. While Rules, Regulations and Tax-Laws may be made by the Government from time to time with the best interests of the country in view, it should not be applicable with retrospective effect. That is bound to shake the confidence of the public as we are today politi-

cally and socially absolutely in a turmoil. Even people have not got much faith left in them because things are changing so fast. I want to say that there should be something to continue the best for stability in all aspects of life. Things should not merely be correct, but they should appear to be correct and if any change is made, it should not at all affect or shake the people's faith and confidence. This is my view which I would like to place before your Committee.

MR. CHAIRMAN: At one place you have said like this. You may kindly refer to your Memorandum. You have said like this:

.....Since then the Income-tax Department had been accepting this view to represent the law correctly and no attempt was made to upset the position established by the highest Court of the land. Thousands of people took it to be the correct legal position and acted on that assumption."

SHRI H. R. VARMA: That is right.

MR. CHAIRMAN: That is the very point. After the Supreme Court decision, as you have said very correctly, thousands of people have now gone into H.U.F. and put their income in H.U.F.

SHRI H. R. VARMA: That is right.

MR. CHAIRMAN: Then you have said:

"I was advised by highly qualified and competent legal experts that if any assets were put into the common pool of the HUF, the income arising to the HUF, is not clubbed in the hand of transferor and thereby suffers tax at lower rates. Led by this advice I have been transferring my saving to the HUF since 1965 so that the members of my family could benefit and have the feeling of security."

SHRI H. R. VARMA: That is right.

MR. CHAIRMAN: As you have done it on the advice of legal experts, thousand others have done it.

SHRI H. R. VARMA: Yest, they must have done it.

MR. CHAIRMAN: Therefore, the question which arises is this. That is what the Committee would like to know from you. They have taken recourse to this kind of method. How can the Government, the State Exchequer get their dues?

SHRI H. R. VARMA: What I said is that all the loopholes can now be plugged.

MR. CHAIRMAN: You want to tell us that this is to be accepted, but that you don't want to make it retrospective.

SHRI H. R. VARMA: That is right. If it is something which is in the interest of the country, then, everybody will have to accept it. It cannot be given retrospective effect. That would be detrimental to the imagination and faith of the people.

SHRI N. K. SANGHI: I want a clarification. You made two discriminations. You said, after 1965, if it is done it would be discriminatory but that if it is done after 1969, it would

not be discriminatory. How would you really explain it? How can that be discriminatory if it is done? What have to say about it? If it is discriminatory there in that case, don't you think it would be discriminatory here also when after 1969 it would be adopted?

SHRI H. R. VARMA: Once it is declared that we are going to have a change in law, everybody is warned about it. If you say certain facility cannot be given, that is an end of the matter. But after giving that intimation, it should not be made applicable for the earlier period when the previous law held good, till it is changed. So, I would say, if such and such a thing has been announced, it is at my own risk whether I take it or do not take it.

SHRI N. K. SANGHI: People who take advantage of the supreme court decision have been very circumventing. This is really an important aspect why it is to be given effect from 1965. There will be discrimination if it is not given effect from 1965. Is it not? They will say, 'You have barred us'.

SHRI H. R. VARMA: I might have paid certain taxes which I am not supposed to do, for want of knowledge of tax laws. I will tell you one instance: I had lost my salary for a few days because I did not claim it within three years' period. All these things are a little bit off the mark. What I want to say is this: Once a thing has been declared as legal it has to take its effect, till it is modified. I never knew of HUF when I was in Delhi as Deputy Chief Engineer, Central Water and Power Commission, till I came to Bombay in 1965. At that time taxes would be deducted from my salary. After coming to Bombay I came to know about the provision in the HUF where there is provision in tax-laws and this could be done.

MR. CHAIRMAN It is quite true that in Bombay there are good expert legal advisers.

श्री कंवर लाल गुप्त : यह जो सुप्रीम कोर्ट का फैसला हुआ है इसके दो प्रभाव हुए हैं, एक तो यह कि टैक्सपेयर को इन्कम टैक्स में कुछ रिलीफ मिलना चाहिए और दूसरा लाभ यह है कि एक आदमी जो अपने आगे बच्चों के लिए चाहता है कि कुछ कर जाए, तो वह कुछ कर ले और इसीलिए वह एच० यू० एफ० में पैसा डाल देता है ताकि कल को उनके लिए कुछ लाभ हो और उन पर ज्यादा टैक्स का भार न पड़े। आपका आब्जर्वेशन यह है कि यह 1965 से लागू नहीं होना चाहिए। आगे के लिए लागू हो जाए, इसके लिए आप राजी हैं।

श्री एच० आर० वर्मा : 1969 से लागू हो जाए जिस दिन से डेक्लेयर हुआ है। यह तो गवर्नमेंट का आप्शन है।

श्री कंवर लाल गुप्त : मेरा सवाल यह है कि गवर्नमेंट जो यह करना चाहती है, उससे यह होगा कि एक इन्डिविजुअल की इन्कम में एच० यू० एफ० की इन्कम भी जोड़ी जाएगी और इस तरह से उसको ज्यादा टैक्स देना पड़ेगा और इसका असर यह हो सकता है कि लोग अपने बच्चों के लिए जो व्यवस्था करना चाहते थे, वह नहीं करेंगे।

श्री एच० आर० वर्मा : जी, हां। बिल्कुल ठीक है।

श्री कंवर लाल गुप्त : तो मेरा कहना यह है कि गवर्नमेंट क्या चाहती है, उसको आप छोड़ दीजिए। आप अपने विचार से यह बताइए कि गवर्नमेंट जो यह करने जा रही है, यह करना ठीक होगा या नहीं।

SHRI H. R. VARMA: It is for Hindus only. Why such a thing should not be for other people? This is a privilege given only to Hindus, and not to others.

1358 LS—13.

श्री कंवर लाल गुप्त : मेरा सवाल यह था कि आगे से एच० यू० एफ० की जो इन्कम होगी, मान लीजिए कि मैं एच० यू० एफ० बनाता हूँ अपने बच्चों के लिए, तो मेरी जो निजी इन्कम होगी, उसमें एच० यू० एफ० की इन्कम भी जुड़ जाएगी। उसका प्रभाव यह होगा कि कोई व्यक्ति दस बार सोचेगा कि उसको एच० यू० एफ० की इन्कम बनानी चाहिए या नहीं और अपने बच्चों के लिए कोई प्रोवीजन करना चाहिए या नहीं करना चाहिए। तो इसके लिए वह डिस्क्रेज होता है। दूसरी बात यह है कि आप हिन्दू मुसलमान की बात छोड़ दीजिए क्योंकि गवर्नमेंट ने अभी भी एच० यू० एफ० के लिए प्रोवीजन किया हुआ है। पुराने एच० यू० एफ० जो चले आ रहे हैं, गवर्नमेंट उनको नहीं लेना चाहती। गवर्नमेंट जो प्रोवीजन करने जा रही है वह उन एच० यू० एफ० पर लागू होगा जोकि आगे बनेंगे। जो पुराने चले आ रहे हैं या एच० यू० एफ० हैं, उन पर कोई असर नहीं पड़ेगा। इसलिए जो सेकुलर ऐम्पेक्ट है, उसको आप छोड़ दीजिए। अगर सरकार आगे के लिए यह प्रोवीजन लागू करती है तो भी क्या आप समझते हैं कि लोग डिस्क्रेज होंगे कि वे बच्चों के लिए और परिवार के लिए एच० यू० एफ० में इन्कम की व्यवस्था करें? सरकार का नजरिया चाहे कुछ भी हो, आप अपने नजरिये से बताइए कि सरकार को ऐसा करना चाहिए या नहीं।

श्री एच० आर० वर्मा : यह तो बिल्कुल ओबवियस है कि बच्चों के लिए जो प्रोवीजन होता था वह नहीं होगा। इस प्रोवीजन का असर तो इस पर पड़ेगा ही।

SHRI H. R. VARMA: They will have to suffer ultimately. This will be very hard on them.

SHRI S. R. DAMANI: Shall I assume that in this Act, for other amendments you have nothing to say? There are many amendments. Do you want to express your views on this amendment only?

SHRI H. R. VARMA: I have come before the Committee only for this particular point.

SHRI S. R. DAMANI: Do you think that the validity of this Act can be challenged?

SHRI H. R. VARMA: I think it can be challenged. If it is made applicable with retrospective effect, cases will have to go to courts. To my mind, this is a very wrong action.

SHRI S. R. DAMANI: Do you think that there will be some misuse of this?

SHRI H. R. VARMA: I don't think, Misuse is there in so many other things. HUF is a clear thing. I don't think in HUF there has been much of misuse.

SHRI BENI SHANKER SHARMA: Your memorandum is very simple. It concerns only one point. There are two aspects so far as changes in law are concerned. One is the principle and the other about applicability—whether it should have a retrospective or prospective effect—with which you are so much concerned. You seem to be in agreement so far as the principle is concerned. I want you to rise a little above, self and take a detached view and tell me whether, in principle, you agree that there should not be interference with this age old institution of joint family and that everybody should be free to put something in the undivided family for its rainy days. Do you subscribe to this view that this institution should continue. In other words I would like to say that as it is based on sound socialist principles all the members of the family get security and guarantee for their future there should not be any interference by law with this throwing of individual earned money into family hotch-potch.

SHRI H. R. VARMA: I object your remarks that this is selfish view. It is not. It has been a very considered view. Then, the second point is fundamental again whether the HUF as an institution should remain or not. As I said earlier it is a privilege to the Hindus only and as such taking an overall aspect of the law it can be done away with. All that I have to say is that till the law permits everybody has the right to exercise that right and HUF provision. I think it is foresight to make some provision for the children when there is opportunity.

SHRI BENI SHANKER SHARMA: Perhaps, you know that the Finance Minister at the time of 1968 Budget had stated that he would see that so far as this retrospective application of the law is concerned it would not be taken recourse to. And you are protected by it. Now, you say that this is an institution peculiar to Hindus and only Hindus are being benefited, it may be done away with.

SHRI H. R. VARMA: Whatever has been established I am not going to challenge. If HUF has been created for centuries that is a fundamental question altogether. But having HUF laws over there what should the enactment of it or what should the changes brought about and from what date—people should be told in advance that this will be applicable from onward otherwise I feel it will amount to snatching away.

श्री राम सेवक यादव : क्या आपको हिन्दू संयुक्त परिवार के बारे में ही जानकारी नहीं थी? या यह जानकारी नहीं रही होगी कि उससे कुछ टैक्स में रिलीफ़ मिलती है। और यही बात जो दोस्तों के बारे में आप कह रहे हैं क्या मैं यह समझूँ कि केवल संयुक्त परिवार को जो टैक्स में रिलीफ़ मिलता है उसकी जानकारी नहीं थी, या आप संयुक्त परिवार को ही नहीं जानते हैं?

श्री वर्मा : संयुक्त परिवार को जो ब्रेनि-फ्रिट मिलता है एच० यू० एफ० से इसके मुताल्लिक मैं नहीं जानता था ।

श्री योगेन्द्र शर्मा : आपने कहा कि 1965 के पहले इसकी जानकारी नहीं थी और आप की तरह बहुत से लोगों को उसके बाद जानकारी हो गई होगी । आपने यह भी कहा कि कल एक आदमी से मुलाकात हुई उनको भी नहीं मालूम था । तो 1965 में बहुत से लोगों को जानकारी हो गई एच० यू० एफ० के फ़ायदे के बारे में ।

श्री वर्मा : आज दिन तक हमको नहीं मालूम क्या-क्या हुआ है और क्या-क्या हो रहा है ।

श्री योगेन्द्र शर्मा : एच० यू० एफ० के बारे में जो यह कहा जाता है कि यदि यह बिल पास हो जायगा तो एच० यू० एफ० टूट जायेगा, यह एक बनावटी सी बात मालूम होती है । क्योंकि एच० यू० एफ० है या नहीं इससे लोग कन्सन्स नहीं हैं, उन्हें टैक्स रिलीफ़ से मतलब है ।

श्री वर्मा : टैक्स में रिलीफ़ होता है कि नहीं फ़ौर सट्टन परपजेज ।

The case of HUF is not applicable to everyone of them. There is only a section of society who can take advantage of it. The others cannot take any help. The HUF is created only when you have surplus money. When you have surplus money you put the money into HUF.

एच० यू० एफ० उस वक्त क्रिएट किया जाता है जब आपके पास कुछ पैसों उधर लगाने के लिये होता है ।

श्री योगेन्द्र शर्मा : 1965 में सुप्रीम कोर्ट के जजमेंट के बाद बहुत से असेमीज ने टैक्स इन्सिडेंस को अवायड करने के लिये एच० यू० एफ० का सहारा लिया । अब सवाल यह है कि इसके बारे में क्या किया जाय ?

श्री वर्मा : जो आप नया नियम बना रहे हैं आपको बताना पड़ेगा कि हम यह प्रिविलेज विद्वान कर रहे हैं ।

You have to declare. Whether it is correct or incorrect is a different matter. That is a matter of law.

श्री योगेन्द्र शर्मा : जहां तक सरकार के इंटेंशन का सवाल है वह तो पहले ही साफ है कि एच० यू० एफ० के जरिये से अवायड नहीं कर सकते । मगर बूक सुप्रीम कोर्ट का फ़ैसला हो गया और कानून की बनावट ऐसी थी जिससे सुप्रीम कोर्ट को फ़ैसला देना पड़ा । मगर उसके बावजूद सरकार का क्या इंटेंशन था यह 1965 के पहले ही साफ था ? जब सुप्रीम कोर्ट में वहस हुई तो सरकार ने अपनी पोजीशन साफ़ की ।

श्री वर्मा : बम्बई और गुजरात हाई कोर्ट्स के 1962 में फ़ैसले हुए, और सुप्रीम कोर्ट का 1965 का फ़ैसला है ।

श्री योगेन्द्र शर्मा : जो टैक्स इन्सिडेंस को अवायड करने के लिये एच० यू० एफ० का सहारा लिया जाता है, दरअसल में एच० यू० एफ० है कि नहीं कहना मुश्किल है । हम आपको बतायें कि गांवों में जमीन की सीलिंग का कानून बना, उस कानून को सर्कमवेंड करने के लिये जॉइंट हिन्दू फ़ैमिलीज का फ़िक्टिशस पार्टीशन हुआ, उमी तरह से शहरों में यह फ़िक्टिशस जॉइंट हिन्दू फ़ैमिलीज बनायी जा रही है । कैसे इस सर्कमवेंशन को काउण्टर किया जाय ? आया काउण्टर करना चाहिये कि नहीं ? हम समझते हैं कि मौरली काउण्टर करना चाहिये । सवाल यह है कि कैसे काउण्टर किया जाय ताकि असेमीज को लीमिट डिफ़िकल्टी हो ?

श्री वर्मा : ओवर आल आस्पेक्ट अगर देखा जाय तो यहां पर बहुत से लीकेज होल्स हैं जिनको प्लग किया जाना चाहिये ।

In the overall aspect this loophole has to be plugged.

मेरा अपना इम्प्रेशन है, जो कुछ मैं जानता हूँ, अगर आप बम्बई की बात करें तो बम्बई में टोटल टैक्स पेरेविल by businessmen would hardly be 10 per cent of what it should be. There should be a law to check loopholes and leakages. But the law should not have retrospective effect. There are more important matters where more revenue can be earned if those loopholes are plugged. It is for the Government and the legal Department.

मेरा अपना विचार यह है कि एच०यू०एफ० का जो एक हिस्सा है वह इतना लाजिमी है कि हिन्दू सोसाइटी के लिये जारी रहना चाहिये । अगर आप विदग्धा करना चाहते हैं इस प्रिविलेज को तो मैं कुछ नहीं कहना चाहता हूँ ।

श्री योगेन्द्र शर्मा : आपने कहा कि लूप होल्स बहुत हैं । क्या आप कम्यूनिटी को हेलप करने के लिये कुछ कांस्ट्रक्टिव सजेसन् दे सकते हैं ? अभी नहीं तो आप वाद में भेज सकते हैं कि कैसे उन लूप होल्स को प्लग किया जाय ।

श्री वर्मा :

This is not my sphere. I am not a legal man. This is not in my hand.

सभापति महोदय :

Thank you very much, Mr. Varma. We have listened to you.

(The Witness then withdrew).

II. The Hindustan Chamber of Commerce Bombay.

Spokesman:

1. Shri Nandlal Kerjriwal—
Hony. Secy.
2. Shri Ramesh Chandra Rastogi—
Hony. Secy.
3. Shri Pannalal Sanganageria—
Adviser.
4. Shri J. N. Gupta—
Secretary.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: We welcome you. Your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of your evidence be treated as confidential. However, even if you desire your evidence to be treated as confidential, such evidence shall be liable to be made available to Members of Parliament.

We have seen your Memorandum. If you have anything to add you can do so.

SHRI KEJRIWAL: These are all the points.

SHRI BENI SHANKER SHARMA: Will you please tell us what is the membership of your Chamber; and what type of businessmen or industrialists are you.

SHRI KEJRIWAL: Our membership at the moment is 750. It consists only of firm members, not individual members.

SHRI BENI SHANKER SHARMA: Does it include limited companies or simple firms?

SHRI KEJRIWAL: There are limited companies as well as proprietary and registered firms. The activities of the Chamber are mainly trading. Mostly we are traders. It comprises of all sorts of traders, mainly cloth and yarn.

SHRI BENI SHANKER SHARMA: You know the main object of this Bill is to simplify and rationalise the income-tax laws which have become very complicated for the laymen as well as for experts. Do you think that this Bill achieves that object? Or, you think that some further things are to be added or subtracted for the rationalisation of the provisions of this complicated enactment?

SHRI KEJRIWAL: There are so many other things which can be done to simplify matters. But we have applied our minds only to the clauses which were sent to us for amendment, and not in addition to that.

SHRI BENI SHANKER SHARMA: Would you give us your submissions on those points later if we ask you?

SHRI KEJRIWAL: Yes, later on we can submit this, no doubt, but not now.

SHRI BENI SHANKER SHARMA: There are certain provisions in this Bill which have been given retrospective effect. Some are for the benefit of the assesseees while some are against the assesseees. Are you totally against this principle of application with retrospective effect?

SHRI KEJRIWAL: In our Chamber, so far as majority opinion goes, we are totally against retrospective effect.

SHRI BENI SHANKER SHARMA: It is stated that the Income-Tax Act is being changed so often or so many provisions are being added every

year—sometimes once, twice or thrice in a year, and it becomes very much complicated, and in fact our Finance Minister earlier had also stated that there should not be so many frequent changes. Even the Acting Chief Justice of India had also stated that. Do you think that we should have a holiday from further amendments for at least five years or such period, so that there are no frequent changes in law and people can understand and plan their future business according to the existing law?

SHRI KEJRIWAL: My personal opinion is that the Bill should be made definitely for a longer period, and not for a shorter period. Especially, changes twice or thrice in a year definitely make matters worse and we have to seek advice from advisers more often than is necessary. Therefore, I would definitely say that things which are only to be simplified or which are only explanatory in nature could be definitely taken during the year because difficulties are to be removed; but changes which are basic changes should not be made during the year.

SHRI K. L. GUPTA: You have objected to the retrospective application about the HUF provision. But in reply to Mr. Sharma's question you said that you are principally against it. In your memorandum you have not mentioned that you not only object to its retrospective application but oppose it in principle.

SHRI KEJRIWAL: At page 1 we have stated that the very basic principle of HUF as stated herein is not correct. The family assets remain undivided right upto the last period. The very concept in the Hindu Family of a division before it actually takes place cannot be considered very fair.

SHRI K. L. GUPTA: You will agree with me that on account of Supreme Court judgment in 1964-65 people

took advantage of it and formed many HUF families but later on disrupted the same. What steps should the Government take to stop this leakage or loophole?

SHRI SANGANERIA: The Government has been fighting since 1964 but losing all the cases in High Courts as well as Supreme Court. That is why they want to patch up by legislation but this is not proper because the presumption goes under the Hindu Law that every Hindu family is undivided. That fundamental presumption we cannot forget.

SHRI K. L. GUPTA: Suppose the fundamental principle of HUF remains and the Government agrees with you what you say but the difficulty of the Government is that on account of this principle Government has to lose revenue and this has become a source of great nuisance to the Government. So that this revenue may not be lost to the Government and at the same time Government may agree with you in principle also what steps should the Government take?

SHRI KEJRIWAL: It is something like an individual getting into the 'majority' after 18 years when he becomes a tax assessee. We know that so many people get the 'majority' and Government tax which was being paid by his father formerly will be reduced by division. It is something like telling that it is revenue decreased but not illegitimately. That is legal evidence and proper avoidance. If somebody has not taken opportunity of HUF formerly why should he be debarred now?

SHRI K. L. GUPTA: What is happening is people are throwing their self-acquired property into HUF. So far as that it is all right. But later on they disrupt that HUF which was formed only two months before and it is again divided. Can you suggest some remedy for it? There was suggestion from some hon'ble Member that the right of forming

HUF should be allowed by Government but further disruption of HUF should not be allowed so far as taxes are concerned.

SHRI DAMANI: My friend Mr. Gupta has said that the main purpose of the Government to bring in this amendment is to stop the misuse by putting the capital in the joint family. First thing I would like to know is whether you feel there is such kind of misuse of this clause or it is not so?

SHRI KEJRIWAL: I feel it is not so. The assessee are not misusing it. They are only using it.

SHRI DAMANI: By making it retrospective do you feel doubt about the legal validity of this measure? Certain trusts are created. If those things are challenged, in that case, have you doubt about the legal validity of the action of the Government?

SHRI PANNALAL SANGANERIA: There is every possibility. It may be possible that it is challenged in the court. This matter will be liable to be challenged.

SHRI S. R. DAMANI: You say legal complications will arise on account of this clause?

SHRI PANNALAL SANGANERIA: Naturally, Sir. It will be complication, instead of simplification.

SHRI S. R. DAMANI: In that, Government is taking away fundamental right of the parent or elder son to give their capital to children.

SHRI PANNALAL SANGANERIA: Certainly.

MR. CHAIRMAN: You know, Parliament can pass legislation giving retrospective effect.

SHRI BENI SHANKER SHARMA : Government's anxiety and our Committee's anxiety is this. There is some evasion of taxes and this has got to be checked. You say, there is no evasion and there is some increase in tax collections. That is quite different. However, if the professional man gets all his income from profession, it is his personal income and individual income. To help the Members of his family he puts some capital in the H.U.F. and with that capital some business is carried on. He as a professional man, as Chartered Accountant or as a Lawyer, cannot do it. The Department should welcome such creation of more assesseees and by this there won't be decrease of tax but there will be some increase of tax realisation. Is that your point ?

SHRI NANDLAL KEJRIWAL : Any income increases revenue. There is no doubt about it. If the increase is by investing that amount in something else, he has to pay more revenue, more taxes.

SHRI BENI SHANKER SHARMA : I will tell you one example. My friend has Rs. 5 lakhs. He transfers Rs. 1 lakh to the H.U.F. If all this money had remained with the individual, that would have attracted the Wealth Tax. Interest would have been added to his income. If this portion of his money earns interest separately and assessed separately it is avoidance of tax though legal. We have to plug this loophole. Most of the men who have created such H.U.F.'s carry on other business. What is your experience ?

SHRI NANDLAL KEJRIWAL : The main thing is not avoidance of capital interest or more revenue. It is on account of the family affections that the H.U.F. is being created. It is one of the reasons. Why happens ? If we just look at the practical aspect, we will see, by just giving more

money to the H.U.F., they also create partnerships. It is not an easy type of demarcation between the two. It is more family affections

SHRI BENI SHANKER SHARMA : Now there is another principal involved in this clause. One is retrospective application and another is prospective application. You are against retrospective application. Suppose we agree. Are you in favour ? If we make it prospectively applicable. Are you in favour of that ? What is your opinion ?

SHRI NANDLAL KEJRIWAL : H.U.F. should be on equal footing with the individual assessments and there should be no discrimination between the two. Prospective and retrospective, both goes.

SHRI BENI SHANKER SHARMA : You don't want any interference with your personal laws ?

SHRI NANDLAL KEJRIWAL : Yes.

MR. CHAIRMAN : Before hearing you, we heard another witness also. If I just tell you what he told us, you would appreciate it. He was a salaried officer of the Government of India. He did not know that he belonged to any H.U.F. He did not know till 1965 what H.U.F. means and what Hindu Law is. Only after retirement, after 60 years, when he came to Bombay after retirement, that he went on asking friends, who is there in this great city, to advise me how to get a little less burden of tax and he heard some legal experts in this city. He could not get such advice in Delhi. Somewhere in Bombay, some legal experts advised him and said : Look, here is a good chance for you; why do you bother about these things ? Supreme Court has given this facility to you. There is one way out. There is this H.U.F. This H.U.F. is something which can help you to get some less amount of the tax burden. You can do it. He said, not only I alone, but

many others also, who were not conscious of the H.U.F. and Hindu Law. After this they became conscious of the H.U.F. and they have gone in for the H.U.F. This is a problem which has been mentioned by the Bhoothalingam Committee. There were various witnesses who have appeared before the Investigating Commissions and Committees. Let us not say that people have not tried to take advantage of this thing; let us not say that there are persons who did not take advantage of the Supreme Court decision to avoid tax.

SHRI NANDLAL KEJRIWAL : Certainly it is an interesting example which you gave. I would still hold that it is a bonafide avoidance. I know of certain cases. They can be concretely proved as well. The number of firms in Bombay which were assessed as joint Hindu family Members or individual firms, were about 10,000 or 20,000 and so they were never worried.

MR. CHAIRMAN : There is no doubt that it was an avoidance which was according to law. But as interpreted by the Supreme Court, sometimes the man is not interested in being very careful for the simple reason that his earnings are, say, only Rs. 5000; the tax payable is very small. But no sooner he gets, say, Rs. 20,000 then he is in search of advice as to how to pay lesser tax; or he wants to make an H.U.F. so that he provides his family as well as he pays whatever is just to be paid.

Do you mean to say that what he was paying before was not a just demand ?

SHRI KEJRIWAL : No. It was his right to provide for his family as well as pay lesser tax.

MR. CHAIRMAN : If it is your right, the Government has also its right. Let us find a via media.

AN HON. MEMBER : What is your objection if the Government wants to raise the rate of tax for joint family. You cannot go into the legal complications and the legal niceties of the Hindu law.

SHRI SANGANERIA : It will affect everybody, not only the joint family.

SHRI KEJRIWAL : I would still hold the same view. I feel the individual and H.U.F. are entirely separate entities and the Constitution gives that right.

"So far as the increase of tax goes, I would request that it should be made general. That is a measure which the Finance Minister decides. That is up to the hon. Members to look to look after.

श्री राम सेवक यादव : अगर इस कानून को रेट्रोस्पेक्टिव इफेक्ट न दिया जाय तब तो आपको कोई शिकायत नहीं है ?

श्री केजरीवाल : शिकायत है । शिकायत तो 1965 से है और आप प्रोस्पेक्टिव इफेक्ट देंगे तो 1970 से होगी । हम चाहते हैं कि सेक्शन 64(2) नहीं रहना चाहिये ।

श्री राम सेवक यादव : आप इस आधार पर ऐतराज कर रहे हैं कि संयुक्त हिन्दू परिवार पर यह प्रभाव डालेगा, और चूँकि कर में उनको कोई रिलीफ नहीं मिलेगी इसलिये कोई भी हिन्दू संयुक्त परिवार नया नहीं बनाना चाहेगा ? यही आधार है आपका ?

श्री केजरीवाल : बेसिक प्रिंसिपल दूसरा है, और वह यह कि जैसे एक फादर है फेमिली का वह आज एच० यू० एफ० बना सकता है लेकिन इस कानून के बाद नहीं बनायेगा जिसका परिणाम यह होगा कि आगे आने वाली जो सन्तान है, जो माइनर्स या वॉइफ़ है, उसको कोई भी स्टेटस नहीं मिलेगा ।

श्री कँवर लाल गुप्त : आपका यह कहना ठीक नहीं है कि ऐच० यू० एफ० नहीं बना पायेगा । वह तो बनेंगे । केवल टैक्स ज्यादा देना पड़ेगा ।

श्री राम सेवक यादव : आप कहते हैं कि ऐच० यू० एफ० नहीं बना पायेगा । तो क्या मैं यह मतलब समझूँ कि जो परिवार टैक्स देने की हैसियत में नहीं है वह संयुक्त हिन्दू परिवार के सदस्य नहीं हैं ? या परिवार नहीं बना पायेगे ?

श्री कँजरीवाल : वह तो आज भी बना सकते हैं । पर चूँकि जो आज इंसेंटिव है वह नहीं रहेगा इसलिये कोई बनाना, पसन्द नहीं करेगा ।

श्री राम सेवक यादव : इंसेंटिव के कारण कई और तरह के होते हैं । हम सोशलिस्टिक इकानामी चलायें तो एक तर्क यह दिया जाता है कि इंसेंटिव गायब हो जायेगा, और काम को खत्म कर सकते हैं । इसलिये अब आप इंसेंटिव पर आ गये कि इंसेंटिव नहीं रहेगा संयुक्त हिन्दू परिवार दूटेंगे नहीं, यही मतलब है आप का ?

श्री कँजरीवाल : मेरा कहना सिर्फ़ यह है कि जो आप स्टैपलेने जा रहे हैं उस से हिन्दू संयुक्त परिवार की जो भावना है वह कम होगी बढ़ेगी नहीं, और इसलिये हम नहीं चाहते कि जो अपने समाज में एक अच्छी चीज है जिसमें माइनर्स की प्रोबलम सोल्व होती है, ऐसे ही स्त्रियों की, जो बहुत ऐडवन्स्ड नहीं हैं, उन को भी प्रोबलम सोल्व होती है । लेकिन इस नये कानून से परिवार पालने की जो भावना है वह कम होगी । हम यह नहीं कहते कि मिट जायेगी ।

श्री राम सेवक यादव : एक सीधा सवाल मैं पूछता हूँ । इस चीज को तो आप मानते नहीं हैं कि संयुक्त परिवार टूट जायेगा,

इसलिये इस बात को ध्यान में रख कर कि नये हिन्दू संयुक्त परिवार में अपना धन डाल कर के लोग कर में छूट चाहते हैं जिसकी वजह से सरकार को कर में नुकसान पहुंचता है । तो आप कोई ऐसा तरीका बतावें जिससे सरकार को कर में हानि न हो और कोई दूसरा रास्ता निकाल सकते हैं ?

श्री कँजरीवाल : ऐसा कोई मेजर नहीं होगा जिसमें आप यह समझें कि आदमी कर नहीं देगा । कर देना इस से बन्द नहीं हो जायेगा ।

श्री राम सेवक यादव : वह जो सरकार को कर देना है वह कम हो जाता है ।

श्री कँजरीवाल : हो सकता है कि जो संयुक्त परिवार को धन दिया गया है । एक लाख रु० पांच लाख में से, वही इन्कम इंटेस्ट से भी ज्यादा हो जाय । तो हमारा ब्याल यह है कि हर हालत में गिर जायेगी । हमारे पास फिगर्स नहीं है जो निश्चित बता सकें । लेकिन एक परिवार में चार भाई हैं, तीन मेजर हैं और एक माइनर है, चौथा जब मेजर हो जाता है तो कर में फर्क पड़ता है, सरकार को नुकसान होता है, लेकिन आप यह देते हैं क्यों कि उस का औचित्य है । इसीलिये संयुक्त परिवार में अपने बच्चों के लिये कोई धन निकालता है तो उस से चाहे जो इन्कम हो ।

दूसरी बात यह है कि अगर कम कर भी हो तो हिन्दू समाज में जो संयुक्त परिवार की भावना है उस को ठेस पहुंचाना ठीक नहीं है ।

श्री राम सेवक यादव : सर्वोच्च न्यायालय के निर्णय के बाद क्या आप बता सकते हैं कि कितने ऐसे मामले प्राये हैं जिन्होंने अपनी सम्पत्ति को संयुक्त परिवार में डाला है ?

चूँकि अब इन को कर में वह सुविधा नहीं मिलेगी तो क्या वह क म न परिवार में अपना धन नहीं डाल सकता ? ऐसी तो कोई वंदिश नहीं है ।

SHRI SANGANERIA : It is a curbing of the sentiments of the Hindus.

SHRI BISWANATH ROY : For the sake of maintenance or well being of the family members you think the joint family is the proper organisation and it is the family which looks after the members of the family while the society and the Government is responsible for maintenance of all subjects of India. Don't you think increase of income tax on the joint family will enable the Government to look after those citizens of India who are in joint family or separately that will be more beneficial for the nation ?

SHRI KEJRIWAL : I am not against the increase of taxes. It is for the common good that taxes may increase and properly distributed. The whole point is whether the differentiation between an individual and joint family from the point of raising taxes is justified or not.

श्री कंवर लाल गुप्त : आप ने जो कलाज 30 और 31 के बारे में कहा वह ठीक है । कलाज 43 के बारे में आप कहते हैं कि स्टेटस को रहना चाहिये और जो रिकग्नीशन आफ फर्म्स रजिस्ट्रार से है वह नहीं रहना चाहिये, इस से मैं सहमत हूँ । लेकिन जो स्टेटस को है उस में क्या कोई और सिम्प्लीफिकेशन नहीं हो सकता ? अगर हो सकता है तो बतावें ।

श्री पन्ना लाल : जैसा मैंने कहा इस के बारे में बहुत कंसीडरेशन तो नहीं किया गया है । यह प्वाइंट पहले चैम्बर में डिस्कस हुआ था और वहाँ यह कहा गया कि अगर कोई फर्म रजिस्टार के यहाँ रजिस्टर

हो जाती है तो फर्दर और कहीं रजिस्ट्रेशन कराना हो उस की कोई जरूरत नहीं रहनी चाहिये । रजिस्ट्रार आफ फर्म्स के वहाँ अगर उस का रिकग्नीशन कर दिया जाता है तो क्या जरूरत है इन्कम टैक्स अफसर के यहाँ कराये ।

श्री कंवर लाल गुप्त : रजिस्ट्रार आफ फर्म्स को आप ने अपोज किया है ?

श्री पन्ना लाल : मैंने कहा है कि एक जगह कराइये ।

श्री कंवर लाल गुप्त : रजिस्ट्रार आफ फर्म्स को आप करेंगे तो उस में एक दोष यह है कि रजिस्ट्रार आफ फर्म्स स्टेट सरकार के अधीन है और उन का रिकग्नीशन का बेसिस अलग है । जैसे किसी का नाम आप ने "नेशनल इंडस्ट्री" रखा तो "नेशनल" शब्द या "इंडिया" शब्द को वह रजिस्टर नहीं करेंगे । और ऐसी बहुत सी इंडस्ट्रीज हैं जिन के यह नाम हैं । तो रजिस्ट्रार आफ फर्म्स उन को रिकग्नाइज नहीं करेगा । इसलिये अच्छा यह है कि यह काम इन्कम टैक्स डिपार्टमेंट के पास ही रहना चाहिये ।

जो आप ने स्टेटस की बात कही तो उस में और क्या सुधार हो सकता है जिस से और सिम्प्लीफाई हो ?

श्री पन्ना लाल : हम इन्कम टैक्स अफसर के पास जाते हैं पार्टनरशिप डीड ले कर, पहले वह रजिस्ट्रार आफ फर्म्स के पास रजिस्टर हो जाता है, उस के बाद दाखिल करते हैं ।

श्री कंवर लाल गुप्त : आज के प्रेजेंट प्रोसीजर में कुछ और सिम्प्लीफिकेशन आप सजेस्ट कर रहे हैं । जैसे रिन्व्यूअल हर साल देना पड़ता है । आप का क्या सुझाव है जिस से प्रोसीजर सिम्प्लीफाई किया जा सके ?

श्री पन्ना लाल : जो फार्म नम्बर 12 देते हैं इस को समाप्त कर दिया जाये।

That may be eliminated. If there is any change in the constitution then the same firm is required; if there is no change in the firm that should be eliminated.

SHRI DAMANI : I also feel the registration creates hardship as in some places there are no facilities and no registrar. Supposing the application for registration is recognised then will it serve the purpose. Have you objection to the entire clause or to the delay part of it?

SHRI KEJRIWAL : We do not have objection in principle but only on account of delay. Secondly, it would be better if we make it more wide as either it may be registration with the Registrar or with the ITO to make it more convenient to the public. Certain simplification can be made.

SHRI BENI SHANKER SHARMA : You are in favour of keeping the status quo. But don't you think this new provision is certainly an improvement on the old provisions in as much as this gives you the right of registration or recognition simply if you get your firm registered with the Registrar of firms. Formerly the ITO used to enquire into so many things. Now what you are required to do is to get the firm registered and that gives you the right to get you automatically registered with the I.T.O. It is a great improvement on the old system but the only difficulty is this registration is to be done in the office of the Registrar of Firms. According to the provisions of this Bill all the firms now recognised shall have to be registered with the Registrar of Firms afresh.

Are you in favour of this alternative that those firms which are already registered with the ITO

should be treated as registered without any further application to the Registrar offices. That is Number One. So far as the future registration of the new firm is concerned, they should get themselves registered with the Registrar as my friend has already pointed out. What would you like? Would you like that the Registrar of Firms should be replaced by some authority in the Income-Tax Department itself (as Income-Tax Officer or Assistant Commissioner) who will perform the duty of the Registrar as it is performed now? What is your view? What would you suggest? Should this duty of registration be left to the Registrar of Firms or to some authority in the Income-tax Department who will do this job?

SHRI PANNALAL SANGANERIA : Registration should be done with the Income-tax Department only. The registration of firms with the Registrar will have to be done away with.

SHRI BENI SHANKER SHARMA : You say, as it is done with the Registrar of Firms.

SHRI PANNALAL SANGANERIA : That is, those firms should not be further recognised. That is all. They should be deemed to be recognised already for this purpose.

SHRI N. K. P. SALVE : I would like to stress certain basic ideas. Now the basic idea behind the contemplated change is not merely to simplify the procedure of registration, but also to obviate and to eliminate the difficulties involved in establishing the genuineness of the partnership firm. Look at the position in this regard. I would too clarify my position. The existing position is this. If there is genuineness of the partnership firm, we want to obviate the difficulties and we want to simplify the procedures. The Central Board of Direct Taxes has told us that under Revenue Law the Registration

with the Registrar of Firms would *prima facie* constitute a ground for registration straightway. It will be almost the Income-tax Officer to prove that the firm is not genuine. It will come up before the Income-tax Officer. He has to prove that registration with the Registrar is purely a pretence it is simulated and it is not genuine. It is the basic aspect of the matter. What we want to do is this. We want to simplify these things but at the same time, we do not want to over-simplify to a point that merely by complying with certain formalities etc. you get registration even if you are not a genuine partnership firm. That right of Income-tax Officers to determine the genuineness etc., we want to retain. That is, while working on the existing law, we want to obviate future litigation about establishing partnership and we want to simplify the procedure. Therefore, would you still want to maintain the status quo? What is your view in this regard?

SHRI NANDLAL KEJRIWAL: The propriety of saving the firms are duly constituted or not recognised properly, that right is with the I.T.O. at all stages, even in the first year, second year and in the subsequent years, in the present law. That right of the I.T.O. is well-established. We are not challenging that. I agree with you there—that we should not make the thing so simple that he has no right to determine the genuineness or non-genuineness of the firm. I would still say that the right of everybody, whether it is the I.T.O. or the assessee has got to be carefully looked into. If a party who has got a partnership proves this question with the banks or with the registrar of firms, if he can prove that it is a genuine partnership firm, that should be proof enough, and good enough also to hold that the partnership is there. That is what is exactly being done at the moment. I feel that the status quo should be maintained.

SHRI N. K. P. SALVE: Actually, we want to obviate the litigation. Any amount of litigation is taking place. You are aware of the amount of litigation going on. How to obviate these litigations? Is there a possibility of laying down a little more of objective test—as a result of which, a firm can be taken to have *prima facie* established the genuineness? Is that possible, or is that not possible? What is your view?

SHRI NANDLAL KEJRIWAL: It can be left to the I.T.O. at the time of the assessment—that is being done at the moment.

SHRI N. K. P. SALVE: We want to minimise the discretion of the I.T.O. We want to curtail that thing. He cannot have an untrammelled authority to go on infinitely challenging the genuineness of the partnership firm. He must have some criteria which he has to accept. He must be on firm ground if he has to go against it.

SHRI NANDLAL KEJRIWAL: That is what we want. Any suggestion that hon. Members may make may be such as would make the system foolproof. In respect of cases where certain firms have complied with all the requirements the ITO may not proceed with the non-recognition of the firms.

MR. CHAIRMAN: What he says is this: Under the present existing conditions, the I.T.O. has to be satisfied with genuineness of the firm—he is being given discretion also. We are improving upon it—once it is registered, *prima facie*, the I.T.O. has to recognize it. It is a great improvement. Why then do you object?

SHRI PANNALAL SANGANERIA: How litigation is to be avoided? Litigation can be avoided by avoiding registration with the Registrar. They will like to get the firms registered within 6 months. If it is registered in the 7th month, there will be litigation.

SHRI N. K. P. SALVE: Are you against this procedure of registration? They say, it should be registration with Income-tax Department

SHRI PANNALAL SANGANERIA: It will not simplify the work.

SHRI N. K. P. SALVE: What the difficulties are with the present registration is a different matter. It is all a question of minimising the litigation. The procedure might present difficulties. Under the procedure, as it is prescribed, if the difficulties are eliminated, will it, or will it not, minimise the possibilities of litigation?

SHRI BENI SHANKER SHARMA: He used to go into so many things and there were difficulties. And here you get a very simplified procedure that once you get yourself registered, the Income-tax Officer will *suo motu* accept that the firm is a genuine one. This is very good improvement. Perhaps you have not applied your mind to it. The only difficulty is that you have to get yourself registered with the Registrar of Firms and he may sleep over the matter, and there may be delay.

SHRI KEJRIWAL: This is only a question of registering with the Registrar of Firms and *suo motu*..

SHRI N. K. P. SALVE: Not *suo motu* but *prima facie*.

SHRI KEJRIWAL: That means the litigation would be less, most probably.

SHRI N. K. P. SALVE: Do we take it that you agree?

SHRI KEJRIWAL: All right.

SHRI N. K. P. SALVE: About the form, have you any concrete suggestions to make about the firms so that no hardship is caused to them?

SHRI KEJRIWAL: That can be made easy Columns may be made in the Income-tax returns "Any change in partnership" or "No change in partnership". Cases are usually taken at the time of hearing.

SHRI N. K. P. SALVE: But there is one difficulty. Supposing there is a dispute and one partner says that in particular year, 'I have not been a partner at all'. There can be hundred other disputes. Then it is not easy to do that.

SHRI KEJRIWAL: But such cases will be very few. The Income-tax Officers can decide these cases.

SHRI N. K. P. SALVE: Have you got any suggestion that while making it incumbent on every partner to commit one way or the other to the I.T.O. we can get rid of the forms?

SHRI KEJRIWAL: The only thing can be that if partners remain the same, the information would not be sent. If there is a change, the ITO may be informed.

श्री कंवर लाल गुप्त : क्लॉज नं० 56, 58 और 59 में तो मुझे कुछ नहीं पूछना है। मैं क्लॉज 63 की तरफ आता हूँ, जिस में कहा गया है कि अगर इनकम टैक्स का नक्शा देर में दाखिल किया जाए या जो चीजें मांगी गई हैं वे न दी जाएं, तो कैद की सजा दी जा सकती है। इस पर आप को एतराज है कि कैद की सजा नहीं होनी चाहिए और पेनेल्टी लगनी चाहिए। पेनेल्टी तो पहले ही है। अब गवर्नमेंट का कहना यह है कि बड़े बड़े आदमी देर में नक्शा दाखिल करते हैं और उस के अलावा बहुत सारी पर्सेकुलर्स नहीं दी जाती हैं और इसलिए टैक्स में काफी गड़बड़ी होती है। इस को दूर करने के लिए अगर फिजिकल पर्सिश्मेंट दिया जाए, तो ये चीजे कम होंगी। इस में आप को क्या एतराज है।

श्री पद्मा लाल संगनेरिया : इसमें एनराज यह है कि दो पेनेल्टी हो जाएंगी।

श्री कंवर लाल गुप्त : दो पेनेल्टी नहीं होंगी।

श्री पद्मा लाल संगनेरिया : पेनेल्टी एण्ड इम्प्रिजेनमेंट दोनों हैं।

श्री कंवर लाल गुप्त : अगर आप की बात मान भी ली जाए, तो अगर यह कर दिया जाए कि इम्प्रिजेनमेंट हो, तो पेनेल्टी न हो, तब तो आप का कोई कांस्टीट्यूशनल ओब-जेक्शन नहीं होगा।

श्री पद्मा लाल संगनेरिया : फिर भी हमारे हिसाब से नहीं होना चाहिए।

श्री कंवर लाल गुप्त : क्यों नहीं होना चाहिए। इसकी बेसिस क्या है ?

SHRI KEJRIWAL: It is a question whether the imprisonment should be kept for the defaulting assesses for late filing. What I suggest is everybody in India who is an assessee is not well-versed with laws. The laws keep on changing. Suppose there is a change and we do not know about it and there is late return and the question of imprisonment comes, it is not justified. That is too much and we are possibly giving too much power to the ITOs

श्री कंवर लाल गुप्त : आप ने एक यह कारण बताया कि ज्यादा सख्त सजा है।

श्री केजरीवाल : हमारा कारण यह है कि जितनी एजुकेशन इस समय एसेसी में है, उसको देखते हुए यह समझ लेना कि हर एसेसी कानून का पूर्णतया पालन कर सकेगा और इसलिए उसको इम्प्रिजेनमेंट की सजा देनी चाहिए, मैं समझता हूँ ठीक नहीं है।

श्री कंवर लाल गुप्त : मान लीजिए, एजुकेटेड को यह सजा दें ?

श्री केजरीवाल : यह डिस्क्रिमिनेशन करना शायद बहुत आसान नहीं होगा। इससे तो फंडामेंटल राइट्स में डिस्क्रिमिनेशन हो सकता है।

श्री कंवर लाल गुप्त : उसका तो रास्ता निकाला जा सकता है। इसको डिस्क्रिमिनेशरी किया जा सकता है या यह कर सकते हैं कि जिनकी इन्कम 25 हजार से ऊपर हो उस पर यह लागू होगा। 25 हजार रुपये की इन्कमवाले लोग तो ज्यादातर पढ़े लिखे थोड़े बहुत होते हैं। 25 हजार रुपये की इन्कम में तो पढ़े लिखे सब लोग आ जाएंगे। उन के ऊपर अगर इस को लागू किया जाए, तो आप को कोई एतराज है ?

श्री केजरीवाल : हिन्दुस्तान में बहुत सारे आदमी ऐसे हैं जो कि लाखों रूपया कमाते हैं लेकिन जो अपने सिगनेचर भी नहीं कर सकते हैं। वे सिर्फ अंगूठा ही लगाते हैं। मेरा कहना यह है कि अगर कोई पांचवी या आठवीं क्लास तक पढ़ा हुआ है तो उससे यह आशा करना कि वह सारी क्लाज को अच्छी तरह समझ लेगा, सही नहीं है।

श्री कंवर लाल गुप्त : लिटरेट और और इलिटरेट की बात न कीजिए : आप यह बताइए कि आप इस के सिद्धान्त रूप में खिलाफ हैं कि फिजिकल पनिशमेंट, जो वायलेशन हुआ है एकेनामिक लेवल पर या फाइनेन्शियल लेवल पर, होना चाहिए या नहीं होना चाहिए ? सिद्धान्त रूप में आप इस के हक में हैं या खिलाफ हैं, यह आप बताइए ? अगर आप खिलाफ हैं तो क्यों ?

श्री केजरीवाल : जहां तक फिजिकल पनिशमेंट का सम्बन्ध है, एकेनामिक लाज के उल्लंघन के लिए वह है, जैसे किमी ने

अगर टैक्स नहीं पे किया, तो उसको फिजिकली पनिसा किया जा सकता है। कुछ आफ्नेसेज के लिए फिजिकल पनिसामेंट है लेकिन केवल रिटर्न लेट फाइल की गई, इसके लिए इस में बहुत सारी चीजें हैं जैसे पेनेल इन्स्ट्रेंट है। उस के लिए इम्प्रिजेनमेंट रखना मेरे हिसाब से जबरत से ज्यादा पनिसामेंट है और मैं उससे एग्री नहीं करता हूं।

श्री पन्ना लाल संगनेरिया : यह कोई इतना बड़ा आफ्नेस नहीं है जिस के लिए इतना बड़ा पनिसामेंट दिया जाए।

SHRI DAMANI: The intention of the Government to bring this physical punishment is that the assessee should be alert to submit their returns in time and to avoid tax evasion. In view of that if such severe penalty is not imposed the percentage of tax evasion may not be checked.

SHRI SANGANERIA: The intention of the legislation will not be served by the results achieved because under the criminal court all the offences are penalised by physical penalty though we find the offences are not minimised. So, how can we assume here!

SHRI DAMANI: Because here we are concerned with 30 or 40 lakh responsible and respectable people.

MR. CHAIRMAN: From experience it has been found the rich man is afraid of physical punishment than a poor man.

SHRI SANGANERIA: We should not be prejudiced against the rich man.

SHRI DAMANI: If some discretionary power is given that due to circumstances the returns have not been submitted then you will agree with this physical punishment.

श्री केजरीवाल : जहां तक इंटेंशन का सवाल है तो उस में मेरा सवमीशन यह है कि अगर एक एसेसी, जो कि एक रिच आदमी है और उस के पास पैसा है, टैक्स एवायड कर रहा है, उस पर आप पेनेल्टी इम्पोज कर देते हैं, तो उस से ज्यादा सजा क्या होगी। मेरे ख्याल से तो अगर वह पैसा नहीं देता है और उस पर आप पेनेल्टी लगा देते हैं, तो वही उस के लिए बड़ी सजा हरे जाती है।

SHRI DAMANI: Now in ticketless travel by imposing physical punishment the ticketless travel has gone down. Similarly, if this severe penalty is imposed these people will be afraid. They will not like to go to jail.

श्री केजरीवाल : जहां तक की सविधान पनिसामेंट की बात है, अब तो बहुत सारे कन्ट्रीज में फ्रांसी की सजा को खत्म करने की बात की जा रही है। सजा जो है वह प्रॉपॉ-शनेट होनी चाहिए। सजा के जोर से आप लोगों में सुधार ले आएंगे, यह मेरी समझ में नहीं आता है। उन को एजुकेट करना और परसुयड करने का दूसरा तरीका हो सकता है। अगर किसी के पास लाख रुपया है, उस पर आप 10 हजार या 15 हजार की पेनेल्टी लगा दें या उस को 10 दिन की सजा दें, तो इन दोनों मेरे ख्याल से उस पर अगर पेनेल्टी लगाएं तो वह जल्दी सुधार जाएगा। आप के ख्याल से वह फिजिकल पनिसामेंट से सुधार सकता है। मेरा इस में डिफ्रेंस आफ ओपीनियन है। फिजिकल पनिसामेंट से वह जल्दी सुधार जाएगा, यह मेरी मान्यता नहीं है।

SHRI BENI SHANKER SHARMA: किसी एसेसी को या व्यापारी को पैसे की मार ज्यादा तकलीफ देती है वनिस्वत शारीरिक मार के, यह आप का कहना है।

पैसे को मार से वह जल्दी सुधार सकता है।

Mr. Gupta skipped over certain clauses—clauses 56 and 58. As regards clause 63 I may draw your attention to the provisions of new Section 256 (a). This punishment is not only for late filing of the return. This is also for your inability to produce certain documents which the I.T.O. wants to be produced. Every dealer has maintain a stock book. But some do not maintain it he says that it is impossible to produce it. He has not committed any crime. Is this a case of real hardship or not? That is the point. This case will affect very adversely the small assesseees. Big assesseees are not affected at all. I am speaking of the smaller assesseees having income of 10,000, 15,000 or 20,000 rupees. They cannot afford the paraphernalia of maintaining stock accounts, which I.T.O. is accustomed to requisition. Would you like that this clause should not be there? What is your view?

SHRI PANNALAL SANGANERIA: This clause should not be there. There should not be any physical punishment.

SHRI BENI SHANKER SHARMA: There is a view that we should make people tax conscious by physical punishments. There is a tendency in Government to prescribe physical punishment for financial defaults. I am personally not in favour of physical punishment for financial defaults. Financial punishments are sufficient to deter the man for financial irregularities or defaults. If rigorous imprisonment is prescribed for the late filing of returns, are you in favour of that. What do you say? I think, you also are not in favour of that. You think, I believe, financial punishments are and will be sufficient to deter a man from indulging in such kinds of practices.

MR. CHAIRMAN: On that point, whether financial punishment is enough to deter an assessee, there is Section 642 (1). You can fine Rs. 10 a day.

SHRI BENI SHANKER SHARMA: If we maintain and retain this provision of physical punishment would you like this clause to remain as it is or in some amended form. Suppose we retain this, clause and provide physical punishment only, if the man intentionally and knowingly does not file the return and not for his failure to produce certain documents would you have objection?

SHRI PANNALAL SANGANERIA: Even if the clause is simplified more litigation will be there. The ITO will prosecute the assessee. The assessee will take the matter to the court.

SHRI BENI SHANKER SHARMA: Will it improve if we add that if the man intentionally, deliberately and knowingly, is not filing returns, then and then only he should be punished. Will that improve matters? What is your view?

SHRI NANDLAL KEJRIWAL: The penalty may be more by way of fines.

SHRI N. K. P. SALVE: Can you give us some idea of the amount of evasion going on in the country because of the failure to file return under 139(1)?

SHRI PANNALAL SANGANERIA: Voluntarily they are not filing returns.

SHRI N. K. P. SALVE: Because of the failure of the people to file return 139(1) there is evasion in the country.

SHRI NANDLAL KEJRIWAL: That is true.

SHRI N. K. P. SALVE: Is there any evasion because of the failure under 179(2)?

SHRI NANDLAL KEJRIWAL: There is evasion, but not much, to my mind.

SHRI N. K. P. SALVE: If there is failure to file return under 139(2), is evasion possible? That is, for failure to file return. If an assessee fails to comply with the notice issued under 139(2), of the Income-Tax Act, is evasion possible?

SHRI PANNALAL SANGANERIA: It is possible for this reason.

SHRI NANDLAL KEJRIWAL: I would like to explain myself. Do I understand you to say that you ask whether mere filing late returns would lead or not lead to evasion? Is that what you want? To my mind, I would say, mere filing of late returns does not lead to much of evasion.

SHRI N. K. P. SALVE: Thank you. That is all right. Now, tell this. Does filing no return lead to evasion?

SHRI NANDLAL KEJRIWAL: That may lead to evasion, but not late filing.

SHRI N. K. P. SALVE: Under 139 (1) it is the assessee who has to file his return when his income exceeds the sum exempted from taxation. People do not file the returns. If it leads to evasion, then what is the magnitude of the evasion? Can you tell me that?

SHRI NANDLAL KEJRIWAL: Not very large because big income comes to the notice of the I.T.O. I may not very wellversed with the law. I have got three income sources; I feel that that income is not much in the first year. I am talking of the new assesseees. I may not be sure about it; but finally it may go to 10 or 15 per cent. I may not have filed the return. But in these cases, I would say, the evasion will not be big. People who are already assessed would have got big income; they cannot just evade it by not filing the returns. Evasion cannot be big in such cases.

1358 LS—14.

SHRI N. K. P. SALVE: Assesseees earning 3,000 to 5,000 rupees are being roped in here and they constitute a section of the business community who do not have any precise idea. Are we or are we not to rope in these people who do not have a precise idea of their income? You only say, they are not educated. I do not know what you mean by that, by saying that they are not educated. The degree itself is hardly a valid criteria for the business people. Suppose a businessman is running a pan shop. His income is Rs. 6,000. The nature of business being what it is, do you really think, you can have a precise idea of his income? What do you say?

SHRI KEJRIWAL: Whether he is getting Rs. 5000 or Rs. 7000, may be misleading if he is not keeping accounts.

SHRI N. K. P. SALVE: We intend to save people who may be innocent but might be trapped. Do you think that the clause takes adequate care to protect such assesseees?

SHRI KEJRIWAL: It does not.

SHRI SALVE: Would you enlighten us whether you apprehend that this clause would be struck down as *ultra-vires* of the Constitution and if so, what are your reasons?

SHRI SANGANERIA: These are *ultra-vires* of Article 22 of the Constitution because two punishments cannot be given.

SHRI SALVE: It is an extra tax we are collecting.

SHRI SANGANERIA: By way of penalty you are imposing plus the physical punishment.

MR. CHAIRMAN: You have said even late filing of returns does not mean that there is an attempt to evade tax and there is attempt to conceal the income.

SHRI KEJRIWAL: That is what I felt. Late filing of return by one month does not mean that a person is evading taxes. He might have missed it on account of some other circumstances. These avoidances are not many and have not done much of evasion.

SHRI BENI SHANKER SHARMA: Clauses 56—58. One of the objects of this Bill is apart from simplification reduction in filing of appeals. Do you think that these clauses whereby we are increasing the fees for filing appeals before the Appellant Assistant Commissioners and the Tribunal, are sufficient to reduce the number of appeals?

SHRI SANGANERIA: It will not reduce the litigation.

SHRI BENI SHANKER SHARMA: There is a suggestion in as much as so far as the Deptt. is concerned. Uptil now Department has not to pay any fee for filing appeals before the Tribunal that they should be made to pay fee—though it will mean a book adjustment only but it will be accounted for against the ITO by whom the appeal is filed. This will discourage filing of unnecessary appeals by the Department. Do you agree with this suggestion?

SHRI KEJRIWAL: I do not think it will much effect as the money is still being kept by the same Deptt.

SHRI SALVE: If we think that frivolous appeals should be discouraged either way by Government or assessee then we say you will have to pay Rs. 250 if you want justice. You will get the whole think back. Principally what is wrong in it?

SHRI KEJRIWAL: This is a very good suggestion that if we get our cost back from the Tribunal even if it is increased fees that will not harm our interests. As I have already said merely on the assumption that we will get everything back—whatever we file—is not correct. Therefore, to increase the fees is denying the justice.

(The witnesses then withdrew)

(The Committee then adjourned for Lunch)

(The Committee reassembled after Lunch at 15.00 Hours)

III. The Indian Merchants Chamber Bombay.

Spokesmen:

1. Shri Pratap Bhogilal
2. Shri Vasant Dalal
3. Shri J. H. Doshi
4. Shri C. C. Choksi
5. Shri C. L. Gheevala.

(The witnesses were then called in and they took their seats).

MR. CHAIRMAN: We welcome you. I must read out to you the relevant portions of the Rules of Procedure in respect of taking evidence before the Parliamentary Committees. It says: "The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament." We have received your Memorandum and we have gone through the same. You may highlight the main points of your Memorandum.

SHRI J. H. DOSHI: Mr. Chairman and Hon. Members of the Select Committee of Parliament, I will make a

few preliminary observations and then go to the main points. I thank you very much on my behalf and on behalf of my colleagues and the Committee of the Indian Merchants' Chamber, for having afforded us this opportunity to appear before you and personally convey to you our views and suggestions on the provisions of the Taxation Laws (Amendment) Bill, 1969.

The Committee of the Chamber have submitted a detailed Memorandum on the Bill, making special reference to some of its provisions which they feel run counter to the objectives underlying the Bill, namely, rationalisation, simplification of procedure and removal of unintended hardships. I do not propose to go in detail into these various aspects. But, I would like to make a brief reference to some of these provisions, which, in my opinion, deserve your careful consideration.

There are certain provisions in the Bill which have the effect of making the reliefs proposed under the Bill grossly inadequate as a result of their being hemmed in by various conditions. For example, Clause 8 of the Bill seeks to insert three new Sections viz. 35D, 35E and 35F in the Act. I appreciate the scheme of relief envisaged by these provisions. But, I fail to understand the rationale behind fixation of a ceiling on preliminary expenses which would be allowed to be amortised, as also restricting amortisation to the items of expenses in the provision. Shri Bhoothalingam in his Report has observed that "Once expenditure under any one of the above heads is accepted for the purpose of business or industry, provision should be made to deduct them over a period of years in computation of profits." He further added that "Unless all true costs whether immediately incurred or not, were allowed, the incidence of taxation would become uneven in unintended ways and would

discourage enterprise and growth." Therefore, the ceiling on preliminary expenses laid down in this provision for purposes of amortisation should be removed and all expenses legitimately incurred for the purpose of business or industry should be allowed.

An important objective sought to be achieved by this Bill is simplification. I am aware that some of the provisions of the Bill reflect a desire to simplify. But, it is doubtful whether in all cases this objective could be achieved. As an instance in point, Clause 34 seeks to substitute a new Section for Section 143 under which Income Tax Officer is being authorised to complete assessments based on the return filed by the assessee without requiring his presence. Even though an appeal has been provided for such an assessment, for all practical purposes, there is no finality since the Income Tax Officer can, if he considers it necessary or expedient, verify the correctness and completeness of the return and require the presence of the assessee and production of the evidence and make a fresh assessment. Such a provision, apart from increasing the work of the Department, will provide increased scope and opportunities for harassment to the assessee. Therefore, this Clause should be so framed as would provide an element of finality and, at the same time, afford a right to the assessee to go in appeal if he so desires.

Clause 43 inserts two new Sections: 186A and 186B providing for the discontinuance of the system of registration of firms and renewal thereof from the assessment year 1970-71 and substitution of a new system of recognition of firms. I do not feel that there is any need at all for any such change which would only result in a huge amount of additional work both for the assesses and for the Deptt. Instead of simplifying or rationalising the existing system, the proposal would result only in causing more hardships

to the assesses. According to me, the only change that would be necessary in the existing system would be to do away with the requirement of filling every year a declaration in Form No. 12 for continuance of the registration signed by all the partners. In place of Form No. 12, it should be sufficient if a simple statement is made in the return of income to the effect that the constitution of the firm has remained unchanged.

I would now invite your attention to a policy decision by the Government that substantial amendments in the tax laws would be made as far as possible prospectively and not retrospectively. Surprisingly enough, the provision relating to individual property converted into Joint-family property is being given effect to from the 1st April, 1965. Sir, I urge that the matter should be reconsidered and suitably modified so as to take away its retrospective character.

Finally, I would draw your attention to the Law Commission's recommendation that there should be a reduction in court fees. In the context of this recommendation, I feel that the prescription of any fee for appeal to the Appellate Commissioner or any increase in the fees for appeals to the Tribunal is not justified.

My colleagues and myself would be glad to make such further clarifications that you may desire.

MR. CHAIRMAN: Shri Beni Shanker Sharma, You may ask. You wanted to take up Clause 8.

SHRI BENI SHANKER SHARMA: What is the number of your Members? I want information about the membership of your Chamber.

SHRI J. H. DOSHI: Directly, about 1750. 120 bodies are affiliated to our Chamber and if we take the total of all the Members of these bodies, it exceeds 20,000 Members.

SHRI BENI SHANKER SHARMA: What is the type of the membership? Do they represent small or middle-class businessmen? Or, do they represent big industry-owners?

SHRI J. H. DOSHI: All classes of membership we have got. We have got limited companies—public and private firms—, individuals, and then, we have trade associations also; which are again affiliated to our Chamber.

SHRI BENI SHANKER SHARMA: About your Members, from which class do they come? From middle-class businessmen or from the top? Can you tell us about that?

SHRI J. H. DOSHI: They are from all classes. I would say, 40 per cent Members come from Industry. 40 per cent come from Trade and 20 per cent miscellaneous professions, small traders, individuals, etc.

SHRI BENI SHANKER SHARMA: You can claim to represent the small traders as well. I am thankful to you for the elaborate way in which you have defined the objectives of the Bill and purposes which this Bill is intended to serve.

MR. CHAIRMAN: Let us confine ourselves to the clauses they have highlighted.

SHRI CHOKSI: For the present, I will confine myself to Clause 8, Section 35(d). So far as this clause is concerned, it may be for the purpose of discussion broadly divided into three parts. The first one says that where a company incurs certain expenditure before the commencement of the business and after the commencement of the business . . . Now, before the commencement of the business it talks of the preliminary expenses. All this time, the representations which were made to the Government and to Mr. Bhoothalingam were not only in respect of preliminary expenses, but they were also in

respect of pre-operational expenses. What is meant by pre-operational expenses? As soon as a company is registered, certain preliminary expenditure is incurred. There is a considerable time-lag between the date on which the company comes into being or commences the business and the registration of the company. This particular period varies between the period of six months in the case of a very small company to a period of three years or four years in the case of a big company. For example, I know a company recently registered in 1964. It went into production in the year 1968 and during this period a large amount of pre-operational expenses were incurred. Sir, it is the intention of the Government that we should try to develop our own technical knowhow in construction of the factory, in construction of the building, installation of machinery, try to produce local machinery etc. They enter into a collaboration agreement with foreigners. For the purpose of collaboration agreement they have to incur a large amount of travelling expenses and when the collaboration agreement is made, these are expenses incurred for construction of the machinery, installation of machinery, etc. All these expenses are considered to be pre-operational expenses as distinct from preliminary expenses and as distinct from expenses incurred for carrying on the business and these expenses can be up to a few crores of rupees in a big project. Not only that, but if the project is delayed on account of some hardships created either in India or outside India, then for every year the pre-operational expenses go on increasing at rate of 10 to 15 per cent of the project cost. There is no provision at all for allowing these pre-operational expenses. It is a matter of fact that the limit laid down in sub-section (3) of 2½ per cent of the aggregate of the share capital, debentures and long-term loans is a very meagre sum compared to the total amount of pre-operational expenses which have to be incurred by these big companies. For a petro-

chemical or a big engineering company or a fertilizers company the pre-operational expenses, Sir, come to nearly one to two crores of rupees and these are not allowed. As Mr. Bhoothalingam mentioned in his report they fall between the two stools; they are neither considered to be expenses incurred for carrying on the business nor are they considered to be preliminary expenses. This type of expenditure should be taken into account.

Then, I find that Government has taken power to prescribe, that is, to satisfy certain expenses. But after all the Government's power will also be limited to the overall limit of two and a half per cent. Therefore, there should not be a limit of 2½ per cent. This is my first point.

SHRI N. K. P. SALVE: Before you proceed further, I would like to know which are the pre-operational expenses you are referring to?

SHRI CHOKSI: I will explain. Let us take an illustration. A company is registered on the 1st of January, 1970. Now, after the company is registered, as mentioned here, the company will have to incur certain legal expenses. Those expenses have to be incurred for registration of the company, for issue of its capital, for subscription, etc. Some of them have been mentioned here. Although this is not an exhaustive list but all of them have not been mentioned. If the Company is registered and before the Company commences business these are the expenses which should be incurred—managerial personnel have to be appointed. They have to be paid monthly salaries. They have to pay rent, expenses for stationery, etc.

SHRI SALVE: In the construction period all these expenses including interest according to Bombay High Court decision will be charged to the machineries, plants and business.

SHRI DOSHI: Not the whole of it. I will give you my own personal experience. After signing the collaboration agreement I sent three of our chemists to U.S. for training in the plant of our collaborator so that they can have training in plant and before the production starts they would return to India and be helpful at the time of starting of the plant. The expenses were of the order of Rs. 75,000. They stayed there for three to four months. This amount would not be allowed either as preliminary nor operational expenses nor research nor training. They just added Rs. 75,000/- and could not amortize that amount in any shape or form.

SHRI SALVE: If you look at clause (g) of sub-section 2 of Section 35(d) what are the expenses you think which are covered to be allowed under clause (g)—“such other items of expenditure as may be prescribed.”

SHRI CHOKSI: That will depend on what the Government will prescribe and instead of leaving it to the Government to prescribe it I would submit, Sir, it is for the Parliament to prescribe all those pre-operational expenses which are neither considered to be debitable to the capital cost nor are allowed as revenue expenditure.

MR. CHAIRMAN: Tell the Committee whether you want the capital base as enunciated in this Bill or the project cost as the base?

SHRI CHOKSI: Normally these expenses should be related to the project cost.

MR. CHAIRMAN: If that is your argument then tell us what should be, according to your basis, percentage of the project cost?

SHRI CHOKSI: Actually it varies from industry to industry depending upon the time taken and the manner in which the project is implemented. Normally, from an experience we find

that this type of expenses vary from 10—15 per cent of the project cost.

MR. CHAIRMAN: I tell you in Calcutta it began with 3½ per cent and went upto 5 per cent but you say 10—15 per cent.

SHRI CHOKSI: I would not suggest any fixed percentage. I will use the same language “all legitimate expenses should be allowed to be written off either as capital or revenue.” They should be classified somewhere. They should not disappear in the air and added up indiscriminately. It should be written off somewhere.

MR. CHAIRMAN: Would you enlighten in how many years a particular industry recovers the project cost?

SHRI CHOKSI: It depends upon the profitability of the project. Today the most profitable project would be petrochemical and least profitable would be a textile industry newly started. If it is possible in a petrochemical industry to recover all these types of expenditures within 7-8 years in a textile industry it may be 10—15 years and during that period one cannot guarantee there may not be losses.

SHRI DAMANI: Mr. Choksi what I gather from your memorandum is that the ceiling of 2½ per cent for new companies will be at a very low percentage and for old companies or bigger established companies with reserves it may not be so low. Now there are certain expenditures which are not being included in the list which companies have to spend. In view of that do you think that there should be two rates—one for new companies and second for established companies? Will that serve the purpose? Secondly, what I gather is that there are certain items which have not been mentioned in the list and for which company has to spend. What do you suggest as to which items should be included more in the list to amortize either in capital or revenue expenditure. Will you clarify on this point?

SHRI C. C. CHOKSI: You have asked me three questions: One is about the percentage. Second is, whether there should be a separate yardstick for the purposes of a going industry, than for a new industry, or a newly started undertaking. The third is, what are the items or details of expenses. I will answer all the three questions. With regard to the first question, I was told that my estimate of 10 per cent is excessive. It is not excessive, because 2½ per cent has to be paid for underwriting commission. 7½ per cent of the capital issued is to be paid straightway for underwriters' commission. So, when I say, it comes to 10 per cent, it is no exaggeration at all. That is my experience—that 10 per cent would be a reasonable sum for a new industry. In an established industry, 5 to 7 per cent would be the minimum cost that they will have to incur for meeting both preliminary expenses and pre-operational expenses. Pre-operational expenses include a large amount of management or administrative expenses. As the hon. Member mentioned, there is the management expenses because the company does not go into production when it is registered. It takes about two to three years before the company goes into production. Of the expenses incurred by the Company, most of them are revenue expenses. They are not considered to be revenue expenses for the purposes of Income-tax. All revenue expenses incurred before the commencement of the business are to be considered to be pre-operational expenses or capital expenses. These expenses are in the nature of salaries, rent, printing and stationery.

MR. CHAIRMAN: We understand those points. You need not stress on those points.

SHRI S. R. DAMANI: I want to know this. Certain expenditure is incurred like salaries, advertisements, travelling expenses, know-how etc. Is it to be considered as revenue expenditure and could not be allowed to be set off against the profit? What do you want to say about this?

SHRI C. C. CHOKSI: They should be allowed to be spread over a period of 10 years. At the rate of instalments of 10 per cent for every year, they should be allowed over a period of 10 years after the company goes into production. That is the way in which they can be recouped. If they are allowed as revenue expense in the way in which it is incurred, then the difficulty is this. The period before which it goes into production, that period, is lost. It is for 8 years. If that takes 3 or 4 years, to go into production, those 4 years' period would be lost to the assessee. It would be more appropriate for the assessee to spread it over a period of 10 years after it goes into production.

SHRI SHINKRE: We have come across witnesses from Calcutta who say it is upto 5 per cent. It is only here that we hear from you that it is 10 to 15 per cent. I want to know only this, as to how it is that you have arrived at this figure and how you arrived at your conclusion like this. What are your precise facts? Have you made any study of some of your companies? Can you give those facts and figures to this Committee?

SHRI C. C. CHOKSI: I have not made a study. I am saying all this from my own experience. As I have already mentioned, about 2½ per cent has to be paid merely for underwriters' Commission—nothing else but underwriters' commission for issue of capital straightway.

SHRI N. K. P. SALVE: A little earlier you said, 10 to 15 per cent. There is a project, it is worth a crore of rupees. You are wanting 15 lakhs alone for preliminary expenses and pre-operational expenses which are not to be loaded on plant, machinery and buildings.

SHRI C. C. CHOKSI: Know-how fees themselves are allowed by the Government to the extent of 5 per cent of the project cost. Now, today, what they do is this. There are know-how fees, engineering fees. If ask for

royalty that is allowed to me as a deduction. Then there will not be an attempt on the part of the assessee to persuade the collaborator to change the know-how fees into a royalty payment. So when I mention that it is 10 per cent., I am mentioning it with a full sense of responsibility that for a project cost it would amount to 10 per cent if know-how fees, expenses incurred in running the office, before the factory goes into production, expenses incurred in printing, stationary, etc., expenses for trial-runs of the factory, etc. are all taken into account and expenses for the training of the staff when they are sent to foreign countries are taken into account. All these expenses will run into quite large sums. I may say, I have mentioned it with a full sense of responsibility; it comes to 10 per cent and not less.

SHRI SHINKRE: How many cases have you studied to say that it comes to 10 per cent? How can you come to the conclusion that it will be 10 per cent.?

SHRI C. C. CHOKSI: I cannot say of all cases. I am talking of large industrial undertakings where foreign collaboration is involved and where the Indian party tries to put up the factory by merely getting drawings from foreign firms and undertaking responsibility of constructing factory, placing the orders, for machinery, importing machinery by inviting tenders from outside, etc.

SHRI SHINKRE: There is another case I would like to mention, the case of the small-scale industries where these points do not arise. In that case, what will happen?

SHRI J. H. DOSHI: After all, what is the sanctity about the percentage?

SHRI N. K. P. SALVE: That is different thing. Mr. Choksi took up a different line of argument about the

percentage in relation to the project. The two things are different basically. We have understood him correctly when he said that we should increase the number of items to be allowed for amortisation and that it should be 10 to 15 per cent.

SHRI C. C. CHOKSI: Both are correct.

SHRI N. K. P. SALVE: The two are different. The real question is whether you want fixed percentage, or not.

SHRI C. C. CHOKSI: Percentage cannot be fixed; it will vary from industry to industry.

SHRI N. K. P. SALVE: That is the end of the matter.

SHRI J. H. DOSHI: Actually, in our Memorandum, we have said that there should be no ceiling at all. We have not suggested any percentage.

SHRI N. K. SANGHI: Overspending of money is there in these days, because of heavier taxation. The tendency has grown to restrict expenditure. That is in respect of items like entertainment tax, restricting them, and also advertising expenses and all that. There are so many concessions which are given in Britain whose example we emulate. We have heard certain witnesses from the associations at Delhi and Calcutta. We have heard another witness at Bombay. Nobody has suggested 10 to 15 per cent. The maximum is 5 per cent. Can you give some samples of the industry's balance-sheets where such expenses are incurred in the past? I think if you do that, that would give us the true picture.

SHRI N. K. P. SALVE: Mr. Choksi, supposing there is a project of 2 crores of rupees, 15 lakhs is to be

amortized according to you and if it is plant and machinery, then a development rebate further will have to be allowed. How many lakhs of rupees will be subsidised by the Exchequer?

SHRI CHOKSI: We are not talking of development rebate; we are talking of actual expenses which are not being allowed. That is not the point at issue.

SHRI N. K. P. SALVE: Then how are you canvassing for 10 or 15 per cent.

SHRI CHOKSI: I would like to correct myself if I have given a wrong impression. I was only asked, 'What is your opinion, experience?'

SHRI N. K. P. SALVE: But you must give me some concrete things.

SHRI PRAKASHCHAND B. SETHI: May I know whether Mr. Choksi is basing his arguments on studies made by him?

We have studies conducted of 31 industries which were set up during the course of the last seven years and out of these 31 industries, 21 industries have shown an expenditure of about 1.9 per cent, on an average, some are doing 7 per cent and like that. It must be based on some studies. I was rather amazed to see that in spite of welcoming this new measure, which was not existing on our Statute book as yet, it is being argued that this limit....

SHRI CHOKSI: May I explain this point? First of all you mentioned that you have made studies. But, in my opinion, Sir, these expenses which are disallowed that is neither allowed as revenue expenditure nor allowed as capital expenditure are not disclosed in the balance-sheet as a separate item. That is number one.

Secondly, I accept it, Sir. We appreciate the generosity in allowing 2½ per cent. But when I was asked as to

what would be a reasonable limit, I must in all fairness to everybody concerned tell you that it varies from 2.5 to 10 per cent or even 15 per cent, depending—I would like to be correctly quoted—depending upon the project.

MR. CHAIRMAN: The hon. Minister wanted to know whether you have made any study like this?

SHRI CHOKSI: I will contact my colleagues in the profession and send it to you.

SHRI BENI SHANKER SHARMA: Do not you think that this fixation of ceiling either at 2½ per cent or 10 per cent or 15 per cent may be misused by some people and may be a source of hardship to others. That is, there might be some unscrupulous fellows who may not spend legitimately even 2½ per cent but may claim that much and there might be some industrialists who are spending, say, 5 per cent half of which would not be allowed for obvious reasons. In that case, would you like that the whole matter should be left to the Income-tax Officer to decide?

SHRI CHOKSI: I agree with you, Sir, that it would be advisable to leave it to the Income-tax Officer, with the overall condition that they should be legitimate expenses incurred for starting of the business. This limit of two and a half per cent should go.

SHRI BENI SHANKER SHARMA: Under 35(d) this benefit is given now only to Indian companies, thereby meaning that partnership firms are deprived from claiming amortisation. Do you like that this word 'Indian company' should be replaced by 'assessee' or would you like this word to remain?

SHRI CHOKSI: Actually, in fairness, it should be 'assessee'. It is not only the privilege of the Indian companies to start new industries; it can be a partnership firm also.

SHRI SALVE: If it is genuine expenditure it must be allowed.

SHRI CHOKSI: That is the principle. The principle is an expenditure is either a revenue expenditure or a capital expenditure if it is incurred for the purpose of business.

SHRI DOSHI: The word 'legitimate' also means not only genuine but reasonable.

MR. CHAIRMAN: Would you please enlighten this Committee what is the procedure in U.K. about amortization?

SHRI CHOKSI: My impression is preliminary as well as operational expenses are not allowed.

MR. CHAIRMAN: Clause 3(d).

SHRI CHOKSI: There are two points involved. The first point is a responsibility is thrown on the assessee to obtain the approval of the Central Government within a period of six months from the employment of a foreign technician. The present law is that within one year they have to obtain the approval. But, Sir, it is not the question of the difference between six months and one year. The difference as a matter of principle is in this way; that at present without the approval of the Central Government one year's salary is tax free if he is a genuine foreign technician. Therefore, within one year's time approval has to be obtained. Therefore, there is no chance of the assessee coming into difficulty but when we prescribe the limit of six months that creates hardship. Therefore, there should not be any six months period. There should be a period of not less than one year within which the approval should be given or deemed to have been given if it has not been refused. Some such provisions should be there otherwise there is no protection to the assessee.

Secondly, this limit of Rs. 4,000/- is a small limit because thereby what we are trying to do is to make the assessee pay more tax and this being the tax which he will have to pay before going into operation it will be a tax he will have to recoup from his taxed income. That would be a terrible amount of cost to the assessee. No technician would come to India within Rs. 4,000/- if it is a complicated industry and further the employment of technicians is always subject to Government approval because no foreign technicians can come and stay here without obtaining the approval of the Home Department.

SHRI BENI SHANKER SHARMA: Could you tell us how many foreign technicians you are employing or your members of the Chamber are employing. Have you any idea also as to the salaries you are paying to them?

SHRI CHOKSI: About number we do not have any statistics but we will try to collect and furnish. The salary is between Rs. 7,500—10,000. A foreign technician is very difficult to get at less than Rs. 7,500.

SHRI SOMANI: Mr. Chairman, I would like to get certain clarification. First of all it should not give any impression to the witnesses of the Chamber that if it is necessary to pay them any salary say Rs. 10,000 to Rs. 20,000 there is no bar at all because Rs. 4,000 is not sought to be the total ceiling that is payable. Secondly, Sir, Indian technicians are not being given enough chance and the employers take a preference for the colour of the skin. The first question that you have asked is about permission. I fail to understand why a prior permission cannot be obtained. If there is a breakdown in a plant and equipment I can understand you must have a technician immediately and in such cases the Government ought to consider the permission being given within 24 hours time. But

when you set-up a plant or industry and you know three, four or five technicians would be needed certainly you are not taking steps and nothing stops you to take a prior permission of the Government of India instead of complaining that we will have to obtain this permission within six months time. Thirdly, I know it for a fact and the Department corroborates that we have both in the private and public sector have misused this provision of tax-free. There are such a large number of unnecessary technicians. The term 'technician' has been applied very loosely in India. Therefore, I would expect that Indian businessmen in the interest of the development of Indian technology would certainly take these things into account. I would, therefore, like your comments in this back-ground—first of all—if a foreign technician is required it is required by an industry which is a profit making one. It is not, for instance, Mr. Bhogeelal will get technicians for textile mills because it is not profitable. You will call them for Petro-chemicals, for new aspects, of Electronics, for new aspects of Chemical Engineering. I want you to tell us about that. But most of the difficulties are there because of the present market position and the situation in the country. There may be exceptions but the industry as a whole is supposed to be wanting that and so some of these things have to be allowed. I would like to have your comments on this background.

SHRI J. H. DOSHI: I agree with you that there is no ceiling. Over 4,000 we have to pay tax; that is extra burden. Secondly, we apply even before calling the technician or even 15 days or 1 month after he has arrived. It has been our experience that we don't get the permission from Delhi within 6 months. I will give you all the correspondence. They call for the qualification and the experience of the man. This matter drags on for a period longer than 6 months. If you say, we must apply

within a month, I have no objection. But it is beyond our powers to decide whether we will obtain the permission in 6 months or one year.

MR. CHAIRMAN: Instead of 6 months, it should be 12 months.

SHRI J. H. DOSHI: It gives longer

SHRI C. C. CHOKSI: Present period of one year should be there. Another point is that for one year at least the exemption should be there without their approval, if it is a genuine technician as it is now. One year exemption should be there in any case. There is one other point. It is true that there is no need for foreign technicians in many of the industries. No Indian would like to call a foreign technician unnecessarily. We have to remember, when we are entering into collaboration agreement, for offering the knowledge, the foreign collaborator says, technical responsibility is his. The Government approves all these agreements. It is only after obtaining Government's approval that the foreign technician comes here after obtaining the Government's approval to the collaboration agreements. One of the clauses says, the responsibility of technical matters is on the foreign collaborator. He says, you will have to employ my technicians. The urgency arises in this way: The man who has come here falls ill; the climate does not suit him; he goes away; somebody else has to be called immediately. It is not that things can be planned out all in advance. If they could be, I agree with hon. Member, permission could be obtained in advance. Then there is a legislation, we have to think of all the different circumstances. That is why our submission would be that the present position should prevail.

SHRI N. K. SOMANI: You said about delays. I agree there. Will this satisfy industrialists if precise guidelines were indicated by the Central Government from time to time that for such and such years and such and such types of technicians

only would be allowed to be imported in the country because it is felt that sufficient technical expertise is not available in the country and secondly, within these categories of cases the permission would be given to you within a month of your application? This is one suggestion that I would like to make.

SHRI C. C. CHOKSI: Certainly, Sir.

SHRI J. H. DOSHI: We can also say that if permission is not received within one month it would be deemed to have been received.

SHRI N. K. SOMANI: They will tell you why they cannot grant you permission. Government Departments have also to be given some laxity in these matters. If I could tell you, I do not know of any case where such application has been made and ultimately it has been refused.

SHRI C. C. CHOKSI: What we say is that the procedure should be streamlined. The application should go to one Ministry—the Finance Ministry—instead of as at present when we have to send it to different Ministries. If it is Petroleum and Chemicals we have to send it to Petroleum Ministry, Finance Ministry and different ministries.

SHRI N. K. P. SALVE: That is examined from different angles. Finance Department alone will not be able to examine the necessity of technician for petro-chemicals. That will have to be done. It will have to go to the concerned Ministry which has to deal with it. My question is this. This limit of 4,000 is going to create land-ship, that is what you said. You are being given 10,000. If it is above 4,000 are you or are you not entitled to pay additional salaries?

SHRI J. H. DOSHI: We will, with permission of Government.

SHRI N. K. P. SALVE: Additional salary is to be paid. On the additional salaries tax is to be borne by the company. Is the tax his perquisite? Is the tax to be added as his income?

SHRI C. C. CHOKSI: It is not tax on tax. It is not grossed up.

SHRI N. K. P. SALVE: What is your hardship? Extra money is paid to him. It is treated as salary in your hands entitled to deduction. Your burden is going to be 50 per cent.

SHRI C. C. CHOKSI: That 50 per cent burden is not fair.

SHRI N. K. P. SALVE: What is it that you want? Do you want the State to subsidise the entire 100 per cent? This is 50 per cent of what is there over and above this 4,000. How can you say, it is not fair.

SHRI C. C. CHOKSI: I would submit that in these days when prices are being fixed and fixed very strictly by the Tariff Commission, it is not always correct to say that the assessee or the manufacturer recovers the full amount from the consumer. It is true there are cases where there were large profits made....

SHRI N. K. P. SALVE: Do you tell us that profit Margin in India are as competitive as in the western world?

SHRI C. C. CHOKSI: They are not. But there have been fluctuations 2 years back and the time was very bad.

MR. CHAIRMAN: You do not know. What is the rate of return of Union Carbide. What is the rate in America? 9 per cent. And, in India, 52 per cent.

SHRI J. H. DOSHI: I entirely agree with you. When you make legislation you don't make it for such companies only which are making large profits. You make it for all companies, big and small.

श्री योगेन्द्र शर्मा :—आप ने कहा कि जो फौरन टैक्निशियन्स हैं वे फौरन कोलात्रेशन से जो इंडस्ट्री कायम की जा रही हैं उन में ज्यादा होते हैं क्योंकि जो फौरन पार्टनर्स हैं वे इस पर इंस्टिस्ट करते हैं। इस का यह भी मतलब हुआ कि यदि हम फौरन कोलात्रेशन में न जाए तो शायद फौरन टैक्निशियन्स की उतनी जरूरत नहीं होगी। अब सवाल यह उठता है कि क्या हमारे देश के राष्ट्रीय हित में फौरन कोलात्रेशन को प्रोत्साहित करना चाहिए या नहीं करना चाहिए। हमारा ध्याल है कि हमारे सामने जो र्धा वाले बैठे हुए हैं वे भी हम से सहमत होंगे कि राष्ट्रीय हित में फौरन कोलात्रेशन को प्रोत्साहित नहीं करना चाहिए। यदि आप इससे एग्री करते हैं तो फिर फौरन टैक्निशियन्स को जितनी सुविधा इस बिल में दी गई है, उस से अधिक सुविधा की मांग करना हमारे राष्ट्रीय हित के खिलाफ है। इस दृष्टि से आप अपने विचार रखें न कि सिर्फ एक छोटे समुदाय की दृष्टि से जो कि फौरन कोलात्रेशन चाहता है। उन के हित के लिए ही नहीं बल्कि पूरे राष्ट्रीय हित की दृष्टि से इस समस्या पर विचार करें।

SHRI DOSHI: I cannot agree more with the hon. Member. I fully agree with what he has said.

SHRI CHOKSHI: Now, there are several points to which I would like to invite your attention. One is Section 140(a), clause 31. Under this clause, if the difference in the amount of tax already paid and the amount of tax payable according to the return is Rs. 500 or more, then he has to pay the balance of the tax, otherwise he has not to pay up. That difference is being reduced from Rs. 500 to Rs. 100. It is very difficult for a person to make such a correct calculation as not to have a difference of more than Rs. 100. It is a very complicated matter to do tax calculation. We

submit that the difference of Rs. 500 should be retained. That is number one.

Then I come to Clause 34, introduction of amendment to section 143. Under this clause the power is given to the Income-tax Officer to make an assessment twice over. He can make an assessment on the basis of income returned from past experience. The assessee no doubt has the right of appeal. But the Income-tax Officer is given the power again to start re-assessment proceedings. This is highly unfair for various reasons. One of the reasons I will explain. Suppose against the original assessment the assessee has gone in appeal and in appeal he has succeeded on some points. But the Income-tax Officer is going to have a second go, and in the second go he has retained that particular item. Not only that, but he has made a further addition. So the matter comes in appeal before the Appellate Assistant Commissioner and if it comes up before another Appellate Assistant Commissioner, he may have a different view. This will create confusion.

SHRI BENI SHANKER SHARMA: Do you mean to say that the assessment to be made by the ITO under 143(1) should be for all practical purposes final and complete?

SHRI CHOKSI: Yes.

SHRI N. K. P. SALVE: I am impressed by your argument. But understand the difficulty of the Department also. They want expeditious, quick assessment in small cases. That is why they think it is a laudable project. If there is a provision that it may be kept in abeyance, do you think that it will meet the ends of justice?

SHRI CHOKSI: With respect it would not meet the ends of justice if second time ITO is allowed to start re-assessment proceedings without re-

opening under Section 147. The most important point is if against the first assessment the ITO finds there is something that the assessment needs revision he has right to appear before the Appellate Asstt. Commissioner if the matter has gone in for appeal and ask for an enhancement.

SHRI SALVE: The jurisdiction of ITO under 147 is entirely different as under 143. The question is first assessment is prima facie assesment and regular enquiry can proceed at a later date. This is merely a provision which enables the ITO to do what the assessee should have done.

SHRI CHOKSI: My feeling is this would result in lot of harrassment and hardship particularly to small asses-sees.

SHRI SALVE: How do we solve the difficulty of Mr. Sethi that they want expeditious assessments; make prima facie additions and demand money.

SHRI CHOKSI: When you have self-assessment procedure....

SHRI SALVE: Self-assessment is my own return and in that I am not making *prima facie*....

SHRI DOSHI: If the difference is more than 25 per cent there is provision for heavy penalty.

SHRI TENNETI VISHWANATHAM: Your objection is under the provision the ITO is making a second assessment against his own first assessment. The provision consists of two conditions either if it is inaccurate or inadequate. Now, the first objection is he cannot re-open it on the ground that his own assessment was incorrect. But supposing it has not been inadequate but he feels inadequate because he has found new material meanwhile what is your objection?

SHRI CHOKSI: He can proceed under 147(b) doors have been thrown open by the Supreme Court by their recent judgement.

SHRI SANGHI: Mr. Choksi, this whole system has been brought in to expedite finalisation of cases because the income--tax returns have increased colossal and are likely to increase by 25 per cent more and the Ministry is not capable of increasing the staff. Can you suggest any safeguards whereby this re-opening of the case is not misused by the ITO? Can you give some thought on it? We also agree this system is going to create hardship. Can you provide some more safeguards as to how we can avoid the ITO unnecessarily fiddling with the fates of the assessees.

SHRI DOSHI: We appreciate your objective but we do not think that objection is served by that amendment. Do it as a final step; give it finality.

SHRI SETHI: Here in the present situation two assessments are provisional assessments with the result they are made final only after some time and as far as appeal is concerned even as against the provisional assessment you are at liberty to go in for appeal and in the meanwhile the assessment is made final. Now, this is a sort of improvement in the sense it would not be a provisional assessment now. Henceforth it would be final assessment and it is not as if it were all the cases are going to be re-opened. It is only after some material evidence comes to the ITO that he will open up that case and not all the cases.

SHRI P. C. SETHI: At the present moment as it is, all assessments are provisional. They are made final. If assessment is reopened we are to that extent closing up the gap. Only very few assessments are likely to be reopened. To say that all cases are to be reopened is not correct.

SHRI C. C. CHOKSI: In the context of the self-assessment provisions there is no need for provisional assessment at all. In fact provisional assessments are not made. And in some of the cases where self-assessments are made, provisional assessments are not made by the Department. We know very well that the difference in taxes is very small. What is done is that a right is given to officer to add those prima facie items. What those prima facie items are we do not know. Prima facie items are not added back in the provisional assessments. Right is being given under guise of passing final assessment. I doubt whether he has the right, but assuming he has got that right, that right is not exercised today with the result that in provisional assessments no add back is done and no provisional assessments are made. A right is given to add such *prima facie* items. And having given that right, look at it from assessee's point of view, as to what an amount of harrassment he has to undergo. Kindly apply your mind to this aspect of the matter. You have taken the power asking the assessee to make advance payment of tax. In respect of the difference between the tax demanded and the tax assessed on the basis of his estimate of income, if the difference is more than 25 per cent then he can be penalised for not paying advance tax. It is a terrible provision. Having made an advance payment he submits his return of income. He is called upon to make a self-assessment. Already there is a two-time review made by him. Only small amount of tax is left to the right of income-tax officer to make assessment under 143(1). There is a right to pass assessment order under 143(2). Is it fair to the assessee, to make him undergo all the calculations four times over and over again?

SHRI N. K. P. SALVE: On the one side there are the intentions of the Government. On the other side are the assesses. The Committee is there

in between these two. If there are any genuine cases of hardship to the assessee we can point it out and recommend to Parliament. When we do something for the assessee, we can't at the same time forget what exactly the Government wants. You said something about hardships. The hardship of Mr. Sethi and Mr. R. D. Shah is this. Lakhs and lakhs of assesseees do not file the return who make self-assessments and out of lakhs and lakhs of assesseees, half of them are such in whose cases without calling them one or two items may be added and that is the end of the matter. For the remaining half it is necessary to go into the details. How does the Government get over this difficulty?

SHRI C. C. CHOKSI: Clause 63 should not be there. You are taking terrible powers under Clause 63. You are taking power to send to jail the person who has not submitted his return.

SHRI N. K. P. SALVE: Let alone the person going to jail; I am not talking of the person going to jail I am talking of the honest assessee, I am talking the genuine assessee who forgets to make proper return. Filing return is so expensive. Anybody does not file a proper return. The other man file a proper return. In the case of one man, they make additions and the matter ends there. In the case of the other man the assessment is inadequate; there is large income which is not included in the return. What is the difficulty?

SHRI C. C. CHOKSI: He cannot under-assess his income because very severe penalty is prescribed in Section 271. If the difference is so much, he gets the penalty.

SHRI N. K. P. SALVE: Do you mean to say, because of the penalty in the books, there is no evasion?

MR. CHAIRMAN: This point we can discuss later on. We need not go into it now.

SHRI VASANT DALAL: This is just a thought that occurred to me just now. Could it not be that the ITO may be asked to disallow such items which he has disallowed in the past and accepted by the assessee and he has not appealed against? It is very likely that these assessments might be final. Suppose I don't disallow my return 1/3 of my motor-car expenses which are being disallowed year after year in the past and accepted by me, the ITO may add that and finish my assessment. That will be final assessment.

SHRI N. K. P. SALVE: That is one way.

SHRI N. K. SANGHI: If you go through 143(2) you will see the provision where the ITO has to re-open the cases. After saying "he shall serve on the assessee a notice" we may add "for the inadequacy, incompleteness and the incorrectness to his knowledge" I think that would set matters right.

SHRI C. C. CHOKSI: Something is better than nothing. If law is to be enacted in the present form, that is the worst of it. If that cannot be accepted, well, something is better.

SHRI N. K. SANGHI: You are very misguided.

SHRI N. K. P. SALVE: That means, we have to scrap the Bill in entirety.

SHRI R. D. SHAH: In view of certain apprehensions mentioned by some, I think it would be necessary for me to clear certain matters up and express certain view-point in this matter. Mr. Choksi said about provisional assessments, and he said now they are not done. Earlier provisional assessments were being made wherever there was revenue gain to the department. In other cases provisional assessments were not made. 143 (1) says, if the ITO is satisfied as to the correctness and completeness of the return. When he says assessment under 143(1) it was necessary to certify that the return was complete and correct in all respects, and that he was satisfied. Now, in all cases even if there was a slight variation between the returned income and the income on which assessment was to be made in spite of the fact that there may be clear items the Income-tax Officer had necessarily to resort to 143 (2), take the proceedings, issue notices, call the assessee, make the assessment and all that. A very large number of cases, on the face of it, wherever there are disallowables, the ITO will complete under 143 (1) where there was material. Where the Income-tax Officer considers that a notice should be issued, the assessee should be given an opportunity to produce the books and only thereafter to make the assessment, he is certainly not going to waste his time and the assessee's time. Between these two extreme lies a small number of case where the Income-tax Officer has made the first assessment, which is final so far as the assessee is concerned and under the existing procedure which is corresponding to the provisional assessment. Now, here the word "reopen" is unfortunately not correct. He does not reopen. What he does is that he issues a notice to the assessee, calling upon him to produce his books of accounts and examine them and make an assessment..

SHRI N. K. P. SALVE: But Mr. Shah, most of the apprehension arises in the minds of assesseees on account of the attitude of the Department under the existing provisional assessment. A large number of cases have gone to the Supreme Court and they are left to litigation. What guarantees or safeguards are you giving to such assesseees who will be roped in by 143?

SHRI SHAH: As I put it, Sir, the point is that in a large number of small cases this provision is intended to be applied. A very large number is there—near about 15 lakhs. This is intended to be applied in spite of the fact that there is no legal sanction for it.

In bigger cases, what he is doing is that he issues the notice, call the assessee, examine those books of accounts, and if he is satisfied, he will make an order. He issues notice in every case.

SHRI DOSHI: In the final analysis, it is a part of the legislation in these matters and it is really unfortunate that the experience of the assesseees with the Department has not been so very happy in the past and that creates a fear in our mind; sometimes it may be a misplaced fear. I would suggest that what Mr. Sanghi has suggested is very true that the powers of the Income-tax Officer should be restricted if he is made to do assessment a second time; he must have some real reason to do it; otherwise it should be considered as final.

MR. CHAIRMAN: We will further discuss it in the Committee.

SHRI DOSHI: To the best of my knowledge, in the United States they never call an assessee every year. They call an assessee every year. They perhaps call him once in five years. If he is found dishonest, he is very severely dealt with.

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SHRI N. K. P. SALVE: You also help us on that point.

SHRI CHOKSI: Clause 43, section 186(a). No doubt this is an attempt to simplify the procedure, but at the same time this is likely to create considerable amount of hardship. In case of Mofussil assesseees, one of the requirements is that the firm which is to be recognized must be registered with the Registrar of Firms. The Registrars of Firms do not have offices in all the places of all the Districts. They have their offices in some of the important urban towns or cities and in our country there are so many assesseees who are not fully conversant with the provisions of law. Therefore, is this a great improvement on the existing system. Then assesseees will be relieved to a great extent. The snag is there is not sufficient number of Registrars and the matter may be delayed.

SHRI CHOKSI: The requirement is it should be registered within six months and a person might forget in these days of forgetfulness.

SHRI BENI SHANKER SHARMA: You have objection when the Registrar takes time. These are procedural difficulties and can be got over by increasing the number of Registrars or making them register the firm in a month. I think you agree with the provisions.

SHRI CHOKSI: Broadly I agree but some relaxation should be there. Here it is very watertight.

MR. CHAIRMAN: We are looking into the details.

SHRI SALVE: I take it that you have read the clause very carefully. Here the Department while commenting on this clause has given a note to us which says *inter alia*: "That the new procedure in Section 186(a) and

(b) is designed to considerably simplify the assessment of the firms and their partners by eliminating the requirement of separate registration for purposes of assessment the income tax and virtually recognising the registration under the Indian Partnership Act self-sufficient for purposes of charge of income-tax."

SHRI CHOKSI: There are two clauses which require consideration. One is clause (e) which says in the first assessment the assessee is to follow the same procedure as he has to follow for the registration of the firm under the present law. Under the present he has to make this declaration to the ITO under clause (e). Therefore, the procedure is more or less the same in addition to clause (e) whatever the present requirement he has to comply with the present law. Clause (e) says that firm should be a genuine firm and not benami of another partner. Therefore, the present provisions of law are being enacted in a different form. The only point is in addition to that the requirement of registration should be done with Registrar of Firms which creates practical difficulties. If that is relaxed I have no objection.

Further, we want to make a mention about clause 14. It goes beyond what the Finance Minister mentioned at the time of the Budget. In his Budget speech he mentioned what he wanted to achieve—assesseees were trying to transfer their assets to their wives and minor children which could not be done under Section 64 but that can be done through the agency of HUF. He wanted to plug the loophole that they should not be able to transfer their assets to the wife or minor child. This is, however, often circumvented by the use of the special provisions relating to the taxation of HUF as a separate unit. What is being done in this clause is something entirely different. That was not what

he mentioned in the budget speech. Therefore, this clause goes beyond the intention of the Finance Minister from his statement.

SHRI SALVE: You approach this question from the point of view of Equity.

SHRI CHOKSI: I am on the principle of Equity

SHRI C. C. CHOKSI: When property is in passed with the HUF, nobody will say, my share is so much. It is only in the event of partition that this happens. Otherwise there is no division or partition of the HUF.

SHRI N. K. P. SALVE: Who partakes the benefit of that?

SHRI C. C. CHOKSI: That property belongs to the family. It is not the property of X or Y or Z. We should not levy a notional charge, for which the person has no right to take anything out of it. We are trying to tax the person, individual, if he has separated that property with the status of HUF, that you will pay the tax on the assumption that you are going to get the benefit out of it. It is not a moral responsibility. It goes beyond what the Finance Minister contemplated. After transferring property to the family, if there is further partition that is one thing.

MR. CHAIRMAN: This HUF is not the creation of today or yesterday. You know the Finance Minister has already made a speech. This is here for many years. We have accepted what the HUF is. After 1964, after the judgement of the Supreme Court, new HUFs are created. Many people were not conscious of the HUF. One witness told us, he had been in Delhi, as Deputy Director. He was more than 60 years old. When he came to Bombay only he was told by legal experts here that he can do that. Before coming to Bombay he did not know that there is any HUF. He

said, so many people in Bombay have done this thing. You can explain to us what your views are so that the Committee may take them up for consideration

SHRI C. C. CHOKSI: This should not be given retrospective effect. That is number One. It should come into force from 1st March, 1969.

Secondly, regarding appeals. The appeal fee is proposed to be charged at the rate of 10 rupees before the A.A.C. In the case of tribunal the appeal fee is increased to Rs. 250 and it is not fair at all. It should not be so very costly, so very expensive.

So, that is my suggestion. And another thing, for paying this amount of Rs. 10 he has to go to the Reserve Bank and stand in a long queue.....

MR. CHAIRMAN: We are thinking of that point also.

SHRI C. C. CHOKSI: The right to condone delay is unnecessarily being restricted. Normally they do not condone delay unless there is sufficient reason for them to condone it. To put further curb on that does not appear to be all right. These are all the main points which I would like to submit to the Committee.

SHRI BENI SHANKER SHARMA: At one stage, you made a statement, that there are clauses which, instead of simplifying, are going to create complications. I do not know what you meant by that. What are those clauses, please let us know.

SHRI C. C. CHOKSI: We have already mentioned the main points. There are five clauses and the clauses have been mentioned. There is one regarding double-assessment proceedings. The assessee is required to pay tax on self-assessment if difference is more than Rs. 100 instead of Rs. 500. On recognition of the firms, he will

get the firm registered with the Registrar of Firms within 6 months. Again there are appeal proceedings and he has to pay the appeal fees. There is another point, namely, taking away the discretion of the Appellant Assistant Commissioners from admitting appeals after 30 days. There are these four or five points. There are certain other points, not in the Bill. This is about advance payment of tax. The very heavy penalty in wealth tax will in genuine cases causes hardship. There is some addition or change of the Section 276(c) imprisonment. You want to have rigorous imprisonment if he has not submitted his return. I know of cases where one is likely to forget....

MR. CHAIRMAN: May I tell you about the procedure in other countries? Everywhere there is this provision of imprisonment punishment.

SHRI VASANT DALAL: Under 276(c) if the assessee does not submit the return under 139(1) without reasonable cause, he is open for prosecution—in spite of the fact that the entire tax to which he is liable, is deducted at source, and he is not required to file a return...

SHRI N. K. P. SALVE: He has to file.

SHRI VASANT DALAL: If the intention is he is required to file that is a different matter...

MR. CHAIRMAN: Very good. Thank you Mr. Choksi. We thank all your other colleagues for this very valuable evidence which you have offered.

SHRI C. C. CHOKSI: We offer our thanks to the Chairman and to the Members of the Committee

MR. CHAIRMAN: The Committee stands adjourned to meet at 10 a.m. tomorrow.

(The Committee then adjourned)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT) BILL, 1969

Friday, the 16th January, 1970 at 10.00 hours and again at 15.00 hours in Council Hall, Bombay

PRESENT

Shri Chintamani Panigrahi—*Chairman*.

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri S. R. Damani
4. Shri B. N. Katham
5. Shri S. B. Patil
6. Shri Shiva Chandika Prasad
7. Shri R. Dasaratha Rama Reddy
8. Shri Bishwanath Roy
9. Shri N. K. P. Salve
10. Shri N. K. Sanghi
11. Shri Beni Shanker Sharma
12. Shri Yogendra Sharma
13. Shri Janardan Jagannath Shinkre
14. Shri R. K. Sinha
15. Shri Tenneti Viswanatham
16. Shri Ram Sewak Yadav
17. Shri Prakashchand B. Sethi.

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(*Department of Revenue and Insurance*)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. Shri N. A. Palkhiwala, Senior Advocate, Supreme Court, representing Tata Sons and Tata Industries Private Ltd., Bombay.

II. *The Mahratta Chamber of Commerce and Industries, Poona.*

Spokesmen:

1. Shri G. L. Pophale, Income Tax Consultant, Bombay.
2. Shri M. S. Vartak, Partner, Managing Agents, Kirloskar Oil Engines Ltd., Poona.

3. Shri V. G. Phide, Partner, Gadre & Bhide, Chartered Accountant, Poona.
4. Shri V. B. Kirtane, Chief Operations Executive, Kirloskar Oil Engines Ltd., Poona.
5. Shri Shantilal Shah, Income-tax Consultant, Poona.
6. Shri Y. P. Pandit, Chartered Accountant, Poona.
7. Shri B. R. Sabade, Secretary, Mahratta Chamber of Commerce and Industries, Poona.

III. Messrs. B. R. Herman and Mohatta (India) Private Ltd., Bombay.

Spokesmen:

1. Shri Brijratan S. Mohatta, Director.
 2. Shri S. Srinivasan, Adviser.
 3. Shri Rajendra Kumar Mohatta, Partner.
- I. Shri N. A. Palkhiwala, Senior Advocate, Supreme Court, Representing Tata Sons and Tata Industries Private Ltd., Bombay.

(The witness was called in and he took his seat).

MR. CHAIRMAN: We welcome you to the sitting of the Committee, and before we start, I shall read out to you the relevant rule, 58, of our Rules of Procedure. Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. However, if you desire to it be treated as confidential, it is liable to be made available to the Members of Parliament.

We have received your memorandum. Would you like to highlight some of the important points mentioned in your memorandum?

SHRI PALKHIVALA: Thank you.

The first comment I would like to make is that we have had so many amendments brought out in our Income-tax law that a stage has come, and I think, I speak quite sincerely and honestly, when I tell you that people would rather go without tax concessions or tax reliefs than for continuous amendments to the law. The confusion has reached a stage when the Income-tax Department,—for whom I personally have high regard because I find people of outstand-

ing ability engaged in dealing with more money in the course of a single month than a High Court Judge will deal with in the course of a whole year—and even people with great ability and great thoroughness find it just impossible to know what the law on the subject is when they deal with the assessments for a particular year. It is the same with the taxpayers. I think there is no country where so much of the intelligence of the nation is just wasted as a result of continuous changes as it is in this country. And I would beg of the hon. Members to bear this in mind as the most important cardinal consideration when dealing with the question of any tax organisations. Speaking for myself, if you ask me whether from the point of view of this Bill, which one I would prefer, I would say that I would rather go without the tax reliefs. I would say; let the country be without tax reliefs; leave the people alone. Because one can understand doing it once, twice or thrice; but doing it as we do it every year or every alternate year, frankly I think,—if a calculation were made you would realise what utter waste of national talent and ability and time is involved in all these amendments. I would with great respect submit that if at all the hon. Prime Minister's suggestion is to

be implemented, namely, that a Commission should be appointed to consider the question of the tax laws, administration, etc., to have a fresh look at the whole thing, it is eminently desirable that this Bill should not be passed but should be left to be considered along with other matters by the Commission to be hereafter appointed.

Now, coming to the provisions, the main provisions which I shall deal with are not many. If I do not touch upon the other provisions of the law, it does not mean that I am unmindful of the good which the Bill aims at doing. But I do not want to take up your time on these provisions. Hon. Members may take it that I have no criticism to offer and I am in agreement with the policy underlying those provisions. Therefore, I shall draw your attention only to those provisions which need a certain application of mind, which you may reconsider before making your report to the Parliament.

MR. CHAIRMAN: Please say a word of appreciation for those provisions also, with which you agree.

SHRI PALKHIVALA: Very well.

First, Clause 2 of the Bill aims at doing something which I think is in public interest, namely, you exclude agricultural income from the scope of Central income-tax assessment, even if land revenue is not payable by that land. This becomes necessary because in many States the land revenue has been abolished, partly or wholly and a very anomalous position arose under the present law where purely agricultural operations may be carried out, the income may be agricultural, and yet exemption is denied only because land revenue is not payable. So the provision that you seek to make in Clause 2 right from the commencement of the Income-tax Act, 1961 is a

salutary provision, removing the condition of payment of land revenue.

The next clause is Clause 3. It aims at amending Section 10 of the Income-tax Act. That section deals with various exemptions which are granted to the citizen in respect of a part of his income. The idea is again here a healthy one, namely, to enlarge the scope of this exemption in respect of salaried employees who are the worst hit in every country, because they are mainly the people where income is, generally speaking, fully disclosed and in their case this is very necessary.

Now, the direction in which this relief is to be given is that if a certain travel concession is given to an employee to enable him to go on leave, that travel concession should not be taxed. But in the Bill as drafted, this travel concession becomes exempt from tax only if the employee proposes to go his home district. I think this is, frankly, not only unnecessary but it is a clear inducement to dishonesty, because if there is a poor employee drawing, say, Rs. 1000—which in these days is not much-wanting to go to a hill-station, Simla, from Delhi...

MR. CHAIRMAN: It is home-sickness, not to a hill-station.

SHRI PALKHIVALA: My point is this. Suppose his home district is Simla. But suppose his father is now settled down, say, 80 miles from Delhi. Well, what is wrong with the man wanting to go back 80 miles from Delhi; he does not want to go back to his home district.

My point is this. You are dealing with little assesseees; you are not dealing with big business magnets who can find out how to get benefits. These small people are really in need of some concession at the hands of the law-makers, and I do submit that

it would be a good amendment if you were to remove the words "to his home district..".

So far as foreigners are concerned, it is all right, because they go back on home leave out of India.

SHRI PRAKASHCHAND B. SETHI: So far as the travel concession to home district is concerned, it is in consonance with the Home Ministry's legal connotation.

श्री राम सेवक यादव : क्या यह सम्भव नहीं होगा कि अगर बीच में उस ने होम डिस्ट्रिक्ट बदल दिया है तो इतला कर के बीच में बदलवा दे ?

SHRI PALKHIVALA: The difficulty arises that 'home district' does not change in law. 'Home district' is the district where the man hails from. That is his home district. So it has a legal connotation

My point is it is always unwise to pass laws which induce people to be dishonest when by letting them be honest the law can be respected.

SHRI SALVE: What is the basic intent of this clause *viz-a-viz* necessity.

SHRI PALKHIVALA: The basic intent of this clause is to give little concession to that class of society which is very hard bressed and deserves relief. Further, the man may be encouraged to go back to his family and have a little recuperation. If that is the idea, it is in consonance with that idea that you remove this thing about home district.

The next point, Sir, is the other sub-clause of clause 3 which is sub-clause (d). So far as technicians are concerned the idea clearly is to reduce the amount of tax exemption available to them. I would only point out this that since it is with the approval of the Government that the employ-

ment has to be given before tax exemption is available and in most cases Government does not permit and rightly so persaps it may not be quite necessary at this stage to reduce the exemption limit because in practice we find that the cases are rare and if an exemption like this is reduce the burden on the employer becomes so excessive because he will have to bear the burden of tax as the employee may still get his tax free salary. The tax on tax is a spiraling effect and the burden becomes so enormous that sometimes you may want to do without the foreign technician and the industry. Itself may suffer. The Department says under the law they are entitled to Pyromiding tax on tax.

SHRI BENI SHANKAR SHARMA : Suppose we do away with this tax on tax system would you agree to the suggestion that the tax could be paid on the salary over Rs. 4000/- by the employers ?

SHRI PALKHIVALA : If you do not have Pyromiding.

SHRI SALVE : That is the intention that no tax on tax is levied. It is simple tax. Will you then have any objection ?

SHRI PALKHIVALA: The main objection would be substantially removed.

SHRI SALVE : We will see to that that supposing there is salary of Rs. 7000. Rs. 4000 is exempt and on Rs. 3000/- the employer is liable to pay the tax. Now, the tax is, for example, Rs. 2200/- then what he pays is Rs. 3000/- plus Rs. 2200/- which will be liable for deduction in the hands of the employers.

SHRI PALKHIVALA: I am on the question of amount of tax apart from the deductability.

SHRI DAMANI: This amendment has been brought on the basis of the recommendations of the Bhoothalingam Committee and ARC Recommendations and with the intention to discourage the employing of foreign technicians and to give chances to our own technicians. We have got a sufficient number of intellectuals. This Rs. 4000/- includes perquisites. Suppose perquisites are removed and salary is taxed in that case will it serve the purpose?

SHRI N. A. PALKHIVALA: The purpose would be served if you made it clear that the salaries shall not be grossed up for the purposes of determining income-tax payable by the employer. Then substantially that will be met.

MR. CHAIRMAN: We want to hear you first.

SHRI N. A. PALKHIVALA: I find, hon. Members have one idea in mind.

MR. CHAIRMAN: You must also be aware of the intention about technicians. We want to make it prohibitive also so that we go in more for Indian technicians.

SHRI N. A. PALKHIVALA: Your intention has to be implemented; it is the policy decision made by Parliament. It is a question of implementing the intention. It should be implemented in such a way that while the objective of the Government is good, namely, encouraging Indians, you do not go to the other extreme, of making prohibitive, even the services of those technicians whose presence here would be publicly beneficial so that we may be able to manufacture products which earn foreign exchange. There will be cases where the presence of the technicians in certain areas will be so important that really speaking it is in the interest of the Government. That is why Government gives approval for 2 year and for 5 year contracts. In such cases, if you make it economi-

cally prohibitive, it will be a self-defeating proposition if you go to such an extent to say that even where foreign exchange can be earned you will not permit him. The other point is this. Mr. Salve mentioned about the deductability to the employer. I want to draw attention to this point. The hon. Member may be under the impression that the employer will get a deduction. In every case I am aware of, the employer pays the tax which is payable by the employer because it is treated basically under section 40 clause (a) sub-clause (5) of the existing Act. There is a limit, a ceiling, upto which perquisites are allowed for the deduction. This tax will not be fully allowed to the employer....

SHRI N. K. P. SALVE: Subject to the limit.

SHRI N. A. PALKHIVALA: Limit is so small. When a man has to be employed, you will have to give him house, give him car, give him other facilities. One important aspect we will have to bear in mind. Do you want foreign technicians at all? If the decision of the law makers is, we do not want them, it is all right. Supposing you realise there are some areas where the circumstances are such that the employment of foreign technicians would be in the national interest, for the time being, then we cannot defeat our own objective by making this economically prohibitive. The way this is drafted, there are two objections—one, there is this grossing up which I will deal with; and secondly, the employer will not get full deduction for the tax he is paying.

SHRI BENI SHANKER SHARMA: We have got an amendment to be made.

SHRI N. A. PALKHIVALA: You would be good enough to amend section 40, clause (a) sub-clause (5) to make it clear that in providing 20 per cent upto which deduction is

allowed, the burden of tax borne under this new imposition will not be taken into account.

SHRI TENNETI VISWANATHAM: You used the term prohibitively costly. Why do you use this term? Payment of tax beyond the salaries is over 4,000. So, in what way you consider it, 'prohibitively costly'? What would be its percentage of the total cost of salaries?

SHRI N. A. PALKHIVALA: There is no hard and fast rule. Every business will naturally look at the economics of any particular thing. When I say prohibitive, I mean this. Any reasonable businessman having regard to the interest of the shareholders and to his own interest, would hesitate to undertake such a burden. He will say, why go in for a foreign market, if I could sell my goods in India. He will make shoddy goods. He will say, I will be able to sell my goods in India, that is all right. I don't have to exert.

SHRI TENNETI VISWANATHAM: As a general proposition it is all right.

What do you think of the percentage of the excess?

SHRI N. A. PALKHIVALA: It is impossible to say that.

SHRI TENNETI VISWANATHAM: How can you say, prohibitive?

SHRI N. A. PALKHIVALA: You have to see the normal effects of the law sought to be passed. If the normal effects in a number of cases would be to include what I call prohibitive items, by prohibitive. I mean economically prohibitive, —any businessman understands what money is—really he will think this is not a viable proposition for him. What a businessman would really think as a viable proposition is something which can give him a fair return for what he is doing.

I now come to the provision for enlarging the definition of a technician, so as to include animal husbandry, dairy, poultry farming, fishing etc. This is very good. This is a very good suggestion to enlarge the definition.

MR. CHAIRMAN: You say, it is good enlarging this definition.

SHRI N. A. PALKHIVALA: This is subject to Government approval.

It is only with that Government approval that the man will come. Take subjects like deep-sea fishing. Deep-sea fishing is something out of which we will earn millions of foreign exchange. Our resources are tremendous in the Indian ocean. These have never been tapped. You could have Japanese to assist you here for deep-sea fishing. You would be able to earn much more by foreign exchange than what you spend by way of tax relief.

MR. CHAIRMAN: Poultry also.

SHRI N. A. PALKHIVALA: By poultry I don't mean what we keep in the backyard. I mean, that kind of scientific, technological development on a big scale.

MR. CHAIRMAN: That we have not developed in the country.

SHRI N. A. PALKHIVALA: We can do it only when we learn the art. The first thing for us is to learn the technique; to learn the art. Take the Amul Dairy for instance. But for the presence of the New Zealand technician who came initially, it would have been extremely difficult for any to reach the present position. All the pride of India is in Amul Dairy. It would not have been so but for the presence of such experts to help us in our Dairy. We are not dealing with any small man keeping dairy etc. We are dealing with something which can be done on a massive scale which may solve the food problems of our vast sections of the people of our

country. That is what I have particularly got in mind. I am not talking of 1,000 chickens.

SHRI BENI SHANKER SHARMA : It is subject to Government approval.

SHRI N. A. PALKHIVALA : Government will not give approval unless the matter is on such a vast scale.

SHRI BENI SHANKER SHARMA : It should be of great national importance, as you say.

श्री राम सेवक यादव : जब आप यह कहते हैं कि तकनीकी की डेफ़ीनीशन को ब्रॉड कर दिया है यह अच्छा ही है और इसलिये उस में कोई दिक्कत नहीं है क्योंकि सरकार ही इजाजत देगी। तो जब डेफ़ीनीशन को ऐनलार्ज करने का एक फ़ायदा इस में आ जायगा तो क्या यह सरकार के लिये प्रेशर की तरह से काम नहीं करेगा कि उस को इजाजत देनी पड़ेगी और यह कहा जायगा कि अगर इरादा नहीं होता कि इन लोगों को ऐनकरेज किया जाय तो डेफ़ीनीशन में क्यों आता। इसलिये इस का बेजा फ़ायदा उठाया जायगा।

SHRI N. A. PALKHIVALA : The answer Government would give is this. The object in enlarging the definition is to promote some big national project like the Amul Dairy. It should be a national project which may be of such importance to the nation. And it is open to the Government to say that, in deserving cases they will give. It is not for one individual who may earn 5,000 out of poultry farming.

श्री राम सेवक यादव : 5,000 रुपये की आमदनी वाला तो फौरेन टेक्नीशियन को ऐमप्लाय ही नहीं करेगा क्योंकि उस की हैसियत हो नहीं है। यह सम्भव ही नहीं है।

SHRI N. A. PALKHIVALA That is, you think of projects which are run on big, national scale. You will never have a technician with your level of taxation.

श्री राम सेवक यादव : क्या आप यह नहीं समझते हैं कि अगर हम इस तरह से फ़िशिंग, पोल्ट्री, डेरीइंग आदि कामों के लिये भी निरन्तर बाहरी टेक्नीशियन्स का इस्तेमाल करते जायेंगे तो फिर हमारे लिये यह डेटरिमेंटल ही होगा और हम अपने को इस योग्य नहीं बना पायेंगे कि बाहरी टेक्नीशियन्स की जरूरत ही न पड़े किसी क्षेत्र में।

SHRI PALKHIVALA : The point is that, I think, for example, in foreign countries much advance has been made, which is still unknown to us. I have in mind those cases where by importing such technicians who will be able to contribute to the agricultural development, dairy development, poultry development of the country, we have a lot to learn still. Our people, no doubt, are superior in ability, but they are not familiar with the technical advances.

SHRI N. K. P. SALVE : I have read the clause very carefully. I entirely agree with you. Except your point about pyramiding, do you see any harm in creating an additional safety-valve and bring about a disincentive also to the business-men not to get technicians where we can manage without them?

SHRI PALKHIVALA : My point is that the right policy would be at the administrative level not to agree to such contracts; but if you find at the administrative level that the contracts are in the national interest, then it should not be excessive.

SHRI N. K. P. SALVE : Sometimes it is very difficult. There are so many factors-involved. What is wrong if we have an additional safety-valve?

SHRI PALKHIVALA: Without pyramiding, it would be reasonable.

SHRI R. D. SHAH: There is no pyramiding, for one reason that up to 4000 it is exempt.

SHRI PALKHIVALA: In the hands of the employee it will be exempt. But the question is what is the quantum, the amount, which the employee will be asked to pay?

SHRI R. D. SHAH: The tax paid by the employer is not taxable, is exempt in the hands of the employee as it is laid down here; last line. Also, the tax paid by the employer, if it is exempt in the hands of the employee, then there is no question of tax by the employer.

SHRI N. K. P. SALVE: What is the remuneration of the employee? If it is 7,000....

SHRI R. D. SHAH: If the remuneration is Rs. 7,000, out of it 4,000 is exempt; the employer pays tax on Rs. 3000. And let us take, for example, that the tax on Rs. 3000 is Rs. 2000. That Rs. 2000 is exempt in the hands of the employee.

MR. CHAIRMAN: We have heard his interpretation. We shall discuss it later.

SHRI PALKHIVALA: Then you have a salutary provision in Clause 4. I appreciate that, I have no criticism. Clause 6 is also a salutary provision.

I come to Clause 8 which is really controversial, on which I am sure many witnesses must have dilated. I have, Sir, a few comments to make. It is clear that the idea is a good one. The idea is to encourage people to start new industries and expand. But I am afraid the way it is drafted it would work adversely to the national interest, for the simple reasons I shall presently give.

First of all, the new section seeks to grant amortisation in respect of preliminary expenses to the extent of two and a half per cent of the capital, debentures and long-term borrowings. There are two ways in which this provision would work against the economic interest of the nation, taken as a whole. First, if one company is able to do the same job as another, but with half the borrowing, then that company, though it is more efficient more economical and is able to get the same job done at half the borrowing, has got a lower tax deduction than another company which to do the same job requires twice the money. Capital is very scarce in our country and we should encourage people who are able to make the maximum use of our scarce capital resources.

Therefore, to make the deduction relatable to the amount of borrowing is not correct because it only puts a premium upon wastage of the monetary resources.

Secondly, it works against the national interest this way: you have a company which is able to generate its own resources, which declares small dividends and ploughs back profit, and thereby it is able to build up its reserves and then preliminary expenditure is disallowed to the company because it has not borrowings and debentures for the purpose of expansion. But another company which has been extravagant and given away large dividends and has no reserves such a company is at a advantage because it gets the preliminary expenses to the extent of 2½% My point is that to relate this amortization allowance to the borrowings is economically unsound. You should only relate it to the capital cost of the expansion of the new project.

MR. CHAIRMAN: How much it comes to your estimate?

SHRI PALKHIVALA: There again you can fix a ceiling which you regard reasonable. Suppose you fix 2½ per cent of the new block.

MR. CHAIRMAN: Would you agree for such companies who husband their resources as 2½% and for others we reduce it?

SHRI PALKHIVALA: It should have no relevance I say, Sir, with this 2½ per cent or 3 per cent. There are some industries where profitability is large and in some profitability is small. The companies with small profitability are the companies which need your assistance more than those companies with large profitability.

श्री राम सेवक यादव : अभी जो आप ने तर्क दिया कि जो अपने ही रिसेंसिज से बिल्डअप करता है, उस को एलाऊ नहीं करते हैं और जो कर्ज ले कर करता है, उस के लिए आप प्रिमियम देंगे, ये दोनों कांट्रा-डिक्टरी नहीं है ।

SHRI PALKHIVALA: My submission is there is no concert between the two. You say in one case give a benefit to the man with reserves and then I say give a benefit to the man who borrows. You will have case after case where to relate it to borrowings is wrong. Once you relate it to reserves then you are doing justice to everybody. Therefore, my suggestion is to make it 2½ per cent or 3 per cent applicable to the company with respect to the cost but do not make a distinction between a company which borrows and one which does not borrow.

MR. CHAIRMAN: Supposing we calculate this on the project cost and not on the capital base would you agree?

SHRI PALKHIVALA: That would be the most rational way of dealing with the matter.

SHRI SALVE: Any idea of percentage.

SHRI PALKHIVALA: I have not calculated the percentage.

MR. CHAIRMAN: Government has made a study where the average comes to from 0.8 per cent to 3.8 per cent.

SHRI DAMANI: We appreciate your point. I want your opinion about new companies. When new companies start with small or big capital the expenditure is more and, secondly, suppose one company issues Rs. 50 lakhs and another Rs. 5 crores but most of the expenditure will be same or a little difference. In such a case the new companies being given 2½ per cent will be at a disadvantage. Would you agree that there should be slab system on the basis of the capital?

SHRI PALKHIVALA: My answer is you want a ceiling. I have for one no doubt time will come when all these expenditure will be allowed as deduction. My own feeling would be that once a project has been found to be a genuine project the expenses unless they result in a capital asset being acquired must be allowed to be written off. In Ireland for instance not only expenses but capital assets can be written off in the first year.

SHRI DAMANI: In U.K.

SHRI PALKHIVALA: There they have got investment allowance which is very reasonable.

MR. CHAIRMAN: You may please go ahead with the other points.

SHRI N. A. FALKHIVALA: On 35(d) the position is this. The level of taxation being what it is, I think, in fairness and justice, between the State and the citizen, all preliminary expenses which do not result in the acquisition of a capital asset should

be allowed to be written off. In other countries they are written off. It may be not in U.K. but in U.K. the rate of taxation is very much lower on limited companies. You do not have the long-drawn out debates and discussions whether a particular expense should be allowed or not allowed. I speak from personal experience of the working of companies which operate both here and there, I myself went up to a Tribunal. The matter was whether a wall which was erected outside a factory would be allowed depreciation or not. The Department went to the extent of saying that depreciation should not be allowed. We went up to the tribunal not once. The department asked for reference to the High Court. What I say is, thousands and thousands of cases are pending in India which you can very well put an end to in 6 months if only correct decisions are made. Let us proceed, let us go on, with the job of developing our economy. Thousands of petitions are there. In Calcutta it amounts to 30,000 cases. In Bombay High Court a reference was made to the High Court in 1964 but the assessment year would be 1950-51 and 1951-52. The matter which I argued yesterday pertains in the year 1946-47 and 1947-48. It comes up after 22 years. The man has gone. He also was brought on record and he died. Another one is on record fighting the litigation. All these litigations could be avoided if we had this provision. My own suggestion about 35(d) and my own personal view would be this. Do not tabulate the list of expenses which may be allowed. Just say, preliminary expenses. We need not list all such items. About consulting fees, the company would like to do a thing entirely for building up the technical knowhow. There are cases where the organisation has got its own consultancy services. Take Tatas for instance. We have our own consultancy team without going in for foreign consultancy organisation. We won't get the deduction because we pay our own officers but that will be disallowed as capital expenses. Another

company which has not built up its own consultancy division will get deduction.

Then take for example the stamp duty and printing charges for share certificates. The stamp duty on share certificates in many States is quite high and it is not allowed as deduction. You may just say, preliminary expenses and not provide for ceiling. You may only say this that any preliminary expenses which do not result in the acquisition of capital asset may be allowed as a deduction.

Then about 35(e), he has to give prior intimation to the I.T.O. in case of shifting. The man is in the midst of change; he has to employ an expert. This provision about prior intimation is just a waste of time. It is waste of funds. It is a case of unproductive labour. This condition about prior intimation should be removed. The I.T.O. has nothing to do with the shifting. He has to be satisfied that shifting actually took place. That is all. Otherwise there won't be any deduction. Another point is this. After shifting, if the undertaking is transferred, the allowance is taken away. In the case of development rebate it makes sense to say that development rebate will be taken back if there is transfer. People who have assets may transfer them within 2 years with a view to earning development rebate. But here when you shift your whole business there is no idea of earning some allowance. A condition like this is unsound.

On 35(f) there are grave objections to the section as it is drafted. People who develop the mineral resources of the country, who create national wealth, should get a deduction for what they are spending. That is the basic idea. Suppose, in a particular,

year, there are deposits worth 5 lakhs; the main calculates, 'I will pay five lakhs to the owner of the land, incur 2 lakhs on excavation, I will sell it for 10 lakhs, and save 5 lakhs this way'. Under the existing law, he will not get deduction if the deposits are imbedded in the ground. It is, Sir,—I use the word most reluctantly—mockery of the right of the man. My point is that saying that this expenditure will not be allowed is completely wrong.

Take oil. For oil you are allowing it. Why do you make a difference for other minerals. It is, as I said, absolutely wrong.

Then, when you come to sub-section (4), see how it works in practice. Suppose you want to develop your minerals. Somebody must take a chance; it is risky; it may turn out to be profitable, it may not. You allow amortization only against the profits of that mineral which is extracted. But he may be extracting, say, five minerals. You won't give him amortisation for that mineral where he is really in need of amortisation. This expense must be allowed to be deducted.

Next point. You are allowing expenses only against the profits on the minerals if the man sells. Suppose, instead of selling it, he uses it himself, he won't get any amount for amortization. Why? Here, again, it shows the right approach to promote development is to allow deduction against the business profits generally.

Fourth point. The exemption is limited only to companies, and not to individuals. There are joint Hindu families partnerships which are doing this extraction work for manganese, bauxite, etc. In fairness, they should get the same deduction that you give to limited companies. Fifth and the last point, is about bauxite which is one of the....

MR. CHAIRMAN: We have noted that point.

SHRI PALKHIVALA: Next clause I will deal with is 14 which seeks to amend Section 64 of the Income-tax Act. You must have lot of arguments on this. I won't give a full dress arguments, but I would only highlight the important points.

I think so far as the prospective effect is concerned, I have nothing to say. You decide whether you think it fair to the community as a whole. A certain section should not get away with tax avoidance. But, the retrospective effect, I submit, Sir, is not fair. The only suggestion I want to make is that you may have some provision to tackle the problem which will otherwise involve endless litigation, and the problem which will arise out of cash being put in the common hotchpot. A man has got Rs. 50,000; he puts it in the common hotchpot. The joint family may do a number of things; it may do business or buy shares. This is bound to result in endless litigation, unless you have some reasonable provision which is fair both to the taxpayer and the State and work out rules which would apply in the case of cash being transferred after it is thrown in the hotchpot.

The next point is only a drafting matter. It is Clause 24. I was only wondering about the word "or" in the third line.

MR. CHAIRMAN: I think the word "and" will be more appropriate.

SHRI PALKHIVALA: I now come to Clause 31. To throw the burden on the taxpayer of making a self-assessment, frankly, I think, on principle, is completely wrong. I do not mind if you ask me to calculate the tax, but I may not be able to do it rightly. The Income-tax Officer was calculating my tax for the last 10

years every time wrong; there are always mistakes of, say, five rupees, ten rupees or even hundred rupees. It is not his fault.

The point is to ask a man to make self assessment and even if there is difference of opinion he must make his assessment. Today he has to make a self-assessment if his tax is upto or less than Rs. 500/- as compared to the tax payable. Now you want to reduce it to Rs. 100. You may reduce it to Re. 1. It is putting an undue burden on the citizen. It is bad enough to pay the tax but to ask to make self-assessment will be putting an undue burden on him. The professional man will be benefited. It is unproductive labour. Please do not change the law.

Next point is the assessment procedure clause 34—now section 143. This is a very important provision. At the very outset I make it clear I fully appreciate and understand the objective underlying the new section 143 which you want to make. Sir, while appreciating the laudable objective behind this new section it is my clear conviction that in practice it will not work. It will not work, Sir, in our atmosphere in the environment in which the Department has to work today and it will not work because of the complexity of our laws. To give an example of section 143 as it is sought to be enacted. You say that the I.T.O. will decide whether certain expenses which the assessee claims are *prima facie* disallowable and if they are *prima facie* disallowable then without hearing the taxpayer the disallowance should be made. *Prima facie* disallowable in Indian law is frankly something on which you will never have the Department or the assessee agree. We have four judgments of the Bombay High Court—one on National Rayon, Arvind Mafatlal, Walcott Brothers and Burmah Shell Refinery. In all these cases at the

Commissioner's level it was thought and *prima facie* there was a mistake and the High Court said there was no mistake at all. When your law is complex to say that anything is *prima facie* disallowable or allowable is meaningless. First of all you are putting a burden on the I.T.O. who is already overworked. Without hearing the assessee you want him to decide what is disallowable. Look at it from the point of view of the tax-payer. Surely his elementary right is to be heard before something is disallowed. Suppose he makes use of the right of appeal. In the meanwhile you are permitting the second assessment after hearing the taxpayer. Then you are duplicating. Look at the number of appeals in your tribunals with the accumulated arrears of work in the courts of India. Today, Sir, the number of taxpayers is 27,00,000. Suppose in the case of 1 per cent there would be two assessments then there will be 27,000 more cases. Do we need 27,000 more cases every year? As it is the system has worked but I do not think looking at it from a practical point of view it will work (a) because of pending cases; (b) atmosphere under which officers have to work, they dare not make decisions lest they may be misunderstood. In these circumstances what is the wrong with the present position.

Take provisional assessment which is on the basis of the return. Even that has resulted in a litigation in Rajasthan High Court and Bombay High Court as to in what cases there is difficulty of provisional assessment. The matter was decided by Rajasthan High Court and the Supreme Court reversed that decision. The law is so complex that you cannot afford to make any assessment not without the assessee being heard. My submission is to keep the present provision and not have the new section at all.

SHRI BENI SHANKER SHARMA:
If we do away with the second assessment would you like the new

provision to stay? There should be only one assessment either under Section 143(1) if the I.T.O. is satisfied with the genuineness of the return and treat it as final or 143(3) if he is not satisfied. Is that all right?

SHRI PALKHIVALA: Yes.

SHRI BENI SHANKER SHARMA: If the I.T.O. wants to make enquiry he calls for the assesseees.

SHRI PALKHIVALA: It is all right. It may be for a small disallowance. The point is really about the second assessment.

Then, Sir, all that is needed is not to have this elaborate section. Then, you will need a small amendment to the present section. The next important clause is Clause 39 and Clause 43. If there is a provision of the Bill to which as ordinary citizen I am against, it is this provision. I cannot see at all what public purpose it can serve. I have earned thousands of rupees as a result of this provision. It is one thing to have an income, but one has to look at the interests of the nation. What really do we need in this country today? About this registration what are all the difficulties? When the Registration law was first enacted it was not settled by judicial decision and nobody knew what to do. Even leading experts did not know what to do, how to file an election application, in form 'A' or form 'B', when to apply for renewal, who should sign, should it be partner at the date of registration or partner at the beginning of the assessment year or current year, the accounting year, etc. A leading firm Crawfers and Bailey used to file 4 separate applications for registration of their own firm, not knowing which is the right one. In Delhi, a leading firm, J. B. Dadachandji and company went to the Supreme Court when a registration was refused on a technical point. Difficulty was with

the law. There are matters where the Supreme Court has taken one view; the high court has taken a different view. Different high courts had taken different views, in what case you give registration, in what case you should not give. I started income-tax practice in 1948. This continued right up to 1962-63; it went on for a period of about 15 years if not more. By that time, 1963-64, all the points have been more or less cleared up. The Supreme Court dealt with number of cases and laid down the law. There were differences of opinion. High Courts differed from one another. But at long last, we have reached a stage when we know now what registration means. If a lawyer is competent he knows his case law; he is in a position to advise the mofussil man, look, you file your registration form this way or that way. You are now proposing completely new conditions. Everyone of your conditions will have to be re-judicially examined.

SHRI BENI SHANKER SHARMA: Do you suggest that the old law with regard to registration should not be upset?

SHRI N. A. PALKIVALA: What is the object which is sought to be achieved by this thing? We should know whether the amendment is needed or not. The official interpretation of this was that today various firms are refused registration; we want to simplify. If the firm is registered with the registrar of firms it will get registration. This difficulty about litigation will not arise. I had read the section carefully more than once.

SHRI N. K. P. SALVE: You say the law is being reversed and changed. I got this from the Ministry. The Ministry says like this:

"The registration of firms for the purposes of assessment to income-tax (which at present is independently of registration

under the Indian Partnership Act 1932) requires a subjective determination by the income-tax officer of the genuineness of the firm and leads to disputes, litigation and delays in the finalisation of the assessments of firms and their partners. The new procedure in Section 186A and 186B is designed to considerably simplify the assessment of firms and their partners by eliminating the requirements of separate registration for the purpose of assessment to income-tax and virtually recognising the registration under the Indian Partnership Act, as being sufficient for the purpose of charge of income-tax as well."

SHRI N. A. PALKHIVALA: I only confine myself to this provision and I have no hesitation in saying that this object is not achieved by the drafts as it is. ITO is not only entitled but in my opinion as a lawyer, bound to enquire whether the firm is genuine or not. If what you read out is the effect of it, I am all for it.

SHRI N. K. P. SALVE: In law this is not brought out; that is what you say. That means, improvement in drafting is called for.

MR. CHAIRMAN: We can look into it.

SHRI BENI SHANKER SHARMA: ITO is not allowed to go into determination of genuineness of the firm if the firm is registered with the Registrar of Firms. I do not think you have any objection.

SHRI N. A. PALKHIVALA: You don't need this. Under the existing provisions of the section, which is 186, you put a proviso, provided that if a firm is registered with Registrar of Firms its genuineness shall not be called in question by the I.T.O.

SHRI BENI SHANKER SHARMA: There won't be the necessity of so many amendments.

SHRI N. A. PALKHIVALA: New procedures you are evolving. It will need 20 years of litigation. How will the man from the mofussil have competent advice? There are so many formalities to be done. The mofussil lawyer does not know what the law is. I myself have grave doubts as to what Supreme Court will interpret in respect of some of the provisions. As a result of 15 years of litigation the law is established in this way. There is a firm of 6 partners. There is a father and grown-up adult son; there are four outsiders. They do business. The father may have told the son, look, whatever share you get, you get by splitting up. In such a case Supreme Court says registration should be granted. That means, what is private agreement between father and son under your new section, in such case registration must be refused. The department must be satisfied that each partner is himself entitled to some share rate which is not the condition today. Sir, the position today is that if the firm is not genuine you refuse registration. I would like to retain the provisions as they are and simply say that once the firm is registered with the Registrar of Firms its genuineness shall not be called into question. These are not big companies; you are dealing with small men, middle-class men. That's why I am strongly against registration.

I may now turn to clauses 55, 56 and 57. There, you have sought to increase the fees. I think the existing provision is that fees are refunded if he succeeds; when he does not succeed, he is not allowed. Now, you may yourself make a wrong assessment; suppose you add Rs. 200 unnecessarily, and if I want to get my two hundred, I may have to incur two hundred and fifty. Conditions being what they are, I do not think it is fair to the taxpayer.

There is one provision which is most objectionable, that is, clause 55, where you say that the Appellate Assistant

Commissioner will have no jurisdiction to condone delay in filing an appeal. It is just incomprehensible. The Tribunal can condone delay, the Supreme Court can condone delay, the High Courts can condone delays. The man may be suffering from some severe disease, or his father may have died and he may have to attend various ceremonies. Why limit it to 30 days? There is no justification at all for this.

Last one is about prosecution which you propose against persons who do not file their returns. My point is that though, no doubt, you may have such provisions as you think right for those who, as a result of not filing the return, escape tax, but please do not provide such a punishment in the case of those where the tax is already paid as in the case of salaried employees. To give you one example, I take my stenographer who has got taxable salary. I deduct the tax at source; he has no other income. He does not file a return. The man is satisfied that the tax is fully paid. Under this, he will be compelled to file a return because otherwise he may be criminally prosecuted. You compel him to file the return for nothing. Other cases may be overlooked in the welter of these returns filed by people who owe no money to the State. Therefore, this provision, I think, should be restricted only to those who fail to file a return and thereby evade tax. Cases of prosecution should be restricted to those where the person from whom the tax is due to the State, fails to file a return. My point is that for the failure to file a return, fine should be the punishment, not prosecution.

SHRI N. K. P. SALVE: About the question of amortisation, it is not very clear to me from what you have stated that we should not fix up a certain quantum.....

SHRI PALKHIVALA: I think it is not right to enumerate the types of expenditure. As soon as you start enumerating; you are leaving out

various others. My point is by way of preliminary expenditure you allow amortization in respect of those expenses which do not result in the acquisition of a capital asset.

SHRI N. K. P. SALVE: Would it be better if we put it as preliminary expenditure and pre-operational expenditure? In some countries there is such a provision. There is considerable debate in the Committee about the interpretation of clause 3(b)(v). What does it mean? Is it necessary at all?

SHRI PALKHIVALA: It is not necessary. Without this the position would be the same.

SHRI YOGENDRA SHARMA: In clause 3(d) you have said: "The proposed ceiling is not only inadequate but highly unrealistic."

SHRI PALKHIVALA: I have not said unrealistic.

SHRI YOGENDRA SHARMA: It is on page 2 last line.

SHRI PALKHIVALA: The sentence is quite different.

It is a different thing.

"While the exemption of ceiling of Rs. 4000/- per month on the tax free salary is somewhat on the low side it is not clear whether the proposed limit is inclusive or exclusive of value of perquisites. If it is inclusive of perquisites the proposed ceiling is not only inadequate but unrealistic."

श्री योगेन्द्र शर्मा : क्या आप बता सकते हैं कि आप के विचार से क्या रियेलिस्टिक होगा और क्या हाइली रियेलिस्टिक होगा ?

SHRI PALKHIVALA: It is highly unrealistic if you include the perquisites.

श्री योगेन्द्र शर्मा : आप ने कहा कि नेशनल इन्स्ट्रस्ट में भी फॉरेन टैक्निशियन्स लेने की जरूरत है जिस से हम को टैक्नेलाजी के डेवलपमेंट में मदद मिले । हम लोगों के सामने बहुत से विटनेस आए हैं और यों भी हम जानते हैं और आप भी जानते हैं कि फॉरेन टैक्निशियन्स फॉरेन कोलाब्रेशन्स के सिलसिले में आते हैं और जब फॉरेन कोलाब्रेशन किया जाता है तो उस में जो हमारे फॉरेन पार्टनर्स हैं वे आम तौर पर इंसिस्ट करते हैं और चहाते हैं कि उन के टैक्निशियन्स लिये जाएं । ऐसे कैसेज में भी जबकि हमारे जो इन्डियन पार्टनर्स हैं वे महसूस करते हैं कि कोई खास जरूरत नहीं है, मगर क्योंकि कोलाब्रेशन करना है, तो उन को फॉरेन पार्टनर्स की इस डिमान्ड को मानना पड़ता है । जब यह रियेलिटी है, तब क्या हमारा नेशनल इन्स्ट्रस्ट यह डिमान्ड नहीं करता है कि इस चीज को एन्क्रेज न किया जाए बल्कि डिस्क्रेज किया जाए ।

SHRI N. A. PALKHIVALA: It is a valid point and I see the force of it.

SHRI BENI SHANKAR SHARMA : Mr. Palkhivala you have very ably given your opinion on this Bill but what I am perturbed about is the opening as well as the closing remarks in your memorandum. How do you think that this Bill is insufficient to achieve the objects and what further things should be done to make the law more simple. You have talked about litigation and it is true. There are number of cases pending for adjudication in the High Courts, Tribunals, etc. My point is that the objective clause is very important. If we are unable to achieve the objective what is the use of passing a law. If you think that it will not achieve and what further things you would like us to do? In the context of litigation and ever-changing law would you like us to have a holiday from tax-law amendment. Then comes the question of making

assesseees honest. We have got to evolve a scheme by which we can make at best 75 per cent of our assesseees honest. These are certain things which require consideration at the hands of all citizens of the State. So my query is that will you give us at a later date the points which according to you will make us achieve the objective this Bill aims at.

श्री योगेन्द्र शर्मा : आप ने अपने मेमोरेन्डम में लिखा है कि इस बिल के जो ट्वीन आबजेक्टिव्ज हैं वे सिद्ध नहीं होंगे । आप ने अगर बिल के आबजेक्टिव्ज को पढ़ा होगा तो आप ने देखा होगा कि इस बिल के तीन मेन आबजेक्टिव्ज हैं । तो तीसरा आबजेक्टिव है, उस को आप ने मेशन नहीं किया है । मैं यह जानना चाहता हूँ कि क्या यह ओमोशन डेलीव्रेट है या वालेन्टरी है या वाईचान्स हो गई है ?

SHRI N. A. PALKHIVALA: So far as the 3rd objective is concerned, there are alternatives which are there.

श्री योगेन्द्र शर्मा : बिल में जो तीन आबजेक्टिव्ज हैं, उन में से एक तो आबजेक्टिव यह है कि टैक्स एवायडेन्स की और टैक्स इवेजन् की जो काफी बड़ी प्रब्लम हो गई है—कुछ लोगों के हिमाव से तो तीन सौ और चार सौ करोड़ रुपये का टैक्स इवेजन् होता है—उस को रोकने के लिए कुछ न कुछ मैजर्स लेने चाहिए, जिससे यह जो इतनी बड़ी प्रब्लम हमारे सामने पेश हो गई है, उस को हम टेक्निकल कर सकें । इस के बारे में आप ने अपने मेमोरेन्डम में कुछ नहीं कहा है, मगर खटकनेवाली बात यह है कि जहाँ पर आप ने आबजेक्टिव्ज का जिक्र किया है, वहाँ भी आप ने इस को छोड़ दिया है । मेरा खवाल यह है कि क्या आप का मतलब यह है कि तीनों आबजेक्टिव्ज उन दो आबजेक्टिव्ज के, जिनको आपने मेशन किया है, पूरा हो जाने से

दूरे हो जाएंगे या ये तीनों ओवजे-
क्लिच परस्पर विरोधी हैं और इसलिये बिल
में नहीं लाए जा सकते ?

SHRI N. A. PALKHIVALA: It is quite possible to combine all the 3 objectives. The reason why I have not mentioned this evasion or avoidance of tax being countered as one of the objectives is this. I have no criticism at all. So far as law is concerned, law-makers would be entitled to make laws which see to it that there is no tax evasion. I have no criticism on that. It is a legitimate object of any Parliament. I have no criticism at all.

श्री योगेन्द्र शर्मा : इस बिल में टैक्स एवाडिन्स और टैक्स इवेजन् को काउन्टर करने के लिए जो मेजर्स सजेस्ट किये गये हैं, उन के बारे में आप का कोई मतभेद है ?

SHRI N. A. PALKHIVALA: I have no objection to that at all.

श्री राम सेवक यादव : टैक्स इवेजन् की एक बड़ी समस्या हो गई है, इस को आप मानते हैं। अगर आप इस को मानते हैं तो क्या विवेक में जो प्रोजीजन्स हैं उन से टैक्स इवेजन् रुकेगा और अगर नहीं रुकेगा तो आप के क्या मुझाव होंगे जिन से टैक्स इवेजन् की समस्या को हल किया जा सके ?

SHRI N. A. PALKHIVALA: You are greatly exercised over this problem of tax evasion. I want to say this. It is a social evil. Parliament would not only be entitled but bound to take measures to stop this evil, to order priorities. There is one mistake which persists in our country, for people to think that evasion is on a vaster scale than in other countries. In other countries also there is this tax evasion; it persists in other countries too. Even in countries where taxation is so low, it is still there, where it is high, still it is

there. Where it is high, it is a more widespread evil. In Germany when taxation was at a high level it was widespread than when it was after Dr. Erhard came and lowered the rate of taxation. So long as the level of taxation is at a certain level, I think, whatever laws you make, you will find it completely difficult to check it.

SHRI N. K. P. SALVE: About shifting of undertaking, you say, no prior intimation is necessary. Against which business income will you seek the amortisation? If you sell away industry the business comes to an end.

SHRI N. A. PALKHIVALA: This will operate retrospectively. Suppose you shift the business in that year you have enjoyed your amortisation. You have enjoyed for first year, second year, etc. In the 4th year you sell the business. All the past amortisation which you have received and enjoyed is all taken back and it is taxed. You have enjoyed amortisation. It is a question of taking back like development rebate.

SHRI N. K. P. SALVE: Unamortised items will cease to be amortised.

SHRI N. A. PALKHIVALA: You may say hereafter you will not get, but not take back what was allowed in the past.

SHRI N. K. P. SALVE: About premiums, you said, this is causing hardships. This has been the concept accepted by all the centuries. In other countries where premium is paid for acquisition of asset that is treated as capital premium and not allowed as business expenditure, as revenue expenditure. Is not that position in law in other countries also ?

SHRI N. A. PALKHIVALA: Suppose he paid a certain sum. You would record that after 10 years it should be written off. Excavation is only for ten years. Then accounting requires that over a period of ten years this

amount should be written off. The whole fundamental basis of amortisation provision is that what is otherwise capital expenditure is allowed to be written off; it arises because it is capital expenditure.

I would say: anything which is really, for instance, referable to the stock in trade.

SHRI N. K. P. SALVE: What is the law in the advanced countries on this point?

SHRI PALKHIVALA: In advanced countries like Japan and New Zealand, this is fully allowed.

MR. CHAIRMAN: In UK this is not allowed.

SHRI PALKHIVALA: In UK there are various provisions for amortization. If you like we shall give you a note.

MR. CHAIRMAN: No. We have got it here.

SHRI N. K. SALVE: About the joint family, in regard to retrospectivity, we have certain provisions in the matter. About the other aspect of the matter you said that it might be difficult for an Income-tax Officer to determine as to what is the proportion of income which is to be clubbed. This is a problem that is inherent in this type of enactment. This is not something which is peculiar. What is exceptional about this?

SHRI PALKHIVALA: There will be some cases which of the same category. The man may transfer cash to his minor son. The only differentiating practice is that of "blending". And it is this blending which will create in some cases problems which do not arise normally because when the man gives a gift to his minor son, there need not be blending.

SHRI N. K. P. SALVE: The concept of blending comes in, as identification creates insurmountable difficulties. But this is also a distinction based on the legal concept of the matter: How would the necessity or the task of identifying the property be not more difficult in this case than what it is under the existing situation?

SHRI PALKHIVALA: Take an example. Supposing a cash of Rs. 50,000 was put in the joint family; the joint family had already cash of over one lakh of rupees. It is all blended. Shares are purchased; stocks may be purchased and some expenditure may be incurred for the joint family purposes, marriage expenses, etc. How will you work it out?

SHRI BENI SHANKER SHARMA: So far as the Government is concerned, it thinks that it is on account of the Supreme Court decision in 1965 that the people have gone in for creation more HUF and the natural presumption is that it has been done for the purpose of evasion of tax. To some extent it may be true. At the same time, of course, there are genuine cases when it is necessary and where the assessee out of genuine love and affection and consideration for the members of his family puts money into the common hotchpot. Do you subscribe to this view that actually there is avoidance of tax on large scale on this account; or is it an exaggerated view?

SHRI PALKHIVALA: There is avoidance of tax. I do not have figures before me. But I don't think the loss of the revenue would be very appreciable.

SHRI BENI SHANKER SHARMA: So far as revenue is concerned, I agree that it would not be much. But suppose, if we legislate like this that any payment to a Hindu undivided family hereafter would be subject to gift tax, will that counteract the tendency to avoidance of law.

SHRI PALKHIVALA: It would be a deterrent to blending with the joint family. A gift tax would itself be a deterrent.

SHRI N. K. P. SALVE: Is it equitable?

SHRI PALKHIVALA: So far as the future is concerned, I think one could justify this provision.

श्री योगेन्द्र शर्मा : आप ने कहा कि 1965 के बाद जिन लोगों ने एच०यू० एफ० में अपना पैसा ट्रांसफर किया है उस को फिर इस अमेंडमेंट में लाने से बहुत कठिनाइयां होंगी । वेशक होंगी । लेकिन प्रीविलेज यह पैदा होती है, कम्पनी के बारे में मैं नहीं जानता मगर देहात के बारे में जानता हूँ कि वहाँ पर लैंड सीलिंग ऐक्ट बहुत सी स्टेट्स में बने हुए हैं कि एक फ़ेमिली 30 एकड़ से ज्यादा लैंड नहीं रख सकती । जब यह लेजिस्लेशन आया तो बहुत से लैंड ओनर्स ने अपनी फ़ेमिली का फिक्डशस पार्टीशन कर दिया ताकि सीलिंग से बच सकें । बहुत से लेजिस्लेशन में इस चीज को काउन्टर करने के लिये ऐसा भी किया कि कोई पार्टीशन या ट्रांसफर प्रीपर्टी का रेट्रोस्पेक्टिव इफ़ेक्ट से ऐडमिनिस्ट्रिवल नहीं होगा फौर दी परपज आफ़ ला ऐसा कानून बहुत सी स्टेट्स में अप्रेशन में है लेकिन उस को ही सर्कमवेंट किया जा रहा है । इसी चीज को इस टैक्सेशन के प्लैंक पर ले आते हैं और एच० यू० एफ० में जो सहूलियत है उस को हासिल करने के लिये बहुत सी सैल्फ़ एक्वायर्ड प्रीपर्टी जो है और जो एच० यू० एफ० में नहीं जाती उस को भी इस कन्सेशन को अवैल करने के लिये 1965 के बाद लोगों ने दिखाया एच० यू० एफ० में । पता नहीं फिक्डशस ट्रांसफर करना सही होगा कि नहीं । मगर यह स्थिति है । तो यदि लैंड सीलिंग

में रेट्रोस्पेक्टिव इफ़ेक्ट वैलिड है सोशल इक्विटी की दृष्टि से भी जस्टिफ़ाइड है तो यहां पर क्यों नहीं होना चाहिये ?

SHRI PALKHIVALA: May I make the correction it is not as if Government said it is our policy, hon. Members have one idea in mind, draw one point of distinction between land reforms cases. There was lot to be done to circumvent the law, to defeat the law. Here by contrast upto today and even now law permits a Hindu to throw his property into the HUF. There is no question of any law being defeated because today the law permits. What you want to say in fairness to society as a whole only one section cannot get away with this tax benefit. There may be Hindus who may not have Hindu joint Family. Now, you are going to make a law which is fair to society. This will cover by and large 95 per cent genuine cases which were properly done under the law.

श्री योगेन्द्र शर्मा : उस डिस्टिंक्शन के लिये क्या करना चाहिये ? उस के बारे में कुछ कांस्ट्रक्टिव सुझाव देना चाहते हैं आप सोसायटी के इंटरेस्ट में ?

SHRI PALKHIVALA: That is why I am suggesting it as 1969. Your Bill was introduced in 1969 and you will give it effect from 1970. People will try and say we had partitioned in August, 1969. In order that they may not do that you can give retrospective effect as from April, 1969. So, only give retrospective effect as from April, 1969 when this provision was put into the Bill.

श्री योगेन्द्र शर्मा : 1965 में जब सुप्रीम कोर्ट ने अपना फैसला दिया तो उस समय भी तो गवर्नमेंट का इंटेंशन बहुत साफ़ था कि सरकार इस चीज को नहीं चाहती है 1965 में सुप्रीम कोर्ट में गवर्नमेंट की ओर से इस बात को कहा गया कि सैल्फ़ एक्वायर्ड प्रीपर्टी एच० यू० एफ० में ट्रांसफर करने से

नो टैक्स रीलाफ या कन्सेशन मिलने की बात है सरकार उस को नहीं चाहती थी । मगर सुप्रीम कोर्ट ने कहा कि नहीं जो ला है उस का यह इंटेंशन नहीं है ।

SHRI PALKHIVALA: If I may make the correction, it is as if Government said it is our policy. Government said there is an existing section. We construe it to include such a provision. The courts said no. There was no question of Government declared policy. All that came in 1969.

SHRN BENI SHANKER SHARMA: So far as the retrospective application of this clause is concerned we understand you are totally against it.

SHRI PALKHIVALA: Except that it should be given effect from 1969.

SHRI BENI SHANKER SHARMA: As regards the general question of retrospective application of law are you in favour of retrospective application as a general rule?

SHRI PALKHIVALA: I think retrospective application should be avoided as far as possible. It is an unhealthy practice.

SHRI TENNETI VISHWANATHAM: The Bill proposes to go into the finances of the HUF. Suppose I throw Rs. 2 lakhs in the hotchpotch and the Bill provides for several complex procedures to trace those Rs. 2 lakhs. Instead I suggest that this amount may be disallowed and may be added to my income and taxed accordingly. It is to prevent me from throwing my money into the HUF to evade tax. Therefore, is it their objection to tax my Rs. 2 lakhs should they do it instead of entering into all complexities.

SHRI PALKHIVALA: Your Rs. 2 lakhs would be the capital that cannot be added to your income. It is only income arising from Rs. 2 lakhs which is transferred to the HUF.

SHRI TENNETI VISHWANATHAM: If I give away Rs. 2 lakhs it means I am having the tax on the income which is attributable to Rs. 2 lakhs corpus.

SHRI N. A. PALKHIVALA: The income arising in subsequent years from those two lakhs.

SHRI N. K. P. SALVE: Some witnesses have opposed this provision. They rejected the objectives. But you have accepted the objectives. You say it is wrong to make assessment and demand tax from assessee in his absence which is likely to give occasion to disputes and litigation. You say it will give rise to duplication and unnecessary increase in unproductive work. If the objectives are laudable what is a simple procedure? Can it be said that in first assessment, if it is made in absence of the assessee if he disputes the computation by the I.T.O. on the disputed items will no tax be payable by him?

SHRI N. A. PALKHIVALA: Give him right of appeal, stay of tax. That would be justified. You amend 143 (1) to permit the I.T.O. to make assessment disallowing certain things without calling for the assessee. But give the assessee the right of appeal and stay of tax. If the idea is to give I.T.O. without resort to 147 the right to make a second assessment after calling the assessee I do not see what public purpose would be served.

SHRI N. K. P. SALVE: If we amend 143(1) that will exhaust the right of the department completely. *Prima facie* assessment is not to be taken as proper assessment. There

has to be a certain measure of expeditiousness brought about. I.T.O. makes an assessment. You go on appeal.

SHRI N. A. PALKHIVALA: Suppose there is a G.P. case. I.T.O. says, your gross profit was 10 per cent I make assessment without calling you. After 6 months he can call the assessee and make it 20 per cent.

SHRI N. K. P. SALVE: It will not include addition of G.P. It is absolutely clear additions.

SHRI N. A. PALKHIVALA: G.P. is 6 per cent; it was taxable. After 6 months, without resort to 147 and without fulfilling all the conditions of 147 he can reopen assessment and say, I don't accept your G.P.

SHRI N. K. P. SALVE: Whether it is adequate or not, he has not applied his mind at all.

SHRI N. A. PALKHIVALA: The mischief is there. The evil of two assessments on the same assessee on the same return for the same assessment year remains.

SHRI N. K. P. SALVE: It remains there even today.

SHRI N. A. PALKHIVALA: It is not there today. It is only on the basis of return.

SHRI N. K. P. SALVE: This assessment is to be made under the new amended law. Lesser hardship should be caused to the assessee.

SHRI N. A. PALKHIVALA: How will it be less of a hardship?

MR. CHAIRMAN: Let us hear him; let us not argue with him. After we get information we shall see at the comments stage.

SHRI N. K. P. SALVE: Let us have comments in writing.

SHRI N. A. PALKHIVALA: I shall give you.

MR. CHAIRMAN: On whatever points you want, we can request him to send further Memorandum.

SHRI N. K. P. SALVE: Still, I would like to ask some questions.

MR. CHAIRMAN: We need not go on arguing. You may submit subsequent Memorandum on such matters where Members want further clarification. It will be helpful to the Committee also.

SHRI BENI SHANKER SHARMA: The ITO makes some additions without calling for the assessee, the assessment is accepted as final. There should not be power for the ITO to reopen the assessments. If we make distinction that those cases which have been completed will not be taken up again will that be all right? What do you say to that?

SHRI N. A. PALKHIVALA: It is all right, unless information is there which make it necessary to change his opinion. Today, assessment after assessment is completed; concealment of income etc. you take up. Under the new law what will happen is, even if there is no information or concealment, even when the assessment is made and he has paid the tax, the ITO will say, after 6 months, Look, I have some little leisure; I will look into your assessment.

श्री योगेन्द्र शर्मा : दोनों सवाल एमोर्टाईजेशन के बारे में हैं। आप ने कहा कि डेवलपमेंट के खयाल से रहने की जरूरत है। साथ ही साथ काप्लेक्सीटीज आफ ला अवायड करने के लिये यह जरूरी है। इसी विचार से एडमिनिस्ट्रेटिव रिफार्म्स कमीशन ने अपनी रिक्मण्डेशन नम्बर 13 में कहा है जिस के बारे में आप के विचार जानना चाहता हूं :

SHRI YOGENDRA SHARMA
(contd)

"The advantage of introducing complexity in the Income-tax law and its administration may be set off against the possible advantages envisaged by the use of . . . as an instrument of providing incentives to various schemes of development. Whenever the need for providing such incentives arises, an attempt should be made, as far as possible, to achieve the objective aimed at through methods other than indirect....."

तो यह एडमिनिस्ट्रेटिव रिफार्मस कमीशन की रिक्मेंडेशन एमोर्टाइजेशन के मुतालिक है, जिसको इंडाइरेक्ट वे आफ गिविंग बेनीफिट्स फोर डेवलपमेंट भी समझते हैं। तो इस के बारे में आपके क्या विचार हैं ?

दूसरी बात मैं यह जानना चाहूंगा एमोर्टाइजेशन के बारे में आप को मालूम होगा कि निकोलस केलडोर ने हमारे टैक्सेशन सिस्टम की स्टडी की है और उन्होंने अपनी एक फाइंडिंग दी है, उस के बारे में आप की क्या राय है क्योंकि वह बहुत रिलेवंट है कि एमोर्टाइजेशन देना चाहिए या नहीं देना चाहिए ? उन की फाइंडिंग इस प्रकार है :—

"In India at the present time in addition to the normal depreciation allowance, additional depreciation allowances are given which double or more than double the normal rate for the first five years after installation and then development rebate @25 per cent is given on the whole amount of the capital expenditure which is additional to the depreciation allowance. The effect of these various concessions is that in many cases the discounted value of the various allowances exceeded the total expenditure . . ."

डेवलपमेंट के लिए बहुत सी सब्सीडी और रिबेट गवर्नमेंट ने दिये हैं जैसे डीपमाइनिंग

के लिए सब्सीडी है इत्यादि इत्यादि। इन सब चीजों के लिए हिन्दुस्तान में डेवलपमेंट के विचार से काफी इंसेंटिव हैं। इसके बावजूद भी आप चाहते हैं कि एमोर्टाइजेशन की सीलिंग बढ़े इस का क्या जस्टीफिकेशन हो सकता है ?

SHRI PALKHIVALA: This is no longer alone. This was at a time when initial depreciation and extra depreciation were permitted. But all those have now been taken away, and we are left now with only depreciation and development rebate. If I may say so, the mistake we make is to think that India is the one country which gives these benefits. In fact, every progressive country in the world gives these benefits.

श्री योगेन्द्र शर्मा : ग्रेट ब्रिटेन जिस के ला के मुताबिक हमारा टैक्सेशन लेजिसलेशन है वहां पर एमोर्टाइजेशन की कोई गुंजाइश नहीं है जहां तक मुझे मालूम है। मैं आप को बतलाना चाहूंगा कि ग्रेट ब्रिटेन में 1920 के रायल कमीशन ने इस चीज के बारे में जो अपनी फाइंडिंग दी है वह बहुत इंट्रेस्टिंग है। हमारा ला उसी पर वेस करता है। उन्होंने कहा था :—

"In accordance with . . . no allowance was given for the depreciation of any assets which was not created out by the expenditure of capital". Definition is very important. And secondly, ". . . whose useful life was 35 years or longer".

इस तरह से आप देखें कि एमोर्टाइजेशन वाली बात इस के बाहर चली जाती है। यहां तक कि उन्होंने डेप्रीशियेशन के लिए भी कोई एलाउन्स नहीं सजेस्ट किया था। तो मैं यह जानना चाहता हूँ किस आधार पर आप एमोर्टाइजेशन की सीलिंग को बढ़ाना चाहते हैं जबकि उन मुल्कों में जिनको हम प्रोग्रेसिव कान्ट्रीज मानते हैं और इंग्लैंड जो टैक्सेशन के मामले में हमारा मदर कन्ट्री है, ऐसी व्यवस्था नहीं है।

श्री वेणी शंकर शर्मा :

I don't accept that England is our mother country.

श्री योगेन्द्र शर्मा : यही नहीं हमारी पार्लियामेंट का सिस्टम भी उसी पर बेस है । इसके अलावा आप देखें कि पूरे योरोप में स्वीडन टैक्सेशन के मामले में सबसे एडवान्स्ड स्टेट है । वहां भी जहां तक मुझे मालूम है, इमपोर्टाइजेशन की गुंजाइश नहीं है । इसलिए मैं यह जानना चाहता हूं कि आप इमपोर्टाइजेशन की सीलिंग को क्यों और बढ़ाना चाहते हैं ? जब और कन्ट्रीज में यह नहीं है तो इस की मांग करना ठीक नहीं है ?

SHRI PALKHIVALA: This is not a correct impression. Apart from Burma, if you take ten business houses and compare the tax, amortization and everything, you will find that the tax will be higher in India than in any other country.

With great respect, we are talking of limited companies. The point is that if we compare the actual laws in the developing countries and the under-developed countries, you will find that the total burden is high and to delude ourselves into thinking that it is not so is wrong.

Take companies which work in various parts of the world. Take ICI, Hindustan Lever, etc. They have got their operations in 35 countries. Just see the operations. I have tried to make some study of this before making this statement.

You are talking of 2½ per cent. You gave the example of Sweden. In Sweden it is 30 per cent.

MR. CHAIRMAN: The question comes up that there is prosperity in one country and not in the other.

SHRI PALKHIVALA: I follow that there is good reason why India should remain highly taxed. It is for Parliament to consider. I am on the question of the two points you have made— firstly, it will cause hardship on an assessee who is not present and assessment made and additions made. Secondly, you said it will duplicate. On the first question the objective of the Deptt. is in such cases where an assessee files a return, files profit and loss account, submits other data and the Deptt. finds without necessitating an assessment under 143(ii) certain additions can be made *prima facie* and assessment completed. Later on, on closer scrutiny he finds this is not adequate and he wants him to come again. This is not to be rule but exception. If that is what is sought to be achieved what quarrel you would have with this objective and what would you suggest to achieve it?

SHRI PALKHIVALA: This is the crux of the whole matter and ultimately it is the vital issue concerned. What is the present position? The present position is if an assessee's return is accepted even though no additions can be made a second assessment can never be made unless the conditions of 147 are satisfied. What you propose is to permit the ITO not only to make assessment on the return but even go behind the return and make additions and further put the assessee to the risk of being reassessed without the conditions of section 147 being satisfied. First, Sir, it is duplication. It will not simplify. If the point is that in very few cases the man will be called then in those very few cases the assessment cannot be made under this type of provision but only after calling the assessee.

SHRI N. K. P. SALVE: What would you like us to do achieve it?

SHRI PALKHIVALA: The point is in which way you have found the present law defective. There is one defect. You are not permitting your

officers to make additions without calling the assessee even if he wants to make an obvious addition. Your objective is to enable the officer to make an assessment even without calling the assessee. What I fail to see is how can the possibility of two assessment ever simplify.

SHRI N. K. P. SALVE: Consider this very carefully. Assume we put under 143(i) that where an ITO wants to make an assessment without calling the assessee he intimates to the assessee this, if you do not object I will make an assessment and issue a demand notice. If he receives the objection then the assessment would be made only under 143(iii).

SHRI PALKHIVALA: That gives rise to doubt. The finality of assessment is the very base of the scheme. It can only be re-opened in the ways known to law. Once you give this power you are permitting ITOs to complete assessments knowing that these are not right assessments and more is to be investigated.

SHRI SHAH (Joint Secretary): You are aware we have started this small income scheme where we make 15,000 by merely accepting the returns and adding obvious additions. Our experience so far is this has not led to many appeals. I am only placing before you the objective underlying this section in order to get enlightenment from you from the legal point of view. We have at least 15—20 lakh cases which are small. These small cases come under this small income scheme which is not statutorily permissible we are putting it on par with 143(i). Previously there was provision of assessment where some additions or some disallowance should be there only thing it was not called final and we were still issuing notices under 139 and examining the books and making final assessment. Only the difference arises we call it final and retain the power of issue of notices and that power we want to restrict as these notices need not be used frivolously by the ITO unless he is convinced there is reasonable ground to

issue a notice otherwise it will be treated final. I feel this is the only hope of the Administration whereby we can accept a very very large number of assessments under this section and we hope the enlightened assessees will make efforts and returns will be submitted in a manner where we just accept it and we do not examine. But as you pointed out or Mr. Salve pointed out a case where I am accepting the gross profit percentage of 8 per cent I consider it reasonable but I find this gross percentage of profit which has been hitherto to be assessed is an understatement. 147(b) won't come to my rescue. I will examine books to satisfy myself that this percentage or profit shown by the return is reasonable. Actually it is not reassessment. What we assess under 143(1) is provisional assessment, we call it final. That is all. All this administrative machinery etc.; issue of notice, writing, despatch, postage, everything, only this we restrict in a few deserving cases. I would feel very happy if we can bring this conception into legislation.

SHRI BENI SHANKER SHARMA: There should be some finality somewhere. Our officers should take up quick decisions. So far as equity is concerned, we suffer from this hesitant attitude of the Executive. Let the ITO look into such cases. Let us decide that these are the cases which he can complete without calling for the assessee. Let him say, these are cases requiring scrutiny. That will solve the problem. He will complete those assessments which are clear and he will keep back those cases which require examination and close scrutiny. There should be some finality in the cases of assessments made. The Democles' Sword should not hang over the head of the assessee at all times. The ITO need not make roving enquiries. He has got to take quick decisions. I know, it may not always be correct; but at all the same, he should try to make quick decisions.

SHRI PALKHIVALA: I may like like to give a coherent reply if I may, without interruptions. I have not the

slightest doubt in my mind, that what I am saying here is right. I will tell hon. Members what I think, with examples, and how it will work. Either you are doing it for the benefit of the assessee or you are not doing it. I can't imagine one single honest assessee throughout India who will say, he wants this provision. I cannot imagine one honest assessee saying this. Dishonest assesseees may say this, but not an honest assessee. He wants his assessment to be finished once for all. He wants to pay his tax and he wants to be let alone thereafter. The basic right of the citizen is this, he should be left alone by the Government. Take whatever tax you want, and leave him alone. There is the honest assessee. He goes to the ITO; he files his return. ITO will complete assessment without calling him. If there is any information that the return was not correct, or that income was concealed, there is power under 147, and that power will be exercised. But there is a case where conditions of 147 are not satisfied. There is no information, no question of concealment of income. Why should any honest assessee who has paid all tax be assessed again? Leave him alone. For God's sake, you have taken 80 per cent., why should he be called again? He will not be called again if you don't want. Then why do you want to give power? I don't see how you can restrict his power. What is the position today? The ITO has the assessee before him and he has to make up his mind. If you want to call, call him and finish the assessment; whatever you do, make your final order. No citizen will have to run the risk of being called again and again. I can understand dishonest assesseees benefiting by this; but I dare say, no honest assessee will benefit by this. If I am unable to file some return, if the ITO wants me to produce some accounts, I produce them, then I destroy the vouchers etc. Nothing remains. There are people who may not keep their papers once the assessments are completed.

You want to let the Democles' Sword hang on his head. Without getting any new information, without charge of concealment, after 3 years, ITO will call me. There are people who make it a business to harass their fellow-citizens. There are such people. But why should any honest man be harassed like this? How can you improve the position? What is the difficulty? What you say is: Make a shipshed check; accept it and allow him. After 6 months again call him. What is this? Is it in the interest of the efficiency of the Department? You permit shipshed assessment to be made. How can you prevent it? The ITO has cases before him whom he will call and whom he will not call. What do you want this provision for? What is wrong with the present law? As I see it, and I speak with some experience of people who are really, honestly, paying their taxes, all that you need is this. My suggestion is this. Make a change in 143(1) to say that without calling the assessee certain obvious items may be disallowed, etc. But when that is done, that is final assessment. You need not call him again. I am not aware of any law like this. Take anything like Customs, Excise, Sales-Tax etc. Is there any Central or State law where the man will have the whole assessment completed and without concealing anything, he would be called again? This is the first law in the history of the country like this. It is a torture for the honest man. Dishonest don't suffer; dishonest people will be happy when they see some ITOs may never reopen their cases, but it is the honest man who bears this colossal burden. There are many direct and indirect taxes in the States and in the Centre. Have you heard of any law either in the Centre or in the States, where, without concealment, without anything of that sort, the tax-payer is called upon to come again? Have you heard of such a thing in respect of Customs or Central or State Excise? Have you heard of it? You have not heard of it. It is only in cases of evasion, concealment of in-

come, income escaping taxation, etc. that second assessment is allowed.

The important principle of fiscal jurisprudence is this: Once you make a final assessment, let the man alone. The State must not bother him any more thereafter. You are basically going against this concept of fiscal jurisprudence. It is the first law where without concealment, without the income escaping assessment, you are permitting this to be done. Take the G.P. case for instance. A small-trader is there; he is a small shop-keeper. He gets 15,000 income. He could have been called and his case decided. But what happens? After one year, he is told to come again. The ITO says: "I was in a hurry then; I want to go into the details now; you please come." The man rightly asks "Then why did you complete my first assessment?" "You should have called me." Therefore, how can it simplify matters if you give power to call a man twice when you can do it once only? Is it not simple arithmetic?

MR. CHAIRMAN: You have made your point very clear and very effectively.

SHRI PALKHIVALA: First make the assessment and then apply your mind! Have you ever heard of such a thing?

MR. CHAIRMAN: We shall hear him again at 10 o'clock in the morning tomorrow. Thank you, Mr. Palkhivala.

(The witness then withdrew)

(The Committee then adjourned for lunch.)

(The Committee reassembled after lunch at 15.00 hrs.)

II. The Maharashtra Chamber of Commerce and Industries, Poona

Spokesmen:

1. Shri G. L. Pophale, *Income Tax Consultant, Bombay.*
2. Shri M. S. Vartak, *Partner Managing Agents, Kirloskar Oil Engines Ltd., Poona.*
3. Shri V. G. Phide, *Partner, Gadre & Bhide, Chartered Accountants, Poona.*
4. Shri V. B. Kirtane, *Chief Operations Executive, Kirloskar Oil Engines Ltd., Poona.*
5. Shri Shantilal Shah, *Income-tax Consultant, Poona.*
6. Shri Y. P. Pandit, *Chartered Accountant, Poona.*
7. Shri B. R. Sabade, *Secretary, Maharashtra Chamber of Commerce and Industries, Poona.*

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: I welcome you, Mr. Pophale, and your other colleagues. You represent Maharashtra Chamber of Commerce and Industries. We have received your memorandum. Would you like to just highlight some of the main points in your memorandum?

The Chairman draw the attention of the witnesses to direction 58 of the Directions by the Speaker.

SHRI G. L. POPHALE The first point is about the registration of firms|recognition of firms. I think there is not much difference between the procedure suggested about recognition of firms and the existing procedure and the law applicable in regard to registration of firms. My first suggestion would be to scrap the entire amendment relating to recognised firms. The reason is the intention of introducing

the concept of recognised firm was once a firm is registered with the Registrar of Firms then it should automatically be recognised by the Income Tax Department without going into the question whether the firm is genuine or not. But that suggestion has not been accepted wholesale and all that they have done in this amending Bill is to change the name from registered firm to recognised firm. If under the existing law one is entitled to get registration for a firm one may not get it if the concept of recognised firm is introduced. There is clause 186(a) sub-section (i) (c)—one of the conditions for getting a firm recognised is none of the partners of the firm has at any time during the previous year any right, title, interests in the share income or property of the firm as such of any other partner of the firm." As you are aware the Supreme Court held that even if one partner of a firm is interested in the share of another partner of the firm still the firm has to be granted registration because the relation has to do nothing with the genuineness or the validity of the firm as such. This provision really is added in such a way that if you could get registration under the existing law you will be deprived of it under the new concept of recognised firm. Otherwise, there is no other difference whatsoever between the two concepts and procedure as is contemplated under the new concept as it is under the old Act.

SHRI N. K. P. SALVE: Mr. Pophale, you have started by saying that the law as contemplated in the Bill does not bring about any change whatsoever in the law established under the existing provisions and as contemplated by law. Do I understand you to say that so far as the law of registration is concerned excepting for the change in the nomenclature there is no other change contemplated?

SHRI G. L. POPHALE: One change is there, that is, (c).

SHRI N. K. P. SALVE: But for the change (c) there is no other change in substance or in procedure.

SHRI G. L. POPHALE: Yes.

SHRI N. K. P. SALVE: That means, the law is being kept as it is. If that is so, subject to what we may say in (c), why do you say, it is worse off than any other law? If law and procedure is the same, how is this any inferior or how is this likely to cause any great hardship than the other law?

SHRI G. L. POPHALE: There is this concept of recognised firms. In that concept one more addition is made in the amendment so as to get over the decision of the Supreme Court.

SHRI N. K. P. SALVE: If this provision—so far as it relates to compulsory registration—is taken out, this law is as good, and the nomenclature of this law is as good and as bad as the other law.

SHRI G. L. POPHALE: I don't see any difference.

SHRI N. K. P. SALVE: This enactment's purpose is not merely not to disturb earlier law, but to simplify the procedure of registration, so that the people are not put to any hardship and harassment. This is what the Ministry says. If that is so, do you think, this view of the Ministry is properly brought out in the drafting? This is what the Ministry says:

"The registration of firms for the purposes of assessment to income-tax (which at present is independently of the Registration under the Indian Partnership Act, 1932) requires a subjective determination by the Income-tax Officer of the genuineness of the firm and leads to disputes, litigation and delays in the finalisation of the assessments of firms and their partners. The new procedure in Sections 186A and 186B is designed to considerably simplify the assessment of firms and their

partners by eliminating the requirements of separate registration for the purpose of assessment to income-tax and virtually recognising the registration under the Indian Partnership Act as being sufficient for the purpose of charge of income-tax as well."

SHRI N. K. P. SALVE: Therefore, we want to obviate even this difficulty of proving the genuineness of the firm. When you have made registration under the Partnership Law, that ought to constitute a *prima facie* proof of your genuineness and that the income-tax Officer must accept, of course, unless he proves to the contrary. Do you say, the drafting of the law and the brief given to us are in harmony? What is your view?

SHRI G. L. POPHALE: No. It is wrong. If the Department thinks that the ITO or some other authority cannot go into the question about the genuineness of the firm . . .

SHRI N. K. P. SALVE: For purposes of assessment to income-tax, it is said here, 'virtually recognising the registration under the Indian Partnership Act as being sufficient'.

SHRI G. L. POPHALE: Is the Registrar of Firms entitled to go into the question of the genuineness of the firm?

SHRI N. K. P. SALVE: The question is not that. We want to make it open to the I.T.O. to go into the genuineness—but only in such cases where disputes of registration are there. That is, if he feels that *prima facie* grounds are there for him to doubt the genuineness. Otherwise normal course investigation applies. That should be accepted *prima facie*.

SHRI G. L. POPHALE: This is just like producing one more piece of evidence. I have got it registered under Registrar of Firms. Consider these.

SHRI N. K. P. SALVE: Do I understand you to say that the law as it stands does not make it incumbent upon the I.T.O. to accept this proof of registration as virtually conclusive of the matter?

SHRI N. K. P. SALVE: That is one aspect of the matter. I am drawing attention to this because we are anxious to obviate and eliminate or at least minimise the avenues which cause the litigation.

SHRI G. L. POPHALE: These amendments are based on the recommendations of the Administrative Reforms Commission.

SHRI N. K. P. SALVE: That is not the gospel for us. Neither Bhoothalingam's report nor that of the Administrative Reforms Commission is a gospel to us. We would like to enlighten ourselves independently and tell it to the Parliament. What do you think about it? Will it be an improvement? He will *prima facie* accept registration under the Indian Partnership Act as sufficient for the purpose unless he shows that it is otherwise not genuine.

SHRI G. L. POPHALE: At present the burden lies upon the firm to prove that it is genuine. At the most, by getting firms registered with the Registrar of Firms the burden will be shifted. That is all.

SHRI N. K. P. SALVE: Will that not be a substantial relief?

SHRI G. L. POPHALE: To the assessee? —Yes. But the question is this, will it not open the doors for legal avoidance?

SHRI N. K. P. SALVE: That is what we want you to tell us. We want you to tell us this. We do not want to shut out the ITO from independent enquiry. Will it be an adequate safe-

guard to accept this registration and thereafter if the smells something of a rat he can go into the whole thing? Will that be an improvement?

SHRI G. L. POPHALE: There will be improvement to this extent that the burden will be shifted from the Assessee to the Department.

SHRI BENI SHANKER SHARMA: My colleague has read out the Department's briefing. It says that this enactment is going to obviate the necessity of certain procedure which was hitherto being followed. The procedure is going to be simplified. The ITO went into the genuineness of the firms themselves. Now, if the firm is registered with the Registrar of Firms, he is not further required to go into it.

SHRI G. L. POPHALE: With respect to Registrar of Firms, I would say, he has nothing to do with accepting or not accepting. He is merely a recording officer. He does not go into anything.

SHRI BENI SHANKER SHARMA: Therefore, it is in the interest of the assesseees and it will help the assesseees. Here the nomenclature is also being changed—from registration to recognition. All the firms registered up till now shall have to undergo through the test laid down now. Do you think that by recourse to Clause (c) many of the firms which are enjoying registration for 5 years or 10 years or 20 years might be denied registration?

SHRI G. L. POPHALE: Wherever we find the principle laid down by the Supreme Court applies to certain firms, all those firms will be affected. Normally it should not in majority of cases.

SHRI BENI SHANKER SHARMA: The ITC shall have to undergo the formality of registration or recognition *de-novo*.

SHRI G. L. POPHALE: He shall have to go into the question every time. That is on the first occasion when he is going to accept or not accept....

SHRI BENI SHANKER SHARMA: Suppose this sub-clause (c) is deleted. Do you think that the clause will be simplified?

SHRI G. L. POPHALE: The other provisions are such.

SHRI BENI SHANKER SHARMA: You object to this sub-clause?

SHRI G. L. POPHALE: Yes. If he is a *benami* or if he has got the interest of any other partner, the firm will not get recognition.

SHRI N. K. P. SALVE: Amongst the partners, if a partner is *benami* then this will hit. Otherwise, will this apply?

SHRI POPHALE: This will not apply.

SHRI N. K. P. SALVE: The fact that someone is sub-sharing the profits should not mitigate against the registration as such. Here also that principle stands that each partner must disclose his beneficial interest in the deed and if that is so, then that is the end of the matter.

SHRI POPHALE: Then probably there will be no trouble. But how is it that you are going to allocate the profits?

SHRI N. K. P. SALVE: The difficulty is not about allocation of profits. The point is this. Supposing there are three partners, A, B and C. A part of the interest of C belongs to A. But in the Partnership Deed the three are known as equal partners, whereas actually part of C's interest belongs to A....

SHRI POPHALE: The question is this: What are their individual shares? When the deed itself shows that out of, say, my share half is to be given to somebody else, then the shares can be determined, then this will not apply.

SHRI N. K. P. SALVE: Yes, this will not apply.

SHRI POPHALE: But is it contemplated?

SHRI N. K. P. SALVE: That is what is contemplated. It is a question of drafting. I ask you another question. What objection do you have if two partners are forced to write their genuine interest in the partnership deed? Why should they not? What prevents you from mentioning in the deed your correct beneficial interest?

SHRI POPHALE: Nothing. But once you recognize the firm as such on the basis of it, you must allocate their shares according to the profit sharing or loss sharing ratio as given in the deed.

SHRI N. K. P. SALVE: So far as the firm is concerned.

MR. CHAIRMAN: How do you say that it is different from the recommendations of the ARC?

SHRI POPHALE: The condition (e) was not mentioned in the recommendations of the Working Group....

MR. CHAIRMAN: We are concerned with the ARC, not with the Working Group.

SHRI POPHALE: Next point is about Section 64(2)—Clause 14. I don't think that anybody can take objection to the principle underlying it. But is it worth while making it?

SHRI N. K. P. SALVE: The simple question is of equity.

SHRI POPHALE: There is no equity in this particular section.

SHRI N. K. P. SALVE: Why should a person only via HUF be allowed to get out of the mischief?

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SHRI POPHALE: Because this is personal law as applicable to a Hindu. Because it is only a Hindu who has got self-acquired property, he can make it.

SHRI N. K. P. SALVE: The concept of 'blending' comes up in Hindu law, and it is peculiar to Hindus and thus it should be allowed: that is what you say?

SHRI POPHALE: As far as the law is concerned, it is already there. What is the object underlying that provision which is certainly going to be enacted with retrospective effect on top of it?

SHRI N. K. P. SALVE: That is a different aspect.

SHRI POPHALE: Then the principle is not in dispute, unless it is really a large amount of tax that is involved.

MR. CHAIRMAN: What is your information?

SHRI POPHALE: From the few cases that have come up till now, I don't think the tax involved will be more than 10 lakhs of rupees in a total of 60 to 70 crores.

SHRI N. K. P. SALVE: What is the basis of your estimate?

SHRI POPHALE: Because hardly half a dozen cases came up before the Tribunal in the course of three to four years.

SHRI N. K. P. SALVE: How many cases came?

SHRI POPHALE: Half a dozen cases. Unfortunately, law being as it is they failed. Everybody failed. So, if there is loophole which is going to cause the State a loss of crores of rupees then it is all right but here it is a very small amount.

MR. CHAIRMAN: Other witnesses have told us that a large number of persons took advantage of it.

SHRI POPHALE: Yes. After the Supreme Court judgement people have taken advantage of it.

SHRI BENI SHANKER SHARMA: As regards prospective application do you think it will be hard to genuine assessee who have got a genuine desire to act according to their personal law and it will be an infringement on their personal law.

SHRI POPHALE: Yes. And, Sir, why stop at income tax. Why not apply it to the wealth tax.

SHRI N. K. P. SALVE: Now, I want to ask you Mr. Pophale if a Hindu father relinquishes his right in a HUF property then nothing under the law can later on make him liable to taxation even by fiction of law for an income earned by a minor or wife in respect of that property which he had given to HUF. Is that a proposition of law or emerges on account of drafting of the Bill?

SHRI POPHALE: It is on account of drafting of the Bill. My next point is about the fee that is being charged and proposed to be charged under the Bill. I do not know what is the justification for increasing the fees.

SHRI BENI SHANKER SHARMA: Do you think by increasing the fees it will reduce the number of appeals?

SHRI POPHALE: In small cases the appeals may go down but then the other opportunity for the small assessee is to go to the Commissioner. The public is not satisfied with the manner the Commissioner is disposing off the appeals.

SHRI BENI SHANKER SHARMA: The principles of natural justice is to be assured. We are bound by the

view that justice should be made cheaper and not dearer. Will this make justice dearer and not cheaper?

SHRI G. L. POPHALE: Yes.

SHRI N. K. P. SALVE: We want to avoid frivolous appeals being put up. Can we make provision of cost? That will be duly taken care of. That will be a deterrent to the Department and to the assessee.

SHRI G. L. POPHALE: Don't increase the fees we pay for putting in appeals to the A.A.C. Do not raise the fees in respect of tribunal appeals also. Make provision for awarding costs. That would be a better deterrent.

SHRI N. K. P. SALVE: Suppose a man goes in appeal frivolously. He knows he has got to pay Rs. 250.

SHRI G. L. POPHALE: When the man is prepared to go to the tribunal, the appeals are not frivolous. The appeals are not frivolous when go to tribunal except perhaps gross profit cases. Why people go in for gross profit matter cases? Because, if they don't go, the argument used by the Department is, we took last year 15 per cent, you had not appealed against it; now we are going to make it 17 per cent.

SHRI BENI SHANKER SHARMA: Frivolous appeals are filed by whom—by the department or by the assessee?

SHRI G. L. POPHALE: I have got statistics. I am very sorry to say that the department fared worse in their appeals before the tribunal.

SHRI N. K. P. SALVE: This is something of great importance. He says his experience is, the assessee has not filed frivolous appeals, but it is the department which files frivolous appeals.

SHRI G. L. POPHALE: The figures are from 1955-56 to 1958-59. I have collected figures for 4 years. We

found that the department fared worse in their appeals before the tribunal, Department has gone even on appeal on the percentage point.

SHRI BENI SHANKER SHARMA: They are not filed by the assessee, but by the department. If so, we should curb this tendency of the Department. We shall think over what should be done. According to you, this tendency on the part of the department should be curbed.

SHRI G. L. POPHALE: Certainly. Even if you increase the fee to Rs. 250 the department has not to pay.

SHRI N. K. P. SALVE: When I pay Rs. 250 to the Department, when costs are awarded to me, it should be on the basis of Rs. 250.

SHRI G. L. POPHALE: If you make provision only. At present there is no provision.

SHRI N. K. P. SALVE: What would be the impact? Would it become more just, more rational?

SHRI G. L. POPHALE: Yes. If you introduce awarding cost at tribunal stage that will act as a deterrent.

SHRI BENI SHANKER SHARMA: Suppose the department is also made to pay same amount of fees like the assessee?

SHRI G. L. POPHALE: It is from one pocket to the other.

SHRI BENI SHANKER SHARMA: Suppose that fee is to be forfeited to the assessee as part of his cost. Do you think that will deter the department from filing frivolous appeals?

SHRI G. L. POPHALE: If the provision is made for awarding cost that will also include this.

SHRI BENI SHANKER SHARMA: The department should also pay the equivalent fee as the assessee. If assessee wins, that fee should be forfeited to the assessee.

SHRI G. L. POPHALE: That will be a good deterrent on the department.

SHRI N. K. SANGHI: Tribunal fees are not allowable expenses of the assessee or litigant. In case fees are increased and these are allowed as allowable expenses of the assessee, do you think it will serve the purpose of the assessee?

SHRI G. L. POPHALE: A part of it; that is all. If I am allowed deduction, I will be saving tax on that.

SHRI N. K. SANGHI: Why it is not allowed as allowable expenditure in the past? Can you throw some light?

SHRI G. L. POPHALE: At the appellate stage it is not earning of profit or income. It is for retaining what you have got.

SHRI N. K. P. SALVE: Does that concept hold on today?

SHRI G. L. POPHALE: Yes, it is still holding good, it is being applied.

SHRI N. K. P. SALVE: You were a judge. You were a fearless judge of great profundity. There may be difference of opinion. Does that hold good today? If you were asked to determine a case without any provisions of the English case what would you think? Does it not impinge upon the right of assessee to get correct income assessed?

SHRI G. L. POPHALE: On the principle of preserving my right or income that I have got once should be entitled to get deduction just as you have got a fixed asset and you want to preserve and maintain, you are allowed deduction.

SHRI N. K. SANGHI: The quantum of tax may not be high. Still there is a right.

SHRI N. K. P. SALVE: What do you think about it now? On the same same principle you are allowed deduction of expenses.

SHRI G. L. POPHALE: I will allow it. Then I come to page 6. There should be no limit to expenditures which are incurred and are reasonably incurred.

SHRI N. K. P. SALVE: How do we proceed to have some checks on the companies not being liberal unnecessarily?

SHRI POPHALE: The trouble is this: If you try to set a certain limit in the Act itself, then I have really to incur 5 per cent or 4 per cent.

SHRI N. K. P. SALVE: There is another aspect. This provision did not exist before and even in some of the advanced countries this does not exist. We are bringing that law on our Statute. Surely, we do not want to go with a maddening speed in the sense that we give a liberty in which the people are tempted to do something which otherwise they would not have taken up at all. Any efficient company would try to bring that under a ceiling. A company which does not bring that to that ceiling, must stand condemned.

SHRI POPHALE: Under-writing commission is itself 2½ per cent.....

SHRI N. K. P. SALVE: That is capital. Assuming we put it in with reference to the project cost, will it be more realistic?

SHRI POPHALE: Apart from the question of percentage, I think the assessee will not get the full benefit of this.

SHRI N. K. P. SALVE: Project cost includes three factors preliminary expenses, pre-operational expenses and project expenses.

SHRI POPHALE: If you define it, then it will be all right.

SHRI N. K. P. SALVE: We will not leave anything to chance. But

would it be more rational: fixation of limit with reference to the project, not with reference to the capital?

SHRI POPHALE: It will be more rational with reference to the cost of the project.

MR. CHAIRMAN: Have you got any studies made in the Maharashtra Chamber of Commerce?

SHRI POPHALE: I am told that 1 per cent is paid as underwriting and 2 per cent as brokerage and for other expenses connected with the printing, stationery. . . .

MR. JANARDAN JAGANNATH SHINKRE: Have you got any figures and facts about this?

SHRI POPHALE: These figures are so obvious.

SHRI N. K. P. SALVE: That is true. But unless you have a percentage with reference to the entire base, how can you compare?

MR. CHAIRMAN: A study made in 31 industries shows it begins from 0.8 and it goes up—only in one or two cases—to 3.4.

SHRI POPHALE: I am afraid I have no statistics.

SHRI BENI SHANKER SHARMA : If we fix the ceiling either at 2½ per cent or 5 per cent, do you think that that may be misused?

SHRI POPHALE: I don't think so, unless it was benefit given to somebody else in whom I have got interest.

Another important point is about the limit being imposed on the salary of a foreign technician—Rs. 4000.

SHRI N. K. P. SALVE: What is wrong in that?

MR. CHAIRMAN: How many members belong to your Association?

SHRI POPHALE: About a dozen.

SHRI N. K. P. SALVE: Kirloskar Industries are your members?

SHRI POPHALE: Yes.

SHRI BENI SHANKER SHARMA: What is the number of your members belonging to different categories?

SHRI POPHALE: About 1000 members and most of them belong to the engineering industry.

SHRI N. K. P. SALVE: Why do you think it is objectionable?

SHRI POPHALE: The reason is that even persons of Indian origin are now getting much more than that.

SHRI N. K. P. SALVE: You give them much more. Who prevents you?

SHRI POPHALE: But if I honestly pay Rs. 6000, why should I not get it for Rs. 6000? Can you get really competent men for Rs. 4000 these days? That is the question. Otherwise, certainly the industry will suffer.

SHRI N. K. P. SALVE: There is another aspect of the matter. Either you pay his tax. . . .

SHRI POPHALE: But then again I only get 15 per cent; I have to pay the balance out of my own pocket.

SHRI N. K. P. SALVE: That means only 15 per cent of the extra.

SHRI POPHALE: If you accept the principle that all expenditure is permissible, then why place a limit?

MR. CHAIRMAN: Simply to make it prohibitive.

SHRI N. K. P. SALVE: We want to take advantage of the countries which have made certain technological advances. We want them quickly to help us so that we are not required

to spend much time in the research work. At the same time, we want additional restriction.

SHRI POPHALE: I don't think that Indian industrialists are going in for foreign technicians merely as a matter of luxury or pleasure. They certainly find it necessary.

MR. CHAIRMAN: Your reading might be a little different from the reading of the many hon. Members here and also those who are dealing with the subject. There is a tendency in certain industries that even they do not look around that that type of technicians are available in the country. They have a fancy for foreign technicians.

SHRI BENI SHANKER SHARMA: You think that Rs. 4000 will not serve the purpose? It will not be a deterrent?

SHRI POPHALE: You cannot get even a foreign technician with Rs. 4000. If I want a service of a particular person I am going to pay because I am interested in my Industry.

SHRI N. K. P. SALVE: Will we be well advised to completely wiping it out?

SHRI POPHALE: If I need the services I am going to get the technician.

SHRI N. K. P. SALVE: We take clause 34. The law now contemplates that there would be provisional assessment under 143(1) and then the assessee could be assessed under 143(2). Now, under the proposed amendment what is sought to be done is we want to vest into the hands of income-tax authorities power to make an assessment under 143(1) on the basis of the record available making *prima facie* allowance, deductions and latter on within two years the ITO can if the matter requires further scrutiny again re-summon the assessee and make an assessment under 143(2). I would request you to tell the Committee whe-

ther you think this type of provision is going to create any extra hardship on the assessee and whether this type of provision will not meet the objective which the ministry has in mind.

SHRI POPHALE: If this provision is not to be used as a substitute for re-assessment under 147 it is very possible that with this provision you are giving a weapon in the hands of the Deptt. so that they need not use 147 or 148 which places lot of burden upon them. If you place restriction that re-opening shall only be to the extent of the income source already disclosed it is a different matter.

SHRI SALVE: What you say is in a system like this there is built in possibility of the Deptt. Making one and the second assessment without taking recourse to 147 and that will cause hardship without any fault of the assessee.

SHRI POPHALE: Yes.

SHRI SHINKRE: I want to ask about discretionary powers to Commissioners. Is it good to give these discretionary powers to them who may misuse these powers ?

SHRI POPHALE: In making an income tax assessment one has to decide a large number of actual questions and in deciding the questions one has to use the discretion but it is not an absolute discretion but judicial discretion based on evidence. If you use your discretion judicially and also judiciously then the power is necessary for proper administration but the trouble comes when the discretionary power is not being used judicially and judiciously. That depends on the individual who is going to use the power. The remedy is not to take away the power but appoint persons who can discharge that power.

(The witness then withdrew)

III. M/s. B. R. Herman and Mohatta
(India) Private Ltd. Bombay

Spokesmen.

1. Shri Brijratan S. Mohatta,
Director.
2. Shri S. Srinivasan. Adviser.
3. Shri Rajendra Kumar Mohatta,
Partner.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we proceed, I would like to read out the rules of procedure. It says that the evidence which you are giving is public and liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is likely to be made available to the Members of Parliament. In the morning you came, but we could not take up your evidence. You may now please highlight some of the points which you think require elucidation.

SHRI BRIJ RATAN S. MOHATTA: I will highlight some of the main points. First is Clause 4(a) of the Bill. This is about taxing rental income from buildings which are rented out. There is distinction between buildings whose construction had commenced and those that are completed. This sort of discrimination should not be there.

MR. CHAIRMAN: You have stated that. We have noted your point.

SHRI BRIJ RATAN S. MOHATTA: So, I need not go into these details of it. Buildings which are constructed are rented out for business purposes. Many small people cannot afford to have their own buildings. They rent buildings from others. Even small-scale industries and medium scale industries take buildings or the shads on rent from others. Depreciation on

these buildings is not allowed to the owner of the building who rents them out. Depreciation or wear and tear on those buildings is the same as if the man has constructed his own building. In all fairness, depreciation to owner of that building who has rented it out should be permitted.

SHRI N. K. P. SALVE: 1/6 is for repairs.

SHRI BRIJ RATAN S. MOHATTA: Repairs is quite different. If I use my buildings for carrying on business I am permitted to spend on repairs which is necessary and but when I rent out the building to somebody then also the wear and tear is the same. I have to carry out the repairs. Repairs is not carried out by the occupant but by the owner. 1/6 is for repair and more than that will go for repair. There is nothing left for depreciation. 1/6 would not cover depreciation. That is not in the memorandum. But I would like to state this point. In regard to owner-occupied houses, according to income-tax law, some deduction in the total income is permitted. The department is adding to the other income a notional income on self-occupied houses. This is restricted upto 10 per cent of the total income. This section is a little ambiguous. A man has 3 houses or 2 houses. Say for instance he has one in Delhi, one in Calcutta or Bombay. He has to tour about. He does not take rented houses. So, he has his own houses there.

SHRI N. K. P. SALVE: Note has been taken by the Ministry.

SHRI BRIJ RATAN S. MOHATTA: Clause 14 is an amendment for the HUF income with retrospective effect from March 1965. The retrospective application is most unjust. This will interfere with personal law. HUF law is a personal law. It governs the life and the conventions of a certain section of Hindus. When you club it with personal income, that is where interference comes in.

SHRI BENI SHANKER SHARMA: Do you think that it will strike at the very root of the personal laws of the Hindus because the Hindus have a right, to throw all or a part of their money into the common hotchpot for the security and safety of the family? Apart from the retrospective application, do you think that so far as prospective application is concerned, it should also be stopped, and that property which is being blended with the common hotchpot should be treated as separate always. and no part of it should be added to the income of the individual?

SHRI MOHATTA: I am fully of this opinion that the Hindu Undivided Family law should not be touched at all. It should remain as it is.

SHRI N. K. P. SALVE: I am extremely pained at the language you use at page 4 of your memorandum: "It tantamounts to treachery to create tendencies by fiscal measures which will cut at the very root of established order of the society of the majority community. . .". You are entitled to your views. But I with the language should have been more moderate.

SHRI MOHATTA: I am sorry if it has been felt like this, if it has hurt any one.

MR. CHAIRMAN: Please go to your next point.

SHRI MOHATTA: I take up Clause 29. This gives certain powers to issue circulars for clarification. What I think is that if similar powers could be given to the Board under the Wealth Tax Act and the Gift Tax Act, for clarification, that would be more helpful.

SHRI BENI SHANKER SHARMA: Do you think that this clause as drafted, in the manner it has been, will interfere with the discretion of individual officers under the Income Tax Act?

SHRI MOHATTA: My reading of this particular clause and the section is that it does not take away the powers of the officers, or discretionary powers on factual matters. Where there is ambiguity in the words of the law or the Rules framed thereunder, and one Income-Tax Officer or one Commissioner takes one view and another takes another view, and where there are genuine, serious differences of opinion between the assessee and the assessing officer, a reference to the Board on the interpretation becomes necessary. This also become necessary if there are genuine hardships and certain rules have been formed which really are hard, harsh or impracticable. Now, if the Board has not got this power, then they have to wait till the amendment of the Act, whereas in this particular case the Board can rectify such defects or shortcomings. It can bring about more uniformity in the administration of the Act. That is how I see it.

Now, I come to Clause 30. This deals with penal interest on registered or unrecognized firms. This penal interest is something which is levied in a case where the firm has disclosed its income less or . . .

SHRI N. K. P. SALVE: You have given certain examples. Your argument proceeds upon an assumption which needs examination. Where did you get this assumption that this is only to compensate interest.

SHRI MOHATTA: There are penalties provided.

SHRI N. K. P. SALVE: The delay in filing the return and other provisions are not to be read in isolation to this but in juxtaposition. But it is the aggregate scheme by which we want to make it really stringent, make it bite really hard, and so hard that it pains the assessee. Assuming this assumption was not merely a compensation to the Government for the belated return but it was also to be

deterrent, what objection do you have to this?

SHRI MOHATTA: The way it is drafted it should be treated as unrecognized firm. That is all. When a firm is to be taxed as a registered firm, then, in all fairness, the interest and everything should be calculated on the amount which the firm would have to pay.

SHRI SALVE: A firm is a firm whether registered or not registered. According to you levy of tax on the unregistered firm is justified but on registered firm it is not justified because you suggest the tax levy is much less on a registered firm.

SHRI MOHATTA: Yes.

SHRI BENI SHANKER SHARMA: Do you mean to say it is creating a difference between an assessee and assessee and there should not be any distinction between an individual and a company and they should be treated on the same level?

SHRI MOHATTA: Yes.

My next point is about clause 59 which relates to the question of recognised and un-recognised firm. The previous clause 30 deals with interest part and this deals with penalty part for taxing and I would request that the same principle should be applied in case of penalty also. Please refer to last paragraph on page 18 of my memorandum.

Then I give a further illustration. The injustice is all the more greater in a case where a registered firm is held to have concealed particulars of income. This is because in such a case a penalty is levied as a multiple of the income and not as a multiple of the tax. Not only the firm shall have to pay penalty equal to the concealed income but further the partners also in their assessments penalised for the amount equal to the concealed income as minimum penalty. It is worth noting. Supposing a firm concealed

income of Rs. 10,000|-. The firm itself is liable to penalty of Rs. 10,000|- which is the minimum penalty leviable and the maximum penalty can be Rs. 20,000|- and further the partners can also be levied penalties aggregate of which can be Rs. 10,000|- and maximum can go upto Rs. 20,000|-. The patent injustice of the penalty provision can be understood from the above example.

SHRI BENI SHANKER SHARMA: So far as the firm is concerned there is an element of duality. Firstly, the firm is penalised for the late filing of the returns and again the partners are penalised for their inability to file their returns. What is your opinion? Would you like the firm to be penalised or partners should be penalised?

SHRI MOHATTA: The firm should be penalised.

SHRI BENI SHANKER SHARMA: So far as calculation of tax penalty is concerned so long it has been related to the amount of tax that has been evaded. But here is a peculiar system. For purposes of imposition of penalty under this clause even in the case of a registered firm the firm is treated as unregistered and taxes calculated as if the firm was assessed as unregistered. It is a case of notional income. Do you mean to say that it is to the actual tax that the penalty should be related and not to the notional tax.

SHRI MOHATTA: The penalty portion should be on tax on income and not on the notional income.

MR. CHAIRMAN: You may please go on to the next point.

SHRI BRIJ RATAN S. MOHATTA: Clause 33 deals with provisional assessments, particularly for refunds. It should be obligatory on the part of the ITO to make assessment within 30 days of the filing of the return; he should not wait for the application from the assessee. But I have to make application. Why should I have the necessity of making application? Let it be straightforward. Let him complete it with the time-limit.

SHRI BENI SHANKER SHARMA: You want to put the return cases on the same basis as in the case of assessments. Refunds should also carry interest, after 31 days of filing the application as in the case of assessment. Interest should be given on refunds in the same way as it is charged on demands.

SHRI BRIJ RATAN S. MOHATTA: It should be on par with demand of tax. This part deals with completion of assessments. It should be completed within 30 days. There is no necessity to make application to complete assessment. It unnecessarily increases everybody's work. It does not simplify matters.

MR. CHAIRMAN: Under 141(a) you say no time-limit is fixed. Administrative instructions are there.

SHRI BRIJ RATAN S. MOHATTA: They are not being followed. Whenever I have made complaints in Chambers or Associations or Commissions, the Members of the Board say bring specific case before us. But you would appreciate how difficult and embarrassing it is to bring in such individual cases. It will become a vindictive case after this.

MR. CHAIRMAN: You say administrative instruction is not implemented properly.

SHRI BRIJ RATAN S. MOHATTA: Yes. It should be made obligatory. If it is not completed in 30 days it should be deemed to have been completed.

SHRI BENI SHANKER SHARMA: Sec. 143 is a very important section.

SHRI BRIJ RATAN S. MOHATTA: There is clause 33 before that. Clause 33 deals with 141(a)(2). There are 4 or 5 years incomplete assessments. Today it is still pending. Such pending assessments are there.

SHRI BENI SHANKER SHARMA: The law has been changed.

SHRI BRIJ RATAN S. MOHATTA: Pending assessments are there. If there are losses or unabsorbed depreciation for the period of these 2 or 4 years which are not assessed the assessee should be permitted to set off that in case of provisional assessment. If the ITO does not assess, if he has objection, he can say. If he does not assess, that should not penalise me that I must pay that amount without taking deduction aspect into consideration. There are penalty provisions which penalise me for paying short.

Then, Clause 34 is there regarding reopening of assessments made under 143(1). ITO is given power to reopen it. It is just making mockery of making summary assessment; nothing else.

SHRI N. K. SANGHI: The number of cases have increased in the past few years. It is going to increase much more. The Department wants the expeditious finalisation of these assessments. Only in very random cases will they reopen the cases. In that background if you want to explain same point, you may do so.

SHRI MOHATTA: This reopening is not left to only those cases, because the definition here given is: "If he finds the assessment incomplete or if he finds he has omitted something or the other". When complete record is there, there should not be any question of having omitted anything. After all, the complete record is there before the Officer and if he finds that there is any concealment you have got other provisions whereby you can reopen up to four years, eight years and even 16 years.

SHRI N. K. SANGHI: Supposing he does not call for the books, and he does not call for the records. Only *prima facie*, he finalises these assessments. There are a large number of such assessees.

SHRI SRINIVASAN: The present provision in 143(1) itself empowers the Income-tax Officer to accept the return and complete the assessment. So if the

Income-tax Officer accepts the return and completes the assessment on the basis of the existing provision, and if he finds later that there has been an escapement of income on the basis of information available, he can reopen the assessment u/s 147(b). That will be more fitting with the scheme which the hon. Member has been mentioning. On the other hand, if we give the power to the Department under section 143(1) to make assessment in every case and then make a fresh a fresh assessment, it will only mean administrative inconveniences. You may remember that against 143 an appeal has been provided to the AAC. The assessee might have gone in appeal...

MR. CHAIRMAN: How do you infer that in every case the Income-tax Officer will open?

SHRI SRINIVASAN: This is because of the experience which we have. At present, Sir, there is a provision for making provisional assessment. That provision has not caused any inconvenience. Why introduce a new theory? That means there is no finality at all?

MR. CHAIRMAN: In the present scheme of regular assessments, there are two categories: (a) those in respect of which the Income-tax Officer is satisfied that they are correct and complete; and (b) in regard to which he is not satisfied.

SHRI BENI SHANKER SHARMA: So far as the object of this clause is concerned, you must agree with me that it is landable and the Department is very serious and sincere to complete those cases quickly which do not require any scrutiny. You do not want this making and re-making of the same assessment, twice; you want that the assessment should be made final and once, and after it has been finalised it should not be reopened except under the provisions of section 147. That is your point?

SHRI SRINIVASAN: Yes. The phraseology 'incorrectness', 'inadequacy' or 'incompleteness' is so wide that

in every case the sword of democles will be hanging over the head of the assessee. So much wide powers are there under 147(b). The assessee will not have any peace of mind.

MR. CHAIRMAN: Next point.

SHRI MOHATTA: Clause 141, page 13. This clause gives power to the Income-tax Officer to treat unrecognized firms as recognized firms. I wanted to submit that if an assessee chooses to do his business as an unregistered firm, and he arranges his affairs as such, why should there be an interference with his affairs? If the idea is that revenue should not be lost—only if this is the idea—then a provision may be introduced that there will be no unrecognized firms; every firm should be treated as registered. But once choice is given and the assessee starts his business as an unrecognized firm and assessment is done, otherwise upsets everything.

SHRI BENI SHANKER SHARMA: Don't you think that it may be used as a device to reduce tax liabilities of certain concerns. Take an example. You are running a firm and income comes to a lakh of rupees. It is a registered firm. There are four partners and each gets Rs. 25,000/- in his share. If you make further income you start a small firm consisting of three of these partners and one another working partner and then here you just limit your income to Rs. 40,000/-. You do not apply deliberately for the registration because if you apply for registration your share of Rs. 10,000/- will be added to Rs. 25,000/- which will attract higher tax. This is in order to reduce this misuse that this provision has been made.

SHRI MOHATTA: When we are talking about powers and if we leave it to the Tax Officer to tax or to consider anybody in a particular manner so that maximum revenue can be attracted then why not flat power given to the assessing officer. When we are making distinction in types

and types of business then irrespective of the revenue consideration we should adhere to the decorum if a chance is given to conduct business in this manner or that manner. Either we should say it shall always be registered irrespective of whether the firm is recognised or un-recognised the tax will be as a registered firm. But lay down that way. To say that it is left to a person to choose what is most beneficial to him then why is the right of the citizen taken away and given to the Government? Either you take away the choice from him so that he may know his position.

SHRI SRINIVASAN: The practical difficulty which arises is supposing a firm applied for its assessment as un-registered firm. It has got income. The ITO wants if it is advantageous for the revenue to treat it registered firm. The share is taxed in the hands of the individual partner. Next year the firm makes a loss. The same firm is treated as unregistered firm. The loss is not allowed to be set off in the hands of the partners. Again if there is profit in the next year it is treated as registered firm.

SHRI BENI SHANKER SHARMA: I agree with you that carry forward of losses in cases of firms should be allowed against the income of the firm. So far as the treating of the firm as registered which is not registered if it is to benefit the revenue I do not think you should have any objection provided the loss is allowed to be carried forward against future income of the firm.

SHRI SRINIVASAN: Yes.

SHRI MOHATTA: Clause 52—page 16. This deals with refunds, delay of refunds of certain types of income. Here I have to state that the delay is not only in cases of passing of the

assessment order but considerable delay of months and months occur from the time assessment order is passed to the time assessee gets the refund voucher. Therefore, the interest to the assessee should be allowed till he gets his money.

SHRI BENI SHANKER SHARMA:

That is perfectly reasonable. The interest should be paid upto the date the refund voucher is posted from the office.

SHRI SANGHI: Technically speaking you are correct but the assesseees will have to have some faith in the Government and to calculate interests meticulously for few days nobody would like.

SHRI MOHATTA: Today the experience is there is delay - of six months, eight months. Clause 53, page 16, deals also with refunds arising out of appeal. The same rule should apply as suggested in clause 52 which provides that interest must start from a certain time after appeal order is communicated. Here also date from which interest should start is not from the time of appeal order is communicated but from the time the amounts of tax were paid. The amounts are paid as and when ITO passes order and money is deposited. Thereafter we go on for appeal; it takes 6 months to 2 years to be heard. For all that period interest should be permitted.

MR. CHAIRMAN: Interest is payable by the Central Government for the period of delay beyond 3 months from end of the month in which appellate order is received by the Commissioner of Income-tax.

SHRI SRINIVASAN: Suppose assessment is completed in March, 1969. I pay tax in April, 1969. I go for appeal

Appeal comes up in 1971 for hearing. The A.A.C. may pass order ordering me the refund. The ITO gives effect to the order. It starts from 1971 onwards, 3 months from the order of the A.A.C. not from 69 April, when I paid the tax.

SHRI BRIJ RATAN S. MOHATTA:

When the demand is made, the ITO can stay the collection. If the appeal order goes against me I have to pay all that interest. As in that case, in case of the refund also I should get that. It should be reciprocal.

Clause 55 deals with delay in case appeal is filed after 30 days.

MR. CHAIRMAN: We will look into the matter. What is the next point?

SHRI BRIJ RATAN S. MOHATTA:

Then I come to Clause 63 at page 20. It is not a criminal law. Delays can occur for several reasons. Powers are given to officers to condone the delay if it is reasonable. There can be difference of opinion between the Department's thinking and the assessee's thinking as to what is reasonable. If prosecution is made on that account, that would be very very harsh. I say that in case the prosecution is launched and suppose the court finds that it was unreasonable, for that unreasonable prosecution there should be some penalty on the officer who ordered or sanctioned prosecution.

I have finished.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

(The Committee then Adjourned)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT) BILL, 1969

Saturday, the 17th January, 1970 at 10.00 hours in Council Hall, Bombay.

PRESENT

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri S. R. Damani
4. Shri B. N. Katham
5. Shri V. Krishnamoorthi
6. Shri Shiva Chandika Prasad
7. Shri R. Dasaratha Rama Reddy
8. Shri Bishwanath Roy
9. Shri N. K. P. Salve
10. Shri N. K. Sanghi
11. Shri Beni Shanker Sharma
12. Shri Yogendra Sharma
13. Shri Janardan Jagannath Shinkre
14. Shri Tenneti Viswanatham
15. Shri Ram Sewak Yadav
16. Shri Prakashchand B. Sethi.

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(Department of Revenue and Insurance)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. Tata Sons and Tata Industries Private Ltd., Bombay.

Spokesmen:

1. Shri N. A. Palkhivala, assisted by
2. Shri S. D Masani, Controller of Accounts, Tata Sons (P) Ltd., Bombay.

II. All India Manufactures' Organisation, Bombay.

Spokesmen:

1. Dr. Pranlal Patel—*Leader.*
2. Shri B. D. Somani.

3. Shri Y. A. Fazalbhoy
4. Shri B. S. Mohatta
5. Shri M. R. Shroff
6. Shri P. A. Shah
7. Shri P. L. Badami—*Secretary-General*.
8. Shri S. P. Subramanian—*Secretary*.

I. Tata Sons and Tata Industries (P) Ltd., Bombay.

Spokesmen:

1. Shri N. A. Palkhivala, assisted by 2. Shri S. D. Masani, Controller of Accounts, Tata Sons (P) Ltd., Bombay.

(The witnesses were called in and they took their seats).

SHRI PALKHIVALA: Sir, the point I am now on today is the question of recognition of the firm. I am not, Sir, making any technical point that formerly you had registration and now recognition; Formerly you had to make an application for registration and now a declaration. These are matters of words. The point is as the Supreme Court said registration is a privilege or right and in order to get registration you have to comply with the formality of the law. These formalities of the law have been repeatedly changed as regards the question of renewal, time of registration to be made, etc. but however by now the law has become clear this way—first, we know who are the people who have to make the application; we know the form; we know the conditions; we know in what circumstances registration would be refused.

The point I am making is that all these points that I have referred to you were points which it took all these years to decide. You will be surprised if you read the section—if you read the old section of the Income Tax Act about registration—you would think how can there be any problem but it took twenty years to unravel the law and make it certain. Your law is much more complicated, this section 140(a), because it is spread over three pages. That rule was in ten lines. When people pass laws they do not realise and if you are changing the

law that means for the smaller men you are again giving him another twenty years litigation and by that time somebody else will again change the law. Please tell me your object. If your object is that a firm registered with the Registrar of Firms should be accepted by the ITO then you do not need this section but a simple provision that once a firm is registered with the Registrar of Firms its genuineness will not be called into question by the ITO. As I said you are only benefiting the lawyers and not the public and not the Income Tax Deptt. You know the pendency of proceedings.

You need one sentence 'once a firm is registered with the Registrar of Firms it should be considered as genuine.' May I remind you, Mr. J. C. Shah who knows more about income tax than any other Judge recently made a speech in Delhi saying: "Please for God sake don't touch Income Tax Act for another five years". If a Supreme Court judge feels like this you can imagine about a layman.

SHRI BENI SHANKER SHARMA: So far I have not been able to understand the Government's view. They want to make it simpler by introducing the system of registration with the Registrar of Firms. According to me they are further complicating things because those firms which are already registered will have to be re-registered. Suppose, we leave aside the old firms and recognise them as registered but as regards the new firms Govern-

ment says it is an improvement on the old system in as much as previously the ITO had to go into the genuineness of the firms now he is being prevented from doing so by this provision that the firm is registered with the Registrar of Firms.

SHRI PALKHIVALA: It is nowhere at all in the Bill.

SHRI BENI SHANKER SHARMA: The brief which has been given to us by Government says that.

SHRI PALKHIVALA: Which clause, sub-section, anywhere says that ITO will be debarred from going into the genuineness of the firm if it is registered with the Registrar of Firms. I have no doubt that the Department has an absolute desire to do good. I am only saying this Bill will not carry that good intention which it has. My suggestion, with respect, is that this good intention of the Deptt. can be carried into effect by keeping the system as it is with a simple provision added: "if you want your genuineness not to be doubted go to the Registrar of Firms and get registered".

SHRI BENI SHANKER SHARMA: Will you give a note on this point?

SHRI PALKHIVALA: I will give a note on the existing sections.

SHRI BENI SHANKER SHARMA: If we change the nomenclature of registration from registration to recognition the whole law will be obsolete. So, we shall have to undergo over again through the process of legal pronouncements on the issue of recognition though the facts may be the same. So, the nomenclature should not be disturbed and the same nomenclature should be retained.

SHRI N. K. SANGHI: Is there any more hardship in the old law about registration?

SHRI PALKHIVALA: Working is so different everywhere. These are new provisions. Every sentence, every

clause, will have to be construed and interpreted. This is the real difficulty. There is enormous work now for the legal profession. I would advise you to keep it as it is. After 20 years of litigation meaning has been given to different words. Are you going to scrap it? You know, in England, you will find; certain words have acquired certain interpretation and in their Parliament, they will take special care not to change them. When you change you are unsettling the whole thing. If there is some benefit, if you benefit the Government or the public I can understand. But nobody is going to be benefited. What is the point of the change?

SHRI N. K. SANGHI: A hue and cry is made in the past about the registration of firms and in the background of that this is done.

SHRI N. A. PALKHIVALA: This is much more cumbersome. There is not one respect in which it is simpler.

SHRI N. K. SANGHI: We see your point of view.

श्री राम सेवक यादव : राजस्वशन की व्यवस्था ज्यों की त्यों बनी रहे ? या उस में आप की समझ में कुछ तबदीली की जरूरत है जिससे कुछ सहूलियत पैदा हो जाए ?

SHRI N. A. PALKHIVALA: All that you need is one simple provision. As I see it, Government thinking is laudable and legitimate, why not say so? Say, we are not being called upon to decide which is a genuine firm, and which is not. You say, let it be registered with the Registrar of Firms. If that is so, the department will accept it.

श्री राम सेवक यादव : फिर आई० टी० ए० के यहां दूसरा प्रार्थना-पत्र देने की जरूरत नहीं रहनी चाहिये ?

श्री एन०ए० पालखीवाला : नहीं, जी नहीं ।

MR. CHAIRMAN: There are the recommendations of the Administrative Reforms Commission. In one place, they have said like this:

"Partnership may be recognised for the purposes of income-tax assesses if (a) it is evidenced by an instrument of partnership specifying the shares of partners; (b) it is registered with the Registrar of Firms within 6 months of its commencement; (c) Any change in its constitution is evidenced by a new partnership similarly registered with the registrar of firms; (d) none of the partners is a nominee or benamdar of any other; and (e) the return of income of the partnership is signed by all the partners.

As a result of this recommendation this new thing has been introduced to which you say, it is unnecessary.

SHRI PALKHIVALA: There are only 2 things which are different from the existing law. You say if the firm is registered with the registrar of firms the department should accept it. Secondly, one partner should not share in the profits which under the partnership deed go to another partner. Suppose Parliament decides, we want to add these ideas. You may add that. You may retain the existing scheme, but just add these two lines.

MR. CHAIRMAN: You can add these two things, you say.

SHRI PALKHIVALA: Yes, it is so simple. You will not be unsettling the law at all. You may let the law remain as it is. You may put these two new ideas into the existing system. Why change the whole existing system?

SHRI BENI SHANKER SHARMA: You say, better effect would be achieved if you put these two in the existing law than to re-shape the whole thing.

SHRI PALKHIVALA: You need not reshape the whole thing. Why have a complete reversal of the existing system at all? There is a firm of 10 partners. If the partnership is registered the tax may come to Rs. 10,000. If it is not registered it may come to Rs. 62,000. The department is getting between Rs. 10,000 and Rs. 62,000. You are increasing the tax to 500 per cent for a technical mistake.

SHRI N. K. SANGHI: Registration is a thing which is done by the State Governments. In many places there are no offices of the Registrar. There is the period of 6 months laid down in the bill. Will it be sufficient to get the firm registered and will there be no complaints at all? If firms are not registered in 6 months what will happen? Will you kindly say how to avoid this kind of inconvenience to the assessee?

SHRI N. A. PALKHIVALA: Now that the hon. Member has mentioned about it, it is true that even lawyers do not know in what State there is a Registrar of Firms, in what State there is not. An Assam Lawyer came and consulted me and he said: I don't know whether there is a Registrar of Firms in my State, and if so where his office is. When I asked where is the Registrar's office, nobody could give any precise information about it. In the States you have no idea. You are making laws for the ordinary people. The honest people must not be bothered once they have paid the tax.

श्री राम सेवक यादव : इनका प्रश्न यह है कि दिक्कत यह है कि हर जगह रिजिस्ट्रार आफ फर्म नहीं है। और जब यह व्यवस्था हो जायगी तो उन को रिजिस्टर करना लाजिमी होगा छः महीने के अन्दर। तो फिर उन की दिक्कतों को कैसे दूर किया जा सकता है, इस बारे में क्या आप कोई सुझाव दे सकते हैं ?

SHRI PALKHIVALA: If at all you want this, you will have to give much longer period.

श्री राम सेवक यादव : रजिस्ट्रार आफ फर्मस स्टेट गवर्नमेंट के मातहत हैं। और हर जिले में साधारण रजिस्ट्रार आफिसेज हैं। तो क्या यह मुमकिन है कि डिस्ट्रिक्ट हेड क्वार्टर के रजिस्ट्रार को फर्म के रजिस्ट्रेशन के लिये अथोराइज कर दिया जाय जिस से यह दिक्कत दूर हो जाय ?

SHRI PALKHIVALA: Yes:

SHRI S. R. DAMANI: Practical difficulty is there. In order to save and protect the assessee can you suggest anything?

SHRI PALKHIVALA: My suggestion is this. Under the existing law, a firm is not required to be registered with the Registrar of Firms. He can go straight to the I. T. Department. The solution I suggest is this. Only give the tax payer a further right if he chooses to get his firm registered with the Registrar of Firms. It is the tax payer's choice; he may have it registered with the Registrar of Firms or he may not. If he has this difficulty etc. in some States, he will not register it with Registrar of Firms but with the Income-tax Department. The tax payer has the option if he chooses.

SHRI S. R. DAMANI: You are going to give us a draft. You may say about these things.

SHRI PALKHIVALA: Yes.

SHRI KANWAR LAL GUPTA: A husband is partner; wife is also partner. The Registrar of Firms has allowed that. The income of wife may be her self-acquired property or her Streedhan. The income will be clubbed in the hands of the husband as the position stands today. If wife becomes a partner with another person, not husband, in that case her income will not be clubbed in the hands of the husband. What is your comment on this? Is it justifiable? Suppose the investment is made by the wife as her 'Streedhan' or in the case of a

minor son or daughter, income is clubbed in the hands of father or husband, as the case may be. What is the justification for this?

SHRI PALKHIVALA: My only view is that there is justification for adding wife's income to the husband's where the wife's capital has been gifted by the husband or has come from the husband. But where there is 'Streedhan' and she is earning, then there is no justification really, though the existing law is different.

SHRI KANWAR LAL GUPTA: But where there is one hundred per cent 'Streedhan'?

SHRI PALKHIVALA: Then, in logic, there is no justification for adding.

SHRI KANWAR LAL GUPTA: Will you like to change the Act?

SHRI PALKHIVALA: It is not in the Bill. In England there is clubbing of that. It is only where the assets are transferred, not where the assets are not transferred. There are several cases. There is only one case where it is not added and that is where it is a professional firm, not business firm.

SHRI KANWAR LAL GUPTA: Unfortunately, I was not present yesterday. The basis for registration by the Registrar of Firms is different. For instance, he will not register a company whose name is 'National Company' or 'Bharat Company' or 'Indian Company' or something like that. It is clearly stated that no firm with the name of 'National Company' or 'Bharat Company' or 'Indian Company' can be registered by the Income-tax Department. So do you suggest that the present position should remain and it should be simplified in the sense that form No. 12 should go and any person or firm, if it or he wants to be registered, may apply to the Income-tax Officer and the Income-tax Officer should register it?

SHRI PALKHIVALA: My suggestion is this: (a) Take the existing scheme; (b) there should be added to the existing provision this, namely, that the taxpayer should have the option or choice of getting registration with the Registrar of Firms. Once the firm is registered with the Registrar of Firms, it should be accepted by the Income-tax Department.

SHRI KANWAR LAL GUPTA: The present position is this. Suppose there is a quarrel among the Partners or there is dissolution. Or Suppose one of the partners dies and there is dissolution of the partnership. The legal heir of that person who died, he or she, is not prepared to sign the Form. Or one of the partners refuses to sign Form 12. So far there is no provision under the existing Act how to get it registered. How will you solve this problem?

SHRI PALKHIVALA: Now, this is one of the things which has led to a lot of blackmail. One partner may be irresponsible who does not care. He may have no, or no known, property which can be attached and others have to pay the price. This is because of the procedures being what they are. It is not at all necessary to have those procedures. These can be simplified. In other words, you may eliminate some of these conditions, in such cases, if the difficulty in getting the partner's signatures is proved before the Income-tax Department, the Income-tax Department should accept it.

SHRI BENI SHANKER SHARMA: Would you like that there should be a simple form attached to the Return form claiming renewal which may be signed by any of the partners, and not by all the partners?

SHRI PALKHIVALA: My point would be that if the firm is registered with the Registrar of Firms, it should be accepted as genuine. If there is

a difficulty in getting any of the signatures and if the difficulty is satisfactorily explained, the Department should accept the application.

SHRI BENI SHANKER SHARMA: It is very difficult to prove the difficulty. I am talking of renewal. Supposing one partner is out of India, or is not available for some reason, would you suggest that instead of all the partners signing the renewal form, it would be sufficient if only one partner signs the renewal form?

SHRI PALKHIVALA: Yes, I would suggest that, if there is no change in the constitution of the firm and it remains the same.

SHRI BENI SHANKER SHARMA: Do you think that under the new law registration will be refused if the wife is a partner along with the husband?

SHRI PALKHIVALA: No, Sir, it would not be refused on that basis because the wife is a partner along with the husband.

SHRI N. K. P. SALVE: Just as a *via media*, would it be all right if Section 141 is retained, which provides for provisional assessment, with the further condition that provisional assessment would become final if no assessment is made under Section 143?

SHRI PALKHIVALA: Of course, subject to 147 and 148. The provisional assessment has created no difficulty. Are you thinking of keeping 141 and giving an additional power to make assessment on the basis of return?

SHRI SALVE: Under the existing law as it stands that means that authority to ITO to make such additions as he may make for summary assessment. Summary assessment is not accepting the return as it is.

SHRI PALKHIVALA: Under the existing law he has to accept the return. Suppose, you were to retain 143

as it is but you give a further power to ITO to disallow *prima facie* admissible items and if there is a right to appeal against that you must give that. The assessment becomes final unless an assessment is made under 143. The real problem arises if you tell the ITO that he has got to apply his mind and then leave the ITO, except in concealment cases of income, he has got to apply his mind. But 141 is amended and given the ITO the power virtually to make an assessment at which he need not apply his mind and six months later make a proper assessment.

SHRI SALVE: Applying the minds there are two ways. One is to apply his mind to the documents attached to the return and secondly by applying his mind by scrutiny of books of accounts, going into further evidence he may like to record.

SHRI PALKHIVALA: That means two assessments. Today provisional assessment is no assessment at all. The only victims of this will be honest tax-payers. I cannot imagine which of the persons known to me who are honest will welcome it.

SHRI SALVE: It is no doubt that honest assessee will be put to hardship but there is administrative aspect. But this aspect we will be able to help the Department in some genuine cases to expedite the assessment.

SHRI PALKHIVALA: Then what prevents the Deptt. in giving notice to the assessee and finishing the matter.

SHRI DAMANI: I think the assesses will be benefited by this clause. They would get benefited and whatever deduction ITO makes, deductions on the basis of the previous years allowance not summarily as he likes. In that connection the assessee will save time of going to the Deptt. and then assessment will be completed and if there is

anything about which the assessee wants to claim an approach the ITO for rectification and that can be done. So, a number of assesseees would be benefited. Side by side while submitting their returns if they have got particular point for deduction they can write a letter, put in a statement, that these are reasons in which our expenditure is more and more deductions could be given and on that basis ITO can consider and give his decision. The second point is about corruption. When the assessee and ITO will not come in contact that will save corruption. These are the advantages which may accrue.

SHRI PALKHIVALA: I am afraid the impressions sought to be created on the minds of the hon'ble Members that the assessee will get benefit is completely wrong. It cannot be in so and let me explain. Take the case of a man whose is a simple matter and some disallowance etc. is to be given. There is no difficulty today. The taxpayer will be called and whatever disallowance is there will be made. You call him and talk to him for half an hour and the matter is completed. What is the great difference between existing provision and the new provision? What is the tremendous difference?

Secondly, you talked of rectification. May I tell you even when the rectification power is very limited yet all over India there are writ petitions filed. It just cannot be imagined. If a man is honest you call him and finish the matter. Assessments may run into some lakhs but this can be finished in one hour. There is no problem created. You may make the final assessment and finish the matter. Secondly, why should the ITO be handicapped in dealing with straightforward, honest cases? The taxpayer has got a right to say, call me, rather than make an assessment now and call him after 2 years.

SHRI S. R. DAMANI: I presume whatever you say is based on the presumption that the assessments will be

reopened. What I feel is that the percentage of reopening or double assessments will be much lower. Re-assessment of 2nd assessment will be only on the basis of some information or some reasons. It is not at all compulsory that every assessment will be reopened. Assessee will get opportunity to explain and present his case and prove his point. He will get that opportunity. There will be number of assessee whose assessments will not be opened at all.

SHRI PALKHIVALA: With great respect, the amendments you are making are directly contrary to the law. In the case of information there can be a reassessment. Under the provision which you have in the Bill no such information is necessary. We must always know what the legal implications are. When you draft a law, do not assume, the power given will not be exercised. Assume always, the power given will be exercised. Otherwise what is the use of giving that power at all? Every single assessment is subject to the possibility of being reopened and reassessment is made without any information.

SHRI BENI SHANKER SHARMA: All those cases under 143(1) will remain in a state of animated suspension.

SHRI PALKHIVALA: Let me say how it will work. There is the I.T.O. he has made the assessment. He calls me after 6 months. He says, how I have leisure, I will look into your books. It will definitely result in more corruption.

SHRI N. K. SANGHI: I agree with you. In case some addition is made in 143(2) saying that while opening assessment under 139 the ITO may ask him to give information regarding the inadequacy, incompleteness or incorrectness that has been brought to his notice, will that suffice?

SHRI PALKHIVALA: That won't do. The main point is this. Where there is less corruption, you are making way for an increase in corruption. Just consider how it will work in practice. It is matter of basic principles. This is the first time you are doing it in the whole history of fiscal jurisprudence. Why do you introduce two assessments orders, when one will suffice? The scheme is this. But I may say, the rest of the Bill pales into insignificance compared to the damage done by this one section regarding two assessments. After dealing with various tax laws in India for the past over 20 years I am not aware of any provision of law whether in customs, excise, or sales-tax where this is being done. Just consider what happens. The ITO is hard pressed for time. The month is March. He has got 30 files with him. He can make assessment. Next year he says, I have got some leisure, you please come, I want to reopen your case. What is this? Where there is scope for corruption at one stage, you are giving scope for corruption at two stages. Even where the cases can be completed and finished, you are giving scope for the ITO to say: Look, I have no information; I don't think you have concealed your income; still I have the right to examine your books, you please come. This is where there is more scope for corruption. I am sure there will be much public furore over this provision. If really you want to make one assessment, what is wrong with the present, existing system? What prevents the ITO from dealing with such cases straight-way? I have known cases. In Tatas, we go and discuss, the income may run into several lakhs, but books are seen, he disallows some miscellaneous items, and we say, we don't go on appeal. The matter is finished. There is no problem at all. In case of customs you will never call an assessee, saying, I want to reopen your account. When you can deal with the matter once, you are giving scope to deal with the matter twice and naturally the scope for corruption multiplies twice.

SHRI KANWAR LAL GUPTA: I agree with you. It is a most dangerous provision in this Bill. I am clear there. The second difficulty is this. The ITO makes assessments under 143 (1). He makes certain disallowances. The man goes on appeal. The appeal is pending. During the pendency period the ITO again calls for the books. Books are required for appeal cases. He again calls for the books. Will there not be utter confusion?

SHRI PALKHIVALA: It is a relevant point. We have said it in our memorandum. What will happen in practice? Assessee wants to go in appeal. ITO may say: I want to make a 2nd assessment. An appeal is pending. A second assessment is pending before the ITO. And mind you, you have a case where is no concealment of income, no information. In this situation I cannot imagine the administration working at all.

SHRI KANWAR LAL GUPTA: Have you come across such cases where the ITO has reopened the assessments? Of course under existing law he has got authority to reopen and 3 or 4 years after that with the previous consent of the Commissioner of Income-tax. Many times, you say, there is no definite information, it is only based on conjectures that this is done, and all that. As to why he reopens, he does not communicate the information to the assessee. So, will you think it desirable that if the Income-tax officer wants to reopen the case, he must communicate to the assessee the reasons for reopening the assessment?

SHRI PALKHIVALA: What I am pointing out is this: The existing provisions are adequate. In fact, your Bill does not touch upon them because these are adequate. Once the assessment is made—that is one stage of corruption—everyone lives under the threat of second assessment. And as I said, if you introduce this, you can do it in all the other laws of India. And I cannot imagine what would happen.

SHRI N. K. P. SALVE: About the registration, yesterday you stated categorically that if the law was to be made on the line contemplated in the Bill, it would completely upset the established law. I very carefully looked into 186(a), provision by provision. If sub-clause (c) of this section was to be deleted and registration of firms with the Registrar of Firms is kept as an optional provision, does it still change the basic law which has been laid down after such a tremendous amount of litigation?

SHRI PALKHIVALA: The question I asked myself is this: If it does not change the law, what are these three-four-five pages for? I do not understand what is the purpose of this change.

SHRI N. K. P. SALVE: The Bill as drafted does not bring out the intent clearly. You will appreciate it will be impossible to waste any power, and once it is the Registrar of Firms, that is the end of the matter. The Income tax Officer will not go into the matter. This is a provision which will be extremely urgent in public interest. But nonetheless it is possible for us to provide that registration with the Registrar of Firms would constitute a *prima facie* proof of the genuineness of the partnership. Let us go clause-by-clause. You are very familiar with the old Section 26A....

SHRI PALKHIVALA: What is the difference between 'Under the Instrument' and 'By an instrument of partnership'? My point is that you change or you do not change. If you do not change, you keep this as it is. If you are changing let us face the facts that we are changing it. What I am trying to dispel is the erroneous impression that you are not making a change.

SHRI N. K. P. SALVE: It is the intent of the Government which is moving this Bill, to simplify the same and to minimise the litigation.

SHRI PALKHIVALA: It only needs one sentence to be put in the existing law.

SHRI N. K. P. SALVE: Would you kindly read clause (c)?

Supposing the father, on behalf of the joint family, has a major son as his partner having his undivided interest in the HUF, would it be hit by clause (c)?

SHRI PALKHIVALA: Might be hit by clause (c). In fact, the Supreme Court has said that this will apply to a case where the other partners are not aware.

SHRI N. K. P. SALVE : In this matter I appreciate what you have said about clause (c). Having these benamis, pseudobenamis is to some extent a device for evasion of tax, would it be wrong if the legislature or the Government should go on to describe this and make it punitive so as to put this prospecto into jeopardy if the partners do not disclose?

SHRI PALKHIVALA: My answer is this. Take any measures to counter-act tax evasion. But please do not disturb the existing scheme; you can put additional conditions.

SHRI PRAKASH CHAND B. SETHI: In cases where it is considered that the ITO is reopening such cases without any solid material at its back, then we can take administrative action to see that such ITOs are properly punished. So what is your opinion in this regard if proper safeguard is provided.

SHRI PALKHIVALA: The first point that the hon'ble Minister made was that this is only combining the existing provision for provisional assessment with the existing provisional assessment. May I point out that is not the correct position because the right to make provisional assessment is different from the right given here to make the first

assessment. In the present right to make an assessment on the basis of the return there is no right of appeal because whatever I might admit will be the tax assessed. It virtually amounts to self-assessment. Today self-assessment is where the individual does not make it but the Deptt. makes. Nobody has any objection to it. What is sought to be done here is completely different.

Your second point is about safeguards and reasons. The ITO can say in the first assessment made I did not see books but now I want to see the books. It is a perfect reason. In every single case he can give a good reason.

MR. CHAIRMAN: Thank you very much Mr. Palkhivala.

(The witness then withdrew).

II. All India Manufacturers Organisation, Bombay.

Spokesmen:

1. Dr. Pranlal Patel—*Leader*
2. Shri B. D. Somani
3. Shri Y. A. Fazalbhoy
4. Shri B. S. Mohatta
5. Shri M. R. Shroff
6. Shri P. A. Shah
7. Shri P. L. Badami—
Secretary General.
8. Shri S. P. Subramaniam—
Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Patel we welcome you and your colleagues to the meeting. I may draw your attention to clause 58 of the Directions by the Speaker.

We have received your memorandum. Would you like to highlight some points?

SHRI PATEL: We are very thankful to the weightage which is given by the Government on the views expressed by our Organisation which is composed of small and medium scale industries, of corporate sectors, partnership and individual ownership.

The first point in our memorandum deals with the foreign technicians. It is the view of the Organisation that the ceiling which you have put Rs. 4,000 is rather unrealistic in terms of devaluation which we have now gone through. Now, there is no clearance on this point whether this remuneration is exclusive of other perquisites. Under normal contract either with the collaborator or machinery suppliers this is the net which we have to pay to the individual to the companies who send the technician to us. Whether this is inclusive or exclusive of the perquisites, and it should be not according to our interpretation otherwise we will not be able to get first rate technicians come to India.

We welcome the measure, that is, managerial personnel, has also been included under the technician class but the discrimination, we do not welcome. You give five to eight years, benefit to the technicians whereas in the case of managerial personnel you are limiting it to 12 months. Today, in the modern complex organisation, we have recognised after very bitter experience in our management that management is the most essential aspect of running an organisation successfully. They should be equated with the technician. Our submission is that even the scientists who come here to work in laboratories should be included and given the same benefit as we give under the definition of technicians.

MR. CHAIRMAN: In respect of managerial skill, the Indian technician will not be able to fill up that gap. Is that what you say?

DR. PRANLAL PATEL: In a complex organisation, it is particularly so. We are very actively associated with the experts. Those technicians are not available with the Indian organisations. And in management skill, there are certain aspects which are connected with the administration, management-administration etc. like production and planning control, quality control, etc. Building quality control is not administrative in nature, but they are classified as technician-managers. You allow 36 months as tax free remuneration to the technician. After 24 months it is to be taxed at the source of the employer. In an organisation it happens that many technicians will be required right from the erection stage till the determination of the processes. The gestation period is long; and a large number of such technicians have to be employed. After 24 months to say that taxes would be paid by the employer is unrealistic in this new situation. Cost of such technicians is amounting to a very large percentage which hinders these companies in the initial stages to give dividends and show reasonable profits. 5 years should be entirely free without any encumbrance on the employer to pay tax. We don't employ technicians directly as individuals. The employment is covered under the collaboration agreement or under the Plant and Machinery suppliers. Payment is made to collaboration firms or Plant and Machinery suppliers. We have encountered considerable difficulty in sorting out this payment and acceptance of the scheme by the Government. It is not payment for an individual person. It is for know-how or plant and equipment.

SHRI B. D. SOMANI: My colleague Mr. Pranlal Patel has already said about the difficulty experienced in this regard. This difficulty is experienced by companies, corporations etc. which are getting plant and machinery from abroad and even some of the research laboratories set up in the country. When you call a particular

person with some broad overall knowledge in order to set up an industry, he comes here, and our experience shows, the period required to set up an industry is 3 or 4 years initially and then it goes for 1 or 2 years more. The period therefore must be increased to 5 years. The erection personnel are supplied by the machinery suppliers as per their schedule. Certain rates are given and the payment is to be made. It is as high as 300 to Rs. 600 a day. Guarantee given by the machinery suppliers has to be fulfilled—this is part of the condition. The erection project must be supervised by their own erection personnel. We have to take their guarantee. It is a very important, a vital part of the agreement. Questions have been raised about the technical people. About those who come here, the period should be automatically restricted by the industry itself. The industry is not interested in paying more than what could be the minimum. It goes from our pocket. It is not that anybody is subsidising that.

MR. CHAIRMAN: It will go from your pocket only within the limit.

SHRI B. D. SOMANI: If I cannot get a first rate man and if I get a third rate man my trouble will be much more. A fertilizer project will take 3 or 4 years to be set up. Any personnel who comes cannot stay for more than 36 months. That man's continuity will be lost. If a new man were to be got, unnecessary difficulty is being experienced. The man completes the erection and he is sent away. If I get some little trouble during the period of one year, I ask the suppliers to send back saying, I am getting trouble. My difficulty is this. There are certain restrictions. Those people who have already been here for such period and enjoyed the tax will not be given the same extent of tax. The help of the person who has already been here would be more helpful than that of a man newly coming, a new personnel.

MR. CHAIRMAN: We have understood your point. Please go to the next point.

SHRI B. D. SOMANI: If I make payment to individual, he is the employee of that company for all practical purposes. We have to submit the application for the individual concerned. But suddenly, if the individual is permanent employee he gets permanent benefits and other benefit schemes of the company. The payment of tax exemption should be permissible even to the company to which the personnel belongs. It is always advantageous to get the personnel of that particular company which has supplied machinery. There are no free individuals floating in the market. We have to get them from the supplier. He is the only person who knows the job and the difficulties involved. These aspects should be taken care of when you have your amendments. Any payment made to the machinery suppliers for the technician should be exempted. They are interested to have their own schedule. We do try to maximise economy wherever possible. In case of difficulty beyond our control, if difficulties are put in, we will find it extremely difficult in getting at the good type of technicians or erectors who are needed for the purpose.

SHRI S. R. DAMANI: Mr. Patel, I think you understand the idea of the Government. This is to discourage the appointment or import of foreign technicians and to give more chances to our own technicians. Our technicians are quite capable. I think at the outset you will agree with the intention of the Government to discourage the appointment of foreign technicians.

DR. PATEL: We are in full agreement. In fact, our organisation is always propagating that as far as possible opportunities should be given to our own technicians.

SHRI S. R. DAMANI: Regarding the ceiling proposed in the Bill, of Rs. 4,000, including the perquisites, in gross it will be Rs. 7000 to 8000. We can appoint good technicians for less than that. I think it is double of what is

normally paid to one of the highest technicians of the country. Will you kindly explain this?

Secondly, technicians are coming from abroad for erection purposes or for setting up plant and machinery, on the condition that those technicians will supervise. Now this may take two years or three years. How do you feel that the period of 36 months will be shorter and should be extended?

DR. PATEL: With regard to this ceiling of Rs. 4000, this is partly because of devaluation. Secondly, prices have gone up very high....

SHRI S. R. DAMANI: Then our Indian technicians who are trained abroad, are going back to USA.

AN. HON. MEMBER: I want to add. I do not think that the restriction will completely deprive the manufacturers, because it only restricts the period of employment in order to encourage our own technicians in India. And if we want him for a longer period, we can send him home and get him back again on re-employment. It is only going and coming.

SHRI B. D. SOMANI: We would like to assure that as far as the industry is concerned, they are much more anxious to train their own people and do their job themselves as far as possible through our own Indian technicians. First of all, it is not easy to get foreign technicians. It is with great difficulty that we can get them. There is always a great shortage of good technical people even in those countries.

Secondly, we have to pay a higher rate. No industry would be anxious or would be so going out of the way to encourage foreign technicians at the cost of Indian technicians. This notion should not prevail that the industry as such does not give encouragement to Indian technicians. In

fact, there are regular programmes of those organised industrial sectors of sending Indian technicians abroad for training in their respective line.

SHRI N. K. P. SALVE: Various organisations have confessed that it was imperative necessity today importing foreign technology in at least sophisticated industries. In fact, that could not be delayed at all because it is accepted by the Government and the Committee realises that we have to import technology in the interest of rapid industrialisation. But what does not seem to have been appreciated properly and adequately is this that we are getting foreign technicians at a tremendous premium and the Indian technicians at a terrible discount.

Secondly, the basic question, the real issue, lies elsewhere, and this is to what extent the Exchequer should subsidize your import of foreign technicians, though indirectly in helps in the country's industrialisation?

DR. PATEL: I would submit that there should be no differentiation between the interests of the State and the interest of the entrepreneur. I think it is in the common interest of both. We have no fancy for foreign technicians. But we want to see that with the investment which we are making the gestation period is considerably reduced and the company goes into production within a reasonable period and arrives at the profitability. Sir, in certain technologies it is not easy to transplant by merely correspondence the concepts and details of technology to be absorbed in new area and new environment. When we call technicians for erection it is only one man which comes. We are not in disagreement that our technicians are put to disadvantage as to foreign technicians.

SHRI N. K. P. SALVE: Tell us why Rs. 4000 should be retained. You are making a good case for long gestation period, then have technicians for longer period but why at State cost and not on your cost.

SHRI PATEL: If the company makes profit after tax-holiday the State shares.

SHRI SHINKRE: I want to know how many foreign technicians are engaged in companies belonging to your organisation.

SHRI PATEL: We do not have the figure.

SHRI SHINKRE: I think foreign technicians are brought here for sophisticated industries which can expect better margin of profits. It is so what is your difficulty to pay something for exchequer in the form of taxes? If you expect better margin of profit in bringing those technicians then where is the difficulty in giving more to technicians?

SHRI PATEL: I would like to give an instance. When any sector in Japan is considered to be a developing industry for instance, in 1968 in Japan the automobile industry, machine tools were declared as a essential sector of development in national economy. Every equipment and component required were to be absolutely free from imposition as far as tax and Government levies were concerned so that the Industry grows and when it grows further the benefits are derived by the State.

SHRI BENI SHANKER SHARMA: Your Association is an All India Manufacturers Association. What is the number of your membership?

SHRI PATEL: 1500.

SHRI BENI SHANKER SHARMA: You have your members from all the States.

SHRI PATEL: Yes, Sir.

SHRI BENI SHANKER SHARMA: Majority of whom I presume come from Bombay side and Gujarat.

SHRI PATEL: One third is from Bombay and the rest from outside.

SHRI BENI SHANKER SHARMA: What type of industry do they represent?

SHRI PATEL: We have got consumer goods, pharmaceutical—practically all industries.

SHRI BENI SHANKER SHARMA: In reply to Mr. Shinkre's question you said you do not have figures for foreign technicians Will you supply that figure later?

SHRI PATEL: We will try to work out.

SHRI BENI SHANKER SHARMA: I think we are talking much in the air. Government tell us that out of 2000 technicians 1800 are employed by public sector and it is only about 200 which are being employed by private sector. It is the public sector which is to be affected more than private sector. Do you agree with me? We do not want foreign technicians for medium scale industries like textile industries but only for sophisticated industries which can pay. My point is the Indian trained men should be given preference. As Mr. Salve put to you it is a question of subsidy. The highly sophisticated industries to which we are going they do not require much to be subsidised. You will agree with me it is medium scale industries which require subsidies and the exemption of foreign technicians from tax is a sort of subsidy which you expect from State. Why should you burden the State with this additional liability?

SHRI PATEL: We do not want to burden one sector. As far as any sector is concerned the entrepreneur has got equal responsibility to share and they all expect equitable returns out of such successes.

DR. PRANLAL PATEL: It will come to a large number compared to the total number of technicians in the country. We have to employ the technician because it is very necessary. Compared to our need, the expenses incurred is very negligible.

MR. CHAIRMAN: Can you say the number of foreign technicians associated with your chamber? You may give us a note later on. By utilising the sophisticated knowledge of the technicians how far your industry has been able to compete in world markets and how far it has been able to expand production? On that you may give us a note later on. What do you say about amortisation?

SHRI SHROFF: Amortisation of preliminary expenses is an acceptance of principle. It is neither capital nor revenue. For a long time our organisation has been pleading that these preliminary and pre-operative expenses have not been allowed to be capitalised and written off in the form of depreciation or written off straight to revenue in the year in which they have been incurred. The approach has been unrealistic. The approach has been halting. The ceiling 2½ per cent is unrealistic.

MR. CHAIRMAN: It is the first approach. I say this when you say the approach is halting.

SHRI SHROFF: It could go a little further so that subsequent amendments may not be necessary. This 2½ per cent ceiling is very low, looking to the promotional costs of Indian enterprises. Amortisation over 10 years seems to be a very long period of time. If a company is able to write it off in 5 years it should be allowed to do so. There are various machineries booked under different types of payments. There is no difference in procuring equipments against a loan from the IFC or ICICI and obtaining supplier's credit. All these should be included in the definition of capital employed. There should be a system by

which the promotional expenses allowed to be amortised could be based on the capital employed in business. Promotional expenses are large in a small company. In the first stage of operation we feel that the definition or the composition of the capital employed is on the liability side of the balance sheet rather than on the assets side.

SHRI B. D. SOMANI: Any new company formation where you have incurred preliminary expenses before production commences, these are neither allowed to be capitalised nor debited in the revenue account when subsequent assessment is taking place. This is a peculiar position. It can't be debited in revenue account as no production has taken place but they are part of preliminary expenses before actual production comes in. If they can't be debited to revenue account the alternative is to capitalise it. There are a lot of expenses, like underwriters commission, brokerage, expenses on advertisement, publicity, etc. They are part of preliminary expenses. There are various restrictions put by the Income-tax department. They do not allow even administrative expenses to be capitalised. They say, this is not part of the production. Therefore, all these expenses which are of a legitimate nature which...

MR. CHAIRMAN: Legitimate to you or to the Income-tax Officer?

SHRI B. D. SOMANI: Expenses on brokerage, on publicity, and many other expenses which take place. ..

SHRI N. K. P. SALVE: That we have noted.

SHRI B. D. SOMANI: They are not productive expenses connected directly with production, nor are there assets created out of them and therefore this question arose. In all the countries it is allowed and allowed to be capitalised also.

MR. CHAIRMAN: I hope you are aware of the position in the U.K?

SHRI B. D. SOMANI: They have amended the law.

MR. CHAIRMAN: Only yesterday we made a reference to it.

SHRI B. D. SOMANI: My submission is this: If you are sincerely anxious to see that the industry as such should grow and tap the savings and make all efforts, it cannot be covered within 5 per cent, depending on the size and nature of the company.

SHRI BENI SHANKER SHARMA: So far as amortisation is concerned, it is really a welcome move and this will give the industry the much needed relief which it has been wanting for such a long time. Now, there are two things. One is the ceiling. Some witnesses who appeared before us wanted 3 per cent, some wanted 4 per cent, some 5 per cent and some 6 per cent. Would you favour that there should be a ceiling of say, 2½ per cent or 5 per cent or 7 per cent, or the Department should be left free to allow the expenses which have to be incurred legitimately for the purpose of the business and which are not allowable under the head 'Capital Expenses'? What is your opinion?

SHRI B. D. SOMANI: In that particular aspect, I would put it this way that it all depends upon the capital structure of a company. We want actual expenses incurred.

SHRI BENI SHANKER SHARMA: Irrespective of the percentage?

SHRI B. D. SOMANI: Yes.

SHRI BENI SHANKER SHARMA: There is another aspect of the question. Would you like that the items of expenses to be amortised should be detailed in the Act itself or the ITO should determine the type of items because these expenses will differ from industry to industry, business to business?

SHRI SOMANI: Board heads must be specified that expenses of this nature for raising the capital should be allowed without being too rigid about the percentage.

SHRI SHINKRE: The Ministry has told us that after making study of 31 firms they have arrived at the conclusion that 2½ per cent amortization is reasonable but you say it is not reasonable. Will you tell us has your Organisation done any study about this is different small scale industries?

SHRI SHROFF: Our Organisation has not made a detailed study but there are studies made both by the Reserve Bank of India and the Financial Press has been regularly bringing out studies and it has been established generally this varies between 4-6 per cent depending upon the size. In the case of the smaller companies the promotional cost would be higher for various reasons. I may make a broad submission as a person closely concerned with management that time delay involved and its impact on project cost is not appreciated. Every delay per year brings 20-25 per cent increase. Secondly, when we are considering U.K. and other countries no country levies an import duty on imports whereas we start with an initial disadvantage of 30 per cent by way of import duty freight, insurance. The other thing, why you import equipment a lot is made in the country itself. Even accepting the validity of it the cost is higher. So, you are starting with that initial handicap.

SHRI SALVE: Mr. Shroff I was on the question of what ought to be a moral rationale basis for determining the ceiling irrespective of what the ceiling ought to be. You have not made a through investigation in the matter. We have made a study-although it is limited to 31 companies-you have pointed out capital base should be taken as proper criteria for

determining the ceiling. Why this base is considered an improper base because preliminary expenses when they are to be allowed what justification do you suggest that moneys which are going into the stock exchange must be taken into account for determining the ceiling.

SHRI SHROFF: Only margin of capital expenditure because presumably 60-70 per cent of your gross current assets would be financed by Bank, that we are keeping out capital employed base. I agree *ab initio* when you are forming a company you are necessarily to arrange for credit facilities which are required in future and the long-term finance which you are projecting only covers the margin on your working capital.

SHRI SALVE: When you arrange a certain capital base it takes into consideration what you may need to acquire your raw-materials and also for your finished goods kept in your industry. What is the justification of seeking 2½ per cent or 3 per cent the deduction by way of amortisation of preliminary and pre-operational expenses.

SHRI SHROFF: We are not taking the cost of raising funds. We are also taking the costs of legal documentation involved, market survey involved, feasibility study is involved.

SHRI SALVE: Are you satisfied with the definition of the long-term borrowing or you want some change as you want capital base? You may give us a note on this.

MR. CHAIRMAN: Let us take up the next point.

SHRI P. A. SHAH: The provisions about HUF will not achieve the objects with which this amendment is brought forward. It does not result in simplification. It is not giving any tax concession or relief. It will counter tax-avoidance to a certain extent but it will increase the number of pendency of appeals. It will cause lot of litigation. Unless the law is settled there will definitely be controversies and

uncertainties in the minds of the public also. It is being given retrospective effect. It is difficult for one to identify where exactly the funds are.

MR. CHAIRMAN: Suppose it is prospective, will you agree?

SHRI P. A. SHAH: It will serve the limited purpose of a countering avoidance to a very limited extent. This provision can be circumvented or avoided by a person who is bent upon avoiding the tax.

MR. CHAIRMAN: Mr. R. D. Shah wants to say something.

SHRI R. D. SHAH: I have no statistical information but in case of big assessments with large incomes partitioning of the HUF helps more in avoiding taxes while in small assesses with income ranging from 10 to 30 thousands partitioning of HUF helps him. For large HUF with lot of property, additional wealth tax is also there. This trend we have observed in splitting up of the HUF. Most of them will not escape additional wealth tax because property must be of more than Rs. 5 lakhs worth. In the case of big HUF with large income the rate of tax burden for individual of those slabs is not much. One of the observations we have made is this. There are small men, salaried people who have no other way of avoiding tax whether in Government or private or others in the ranges of 10,000 to 30,000 and so do this. At the most, for big HUF the partitioning is the process most paying. You can examine from that point of view.

SHRI BENI SHANKER SHARMA: The object of the Bill is to check the avoidance of tax. This Bill is intended to achieve that objective. HUF's after 1965 have come into existence very much. This institution is very widely used for avoiding tax. What is your experience? Is it being widely used for avoidance of tax or the apprehension is only imaginary.

SHRI P. A. SHAH: I would put it, that the people have been more conscious. But it is not necessary that this is done with this motive.

SHRI BENI SHANKER SHARMA: Could you tell me, with your experience, about the number of HUFs created? Could you give these figures later?

SHRI P. A. SHAH: It is not possible for us to do so.

SHRI BENI SHANKER SHARMA: As regards retrospective effect, I understand you are against retrospective effect?

SHRI P. A. SHAH: Yes.

SHRI BENI SHANKER SHARMA: Are you against prospective application? Supposes we just make the law applicable from 1st April, 1970?

SHRI P. A. SHAH: I am against that also, primarily because that though it may fulfil one objective, it will increase complications also and it will result in lot of appeals and uncertainty about the law also.

SHRI BENI SHANKER SHARMA: We were told that in the case of salaried persons there is a tendency to earn and throw that money into the common hochpot and that may be for the purpose of avoidance. But that may as well be for the purpose of security of the members of the HUF. Do you think that in the latter type of cases there is not so much the question of avoidance of tax than the question of creation of a guarantee for the future security?

SHRI P. A. SHAH: I have not come across many such cases. But that can be a very valid reason, namely, the family security.

SHRI N. K. SANGHI: You have stated in your memorandum that this particular amendment is against the basic principle of the Hindu law. Can you throw some light on this?

SHRI P. A. SHAH: Income of the HUF would be taxed in the hands of others. There will be litigation between the wife and husband or the minor child. It will result in some unsettled effect.

MR. CHAIRMAN: Next point.

DR. PATEL: Under the new economic policy, we are all aware that shifting is encouraged. One of the conditions would be that we have to inform the ITO within four years. These benefits which are derived are nullified.

SHRI N. K. P. SALVE: Prior intimation is superfluous, that is nothing to do with shifting; that is what you want to say?

DR. PATEL: Yes.

SHRI N. K. P. SALVE: The moment you sell it, your amortisation will cease. There is no business income from that and you will not be entitled to amortisation. I hope that you will accept.

DR. PATEL: Well, I think that we shall agree to it.

SHRI N. K. P. SALVE: Recongition of firms.

SHRI P. A. SHAH: Here, Sir, we have to make one suggestion. That is very vital. The Bill as drafted suggests that in case the person does not comply with the requirement of registration within the initial period, then at no time would he get registration, provided he is not covered by the proviso which exempts him, which permits condonation of delay.

SHRI N. K. P. SALVE: We appreciate. We shall take care of it.

SHRI P. A. SHAH: Coming to the next point, we would like to go to the question of self-assessment.

SHRI N. K. P. SALVE: Do you accept the law?

SHRI P. A. SHAH: Yes. We consider that this reduction of limit of self-assessment to Rs. 100 is very unrealistic. It is very difficult even for experts to compute income-tax to the nearest Rs. 100. Here, one observation I have to make is that so far as the last few years' legislation is concerned, increasing burden is being thrown on the assessee; no corresponding duty is being cast on the Department to assist. Even minor delays are subject to penalties. So suitable instructions should be given that minor delays are not penalised; wrong calculations do not also attract any penalty; the Department should be requested to assist the assessee in making self-assessment. Probably, for this purpose, counters should be opened, for giving assistance to the assessee for complying with the legislation.

SHRI N. K. P. SALVE: Supposing, instead of Rs. 100, we make it Rs. 500, do you think it would be reasonable?

SHRI P. A. SHAH: Rs. 500- is reasonable but the other thing is at present challans are not supplied.

SHRI PATEL: It is high time when larger section of community will be covered by payment of tax and many people do not want to avoid but ignorantly it happens; so, why not Deptt. sets up public relations department.

MR. CHAIRMAN: The department is considering that.

SHRI P. A. SHAH: The next point is about assessment on the basis of the return. This should be viewed in the light of the fact that time-limit is going to be curtailed and there is

hardly time to complete one assessment. This provisional assessment and later assessment made in some cases may afford to save time but so far as practical working is concerned it will make double cases and there will be larger number of appeals. My suggestion is that the Deptt. should issue suitable instructions whereby assessee are encouraged to file returns making suitable additions where necessary and in all such cases attempts are made to accept returns. In that case there will be no need to make two returns. At present all the efforts made by Chartered Accountants to comply with the requirements of law inspite of that they are called.

SHRI R. D. SHAH: I want to make one point clear. When you say the assessee adds back what is required to be added back, that is the tragedy. I have known in the U.K. that all the disallowables under the law are known to assessee, they are expected to add back in the return, they are detailed and indicated as to what are the items to be added back and also indicated the depreciation etc. These details have not been complied with. The Deptt. had to make additions which are obvious. If that is done 143(i) will be automatic without this. We are trying to do - I can understand an assessee being ignorant. Where the returns are filed and represented by Chartered Accountants obvious items of disallowables are not shown in the returns and for which we could prosecute but we do not.

SHRI P. A. SHAH: This results from a number of other reasons also. The time-limit being 30th June it results into congestion. Many people forget to make additions and they also forget to take deductions.

MR. CHAIRMAN: Administrative instruction is given under 143(1). You have said that 143(1) could be amended.

SHRI P. A. SHAH: As far as possible all these assessments should be final. We have submitted our views regarding fees for appeal before tri-

bunal. Rectifications are not attended to by the ITOs. It is incorrect to levy any fee. The intention is, people should be deterred from going to the tribunal but this will not stop people from going to the tribunal. The cost of the counsel is very heavy.

SHRI N. K. P. SALVE: If the principle of cost is introduced and we say that provision of awarding costs should be provided for at tribunal level would you accept it? Assessee will get the cost. The department will have to make good the money.

SHRI P. A. SHAH: It will be unnecessarily additional complication. Appeal is to be filed on a point of principle, as such. Of course, I may say, honestly, I have not applied my mind to it.

DR. PRANLAL PATEL: On Amortisation of mining companies and mining activities, Mr. Shroff will enlighten.

SHRI SHROFF: This is sought to be confined for 5 years only. Mineral development is a continuous process. You start with best mines. You go on with less economic mines later on. If it is restricted for 5 years it may not lead to full exploitation of the mines and mineral production and this will not go to the extent desired. We therefore do not see the logic of it. Why do you allow for 5 years only and not thereafter? The rationale of fiscal incentives for expansion for industries

applies both to existing companies and new companies. It should be made applicable to all such companies engaged in mines and mineral development.

Then coming to the question of bauxite, I wish to say this....

MR. CHAIRMAN: We have noted that. You need not elaborate.

SHRI SHROFF: We will also send a note. We are slowly being replaced also in the field of mineral supplies by other countries like Australia, for instance. They are earning billion dollars on minerals which we were supplying. This may cut into our export potential. On this we will send a note to you.

MR. CHAIRMAN: Thank you very much. We express our thanks to you and your colleagues.

(The witness then withdrew)

MR. CHAIRMAN: Before we adjourn, I wish to record this. The Committee places on record their appreciation of the assistance rendered to them by the Maharashtra Legislature Secretariat for holding their sittings in the Council Hall, Bombay.

The Committee stands adjourned. Thank you.

(The witnesses then withdrew)

(The Committee then adjourned)

**MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE
TAXATION LAWS (AMENDMENT) BILL, 1969.**

Saturday, the 31st January, 1970 at 11.00 and again at 15.00 hours.

PRESENT

Shri Chintamani Panigrahi—Chairman.

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri N. C. Chatterjee
4. Shri J. K. Choudhury
5. Shri Kanwar Lal Gupta
6. Shri B. N. Katham
7. Shri Yashwant Singh Kushwah
8. Shri S. B. Patil
9. Shri Shiva Chandika Prasad
10. Shri Vishwanath Roy
11. Shri N. K. Sanghi
12. Shri Beni Shanker Sharma
13. Shri Yogendra Sharma
14. Shri Janardan Jagannath Shinkre
15. Shri R. K. Sinha
16. Shri N. K. Somani
17. Shri Tenneti Viswanatham
18. Shri Prakashchand B. Sethi
19. Shri V. Krishnamoorthi

LEGISLATIVE COUNSEL

Shri Harihara Iyer, Additional Legislative Counsel, Ministry of Law.

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. N. Mutto, *Chairman, Central Board of Direct Taxes.*
2. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
3. Shri V. Ramaswamy Iyer, *Deputy Secretary.*
4. Shri M. S. Moray, *Under Secretary.*
5. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

I. Shri V. P. Gupta, President, All India Federation Income-Tax Gazetted Services Association, Central Revenue Building, New Delhi.

II. Indian Revenue Service (Income-Tax) Association, New Delhi.
Spokesmen:

- (i) Shri P. S. Bhaskaran, Vice President.
- (ii) Shri S. N. Mathur, Member, Executive Committee.
- (iii) Shri G. C. Aggarwal, Member, Executive Committee.
- (iv) Shri M. C. Joshi, Member, Executive Committee.
- (v) Shri C. V. Padmanabhan, Secretary, Delhi Unit.

III. Federation of Indian Chambers of Commerce and Industry, New Delhi.

Spokesmen:

- (i) Dr. Bharat Ram, Ex-President.
- (ii) Shri G. L. Bansal, Secretary-General.
- (iii) Shri C. C. Chokshi, Committee Member.
- (iv) Shri R. Thakur, Chartered Accountant.
- (v) Shri O. P. Vaish, Chief, Taxation Division.
- (vi) Shri C. H. Hazari, Vice-President, Escorts Ltd.
- (vii) Shri M. N. Nagarajan, Senior Research Officer.

I. Shri V. P. Gupta, President, All India Federation, Income-Tax Gazetted Services Association, New Delhi.

(Shri Gupta was called in and he took his seat)

MR. CHAIRMAN: We welcome you. I am reading out the relevant Rule 58 of the Rules of the Procedure that "your evidence shall be treated as public and is liable to be published unless you specifically desire that all or part of the evidence given by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, your evidence is liable to be made available to the Members of Parliament." So, Mr. Gupta, you have not given us any Memorandum. Kindly tell us the problems that you want to place before the Committee here.

SHRI V. P. GUPTA: Thank you, Sir. First, I introduce myself. I am V. P. Gupta, Inspecting Assistant Commissioner, and I happen to be the

President of All India Federation of Income-tax Gazetted Services Associations. This Federation constitutes of 14 Associations, spread all over the country, which are formed of Income-tax Officers and Assistant Commissioners of Income-tax. This Federation used to represent all the Services Senior Gazetted Officers till 1960. But after 1960, another Association has also been formed by the direct recruits to the Gazetted Services. And that Association--our sister association--is also coming before you at about 12 O'clock today. Since this Federation is spread all over the country, I am sorry, we could not send you a written memorandum. However, we welcome these Amendments. These are long awaited and much needed for the country. And by these Amendments,

certainly healthier Income-tax legislation will prevail. My brief submissions in connection with these amendments would be as follows:—

(1) I welcome this opportunity given to me to come before this Select Committee.

The Federation of Service Associations is mainly formed for service matters for raising the status, structure and for giving amenities etc. to the members of the services. It is really a happy augury that we have been allowed to submit our comments on the intended legislation that is coming before Parliament.

As I have seen the Bill it contains the much-needed reforms in many ways. I have been told to say that I can submit my problem. So, I take this little liberty to ventilate the feelings of members of the Federation. They want to submit that these amendments relate purely to legislation and so the service associations or the Federation would like to bring to your kind notice that this legislation would add up some work on the department—some extra load on the department. This aspect may kindly be borne in mind. When this Bill was sought to be introduced in May, 1969, that was done due to the amendments suggested by the P.A.C., the Administrative Reforms Commission and by the final Report of the Bhoothalingam Committee. These three documents deal with the administrative aspects of the Departments and the Board. Too much of legislation has been brought about after 1961 Act. With these series of amendments much work has been thrown on the department for training the staff and officers for making them aware of these amendments. It may be a very good legislation but you know, sir, that there is shortage of officers. Some extra staff is also needed to implement this. So, I may kindly be excused to say something here because my very senior officers of the Board are sitting here. All the same I am representing

this Federation of the officers who are executing this. They may be given some facilities in the matter of status and pay-structure. We are almost copying or following the U.K. and U.S.A. legislations. If you compare the scales, their scales are far better than the scales of the I.T.Os in India. The Central Board of Direct Taxes raises far more revenue than the Railway Board and Postal Board. There the Secretary of the Board is a full-fledged Secretary; the Chairman of the Railway Board is also a full-fledged Secretary while the Members of the Railway Board are of the ranks of Additional Secretaries. Our Chairman is of the rank of an Additional Secretary. Similarly, the salary of the Commissioner is not as good as in other services.

MR. CHAIRMAN: Mr. Gupta, will you kindly confine yourself to the provisions of the Bill?

SHRI GUPTA: Since you have asked me to confine myself to the provisions the Bill, I shall now do so.

MR. CHAIRMAN: How do you say that the work has increased?

SHRI GUPTA: I shall first concentrate on the provisions of the Bill.

SHRI PRAKASHCHAND SETHI: How is the workload going to be increased? You may please explain that.

SHRI GUPTA: For example in the Bill, a penal provision has been brought in. If there is a failure to file a return, prosecution will be started against the assessee. With the number of increase in the assessee, the workload or arrear assessments too will go on increasing. And naturally some staff—some officers—will be needed.

Similarly, Section 143(1) is going to be amended authorising the officers to make an assessment on the spot without calling the assessee. If there is reviewing of or revising of assessment there may be a little more work for the same assessment. The officer

will continue to apply his mind twice to the same assessment work. That means some extra work.

MR. CHAIRMAN: You mean there will be double assessments.

SHRI GUPTA: Not in every case. New Section authorises the Board to make assessments in certain classes of assessee. These may make them to do quicker assessments. The new provision empowers the I.T.O. to revise certain assessments without reference to higher authorities. He knows that the first assessment that he has made is not final. He may apply his mind to see whether he has committed any mistake. He may rectify that either by revising the assessment and/or by reopening that under Sec. 147 or 148. But under the new procedure he will automatically revise the assessment. I hope that my point has been brought out very clearly that it would mean some extra work to be done in the department.

SHRI PRAKASHCHAND SETHI: You must know that labour is going to be reduced by not calling the assessee to office for examining the account books etc.

SHRI GUPTA: This is a far-reaching provision. In the U.K. the assessee are not called; they are only called when notice is issued by the Commissioner in certain cases. Completing the assessments without calling the assessee may be limited to certain cases only.

SHRI KANWARLAL GUPTA: Mr. Chairman, let him first finish his submissions and then we shall ask him questions one by one.

SHRI GUPTA: May I proceed?

MR. CHAIRMAN: The point is that he has not given us any written memorandum. He said that the workload has increased. Let us hear him on this point.

SHRI GUPTA: My point was about prosecution for non-filing of the return. My submission is that only 50 percent of the salaried assessee do not file the returns at the moment. And their taxes are deducted at source. Now by compulsion of this provision they have to file their returns. The idea of this section 143 leads one to a conclusion that this may lead to some extra work. This revised procedure will lead to extra work; also the penalty provisions will lead to the same thing. Whenever a fresh Bill is introduced that creates some extra work. It is not as if the work is going to be decreased. Even the pendency of arrears of assessments and collections of income-tax arrears shows that the present staff is not able to cope up with the work. With the additional work, naturally the staff would also be required to be increased. We have to keep the services contented for implementing the new provisions.

SHRI KANWARLAL GUPTA: You tell us whether it is desirable to prosecute a person for late filing of the return. We are making changes by amending Section 143(1). According to this, the I.T.O. can revise the assessment again. Is it necessary at all or can we drop this provision? You said that you would require more staff to cope up with the increased work. For this purpose have you any improvements to suggest?

SHRI GUPTA: I say that the amendment need not be dropped. Under the amended Sec. 119, the Central Board of Direct Taxes is empowered to issue instructions authorising the officers in special classes of assessee to make the assessments on the guide-lines, principles or procedures to be followed by income-tax authorities.

SHRI V. P. GUPTA: According to the amended section 119, and also as the Hon. Minister stated, in small income cases perhaps such a procedure will be adopted for making summary assessments.

SHRI KANWAR LAL GUPTA: Under 143 you have been making assessments even now. Under the amending Bill you will complete them, but still you can open them at any time, and there would not be any finality. These days, you have been fixing the cases of partners without fixing the cases of the firms just to show more disposal. Tomorrow, if this Bill is passed, it is possible that many cases would be completed under 143. There is no difficulty and then you again ask the assessee to bring his books, you want to examine books, etc. Will it not lead to corruption and so many complications?

SHRI V. P. GUPTA: In UK the same Inspector of Taxes has the power to review his own assessment. Why not follow it? Let us have confidence in the Service and let us create morality for the assessee also that we will accept the return first and if and when there is need, it will be reopened. There are superior officers to watch the I.T.Os actions. It will not lead to corruption. And certainly some safeguards will be that incomes below 25,000 can be accepted, and cases above that may be assessed by looking at the accounts with the help of the lawyers and with the help of the assessee. That should be my answer.

SHRI N. K. SANGHI: Don't you think that this tendency will develop in a majority of cases? Don't you think that is going to cause hardship with certain officers who are not behaving in a proper manner in deciding the cases?

SHRI V. P. GUPTA: Time has come in our democratic set-up when we have to take a risk, Let us take the risk and pass this amendment.

SHRI KANWAR LAL GUPTA: You are the Inspecting Assistant Commissioner. You have fixed a certain disposal for every ITO. And when they are unable to make the requisite disposal, what do you think they do?

They make assessment under 143(1) of the partners without finalising the cases of the firm. At least in Delhi I know, Mr. Chairman, that cases of partners are finalised without fixing the cases of firms and they are being finalised under 143(1). To show more disposal, a sort of fictitious disposal is made. If this amendment is passed, this tendency will develop much. So what is your reaction to it?

SHRI V. P. GUPTA: I think it is boldness on the part of Legislature to conceive of such an amendment.

SHRI KANWAR LAL GUPTA: You have not answered my question.

SHRI N. K. SANGHI: Have you given any thought where a case has been finalised under 143(1) and an appeal has been filed by the assessee and later on this very case is reopened by the Income-tax Officer on finding certain facts? What do you think would be the feasible proposition to rectify this matter?

SHRI V. P. GUPTA: If I understand things correctly, the AAC has applied his mind to the facts then existing before him on the assessment made under section 143(1). That will take its course. If the ITO has found some inadequacy, incorrectness or incompleteness in the earlier assessment, he is still empowered under the new provision to make a fresh assessment. The two courses will be open in their own way. They may not be mixed up. Those proceedings are going on separately.

HON. MEMBER: Supposing a case has been completed under section 143(1) and an appeal is lying pending. There will be a judicial pronouncement; a particular matter will be finalised. What do you suggest in such a case?

SHRI V. P. GUPTA: The same officer should review it. There may be some safeguards. Either a higher officer

should give the sanction for re-opening or some prescribed provision be made under which he should re-open the case.

The new Section 119 empowers the Board to lay down the various procedures of assessment in various classes. So, under this provision, the Board may empower and may issue certain instructions that in certain cases no assessee be re-called.

SHRI KANWAR LAL GUPTA: But the instructions and the directions of the Board cannot supersede the Act.

SHRI V. P. GUPTA: The Board does not come in but the Board's orders will help the IAC or Commissioner that he does not unnecessarily get the cases reopened.

SHRI SANGHI: Mr. Gupta, you are on the administrative side with wide experience. Give us some background of the cases opened under the old Act. What are the reasons for not closing the same so far? Are the officers applying their mind to it? The cases re-opened under Section 34 for the past 20 years have not been finalised.

SHRI V. P. GUPTA: It is a general question. I can only say that even cases opened under Section 34 there is time-limit to be completed and time-limit to be re-opened. It is not that they will lie re-opened for such a long time. That general situation does not prevail that all the re-opened cases under Section 34 are lying re-opened.

MR. CHAIRMAN: According to your observations if we look into the provisions of 143 (1) with new section 119 the harassment which we are thinking the assessee may be put to is not there and this is an improvement.

SHRI V. P. GUPTA: Yes, Sir.

MR. CHAIRMAN: Then why you say your work-load will increase.

SHRI V. P. GUPTA: Clerical work will increase because the review will be now in greater cases.

MR. CHAIRMAN: You have made two observations which are rather contrary to each other—one, this is an improvement in the sense that there is possibility of lessening the harassment; second, there will be greater workload. Whether from your practical experience this law which is going to be enacted will really lessen the hardship and if so, also work load will be lessened?

SHRI V. P. GUPTA: It will certainly lessen the hardship and improve the public relations but the clerical work in the Income Tax Office is likely to increase.

MR. CHAIRMAN: When you say this workload will increase it will mean that in practice thousand of cases will be re-opened.

SHRI TENNETI VISHWANATHAM: There seems to be some general agreement that the small assessee should be saved from this botheration of reopening. The witness says the Board can give suitable guidelines or directions. On that also there seems to be some agreement; but Mr. Kanwar Lal Gupta has said that they cannot issue guidelines or directions against positive provision of the Section. Therefore, supposing I suggest that you divide Section 143 into two sections—one section dealing with small assessee and the other with big assessee and there is a regular procedure of re-opening and all that. Supposing one Section says that the small assessee cases shall not be re-opened at all. It will lighten the work of the Income Tax Officers and will save small assessee in their cases being opened in an unexpected way. What would be the re-action of the witness if a statutory provision is made defining a small body of assessee i.e. with Rs. 20,000—Income their cases shall not be re-opened at all.

SHRI GUPTA: To say in a blanket way that they will never be re-opened may not be possible.

SHRI T. VISHWANATHAM: There is no difficulty because Income Tax Officers have got to be trusted. Assesseees have got to be trusted. We are making progress. How can we progress if we leave doubt? Therefore, as the witness has said, after all, the Government is not going to lose very much if the cases of the small assesseees are not re-opened. There will be a widespread satisfaction among the small assesseees that they are not very often being called. Put a statutory limit for small assesseees so that their cases should not be re-opened.

SHRI SOMANI: The proposal already given that there shall be a compulsory imprisonment in late filing of return and non-production of books....

MR. CHAIRMAN: Let us hear Mr. Sethi.

SHRI SETHI: As far as I can understand the intention is to avoid the harassment to the smaller assesseees and that is why the power under Section 119 has been given to the Board to issue instructions. Now that will take care of as to what will be the small income group, that can be decided. In the very initial stage the assesseees need not come with their Account Books, witnesses and other things to the Income Tax Department neither they would be called and their assessment is based on whatever they file—self assessment basis should be accepted. The Income Tax Officer has not seen the Account Books and that is why he should re-open, that would be proper justification for re-opening such cases, because the very intention is not to call them with their Accounts Books but even in such cases if the Income Tax Officer has in his possession some positive information whereby he comes to this conclusion that the income has been evaded or proper assessment has not filed, to that extent it would not be desirable to restrict income tax

authority. While in the case of other assesseees who go beyond the particular income group, in these cases while the Income Tax Officer finalises his assessment under 143(1), it would be on the basis of examination of the record, Accounts Books at the very first instance and therefore in the case of such assesseees he would not be able to re-open these cases because he has seen the Accounts Books and he has done so only after seeing the Accounts Books. He would be able to do on the basis of some positive information with him. Therefore, this fear that each and every case—small income group or higher income group—there will be duplication of work. The Section does not come in the way of other provisions and that Section could give proper authority to the Board to issue proper instructions. That is how I see it.

SHRI KANWAR LAL GUPTA: The Minister is not correct in the sense that Income Tax Officer has got some extra information that a particular assessee has evaded the tax and therefore the Income Tax Officer has got the power to re-open the case. Now the position will be different after the passing of this Bill. The position today is there is self-assessment. On the basis of the income the income tax will be paid. There is no problem. Now if you want to complete the assessment under Section 143(1), even now it is being done. There are two changes which are made in this amending Bill—one is now under the existing Act. There is no provision to make any adjustment. Suppose there is an apparent mistake you cannot judge it or subtract it. In this Bill the power has been given to the Income Tax Officer that while assessing it under 143(1) he can make necessary adjustment if there is an apparent mistake. That is a welcome sign. The second power which is given to the Income Tax Officer is that he can re-assess or review his assessment is not proper. If you have got some definite information regarding evasion of tax he has no power even now to re-open it. Now more power is given. If the

assessment is under 143(1) of a small assessee, to-morrow the Income Tax Officer says, well, I want to review it again. What the position to-day is that in that case he has to issue a notice that I have got a definite information, you file a fresh return. That is all right. That system is there if there is tax evasion. Now he need not issue any notice. He will say, all right, I want to review it without any reason. He need not have any definite information. He may say any one to review it. It will lead to corruption. It will be harassment to the assessee and unnecessary harassment to the Income Tax Officer and any assessee can say that since he did not give money to the Income Tax Officer, therefore, he is harassing him. I do not see any benefit from the revenue point of view.

MR. CHAIRMAN: If in 119 all the instructions are made public and available to the assessee, to the Board, will it improve the matter so that the assessee will know everything? I hope that will be more helpful.

SHRI GUPTA: Unless there is something secret.

MR. CHAIRMAN: There is no secrecy so far this is concerned. About 143, 144, 147, 154, 155, there is no secrecy about it.

MR. CHAIRMAN: They will be helpful to the assessee.

SHRI Y. S. KUSHWAH: Are we discussing the instructions issued by the Income-tax Department, or....

MR. CHAIRMAN: Section 119 of this Bill gives some powers to the Board. So far as these Sections are concerned the Board may, if it considers necessary, issue instructions. The Board is empowered by the Law to do this for its day-to-day working, so that harassment will be less. This is to mitigate the hardships of the assessee.

SHRI N. K. SOMANI: I am talking about a new provision—compulsory imprisonment of those assessee who fail to file their returns in time or to produce their books of accounts. Now, one possibility occurs to me instantly, and that is in respect of salaried income, staff, whose income is a fixed income, where the tax is deducted at the source. These people have less moral responsibility as far as filing their returns are concerned. Their tax is deducted at the source. But the employer, for any reason might like to hold back or use that money as working capital and does not submit this return to the Income-Tax authorities. Does this ask for the employee to be imprisoned? Then, there is the case of small assessee, who are not conversant with the technicalities of law and who may not be able to afford Income-tax practitioners to appear before you and who may not be able to comply with the situation in absolute details as far as time and all these demands are concerned. For the first time this is being introduced that there shall be a compulsory imprisonment up to 6 months. This is a point where we would like to have your advice. Would you not rather make this applicable to non-salaried income group above a certain level? That means, you should exempt all those, whose taxes are deducted at the source, and you would also like to consider that the small assessee should also not fall within the mischief of this. This, I would like to know from your experience.

SHRI V. P. GUPTA: I can say that Section 119 will protect those, if some instructions are issued from the Board that the salaried persons may not be included even if they fail to file for five years, or small assessee, if they do not file their returns, may not be prosecuted. The instructions will look after that.

SHRI SOMANI: I don't think so. Except, the law states clear that there shall be this. The instructions cannot be contrary to the law. In theory, you will have authority to prosecute each

and everybody who is falling within the law, unless it is provided in the law itself.

SHRI V. P. GUPTA: The instructions will not be prejudicial to the assessee.

SHRI SOMANI: How do you guarantee this?

SHRI K. L. GUPTA: If you agree in principle with the contention of Mr. Somani, why should we not provide in the amending Bill that the small assessee should not be made the target of this and the salaried people should not be made the prey of it? Why should we not provide it in the legislation?

SHRI V. P. GUPTA: Even in the existing law, there is nothing like classification of assessee. Such things will come in the way of instructions through the Board. The law does not clearly lay down that assessee having incomes upto 25,000 of rupees may be given this treatment or above Rs. 25,000 should be given this treatment.

SHRI K. L. GUPTA: Suppose the instructions are issued by the Board that no person, who has an income of Rs.20,000|- will be punished. And tomorrow, some Income-Tax officer sues somebody whose income is Rs. 10,000|-. Is it not illegal?

SHRI V. P. GUPTA: It is in the sense....I will read C1 3 of Section 119—"Every income-tax officer employed in the execution of this Act shall observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection or by the Commissioner or by the officer within whose jurisdiction he performs his functions.

SHRI P. C. SETHI: We cannot make a classification that the income group, if they do not file the return, should not be prosecuted. Section 119 is not so much over-riding as to give authority to the Board to over-rule the other Sections.

MR. CHAIRMAN: Mr. Gupta, are there such instructions being issued by the Board at present also?

SHRI V. P. GUPTA: Not about imprisonment. But, for making a summary assessment up to an income of Rs.10,000|-, there are instructions which are being followed. In those cases, the assessee are not called.

SHRI SOMANI: About my proposal that about the salaried income and about people whose income is up to Rs. 20,000 or Rs. 25,000 would you or would you not like those people to be exempted from that Section?

SHRI V. P. GUPTA: Yes. If such a distinction can be made under the law between the salaried assessee and the non-salaried assessee.

SHRI SOMANI: Should it be made? We can do anything.

SHRI V. P. GUPTA: It is bound to be welcomed for salaried assessee. I will agree with what Mr. Somani says.

MR. CHAIRMAN: What is your other point?

SHRI V. P. GUPTA: Salaried assessee are the most hard-pressed. I represent the Services Associations, but I need not limit myself up to the Income-tax Officer. All the salaried assessee pay taxes through their nose at the source. And the only relief they got is for the transport; if you own a car, you get some concession. I will plead, at least 15 per cent of the salaried assessee's income may be granted exemption. That will cover up each of the small assessee, who come by bus etc. It might be 15 per cent, 12½ per cent or 10 per cent. I am taking due from the concession granted by Mr. Somani. If you grant this concession in law to the salaried assessee, it will go a long way. Mostly the salaried assessee, are being hard-pressed. The non-salaried assessee sometimes escapes and he pays after 4 years. So, why not grant the general

exemption of 10 per cent to the salaried assessees. It will incidentally help the Service Associations and other salaried persons—including small assessees. A small assessee does not have a car. He gets the house with difficulty. Why not give him some concessions?

MR. CHAIRMAN: Have you thought of such an Amendment? You send it to us.

SHRI V. P. GUPTA: I will send it.

MR. CHAIRMAN: And the relevant Section where we can fit in this thing.

SHRI K. L. GUPTA: The last question is about the comment on change in procedure of registration of firm.

SHRI GUPTA: These are welcome amendments except that the existing registered firms need not be asked to go to the Registrar of Firms. There are two authorities—one is the Registrar of Firms and the other is the I.T.O. himself. Those firms which are enjoying the registration now should continue to enjoy this benefit. I think the amendments are in order.

SHRI KANWAR LAL GUPTA: A firm need not go to the Registrar of Firms if there is no change in the constitution of the firm. Is this a sufficient provision?

SHRI GUPTA: I think that should be sufficient. And this amendment should not cause complexities. The idea here is to simplify the process of registration and renewal of registration of firms. This new amendment is welcome.

MR. CHAIRMAN: Do you want to suggest any improvements to any clauses of the Bill?

SHRI GUPTA: There is some amendment to H.U.F. property in

clause 14 of the Bill regarding conversion of individual property in the H.U.F. property. This is not really called for. In any case the amendment should not be applicable retrospectively from 31.3.65. On the contrary it should be prospective and not retrospective. There should be no amendments for four or five years after this Bill is passed.

MR. CHAIRMAN: Suppose there is only one comprehensive amending Bill. If it comes about do you think that this will be enough?

SHRI GUPTA: At the moment since this is considered by the PAC, A.R.C. and Bhoothalingam Committees, I think it is good enough.

SHRI YOGENDRA SHARMA: They are thinking in terms of the next five years because our country is engaged in Five Year Plans.

SHRI N. K. SANGHI: I think Mr. Gupta started in the beginning saying about the dissatisfaction among the staff. Then he was stopped. I feel that there is a lot of dissatisfaction in the services which is one of the most paying branches of the Government of India. He was mentioning that even the status of the members of the Board and the Chairman of the Revenue Board are not equal to the Status of the Chairman of the Railway Board and so on. I want to seek his clarification on this point.

SHRI KANWAR LAL GUPTA: I think it is a very important point because it is they who implement this Act.

MR. CHAIRMAN: That is correct.

SHRI N. K. SANGHI: That is why I request for the permission of the Chairman to take five more minutes for clarifications from Shri Gupta.

SHRI YOGENDRA SHARMA: If you so desire you may submit to the committee a written note on this subject.

MR. CHAIRMAN: All right you better give us a written memorandum in all these things. All these things of course do not come within the scope of this Bill. As Mr. Sharma pointed, you please give us a memorandum on this.

SHRI GUPTA: I would submit a written memorandum on this.

MR. CHAIRMAN: Whatever improvements you want to suggest in the Bill may also be given in that memorandum.

SHRI GUPTA: We are contributing Revenues about 700 crores in a year whereas the Postal Board is contributing a crores of rupees. I have got with me the figures. I quote from my own address which I delivered to our delegates when Mr. Morarji Desai also addressed them on 17th May, 1969 at the annual session of all India Federation of Income-tax Gazetted Services Associations. I shall send copies of that along with my written memorandum.

I am grateful to you for permitting me to send you a written memorandum.

MR. CHAIRMAN: Thank you, Mr. Gupta.

(The witness then withdrew)

II. Indian Revenue Service (Income-Tax) Association, New Delhi.

Spokesmen:

- (1) Shri P. S. Bhaskaran—Vice President. . .
- (2) Shri S. N. Mathur—Member, Executive Committee.
- (3) Shri G. C. Aggarwal—Member, Executive Committee.
- (4) Shri M. C. Joshi—Member, Executive Committee.
- (5) Shri C. V. Padmanabhan—Secretary, Delhi Unit.

(The witnesses were called in and they took their seats)

Sarvashri Joshi, Bhaskaran and Mathur of the Indian Revenue Services Income-tax Association, New Delhi were called and examined.

MR. CHAIRMAN: Before we proceed I would like to read to you the relevant Direction (No. 58) from the Rules of Procedure and Conduct of Business in the House. You will kindly note that the evidence you give before us will be treated as public and it is liable to be published unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you may desire your evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

We have received our memorandum. Would you like to say something about your Association on the points that you have made in that memorandum?

SHRI BHASKARAN: Our Association represents mainly Class I Officers of the Income-tax Department. In this memorandum we have dealt with more important changes sought to be introduced in the Indian Income-tax Act. We have pointed out that certain provisions require further consideration—some with slight modifications and some changes because of administrative and legal difficulties which we have to face.

SHRI KANWAR LAL GUPTA: May I ask a general question? We have been making changes in the Income Tax Act so frequently, because we want to simplify or rationalise it. Do you feel that it leads to simplification or complication?

SHRI BHASKARAN: With due respect, I believe that it leads to complications. By the time we get acquainted with the existing provisions,

it is changed and it becomes very difficult to apply this provision from year to year.

SHRI KANWAR LAL GUPTA: Do you suggest that we should make changes once and for some years we should not make any change unless it is very necessary?

SHRI BHASKARAN: I would suggest that.

MR. CHAIRMAN: Let us not have sweeping observations like these. Mr. Bhaskaran, from your practical experience we expect you to help us.

SHRI N. C. CHATTERJEE: Regarding Clause 2, in the last paragraph you say: "We therefore, suggest that a comprehensive measure redefining the meaning of agricultural income should be incorporated in the Act so that the relief granted to small holders is not defeated by the provisions of the Income tax Act. Have you got any draft?"

SHRI BHASKARAN: We have not drafted any. Our resources are very limited in the sense that we are not lawyers.

SHRI KANWAR LAL GUPTA: Send us some guidelines in a week or so.

MR. CHAIRMAN: Please tell us freely what you think about it. You can freely express your views. This is a Committee of the Parliament. Parliament is supreme, very supreme.

SHRI BHASKARAN: We believe that change is not at all necessary at this stage.

MR. CHAIRMAN: You mean to say that Clause 2, as it is today, is not going to be very helpful?

SHRI BHASKARAN: It will create complications. In U.P., unless land revenue is paid, income from that land will not be agricultural; so it would not be liable to income-tax.

MR. CHAIRMAN: What is the provision in UP?

SHRI BHASKARAN: In U.P., where the holding is less than a certain limit, it is not assessed to land revenue and income will not be agricultural income.

SHRI N. K. SANGHI: Perhaps you have not given a careful thought to it. This definition is there already. Actually, the classification for agricultural income has been very much widened here. They have provided two conditions. The land is away from the city or the land should have been subjected to....

SHRI N. C. CHATTERJEE: It is removing one condition. If it is used for agricultural purposes, it is agricultural income.

SHRI BHASKARAN: Land is either assessed to land revenue in India or is subject to a local assessed and collected by officers of the Government as such. The land should be assessed to land revenue. This condition was there in the original provision also. It is not something new.

Then, it says that the land should be situated beyond 8 kilometres from the local limits of the Municipality...

SHRI N. K. SANGHI: I think there is a misunderstanding here.

According to the present Act, 1961, agricultural income means any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue or is subject to a local rate assessed by officers of the Government. This is the existing provision: "Any rent or revenue derived from land, which is situated in India and is used for agricultural purposes...." Now, this thing has been deleted, "and is either assessed to land revenue in India or is subject to local tax..". So, the whole definition has been widened.

MR. CHAIRMAN: We come to your next point about clause 8.

SHRI BHASKARAN: We have made a general suggestion that this clause gives a concession to new industrial units and is confined to companies only. We have suggested that it should be given to firms, HUF or any assessee who starts a new business. Secondly, instead of listing the possible expenses which would be allowed under this clause some sort of general provision may be made so that the expenses relate to the business but are not individually listed. Thirdly, this provision does not give relief to a company which finances its expansion from internal finances.

MR. CHAIRMAN: Have you given any thought to this problem about amortisation. The way you have mentioned shows you have not given a lot of thought. What should be the base of amortisation?

SHRI BHASKARAN: We have no experience in allowing this expenditure because we have been disallowing under the existing law all such expenses. What will be a reasonable amount of expenditure it is very difficult to say as a percentage of the capital base or even loan capital.

MR. CHAIRMAN: You have said it is not necessary to list the expenses which have to be allowed. Supposing we do not list then what are we going to do?

SHRI BHASKARAN: All expenses will be allowed provided it is for the purpose of the business.

MR. CHAIRMAN: As all expenses were being dis-allowed now all expenses be allowed.

SHRI BHASKARAN: Yes, over a period of 10 years. There should not be any ceiling.

SHRI YOGENDRA SHARMA: You seem to think that amortisation benefits should be given to all assessees irrespective of the fact whether

they are Indian companies or otherwise? So, you do not want to make any differentiation between an Indian and a foreign company.

SHRI BHASKARAN: I would say there should be no distinction between an Indian company and a foreign company.

SHRI YOGENDRA SHARMA: In this age of national resurgence this factor cannot be overlooked. Every country looks after its interests first, then why not we?

SHRI BHASKARAN: You are leading me to issues on which I am reluctant to express. We are eager to get capital for industrialisation of India and if a foreign capitalist comes to invest his capital.....

SHRI YOGENDRA SHARMA: That does not mean we should throw open our rooms to the foreigners.

SHRI BHASKARAN: We give them incentive.

SHRI YOGENDRA SHARMA: Amortisation benefits lead to capital gains. How can the capital gains be allowed at the expense of the society?

SHRI BHASKARAN: I do not think that these expenses result in capital gain to the assessee. Take the specific example of a company which pays a lot of money in raising capital by issue of shares, etc. In this expenditure no tangible capital assess has come into existence.

SHRI YOGENDRA SHARMA: If these intangible expenditure do not go to make for capital gains, there should not be any intangible expenditure at all. The very fact that intangible expenditure has to be resorted to, is that necessary for making capital gains; otherwise why is that resorted to. What is the justification of intangible expenditure. Intangible expenditure have become as much as

integral part of capital gain as tangible expenditure; otherwise intangible expenditure is not at all necessary.

MR. CHAIRMAN: In your circle if we allow this concession how much revenue we lose by this.

SHRI BHASKARAN: I have no idea.

MR. CHAIRMAN: You should have worked it out. You can subsequently send us some idea.

SHRI BHASKARAN: As an Association we do not have any statistics regarding these things and even as an officer of the Department, I may be subject to correction, we do not have any statistics regarding the preliminary expenses which have been disallowed in the assessment in the past or for a period of time.

SHRI KANWAR LAL GUPTA: Suppose this amendment is passed, will it give some specific benefit to the Company and how much we will be losing the revenue?

SHRI BHASKARAN: About the loss of revenue I cannot give any idea because it will be purely a guess work. But as far as tangible benefits to the company are concerned, I am speaking as a citizen. I would say as in equity they have spent and some deduction should be given. I feel there will be substantial gain.

MR. CHAIRMAN: When you say that it will be giving benefit; may I know which foreign country has adopted it?

SHRI BHASKARAN: I have no idea.

SHRI SETHI: When he says that he has no idea of the percentage because they have not worked on this basis, therefore, as far as the percentage is concerned that is left to us whatever we decide for amortisation. The only contention seems to be that we should not list whatever is submit-

ted after the limit. We fix to the extent that will be disallowed and to the extent that they come within that limit, that will be amortised. Is it the idea?

SHRI KANWAR LAL GUPTA: They do not want any ceiling:

SHRI SETHI: Do you want ceiling or not? You do not want listing?

SHRI BHASKARAN: We have not said anything about ceiling. We have said that there should not be any listing.

SHRI KANWAR LAL GUPTA: What are your views about ceiling. You said there should not be ceiling. All the expenditure should be allowed. You did not say anything about ceiling, but what are your views about it? Please let us know.

SHRI SANGHI: The ceiling are put because this requires understanding with the officer.

SHRI BHASKARAN: May I invite attention to Section 37 of the Income Tax Act which is the widest section. It says any expenditure laid out or expended wholly and extensively for the purpose of business, the Income Tax Officer has to make discrimination whether it is laid out or expended for the business and that covers the maximum amount of expenditure which is allowed in Income Tax assessment. There the Income Tax Officer's discrimination is there.

MR. CHAIRMAN: They have given a general provision in Clause 2. That the expenditure referred to in subsection 1 shall be expenditure: laid out or expended wholly and exclusively for the purpose of business or provision but which is not allowable because it is incurred before the commencement of business or in connection with the industrial undertaking or in connection with the new industrial units and for which no expenditure or allowance is permissible under any other provision of this Act.

SHRI KRISHNA KANT: Suppose a Company before starting the production and all that makes some expenditure. My question to the witness is, are you in favour of having any ceiling or not because there is a big company. It spends a lakh or so. Small company spends less. Their capital is less. If you fix 2 per cent, then the small company will suffer. So many factors are there. From the equity, administrative point of view, is it not desirable to allow all the allowable expenses or to have the ceiling?

SHRI BHASKARAN: If there is no limit, apart from taxation point of view—loss of share holders capital also, I feel that some sort of upper limit is necessary.

SHRI KANWAR LAL GUPTA: Under the present Act are you not empowered not to allow certain expenditure which you feel is not reasonable? So that point does not carry you anywhere.

SHRI BHASKARAN: In the present law, according to the Supreme Court, 'reasonable' should not be a subjective appraisal, but an objective appraisal from the business point of view. So, it is very difficult to disallow any part of the expenditure as unreasonable and to get it sustained in appeal.

SHRI GUPTA: Suppose, if he says legitimate expenditure, will you agree?

SHRI BHASKARAN: Allowable.

SHRI T. VISWANATHAM: Put a ceiling of 10 per cent.

SHRI BHASKARAN: That is for this hon'ble Committee to decide. But there are two aspects to this question.

SHRI P. C. SETHI: With regard to Cl. 37, as far as the expenditure allowance is concerned, do you relate this expenditure which you are authorised to allow to the gross in-

come or the business turned out by the firm? In what manner do you relate it? Suppose, I am having a firm having an income of Rs. 25,000/- per annum. I show Rs. 10,000/- as salaries of the various persons whom I have engaged for doing the business, and I show Rs. 8,000/- as travelling expenses—make 50 trips by Air to Delhi. Of course, the entertainment allowance is fixed by a percentage. Then, I some times deliberately reduce my income from Rs. 20,000 to Rs. 5,000 by showing all this expenditure. Then, how do you relate this expenditure?

SHRI BHASKARAN: It will be slightly a long story. We used to disallow as excessive or unreasonable expenditure. Now, the court have held that excessive or un-reasonable is to be not the subjective decision of the Income-tax Officer but the objective decision of the Income-tax Officer. I may be very much mistaken because my experience is very limited and within my limited sphere of experience, I can say that hardly any disallowance of expenditure of this nature of travel expenses etc. is sustained in appeal.

SHRI K. L. GUPTA: Mr. Bhaskaran, the hon'ble Minister has given you a particular example. For instance, he has shown an income of Rs. 15,000/- and on the other hand, he shows that he spends about Rs. 10,000/- for going here and there by Air. Then, will you allow that Rs. 10,000/- if you assess objectively?

SHRI BHASKARAN: If the purpose of that travel is in connection with the business, then the Supreme Court has decided that income is no criterion for allowance or not.

SHRI K. L. GUPTA: Not necessarily income, but taking the picture as a whole as to what a reasonable businessman will do. There is a basis decided by the Supreme Court, and not that he can arbitrarily spend anything, whether it is required in the interest of the business.

SHRI BHASKARAN: The difficulty is that ten trips are for the business. And the expenditure has to be allowed. We cannot say that ten trips were not necessary for the purpose of business.

SHRI YOGENDRA SHARMA: You have given your views on amortisation etc. We have got lot of views on this. Now, we are more interested in your views about how to counter the tax avoidance and evasion, because as Income-tax Officers, you have to deal with these problems. You have experience in this and you can help the Committee by giving your suggestions to deal with this. This is a particular problem in which your evidence or your opinion should be more useful.

SHRI BHASKARAN: We thought that we were to give our views on this proposed Amendment Bill. So, we have given our views in this Memorandum on certain provisions, which we considered as Important provisions of the Bill. And we have certainly definite views about tax avoidance and evasion, and if the Chairman permits, we can express them here.

MR. CHAIRMAN: I think Cl. 30 is the most relevant one and let us have your views on that.

SHRI BENI SHANKER SHARMA: You may send us a note later on this subject of as how to check the tax avoidance etc.

MR. CHAIRMAN: Mr. Bhaskaran, you give us a detailed memorandum on this, as suggested by both Sharmas. You work it out, and think out properly, and then give us a detailed memorandum.

SHRI K. L. GUPTA: Regarding Section 64, in the end they have said that "the saving of such transactions effected before 1-4-1965 does not seem to be justified on principle." So, principle is alright. From administrative angle, do you feel that the applications should not be from retrospective effective, or it should be?

SHRI BHASKARAN: If I understand this Provision correctly, the provision says that this income will be included in the total income of the assessee from the assessment year 1970-71 onwards only. So, there is no retrospective operation of this provision. The only thing is that it brings within its net the transactions which were effected before this upto 1st April, 1965. Those before 1965 are not brought within the area of this Act.

Those before 1965 are not brought within the area of this Act.

MR. CHAIRMAN: Let us go to clause 30. We would like to hear from your practical experience.

SHRI KANWARLAL GUPTA: Under the amending Bill there is a provision that if a person files his return late he will be given physical punishment rigorous imprisonment. It is obligatory. There are many assesseees who are illiterates. Suppose you make a survey. And that survey puts the figure at 10,000. It may even go upto 20,000 or 50,000 assesseees. If there is a wholesale survey it will show you that these people were not filing their income-tax returns. Some were having marginal incomes. They did not maintain the accounts. So, for the persons having 4,000, 5,000 or 6,000, will it be desirable from the administrative angle to give physical punishment to the assesseees or some other punishment which you have already mentioned, namely heavy penalty of 100 per cent or 200 per cent income-tax should be there?

MR. CHAIRMAN: So many times our friends have pointed out that you need not be afraid when you have come before this Committee. Please speak frankly.

SHRI BENI SHANKER SHARMA: You are not representing the views of the Department but the views of the

Association as well as your members and assesseees as a whole who are very much affected.

MR. CHAIRMAN: Whatever genius you have let the Committee be benefited by that.

SHRI BHASKARAN: After 20 years of experience whatever genius I have spent without the benefit of amortisation.

SHRI KANWARLAL GUPTA: As an office-bearer of the union or association you must give us your views frankly.

SHRI BHASKARAN: I would express the Association's opinion on section 139 in a general manner. Clause 34 also provides for self-assessment or selective assessment.

SHRI KANWARLAL GUPTA: You tell us something about Clause 30.

SHRI BHASKARAN: You are asking a general question I believe.

SHRI KANWARLAL GUPTA: I am asking you a particular question—are you in favour of giving physical punishment to assesseees for not filing the income-tax returns in time?

SHRI BHASKARAN: For the assesseees who file the correct return and pay the correct tax there should be some provision. We should have provision for the imprisonment if the assessee does not file his correct return. There should be definitely a provision for prosecution if the assessee does not file a correct return and pays his correct tax.

SHRI KANWARLAL GUPTA: What about for the late filing of return which is a wrong return?

SHRI BHASKARAN: Late filing means that he has not filed the return by the due date. For that he should be punished. We have also suggested later that the punishment should be commensurate with the

offence in the sense that if he has already paid the taxes by deductions or in advance and no tax is payable on the basis of the assessment probably the punishment should not be severe. I would term this as a benign type of punishment.

MR. CHAIRMAN: Here you have said in clause 30 that the provisions as they stand at present benefit an assessee who does not file the correct return. If a person files a correct return but late return he is liable to pay interest at the rate of 9 per cent on the tax payable by him from 1st January or from some other date as the case may be. If he files a wrong return, he escapes the penal provisions of charging of interest. In this case he has to pay interest on the tax determined only from the 35th day of the service of the notice of demand. You have suggested that in order to differentiate between the assesseees who file a correct return although late and an assessee who files it in time but incorrect return, the interest provisions should be made applicable to both from the same date, that is for those who have filed a correct return but late and those who have filed a late return but incorrect return.

SHRI BHASKARAN: May I explain it? Suppose an assessee has paid certain taxes in advance way of deductions. And on filing the return he has to pay, say Rs. 10,000 as tax. Now he has to file the return by 30th June or so. So, upto October there is no interest provision. If he files his return by 31st December, on this Rs. 10,000 which he has to pay, after giving credit to whatever tax he has paid, he has to pay 9 per cent interest for three months. If he files a correct return, on Rs. 10,000 which he has to pay, he has to pay 3 per cent interest. Suppose the assessee files a return which shows

that no additional tax is payable and there is no concealment—if it is concealment that is a different aspect—and if the return is not very correct and he says that no tax is payable by him, in that case on Rs. 10,000 determined to be payable by him on assessment, he has to pay interest at 9 per cent only within 35 days from the date of service of the demand notice.

SHRI BENI SHANKER SHARMA: Mr. Gupta's question was different. He was asking whether you were in favour of physical punishment where the assessee was late in filing the return? In other words, are you in favour of physical punishment for fiscal defaults? Is that desirable in so far as non-filing of returns is concerned? So far as punishment is concerned you have said that it should be commensurate with the offence. Do you think, as an experienced officer—I do not know whether you are an A.A.C. or I.A.C.—that this physical punishment will be commensurate with the offence that you have mentioned namely late filing of the return? That is his question.

SHRI KANWARLAL GUPTA: Let him answer my question which I shall elaborate a little. In our country there are many small assesseees out of 25 lakhs assesseees. Some of them are illiterates and some of them do not know income-tax laws and all that. In many cases the number goes even to lakhs, where a person does not file income-tax returns in time. From an administrative angle I am asking you—not as a politician but as a citizen I am asking—will it be practicable, feasible or desirable to have this physical punishment?

SHRI BHASKARAN: The punishment is given only if the return is not filed before the end of the assessment year.

SHRI KANWARLAL GUPTA: There are so many cases running into lakhs where the return is not filed for three, four or five years and you reopen the assessment for eight years. You know it better. So, administratively, what should be done about this?

SHRI BHASKARAN: I do not mean any disrespect to the committee or any members of this committee. From my experience in the I.T. Department as an ITO I have yet to see an assessee about whom so much is talked about—being illiterate small assesseees—who may not know anything about income-tax matters. I am in favour that if a person does not file his return within three years or four years, he should be sent to jail. And there is no escape from it.

SHRI BENI SHANKER SHARMA: In your experience, while the assessee thinks genuinely that his income is below the taxable limit, while making assessment, you, by your ingenuity, convert it into taxable income. Suppose his income is Rs. 3400 and you assess it at Rs. 5200 he does not mind paying a small amount of tax—Do you think even in such cases he should be punished?

SHRI BHASKARAN: I think where there are adequate reasons for not filing the return, there should be discretion for the Department not to punish him.

SHRI BENI SHANKER SHARMA: Don't you think it as an adequate reason that the assessee thinks, in his judgment, that he is not assessable?

SHRI BHASKARAN: My understanding of the provision is that it proposes punishment where there is default without adequate cause. If there is adequate cause, then there will be no punishment. That is my understanding of the provisions.

MR. CHAIRMAN: Will you kindly elucidate page 4 of your memorandum? You say, "...Therefore, the

filing of the return should be related to the payment of the tax." What do you mean by that?

SHRI BHASKARAN: Where additional tax is payable as a result of assessment, interest should be from the 1st of October. If he had filed a correct return he would not have paid the tax or he would have to pay tax within thirty days. He escapes this interest even.

SHRI PRAKASHCHAND B. SETHI: If it is a case of concealment of income, then, apart from interest, he has also to pay the penalty?

SHRI BHASKARAN: Yes.

SHRI PRAKASHCHAND B. SETHI: In that case it is only a question of interest, while in this case it is both, interest plus penalty.

SHRI BHASKARAN: I am mentioning where there is no concealment, if there is no gross or wilful negligence. But within 20 per cent it is not a question of concealment.

SHRI TENNETI VISWANATHAN: I wanted to know, in his experience, what is the percentage of the persons who would file these returns late and therefore will become subject to punishment under these provisions? Would it run into hundreds, thousand or lakhs?

SHRI BHASKARAN: When I was an Income-tax Officer, that is, about ten years ago, I would say that the default could be anywhere between 25 per cent to 50 per cent, whereas now my inference is that the percentage of complaints is lower.

SHRI TENNETI VISWANATHAN: More than 50 per cent?

SHRI BHASKARAN: Less than 50 per cent

SHRI TENNETI VISWANATHAN: 40 per cent?

SHRI BHASKARAN: It will be a wild guess.

SHRI TENNETI VISWANATHAN: Supposing it is 35 per cent, what would it be in terms of numbers? Would it be 7 lakhs? If so, according to you, 7 lakh persons will be accommodated in the Jail

SHRI KANWAR LAL GUPTA: It is on a very extensive, large scale. It may be even one lakh. In one year, you will put at least one lakh persons every year behind the bars. Isn't it?

SHRI BHASKARAN: My frank opinion is that we should enforce self-assessment. The taxpayer should file his return and pay the correct tax. And if we have to face administrative difficulties, we should face them and try to enforce the reforms.

MR. CHAIRMAN: I would like you to give us a further memorandum on this thing: Page 34 of your memorandum, Clause 30, "The Association submits that the provisions of Section 139 relating to filing of return and charging of interest for late filing thereof require to be rationalised". What is your specific suggestion. You can give us this in 15 to 20 days time.

Then, look to page 5 of your memorandum, second paragraph, "The Department is not in a position to do justice to the present workload....". When you submit your memorandum, kindly state what is the present workload, what will be the further workload, on what account there will be more workload, etc.

SHRI BENI SHANKAR SHARMA: You see earlier the assessee were to make self-assessment and you were to issue challans. But now the ITO has been asked to make a summary assessment after making some allowances and disallowances. Then, he is expected by the Department to scrutinise those files later and

again issue notices to the assessee and re-make the assessment. There is so much of supervision and interference with the ITO's work that every office will have to go through those files over again which he has assessed summarily. Do you agree so far as the first assessment is concerned that where you as an ITO thinks that the assessment which can be made under 143(i) should not be re-made but only re-opened under Section 147 as Mr. Bhoothalingam has suggested. Instead of asking the Officer to make two assessment would it not be convenient from the administrative point of view that the assessment made under Section 143(i) is treated as final and complete for all practical purposes and re-opened only next year of after that under Section 147 if there is any escapement of tax.

SHRI BHASKARAN: My frank opinion will be if I have to choose between 143(i) and 143(iii) I would like to do away with 143(i). In respect of the ITO having to scrutinise the assessment I would put the responsibility on the assessee to file a correct return and pay the taxes and as far as the Deptt. is concerned the law should so provide that the ITO may take up few returns at random just to see that everybody is doing it and if he finds somebody has defaulted a very stringent punishment should be put. I do not want the ITO even to make assessment under 143(i).

SHRI K. L. GUPTA: The idea of the Government is that they do not want to assess the small assessee but summarily accept their returns. For that under this Bill there are two provisions—(i) the ITOs will be empowered to make necessary adjustments which they cannot do now; second, that the ITO can review his own assessment at any stage. Are you in favour of dropping it or retaining it?

SHRI BHASKARAN: My understanding of this amendment was it is a step to change the pattern of income tax administration. The proposed pattern is that the assessee has to file a correct return and the ITO will only make a cursory examination whether it is a correct or not. 143(iii) is a more detailed examination probably—it is not clear on a selective basis, that is, all the 27 lakh returns may not be examined but a percentage of that may be taken up.

SHRI BENI SHANKAR SHARMA: If you do away with Section 143(i) then all those returns will have to be examined under Section 143(iii).

Now, I come to certain general questions. The main object of this Bill is rationalisation of certain provisions and simplification of the procedure and collection of taxes. Are you satisfied this amending Bill does full justice to these objections or even touches the fringe of the problem. If not, what are your suggestions for the rationalisation and simplification of the Act. Please give us a note on it later, if you are not ready now.

Secondly, in this Bill there are some provisions which gives retrospective effect. As a general rule are you in favour of retrospective application of the provisions. From the administrative point of view do you think that this sort of retrospective effect should not be given as it will make the administration difficult and add to the workload of the officers.

SHRI BHASKARAN: Actually whether legislation should have retrospective effect or not is a big question in jurisprudence. I would not attempt to answer that. But as far as amending Bill is concerned, no provision has struck me as would lead to administrative difficulty because retrospective effect is given.

SHRI SHARMA: I would request you to examine it and submit this too in your Memorandum.

MR. CHAIRMAN: On page 5 of your Memorandum you have said:

"Even if the review u/s 143(3) is a restricted one, on a selective basis, the Association feels that there is no machinery to make such selection at present and the officers of the Department should not be exposed to allegations against their integrity in the matter of selection of returns. An independent and central machinery should be evolved for selection of returns for review under Section 143(3)."

So, kindly elucidate this point as to what kind of independent machinery you are thinking of.

You have again suggested regarding jurisdiction of the ITO i.e. the existing provisions regarding jurisdiction of ITOs require to be drastically changed. What is your thought in this regard?

SHRI SHARMA: There are two types of officers in the Income Tax Deptt. viz. Class I and Class II. But both of them have to do the same type of work. Whether you want to do away with this distinction would you make a mention in your Memorandum. There have been frequent and constant changes in the Income Tax Act. There is a demand from all quarters that there should not be so frequent changes. Are you in favour of a tax making holiday for five years at least.

SHRI BHASKARAN: This question was raised earlier by Mr. Gupta.

MR. CHAIRMAN: In the last portion of your Memorandum you have said that the Association feels that the minimum punishment should be suitably changed. What change you want, this may also be mentioned in your Memorandum.

SHRI BHASKARAN: All categories of default are dealt with in the same manner, that should not be done.

MR. CHAIRMAN: You make a mention of the minimum punishment in your Memorandum.

SHRI BHASKARAN: Can we cover certain points which are not in the Bill? One Hon'ble Member said about the measures towards 'avoidance'.

MR. CHAIRMAN: You may give that. But for the rest, you have to be within the Bill.

Thank you.

(Committee then adjourned for lunch)

III. Federation of Indian Chambers of Commerce and Industry, New Delhi.

Spokesmen:

(i) Dr. Bharat Ram, Ex-President.

(ii) Shri G. L. Bansal, Secretary General.

(iii) Shri C. C. Chokshi, Committee member.

(iv) Shri R. Thakur, Chartered Accountant.

(v) Shri O. P. Vaish, Chief, Taxation Division.

(vi) Shri C. H. Hazari, Vice President, Escorts Ltd.

(vii) Shri M. M. Nagarajan, Sr. Research Officer.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: We welcome you Dr. Bharat Ram and all your colleagues. Before we proceed, I just read out Rule 58 of the Rules of Procedure. "Your evidence shall be treated as public and is liable to be published unless you specifically desire that all or part of the evidence given by you is to be treated as confidential. Even though you might

desire your evidence to be treated as confidential, your evidence is liable to be made available to the Members of Parliament." So, now, you can high-light some of the points mentioned in your Memorandum.

DR. BHARAT RAM: I would like to thank you for giving us this opportunity of placing our views before you. We have already sent a written memorandum. The objectives of the Bill are certainly laudable. There are a number of improvements. At the same time, we find that there are certain items which would create some hardship. I would personally like to refer to the Clause of the Bill, with regard to amortisation of certain preliminary expenditure. While I talk on this point, I will make it a little wide and also include the matter of royalties and down-payment in terms of foreign collaborations. The list of items of preliminary expenditure, we hope would be completely an exhaustive list. As it is, the list is too small and does not cover all the expenditure which would be preliminary expenditure. My basic point is that "in running any business or starting any new business, all expenditure related to the business must come under some head of the accounts." It must either be treated as capital expenditure, on which there may be a depreciation, or it may be amortised in a few years' time, or it must be revenue expenditure, unless of course, any expenditure is considered an unnecessary and wasteful. For starting a business or running a business, any expenditure must come under one of these three heads. We find that percentage limit which has been put in this Clause, would cause hardship. In many cases, even the down-payment which a Company makes for foreign collaborations, which are approved by the Government and which have been made with the permission of the Government, the Income-tax Officers are creating trouble for the companies. They are not permitting the royalties to be treated as revenue expenditure, and

try to find technical lacunae in the Agreement. But it should be obvious to anybody that if the Government has approved the Agreement, that a royalty has to be paid to the collaborator and then it must come as a revenue expenditure. Similarly, with regard to down-payment. It may either be treated as capital expenditure eligible for depreciation or amortisation or revenue expenditure. But you would agree that it must come under some head of expenditure. Mr. Choksi, I think you might like to say something.

SHRI C. C. CHOKSI: The point which we wish to emphasise is that in Sub-Section (2) of the proposed Section 35D, the eligible expenses have been listed and in listing these expenses, an expense like know-how fees has not been mentioned at all. Expenses of the nature of consultancy fees for engineering services relating to the business of the Company have been mentioned, and there are two conditions which have been laid down with regard to these expenses. One is that the payment of such expenditure should be made to a Concern which renders such services in the course of the business or profession carried on by it. The second condition is that such Concern should be approved for this purpose and such agreement and payment should be approved by the Government. Now, there are two parts of it. As I pointed out, know-how fees has not been mentioned at all. Secondly, engineering fees are allowable only to the extent that they satisfy the aforesaid two conditions. This would create hardship because under the present practice, all engineering fees are allowed to be added to the cost of the capital assets like plant, machinery and equipments. If it is covered by this clause, an attempt may be made by the ITO what is added to cost of machinery at present to disallow the same. It would be better clarify that there is no intention to disallow the

capitalisation of genuine engineering fees which are paid on the ground that there is a provision here for allowance only for consultancy engineering fees if these conditions are satisfied.

That is my second point.

MR. CHAIRMAN: In Part IV consultancy fees in engineering services relating to any business of the company are all there.

SHRI CHOKSI: I am coming to that I would seek a clarification on engineering fees which are being allowed at present as a part of the cost of the machinery and equipment. To-day, broadly speaking, the know-how fees are divided into three parts—one is the know-how—knowledge and information about how to carry on the business and the other is the engineering fees. The third is of course payment of royalty sometimes it is a lump-sum payment of fees for getting the process.

With regard to the know-how fees, at present no allowance is made. With regard to the engineering fees, the I.T.O. allow us to debit this amount to the cost of machinery and equipment. For the right to use the process or the patented process if we pay royalty it is allowed. If we make a lump sum payment for patents then it is allowed to be written off over a period of fourteen years.

I am therefore not mentioning about patent fees but I am only mentioning this about know-how fees and the engineering fees. Know-how fees are not allowed at all. But my submission is that know-how fees should be allowed and they should be mentioned here.

MR. CHAIRMAN: Do you mean to say that it is not sufficiently clear?

SHRI CHOKSI: Yes Sir, That is not sufficiently clear.

MR. CHAIRMAN: And that is why you want that the engineering know how fees should be included here.

SHRI CHOKSI: The way it is mentioned it is not clear whether the engineering fees are relating to the services rendered for example for drawing, layout plan of the plant etc.

MR. CHAIRMAN: Have you any clarifications to offer on the engineering services?

SHRI CHOKSI: There are three types of engineering services one is that before we are thinking of the project, we consult the consultancy firm and take their advice and guidance and we spend some amount on engineering services. Second is that after having worked out the project we again spend some money for getting the drawings, designs, specifications of the plant, machinery and equipment. These are also engineering fees—consultancy fees. The third type of fees are that after the project goes into production, in order to keep up our production capacity and our efficiency at the proper level, we may have to pay engineering assistance fees.

If it is paid from year to year this would be allowed as a revenue expenditure but if it is paid by a lump sum, then, we have to claim a deduction for that. If it is paid for getting the drawings, the designs, specifications of the plant, machinery and equipments, then they would be termed 'engineering fees'. And it should be added to the cost of plant and machinery. For preparing a project report, engineering fees would have to be paid. What is the type of engineering fee that is contemplated here is not clear at all. This is my second point.

My third point is that these types of payments which are again made subject to the two conditions makes it very difficult particularly in a very complicated industry. To satisfy the two conditions would be almost impossible. The first condition is that

a payment should be made to the concern which renders such services in the course of business or profession carried on by that company. Particularly in case of petro-chemicals and the complicated engineering processes the manufacturers themselves give this know-how or render the engineering services and therefore this condition is not likely to be fulfilled. Therefore this condition should not be there. My fourth point is that the lump sum payment of 2½ per cent of the capital plus long-term borrowings is a very small amount compared to the engineering fees and know-how fees and promotion expenses which are permitted by Government. This total goes up to 7 to 8 per cent or even much more than that. For example, at Bombay I was asked to give you one or two examples. I have got two or three examples here where large amounts of fees have been sanctioned by companies. One is about the case of the Hindusthan Aluminium Corporation where all these fees paid to the collaborators came to Rs. 1.22 crores in respect of three items—payment to collaborators for technical know-how, training and technical assistance fees and for designing and engineering in India and outside India. The total came to Rs.1.22 crores. This has been disclosed in their prospectus and I have taken this item from there.

MR. CHAIRMAN: What is the total cost of the project?

SHRI CHOKSI: The estimated cost of the project is Rs. 17 crores on which this comes to Rs. 1.22 crores. In addition to that, about Rs. 21.42 lakhs have been incurred by way of preliminary expenses and expenses on issue of capital. The two together comes to about Rs. 1.50 crores which works out to about 8½ per cent of the project cost. This is one example.

The other example I have got is with regard to Synthetics and Chemicals Ltd. where the project cost was estimated at Rs. 13 crores which was subsequently taken to be Rs. 15 crores

and this comes to Rs.1.87 crores consisting of three items—engineering fees paid amounted to Rs. 37.50 lakhs disclosure fees amount to Rs. 15 lakhs; know-how and technical services fees amount to Rs. 1.43 crores(about). Rs. 1.87 crores was sanctioned by Government. In addition to that, there were further payments consisting of expenditure during the construction which amounts to Rs. 16.42 crores. Besides Rs. 15 lakhs were paid to promoters as preliminary expenses for remuneration etc. Expenses on share issue amounted to Rs. 20 lakhs. The total of these comes to about 9 to 10 per cent. I have quoted only two examples. I have also got the third example and that is about the Baroda Rayons. I have extracted the figures from the balance sheet of the company. The cost of the project is Rs. 8½ crores; expenses incurred during the construction of the plant which was subsequently allocated to the plant, machinery and building was Rs. 54.88 lakhs and preliminary expenses and expenses on issue of capital was Rs. 5.93 lakhs making a total of Rs. 60.89 lakhs. This works out to about 7.2 per cent of the project cost. Therefore my submission is that this tying up to the paid-up capital and long-term borrowings is not fair or not enough. Secondly restricting that to 2½ per cent is also not enough and thirdly in the case of a project - an expansion project—or diversification of the existing industry relating the expenses to, issue of a new capital is not fair. The new capital issue may be a small amount because there may be a plough-back of the profits and some of the finances of the existing business may be utilised for the new project. Therefore, in all these cases, my first submission is that these expenses should be related to the project cost; secondly, it should be the expenses incurred genuinely; as Dr. Bharat Ram said, for the purpose of setting up of the business, which should be allowed, and no percentage limit should be fixed; and thirdly, if at all a percentage is to be fixed, it should be fixed on the basis of the project cost, and not on the basis of

the sources from which finance has been obtained.

One more point in this regard I would like to add is that it is not in all cases that a person finances his project by issuing capital and by borrowing moneys. Very often, and today it is the practice, deferred credits are obtained. And if deferred credits are obtained, according to the definition given here, it would not amount to borrowings. Actually, the Explanation which is given here says that borrowings will be considered as borrowings only if monies are borrowed either from the Industrial Finance Corporation or the Industrial Credit Corporation of India or any other financial institution which the Central Government may notify in this behalf.

These are the four points I would like to submit with regard to this proposed Section 35D.

DR. BHARAT RAM: On this point, as Mr. Choksi has made out, the question of preliminary expenses is on part of it. Apart from preliminary expenses, there is also the question of royalty, which is a continuing expenditure. My point is that if Government has approved a certain agreement under which royalty is payable, it should not be left to the discretion of the Income-tax authorities to question the payments made in this behalf.

SHRI KANWAR LAL GUPTA: Dr. Bharat Ram, we have been making frequent changes in the Income-tax Act; practically after every two years we have been making some changes in the name of simplification or rationalisation. Do you feel that the amending Bill, as the position stands today, is a step towards simplification or more complication? What is your view?

DR. BHARAT RAM: As I said at the beginning, I think, quite a good work has been done on this Bill and there are many things which we appreciate very much.

SHRI CHOKSI: The second point about the proposed amendment to Section 143 by Clause 34. The power is going to be given to the Income-tax Officer to make an assessment on the basis of the return after adding back such amounts as he considers in computing the taxable income and making such adjustments as he considers necessary. After having made an assessment under sub-section (2) of the proposed section, he is given the power to start re-assessment proceedings and to call for books and other evidence. Sir, this power to make a second assessment will create untold hardships to the assessee. It may be said, Sir, that it is not the intention to make re-assessment or start assessment proceedings in all cases, but once there is a power given to ITO it is not clear how we can stop him. It would give a right to the officers to harass the assessee, if he so chooses.

MR. CHAIRMAN: Why do you take it for granted?

SHRI CHOKSI: I said, if he chooses. This is not fair to the assessee. And particularly in our country where the assessee has to apply his mind to payment of tax at least three or four times in a year. He has to pay his advance tax by three instalments. At the time of making the last instalment he has to find out whether he has earned more or he has earned less. If he has earned more, he has to make a self-assessment. He has to be a sort of astrologer and find out what will be his income at the end of the year and make additional payment of tax if he finds that the tax paid by him is less. The difference is also being reduced from 500 to Rs. 100. It will be a further step of harassment to the assessee. These days it is very difficult for an ordinary assessee to compute his tax liability. Even most of us sitting round the table will not be able to correctly compute the tax liability. It is a very difficult task even for tax experts, and also for the Income-tax

Department. So far the assessee to make a correct assesment up to the nearest Rs. 100 is very, very difficult.

MR. CHAIRMAN: Sanskrit should be made more complicated and difficult so that pandits will have more influence.

SHRI CHOKSI: We are talking of the common man. Then the Income-tax Officer makes a prima facie assessment. There also he has been given the power to make whatever adjustments he considers reasonable. Then the assessee is told, 'if you are dissatisfied, you can go in appeal'. But that appeal is of no use of the Income-tax Officer subsequently is given the power to start re-assessment proceedings, looking at the books and making a fresh assessment. Very often it would create untold hardship. Therefore, the Department should have either the choice to make a prima facie assessment under 143(i) or to call for the books and make a regular assessment as is being done at present.

My next point is about the salary exemption to a foreign technician. It is true that the salary payment of a foreign technician can be paid to the extent of any amount by the employer but although the salary may be paid tax-free the Department will consider only Rs. 4000/- as tax-free payment. The balance of the amount will be liable to tax but the tax will be paid by the employer at the rate the employee would be paid and it will not be grossed up. The second part of it is in order to employ a technician whose salary even to the extent of Rs. 4000/- will be tax-free the employer will have to see that he obtains the approval of the Government within six months. That is the second change. The third change is that under the present law a foreign technician can be employed without getting the Government's approval at least for a period of one year and salary can be paid free of tax. That is being removed and in all cases it is said that a foreign technician's employment if he is to be paid tax-

free salary must be approved by Government within six months. The last point will create genuine hardship because where we have got foreign collaboration and there are foreign technicians—suppose, we find ourselves in difficulty and call them at short notice—then we will not be able to make tax free payment because we would not know whether Government will approve of their employment or not. At least for a period of six months we should be entitled to employ a foreign technician without obtaining the approval of the Government. At present it is one year. You may reduce it to six months but to do away with that relief will create hardship. Secondly, no doubt upto Rs. 4,000/- it will be tax-free and on the balance the company can pay the tax but when we are trying to bring down our cost of production to ask the assesseees to pay the additional amount on salary and again to pay tax on that will increase cost of production and reduce the competitive power in the foreign market. That exemption should not be taken away.

MR. CHAIRMAN: Supposing you get a foreign technician the Government does not object to your paying him any amount. What the Bill seeks is that above Rs. 4000/- give a little to the exchequer. We want that the Indian technician should be encouraged.

DR. BHARAT RAM: Sir, the more important point is about the practical difficulty in having to take the permission of the Government.

MR. CHAIRMAN: From your experience tell us any single instance where you have asked for the approval of the Government for your foreign technicians and the Government has said 'no'.

DR. BHARAT RAM: The Government has said 'no' in many instances.

SHRI HAZARI: The point is that we should discourage the employment of foreign technicians. It is

really the specialist we want. We do not want other technicians who are more or less mechanics working in foreign countries, who by coming here may earn some money and have increase in salary. We want only specialists to come to this country. We will have to pay the cost of such technicians and since the Government has the authority to decide what salary is to be given, whether it is right to employ a person or not, so the statutory enactment that is going to be there should not be there. It is the right of the Government to decide whether a person should or should not be employed. I would say to get a real specialist one will have to pay a thousand dollars. In the context of European prices one will not be able to get a good technician for less than Rs. 7-8,000. This clause if enacted, the firms which go in for collaboration will get second-class technicians. So, it goes against the very intention.

DR. BHARAT RAM: The question of time is very important.

SHRI SOMANI: Why should any foreign technician be allowed to come without prior permission of the Government at all. I can see one eventuality in the case of break down where the industry has to rush in for the foreign technician but in normal cases where Project planning is very much in advance, not only from the capital, managerial but also technical point of view, if the application goes sufficient in advance to the Government, I am sure this point can be very well met. We are proposing that in all cases of break down they must O.Kay the application within 24 hours. That point may be considered by the Government. Otherwise I do not see any point why the foreign technician should be allowed.

DR. BHARAT RAM: It is easy to

say within 24 hours. The basic thing is that we do not want industries to suffer. I in fact say I do not need foreign technicians. The Company also does not want it. But if the company does need, time factor should not come in the way.

MR. CHAIRMAN: Mr. Somani said that if there is a break down, it should be allowed.

SHRI SANGHI: Under 4(10) the foreigners are granted exemption.

SHRI TENNETI VISWANATHAM: To shut ourselves from all technical advancement which is going on in this world. The science and technology is advancing very much. Technical knowledge is not a static thing.

MR. CHAIRMAN: That is not the point.

SHRI CHOKSI: The proposed amendment of sections 186 (A) and 186(B)—these are relating to the registration of firms. It is true that an attempt is made to simplify the present provision of registration of firms. I do recognise that. I am very happy about it. The only point is that these new provisions are likely to create hardship on two points.

It says that a firm will be recognised provided it is registered with the Registrar of firms. Now, Sir, Registrar of firms are located in the principal towns in each one of the States, whereas the assesses are spread all over the district in the States, cities, towns and even in villages. Therefore, to expect the assesses to register their firms with the Registrar of Firms and that too with a period of six months is going to create lot of hardship. Therefore, my first suggestion would be that since the Government has been good enough to accept this principle that this provision with regard to registration should be simplified, the law a sit stands can also be amended without 25 or 30 amendments.

MR. CHAIRMAN: If you have thought of some amendment, you send it to us.

SHRI CHOKSI: The objection is to:

1. requiring registration with the Registrar of Firms;
2. within a period of six months.

These are two objectionable features.

SHRI BENI SHANKER SHARMA: Mr. Choksi, so far as 186 (a) and (b) are concerned, there are two important things:

(i) Change of nomenclature. Henceforth there will not be registration but recognition. There are certain conditions in which a firm will be recognised. I would like to ask firstly, whether you would like to retain the old nomenclature i.e., registration or you would like to change it to recognition. The point is if we retain the word 'registration', perhaps there would not be consequential changes as you have just suggested.

(ii) Then the case-law which has been built up on the issue of registration will also remain as a good law. If registration is changed to recognition the whole case-law on the subject will become obsolete and it will take another 20 years to clarify the law on this point. What is your suggestion—should we change the nomenclature from registration to recognition?

SHRI CHOKSI: The word registration should not be changed to recognition. It is not necessary since the Government has accepted the

principle of simplifying the law with regard to registration of firm. I can make a suggestion of amending the law in such a way that the principles laid down here would be broadly covered with the omission of the requirement that the firm should be registered with the Registrar of Firms.

SHRI BENI SHANKER SHARMA: There is another thing. You have stated about the difficulty of registering the firms with the Registrar. If all the firms are registered at a time the Registrar will have overburdened. The firms which are already registered, need not be registered afresh. If they are to be recognised then they have to be registered afresh. If we retain the old nomenclature i.e., registration, there is no need of getting the old registered firms as re-registered and it is also not necessary that they should be registered with the Registrar. Suppose if we just agree to this principle that the firms which had already been registered will be treated as registered or recognised and the firms which will henceforth come into existence should comply with the terms which include that they should be registered with the Registrar of Firms, I do not think then there will be so much pressure on the Registrar and the fears which you have envisaged will not be there.

SHRI CHOSKI: Sir, actually I am not worried about the pressure, but the difficulty of a mofusil person staying in a village to file his papers with a Registrar of Firms is a difficulty which is a genuine difficulty. Because the person staying about 50 miles away from the Headquarters may not be able to send his registration application to the Registrar of Firms.

SHRI BENI SHANKER SHARMA: I think this case is also an imaginary one. Under the Indian Partnership Act, if a person has to sue, he has to register with the Registrar of Firms, and in fact the mofusil practice is that persons who enter into

partnership get themselves registered because there are litigations etc. This is not correct to say. People come from distant places, and they do it. But the only apprehension here is that if all the firms in India have got to register themselves with the Registrar of Firms at a time, it will be something difficult and it will create confusion. But that can be overcome by making a provision like this. The firms which are already registered need not be registered with the Registrar office, but the firms which will come into existence should comply with the new provisions including that of registration with the Registrar of Firms. That will simplify matters. Because it is the intention of the Government to make registration more simplified. And you will agree with me that these new provisions go a long way in simplifying the registration of firms.

SHRI CHOKSI: There is one more difficulty, which I mentioned and I would like to repeat it, that the requirement that it should be done with the Registrar of Firms within a period of six months. And this is likely to create genuine difficulties in small towns and villages. It is true that in many of the towns, people do get firms registered with the Registrar of Firms, but not immediately within a period of six months.

SHRI BENI SHANKER SHARMA: At page 16 of your Memorandum, you have given an alternative suggestion. You have said that "it may be considered whether the same particulars as are required to be filed with the Registrar may be filed with the Income-tax Officer, and subject to his satisfaction that the particulars supplied are correct, the firm may be registered." Of course, this will be considered by the Committee. But then, don't you think that we are reverting to the old position? In fact, the registration with the Registrar of Firms will considerably improve matters.

SHRI THAKUR: Under Section 58 of the Partnership Act, what are the

particulars to be submitted? It will not help the Income-tax Officer in his assessment. What we are required to submit are: the name of the firm, place of business, names of different branches, names of the partners and other particulars. It is not required to say as to what is the share of the individual partner. Now, this is not going to improve the position. In many cases, the Income-tax Officer will have to apply his mind. And under Section 59 of the partnership Act, the Registrar has just to see that the particulars are submitted, and then he will register the firm. He has no opportunity to examine the details of the partnership firm.

MR. CHAIRMAN: Is it not to your advantage?

SHRI THAKUR: It is not to our advantage. I am coming to that point. The assessee should certainly have the real advantage. But the subjective determination of the Income-tax Officer creates problem now. That is the starting point of the proposed Amendment. If certain criteria could be laid and if the Income-tax Officer creates problem now. That is limit, it will be much easier for the assessee to get it done than to get it registered with the Registrar of Firms. As already pointed out, there is one Registrar in Lucknow. The Income-tax Officers may be there in Varanasi and Allahabad. All have to go there. So, it is not easy to meet Registrar. Again, this is a State Government subject. It will create problem.

SHRI K. L. GUPTA: My question is as to what is the difficulty in the present procedure. Are you satisfied with it? What are your suggestions to simplify it?

SHRI THAKUR: My suggestions are two. Without going to the Registrar, we can have it. One is that the Income-tax Officer, should not oppose in his subjective judgment

the genuineness of the firm. If he wants, a criteria should be laid down. It should not be left to his discretion.

MR. CHAIRMAN: When subjective is not to be there, the objective is also a vanishing point.

SHRI THAKUR: Certain criteria could be laid down. The discretion should still be there. It is still there. The Income-tax Officer has to apply his mind. Some criteria could be laid down. My suggestion would be that the Income-tax Officer should examine the Deed presented to him. All the particulars which are required to be submitted to the Registrar could be submitted to the Income-tax Officer himself and he can examine, because the Registrar is not going to apply his mind. The second suggestion is about the difficulty felt by the partnership firm. Every year they have to apply for renewal and each partner has to give the particulars. This could be removed by giving a declaration along with the return by one of the partners that there has been no change in the constitution of the firm.

SHRI K. L. GUPTA: Mr. Thakur, you have made two suggestions— one regarding the renewal and the other about the genuineness of the firm. So, you want the present procedure to continue plus these two suggestions.

SHRI THAKUR: Yes.

SHRI K. L. GUPTA: In the amending Bill, there is a provision that that the application of the partners must say that one partner has no share of income or profits of the firm as such of any other partner of the firms. Suppose, if one person has interests in the share of another partner, the firm will not be recognised under the amending Bill. But the benami has been accepted by the Government under the law. At the most what the Government or the

Department should do is that the income should be clubbed in the end, and not that the firm should not be registered.

SHRI THAKUR: I agree.

SHRI K. L. GUPTA: What are your comments?

SHRI VAISH: I will agree: This clause, which has been introduced makes the matters worse. This tries to supersede the Supreme Court view that if there is a benami partner, the income of those two should be clubbed together. The firm should not be refused registration on that ground. This has been the considered view of the Supreme Court on the facts of a case of this type. From that point of view the proposed amendments make the matter worse.

SHRI BENI SHAKER SHARMA: It seems he is for deletion of the clause.

SHRI N. K. SANGHI: We have a clause in partnership deed. Suppose we have a similar clause in this regard, do you think that it will be a good enough provision?

SHRI VAISH: Yes, Sir.

SHRI KANWAR LAL GUPTA: Suppose there is a death of a partner. In some cases the question of renewal comes. Suppose the legal heir of the deceased is not prepared to sign the renewal deed there arises a dispute between the partners. Since there is no provision in the Income-tax Act in this regard, what are your suggestions?

SHRI VAISH: The only suggestion is that one partner should be able to certify that such and such a person is a partner or a genuine heir of a person who is dead. If such a declaration by one partner is permitted this difficulty would be obviated. The declaration would prove that he or she is a legal heir of the partner.

SHRI CHOKSI: My next point is with regard to clause 14. This amendment will have the effect of taxing the income of the H.U.F. in the hands of the *karta* of the family. If a HUF property is created, then HUF is a person to whom all assets belong—however income of the H.U.F. would be assessed in the hands of the transferor individual. That would be his own share in respect of those assets transferred plus the share of his wife plus the share of his minor children. That is what is proposed by these amendments. My submission is that it is not correct to say that a particular member of the family has a definite share in these assets of the family. It is after all a corporate body without any person having a definite share. It is only at the time of the partition that each member has a share according to law as a co-partner and shares equally whereas the wife of the *karta* has the share equal to that of any one of the co-partners. The unmarried daughters and other family members, if there are children, do not have any direct interest in that. What the proposed amendment in Sub-section (2) proposes not what was intended by the Finance Minister what was intended was that through the medium of H.U.F. if assets are transferred to the wife or minor child by partition then it is at that point of time that the law should intervene and tax income in the hands of the transferor *karta*.

MR. CHAIRMAN: I see your point. We understand the difficulty. You are talking of normal H.U.F. whereas our friends are talking of abnormal H.U.Fs. This thing continues for hundreds of years. It is only when we came to Bombay that we actually came to know that a person who was a government servant in Pakistan for many years was good enough to think of the HUF after he settled down at Bombay on his retirement. He had some savings. He went to Bombay and the enlightened opinion advised

him that here was a way-out for his difficulties. Then he became conscious of this. We share all your sentiments but we are not concerned with that.

SHRI KANWARLAL GUPTA: The position here is that there is a large-scale evasion of tax by these people by forming themselves as H.U.Fs. Especially there is large-scale disruption and tax evasion after the Supreme Court judgment.

MR. CHAIRMAN: Any way we have discussed this point threadbare when we were in Bombay where you gave us your enlightened opinion. This is the problem as to how the taxes are being avoided because of this lacuna in the Act.

SHRI KANWARLAL GUPTA: What is your solution to this? How to check this avoidance or evasion of tax or whatever it may be?

SHRI CHOKSI: I would reply your question. I agree with that proposition that if a partition takes place, then you are entitled to see whether there is a transfer originally by the individual to the H.U.F. and thereafter again it is transferred to the members of the family. At that time you have the right to take steps to put an end to that transfer. But, so far as HUF remains as one unit, it makes no difference whether I, as an individual can transfer the property to an H.U.F. or whether I have the property inherited from my forefather. But having earned in income myself, I have to provide something for the family in order to see that the younger members as well as the older members of the family remain together and to look after the family as one unit, I entrust the whole of my property to the status of the H.U.F. In that case, I should not be discriminated against. If a person has got the property from his forefathers and has put everything in the hotch-potch, there should be no discrimination. If there is a subsequent partition, then I can understand that.

MR. CHAIRMAN: Suppose he does it according to law.

SHRI CHOKSI: We are talking of social problems.

MR. CHAIRMAN: You have to help us to solve this social problem. You are in the better know of this than ourselves.

SHRI CHOKSI: I agree. But, as a matter of fact I cannot call it as tax evasion but I shall call it as avoidance of tax. Avoidance of tax is inherent whether one is a Hindu or a Muslim or anybody else. For example, a Muslim can create a wakf. If attempt is made to see that the property is taxed in the hands of the transferor. In the same way a person can create a trust and say that this trust's income is accumulated over a period of year and the income derived from the trust property will be distributed equal between named beneficiaries not covered by section 64.

SHRI BENI SHANKER SHARMA: The I.T. Act has to do much with the joint family system. The old Act was responsible for the destruction of the joint family system. The Supreme Court has stimulated the formation of a new joint family. But it is also common knowledge that people have tried to pass on their property to their wives and children by creating an HUF and then disrupting it. So, at least you will agree with us that if there is a dissolution within a year or two,—after 5 or 10 years it should be deemed in natural course—that is only for the purpose of avoiding the law.

If there is such a dissolution, there should be some provision that the income arising from the property transferred by this indirect process should be clubbed with that of the transferred.

SHRI CHOKSI: I entirely agree—even at any time, even after 10 years.

SHRI BENI SHANKER SHARMA: Now there are another two points. It is the retrospective application for the families created after 31st March '65. You may object to it as you have so many difficulties e.g. where the property may change hands. But what objection would you have if we have prospective application?

SHRI THAKUR: Even the prospective effect should only be in cases where partition takes place in course of time and where the very object, as has been stated in the Bhoothalingam Report as well as the Finance Minister's Budget Speech, is to misuse the provision. It will affect many smaller people in the country. The higher bracketed people may not be affected. It should be taxable only in such cases where this institution is being misused by dividing the assets and reducing the tax liability.

SHRI N. K. SOMANI: Mr. Thakur rightly pointed out, that this should be for the middle income group and for those who are economically weak. As far as the rich sections are concerned, they can certainly look after their dependent. I would like to have comments from this point of view on this section, namely, that HUFs will only be allowed to middle class families which you mentioned at great length. What would be your reaction to this?

SHRI THAKUR: It would be extremely difficult to make any distinction between these groups. It may not have any real revenue benefit to the Department. It will create administrative problems.

SHRI VAISH: I am sure it will be very difficult to define it in the Act. By fixing an arbitrary limit for a middle class person, we might put a person with income exceeding the prescribed limit by Rs. 100 or so in a disadvantageous position. Defining it in the Act will be difficult.

SHRI TENNETI VISWANATHAM:

The point which the witness wants to make is this, that the Income-tax Act should not be utilized to effect changes in the concept of the Hindu laws. But does the witness concede that the Government have got the power to do it? Parliament has got the power to do it?

SHRI CHOKSI: Yes, I am not challenging the power of the Parliament. Actually, Parliament is not disrupting. What Parliament is doing is that it is only making provision for taxation of income in a particular manner. Therefore, I do not think that constitutional rights of any of the assessee are involved. It only creates an inequity in law. That is what I was at pains to explain.

SHRI TENNETI VISWANATHAM:

Your point is if the concept of the Hindu Law has to be changed it must be done through proper legislation and not through Income-tax Act. Now the difficulty which the Government has been feeling is that these people are misusing and not using the Joint Hindu Family in order to avoid tax. Therefore, will you be satisfied that the gentleman transferring the property should be considered as mis-demeanour and be punished.

SHRI CHOKSI: First of all I do not agree that there is anything wrong in a person trying to arrange his affairs in a way to reduce the tax liability.

SHRI TENNETI VISWANATHAM:

The avoidance of tax is legal of the individual but not just to the Government because they lose a fair amount of revenue. Recently I met a lawyer who refused to accept an engagement because it would raise his income to a higher slab and so he did not accept it.

DR. BHARAT RAM: If within a certain period they want to disrupt the family that means they want to avoid the tax. In that case something may be done but not at the immediate point of creation of joint family.

SHRI BENI SHANKER SHARMA:

It is a fact that in high income groups there is attempt to create joint families for attracting lower rates of tax. But at the same time so far as this age-old institution of HUF is concerned it is a very good institution because it provides for the children and the old in the family. There is a genuine desire in every man to see that his dependants are well-provided and for that purpose he creates a fund in the shape of an H.U.F. What is your objection if we allow this facility to the income group up to Rs. 30,000 and beyond that we do not allow that facility, so as to counteract the attempts at tax avoidance by bigger income group people.

SHRI CHOKSI: My experience is that it is not big families by whom attempt is made to create joint families. In big families there is already Hindu Undivided Family but it is only small men who try to create Hindu Undivided Families for the purpose of tax avoidance.

Now, I will come to, Sir, three or four points of genuine hardship. The object of the Bill is to remove hardship and with best of intention there are three or four really unintended hardships which will be created. One is with regard to proposed amendment to Section 140(a)—self-assessment. It is said that if an assessee when he submits his return of income and finds that the tax payable by him by way of advance tax falls short of the tax which he should pay according to the income submitted by him to the extent of more than Rs. 100 then he should make a self-assessment. Formerly, a person could escape self-assessment, even there is a shortfall of Rs. 500 he need not make self-assessment. In other words, if there is a mistake in tax calculation upto Rs. 500 at the time of submitting return that was being excused. Now, the mistake should not be more Rs. 100. As I mentioned earlier this difference of Rs. 100 is far

too small an omission in payment of tax. Any person is likely to make a mistake in calculating tax by more than Rs. 100. Therefore, the present provision should not be disturbed.

The second point of hardship is with regard to the amendment proposed in Section 23. That is also a relief being given but the way in which this amendment is made is going to create hardship. The proposal is that a person constructs a property then if the construction of the property was started after 1st April, 1969 and completed before 31st March, 1969 and if the rental value did not exceed Rs. 600 then he need not pay any tax on his property income. That was a good proposal and improved upon by this introduction of clause (b) which says even if the property income does not exceed Rs. 1200 no tax be paid. But the way in which this clause has been worded is going to create hardship, but the way in which it has been worded is creating hardship because exemption will be only if property is constructed.

MR. CHAIRMAN: We have taken note of it

SHRI CHOKSI: The third point is with regard to submission return.

Clause 63—It says after 276(b) the following has been inserted and then it says 'if a person fails, he shall be punishable with imprisonment for a term of six months. This is a severe punishment that is being prescribed.

It should be on persistent failure on his part or default but it should not be that on first default he should be put to such a severe punishment.

Actually for non-submission of return the minimum penalty has been of the 80 per cent of the taxation. It can go to higher up. To make him liable to rigorous imprisonment is not fair.

MR. CHAIRMAN: That is there in other countries also.

SHRI THAKUR: Large number of salaried assesseees do not give it as the tax is deducted at a source of payment itself.

SHRI SETHI: It may be technical default but the idea is to force the assesseees who are liable to be taxed file the Return, even in the case of salaried persons who are paying their tax at source. How can you ascertain whether the salaried persons have other income unless they give their return? The main point is that by not filing the Return we are not able to find their other sources of income. The idea is to have compliance at least in the matter of filing the Return.

SHRI KRISHNAMOORTHY: Even in Civil Law he is kept in jail. These need not be criminal offences. It may be civil offence.

SHRI CHOKSI: Civil offence is when he does not make the payment. If he does not submit the Return it does not mean that he has committed offence of such a serious nature as to invite imprisonment. Forgetfulness is known, not only restricted to the Ministers of the Government, it is possible for every human being.

MR. CHAIRMAN: A person who fails without reasonable cause or fails to produce the books of Account and documents called for by notice under Section 142(1) is liable to prosecution, but the punishment of conviction before the Court is upto a fine of Rs. 10 for each day of default.

The heavy punishment in the former case and light punishment in the latter case shows that the tax evasion as in recent years is more than even in U.K.

If you ask them to choose between the two—payment of fine of Rs. 3,000 or going to jail, the defaulter will say that he would prefer to pay the fine, than to go to jail. It is a deterrent

provision. In this way, perhaps the tax evasion may be a little less. What is your objection to that?

SHRI CHOKSI: Rigorous imprisonment is not necessary. Department has come across cases where people have not submitted Return deliberately. In that case the Department have the right under 139(2) to submit a notice. Thereafter if he defaults, then I can appreciate. But in 139(1) when the return is to be filed, mistake can occur. A person who has paid his tax in full, probably he becomes entitled to refund. If he does not submit the Return he is liable to rigorous imprisonment. It is too much. If 139(1) was omitted and only 139(2) was kept, I can understand that.

SHRI SETHI: 139(2)—Notice can be served only on assesseees who are known. Section 139(1) is a general declaration that all those persons who are taxable should file the Return. When the Department does not know whether a person is taxable or not, how can we know.

SHRI CHOKSI: Under 139(1) he has to submit the Return. That person will come within the knowledge of the Government when the Government finds out, otherwise in spite of this the person will escape. On the contrary the effect of it would be that the genuine cases who have forgotten to submit the Returns in 139(1) would be exposed to punishment.

SHRI SETHI: It is there 'without any reasonable excuse'.

SHRI CHOKSI: How can a person say that it is a reasonable excuse as he forget it. The salaried persons deductions of tax is made at source. Dividend earners tax is deducted. Only such persons will be liable to tax if they have lost their vouchers. If my income is Rs. 4,000 or Rs. 5,000 how can I know that....

More or less, I have not been preserving vouchers, and on that ground, I can be sent to jail. Such persons will be liable to imprisonment.

SHRI BENI SHANKER SHARMA: I think it will also cover those cases where the assessee's income is below taxable limit. Suppose, there is a small shopkeeper he does not maintain stock accounts. According to him, his income is Rs. 3,000. He does not file his return. Subsequently, the Income-tax Officer sends a notice to him and assesses him summarily on an income of Rs. 5000 for failure to maintain proper accounts. He does not pay the tax. But in that case too, he shall be imprisoned because he has failed to produce the stock-register which he never kept. That is a great hardship on small people. It is for the non-production of the account books or documents etc. required by the Income-tax Officer that he shall have to suffer imprisonment. So far as the bigger assesseees are concerned, they are not going to come under the purview of this Section. It is the small people who will be harassed.

DR. BHARAT RAM: It is really going to be a problem for the small assessee. This is a point for the committee to consider.

SHRI CHOKSI: The next point relates to the proposed Cl. 55 and 56. There are two points in this. A provision is being made that a fee of Rs. 10 should be paid for filing an appeal before the Appellate Assistant Commissioner, and a fee of Rs. 250 in case of an appeal filed before the Tribunal. At present fees are not paid for filing before the AAC. So far as the AAC is concerned, even small assesseees go before him, and, therefore to make justice expensive for small assesseees is not fair. For a big assessee, a fee of Rs. 10 is very small but it is only a harassment in the sense that this fee of Rs. 10 has to be paid to the Reserve Bank, and the person has to wait a long time to make a

challan. But so far as the small assessee is concerned, it will certainly create a hardship for him. And the increase in fees of Rs. 100 to Rs. 250 for filing an appeal before the Tribunal is also going to create a hardship for the small assessee. That is my first point. The second point is that the discretion of the AAC in admitting the appeal is being taken away. Cl. 3, which is being amended, says that the AAC may admit appeal within 30 days after the expiration of the period specified in Section 2. In other words, his discretion to admit an appeal as within the time, without any reference to a period, is taken away, and he is told that if the appeal is delayed by more than 30 days, he should not admit it. Normally, our experience is that the AACs do not admit appeals after they are delayed even by one day unless valid reasons are given. Has the Department got so much of experience that the AACs go on admitting appeals indiscriminately? Our experience is of the other side that the AACs rarely condone even one day's delay. In many cases, even if genuine hardship is shown, they are very reluctant to admit appeals as within time. To take away even this discretion will create hardship in genuine cases, and therefore, this particular provision should not be amended.

SHRI P. C. SETHI: Regarding the payment to Reserve Bank, will it be alright if we make it that he can pay by way of postal order or stamps to the Income-tax Officer?

SHRI CHOKSI: That will reduce the hardship. I appreciate it.

SHRI BENI SHANKER SHARMA: The object of this Bill is to reduce the pendency of appeals and filing of unnecessary and frivolous appeals.

SHRI CHOKSI: Sir, it will create hardship for small men. It will not reduce the number of appeals. So far as the big assessee is concerned, it is not going to make any difference

because the fees of the accountants and lawyers is much more than that. But it is the small men who will suffer. Are we going to deny justice to the small men?

SHRI THAKUR: In another provision of the Bill, we are saying that the small assessee's assessment should be made by the Income-tax Officer, without reference to the books and all that, thereby creating more opportunities for such people to go on appeals. And certainly, as Mr. Choksi has said, this will affect such class of people though the amount is very small.

SHRI P. C. SETHI: The idea is to relieve the assessee. As far as the small bracket is concerned, the idea is to assess without calling him unless there is some evidence before the Income-tax Officer whereby he feels it necessary to go into the accounts books. Therefore, it is not as if every small assessee is to go in appeal.

SHRI N. K. SANGHI: Regarding the time of accepting condonation of the appeal and filing of appeals before the AAC, a point has been made by the Representatives here that most of the time, the AAC refuses the delay even by a day. Whereas the Government's experience has been different on this point:

I would request Shri Muttoo to give us some information on this point later on, as to whether their experience is adverse in this matter or whether these genuine delays have not been condoned by the A.A. Cs.

MR. CHAIRMAN: We shall discuss that point amongst ourselves.

SHRI VAISH: Clauses 30 and 59 deal with the levy of penal interests and levy of penalty on registered firms. They have been retained as they were. In fact we have repeatedly been stressing the point that since there is a separate tax on regis-

tered firms, penalty and penal interest should be calculated with reference to that tax. The present provisions were introduced when there used to be no tax on the registered firms. Now we tax the registered firms separately and still levy penal interests on them as if they are unregistered firms.

My submission is that we should get away with this irrationality in view of the fact that we levy separate tax on registered firms. When there was no tax on the registered firms, penalising them, if they were unregistered was understandable.

SHRI BENI SHANKER SHARMA: The firm should be penalised only with reference to the taxes payable by it. I think you have no objection to this. So far as the partners are concerned they should be penalised for the lapse. Is it so?

SHRI CHOKSI: Yes, Sir.

MR. CHAIRMAN: Mr. Choksi you mentioned three industries so far as amortisation is concerned viz., Hindustan Aluminium, Baroda Rayons and Synthetics and Chemicals. They are all capital intensive industries that you have selected. You give us the representative types of industries.

SHRI BHARAT RAM: I am going to re-emphasise my points before we adjourn. Many matters, of course, Shri Ghoksi has already dealt at length. The point mentioned was about amortisation of know-how fees. The ITO should accept payment of royalty as deduction when once it has been accepted by Government of India. Once the terms and conditions under which the know-how fees and the royalties are paid to collaborators, have been accepted the ITO should have no option to disallow this on a small technical flaw. This is my point which I want to re-emphasise.

SHRI PRAKASHCHAND SETHI: I think Dr. Bharat Ram made two points. One is in regard to amortisation and the other is with regard to disallowance by the I.T. authorities.

DR. BHARAT RAM: There are two types of collaboration fees. One was relating to preliminary expense.

SHRI PRAKASHCHAND SETHI: You particularly mentioned about the royalty payment. As far as I can see these payments are approved by the Government whether it is $3\frac{1}{2}$ or 4 per cent.

DR. BHARAT RAM: Once the government has accepted a certain percentage with regard to royalty payment, the ITO should not waste his time and the time of the company on this. Second point is about lump sum payment. When a lump payment is made that forms part of the capital. It must be amortised like any depreciation allowance or any other allowance which is a reasonable outlay from a company, so long as the government and the I.T. authority have satisfied themselves that there is no hanky-panky.

SHRI PRAKASHCHAND SETHI: The amortisation is to be allowed over a period of time. And there is a certain percentage.

SHRI BHARAT RAM: It has to be amortised over a period of seven or ten years.

SHRI PRAKASHCHAND SETHI: Whatever percentage we have indicated is not quite satisfactory. Is that so?

DR. BHARAT RAM: You are talking of preliminary expenses whereas I am talking of lump sum payment which has been made as a part of the agreement. Mr. Choksi already dealt with the point of engineering fees etc. I am referring to royalty payment made in lump sum. There the

instruction has to be very clear that if the government has agreed to the payment and the payment is made, then in that case the ITO merely on account of small technical flaw here and there in the agreement should not disallow that. That is all I want to say.

MR. CHAIRMAN: Basically you did not enlighten us on this point. We wanted you to help us. Mr. Choksi selected only three industries. We would request you to send us a written note within ten to fifteen days covering other specific industries. You have studied three industries whereas the government have studied 31 industries.

SHRI VAISH: Government have studied private limited companies in which the question of underwriting commission, brokerage, preliminary expenses etc. do not come in. We have taken about 20 companies and limited our study to the share issue expenses.

MR. CHAIRMAN: You give us the figures—the percentage that comes to?

SHRI VAISH: It varies from 2.4 per cent to 12 per cent. The average comes to cover 5 per cent for the simple reason that the underwriting commission, brokerage and share issue expenses alone come to about 5 per cent.

MR. CHAIRMAN: I said that the average comes to 4 per cent.

SHRI CHOKSI: This average of 5 per cent relates only to the issue of capital and not of the expenses which I mentioned.

MR. CHAIRMAN: Would you agree that the project cost should be based on nature of the expenses?

SHRI CHOKSI: The average should be based on the nature of the expenses that go into the production.

MR. CHAIRMAN: We have discussed these points and the Committee will discuss that later on.

SHRI CHOKSI: The whole of my submission may be divided into two parts. The second part is very important. The proposal is going to create hardships for companies because there is it (4) in Sub-Section (2)—items of engineering fees. It is not clear. What is the nature of the engineering fees which are being included in this? As a matter of fact, for a new project, engineering fees would come to 4 to 5 per cent of the project cost. When I was pointing out, 4 to 5 per cent of the project cost, it will be much more than the capital cost of the company. When the study was made by the Government, they have not taken the new industries into account—industries in which there is foreign collaboration, where there is know-how to be paid, where there is engineering fee to be paid and where there are other types of fees to be paid....

MR. CHAIRMAN: I understand. Would you please answer, whether India is a protected market or not for your products?

SHRI CHOKSI: To an extent, yes. To the extent there is high profitability, the Government comes down with a heavy hand, with high rates of excise duty. I will give one instance. The excise duty in case of Nylon comes to nearly 40 per cent of the sale-price.

AN HON. MEMBER: You cannot have both.

MR. CHAIRMAN: You have to face no competition from abroad, as far as many of the industrial products are concerned. You should let us know in how many years you recover the project cost. We have studied that. You can recover it in four, five, six or seven years. The Government have gone forward. It is a welcome

measure. All the Chambers have welcomed it. The Government has gone forward to amortize. This should be welcomed by you.

SHRI CHOKSI: In that case, Clause 4 of Sub-section (2) should be omitted. It should be allowed in the manner in which was allowed in the past. I am repeating what I said that

Clause 4 of Sub-section (2) puts greater hardships on the industry.

MR. CHAIRMAN: Thank you very much.

DR. BHARAT RAM: We thank you for giving us this opportunity of coming before you, and for your patient hearing.

(The Committee then Adjourned)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE
(AMENDMENT) BILL, 1969.

Thursday, the 5th February, 1970 at 10.00 hours and again at 15.00 hours
in Central Hall Legislators' Hostel (Old), Madras.

PRESENT

Shri Tenneti Viswanatham—*In the Chair.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri Kanwar Lal Gupta
4. Shri B. N. Katham
5. Shri Yashwant Singh Kushwah
6. Shri S. B. Patil
7. Shri Shiva Chandrika Prasad
8. Shri R. Dasaratha Rama Reddy.
9. Shri Bishwanath Roy
10. Shri N. K. Sanghi
11. Shri Janardan Jagannath Shinkre
12. Shri R. K. Sinha.

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes and Ex-officio Joint Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
2. Shri S. P. Chowdhury, *Under Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. *Madura—Ramnad Chamber of Commerce, Madurai.*

Spokesman:

Shri Peri Thiagrajan—*Chartered Accountant.*

II. *Revenue Bar Association, Madras.*

Spokesmen:

1. Shri T. V. Viswanatha Aiyer—*President.*
2. Shri K. Srinivasan—*Vice-President.*

3. Shri S. Swaminathan—*Vice-President.*
4. Shri G. V. Mahalingam—*Secretary.*
5. Shri S. V. Subramanian—*Joint Secretary.*

III. *Andhra Chamber of Commerce, Madras.*

Spokesmen:

1. Shri Rasiklal M. Mehta—*President.*
2. Shri J. V. Somayajulu—*Former President.*
3. Shri P. Brahmayya—*Former President.*
4. Shri M. S. Sambasivam—*Secretary.*

IV. *Shri V. S. K. Duraiswamy Nadar, Commissioner of Income-Tax (Retd.), Madras.*

I. *Madura—Ramnad Chamber of Commerce, Madurai.*

Spokesman:

Shri Peri Thiagrajan—*Chartered Accountant.*

Shri Thiagrajan, representing the Madura—Ramnad Chamber of Commerce, Madurai, was examined.

MR. CHAIRMAN: Mr. Thiagrajan, you are welcome to the Committee. The evidence you tender will be treated as confidential. You have submitted a memorandum. Do you want to say anything in addition to what you have said in the memorandum? Kindly say what you have got to say briefly and pointedly.

WITNESS: I have only to highlight some of the points mentioned in the memorandum.

As far as clause 8 is concerned, it should be made applicable to all assesses and not restricted to companies alone. Secondly all expenses during the pre-operation period should also be included in the expenses. Thirdly the percentage of 2.5 seems to be very low and it should be increased.

Clause 14 relates to transfer of self-acquired property. According to the proposed sub-section (2) of section 64, the provisions of that sub-section will apply only if it is beneficial to the revenue. Whether it is beneficial to the revenue or not, it should be applied. It will be difficult to keep track of the assessment. Even in the Wealth Tax Act under section 4(4),

as far as transfers are concerned, the provision has not been given any retrospective effect. This section affects all transfers after 31-3-1965. If at all the section is to be retained, it should be given effect to only after the Bill becomes law and not with retrospective effect.

Next I come to clause 30. Interest is to be charged and the firm is to be treated as an unregistered firm. In the earlier days when the firm as such is not liable to tax, you calculated the tax as if it was an unregistered firm. Now that you have a tax on the registered firm as an entity for tax-paying, it will be appropriate to charge interest only on the tax payable by the firm. Practical difficulties will arise. A firm with three or four partners may go into liquidation. In a particular case there were two lady partners and one managing partner. The managing partner was charged with the duty of filing the return. Due to some litigation the managing partner failed to submit the return and action was taken against the lady partner. In such cases where it is not the fault of the other partners who are almost sleeping partners, there will be difficulty if you treat the firm as unregistered. Therefore it is I say that it will be appropriate to charge interest on the tax payable by the firm.

Clause 31: Now the assessment limit of Rs. 500 is there. If the limit is reduced to Rs. 100, the number of cases will increase and it will be a onerous job for the department to

take action. This self-assessment may be restricted to the tax amount payable on Rs. 10,000.

Clause 32: Section 141 regarding provisional assessment should not be removed.

Clause 34: Section 143 (1) (a) gives power to the Income-tax authorities to complete the assessment and section 141A provides for appeal. So there is no finality at any level.

Clause 43; New sections 186A & 186-B: There are some practical difficulties in the matter of registration by the Registrar of Firms. In the registration of firms there are certain restrictions on the words to be used. For instance there is an industry called the National Fasteners (Private) Ltd. A sister concern has been floated under the name of 'National Agencies' for marketing the products. The latter firm wanted to use the word 'National' because there is some connection between the two. The Registrar of Firms has said that the word 'National' is prohibited under the Partnership Act. 'Banker' is another word prohibited under the Partnership Act for the registration of firms. But under the Income-tax Act, they don't bother about it.

We have had difficulty in the State Government taking recovery proceedings and therefore the Centre has taken it over from the State Government. Going back to the State Government will create hardship.

There is reference to the change in the constitution of the firm. When a partner is going out or a new partner is coming in, a new deed will be drafted and it will be intimated to the Registrar of Firms. But if the change is in the matter of profit sharing, it need not be intimated to the Registrar. According to the amendment, the Registrar of Firms should be intimated of any change. Under the present law, there is no necessity to inform the Registrar of Firms.

Under section 168A, as far as profit sharing is concerned, a new code is

drafted. According to the Stamp Act, Rs. 2.30 stamp paper is necessary. Whenever there is change, whether a new deed with Rs. 60 stamp is necessary or whether the Rs. 2.30 stamp paper will be necessary—that is not clear.

One more point. No partner should have any interest in the share of the other partner. If it is husband and wife or father and minor son, it is all right. Taken a case where a co-parcener is the kartha of the family. The kartha represents the family. The co-parcener has got interest in the firm's share. Is it the intention of the family that the partner should not have any interest even though the co-parcener has an interest in the share of the family?

Clause 53; Interest on refunds: Strictly speaking interest should run from the date of payment of tax and it should not be calculated with reference to the Appellate order.

Clause 56: There is a very small matter. They feel for filing appeal before the Tribunal is raised from Rs. 100 to Rs. 250 on account of the increase in administrative charges. If it is retained at Rs. 100, it is a welcome feature.

The powers of a single member of ITAT to dispose of an appeal with a total income of Rs. 25,000/- only should continue. Increasing the limit to Rs. 50,000/- will mean denial of the benefit of the opinion of two members in cases of the first category with income up to Rs. 50,000/-.

Clause 63 provides for penalty. According to it, the assessee shall be punishable with rigorous imprisonment for a term extending to six months, in addition to fine for failure to submit a return of income. This is a fiscal measure. We have got very many assesseees whose tax education is not up to the mark. If the return is filed before the assessment year closes, there should be no penalty and this provision should not apply, if the provision cannot be deleted altogether.

SHRI N. K. SANGHI: We quite appreciate that. But we want to know from what date the interest to be paid should be effective? Is it from the date of payment of tax or from the date of the appellate order.

WITNESS: The date of payment should be taken as the crucial date.

SHRI N. K. SANGHI: How to find out the date?

WITNESS: That is available from the chalan.

SHRI N. K. SANGHI: Sometimes after the passing of the appellate order, cases go to the tribunal and the High Court and naturally there is a lot of delay. That is why they want the assessee to pay interest from the date of the appellate order.

WITNESS: They can take back the interest given after the passing of the Appellate order.

SHRI N. K. SANGHI: Regarding imprisonment do you think that a penalty like 100 per cent extra tax would meet the ends of justice, in case imprisonment is to be avoided for the non-filing of returns.

WITNESS: It should not be made uniform in all cases. In the case of non-residents, a different rate could be fixed. But you can fix the maximum at 100 per cent. We can also fix the minimum penalty. For the belated filing of returns, besides interest, a certain fixed amount on a graded scale could be for each year of delay. As the number of years increase, the penalty will also increase.

SHRI N. K. SANGHI: The Government have no patience to wait indefinitely and unless we show them some way, we cannot persuade them in regard to this matter.

Regarding clause 8, you have stated that all legitimate capital expenditure including goodwill incurred shall be made eligible for amortisation. How can you determine goodwill?

WITNESS: Goodwill when it is acquired and not the goodwill that is created by oneself

SHRI N. K. SANGHI: Regarding the Hindu undivided family, do you think that the Bill would affect them?

WITNESS: It affects them.

SHRI N. K. SANGHI: Do you think that it would really affect the Hindu law in any way.

WITNESS: It is only a question of payment of tax in default. It does not take away the right of the coparcener as provided for in the Hindu law.

SHRI N. K. SANGHI: Co-parceners get a right from the property if they go to a court of law. Do you think that this amendment would upset that right if they go to a court of law. Have you given thought to this matter?

WITNESS: No.

SHRI BISHWANATH ROY: There is so much evasion of tax and unless there is some stricter method of imprisonment, the Government would not be able to realise the tax due from the assesseees. What is the method you suggest to prevent evasion of tax?

WITNESS: The best way is to make a survey of the whole matter. For instance, even in the case of iron materials and cement they can make it compulsory to take the correct address of the person who has purchased them and also note down for what purpose they have been used, either for an institution or for himself. If it is for a personal property, we can ask how it has been acquired. But I find that in very many cases the Income-tax Officer does not pursue it in that manner.

SHRI BISHWANATH ROY: It would require a big department to maintain the transactions of different materials. The amount due to the Government by the persons engaged in such business must be paid to the Government. Can you suggest a method other than imprisonment?

WITNESS: Then we have to educate the assesseees.

SHRI BISWANATH ROY: Regarding the Hindu Joint family, you have stated that certain clauses of the Bill might affect it to some extent. Without the removal of that system, can you suggest a method by which the Government can get the amount due from that joint family? Now there is evasion on account of the joint family system.

WITNESS: Transfer of individual property to the joint family cannot be considered as an evasion.

SHRI JANARDAN JAGANNATH SHINKRE: You have stated that the limit of 2.5 per cent with regard to amortisation should be raised to 5 per cent. Have you made a study with regard to this matter.

WITNESS: For issue of share capital the Corporation charges nearly 2 per cent. Then you have got expenses connected with the floating of the company. Therefore, 2.5 per cent seems to be too low.

SHRI JANARDAN JAGANNATH SHINKRE: The Government have fixed 2.5 per cent after making a study of it. Has any institution belonging to your Chamber made a study of it?

WITNESS: No.

SHRI JANARDAN JAGANNATH SHINKRE: As far as clause 14 is concerned, after the decision of the Supreme Court, many people find themselves in difficulties. Do you think the provision is reasonable?

WITNESS: Even before the Bill, there are cases where they have done it already. Therefore in cases where things have already been done should not be penalised. It is not a legal crime. Of course, it has been done to save tax, I do agree. But at the same time, my submission is what they have done legally should not be affected by giving retrospective effect now.

SHRI JANARDAN JAGANNATH SHINKRE: Now the date of the notification, is 20th May, 1969. Instead, supposing we say it is from the date of the Bill?

WITNESS: That will be fair, I think.

SHRI S. B. PATIL: Now, you have opposed the clause providing for imprisonment. Why do you oppose it? This is provided for only offences?

WITNESS: In actual practice we come across cases where the income will be only Rs. 7,000 or 5,000. Maybe, for four or five years return has not been filed. But then it is not a wilful act. It is merely ignorance and for sheer ignorance, the man should not be punished severely. Many of them are illiterate assesseees. Even such small assesseees are covered by the Section.

SHRI S. B. PATIL: As you know there is much of tax evasion and for offenders imprisonment is provided for?

WITNESS: But it affects even innocent persons.

SHRI S. B. PATIL: How?

WITNESS: Even persons who have Rs. 7000 or less are affected. If there is graded penalty, at least than can be considered reasonable. If it is a case of wanton evasion, I think imprisonment can be there. But there are cases of small assesseees. Such

people should not be affected. If there is intention of deceiving Government, then the punishment may be there.

SHRI R. K. SINHA: So you agree that in cases of deliberate attempts at tax evasion, imprisonment can be restored to?

WITNESS: If it is a deliberate case and wilful evasion, imprisonment clause may be retained.

MR. CHAIRMAN: There are some catches in what you have said from the department's point of view and Mr. Shah would put some questions.

SHRI R. D. SHAH: You say interest should be given from the date that the tax has been paid. If we take that as the basis on which we argue, then the question would be that in cases where it is reopened by the department, that means there was originally an assessment and cases are re-opened and further demands raised and tax levied. In these cases on the same analogy, can we argue that the assessee retained money belonging to the Government which he has paid only at a later date and in that connection would be correspondingly say that interest should also be charged from the date of the assessment order or from the date when the return became due, for, the tax would have been paid by him on self-assessment if he had correctly declared himself when the return became due?

WITNESS: I appreciate that. On self-assessment the money belongs to Government and therefore they can get from the date of self-assessment, i.e. when the return became due.

SHRI SHAH: Even in cases where they are re-opened later after four years or 8 years, there will be no waiver or reduction of tax, but charged from the self-assessment due date?

WITNESS: Yes, I agree.

SHRI SHAH: As regards penalties, there are cases where penalty is imposed, but our experience is that neither the tax is paid nor the penal amounts are paid. Where is the deterrent? Would you not say that prosecution be a reasonable deterrent?

WITNESS: I have not come across cases of such non-payment of tax or penalty.

SHRI SHAH: But the arrears are seven hundred crores!

WITNESS: Imprisonment can be at that stage of non-collection, but not at the stage of non-filing of returns.

SHRI SHAH: So you would agree that where the default is deliberate, you have no objection to prosecution. For that the section provides for reasonable caution being taken and thus the section takes care of it.

WITNESS: In very many cases reasonableness is not given effect to.

SHRI SHAH: In prosecutions, it is the magistrate and not the officer who will be in charge. You welcome penal punishment?

WITNESS: Imprisonment can be there with restricted use, in the sense that it is used only in deliberate cases.

MR. CHAIRMAN: It is restricted or not restricted; but it is in the discretion of the magistrate having regard to the circumstances of the case.

WITNESS: I am thinking whether you cannot put a minimum, say, of Rs. 7000 or 10,000 in drafting the Bill. In such cases, it looks as though the present provision will apply.

SHRI JANARDAN JAGANNATH SHINKRE: Provisions of punishment should be there according to you for non-filing of returns also?

WITNESS: To check evasion, if it is felt necessary, the provision may be there.

MR. CHAIRMAN: You accept that punishment should be there for anti-social elements?

SHRI N. K. SANGHI: The evasion may be of different forms, do you think that imprisonment should be there only for graver offences?

WITNESS: In cases of fabrication of accounts etc., the deterrent punishment should be there.

SHRI JANARDAN JAGANNATH SHINKRE: There are Government servants whose tax is collected at source, but they also omit to file returns. What should happen to them?

WITNESS: If they have other incomes, this will apply.

MR. CHAIRMAN: Thank you very much for your very clear evidence.

The witness then withdrew

II. Revenue Bar Association, Madras.

Spokesmen:

1. Shri T. V. Viswanatha Aiyar
—President.
2. Shri K. Srinivasan
—Vice-President.
3. Shri S. Swaminathan,
—Vice-President.
4. Shri C. V. Mahalingam
—Secretary.
5. Shri S. V. Subramaniam
—Secretary.

MR. CHAIRMAN: What is the strength of your Association?

SHRI T. V. VISWANATHA AIYAR: 60. We are specialising in taxation and therefore, it is a separate Association

for taxation. We cover the entire State and there are some people outside Madras also.

I would say a few words on one or two points by way of clarification.

So far as debentures are concerned it is already the law that in regard to debentures the entirety of the expenditure should be allowed. That has been decided by the Supreme Court in 60 *Income Tax Reports*, page 52. In the present amendment it should be made clear that it is not intended to affect that former position. That is why we have suggested a slight amendment. We have said that in clause (f) the words 'or debentures of' may be omitted and a separate clause may be added so that so far as debentures are concerned, this proportionate matter won't come in. We do not want that the amendment should take away something which is already there. I do not think there is anything else so far as the Explanation is concerned.

The second Clause with which we are concerned is Clause 14. This is a matter on which we feel strongly. With reference to impressing of separate property with the character of joint family property, our recommendation is that it should be dropped. I am an old bird on this matter. For 43 years I am connected with income tax. The first one is Section 16 of the Income Tax Act of 1922, that is the parent of this Section that came in 1937 by Act IV of 1937. That has been going on for about 30 or 31 years without anybody thinking that there is any evasion about it, nor even avoidance about it. Nobody thought that there was anything wrong on that matter. It is a matter of Hindu Law. We cannot interfere through the machinery of the Income Tax Law what is natural and proper in Hindu Law. Therefore, that should not come as if it is any evasion or avoidance. Therefore, I would first mention that in practice nobody ever thought of it for about 30 or 32 years or even more, that there was anything like evasion

or avoidance, with reference to this normal feature. Secondly, it is also not workable in proper measure. Our submission on this matter is that diagnosis is wrong and the remedy is therefore, equally wrong. So, we say that the whole thing should be dropped. If, for any reason, the Committee or Parliament thinks that it should go into the Statute Book, it is very wrong to make it retrospective so far as the date is concerned. What is natural has been made retrospective. It is not as if anybody thought that there was anything wrong about what has been going on. The majority are Hindus and they have dealt with it under the Hindu Law. Even under the Hindu Succession Act or in any other sense, none of these have been interfered with. Therefore, I submit that apart from the merit of the main question, the date 31-3-65 is wrong. If at all anything should be done, it should be prospective and not retrospective.

Then, so far as Clause 31 is concerned, I should frankly say that we are the people who must know much about this Clause than anybody else because we are daily in contact with this question. We have not dealt with number of Clauses but we have concentrated our attention only on 8 Clauses.

If there is a difference of even Rs. 100/- the question of payment of tax arises by way of self-assessment. If I am asked to calculate it, it is impossible for me to calculate. We have got this Audit Bureau which is dealing with Income Tax. Any number of objections have been raised by the Audit Bureau against the calculations of the Income Tax Officer himself and are getting a number of requisitions for rectification as error apparent on the face of the record. To say that we should be calculative by the exact extent of even Rs. 100/- or 101/- is not a practical proposition and many Income Tax Officers themselves won't be able to do it except with the assis-

tance of that book or some Clerk or Head Clerk. It is not easy to do it. There are two things which I should mention. Not only is the extent reduced from Rs. 500/- to Rs. 100/-, but provisional assessments are sought to be deleted. That is very bad. We are anxious that provisional assessments should be kept and this reduction from Rs. 500/- to Rs. 100/- should be deleted. The proper thing would be, persons are helped to pay correctly by the persons who know how to calculate correctly. The provisional assessment helps a man to understand if there is anything that he has left over. That will be very much more beneficial from the point of view of too many calculations and too many mistakes that are arising in practice. Ordinary people do not know anything about the calculations because the rates are changing, new surcharges are coming in, new allowances are coming in. It is not steady even for a Plan period. I have been mentioning it for years. The rates must be steady. By the time we understand, the year is out. I may mention that this principle itself is wrong that we should calculate and give it. It has already been there in the Statute and Rs. 500/- difference is there. Therefore, I do not want to say that it should be deleted, though our opinion is that it should be deleted. To make it further less Rs. 100/- I do not think it is a practical thing or proper thing. So, I say that Section 140-A should be deleted and Section 141 should be kept.

The next point is, if however, the proposed amendment is retained, the same thing should apply so far as the Government is concerned. If the refund is more than Rs. 100/- they should refund it immediately. They will never do it. They want one year for it. But if it is a question of payment by the assessee, he should pay it within 30 days or so. For refund also, that time limit should apply. I can only say that nothing would be a law which is not practicable. A Law cannot be something which is not

workable in practice. People who should know how to calculate, issue notice and collect do not want to do the work. They want to throw the responsibility on others who are least qualified or fitted for the work. In respect of payment of tax under section 140A(1) if the amount is put at Rs. 100, it will affect even ordinary people getting Rs. 1000 and 2000, and not only the higher people who have professional assistance or the assistance of chartered accountants. How many of them will be able to understand the difficult calculations?

The next point is about recognition of firms. We are completely against this new provision; we would prefer to keep the old provision. After years and years and a number of cases, only for the last two or three years, the law has become settled. Now litigation has become practically nil. To introduce this new idea "Recognition of firms" is not necessary. Government is not going to get one rupee extra, whether it is a "recognised firm" or "registered firm". Even assesseees have understood the law. This was considered by the Law Commission and I tendered evidence before it. When the law is settled both as regards interpretation of the provisions and as regards procedure, there is no need to amend the law. Actually this is nowhere near the objective of simplification; it is only adding trouble and not simplification. No question of evasion arises in this matter.

The next point is in paragraph 5 on page 5 of our memorandum. There are a group of sections. The point they deal with is the same, that is, whether there should be a sort of court fee for every appeal to the Appellate Assistant Commissioner and to increase the court fee for appeal to the Tribunal. We are against this and this should be dropped. This group of sections amend the Income Tax Act, the Wealth Tax Act etc. and the same principle applies in all cases. Taxation is not dealt with either in

the Constitution or as a sort of civil litigation. Without waiting for all these things, tax has to be paid immediately. The matter itself should not depend upon costs or no costs. The Government is interested in getting the law settled one way or the other. Taxation proceedings should not be dealt with as if the assesseees are like litigants in civil proceedings or small cause proceedings. It is a matter in which the whole of India is involved. It does not depend upon the money involved. A levy of Rs. 10 is not going to matter, when the amount involved is huge. The purpose of this does not seem to be money. By the levy of Rs. 10 the number of appeals is not going to be less. Therefore it should be dropped.

The proposed amendment to subsection (3) of section 249 is wholly unwelcome. Appellate Assistant Commissioner's decision regarding admission of appeals is a judicial decision. To restrict his power to condone delay thirty days only is not right. The power should not go away even if it is 35 days. You must trust the people who administer the Act.

Clause 57: Amendment to Section 225: I don't think this should be made. The point is not whether the amount involved is Rs. 25000 or Rs. 50,000. It should not be approached on that basis. In actual practice we find a number of single member cases, being transferred to the bench. Let us drop the amendment. According to us even the existing provision of hearing by a single member should not be there. I do not know whether we will be in order in opposing what is already there.

Clause 61: Substitution of new section 275: The proposed amendment deals with the bar of limitation for making an order imposing a penalty. We welcome it. But one small lacuna is there. The amendment deals with the appeals against the orders of

assessment pending before the Appellate Assistant Commissioner or the Appellate Tribunal. Similar extension of time to levy the penalty should be made available to an assessee who files a revision before the Commissioner under section 264. I suggest the following amendments:—

“In section 277(a) after the words ‘under sub-section (2) of section 253’ add the words ‘or a revision to the Commissioner under section 264’”.

“In section 277(a)(ii), add at the end ‘or six months from the end of the month in which the order of the Commissioner is received by the assessee’”.

These words are added to make the picture complete. I am only extending the principle applicable to appeals pending before the Appellate Assistant Commissioner or the Appellate Tribunal to the revision pending before the Commissioner.

Clause 63: Introduction of section 276-C: Section 276C deals with penalties for failure to furnish returns or produce account books. Our recommendation is that this should not be put in the Statute. Our requestion is to drop the amendment.

A distinction is made between the filing of returns and the production of accounts or records. The proviso to the section says that if the returns are filed before the expiry of the assessment year, the penalty that is to be imposed may be waived. Failure to produce the accounts or records is a default. If they are produced before the expiry of the assessment year, it should not be treated as default. What happens to a case where there is failure to produce the accounts on a particular date? Suppose a person is asked to produce accounts by 31st October. He asks for time and let us assume you give time till 30th November. Suppose some trouble arises and he does produce by that

date. Immediately the penalty including imprisonment automatically comes in. Suppose he produces by 15th December. What is required in income tax is cooperation in the real sense and not default. One must show his books, his income and he must cooperate. You should not encourage merely the punishment aspect. For those who want to cooperate, you should not make it difficult. You make both equal—one who wants to cooperate and one who does not want to cooperate from the beginning. This distinction between filing of returns and production of accounts or records may be removed. If he produces ten days hence, you can say it is default, but you cannot make a prosecution and punish him with rigorous imprisonment. Ordinarily something may happen. There is no power given even to excuse. We are against the whole thing. Assuming you want to retain something, this point may be kept in mind.

SHRI R. K. SINHA: You have said that sometimes by mere forgetfulness or sickness or death of a near relation, there may be failure to furnish return and that the penalty of rigorous imprisonment should not be there. You have also said that there should be cooperation between the assessee and the Government. Are there not those who do not want to cooperate?

WITNESS: Imprisonment is there.

SHRI R. K. SINHA: In cases where there is deliberate avoidance or deliberate in the filing of returns, there can be rigorous imprisonment also?

WITNESS: I don't agree to that. The powers that are already there are enough. Assessee should not be treated as criminals. There are enough powers under the present Act to punish people who do not cooperate. The amendment introduces the punishment of rigorous imprisonment for the first time. They are trying to make the punishment more rigorous and automatic. I am against the rigour and the automatic nature of it.

SHRI R. K. SINHA: You have long experience in that line. You probably know that in spite of the Act there has been evasion and even educated people have not filed returns. What is your view in regard to this matter?

WITNESS: I do not want anybody to escape from paying even a quarter anna and if he tries to do it, it shall be at his own peril. But he should not be imprisoned and you should try to find out the real truth: Imprisonment does not settle anything. Apart from extraordinary cases of black-marketeers where the whole thing is bad from beginning to end, there are also cases which are innocent.

SHRI SINHA: So, what is the distinction or the way you suggest for dealing with innocent cases and cases where the blackmarketeers deliberately avoid paying taxes?

WITNESS: Firstly, it is not at the stage of filing returns or keeping back books. The point is that any number of defaults are permitted to be dealt with under the existing laws which are very effective. Non-submission of returns or non-furnishing of documents are specifically dealt with in Section 271 and offences have been made specific. Therefore, you should not think that except imprisonment, no other remedy is available. Prosecution of a person does not bring you any return.

SHRI SINHA: At what stage or under what circumstances, punishment should be given?

WITNESS: It is already provided in the Act. Now I am at the 'namakar-nam' stage and I will come to the living stage later. Now you want to prosecute him under the Indian Penal Code and not under the Income-tax Act. The present Income-tax Act helps you in getting a proper assessment.

SHRI SHINKRE: You have stated that amendment to section 64 'is merely an attempt to counter some of the decisions of the High Court and the Supreme Court.....' Certainly when courts point out some lacuna in laws, the Government have to get over them by amending the laws.

WITNESS: Firstly, there is a wrong assumption that there is a lacuna. I say that there is no lacuna in the Act.

SHRI SHINKRE: Many people have filed bogus statements by taking advantage of the terms 'avoidance'.

WITNESS: But the Parliament cannot put an innocent man to jail just because some persons have avoided paying the tax.

MR. CHAIRMAN: You want to make the area of offence as restricted as possible.

WITNESS: There is no offence as regards basic justice. This assumption of offence is mistaken.

SHRI SHINKRE: In this section there is no question of offence. It is only an incorporation of the suggestion made by the Supreme Court.

WITNESS: You want to make a natural item into an unnatural item.

SHRI SHINKRE: You want the proposed amendment of Section 64 to take effect from 1-4-1970.

WITNESS: Yes.

SHRI SHINKRE: But the Parliament introduced the Bill on 28th May 1969 itself, and so retrospective effect should be given from that date.

WITNESS: No. I should apply prospectively.

SHRI BISHWANATH ROY: You have emphasised the point that a person should not be named as a defaulter or criminal. Do you want to fix a date, after which a person could

be named as a defaulter? What should be regarded as negligence or ignorance?

WITNESS: My point is that every defaulter should not be made into a criminal or nicknamed as a criminal throughout. Simply because a person has filed a return one day late, he should not be named a criminal or defaulter. Of course, defaults are defaults and I am not excusing defaults. It may be that default might have occurred with knowledge or without knowledge and you cannot classify it under criminology and imprison the person who has defaulted. You cannot assume that everybody is criminal. Suppose a person filed the return through a registered post but it might have reached a day later than the prescribed date and you cannot immediately say that he has done it with a criminal intent and therefore he should be treated as a criminal.

SHRI BISHWANATH ROY: If a person does not file the return even after the expiry date, can he be called a criminal? If a man fails, then the section says that he can be prosecuted. But whatever the thing, the question is whether there is criminal intent. As regards taxation of income, I can understand somebody saying not only I book him in money but also physically; bodily; a criminal can be prosecuted. But for a small thing like not producing a document on a particular day or one fine morning, of course, in some cases, it may be criminal or not criminal. But in the majority of cases of 27,00,000 assessee, 26,80,000 will not be criminals. I do not want to make the law applicable to the 20,000 to be applicable to all the 27 lakhs.

SHRI BISHWANATH ROY: Have you got any specific basis for that?

WITNESS: Yes, yes. There is a section making provision what should happen in particular cases. I think that is Section 271. You kindly see

that section, it is page 243 in my book here. It speaks of failure to furnish returns, comply with notices, concealment of income. Well, 'concealment of income' I immediately grant there is criminal intention. Therefore, we are not talking about it. But 'failure to file returns', you cannot equate this with criminal intention to conceal income.

SHRI BISHWANATH ROY: Supposing a number of persons do not submit their returns in time, and take their own time, even then Government are put to loss. What should be the criteria for distinction between persons with criminal intention and those with unfair motives, if we can say so?

WITNESS: If here is wilful negligence, you penalise. But for ordinary negligence you excuse; or he is charged with interest. In one case you recover tax and in another case you recover interest and in the third case you levy penalty. But imprisonment is grievous.

MR. CHAIRMAN: Well, their (witness's) view is that the present provisions are adequate. But some how or other, the Government have thought that the present provisions are not adequate. There is difference of view.

SHRI N. K. SANGHI: After you have strongly expressed your view that the proposals should not be proceeded with, you have also said that it should be made prospectively?

WITNESS: No, no. I am only mentioning it as an alternative. We want the proposal should be dropped. But if you are determined, I am trying to be cooperative with you.

SHRI N. K. SANGHI: Do you think that the present provisions by which an individual puts his money into the hotch-potch of the joint family and then he is taxed, they will affect the Hindu law?

WITNESS: So far as members of the joint family are concerned, this law will have no effect. It is only for taxation but it is from the wrong point. It may lead to legal complications. This is making an unnatural illegal inroad into Hindu law.

SHRI N. K. SANGHI: So far as self-assessment is concerned, supposing the intention is to increase the taxable minimum from Rs. 4500 to Rs. 7000, even then will you not be in favour of this change?

WITNESS: No; my objection is so far as the the calculation is concerned, it is practically difficult. An income-tax clerk can do better than any of the lawyers here. If we take 10 tax officers and ask them to calculate, there may not be uniformity. The duty should be cast upon the persons qualified. The question now is between Rs. 500 and Rs. 100; the margin of Rs. 100, is so small.

SHRI N. K. SANGHI: Do you think to serve the purpose a chalan could be sent to the assessee and he asked to remit and file the return?

WITNESS: They want to see that the money is collected at the earliest at the right figure, whether it is self-assessment or not. Why not that person be intimated of the right figure and asked to pay it. That will save a lot of difficulties for all. Let the work be done by men who are intended to do that work. Let the experts do it. I am afraid you are putting in the wrong section and omitting the right section.

SHRI N. K. SANGHI: Regarding imprisonment, the background is that in the Hindi racket, many people escaped and Government could not assess.

WITNESS: What I am anxious is this. Where there is no return filed, make the assessment quickly; that is important; if you go on waiting, it will drag on; we know the long delay in magistrates' courts; it will drag for one year or two years.

Now-a-days people are not bothered about prosecutions and therefore it is not a good deterrent.

MR. CHAIRMAN: Well, it is their point of view. They have said it. They are satisfied with the existing provisions of the Income-tax Act and new provisions do not seem quite necessary for them. That is their point of view.

WITNESS: We are satisfied with the effectiveness of the present provisions, if it could be administered properly. What is simplification with 10 provisos in a section?

MR. CHAIRMAN: Well, sometimes Government do not know what is effective and what is not effective. Sometimes it happens.

SHRI N. K. SANGHI: Section 249 condones delays. Have you experience of Asst. commissioners condoning delays?

WITNESS: Not at all; even for one day, they have refused. Though Commissioners are given discretion, there are the Board's circulars which restricts their powers.

SHRI BISHWANATH ROY: Have you any suggestions to make the present act more effective?

WITNESS: Well, we have; but that is not covered by the present proposals to amend the law.

SHRI BISHWANATH ROY: You may send your views in writing later.

WITNESS: We will do that. The point is, the Legislation standing as it is, we should see how it could be better administered, more effectively administered to achieve the purpose of this Bill.

MR. CHAIRMAN: You know the mind of the Government and the assessee. You can do it.

WITNESS: At least the Legislators' mid we know.

SHRI N. K. SANGHI: As regards registration of firms, there is a Clause that no partner should be a benamidar of another partner. Do you think that it would serve better if a column is provided in the return itself mentioning if a partner is benamidar of any one, as is provided in the case of spouses and minors. Government would like to know who is the benamidar, so that it may be easier.

WITNESS: The joint family manager is there in the assessment of the joint family. His family is booked without any indication of benami or non-benami.

SHRI SANGHI: It is only to get more clarification.

WITNESS: People would know very well about all these matters, especially of registration. The assesses are very much better educated than most of us.

SHRI SANGHI: Suppose, we say that if they go to the Registrar of Firms and bring a certificate, it should be conclusive evidence.

WITNESS: I know what is happening there. Here it is a better check. There, it is only a paper check. Here, it is an effective check and a better check. There, it is done *en masse*.

SHRI SANGHI: The Registrar may not go through the genuineness.

WITNESS: Yes he is not concerned with the genuineness. The Chairman thanked the witnesses who then withdrew. The Committee adjourned for lunch.

III. Andhra Chamber of Commerce:

Spokesmen:

Shri Rasikalala M. Mehta
—President.

Shri J. V. Somayajulu—Former President.

Shri P. Brahmaya, F.C.A.—Former President.

Shri M. S. Sambasivam—Secretary.

MR. CHAIRMAN: We have seen your memorandum and the various points raised in it. If you want to highlight any particular point, you may do so. Then our Members will ask questions on various points.

SHRI J. V. SOMAYAJULU: At the outset I would like to express our sincere thanks for affording us an opportunity to come before you. We would like to mention only one or two important points emphasised in our Memorandum already submitted.

We have suggested that the exemption proposed, *viz.*, Rs. 4,000/- may be increased to Rs. 7,500/-.

The next point we would like to mention is about Clause 4(a)—Second proviso to Section 23 of I.T. Act., that is regarding the allowance allowed to be deducted in the case of residential buildings. The buildings that were started after 1961 and not completed before 1969 do not come under exemption. We would suggest that some Clause may be provided to make those buildings also become eligible for exemption.

Another point we would like to mention relates to amortisation of certain preliminary expenditure of Indian Companies. Normally in any floatation the expenditure comes to round about 5 per cent. Even when the capital is raised in the market the normal under writing commission itself comes to about 2½ per cent. Though we welcome this new provision, we would like to urge that the limit of 2½ per cent may not be quite sufficient to meet the needs.

One point No. 7 relates to conversion of self-acquired property into

H.U.F. property. As long as the proportion is to be determined and in some cases even these things are also taken into account for purposes of gift tax and again for determining the individual income tax, if those are clubbed to the individuals—there is also a provision to add whatever is necessary in the case of minors and other things—if that is also added, then converting individuals into H.U.F. may be lost. The other points are comparatively minor matters and we would like to answer questions that may be put by the members.

SHRI Y. S. KUSHWAH: On what basis you have come to the conclusion that 2½ per cent would not be adequate?

WITNESS: Whenever any Company is floated and when we want any institution like LIC to underwrite the capital, they are normally taking 2½ per cent commission for underwriting and over and above that, they pay about one per cent as brokerage for various stock-brokers for procuring applications. This is the normal thing. Over and above these things, there may be some other expenditure like advertisement. So, in the initial stages whenever any Company is floated 2½ to 3 per cent is the minimum that has to be paid towards commission and you have to spend about half to one per cent as brokerage, apart from other expenditure on items like advertisement. So, we have said that if you restrict the thing to 2½ per cent, it may not meet the needs.

SHRI Y. S. KUSHWAH: What is suggested?

SHRI Y. S. KUSHWAH: The percentage you suggest is 5 per cent.

WITNESS: About 5 per cent would be reasonable.

SHRI KANWAR LAL GUPTA: Most of the points are very old. I would like to ask only one or two questions regarding the recognition of firms. Your plea is that firms already registered with the Income-tax Department may be exempt from

the need to get the firm registered with the Registrar of Companies. Is it not? So, you agree with the amendment practically barring this. If the Companies which are already registered are exempted, then you have no quarrel with the amendment, is it not?

WITNESS: A partnership firm which is already registered with the Registrar of Firms and also with the Income Tax authorities, as long as there is no change in its constitution, there is no necessity for such a firm to go again for registration.

As regards the production of a certificate from the Registrar of Firms, it may be difficult. We are always in a position to produce the Certificate of Incorporation, but that does not contain certain details like the names of partners. That will be available only with the Registrar of Firms. If you want that a copy of that to be procured, we have to apply for a copy and normally it takes a long time to get a copy. If that is not there, so far as the other things are concerned, there may not be much difficulty. The Registrar of Firms is only one Officer for the entire State and the firms are distributed in different parts of the State and if they have to get a copy, then there may be difficulties.

SHRI K. L. GUPTA: There is some procedure for getting the firm registered under the present Income-tax Act. Do you find any difficulties under the present procedure and what are they or would you like to make any suggestion to improve the procedure?

SHRI SOMAYAJULU: If a firm is registered with the Income-tax Department, it is not necessary that it should be registered with the Registrar of Firms. Taking the whole thing as it is, the present system is all right.

SHRI K. L. GUPTA: Will you like to make any suggestion to improve the present system?

SHRI RASIKLAL: Why do you want the firm to get registered every year? The partnership deed is already there with the Income-tax Officer. Going on registering every year is an unnecessary waste of time.

SHRI K. L. GUPTA: Suppose there is a change.

SHRI RASIKLAL: When there is a change in the constitution due to addition of new partners or otherwise, at that time you can have registration.

SHRI K. L. GUPTA: According to you Form No. 12 should go. You do not want any other change in the procedure. The idea behind is that after the Supreme Court Judgment there is a lot of avoidance or evasion of tax. Can you make any concrete suggestion so that the Government may not lose any revenue?

SHRI RASIKLAL: The proposed amendment covers the case of an individual who abandons his separate interest at any time after 31-3-65. You are passing the Act in 1970. You should give effect to it from the date of the coming into force of the Act.

SHRI N. K. SANGHI: Suppose it takes effect from 1st April, 1970. Is it all right or would you like any further improvement?

SHRI RASIKLAL: If there is no retrospective effect, it will be all right.

SHRI N. K. SANGHI: What the Government has in mind is this. Suppose money is thrown after 1965. The income accruing to that man from 1969-70 from the property thrown into the hotch-potch will be charged to that individual's share. It will not be charged for the years 1965-66, 1966-67 etc.

SHRI RASIKLAL: Now that you are going to pass a law, hereafter people will not form the H.U.F. Those who have already made H.U.F. should not be charged.

SHRI K. L. GUPTA: Suppose you file your income-tax return late by one year or so. There is provision for rigorous imprisonment. What are your comments?

SHRI SOMAYAJULU: Existing penalties are fairly heavy. Penalty of imprisonment may be in very very extreme cases where the conditions may be out of the way. Our suggestion is that rigorous imprisonment should be dropped.

SHRI S. B. PATIL: Instead of rigorous, you want simple imprisonment or you want complete dropping?

SHRI RASIKLAL: We want complete dropping. A man may be in a nursing home or by some misfortune he may not be able to file the return. Then the law begins to operate.

MR. CHAIRMAN: The point is you are not in favour of punishment like imprisonment.

SHRI S. B. PATIL: There is some improvement in this Bill. If the income-tax officer wants to make some additions and if he wants to complete the assessment under section 143 he can call for an assessee and his account books and he can make some adjustments. The income-tax officer is given power to review his own assessment. Suppose an income-tax officer makes an assessment under section 143-A. Then he can review his own assessment, ask the assessee to come and make a re-assessment. What is your reaction to this?

SHRI BRAHMAYYA: As long as it does not lead to any abuse of power on the part of an Income-tax Officer and proper safeguards are

provided in the sense that the Commissioner's permission may be taken for very valid reasons, there is no objection to re-opening the assessment.

SHRI S. B. PATIL: In case certain information emanates?

SHRI BRAHMAYYA: Without any information, it is not desirable. I don't think it is desirable from the point of view of the assessee.

SHRI DASARATHA RAMA REDDY: If he has any information before him and on the basis of that information he wants to revise.

SHRI BRAHMAYYA: There is provision for it in the old Act.

SHRI DASARATHA RAMA REDDY: The Department's view is that it is not likely to be reopened. In very few cases the officer may re-open the matter. He has got the legal right to re-open even if it has been pending for two years.

SHRI BRAHMAYYA: In actual practice it does not work so innocuously as the framers of the Bill contemplate. Therefore I oppose it.

SHRI J. J. SHINKRE: The Bill proposes to fix a ceiling of Rs. 4,000 per month as tax-exempt on the remuneration paid to foreign technicians. You have suggested that the ceiling should be raised to Rs. 7500. Foreign technicians will come only in some sophisticated industries which are making profit. They will be coming in industries for whose products there is a demand. It means certainly more profits to industrialists. Then what is the difficulty in paying tax to the Government?

SHRI BRAHMAYYA: You are violating the very concept of the basis of arriving at the net income. Where a businessman has incurred certain expenditure, that expenditure should be set off against income for the determination of assessable income.

SHRI J. J. SHINKRE: You can pay more. But the tax-free is only Rs. 4000. As far as the excess is concerned, industrialists should pay taxes because they are making profits.

SHRI BRAHMAYYA: Once you have introduced a facility, we are only discussing the reasonableness or adequacy of that facility. We may not always be able to get first class technicians on the ceiling fixed by you.

SHRI J. J. SHINKRE: How many foreign technicians are engaged in industrial concerns belonging to the Andhra Chamber of Commerce? Have you got figures?

SHRI BRAHMAYYA: I do not have the figures. The Act applies to the whole country and we are talking about the country as a whole.

SHRI J. J. SHINKRE: As far as the H.U.F. is concerned, you are against retrospective effect from 1965. The Bill was presented to Parliament on 20th May, 1969. If retrospective effect is given from that date, will you accept it? As far as the budget is concerned, it is presented on a particular date and there are very few changes afterwards. Similarly there may be very few changes here also. When the Bill was presented to the Parliament, people should take notice of it and the same malpractices should not be there. So, do you favour retrospective effect?

MR. CHAIRMAN: He has suggested that it should be prospective and it should not have retrospective effect.

WITNESS: Yes, it should have effect from 1970.

SHRI BISHWANATH ROY: Regarding the tax-free remuneration for foreign technicians, you want that the ceiling should be increased from Rs. 4,000 to Rs. 7,500. How is it

that the same amount is proposed by all? When a Company is making profit and they can afford to pay the tax, why do you want to raise the exemption limit?

WITNESS: Some of our Members are employing some foreign technicians. Compared to the standard of living that these technicians are having in their home countries, we feel that the sum of Rs. 4,500 is inadequate. As regard the other point that the company making profit could afford to pay the tax, it would lead to some complications because it may be argued that tax-free salaries and tax-free income is profit and it may not be desirable.

SHRI BISWANATH ROY: When the company can afford to pay so much to a foreigner, naturally that company can pay a little more income-tax from the national point of view. So, why do you want to raise the exemption limit?

WITNESS: Because the Government are contemplating a kind of ceiling, we have suggested that the ceiling should not be too low as to inconvenience anyone.

SHRI N. K. SANGHI: With regard to amortisation of certain preliminary expenditure, do you agree that the total cost of the factory should be taken into consideration instead of profits put in reserve, besides capital, debentures and borrowings.

WITNESS: The total cost of the project is sometimes distributed over a number of years. Therefore, whatever is actually incurred in particular stages may be taken as a basis for the purpose of amortising the expenses.

MR. CHAIRMAN: Now on the whole the provisions of the Bill are

acceptable from your point of view except for the minor defects pointed out by you.

WITNESS: Certain modifications are necessary both in the interests of the Government and the citizens of the country.

MR. CHAIRMAN: Can you tell us the complex features in the Bill.

WITNESS: Simplification of the Act is necessary. The provision regarding amortisation of certain preliminary expenditure is a welcome thing.

MR. CHAIRMAN: Even penal provision without rigorous imprisonment is quite all right.

WITNESS: In fiscal measures there is moral turpitude involved and I do not think that imprisonment for technical defects would be justifiable under any circumstances.

MR. CHAIRMAN: Suppose a series of moral turpitude or a series of defaults of the same nature continue in spite of warnings and would they not lead to an assumption that there is some immorality or non-morality.

WITNESS: If your dictum is applied, it may lead to a dangerous thing. As long as there are small technical defaults imprisonment may be too draconian.

MR. CHAIRMAN: Suppose there is a technical default in that one does not file a return in a particular month. Then after three months the same technical default continues in spite of notices being issued and it is again stated that the return could not be filed due to want of staff like clerk or accountant. What should be done in that case?

WITNESS: Imprisonment for this kind of default may be too severe.

MR. CHAIRMAN: So, as a juristic principle it is bad.

WITNESS: Yes.

MR. CHAIRMAN: Suppose you ask a person to produce records but they have not been produced in spite of notices and warnings over a period of months. Do you think that this continued default should go unpunished?

WITNESS: It depends on the particular circumstances of the case and your knowledge about the character of the person involved.

MR. CHAIRMAN: If the income-tax officer having knowledge of the previous record of that gentleman make such a presumption he would not be totally wrong.

WITNESS: How does imprisonment solve the problem?

MR. CHAIRMAN: Do you agree that a presumption could be drawn that the default in the form of a civil wrong has gradually taken the colour of a crime.

WITNESS: I am drawing a distinction between a mere technical default and a moral turpitude and it has nothing to do with criminality.

SHRI BISWANATH ROY: You have referred to the moral turpitude. That expression has now become old in view of the changes now taking place in our day-to-day life. What-ever has been regarded as moral turpitude previously has been increasing, and so many crimes in different forms are being committed both physically and financially. Now the moral turpitude includes evasion of tax.

WITNESS: If you think that I am not irrelevant, may I say that in all walks of life, standard of moral turpitude has been diluted; that being so, why in tax alone it should be a rigorous standard? Excuse me for putting that question.

SHRI BISWANATH ROY: It is a matter of opinion. We cannot solve it.

MR. CHAIRMAN: If it is a case of moral turpitude, punishment or no punishment it continues and it is not going to be reduced. I must thank you very much for the very clear evidence your delegation has given before us.

The witnesses then withdrew.

IV

Shri V. S. K. Duraiswamy Nadar, Commissioner of Income-Tax (Retired), Madras

MR. CHAIRMAN: I welcome you to this Committee. I have to inform you that the evidence you tender before this Committee will be published; but until it is published, it will be treated as confidential. You may please note that.

WITNESS: I have already signed a statement to that effect. I have signed a declaration, I think.

MR. CHAIRMAN: All right. Do you want to add anything to what you said in your Memorandum or do you want to highlight any point or points. It is a fairly long Memorandum.

WITNESS: If you will permit me, I would like to stress about Registration of Firms. I mean the new procedure. That can be considered as a subject of great importance. Now, in my opinion a very long section has now been introduced. There are a number of sub-sections. The only two things, which I am able to find in the new provisions are these—one is that a firm should be registered with the Registrar of Firms, and that is one of the conditions. The other is that no partner should have any interest in the share of any other partner. My submission is that if these are the only changes, according to me, the object can be achieved by making necessary amendments in the existing Rules, instead of doing away with the existing provisions and introducing elaborate and complicat-

ed new provisions. This is bound to lead to a lot of litigation. The old Rules and provisions have the benefit of many judgments of the High Courts and Supreme Court. By introducing new provisions, you are creating wider targets for attack; and it will only help the professional people. It will create unnecessary work for the department, if my interpretation is correct. I should know what is the object of doing away with the old provisions and what is the object to be gained by the new provisions for 'recognition' of firms. My suggestion is that the new provisions could be incorporated in the old existing rules.

SHRI K. L. GUPTA: What will be the benefit? If any partner should have interest in the share of another partner, and if in that case the firm will not be registered or recognised, is it proper to allow it? What is the proper course?

WITNESS: In my opinion, the proper course is to include the benamidar's share of income in the total income of the beneficiary. The object should be to collect taxes from the proper persons and not to take shelter under any technical flaw and refuse registration.

SHRI K. L. GUPTA: You do not accept the second part of it?

WITNESS: Yes regarding the first part that it should be registered with the Registrar of Firms, I agree.

MR. CHAIRMAN: You please highlight your points. Try to be as pointed as possible.

WITNESS: When these two changes are introduced, you get your object. Why take away the name 'registered firm', introduce a new name and introduce a new Section? Actually the Taxing Officers already find it very difficult to administer things because they are inundated with circulars and rules. If you do away with the old procedure and ask them to learn new Sections and new circulars, it will be unnecessary work. The object of the Government can be achieved by making two small changes in the

existing rules.

The next thing is about the proposed imprisonment for failure to file the return. According to the principle of natural justice, there should be a relationship between the severity of the offence and the punishment meted out to the offender. For instance, a man who steals some ink from the inkpot of his neighbour cannot be put in prison. Even in the Indian Penal Code, there is a Section which says that trifles which form an offence within the four corners of the law should be ignored. Though this failure to file return is an offence, it is not of such a severe nature as to warrant imprisonment and also deprive the Magistrate of his discretion and make it obligatory on his part to impose rigorous imprisonment. Under the existing law if a man fails to pay the tax deducted from salary within a certain period, he can be convicted with rigorous imprisonment. In one case the amount involved was less than Rs. 200. The failure to remit was absolutely due to sheer negligence or innocence. The Magistrate was convinced that it was not deliberate and the tax payer did not deserve any punishment. But unfortunately the existing law did not give him discretion and he did not know what to do. He found that the facts of the case did not justify such a penalty. What he did was, he sentenced the man to rigorous imprisonment till the rising of the Court. Deliberately the Magistrate came to the Court at about 4 o'clock and left the Court at about 4.45 just to satisfy the law. But how many Magistrates will do like that? It is not stated in the I.P.C. that even a murderer shall always be punished with rigorous imprisonment.

MR. CHAIRMAN: The word here is 'shall be punishable'.

WITNESS: So there is no discretion left to the trying Magistrate. He cannot convict him to simple imprisonment. 'Shall' is mandatory. My submission is, there must be some consideration. There must be some

relationship between the severity of the offence and the punishment meted out.

About the proposed enhancement of the fees, I want to say a few words. At present there is no fee for appeals filed before the A.A.C. and now the proposal is to collect Rs. 10 per appeal. Similarly the existing Rs. 100 as fee payable to the Appellate Tribunal is proposed to be enhanced to Rs. 250. There may be many petty cases where the I.T.O.s. may not have time to go into details and may make some additions believing that they are right, but really they are wrong. Justice in such cases will be meted out by the A.A.C. So, in these simple cases, where justice will be meted out by the Appellate Assistant Commissioner only why should a man be asked to pay Rs. 10/-?

SHRI JAHAN UDDIN AHMED:
Because he is seeking justice.

WITNESS: You are introducing a new change. What are the new factors which justify the collection of this fee? Till to day he has been getting justice for nothing except affixing some stamp to the petition, which is not a fee.

WITNESS: On principle there is objection to levy a fee on appeals to the Appellate Assistant Commissioner.

SHRI N. K. SANGHI: You are saying that the fee of Rs. 10 should not be there. Can you explain what is the rationale behind charging 8 annas for appeals to A.A.C.?

WITNESS: That is a time-honoured practice and I do not know the historical origin.

SHRI SANGHI: Nobody objected to this sort of trouble that is undertaken to get a Court-fee stamp and file the appeal. So, why not the Government increase it to Rs. 10 because the cost of everything has increased.

WITNESS: Court-fee is not peculiar to the appeals to A.A.Cs. Even for any petition we will have to affix Court-fee stamp. The quantum will differ. It is not a fee.

SHRI SANGHI: As regard the fees to be paid to the Tribunal appeal, it is a matter of principle involved. Some sort of expenses may have been disallowed which the assessee feels, should not have been disallowed. There may be number of cases that have to be decided together and so, a number of appeals may have to be filed. In such cases do you think, if one fee of Rs. 250 is levied, it will be reasonable?

WITNESS: Rs. 100 is all right. If two or three appeals covering the same point are filed, for everything you will have to pay Rs. 100 now. You cannot consolidate. You will have to pay Rs. 100 for every appeal, irrespective of the fact that all the appeals may cover only the same point.

SHRI SANGHI: If the proposed fee is for two or three appeals covering the same point, will it not be a satisfactory solution for the increased fee?

WITNESS: On principle of justice, it looks all right. But in practice it will be difficult because there will normally never be an occasion for two or three appeals covering only the same point to be filed before the Tribunal together. There is also time limit. You will have to file an appeal within 60 days.

SHRI SANGHI: As regard registration of firms, suppose we provide a proviso regarding declaration of the interest of the partner to another partner, do you think that would suffice the legislative part of the whole thing?

WITNESS: That will suffice the interest of the Department. Courts have recognised that there can be a

benami partner. I may be a real partner and I may have 'X' as benamidar in order to reduce my tax liability. In that case my submission is that every firm may be asked to file a declaration signed by every partner saying whether he is a partner of his own behalf for his own benefit or as the beneficiary of somebody else or trustee of somebody else. Once he files such a declaration, the Department has got a right to tax the other man. You do not lose the revenue.

SHRI SANGHI: The intention of the Legislature in this particular aspect is, once you go to the Registrar of Firms and bring that certificate, it is conclusive and 99 per cent accepted. Subject to other drawbacks the firm will be given recognition. What do you think about it?

WITNESS: Registrar's certificate is the simplest thing. You pay Rs. 3; and whatever we write the Registrar accepts. He never examines the genuineness like the Income Tax authorities. Actually the insertion of that condition is not going to improve matters. That is my opinion. As a matter of fact, especially in Madras and in some other States, already Income Tax Officers are insisting on the production of a certificate from the Registrar of Firms just to prove the genuineness of the firm. Almost all the firms are registered. Unless you register, you cannot file a suit. From the business point of view, it has to be registered. Registration is actually done. It is not going to put any businessman to any difficulty. So, a certificate can be produced. But if the Income Tax authority is asked to approve registration solely on the basis of the Registrar's certificate, there will be any number of firms which are not genuine. The Registrar simply asks you to fill up the forms. He does not care to examine whether the statement given is true or not.

SHRI SANGHI: He does not go in to the back of the whole thing.

WITNESS: He has not got the time.

SHRI SANGHI: What is your opinion regarding these two assessments, the provisional assessment on seeing the returns and the reopening of the assessment.

WITNESS: That is a good suggestion.

SHRI SANGHI: Do you think it is going to help by and large cases?

WITNESS: It depends upon how it is worked and how it is implemented. It will minimise the work considerably, in my opinion. The Income Tax Officer can just examine the statement and the returns. That is what is done in the West. In England seldom they call for account books. They examine the returns and the statements. Some times they enter into small correspondence. Then, with the help of those papers, they are able to fix the total income fairly accurately and make the assessment. The party also will be satisfied. So, that is a good proposal.

SHRI N. K. SANGHI: One of the persons has suggested that in this particular case, officers might not apply their mind. What do you think of the practicability?

WITNESS: Some officers will do it. That is an individual thing. But by and large they will do not. If they resort to it, there will be adverse criticism from their superiors. I don't think normally officers will do it. I think it is a good provision.

SHRI BISWANATH ROY: You say on page 1 and point 3 of your memorandum that the words "in connection with the extension of the industrial undertaking of the company or in connection with the setting up of a new industrial unit" may be removed so that non-industrial companies

trading companies etc.) may also get the benefit of the new section. The section relates to amortisation. Why do you make this suggestion?

WITNESS: After all you have decided to amortise capital expenditure and allow it to industrial concerns on the principles of natural justice. On the same principle, non-industrial companies also should get the same concession. I want the same principle to be applied to both, unless the Legislature wants to show a concession in favour of industrial undertakings only. My submission is that there is no justification to treat one as the real child and the other as the step child.

SHRI J. J. SHRINKRE: Clause 43 introduces a new section. You say in your memorandum that there is no need for it and that the existing provisions are enough. You have been a government officer and you know the mind of the government officers. They have made this suggestion after a careful study and bestowing thought over the matter. Can you say what is in their mind in suggesting this amendment?

WITNESS: If I were there, I would not have introduced it. How can I know their mind. I also bestowed some thought over the matter, and in my opinion there is no need for it. Unless I know what the other considerations are which guided the department, I will not be able to answer.

SHRI DASARATHA RAMA REDDY: With regard to punishment, do you think that the officers must have discretion whether it should be simple imprisonment, rigorous imprisonment or fine?

WITNESS: If one reads the I.P.C. one will find that simple imprisonment is given for minor offences, rigorous imprisonment for major offences and in every case discretion is

given to the magistrate. Is failure to furnish a return a greater crime than the crimes contemplated in the I.P.C.?

MR. CHAIRMAN: In post-war legislations there are provisions which give no discretion to the magistrate.

WITNESS: The magistrate is given discretion, and he uses his discretion when there are extenuating circumstances. Here no discretion is given.

SHRI DASARATHA RAMA REDDY: You want the fee to be varied with reference to the claim in dispute?

WITNESS: I do not say that. My only point was that the existing Rs. 100 is sufficient.

SHRI DASARATHA RAMA REDDY: In ordinary civil law you pay *ad valorem* fee on the basis of the amount in dispute. Even Rs. 100 is heavy if the amount in dispute is Rs. 100. You are not governed by the principle of *res judicata*.

WITNESS: If such a provision is introduced, there should be provision for awarding costs.

SHRI DASARATHA RAMA REDDY: Under the Land Acquisition Act, you are paying cost to the party against Government also. Do you think that a provision should be made for awarding costs also?

WITNESS: If costs are awarded, I am sure there will be a very big reduction in the departmental appeals to the Tribunal.

SHRI DASARATHA RAMA REDDY: There is the Hindu Law and the Supreme Court judgment. Do you think that the amended provision can be worked satisfactorily?

WITNESS: On principle I entirely agree with the proposal and I have nothing to say against it. Coming to the practical side, there will be a lot

of difficulty. You cannot complete the assessment until the assessment of all his children and wife are completed. It is not worth the trouble.

SHRI DASARATHA RAMA REDDY: Have you got any suggestion to safeguard the revenue of the Government?

WITNESS: The only suggestion is that when an individual transfers his assets in favour of his Hindu Undivided Family, the transfer should be deemed to be null and void for the purpose of the Income tax Act. That means he will continue to be the owner so far as tax is concerned. I do not know whether it will be valid in law.

SHRI DASARATHA RAMA REDDY: In the Andhra High Court, when a transfer is made by a Kartha to a H.U.F., Gift tax is collected.

WITNESS: There are other decisions also that it will not come under the Gift Tax.

SHRI DASARATHA RAMA REDDY: Suppose it is brought under the Gift Tax Act and then taxed?

WITNESS: Then you will get something definitely substantial. You will be simplifying matters.

SHRI S. B. PATIL: On page 1 of your memorandum you say "Everybody knows the inordinate delay caused in Government circles by red tapism. It is impossible to get the Government's approval before incurring expenditure on feasibility report, project report, market survey etc." What was your experience regarding delays when you were an officer?

WITNESS: When I was in service, there were not so many provisions requiring prior approval of other departments. After retirement I have been in business. I am contacting the

ministry for licence, this and that. I am the Chairman of a paint manufacturing company. The Government want us to export and earn foreign exchange. This is a new company. In order to get entitlement for export, the company has to be registered with the Export Promotion Council. First we were told that we should send an application to Calcutta. We sent an application. We did not hear anything for two months. Then we sent a reminder. We were then told that there is an office in Madras to which we should send the application. We sent it to the Madras office. Only recently we got an acknowledgment; but the registration is yet to come. Departments have expanded and there is bound to be delay. Why is prior approval necessary? If prior approval is necessary, one has got to put up with the delay. The income tax officer is concerned with verifying whether the expenditure is genuine and whether it has been incurred properly. As a businessman I can say that it will be very difficult for me to get prior approval for engaging professional people for market survey, feasibility report etc.

SHRI KANWAR LAL GUPTA: Under the present amending Bill in the case of a person who does not register his firm with the Registrar of Firms, his firm will not be registered. Also, if a person names his company as 'Indian National Company' or 'Bharat Company', the Registrar of Firms will not register it. In that case, this firm will not be recognised by the Income-tax Officer. If we introduce this condition in the Amending Bill, will it simplify or complicate the matter.

WITNESS: It would lead to hardship if a company is not registered because certain words like 'National' or 'Bharat' are used. The firm has to be registered with the Registrar of Firms in order to file suits. So, I do not think the firm will use those words and thus lose the right of filing suits to recover arrears.

SHRI GUPTA: From the administrative point of view, will you suggest anything to simplify it.

WITNESS: Personally I think it is not an essential condition and it is not necessary. It can be done away with.

SHRI GUPTA: Under Section 143(1) of the Income-tax Act, the Income-tax Officer has been given power to make minor adjustments here and there and at the same time he has also been given power to review his own decision. That means that the Income-tax Officer can review his own assessment at any time he likes. So from the administrative angle, is it desirable to have such a provision.

WITNESS: After all, he would not review every case. Only when he finds that a substantial mistake has been made, he will review it.

SHRI GUPTA: If there is a substantial mistake, under the existing law he has power to reopen it.

WITNESS: That power is there.

SHRI GUPTA: So what is the idea of having additional powers? For instance, if the Commissioner is not able to dispose of 2,000 or 3,000 cases in the last week of the year, he would

make an assessment under section 143 without looking into them in detail. After three or four months he will review them. So, there would not be any finality in the matter. From the administrative point of view, is it desirable to do it?

WITNESS: Otherwise, the administration will have no chance to correct the mistake made by them.

SHRI GUPTA: The Income-tax Officer is not supposed to make any mistake. If he has got any definite information, he can re-open it.

WITNESS: You are referring to certain officers who would do like that just for the purpose of statistics. But I do not think that the power would be misused by the Income-tax Department.

The Chairman then thanked the witness for the evidence tendered by him.

The Committee then decided to invite the Chairman of the Central Board of Direct Taxes to tender evidence before the Committee.

The Committee then adjourned to meet again at 10 a.m. the next day (6th February 1970).

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS
(AMENDMENT) BILL, 1969.

Friday, the 6th February, 1970 at 10.00 hours and again at 15.00 hours
in Central Hall Legislators Hostel (Old), Madras.

PRESENT

Shri Tenneti Viswanatham—*In the Chair.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri Kanwar Lal Gupta
4. Shri B. N. Katham
5. Shri Yashwant Singh Kushwah
6. Shri V. Krishnamoorthi
7. Shri Shiva Chandika Prasad
8. Shri R. Dasaratha Rama Reddy
9. Shri Bishwanath Roy
10. Shri N. K. Sanghi
11. Shri Janardan Jagannath Shinkre
12. Shri R. K. Sinha

LEGISLATIVE COUNSEL

Shri Harihara Iyer, Additional Legislative Counsel, Ministry of Law.

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, Member, Central Board of Direct Taxes and Ex-Officio Joint Secretary, Ministry of Finance (Department of Revenue and Insurance).
3. Shri S. P. Chowdhury, Under Secretary, Ministry of Finance (Department of Revenue and Insurance).

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. Tamil Chamber of Commerce, Madras.

Spokesmen:

1. Shri V. S. K. Duraiswamy Nadar
2. Shri V. Ramachandran
3. Shri M. S. Swaminathan.

II. *The Southern India Chamber of Commerce and Industry, Madras.*

Spokesmen:

1. Shri P. Maruthai Pillai—*President.*
2. Shri S. Narayanaswamy—*Vice-President.*
3. Shri N. C. Krishnan—*Member.*

III. *Hindustan Chamber of Commerce, Madras:*

Spokesmen:

1. Shri K. D. Shah—*Vice-President.*
2. Shri R. Ramakrishnan
3. Shri V. Ramachandran
4. Shri G. Narayanaswami
5. Shri R. Ananthakrishnan

IV. *The Indian Chamber of Commerce, Coimbatore.*

Spokesmen:

1. Shri G. D. Naidu
2. Shri P. Rangaswami

V. *The Madras Income-tax Employees Association, Madras.*

Spokesmen:

1. Shri K. M. Kochukumar
2. Shri N. Sundararajan
3. Shri C. Subramaniam
4. Shri S. Raghavan
5. Shri G. S. Ghanam

I. **Tamil Chamber of Commerce, Madras**

Spokesmen:

1. Shri V. S. K. Duraiswamy
Nadar
2. Shri V. Ramachandran
3. Shri M. S. Swaminathan

(The witnesses were called in and they took their seats.)

Mr. Chairman cautioned the witnesses that until the evidence was published, it was confidential. He asked them to state briefly what they wanted to say in addition what they have given in their Memorandum.

Shri Nadar suggested that in as much as he had spoken the previous day, Mr. Ramachandra would speak and clarify any points.

WITNESS: The first point I want to highlight is with regard to Section 35D, i.e. with regard to the provision relating to amortisation. The provision is worded vaguely. It might lead to various problems with regard to interpretation. Benefit of amortisation should be given to all expenses which are normally capitalised other than capital expenses on which depreciation is given.

MR. CHAIRMAN: What is your suggestion?

WITNESS: It is not possible to give an exhaustive list of the expenditure.

MR. CHAIRMAN: We have noted your definition. That is very good. Is there anything else?

WITNESS: Second thing is with regard to Sec. 143 which is a new section. We have not mentioned about it

in the Memorandum. This is a provision for fresh assessment. I suggest that the provision 143(3) be removed, for two reasons. One is it might cause hardship and second is that already there is a provision for reopening of assessment where income has escaped. Now 143(3) is repeated without safeguards provided.

MR. CHAIRMAN: I think this point was mentioned by everybody before the Committee.

WITNESS: There is provision in 147 and this is a duplication. Actually, the safeguards are not here. Therefore this gives a blanket power. I suggest that sub-clause (3) is not necessary. You may stop with sub-clause (2) which is complete in itself, for the purpose of collection expeditiously. For that sub-clause (3) is not necessary.

MR. CHAIRMAN: We have taken note of your suggestion.

WITNESS: However, if sub-clause (3) if considered absolutely necessary, it might be restricted to clerical corrections only.

MR. CHAIRMAN: You think that we could stop with sub-clause (2) alone.

WITNESS: Yes. Another point is with regard to benefit of amortisation. The benefit need not be restricted to industrial undertakings only. There are many other undertakings like Hotel where the capital expenditure will be substantial. These benefits should be extended whether one is an industrial undertaking or not.

* The next point is benefit of shifting of undertaking, i.e. 35-E. This is given to owners of undertakings. There can be cases where a person holds an undertaking on lease with the consent of the lessor and he wants to shift; then in that case the owner does not get the benefit nor the lessor. The benefit is wasted.

The other things is with regard to clause 14, i.e. sec. 64. The first provision is not necessary. However, if it is felt necessary, two safeguards should be provided—one is that retrospective effect should not be given and secondly the question of acceptance of minor co-parceners in cases where the transfers are made.

Then, with regard to registration of firms. This should be restricted. The existing provision amply covers the purpose and the safeguards that are intended either assessee or revenue. The amendment is not essential. If amendment is considered necessary, one safeguard should be there. I presume this is done to get over the position created by Supreme Court judgment. It is said that if any person has any interest in the share of any one of the partners, then registration will be refused. Supposing in a firm two or three members of a joint family, are partners using the capital funds of the joint family, there is nothing to prohibit in law to do so and in such a case the entire income, share income of all the members should be assessed; each one has got a share of the other both in the corpus as well as income. If there are 10 parties out of which 7 are outsiders and 3 partners are members of a joint family, simply because 3 are a joint family, they have got some interest in each of the share, the entire firm does not get registration. The family would have nominated them to safeguard its interests. If any resolution is to be passed on the strength of partners, the joint family has 3/10th interest. In such a situation, registration would be refused. Therefore either the provision should be dropped or safeguards should be provided to cover such cases as have been illustrated.

MR. CHAIRMAN: What is the language you would suggest?

WITNESS: Normally we would feel that the provision is not necessary. The expression *benami* should be used in such a way as not to create too

much of litigation. If registration should not be refused, then safeguard should be provided.

WITNESS: With regard to filing of the appeals to the Tribunal, except to mention that, I do not want to add anything to what we have stated in our Memorandum. That has been dealt with by everybody.

Then the last Clause which I would like to refer is the one relating to prosecution. The provision for prosecution for delayed submission of returns is not warranted. The practical problem is this. Once the prosecution is started, then the question of discretion and other things might not come in. Without meaning any disrespect to any of the Courts. If an income-tax matter goes before a Magistrate, the Courts angle at which it is viewed is entirely different from a tax angle. When a matter goes before the Magistrate's Court, irrespective of practical considerations and difficulties, it will make the person liable for punishment. The difficulties of the assessee or the tax consultants or tax-payers might not be viewed in the same light as it would be viewed by the Income-tax authorities or the appellate authorities who deal only with income-tax cases. The provision for prosecution should, as far as possible, be restricted to real offences and not technical offences like delay in filing of returns. In fact actually we had cases of late where punishment had been given for mere technical default by non-deduction. I had a case a week back where a Company with a huge capital failed to deduct a case of about a few hundred rupees. There was a short delay of about a week in remitting the tax. For that they had to undergo imprisonment till the rising of the Court. If the matter had come before a Tax Court or Appellate Tribunal or A.A.C., it would have ended with a penalty of Rs. 5/-. I do feel that this is a case in which imprisonment should not be given. Because the Section is mandatory, the Director was made to undergo imprisonment till the rising of the Court.

SHRI BISHWANATH ROY: Concentration of wealth in a few hands has been a burning topic and the Government has the policy of just checking it up in whatever degree it can be. A clause debarring shares in the name of the members of the same family has been proposed. What is your view regarding that Clause? In the interest of the whole society are we justified in proceeding with that Clause?

WITNESS: Is the question refers to Section 64, this may not materially affect because the law provides for the existence of joint families. If the question refers to the registration of a firm, this can be avoided even by another joint family by effecting a partnership partition with regard to the business. If a partnership partition is effected, in effect there is bound to be loss by that way of wealth tax and also by way of Income tax. Instead of that, if the question of registration by two or three members continuing the firm is not affected, many families would still like to continue the business interest paying a higher rate of wealth tax. The question of wealth concentration as a joint family has also a similar liability. They pay a higher rate of wealth tax. Except the lower slab, they pay wealth tax on the entire limit. So, the trend, of late, has been to partition the families and as such, no further benefit is conferred on a joint family apart from the question of a lower limit of additional one lakh in respect of wealth tax. Not much of tax effect would be gained by providing any provision which restricts the family from doing business either itself or by any number of joint families joining together in a firm or otherwise. That purpose will not be achieved by this provision.

SHRI BISHWANATH ROY: The purpose of checking concentration of wealth will not be achieved by this clause, but this Clause would be helpful in checking that trend. From that point of view, do you think that this Clause might be there?

WITNESS: In fact the purpose of division of the shares of a family is not achieved by any of the provisions. Section 64 only prevents throwing into the common stock.

SHRI R. K. SINHA: The question of mandatory punishment was raised yesterday and today also it has been raised. I want to know from Mr. Shaw the Government's point of view.

MR. CHAIRMAN: This is only a Bill. At present the Government have given its view only tentatively and they have provided this punishment in the light of the experience they have gained. It is a question of policy whether in the light of the experience of the income-tax administration, they have been obliged to resort to this extreme steps in order to see that the assessee filed their returns in time.

SHRI SINHA: There is the question of innocent people being punished.

MR. CHAIRMAN: I understand the distinction. Offences can be divided into two types, those which are merely technical offences and offences which have got the gravaman of a crime. He has suggested that for mere technical matters, imprisonment is not proper. That is the attitude of Criminal Jurists. The Government may not be a criminal jurist. We can discuss with the Government later.

WITNESS: With regard to technical offences, the Government stands to gain by way of revenue, if a penalty is collected. For example, if a penalty is levied for late submission of returns, if the penalty is sufficiently heavy for assessee, they cannot just afford to file the returns late. On the other hand, on the top of it, if it is going to be a punishment of imprisonment even for such technical offences, it will create an atmosphere of illfeeling between the Department and the assessee. If the assessee is asked to sit in the Court till the rising of the Court, nothing is gained, apart from the ill-feeling. If an assessee sits in

the Court till the Court rises, he sits along with other parties and advocates. Nobody knows that he is sitting there undergoing imprisonment. They will be thinking that he is watching the proceedings. So, no particular purpose is achieved except that the assessee knows that he has been punished with imprisonment till the rising of the Court.

SHRI K. L. GUPTA: In many cases they deduct the tax from the employees' emoluments and they keep it for years together without depositing it with the Income-tax Department. In such cases, if you levy a penalty of Rs. 5,000/- they do not mind and pay it. But if you send them to jail even for a week they do not repeat the mistake. I think you will agree with me.

WITNESS: In such cases, my suggestion is this. The penalty should be paid by the principle officers themselves personally and not by the company. If such a provision is made, no principle officer can afford to take a risk with regard to non-depositing of the amounts with the Income-tax Department then and there.

SHRI SINHA: If a man is deliberately trying to cheat the Government or the treasury, what about him?

WITNESS: In that case it can be made alternative.

SHRI SINHA: You agree that some sort of punishment including imprisonment would be necessary in extreme cases.

WITNESS: I am not certainly pleading for tax offenders.

SHRI SINHA: If it is proved that he is a blackmarketeer or tax offender or a deliberate offender, they may be punished.

WITNESS: They can certainly be punished.

MR. CHAIRMAN: The whole question is this. Supposing the Income-tax authorities put forward this point of view—they have not put it to me—but supposing they do—they adopt different methods to collect the tax, but they prove futile because the assesses transfer the assets, and nothing is left for the Department to collect. Therefore, the only deterrent is imprisonment. Mr. Gupta has elicited from the Government that people who are very rich and whose names still shine high with big neon-signs in the industrial world are in arrears, and their arrears have been written off on the ground that nothing is collectable from them. They have taken to various legal devices by which they have rendered themselves absolutely propertyless. The Government are not able to get at their properties because of the other legal impediments. So, in such cases imprisonment will be a deterrent. What would be your answer for that?

WITNESS: In such cases, punishment is necessary. But the point is, it should be made alternative and imprisonment should not be made compulsory.

MR. CHAIRMAN: You say according to the nature and the gravity of the crime, the punishment must be there.

WITNESS: Yes. Obligatory provision of imprisonment should not be there. It must be left to the discretion of the Magistrates.

MR. CHAIRMAN: If you can give any concrete suggestion to change the language suitably, we will consider that.

SHRI DURAISWAMY NADAR: The wording can be changed like this.

He shall be punished with imprisonment or fine or with both.

That is the usual language in the I.P.C. if the discretion is left to the

Magistrate, he will award the appropriate punishment depending upon the gravity of the situation.

SHRI K. L. GUPTA: You can send your amendment in writing. Bestow some thought over it and send it within a week.

You have not suggested that the benefit should be given to all assesses. It is given to companies only.

SHRI DURAISWAMY NADAR: I have given my comments that there is no justification to confine the benefit to companies only. Cases like mica mines are exploited not by companies. We have given mica mine as an example. The concession should not be confined to companies only but should be extended to all assesses.

There is one point about Gift Tax, though it does not relate to this Bill. I crave the indulgence of the Chairman to say it briefly. The Tamil Chamber of Commerce has been agitating for an amendment of the Gift Tax Act for a number of years. Under the existing provision, there is no provision for granting double tax relief. We cited a concrete case. A citizen of India who is doing business in Ceylon made gifts in Ceylon out of Ceylon funds. The Ceylon authorities assessed him to Gift Tax. For income-tax he was treated as a non-resident. In India also he was assessed to Gift Tax on the same amount.

MR. CHAIRMAN: You want double tax relief?

WITNESS: Yes. The business community will be pleased if such a concession is provided.

(The witnesses then withdrew.)

H. Southern India Chamber of Commerce & Industry, Madras.

Spokesmen:

1. Shri P. Maruthai Pillai—President.

2. Shri S. Narayanaswamy—*Vice-President.*

3. Shri N. C. Krishnan,—*Member*

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: You have given a memorandum. Would you like to say anything special on any of the points in the memorandum. You can say what you have got to say briefly and pointedly.

SHRI MARUTHAI PILLAI: We will be elaborating on the points raised in the memorandum. Mr. Narayanaswamy will briefly deal with those points.

SHRI S. NARAYANASWAMY: The first point is in regard to tax exemptions for foreign technicians. There has been an increased reluctance on the part of foreign technicians to come to India purely on personal grounds—family circumstances, climatic difficulties and the like. In their own country there has been a considerable upgrading of their wages. This has gone on for the last two years, more particularly in Europe and the United States. Wage have gone very high. The ceiling of Rs. 4000 seems to me to be rather on the low side. We have very much difficulty in getting these people. It is all right to say 'You are free to pay a larger sum. But pay tax for the excess over Rs. 4000. Already the cost of foreign collaboration—capital expenditure as well as revenue expenditure—has gone up over the years. The capital cost of plant and machinery has become highly inflated. Civil costs, cost of land have gone up. To pay tax on the remuneration paid to foreign technicians will be a very genuine hardship. We therefore say that this matter of ceiling should be left to be decided by the tax authorities from time to time on the basis of the size of the project and merit of the collaboration. If there is to be a ceiling, I would put it at Rs. 9000 or 10,000.

Today there is tax exemption for salaries paid by Central or State Governments from the income of foreign nationals. I think it should be extended to statutory corporations, in view of the increase in the number and size of the public sector undertakings.

Then we come to clause 8. There is a distinction between industrial companies and non-industrial companies. At the promotion stage a non-industrial company incurs as much preliminary expenditure as an industrial company. Mostly the expenses consist of advertising prospectus, putting in advertisements, brokerage etc. I think it is safer to avoid this distinction and allow non-industrial companies to amortise this expenditure.

This 2½ per cent amortisation seems to be on the low side. Capital reserves would not appear to be a fairly reasonable basis. Actual capital cost of the project should be the determining factor. If there is to be a percentage, it should be 5 per cent. In that case, instead of 40 years, it becomes 20 years. The analogy of the development rebate for which there is provision in the Income Tax Act does not seem to be applicable in regard to amortisation. The parallel is not on all fours. For the remaining period you may deny amortisation. I don't think the vendor should be denied the benefit of amortisation by the write-back.

There is no sanctity to apply it to only joint stock companies. Mining is a wasting asset and after a period we have to abandon it. In the case of gold reef occurs and we have to abandon it. In the case mineral oil's it becomes a dead stock at the end of the period. . . . We think it should be extended to non-corporate bodies also.

We have lived with this trouble of H.U.F. for a long time. There seems to be a general opinion firmly held in many quarters that the H.U.F.

dividing is a basic tax-dodging device. It is wrong to say summarily that this will be dealt with as if it is an individual assessment. In a harsh taxation system such as we have in India to-day, a small disallowance of a bad debt may raise 88 per cent tax assessment to 100 per cent. I think we have to be careful.

The only point is that it should not have retrospective effect.

As regards clause 30, it is not equitable to calculate interest in the case of a recognised firm on the basis as if the firm was unrecognised as such a provision is not justified as the registered firm is assessed to tax. This provision is likely to cause considerable hardship. Already we are having considerable hardship in regard to the registration of firms. Therefore, we think that interest should not be charged.

With regard to clause 31, the reduction of the limit from Rs. 500|- to Rs. 100|- is not necessary as the latter is a small sum. The present limit of Rs. 500|- may be retained.

So far as clause 35 is concerned, we would like that a time-limit is also provided in respect of pending assessments.

Clause 43 is very important. For the last 20 years with very great difficulty we have been educating our clients with regard to the registration or renewal. Now if you try to change the entire system, it would take another 20 years, and in the meantime there would be great evasion.

MR. CHAIRMAN: So, the new provision does not make matters simple.

WITNESS: Yes. Alongwith the existing proviso, you can add a proviso that it should be registered with the Registrar of Firms also.

MR. CHAIRMAN: This is meant for income-tax purpose and the income-tax people should have a higher say in the matter.

WITNESS: Also, a firm should not be refused registration simply because one of the partners has some interest in the share of another partner. Benami interest or rights have been recognised by courts.

As regards clause 54, the penal interest tends to be very harsh and the provision to appeal to the Appellate Assistant Commissioner should be retained and not extinguished.

With regard to clause 55, the proposed levy of Rs. 10|- for every appeal petition is not necessary as the assessee has to pay it from his own pocket.

So far as clause 56 is concerned, the increased levy of Rs. 250|- is very deterrent. If it is to be levied, in case the assessee succeed in their appeals, the cost should be returned to them and the cost may be awarded against the Income-tax Department.

MR. CHAIRMAN: There is no harm in asking for it.

WITNESS: The present fee of Rs. 100|- may be continued and do not make it very costly for them.

As regards clause 63, rigorous imprisonment is a grave punishment.

MR. CHAIRMAN: Do you object to be expression 'rigorous' or 'imprisonment'?

WITNESS: Both.

SHRI REDDY: Do you want that there should be no punishment for all defaulters or do you want that there should be punishment for continuous defaulters. Do you want to make a distinction in regard to this matter?

WITNESS: I suggest that defaulter should be punished financially. I have always felt that during the last

50 years an honest assessee becomes a marginal defaulter and a marginal defaulter becomes a confirmed defaulter. I think we need not have a general provision. When you make a provision, you must see that it is implemented humanely. Now the Company Law is invoked even for the slightest provocation.

SHRI SHINKRE: What are the total number of members in your Chamber?

WITNESS: 900 members.

SHRI SHINKRE: How many companies under your Chamber employ foreign technicians.

WITNESS (SHRI NARAYANASWAMY): I am a Director in 19 companies and 14 companies employ foreign technicians.

SHRI GUPTA: How many technicians get more than Rs. 4,000/-.

WITNESS: It would take a couple of months to collect those statistics. I have had three technicians who had gone away before the expiry of their stay in this country because after devaluation their salaries received in rupees are too small that they could not maintain their family. So they went back.

SHRI GUPTA: The idea is that we should discourage the employment of foreign technicians and encourage our own technicians as there is unemployment among our own engineers. Also in many cases we have been enamoured of the foreign technicians even though they may not possess expert knowledge. Many of them may not get even Rs. 500/- in their own country but we give them Rs. 5,000 to Rs. 10,000. Also, 80 per cent of them are employed in the public sector and not in the private sector and so you are not much affected by the Bill. So, Indian technicians should be encouraged.

WITNESS: Our problem is running the machinery. We are not fond of white skin. These foreigners are utilised to run the machinery in the first year and side by side to give in-plant training to our boys, our Indian boys. They just carry on like that for three or four years and at the end of the period, we naturally send them out. By that time our boys take charge. Therefore, for the interim period we use their services and knowledge. Otherwise, if I start the machinery got from our collaborators and if there is any trouble, they would say, 'Oh, your men have run it the wrong way' and under the contract I would be penalised. They are utilised for giving in-plant training to our own boys. Actually many of our boys have become excellent technicians. This expenditure incurred during the interim period is necessary and is to our advantage. We do not want to keep them longer.

Further, in the matter of getting the services of these foreign technicians, we have got the approval of the Industrial Development Wing and then after great scrutiny, it goes to the Finance Ministry. They also assess the technical personnel in the country and then alone they approve. The time taken and the procedure adopted in these bodies are so tiresome that industrialists do not have any pleasure in going in for these foreigners. Therefore when there is such rigid control in getting approval from the Government of India, there is no necessity for you to impose any tax.

SHRI J. J. SHINKRE: In the cases of sophisticated industries you make good profits and therefore you can afford to pay tax.

WITNESS: Even in sophisticated industries, it takes time to make profits.

MR. CHAIRMAN: Both the views are possible in such cases.

SHRI SANGHI: Under Section 186.A, while you say that the old law is advantageous, you also agree to the registration with the Registrar of Firms. Can you give the background for your statement?

WITNESS: It is not very difficult to do it. You just make your application and the Registrar gives you the certificate. It is not a big formality. If you can dispense with it, well and good. But if you insist that registration should be done, well, we have no objection.

SHRI GUPTA: Now, it is not as simple as that. There is only one Registrar for the State whereas every town has got an Income-tax officer. Will not that be troublesome to small assesseses?

WITNESS: Our experience in Madras State is that within a short time we get registration. It is simple enough. There is the prescribed form; you fill it up and one of the partners signs it and sends it on to the Registrar; after some usual enquiries, you get the certificate.

SHRI SANGHI: Another point is for completion of reopened assessments, a time-limit has been prescribed. Have you any large number of pending cases?

WITNESS: Yes, I have got about a dozen cases. After income is assessed, some anonymous letter is received.....

SHRI SANGHI: Period to which they relate?

WITNESS: Time-lag is from 1952-53. Most cases relate to the Hundi transactions.

SHRI SANGHI: Regarding clause 276-C providing for imprisonment, we have many defaults—non-payment of tax, non-filing of returns, non-payment of tax even after filing returns, concealment of income and

so many other things. There may be fabrication of accounts. Can you tell us for what kind of offences rigorous imprisonment should be provided?

WITNESS: In cases of concealment of income, deliberate and continuous concealment, may be a more deterrent punishment is called for.

MR. CHAIRMAN: So you are not against punishment. Only you are in favour of serious punishments for serious offences and for lighter offences, lighter punishments should be provided for. All right. Punishments should be to suit the various shades of offences. Let us see.

SHRI NARAYANASWAMY: It must be resorted to in extreme cases. Though assurances are given by more than one generation, they are not bound by any assurances.

SHRI N. C. KRISHNAN: For mere technical offences, such punishment should not be given.

SHRI SANGHI: I would like to put a question with regard to Section 64. There may be cases where individual property might have been converted into HUF property. Would you be amenable to the suggestion that the law may provide for levy of compulsory gift tax in such cases and also increase the gift tax further by 50 per cent to see that commensurate review is received by the Government.

SHRI N. C. KRISHNAN: We are not in favour of gift tax at all. HUF is a peculiar position. Now in certain cases gift tax is being levied. We just made a point because we are averse to both the gift tax and for clubbing the income retrospectively.

SHRI SANGHI: Of course, the Supreme Court has to give its decision on gift tax. Would you prefer that a law be made to levy a higher rate of gift tax and to do away with this particular section. The whole

idea has been brought for the simple reason that the Government feels that there is a big loss of revenue if self-acquired property is thrown into the hotch-potch.

SHRI NARAYANASWAMY: Taxes have been mounting in the last two years including the gift tax. It would be harsh.

SHRI SANGHI: If the Supreme Court says that we cannot levy any gift tax in respect of such transfers, would you suggest any alternative to avoid this amendment?

WITNESS: It is not a gift at all.

MR. CHAIRMAN: The member's question is this. You have raised an objection to the provision as it is. What is the alternative to see that the Government does not lose the tax. It is like this. The man is liable to pay tax. But at the time when the Income-tax Department wants to catch hold of him he is going away and taking shelter under the Hindu Joint Family.

SHRI NARAYANASWAMY: H.U.F. should not be regarded as a sanctuary for fugitive assesseees who want to reduce their tax liability. We do think there must be a continuation of the acceptance of the concept of the H.U.F.

MR. CHAIRMAN: I am not suggesting that we should invade into it. The liability to pay tax is ascertained and just at that time the person is transferring the property to the Hindu Joint Family. The Income-tax Department is deprived of their income.

SHRI NARAYANASWAMY: A man becomes a member of H.U.F. only once.

SHRI SANGHI: Out of self-acquired property, the man throws some money into H.U.F.

WITNESS: Once his position as H.U.F. has been recognised, that is a legitimate procedure.

MR. CHAIRMAN: We are not going to discuss the juridical aspects of the H.U.F., nor the right of an assessee to throw some of his self-acquired money into the H.U.F. We are not questioning these things. But at the same time a tax which should have been paid is being avoided in this manner. Have you any suggestion to see that the tax so avoided will accrue to the Department? If there is no concrete suggestion, you can pass on to the next point. There is the objection there, no doubt.

SHRI NARAYANASWAMY: We are always helpless. All Committees want us to make suggestions for reimbursement of loss of revenue by Government.

MR. CHAIRMAN: The Committee is like a Judge. We put questions on both sides. Do not think that the Committee is committed to anything when it puts questions. Until the judgment is given, a judge has not decided. Similarly the Committee does not decide anything until it gives its report.

SHRI GUPTA: There are many cases and their number runs to thousands where self-acquired property is thrown into H.U.F. Not only that. The matter does not end there. The H.U.F. is again divided and in that way there is avoidance of tax or evasion of tax whatever you call it on an extensive scale. Can you give some concrete suggestions so that the Government may get over this difficulty, and may not lose revenue in that way?

WITNESS: It is a difficult question to answer.

SHRI GUPTA: One suggestion has been made by a witness. Suppose the self-acquired property is thrown into H.U.F., you do not tax it. But

once it is divided again, the second time, then you tax it. What do you say about it? Will you agree?

SHRI N. C. KRISHNAN: That is half-way and it is much better because the tax is levied at the second stage.

The Chairman thanked the witnesses who then withdrew.

III. Hindustan Chamber of Commerce, Madras

Spokesmen:

1. Shri K. D. Shah—Vice President.
2. Shri R. Ramakrishnan
3. Shri V. Ramachandran
4. Shri G. Narayanaswami
5. Shri R. Ananthakrishnan

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: You have given a fairly long memorandum. You can say what you have got to say on important points.

SHRI RAMACHANDRAN: One point to which I would like to draw the Committee's attention is section 140-A of the Income-tax Act which is sought to be amended whereby assesseees who have got to pay more than 100 rupees have got to pay the tax within thirty days from the date of the submission of the return. If he does not pay within thirty days, he is liable to penalty. The section is so worded that there is no provision for excuse even where a person is prevented by unavoidable causes. It looks as if the levy of the penalty is automatic.

The next point is about amortisation of the expenditure to be allowed at 5 per cent of the paid up capital and long term borrowings. In the initial stages long-term borrowings will not be there. Let us have a higher percentage only on the paid up

capital. 10 per cent will be reasonable.

SHRI K. L. GUPTA: On what basis do you say that it should be 10 per cent?

SHRI RAMACHANDRAN: Actually I would not put any ceiling at all. If the expenditure is incurred for the purpose of the business and if the officer is satisfied that it has been incurred *bona fide*, it has got to be allowed *in toto*. If any restriction is to be there, let it be 10 per cent. From my experience of a few companies, 10 per cent will be reasonable.

SHRI K. L. GUPTA: Can we have a copy of the analysis you have made of the various companies? You can send the working sheet within a week.

SHRI V. RAMACHANDRAN: Yes.

SHRI K. L. GUPTA: The benefit goes to companies only. would you like it to be extended to all assesseees?

SHRI RAMACHANDRAM: Yes, it should be extended to all assesseees. The income to be computed for tax purposes should as far as possible be real income and should not be off the mark. To the extent to which it is denied to all the other assesseees also, it creates a notional income.

SHRI N. K. SANGHI: You have said that amortisation should be on the paid up capital. Don't you think that borrowings are larger than paid-up capital? 10 per cent seems to be very high. The idea is that the benefit should be substantial to the man who meets the preliminary expenses.

SHRI RAMACHANDRAN: These expenses would have to be incurred in the first year or second year. In most of the cases long-term borrowings would be only after the second or third year. In a large number of cases, relief based on long term borrowings would be illusory.

SHRI N. K. SANGHI: If the relevant period is taken as after a year of the formation of the company?

SHRI RAMACHANDRAN: That would be all right.

The next point I would like to invite the attention of the Committee to is about the recognition of the firm. So far as recognition of the firm is concerned, there appears to be no simplification. Even though it may look simple to get a firm registered and get a copy of the certificate, in actual practice it will be onerous and difficult. Secondly, no Registrar goes into the genuineness of the firm or the actual *bona fide* share of the firm's profits. For the purpose of income-tax the most important point for recognition of the firm would be an investigation into the reality of the partnership and the profit sharing. The most suitable persons for this purpose would be the income tax officers. Getting registered with the Registrar of Firms is not going to be of any advantage to the income-tax administration. I would prefer that this investigation is done by the income-tax officer himself. If there is any miscarriage in the registration, it would result in loss of revenue to the Government and underserving benefit to a large number of assesseees.

The present procedure should be simplified by dispensing with Form No. 12. Once an income-tax officer is satisfied with the genuineness of a firm, the registration may continue till such time as there is change in the constitution of the firm. Subject to the abolition of Form No. 12, the present system will be better than the proposed change. If however the proposed change has to be made, I suggest that the requirement of registration with the Register of Firms may be dispensed with for existing firms. Even for new firms, registration alone will do. Certified copy from the book may be dispensed with and the declaration that it is liable to pay tax will do.

SHRI K. L. GUPTA: You want the dropping of Form No. 12. Suppose one of the partners has an interest in the share of another partner. Then that firm will have to be registered. What is your reaction?

SHRI RAMACHANDRAN: Let us assume there are two partners. One may happen to be a benami of the other and there may be no partnership at all. Legally there is no firm at all. To cover such cases, it is intended. I think it is an unnecessary formality which has no practical significance.

SHRI N. K. SANGHI: Do you think a large number of firms will get disallowed?

SHRI RAMACHANDRAN: Yes.

The Registrar, while he registers, does not go into the genuineness of the firm or to whom the interest belongs. In fact he has no jurisdiction. He sees whether the provisions of the Partnership Act are not offended. If they are not offended, normally he grants recognition.

SHRI SHINKRE: Certain safeguards are provided in that they can go to the Registrar of Firms and get a certificate from them. The Income-tax officer need not enquire into the genuineness of the firm. Do you think that it would be a better set-up.

WITNESS: Yes, it would be a better set-up but it would not be possible. The Registrar may not be able to do justice in the matter and only the income-tax officer is better qualified. But from the assessee's point of view, it would certainly be worthwhile.

Then Section 139 is sought to be amended. Already there is a provision, Section 271 which provides for the levy of penalty where there

is delayed submission of returns without extension of time. Even in such cases to levy 9 per cent per annum under Section 139 may not be justifiable. Now, the point is that the assesseees who are granted time will be charged an interest of 9 per cent whereas assesseees who are not granted time will be charged 24 per cent per annum.

Then so far as the amendments to Sections 143(1) and 143(3)(a) are concerned, there is a danger to the power vested under Section 143(3)(a). What the Income-tax officer cannot achieve for re-opening under Section 147, can now be done by him by merely completing an assessment under Section 143(1) and make a "fresh assessment" under Section 143(3)(a) regardless of the statutory requirements under Section 147 for a re-opening of an assessment for escaped income. We, therefore, feel that there is no warrant for a power to assess under Section 143(3)(a) in view of the specific powers under Section 147 in the existing Act.

SHRI GUPTA: Even in the existing provisions, there is provision for reopening an assessment if the income-tax officer has got information about the escaped income. So, you oppose the proposed amendments.

WITNESS: Yes, because Section 147 is already there and the proposed amendments would only duplicate matters, and add to the difficulties of the assesseees. The existence of a redundant section at the disposal of the administrative machinery will only make them to use it which lead to unnecessary work.

Then I am not in favour of increasing the filing fee to Rs. 10 for appeals to the Appellate Assistant Commissioners. It is the duty of the Department to render justice as far as possible to the assesseees and to levy a fee of Rs. 10 would be an indirect shutting of the appeals in a large number of marginal cases, as an appeal to the Appellate Commissioner would become very costly.

Therefore, the proposed levy is most objectionable. Moreover, the revenue derived out of it would not be much. Even in genuine cases, the assesseees will be tempted not to file the appeal. Similarly the increase in the Institution Fee from Rs. 100 to Rs. 250 in regard to appeals to the Tribunal, is too high and a large number of middle-class assesseees will reconcile themselves to the injustice which may be done by the Department, rather than incur heavy expenditure.

SHRI SANGHI: If experienced Appellate Assistant Commissioners are posted for this purpose, will it give much relief to the assesseees?

WITNESS: There are a good number of Appellate Assistant Commissioners. The question of relief will depend on the personalities.

SHRI SANGHI: Most of the orders of the Appellate Assistant Commissioners have been rejected by the Tribunal. So, what would you suggest to check this kind of trend.

WITNESS: Strictures should be passed against them and departmental action should be taken against them.

SHRI GUPTA: Do you want that the Department also should pay a fee of Rs. 100 whenever they file an appeal before the Tribunal so that it can act as a deterrent?

WITNESS: It is worthwhile but the Commissioner can use his discretion in regard to the number of appeals to be filed before the Tribunal. The Board also can look into the matter.

SHRI SANGHI: Do you think that the assesseees would be benefited if costs are awarded in favour of them.

WITNESS: In fact there has been a move that the fee paid by the assesseee should be refunded but that has not been accepted so far.

Then Clause 59 seeks to amend Section 271 so as to levy a penalty on recognised firm or unrecognised firm treated as a recognised firm on the basis of tax payable as if it were an unrecognised firm.

An amendment might be provided so that if a firm commits the offence, the penalty may be imposed as if it were an unregistered firm and in the case of the partner, for the same offence the penalty may be levied, share income may be excluded and in respect of other income, the quantum of penalty computed. Supposing there are five partners and the firm is penalised at 5 lakhs, the partners' share income will be one lakh and his other income is Rs. 20,000, then under 271(1) penalty be computed as tax payable on Rs. 20,000 and the penalty be restricted to the quantum on the other income. Otherwise, the penalty will be much more.

SHRI SANGHI: You have deviated from your Memorandum. There you have suggested that penalty should be charged....

WITNES: This is an alternate suggestion.

SHRI SANGHI: We do not know which is important and which is secondary.

WITNESS: The other point is about provision for prosecution for failure to submit voluntarily income-tax return. In our country most of the new assesseees will be from the uneducated classes. There will be a large number of assesseees who may not have the knowledge about income-tax laws. There will be default, not wilful. For that prosecution will be very unfair.

SHRI SANGHI: How can the income-tax department get at the assesseees? What is the machinery?

WITNESS: Even now there is 139(1) and penalty is there. Any default is punishable and a separate provision for prosecution may result in greater hardship.

SHRI SANGHI: The trouble will be from villages and Government cannot get at persons who are assessable. So some roundabout methods have to be adopted.

WITNESS: It can be propaganda, education and extending their inspection survey net work. I may tell you the Survey Operation of the department has been suspended in the last four years. What happened to the Survey Operations? It was done on an extensive scale and it resulted in a large number of new cases. Then the department could not cope up with the volume of assesseees and they had a large number of pending assessments; in Parliament Government received strictures. Questions were asked and there were Parliamentary wiggings. Therefore the department suspended its survey operations. For the slackness of the department, the people in villages should not be the victims.

MR. CHAIRMAN: Your suggestion that because of Parliamentary questions etc., the department became weak and they stopped survey operations and as an alternative they have now produced this 139(1).

WITNESS: That is the presumption.

SHRI K. L. GUPTA: Physical punishment would be necessary in extreme cases, is it not? There may be cases where a person would not have filed the return even after many reminders. It may be deliberate avoidance of filing his return. There may be extreme cases of concealment of income etc. Do you not think that in such cases at least there should be some provision for physical punishment?

WITNESS: Such things will come under 139(2), it is liable for prosecution. In such cases, I have no objection. But if such severe punishment is prescribed for people who have no occasion to know what they should do, it will be a hardship.

SHRI GUPTA: So you have no objection to physical punishment if one violates 139 (2); only 139(1) is objectionable to you?

WITNESS: Yes.

MR. CHAIRMAN: What are the important sections according to you which may lead to complexities....

WITNESS: I think the provision regarding registration of firms, one partner having interest and all that; that will lead to complications. Then there is the HUF retrospective operation, that will lead to difficulties. Another thing is instead of giving effect from 20th May 1969, it can be 1st April 1970; that will be more precise.

MR. CHAIRMAN: Thank you very much for your very clear evidence.

(Witnesses then withdrew.)

(The Committee then adjourned for lunch.)

IV. The Indian Chamber of Commerce, Coimbatore.

Spokesmen:

1. Shri G. D. Naidu.
2. Shri P. Rangaswami.

The witnesses were called in they took their seats:

MR. CHAIRMAN: You are welcome to this Committee. The Committee is anxious to know your views. We are not traversing through the entire income-tax law. This Bill is very limited in its application to amend certain provisions with a view to simplify the procedure. It does not touch the basic problem as such.

You are appearing on behalf of the Indian Chamber of Commerce. You have sent your Memorandum. We would like you to tell us the important points and after that the members will ask you some questions and you can answer them.

Whatever evidence you give before the Committee is confidential. However, that will be made available to the Members of Parliament.

WITNESS: Have you got the papers relating to Thyagi Committee in 1959.

MR. CHAIRMAN: No, we do not have them.

SHRI KRISHNAMOORTHY: If there is anything particular pertinent to our discussion you can mention that.

MR. CHAIRMAN: You have gone through the provisions of the present Bill.

WITNESS: There are 88 amendments. Is it possible to remember all these amendments by a lawyer or an auditor or an Officer. So many amendments, so many rules.

SHRI KRISHNAMOORTHY: In a democracy it is inevitable. Your Chamber of Commerce have already submitted a Memorandum to the Committee. You can explain the points to the Committee. This Committee is only a Select Committee pertaining to the Bill before us. We are not going into details and making an enquiry as to how the Income-tax Department works and how improvements can be effected. Our purpose is only to get some clarifications and suggestions from the witnesses pertaining to the Bill before us.

WITNESS: To simplify the income tax department itself and the collection, it is better to wipe out all these

amendments. I can give you this paper. *(The witnesses handed over a letter to the Chairman).*

MR. CHAIRMAN: You are an old experienced gentleman. The Committee would like to hear you. You just give out your points in your own way.

WITNESS: Briefly I have given the points in this letter. That will do I think. Instead of so many amendments, you simply say if anybody gets any income in any way half of the income should be paid to the Government.

MR. CHAIRMAN: It is a good suggestion. How to know the income is the whole trouble.

WITNESS: Now, how you are knowing?

MR. CHARIMAN: That is why such a long Act has come into existence.

SHRI KRISHNAMOORTHY: If all people are honest and pay 50 per cent of their income to the Government, then we can cut short the whole Governmental machinery. But all people, as we presume, are not honest.

WITNESS: I believe that this Income-tax Department is making the honest people dishonest.

MR. CHAIRMAN: To the extent that the law is there, we have to provide through law, you please tell your views. It is true some Department people are always bad. It is also true that among assesseees there are some bad people. We are not thinking about them. The extreme provisions are intended to meet such cases. Ordinarily speaking, the ordinary assesseees have got to deal with the Government and the Government have got to deal with them. Therefore, you better give your views on that.

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SHRI GUPTA: You have said in your letter that there should not be any frequent changes in the Act because that makes honest man dishonest. That is the first objection you have raised. Can you throw light on it as to how the Government should proceed.

WITNESS: If you amend this like this that half of the income should be paid to the Government and then if it is found out that a person has not disclosed his income properly, then confiscate his whole wealth. Then nobody will make any false statements or hide any accounts. Now you are making a lot of rules, but nobody is observing them and nobody is carrying out them.

MR. CHAIRMAN: How do you say so? What is the basis for your statement?

SHRI GUPTA: My question was different. You have made an observation in your letter just handed over to the Chairman that you are against frequently revising the Income-tax Act. Is it not? The Government has been making frequent changes in the Income-tax Act practically every year and according to you, it should not be done. What are its implications and what is the difficulty, if the Government makes frequent changes and what remedy do you suggest?

WITNESS: Frequent changes make the assesseees not to disclose their income properly. To maintain that, he is observing several other ways and means. For instance, in my own case, for the last four years I refused to give any income-tax return. I have written like that. What action they have taken. No action taken.

SHRI GUPTA: You have not filed your income-tax returns for the last four years?

WITNESS: I refused to.

SHRI GUPTA: Your income is taxable.

WITNESS: Taxable. I have not filed the income-tax returns for the last four years, not one or two years and no action has been taken. Then, for one year 1964 or 1965 a prosecution order came. Then I waited for 15 days and I went to the Officer and asked him 'why you have not prosecuted'. He said 'it is our will and pleasure.' Like that they answered. Then I went away. No prosecution or anything.

SHRI SANGHI: It is a serious reflection on the working of the Revenue Ministry.

SHRI GUPTA: Your income was taxable and you declared that you would not file the income-tax returns. No notice was issued to you, no penalty was imposed and you were not prosecuted.

WITNESS: No prosecution, no penalty and for some one year some penalty was imposed and that penalty also was cancelled.

SHRI GUPTA: You filed an appeal against that?

WITNESS: No appeal. I wrote a letter only recently, last month, to the Chairman of the Board of Revenue. I sent a registered notice.

SHRI BISHWANATH ROY: You just told the Committee that if they did not pay half of their income to Government, their whole property should be confiscated. In that light even you yourself are not abiding by the laws and the rules of the Income-tax Department. When an honest person like you cannot abide by these rules and laws, ordinary assessees, and businessmen might not be expected to be so strictly honest as we expect them to be. So, what is the remedy? What is to be done?

WITNESS: If you carry out these rules strictly, nobody will be dishonest. You are not carrying out the rules properly.

SHRI GUPTA: There are so many people in this country who say that they are not prepared to pay 50 per cent as income tax because that is too high. That is why they declare their income less, even though actually their income is much more. What is the remedy for it.

WITNESS: In some cases for Rs. 100 income, the tax is Rs. 120.

SHRI GUPTA: How?

WITNESS: For Rs. 100 income, 85 per cent tax is levied and then wealth tax. That will come to 10 per cent. I can give you many cases like that.

SHRI GUPTA: Without referring to big people. I am talking of small assessees. You say that everybody should pay 50 per cent of their income to the Government. Suppose, I have an income of Rs. 10,000 a year. Do you mean to say that I should pay Rs. 5,000 to the Government.

WITNESS: You have to fix a certain limit and say that amount is not taxable, Rs. 3000 or Rs. 5,000, something like that. And above that limit, you have to pay half of the amount.

SHRI GUPTA: Should there not be a difference between a poor man and a rich man?

WITNESS: For poor man, Rs. 5,000 not to be taxed.

SHRI GUPTA: Suppose the income is Rs. 10,000.

WITNESS: First Rs. 5,000 not to be taxed. He has to pay Rs. 2,500 as income-tax. Then, nobody will hide any income.

SHRI GUPTA: You have to find out the real income. The assessee says 'my income is less'. The Department says 'His income is more'.

WITNESS: He is giving a return. I told in one of the Committees that all the assesseees should give proper income returns within 30 days, i.e. before 30th April. Then, within May 30th the Officers should give the assessment order. Within June 30th the amount has to be paid. Then, what work is there for the Income-tax Assistant Appellate Commissioner, Tribunal, etc? The officers can enquire for nine months and find out whether there is any wrong return. If the wrong is proved, the confiscate his property. Then nobody will hide his income.

MR. CHAIRMAN: Your idea is carrying the idea of self-assessment a little further.

WITNESS: I have seen a gentleman in Germany. All German people started with 40 marks in 1948. In 1961 or 62 one fellow had 2 million marks. I asked 'where is your income-tax officer'. He said 'I do not know. He sends the notice and I send the tax. In this country the rules make the people dishonest.

SHRI K. L. GUPTA: you want the Income-tax Act to be made simple as to be understood by everybody.

WITNESS: Yes, it should be simple. Here even an auditor cannot give any explanation. My case is 20 years old, and there are many cases like mine.

SHRI V. KRISHNAMOORTHY: For these 63 industries, he has paid a tax of Rs. 31 lakhs. There has been a failure to collect the tax in spite of registered notice and other things.

WITNESS: They are asking for tax even though there was no profit. They wanted me to produce the account books and they were produced. I wanted a copy of a state-

ment to be taken and asked them to return the books. They said 'You must come to the office to take a copy of the statement.' Then I loaded the account books in 9 lorries—accounts from 1920 to 1965—and set fire to the books. Then I said that there were no records. No action was taken. These officers are afraid of the auditors.

MR. CHAIRMAN: You have told us some of your history. But this committee is concerned with the amendments.

WITNESS: The officers should not be given the power of punishment. A court alone should award the punishment.

SHRI V. KRISHNAMOORTHY: You have said in your written statement that in deserving cases, imprisonment should also be given as a punishment. What are those deserving cases?

WITNESS: In deserving cases, not only confiscate the property but also award imprisonment for six months or one year.

To whatever income is given in the return, the Income-tax officer adds 25 per cent or 50 per cent, because he wants to show to the higher authorities, higher income and higher tax.

The Chairman then thanked the witness.

(The witness then withdrew)

V. The Madras Income-tax Employees' Association, Madras

Spokesman:

1. Shri K. M. Kochukumar.
2. Shri N. Sundararajan.
3. Shri C. Subramaniam.
4. Shri S. Raghavan.
5. Shri G. S. Gnanam.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: You are welcome to this Committee. In your memorandum you have raised many points. Now please highlight the most important points which you want the Committee to consider.

WITNESS: As regards clause 4(a), in the second proviso for the words 'completion of the building' the words 'Completion and letting out of the residential unit' may be substituted. For instance, there may be a case where a building may be incompleated and only a certain portion may be completed and if that is let out the benefit may not go to that owner.

MR. CHAIRMAN: That is a point.

WITNESS: There is a lacuna even in the existing Act, especially in regard to Section 23(1). Proviso (b) states that the net result of the computation should not result in a loss which is provided in the existing section. Deduction of the genuine loss especially in a case where such constructions are put up with borrowed funds should not be denied. The benefit which would otherwise be allowable by way of deduction for new residential units should not be taken away by such a provision. The provision should be redrafted in such a way that no loss is allowed because of the special allowance of Rs. 1,200. I suggest that this provision may be inserted in Section 24.

SHRI SANGHI: Your suggestion is good. It should be included in Section 24 for the sake of simplification. But in your memorandum you have stated that in regard to the computation of property income, an overall deduction of 25 per cent may be allowed. In Bombay the property tax is 30 per cent.

WITNESS: That is the maximum. If a person could prove it to the satisfaction of the Income-tax officer that the expenditure incurred on that account is more, definitely he can get it

SHRI SANGHI: Section 24 is very explicit and what sort of deductions are to be made are stated therein. Do you suggest an *ad hoc* reduction? In your memorandum, you have suggested a little unreasonable thing.

WITNESS: Being a comprehensive Bill, we thought that this would also be another step in the process of simplification. Now that the legislature has switched over from a system of giving rebates and deductions to allowance of straight deductions, on the basis of Boothalingam's report, and the whole thing would be simplified.

As regards Section 35D(5) and Section 35D(2)(g), they are overlapping. Section 35D(5) says—

'Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (2), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.'

Section 35D(2)(g) says—

'such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) may be prescribed.'

The words "not being expenditure eligible for any allowance or deduction under any other provision of this Act" within brackets in 35D(2)(g) may be deleted.

Then the cost of the asset on the one hand and incidental charges on purchase of the assets, erection and construction of plant and machinery and buildings on the other hand may be separated so as to give development rebate only on the actual cost

of the assets and not on the incidental expenditure also. Incidental expenditure and erection expenses may be incidental expenditure also. Incidental expenditure under Section 35D(2) itself. Suitable amendments may be made in regard to this matter.

WITNESS: The next point is about.

SHRI GUPTA: Will you like to have any expenditure, spent exclusively for business. I think from the simplification point of view, from the administrative point of view, will you prefer that? Genuine expenditure?

WITNESS: As a tax gatherer, I would like only genuine expenditure is allowed.

SHRI GUPTA: What is the quantum? It is possible that some expenditure is genuine and some are not.

WITNESS: That is why we have under 2(g), 'such other items.....'

SHRI GUPTA: Would you write down just genuine expenditure incurred for the business?

WITNESS: Of course; but that would be a matter which could lead to litigation between the department and the assessee as to what is 'genuine' and all that.

SHRI GUPTA: That the ITO will decide which are genuine and which are no. genuine.

WITNESS: On the interpretation of the word 'genuine' there may be litigation.

SHRI GUPTA: Supposing a company starts production and after that the department allows genuine expenditure under the present Act, even then there is litigation. Instead of having a long list of expenditure, would it not be desirable to say all genuine expenditure for business?

SHRI SANGHI: Now the Bill provides for items of expenditure such as legal charges for drafting the Memorandum and Articles of Association of the company, expenditure on printing of the Memorandum and Articles of Association, fees for registering the company under the provisions of the Companies Act, preparation of feasibility report, project report etc. Instead of listing the items like that, if you just say any preliminary expenditure incurred exclusively for the promotion of the company, will it not be simpler and desirable?

WITNESS: I think it can be done. Payment of salary will be left out. We understand what you say. All these things were listed out in Boothalian-gam's committee's report and they have been drafted in the Bill. What the hon. Member suggests would be a very drastic amendment. It may be applicable not for the purpose of this provision only, but for all deduction etc. That would be a comprehensive decision which I do not think we can do now.

MR. CHAIRMAN: All legitimate and genuine expenditure could be allowed?

WITNESS: We cannot put it so vaguely. One omnibus section would be enough and not a big Act. That is why we submitted to the Thyagi Committee, the expression 'for the purpose of earning the profit, instead of incidental to the carrying on of the business. I think in most of the countries this kind of provision is there.

Next point is with regard to 139(3). The intention is probably to curtail the filing of the loss return. It was suggested by Mathai Committee that it should be provided to prevent spurious losses being claimed. If that is the intention, I think even then 139(3) relating to extended time must be restricted. If the intention of the Legislature is it should be for only the

extended period, that particular sub-section must be added in section . . . That is our view.

SHRI SANGHI: Your suggestion will become infructuous because of the provision for imprisonment.

WITNESS: If he has incurred genuine expenditure and asks the Government to carry forward the losses, it should be done. As a citizen he is entitled to carry over the loss. Equity demands he should be allowed that.

Then, 140-A(1). In the other countries, tax has to be paid along with the return. The Legislature has thought it fit to put the limit down at 100. Either have the original limit or extent it to all cases.

SHRI SANGHI: Advance payment is a good thing. It would be desirable to have a reckoner which will show that or such and such income, one will have to pay so much. A ready reckoner will be helpful to the assessee. Do you not think that that would obviate your problems and the problems of the Assessee?

WITNESS: For payment of tax on self-assessment it is all right.

SHRI GUPTA: The present position is that the assessee pays advance tax and when the return is filed, he is supposed to pay the balance payment on the basis of self-assessment and the procedure is that he approaches the department, asks for a chalan, you give them a chalan and that chalan is signed by the Income-tax Officer. All that takes a long time. The best course would be when you receive the return from him, why should you not issue a chalan and send it to him so that he can make the payment. What is the difficulty for you? You have to calculate even now. The assessee has to come in search of you two or three times. It should be the duty of the department to do it even at the initial stage. Is it not?

WITNESS: For self-assessment there is a separate chalan and the assessee himself can pay. That need not be signed by the ITO. It is a printed form. Self-assessment chalan need not be signed by the ITO; that is not in vogue. There is a separate chalan and he can make the payment just like advance payment.

SHRI GUPTA: The difficulty is for the assessee to calculate. There are 25 lakhs of assesseees and of them hardly a few thousands must be knowing how to calculate it and all that. Would it not be desirable for the department to issue him a chalan ready for payment, after receipt of the return?

WITNESS: I think even now we issue chalans along with the returns under executive instructions. It would be advantageous to publish a ready reckoner, inasmuch as now the rates are known in advance and the assesseees could calculate and pay it.

WITNESS: It is to obviate the difficulty of calculating the tax we are supplying the chalan to the assesseees. To prevent the calculation botheration on the part of the assesseees, the Department can have fixed tax chart for paying self-assessment tax. The departmental working has to be streamlined and as it is, we may not be able to undertake this.

SHRI SANGHI: Suppose a man says that his income is Rs. 10,000, if there is a chart, he can pay according to that.

WITNESS: In small income cases they do not know how to calculate the tax. Most of them do not engage Chartered Accountants. So, they have to come to our office for calculation. It takes away part of the time of the UDCs. Once we have an amendment, naturally the procedure is there. Even though according to law all people who have reached the taxable minimum prescribed have to pay advance tax, yet by executive instructions they have said that only to those persons whose liability comes to more than

Rs. 2,000, advance tax notice will have to be issued. If this amendment is made, there will be overcrowding in the income-tax office by the assesseees for payment of tax. The staff can be utilised for more productive work like liquidating the arrears or assessments and with that intention we have made the suggestion.

Then we come to Section 143(1). At present in such cases many of the Chartered Accountants or Income-tax practitioners do not file the details regarding their assets, new investments, loans etc. So, unless they file these details, it will be very difficult to make an assessment under Section 143(1). The details are absolutely necessary.

SHRI SANGHI: There are different categories of assesseees. If you make these things compulsory, then will it not be increasing your work?

WITNESS: It is just an extraction of a trial balance and nothing else if he keeps books. If he does not keep books, the problem does not arise. If he keeps books, what is the harm in extracting a trial balance and sending it.

SHRI SANGHI: You are not appreciating the fundamental change. You straightaway decide in some cases that nothing more has to be done. Only if something has to be done, then you can go through the whole process. It is only with a view to complete large number of assessments quickly. It is only in very few cases you go back.

WITNESS: It is an open invitation to file under-estimated returns.

MR. CHAIRMAN: What is your suggestion.

WITNESS: Rules can be amended that when returns are filed, these things are absolutely necessary

MR. CHAIRMAN: A new form of return must be prepared and when it comes into existence instructions must be issued that the specified particulars must be mentioned in the self-assessment form. Otherwise, it would not be possible for you proceed under Section 139(1) or if you will proceed you will simply accept. You cannot reject it.

WITNESS: Yes.

Then we come to Section 235. We are of the opinion that the provision as it stands today and as it is proposed to be amended do not cure the anomalies. Bhuthalingam has said that this relief might be scrapped. But the Act provides for relief. As we have worked out in a specific case. It gives more than what the assessee has paid to the State Government. I think it is a very fundamental lacunae which probably has been lost sight of. It will be known only if you actually work the case. We have also given examples how the excess rebate is allowable in these cases.

During the discussion there was a question whether the Department could not issue the chalanis. I mentioned that it depends on the working of the Department. These amendments are proposed to streamline the income-tax to the benefit of the assesseees and to the Department. I would like to submit that the present working of the Department has to be changed. We are aware that it is not within the scope of the Committee. Now we are functioning under a Scheme described as an American Scheme as functional scheme. Our feeling is that this system has not promoted the effective functioning of the Department. If there is liquidation of arrears, if some assessments are disposed of, it is not because of the Scheme but because there are Departmental instructions to straightaway accept small income cases. We had earlier suggested to a Committee that the old unitary system should be

implemented in a better manner. Actually there is no programme for training and no planned recruitment. Even people recruited as UDS last week are asked to calculate the tax. That is the Scheme we are now working. When somebody raised the question of issuing chalan, the question of efficiency comes in. We are naturally interested in the efficient working of the Department. We have been representing to various Committees, but unfortunately nothing has happened. Mr. Gnanam and Sundararajan had studied the working of the tax system in U.K. But our Department is not prepared to hear our views.

MR. CHAIRMAN: How?

WITNESS: Any suggestion from the Non-Gazetted Employees are not considered.

MR. CHAIRMAN: That is a general position. In this particular case, what happened we would like to know.

WITNESS: They proposed to reorganise the Department. There were quite a number of Committees. In fact our first experience was before the Hon'ble Thyagi Committee. They very well appreciated our case. We gave in writing about 200 to 300 pages. The net result was, from our point of view, nothing happened. Later on, there was a Sub-Committee headed by one Mr. Singh. Later on there were some committees on tax administration. But none of them touched the fringe of the problem. We have actually suggested a very comprehensive scheme touching all aspects of the administration right from the top to the lower rank. That was not at all acknowledged. On the other hand they introduced the functional scheme even without consulting us. At least the public must have been satisfied or the Parliament or the administrative machinery must have been satisfied that they have

done the job well or at least we must have been satisfied that we have done the day's job well and that we are getting more salary and we are happier. By this functional scheme, nobody has been satisfied.

SHRI SANGHI: We would very much like to know about the functional scheme. Final assessment has not yet been made by the Government. It has been extended on an experimental basis.

WITNESS: No satisfactory work is being done. Speaking as one who has working in this Department very sincerely as also my colleagues, I would say that this scheme has worsened the matters for the assesseees, for the tax-gatherer and for the public.

SHRI SANGHI: This scheme has originated from U.S.A.

WITNESS: Mr. Gnanam and Sundararajan had been to U.K.

SHRI SANGHI: The functional scheme is not in vogue in England.

WITNESS: No.

WITNESS: There is inordinate delay in the scheme at every such. Even demand notices and orders read as lines after assesseees one hand and assets are completed.

SHRI N. K. SANGHI: Do you think some radical changes are necessary?

WITNESS: I am not for radical changes nor do I say that all that the Department has brought in should be scrapped totally. If there is some dialogue, we can work out a scheme which will incorporate the best of both.

SHRI SHAH: Mr. Surendra Narayan moved round the whole country discussing with all the units in order to give it a final shape. I presume he must have discussed, not with you personally, but with many people to

find out the difficulties and how improvements could be effected. The functional scheme was started on a pilot basis in Madras. At that time it was in a fluid state. At that time I was in charge. We formulated a manual tentatively. Meanwhile, that duty was taken over by Shri Suryanarayana.

WITNESS: We are working under an automatic scheme. An Income-tax Officer makes the assessment and passes it on to another officer. If the assessee asks for extension of time, it has to be decided by another office who is seeing the file for the first time. Administrative officers have to sign thousands of notices without having adequate time.

SHRI N. K. SANGHI: You send a note from your association with copy to Mr. Shah.

SHRI SHAH: If any of your propositions have not been accepted, you should not have the feeling that they have not been considered with the respect they deserve. You might have examined it from one point of view and they might have examined from another point of view.

SHRI N. K. SANGHI: From my experience, I find that the papers do not reach the proper quarters. Some-

times even dividend warrants are lost. Can you suggest some method for proper implementation?

WITNESS: Under the old system one Income-tax Officer was responsible for all the actions in a file. Now the functions have been distributed among various officers with the result that the Income-tax officer who does the assessment is not aware whether the tax has been collected or not. From our experience, functional system has created more confusion. It is not our intention the fair name of the Department should be tarnished. Particularly in Madras, we have earned encomiums. But there have been several complaints from the public. The officers and staff are not responsible for it; the system is responsible for it. In the recent collection drive, some infuriated assessee threatened even court action and defamation.

MR. CHAIRMAN: You can send a note, but on the distinct understanding that this Committee is not the executive. We will do our best to influence the the Department.

The Chairman thanked the witnesses.

The witnesses then withdrew.

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT) BILL, 1969

Saturday, the 7th February, 1970 at 11.00 hours in the Conference Hall, Vidhan Sabha, Bangalore.

PRESENT

Shri Tenneti Viswanatham—*In the Chair*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri Kanwar Lal Gupta
4. Shri B. N. Katham
5. Shri Yashwant Singh Kushwah
6. Shri S. B. Patil
7. Shri Shíva Chandika Prasad
8. Shri R. Dasaratha Rama Reddy
9. Shri Bishwanath Roy
10. Shri N. K. Sanghi
11. Shri Janardan Jagannath Shinkre
12. Shri R. K. Sinha.

LEGISLATIVE COUNSEL

Shri Harihara Iyer, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes and Ex-officio Joint Secretary, Ministry of Finance (Department of Revenue and Insurance).*
2. Shri S. P. Chowdhury, *Under Secretray, Ministry of Finance (Department of Revenue and Insurance).*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. *Mysore Chamber of Commerce and Industry, Bangalore.*

Spokesmen:

- (i) Shri C. M. Reddy—*Vice-President.*
- (ii) Shri M. K. Ramachandra
- (iii) Shri M. R. Ranga Rathnam

(iv) Shri J. Srinivasan

(v) Shri G. N. Krishna Murthy—*Secretary*

II. *New India Fisheries Ltd., Bombay.*

(i) Shri J. K. Munshi—*Solicitor*

(ii) Shri N. V. Shah—*Secretary.*

(iii) Dr. S. V. Gokhale—*Commercial Manager.*

I. **Mysore Chamber of Commerce & Industry, Bangalore.**

Spokesmen:

- | | |
|-----------------------------|-------------------------|
| 1. Shri C. M. Reddy | — <i>Vice-President</i> |
| 2. Shri M. K. Ramachandra | |
| 3. Shri J. Srinivasan | |
| 4. Shri M. R. Rangaratnam | |
| 5. Shri G. N. Krishnamurthy | — <i>Secretary</i> |

(The witness were called in and they took their seats)

MR. CHAIRMAN: There is a rule here that whatever you say is liable to be published and even if you say that it is confidential, it is liable to be published to the members of Parliament. Until then neither you nor we should publish what you have said.

You have given a very neatly typed memorandum containing some specific points. Would you like to explain to the Members the most important of them;

WITNESS: Mr. Chairman, on behalf of the Chamber we would like to thank you for giving us this opportunity of representing our views on this Taxation (Amendment) Bill. We have already submitted a memorandum to you earlier. By way of elucidation, I would like to touch upon a few salient points and also give our comments based on the subsequent representations that we have received from our various associations and members.

On clause 3, good technicians may not be willing to come to India for short period and more so when the tax exemption is proposed to be restricted to only Rs. 4,000/- per month. It is suggested that the period be extended to 60 months and the tax paid on account of the technicians by the employer should be allowed as an expense. The exemption in respect of foreign technician, whose contracted

service is not approved by the Government for a period of 365 days is now proposed to be withdrawn. This must be retained.

As regards clause 4, there is an obvious lacuna which leaves out new residential house erection of which began before 31st March 1969 but completed after that date.

SHRI N. K. SANGHI: You have stated that clause 2(a)(i)(a) (ii) should be so worded that buildings situate on agricultural land in the belt area of 8 K. Ms. from the outer circumference of the municipal limits must also be exempted. Could you explain what you mean by the amend you have suggested? What the Government has proposed here is:

“(ii) the land is either assessed to land revenue in India or subject to a local rate assessed and collected by officers of the Government as such or, where the land is not so assessed to land revenue or subject to a local rate, it is situated beyond a distance of eight kilometres from the nearest local limits of any Municipality (whether known as a Municipality, Municipal Corporation, Notified Area Committee, Town Area Committee, Town Committee or by any other name) or Cantonment Board.”

WITNESS: Here it is mentioned as local limits. It may be specified what is the area; otherwise, it may be a point of dispute afterwards. It may be specified whether it is a point within the radius of 8 miles or a point within the outer limits of a Municipal Area or Corporation area.

SHRI N. K. SANGHI: It is beyond 8 K. Ms. or beyond the outer limits of the Municipal area.

WITNESS: If it is clear we agree with that amendment. But it should be made clear so that it will not lead to interpretation by income-tax officials.

SHRI S. B. PATIL: How many imported technicians are there?

WITNESS: It is very difficult for us to say how many imported technicians are there. What we want is that at least in future such import of technicians under the heading 'Technicians, Chartered Accountants and Business Management' should be stopped. At present, the Chamber is not able to give details. On an All-India basis we will not be able to get that information.

SHRI S. B. PATIL: Does your Chamber represent the entire Mysore State or only a part of it?

WITNESS: It represents the entire Mysore State.

SHRI S. B. PATIL: Does it include the Bombay Karnatak and Hyderabad Karnatak Areas?

WITNESS: Yes.

SHRI S. B. PATIL: One Karnatak Chamber of Commerce is also there.

WITNESS: It is another Chamber of Commerce. We have 60 Associations affiliated to us. We have Canara Chamber of Commerce, Dharwar Chamber of Commerce and quite a few others which are affiliated to us.

SHRI KANWAR LAL GUPTA: Do you agree with another amendment concerning foreign technicians getting Rs. 4000 salary?

WITNESS: Rs. 4000 is not sufficient; if you really have to attract people with top qualifications, Rs. 4000 is not attractive.

SHRI KANWAR LAL GUPTA: You have not mentioned it in your memorandum.

WITNESS: In Mysore State we do not have such complex Petro Chemical Industries.

SHRI KANWAR LAL GUPTA: You agree with it? What is the difficulty? It is imaginary and you must welcome it. I agree with you that you want Indian talents even in technicians and so we should try to exclude them as far as possible.

WITNESS: We are generally of the opinion that no such limits can be prescribed where necessity arises.

SHRI KANWAR LAL GUPTA: The idea is just to discourage foreigners. There are so many engineers here who are idle and who do not get employment. Foreign technicians are coming in numbers. They may be expert and in the name of experts they get Rs. 10,000, 15,000 and even Rs. 20,000. There is no bar as such, but income tax benefit would not be there. That is the only thing.

WITNESS: There are several sophisticated industries for which technicians are required to be imported from abroad.

SHRI KANWAR LAL GUPTA: In your State you do not need any?

WITNESS: Not for the present, but we foresee developments in the future and at that time we do not want this to come in the way.

SHRI R. K. SINHA: On page 2 para 3, you have mentioned that the limitation of 2.5 per cent is very meagre. But you have not fixed any limit for yourselves. What according to you should be the percentage of limitation?

WITNESS: We have said that even under the Companies Act the ceiling has been fixed at 5 per cent for brokerage and commission. At least the limitation of 5 per cent should be allowed to us so that it will be possible for us to meet the expenditure.

SHRI R. K. SINHA: Have you made any statistical study of different Companies in the past? How have you arrived at this figure? Or is this an imaginary concept?

WITNESS: It is not imaginary. We have received representations from several of our members.

SHRI KANWAR LAL GUPTA: Is there any basis for your demand? There may be some industries where the expenditure does not exceed even 1 per cent. There may be several industries where it may exceed 5 per cent. There must be some basis. It varies from industry to industry.

MR. CHAIRMAN: They have taken from the Company Law I suppose.

SHRI R. K. SINHA: 2.5 per cent is too high according to our study.

MR. CHAIRMAN: They do not seem to have made any case study.

SHRI R. K. SINHA: Then it is a speculative figure.

MR. CHAIRMAN: They have related to the provision in the Company Law.

SHRI BISWANATH ROY: Regarding your suggestion concerning clause 2(a), it has been raised for the first time before this Committee. Don't you think that if your suggestion is

accepted by Government that would enable citizens of municipal areas to enjoy practically the facilities or amenities provided by the municipality and they would be saved at the same time from the responsibility of the municipal areas. Secondly persons living in municipal areas would be encouraged to leave their property in the municipal area and have again something just near the municipal area or beyond the limit which is suggested by the Government and at the same time they will enjoy privileges and amenities but they would be saved from taxation. What do you think about this?

WITNESS: That amendment is only in respect of buildings situated in agricultural lands. The suggestion of the Hon. Member may not be applicable in the sense that it will not lead to people from municipal areas to shift their residences to belt area.

SHRI BISWANATH ROY: The inhabitants of municipal area would be encouraged to have their property just near the boundary line as suggested by you. It would be quite near the municipal area. That means they would have every chance to enjoy all the facilities provided by the municipality and at the same time they would be saved from taxation and other municipal responsibilities. In this way just for the avoidance of taxation and at the same time avoidance of the responsibility of municipal areas, they would have their houses beyond that area but practically they will have the enjoyment of all those facilities. So, don't you think from both points of view, from the point of view of escaping from municipal responsibilities and from the point of view of being saved from taxation, they would shift their residences beyond the belt area?

WITNESS: That would be possible only if the building is situated on agricultural lands beyond 8 K. M. First of all there should be agricultural land on which building must be constructed.

SHRI BISWANATH ROY: Don't you think that such building could be utilized for hire purposes if it is near the municipal boundary and if it is not away from the municipal boundary?

WITNESS: It should be away from the municipal limits. We feel that it should be clearly defined as to what is the area which should be exempted.

MR. CHAIRMAN: You are referring to distance and they are referring to area.

SHRI BISWANATH ROY: My point is that those buildings built on agricultural lands near the municipal area would be utilized for rent and thus they would avoid taxation.

MR. CHAIRMAN: Your point is clear, but they do not like to commit themselves.

Clause 3

SHRI N. K. SANGHI: About the technicians, are you inspired by the visit of Prof. Kaldor or some other consideration?

WITNESS: We are not influenced by Kaldor.

Clause 4

WITNESS: There is an obvious lacuna which leaves out new residential houses the erection of which began before 1969 but completed after that date.

SHRI KANWAR LAL GUPTA: We have noted that.

WITNESS: Instead of categorising the various items of expenses for the purpose of amortisation, all items of expenses including administration, accounts, payment of technical know-how etc. should be properly allowed to be amortised. Again, the percentage limit of 2½ per cent of the capital and borrowings does not seem to

be reasonable. Under the Companies Act ceiling for brokerage and commission of sale of Shares alone is 5 per cent of the share issue. There are various kinds of expenses such as, registration printing of prospectus, advertising etc. The ceiling of 2½ per cent should be raised to at least 5 per cent. The present amortisation allowance under section 35-D as proposed is applicable to Companies only. This should be in all fairness to all units. The amortisation of expenditure for shifting of an industrial undertaking is on the condition that the undertaking should not be sold or otherwise transferred. The allowance is given for shifting of the undertaking and therefore, it must be withdrawn only in cases where after shifting it is brought back to the former place.

MR. CHAIRMAN: What do you suggest?

WITNESS: It may be increased to five per cent.

SHRI JANARDAN JAGANNATH SHINKRE: For what type of industries you suggest it? If you fix for small scale industries, they will be hit hard?

WITNESS: Yes, even the preparation of project report will be costly.

SHRI JANARDAN JAGANNATH SHINKRE: Supposing we fix as 10,000 as the limit. Will you accept that?

WITNESS: Your suggestion is a good one. That is, you can fix minimum of lump sum or maximum of 5 per cent, whichever is lower. I would say in the absence of figures on our side, on a broad fashion minimum can be fixed and as far as percentage limitation is concerned, 5 per cent may be given and if the taxpayer is able to prove reasonableness or worthiness of the expenditure involved, the tax authorities must be given the discretion on the various

points because we cannot categorically lay down and again try to revise. If the object is simplification and rationalisation of taxation, certain amount of discretion will have to be given because we are undergoing difficult phase while organising. The Statistics Department do not give us right figures. In that particular context I would say that we give 5 per cent on preliminary expenses and other expenses that would be needed. You also give discretion to the officers or commissioners to see reasonableness and allow those expenses on the basis of amortisation.

SHRI KANWAR LAL GUPTA: When you say all expenditure which is reasonable and relevant, why do you say only 5 per cent?

WITNESS: That is because it is mentioned as 2.5 per cent in the Bill. We will be happy if no minimum or maximum is fixed.

SHRI N. K. SANGHI: Your point is that any expenditure necessarily done for the promotion of an industry should be allowed and no percentage need be fixed?

WITNESS: Yes.

SHRI JANARDAN JAGANNATH SHINKRE: So far there was no provision amortisation?

WITNESS: Yes. There has been representation to the department and to the Parliament in general regarding this particular need for writing off of the unproductive expenditure. Though there has been a need for it for a long time, we do appreciate this good attempt. After all the Government is for the people and therefore it is appreciated. But further point is, in putting this particular percentage if there is understanding saying that all necessary and proper expenditure and permissible expenditure is incurred for this amortisation, it will be to our advantage.

In the amendment we have only six items to be considered as preliminary

expenditure. The Chamber would welcome if it is worded as all expenditure and then excluding these particular items by way of a proviso. In suggesting this we have in mind the accounting and other expenditure incurred before setting up an industry.

MR. CHAIRMAN: Your point is that all the expenditure should be allowed for amortisation.

WITNESS: Yes.

MR. CHAIRMAN: We shall take up another item. Clause 14—Hindu undivided family. Several associations have stated about this. We would like you to kindly answer the questions.

SHRI KANWAR LAL GUPTA: In your memorandum you have said: 'further, the proposed amendment cuts at the very root of Hindu law.' What do you mean by it?

WITNESS: In the Hindu law, sacrifice is made of self acquired property. He puts his entire earnings to the common hotch-potch and it is placed at the disposal of the joint family. Let us not take the tax position. The principle of blending his personal property, is his individual right and has been the concept of Hindu law. Legally it is recognised. If that particular thing is brought back again by a provision it should not be taxed.

SHRI KANWAR LAL GUPTA: There is no legal bar in forming H.U.F. You will get the income-tax benefit. Even if a person were to throw his property in H.U.F. after the passing of the Bill, the effect will be he won't get the income tax benefit. After the Supreme Court judgement in 1965, many people after throwing their self-acquired property into the hotch-potch have again divided it among the members of the family and in that way the avoidance of tax is going on

an extensive scale. Can you make suggestions by which this avoidance can be checked? You can state your difficulties, if any, also.

WITNESS: We should not categorise all attempts of blending into the property into attempts of tax evasion. It might be a burden on the entire family.

SHRI KANWAR LAL GUPTA: There are thousands of cases where it is broken only for tax evasion. That is very clear. Suppose you make the H.U.F. and break it, it necessarily means that the idea is to evade tax.

WITNESS: I personally feel and I think my colleagues also agree that if there is an attempt to formation of HUF and then breaking it by means of a Partition, it is for evasion of tax. But the very principle of blending will come into the inroads of our Hindu structure.

MR. CHAIRMAN: So, you are not against conversion, but against fraudulent conversion.

WITNESS: We can say that if there is an attempt to partition, the property which has been thrown into the hotch-potch can be a fraudulent thing, but not at the discretion of the income-tax authorities straightaway. As long as it is a blending of a property, it should not be affected.

MR. CHAIRMAN: There should be no attempt to repartition. We can fix up a period, say 5 years.

WITNESS: We can put it as 5 years, because by the time we complete our plan retrospective effect will come.

SHRI N. K. SANGHI: In case the amendment is passed, it will tantamount to losing property and incurring a huge liability.

SHRI R. K. SINHA: You have said that the Income-tax Department will

find it very difficult in practice. What will be the difficulty of the Income-tax Department in this?

WITNESS: We are ultimately bothered about it though not in the beginning. Whenever there is friction between us and the Department in regard to the determination of the income, such a difficulty would arise.

SHRI R. K. SINHA: If the expert of the Income-tax Department won't feel it that way?

WITNESS: Though I am in the Chamber of Commerce, I am also a practitioner and I know that any piece of legislation, which is not specific, would create friction in the minds of the authorities.

SHRI R. K. SINHA: Do you believe that in H.U.F. there have not been people who have fraudulently attempted to join in order to evade taxes?

WITNESS: It is not so. The determination of the income to be added to the individual's hands is going to be very difficult in practice. The whole property of HUF may be invested in different kinds of investments, taxable, partly taxable and exempt. There is already heavy burden on the administration side and these provisions are going to be highly controversial leading to friction between the department and the tax payer. Sometimes it will be a sort of imagination in arriving at a conclusion and it is a sort of gymnastics we have got to play.

SHRI KANWAR LAL GUPTA: So you object to the complications which arise, but not to the principle!

WITNESS: We have to see how far it is beneficial in general, is it reasonable, and while accepting it we have got to see what are the things that

come into play. We do not want to say that tax should be completely scrapped.

CHAMBER OF COMMERCE: There will be no final assessment. It provides for duplication of work and there will be no merit in it. It should be a simple one.

SHRI KANWAR LAL GUPTA: If the Income Tax Officer gets doubt about the income he can reassess it. He is expected to declare the income of a particular individual. On the other hand he should be given powers to check the accounts and he should be given powers to make adjustment. I think you should not have any objection to that.

CHAMBER OF COMMERCE: We have no objection provided that particular assessment become final.

SHRI KANWAR LAL GUPTA: You say in your memorandum that the Chamber is against to make a final assessment for the same year. Of course it may be easy for the Income-Tax Officer to finish the accounts and come to a finality in the case of small assesses. But in the case of Bigger assesses, he may require those people to produce the accounts. What is the difficulty in getting these accounts re-examined.

CHAMBER OF COMMERCE: As long as the Section 141(3) is concerned, it is convenient and good also. But that is not the case with the Income-Tax Officers. There will be no finality. If there is a finality, the assessee will have a satisfaction that the accounts for the year in regard to income-tax assessment is over. There will be psychological feeling and satisfaction if it is finally over.

SHRI KANWAR LAL GUPTA: Supposing the Income-Tax Officer commits mistakes. He wants to review it. I want to know from you what to do under such circumstances.

CHAMBER OF COMMERCE: If there is any error in assessment, it can be rectified by invoking the other provisions of the Act. But that will not be the case. There will be a regular assessment and it will be an ordinary assessment.

SHRI KANWAR LAL GUPTA: If there is a case of evasion, what do you want him to do?

CHAMBER OF COMMERCE: Without giving any difficulties, he can still re-open such cases. He should have every power to invoke the other regular provisions of the Section.

SHRI KANWAR LAL GUPTA: In such particular cases, he says, that I want to examine every record. He gives reasoning.

CHAMBER OF COMMERCE: In particular cases of that type, if it is necessary for him to scrutinise the records, he can re-open the case and examine. We have no hesitation to say that a regular assessment be gone into. When once he trusts the assessee, he should trust and there should not be half trust. That is our important point. He should not try to disbelieve every body. If that is the case there will be no end and there will be no finality at all.

SHRI KANWAR LAL GUPTA: You want that particular clause to be dropped.

CHAMBER OF COMMERCE: Yes.

SHRI N. K. SANGHI: The Government has got every right to go ahead in reassessing depending upon the cases. 141(3) gives power to that effect, without giving chance to the assessee.

CHAMBER OF COMMERCE: Clause 141(3) gives power except to make some minor adjustment. He may disagree if there are some minor mistakes. Such minor mistakes can

be adjusted. But once the assessment is made, it cannot be reopened excepting on sufficient valid reasons invoking other provisions of the law.

SHRI N. K. SANGHI: Re-opening could be made by intimating to the assessee on reasonable grounds. The Income Tax Officer will be getting a large number of cases in advance, and it may not be possible to assess every case correctly. He may commit mistakes whether it is small or big. What is the difficulty if he does it again without giving any trouble to the assessee?

CHAMBER OF COMMERCE: The difficulty is the assessee will have no peace of mind. The Income Tax Officer can re-open such cases, if there are grave mistakes, under Section 148. He can go through the records. The point here we want to stress upon is let him (I.T.O.) do it once and for all correctly taking into confidence the assessee. When once it is done like so, they should not be re-opened. If there are minor mistakes, they can be done by re-adjustment.

SHRI N. K. SANGHI: Supposing there are about 80 cases. Out of these, 2 cases have not been correctly done. He has to ask to produce facts and figures in these cases, where there are grave mistakes and where there are evasion. Do you think, it is necessary to safeguard them in these matters also.

CHAMBER OF COMMERCE: Powers are vested under section 148 and he can reopen the case under such circumstances. There is no question of safeguarding anybody. This new additional section introduced will hamper the progress of assessments.

MR. CHAIRMAN: In this, I think there is a point.

SHRI N. K. SANGHI: You are against taking discretionary powers, under Clause 75. If the discretionary powers are there, these officers can dispose of many cases. What is wrong in it?

CHAMBER OF COMMERCE: Discretionary powers have nothing to do with this. They can invoke the regular section. The provisions of the regular section cover such contingencies.

SHRI N. K. SANGHI: Do you mean to say that the officers can dispose of such cases by modifying the present clause?

CHAMBER OF COMMERCE: We have no objection in making such modifications. We welcome this suggestion because, in regard to certain charges and deviations in certain instances which are not liable to make adjustments, records have to be called for. But in certain cases where he has that trust, he should not do it again because he has once accepted.

WITNESS: In regard to 143(1) there is one more difficulty. There has been no check on the Income Tax Officer to make two assessments.

MR. CHAIRMAN: Your point is that there should be some check which could prevent the Income-tax Officer from making irregular assessments. The Committee will consider it.

Clause 63 (b)

SHRI R. K. SINHA: In your memorandum you have stated that:

"The Chamber is not in favour of the punishment with rigorous imprisonment for failure to furnish return in time or for non-production of books at the required time. The existing provisions under Sec. 271(1) (a) and 271(1)(b) are by themselves very rigorous and a further penalty is not warranted."

The main object of the deterrent punishment is to see that proper returns and accounts are filed. Even the present laws have been insufficient in getting proper returns and accounts. Don't you think there are special cases in which this deterrent punishment is called for?

WITNESS: If the Government is really serious about plugging up loopholes in tax payments, these penalties will not help them. By this law an honest man may have to suffer.

SHRI R. K. SINHA: Mostly the richer sections of the people would be involved in tax evasion cases. Don't you think that people who fail to submit returns should be punished?

WITNESS: We are not at all against any measures taken by Government. But the most important aspect is that this rule whenever it becomes a law will be applicable to the entire population. More often the honest man will be punished though he may not have any intention to evade payment of tax.

SHRI R. K. SINHA: There may be exceptional cases to prove dishonesty where such punishment is called for.

WITNESS: It is a right given to the authorities to deal with every case of non-production of returns. I would say that deterrent punishment could be given in cases where there is wanton negligence or proven negligence in evasion of tax payment. Whatever modifications have been done till now is only because of a Supreme Court Judgment or because one or two persons evaded taxation.

MR. CHAIRMAN: Your point will be considered by the Committee. What is your next point.

WITNESS: In regard to registered firms I would like the law to stand

as it is. Instead of getting a declaration in form 12 a clause could be inserted in the returns form itself saying that:

"I further state or declare that the partnership or the firm is not altered from the last year".

SHRI KANWARLAL GUPTA: Suppose one partner has an interest in the income or property of the firm of any other partner, the firm will not be registered.

WITNESS: There is a proviso which states:

"Provided that the condition specified in this clause shall not apply as between the partners of a firm who are related to one another as husband and wife or parent and child (being a minor);"

We would like to emphasize that this exception should be extended to Hindu undivided families, also.

SHRI K. L. GUPTA: If one of the partners is interested in the share of another partner, his firm will not be registered. Do you agree with it?

WITNESS: We do not agree with it because there may be a partner may not know that it is benami. It will be throwing a premium on a partnership regularly constituted and recognised all these years. That is why the Chamber said that that particular amendment should not be brought.

SHRI K. L. GUPTA: The present position is that the firm will be registered. But if this amendment is passed, the firm will not be registered.

WITNESS: Because of the failure of one partner to disclose the interest in the other partners, the other partner will also suffer. The non-disclosure of one partner's interest in another partner will spoil the chances of the other partner getting the benefit of registration.

SHRI K L. GUPTA: With regard to self-assessment, the limit has been reduced to Rs. 100. We are satisfied with Rs. 500.

MR. CHAIRMAN: In the case of smaller assesseees some distinction should be made. It does not prevent bigger assesseees; it prevent small assesseees. So, some distinction must be made between small and big assesseees.

WITNESS: The benefit of the small man should be given to everybody.

MR. CHAIRMAN: So, you mean that in the interest of the small people the big people should also be exempted.

WITNESS: I have to correct myself that it will affect not only small assesseees but also small questions of law which are of vital importance.

SHRI JANARDAN JAGANNATH SHINKRE: Your memorandum is full of protests. What are the clauses which you feel are useful ones and what is your reaction to the amendments as a whole?

WITNESS: Offhand I cannot make a summary of such a long piece of legislation. If you give us time, we will definitely try to see that in a few hours or tomorrow morning a paper is given to you in which definitely state what we want to state.

SHRI JANARDAN JAGANNATH SHINKRE: Actually you do not like any of the clauses of the amending Bill.

WITNESS: The purpose of circulating it is to see how we like it. We like it that way.

MR. CHAIRMAN: Have you got any other points to make out?

WITNESS: We want to emphasise in general that along with attempts to plug any tax evasion we must also

give emphasis to social security measures. For instance, Section 80EE envisages relief in respect of retirement annuities. In fact, the original idea was to give this particular benefit to self-employed persons. When it came on the Statute Book it was restricted to partners of the registered firms. Chartered Accountants and Solicitors who are practising are not given this relief.

CHAIRMAN: We shall look into it.

II. New India Fisheries Ltd., Bombay

Spokesmen:

1. Shri J. K. Munshi
2. Shri N. V. Shah
3. Shri S. V. Gokhale

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: You are welcome to the meeting. The evidence which you give should be treated as public and it is likely to be printed and supplied to the Members of Parliament. Until then it is confidential.

WITNESS: This is the only company in this country which deals in deep sea fishing. The specific point on which petition has been made is with respect to explanation to sub-clause (vii) which says that for the purposes of this sub-clause, 'technician' means a person having specialised knowledge and experience in agriculture, animal husbandry, dairy or poultry farming, deep sea fishing or ship building. In the Explanation on the next page, deep sea fishing is included from 1st April, 1970. My submission is that this amendment was brought about as a result of New India Fisheries Ltd. making repeated representations to Government from time to time. New India Fisheries Ltd. is a collaboration Company with 49 per cent Japanese participation. Taiyo Fishery Co. Ltd. is a leading Company in Tokyo. They held 49

per cent shares of our Company. One of the terms of agreement is that they must teach Indians in this special art of deep sea fishing which was prior to this unknown to this country. As a result of the Japanese technicians coming into this country during the last 6 years the country has earned 68,00,000 U.S. Dollars in foreign exchange. If I may refer the Committee to para 5 of my petition because deep sea fishing technicians were not included in the exempted list, during the last 6 years we had to pay Rs. 32,39,228 as tax.

CHAIRMAN: Your point is that although the amendment was included at your instance, it was not done in the way in which you wanted it to be done.

WITNESS: True.

CHAIRMAN: Now you want them to give retrospective effect to it.

WITNESS: Yes. Two points emerge from this amendment. The employment should commence after 31st March, 1970. But these technicians who are already there will not be entitled to exemption. Unless we send back the trained technicians and bring new untrained technicians we cannot get the exemption benefit under this amendment.

CHAIRMAN: Suppose in the coming Finance Bill the Government were to reduce the rate of taxation, would you ask for a refund of the amount already paid in previous years?

WITNESS: No.

CHAIRMAN: Similarly from this year onwards they are giving the benefit of this tax exemption.

WITNESS: If this is allowed to continuing technicians it is all right, but the section as it is worded is not clear.

CHAIRMAN: Certainly the Committee will consider your point.

WITNESS: The whole point is this. The word used is "commencing". That may mean technicians whose employment is commencing after 31st March, 1970 and all those who have already rendered service prior to 1st April, 1970 in our Company will not be entitled for the benefit of this tax exemption. Our point is that this benefit should be extended to them also.

SHRI N. K. SANGHI: Do you mean to say that those technicians who have been working from the past years prior to 1st April, 1970 will not be entitled to this exemption?

WITNESS: As the proposed amendment reads, they will not be entitled to it.

SHRI N. K. SANGHI: There is a limitation for a period for 5 years.

WITNESS: The limit is there. But I would refer you sub-clause (via) of clause 3, where it is mentioned "where such individual renders services as a technician in the employment (commencing from a date after the 31st day of March, 1970..)" So if the employment commences after 31st March, 1970 then only the benefit of exemption is available. I am urging upon the hon. Members to delete the word "commencing".

SHRI N. K. SANGHI: We who come from north India would like to know how you are locating fish?

DR. GOKHALE (Witness): Fishing is an extremely complicated art. It should not be considered as just one of the ordinary arts, but it is a highly complicated art. Today because we do not have properly trained technicians we are losing a lot of our resources which are under-tapped. We exploit only to the extent of 10 per cent now. Today our deep sea

fishing in India is roughly of the order of 1 million tons. It can easily go according to the advice of F.A.O. to at least 2.5 million tons. Their estimate is 5 million tons. So today our exploitation is very poor due mainly to the fact that we do not have properly trained technicians.

SHRI N. K. SANGHI: We want to know how you locate fish.

DR. GOKHALE: The point remains as to how to find out this fish because we are not getting them and we are not able to locate them. So here you come across a situation which demands expert knowledge of the sea. These Japanese technicians are very well-known all over the world. It is not only the question of knowing how to throw the net and to take it back, but it is a question of catch if we are in sea and where fish is known to be there or not. A skipper who just comes to India takes about 6 to 7 months to get a full knowledge of the various bearings as it is technically called. It is only then he knows where fish is found more. Actually it is a scientific way of finding out. He goes to various parts of the sea, he takes different dimensions of depth at different places, etc.

SHRI N. K. SANGHI: While catching fish like this, will you not come to a situation where fish in the sea is exhausted?

WITNESS: Today we are very much under-exploited and there is no danger of over-exploitation as you fear. This danger which you referred has become true in the case of certain species of fish like prawns which are earning a lot of foreign exchange. In their case a situation has been reached where the catch is going down and that is why we require expert people to find out some species in deeper waters. Today that kind of fishing is done only in shallow waters.

SHRI N. K. SANGHI: Can you not proliferate this species and thus increase the catch?

WITNESS: In the case of sea this is not possible. This method which are referring to is possible only in lakes and rivers, but in the case of sea these measures are not so very practicable and we should go to areas which are not tapped.

SHRI N. K. SANGHI: Can you give us figures to show by the foreign exchange earning has been static during the last 3 years?

WITNESS: In the case of particular species we have reached a stage where the catch per unit effort is going down and that is why we want people with expert knowledge to come to India to train our people and improve the catch.

SHRI N. K. SANGHI: In the case of mines, it happens after some time the mines get exhausted and you have to go to some other areas.

WITNESS: Today much of the fishing is done in Cochin and other places, but there are plenty of other places like Vishakhapatnam where fishing is not done and where there is lot of fish available. If we have to go to such places for fishing, we need to have capital equipment. In that process if we can save something it will bring for us more foreign exchange and more profits. There is one other point. One deals with the continuance of old experts and the other deals with this petition made to the Government two years back. We had about eight technicians and large amounts had to be paid. I am submitting that the benefit of this exemption may be given.

MR. CHAIRMAN: When did you appoint them?

WITNESS: They are there from 1966. We had originally 26 technicians; it came down to 8 and for the last two years there are only four technicians.

SHRI KANWARLAL GUPTA: You have made a very good point regarding the availability of fish and all that. The relevant point is, at present the income is low. What are your profits in the last two years?

WITNESS: In 1967-68 we made a loss of nearly 9 lakhs. We have always been doing profits and giving good dividend of 12 per cent.

SHRI R. DASARATHARAMA REDDY: This concession was withdrawn in 1962. Were you able to pay tax?

WITNESS: We have been able to pay tax.

SHRI KANWARLAL GUPTA: You are demanding concession only for the last two years. What are the figures in the last two years?

WITNESS: In 1967-68 the loss of the company was 2½ lakhs; in 1968-69 we made a profit of 9 lakhs. In 1969-70 our estimate is that we will be incurring a net loss of 3 to 4 lakhs.

SHRI KANWARLAL GUPTA: I am talking of 1969-70 assessment year.

WITNESS: I am giving figures on the basis of accounting year.

SHRI KANWARLAL GUPTA: In 1968-69 you are saying there is loss. Assessment has been completed in the last two years.

WITNESS: No, our assessments are pending from 1966-67.

SHRI KANWARLAL GUPTA: Then in 1967-68 you are demanding concession; you have a profit of 9 lakhs. What will be the tax effect if this concession is given to you?

WITNESS: We will be saving at least 7 lakhs. I will submit to you this paper.

SHRI N. K. SANGHI: It will be better for the Government to consider a particular matter and give permission for employment of four technicians.

MR. CHAIRMAN: They are asking that the statute must be changed for the sake of a particular company. We have to consider whether we can do so or not.

SHRI KANWARLAL GUPTA: My submission is they are showing a profit of 9 lakhs for this accounting period 1968-69 and assessment year 1969-70. The income tax liability on the salary according to them comes to six lakhs. So they will be saving three lakhs after paying this income tax liability on the foreign technicians. You say that you did not call for any other expert from Japan because if you had to pay salary to him it would have come to so much and all that. Whether you got income tax benefit or not, if it was advantageous to you to call the expert, you must call him.

WITNESS: The question is that the technicians that we have already employed are conversant with the Indian conditions and the conditions prevailing in the Indian Ocean. They have been with us for the last 6 to 7 years and they know the local language also.

SHRI KANWARLAL GUPTA: You say that you did not call for expert because there was no concession by the Income Tax Department.

WITNESS: My case is if we had this benefit of tax, we would have developed in other places and earned more foreign exchange.

SHRI KANWARLAL GUPTA: You have been earning profit every year.

WITNESS: That is true. In spite of foreign technicians not being available in sufficient number we have been earning.

MR. CHAIRMAN: Your point is to give retrospective effect. We will consider it.

SHRI S. B. PATIL: Your company was started in 1956. I want to know whether your company has programmed to train technical personnel hundred per cent.

WITNESS: That programme has been there from the very beginning. We originally started with 26 technicians when we had only 4 boats. Today there are 11 boats and there are only eight technicians. By April even this 8 will not be there. Four persons will be repatriated. In case we have to expand fishing more money and more experts are necessary. These experts can do provided they get benefit out of it.

MR. CHAIRMAN: You are going to have concession from March?

WITNESS: Yes.

SHRI KANWARLAL GUPTA: Do you get export benefit also?

WITNESS: Yes, we get replenishment licences and concession of 10 per cent F.O.B. of the value is there. That is the only benefit and nothing else. This is the only company in India.

MR. CHAIRMAN: In England private legislation is passed to meet such cases.

WITNESS: I may say that recently in Cochin on the 3rd, 4th and 5th a symposium was held which was attended by the Ministry of Food and Agriculture, Ministry of Finance and Ministry of Foreign Trade as well as the industrialists. This question of granting income tax exemption to technicians was discussed and it has

been resolved that the Government should be approached stating that these technicians should be exempted from income tax. This question of retrospective effect was not discussed.

MR. CHAIRMAN: The point is made clear and we will consider it.

SHRI SHIVACHANDIKA PRASAD: In the memorandum it is stated as follows:—

“At present, the company's income-tax liability is about Rs. 8,15,400|- on the 12 months' wages of the Japanese technicians. If the Government is pleased to classify the Japanese fishermen—skippers and engineers—as technicians, for they are highly skilled technicians having been trained in Japanese Fisheries Institutes with long practical experience of deep-sea-trawler fishing, the Government will not suffer any loss but, on the other hand, will benefit by it. Exemption from payment of income-tax will enable the company to expand its fishing fleet by the purchase of “Sudha” type of trawler of the value of Rs. 6.5 lakhs each. Such a trawler may be expected to land some 1,76,200 Kgs. of shrimp annually. The export of these shrimps caught by one trawler will enable the company to earn some Rs. 7,00,000|- by way of foreign exchange annually.”

Do you stick to this in the case of exemption of income-tax?

WITNESS: We will definitely stick to it. Actually, at present we have plans to open new business on eastern coast where it is reported that the availability of prawns is in great supply and we are negotiating for establishment of freezing plants. We are always in favour of exporting prawns which has a very great international demand.

We have recently invested Rs. 2 lakhs and we have to develop in that context.

SHRI KANWARLAL GUPTA: May I know why other industries in this line are not coming up?

WITNESS: They will not allow other Japanese concerns to come into the country. There are other companies which are planning to go into the deep-sea fishing. We have heard that lot of orders have been placed for the construction of trawlers, but it will take some time. Till then, ours is the only company which owns trawlers which get fish for export.

SHRI KANWARLAL GUPTA: Does your trawlers go near Goa and Karwar?

WITNESS: They go upto Ratnagiri and Cochin. It depends on the availability of fish. Our fishing range is nearly 1,000 miles. The entire west coast is exploited and we want to extend it to east coast also.

SHRI KANWARLAL GUPTA: If this benefit is given to you, how much it will help on exports?

WITNESS: It will certainly help. To start with we can go upto Visha-

khapatnam, which means more trawlers and more foreign exchange also. Today, one trawler costs Rs. 10 lakhs and we have also to have infrastructure which consists of refrigerator plant, ice plant, etc. which may cost about Rs. 5 lakhs.

MR. CHAIRMAN: May I know why fish has become costly in this country? Are you not able to supply fish for internal purposes?

WITNESS: I am quite aware of this difficulty. In Bombay we can land lot of fish, but there is transport difficulty from Bombay to Delhi. If I can have some means of transporting this fish from Bombay to Delhi, I will be very glad. As it is in Indian climate, fish gets spoiled soon. The increase in cost is also due to rise in price of equipment, diesel oil, etc.

MR. CHAIRMAN: Thank you very much.

We will place on record our appreciation for the valuable assistance rendered to the Committee by the Secretary, Mysore Legislature, the Reporters and other staff in the holding of this sitting at Bangalore.

The meeting adjourns *sine die*.

(The meeting adjourned at 12.40 P.M.)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS
(AMENDMENT) BILL, 1969.

Tuesday, the 7th April, 1970 at 16.00 hours.

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri N. C. Chatterjee
3. Shri J. K. Choudhury
4. Shri S. R. Damani
5. Shri N. Dandekar
6. Shri Pattiam Gopalan
7. Shri Kanwar Lal Gupta
8. Shri Yashwant Singh Kushwah
9. Shri Bishwanath Roy
10. Shri N. K. P. Salve
11. Shri N. K. Sanghi
12. Shri Beni Shanker Sharma
13. Shri Yogendra Sharma
14. Shri N. K. Somani.

Legislative Counsel

1. Shri K. K. Sundaram, *Joint Secretary, Ministry of Law.*
2. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*
3. Shri Harihara Iyer, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri P. Govindan Nair, *Secretary.*
2. Shri R. R. Khosla, *Deputy Secretary.*
3. Shri M. S. Moray, *Under Secretary.*
4. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

Shri R. N. Muttoo, *Chairman, Central Board of Direct Taxes, Ministry of Finance, Deptt of Revenue and Insurance.*

(*The witness was called in and he took his seat.*)

MR. CHAIRMAN: Mr. Muttoo, I hope that will be better if you give us your views on important points concerning this Bill.

SHRI MUTTOO: Mr. Chairman, I am obliged to you for giving me a chance for putting up the case on behalf of the Board. Regarding the suggestion made by you, Sir, I would say that I would like to be rather questioned about these items by the hon. Members of the Committee and would do my best to throw light on those points to the best of my ability.

SHRI GUPTA: You may be convinced by some clauses and you may like to have some changes in this bill also. With that background, it will be better if you say something.

MR. CHAIRMAN: Let us refer to important clauses as Mr. Muttoo says so that we can go ahead.

SHRI MUTTOO: You suggest any clauses and we will try to go on that.

MR. CHAIRMAN: Let us first deal with the registered and recognised firms.

SHRI BENI SHANKER SHARMA: You must have seen the statement of objects of this bill. To refresh your memory, I may say that the main objects of this bill are the rationalization of certain provisions and the simplification of the procedure for assessment and collection of tax as also to promote the development of the economy etc. Now do you think that the bill as framed and as brought before the House really meets this need of simplification and rationalization or something more is required to be added or subtracted from it.

SHRI MUTTOO: So far as the present provisions which we have

placed in the bill are concerned, Sir, they meet the bulk of the objects that we have. We can never say that we have achieved the full goal as set out. So far as these provisions which have been placed before you, Sir, I think, they will help us in improving the tax law.

SHRI BENI SHANKER SHARMA: I agree with you, but in the evidence which was given before us by so many institutions and individuals, their submission was that the greatest need of the time was to simplify and rationalise the whole Act as it is and this Bill did not go far to meet that requirement. Many more provisions are to be added for the purpose of simplification. Do you agree with this view or not?

SHRI MUTTOO: Sir, with due respect to the views of the other witnesses, I would venture to say that the proposals in the Bill do make a bold step to simplify and rationalise the Act, as it is. For instance, this procedure to speed up the assessment would go a long way to rationalise the disposal of small income cases.

SHRI BENI SHANKER SHARMA: Now coming to the specific clauses. The clause relating to H.U.F. is a very ticklish one. By this clause, it is suggested that those assessments which have been made after April, 1965 would be reopened and assesses unnecessarily harassed:

SHRI MUTTOO: The assessments would not be reopened. The income of the 'karta' of the family shall be added. There is a difference between the re-opening of the past cases and whether the creation of the joint family took place on a certain date or later on.

SHRI BENI SHANKER SHARMA: That will affect the HUFs which have come into existence after 1st April, 1965 and not those which came into existence earlier. We had asked Mr. Shah to give us the figures showing what would be the effect on.

revenue if the provision as it is put is accepted. Have you got those figures?

SHRI MUTTOO: We were not able to collect because it is not possible to do that exercise. Further, Sir, instead of examining this issue on the basis of revenue why not examine on merits. We have made 1965 suggestion because of the decision of Supreme Court. It is not done with the object of getting more revenue. If that had been the object we could have placed it before 1965.

SHRI DAMANI: Before making such a suggestion have the Deptt. considered about the number of litigations which may arise. Instead of simplifying the Government will be in trouble.

SHRI MUTTOO: So far as litigation part is concerned I do not anticipate much of litigation if this clause is brought into force because the bulk of cases would be beyond its provision. These provisions would apply only to newly created HUFs. So, the bulk of HUFs which were prior to 1965 would not be affected. Again HUFs which are newly created and have major children they would not be affected. It will only be *vis-a-via* husband and wife. These newly created HUFs just not going to involve that much of problem as is anticipated. There would be some problems but it would not be to that extent.

SHRI DAMANI: The Finance Minister has said in Parliament that henceforth all the direct taxes will be prospective. In his particular case if we make it retrospective. In this particular case if we make it retrospective it will be contrary to the announcement made by the Finance Minister on the floor of the House.

MR. CHAIRMAN: We have heard many a witness on this point. You please tell us whether keeping in

view all these difficulties whether this provision in the Bill will be helpful?

SHRI MUTTOO: So far as this provision is concerned and the evidence that has come before you I have the impression that the main thing which is irritant in this clause is date—that is, 31st March, 1965. Well, it is for the hon'ble Committee to take a decision on that.

SHRI SANGHI: Almost all the witnesses who have appeared before the Committee have agitated against this HUF being taken from 1965. Would you be prepared to consider to treat this matter from 1st April, 1970 or 1st April, 1969? Whether it would solve the administrative difficulties?

SHRI SALVE : I have to come to the crux of the problem. It is twofold. Firstly, you have stated that this is a provision which is being made to plug the loophole through which a substantial chunk of tax was being avoided. Whenever you make so, the quantum of tax is a very relevant factor. Merits, justice equity and rationale can come in this context. Can you tell us in this period—1965 to 1969 there has been such a colossal avoidance of tax? Will that take care of retrospectively? What is the rationale your treating the income of the HUF as the income of the transferer? If you are anxious to bring the law on par with any other individual and not to give the HUF the privileged position, to that extent one can understand, but why are you contemplating, it is not transferred to minor son or wife because an individual can transfer it to anybody else, likewise he is gifting it to HUF?

SHRI MUTTOO: Regarding the first point as to why it is being given retrospective effect i.e. from March 1965, as I submitted it is an anti-tax avoidance measure. We took this date, as mentioned earlier, from the date of decision of the Supreme Court.

Coming to the quantum that could be involved, Sir, I am sorry to say this exercise could not be made, as it would not be possible.

SHRI CHATTERJI: Are you bent upon giving it retrospective effect? What is your considered advice to this Committee?

SHRI SALVE: We would like to know from the Chairman of the Direct Taxes about plugging the loop-hole—avoidance and retrospectively for this avoidance is sought to be rectified and therefore, is this quantum.

SHRI SANGHI: We would like the Revenue Board to give the suggestion. We are not happy to amend this Bill ourselves.

SHRI MUTTOO: According to our judgement we have presented this Bill and in the light of the avoidance this has come before the Committee. It is for the Committee to decide.

SHRI GUPTA: You must have heard the evidence. There must have been some effect on you. Whether you are convinced or not? Supposing you are convinced, should the retrospective effect go or not? What changes would you like to have in the Bill?

SHRI DANDEKER: Apart from the question of such transactions being given retrospective tax effect, I think it is rather shocking that the Chairman, of the Board does not know what is the tax implication of these transactions. It sounds as if the Department was bent upon a particular view, viz., that transfer of property by way of gift to HUF should be challenged to which Supreme Court said 'no'. How to get over this? All right says the Board; we are going to pass a law by which income of HUF arising out of such transactions should be assessed to the maximum extent possible as the income of the individual. If the extent of tax loss on this account was

considerable, I would have agreed. Keeping in view the magnitude of the loss, I would agree we ought to complicate the law. Here it is not tax evasion, but tax avoidance; but to what extent, nobody knows? That is what surprises me immensely; so that I infer the tax loss is not significant. I am quite sure because had there been tax avoidance in any significant degree, they would know of it; and quite rightly, they would have thought of ways and means to counteract it long ago. I would like to ask, if you do not know the extent of tax avoidance, when no estimate has been made, why are you making these charges at all?

SHRI BENI SHANKER SHARMA: While we were taking evidence in Calcutta, we had asked Mr. Shah to get these figures and he had also agreed that he would give the figures at a convenient date later on. If Mr. Muttoo you are not ready now on this very crucial issue you may give the figures later. As Mr. Dandekar has said if there is big escapement of taxes, certainly we should try to plug the loophole. But if the amount is insignificant, why unnecessarily trouble both the assessee and the assessor. I think you will agree with me that it would be very difficult for your officers to even pursue the income from assets thrown in the HUF.

Clause 14, Sub-clause (2) says: "Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force for the purpose of computation of the total income of the individual under this Act, for various assessment year commencing on or after 1st April, 1970.

(b) The income derived from converted property or any part thereof in so far as it is attributable to the interest of the individual in the property of the family, shall be deemed to arise to the individual and not to the family."

You see within these 5 years the property might have changed shape in so many ways. Do you not think it would be difficult also to keep a track of this change and collect taxes? Until and unless as Mr. Dandekar has said, there is a big loss of revenue, we should not indulge in this luxurious or elaborate exercise. What would be the approximate amount that you hope to get if we accede to this suggestion as that is very crucial.

SHRI CHATTERJI: We want to know how big is the hole which you want to plug?

SHRI MUTTOO: There is no dispute that there is a big hole of tax avoidance.

SHRI DANDEKER: I do not agree that there is a big hole. That there is a hole, I do agree; but it is insignificant.

SHRI SALVE: The question is that there is no doubt that there is a dispute. What Mr. Dandekar says is that we would request you not to proceed on the assumption that there is no dispute.

SHRI MUTTOO: It has been admitted by the Hon'ble Member that there is a hole. Our view point is that there is a substantial loss of revenue by this measure. This is being adopted on a large scale hereafter, more so, since there has been this decision of the Supreme Court. Now coming to the exact amount, as no exercise had been done, we cannot give the figure. Mr. Sharma mentioned that my colleague had promised to get this done. I will check up and try to furnish whatever information we can on this subject to the extent that the figures *vis-a-vis* 1965 or 1969 would make to the revenue.

MR. CHAIRMAN: We have heard the evidence. There two things were made clear. As Dandekarji is now

suggesting that many of them though first objected to this provision, but during the course of discussion with the various witnesses, they ultimately agreed that yes, there is a scope for avoiding these taxes through these measures. One thing that they said was that it should not be given retrospective effect.

SHRI GUPTA: Mr. Chairman, as Shri Dandekar has pointed out and quite rightly, nobody disagrees that there is a hole, but what is the size of the hole Shri Muttoo has not properly explained that. He says the size is substantially large. What is your basis?

SHRI DAMANI: Mr. Chairman, one point more. Suppose we agree that there is a hole, but whether legally it will be possible to recover it or not. You also see this aspect whether it will be recoverable and there will be no litigation.

SHRI MUTTOO: We do hope to recover. It is not retrospective in the sense that we are asking a person to pay tax from March 1969. It is just a question of fixing a starting point and we fixed this starting point because immediately there was this Supreme Court decision, there was a rush to avail of this facility.

MR. CHAIRMAN: You can understand what Mr. Dandekar pointed out. It is not that the Committee is going to oppose what you say. But let us know some figures about it.

SHRI MUTTOO: I submitted that I will certainly try to give some idea of this. We will try to give our basis of arriving at the figure and I will request for a short time.

SHRI SALVE: You may process the point and give the figures for the next 5 years. And how will you determine the magnitude of the evasion. The tax liability will only be attracted from 1970-71 onwards.

SHRI MUTTOO: We will say cases which were formed in 1965 March. There would be quite a number of cases which were formed in 1966 and like that.

SHRI SALVE: And you will have aggregate figures of these four years and in the assessment year 1970-71 you would be able to know what will be the tax liability.

SHRI DANDEKER: At least for 3 years if you can project the figures and give us, that will be better.

SHRI MUTTOO: I will give you, sir.

SHRI SALVE: What the clause seeks is to penalise transfer to HUF even if it is not partitioned prospectively or retrospectively.

SHRI DANDEKER: The real problem has already arisen. In those cases the properties were transferred to the HUF and immediately after that there was a partition; with the result that while the family, the wife, minor children and so on, got property which if directly transferred the income would have been assessable in the hands of the transferor, but being transferred in the course of partition after the transfer to the H.U.F., they defeated the law. I take it Mr. Salve's point is why are you trying to penalise this sort of transaction here where there is no partition following the transfer?

SHRI MUTTOO: If a transfer or transfers to the HUF, then there is an opportunity.

SHRI DANDEKER: Then there is tax reduction, I am not denying that. Your problem really was where there is transfer to a limited H.U.F. followed by partition whereby property instead directly going to the wife and minor children went to them via the H.U.F. and its partition.

SHRI MUTTOO: Partition would arise only if there is HUF. HUF is created first.

SHRI DANDEKER: I can understand the gravity of the problem that you are pointing out where there is the creation of an HUF and a transfer of property, followed by partition.

SHRI MUTTOO: There is tax evasion at both points.

SHRI SALVE: Mr. Muttoo, you are putting the HUF in an unduly harmed position. Assuming there are 4 brothers; one of them doing business one brother not doing anything and one of them is minor. He can take two of them into partnership and the entire income is divided. Take a more concrete instance. I build a house and give it to my brother who is staying with me. I give 50 per cent of the share in his favour. In respect of that income he will be liable to pay; his income may be very much less. HUF is an entity separate by itself. It is not a device by which you should transfer property to minor sons and wife.

SHRI DANDEKER: If I transfer property to my brother, I pay gift tax. That is the end of it. If I transfer my property to my wife and minor children, that is also liable to Gift tax and to aggregation of income under the transfer provisions. Why a family is chosen to be the subject of attack as distinguished from, if I am to choose my brothers, nephews etc. Where the joint family is created and has been used as a device whereby after the transfer of property, partition takes place—father making a gift to the new joint family and when having a partition. These are the cases you are trying to get at.

SHRI MUTTOO: When an HUF is created, you do not lose your interest but when you transfer this, you have washed off your hands of the whole thing.

SHRI DANDEKER: In fact, in such a case, there was no joint family at all, but a joint family is

being created by the father by gifting to the wife and the children.

SHRI MUTTOO: We are restricting it to the new HUF for its little purpose.

SHRI SALVE: There is a HUF, where there are all the members, there are no minors, will this section apply?

SHRI DANDEKER: Of course, this will.

SHRI SALVE: This will not apply.

SHRI DANDEKER: And if I have no wife and no minor children.

SHRI MUTTOO: This would not apply.

SHRI SALVE: You are only penalizing the HUF. There are all adult members; they have their own income; they want to create one more unit HUF. But just because one has a minor children, you are penalizing him.

MR. CHAIRMAN: Would you refer to sub-section 2. They have clarified this.

SHRI BENI SHANKER SHARMA: Mr. Muttoo, you will agree with us that HUF is a very great socialist institution in a small way and is to be protected. Of course, after the Supreme Court decisions, there might have been cases where HUF have been created with the purpose of avoidance of tax. But there are genuine cases as well. As for example, I am a professional man. I have a genuine anxiety to create a fund for my family for the benefit of the member. Now you see that this is a very old institution and it works in a socialist way. What I am earning, I am distributing to all the members of the family and I am divesting myself of the right to utilize the money only for my benefit and in any manner I like. When I am divesting myself of that right, there is no question of having a hold on

the property myself. HUF is a very old institution. How will you protect such genuine cases.

SHRI MUTTOO: The institution of HUF, no doubt, is very very old. But the case you are referring to—HUF which has just been created with certain ideas and we are trying to catch that sort of unit, and not which have come in.

SHRI BENI SHANKER SHARMA: HUF is already there. It is not created. It is there even without any fund. That is a legal institution, which cannot be created.

SHRI MUTTOO: We take cognizance of those to whom some income is attributable.

MR. CHAIRMAN: Some witnesses have told the Committee that it is better if the Govt. had some kind of gift tax, so that it may not cause so much difficulties and harassment to the large number of small HUFs. That was a suggestion also from some of the witnesses.

SHRI MUTTOO: Whenever such HUFs are created, they give gift tax. Regarding the gift tax point, it is chargeable according to our interpretation, but this is being disputed in the High Courts and Supreme Court.

SHRI GUPTA: Some witnesses said that you permit the formation of HUF but do not permit the breaking of it. That was a *via media* suggested by some witnesses and that they gave solid arguments. Suppose a person for the security of his wife or minor children he feels that an HUF should be created, in that case, you let him form some HUF, but he does not want to protect it. What is your reaction to this?

SHRI MUTTOO: Genuine cases would be hit when provision is brought into operation, I do agree, but certain genuine cases may not be

managed and another factor is if it is just for the wife and minor children an HUF has been created; well, if there had been no HUF and more gift then the income would have been assessed and we are trying to follow the same pattern.

SHRI DAMANI: Why don't you make some amendments to clarify this provision so that the matter can be discussed in that light?

SHRI SALVE: Mr. Muttoo has been continuously stating that this is a measure to make sure that the HUFs which are created for the purpose of taking advantage of the loop-hole in the law and to route their properties to the minor and wife. That is not the position in law. Assuming there is an existing house of HUF and have earning of Rs. 2000 to Rs. 3000. In that a new HUF is created, will such an HUF will be hit?

SHRI MUTTOO: Yes, it will be.

SHRI SALVE: In other words existence of the HUF or bringing into existence of a new HUF will be irrelevant consideration. The consideration will be whether or not a person having his individual self-acquired property is putting to the common hotch-potch or not?

SHRI MUTTOO: Yes, that is right.

SHRI SALVE: So, it will hit not only the new HUFs but the existing HUFs also.

SHRI BENI SHANKER SHARMA: I have got an HUF since 1945. Today I am throwing some more funds and got a wife and some minors. Will they be affected by this clause?

SHRI MUTTOO: Yes.

SHRI BENI SHANKER SHARMA: Don't you think it will be a great hardship to those HUFs which are genuine and not artificially created?

SHRI MUTTOO: For this purpose it may be.

MR. CHAIRMAN: Would you please enlighten the Committee that all our efforts are directed for simplifying tax laws? Is this process going to simplify and plug the loop-holes?

SHRI MUTTOO: It is in the second category and not in the first,

SHRI SANGHI: According to the present law whenever somebody transfers self-earned property he is liable for gift tax and this matter is still pending before the Supreme Court though High Court has given its judgement that self-earned property will not be subject to gift tax. Now, we are bringing another that will be liable also to income-tax. How do you explain?

SHRI MUTTOO: We have not proposed any change in the gift tax.

SHRI SANGHI: When you bring an amendment you think on this line. It will create confusion and complexities.

SHRI MUTTOO: We do not propose to bring in amendment. We thought about it and the position as it is, according to our interpretation such instances would be liable according to gift tax.

SHRI SANGHI: First of all, liable to gift tax and then income tax, that will be double taxation.

SHRI MUTTOO: This thing already existed.

SHRI SANGHI: It will be in the hands of the transferor.

SHRI GUPTA: Are you inclined to accept this amendment?

SHRI MUTTOO: I have placed my point before you for the consideration of the Committee. It is for

checking the tax evasion. That is the rationale behind it.

SHRI GUPTA: Whether it should be from 1-4-1970 or from 1965? That is the only point I want to ask.

SHRI DANDEKAR: He is leaving that for the Committee to decide.

SHRI CHATTERJEE: He said there will be considerable loss. Let us know the extent of loss and then we can decide.

MR. CHAIRMAN: Shri Muttoo will be giving us the figures.

SHRI DANDEKAR: It is a matter of language.

Sub-clause (b): "Income derived from converted property or any part thereof in so far as it is attributable to the interest."

The word 'attributable'—how can income be attributable to the interest? It is attributable to the property that is put into the hotch-potch. Is it attributable to the property that I have put in or is it attributable to the interest of individual members of the family as a whole?

You want to say the income of this property that I have transferred should be assessed in my hands and in the proportion in which they are described under proviso (2). I assure you that you are heading for trouble when you say 'attributable'.

MR. CHAIRMAN: They must have referred to the Law Department and the Law Department must have said, it is like this. Mr. Dandekar, we shall discuss it ourselves in the Committee.

SHRI SALVE: About registration, Mr. Muttoo.

If we have been able to understand the entire intention behind bringing about these measures, we are to simplify, to rationalise the

procedure and to eliminate the unnecessary litigation. You have yourself stated on page 138 of the brief.

The new procedure in Section 186A and 186B is designed to considerably simplify the assessment of the firms and their partners by eliminating the requirement of separate registration for the purpose of assessment of income-tax and virtually recognising the registration under the Indian Partnership Act has been sufficient for the purpose of charge of income tax.

The object is very laudable. I cannot think of anything else which could really be more urgent and imperative so far as giving relief is concerned.

From where did you draw this that virtually you are eliminating separate registration with the income-tax? First the firm is registered with the Registrar of firms. In other words, whereas nomination appears to be registration of firms with the Registrar, exclusively for the purpose of income-tax or as has come about is that whereas for the purpose of income-tax the formalities will have to be completed by the assessee as he was doing in addition to registration with the Registrar of Firms, to get the benefits of registration. That has been the clear and categorical interpretation of witness after witness who came to give evidence before us and that also to my mind appear to be a fair interpretation.

Second aspect of the matter is, since after the litigation of over two decades the law has now settled and your entire purpose is to achieve simplicity and to make sure that Registrar of Firms virtually grants registration to the firm, why not allow the existing law to remain as it is and just insert a proviso or add a Section that where there is a registration with the Registrar of Firms,

that would *ipso facto* mean that the firm is genuine unless Income Tax Officer has some reasons to say that it is not genuine?

SHRI BENI SHANKER SHARMA: Along with this I may add one question and it would be convenient for Mr. Muttoo to answer.

From registration you have changed the nomenclature to recognition. According to me the whole case law as Mr. Salve has just said, built on registration would be nullified and it will take another 10 to 20 years to settle the law on this issue. Will it make any difference if instead of recognition, we keep the old nomenclature of registration? What is there in a name as Shakespeare put it and why we should quarrel over it. The Bill has made it compulsory that for recognition of all the firms—whether new or old—they have to be registered with the Registrar of Firms. What is the fun in having those firms apply for fresh registration which are already registered for the last 20 years? Have you any objection if the old firms which are registered are not disturbed? So far as the new firms are concerned, as Mr. Salve said, we may add a clause or a proviso that the firms which came in existence after such and such a date should be registered with the Registrar of Firms before getting registered with the Department.

SHRI MUTTOO: Sir, in case the Committee decides to retain the proposal as it is, we do propose to submit that the registered firms, which are old, they would continue and they need not observe the new formality.

MEMBERS: That is a very good suggestion.

SHRI MUTTOO: Of course, unless there is a change in the constitution. That is one thing. Now coming to the point of Hon'ble Member as to the

new firms, which are coming. If they get the certificate of the Registrar of Firms, they will have to observe the dual formality of the old law and the new. Well the test of genuineness of a firm, which was there earlier, has been eliminated.

SHRI SALVE: Will you read Section 186 A. It is not eliminated and we are glad it is not eliminated. You must go into genuineness. A registration with the Registrar of Firms is good enough but that should not be a device for all sorts of fraudulent people to take advantage of the registration. Mr. Muttoo will you please clarify where it is eliminated.

SHRI MUTTOO: Specific tests of registration have been laid down in the provision here and if we follow them, then this question would not arise. We have only to look to benamindars.

SHRI SALVE: We will look after them in clause 'C'. But where it is laid down that the Income tax Officer can say that this is not a firm in itself.

SHRI MUTTOO: The very fact that it is registered with the Registrar of Firms means that it is a firm.

SHRI SALVE: Will you read us the Section.

SHRI MUTTOO: The wordings are a firm shall be a recognised firm where the following conditions are fulfilled; partnership is in existence; the firm is registered with the Registrar of Firms Section 186(i)(a)&(b).

MR. CHAIRMAN: Then why do you want to bring in the change and in which part.

SHRI SALVE: Will you tell me in the old section where was this test specifically laid down? 185 will continue to remain as it is.

SHRI MUTTOO: It will continue for the old firms, which are there. It does not remain in the case of new firms. This is provided, sir, in clause 42.

SHRI SHARMA: Clause 42 is concerned with Section 184.

SHRI MUTTOO: It is concerned with Section 185 and 186 as well.

MR. CHAIRMAN: 185(a) says if he is satisfied that there is or was during the previous year in existence a genuine firm and the ITO is satisfied, he shall pass an order in writing that the firm was in existence. If he is not so satisfied, then what?

SHRI MUTTOO: This was the provision as at present. Once we introduce the new clause, this would cease to operate.

SHRI SALVE: Are you trying to suggest, Mr. Muttoo, that in terms of sub-section (3)(a) (of the proposed section 186A) where certain conditions are prescribed, the ITO has no option so long as those conditions are fulfilled?

SHRI MUTTOO: If the conditions are fulfilled, well, we have no option.

SHRI SALVE: And, therefore, by implication, it is your suggestion that once a firm is registered and other conditions are fulfilled, he has got to accept them without going into the genuineness.

SHRI MUTTOO: Yes, Sir.

SHRI SALVE: Why not make it more specific. Now I do understand the scheme a little better that you are stipulating certain conditions to be complied by a person or firm which want to get registration. But tell me one thing, my question is why not keep the existing law as it is.

SHRI DANDEKER: As I understand it, sub-clause (3a) is what Mr. Muttoo refers to, viz., where the Income-tax Officer is satisfied that the conditions specified in the foregoing provision of the Section are fulfilled, he shall assess such firm as a recognised firm for that assessment year. Your point (Mr. Salve's) is that we should make the point clear that there is no further

question involved as to the genuineness of the firm. I am not myself satisfied and may I take you to sub-clause 186A(1): (a) subject to the provisions of the section, the partnership as in existence during the previous year is evidenced by an instrument and the individual shares of the partners are specified in that instrument; and (b) the firm is registered. Under (a) the ITO cannot go into the question of genuineness and under (b) the firm has got to be registered. This is a strange thing. This says the following conditions should be fulfilled. Is the fact that it is registered with the Registrar of Firms final?

SHRI MUTTOO: Yes, sir, because we are trying to implement the recommendations of the Committee which has examined it. It is their suggestion that we are accepting.

SHRI GUPTA: You say if the firm is registered with the Registrar of Firms, then it will be treated as a conclusive evidence.

SHRI SALVE: We do not want to divest you of your right to go into the genuineness, but we certainly do not want you to raise litigation and this is possible if we keep the law as it is and make a provision that where it is registered, it shall be treated as genuine unless the ITO has reasons which he shall record in writing, that it is not genuine. One more question. Is not it likely to be extremely risky that we divest you of your authority to go into the genuineness in every case?

SHRI MUTTOO: We try to follow the recommendations.

SHRI SALVE: Your suggestion is that existing law be kept and one more clause be added 1(b) that registration is virtually done unless Income Tax Officer finds otherwise. If your interpretation of the law is as it is the existing law plus the proviso, is not the suggestion made by a little more stringent?

SHRI MUTTOO: If we accept this addition to the existing law, it will make it more stringent, but it will be simple.

SHRI BENI SHANKER SHARMA: We have known Mr. Muttoo's views on this point; we may further discuss this in the Committee.

SHRI MUTTOO: The first suggestion of the hon. Member as to the addition of these new firms, why should it not be dropped but and let the things continue as they are—*status quo*—well, it is for the committee to consider this.

SHRI BENI SHANKER SHARMA: Mr. Chairman, one question about sub-clause (c) of 186A(1) at page 27, line 12. There are certain conditions laid down. Now suppose, if there are four partners, a, b, c and d and d is the Benamidar of a. In that case, the whole firm would be considered as ingenuine and it may not be registered. The firm should not in view of the accepted principles of the law of Benami be declared as unregistered but simply the income of the Benamidar should be added to the person. So, would you just agree if we say that the income should be added to the income of the original holder, and the firm should not be treated as unregistered?

SHRI MUTTOO: Sir, the idea is to meet that decision of the Supreme Court and that is why, we have introduced this. If there is Benamidar, well, it would not be just a question of adding this share to that.

SHRI BENI SHANKER SHARMA: The law of Benami is a recognized law, so far as India is concerned.

For some reason or the other, one may not be a partner in his name, but he may be a partner in the name of 'a'. Don't you think, if the whole firm is unregistered, it would cause a great hardship. The income only should be added to the original holder as there is no concealment or supersession of facts.

SHRI MUTTOO: But why not the original holder should be there.

SHRI GUPTA: Benami is a recognized law of the land.

SHRI MUTTOO: The idea is just to check the dummy partners.

SHRI SALVE: Under this provision, it may not be checked, but under the general law, you would go and check him up.

SHRI BENI SHANKER SHARMA: The question of the law of Benami, should be made clear. Benami holding of properties is an accepted mode of holding properties in the law of the land. That does not bring any reduction in any actual liability. What Mr. Muttoo has in mind, I think—is where Benamidars are used as a matter of fraud and for evasion of tax. But if 'a' is the Benamidar of 'd' and 'd' does not disclose it, how you will find it out.

SHRI MUTTOO: We may not be able to find it then and there, but once we will find, we will check.

SHRI SALVE: Where this type of hanky-panky is done, then we will examine it in that law. It is a different aspect.

SHRI MUTTOO: They would come to know about it, when we refuse the registration on this ground.

AN HON. MEMBER: There are six partners, supposing. Partner No. 1 is the Benamidar of the 7th and all other five acquiesce in the 6th being the Benamidar. Supposing of the five, one is innocent then....

SHRI MUTTOO: But he is subscribing to them.

SHRI SALVE: If of the six, five are party to a fraud, the 6th is not a party, but he is admitted to the benefits of the partner, but he does not know. The second aspect of the matter is, where HUF *karta* comes as a partner in the HUF.

SHRI SALVE: 'As such' means what? What is the dictionary meaning of *Karta*? 'None of the partners of the firm has at any time during the previous year any right, title or interest in the share, in the income or property of the firm 'as such'—by virtue of being a partner.

SHRI MUTTOO: The idea is to exclude HUFs by this wording.

SHRI K. L. GUPTA: Why should they refuse registration at all? That is my basic question. If you feel there is evasion you can make further additional charges.

SHRI MUTTOO: We want to make it more deterrant by denying registration.

SHRI SANGHI: We have studied this new procedure of registration of firms and heard so many people. We feel this change has been inspired by Bhoothalingam report. Particularly, he has laid great emphasis on taxation of firms rather on the individual. If you read this Report you will find he has very clearly stated that the firm at no time should be considered as un-registered firm provided he complies with certain responsibilities. It should be the duty of the ITO that Benamidar is taxed whenever such a firm is registered. In this background we feel is the drafting has not been rather clear? Would you subscribe to this view?

SHRI MUTTOO: The provision in the Bill is based not only on the Bhoothalingam report but also on the basis of the Administrative Reforms Commission's Report and therein they have mentioned partnership may be recognised for the purpose of income-tax assessment if (a), (b), (c) and (d). 'None of the partners is nominee or Benamidar of any other'.

SHRI SANGHI: Then our whole Act should show if there is a Benamidar it will be considered as un-recognised firm.

SHRI DANDEKER: I agree that benefits of registration should not be allowed to be passed on to people having undisclosed Benami interest; and where the existence of one of the partners is Benamidar for another comes to light then the firm should be refused recognition. But I will only ask Mr. Muttoo: supposing for reasons of their own a firm has got a Benamidar and they disclose it. Supposing I am in partnership with three or four people and there are certain reasons for which I have to have a Benamidar and they disclose this: they say, Mr. ITO we are six partners but partner No. six is Benamidar of partner No. 1. Is there any reason to deny recognition in that case?

SHRI MUTTOO: We cannot make exception that way. We would not like to create two categories where somebody comes forward and says well these are Benamidars please do not apply this and another where ITO finds that. For uniformity we propose to treat all the cases on par.

SHRI DANDEKAR: You want uniformity between firm 'A' which wants to be honest and another firm 'B' which is dishonest.

SHRI MUTTOO: If the law is there why should he have a bogus or a dummy partner?

SHRI BENI SHANKER SHARMA: As regards the nomenclature between 'recognition' and 'registration' would you have any objection if the old nomenclature of 'registration' is maintained.

SHRI MUTTOO: The new word 'recognition' was coined in order to avoid mixing up of the old firms and the new firms.

SHRI BENI SHANKER SHARMA: When we agree that the old registered firms shall be treated as registered, there is no point in what you say.

SHRI MUTTOO: If the Committee is accepting these provisions there would be new category of firms which will come up under the new provision. We would like to call them and distinguish them from the old ones and that is why we have introduced it.

MR. CHAIRMAN: There are some more important points. Should we

sit for half an hour more and finish or shall we meet on any other day?

SHRI SALVE: I would like to seek clarification on drafting.

MR. CHAIRMAN: We may meet on 24th April, 1970 at 3 P.M.

Thank you very much Mr. Muttoo.

(Committee then adjourned).

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS
(AMENDMENT) BILL, 1969.

Friday, the 24th April, 1970 at 15.00 hours.

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri N. C. Chatterjee
3. Shri J. K. Choudhury
4. Shri B. N. Katham
5. Shri Yashwant Singh Kushwah
6. Shri Shiva Chandrika Prasad
7. Shri N. K. P. Salve
8. Shri N. K. Sanghi
9. Shi Beni Shanker Sharma
10. Shri Yogendra Sharma
11. Shri Tenneti Viswanatham
13. Shri Ram Sewak Yadav
14. Shri Prakashchand B. Sethi.

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram, *Joint Secretary, Ministry of Law.*
2. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*
3. Shri Harihara Iyer, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. R. Khosla, *Deputy Secretary.*
2. Shri S. P. Chowdhury, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

Shri R. N. Muttoo, Chairman, Central Board of Direct Taxes, Ministry of

Finan. Deptt. of Revenue and Insurance.

(The witness was called in and he took his seat.)

MR. CHAIRMAN: We may begin with Clause 34.

SHRI R. N. MUTTOO: Before beginning, I will refer to the discussion in the last meeting regarding clause 14. I was asked to collect some statistics regarding Joint Hindu families which were formed trusts from 1.4.65 onwards. During the short time available, a few cases involving conversion of self-acquired property into joint Hindu family property in Delhi charge have been studied. The study was confined to few cases only on the basis of the personal knowledge of the officers concerned. In 53 cases covered by the study, the additional revenue for the assessment year 1970-71, if the provision in clause 14 of the Bill is enacted into law, would be of the order of Rs. 1,80,000. In this connection, I would further submit that out of 53 cases, 24 cases related to business circles and the additional revenue in those cases for one assessment year was estimated at Rs. 1,32,000. The remaining 29 cases related to salaried employees and additional revenue in these cases was estimated at Rs. 48,000. We are making similar arrangement for study in important circles like Ahmedabad and I hope to submit a report within a fortnight.

MR. CHAIRMAN: Bombay also?

SHRI R. N. MUTTOO: Bombay also.

SHRI BENI SHANKER SHARMA: Calcutta too.

SHRI R. N. MUTTOO: Very well.

SHRI N. K. P. SALVE: May I know in these 24 cases how many cases are involved with income above Rs. 50,000?

SHRI R. N. MUTTOO: We will give that information.

SHRI N. K. SANGHI: What is the basis of checking up these 53 cases?

SHRI R. N. MUTTOO: This study was done in Delhi. It related to cases assessed in Delhi and this was done on the basis of the personal knowledge of officers.

MR. CHAIRMAN: Shri Muttoo has promised to give detailed figures in the case of Bombay, Ahmedabad and Calcutta.

SHRI SANGHI: He may take a particular ITO Incharge. He will include small and big cases. He may take a few ITOs and assemble all the figures.

SHRI MUTTOO: It is difficult to ask each individual and give the information. The Commissioner has to use his personal information that such and such cases have attracted this provision and important circles which have been entrusted with this job. The idea is to show the extent of loss of revenue and we are trying to collect this information on that basis.

MR. CHAIRMAN: We need not be meticulous so far as the loss of revenue is concerned. What we wanted to know is as to what would be the approximate loss that may result if we do not take into consideration the provisions as enacted in the Bill? You have just taken 53 cases. Do they cover all the cases in Delhi or they do not? Can you or the Commissioner say from your knowledge, on taking sample survey, the total amount of revenue involved will be so much. We want an estimate from him, because he is the man Incharge. Therefore, by making a sample study of 53 cases he has a loss of Rs. 1 lakh. I have taken bottom cases and the remaining loss will be Rs. 50,000. He may give his own figure and his own estimate as to the possible loss of revenue by making a sample survey.

SHRI SALVE: Either you take an absolutely random sample survey or you take 10 or 12 ITOs and take their cases and see how much it comes to

MR. CHAIRMAN: You think, it is only pick choose?

SHRI SALVE: I do not attribute any motive that the Commissioner would bring in bias but there is an inherent limitation in this type of procedure. If he is going to select cases, all right. I am afraid we are very much wide off the point. Real sample survey is random. Take 10,12 ITOs. Tell how much the individuals have property. That ought to be directly the method of computation.

MR. CHAIRMAN: Perhaps, the Committee was aware of the limitation when we wanted to know the single figure from the Ministry and then they say they had not gone into such a kind of exercise. Now, perhaps, when we insisted that day, they have tried for us to give an idea which you say is not satisfactory.

SHRI SALVE: My submission is that the Committee wanted an idea of what obviously will be possible for the Department to give. I would not like to be given the figures which may be wide off the mark.

MR. CHAIRMAN: Above 25,000 how much?

SHRI SALVE: It is a special classification.

SHRI T. VISWANATHAM: What is the total cases brought to your notice—conversion after 1965?

SHRI MUTTOO: We do not have the information.

SHRI CHATTERJEE: Mr. Chairman put this question. You asked Mr. Shah to give us the figures as to what would be the effect on revenue.

SHRI MUTTOO: In order to comply with this assurance we made a sample study in Delhi and I have requested for sometime. I have sent a team to Ahmedabad also.

MR. CHAIRMAN: We rely on you. We do not want 5 per cent or 10 per cent. It may be 5 per cent or 10 per cent off the mark. It should be 90 per cent correct at least. Every ITO has certain number of cases in his charge. Will you scrutinise the number of HUF? A few cases can be picked up and figures can be calculated. It would be difficult as I understand it but anyway we are not very much interested about the correctness of the figure. 10 per cent or 5 per cent off the mark. I do not mind, but we should have some basis to consider.

You have said 5 lakhs in Calcutta and 5 lakhs in Bombay. It will be a useless labour if it actually runs to crores.

SHRI MUTTOO. It would not be a wrong exercise because if there were 100 cases to it could be added 50 cases. It would be something like a snow ball.

SHRI N. K. P. SALVE: That may be remedied. It is different story if it continues to occur after 1st March, 1969. It is good to have what is the approximate loss of revenue with retrospection, and what would be the type of assessee, and whether it is going to effect any substantial assessee.

SHRI MUTTOO: I am thankful for the suggestion. As I mentioned, these 24 cases had resulted in Rs. 1,32,000 of tax. In all cases, we would recover from Rs. 10,000 to Rs. 15,000 extra.

SHRI SANGHI: Mr. Chairman, the hon'ble Minister is also here. We have come to the fag end of the evidence and we have come to certain conclusions. And we are also keen that there is no loss of revenue as far as possible and at the same time, there should not be undue harassment. And

we want particularly Mr. Muttoo's assistance and guidance as to what we can do to see that the matter is simplified and revenue loss is not much.

SHRI MUTTOO: Thank you, Sir.

SHRI B. S. SHARMA: You said that there might be further additions. So far as the legislation is concerned, it came after the decision of the Supreme Court and the matters have now been settled. There would not be further artificial creation of which you are afraid of. If it is in the course of normal HUF, neither the Department would mind nor you mind.

SHRI MUTTOO: It is not so simple.

SHRI B. S. SHARMA: Do you think that there will be rush?

SHRI MUTTOO: The question of rush is not there. It is being followed on the basis of the guidelines set by the Supreme Court, and the cases are going up.

SHRI B. S. SHARMA: Those cases that they have are very few, and those that will come in later will be very few.

MR. CHAIRMAN: When we next go to Clause-discussion, we can get further information also.

SHRI N. K. P. SALVE: I hope on the lines indicated—ITO's.

MR. CHAIRMAN: Mr. Muttoo, I hope you have understood the suggestions made by the hon'ble Members.

SHRI MUTTOO: Yes, Sir.

MR. CHAIRMAN: Let us now hear his views about Clause 8. Have you heard all the evidence from Chambers of Commerce?

SHRI MUTTOO: Yes, Sir.

MR. CHAIRMAN: What are your views?

SHRI MUTTOO: In Clause 8, there are three sections which we propose to introduce—Section 35(D), 35(E) and 35(F).

MR. CHAIRMAN: The difference was that some of them say 2½ per cent was low. To cut short the things, they have welcomed this decision of the Bill that Government, for the first time, has been able to afford some amortisation. The difference was the basis on which this amortisation was worked out. After some sample surveys of some industries, the average worked out to 2½ per cent. And they took up some surveys when we insisted on them. They say that at least 5 per cent will be a reasonable one. Ultimately, they came to 5 per cent. So, what are your views on this?

SHRI MUTTOO: So far as our study was concerned, it was confined to 31 cases and we have already submitted the necessary information. We were asked to look into three cases in particular—Baroda Rayon Corporation, Hindustan Aluminium Corporation and Synthetic and Chemicals Ltd. And we have analysed those cases.

SHRI N. K. P. SALVE: It comes to how much?

SHRI MUTTOO: So far as Baroda Rayon is concerned, on the basis of capital of the Company, it is 1.25 per cent, and on the basis of total project cost, it is 0.69 per cent. In case of Hindustan Aluminium Corporation, on the basis of capital, it is 6.65 per cent, and on the basis of project cost, it is 3.64 per cent. Regarding Synthetic Chemicals, on the basis of capital of the Company, it is 6.03 per cent, and on the basis of total project cost, it is 0.57 per cent.

SHRI N. K. P. SALVE: About Baroda Rayon . . .

SHRI MUTTOO: The Preliminary expenses shown in the Balance Sheet of Baroda Rayons were Rs. 23 lakhs; those that were disallowed by the ITO were Rs. 11 lakhs. Total preliminary expenses were Rs. 34 lakhs. In this item of Rs. 23 lakhs, there was an item of payment to promotees which is Rs. 15 lakhs. We have given this figure.

SHRI N. K. P. SALVE: I think you computed as though 34(D) was applicable.

SHRI MUTTOO: Yes. On the basis of 35(d) the percentages would be: in the case of Baroda Rayon Corporation 0.72, Hindustan Aluminium 3.27, Synthetic Chemicals Ltd. 1.44.

SHRI N. K. P. SALVE: Mr. Muttoo, your figures are really baffling in the sense that the divergence is very great. Rayons and chemicals are chemical industries, but whereas in Baroda Rayon we have 0.72, in Synthetic Chemicals we get 1.44, and so on. I mean, there are no meeting grounds at all. May I, therefore, know from you, Mr. Muttoo, firstly, is it likely to cause hardships if we were likely to fix some percentage ourselves, because it may be just unfair in some case; it may be hopelessly high in some cases; it may be hopelessly low in some other cases. Secondly, is there such a possibility or not. Second question, which is very important, would you rather have the matter left to the discretion of the ITO to determine what are the reasonable expenses? And thirdly, whether you would have the authority left to the Board to make some rules industrywise so that there will be a more rational approach and a more rational classification? Personally I do not like this delegation of legislation very much, but seeing this distinction in the same type of industry, would it not be better to take re-

course to something so that evil is lesser.

SHRI SHARMA: I have one or two questions, Mr. Muttoo. With this clause added now, we have got three types of expenses. The assessee, whatever he spends, should get either as revenue expenses or if it is capital expenditure, that amount should be capitalised and he should get depreciation and if it is not any of the two, then it should be amortised. Now would you leave it to the discretion of your Income-tax Officers to decide to allow the expenses in either of these three categories without any check being put on them?

SHRI MUTTOO: It is not proposed to allow all the expenses, as suggested by you, Sir.

SHRI N. K. P. SALVE: My question is the nature of expenses—we will enumerate.

SHRI MUTTOO: I am coming to the point. The first point you mentioned was about revision of the percentage; should it be left to the ITO? That question should not be left to the ITO. Then comes the question of ITO's discretion regarding items which are to be . . .

SHRI N. K. P. SALVE: My query in a very simplified language is we will enumerate such and such expenses will be amortised spread over 6 years, 7 years, i.e. spread over a period . . .

MR. CHAIRMAN: First, unless you fix a percentage . . .

SHRI N. K. P. SALVE: We would rather leave it to them to determine. You are seeing the great divergence in the same industry. Rayon and chemical are the same.

MR. CHAIRMAN: It is not the same industry.

SHRI N. K. P. SALVE: I am leaving out the aluminium. In terms of 35(d) the actual expenditure in Baroda Rayon is 0.72.

SHRI P. C. SETHI: In that case you will have to provide separately for separate industries.

SHRI N. K. P. SALVE: Naturally.

SHRI MUTTOO: It will be a very tedious exercise.

SHRI SHARMA: That will be something impossible.

SHRI N. K. P. SALVE: My question is to one it is extremely favourable and to another it is extremely unfavourable.

SHRI P. C. SETHI: What is the way out that you suggest.

SHRI SANGHI: Let us decide a broad policy. At one place you want to fix up a limit of 2.5 per cent.

SHRI P. C. SETHI: Hon'ble Members can deliberate whether 2.5 per cent is fair or unfair.

SHRI SANGHI: I am only asking the Chairman, suppose a limit is kept, then why put so many other patterns. Why not mention that preliminary expenses will be automatically allowed. We have fixed 2.5 per cent. Let us make the law simplified. We are giving a concession. Let us give it to all.

SHRI SETHI: Mr. Muttoo has given a case where 15 lacs has been allowed.

SHRI N. K. P. SALVE: That is not the limit.

SHRI MUTTOO: If you are kind enough to permit ITO to disallow certain expenses, we are prepared to give guidelines for an ITO.

SHRI SANGHI: My submission is that you keep a limit that you like, of 2.5, and then let the guidelines be

found out by ITO himself and use his discretion from case to case. Anyhow, my next point is you have mentioned 35(d) Indian Company. Would you have any objection if we put the word "person" in place of the "Indian"? If so, what are the reasons?

SHRI MUTTOO: We have objection. We do not want to give it to non-domestic companies.

SHRI SANGHI: We must give some benefit to small man if we are giving something to the big companies. I feel this legitimate benefit should be given to all sorts of persons.

SHRI MUTTOO: This amortisation would arise in cases where the investment is large. It is not the question of giving this concession in a case where the investment is a lakh or so.

SHRI SALVE: We have a quarrel with you, Mr. Muttoo. Why are you ignoring the small men.

SHRI MUTTOO: It is usually considered when the investment is large. It is not to be considered to amortise the expenditure.

SHRI SALVE: If that is the intent of legislation, if the big business houses are to get the benefit, then we must think otherwise.

SHRI P. C. SETHI: In the scheme that is before consideration, we have not said that it is not available to small entrepreneurs.

SHRI MUTTOO: Available to all Indian companies.

SHRI SETHI: Whether big or small.

SHRI SHARMA: Here the question is not of a big or small companies. A company with a capital of 25 thousand may get the benefit, but a firm with a capital of 5 lakhs would not get the

benefit here. That is not the criterion. Our thinking is that whosoever spends in the manner as laid down in the Act should get the benefit, whether he is an individual or a firm. But why should you ignore a firm who is doing the same business and more efficiently, and why should you give it to the companies only. A company may be big or small, it does not matter.

SHRI MUTTOO: Their accounts are also subject to statutory audit by chartered accountants and again Sir, we have so many other provisions in the Income Tax Act which are restricted to companies and mostly to Indian companies.

SHRI SHARMA: But so far as this benefit is concerned, we would like to extend to smaller people also.

MR. CHAIRMAN: Clause 35(d)(1). This concession has been given to Indian companies.

SHRI SALVE: Supposing, there is an engineer, a very poor engineer, who has not much resources, and he spends Rs. 3,000 for a preliminary project, is his interest less important than the interest of a man that has spent 25,000 rupees.

MR. CHAIRMAN: Company has been defined; let us also understand that definition.

SHRI N. K. P. SALVE: What Mr. Sanghi raised is why it should not be given to assessee other than companies, his distinction drawn on larger resources in our opinion is extremely unfortunate distinction.

SHRI MUTTOO: The accounts in the cases of companies are subject to statutory audit by chartered accountants and not in the cases of individuals and partnerships.

SHRI N. K. P. SALVE: You can suggest that to take care of the revenue, the accounts can be presented

in a proper way, but let not the big or small be the criteria.

SHRI SANGHI: Let us have your personal views in the matter.

SHRI MUTTOO: We want some sort of check on accounts.

SHRI P. C. SETHI: We would finally discuss it later on. The intent is what is prescribed here, but we can certainly think over this matter because 35(d) as has been laid down here is meant simply for companies. We will have to limit it to Indian companies only. Now the main point which is being argued by Mr. Sanghi and Mr. Salve is that supposing as an individual or a partnership firm somebody puts up a factory or an industry, then they spent on project report and if their accounts are properly audited as in the case of companies why they should not get the benefit of amortisation as has been provided in 35(d) for companies.

SHRI SHARMA: That is our point.

SOME HON. MEMBERS: That is our point. That is the main issue.

SHRI PRAKASHCHAND B. SETHI: I am not committing myself fully. I am just thinking as a company gets amortisation benefit in respect of an industry, similarly a partnership or a private firm should get it. In that case, the only point is that you cannot leave it to the discretion of the ITO that he may allow any amount of expenditure. You will have to prescribe a limit. But you will also have to enumerate the headings, because in the cases of a company whatever is given here—legal charges, etc.—this will be allowed, but for the partnership it would not arise.

SHRI R. N. MUTTOO: The idea was that corporate sector has a better potentiality of raising finance and can go in for bigger projects. So it

was with that idea, because amortisation is necessary where such expenses are there.

SHRI N. K. SANGHI: The thing is getting nowhere. We are giving a very small concession.

SHRI R. N. MUTTOO: These companies are subject to discipline of Company Law. Those restrictions are there. They have a sort of better control and check.

SHRI PRAKASHCHAND B. SETHI: As far as the Income-Tax Act is concerned, what you want is audited account. That you make a compulsory condition.

I have loudly made my thinking, I have not committed. That we shall do when we come to the final stage after proper drafting.

SHRI R. N. MUTTOO: This may also be considered whether amortization should be on the basis of capital or on project cost. Either basis could be adopted.

SHRI N. K. SANGHI: I am referring to 35(d) page 9. Would you have any reason for keeping the word "long-term" borrowings?

SHRI N. K. P. SALVE: It is explained in the Explanation. He has given his views. We will consider 35(e). Is there the requirement of 'prior intimation'?

SHRI R. N. MUTTOO: We have no objection if it is taken out.

SHRI N. K. SANGHI: When an undertaking is sold, you have said that amortisation will be withdrawn. Would you have any objection in case this is deleted?

SHRI R. N. MUTTOO: In fact, under the existing provision for the grant of tax credit certificate to public companies, shifting of their industrial undertaking from an urban

area to any other area—there is a provision for withdrawal of 50 per cent of the tax credit certificates if any building or land or undertaking in any area is transferred by the company within a period of five years from the date of acquisition or construction to any other person other than Government.

SHRI N. K. P. SALVE: Do you think that the amortisation which he gets would in any way be an incentive for him to make any additional credit certificate? I suppose that is your reason.

SHRI R. N. MUTTOO: We shall try to follow that.

Certain minerals were left out from the list and while going through the items we would suggest these items could be added in the Schedule:

Bauxite, Enamel Plate, Titanium, Columbia minerals, etc.

MR. CHAIRMAN: In the Memorandum have you said that several minerals should be included? You have given a fairly exhaustive list. Has any mineral been left?

SHRI MUTTOO: We will check up and let you know.

SHRI SHARMA: So far as mining in Bihar (Hazaribagh) is concerned, in our mica mine they are doing very big business. Do you not think that there will be hardship if this benefit is allowed?

SHRI MUTTOO: Your decision regarding 31(d) would be equally applicable to 35(f).

Regarding Indian Company the Hon'ble Member wanted why it should not be relaxed as 35(d).

SHRI SHARMA: There are so many people doing mica business; where you allow for other concerns—

in 35(d), will you allow so far as 35(f) is concerned,

MR. CHAIRMAN: When the Minister has given his opinion, why to re-open it.

SHRI SHARMA: We shall discuss it personally.

I would like to have clarification on clause 25, 30(QQ). So far as Clause 24 is concerned, it is very welcome clause. It gives some benefit to the publishers of books, etc. Do you think that every book which is printed should get the benefit? This benefit is being allowed to all sorts of publications. Would you see that the Board should have the power to prescribe that this should go to some books which are trash, defective novels. I think that would be healthy provision if we allow concession to books of literary value and not to the other books which are merely printed and bound.

SHRI MUTTOO: The idea is to encourage the business of publication of books. Coming to the content whether it is trash or not, it is very difficult to decide what is trash and what is not.

MR. CHAIRMAN: We can define it.

SHRI SETHI: The difficulty arises if the same publication house is coming out with different kinds of books which may be trash or fiction. How will you separate the two?

MR. CHAIRMAN: Practical difficulties are likely to be very much.

SHRI SHARMA: There would not be any difficulty if we defined that we shall give this concession to such and such a type of book.

SHRI SETHI: This point was discussed in Delhi with the Ministry of Education and they could not come to a satisfactory conclusion as to how it should be.

SHRI SHARMA: The Board may be given the power as may be prescribed.

MR. CHAIRMAN: We shall discuss.

SHRI MUTTOO: This will create unnecessary complication for us. Of course the idea has to be appreciated.

SHRI SHARMA: Income Tax Act has a complication. There is so much of trash literature. If we encourage publication of that type of literature, we do not know where do we stand?

As regards the same House publishing two different books, I may tell you that it is not the same House that publishes it.

SHRI SETHI: The Ministry of Education must prescribe what type of books should be published and not for the Income Tax Department to go into bifurcation, etc.

MR. CHAIRMAN: We can consider it at a deliberation stage. Mr. Muttoo has said it is difficult.

Section 34.

SHRI SHARMA: I want to put a question on Clause 29.

MR. CHAIRMAN: Mr. Muttoo, we would be grateful if you enlighten us about the rationale in the double assessment that you have contemplated and the prosecutions that you are contemplating for failure to file returns voluntarily.

SHRI MUTTOO: So far as this question of Section 143(1) as proposed to be revised is concerned, it would be appreciated that there is need to expedite the assessment proceedings in cases of small incomes in particular, and in all the cases in general, wherever possible. We have a scheme

at present whereby we can dispose of the small income cases, but it needs a sort of statutory sanction. We have submitted this proposal of having assessment on the basis of the returns filed. And then there is the question that if the assessee does not approve the figure, he goes to the A.A.C. If the ITO thinks that something has been left out, then ITO is reopening it.

[Shri Panigrahi in the Chair]

This is the scheme, and certain difficulties have been mentioned by Witnesses who have appeared before the Committee. We have re-examined the whole thing and we would like to place the following suggestions for your consideration.

Instead of providing an appeal to the AAC against an assessment under Section 143, provision may be made for an application to the Income-tax Officer by the assessee aggrieved of an assessment under Section 143(1), that proceedings should be initiated under Section 143(2) and a fresh assessment should be made after the examination of books of accounts and other evidence. I may explain, Sir, that the existing provision is that if the assessee is not satisfied, he goes up to the A.A.C. for reopening the assessment. To do away with this unnecessary appeal, as was suggested by the Witnesses, it is suggested that the assessee writes to the Income-tax Officer saying "please conduct proceedings as prescribed under Section 143(2) and assess accordingly." Of course, we will have a little precaution that such an application will have to be made to the Income-tax Officer within the prescribed date of the Demand notice from the assessment under 143(1). And so far as undisputed demand is concerned, that would not be withheld. These are the two suggestions regarding the first part.

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SHRI N. K. P. SALVE: Disputed and undisputed demand will again be a subject matter of dispute.

SHRI MUTTOO: The assessee would be expecting some part of the demand.

SHRI N. K. P. SALVE: Will you provide this in law? As you know there are cases where the disputed and undisputed is a subject matter of dispute.

SHRI B. S. SHARMA: I may say that so far as the assessment is concerned, it is an excellent suggestion. There cannot be an exhaustive assessment under Section 143(1). It is only normal. Then, of course, there should be a provision for appeal. If ITO reopens the assessment, there is nothing wrong in it. That will save time and cost to the assessee.

SHRI N. K. P. SALVE: The first part is all right. It is very laudable. Regarding the second part, according to what he is suggesting, the validity of the demand does not diminish; it remains on your head and further liability is still there to make good under that very demand notice a sum which is undisputed. Now, if there is no dispute about what is likely to be undisputed, then the law should stand the test of the time. It is possible for us to provide on assessment of what he has to pay notwithstanding the disputes that arise. We could think of the suggestion. Could you tell something, Mr. Muttoo?

SHRI MUTTOO: You are well aware of the provisional assessments which are being made. 143(1) assessment is a sort of provisional assessment. In a case where the assessee comes up with the objection, it should be under regular procedure i.e., 143(2). We would like that this little concession be given to the Department—the disputed amount is only not paid by them. Of course, the

question arises as to what is disputed and what is not. I am sure the Department would be as fair to the assessee as it is at present.

SHRI SANGHI: We have not been able to see eye to eye on this new procedure. At one time you want to do something and at the same time you would say that there is no finality about it. The whole thing worries us. There is no finality. The man is asked to file *suo moto*. He is asked to make his own assessment.

SHRI MUTTOO: Regarding the finality, I have a submission to make. I was just mentioning about the first part—where the assessee, instead of going in appeal, is just coming to the Income-tax Officer.

SHRI SANGHI: I follow that suggestion. You go ahead and complete the assessment. The only idea is that having completed, you cannot fall back on some information in my possession.

SHRI MUTTOO: Coming to such cases where an assessment has been completed under Section 143(1) to which you are referring, proceedings under Section 143(2)—calling for account books etc. by the Income-tax Officer on his own—will be initiated either on the basis of an application from the assessee or where this is done on the initiative of the Income-tax Officer, we are suggesting a sort of a check that we would have to get prior approval of the Inspecting Assistant Commissioner.

SHRI MUTTOO: The Income-tax officer will communicate to the A.A.C. that this assessment was completed under Section 143(1) and I propose to reopen it giving the reasons for the same, and say: 'so I propose to issue notice under 142(2)'.

SHRI SANGHI: The ITO will write to the IAC giving reasons of the incompleteness of the assessment already done. Now this has changed

the complex of the whole thing that we have been discussing all these days.

SHRI N. K. P. SALVE: May I state that the suggestions made by Mr. Muttoo *prima facie* appear to be taking us to the thing where very serious objections were raised by witnesses which came before us. Now before we can sort of think on this line again, may we have a sort of draft of the law as it would be if your suggestions were accepted.

MR. CHAIRMAN: Certainly. I think Government would come forward with it. We shall fix up our programme . . .

SHRI N. K. P. SALVE: So that, if necessary, we may examine him again.

SHRI SHARMA: On this point, Mr. Muttoo, the bone of contention has been that you are making a sort of reassessment. The assessment is first completed under Section 143(1) and that is a very laudable object. In fact, if I may tell you something personal, in 1947 I and Mr. Dandekar had discussed this very procedure. For certain limits, upto 15,000, 20,000 or 25,000, you make a summary assessment, but once you have made that assessment, there should be finality. The only objection is that so many witnesses appeared before us and they all pleaded that this assessment should not be opened on the whims of the ITO. Now you say with the approval of the AAC, that is a little improvement. Our plea is once the assessment has been completed, it should be treated as final and if something is found out, it should be opened under section 147 and so far as the examination of the assessee is concerned, every 3 years, as Mr. Boothalingam put it in paragraph 15(6)—he has elaborately dealt with this point—you can do it. I think we allow these assessments to be finally completed under 143(1). If there is any concealment or any thing is found, let it be opened under 143(1). Every 3

years every case will be reopened by rotation and if the ITO finds he can open this case under 147 (such cases will be very few and far between) and if we keep the provisions as they are, the Damocle's sword will be hanging over the assessee. What we want is that the assessment under 143(1) should be treated as complete and final and it should be reopened only under 147 and not otherwise. What have you got to say to this, because it will make the ITO sort of reviewing and enquiring in every case?

SHRI MUTTOO: I will seek a little indulgence that ITO is not going to make every assessment under 143(1). Our idea is on the same pattern as suggested by you, Sir. We have to have it on the same lines but we do want to keep this check that all assessments have been done and there would be no restriction that they are confined to income upto 15,000, 10,000 or 20,000. They can be made on income under any amount under this provision. Then if the ITO having accepted the income tax returns along with the data, wants to reopen, he should be allowed to do so under this clause. That is the idea and he should not be asked to reopen it under 147.

SHRI SHARMA: After all 147 says: (He read the article)... Now here of course the approval of the Commissioner is needed; you are giving the approval of the Assistant Commissioner. You want with the approval of the Assistant Commissioner he should reopen. Under section 147 also we can do that.

SHRI MUTTOO: I would not like to have these cases reopened under 147 because they are on a different pattern. I would submit that this suggestion that the Income tax Officer would be in a position to reopen assessments with the prior consent of the AAC may be accepted.

SHRI N. K. P. SALVE: Now a new law has been thrown by Mr. Muttoo. May I submit under 276(c) (a), clause

63, if they (People earning Rs. 5,000) do not file a return, they will have to go to jail.

SHRI MUTTOO: The idea was that if a return is not filed, the man cannot be punished for concealment of income.

SHRI SALVE: That is right.

SHRI MUTTOO: And somebody can conveniently avoid that by not filing the return voluntarily. That is why in order to force him, we have brought this now. But as you have mentioned, it should not be so wide, as at present.

SHRI N. K. P. SALVE: Thank you, very much.

SHRI SALVE: Is not the punishment provided too harsh for non-filing of the returns?

SHRI MUTTOO: As far as non-filing of the return is concerned, we have definitely provided prosecution because that would avoid non-filing of the return.

SHRI P. C. SETHI: Because we are opening up the question of prosecution, I would also like to suggest that if we do it legally, that is for the legal experts to point out, but for the present, we have no remedy for those persons where there is heavy liability of tax dues except that we can send them to civil prison under certain circumstances. Now the question of attachment of property does not arise, because the property withers away much earlier. We have provided for a very stringent punishment in the case of those persons, where there are heavy dues and they do not pay.

SHRI SALVE: But my question is, is not the punishment for small assesses for not filing the return too harsh? What is your personal opinion, Mr. Muttoo?

SHRI MUTTOO: Of course, it is little harsh.

SHRI SHARMA: Clause 29, one question. Mr. Muttoo, so far this section 119(1) is concerned, it is the same as in the old Act. Now you are just adding another 139(2), of course, this is also a good suggestion. In the brief, you have said that it is for the purpose of relaxation of hardship. Now here if it is for the purpose of relaxation, it is quite good, but you say 'or otherwise'. Would you not like to delete 'or otherwise'.

SHRI MUTTOO: The idea is that specific powers are being vested in the Board with the intention to avoid genuine hardship and in any case cases where relief is otherwise due but time for preferring claim is expired, the idea is to regularise these cases.

SHRI SHARMA: My quarrel is only in line 7. What is the necessity of 'or otherwise'. That will bring so many complications. You may forget the main object of relaxation and may put other difficulties in the way of assesseees.

SHRI MUTTOO: In sub-clause 2(a) it is mentioned 'not being prejudicial to the assessee'. Nothing would be done, that is prejudicial to the assessee.

MR. CHAIRMAN: 3(e) about travel concession to retired employees. Some of the members suggested that it should be any part of India. Mr. Muttoo, have you got any objection to this?

MR. MUTTOO: The idea is to give concession for going to the home district and not 'Bharat darshan'.

(The witness then withdrew).

MR. CHAIRMAN: It has been suggested by some of the hon. Members that the clause-by-clause consideration of the Bill would need very careful thought and it might need continuous sitting for six or seven days. Some Members also suggested that in the earlier itinerary of the Committee, Jammu and Kashmir had been left out. It is important to mention that the Income-Tax Act had been applied to Jammu and Kashmir only a few years ago and it would be of much help to the assesseees in Jammu and Kashmir if their views on the Bill were also obtained just as has been done in the case of Chambers of Commerce and other bodies at Calcutta, Bombay, Madras, Bangalore, etc. Shri Kanwar Lal Gupta, a Member of the Committee, has been very much insisting that some of the assesseees in the lower ranges of income should also be heard, because it was they who could not afford a lawyer and most of them were not fully acquainted with the provisions of the law. While the Committee visits Kashmir, they might also hear some of the small assesseees. The hon. Minister is very much in favour of this proposal and he is agreeable that the Committee might assemble at Srinagar on the 18th June, 1970. On the 19th the Committee might hear the evidence of the Jammu and Kashmir Chamber of Commerce, local Income-tax Bar Association and one or two small income-tax assesseees. On the 20th, they might go through the mass of the evidence tendered before the Committee so far and then ask the Minister in charge of the Bill to indicate Government's thinking on the various suggestions made before the Committee. This would enable the Members to make up their mind and also facilitate consideration of the Bill. Then, from the 22nd onwards the Committee might sit both in the morning and afternoon to take up clause-by-clause consideration of the Bill for a week or so.

The Committee authorise the Chairman and Shri N. K. P. Salve to see the Hon. Speaker and solicit his approval to the holding of the sittings of the Committee at Srinagar. It was emphasised that the Bill has far-reaching effects on the tax structure of the country and it was but neces-

sary that the committee should give the utmost consideration in rationalising and simplifying the tax structure, which is not only in the interest of the assesseees but also that of the exchequer.

(The Committee then adjourned.)

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT) BILL, 1969.

Friday, the 19th June, 1970 at 10.00 hours and again at 15.00 hours in Legislative Assembly Building, Srinagar.

PRESENT

Shri Chintamani Panigrahi—*Chairman*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. SShri J. K. Chowdhury
4. Shri S. R. Damani
5. Shri Pattiam Gopalan
6. Shri Kanwar Lal Gupta
7. Shri B. N. Katham
8. Shri Yashwant Singh Kushwah
9. Shri V. Krishnamoorthi
10. Shri S. B. Patil
11. Shri Shiva Chandika Prasad
12. Shri R. Dasartha Rama Reddy
13. Shri N. K. P. Salve
14. Shri N. K. Sanghi
15. Shri Beni Shanker Sharma
16. Shri Janardan Jagannath Shinkre
17. Shri N. K. Somani
18. Shri Tenneti Viswanatham
19. Shri Ram Sewak Yadav
20. Shri Prakashchand B. Sethi.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri V. Ramaswamy Iyer, *Deputy Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
3. Shri R. R. Khosla, *Deputy Secretary, Ministry of Finance Deptt. of Revenue and Insurance.*
4. Shri S. P. Chowdhury, *Under Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. The Kashmir Chamber of Commerce and Industry, Srinagar.

Spokesmen:

1. Shri R. K. Sawhney—*President.*
2. Shri P. N. Puri—*Senior Vice-President.*
3. Shri R. C. Gupta—*Member.*
4. Shri D. S. Oberoi—*Secretary-General.*
5. Shri K. K. Mehra—*Member.*

II Group of Small Income-tax Assesseees, Srinagar.

Spokesmen:

1. Shri D. N. Madan—*President, Traders' and Manufacturers' Federation, Srinagar.*
2. Shri N. K. Raina—*Vasant Art Press, Srinagar.*
3. Shri Mohd. Yusaf—*Lucky Boot House, Srinagar.*
4. Shri Niranjan Nath—*Messrs. Jagan Nath Madan Lal, Maharaj Ganj, Srinagar.*
5. Shri Sudarshan Lal Jain.

III. The Institute of Chartered Accountants of India.

Spokesman:

Shri H. B. Dhondy—*President.*

IV. Beopar Mandal Kashmir, Srinagar.

Spokesmen:

1. Shri H. Abdul Aziz—*President.*
2. Shri Noordin—*Vice-President.*
3. Shri O. P. Kapur—*Secretary-General.*
4. Shri Haji Kurshid Ahmed Martoo—*Member.*
5. Shri Lal Chand Mehra—*Member.*
6. Shri Mohd. Yasin—*Member.*
7. Shri Dharam Pal Mehta—*Member.*

1. The Kashmir Chamber of Commerce and Industry, Srinagar

(The Witnesses were called in and they took their seats)

Spokesmen:

1. Shri R. K. Sawhney—*President*
2. Shri P. N. Puri—*Senior Vice-President.*
3. Shri R. C. Gupta—*Member.*
4. Shri D. S. Oberio—*Secretary-General.*

MR. CHAIRMAN: We welcome you and your friends while participating this meeting. Before starting our business will you kindly introduce yourself as well as your friends to the Hon'ble members of this Committee.

SHRI SAHANI: Mr. Chairman. It is my pleasure to introduce you and the Hon'ble members of this Committee the names of the witnesses. Here is Mr. P. N. Puri, Senior Vice-President, Mr. R. C. Gupta, Member of the Chamber, Mr. K. K. Mehra, Member of the Chamber and Sardar Dharvir Singh, Secretary General.

MR. CHAIRMAN: Thank you Mr. Sahani. Before your evidence is taken place I must read the relevant section of the Rules of Procedure. So far as the evidences are concerned, it is very clear here. (reads)—

Note: The Hon. Chairman read out the concerned section of the Rules of Procedure in this connection.

It appears that you have received the memorandum late. Nevertheless any way you would lie to high light the memorandum to some extent.

SHRI SAHANI: With your permission Sir, I would like to read out concerned note in this connection. (reads). Here I would like to mention about the various clauses of the bill. And it is very clear here. (Reads)—

Sir, in this connection I beg to submit that in a small company the provision in the amendment bill is that the amortisation will be in ten years 1/10th.

SHRI SALVE: Mr. Sahani. You have made mention about the small scale industries in the note. We would lie to know whether these industries can be installed in the State of Jammu and Kashmir?

SHRI SAHANI: Sir, there are very few companies in this State. However, medium scale industries can be installed in the Jammu and Kashmir State, and S.A.Cs. will have the effect of about 95 per cent.

MR. SALVE: What about companies of other type.

SHRI SAHANI: Sir, that is the only Engineering Service. However, I would submit that in order to get optimum production and maximum benefit we must know the know-how....

MR. CHAIRMAN: You said that in the Jammu and Kashmir 90 per cent are small scale industries, and due to technical know how the industries in the Jammu and Kashmir suffer. All facilities which are required to the small scale industries are not provided here?

SHRI SAHANI: Definitely the technical know how in the Jammu and Kashmir is below expectation. We should stand on sound footing.

MR. CHAIRMAN: The growth of the industrial product is also less in the Jammu and Kashmir State.

SHRI SAHANI: Climatically we assemble that most of the products are being manufactured in foreign countries.

MR. CHAIRMAN: You would also be feeling difficulty in operating a watch factory here.

SHRI SAHANI: Yes Sir, for a watch factory we should have equipment for heating up of rooms etc.

SHRI SOMANI: In Jammu and Kashmir there is no capital provided which has got expensive capital structure.

SHRI SAHANI: Sir, we can provide you that data.

MR. CHAIRMAN: What is number of Company which you have as Members in the Chamber?

SHRI SAHANI: Sir, we have got 250 members with hardly one or two companies.

SHRI DAMANI: Now there are two items which you have one to fix percentage, no percentage should be fixed. How much capital expenditure it will involve.

SHRI SAHANI: In case capital expenditure is allowed it could be justified.

SHRI S. R. DAMANI: Mr. Gupta, can you give any instances in regard to certain items of expenditure which should be disallowed?

SHRI GUPTA: We can't categorically say which items should be disallowed. However, I would suggest that the expenditure incurred on the projects during the construction period should be disallowed. In the preliminary stage of the project, expenditure incurred cannot be categorized as capital expenditure or even revenue expenditure.

SHRI N. K. P. SALVE: Can you illustrate such sort of expenditure?

SHRI GUPTA: We provided this thing in our original memorandum. Similarly the loan cannot be categorized as capital expenditure. In our State there is a Financial Corporation. This Corporation gives loans for establishment of industries. My point is that such like amount should not be considered as capital expenditure.

SHRI S. R. DAMANI: Have you included this point in the memorandum?

SHRI GUPTA: No, please.

MR. CHAIRMAN: The Committee has taken note of the point about the State Financial Corporation.

SHRI N. K. P. SALVE: Mr. Gupta, can you give any specific instances items of expenditure which do not come under capital expenditure in Kashmir

SHRI GUPTA: In Kashmir there is a coal mine at Kalakote. Similarly there are other projects. As long as the machinery is not installed in these projects, expenditure incurred during construction period on such like projects cannot be categorized as capital expenditure.

SHRI N. K. P. SALVE: Are these experimental projects?

SHRI GUPTA: They are experimental projects.

SHRI N. K. P. SALVE: Now I want to know if after construction of building and commission of the plant do you still incur the expenditure on.

SHRI GUPTA: We do.

SHRI N. K. P. SALVE: I want to know if the Bill affects the Hindu Law. My point is that if the Bill conflicts with the basic concepts of the Hindu Law.

SHRI SONI: Whereas certain clauses in the Bill do seek to provide for allowance of certain expenditure hitherto ignored as also for exemption of certain receipt/income for purpose of determining the taxable income, in our view the following clauses would hit the assessee and need to be deleted or suitably amended:

1. Amortisation of certain preliminary expenses provided in proposed section 35D (*vide* clause 8) should be admissible to assesseees other than companies, with suitable modifications.
2. Clause No. 14 seeks to enhance the scope of section 64 of the Act with a view to treat the undernoted income accrued in relation to any personal property transferred by an individual to the H.U.F., where is as a member:
 - (i) His own interest in the income.
 - (ii) Income accrued to the spouse and minor sons of the individual.

Formerly these were treated as income of HUF and not of the individual. Moreover the income is sought to be dealt with as such in respect of property passed on after 31st March,

1965. Similarly omission of relief U/S 80 (B)(5) is sought to be made w.e.f. 1st April, 1968.

In our opinion the clause needs to be deleted altogether, as it seeks to assess the income in the hands of one who is not the owner thereof. A transfer as envisaged in the Bill being otherwise lawful should not be sought to be nullified. In any case if the clause is not deleted it should be made applicable to such assets/properties as are transferred after coming into force of the Amendment Bill and not to those effected earlier so also the omission of relief U/s 90B(5) *vide* clause 20 of the Bill should not have retrospective effect.

My point is that this should be deleted as this likely to create complications after the property has been assessed.

SHRI N. K. P. SALVE: Do you think that the right of Hindu to acquire the property and then enter into a joint venture does conflict with the passage of this bill.

SHRI SONI: It does. H.U.F. is a separately entity.

SHRI N. K. P. SALVE: Do you think that the Bill is going to have.....

SHRI SONI: It will be deterrent.

SHRI SALVE: Do you think that the Hindu law is violated.

SHRI SONI: Certainly, Sir.

SHRI GUPTA: We do not say that this clause effects Hindu law.

SHRI N. K. P. SALVE: That is the end of the matter.

SHRI GUPTA: There are two points involved in this. First is that if the property is transferred then the income-tax is being paid under the Property Transfer Act—and

secondly when the property is gifted then in that case also the gift rules apply.

SHRI S. R. DAMANI: Mr. Gupta, do you know why the Government is bringing forward this legislation. That many of the families have turned their property into the trust and thereby there has been fall in the revenue. May I know if there is any objection if passed retrospectively.

SHRI GUPTA: My point is that this clause should not be enforced and is should not be retrospectively at all.

SHRI S. R. DAMANI: Why should not it be enforced retrospectively?

SHRI GUPTA: If the legislation is passed retrospectively say from 64 then it becomes a fiction because the property has already been assessed and it will not be possible to re-assess the same creating lot of prolems. Also there is a basic difference between the H.U.F. and a spouse.

SHRI S. R. DAMANI: What will otherwise happen if this difference is not there.

SHRI GUPTA: We are discussing this section as it is.

SHRI K. L. GUPTA: Ours is a secular country. This piece of legislation is applicable to Hindus as well as other castes. Why do you suggest that this should not be made applicable to the Hindus.

SHRI GUPTA: This is our personal law....

MR. CHAIRMAN: We should discuss this question between ourselves.

SHRI V. VISHWANATHAM: I want to know if you can interrupt the Hindu law. If so, can you let me know how it will be possible for the Income-Tax Department to assess between the nature of property when it is transferred to a joint family.

SHRI GUPTA: My point is....

SHRI V. VISHWANATHAM: My point is in a limited capacity.

SHRI B. S. SHARMA: Mr. Chairman, I am afraid Mr. K. L. Gupta's question rather vague and misleading. What the witness means to suggest is that there should be no interference with the personal laws of the Hindus by the State, more so, through an enactment like the present Bill, as the State does not interfere with the personal laws of Muslims in matters relating to marriage etc.

SHRI P. N. PURI: Sir, not being a lawyer, I cannot go into a detailed explanation about the concept of the Hindu Laws. So far as taxation laws are concerned, it is very clear here that there is some difference between....

SHRI N. K. P. SALVE: Sir, so far as this point is concerned, I would submit that we had also sought clarification from the Finance Ministry. And we had requested them to make a survey about it. In Bombay a detailed survey was made and came to the conclusion....

MR. CHAIRMAN: You mean about general position.

SHRI N. K. P. SALVE: Yes Sir.

MR. CHAIRMAN: So it has been clarified. We will proceed further. We will take up clause 31.

SHRI SAHANI: Sir, *vide* clause 31 payment U/s 140A (self assessment) is made applicable to all those assesses who are liable to pay balance tax at the time of filling the return exceeding Rs. 100 instead of Rs. 500 as at present. In our view the present limit of Rs. 500/- is reasonable and should continue.

Clause 34 seeks to amend section 143 of the Act. Proposed Sub-Sections (2) and (3) seek to give to the

I.T.O. a right to revise his own assessment made U/S 143 (1) which is unjust. The I.T.O. can revise (rectify) the mistakes crept in the assessment order U/s 154 and he can bring into account other incomes U/s 147. It is not, however, fair to empower the I.T.O. to revise his own order. Assessments U/s. 143(1) would not thus have the impact of finality and as such the very purpose of the sub-section would be defrauded. Sub-Sections (2) and (3) should therefore, be suitably amended to delete the words importing re-assessment or cases finalised under sub-section (1).

Sir, so far as clauses 42 and 43 are concerned.

MR. CHAIRMAN: As per the previous clauses, we have taken note of it. We have taken them into account and it will be clarified.

SHRI SAHANI: Sir, Clauses 42 and 43 seek to substitute the existing section 184.

MR. CHAIRMAN: That we have also done.

SHRI SAHANI: Clauses 55 and 56 of the Amended Bill seek to provide:

(i) To restrict the period within which the A.A.C. can admit appeals to 30 days beyond the stipulated period of 30 days. At present there is no such limit.

SHRI N. K. P. SALVE: Mr. Chairman, I would like to put an important question in this connection. So far as this clause is concerned, I would like to know whether any complaint has been made by the concerned Association in respect of the assessments? In other words, in order to reduce the litigations what steps have been taken by the concerned authorities to redress the grievances of the Association?

SHRI P. N. PURI: Sir, so far as we are concerned, I would submit that

we are not shirking the responsibilities to this effect.

MR. CHAIRMAN: What is the general impression?

SHRI P. N. PURI: Sir, as we have already submitted in the Memorandum.....

SHRI N. K. P. SALVE: We have not seen the cases where the assessments made by the I.T.O. have been reversed in favour of the assesseees?

SHRI BENI SHANKAR SHARMA: The complaint made by the J & K assesseees is generally the grievance of assesseees throughout India.

SHRI SAWHNEY: Clause 63 seeks to add sec. 276 C to the Act which provides for rigorous imprisonment extending upto six months for even late filing of Returns and other information/documents required by the I.T.O.

This is in addition to fine of Rs. 10 per day during the period the default continues and interest @ 9 per cent for the period of default.

The proposed provision is basically unjust and uncalled for. It is bound to cease harassment primarily to small and 'not too well to do' assesseees who cannot afford legal advice at every stage.

It is emphatically suggested that the proposed amendment be totally deleted. There are so many provisions for imposing of penalties, levy of interest provisions for imposing of penalties, levy of interest etc., for censure and impounding of records as also for recovery of the taxes determined by the Income Tax Authorities, that there is no need to have recourse to this provision.

To empower the tax authorities to impose imprisonment of the assessee and that too in the circumstances enumerated in the proposed section would be extremely harsh.

SHRI N. K. P. SALVE: Assuming that all that is implied is proved to be a fraud even then do you insist that the criminal should be punished?

SHRI SAWHNEY: In my opening remarks I have made it clear that punishment of six months rigorous imprisonment is very hard.

MR. CHAIRMAN: Please give examples where and when the filing of late income-tax returns have been impounded and filed in.

SHRI KANWAR LAL GUPTA: I would say that a particular tax act should be made in favour of those assesseees and other assesseees, who file their returns rather late, should be granted amnesty.

SHRI S. R. DAMANI: If this permission is granted to C.I.T. then the assesseees would be protected.

SHRI SAWHNEY: You please go ahead with your reply.

SHRI SAWHNEY: (Reads remarks from the file). The memorandum we have presented to you, we thank you for the opportunity provided to us to hear our comments on the proposed amendment. Thank you, Sir.

MR. CHAIRMAN: We also thank you and your colleagues as well.

The witnesses then withdrew.

(10.15 to 11.45 hours)

II. Group of small Income-tax Assesseees, Srinagar.

Spokesmen:

1. Shri D. N. Madan—President, Traders' and Manufacturers' Federation, Srinagar.

2. Shri N. K. Raina—Vasant Art press, Srinagar.

3. Shri Mohd. Yusaf—Lucky Boot House, Srinagar.

4. Shri Niranjan Nath—*M/s. Jagan Nath Madan Lal, Maharaj Ganj, Srinagar.*

5. Shri Sudarshan Lal Jain.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Let us now take the evidence of the other group of small assesseees.

Mr Madan, we most welcome you here. Would you please get us introduced to your colleagues?

SHRI MADAN: Sir, we are extremely thankful to you for having invited us to appear before you. I will, first of all, apprise you about those difficulties which are being faced by the small assesseees dealing in many trades in the Valley....

MR. CHAIRMAN: You please introduce your colleagues to us!

SHRI MADAN: Sir, I, on behalf of the Traders Federation of Kashmir, do introduce my colleagues who are present before you. These are: Shri Neel Kanth Raina, Vasant Art Press, Srinagar, Shri Mohd. Yusaf, Lucky Boot House, Shri Niranjan Nath, Jagan Nath & Bros. and Shri Sudarshan Lal Jain.

MR. CHAIRMAN: Mr. Madan, the evidence, which you are supposed to give before the Committee regarding the relevant portions of the Bill, will be treated as confidential but at the same time it will be made available to the Members of Parliament. So please tell us, what you want to say.

SHRI MADAN: Sir, we have to inform you that we were informed only two days earlier about our coming before the Committee. And it was only yesterday, that copies of the Bill were made available to us. So we did not find any time to study it. Therefore, I will appeal that, if it is possible, some more time may be granted to us so that we will be able to study it thoroughly in a better way. At the moment we have not gone

through the Bill. Therefore, we have got only a scattered information.

MR. CHAIRMAN: When you will be able to appear again before us?

SHRI MADAN: Sir, in a couple of days.

MR. CHAIRMAN: Say, in about two days.

SHRI MADAN: Yes, Sir, within two-three days, as you like.

MR. CHAIRMAN: Mr. Madan, if you want to give some suggestions, you can give in writing and we will consider them at Delhi.

SHRI MADAN: Sir, we will give our written suggestions within a couple of days, regarding the small income scheme. When no binding is put, yet the penalties are heavy. In some cases it is 100 per cent (minimum) and 200 per cent (maximum) but there are no conveniences provided to the small assesseees whereas the penalties are too heavy. We will, therefore, request that the penalties should be only nominal and not at the rate of 100 per cent or 200 per cent.

श्री कंवर लाल गुप्ता : इस बिल में जो बातें कही गई हैं, उन के बारे में मैं कुछ पूछना चाहता हूँ।

श्री मदन : जब तक मैं बिल देखूंगा नहीं, तब तक क्या कह सकता हूँ।

श्री साल्वे : जो तरमीम आपने सुझाई है, वह ठीक हो सकती है। लेकिन वह हम लोगों की स्कोप के बाहर है। हमारा स्कोप इतना ही है जितना इस बिल में दिया हुआ है। इस में जो प्रावधान है उन से स्माल एसेसीज का इन्टरेस्ट कैसे इफेक्ट होता है, उस पर आप गौर करें और हम को उस के बारे में लिख कर दे दें।

श्री कंवर लाल गुप्ता : इस बिल में एक प्रावधान है जिस के अनुसार अगर आप इन्कम टैक्स का नक्शा देर में दाखिल करेंगे

तो आप को 7 महीने तक की सख्त सजा लाज्मी है । पहले कोई ऐसा प्रोवीजन नहीं था । पहले अगर नक्शा दाखिल करने में देर होती थी तो जुर्माना होता था । जैसा आप कहते हैं—कभी 100 परसेन्ट, कभी 50 परसेन्ट, कभी 60 परसेन्ट । लेकिन अब अगर कोई आदमी जिस की आमदनी पांच-छः या सात हजार की भी है, नक्शा देर में दाखिल करेगा तो उस के लिये 6 महीने की सख्त सजा लाज्मी होगी । अगर हम इस को पास कर दें तो इस के बारे में आप को क्या कहना है ?

SHRI MADAN Sir, I will submit that just for a delay in filing the returns in time, if they are imposed rigorous imprisonment, then it will be a very very hard punishment.

श्री साल्वे : जो सवाल माननीय सदस्य श्री गुप्ता ने किया है उस का बड़ा निकट का सम्बन्ध है, छोटे असेसीज के साथ में । हम को हर जगह यह बताया गया कि जिस तरह का प्रावधान इस विधेयक में रखा गया है अगर वह कानून बन गया तो जो छोटे असेसीज हैं, जो वकीलों के पास नहीं जा सकते और खुद अपना रिटर्न भरते हैं, तो उन को दिक्कत होगी । जिनकी आमदनी पांच हजार से ज्यादा है, नोटिस आये या न आये, अगर रिटर्न भरने में देर होगी तो उनको सजा हो सकती है । मैं यहां पर हार्श एण्ड माइल्ड सजा का सवाल नहीं है, जो कानून के तहत नहीं चलेगा उस को सजा भुगतनी पड़ेगी टैक्स की चोरी करने के लिये और टैक्स रिटर्न में देरी करने के लिये । मैं जानना चाहता हूं कि जो छोटे असेसीज हैं, जो कानून नहीं जानते हैं, जो वकीलों के पास नहीं जा सकते हैं, उन पर इस प्रावधान का क्या असर पड़ेगा ।

श्री मदन : जहां तक प्रावीजन का सवाल है मेरा ख्याल है जो छोटे असेसीज हैं, उन पर और सारी इकानमी पर इस का बड़ा एडवर्स इफेक्ट होगा । असेसीज का

जो लार्ज नम्बर है, वह छोटे-छोटे आदमियों का, छोटे-छोटे दुकानदारों का और कारो-वारी आदमियों का है, जो इलिट्रेट हैं और टैक्स ला को अच्छी तरह समझते भी नहीं हैं, उन के लिये यह डिजायरेबिल नहीं होगा ।

श्री साल्वे : यह डिजायरेबिल या अन-डिजायरेबिल का सवाल नहीं है । अगर दिशापन निकाल कर या दूसरे माध्यम से यह बात दिया जाय कि जिस की आमदनी पांच हजार रुपये य' उस से ऊपर है उसको नक्शा भरना है तो ईमानदार आदमी नक्शा भरना जरूर चाहेगा । मैं जानना चाहता हूं कि उस को इस प्रावीजन से क्या दिक्कत होगी, क्योंकि छोटे असेसीज के लिये जरूरी नहीं है कि वह सारा इन्कम टैक्स-ला जानते हों या सारे प्रावधान को जान लें, इतना सख्त यह इन्कम टैक्स एक्ट है । लेकिन अगर मालूम हो जाय कि उस को नक्शा भरना है—तीन या छः महीने के अन्दर तो उस को क्या दिक्कत होगी ?

श्री मदन : अगर सब को मालूम हो जाय, तो यह बहुत अच्छी बात है और यह प्राबलम की एक करेक्ट एप्रोच है । लेकिन आजकल जो हालत है उस को देखते हुए यह कहना कि सब को मालूम हो जायगा, मुझे इस में शक है । आप रूल एरियाज को ले लीजिये । अगर आप वहां पर बड़े-बड़े पोस्टर्ज भी लगायें, तो भी लोगों को मालूम नहीं हो पाता , क्योंकि वहां पर पढ़ने वाला कोई नहीं है, वहां पर लोग इलिट्रेट होते हैं ।

MR. VISHWANATHAM: Are you against the penalty clause of the Bill?

SHRI MADAN: Unless it is very hard, we are not against the punishment.

SHRI V. KRISHNAMOORTHY: Are you not satisfied with the provisions in the Bill in regard to avoidance of filing income-tax returns?

SHRI MADAN: We will submit about it in writing.

SHRI N. K. P. SALVE: There is a provision of Rs. 7,500/- in the Bill. Are you satisfied with it?

SHRI MADAN: I think it should be enhanced?

SHRI N. K. P. SALVE: How much?

SHRI MADAN: It should be raised to Rs. 20 thousand.

MR. CHAIRMAN: Have you any thing more to say?

SHRI MADAN: We will send all in writing.

SHRI VISHWANATHAM: Are you satisfied with the working of the Department?

SHRI MADAN: Yes, please.

SHRI N. K. P. SALVE: This is exceptional.

MR. CHAIRMAN: Thank you, very much.

There is a change in our programme. We will be leaving for Delhi on 26th morning. We will leave for Gulmarg on 25th instant.

SHRI N. K. SANGHI: I will be leaving on 23rd and I would suggest that we should go to Gulmarg earlier than 25th.

SHRI K. L. GUPTA: At the start of the meeting, Mr. Somani, Mr. Salve and Mr. Beni Shanker Sharma had suggested that final discussion on the Bill would be taken up in Delhi. Here we would have general discussion on the Bill. It was agreed by the Chairman also.

MR. CHAIRMAN: Some of the clauses of the Bill are to be discussed here. But final decision about the Bill would be taken in Delhi and we will take up these clause by clause.

SHRI SETHI: Sir, we shall finalize these clauses one by one. It is clear here that some of the clauses which are controversial will remain undecided and we will take up these clauses afterwards.

MR. CHAIRMAN: So we are here in Kashmir upto 25th of June, 1970. The Hon'ble members feel that we shall proceed to Gulmarg on 22nd of June, 1970. For the rest of clauses which are to be finalised, we will meet at Delhi on 21st and 22nd of July, 1970.

Now the business is over at the moment and we will meet here again at 3 P.M. today.

NOTE: The Committee then adjourned for lunch.

III. The Institute of Chartered Accountants of India

Spokesmen:

Shri H. B. Dhondy—President.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Mr. H. B. Dhondy. We welcome you to this Committee. I will read out the relevant portion of Section 58. If you want again to highlight anything on this you may explain the points.

SHRI H. B. DHONDY: Let me begin by thanking the Committee for the courtesy they have shown to me and also thank you once again on behalf of the institution for inviting me again.

We were asked to highlight whatever points we had in support of the two matters—one relating to clauses 42 and 43 and the other relating to clause 8—the proposed new sections 186A and 186B containing the proposed changes in requirements for registration/recognition of firms and the other matter arising from proposed new Section 35D.

In regard to the first matter, we would like to make it clear that the changes that are sought to be made for the objective of simplification, as expressed in the statement of objects and reasons, will in fact cause many hardships. I would like to mention here that the present provisions have a long judicial history behind them, and that they are now settled matters.

There does not seem any need for bringing such basis changes in the present provisions regarding registration of firms.

Our suggestion is that the requirement of filing every year a separate declaration in the prescribed form for continuation of registration of a firm which has already been granted registration for an earlier year, where there has been no change in the constitution of the firm or the shares of partners, should be substituted by a requirement for the firm to furnish (and not along with) its return of income for the assessment year concerned a simple declaration to that effect. This can be achieved very simply, by substituting the word "in" for the words "along with" in clause (ii) of the proviso to sub-section (7) of section 184.

In section 184(7) the language used is such that it is full of "ifs". The point here is that the assessee has submitted his declaration and other forms, but the I.T.O. does not attend to this particular case by the return for the next year is due, and thus the interests of the assessee are likely to suffer. That is why we have suggested the change. Even if the partnership breaks up, the record of the firm is before the department they can make out the assessment from the record. There was discussion on the hardship caused under the present provisions regarding registration of firms, in cases where the assessment for the first year after a change in the constitution of the firm has not been completed by the time the return for the second year is required to be filed, and there has been no change in the interregum in the constitution of the firm or the shares of the partners. In such a case, the law is not quite clear as to whether what is required in the second year is merely a declaration in form No. 12 for continuation of registration of the firm, to be furnished along with the return of income, under the provisions of Section 184(7) proviso (ii), or

a further application for registration has to be again submitted in form No. 11 in respect of the second year. The difficulty is occasioned by the use of the words "where registration is granted to" in section 184(7). To get over this practical difficulty, we suggest the insertion of a new sub-section (9) in Section 184 to cover such cases. This new section 184(9) should provide that where no order has been passed on the application for registration of a firm before the date by which it is required to submit its return of income for a year succeeding the year for which the application was filed, and there has been no change in the constitution of the firm or the shares of the partners since the date of the first application for registration, the firm would not be required to submit further applications for registration for the second and succeeding years, but it could suffice if, instead, the firm furnished in its return of income for each of the second and succeeding years concerned, a declaration to the effect that there has been no change in the constitution of the firm or the shares of the partners from the position as stated in its application for registration.

MR. CHAIRMAN: We have heard witnesses from different parts of country and have also heard you about this. We have also given thought to this. All are agreed that the existing law is suitable with a little modification which I shall read out (reads). What is your opinion about this?

SHRI DHONDY: With respect Sir, it is not enough due to a very simple reason. The reason is the language of sub-section (7) of Section 184. According to this sub-section, the requirement is that registration "is granted" to a firm for an assessment year. Now the legal interpretation is that before this sub-section applies to a firm, it must already be registered. So far as the case under discussion is concerned, the assessment order for the said year has not been

issued as yet, by the time the application for the next year has to be made.

SHRI N. K. P. SALVE: So far as the registration grant is concerned, it shall have made a mention of certain difficulties being faced by you. I do appreciate these difficulties.

MR. CHAIRMAN: Mr. Dhondy, So far as these difficulties are concerned, these are being taken into account by the Government. I will read out the said section again for further clarification. (reads).

SHRI DHONDY: Sir, this section will be little effective in many instances. The amendment we have proposed is concerned with only a small number of cases, where there are certain difficulties, which have been submitted by me a little while ago.

SHRI N. K. P. SALVE: So far as the first registration application is concerned, there is no problem behind or before it. The question is of a subsequent year where a registration order had to be issued and it is still pending. I think that in such cases the orders made on the original application should be followed. If there is a change in the Constitution, but the firm remains as it is, there is no change to the firm. Do you think that there will be any change in the firm?

SHRI DHONDY: With respect, Sir, the existing requirements will continue. And these requirements will depend upon the facts, but the procedure will remain untouched. These pending applications can only be renewed.

SHRI B. S. SHARMA: Please let me know whether the renewal declarations are to be signed by all the former partners of business or not.

SHRI DHONDY: Yes Sir, the renewal declaration is to be signed by all the partners. We are aware of the difficulty as to how far the former partners of the business will cooperate with the continuing partners in the timely submission of the renewal declarations. Sometimes it also happens that some of the partners may be out of station and thus a difficulty arises for the firm. For instance, A, B, C and D start a business with a certain capital. These partners would be required to submit further applications for registration for the second and succeeding years, we suggest but it should suffice if, instead, the firm furnished the declaration in its return of income for each of second and succeeding years concerned. This is in order to enable the I.T.O. to know the share of each partner, for fixing the tax on each of the partners and thus to avoid any undue avoidance of tax. In this way no difficulty arises for the Department in locating the actual amount of tax to be imposed on such and such partners of the business. - In order to further elucidate this I will invite reference to para I(2) of our Second Memorandum which is self-explanatory. (Reads)

SHRI N. K. P. SALVE: It happens sometimes that this practice is put to abuse. If the Department does not detect it, then it would be the responsibility of the Department to find some solution of the problem. If there are four partners in a firm, e.g. A, B, C and D, then A is the partner of B, and likewise C is the partner of D. If partner A is guilty of fraud, how can you say that other partners are also guilty of fraud?

MR. DHONDY: The suggestion of Shri Salve does not look proper. If the Department does not detect the fraudulent partner, the provision could not be applied. If the benami-dari relationship is detected, that

person that is going to be assessed should properly be charged at a penal rate, rather than that the firm and the innocent partners should be made to suffer. Now if that is the intention, under the proposed clause all the partners would be penalised. The partners in know of the Benamidari as well as the other innocent partners, all would be penalised equally under these suggestions.

SHRI SHARMA: This has rightly been pointed out by Sharma Ji that the declaration is to be signed by the partner, and then why should there be some fraud as pointed out above, or signing the declaration on behalf of the other if the firm, consisting of a number of partners. In pursuance of 1939 Act, the renewal declaration is required to be signed by all the partners of the firm. Therefore there should not be any difficulty in this respect.

SHRI SALVE: The declaration cannot be forwarded in time before the assessment.

SHRI K. L. GUPTA: If one of the partners of the firm, for example, signs the declaration, in a fraudulent way, how would you remove it?

SHRI SALVE: The declaration is required to be filed upto September, 1970. There are four partners in a firm, suppose, upto December, 1970 one partner is not willing to sign the declaration. Can he be penalised under the procedural rules?

SHRI DHONDY: There are two suggestions. But suppose one partner is minor and he signs, what would be the consequences? If a partner, competent to sign, signs the declaration, it would be apparent and clear that the other partners not signing the declaration would hardly plead that the firm has not applied for the registration. This becomes all the more justification for allowing the declaration in the return to be signed by any partner competent to sign for the firm.

SHRI DHONDY: Rule 24 relates to the declaration for continuation of the registration.. (read the said rule). When you come to rule 22, you will find that the application should be signed by all the partners. (reads rule 22). My difficulty is a simple one. The man is not absent from India. He can be anywhere in India and he can file his declaration from there. Your answer is that in this particular case the man can say that he did not sign the document. On the contrary there is a case for examination whether the return itself should be signed by one partner or all. You want to penalise all the partners and impose much penalty whereas a penalty should be imposed only on the guilty partner.

SHRI SALVE: In dealing with these matters we have, first of all, to see to the interest of the majority of the people. We do not want to jeopardise 99 per cent of the people. In this case two aspects are needed to be taken into consideration. One, if a partner signs, and the others do not object, then it should be deemed to have been signed by all. Second, if one partner signs and sends the firm's return and on an enquiry it is found that he has nothing to do with this....

SHRI S. R. DAMANI: In the practical way, when the signature of a partner is there, how can anybody say that he is not a partner? It is a practical business. How anybody can deny it.

SHRI BENI SHANKER SHARMA: It can be one case in one thousand cases. I have got three such cases in Calcutta. When a partner signs and the other does not, then this is another kind of a blackmail.

SHRI N. K. SANGHI: Mr. Dhondy's point is that if an assessment has not taken place, the party can file the same in the next year. The position is not clear.

SHRI SHAH: I do not think there would be so much inconvenience. The broad facts of this case are that if a man signs a declaration on behalf of all the partners, there is every apprehension that the man will retire early. Maybe, the fact may not come into the knowledge of the Department.

SHRI SALVE: If any partner discontinues his partnership from any firm, has he to inform the Department?

SHRI SHAH: If anybody discontinues the business or any firm becomes insolvent, they have to intimate the Department about it. If they don't intimate the Department, they are liable to penalty. But a large number of people do not intimate to the Department. Frankly speaking, we have not misused this penalty provision.

SHRI K. L. GUPTA: If the firm is registered one, how the assessment is to be made?

SHRI SHAH: If the firm is treated as registered, the Income-tax Department will assess its income. They have every right to go against the assessment and file an appeal against it.

SHRI BENI SHANKER SHARMA: Mr. Shah you have said just now if any firm does not intimate the Department, about the closing of their business, they are penalized. Is there any penalty for forgetfulness? If a man forgets about his retirement and does not intimate the Department, he should not be penalized. There are about 95,000 such cases.

MR. CHAIRMAN: Mr. Dhondy, you have suggested in your memorandum that under the provisions of Section 184(7), proviso (ii); a further application for registration has to be again submitted in form No. 11 in

respect of the second year. Are you not satisfied with the amendment proposed in the Bill?

SHRI DHONDY: The difficulty is occasioned by the use of the words "where registration is grant to" in section 184(7). To get over this practical difficulty, we suggest the insertion of a new sub-section(9) in section 184 to cover such cases. This new section 184(9) should provide that reading from Second Memorandum "where no order has been passed on the application for registration of a firm before the date by which it is required to submit its return of income for a year succeeding the year for which the application was filed....."

MR. CHAIRMAN: You have read from your amendment to section 184, sub-section 7.

SHRI DHONDY: This covers the normal cases where the registration has been granted and there is no change in the constitution of the firm or the shares of the partners. We have also suggested change of the words "along with" to 'in'.

MR. CHAIRMAN: If we put word 'in' in the amendment, we will be justified?

SHRI DHONDY: That meets one point.

MR. CHAIRMAN: Your second point is about sub-section 184(7), proviso (ii).

SHRI DHONDY: We have made two points, which you have discussed today and indicated the required changes.

SHRI K. L. GUPTA: Why not we now take up this "benami" question?

SHRI N. K. SANGHI: I have never understood what this "Benami" means.

What are its legal implication and all that I do not know.

SHRI DHONDY: One simple suggestion is that income-tax should be levied at higher rates on the beneficial owner of a partner's shares, because, in addition to the punishment provided under the rules for evasion, the higher rate of tax will be a deterrent to concealment. That is why I suggested that by substituting the word "in" for the words "along with" in clause (ii) of the proviso to sub-section (7) of section 184, this will also check the leakage. I do not think anybody is going to conceal his income when he will not be sure of the returns from such concealment. There is no purpose in amending this clause (8) for by amending this clause the very purpose is defeated and we would be inviting a lot of criticism.

Like-wise the proposed new Clause 35D is full of "ifs" and "buts" and it is not possible to list exhaustively all the expenditure items. In this connection I would like you to go through the latest issue of Company News and Notes. At page 19, there is enough to suggest that what the committee wants to achieve cannot be achieved. The statistics given are quite clear.

SHRI N. K. SANGHI: We want to know whether you want to widen the definition of limit in the list.

SHRI DHONDY: I do not want to bring any change in the present clause because nobody is going to involve himself for nothing when there are enough provisions to check him. He would not like to rise spending one rupee for a doubtful saving of $\frac{1}{2}$ a rupee. With respect, Sir, there should not be a limit, because as principle nobody goes out of the way to incur avoidable expenditure to get a doubtful benefit and of a very little amount too. Hence I would most humbly submit that there

should not be any limit, which is quite reasonable.

SHRI TENNETI VISHWANATHAM: Suppose the Committee wants to put some limit. Then what would be the percentage?

SHRI DHONDY: Sir, with respect, as I have already submitted, there should not be any limit to this effect, as there are so many difficulties being faced by the people concerned.

SHRI DAMANI: We appreciate the difficulties being faced by you. However, the Committee feels that there should be some percentage of this limitation. Because some expenditure involves in it.

SHRI SALVE: Turning to page 9 of the Bill under Section 35-D, I will read out the concerned clause of the Bill for further elucidation:

(i) in a case referred to in clause (i) of sub-section (1), an amount calculated at two and one half per cent of the aggregate of the issued share capital, debentures and long-term borrowings of the company as on the last day of the previous year in which the business of the company commences;

(ii) in a case referred to in clause (ii) of sub-section (1) an amount calculated at two and one half per cent of the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the extension of the industrial undertaking is completed or, as the case may be, the new industrial unit commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the industrial undertaking or the setting up of the new industrial unit of the company.

Here I will quote the 'Explanation' for further clarification. It reads:— In this sub-section "long-term borrowings" means any moneys borrowed by the company from Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution which the Central Government may notify in this behalf in the Official Gazette or any banking institution (not being a financial institution notified as aforesaid) or any person in a country outside India, where the terms under which such moneys are borrowed provide for the repayment thereof during a period of not less than seven years.

SHRI DHONDY: Mr. Salve! Let us examine it step by step. I would like to quote an instance to this effect which will perhaps make our point clear.

SHRI KANWAR LAL GUPTA: I would like to know the procedure in regard to expenditure incurred by a businessman for purposes of promoting his business. The ration and quantum of profit earned by them during the course of business on the working capital. I would like to know how the Department determine the amount which should be amortized.

SHRI DHONDY: The Department in effect otherwise attempt to overlook the items.

SHRI SOMANI: Suppose the partners of a business start business with a certain amount of capital, and after a lapse of two or three years certain amount of profit is gained, but the partners who conceal the actual amount of tax should no doubt be penalised in due course of time.

SHRI DHONDY: Assume that in the course of business it happens that the partners conceal their actual income and expenditure, and their profit also, which causes difficulty to the Department in locating the tax to

be levied on them. But on detection the maximum penalty may be levied.

SHRI DHONDY: The level of evasion may depend on the persons concerned and the income involved. With all respect, all tax-payers are not equally honest. This is the position all the world over and among all nationalities. Now the question is whether now, instead of something due not being allowed to them, something can be allowed to fill the void. The Department want to win the confidence of the public as well. This helps as well sometimes. The assessee would definitely think that, if he is honest, he should be given some relief he is entitled to and if he is dishonest, he will find ways to circumvent the law.

SHRI SOMANI: Playing with this limit of 2½ per cent, how is this expected to be determined? Could you not recommend certain slabs?

SHRI DHONDY: As regards the endless introduction of slabs and limits you will find that it is gradually leading to more complications instead of simplification. Although expenses which nonetheless Government intend not to allow, may be excluded. This is a question of Government policy and I can only suggest that all this may be based on the recommendations made by our Institute, looking to correct accounting principles. Moreover, from a correct view point, in setting the limits, there are other categories too, which could be allowed to be amortised.

MR. CHAIRMAN: Now you have heard the sweet voice of Shri Somani for some time and now this will do. Shri Salve will give some views in this connection.

SHRI DHONDY: It is a question of drafting. If the limit is to be increased from year to year, the difficulty arises of equating the time determined ceilings with the disbursement of expenditure.

SHRI SALVE : How much time is to be allowed for utilization if a Company spends on these items which will involve more expenditure on third year than the second year and first year. What is the aggregate that you would allow?

SHRI DHONDY : If you fix a ceiling per annum that may be exceeded in one or the other year....

SHRI SALVE : My point is suppose, for the first year we spend 10 lakhs and for the second year we spend 20 lakhs, and for the third year we spend 30 lakhs.....

MR. CHAIRMAN : We have discussed this point at some other stage and we hope to consider it again later on. All right, Shri Dhondy, you can now go.

(The witness then withdrew)

IV. Beopar Mandal Kashmir, Srinagar

Spokesmen :

1. Shri Abdul Aziz—President.
2. Shri Noorudin—Vice President.
3. Shri O. P. Kapoor—Secretary-General
4. Shri Haji Kurshid Ahmed Martoo—Member
5. Shri Lal Chand Mehra—Member.
6. Shri Mohd. Yasin—Member.
7. Shri Dharam Pal Mehta—Member.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN : Now let us take the evidence of the representatives of the Beopar Mandal. First of all I would like to have the introduction of the representatives.

NOTE:—The representatives of the Mandal were introduced by Mr. O. P. Kapoor.

MR. CHAIRMAN : Mr. Kapoor, before we take your evidence, I will say that whatever evidence you give, it

will be treated as confidential but it will be made available to the Members of Parliament. Now tell us, what you want to say about the taxation proposals.

SHRI O. P. KAPOOR : Sir, we have discussed the proposals clause by clause and have given our views in our memorandum. If you want that we should narrate what we have already discussed, then I may kindly be allowed to read it.

VOICES : Is there anything new which you want to tell us apart from the memorandum which you have submitted to the Committee?

SHRI O. P. KAPOOR : No, Sir, there is nothing new which we have to add to it.

SHRI BENI SHANKER SHARMA : Mr. Kapoor, in your opening paragraph, page 1, you have stated that the attempt made has not been exactly successful in the above mentioned spheres. For instance, nothing has been done to avoid unintended hardship to the Tax Payer because of the high pitched assessment made by the Income-tax Officer. In such cases infructuous demand is created against the assessee which he is pressed hard to pay even though he is unable to do so. For such non-payment penalties are imposed regularly till such time that the infructuous demand becomes 1½ times (now with the proposed amendment it will become 2 times than the original demand). Then there are other harassment regarding recoveries of such demand through the State Revenue Officers. Now can you give any example where an assessment in this State was made at a very high figures and subsequently the income assessed was reduced considerably.

SHRI O. P. KAPOOR : Sir, in fact there is no such example before us in this State. It is only a guess work. Before the decision on the appeals and demands is made known, the assessee

are subjected to unnecessary harassment on account of demand on over-assessed income. Therefore such demands should be kept in abeyance till final decisions.

SHRI B. S. SHARMA: We wanted to know whether there is any example whereunder on an appeal the assessment is reduced considerably.

SHRI O. P. KAPOOR: Sir, there is no specific example.

SHRI B. S. SHARMA: Could you please state the example without mentioning the names.

SHRI O. P. KAPOOR: Sir, we will try our best. If any case is brought to our knowledge we shall report you.

श्री रामसेवक यादव : कोई अन्दाजा है कि कितने मामले ऐसे होते हैं ।

श्री कपूर : कभी-कभी मामले ऐसे हो जाते हैं ।

श्री खुशद अहमद : मैं एक मिसाल आप के सामने पेश करूंगा ।

SHRI B. S. SHARMA: You have further suggested that, to discourage high pitched assessments based on suspicion and without any sustainable material, there should be enactment to pay interest @ 9 per cent to the Tax Payer from the date of wrongful collection to the date of its refund as a result of final decisions. We are being shown example of some other countries where rigorous imprisonment is awarded for late filing of returns etc.

MR. O. P. KAPOOR: Sir, you frame the destiny of the Nation. In fact there should not be any such sort of penalty in any case. The new amendment which seeks to award six months imprisonment, is a hard punishment for the people of this State who are

mostly illiterate. I myself cannot understand this law. Whenever I needed any assistance, I have to approach to my legal adviser. Our submission, therefore, is that this Bill be simplified minus any complications.

SHRI N. K. P. SALVE: Are you satisfied with the penalty proposed in the Bill?

SHRI O. P. KAPOOR: The penalty on small assesseees should be as less as possible.

SHRI SALVE: Do you feel that the Income Tax Department harass while assessing the income of assesseees?

SHRI O. P. KAPOOR: There is no harassment in our State.

SHRI SALVE: All over the country there are cases where assessment is found overpitched. Do you find any difficulty here?

SHRI O. P. KAPOOR: There is our executive member who will tell you a particular instance in regard to his assessment.

श्री खुशद अहमद : जनाव मुझे वेल्य टैक्स का एक नोटिस आया था, जिसमें मुझे से पूछा गया था कि मैंने वेल्य टैक्स का रिटर्न क्यों नहीं भरा है । मैंने जवाब में दख्खास्त दी कि यह मुझ पर नाफिज नहीं होता है । फिर इनकम टैक्स आफिसर ने मेरी वाइफ का हवाला देते हुए लिखा—मेरी वाइफ मेरी फर्म में पार्टनर है और उस को अपने बाप से कुछ पकम मिली थी—कि इनके बारे में रिटर्न दिया जाना चाहिये । मैंने अर्ज किया मेरे पास इस बारे में हाई कोर्ट का फैसला है, चूंकि इस वक्त वर्त पड़ने से रास्ते बन्द हैं लिहाजा मुझे फुर्सत दी जाय ताकि पास्ते खुलन पर मैं जम्मू हाई कोर्ट से नकल हासिल करके दाखिल कर सकूँ । लेकिन

उन्होंने मेरी इस बात को नहीं माना—
वैल्य टैक्स भी लगाया है और पेनेल्टी भी
लगाई है ।

श्री कंवर लाल गुप्ता : कितनी लगाईए
है ?

श्री खुशद अहमद : 1800 रुपये टैक्स
और इतनी ही पेनेल्टी लगाई है ।

श्री साल्वे : क्या आप ने बताया था कि
आप के पास हाई कोर्ट का फैसला है जिस के
मुताबिक साबित हो जायेगा ?

श्री खुशद अहमद : मैंने बतालया भी
था और फिर उसके खिलाफ अपील भी
दायर की थी । लेकिन अपेलेट आफिसर
लिखते हैं कि उस वक्त आप ने ऐसी कोई बात
नहीं बतलाई थी कि रास्ते बन्द हैं, बर्फ ज्यादा
पड़ी है इस लिये उस फैसले को बाद में दिखलाने
के लिये वक्त दिया जाये और उन्होंने भी मेरी
उस अपील को रिजेक्ट कर दिया ।

उस के बाद मैंने ट्रिब्यूनल में अपील
दायर की । पांच छः महीने हो गये हैं, शायद
उन्होंने फैसला कर दिया होगा लेकिन मुझे
अभी मिला नहीं है । रोज मेरे पास नोटिस
आता है कि वैल्य टैक्स भरो, पेनेल्टी का
1800 रु0लगा दिया है और मैं कहता हूँ कि
ट्रिब्यूनल का फैसला आ जाने दो ।

श्री कंवर लाल गुप्ता : अपील कब की
की थी ?

श्री खुशद अहमद : नौ दस महीने हो
चुके हैं ।

श्री साल्वे : क्या वहस हो चुकी है ?

श्री खुशद अहमद : हाई कोर्ट के फैसले
की मने तीन कापियां भेजी थीं । फिर उनकी
चिट्ठी आई कि अगर हम फैसला कर दें तो
आपको कोई ऐतराज तो नहीं है ? मैंने कहा

कि मुझे कोई ऐतराज नहीं आप फैसला कर
दें । उसके बाद 18 फरवरी को पेशी थी,
लेकिन उस दिन ईद थी इस लिये वहां नहीं
जा सका । अभी वहां से कोई फैसला मेरे
पास नहीं आया है । इनकम टैक्स वाले रोज
नोटिस भेजते हैं कि रिटर्न भर लो । मैं जवाब
देता हूँ कि जब तक ट्रिब्यूनल का फैसला नहीं
आ जायेगा तब तक रिटर्न नहीं भरूंगा ।

जनाव, हमारे काश्मीर में सिर्फ 2 या 3
फी सदी ऐसे लोग हैं जिन्होंने तालीम हासिल
की है, बाकी सब इल्लिट्रेट हैं । खास तौर से
हमारे दुकानदार तबके में तो सिर्फ 1 या 2
फी सदी ऐसे लोग हैं जिन्होंने पांच या छः
जमायत तक तालीम हासिल की होगी ।

श्री कंवर लाल गुप्ता : लेकिन अब
आप इस बात को जान लीजिये कि अगर आप
आप नकशा दाखिल नहीं करेंगे तो 6 महीने की
सजा होगी ।

श्री खुशद अहमद : लेकिन जब मेरी
आमदनी टैक्स के लायक ही नहीं है, तो मुझे
नकशा भरने की क्या जरूरत है ?

श्री साल्वे : लेकिन अगर यह बात आपको
बतला दी जाय कि जिनकी आमदनी पांच
हजार रुपये सालाना है, उनको नकशा भरना
पड़ेगा ।

श्री खुशद : मैंने आपको अपनी वैल्य
टैक्स की मिसाल दी है । मुझे नकशा नहीं
भरना था, क्योंकि मेरे पास इतनी प्रापर्टी
नहीं थी, लेकिन फिर भी मुझ पर टैक्स लगाया
गया और साथ में पेनेल्टी भी लगाई गई ।

श्री साल्वे : यह ठीक है कि कानूनन
जिम्मेदारी नहीं थी, लेकिन इनकम टैक्स
आफीसर समझता है कि आपकी जिम्मेदारी
थी और फैसला होने तक आपको परेशान
होना पड़ा ।

श्री खुशद अहमद : मैंने अभी आपके सामने पेनेल्टी के मामले का भी जिक्र किया है—फैसला अभी हुआ नहीं है, वहाँ मेरी रकम विदाउट इन्टरेस्ट पड़ी हुई है ।

श्री कंवर लाल गुप्ता : आपने दो बातें कही हैं—एक तो यह कि आपको आपकी रकम पर 9 परसेंट इन्टरेस्ट मिलना चाहिये—जो रकम आपने ज्यादा जमा कराई है—उस पर यह इन्टरेस्ट आपको मिले । दूसरी बात आपने यह कही है कि अपील की कास्ट पर जो खर्च आता है, वह आपको मिलना चाहिये—क्या इसके अलावा भी आप कुछ कहना चाहेंगे ?

श्री ओ०पी० कपूर : इस सिलसिले में जो कुछ मुझे अर्ज करना था—वह मैंने अर्ज कर दिया है ।

श्री कंवर लाल गुप्ता : एक बात मैं आपसे और पूछना चाहता हूँ—आपने कहा है कि जम्मू काश्मीर में पढ़े लिखे लोग बहुत थोड़े हैं, शायद एक या दो परसेंट हैं । ऐसी हालत में यहाँ के लोगों पर इस अमेण्डमेंट का क्या असर पड़ेगा ? सरकार यह कहती है कि बहुत सारे लोग ऐसे हैं जो नक्शा दाखिल नहीं करते हैं, जब कि उन्हें मालूम भी है कि उनकी आमदनी टैक्स के लायक है । आप बताइये कि इसका क्या इलाज किया जाय । जब गवर्नमेंट के पास पैसा नहीं आता है तो उसको इस तरह के सख्त कदम उठाने पड़ते हैं, उसका यह खयाल है कि अगर सख्त सजा कर दी जायेगी तो लोग नक्शा भरने लगेंगे ।

श्री ओ०पी० कपूर : इस वक्त हम इसी बात को डिस्कस कर रहे हैं । यह वैल्य टैक्स की मिसाल अभी आपके सामने पेश हुई है । कभी ऐसा भी हो जाता है कि कोई आइटम गलती

से ओमिट हो जाती है । हम यह चाहते हैं कि अगर वह assessee खुद वालन्टैरिली आई० टी० ओ० के पास आ जाता है और कहता है कि मेरा केंस रि-ओपन कर लो तो उसके लिए इतनी ज्यादा पेनेल्टी नहीं होनी चाहिये । जहाँ तक सजा, पेनेल्टी या कैद का ताल्लुक है और सरकार यह समझती है कि इससे ज्यादा रेवेन्यू मिलेगा, वहाँ यह चीज भी नजर-अन्दाज नहीं की जा सकती कि जो ऑनैस्ट एसेसीज हैं उनके साथ हैरेसमेंट न हो । इसलिये कोई ऐसा रास्ता तलाश किया जाय, जिसमें रेवेन्यू भी कम न हो, डिस्-ऑनैस्ट लोगों को हैरेस भी किया जाय और ऑनैस्ट लोगों को हैरेस न किया जाय ।

श्री कंवर लाल गुप्ता : वह रास्ता क्या हो सकता है, आप बतलाइये ?

श्री ओ०पी० कपूर : मैं इस वक्त तो कोई सजेश्चन लेकर नहीं आया हूँ लेकिन जो कुछ अर्ज करना चाहता हूँ—वह यह है कि जो कैद की सजा इसमें रखी गई है, उसको ओमिट कर दिया जाय और पेनेल्टीज को लगाने का प्राविजन कुछ इस तरह का होना चाहिये जिसमें आई० टी० ओ० के लिये डिस्क्रिशन रखी जाय, वह रीजनेबिल या अनरीजनेबिल वजूहात को मद्देनजर रख कर पेनेल्टी लगाये और वह डिस्क्रिशन भी कमिश्नर के सामने एपीलेबिल हो ।

श्री कंवर लाल गुप्ता : वह तो अभी भी एपीलेबिल है ।

श्री ओ०पी० कपूर : उसमें थोड़ी सी डील हम यह चाहते हैं कि उसमें डिस्क्रिशन रख दें, जिसमें वह हालात के मुताबिक कर दें । मैं यह भी अर्ज करना चाहता हूँ कि यह ला

बड़ी कम्प्लीकटेड है। मिसाल के तौर पर यह जो बिल आया है, हमें इस के बारे में कुछ भी मालूम नहीं था। जब हमारे पास चावला साहब की चिट्ठी आई तब हमें मालूम हुआ। आम आदमियों को इस के बारे में कुछ भी मालूम नहीं है। राज नई तबदीलियां होती रहती हैं। हैवी पेंनेन्टीज, जेल की सजा इन सब बातों के बारे में आम आदमियों को कुछ भी मालूम नहीं है।

श्री बेणी शंकर शर्मा : आपने अपने मेमोरेण्डम के पेज 2 पर कहा है—

"The present bill has made an effort to simplify certain procedure and grant certain more facilities to a certain type of assessee as against taken away some or the existing privileges."

वे कौन सी प्रिविलेजिज हैं जो इस कानून के जरिये छीन ली गई हैं? क्या आप कोई मिसाल देंगे?

श्री ओ०पी० कपूर : आप सैक्शन 143 को अमेण्ड कर रहे हैं—उस में सब सैक्शन जोड़ रहे हैं।

श्री कंवर लाल गुप्ता : तो क्या होना चाहिये, आप क्या चाहते हैं?

श्री ओ०पी० कपूर : आप जो सैक्शन ऐड कर रहे हैं, उसमें आई० टी० ग्री० को अनलिमिटेड पावर्स मिल जाती हैं—वह जिस वक्त चाहे केस को फिर से खोल सकता है और अगर किसी के साथ ईको नाराजगी हो तो अपनी पावर्स को misuse भी कर सकता है। इस लिये हम ऐसा महसूस करते हैं कि जो राहत हमें मिली हुई है, आप उसे हम से छीन रहे हैं।

श्री बेणी शंकर शर्मा : आप की मंशा यह है कि 143(I) में जो एमेसमेंट हो तो 143(2) में उस को फिर से न खोला जा सके। एक बफा जो एमेसमेंट हो जाय, उस को फाइनल मान लिया जाय?

श्री ओ०पी० कपूर : हमारी मंशा यह है कि इस तरह से ओपन न किया जाय, इस के लिये कोई टाइम लिमिट होना चाहिये और जब खोला जाय तो उस के लिये रीव्यूज दिये जाय और उस के खिलाफ अपील भी हो सके।

श्री बेणी शंकर शर्मा : जहां तक नये सेक्शन का सवाल है, हम लोग एक नया आईडिया दे रहे हैं। एक नया एक्सपेरिमेंट कर रहे हैं। चूंकि जो 10 या 15 हजार रु० की आमदनी वाले व्यापारी हैं उन को आज काफी तकलीफ है, उन पर बकार का बकीलों का खर्च पड़ता है, इस लिये उन की तकलीफ को मिटाने के लिये यह तरकीब सोची गई है कि इस तरह के व्यापारी जो भी नक्शा भरें उन पर 100-200 रु० बढ़ा वटा कर, जैसा मुनासिब हो, उन केसेज को खत्म कर दिया जाय। ताकि ऑफिसरों का वाकी टाइम बड़े बड़े आदमियों पर, बड़े बड़े असेसीज पर, लगाने के लिये मिल सके तो निकाला जाय। यह बात बेहतर होगी। लेकिन इस में एक नुक्स है कि आई०टी० ग्री० 143 (2) को तहत किसी केस को रियापन कर सकता है। आप का कहना यह है कि जब किसी केस को 143 (1) की तहत खत्म कर दिया तो 143 (2) की तहत उस को फिर रियापन है किया जाये। जब मालूम हो जाय कि कहां गलती है, कहां बेईमानी की गई है, बदमाशी की गई है, तभी उस को 143 (2) की तहत रियापन किया जाये। क्या यह ठीक है?

श्री ओ०पी० कपूर : आप का खयाल नेक है। छोटे असेसीज को कोई तकलीफ न हो इस लिये यह सेक्शन रक्खा जा रहा है। लेकिन क्या गारण्टी है कि जो हायर इनकम वाले असेसीज हैं उन के साथ आई० टी० ग्री० वही व्यवहार नहीं करेगा।

श्री बेणी शंकर शर्मा : जो बड़ा आमदनी वाले केसेज हैं उन पर यह लाभ नहीं होगा।

जो छोटी आमदनी वाले केसेज हैं 10 या 15 हजार रु० की आमदनी वाले, उन पर ही यह लागू होगा क्योंकि खाली छोटे असेसीज को ही यह राहत दी जा रही है।

श्री ओ० पी० कपूर : अगर यह बड़ों पर लागू नहीं होगा तो हम को कोई एतराज नहीं है। लेकिन साथ ही मेरी अर्ज यह है कि अगर छोटे असेसीज पर यह लागू होता है तो उस में कोई टाइम लिमिट होनी चाहिये क्योंकि आज जो छोटे असेसीज हैं उन पर बड़े हैरिसमेंट का अन्देशा न रहे

श्री वेणी शंकर शर्मा : आई० टी० ओ० पर टाइम लिमिट लगाने का कोई सवाल नहीं उठता। जब कि दफा 147 में अलग टाइम लिमिट है अगर कोई अपनी आमदनी छिपाता है तो उस पर दफा 147 लागू होनी

चाहिये। मान लीजिये कि अगर कोई आदमी अपनी आमदनी 50 हजार के बजाय 15 हजार दिखलाता है तो उस पर इस को लागू किया जायेगा।

श्री संघी : आप ने जो मेमोरेण्डम दिया है उस में आप ने लिखा है कि ऐमारटाइजेशन 1962 से मिलना चाहिये। मैं जानना चाहता हूँ कि क्या इंडस्ट्रीज ज्यादातर 1962 के बाद शुरू हुई हैं?

SHRI O. P. KAPOOR: The tax has been levied or imposed upon us from 1961. This is not the question of myself getting the benefits but here the entire community is involved and therefore they must get the benefit from 1-4-62.

The witnesses then withdrew.

The Committee then adjourned to meet at Pahalgam on 20th June, 1970.

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION LAWS (AMENDMENT) BILL, 1969

Saturday, the 20th June, 1970 at 11.30 hours in Pahalgam Club, Pahalgam

PRESENT

Shri Chintamani Panigrahi—Chairman

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri S. R. Damani
4. Shri Pattiam Gopalan
5. Shri Kanwar Lal Gupta
6. Shri B. N. Katham
7. Shri Yashwant Singh Kushwah
8. Shri V. Krishnamoorthi
9. Shri Shiva Chandika Prasad
10. Shri R. Dasaratha Rama Reddy
11. Shri Beni Shanker Sharma
12. Shri N. K. Sanghi
13. Shri Janardan Jagannath Shinkre
14. Shri Tenneti Viswanatham
15. Shri Prakashchand B. Sethi

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
2. Shri V. Ramaswamy Iyer, *Deputy Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
3. Shri R. R. Khosla, *Deputy Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
4. Shri S. P. Chowdhury, *Under Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. *Hotel Association, Pahalgam.*

Spokesmen:

1. Shri D. M. Wazir—*President*
2. Shri Narinder Singh—*Secretary.*

3. Shri Satinder Singh—*Member.*
4. Smt. Iqbal Kaur—*Member.*
5. Shri Abdul Rehman—*Member.*
6. Shri Subhag Chand—*Treasurer.*

II. Beopar Mandal, Pahalgam, Pahalgam.

Spokesmen:

1. Shri Abdul Aziz Magrey—*President.*
2. Shri Dina Nath—*Organiser.*
3. Shri Lal Mir—*Vice-President.*
4. Shri Sham Lal—*General Secretary.*
5. Shri Ravi Kumar—*Member.*
6. Shri Amarjit Singh—*Member.*

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Mr. Abdul Aziz. Before we start our today's business, you will please introduce your friends as representatives (witnesses) to the Hon'ble Members of this Committee.

SHRI ABDUL AZIZ: Sir, here are: Mr. Dina Nath, Mr. Sham Lal and Mr. Amarjit Singh. (Beopar Mandal, Pahalgam Representatives).

MR. CHAIRMAN: And the next party.

SHRI D. M. WAZIR: Sir, here are Shri Narinder Singh, Shri Satinder Singh, Shri Subhag Chand, Mrs. Iqbal Kaur and Shri Abdul Rehman (Representatives of Hotel Association, Pahalgam).

MR. CHAIRMAN: We have a great pleasure in welcoming all of you here while participating this Joint Meeting of this Committee. You might have got a Memorandum with you, you will please read out the contents of this Memorandum for the information of the Hon'ble Members of the Committee.

SHRI AMARJIT SINGH: Respected Sir, We feel honoured by your visiting Pahalgam, the internationally famous health resort of our country,

which is the place of our living. At this august time, we therefore, avail of the opportunity to make following suggestions to you for consideration—

1. For Tourists coming on holiday and for other several purposes to Kashmir a visit to Pahalgam is a must. Our Government has from time to time been taking different steps in the development of this place, but unfortunately with the limited resources, an integrated coordinative development of the entire Pahalgam area has not been taken in hand. We, therefore, suggest that an overall development programme of the whole area—not only from Natraj Hotel to the Government Club—may kindly be taken in hand for which adequate funds may be allotted by the Central Government. The development of Pahalgam area, we believe, would undoubtedly have its good effect in attracting more tourists to our country.

2. The first site with which the tourists coming to Pahalgam come across is the main market with its old shaby houses. Steps to change the entire market into a modern one are suggested to be taken. This could be done in a

phased manner as from beautification point of view this is one of the essential thing which needs attention.

3. Pahalgam is known since ages for its facilities as a base camp for going into the interior of mountains on trekking, mountaineering, sight-seeing etc. The places within easy approach are Chandanwari, Arue, Baisaran and Shikargah. Proper roads to all these places may be laid and at each place sufficient accommodation facilities with and without catering arrangements may be made available. After this is done, tourists could make Pahalgam as their headquarter for going to stay at Arue, Chandanwari, Baisaran, Shikargah, Batkote, Mattan, Overa and even Achabal etc. In this way the activities of the Tourists staying at Pahalgam for longer period could be spread and the benefit of the Tourist trade expanded to all the surrounding areas of what is presently known as Pahalgam.

4. In Gulmarg Winter Sports activities are being revised although all weather roads does not so far exist to that area. Against this vehicular traffic to Pahalgam continues to be on throughout the year. It is suggested that side by side with Gulmarg, the tourists coming to Srinagar for Winter Sports activities at Pahalgam may kindly be explored. Immediately the tourists coming to Srinagar for Winter Sports could be diverted to Pahalgam also, in between, on days trips, to begin with. The offices functioning at Pahalgam during summer season, which stand sanctioned for the whole year round could be kept open during winter also here, in which mention may be made of the Tourists Office, Tehsil Office, Police, Post and Telegraph Office and Govt. Hospital. No extra expenses shall have to be incurred by the Government if these offices are kept open here during winter also. A hotel and some good provision shops could be persuaded to remain stationed during winter also.

5. For proceeding to the holy cave of Shri Amarnathji, Pahalgam is the base camp. At this juncture thousands of Yatries, Labourers, Horse-owners and other assemble in Pahalgam. To accommodate all such people a Sarai needs to be constructed at Pahalgam.

6. The Beopar Mandal, Pahalgam may be permitted to establish a dairy and a Poultry Farm at Pahalgam, since these essential commodities are in great demand here. For this purpose a proper plot of land with necessary loan is suggested to be sanctioned in favour of the Beopar Mandal. In this way the Goojars and villages also would be benefited.

7. The lease of Pahalgam Market is due to expire in this year. It is requested that further lease may be granted to the existing shopkeepers. Any compensation for the existing structure will be gladly paid by the shopkeepers.

We hope that the suggestions made by us in the interest of Tourism and beautification of Pahalgam shall meet your favourable approval.

Thanking you, Sir.

SHRI ABDUL RAHMAN: Sir, with your permission I may submit that there are already about 70 Government huts which for a major part of the season remain vacant and now the Government is still thinking of constructing more huts. All these huts are hitting the Hotel trade in Pahalgam, Government and Hotel owners on one side are improving hotels to attract visitors to Pahalgam. If these huts go on increasing recklessly, hotel industry can never improve. I would therefore suggest that there should be some check on the construction of huts, or take over all the hotels in Pahalgam and nationalise the industry.

The registration of partnership should be accepted as by the Registrar of Firms.

Heavy penalty on late filing of return should be relaxed when especially for a seasonal place like Pahalgam, when during the season it is very difficult for the assessee to leave the business to fill the return forms.

SHRI SHAM LAL: With your permission Sir, here I will briefly submit that despite the paucity of shops in the main market, we people are helpless to construct additional shops due to certain difficulties. The main difficulty is that we cannot construct shops unless a Cabinet sanction is accorded to this effect. Even here in Pahalgam we cannot make any execution of repairs to our shops or houses. So steps to change the entire market into a modern one are suggested to be taken.

SHRI SETHI (Union State Minister for Finance): Is Cabinet sanction necessary for this purpose.

SHRI AMARJIT SINGH: Yes Sir. Besides other difficulties being faced by the public here, visitors visiting this place are helpless to purchase commodities unless he has got change in his pocket. In other words, I would humbly submit that we people have to get only 92 paise instead of a rupee whenever we get a change or having a change for a rupee from somebody.

SHRI SETHI: I feel that there might be a Bank Branch here in Pahalgam also.

SHRI AMARJIT SINGH: Sir, I would humbly submit that no doubt, there is a bank branch which was set up last year and has started its function very recently but it has not proved so fruitful to we people. I mean

to say that it does not serve any purpose even to the Tourists from home and abroad who are always in need of encashing of T. cheques. This is due to the fact that it is a pay office here and not branch. So a Branch Office is essential here in such a most important place—health resort in whole of Kashmir.

सभापति महोदय : अब आप को जो कुछ और कहना है, वह कहिये ।

श्री अमरजीत सिंह : हमें यही अर्ज करना है कि पहलगाम एक सीजनल प्लेस है । यहां पर रेन्ट कंट्रोल भी लागू है, लेकिन जो यहां पर हाउस-ओनर्स हैं, वे उसके मुताबिक नहीं चलते हैं । वे हर साल किराया बढ़ाते रहते हैं । जिस दुकान का एक साल में हम एक हजार रुपया किराया देते हैं, अगले साल वह दो हजार रुपये डिमाण्ड करता है, जिसका असर टूरिस्ट्स पर पड़ता है । हम चाहते हैं कि यहां पर रेन्ट कंट्रोल कानून को ठीक तरह से एन्फोर्स किया जाय, ताकि गरीब दुकानदार उस किराये को बरदाश्त कर सकें ।

दूसरी बात मुझे यह अर्ज करनी है कि यहां पर किसी किस्म की कंस्ट्रक्शन नहीं हो सकती है जब तक कि उसे केबिनेट मंजूर न करे । दो-दो साल उसके लिये इन्तजार करना पड़ता है, यहां तक कि रिपेअर्स भी नहीं की जा सकती हैं । इस तरह ठीक तरह से तबज्जह दी जाये ।

तीसरी चीज यहां पर चेंज नहीं मिलती है । स्टेट बैंक की यहां पर ब्रांच है, लेकिन वहां पर भी चेंज नहीं मिलती है । इससे टूरिस्ट को और दुकानदारों को बहुत दिक्कत होती है । हम चाहते हैं कि बैंक में इस तरह का इन्तजाम किया जाय कि लोगों को छोटी रेजगारी-जरूरत के मुताबिक मिल सके ।

सभापति महोदय : जो यहां पर मकान मालिक हैं—क्या वे इन्कमटैक्स देते हैं ?

श्री अमरजीत सिंह : मुझे मालूम नहीं है ।

सभापति महोदय : आपने अभी कहा है कि यहां पर मकान मालिक हर साल बड़ा कर किराया लेते हैं, पहले साल एक हजार लेते हैं तो दूसरे साल दो हजार मांगते हैं। ऐसी सूरत में क्या वे इन्कमटैक्स देते हैं ?

श्री अमरजीत सिंह : जरूर देते होंगे—लेकिन इस के बारे में डिपार्टमेंट ही बता सकता है ।

सभापति महोदय : यहां पर इनकम टैक्स के असेसीज कितने हैं ?

श्री अमरजीत सिंह : मुझे सही तादाद मालूम नहीं है—यह भी आप को डिपार्टमेंट ही बतला सकता है ।

सभापति महोदय : आप को इन्कमटैक्स के बारे में अगर कोई दिक्कत हो तो उसके बारे में बतलाइये ?

श्री अमरजीत सिंह : इन्कम टैक्स का काम बड़ा कम्प्लीकेटेड है, जो हमें तो समझ में नहीं आता है । हमें अपने वकील से इस काम को कराना पड़ता है । हम चाहते हैं कि इस काम को कुछ आसान बनाया जाय ताकि हर आदमी जिस को रिटर्न भरना है, इस को समझ सके ।

श्री नरेन्द्र सिंह : इसमें हमारे सामने बड़ी भारी प्राब्लेमें आ जाती हैं । जो स्माल असेसी हैं वह ला को तो जानते नहीं हैं इनकम-टैक्स के । जरा सी गलती से उनकी कम्पनी अनरजिस्टर्ड मान ली जाती है । लेट फाइलिंग आफ रिटर्न पर भी बड़ी भारी पेनेल्टी है ।

इसके लिये अब तो सजा भी रकबी जा रही है । इस लिये जिन लोगों का सीजनल विजिनेस है उनको बड़ी दिक्कत होती है क्योंकि वह लोग वकील वगैरह तो रख नहीं सकते हैं ।

सभापति महोदय : यहां पर कितने होटल हैं ?

श्री नरेन्द्र सिंह : चार पांच होटल बड़े हैं, बाकी छोटे हैं ।

श्री बेणी शंकर शर्मा : आपने जो प्रीवाल्सेज बतलाये उनको मिनिस्टर साहब ने नोट कर लिया है । जहां तक इस कमेटी का टाल्लुक है उसका काम यह है कि जो नया कानून बन रहा है उसको इस तरह का बनाया जाय कि टैक्स ठीक से अदा हो सके । हम जानना चाहते हैं कि इस वक्त जो कानून है उसके खिलाफ आप को क्या शिकायतें हैं और जो नया कानून बन रहा है, उसके बारे में आप को क्या दिक्कतें आयेंगी । अगर आप यह बतला सकें तो बतलायें ।

श्री श्याम लाल : पहलगाम में जो दूकान-दार हैं उनमें मैजिस्ट्री पढ़े लिखे लोगों की नहीं है । वह सीजन भर में मुश्किल से पांच या छः हजार रुपया कमाते होंगे । एक आर्डिनरी दूकानदार के लिये इतनी चीजों का रेकाई मेन्टेन करना मुश्किल ही जाता है । मेरा सजेशन यह है कि जो छोटे दूकानदार 6 से 10 हजार रु० की आमदनी वाले हैं उनको इस टैक्स के दायरे से हटा दिया जाये ।

श्री सेठी : 5,000 रु० तक की आमदनी वाले तो इस टैक्स से बाहर हैं ही । उनको टैक्स देने की जरूरत नहीं है । जिनकी आमदनी 5,000 रु० से ज्यादा है उनको ही यह टैक्स देना होता है । इसलिये यहां पर 10,000 रु० तक की आमदनी के लिये एग्जेंशन दिया जाये, बाकी के लिये 5,000 रु० का

एग्जेशन हो, यह मुमकिन नहीं है। सारे देश के लिये तो एक जैसा ही कानून होगा। हां, जिन लोगों की आमदनी 10 या 12 हजार रु० है वह जो नक्शा भर कर देंगे उसको इनकम टैक्स डिपार्टमेंट बिना किसी ऐतराज के माने लेगा।

श्री वैष्णो शंकर शर्मा : आपने जैसा नक्शा भरा है अगर उस पर 100, 200 रु० टैक्स बढ़ भी जाय तब भी आपको कोई आपत्ति नहीं होगी, ऐसा मैं समझता हूँ। अब आप बतलाइये कि आप को और क्या दिक्कतें हैं ?

श्री नरेन्द्र सिंह : एक सबसे बड़ी दिक्कत तो यह है कि होटलों पर इनकम टैक्स का रेट 33 पर सेंट प्राफिट पर लगाया जाता है। पता नहीं किस तरह यह फैसला कर लिया गया कि होटलों में 33 पर सेंट प्राफिट होना ही चाहिये। हमारे सामने प्रॉब्लेम यह आती है कि अगर हम कहें कि प्राफिट 25 पर सेंट हुआ है तो भी इनकम टैक्स अफसर उसको मानते नहीं हैं। वह 33 परसेंट प्राफिट के हिसाब से ही टैक्स लगाते हैं।

श्री श्याम लाल : वह लोग कहते हैं कि वाउचर दिखलाओ। अब आप यह देखिये कि मान लीजिये कि एक अंडे वाला है उससे मैंने कुछ अंडे लिये। उसके पास कोई वाउचर बगैरह तो होता नहीं है। हमारे लिये भी स्टॉक रजिस्टर मेनटेन करना मुश्किल है। तब भी 33 परसेंट प्राफिट लगा लिया जाता है। हमारा छोटा सा बिजनेस है हम कहां तक हिसाब रखेंगे कि कितने अंडे लिये और कितनों की बिक्री हुई, या कितने मुर्गे लग गये और उससे कितनी प्लेटें बनीं ?

श्री वैष्णो शंकर शर्मा : यह तो होटल वालों की दिक्कतें हुईं। लेकिन जो छोटे दूकानदार हैं उन्हें क्या दिक्कतें हैं ?

श्री श्याम लाल : जो छोटे दूकानदार हैं उनमें से 95 फीसदी अनैजुकटेड हैं। वह सामान तो बेचते हैं लेकिन उसका कोई अकाउण्ट उनके पास नहीं होता है। मेरी अपनी राय यह है कि जब अकाउण्ट वह लोग दे दें तो इनकम टैक्स कानून के मुताबिक जो भी वाजिब टैक्स हो वह लगा लिया जाये क्योंकि अकाउण्ट रखना वह जानते नहीं हैं।

सबसे बड़ी दिक्कत तो यह है कि यहाँ पर जो भी बिजनेस है वह सीजनल है, यानी दो या तीन महीने का है। उसके बाद यहाँ के 95 फीसदी आदमियों के पास कोई काम नहीं होता है। खास कर पहलगाम का हाल तो यह है कि सीजन में अगर कोई टूरिस्ट आ गये तो आ गये, नहीं तो नहीं। अगर आप जुलाई में यहाँ आये तो देखेंगे कि यहाँ सिर्फ 25 फीसदी टूरिस्ट रह जाते हैं और दूकानदार बिल्कुल खाली रहते हैं। वही होटल जो इस वक्त 20 रु० रोज पर रूम देते हैं बाद में 5 रु०, 4 रु० और 3 रु० रोज पर वही कमरे देते हैं। ऐसे बिजनेस के लिये कोई लिमिट होनी चाहिये, जिसके हिसाब से वड़ इनकम टैक्स दे सकें।

श्री बेनी शंकर शर्मा : आप यह बतलाइये कि इनकम टैक्स अफसर को कैसा पता लगेगा कि आपने 50,000 रु० कमाये य 10,000 रु० कमाये ? आपको कुछ हिसाब तो बतलाना पड़ेगा कि हमारा इतना सेल हुआ और इतना खर्च हुआ जिसमें इतनी आमदनी हुई ?

श्री श्याम लाल : कुछ यहाँ पर एजुकटेड दूकानदार हैं जो अपने रिटर्न सविमट करते हैं। लेकिन होता यह है कि अगर हम कहते हैं कि हम को 50 हजार रुपया हासिल हुआ तो इनकम टैक्स वाले कहते हैं कि नहीं तुम को 1 लाख रु० हासिल हुआ और उस पर ही टैक्स लगा देते हैं। स्टॉक रजिस्टर तो हमारे

पास रहता नहीं है। हम कम्पलीट अकाउण्ट नहीं रख सकते हैं। ऐसे लोगों के लिये आप को कुछ न कुछ तो करना ही होगा। मैं यह नहीं कहता कि पहलगाम के लोगों को इनकम टैक्स से बाहर निकाल दिया जाये। हम लोग इनकम टैक्स देना भी चाहते हैं जो भी बनता है लेकिन यहां का जनरल विजिनेस मुश्किल से, दो या तीन महीने का है इसका ख्याल तो रक्खा ही जाना चाहिये।

श्री बेनी शंकर शर्मा : हम लोग इस बात को देखेंगे कि इनकम टैक्स आफिसर यहां आकर आप लोगों के मामलों को तय करें और आपको वहां न जाना पड़े। हम यह भी कहेंगे कि डिपार्टमेंट इस काम में आप के व्यापार मण्डल से मदद ले, आप भी अपनी तरफ से सरकार के साथ टैक्स के मामले में कोऑपरेट करें। हम यह भी रिक्मेण्ड करेंगे कि आफिसर यहां आकर आपसे नकशा भरा ले और आप के केस का यहीं फंसला कर दे। हम सही टैक्स लगाना चाहते हैं ज्यादा नहीं लगाना चाहते हैं, साथ ही साथ कम टैक्स भी नहीं लेना चाहते हैं।

श्री शिकरे : जो असेसमेंट इनकम टैक्स आफिसर करता है कभी कभी क्या वह ज्यादा भी होता है, क्या आप उसके खिलाफ अपील भी करते हैं ?

श्री श्याम लाल : जब हमारे पास कम्पलीट अकाउण्ट ही नहीं होते, तो अपील किस चीज की बिना पर करें। जो असेसमेंट वह कर देते हैं उसको मानना पड़ता है।

श्री अमरजीत सिंह : एक दिक्कत यह भी है कि अपील चण्डीगढ़ होती है, जम्मू, होती है, छोटे छोटे दुकानदार वहां कैसे जा सकते हैं, इसमें काफी खर्च हो जाता है, वकील करना पड़ता है, इसलिये जो असेसमेंट होता है, उसको मान लेना पड़ता है।

एक दिक्कत यह भी है—जिस दुकानदार का हिसाब दिसम्बर में खत्म होता है, उसे 31 जून तक अपना रिटर्न फाइल करना होता है। यही दिन हमारे सीजन के होते हैं। आज 20 तारीख हो गई है, सिर्फ 10 दिन रह गये हैं इतने थोड़े अर्से में हिसाब कैसे तैयार हो सकता है। इसके अलावा हमें श्रीनगर जाना होगा, वहां वकील को कहना होगा— मैं चाहता हूँ कि इसके लिये हमें रिलीक्सेशन दिया जाय।

श्री बेनी शंकर शर्मा : आप टाइम मांगेंगे तो तीन महीने का टाइम आप को और मिल जायगा।

श्री अमरजीत सिंह : यह उसकी डिस्क्रिशन पर है—वह दे या न दे।

SHRI SETHI: (Union State Minister for Finance): How much tax is collected from Pahalgam?

SHRI AMARJIT SINGH: Sir, we cannot give specific figures in this behalf as proper accounts are not maintained by we poor people. However, I will humbly submit that even though taxes are being paid regularly to the great extent yet our difficulties are not taken into account. Besides as a matter of fact there is very limited time for we people to flourish our business as we are involved in one difficulty or the other and cannot get chance to mind our own business.

SHRI SANJI: The difficulties being faced by these poor people are appreciable. It is but essential that instructions should be issued in order to redress the grievances of the people.

SHRI B. S. SHARMA: Besides it it appears that the tax percentage is considerably heavy here and needs also due relaxation. These difficulties pointed by the gentlemen may be taken into account and instructions to this effect should accordingly be issued as early as possible.

SHRI SHAM LAL: Sir, I would most humbly submit that as pointed out by the Hon'ble Member here that the tax percentage is high here, I will honourably try to elucidate the fact that the taxes are not collected quite reasonably by the concerned Income Tax Officers. I would submit a simple example to this effect. Suppose the income tax of a shopkeeper has been fixed Rs. 50 per five thousand rupees under the rules. The Income Tax Officer directs the petty shopkeeper to pay Rs. 100 instead of fixed sum. In this way the poor shopkeeper is helpless to refuse the Income Tax Officer to pay the reasonable tax as he cannot maintain the proper accounts to this effect and having very limited source of income he cannot file any appeal in the court of law against the concerned Officer for charging high tax. I have submitted the brief and simple example in this behalf and humbly submit that the similar difficulties should be removed so that the grievences be redressed.

श्री अमरजीत सिंह : यहां एक दिक्कत यह भी है कि बिजनेस रेग्यूलर नहीं होता है। अगर किसी साल टूरिस्ट की कम तादाद आये तो बिजनेस गिर जाता है, लेकिन इन्कम टैक्स अफसर टैक्स को कम नहीं करता है, वह टैक्स को बढ़ा कर ही लगाता है। हमारा सारा बिजनेस एक तरह से पोलिटिक्स पर डिपेण्ड करता है। शोब अब्दुला ने अगर कोई स्पीच दे दी—लोग यहां से भाग जाते हैं। अभी हाल में कुछ आगें लगी हैं, जिनकी वजह से इस साल टूरिस्ट्स बहुत

कम आये हैं। आप इस वक्त मार्केट में जाकर देखिये—12 आना विजिटर भी नहीं है। अगर सीजन इसी तरह से गुजर जायगा तो खर्च भी निकलना मुश्किल हो जायगा। मकान मालिक सीजन खत्म होने पर माल नहीं उठाने देता जब तक उसको पूरा किराया न मिल जाय। अगर किराया पूरा नहीं देंगे तो दूसरे साल दुकान नहीं मिलेगी।

श्री इयाम लाल : मैं अर्ज करना चाहता हूँ कि जो भी कानून आप बनायें वह इस किस्म का हो कि हमारे सही प्राफिट्स पर हमसे इन्कम टैक्स लिया जाय। हमें अगर एक हजार रुपये प्राफिट होता है तो उस पर 10 रुपये टैक्स देवे में हमें कोई दिक्कत नहीं है, लेकिन जब 500 रुपये प्राफिट भी नहीं होता है, दुकान का किराया भी नहीं निकलता है, उस सूरत में हमें एवजेस्ट किया जाय, पिछले साल के मुताबिक असेस न किया जाय।

श्री प्र० चं० सेठी : आपने अपने रिटर्न में क्या भरा है ?

श्री इयाम लाल : हमारे पास तो कोई हिस्सा ही नहीं है।

श्री प्र० चं० सेठी : आपने कोई नक्शा तो भरा होगा। आप असेसी हैं या नहीं ?

श्री अमरजीत सिंह : यहां पर हर साल कैम्प लगता है इन्कम टैक्स आफिसर साहब एक एक दुकानदार को बुला लेते हैं उनकी इन्कम को पूछ कर उसी वक्त इन्कम टैक्स लगा देते हैं।

श्री बेणी शंकर शर्मा : लेकिन हर साल तो नहीं आते हैं।

श्री अमरजीत सिंह : पिछले साल नहीं आये थे।

श्री श्याम लाल : मेरे पास वाइन्ज एण्ड प्रोविजन्ज का काम है। पिछले साल मैंने 60 हजार की सेल दिखलाई और दो हजार रुपया प्राफिट दिखलाया, लेकिन उन्होंने नहीं माना।

श्री सेठी : कितना टैक्स लगाया ?

श्री श्याम लाल : टैक्स तो सिर्फ 11 रुपये लगाया। दिक्कत यह थी, कि मेरे पास ब्राइन की स्टॉक-बुक थी प्रावीजन्ज की स्टॉक बुक नहीं थी। जो रीग्रल सेल थी, उस को मैंने नक्शे में दिखलाया था लेकिन उस को उन्होंने नहीं माना।

श्री कंबर लाल गुप्त : हम इस कानून में इस तरह की व्यवस्था कर रहे हैं कि दुकानदार जो नक्शा भरे उसी के मुताबिक टैक्स लगा दिया जाय। इसमें आप को दिक्कत नहीं होगी।

श्री श्यामलाल : हम सिर्फ यही चाहते हैं कि हम को दिक्कत न हो चाहे टैक्स आप 11 रुपये की बजाय 22 रुपये ले लें।

श्री सेठी : वाइन पर 10 परसेंट का प्राफिट लगा कर अगर खर्च निकाला जाय तो ज्यादा नहीं है, मेडिसिन का और परसेंटेज है, प्रोसरीज का परसेंटेज अलग है। इस बेसिस पर कुछ न कुछ रुपया तो देना ही पड़ता है। यहां के लोग 10 परसेंट से ले कर 50 परसेंट तक प्राफिट कर सकते हैं।

SHRI SHAM LAL: Sir, we feel here lot of difficulties I am dealing in Wines and I have been running this business for a pretty long time. The point which I was to stress is that due to paucity of accommodation the tourist feel lot of inconvenience, due to which the house owners of the Pahalgam increase their rents which

directly tells upon the tourists. In view of the fact the house owners are required to construct their houses or increase the accommodation, for which cabinet sanction is most essential. If any person applies for cabinet sanction it involves two years at least in getting sanction, and in this way the matter remains hanging fire. I would request the Hon'ble Minister and the members as well that sanction may kindly be accorded with regard to construction of new market so that the inconveniences of tourists could be redressed.

MR. CHAIRMAN: Is cabinet sanction necessary for the construction of new market.

SHRI SHAM LAL: Yes Sir, Cabinet sanction is necessary for the construction of new market. In this procedure it involves the previous time of businessmen. I would again request the members and Mr. Chairman that our difficulties may kindly be viewed and our grievances redressed.

श्री नरेन्द्र सिंह : मेरे ब्याल में तमाम इंडिया में यहां की एक ही मिसाल है जहां पर सीजनल काम होता है। यहां कोई टाटा बिड़ला तो हैं नहीं। आम तौर पर छोटे दुकानदार हैं। इस को कंसिडर करते हुए जो भी मुनासिब अमाउंट हो उस को पे करने की बात हमारे लिये तय कर दी जायें।

श्री कंबर लाल गुप्त : पहलगाम में ऐसे लोग रहते हैं जिन की आमदनी फिक्स्ड नहीं है। यहां पर किसी वक्त आमदनी ज्यादा होती है और किसी वक्त कम होती है। इस लिये डिपार्टमेंट को देखना होगा कि किसी आमदमी की कितनी आमदनी है। जैसा मिनिस्टर साहब ने कहा, जिस की आमदनी 10,000 रु० तक होगी मोटे तौर पर वह जो नक्शा भर देगा, वह मान लिया जायेगा। जिस की आमदनी

10,000 रु० से ऊपर होगी उसका अकाउंट इनकम टैक्स वाले देख लेंगे। अगर उसमें कहीं गलती होगी तो वह इनकम टैक्स को बढ़ायेंगे। और अगर गलती नहीं होगी तो नहीं बढ़ायेंगे। असल में हम छोटी आमदनी वालों को, यानी 10,000 रु० से नीचे वालों को राहत दे रहे हैं। अगर उनको खुद को बुलाये हुए जैसा नक्शा वह भर देंगे वैसा ही उस को मान लिया जायेगा।

श्री वेणी शंकर शर्मा : ऐसा भी हो सकता है कि आप को श्रीनगर बुलाया जाय, उन को ही वहाँ न बुलाया जाये ?

श्री दीना नाथ : ऐसा नहीं हो सकता कि आई०टी०ओ० एक साल आ जाये यहाँ पर और सब कुछ देखने के बाद कुछ रकम तय करदे।

श्री वेणी शंकर शर्मा : एक बात साफ है कि ये लोग टैक्स देना वह माइन्ड नहीं करते, लेकिन जो दिक्कत है उससे वह घबराते हैं, वह डर होने चाहिये।

श्री कंवर लाल गुप्त : आप ने अपनी इनकम कितनी दिखलाई ?

श्री दीना नाथ : 40,000 रु० की।

श्री नरेन्द्र सिंह : पहलगाम में कई छोटे विजिनेसमैन हैं, जिनके पास स्टॉक रजिस्टर नहीं होते हैं। उनकी आमदनी का 25 परसेंट से ज्यादा खाने में निकल जाता है। इनकम टैक्स अफसर कहते हैं कि आपके पास कोई स्टॉक रजिस्टर तो है नहीं, जिससे पता चल सके कि कितने अंडे या मुर्गियां आप ने लीं। आपके पास वाउचर भी नहीं है।

श्री कंवर लाल गुप्त : ऐसा भी तो हो सकता है कि आप मुर्गियां और अंडों को अपनी किताबों में न दिखलायें ?

श्री नरेन्द्र सिंह : इसको तो तभी ठीक से रखा जा सकता है जब पूरा विजिनेस हो और

सारी किताबें पूरी तरह से ठीक से रखी जायें। वहाँ पर तो मुश्किल से दो तीन महीनों का विजिनेस होता है।

श्री श्याम लाल : यहाँ पर कुछ लोग तो ऐसे हैं कि मरने के बाद भी उनके नाम नोटिस आती हैं। एक मिसाल ऐसी है जिसमें आदमी दो साल पहले मर गया लेकिन अभी तक उसके नाम नोटिस आ रही है। वह आदमी भी मर गया दूकान भी नहीं है। उसका एक बच्चा है जो आठ साल का है। उसके पास नोटिस आती है। अभी भी नोटिस आ रही है ऐसे लोगोंके नाम जिनका कोई कंसर्न ही नहीं है। एक तो यह बड़ी हद तक होता है, दूसरी बात इसके अलावा यह है कि कोई पार्टी कमजोर हो गई है, गरीब हो गई है—तीन चार सालों से वह गरीब हो गई है, लेकिन फिर भी इनकम टैक्स डिपार्टमेंट उसके पीछे पड़ा हुआ है। वह आदमी 100-50 रु० टैक्स देने से डरता नहीं है, लेकिन इनकम टैक्स वाला कोई आता है तो ऐसा पता चलता है मानो कोई देव चला आ रहा है और वह हमें खा जायेगा। मैं पढ़ा लिखा आदमी हूँ। मैं सोचता हूँ कि अगर इतना सेल होने के बाद 11 रु० डिपार्टमेंट को न देने से क्या फायदा है। मैं तो 100 रु० भेज देता हूँ, लेकिन फिर भी जब नोटिस आता है तो एंजु-केटेड हो कर भी डरता हूँ। जो मिसाल मैंने दी है उसके पास अब भी नोटिस आती है। यह चीज ठीक नहीं है।

श्री कंवर लाल गुप्त : आपकी दिक्कतें दूर हो जायेंगी। जिसकी आमदनी 10,000 रु० तक है अगर उसके नक्शों को मान लिया जाये और 10-20 रु० टैक्स उस पर लगा दिया जाये तो ठीक हो जायेगा ?

श्री रवि कुमार : पहलगाम में जो लोग हैं उनका विजिनेस दो महीने का है। जहाँ तक छोटे दूकानदारों का ताल्लुक है उनकी आमदनी 5,000 रु० से ज्यादा कैसे हो सकती है? दो महीने के विजिनेस में वह

प्राफिट कैसे दिखलायेगा, यह एक अजीब सी बात है।

श्री दमानी : जब आप की दुकानें चार पांच महीने ही काम करती हैं, तब आप की गृहस्थी का खर्च कैसे चलता है ?

श्री अमरजीत सिंह : हम चावल खा कर जिन्दगी काटते हैं और सो जाते हैं।

श्री रवि : जैसे जैसे यहां पर किराये बढ़ते जा रहे हैं प्राफिट कम होता जा रहा है—जिस का नतीजा यह होगा कि एक दिन सब दुकानदार यहां से भाग जायेंगे। 800 रु० से बढ़कर आज दुकानों के किराये 3 हजार रुपये हो गये हैं। इन मकानों के मालिक आमतौर पर यहां के नहीं हैं, बाहर से आते हैं, कोई श्रीनगर से आता है, कोई अमन्तनाग से आता है, किराया लेकर चले जाते हैं।

श्री बरिन्द्र सिंह : मैं बी० एस० सी० पास हूँ लेकिन नक्शा भरना मुझे भी नहीं आता है—काफी कम्पलीकेटेड काम है—इस को आसान बनाया जाना चाहिये।

श्री सुभाग चन्द : मेरा बम्बई से जो इन्टरैस्ट आता है उसे भी बताता हूँ, तो भी वे उस को नहीं मानते।

चेयरमैन महोदय : बम्बई में आप का क्या है ?

श्री सुभाग चन्द : कुछ नहीं है, सिर्फ इन्टरैस्ट आता है। दो-तीन हजार रुपया आता है—जिस को मैं बता देता हूँ, क्योंकि मैं मनी को व्हाइट रखना चाहता हूँ, इस से इन्कमटैक्स की रकम बढ़ जाती है, लेकिन वे उस को भी नहीं मानते। जब पाकिस्तान के साथ लड़ाई हुई हम अपना कारोबार बन्द कर के पाकिस्तान चले गये, जब लौट कर आये तो रिटर्न भरने में देर हो गई। इन्कम-टैक्स ऑफिसर ने नहीं माना, हम पर पैन्ल्टी

लगा दी। यहां के बिजनेस का सारा दारो-मदार बम्बई के टूरिस्ट्स पर है। गवर्नमेन्ट्स की हट्स यहां पर बढ़ती जा रही हैं, टूरिस्ट इन में ठहरना ज्यादा पसन्द करते हैं, क्योंकि सस्ती पड़ती है, होटलों में ठहरने नहीं जाते। इस साल फायर की वारदातें हुई हैं, जिस की वजह से एक-चौथाई टूरिस्ट भा यहां नहीं आया।

SHRI NARINDER SINGH: (Hotel owners Association): The difficulties being faced by the poor people of Pahalgam have been expressed by my friends. In this connection I would also humbly submit that besides other difficulties, the taxation laws are so much complicated that we people are helpless to flourish our business and raise our normal standard to some extent. As already submitted that the business season is very brief here and we are put to trouble and involved in one difficulty or the other for the reasons not known to us during this busy season. Keeping these few but essential suggestions in view, I humbly request your goodself that efforts may be taken to redress the grievances of our people enabling us to make both ends meet without any hardship.

MR. CHAIRMAN: Now we thank all of you and assure you that efforts will be made and instructions issued to redress the grievances as soon as possible. You kindly send us a detailed memorandum indicating your suggestions in order to get the needful done by the Government.

SHRI WAZIR: Alright Sir. Thank you Sir.

MR. CHAIRMAN: Today's business is over we will meet again on Sunday, the 21st of June, 1970 at 10.00 a.m. at Assembly Lobby, Srinagar.

The witness then withdrew.

Note: The Committee then adjourned to meet again on Sunday the 21st of June, 1970 at 10.00 a.m.

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION
LAWS (AMENDMENT) BILL, 1969.

*Sunday, the 21st June, 1970 at 10.00 hours in the Legislative Assembly
Building Srinagar.*

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri J. K. Choudhury
4. Shri S. R. Damani
5. Shri Pattiam Gopalan
6. Shri Kanwar Lal Gupta
7. Shri B. N. Katham
8. Shri Yashwant Singh Kushwah
9. Shri V. Krishnamoorthi
10. Shri Shiva Chandika Prasad
11. Shri R. Dasaratha Rama Reddy
12. Shri N. K. P. Salve
13. Shri N. K. Sanghi
14. Shri Beni Shanker Sharma
15. Shri Janardan Jagannath Shinkre
16. Shri N. K. Somani
17. Shri Tenneti Viswanatham.

LEGISLATIVE COUNCIL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(Department of Revenue and Insurance)

1. Shri R. N. Muttou, *Chairman, Central Board of Direct Taxes.*
2. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
3. Shri V. Ramaswamy Iyer, *Deputy Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
4. Shri R. R. Khosla, *Deputy Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
5. Shri S. P. Chowdhury, *Under Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

I. All India Tax Advocates Association, New Delhi.

Spokesmen:

1. Shri G. C. Sharma, Advocate—Vice-President.
2. Shri D. P. Mahajan, Advocate—Secretary.
3. Shri O. P. Dua, Advocate—Secretary.
4. Shri Kewal Krishan Wadera, Advocate—Secretary.
5. Shri S. Grover, Advocate—Member.
6. Shri M. M. Khanna, Advocate—Member.
7. Shri Prem Singh, Advocate—Member.
8. Shri I. M. Bhardwaj, Advocate—Member.
9. Shri A. C. Chawla, Advocate—Member.
10. Shri R. C. Dhawan, Advocate—Member.
11. Shri S. K. Kakkar, Advocate—Member.

All India Tax Advocates Association,
New Delhi.

Spokesmen:

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2. Shri D. P. Mahajan, Advocate
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4. Shri Kewal Krishan Wadera,
Advocate
5. Shri S. Grover, Advocate
6. Shri M. M. Khanna, Advocate
7. Shri Prem Singh, Advocate
8. Shri I. M. Bhardwaj, Advocate
9. Shri A. C. Chawla, Advocate
10. Shri R. C. Dhawan, Advocate
11. Shri S. K. Kakkar, Advocate

The witnesses were called in, and they took their seats.

MR. CHAIRMAN: Mr. Sharma, we welcome you and your colleagues who have taken trouble in coming over here to give their evidence before the Committee. Before we start taking evidence, may I read from rules of procedure which applies to the evidences (reads the particular rule from the rules of procedure). Now we have received your memorandum. While giving your evidence, you may kindly highlight the main points contained in

your memorandum. You can tell other difficulties which you feel in the present enactment and which you have not mentioned in the memorandum.

MR. G. C. SHARMA: Mr. Chairman, I am appearing before you this morning as Chief Spokesman of the All India Tax Advocates Association which, I may claim so, is the largest single body of Advocates practising Tax in the country. Some idea about the constitution, aims and objectives and the activities of the Association can be had from these two Souvenirs which I present to you on this occasion, which were brought out at two Annual Conferences of the Association. In this evidence, therefore, I offer not only my personal views, but also those of the Association assisted by a team of Advocates who are sitting by my side, being the delegates from different places. (Mr. Sharma introduces Mr. D. P. Mahajan (Delhi); Mr. H. M. Khanna (Bombay); Mr. Dhawan (Srinagar); Mr. Grover (Jammu); Mr. O. P. Dua (Delhi); Mr. K. K. Wadhera (Delhi); Mr. Prem Singh (Jullundur); Mr. A. C. Chawla (Delhi) and Mr. Bhandari (Jodhpur).

I think it is permissible for me to address you standing as I am not used

to deliver speeches while sitting; and I presume it is also permissible to make a few preliminary observations before referring to the specific clauses in the Bill with respect to which my evidence may be sought. I also wish that have been specifically criticised or one or two clauses other than those that have been specifically criticised or commented upon in the written memorandum submitted to you on behalf of the Association. Therefore, Mr. Chairman, with your permission first of all I want to draw your attention specifically to clause 29 of the Bill which seeks to amend Section 119 of the Income-tax Act and which has not been commented upon in our written memorandum. But before I even do that, however, I wish to stress that by bringing frequent amendments, to the Income-tax Law the Government is creating big inconvenience and difficulties for the people.

MR. CHAIRMAN: If you look into the particular provision in the Bill, we have given protection in this respect.

MR. G. C. SHARMA: Our Association feels that this Amendment Bill is another glaring illustration of the working of the Government's mind in the matter of tax legislation. As soon as the Supreme Court interprets any law and pronounces a judgement if it is found to be adverse to the Government's interests or intentions, the Government immediately decides to amend the law. Unless the decisions of the Supreme Court are given due importance and consideration by the Government and are allowed to be stayed and to be followed for some time, it would be no use taking the matter to the Supreme Court for adjudication. With due respect, I am a lawyer, feel that this is a very dangerous trend developing in the history of tax-law and then begin to apply it takes a pretty long time for the people to first understand the complicated tax-law and then begin to apply it correctly. When the law goes for a test before the Court of Law and the court after applying its mind, interprets it and pronounces the judge-

ment, it is not a sound policy to take hasty steps for immediately undoing what the Court has done. We feel that there has been unfortunately very indecent haste and frequency in amending the laws immediately after the pronouncement of certain judgments by the Supreme Court. The result is that at every time a new amendment is introduced, it creates new problems and gives rise to new interpretations. Therefore, I would suggest that it would be safer for the Society and the legislature as well, if at least five years period of stability and trial is given to any new law enacted before any amendment is brought thereto unless there are special reasons for it. Amendments are not only introduced by the amending Acts in this manner from time to time, but we see so many amendments are never referred to any Select Committee although they are of bigger consequences and are rushed through in the Parliament. There has been big criticism about these amendments in the Parliament and outside Parliament and in the Press. Every year we see that the amendments to the main enactment introduced through the Finance Bill are multiplying. The tendency and procedure has to be checked.

MR. CHAIRMAN: Why don't you refer all the clauses which you have referred in the memorandum first.

MR. TENNETI VISWANATHAM: As per your arguments, the while bill should be withdrawn.

MR. G. C. SHARMA: Mr. Chairman, now I want to specifically refer to a clause which has not been referred to in the Memorandum. In fact, this clause has not been discussed.

MR. CHAIRMAN: You want to refer a clause which is not part of the Bill. Is it so?

MR. G. C. SHARMA: It is part of the Bill but is not in the Memorandum of the Association. We are seek-

ing to amend Section 119 of the Income-tax Act. It is on page 18. I seek your favour to allow me to read this section so that I may be able to make my submissions clear. Section 119 has been in the Act for so many years, but now it is proposed to re-enact it in the following:

(Mr. Sharma reads the relevant clause of the Bill amending Section 119).

Our criticism about this is: The Tax Law must be of a kind as could be made applicable to everybody in similar terms. There should not be any judicial inequality so far as taxation is concerned. Although the proposed legislation may be beneficial to some assesseees in certain cases, but it can do a great deal of damage not only to the other assesseees, but also to the assessing authority. I may urge that by implementing the instructions of the Board, the quasi judicial assessing authority would be reduced to a nullity and it will only be the top-administration that will have the upper hand. On the other hand, some class of people will give us relaxation but the Board will not give them; whereas it will have authority to give to another class. It will create many administrative problems for the Board. It is not that I and my colleagues are opposing the legislation because we have no faith in the Board; we have immense faith in it, but we are opposed to it in principle because it gives precedence to unwritten law over the written law. The Taxing Officers have a power to exercise their discretion, but the provision will develop a sense of timidity in them. We, therefore, strongly oppose that the executive should have any hand to alter the written law from the back door. Suppose a class of people submit their late returns to the Board and the Board issues order that penalty will not be levied for such default in the case of that class of people, it will be a valid direction so far as the proposed Section 119 goes. Such a direction cannot be questioned in a Court

of Law. On the other hand, it will create heart burning amongst different classes of people—some getting preferential treatment and some not. This will embarrass the whole administration.

MR. KANWAR LAL GUPTA: Mr. Sharma, you are a leading lawyer. The Department has to handle about 25 lakh assesseees and their number is still going up. There are so many practical considerations. Even now the Board has been issuing instructions. For instance, in the case of penalties there is an income of 6,000 or 7,000 and the Board has been issuing instructions, whereas below certain levels, no penalty will be levied. If this section is not there, then the I.T.O. is bound to levy the penalty. We have to see the overall effect of this legislation. The Board has been issuing instructions but even then there is no legal binding. The ITO is supposed to submit the files for the approval of the I.A.C. if the Board may be issuing instructions, then they should be asked to give some explanation. If you delete this clause and the Board goes on issuing the instructions, then it is against the Act.

LAWERS: No, Sir.

MR. KANWAR LAL GUPTA: Even the Board has been issuing instructions where the income is below 10,000. This should be decided under section 131, as to whether the Board can issue such instructions.

MR. G. C. SHARMA: By directions of the Board, the provision of law thereafter can be relaxed which is not proper.

MR. KANWAR LAL GUPTA: What will be the effect if that clause is deleted.

MR. G. C. SHARMA: If some relaxation is proposed or intended, let it come before the Parliament.

MR. CHAIRMAN: Mr. Sharma can you please look to section 296 of the

Act of 1961. The rules say that it is an independent authority.

MR. G. C. SHARMA: Sir, there is no provision in the enactment that the directions issued by the Board u/s 119 would be placed before the Parliament. In my opinion, neither the Parliament nor the Courts have a right to question the issuance of such directions because the Central Board of Revenue is clearly empowered by law to do so.

MR. CHAIRMAN: Mr. Sharma, will it be against the provision of the rules itself?

MR. G. C. SHARMA: Yes Sir. The provision of the proposed Section 119 (2) confer unfettered power and discretion in the Board to issue any special orders in respect of any class of incomes or any class of cases, relaxing any of the provisions of the Sections referred to therein and such directions cannot be challenged, in my opinion, by anybody even in the Courts.

MR. KANWAR LAL GUPTA: So far as this Bill is concerned, I would like to know whether you are satisfied with the delegation of such items?

MR. G. C. SHARMA: No, Sir. I am not particularly concerned which class of cases or which class of incomes are selected by the Board for purposes of relaxation, but I am only opposed to the ethics of the proposed legislation because it is opposed of judicial cannons.

MR. CHAIRMAN: But it is an interpretation which you are putting in.

MR. G. C. SHARMA: No doubt, I am submitting for your consideration a view which can be reasonably taken of the proposed section and there is every risk that the people will not be able to interpret in it in the manner the Government intends it to be interpreted. It is, therefore, my duty to suggest that it should not let

a provision emerge in a condition where there will be chances of the interpretation put forward by me.

MR. BENI SHANKER SHARMA: Mr. Sharma it is a fact hat the Board issues instructions and directions to the Officers concerned, and I personally agree with your contention. But I will quote an instance based on the experience we had yesterday at Pahalgam. This is about the small assesseees. The tax laws are so complicated that the ordinary people are unable to understand then and there they feel very much troubled. It is, therefore, but essential that we must give some relaxation to these people not by amending the laws but by suitable executive instructions. We were surely impressed while hearing the grievances of the public there at Pahalgam. Hence it is very essential that the laws should be amended as early as possible.

MR. SALVE: Mr. Sharma, you must take care of the basic articles. Please take note of it.

MR. G. C. SHARMA: Sir, as a matter of fact we must also take other considerations into account. We must not look at the provision only from one angle as it is capable of different interpretations. ?

MR. SALVE: That is correct, but we must not take things as a matter of opinion. So far as clauses 42 and 43 are concerned, the registration not being compulsory to establish the identity as a firm need not be insisted upon a firm which is capable of being treated as a firm under the Indian Partnership Act, should be treated as such by the Income-tax authorities. You are also knowing this fact.

MR. G. C. SHARMA: I would like to refer section 60 of the Act, 1922

MR. G. C. SHARMA: I would amending Bill.

MR. G. C. SHARMA: It has been removed from the Bill

MR. CHAIRMAN: It is your interpretation of things

MR. SALVE: My last question is that your objection is that there would be administrative difficulty. Is it so?

MR. G. C. SHARMA: Yes, absolutely it is so.

MR. TENNETI VISWANATHAM: You have raised very important objection as per my opinion. Your objection is that the Board has been given powers to relaxe the assessment made by the I.T.O. In this way the Board can make instructions to the I.T.O. for relaxation on political grounds. You want that these instructions should be made public. This particular section would lead political relaxation not only in particular class of cases but even it would encourage the individuals. Is it so according to your arguments?

MR. G. C. SHARMA: Absolutely it is so.

MR. TENNETI VISWANATHAM: If the provision is made in regard to powers of the Board, it cannot be then regarded as a violation of Act. The power given to the Board is itself bad according to you and I also agree with you. The Board should not have been given powers. After the assessment is made and the Board cancels that assessment with the powers given in the particular section, it would be against the principles of the legislation. Is it your contention?

MR. G. C. SHARMA: Yes.

MR. DAMANI: The assessee who submits his returns late in the first time, for such kind of assessee, the Board must be given powers to protect them. You know that there are about 4 to 5 lakhs assessee in the group of 10 thousand income. If the Board is not given power to exempt them or to give them any relief, what

would happen to such assessee then? Therefore, the power given to the Board for exempting the assessee is very essential. Will you consider this suggestion?

MR. G. C. SHARMA: I think the legislature should not confer such power under the law on the administrators of the law.

MR. CHAIRMAN: You mean to say if a man is going to be hanged, let he be hanged.

MR. SANGHI: According to your contention the Board may use the power given to it to the detriment of the peoples' interests by giving exemption to certain class of people. Generally, the Income-tax Officers are quasi-judicial officers. Do you think that the Board's instructions given from time to time would take back powers from the Income-tax Officers? In the past also the Board has been issuing instructions and we have instances that with the Board's instructions the assessee have got some relief.

MR. G. C. SHARMA: The instructions given by the Board are always confidential as they are meant for the departmental heads and subordinates. These instructions could not be questioned in a Court of Law, either as right or wrong being clearly outside the enactment. Until now there has been no statutory backing. With the introduction of this particular section, they will not begin to have a statutory backing.

MR. DAMANI: I think this is a very important suggestion.

MR. KANWAR LAL GUPTA: If the instructions are made public by placing them on the Table of the House, in that case will you be satisfied?

MR. G. C. SHARMA: Whatever be the general or special orders issued by the Board under Section 119, they must be in conformity with the other sections of the Act.

MR. KANWAR LAL GUPTA: If the instructions are placed on the Table of the House, we can discuss them and we can condemn the Government if any relaxation is given under some political pressure. I think that serve your purpose.

MR. G. C. SHARMA: Because the influential personalities exercise their influence and the situation remains as it is. Some time it is got done under political pressure.

MR. BENI SHANKER SHARMA: I think that you will agree with me that so far as the substitution of this sub-clause is concerned, if the provisions therein are used judicially and not under any political pressure it is a good provision. Now it is for the Board to issue instructions for this purpose. I don't think you have got any objection in this connection. The Board should issue directions and orders in favour of poor section of the people and not for the benefit of higher sections of people. You see that we in India are in every way trying to unlift poor section of people. So poor assessee should be helped by suitable reclassification which can be done only through proper instructions. There are instances that the Government is favouring certain class of assessee only.

MR. G. C. SHARMA: There are many other ways to implement the policy, if it is of the Board, to treat the small income earning assessee preferentially or bestowing upon them slight favour of the such assessee and can also increase the allowances in the computation of their taxable income. In such a situation this class of assessee will have a right under the law itself to get the necessary relief which anybody can justifiably question that.

MR. BENI SHANKER SHARMA: The Board is entitled to issue directions in view of the provisions of substitution.

MR. G. C. SHARMA: The matter has been thoroughly discussed in the meeting of our executive also and the opinion expressed is that it would be unsafe and unsound legislation to confer on the Board such wide powers for issuing any general or special orders granting relaxation of the specified provisions of the Act. I being a spokesman of the Association am only placing before you their reaction for this provision.

MR. CHAIRMAN: This does not mean that the interpretation, if any, would be exempted being a spokesman. Here are one hundred and one interpretations.

MR. BENI SHANKER SHARMA: Before going to second point I would like to put one more question to Mr. Sharma. In the previous remarks you stated that there are not so many frequent changes in the Act. I am with you. Do you mean to suggest that so far as the amendment of the present Bill is concerned it should be kept in abeyance.

MR. SALVE: No. No. Mr. Sharma has nothing to do with it.

MR. CHAIRMAN: Yes, Mr. Sharma has nothing to do.

MR. G. C. SHARMA: The question is rather difficult—for me to reply. So far as the introduction of an amendment bill is concerned, the lawyers are not supposed to decide whether it should be introduced or dropped, but I would like to supplement this statement by once again saying that frequent amendments of the law put sometimes even a lawyer in great difficulty. If the Parliament is proceeding at such a rapid pace with all kind of legislations, the people cannot understand the laws at all. In fact, our tax-payers are not much educated.

MR. CHAIRMAN: Mr. Sharma, we are just functioning with the speed of the nation.

MR. G. C. SHARMA: In this very context, Mr. Chairman, even clause (b) of sub-section 2 of Section 119 prominently displays the desire on the part of the Board for taking away the discretion from the subordinate authority. The Commission of the Income-tax has already the power to extend the period and I do not understand as to why this discretion is being taken away from the subordinate authority.

MR. KANWARLAL GUPTA: The point is whether the said power will be utilized properly by the Board. Whether it will be mis-used. Mr. Sharma, please enlighten the Committee with your suggestions so that proper use of powers is made by the Board. The discretion of the Board is there and it may be properly utilized. May be, if these are not properly utilised.

MR. G. C. SHARMA: The fundamental principle is that the Board wants to take power for granting time.

MR. KANWAR LAL GUPTA: But this is an additional power.

MR. SALVE: The Commissioner can condone the period of even 20 years. The expression used is authorised and there is no doubt about it.

MR. G. C. SHARMA: My one suggestion would be that all cases where the Board has exercised power under these provisions should be published and notified to give the people a chance to examine whether such powers have been used or misused.

Clause 2 of Section 119, as proposed, is without prejudice to sub-clause 1, and has got still wider scope than clause 1. Even in clause 1, some significant words have been added which were not existing in previous enactment. You are aware, sometimes it is the I.T.O. who writes the order but takes dictation from the superior authority. I do not know whether my understading about the

provisions of clause 1 of Section 119 is correct. In my opinion the words pointed out have most probably been introduced only to legalise such dictation. Any verbal change which is introduced by legislature becomes always controversial.

MR. KANWAR LAL GUPTA: I agree with you but you read the proviso.

MR. G. C. SHARMA: Now I think I should throw some light on clause 14 which must have been the subject matter of great consideration of this august body.

MR. CHAIRMAN: My suggestion is that let us proceed point by point. Here is a point of Registration or Recognition of Firms. The Bill has tried to simplify the existing provisions for the benefit of Registration of firm for the purpose of Income-tax.

MR. G. C. SHARMA: Let me read it out Sir. It is stated that the Bill is an attempt to simplify the existing provisions for the registration of firms. In my opinion if it is desired to simplify the law, there should be nothing like an unregistered firm. Either a firm should be assessed as a firm if the Income-tax Officer accepts it as a firm conforming to all the ingredients of the partnership Act, the partners having specified shares etc.—or it should not be assessed as a 'firm'. For taxation purposes, it is to be regarded as a firm if on the return such a status has been claimed and the assessee has been able to justify that status. The Income-tax Officer should be only concerned to see the genuineness of the existence of the firm. Merely because an application for registration has not been submitted before the closing of the accounts, the benefit of registration should not be denied and the firm asked to pay tax as one unit, whereas from all other standards, it is a validly constituted firm. It is sheer discrimination proceeding from the technical flaw. The discretion between

the registered firm or un-registered firm is superfluous in my opinion. Either a firm should be assessed as a firm if it is genuinely constituted or it should be assessed as an Association of persons as a single unit of taxation. The recognition of status as at present, either as a registered or recognised firm or an unregistered or unrecognised firm should disappear.

Even if the above procedure is retained, the proposed new conditions for availing the benefit of registration should be only applicable to the new firms and not to the old firms which have already been enjoying such benefits. Application of the new procedure to the old firms will be hardship to them. Again, because of illiteracy in the country, most of the business community do not understand clearly and fully the provisions of Taxation Law which are frequently changing. The same difficulty was felt when there was a shift of procedure for continuing registration under the new Act of 1961 which repealed the Act of 1922. According to the old Act, declaration in Form No. 12 was not necessary to get the continuance effect of registration in subsequent years when once the registration was granted. It is, therefore, suggested in the first instance that distinction between registered firm and unregistered firm or a recognised firm and unrecognised firm should be done away with and the assessment should be made either in the status of a firm or in the status of no firm. In the former case, the benefits which a registered firm is entitled to, would accrue to the firm on the basis of such status accorded in the assessment. Again the procedure proposed should only be applicable to new firms and not applicable to the old firms which have already been enjoying the benefits of registration.

MR. SALVE: In the partnership, all persons do not disclose their wealth.

MR. G. C. SHARMA: They disclosed their wealth to the Department only.

MR. SANGHI: If the documents are called for examination, then the whole base is lost.

MR. G. C. SHARMA: What revenue would accrue by insisting on it.

MR. KANWAR LAL GUPTA: There are three partners namely 'A', 'b' and 'c'. A is the 'binami' of 'c'. If B does not know that A is the 'binami' of C, then 'B' should be penalized?

MR. G. C. SHARMA: No.

MR. SALVE: I think you want that no revised legislation should be introduced.

MR. G. C. SHARMA: Yes.

MR. KANWAR LAL GUPTA: Mr. Sharma, I asked some question, you any question, even then you say 'yes'. any question, even then you say 'yes'. I do not know what is correct.

The idea of this clause is that there are 'binami' partners. Generally the assees are making the fraud on the Department to evade from this tax. I think nobody would like to shield such assees. In the present clause penalty has been incorporated. What more provision should be made so that it could be deterrent to such type of assees who evade taxes. Can you suggest?

SECRETARY (BAR ASSOCIATION): Mr. Chairman, I think the particular problem can be viewed from two angles. One is where the fact is concealed and the second one is when the fact is entirely disclosed to the Department. Of course, there is no dispute so far as the second part is concerned. With regard to first the situation may arise as Mr. Gupta has pointed out that our of 16 partners some may be 'binamidars'

By enacting this particular clause, I think, in such like cases, innocent people will be punished which I think is neither the intention of this Committee nor of Parliament. In fact, the guilty should be punished. As such I would suggest de-registration of any firm or confiscation of the property instead of punishment.

MR. CHAIRMAN: What is your suggestion?

SECRETARY (BAR ASSOCIATION): Some other penalty than punishment.

MR. SALVE: Do you suggest as Mr. Gupta pointed out penalty to the culprit?

SECRETARY: Confiscation could prove a good penalty. It could be 200 per cent more than the penalty proposed in the existing provisions.

MR. SOMANI: As Mr. Beni Shanker Sharma has pointed out that under some compelling circumstances, 'binamidar' is allowed to function. I would like to know under what circumstances this 'binamadari' institution is allowed.

MR. GROVER: In J & K State, no trust is registered or 'binamidar' is allowed unless he is a State Subject.

MR. CHAIRMAN: I want to have answer to the question posed by Mr. Gupta. So this matter can remain there.

MR. BENI SHANKER SHARMA: I had an opportunity to visit Nagaland. No Indian citizen is allowed to carry business there. Every Indian citizen is 'binamidar' of a Naga there, as Nagas do not know how to carry a business and the Indian citizen can not carry on any business there. So this institution has to be taken recourse to

MR. CHAIRMAN: You please take next point now i.e. clause 14.

MR. G. C. SHARMA: Sometimes it happens that there are three partners who want to start business and where 'A' provides 50 per cent capital and 'B' provides another 50 per cent capital yet the third partner becomes entitled to equal profits for his active participation. No it is all right. You have been considering this clause for a considerable time and have heard the views of various sections of people in this connection but I believe the majority of the people opposed this enactment.

MR. BENI SHANKER SHARMA: I would like to know what is your opinion in view of the provisions of the act.

MR. G. C. SHARMA: Now I would like to draw the attention of the Chairman and the Members to Clause 14 of the Bill (Reads Clause 14). The proposed legislation react adversely to the consolidation and maintenance of the Hindu Society. In my view no provision should be introduced in the Income-tax Act which strikes at the very roots of the institution and destroys it. Besides, the proposed legislation will create many administrative problems. It will also not be easily possible for the Revenue to recover the taxes whether there are its areas. The only recovery which could be affected would be selling the property; but if I do not have any property from where I shall pay the Taxes. Taxes will be limited to the recovery of, say, my 1/3rd share in the property, but the property must have been broken into pieces by then. Secondly, it will unnecessarily burden the Income-tax Officer. In the wide phraseology, in every case the I.T.O. will have to examine whether the application of the provision will be beneficial to the Revenue or not. Now, Mr. Chairman, many assesseees go in appeal. The individual declares in the returns his income at a certain level. At the stage of assessment, the Income-tax Officer may find that the application of the provision would be beneficial to the Re-

venue, but the matter cannot be finalised at the state when the I.T.O. is merely applying the provision at the assessment stage. On appeal it may be discovered otherwise which is not advantageous to the Revenue. Therefore, it may lead to many complications. The third point is that the Revenue seems to consider that it will be very easy for it to identify the income for all times to come. I mean the incomes arising from the converted property. But this will not be easy to do so in many cases. There are so many illustrations to cite. Suppose a man transfers his property of Rs. 2 lakhs, represented by certain shares, to this family. After some time he spends lot of money on the marriage of his children or incur losses on other account; he will say what been spent is the income arising from the converted property; whereas the Incometax Officer will try to argue that what was spent was the other income and not the income arising from the converted property. Mr. Chairman: thousands of illustrations can be cited where it will be impossible for the Department to identify the income arising from the converted property, where the converted property has been intimately mixed up or blended with the other income of the individual. The Act does not seem to be laying down any rules for determining the income arising from the converted property in such cases.

SHRI BENI SHANKER SHARMA:

Mr. Sharma, you have said a lot about the difficulties being encountered by the Department. The Department. The Department may or may not be thankful to you. Now I will request you to see that it is the anxiety of the Department to see that the right given to a Hindu Undivided Family are not misused. Now after the verdict of the Supreme Court there have been cases where certain people have covered the transactions of transfer of property to their wives and children by the use of the institution of HOF. They throw their individual property in the common hotch-potch Tomorrow, or after six

months, they may again divide their family and thereby transferring their assets to the minor children or wife. People may avoid proper taxation by dividing the family. At the same time, this old institution of the Hindu Undivided Family being a socialistic institution has to be protected. Therefore, we have to see that this Institution is not mis-used.

MR. G. C. SHARMA: Sir, my first submission with reference to your observation is that this right was available to Hindus even there was no taxation in the country. Undoubtedly, the circumstances are quite different today.

MR. KANWAR LAL GUPTA: What is your suggestion then so far as this point is concerned?

MR. G. C. SHARMA: Sir, my humble submission is that the Committee can very well suggest its opinion besides other suggestions. However, I would submit that so far as Section 12 (b) is concerned, it is very clear here that.....

MR. KANWAR LAL GUPTA: Let me pleased elucidate it.

एक सजेशन यह आया था-यह तो आप मानते हैं कि इन सब चीजों में वेलैस्टव्यू लेना चाहिये ताकि इन्कम-टैक्स के रेव्यू का इवेजन् न हो और जो इंस्टीचूशन बहुत सालों से चली आ रही है वह चलती रहे। मैं इस बात से एग्री करता हूँ कि काफी कंसेज् जेनुइन भी हो सकते हैं, लेकिन जैसा शर्मा जी ने कहा— 1965 के बाद से खास तौर से यह लीकेज का सोर्स बन गया है—जिसको रोकना चाहिये। हमने इसके बारे में फिगरस निकाले थे और यह देखने में आया कि 10 परसेंट कंसेज् में एच० यू० एक० बनाया गया और तीन-चार महीने बाद खत्म कर दिया गया, केवल इसलिये कि टैक्स को अवाइड करना है, इवेड करना है। यह चीज रोकनी जानी चाहिये। इस सिलसिल में एक सजेशन यह आया था कि एच० यू० एक० बनाने तक कुछ न कहें

लेकिन जब डिस्पोजन हो, उस वक्त यह प्रोजेक्शन लगा दें इस बारे में आपका क्या रिप्लेक्शन है ?

MR. G. C. SHARMA: Sir, I think it will be an adequate safeguard to check the discretion.

MR. BENI SHANKER SHARMA: What should be the time limit?

MR. G. C. SHARMA: Sir, I think it should not be more than two to three years. There will be quite a few cases where hardship is involved. If the justification for such provision is merely that there should be an increase in the income of the public exchequer, then the difficulties of the people should also be taken into account.

MR. CHAIRMAN: Mr. Sharma! the Committee's opinion also indicate that the grievances of the people should be redressed. When the Hon'ble members of the Committee goes to different places to get the evidences of the public it is sorry to note that the people have to face much more difficulties due to irresponsibility of the officers of the department concerned. As Mr. Gupta has pointed out that the people face numerous difficulties and they are not in a position to pay the taxes.

MR. G. C. SHARMA: Sir, it is true that the difficulties are being faced by the people. I agree there are difficulties on the other side also, but we must not see anything from one angle only. The Government has already announced its intention to club the income of the husband the wife and; therefore, the provision proposed to be introduced by Cl.14 is not of much consequence. In this connection, however, it has to be seen that when property is thrown into common pool of the family, the income arising from the converted property will not be identified accurately and assessed. We can also keep in view the pronouncement of the judgment of the Supreme Court in this connection, where the view expressed was that throwing self-acquired property into common hotch potch does not amount to transfer of property and Parliament should not

rush through in counteracting the efforts of the pronouncement, specially when the Prime Minister has already made an announcement in the Parliament that they are going to bring in a proposal soon for taxing the income of the husband and wife together.

SHRI KANWAR LAL GUPTA: Do you take the Prime Minister very seriously.

MR. CHAIRMAN: We shall take the points raised by Mr. Sharma into consideration and may wait till the scheme for taxation.

SHRI KANWAR LAL GUPTA: You have not informed us whether the scheme should be made applicable or not. Tell us in brief about this.

MR. G. C. SHARMA: I do not conceive of any earthly reason for bringing this amendment with retrospective effect merely on the justification that many took advantage of the law after the Supreme Court's pronouncement came in 1965. We should not rush through the legislation on that basis.

SHRI KANWAR LAL GUPTA: There is lot of discrimination. The point is that those of the people who knew transferred their property prior to 1965 and those of the people who knew nothing about this did transfer the property after 1965.

MR. G. C. SHARMA: I fear that provision may be challenged in the Court of Law. In my opinion some of the measures may not stand trial in the Court of Law.

MR. CHAIRMAN: What about 90 percent. Even when the people did not come to know about the ruling of the Supreme Court.

MR. G. C. SHARMA: The Supreme Court never gave any ruling that if a person throws his self-acquired property into the common hotch potch of the family, it tantamounts to a transfer of property ruling which is in your minds was given in a different context.

SHRI KANWAR LAL GUPTA: What do you want the Committee to suggest?

MR. G.C. SHARMA: My point is this that it will be impossible for the administration to have a check over all the cases. After all, the Administration Department is to be run by human being like us. So the question of enforcing the amendment retrospectively should be seriously considered.

MR. CHAIRMAN: We have taken a note of your suggestions. You want to bring change in it.

MR. G.C. SHARMA: I shall be highly obliged.

MR. CHAIRMAN: We shall proceed further.

MR. G.C. SHARMA: So far as this explanation is concerned, first I shall request you to read it (Reads).

SHRI TENNETI BISWANATHAM: The explanation is only a guidelines.

MR. G.C. SHARMA: Section 147 allows the I.T.O. to re-open the assessment if certain conditions are fulfilled. In this context, I would like to submit that the amendments proposed to Section 143 of the Act are in direct conflict with the provisions of Section 147.

MR. CHAIRMAN and the Hon'ble Members I think all the amendments proposed to be introduced through this Bill give an impression that, perhaps the man has been made for the law and not the law for the man. In this connection, I will read to you particularly the amendments proposed to Sections 271 and 275 of the Act. A man is being made liable for prosecution and imprisonment for the late filling of returns which will, of course, become applicable even to the small shop-keepers who do not understand the law at all or do not maintain any proper records of their business. Severe and multiple punishments are provided

for such innocent although legally delinquent small assesseees. We must keep in mind that our taxpayers, and even our lawyers, however, faithful and dutiful they may be, are bound to sometimes lose sight of the provisions of law scattered all over the Act, especially when they undergo frequent amendments. Should they be penalised so severely?

This provision should not be amended because in our democratic State most of the people are yet illiterate and I anticipate that in the long run only poor people will become victims of this provision, because they are ignorant of how the business records should be kept, how the regulations should be complied with, whereas the prosperous and rich businessman will always be able to find an escape. There can be no doubt that the illiterate businessman cannot apprehend the provisions. So naturally they will be taken into the grip.

MR. BENI SHANKER SHARMA: Mr. Sharma I would like to know from you as to what is your idea about the present amendment only.

MR. G.C. SHARMA: I am talking now of Section 143.

MR. DAMANI: Then the whole scheme is to be dropped.

MR. G.C. SHARMA: I am questioning the complicated procedure and not the whole scheme which has been working very satisfactory for some years with respect to small group of assesseees.

MR. BENI SHANKER SHARMA: So far as the Government's amendment is concerned, it is very laudable as it is further good of small assesseees because they get exemption from daily attendance on the I.T.O. and so may other arrangements. But when an assessment is made under section 143 the I.T.O. should not reopen the assessment. It is just possible that the I.T.O. may reopen the assessment under some temptation. I think the

I.T.O. should be given powers to reopen the assessment with the permission of the Commissioner only under Section 147 what have you to say on it.

MR. G. C. SHARMA: The Commissioners are already possessed of such powers, but once the assessment is made by the I.T.O. it can be cancelled by him under this clause. With due respect, I would submit that this would not make the procedure simple. The professed object of the Bill is to simplify and rationalise the tax procedures. The object may be laudable, but the amendments would certainly complicate the work-load of the Assessing Officer.

MR. KANWAR LAL GUPTA: Sometimes the I.T.O. does wrong assessment. If the assessment is reopened, it is laudible to this extent.

MR. BENI SHANKER SHARMA: It is also laudible because with the incorporation of particular clause majority of the assessments will be completed in much less time leaving the I.T.O. to devote more time to bigger cases. But I agree with you that the I.T.O. should not be given power to reopen the assessment.

MR. G.C. SHARMA: How many provisions we have already in the Act for revising or modifying the assessments originally made.

MR. BENI SHANKER SHARMA: So you are not in favour of giving powers to the Assistant Commissioner and Commissioner.

MR. G.C. SHARMA: If the assessment is wrong, let it be cancelled by the Commissioner under Section 264, but it should not be allowed to be reopened by the Income tax Officer under Section 143.

MR. BENI SHANKER SHARMA: You mean that the clause(1) of section 143 is redundant and clause(2) and (3) should remain there.

MR. G.C. SHARMA: Yes.

MR. CHAIRMAN: If the section 143 is suitable amended, then you will be satisfied?

MR. G.C. SHARMA: Then I will be satisfied.

MR. CHAIRMAN: It is provided in the section 149 (reads).

MR. G.C. SHARMA: This is different, Sir.

MR. KANWAR LAL GUPTA: His objection is that I.T.O. should not be given power under section 143.

MR. CHAIRMAN: This thing we have also proposed (reads from the Act).

MR. KANWAR LAL GUPTA: They are opposing it.

MR. CHAIRMAN: Anyhow we have heard his point of view about the particular point.

MR. BENI SHANKER SHARMA: I think you have finished important points.

MR. G.C. SHARMA: No, Sir.

MR. CHAIRMAN: Let us go to clause 63.

MR. G.C. SHARMA: Yes, I am coming to this clause. The amount of expenditure in certain cases may be very insignificant, but the amendment proposed provides for spreading over 10 years every amount of such expenditure. I do not, therefore, think that the suggestion which I am making will affect the revenue in any significant measure. The expenditure over items such as printing of prospectus, charges for typing of prospectus etc. may be allowed in the first year itself in which it has been incurred rather than deferred for allowance over 10 years.

The calculations over 10 years would be rather cumbersome and would require the records to be preserved very safely and carefully, which has been found to be hardly practicable in the Income-tax Department.

MR. CHAIRMAN: Mr. Sharma, we are going to conclude.

SHRI G.C. SHARMA: So far as the fees for filing the appeals in the Tribunal go, the revision proposed is rather at an exhorbitant rate. After

all, realisation/as fee is not realisation/as tax. All that I know, for filing a special leave petition in the Supreme Court or in the High Court, the fees vary from Rs. 250/- to Rs. 50/-.

MR. CHAIRMAN: Let us now conclude our programme for today. I am very much thankful to you. We are really very grateful to you, Mr. Sharma.

(The witnesses then withdrew)

The Committee then adjourned.

MINUTES OF EVIDENCE OF THE SELECT COMMITTEE ON THE TAXATION
LAWS (AMENDMENT) BILL, 1969

*The Committee sat on Monday, the 22nd June, 1970, from 11.30 to 13.00
hours in Gulmarg Club, Gulmarg.*

PRESENT

Shri Chintamani Panigrahi—*Chairman.*

MEMBERS

2. Shri Jahan Uddin Ahmed
3. Shri J. K. Choudhury
4. Shri S. R. Damani
5. Shri Pattiam Gopalan
6. Shri Kanwar Lal Gupta
7. Shri B. N. Katham
8. Shri Yashwant Singh Kushwah
9. Shri V. Krishnamoorthi
10. Shri Shiva Chandika Prasad
11. Shri R. Dasaratha Rama Reddy
12. Shri N. K. Sanghi
13. Shri Behi Shanker Sharma
14. Shri Janardan Jagannath Shinkre
15. Shri N. K. Somani
16. Shri Tenneti Viswanatham
17. Shri Prakashchand B. Sethi.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri R. N. Muttoo, *Chairman, Central Board of Direct Taxes.*
2. Shri R. D. Shah, *Member, Central Board of Direct Taxes.*
3. Shri R. R. Khosla, *Deputy Secretary, Ministry of Finance, Department of Revenue and Insurance.*
4. Shri V. Ramaswamy Iyer, *Deputy Secretary, Ministry of Finance, Deptt. of Revenue and Insurance.*
5. Shri S. P. Chowdhury, *Under Secretary, Ministry of Finance, Department of Revenue and Insurance.*

SECRETARIAT

Shri M. C. Chawla—Deputy Secretary.

1. Group of Small Income-tax Assesseees.

Spokesmen:

1. Shri Avtar Kishen—Sub-Agents, ESSO, Sopore.
2. Shri Ghulam Mohd. Kar—Messrs. Kar & Co., Sopore.
3. Shri Hirday Nath—Messrs. Prem Nath Hirday Nath, Sapore.
4. Shri Gopi Nath Raina—Tourist Hotel, Gulmarg.
5. Shri Amar Nath—Messrs. Madho Lal & Co., Gulmarg.

MR. CHAIRMAN: Let us start now.

SHRI GHULAM MOHD. KAR: The undersigned feels encouraged by the opportunity the Committee has afforded me to express my views and opinions regarding the assessment, procedure etc. about the law relating to the income tax. Kindly take the views of the undersigned as under:—

1. My point is that we should remember that "trust begets trust".

2. The scheme should be infused with a sense of responsibility in the tax payers so that he is willing to place before the *Samaj* his subscription.

3. That no tax-payer should by nature be dishonest and disloyal. Every tax-payer should contribute his share willingly for the national cause provided it is taken from us like a bee that takes honey from the flower without hurting or damaging the flower. The present system brings only mental agony to tax-payer due to the harassments he receives from the department for petty and negligible deficiencies in the account. So my request to the Committee members would be that the new scheme should be such as that every assess receives due co-operation from the department.

4. Keeping under consideration the devalued value of the market the limit of the scheme should kindly be raised by rupees 10,000.

5. There is a tug of war between the 'have's and have not's like the undersigned. The department's attitude should be like a business man who tries to satisfy his customer in every possible manner. The Department should try to educate the public mind especially the smaller assesseees to that an atmosphere is created that these assesseees voluntarily come forward to pay their taxes for the national cause. The assesseees whose means does not exceed Rs. 10,000 should not be asked to render the accounts.

In the end I hope that the Committee shall pay due attention to our genuine grievances and remove these so that a sense of responsibility is restored in all the assesseees.

श्री प्र० चं० सेठी : यह टैक्स जो दस हजार तक रोज किया है, इस का मतलब एकजैम्पशन नहीं है।

श्री अरवतार कृष्ण : लेकिन हम चाहते हैं कि इस को बीस हजार तक कर दिया जाय।

सभापति महोदय : आप के यहां कितने असेसीज है ?

श्री कार : काफी हैं, तादाद मुझे मालूम नहीं है।

श्री कंवर लाल गुप्ता : यहां पर आप को क्या दिक्कतें हैं। अगर कोई दिक्कत हो तो हमसे बतलायें ताकि हम उन को ठीक करा सकें ?

श्री कार : इन्कम टैक्स डिपार्टमेंट से हमारे काश्मीर के लोग बहुत डरते हैं। क्यों डरते हैं? इस लिये कि हमारे पास एजुकेशन नहीं है। हम यह चाहते हैं कि यह डिपार्टमेंट बुनियादीतौर पर कामशियल डिपार्टमेंट की तरह से काम करे। जैसे एक बिजनेस-मैन अपने ग्राहकों को हर तरह से खुश रखने की कोशिश करता है ताकि उस से ज्यादा से ज्यादा नफा कमा सके वही असूल इस डिपार्टमेंट का होना चाहिये। जितना भी यह डिपार्टमेंट असेसीज के साथ अच्छी तरह से बिहेव करेगा, इखलाक से पेश आयेंगा, उस का असेसीज पर बहुत अच्छा असर पड़ेगा और मेरा यह ख्याल है कि ऐसा करने से जो इन्कम इस वक्त डिपार्टमेंट की हो रही है, वह डबल हो जायगी।

सभापति महोदय : आप के इलाके में इन्कम टैक्स आफिसर कौन हैं ?

श्री कार : मि० शर्मा हैं, बहुत अच्छे आदमी हैं।

सभापति महोदय : जब आप के इलाके के इन्कम टैक्स आफिसर बहुत अच्छे आदमी हैं, तो फिर डरने की क्या बात है ?

श्री कार : मैं तो पिछले 20 सालों की बात कह रहा हूँ। श्री शर्मा तो बहुत बल्लेड और सीज़ड आदमी हैं। वह इस को कामशियल डिपार्टमेंट की तरह से ही समझते हैं। पिछले साल मैंने अपने एकाउन्ट्स इन के सामने पेश किये। मुझे अपने हिसाब से टैक्स नहीं देना था। लेकिन इन्होंने मुझ से कहा कि अपनी खुशी से कौम के लिये आप को कुछ देना चाहिये, जो कुछ इन्होंने मुझ पर लगाया, उस को मैंने एक्सेप्ट

कर लिया। जितने ज्यादा तजुर्बेकार आफिसर इस डिपार्टमेंट में आयेंगे, उतना ही ज्यादा टैक्स इस डिपार्टमेंट को हासिल हो सकता है।

सभापति महोदय : क्या इस वक्त आपको कोई दिक्कत है ?

श्री कार : हमारे इलाके में तो कोई नहीं है, दूसरे इलाकों में होगी। अक्सर लोगों का हेरसमेन्ट होता है। 100 रुपये टैक्स देना होता है, लेकिन दो सौ रुपया जाने-आने में लग जाता है। एक दफ़ा की पेशी में दो दिन खर्च हो जाते हैं। यहां से चल कर वहां पहुंचना पड़ता है, अगर दो बज जाते हैं और नम्बर नहीं आता है, तो कह दिया जाता है कि कल आओ या कोई दूसरी तारीख दे दी जाती है। हमारे मौजूदा इन्कम टैक्स आफिसर से हमें कोई शिकायत नहीं है, हम उन से बहुत खुश हैं, उन के बारे में हमें कुछ नहीं कहना है। लेकिन जो नये इन्कम टैक्स आफिसर आते हैं, हम चाहते हैं कि वे वेल-विहेल्ड हों और तजुर्बेकार हों।

श्री कंवर लाल गुप्ता : अब जो कानून बन रहा है, उस में आप की यह दिक्कत हल हो जायगी। अगर आप की आमदनी 10 हजार रुपये से नीचे होगी तो शायद आप को पेशी के लिये न जाना पड़े, जो नकशा आप भर कर भेजेंगे, उसी के मुताबिक वे फंसला कर के आप को भेज देंगे।

श्री अश्वतार कृष्ण : लेकिन नकशा भरने में बहुत दिक्कत होती है।

श्री कंवर लाल गुप्ता : हर चीज में कुछ न कुछ दिक्कत तो होती ही है।

श्री अश्वतार कृष्ण : सितम्बर में हम को नकशा भरना होता है। हमारे यहां,

ज्यादातर रैटी-शाप-नीपर्व है, जो मुंशी को नौकर नहीं रख सकते। अगर वह नकशा भरने में लेट हो जाते हैं तो उन पर पैन्ल्टी पड़ती है।

श्री कंवर लाल गुप्ता : आप का साल तो मार्च में खत्म हो जाता है। आप को छः महीने मिल जाते हैं। जो छोटे शाप-काँपर हैं उन को अकाउंट बँका बँकाना है ? रोज की बिक्री तो वह लिखते ही होगे ?

श्री अवतार कृष्ण : मैं अपने इत्ताके को रेप्रेजेंट करता हूँ। मैं पढ़ा लिखा आदमी हूँ। दूसरे वे पढ़े लिखे हैं जो अकाउंट नहीं रख सकते। उन को कोई पार्ट टाइम रखना पड़ता है।

श्री बेणी शंकर शर्मा : आप को जो इनकम टैक्स देना पड़ता है उसके लिये आप को बही खाता रखना पड़ता है दिखलाने के लिये। आप उस को श्रीनगर जा कर दिखलाते हैं या इनकम टैक्स अफसर यहीं आता है ?

श्री गुलाम मुहम्मद कार : आम तौर से वह साल में एक दफा हमारे टाउन में आता है और हम उस को अकाउंट देते हैं, लेकिन ऐसा भी हो जाता है कभी कभी कि वह हम को किसी जगह पर बुला लेते हैं।

श्री अवतार कृष्ण : अगर कभी कागजों या बहीखातों में गलती हो जाती है और उस को वक्त से नहीं ठीक किया जा सकता है तब हम को श्रीनगर जाना पड़ता है।

श्री बेणी शंकर शर्मा : अगर कोई अफसर यहाँ आकर अपना काम करे, पांच सात या दस दिन तक यहाँ ठहरे तब आप को अपने खाते बगैरह दिखला कर और हिसाब किताब बतला कर उस के साथ फोअपरेट करना चाहिये ताकि आप खर्च और हैरानी दोनों से हो बच सकें।

श्री गुलाम मुहम्मद कार : जब कभी हम को टैक्स पे करना होता है तब उसके लिये यह रूल बना हुआ है कि हम स्टेट बैंक में रुपया दाखिल करें। उस को सिर्फ एक ही ब्रांच श्रीनगर में है। हमारे लिये यह सब से बड़ी दिक्कत है। इन वक्त हमारे टाउन में दो चार बैंक हैं, स्टेट ट्रेजरी भी है। यह होना चाहिये कि हम चाहे अपना रुपया ट्रेजरी में जमा करें या बैंकों में। बाकी बैंकों में तो हम लोग कर ही नहीं सकते, ट्रेजरी ने भी डिस्अलाऊ कर दिया है। अगर कोई बंस से जा कर पैसा जमा करना चाहे तो 11 बजे तो जमा कर नहीं सकता। 11 बजे की बस से चल कर नहीं। 1 बजे जा कर आदमी पहुंचेगा। 2 बजे के बाद वह बंस में जा नहीं सकता।

श्री कंवर लाल गुप्ता : अगर किसी भी बैंक में जमा करने की इजाजत दे दी जाये तो क्या आप की सारी दिक्कत दूर हो जायेगी ?

श्री अवतार कृष्ण : जी हाँ। जम्मू काश्मीर में यूनाइटेड कामर्शियल और मेट्रल बैंकों की ब्रांचेज हैं।

श्री बेणी शंकर शर्मा : अगर आप बैंक में अपना अकाउंट रख सकते हैं तो चेक से भी पेमेंट कर सकते हैं। किसी भी बैंक को अलाऊ कर दिया जाये, चेक्स सब जगह काम दे सकते हैं ?

श्री अवतार कृष्ण : अगर श्रीनगर में अलाऊ करना है तो सोपुर में भी बैंक है वहाँ से ही पे करने दीजिये।

श्री बेणी शंकर शर्मा : यहाँ पर कोई स्टेट बैंक का पे आफिस है ?

श्री अवतार कृष्ण : जम्मू काश्मीर बैंक है, ट्रेजरी भी है। हम लोगों का कहना यह भी है कि इनकम टैक्स डिपार्टमेंट कामर्शियल

डिपार्टमेंट है । इस को हथलाना नहीं होना चाहिये । इस से यह होगा कि लोगों का डर दूर हो जायेगा और हम अपनी बात कह सकेंगे । हमें मद्दयूस हो जायेगा यह कोई बला नहीं है । जिस समय आई० टी० ओ० आता है उस वक्त हम लोग अपने कागज छिपाने लगते हैं । यह चीज नहीं होनी चाहिये ।

श्री कंवर लाल गुप्ता : आप लोग इनकम टैक्स अफसर से घबराने क्यों हैं ?

श्री अवतार कृष्ण : हमारा अपना तजुर्वा यह है कि अगर टोटल में गलती हो जाये, अगर 10,000 रुपये के टोटल में 2 आने का भी फर्क हो जाये तो वह लोग हम को तंग करते हैं । इस लिये वह लोग भाग जाते हैं । जो तजुर्बेकार अफसर होता है वह हमारी इस कमजोरी को समझता है और हम को तंग करता है । उस को हमारे साथ ठीक से बिहंव करना चाहिये ।

श्री गुलाम मुहम्मद कार : आप मेम्बर साहबान जो कानून बनाते हैं, हमारी मुश्किलों को सामने रखें । आप जब पार्लियामेंट में कानून बनाते हैं तब यह नहीं देखते कि जो छोटे लोग हैं उन को क्या दिक्कतें हैं ।

श्री संघी : आप लोग जो नक्शा भरते हैं उस में आप लोग वकीलों की मदद क्यों नहीं लेते कि वह आप को समझा दे ?

श्री गुलाम मुहम्मद कार : अगर हम वकील को एन्गेज करें तो हम को उस को भी 50 रुपये देने पड़ते हैं । यह कैसे करें ?

श्री संघी : पेनैल्टी कितनी लगती है ?

श्री दमानी : लगनी जरूरी नहीं है, लेकिन गलती होगी तो जरूर पेनैल्टी लगाई जायेगी ।

श्री बेनी शंकर शर्मा : आप से भूल हो जाती है और वह कहते हैं कि बेईमानी करते हो, क्या यह सही है ?

श्री अवतार कृष्ण : कुछ लोग हैं जो बेईमानी नहीं करते हैं । उन के लिये तो कुछ करना चाहिये ।

श्री गुलाम मुहम्मद कार : अफसर ऐसा तजुर्बेकार होना चाहिये कि आदमी की शक्ल देख कर बतला दे कि गलती हो गई है या बेईमानी की गई है । आज जब भी कुछ गलती होती है तब अफसर के ब्याल में तो बेईमानी होती है जब कि टैक्स देने वाले के ब्याल स गलती होती है ।

SHRI BENI SHANKER SHARMA: Don't you maintain your account books.

SHRI GHULAM MOHD. KAR: We do not maintain account books because most of the shopkeepers in our State are illiterate and they cannot afford to engage *Munims* for this purpose.

SHRI KRISHNAMOORTHY: Mr. Chairman, I would suggest why we should not exempt from taxes the tourist places like Gulmarg and Pahalgam.

MR. CHAIRMAN: They belong to Sopore which is a flourishing town.

SHRI VISHWANATHAN: Which of the two you would like to penalty or imprisonment for the assessee who do file their returns in time?

SHRI GHULAM AHMAD BUTT: Neither of two punishments we approve. We should suggest that they should be given one month's time more to file their returns.

MR. CHAIRMAN: Any thing more do you suggest?

SHRI GHULAM AHMAD BUTT: Whatever we want to suggest we have given in writing to you. We would be very thankful to you if you consider our suggestions sympathetically

MR. CHAIRMAN: We have taken note of your suggestions.

Thank you very much.

(The witnesses then withdrew).

The Committee then adjourned

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PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF
BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED BY THE GENERAL
MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI.
