P. A. C. No. 468

PUBLIC ACCOUNTS COMMITTEE
(1977-78)

(SIXTH LOK SABHA)

TWENTY-NINTH REPORT

INCORRECT VALUATION OF ASSETS

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Paragraph 70 (i) of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes relating to incorrect Valuation of Assets]

Presented in Lok Sabha on 19th December, 1977

Laid in Rajya Sabha on 19th December, 1977

LOK SABHA SECRETARIAT
NEW DELHI

December, 1977/Agrahayana, 1899 (S)

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(1977-78)

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Shri Bipin Behari—*Senior Financial Committee Officer.*

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*Elected w.e.f. 23 November, 1977 Vice Sarvashree Sheo Narain and Jagdambi Prasad Yadav ceased to be Members of the Committee on their appointment as Minister of State w.e.f. 14-8-77.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Twenty-Ninth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraph 70(i) of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes, relating to Incorrect Valuation of Assets.

2. The Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes was laid on the Table of the House on 14 May, 1976. The Public Accounts Committee (1976-77) examined paragraph 70(i) relating to Incorrect Valuation of Assets at their sittings held on 15 and 16November, 1976, but could not finalise the Report on account of dissolution of the Lok Sabha on 18 January, 1977. The Public Accounts Committee (1977-78) considered and finalised this Report at their sitting held on the 6th December, 1977. The Minutes of the sittings form Part II* of the Report.

3. A statement containing conclusions/recommendations of the Committee is appended to this Report (Appendix VII). For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the commendable work done by the Chairman and Members of the Public Accounts Committee (1976-77) in taking evidence and obtaining information on this Report.

5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of this paragraph by the Comptroller and Auditor General of India.

6. The Committee would like to express their thanks to the Department of Revenue and Banking (now Department of Revenue), Ministry of Finance for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
December 9, 1977.
Agrahayana 18, 1899(*S*).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

REPORT

INCORRECT VALUATION OF ASSETS

Audit paragraph

1.1. For the purpose of Wealth-tax Act, the term 'asset' includes property of every description. Wealth-tax is, therefore, leviable even on the value of an interest—vested or contingent—in property. A 'vested interest' is one which takes effect forthwith or on the happening of an event which is certain to happen; a 'contingent interest' is one which is to take effect only on the happening of a specified but uncertain event.

1.2. In the case of a trust of an immovable property created in 1928, the settler, who had three sons, declared that after the death of his last surviving son, the property shall be offered for outright sale for Rs. 8,00,000 to his grandson from the first son and if he be not alive, then to the great grandson and if even he be not alive, then to the eldest grandson from the second son. As one son of the settler is still alive, the interest created in favour of the first grandson is a vested interest and that created in favour of the great grandson and the second grandson is a contingent interest.

1.3. The trust was assessed to wealth-tax for this property at Rs. 6,92,000 upto the assessment year 1969-70. For the assessment year 1970-71, however, apprehending that the property was being considerably under-valued, the Department referred the matter to the Valuation Officer who, in his report of 26th July, 1972, determined the value of Rs. 1.03 crores for 1953 to 1955, Rs. 67 lakhs for 1955 to 1969 and Rs. 74 lakhs for 1970-71. When the assessments were reopened, the trust contended on the basis of legal opinion obtained by it (including one from a retired Chief Justice of the Supreme Court) that in view of the stipulation in the trust deed regarding the offer to be made to a specified person for Rs. 8 lakhs, the market value of the property in the hands of the trust could not exceed Rs. 8 lakhs. The Department, after consulting the Ministry of Law, accepted the contention and accordingly the value of Rs. 8 lakhs was adopted in the assessments of the trust.

1.4. The question of including the value of the vested or contingent interest in the assessment of the beneficiaries, who had been given the right to purchase the property worth nearly a crore of rupees for Rs. 8 lakhs only was discussed between the Board and the Ministry of Law in February 1973 when the Ministry of Law opined that no assessment of the value of the rights of beneficiaries could be made as these rights could arise only after the happening of the contingencies. Consequently, the value of the respective interests in the property escaped assessment in the hands of the specified beneficiaries.

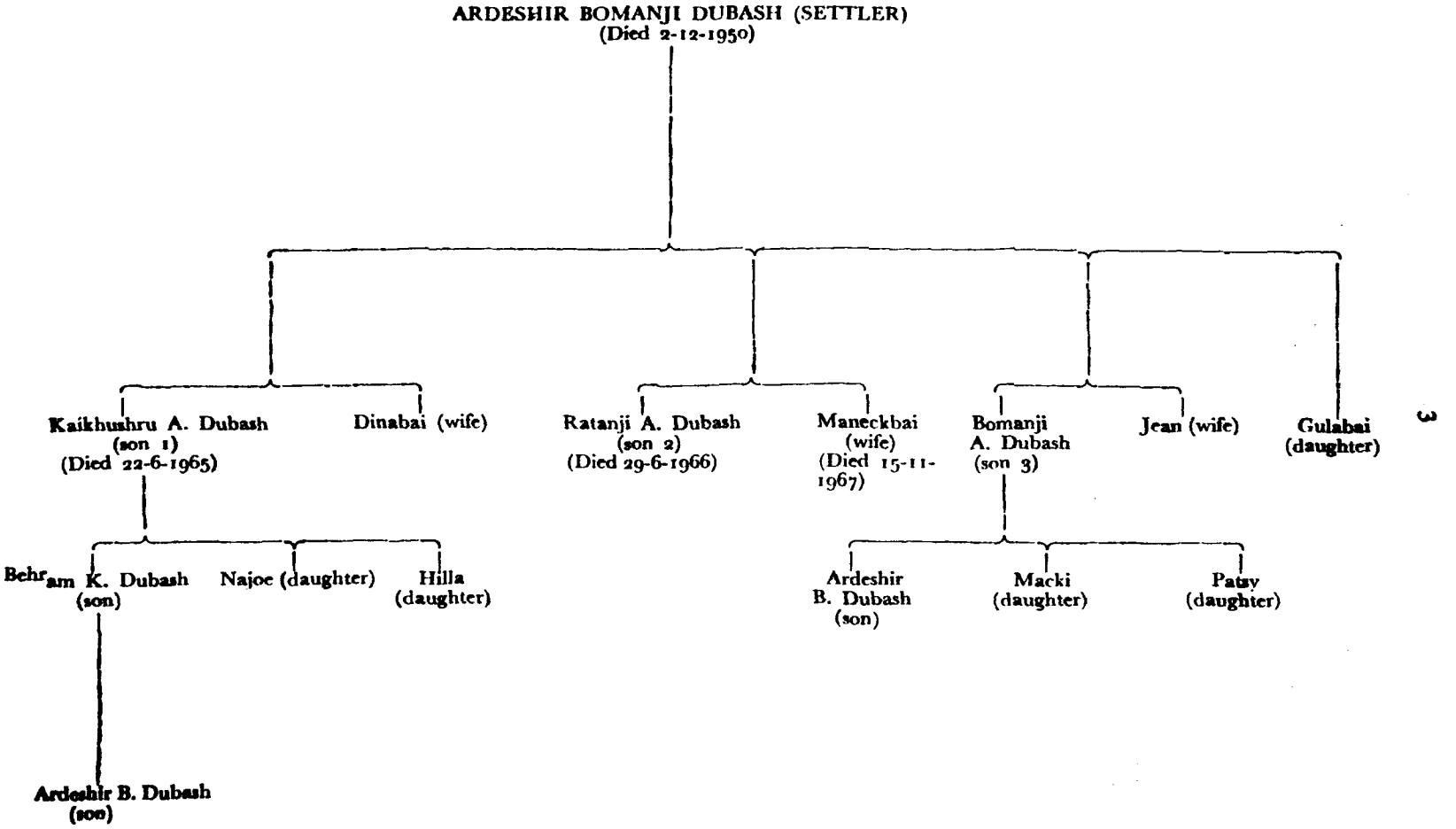
1.5. The Ministry have stated (February 1975) that the Department was already seized of the various issues.

[Paragraph 70 (*i*) of the Report of the Comptroller and Auditor General India for the year 1974-75, Union Government (Civil) Revenue Receipts, Volume II, Direct Taxes]

A. Background information

1.6 The Committee learnt from Audit that the case cited by them related to a palatial property known as "Mount Napean" in Bombay forming part of a family trust created in 1928 by one Ardeshir B. Dubash in respect of his immovable properties and that by a supplementary trust deed dated 2 August 1945, the Settler had made certain separate provisions in regard to the benefits accruing from the said property, the distribution of the corpus of the trust, sale of the property, etc. The Committee were further informed by Audit that though the fair market value of the property had been determined, in 1972, on a reference made to the Department's Valuation Officer, as Rs. 103 lakhs for the years 1963 to 1965, Rs. 67 lakhs for the years 1965 to 1969 and Rs. 74 lakhs for the year 1970-71 (as against the value of Rs. 4,21,500 adopted earlier for the assessment years 1963-64 to 1966-67 and Rs. 6,92,000 for the assessment years 1967-68 and 1968-69), the value as determined by the Valuation Officer was not adopted under the mistaken belief that a provision in the trust deed relating to the sale of the property at Rs. 8 lakhs only to a beneficiary in the course of distribution of the corpus of the trust, when the last survivor of the three sons of the settler died, was a restriction or encumberance on its sale and the assessments were completed for the assessment years 1968-69 to 1972-73 taking the value of the property as Rs. 8 lakhs. This view had been taken, as pointed out in the Audit paragraph, on the advice of the Ministry of Law who examined the case on the basis of the legal opinion obtained by the trust which also included an opinion from a retired Chief Justice of the Supreme Court.

1.7. The family of the settler, Ardeshir B. Dubash, comprised of the following members:


ARDESHIR BOMANJI DUBASH (SETTLER)
(Died 2-12-1950)
Kaikhushru A. Dubash
(son 1)
(Died 22-6-1965)
Dinabai (wife)
Ratanji A. Dubash
(son 2)
(Died 29-6-1966)
Maneckbai
(wife)
(Died 15-11-1967)
Bomanji
A. Dubash
(son 3)
Jean (wife)
Gulabai
(daughter)
Behram K. Dubash
(son)
Najoe (daughter)
Hilla
(daughter)
Ardeshir
B. Dubash
(son)
Macki
(daughter)
Patsy
(daughter)
Ardeshir B. Dubash
(son)

1.8. At the Committee's instance, the Department of Revenue & Banking made available a copy of the supplementary trust deed dated 2 August 1945 relevant to the property in question. The salient features of the trust deed are briefly discussed in the succeeding paragraphs.

1.9. By the principal deed of trust, the settler, Ardeshir Bomanji Dubash had created a family trust of his various immovable properties on 2 May 1928. The properties so settled comprised of the bungalow known as "Mount Napean" situated on Napean Sea Road, Bombay, with servants quarters and garages and four building plots of land (Nos. 1, 2, 3 and 4), the total area being 26,000 square yards (approx). By the subsequent Deed of Trust (executed and registered on 2 August 1945 under the power of appointment and revocation reserved by the settler under the principal indenture), the settler took out the following properties from the corpus of the principal trust deed and settled them on trust :

(*i*) The bungalow "Mount Napean" with servants quarters and garages, garden and approaches, etc. (Area 18,744 sq. yds.)

(*ii*) Vacant plot No. 3.

(*iii*) Certain securities, cash and movable property including plate and silverware.

1.10. *Benefits reserved in the Trust Deed of 2 August* 1945 : According to the Trust Deed [clauses 1(a) and 3(a)], the settler reserved a part of the premises (two rooms on the second floor of "Mount Napean", the Tower Room and five servants rooms and common use of the basement on the ground floor and of the drawing room and dining room on the first floor and other amenities) and the income from the securities for his own benefit and enjoyment. The remaining portions of the premises were to be used as residences by his sons and their families. It was further provided [clause 1(b)] that from and after the death of the settler, the occupants of various portions of the bungalow were to pay rent to the trustees as under :

(a) Portions reserved for common use :	(i) Basement on ground floor and furniture therein. (ii) Garden. (iii) Dining hall, drawing room with furniture, furnishings and fixtures. (iv) Garage and servants quarters. (v) Kitchen, worship places, etc. (vi) Vacant plot No. 3.
(b) Residence of Kaikhushru A. Dubash.	Portions of the second floor earlier used by the settler and Kaikhushru at a rent of Rs. 400 p.m. or Rs. 4,800 p.a. Kaikhushru was also to accommodate, in the room occupied by his son, the settler's daughter Gulabai for which a rent of Rs. 50 p.m. or Rs. 600 p.a. was to be paid by her to the trustees.
(c) Residence of Ratanji A. Dubash.	Portions of the first floor in his occupation at a rent of Rs. 250 p.m. or Rs. 3,000 p.a.
(d) Residence of Bomanji A. Dubash.	Portions of the third floor in his occupation at a rent of Rs. 300 p.m. or Rs. 3,600 p.a.

The Trust Deed also provided [clause 1(b)(vi)] that the right of residence granted as above to the sons and their families was strictly personal to the settler's sons and shall not entitle any of them to transfer or alienate the same to any other person or do any act, deed or thing inconsistent with such personal use. Thus, the premises could not be leased out by any of the beneficiaries. The rights of residence as aforesaid were, according to clause 1(b)(vii) of the Trust Deed, were to pass on to the scions of the family respectively mentioned against each portion of the premises. It was further provided [clause 1(b)(x)] that from and after the death of the last survivor of the three sons of the settler, *viz*. Kaikhushru, Ratanji and Bomanji, the rights of residence shall come to an end to all intents and purposes. A further stipulation under clause 1(b)(vii) provided that these rights and benefits shall endure only so long as "Mount Napean" remained unsold under the trust, "the intent being that if the said Mount Napean has not already been sold under clause 6, then on the death of the last survivor of the said Kaikhushru, Ratanji and Bomanji, the trustees as provided for in clause 4 shall proceed to sell the said Mount Napean freed from such rights of residence in favour of the said Dinabai (wife of Kaikhushru), Maneckbai (wife of Ratanji), Jean (wife of Bomanji) and Behram (son of Kaikhushru) and such rights shall be deemed to have ceased and come to an end on such sale."

1.11. In certain contingencies provided for in clause 1(b)(viii) of the Trust Deed, namely, if any of the persons entitled to the right of residence co mentioned above does not exercise such right or such right of residence sses to an end by the death of the person in whom the said right is veimd or otherwise and the portions allotted to Kaikhushru, Ratanji and Bomenji respectively and the members of their family or any of them remaans vacant or unused, the trustees had the option to let out the said portion or portions lying vacant on such terms and conditions and for suchi period as the trustees may in their absolute discretion think fit, the first option of refusal being given by the trustees to the other parties or persons who may be residing in the other portions of "Mount Napean" allotted to them under the provisions of the trust deed. Such of the garages as may not be required for family use could also be let out by the trustees at their discretion.

1.12. *The event and mode of distribution* : As stated earlier, the trust shall endure only till the death of the last survivor of three sons of Ardeshir B. Dubash. Clause 4 of the Trust Deed provided that from and aftera the death of the last survivor of the aforementioned three sons, the trustees shall hold "Mount Napean" with permanent fixtures, fittings, fixed decorations, chandeliers, lights, fans, furniture in the basement hall and dining room, statues in the gardens and the vacant plot No. 3 upon the following trust:

(a) The trustees shall offer for outright sale for Rs. 8 lakhs the same to Behram Kaikhushru Dubash (son of Kaikhushru) if he be alive and if Behram be not alive to his son Ardeshir B. Dubash (grandson of Kaikhushru) and if Ardeshir be also not alive then to the eldest male child of Bomanji A. Dubash as may then be alive, *inter alia*, on the following terms:

(i) The purchaser to pay the trustees the sum of Rs. 8 lakhs within one year from the date of the death of the last survivor among Kaikhushru, Ratanji and Bomanji.

* * *

(iii) The purchaser to pay interest on the purchase price from and after six months of the death of the last survivor of Kaikhushru, Ratanji and Bomanji.

* * * *

(v) The offer to be accepted within two months from the date of which it is made by the trustees.

(b) In the event of the offer being accepted by any of the parties mentioned above, it shall be open to the trustees to receive the whole consideration money at one time or to receive it by reasonable instalments within one year, the unpaid amount being covered by proper security.

(c) If the offer for sale made by the Trustees shall not be accepted by any of the persons named above or for and on their own behalf within the time prescribed *i.e.* two months from the date on which it is made (time being of the essence) the Trustees shall at their discretion by at liberty to sell same to whosoever they may think fit either by private treaty or by public auction and on such terms and conditions as they may think fit.

(d) After paying all costs charges and expenses of such sale the Trustees shall divide the net sale proceeds into two equal shares and hold one such equal share Upon Trust to divide and distribute the same—between all the children of Kaikhushru—Aredeshru Dubash in equal shares and the trustees shall hold the other such equal share Upon Trust to divide and distribute the same between all the children of the Bomanji Ardeshir Dubash in equal shares.

1.13. Clause 5 of the Trust Deed provided for the division and distribution of the movables held upon trust on the death of the last survivor of the settler's three sons in the same manner as provided for distribution of the sale proceeds of "Mount Napean" in clause 4(d) of the deed.

1.14. *Sale of the property by Trustees* : Subject to certain specified conditions, the trustees could sell the property. Clause 6 of the Trust Deed dated 2 August 1945 is relavant in this connection and is reproduced below :

> "The Trustee shall during the lifetime of the settler if the settler so directs sell the said Mount Napean freed from the trusts and rights of residence created by these presents in favour of the members of the settler's family and upon such sale the trust in provisions and conditions created in respect of such right of residence shall be deemed to have been revoked and at an end. In case of such sale the Trustees shall hold the sale proceeds and the investments thereof upon trust to pay the income to the settler during his life time and after his death upon the same trusts and conditions on which the sale proceeds are to be held in case the said Mount Nepean is sold after the death of the settler but before the period of distribution as provided below. Similarly, after the death of the settler the trustees may with the written consent of the beneficiaries hereunder named that is to say the said Kaikhushru, Dinabai, Behram, Ratanji, Maneckbai, Bomanji and Jean and in case of the death of any one of them with the consent of the survivors or survivor of them and in case the majority of them agree then with the sanction of the Court

first obtained sell the said Mount Nepean freed from the rights of residence so created as aforesaid and in case of such sale the trusts provisions and declarations creating such rights of residence shall be deemed to have been revoked and come to an end. Upon any such sale as afore-said the sale proceeds and the investments the reof shall be held upon the trust to divide the same into three equal parts and hold one such equal part or share upon trusts to pay the income thereof to the said Kaikhushru for life and after his death to his wife Dinabai until her death or remarriage for the maintenance and support of herself and her children and upon the death or remarriage of the said Dinabai shall hold the same upon the same trusts and provisions as are contained in clause 4(d) hereof for the distribution of the sale proceeds of Mount Napean among the said children of Kaikhushru Ardeshir Dubash. Similarly the Trustees shall hold the second ⅓rd equal part or share and the investments thereof upon Trust to pay the income thereof to the said Ratanji and after the death of the said Ratanji to his wife Manackbai until her death or remarriage for the maintenance and support of herself and after the death or remarriage of the said Maneckbai the Trustees shall divide the same into two equal shares and hold one such share upon the same trusts and provisions as are contained in clause 4(d) for distribution of the sale proceeds of Mount Nepean among the children of the said Kaikhushru and the other such equal share upon the same trusts and provisions as are contained in clause 4(d) for the distribution of the sale proceeds of Mount Nepean amongst the children of Bomanji Ardeshir Dubash. The Trustees shall similarly hold the remaining such ⅓rd equal part or share and the investments thereof upon trust to pay the income thereof to Bomanji and after the death of Bomanji to his wife Jean until her death or remarriage whichever happens first for the maintenance and support of herself and her children and upon the death or remarriage of the said Jean shall hold the same upon the same trusts and provisions as are contained in the clause 4(d) hereof for distribution of the sale proceeds of Mount Nepean among the children of the said Bomanji Ardeshir Dubash."

1·15. The following further facts relevant to the case emerge from a study of the material made available by the Department of Revenue & Banking and Audit :

(a) The settler, Ardeshir Bomanji Dubash died at Bombay on 2 December 1950 and after this date, the rent under the trust deed became payable to the trustees in terms of clause 1(b) of the Trust Deed.

(b) The settler's eldest son, Kaikhushru A. Dubash, and his wife Dinbai renounced on 14 July 1955 their right and interest to reside in "Mount Nepean" given to them under the Trust Deed in favour of their son Behram Kaikhushru Dubash. Kaikhushru A. Dubash died on 22 June 1965.

(c) Ratanji A. Dubash also died on 29 June 1966 and, therefore, the last survivor of the three sons of the settler was Bomanji A. Dubash.

(d) Bomanji A. Dubash, the youngest son, and his wife Jean executed a Release Deed on 5 February 1973 giving up the right to residence under the trust deed and the property was leased to M/s Nepean Estate (P) Ltd.on 24 February 1973 by Behram K. Dubash for a period of 98 years at a token rent of Re. 1, if demanded, for the first three years and at Rs. 12,700 p.m. after the first three years. It is significant in this context that M/s. Napean Estate (P) Ltd., to whom the property was so leased consisted of the members of the Dubash family. On 26 February itself, M/s. Napean Estate (P) Ltd., sub-leased a portion of the property for 97 years and 11 months to M/s. R. Sharp & Sons Pvt. Ltd., at a rent of Re. 1 for the first three years and at Rs. 2,500, p.m. thereafter.

(e) On 3 September 1973, shares of M/s. Napean Estate (P) Ltd., were sold by the members of the Dubash family to G.K. Govani and others.

1·16. As has been pointed out in the Audit paragraph, for the purpose of the Wealth-tax Act, 'asset' includes property of every description and wealth -tax is, therefore, leviable even on the value of an interest vested or contingent-in property. The Committee have been informed by the Department of Revenue & Banking that the provisions of the law governing the assessment of the net wealth held by family trusts in the hands of the trustees and beneficiaries are contained in Sections 2(e), 2(m), 3, 7 and 21 of the Wealth-tax Act, 1957 and Rule IB of the Wealth-tax Rules, 1957. The term "asset" has been defined in Section 2(e) of the Act while "net wealth" has been defined in Section 2(m). These are extremely comprehensive provisions, all assets being included in "net wealth" by the very definition and in the definition of "asset", property of every description movable and immovable, is included. Section 3 of the Act imposes the charge of wealth-tax upon the net wealth and it has been held by the Bombay High Court (71 ITR 180) and approved by the Supreme Court (76 ITR 471 and 88 ITR 417) that net wealth "necessarily includes property of any and every description of the assessee, movable or immovable, barring the exceptions stated in Section 2(e) and other provisions of the Act." Thus, in the present case commented upon in the Audit paragraph, the vested/contingent interest of the beneficiaries (Behram K. Dubash and Ardeshir B. Dubash, son and grand-son respectively of Kaikhushru A. Dubash) who had a pre-emptive right, under clause 4 of the Trust Deed dated 2 August 1945, to pruchase "Mount Nepean" was also to be included in their wealth-tax assessments.

1.17. The assessment procedure in the case of trusts is laid down in Section 21 of the Act. Section 21(1) of the Act provides that in the case of assets chargeable to tax under the Wealth-tax Act which are held by ".....any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherewise (including a trustee under valid deed of wakf)", the wealth-tax shall be levied upon and recoverable from the trustee "in the like manner and to the same extent as it would be leviable and recoverable from the person on whose behalf or for whose benefit the assets are held" and the provisions of the Act "shall apply accordingly". Under Section 21(2), "Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf or for whose benefit the assets above referred to are held, or the recovery from such person of the tax payable in respect of such

assets." Further according to Section 21(4), notwithstanding anything contained in this section, "where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered" from the trustee "as if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for the purposes of this Act."

1.18. It has been held by the Bombay High Court (71 ITR 180) that under Section 21(1) read with Section 21(2), the assessment can be made in the hands of the trustee or beneficiaries according as the interest of revenue dictates and that the effect of Section 21(4), which creates an exception to this choice given to the department, is that sub-section (2) would not be available. to the department where the shares of the persons on whose behalf or for whose benefit any assets are held are indeterminate or unknown.

1.19. At the Committee's instance, the Department of Revenue & Banking furnished a note indicating the salient features of the instructions issued, from time to time, by the Central Board of Direct Taxes in regard to the manner of assessment of family trusts and valuation of the rights of the beneficiaries therein, which is reproduced in Appendix I.

1.20. Section 7 of the Wealth -tax Act, 1957, deals with the procedure for the determination of the value of assets. Under Section 7(1), "subject to any rules made in this behalf, the value of any assets, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

1.21. The Committee have been informed by the Department of Revenue & Banking that while the valuation of life interests is governed by Rule 1B of the Wealth-tax Rules, 1957, in the case of interest of remainder-men in the corpus of family trusts, no rules regarding valuation of such interest have been framed and that under Section 7 of the Wealth-tax Act, the value of such interest is to be taken at the price which, in the Wealth-tax Officer's opinion, it would fetch in the open market if sold on the valuation date. The Department have further stated that this valuation is made on actuarial principles with due regard to the following four main factors :

(i) the mortality assumed ;

(ii) the rate of interest employed ;

(iii) the value placed on the trust fund ; and

(iv) the effect of estate duty.

B. Under-valuation of "Mount Napean"

1.22. The Committee enquired into the method of assessment of trustees and beneficiaries in the case of family trusts. A representative of the Central Board of Director Taxes stated in evidence:

"Wealth-tax is leviable on the net wealth of an assessee, and those assesses are individuals and HUFs. Wealth has been defined

as assets minus liabilities. The relevant words, are 'Assets belonging to an assessee'. That is one part of the law on the subject. Then, section 7 deals with valuation. Then there is a specific provision in the Wealth-tax law, section 21, which says that in the case of assets held by a trustee, the tax shall be levied on and recovered from the trustees in the same manner and to the same extent as it would have been levied on the beneficiaries. A sub-section under it gives us an option to make a direct assessment on the beneficiary instead of making an assessment on the trustees. Then there is sub-section 4 which says that if the shares of the beneficiaries are not determinate or are unknown, the assessment may be made by regarding the beneficiaries together as if they were single individual who is a resident of India and a citizen of India."

He added :

"We can either assess the beneficiary direct or we can make an assessment on the trustees. In the latter case when the assessment is made on the trustees, the wealth tax has to be levied and collected in the same manner and to the same extent as if it was to be recovered from the beneficiary directly."

Asked whether the manner of computing wealth-tax in the case of a trustee or a beneficiary or an individual was the same, the witness replied:

"It is the same method whether it is for a trustee or a beneficiary."

To Another question regarding the manner in which the assessment had been made in the present case cited in the Audit paragraph, the witness replied :

"The assessments have been made for the property in the hands of the trustees at a figure of Rs. 8 lakhs. But no assessments have been made on the beneficiaries, that is, the three sons. The settler had three sons, S/Shri Kaikhushru, Ratanji and Bomanji. The trust provided that during the life time of these three sons, they had a right to live in the house and, after the death of all the three sons, the trust provided that the trustees shall offer the property at a specified value of Rs. 8 lakhs to the son of Shri Kaikhushru whose name was Behram if he was alive at that time and, if Mr. Behram was not alive, then to his son, Ardeshir and, if Mr. Ardeshir was not alive at that time, then to the eldest male child of Bomanji who was the third son."

1.23 The following table, furnished at the Committee's instance, by the Department of Revenue & Banking, indicates the value of the property, "Mount Napean", adopted in the assessments pertaining to the period 1964-65 to 1972-73.

Assessment Year	Value adopted	
	Original Assessment	Revised Assessment
1	2	3
	Rs.	Rs.
1964-65	4,21,500	6,92,000
1965-66	4,21,500	6,92,000
1966-67	4,21,500	6,92,000

1	2	3
1967-68	6,92,000	..
1968-69	6,92,000	7,00,000
1969-70	6,92,000	7,00,000
1970-71	6,92,000	7,00,000
1971-72	8,00,000	..
1972-73	8,00,000	..

1.24 Asked to indicate the reasons for referring the question of valuation of the property to the Valuation Cell in 'Assessment Year 1970-71, the Department of Revenue & Banking have, in a note, stated :

> "Since the value of the property was thought by the wealth-tax Officer to be understated, valuation was referred by him to the Valuation Officer."

As has been pointed out in the Audit paragraph, the Valuation Officer, in his report of 26 July 1972, determined the value of the property at Rs. 1.03 crores for the years 1963 to 1965, Rs. 67 lakhs for the years 1966 to 1969 and Rs. 74 lakhs for 1970-71. A copy of the relevant report of the Executive Engineer (Valuation), Income-tax Department, Bombay, was also made available to the Committee by the Department.

1.25 Since a property valued at nearly a crore of rupees by the Department's own Valuation Officer had been valued only at Rs. 8 lakhs for purposes of wealth-tax, the Committee called for copies of the assessment orders relevant to the case, in response to which the Department of Revenue & Banking furnished copies of the assessment orders for the assessment years 1964-65 to 1972-73. The Committee found therefrom that the following note had been recorded by the concerned wealth-tax Officer on 8 March 1973 in the assessment orders for the years 1964-65, 1968--69 and 1971-72 :

> "In this case the matter was referred to the Valuation Cell and the Executive Engineer valued the property Mount Napean for Rs. 1,03,60,000 for the year 1963 to 1965, Rs. 67,15,000 for the year 1966 to 1969 and Rs. 74,45,000 for the year 1970-71. In the meanwhile the assessee had approached the Board and the Board in turn referred the matter to the Law Ministry. As per opinion of the Law Ministry which is based on the opinion given by Justice..... the value of the property cannot exceed Rs. 8 lakhs. As there was wide disparity between the valuation made by the Executive Engineer and the value placed by the Law Ministry, the case was discussed with I.A.C. The I.A.C. appears to have discussed the matter with the C.I.T. who again referred the matter to the Board. The Board's final orders have been received on 5-3-1973 and the W.T.

assessments are completed on the basis of Board's instruction and after discussion with the I.A.C."

1·26 In view of the fact that in this case, the Wealth-tax Officer had apparently not been allowed to complete the assessments according to his or her own judgement and the law allowed to take its own course on account of intervention by the Central Board of Direct Taxes, obviously on the assessee's initiative, the Committee desired to know whether it was normal for the Board to be approached in this manner while the case was being considered by the proper officer and why the Board had apparently gone out of its way to get the matter examined by the Law Ministry on the basis of an opinion given by a former Chief Justice of the Supreme Court. The Chairman of the Central Board of Direct Taxes stated in evidence :

"We have now issued instructions that the Board shall not interfere in individual cases."

He added :

"These instructions were issued on 22 November 1974. Before these instructions were issued, I understand it was quite a common practice to give advance rulings as well as deal with individual petitions of assessees, although it was contrary to the provisions of law, but it appears that nobody noticed this fact and this practice was going on until the matter was raised in the Public Accounts Committee and the PAC criticised this practice and brought it specifically to the notice of the Government. Thereafter the Board consulted the Ministry of Law also and they agreed with the PAC that this practice was not in accordance with the provisions of the law, that is, the Board is not competent to issue instructions in individual cases. Since then these instructions were issued and the practice has been stopped."

1·27 Another case relating to the assessment of a foreign company in which a representative of the foreign company had been in touch with the Central Board of Direct Taxes in connection with its assessments and the Board had issued instructions, contrary to the provisions of law, to the Commissioner of Income-Tax concerned, commented upon in paragraph 17 of the Report of the Comprtroller & Auditor General of India for the year 1973-74, Union Government (Civil) Revenue Receipts, Volume II, Direct Taxes, had also been examined by the Committee. With reference to this case, the Committee had asked whether this did not indicate that the Central Board of Direct Taxes had been interfering often in individual cases to the detriment of the country's revenues and the Chairman of the Board had replied in evidence :

"As I stated earlier, it was quite a common practice for the Board to give instructions in individual cases..... This is the factual position which we have got to admit."

Asked whether this practice of the Board interfering in individual cases, particularly those relaing to influential and powerful assessees, had overcome to the Finance Secretary's notice, the Finance Secretary replied :

> "While it is true that I have been in the Finance Ministry ever since coming to Delhi, my experience with revenue matters has been since 1974. In this connection, I would refer to a specific provision in the Income-tax Act, where it is laid down by statute itself that the Board will not be looking into individual cases."

The Chairman, Central Board of Direct Taxes, added in this context :

> "As I have stated, after the issue of these instructions, if this very case had come to the Board, the Board would have refused to interfere and the Board would have told the assessee to deal with the Income-tax Officer directly. There are cases now where when we receive references, our stock reply is that the Board declines to interfere."

1·28 As stated by the Chairman, Central Board of Direct Taxes, the practice of the Board giving advance rulings as well as dealing with individual representations from assessees had also been criticised earlier by the Public Accounts Committee. Dealing with one such case where an advance ruling has been given by the Board in regard to the tax liability of a foreign company, the Public Accounts Committee (1973-74), in paragraphs 5·87, 5·89 and 5·91 of their 128th Report (Fifth Lok Sabha), had made, *inter-alia*, the following recommendations/observations :

> "5·87 A ruling given by the Ministry in May 1973 in regard to the tax liability of a foreign company under a collaboration agreement with an Indian company in which the Government of India have 51 per cent of shares and L.I.C. 23 per cent of shares came to the notice of the Committee. The facts narrated by the Committee in the fore-going paragraphs would indicate how the Ministry went out of the way on the suggestion of the Ministry of Law and sought modification in the terms of the agreement if certain payments to be made to the foreign company for so-called know-how were to be exempted from tax. The Finance Secretary already agreed with the view that advice should not be in a specific instance. According to him, if the basic premise is accepted that the tax determination in a particular case has to be made by the ITO in a quasi-judicial proceeding then only would the Board express a view in general terms. The matter, therefore, requires thorough inquiry in depth so as to set out clearly the scope of advice which may be given by the Ministry of Finance (Foreign Tax Division), in such matters."

> "5·89 The question of the Board's giving advance ruling had been raised before the various committees and commissions which inquired into direct tax administration. In this connection the Committee would refer to paragraph 6·179 of Direct Taxes Enquiry Committee's final report (December 1971). It appears that unless the Board is authorised by law to give advance

rulings the Board should not give advance ruling. The Committee therefore, desire that in order to place the matter on a legal footing necessary amendment to the law should be considered early."

"5·91 The advice (not ruling) should be not for avoidance/or for finding loophoies but it should be in the nature of a general analysis of law as it stands and no more. The Board should not have powers to render regular consultancy service."

In their Action Taken Note on these recommendations/observations [*vide* page 34 of the Committee's 153rd Report (Fifth Lok Sabha)], the Department of Revenue & Insurance had informed the Public Accounts Committee (1974-75) as follows :

"The matter has been considered in detail and, in the light of clause (a) of the proviso to Section 119(1) of the Income-tax Act, 1961, it has been decided that the Board will not issue any advance rulings/directions instructions in individual cases.

The advice to be given to the taxpayers will be in the nature of a general analysis of law as it stands.

In view of the decision that the Board will not issue any advance rulings, it is not considered necessary to amend the law for taking a power enabling the Board to issue advance rulings.

The Public Accounts Committee's observations in this para have been noted for guidance."

1.29 Section 119(1) of the Income-tax Act, 1961, as amended by the Taxation laws (Amendment) Act, 1970, with effect from 1 April 1971, prohibits, *inter alia*, the issue of orders, instructions or directions by the Central Board of Direct Taxes requiring any Income-tax Officer to make a particular assessment or dispose of a particular case in a particular manner. The Section reads as follows:

"119. Instructions to subordinate authorities (1) The Board may, from time to time, issue such orders, instructions and directions to other Income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued—

(a) So as to require any income-tax authority to make a particular assessment or dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions."

1.30 A copy of the instructions (No. 796) dated 22 November 1974 issued in this regard was furnished, at the Committee's instance, by the Department of Revenue & Banking, which is reproduced in Appendix I.

1.31 Even under the Wealth Tax Act, 1957, the Committee learnt from Audit that the Supreme Court, had held, in Sirpur Paper Mills Ltd. *vs.* Commissioner of Wealth-tax (1970)(77 ITR 6), that Section 13 of that Act did not imply that the Board may give any directions or instructions to the Wealth-tax Officer or the Commissioner in exercise of his quasi-judicial functions. The Supreme Court added that any interpretation permitting that would be plainly contrary to the scheme of the Act and the nature of the powers conferred on the authorities invested with quasi-judicial powers.

1.32 The Committee desired to know when the assessee in this case (trustees of "Mount Napean" Trust) had approached the Central Board of Direct Taxes and whether the opinion of the former Chief Justice of the Supreme Court had already been obtained by the assessee or whether it was obtained only subsequently. A representative of the Central Board of Direct Taxes stated in evidence:

> "One Mr....., on behalf of the Trust, approached the Board with a letter dated 22 September 1972. This was supported by an opinion from Mr.....and later on Mr...'s (former Chief Justice of the Supreme Court) was also taken."

Since the former Chief Justice's opinion had admittedly been obtained only later, the Committee desired to know the circumstances in which it became necessary for obtaining the opinion of a person like a retired Chief Justice. The witness replied in evidence:

> "I will go through the file. I presume that the assessee must have furnished that in support of the case that he was putting forward."

To another question whether a second opinion was also obtained by the assessee from the former Chief Justice, the witness replied in the affirmative and added:

> "There is a supplementary opinion dated 21 November 1972."

1.33 The Committee desired to be furnished with a copy of the letter dated 22 September 1972 alongwith the opinion stated to have been given to the Board on the assessee's behalf and enquired into the circumstances in which the initial and supplementary opinions were obtained from a former Chief Justice of the Supreme Court. Further, they also desired to know on how many occasions the assessee or his representatives had met the Chairman other senior officials of the Board in connection with this case. Complete details of such meetings alongwith copies of the records of discussions, if any, all correspondence exchanged between the assessee or his representatives and the Board, of the relevant notes in the Board's files leading to the issue of the instructions to the Commissioner of Income-tax were also called for by the Committee. The Department of Revenue & Banking, in a note furnished in this regard, informed the Committee that the file containing the relevant information/documents had been sent to the Ministry of Law on issues arising out of this case and would be made available as soon as it was received back from that Ministry. This had, however, not been furnished till the finalisation of this Report. Copies of the opinions dated 30 October 1972 and 21 November 1972 given

by the former Chief Justice were, however, furnished by the Department to the Committee which are reproduced in Appendix II.

1.34 The Committee, on a scrutiny of the opinions of the former Chief Justice, found that the first opinion dated 30 October 1972 had not taken into consideration the fact that under clause 6 of the Trust Deed, sale of the property was possible during the life time of the settler, if he so desired, and after his death, with the consent of the surviving beneficiaries or with the consent of a majority of the said beneficiaries with the sanction of the court, but had confined itself to an examination of the implications of clause 4 of the Trust Deed. The former Chief Justice, in his opinion dated 30 October 1972, had observed, *inter alia*, as follows:

"** ** ** **

> Under S. 7 of the Act, the value of the property shall be estimated to be the price which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.
>
> It is true that for purposes of valuation under S. 7(1) of the Act, the words 'if sold in the open market' does not predicate actual sale are an actual existing market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market. The Wealth-tax Officer must assume a notional market for the sale of the property and determine the value at which the property may be sold in the market.
>
> [*See*: The judgement of the Supreme Court in Ahmed G.H. Ariff and other vs. Commissioner of Wealth-tax, Calcutta (76 ITR 471)]
>
> The judgement does not expressly state nor does it imply that the restrictions which are imposed upon the property either by virtue of legal provisions or because of settlement to which the property is subjected, are to be ignored. If the property is subjected to restrictions which restrict its market ability as encumbered property the value of the same will be less than the value it could have fetched if it were unencumbered. Such restrictions and convenants as reduce the value must be taken into account in valuing the property.
>
> ** ** ** **
>
> The right which Behram K. Dubash has in the property will arise only on the death of all the three brothers; this right is contingent. The right to purchase property at the price fixed by the settler cannot however on that account be ignored; for the trustees must hold an apply the property according to the directions of the settler because any purchaser of the property from the trustees will take the property subject to the restriction imposed by the settler.
>
> In my opinion, the value of the property in the hands of the Trustees in no circumstances can exceed Rs. 8 lacs.

In this connection, it is also important to bear in mind that the amount of Rs. 8 lacs includes the value of the permanent fixtures, fittings, decorations, chandeliers, fans, furniture and statues, etc., the value of which has to be ignored while valuing the property for wealth-tax purposes, and hence the value of the house and land would be less than Rs. 8 lacs, for the purposes of the Wealth-tax Act, and in any circumstances cannot exceed Rs. 8 lacs."

Since this opinion did not, as stated earlier, take into account clause 6 of the Trust Deed, the second opinion dated 21 November, 1972 appears to have been obtained, relevant extract from which is reproduced below:

"The Querist seeks a supplementary opinion on points not covered by the earlier opinion dated October 30, 1972. My attention is invited to Cl. (6) of the Indenture of Trust dated August 2, 1945.

** ** ** **

It is true that under Cl. (6) the property may be sold with the consent of all the persons mentioned in paragraph 6 or a majority of those persons with the sanction of the court. But the right vested in certain specified persons to purchase the property for a fixed amount of Rs. 8 lacs after the death of the last surviving son of the settler must also be taken into account in considering whether there is any reasonable posibility of such consent of a majority of the persons. The present market value of the property free from encumberances may be large but the persons named whose consent must be obtained for sale of the property would not normally be expected to assent to any sale to outsiders. It is difficult to believe that any of those persons will agree to the sale of the property to his or her own detriment or to the detriment of his or her children and close relatives. Out of the three sons of the settler, Kaikhushru, Ratanji and Bomanji, two are dead. After the death of the third son, the property must be offered for sale to Behram son of Kaikhushru and if Behram be not then alive to his son Ardeshir and if Ardeshir be not alive to the eldest male child of Bomanji. These are restrictions inherent in the title to the property and must reduce the value of the property. Granting that in certain circumstances the property may be sold at the market price with the consent of the persons named Cl. (6) but that consent is not in the existing circumstances capable of being obtained. The valuer accordingly cannot ignore the restrictions which are inherent in the right of the trustees to sell the property at the market value. The market value of the property it may be repeated is that amount which the property subject to the restrictions, encumberances and limitations may fetch and so long as the restrictions under Cl.(4) remain there is no reasonable possibility of the property being sold for a price exceeding Rs. 8 lacs. The mere circumstances that the settler envisaged a situation in which the property may be sold free from the restriction and which situation is impossible to be achieved, is in my opinion, not a ground for holding that

the value of the property is more than the value at which the property would be offered for sale by the trustees on the death of the last son of the settler."

1.35. Asked how the department got the opinions given by the private counsel of assessees verified and tested independently, the Chairman, Central Board of Direct Taxes replied in evidence:

"So far as we are concerned, we did not issue any instructions in the matter of individual cases. But if an assessee raises an issue before an Income-tax Officer, then it is competent for the Income-tax Officer to seek the legal advice of the Standing Counsel through the Commissioner of Income-tax and that is merely a legal advice on which the Income-tax Officer or the Commissioner of Income-tax may or may not act."

To another question whether in this particular case, the opinions given by the former Chief Justice were got tested by any other legal authority, the witness replied:

"The Law Ministry is our legal adviser in this respect and there is no question of going to anybody else."

1.36. As stated in the Audit paragraph, the assessee's contention that the property could not be valued at more than Rs. 8 lakhs (on the basis of the legal opinion obtained by the trust) had been accepted by the Department, after consulting the Ministry of Law and accordingly the value of the property had been adopted as Rs. 8 lakhs in the assessments of the trust. At the Committee's instance, the Department of Revenue & Banking furnished a copy of the relevant advice of the Law Ministry dated 10 January, 1973, which is reproduced in Appendix III. The Committee found therefrom that in his note dated 23 December, 1972, the Joint Secretary and Legal Adviser in the Ministry of Law had, *inter alia*, recorded the following views on this case:

"** ** ** **

4. It is true that for the purposes of this case, what is to be determined is a sale in the open market and not restricted market. But, nevertheless, what is to be determined is the price which the particular property would fetch and for this purpose regard should be had not only to its advantages but also to any disabilities which may attach to the property. Under paragraph 4 of the Deed of Settlement and Trust, after the death of the three sons of the settler, the trustees are required to offer the property 'Mount Napean' to certain members of the family in a specified order for a sum of Rs. 8 lakhs. It is only if the persons concerned fail to avail themselves of this offer that the trustees would be free to dispose of it. (I shall deal with the implications of clause 6 of the deed later.)

5. Thus, in the event of the trustees offering to sell the property, the prudent buyer would know that the trustees are under an obligation to offer it for sale to certain named persons for a sum of Rs. 8 lakhs.

6. Assuming that the trustees sell the property in breach of trust, the purchaser would hold the property subject to the same obligations of trustees. Thereafter, in the event of any of the named persons exercising their option, he will be compelled to part with the property to them for a sum of Rs. 8 lakhs. He cannot expect to get anything more.

** ** ** **

9. While the assumption has to be made that there is an open market in which the asset can be sold (Ahmed G.H. Ariff *Vs.* C.W.T. 76 ITR 472), it has to be kept in mind that what is relevant is the particular property subject to all the convenants and restrictions which go with it and not an unencumbered asset. Hence clause 4 of the Deed of settlement and Trust stood by itself, it would be difficult to sustain the proposed valuation."

The implications and effect of clause 6 of the Trust Deed providing for the sale of the property by the trustees subject to certain conditions had also been considered by the Joint Secretary who had observed as follows:

"10. Reference, however, has been made to clause 6 of the Deed of Settlement and Trust which provides that in certain contingencies, the trustees can sell the property to any person they choose at the best possible price when the obligation to offer Rs. 8 lakhs would not operate. The trustees would be able to do this with consent of all the persons mentioned in that paragraph or a majority of these persons and with the sanction of the court.

11. The questions whether the necessary consent of all the parties or a consent of the majority of the persons concerned and the sanction of the Court would be forthcoming are, however, matters on which it is not possible to speculate. Till such consent or sanction is forthcoming, the possibility of a sale without the restriction of having to offer the property to the named individuals for prior purchase, would merely be hypothetical and would not be relevant in determining the market value which the property in question would fetch in the open market on the valuation date. On this aspect of the matter, I am in agreement with the views expressed in the opinion of Shri.. .....(former Chief Justice of the Supreme Court). The opinion would appear to set out the correct principles with regard to the manner in which the property has to be valued."

The Joint Secretary's opinion in this regard had also been endorsed by the Law Secretary.

1.37. The Department of Revenue & Banking also furnished to the Committee in this context an extract from a Note dated 21 February, 1973 recorded in the relevant file of the Central Board of Direct Taxes by a

Director in the Board relating to the Law Ministry's opinion, which is reproduced below:

> "Member went and discussed this case with Shri..... (Joint Secretary and Legal Adviser) when I was also present...
>
> ** ** ** **
>
> Member also discussed the question as to whether in the light of the opinion given by Shri.....(former Chief Justice of the Supreme Court), particularly at p. 91/c, there would be any case for taking action for assessing the value of the rights of the persons for whose benefit, the restrictions are enforceable. Shri.....(Joint Secretary and Legal Adviser) pointed out that the rights of the other persons could arise only after the happening of the contingencies mentioned in clause 6 of the deed dated 2nd August, 1945. As these contingencies had not yet happened, no assessment of the value of the rights of the persons for whose benefit the rights and restrictions are enforceable could be made.
>
> ** ** ** **

1.38. On the Committee pointing out during evidence that it seemed strange that the Department should have been prevented from valuing the property on the basis of the valuation of the departmental valuer because of a settlement effected decades earlier and on what, *prima facie*, appeared to be an uncalled reference to the Law Ministry, a representative of the Central Board of Direct Taxes stated:

> "The first question that we considered was as to what should be the value of the property which should be assessed in the hands of the trustees. We consulted the Ministry of Law because this was a highly technical and disputed point of law and we were advised that in view of the restrictions contained in clause 4 of the trust, namely, at the death of the last son, the trustees must offer it for sale to Mr. Behram or the specified amount of Rs. 8 lakhs, we could not adopt a higher value than Rs. 8 lakhs for the property in the hands of the trustees."

In this connection, the Chairman of the Central Board of Direct Taxes added:

> "So far as we are concerned, we got this property revalued by our Valuation Cell without taking into consideration these restrictions and limitations imposed on it. It was valued for one year at a crore of rupees and odd; for the next year, it was valued at Rs. 80 lakhs and so on. We had reopened the assessment also. But when we got the advice from the Law Ministry, we dropped those proceedings."

Elaborating the position further, the representative of the Board stated:

> "The main argument was this. The Law Secretary is here and he will correct me if I am wrong. The main argument that he gave was, supposing the trustees were to sell the property in con-

travention of the condition put by the trust at a figure of, say, Rs. 20 lakhs, then the beneficiary could ask the purchaser to return back the property to him for Rs. 8 lakhs. Therefore, no pruduent purchaser will purchase this property at a figure higher than Rs. 8 lakhs. Therefore, this restriction in clause 4 of the trust depresses the market value of the property to Rs. 8 lakhs."

Asked whether the testator in this case, by a settlement effected in 1945, could bind the hands of the State for all time to come by stipulating that the property should be sold to a specified person for a specified amount when it was in fact capable of being sold for a much larger price, the Law Secretary replied in evidence:

"The trustees had accepted it subject to the conditions mentioned in clause 4 of the trust. This was a family trust. The first condition was that his three sons would have the right of residence and thereafter the grandson had the option to purchase the property and the price was fixed. If the trust property had been valued at a higher amount, no purchaser would have taken the risk of the beneficiary going to the court and compelling him to sell it back to the beneficiary for Rs. 8 lakhs. Who will take that risk?"

He added:

"This trust was executed long before anybody thought of wealth-tax or gift-tax or estate duty. There were these conditions put in the trust. Subject to these conditions, we have to see whether there is any purchaser to purchase the property at any other value. We have to find a purchaser who is willing to purchase the property at a higher value."

Asked whether it did not appear that the Law Ministry had chosen to agree with the legal opinions furnished by the assessee trust in support of its contention merely because the opinions had been given by an eminent person like a former Chief Justice of the Supreme Court, the Law Secretary replied:

"If I may explain, it is not as if the opinon of the Law Ministry is based on the views expressed by Justice.....It was independently examined and, after examining it, if we say that we agree with the view of Justice....., I would not say that it is based on his judgement."

To another question whether the then Law Secretary who had dealt with the case at the relevant time had earlier worked in the chambers of the Chief Justice, the Law Secretary added:

"To my knoweldge he had not. He was Solicitor before joining the Government service. There was no occasion for him to work in the Chambers of Mr.....as a junior of Mr....."

He added:

"As far as I remember, Justice....., before his elevation, was practising on the appellate side of the Bombay High Court."

1.39. As stated earlier, the Wealth-tax Act provides that when an assessment in respect of a trust property is made, the valuation has to be done like any other property held by an assessee. In the case of Commissioner of Wealth-tax, Bombay City II *Vs.* Purshottam N. Amarsey and Another (71 ITR 180), the Bombay High Court had held that Section 7 of the Wealth Tax Act merely deals with the mode in which the value of the assets has to be determined and, though the charging section, because of its opening words "subject to the other provisions contained in this Act", must be held to be subject to Section 7(1) and that Section 7(1) could not be utilised to nullify the provisions of Section 3 itself. The Court had further held that "When the statute uses the words 'if sold in the open market', it does not contemplate any actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis directs that the value should be found out." Observing in this connection that "it is a hypothetical case which is contemplated by these words of the sub-section", the Court had held that "the tax officer must assume that there is an open market in which the asset can be sold and proceed to value it on that basis", and that "the use of the words 'if sold' creates a fictional position which tax officer has to assume." The Court had also gone on to observe that "the mere fact that the property was not capable of being transferred is not a consideration which ought to have prevailed.....The error which the Tribunal committed in that respect was to have regard to the actual position in the actual market whereas upon the statute what they should have considered is, assuming a hypothetical market, what would be the price if the interest was sold." This judgement had also been approved by the Supreme Court, while considering the cases of Ahmed G.H. Ariff and Others *Vs.* Commissioner of Wealth-tax, Calcutta (76 ITR 471) and Purshottam N. Amarsey and Another *Vs.*Commissioner of Wealth-Tax Bombay City II (88 ITR 417). In the former case, the Supreme Court had observed, *inter alia*, as follows:

> "It has been rightly observed by the High Court that when the statute uses the words 'if sold in the open market' it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and, on that basis, the value has to be found out. It is a hypothetical case which is contemplated and the tax officer must assume that there is an open market in which the asset can be sold."

Clarifying the position further in the latter case, the Supreme Court had observed:

> "What this Court ruled in *Ahmed G. H. Ariff's* case was that even if the property in question is incapable of being sold in the open market, being a personal estate, in that event also the interest of the assessee has to be valued by the Wealth-tax Officer."

Considering the case of Ahmed G. H. Ariff *Vs.* Commissioner of Wealth-tax, Calcutta (59 ITR 230), the Calcutta High Court had held:

> "The further contention that even if the right of the assessee in this case was an asset within the meaning of Section 2(e) of the Act, it could not be taken into account in computing net wealth

as defined in Section 2(m) because the property out of which the rights to receive the income arose did not belong to the assessee, is of no substance. If the right to receive the income is an asset it belongs to the assessee no matter whether the right is dependent on the existence of some property and springs out of it. It is the asset of the assessee which has got to be taken into account. If the asset disappears by reason of the non-existence of something to which it is attached or appurtenant, it may cease to belong to the assessee when the tangible property out of which it arises ceases to exist. Consequently, the fact that the ownership of the property rested or vested in God is a matter of no moment. It is not the ownership of the wakf properties which can be made taxable for the purpose of the Wealth-tax Act; it is only the right of the assessee to receive some benefit out of the property which is exigible.

I find myself unable to accept the contention of the assessee that because his right in this case cannot be transferred or sold for a consideration no value can be given to it under Section 7(1) of the Act. No doubt, Section 7(1) shows how the value of an asset is to be determined but it only indicates that the value of an asset for the purpose of the Act is to be estimated as the price which it would fetch if sold in the open market on the valuation date. As the asset in this case is a non-transferable one it cannot be sold in the open market but that does not establish that it has no value. For the purpose of the Act, the Wealth-tax Officer must proceed to value it as if it was an asset which could be sold in the open market. This would depend on actuarial valuation. An actuary would probably value it taking into account the age of the person who is in receipt of it and his estimated length of life. If the property is of a wasting nature probably that too would be considered but these are not matters with which we are concerned in this case. All that we have to see is whether it is one which is capable of being given a capitalised value."

In yet another case [Commissioner of Wealth-tax Vs. Smt. Rani Kaniz Abid (93 ITR 332)], the Allahabad High Court had held that even the right to remuneration granted to a mutwaalli under a wakf deed, though not transferable, was nevertheless an asset under Section 2(o) of the Act and assessable to Wealth-tax. In this case, the Court had observed, *inter alia*, as follows:

"..... excluding the exceptions, all movable and immovable property, no matter of what description, is an asset for the purposes of the Wealth-tax Act. Whether or not it is transferable does not affect the definition. Ordinarily, it may be possible to say that all property includes the right to transfer it, but because of the peculiar incidents of the property concerned or because of statutory or contractual restrictions, the potential right of the owner of the property may be abridged or excluded altogether. Nonetheless, what remains is still property. Because the right of transfer is absent does not mean that the other incidents of ownership do not continue in the property."

The legal position in this regard, as enunciated by the Supreme Court, had also been conceded by the former Chief Justice of the Supreme Court in his opinion dated 30 October 1972 with reference to the present case under consideration.

1.40. The Committee's attention has also been invited by Audit to p. 573 of Dymond's Death Duties for the citation of House of Lord's decision in Lord Advocate *V.* Wood's Trustees (1910) ISLT 186 under the provisions in English Law similar to the provisions in Section 7(1) of the Wealth Tax Act, 1957, according to which "The price or the value which a testator may have given by his will to a particular property is not a test of its market value".

1.41. Since in this particular case, the trustees, under clause 6 of the Trust Deed, could sell the property subject to certain conditions free of the provisions of clause 4, and according to clause 1(b)(vii) of the Deed, the property could be sold to Behram K. Dubash for Rs. 8 lakhs only if it had not already been sold under clause 6, the Committee asked whether clause 6 would not, therefore, have an over-riding effect on clause 4. The Chairman of the Central Board of Direct Taxes replied in evidence:

> "It cannot be said that clause 6 over-rides clause 4. If clause 6 is operated upon, then clause 4 has no meaning at all. It is a fact. Clause 4 will come into operation if the property is not sold under clause 6. That is quite a clear thing."

1.42. The Committee learnt from Audit that the property in question had been sold to Behram K. Dubash for Rs. 8 lakhs in 1973, when the last surviving son of the settler was still alive. In view of the fact that the sale had, therefore, apparently taken place in contravention of clause 4 of the Trust Deed, the Committee asked whether the sale could be considered regular in terms of the Trust Deed. The representative of the Central Board of Direct Taxes replied:

> "I agree with you. But this is a matter which involves legal issues. We would like to be guided by the Law Ministry on this point."

On the Committee enquiring whether in view of the fact that the sale had taken place during the life-time of the last surviving son of the settler, it could not be construed that the sale had been effected under clause 6 of the Deed with the consent of the survivor, the witness replied:

> "As I understood the Law Ministry's advice, it was to this effect that even if the property is sold in violation of the Trust, the purchaser of that property could follow the property and, therefore, the beneficiary, that is, Mr. Behram, could have asked the purchaser to sell back to him for Rs. 8 lakhs. That was the crux of the argument of the Law Ministry who has insisted on it. And, therefore they said that the value of this property cannot be taken at more than Rs. 8 lakhs. In law, there are two things—when we are using the concept of open market under Section 7, we ignore all the restrictions on the saleability of a property in the open market. But, if there are any restrictions which depress the value of the property when sold in the open market, those res-

trictions cannot be ignored. That has been laid down by a long line of decisions including one from the House of Lords."

In this context, the Law Secretary stated:

"The trust deed has given the right or has created the right in favour of the beneficiary. It is for the beneficiary to exercise their right or to give up that right or surrender the same. It is for him to decide. The intention is so long as he is living, he has the right of residence.

If the son wants to give up voluntarily right of residence, sub-clause 1 should operate immediately after the right of residence has gone."

He added :

"We have construed clause 4. We have construed clause 6. We took into account the restrictive covenants contained in the trust deed and we said the value could not be more than Rs. 8 lakhs."

The representative of the Central Board of Direct Taxes, however, informed the Committee that the Law Ministry had given its advice before the last surviving son, Bomanji K. Dubash, released his interest in the trust.

Asked whether the Law Ministry should not have examined the Trust Deed in its entirety so as to take into account the totality of the circumstances and the various connotations, the Law Secretary replied:

".....when we give opinion, we see what is the exact point referred to us and we don't take the totality of the circumstances."

The Finance Secretary added:

"I cannot say that whatever has been said by the Law Officer is wrong. More often than not, one finds that something might appear wrong on the face of it, but that it is not really so. Since you say there is something in it, I would look into the matter. If a letter comes from you it would strengthen our hands. Both the persons who were directly concerned have retired. One is Mr..... He was the former Chairman."

To a question whether the former Chairman of the Board was connected with any business house or industry after his retirement, the Chairman of the Board replied:

"After he retired, he was appointed as Chairman of the Industrial Investment Corporation of Gujarat. He resigned from there and joined the DCM group as Finance Director. He served there for a couple of months. He has resigned now. To my understanding he has gone to Ahmedabad."

1.43. Since the view had been expressed by the Law Ministry that clause 4 of the Trust Deed constituted an encumbrance or restriction which depressed the value of the property, the Committee desired to know what

was an encumbrance and what was a restriction on sale under the tax laws. In a note, the Department of Revenue & Banking stated:

> "The terms 'encumbrance' and 'restriction on sale' have not been defined in any of the Direct Taxes Acts. They have to be interpreted in their ordinary meaning."

Asked whether it was not a fact that under the Trust Deed of 2 August 1945, the so-called encumbrance in clause 4 was subject to a possible sale under clause 6 and that since a sale under clause 6 would be more beneficial to all the beneficiaries, who under the instrument of trust, were fully competent to arrange such a sale, whether there would not always be a greater presumption of sale under clause 6 than that of a sale under clause 4, the Department replied:

> "Reply to these questions depends on as to what exactly are the implications of clauses 4 and 6 of Trust Deed dated 2-8-1945 in so far as they relate to fair market value and sale of the property 'Mount Napean'. Reference on this point and other connected matters has been made to the Law Ministry for their reconsideration. Their advice is awaited."

1.44. In view of the fact that trustees, under the vesting declaration, hold the property for the purposes of the trust and for the benefit and on behalf of the beneficiaries of the trust and though the title to property rests, for the time being, with the trustees, they were not owners of the property, the beneficial ownership resting with the beneficiaries the Committee enquired whether it was correct to say that the manner of distribution of the corpus of the trust after the date of distribution (date of the death of the last survivor of the three sons of the settler), namely, offer for sale of a property worth over a crore of rupees at Rs. 8 lakhs was debt or encumbrance depressing the market value of the property. The Committee also desired to know whether the provisions of clause 4 of the Trust Deed did not amount, in effect, to a situation where the sale is effected by the trustees, in the course of distribution of the corpus of the trust, at the going market value of Rs. 1 crore, Rs. 92 lakhs are given to one particular beneficiary and the balance Rs. 8 lakhs (after meeting expenses, outgoings, etc.) are finally distributed to the beneficiaries of the trust and, if this were so, how clause 4 could operate as a charge, debt or encumbrance on the property. In a note, the Department of Revenue & Banking have replied:

> "The Law Ministry's advice dated 10-1-1973 may please be seen in this connection. The Law Ministry has, however, been requested to consider the matter again. Meanwhile, the Commissioner of Income-tax, Bombay has been requested by the Board ..... to take protective measures."

1.45. Asked whether the significance of various judicial pronouncements including those of the Supreme Court holding that the words 'sale in the open market' in Section 7(1) of the Wealth-tax Act imply not an

actual sale in an actual market but only a hypothetical sale were taken into account in this case, the Department of Revenue & Banking replied :

> "This question was gone into by the Law Ministry as would be clear from paragraphs 4 to 9 of their advice dated 10-1-1973. Paragraph 9 speciafically refers to the Supreme Court's decision in the case of Ahmed G. H. Ariff. In view of all these considerations the Law Ministry advised that the value of the property could not be taken at a figure higher than Rs. 8 lakhs."

1.46. The Committee desired to know when the Board's decision overruling the valuation of the Valuation Cell was issued in this case. The Department of Revenue & Banking, in a note, informed the Committee that the Board's decision was conveyed to the Commissioner of Income-tax in letters (F. No. 319/25/72-WT) dated 18 January 1973 and 26 February 1973. Copies of these communications, made available by the Department are reproduced in Appendix IV. The Committee found in this connection that the Wealth-tax Act, 1957, had been amended with effect from 1 January 1973 by the Taxation Laws (Amendment) Act, 1972, making the acceptance of the valuation by the Valuation Officer mandatory [Section 16A(6)]. The Committee, therefore, asked whether it was proper for the Board to have issued instructions in regard to the valuation of this property, over-ruling the valuation done by the Valuation Officer, after the introduction of Section 16A in the Act. The Chairman of the Central Board of Direct Taxes stated in evidence:

> "To the extent that the instructions were issued after this provision was made it is a fact."

1.47. Since the property had apparently been transferred for a consideration (Rs. 8 lakhs) which was less than the fair market value as determined by the Valuation Officer (nearly a crore of rupees) and thereby the tax liability had been reduced, the Committee desired to know what prevented the Department from acquiring the property for Rs. 8 lakhs under the provisions of Chapter XXA of the Wealth-tax Act. The representative of the Central Board of Direct Taxes stated in evidence:

> "This was considered by the IAC and the Commissioner at that time. Having regard to the fair market value as defined under Section 269A and the value of Rs. 8 lakhs taken for wealth-tax assessment of the trust it was considered by the IAC (Acquisition Range) that it would be inconsistent to adopt any other value except Rs. 8 lakhs to be thefair market value of the property. Accordingly, with the approval of the Commissioner of Income-tax, no proceedings for the acquisition were initiated."

The Chairman of the Board added in this connection:

> "It is a fact that the property was sold. What we have to see here is: what was the market value of that property on the date of its sale ? Now, the IAC (Acquisition) considered that when the sale actually took place, he found that the market value of the property was Rs. 8 lakhs because that could not be sold for

more than Rs. 8 lakhs. So, it is the market value which is the main thing to be considered at the time of sale. After the property has been sold, one minute thereafter it becomes property worth Rs. 2 crores. What we have to see is what was the value of the property on the date, at the time of the sale ? That Rs. 8 lakhs according to the opinion which had been formed regarding this property."

Clarifying the position further, the witness stated:

"Under that chapter we have to see: what was the market value of the property at the time of its sale. . . . Once it had been decided in consultation with the Ministry of Law that the market value of the property was in fact Rs. 8 lakhs, the question arises whether we were justified in taking it up at Rs. 8 lakhs or not."

The Finance Secretary added:

"Chapter XXA comes into operation under certain conditions which have been laid down in Section 269C. This section says that where the competent authority has reason to believe that any immovable property of a fair market value exceeding Rs. 25,000 has been transferred by a person to another person for an apparent consideration which is less than the fair market value of that property, certain things could be done. What is being contended over here is that the apparent consideration and the market value were the same, namely, Rs. 8 lakhs. Therefore, this does not apply."

In a note furnished subsequently in this regard, the Department of Revenue & Banking have stated:

"Note dated 24-12-1973 recorded by Commissioner of Income-tax Bombay, gives the reasons for not acquiring the property under Chapter XXA. The note is reproduced below:

'The Board had consulted the Law Ministry about the market value of property under consideration and the opinion of the Law Ministry was that in view of the restrictive clauses in the Trust deed, the market value of the property cannot exceed Rs. 8 lakhs. It has been pointed out that even if the property were to be sold to an outsider he would have to buy it in full knowledge of the fact that Shri B. K. Dubash was entitled to purchase the same property for Rs. 8 lakhs. In this case, the property has actually been sold to Shri B. K. Dubash himself who is a beneficiary entitled to purchase the property. In the circumstances, it is not possible to say that the market value of the property would be higher than that the price of Rs. 8 lakhs for which it is sold to Shri B. K. Dubash. Even otherwise, for the purpose of acquisition of a property under the Amendment Act of 1972, the competent authority must have reason to believe that the consideration for transfer, as agreed to between the parties, has not been truly stated in the instrument of transfer with the object of evasion. Here, the trustees were under obligation to sell the property to Shri B. K. Dubash,

and he was correspondingly entitled to purchase it for a sum of Rs. 8 lakhs only. As such, there is no ground whatsoever to hold that the consideration for the transfer has not been truly stated in the instrument of transfer. I, therefore, agree with the IAC that there is no case for starting any acquisition proceedings under Chapter XXA of the Act of 1972'."

1.48. Asked whether it did not appear strange that Government should have been placed in a position of having to accept the valuation of Rs. 8 lakhs in respect of a property admittedly worth a crore of rupees in terms of a Trust Deed executed by a settler as early as in 1945 and by an uncalled for intervention of the Central Board of Direct Taxes and the Law Ministry, the Finance Secretary conceded during evidence:

"I would entirely subscribe to your views. I don't think this case has really been treated in the right way. Left to myself, and quite frankly, it seems amazing that it should be possible to arrange things in such a manner that property once valued at Rs. 103 lakhs should be valued at Rs. 8 lakhs and Government asked to accept such a position. Not having seen the case, however, all that I can say, on the basis of this brief, is that the Board was approached with the opinion given by Shri ..... (retired Chief Justice of the Supreme Court), and the Board referred the matter to the Law Ministry—and a copy of the opinion of the Law Ministry is before you."

1.49. Clarifying, in this context, various facts of the case, at the Committee's instance, the Director of Receipt Audit stated during evidence:

"....the case should have been looked into from the entirety of the settlement and not by picking up clause 4 or clause 6. In fact, when the first opinion was given by Justice....., he did not have any attention fixed on cluase 6 at all. When it came to the Board, probably the quesion was raised..and they wanted to go into clause 6 also. Possibly, if the Law Ministry had before them all the facts at that time, when they gave their first opinion, they could have given a different opinion. Some facts were missing at that time. They are:

(i) They did not look into the facts of the governing clause 1(vii) setting out the intentions. The intention of the testator is that only after the death of three persons, the property can be sold. The governing condition was that clause 4 confers the right to sell only after the death of all the beneficiaries. I also have studied some cases and I am sure that no one can say that renunciation except in the case of a Hindu renunciation means civil death. Even here mere renunciation is not a civil death. Assuming that it is so, in this deal there is no provision to renounce at all.

(ii) There is another clause which says that subject to the aforesaid rights, the sons of settler shall not be entitled to any kind of transfer or alienation of the property to any other person or to do any act or to do anything which is inconsistent with

such personal use. That is very clear in this deed. They shall not do anything inconsistent with the intent of the to stator.

(iii) Finally, in this case, renunciation took place in 1973 in the case of the last son. That probably was not before the Law Ministry. The Law Ministry's opinion does not show that they were aware of the renunciation at that time when the opinion was given."

He added:

"The matter before us is this. In 1970-71, renunciation had not taken place of the last son. Therefore, clause 4 could not have come into operation. If these facts are considered by the Law Ministry again, possibly they could come to a different opinion and they would certainly be following the case of Ariff. From the facts of the case, either restricted or unrestricted, the property must be deemed to be the property placed in the open market by a willing buyer to a willing seller and restrictions in respect of that particular property should not affect the operation of Section 7(1).

I consider that this is a matter which should have gone again to the Law Ministry with all the facts. I leave that to Government.... Possibly, it can now go to the valuation officer because he has been repeatedly stating that clause 1(vii) is operated. He had been ignored. If it goes to the valuation officer, he can give an opinion and that can be binding now. That can be done under section 16A(6) and that opinion can be passed on to the Wealth-Tax Officer which would enable the Department to reopen the assessment under Section 17 because the position is that if any fresh information comes from external source, that would entitle the officer to reopen the assessment."

1.50. Asked whether the question of valuation of the property had also been referred subsequently to the superintending Engineer (Valuation) after the Executive Engineer had valued it and, if so, when this was done, the Department of Revenue & Banking, in a note, replied:

"Valuation of the property was referred to the District Valuation Officer on 12-8-1975. His report is awaited."

To another question whether it was a fact that the legal opinions filed by the assessee examined the question of valuation only in the context of clause 4 of the trust deed without making any reference whatsoever to the provisions of clause 6 and, if so, what the reasons therefore, were, the Department replied:

"Legal opinions filed by the assessee are contained in Board's file No-319/25/72-WT. The file is linked with another F. No. 326/9/76 WT which has been sent to the Ministry of Law for advice on issues arising out of this case..... The file would be sent to PAC as soon as it is received back from the Ministry of Law."

1.51. In view of the fact that this case appeared, *prima facie*, to reveal certain suspicious features and the handling of the case by senior officials in the Central Board of Direct Taxes as well as the manner in which the Law Ministry had given opinions which appeared to be doubtful, the Committee asked whether the Finance Secretary would agree to a principled and through investigation of the circumstances in which the property in this case had been under-valued and also to a re-examination of the entire case. The Finance Secretary replied in evidence:

> "We will be certainly very glad to look into the matter. But at the present moment I think it appears that the Law Ministry's opinion is binding and until they are prepared to reconsider that opinion and give us a different one, I do not think we can do very much about it. But we will certainly look into it and also the question of propriety as to why the Board issued these instructions and whether the new section 16A has any relevance."

C. Other irregularities in assessment

1.52. Section 5(i)(iv) of the Wealth-tax Act, 1957, provides that subject to the provisions of Section 5(1A), wealth-tax shall not be payable by an assessee in respect of one house or part of a house belonging to the assessee and shall not be included in his net wealth, provided that, where the value of such house or part exceeds one hundred thousand rupees, the amount that shall not be included in the net wealth of the assessee under this clause shall be one hundred thousand rupees. The Committee learnt from Audit that in this particular case, exemption of Rs. 1 lakh under this Section had been incorrectly allowed to the trustees in each of years 1968-69 to 1970-71 while the said exemption was not allowed in the year 1971-72.

1.53. Asked, therefore, whether such exemption was admissible under the law, the Department of Revenue & Banking, in a note, have replied as follows:

> "The exemption in respect of value of house property under Section 5(i)(iv) was not allowed in the assessments for assessment years 1968-69 to 1970-71.
>
> The Ministry of Law in their note dated 8-10-1975 (F. No. 326/11/75-WT) advised that exemption under Section 5(1)(iv) is not allowable to a beneficiary as the property does not 'belong' to him. Ministry of Law have reconsidered their opinion. They have now advised that the exemption under section 5(1)(iv) would be allowable in respect of beneficiaries' interest in the property subject to certain conditions."

The Department also made available to the Committee in this connection the relevant extract of the Law Ministry's note recorded on 8 October 1976 in the Board's file No. 317/35/76-WT, which is reproduced below:

* * * *

> Under Section 21(1) of the Wealth Tax Act, where a trustee holds any assets on behalf of, or for the benefit of, any person/bene-

ficiary, tax could be levied thereupon and recovered from the Trustee in respect of such assets also. If, therefore, a beneficiary had an absolute right of user of the property during the life-time, it could be said that he had a life interest in the house and as such, it belongs to him (as per the opinion expressed by the Law Secretary in the linked file). Then, such interest being an asset within the meaning of the Act, is exempt under Section 5(1)(iv) of the Act, subject to the other conditions laid down there under. It is, however, necessary to look into the terms of the trust deed or the settlement deeds to be sure that he has such an absolute right of user. If, however, under the trust deed he has no such absolute right and the trustees are empowered to permit any beneficiary to stay in the house according to their discretion, it could not be said that the beneficiary had such absolute right *vis-a-vis* the trustees. In other words, it would depend upon the facts and circumstances of each case, whether or not a beneficiary has an absolute right of user or a life-interest in the property. If it could be said that in view of such interest, the house belongs to him, then, it would be reasonable to exempt the same under Section 5(1) (iv) of the Act."

* * * *

1.54. According to Section 2(xii) of the Gift-tax Act, 1958, "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth and includes the transfer or conversion of any property referred to in Section 4 of the Act, deemed to be a gift under that section. "Transfer of property" has been defined in Section 2(xxiv) of the Act and means any disposition, conveyance, assignment settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes:

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, casement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property to determine its disposition in favour of any person other than the dence of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

1.55. Section 4(1) of the Gift-tax Act, 1958, provides:

(a) Where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferer;

(b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been *bona fide*, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender forfeiture or abandonment;

(d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift made in his favour by the person who causes the had caused the property to be so vested.

1.56. As stated earlier in this Report (vide paragraph 1.15) Bomanji A. Dubash, the settler's youngest son, and his wife Jean had executed a Release Deed on 5 February 1973 giving up the right to residence in "Mount Napean" under the trust deed. Since they appeared to have relinquished their right of residence voluntarily, the Committee asked whether the gift involved in such release or relinquishment had been subjected to Gift-tax. The representative of the Central Board of Direct Taxes replied in evidence:

> "This matter was referred to the Bombay branch of the Law Ministry and they were of the opinion that gift-tax was not leviable on this. This advice is under further consideration."

At the Committees instance, the Department of Revenue & Banking made available a copy of the advice dated 16 September 1976 of the Bombay Branch of the Law Ministry, which is reproduced in Appendix V. Relevant extracts therefrom in so far as they relate to this specific question are reproduced below:

* * * *

> The next question posed is whether the relinquishment of the right of the residence by Shri Bomanji and his wife Smt. Jean of residence and of construction is a gift within the meaning of Sec. 2(xii) read with Sec. 2(xxiv). Gift has been defined to mean the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth and includes transfer or conversion of any property referred to in Sec. 4 deemed to be a gift under that Sec. Sub-sec. (2)(xxiv) defines transfer of Property. There is no difficulty in construing the relinquishment as transfer of property. But the question is whether this was gift. At the time of the release Bomanji was already a tenant and was protected under the Bombay Rent Control Act. What actually was given up was a right of residence under the 'Will' but the right to reside continues as a tenant. Even today Bomanji has continued to stay in the premises. In effect there was no consideration for giving up a right which was less than right he had under the tenancy. In this connection a reference may be made to para 4 of Circular No. 1(1)-59 GT dated 27-2-59 from CBR. These circulars are binding on the Department.

Transfers deemed to be gifts: Section 4(c) has been inserted with the object of roping in so-called business transactions which are really gifts in a camouflaged form. It is not, however, the intention to penalise cases where the release, discharge, surrender forfeiture or abandonment has been made for bonafide reasons. For example, a debt may be abandoned becuase it is genuinely irrecoverable and the person may not have taken legal steps to recover the amount as it would have meant only throwing good money after bad. Such an abandonment will not be treated as gift. This provision would be invoked only in cases where the circumstances justify an inference of collusion between the person who makes the discharge, surrender, abandonment, etc. and the person in whose favour the discharge, surrender or abandonment etc. has been made.

There could be no question of any market price for this transaction. Under the circumstances, I am of the view that the relase may not amount to gift. Even if it were to be treated as a gift it could not have any ascertainable value particularly as all his rights of residence are not affected.

* * * *

1.57. Since it appeared, *prima facie*, that the relinquishment of the right of residence would amount to a gift, the Committee desired to know the basis on which the Law Ministry could come to the conclusion that Gift-tax was not leviable in this case and whether that Ministry's opinion was based on a proper understanding of the law. The Law Secretary stated in evidence:

"I will have to look at it.....I have come across this opinion just now and *prima facie* I feel it requires a second look. Full facts are not before me. From facts mentioned just now whether it would amount to a gift, I have my own doubts. The facts are not clear to me."

Asked whether the witness would agree to have a second look at the entire transaction, he replied:

"I personally have no objection."

The representative of the Central Board of Direct Taxes added:

"We have called for the comments from the Commissioner and after these are received, we will examine the matter in consultation with the main Ministry of Law."

1.58. In terms of Section 45 of the Income-tax Act, 1961, any profits or gains arising from the transfer of a capital asset effected in the previous year shall.....be chargeable to Income-tax under the head "capital gains", and shall be deemed to be the income of the previous year in which the transfer took place. According to Section 52(2) of the Act without prejudice to the provisions of sub-section (1), if in the opinion of the Income-tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than fifteen per cent of the value so declared, the full

value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of its transfer.

1.59. The Committee found from the advice dated 16 September 1976 given by the Bombay Branch of the Law Ministry (*vide* Appendix V) that the question whether there were any capital gains under Section 52(2) of the Income-tax Act as the property worth several times more had been sold for Rs. 8 lakhs only had also been examined and that the Bombay Branch had observed in this regard as follows:

* * * *

> That leads to the next question which is whether there was any capital gains under Section 52(2) of the I.T. Act as the property which was admittedly worth several times more was sold for Rs. 8 lakhs to Behram. This question had been examined previously by this Ministry and under our U.O. No. 25396 72-Adv. (F) dt. 10-1-73, wherein for the purpose of valuation for wealth-tax the property was held to be worth Rs. 8 lakhs. The opinion expressed by Shri..... ex-Chief Justice of the Supreme Court was considered and the view expressed by him that since the property could not be sold in the market as the trustees were bound to sell it for Rs. 8 lakhs, the value of the property could not be placed higher than Rs. 8 lakhs was accepted. Since this property was sold to Bomanji for Rs. 8 lakhs it cannot be said that there had been any capital gains. This was a bonafide transaction in pursuance of the Trust Deed which had been drawn up as far back as in 1965. I am of the view that Section 52(2) of the I. T. Act cannot be invoked."

1.60. The Bombay Branch of the Law Ministry had, however, held the view that Saction 52(2) of Act could be resorted to in respect of the lease of "Mount Napean", after Bomanji A. Dubash and Jean had executed the Release Deed giving up the right of residence in the property, to M/s. Napean Estate (P) Ltd. Relevant extracts from the Ministry's advice in this regard are repoduced below:

> "Behram leased the property for a sum of Rs. 12,700 per month for a period of 98 years. Very valuable property was leased out to M/s. Napean Estate (P) Ltd. whose shareholders were all members of the family including himself. Lease-hold rights are valuable rights and obvisouly, these rights have been transferred for inadequate consideration. It should be possible to acertain what 98 years lease of this property would have fetched in the market. No lumpsum amount was received as per the deed before executing the lease deed as consideration. In this connection, Shri..... (ex-Chief Justice of Supreme Court) in his opinion has expressed that lease is not a transfer of capital asset within the meaning of section 2(47) of the I.T. Act. The said sub-clause 'transfer', in relation to capital-asset includes the sale, exchange or relinquishment of the asset or extinguishment of any rights therein or the compulsory acquisition thereof under any law. It is an inclusive definition. The word transfer should

be accorded its normal meaning. Lease for 98 years is undoubtedly a transfer. See capsulation Services P. Ltd. *Vs.* CIT, Bombay (1973) (91 ITR 566). In the case of Traders and Miners Ltd. *Vs.* CIT (1955) (27 ITR 341), it has been held that a lease of a mine or a land is a transfer and salami or premium rates for this may be assessable as capital gains. The same effect is the ruling of the Andhra Pradesh High Court in the case of Rajendra Mining Syndicate *Vs.* CIT (43 ITR 460). Shri..... (ex-Chief Justice of Supreme Court) in his opinion has expressed the view that these rulings do not lay down that ordinary lease of a building or a land amounts to a transfer which gives rise to capital gains. But what has been done in this case, a valuable right has been transferred for obviously inadequate consideration. In my view, it may be worthwhile resorting to Section 52(2) of the I. T. Act."

The Ministry had gone on to observe further as follows:

"The next two questions arise out of the same question as to whether gift tax or capital gains could be attracted with regard to the difference between the capitalised market value of the lease and the capitalised value of the lease as given. Normally, if the gift tax is levied the capital gains cannot be levied and *vis-a-vis*. It cannot be said with certainty whether the transaction will be treated as a gift. It is left to the Deptt. to choose the course of action. To err on safe side, perhaps, the Deptt. may resort to both courses of action so that one of them would ultimately sustain. However, the case for capital gains should be made out strongly. Board's circular 340/22/76-GT dated 2nd July 1976 may be seen."

1.61. The following table, furnished at the Committee's instance by the Department of Revenue & Banking, indicates the annual value of the property "Mount Napean" adopted in the income-tax assessments for the years 1969-70 to 1973-74:

Assessment Year	rent receivable/ Municipal value	Net annual value
1969-70	30,916	21,664
1970-71	30,916	21,664
1971-72	..	30,916
1972-73	..	30,916
1973-74	..	40,561

1.62. The Committee enquired into the basis on which the value of the property for the years 1969-70 and 1970-71 had been arrived at as Rs. 30,916 and whether this figure was based on the contributions paid by the beneficiaries residing in various portions of the property and, if so, whe-

ther these beneficiaries constituted Tenants covered by the Rent Control Act. In a note, the Department of Revenue & Banking have replied:

"The annual value is arrived at on the basis of municipal valuation."

The following calculations have also been furnished by the Department in this regard:

	Rs.
Rateable value	27,825
Add 1/9th	3,091
Annual value	30,916

Asked if they were tenants under the Rent Control Act, how clause 4 of the Trust Deed could apply against the protection afforded to the beneficiaries under the Rent Control Act, the Department replied:

"The whole question regarding the effect of clause 4 is under reconsideration in consultation with the Ministry of Law."

1.63. The Committee desired to know whether the value of the life-interest of the beneficiaries Kaikhushru A. Dubash, Ratanji A. Dubash and Maneckbai (wife of Ratanji), in respect of right of residence in "Mount Napean" at a concessional rent had been included in their respective Estate Duty assessments. In a note, the Department of Revenue & Banking have informed the Committee that information in regard to the case of Late Kaikhushru A. Dubash was not readily available as the relevant estate duty records were reported to be not traceable and that "with regard to the value of right of residence in the 'Mount Napean' property at a concessional rent, no value *as such* had been separately assessed and subjected to tax."

1.64. In view of the fact that various direct taxes assessments relating to this trust and its beneficiaries appeared to have been handled in a piecemeal fashion and certain provisions of the Trust Deed had been interpreted in an isolated manner to the detriment of revenues, the Committee asked whether the Department would agree to re-examine in depth the various issues arising out of the transactions relating to "Mount Napean". The represantative of the Central Board of Direct Taxes replied in evidence:

"We will re-examine the whole case. Where assessments have already been settled, fresh look will be given."

Subsequently, in a letter (F. No. 240 4 76-A&PAC-I) dated 9 December 1976, the Department of Revenue & Banking informed the Committee that "a detailed note incorporating therein the various issues arising out of the transaction relating to 'Mount Napean' is being drawn up for reference to the Ministry of Law for their advice" and that the issues on which the Ministry of Law were being requested to advise were as under:

(1) Having regard to the provisions of Section 7(1) of the Wealth-tax Act as also those of the Supplemental Trust Deed dated 2 August 1945, what was the fair market value of the property "Mount Napean"?

(2) Was the right of residence of the beneficiaries under the trust an asset within the meaning of Section 2(e) of the Wealth-tax Act and as such assessable for wealth-tax purposes in their respective hands ? If so, how is it to be valued ? Could it be valued under Rule 1B of the Wealth-tax Rules ?

(3) Whether exemption under Section 5(1)(iv) is allowable against the value in respect of life interest of the beneficiaries.

(4) Were the rights of Behram K. Dubash, his son Ardeshir Behram Dubash and Ardeshir Bomanji Dubash, son of Bomanji K. Dubash (whether vested or contingent) to buy "Mount Napean" for an amount of Rs. 8 lakhs, in terms of clause 4 of the Deed, assets within the meaning of Section 2(e) of the Wealth-Tax Act and, as such, assessable to wealth-tax ? If so, are they assessable in their respective hands or in the hands of the trustees under section 21(4) ?

(5) Bomanji A. Dubash was made a tenant in 1959 of the portion of "Mount Napean" in which he had a right of residence under the Trust Deed. Is the right of residence under the tenancy assessable to wealth-tax ?

(6) Whether the release by Bomanji and his wife, Jean, of their right of residence under the Trust Deed *vide* Release Deed dated 5 February 1973 attracted the provisions of Section 4 of the Gift-tax Act and Section 52 of the Income-tax Act ?

(7)(a) What are the legal implications of the transaction of sale of property by the trustees to Behram K. Dubash for Rs. 8 lakhs on 24 February 1973 ? Can it really be regarded as sale under clause 4 of Trust Deed dated 2 August 1945, which it is purported to be *vide* clause 28 of Sale Deed dated 24 February 1973, in view of the fact that Bomanji A. Dubash, the last surviving son of the settler, was still alive at that time ?

(b) If the sale is in contravention of clause 4 of the Trust Deed, what in the eye of law is the effect of the same ? Can it be said in these circumstances that the trustees who could have sold the property worth about Rs. 1 crore under clause 6 of the Deed have actually sold it for Rs. 8 lakhs and as such provisions of Section 4 of the Gift-tax Act and Section 52 of the Income-tax Act are attracted ?

(8) Wnether the provisions of Section 4 of the Gift-tax Act and Section 52 of the Income-tax Act are applicable in respect of the following transactions:

(i) Lease of property "Mount Napean" by Behram K. Dubash to Napean Estate (P) Ltd. on 24 February 1973.

(ii) Lease of property by Napean Estate (P) Ltd. to M/s. R. Sharp & Sons Pvt. Ltd. on 26 February 1973.

(iii) Sale of shares of Napean Estate (P) Ltd. by the members of the Dubash family to G. K. Govani and others on 3 September 1973. Asked

to indicate the latest outcome of these efforts, the Department of Revenue & Banking, in a note dated 15 March 1977, have replied:

> "The matter was referred to Ministry of Law on 7 December 1976 and their advice is awaited."

D. Other properties of the settler.

1.65 The Committee learnt from Audit that apart from the heavy under-assessments in respect of "Mount Napean" reported in the Audit paragraph, four other properties, "Hamilton Villa", "Romana Villa", "Rughby House" and "Belmont", belonging to the same family and located near "Mount Napean" on Napean Sea Road, Bombay, had also been grossly under-valued by ignoring the very high land values comprised therein.

1.66 Asked which of these properties had been got valued by the Valuation Cell, the Department of Revenue & Banking, in a note, have replied:

> "The valuation of three properties, namely, Hamilton Villa, Romana Villa and Rughby House, has been referred by the Income-tax Officer to the District Valuation Officer, Bombay. The Valuation Officers' report is awaited.
>
> The fourth property 'Belmont' was valued as on 31-12-1969 and 31-12-1970 by the Valuation Officer at Rs. 6 lakhs. In this valuation, the value of the land was taken into account at Rs. 400/- per sq. yd."

In another note, the Department informed the Committee that the valuation of the first three properties was referred to the Valuation Officer on 22 September, 1975.

1.67 The following table, compiled from data furnished at the Committee's instance by the Department of Revenue & Banking, indicate the annual value (arrived at on the basis of municipal valuation) and not income from these properties, after deducting Municipal taxes, deductions under Section 24, etc. for the assessment years 1969-70 to 1973-74:

Assessment Year	Property	Rent receivable/ Municipal value	Annual value	Net income from house property
1969-70	Villa Romana	18488	13720	22131
	Hamilton Villa	9144	6863	
	Rughby House	11633	8655	
	Belmont	N.A.	N.A.	N.A.

Assessment Year	Property	Rent receivable/ Municipal value	Annual value	Net income from house property
1970-71	Villa Romana	18488	13332	
	Hamilton Villa	9144	6677	21488
	Rughby House	11833	8397	
	Belmont	80661	59032	45138
1971-72	Villa Romana	18488	13332	
	Hamilton Villa	9144	6677	21276
	Rughby House	11833	8397	
	Belmont	80661	59032	45138
1972-73	Villa Romana	18488	11782	
	Hamilton Villa	9144	5935	18695
	Rughby House	11833	7364	
	Belmont	80661	59032	38630
1973-74	Villa Romana	18671	11771	
	Hamilton Villa	9236	5934	18687*
	Rughby House	11951	7353	
	Belmont	78540	56098	36372

*Income assessed : Rs. 18689.

1.68 The Committee desired to know whether the same comparative market rates of land had been adopted in the valuation of these properties as in the valuation of "Mount Napean" referred to in the Audit paragraph and in case this was not done, what were the rates adopted and the reasons for the differences. In a note, the Department of Revenue & Banking stated:

"The property referred to in the Audit paragraph (*viz.* Mt. Napean) was valued by the Valuation Officer in July 1972. The value of land was adopted by him at Rs. 550/- per sq. yds. as on 31-3-1963, 1964 and 1965, Rs. 350/- per sq. yd. as on 31-3-1966, 1967, 1968 and 1969 and Rs. 390/- as on 31-3-1970 and 1971.

In the assessments completed upto assessment year 1971-72, the value of land comprised in the three buildings, *viz.*, Hamilton Villa, Romana Villa and Rughby House, has been shown and accepted at Rs. 100/- per sq. yd.

The assessment records do not indicate any reasons for the adoption of different values of land comprised in these buildings as compared to the valuation of land adopted by the Valuation Officer in his report relating to Mt. Napean."

1.69. Asked to indicate the floor area of "Mount Napean" (municipal value: Rs. 30,916) compared to the floor area of "Belmont" (municipal value: Rs. 80,661), the Department, in a note, have replied:

> "The Commissioner of Income-tax, Bombay has reported that the floor area of the Mount Napean property is 25,538 sq. yards. He has further reported that the covered area of the Belmont property is approximately 42,000 sq. ft. without taking into account the outhouses etc."

1.70. As stated earlier in paragraph 1.66, the value of the land in respect of "Belmont" had been taken as Rs. 400 per square yard by the Valuation Officer and the property had been valued at Rs. 6 lakhs. The Committee learnt from Audit that according to a Gift Deed executed by the settler (Ardeshir B. Dubash) on 16 October 1948, gifting this property to his son Bomanji A. Dubash and to his son Ardeshir B. Dubash as tenants-in-common in two equal parts, the area of the land with this property was 3068 square yards. Since the value of the land alone would, therefore, be Rs. 12,27,000, the Committee asked how the value of the property was computed at Rs. 6 lakhs only. In a note clarifying the position in this regard, the Department of Revenue & Banking have stated as follows:

> "The value of the property 'Belmont' was taken at Rs. 6 lakhs as per valuation report of the Executive Engineer (Valuation), Income-tax Department, Bombay. This valuation was based on the following computation:

		Rs.
(i)	Capitalising the net income of Rs. 42,000 at 7 1/2 per cent and redemption of capital at 4 per cent. for 60 years	
	Rs. 42,000 × 12·63	5,30,460
	Add:	
(ii)	Revisonary value of land and measuring 3068 sq. yards. at Rs. 400 per sq. yd. for 60 years at 5 per cent 3068 × 400 × 0·054	66,269
		Rs. 5,96,729
	Say	Rs. 6,00,000

1.71. In view of the fact that the value of the land comprised in the three buildings, "Hamilton Villa", "Romana Villa" and "Rughby House" had been accepted at Rs. 100 per square yard only as against the values of Rs. 550, Rs. 350 and Rs. 390 adopted in the case "Mount Napean", the Committee desired to know what would be the under-valuation of the land comprised in these three properties on the basis of the rates adopted in respect of "Mount Napean". Information furnished in this regard by the Department of Revenue & Banking is tabulated below:

Property	Years		
	1963-64 to 1965-66	1966-67 to 1969-70	1970-71 to 1971-
	Rs.	Rs.	Rs.
Hamilton Villa	1,19,596	66,442	77,073
Romana Villa	3,46,441	1,92,467	2,23,262
Rughby House	7,02,099	3,90,055	4,52,463

1·72. The Committee, therefore, asked whether the Central Board of Direct Taxes had considered the question of reopening the past assessments in the all these cases to bring to tax the correct values of these properties. In a note furnished in reply, the Department of Revenue & Banking have stated :

> "In respect of Belmont, the CIT has reported that no question of reopening the past assessments would arise, since there is no under-valuation in the land value, as explained .... (*vide* paragraph 1·70). For the other three properties, the concerned W.T.O. has been instructed to look into the question of under-valuation."

1·73. The Committee were informed by Audit that as in the case of the "Mount Napean" property, Ardeshir Bomanji Dubash had made another settlement on 6 March, 1947 in respect of the properties comprising of "Hamilton Villa", "Romana Villa" and "Rughby House" and that the main provision in this trust deed to pay the net income from these properties to various branches of the Ardeshir family after meeting all expenses and outgoings and after making a provision for heavy repairs and additions and alterations @15 per cent of the net income to be accumulated in a reserve fund of Rs. 1 lakh which was to be maintained also at that level. From and after the settler's death, the net income from these properties was to be applied as follows :

(a) One-third equal share of the net income to the settler's son Kaikhushru A. Dubash for his life and after his death to the date of distribution of the corpus of the trust to his children Behram K. Dubash (son) and Najoo and Hilla (daughters) till their death with remainder over.

(b) One-third share to Ratanji A. Dubash (second son) and after his death to his wife Maneckbai for her life with remainder over as in (c) below .

(c) One-third share to Bomanji A. Dubash (youngest son) for his life and after his death to his children Ardeshir B. Dubash (son) Macki and Palsy (daughters) with remainder over to heirs and successors.

The Committee further learnt that on the death of the last survivor of the settler's son, Kaikhushru, Ratanji and Bomanji, the trustees may at their discretion, as and when convenient, sell the said Trust premises in one or separate lots either by public auction or by private treaty and on such terms and conditions as to title or otherwise as they think fit and shall hold the net sale proceeds thereof and the amount of the reserve fund and the income thereof (referred to as the 'Corpus of the trust premises') upon trust to divide the same into two parts or shares and hold them as follows :

(i) One such equal part or share of Corpus of the trust premises shall be divided between and given to the three children of Kaikhushru A. Dubash, *viz.* Behram K. Dubash, Najoo and Hilla, and their heirs in equal shares absolutely.

(ii) The other such equal part or share shall be divided between and given to the children of Bomanji A. Dubash, *viz.* Ardeshir B. Dubash, Macki and Patsy, and their heirs in equal shares absolutely.

1·74. The Committee also learnt from Audit that while Kaikhushru A. Dubash released his life-interest in these trust properties on 1 July 1955 in favour of his three children, by a Release Deed dated 1 November 1962, Bomanji A. Dubash also relinquished his right and interest in the one-third income in favour of his three children. Thus, with effect from 1 July 1955, Behram K. Dubash, Najoo and Hilla are the beneficiaries of one-third income from the trust properties as life-tenants and also of half of the corpus of the trust premises in the event of distribution. Similarly, Ardeshir B. Dubash, Macki and Petsy are entitled to one-third income from the trust properties from 1 November 1962 and two-third income from 15th November 1967 (date of death of Maneckbai) as life-tenants as also to half of the corpus of the trust properties on the date of distribution.

1·75. The Committee desired to know whether the values of the life-interest of Kaikhushru A. Dubash, Ratanji A. Dubash and Maneckbai in the net income from these properties as per the Trust Deed of 6 March 1947 had been included in the principal values of their respective estates and assessed the estate duty. As stated earlier in his Report (*vide* paragraph 1·63), the Department of Revenue & Banking informed the Committee that information in regard to Kaikhushru's case was not readily available as the relevant estate duty records were reported to be not traceable. As regards the interest of Ratanji and Maneckbai, the Department have stated, in a note, as follows:

"The three properties—Hamilton Villa, Romana Villa and Rughby House are comprised under the trust known as C. H. Bhabha Trust. Value of interest of Late Ratanji Ardeshir Dubash and Late Maneckbai R. Dubash in the said trust was included in their respective estate duty assessments. Both the deceased had 1/3rd interest each in the trust and value of their interest was assessed at Rs. 89,000 each."

1·76. Asked whether the relinquishment by Bomanji A. Dubash on 1 November 1962 of his right and interest in the one-third net income from these three trust properties in favour of his children had been assessed to Gift-tax and, if so, when and at what value, the Department of Revenue & Banking, in a note, replies :

"Shri Bomanji Ardeshir Dubash had executed the deed 1-11-1962 relinquishing his right or interest in the 1/3rd net income and reserve fund in respect of the trust properties *viz.* (1) Hamilton Villa, (2) Romana Villa and (3) Rughby House in favour of his three children. This release of interest had been assessed to Gift-tax for the assessment year 1963-64 on 20-3-1964 at a value of Rs. 44,687 and levying a gift-tax of Rs. 1,347·48."

1·77. In reply to another question whether deductions had been allowed in the assessments of the trustees of the trust premises for the life-interest of the beneficiaries and if so, what was the authority in law for such deductions, the Department have stated:

> "In the assessments of the trustees of the Trust premises (1) Hamilton Villa, (2) Romana Villa, (3) Rughby House, deductions have been allowed for life interest of the beneficiaries.
>
> This appears to have been done by the WTO in view of the provisions of Section 21 of the Wealth Tax-Act. "

E. General.

1·78. It would appear from the foregoing discussions that the device of a family trust had been used in this case to avoid/evade tax on a large scale. It is also not unknown that members of rich families often resort to the creation of a number of family trusts in which two or three of the same group of relations are shown as beneficiaries and the trust deeds are so drafted that the ascertainment of the interest of the beneficiaries becomes impossible. Sections 4(1)(a)(iii) and 4(1)(a)(iv) of the Wealth-tax Act, 1957 provide that in computing the net wealth of an individual, there shall be included, as belonging to that individual, the value of assets which on the valuation date are held by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter) or both, or by a person or association of persons to whom such assets have been transferred by the individual otherwise than under an irrevocable transfer. Thus, if the trust is irrecoverable and the settler does not reserve any benefit for himself, the provisions in the direct taxes Acts do not provide for the clubbing of income and net wealth of these trusts where the settler and the beneficiaries in a number of trusts belong to the same family.

1·79. The Committee, therefore, enquired whether the Central Board of Direct Taxes would agree that in order to avoid direct taxes by defeating the progression in the rates of Income-tax and wealth-tax, the device of settlement of properties on a number of family trusts to the benefit of the same related persons was widely resorted to. In a note furnished in this connection, the Department of Revenue & Banking have replied :

> "Avoidance or reduction in the level of tax incidence through the use of private trusts came to the notice of the Board in 1965. In order to put an effective curb on the proliferation of trusts and to reduce the scope for tax avoidance through such means, the Finance Act, 1970, amended section 164 of the Income tax Act.
>
> Before its amendment, under the provisions of Section 164, income of a trust in which the shares of the beneficiaries are indeterminate or unknown was chargeable to tax as a single unit by treating it as the total income of the association of persons. This provision afforded scope for reduction of tax liability by transferring the property to trustees and vesting discretion in

them to accumulate the income or apply it for the benefit of any one or more of the beneficiaries at their choice.

Under the *amended* section 164, where the shares of the beneficiaries are indeterminate or unknown, the income of the trust is chargeable to income- tax at a flat rate of 65% or the average rate which would be applicable if such income were the total income of an A. O. P. , whichever is higher.

Similarly, in order to put an effective curb on the proliferation of such trusts, the Finance Act, 1970 amended section 21 (4) *of the W.T. Act*. Where the shares of the beneficiaries are indeterminate or unknown, wealth-tax is now leviable at a flat rate of 1 .5% or the appropriate rate of wealth-tax, whichever is higher. Further, the flat rate of 1·5% would be applicable on the whole of the net wealth without the initial exemption of Rs. 1 lakh."

Asked whether the Board had examined the question of preventing effectively tax avoidance through the device of such family trusts and if so, what was the thinking in this regard, the Department have replied :

"As stated above, suitable amendments were made in the Income-Tax Act and the Wealth Tax Act to curb the tendency of avoiding or reducing the tax incidence through the medium of family trusts. Since then, no further study of this problem has been brought to the Board's notice to show that the amendments made in 1970 were inadequate for the purpose."

In reply to another question whether any procedure was prescribed for the examination of trust deeds from the tax angle before their registration so as to safeguard against tax avoidance/evasion, the Department have stated:

"No such procedure has been laid down by the Department of Revenue for the registration of private trusts.

The Income-tax Officers are expected to carefully scrutinise the provisions of the trust deeds for the purposes of assessing the trustees and beneficiaries under the various Direct Taxes Acts at the time of assessment."

1·80. Asked whether it was correct that family trust deeds were usually drafted in such a manner as to make the ascertainment of the value of the interest or right of individual beneficiaries difficult, thus defeating the clubbing provisions of sections 21(2) and 4(1) (a) (iii) of the Wealth- tax Act, the representative of the Central Board of Direct Taxes replied in evidence:

"The exact interpretation of these sections has given rise to some controversy, and this is reflected in the various High Court decisions on the subject. One of the illustrative cases was Arundati Balakrishnan's case in which the problem was something like this. The value of the total corpus of the trust was, say, Rs. 30 lakhs. The value of the interest of the beneficiary, Arundati, who was entitled to the net income of the trust's corpus during her lifetime, was assessed at, say, Rs. 6 lakhs. The question arose whether the remaining Rs. 24 lakhs could be assessed on the trust itself or not.

There are two other cases, Sarabhai's case and Padmavati's case.

The effect of these judgements is that the sum total of the assessments which may be made on the trust and the beneficiaries may fall short of the total value of the corpus of the property held under trust. In Arundati's case we have gone in appeal. In another case, the matter went up to the Solicitor General, and he said that the judgement might be accepted, but the law should be amended. So, the matter rests there, and we have taken note of the need to amend the law as soon as possible."

In a note furnished subsequently in this connection, the Department of Revenue & Banking have stated as follows :

"In the case of Arundhati Balkrishna Trust, the assessee was entitled to the entire income of the trust during her life time and after her death the assets were to be divided amongst the male children of her husband in equal shares. The W. T. O. assessed the capitalised value of the interest of life tenant to wealth tax in the hands of Smt. Arundhati and the balance of the wealth of the trust was assessed in the hands of the trustees. For the A. Y. 1959-60 the net value of the assets of the trust was Rs. 33·56 lakhs. The value of the life interest of Smt. Arundhati was taken at Rs. 4·56 lakhs and the value of the interest of the reversioners at Rs. 1·91 lakhs. The following five questions were referred to the High Court.

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment should be u/s 21 (1) and not u/s 21 (4) of the Wealth Tax Act, 1957.

(2) Whether, on the facts and in the circumstances of the case, the trustees are liable to be taxed on the total wealth of the trust minus the interest therein of Smt. Arundhati Balkrishna the same having been taxed in her hands ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that even presuming without admitting that the real total wealth of the trust is more than the combined interest of the beneficiaries, the assessment has got to be limited to the interest of the beneficiaries under sub-section (1) of the section 21 of the Act.

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Trust should be assessed only to the extent of the value of the interest of the reversioners arrived at by the valuers.

(5) Whether, on the facts and in the circumstances of the case, the interests of life-tenant and the remaindermen having been taxed separately in the hands of the life tenant and the Trust respectively and by so doing the total of the value of the two interests having fallen short of the net wealth of the Trust

the balance is liable to be taxed to wealth tax in the hands of the trust under section 21 (4) of the Wealth-tax Act, 1957.

Questions 1,3 and 4 were answered in the affirmative and questions No. 2 and 5 in the negative by the Gujarat High Court (30th August 1974).

The decision of the Gujarat High Court in this case was not accepted by the Board and petition for leave to appeal to Supreme Court was authorised. (30·10·1974).

The implications of this decision on the assessment of trust and beneficiaries were examined in file No. 319/6/73/WT. Meanwhile, similar issues had arisen in the case of trustees of P. A. Hormasji. The Tribunal's order in this case was not accepted. However, both the Tribunal and the High Court rejected the reference applications filed by the Department. When we wanted to take up the matter to the Supreme Court, the Solicitor General advised (September 1975) that this was not a fit case and that amendment of law was called for.

Keeping in view this background, it was decided that the Board should consider suitable amendment of the Wealth Tax Act in this regard."

At the Committee's instance, the Department also made available a copy of the relevant opinion of the Solicitor General, which is reproduced in Appendix VI. Since this apparently revealed certain loopholes in the law relating to assessment of family trusts, the Committee enquired into the remedial action proposed to be taken in this regard. In a note, the Department have replied :

"The matter of amending the law is under consideration."

1·81 According to Section 7 (1) of the Wealth-Tax, Act, 1957 the value of any asset other than cash shall be estimated, for purposes of the Act, to be the prices which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. Various judicial pronouncements have also held that the words "if sold in the open market" used in this Section contemplate only a hypothetical case and not any actual sale or the actual state of the market, and, therefore, the tax officer must assume that there is an open market in which the asset can be sold and proceed to value it on that basis. In the present case under consideration relating to a family trust, however, the Committee are concerned to find that despite this clear and unambiguous decision of the courts and in spite of the fact that the Department's own valuation officer had also determined the value of the property at nearly a crore of rupees, the value of a palatial property, located in a posh residential area of Bombay, had been adopted, for purposes of wealth tax, at the ridiculously low figure of Rs. 8 lakhs only. After a study of the evidence tendered before the Committee, the conclusion that this case with large revenue implications was not given the thought and attention that it deserved is fairly inescapable. The case also reveals,

prima facie, certain suspicious features which have given rise to serious misgivings in the Committee's mind.

1.82 The Committee note that the property in question known as "Mount Napean" formed part of a family trust created in 1928 by one Ardeshir B. Dubash in respect of his immovable properties and that by a supplementary trust deed dated 2 August, 1945, the settler had made certain separate provisions in regard to the benefits accruing from the said property, its sale under certain conditions, the mode of distribution of the corpus of the trust, etc. While a clause (clause 6) in the supplementary trust deed provided that the property could be sold free from the trust and rights of residence created therein if the settler so directed, or after his death with the written consent of all the beneficiaries or of a majority of those persons with the sanction of the Court, the settler, by another clause (clause 4) in the trust deed, had also made certain other provisions for the sale of the property at a fixed price to certain specified members of the Dubash family. Under this clause, the settler had declared that after the death of the last survivor of his three sons, the property shall be offered for outright sale for Rs. 8 lakhs to his grandson (Behram K. Dubash) from his first son (Kaikhushru A. Dubash) and if he be not alive, then to his great grandson (Ardeshir B. Dubash) and if he be also not alive, then to the eldest male child of the youngest son (Bomanji A. Dubash) as may then be alive. For purposes of wealth-tax, the property had initially been valued at Rs. 4,21,500 for the assessment years 1963-64 to 1966-67 and at Rs. 6,92,000 for the assessment years 1967-68 to 1969-70. Apprehending that the property was being considerably under-valued, the Department had referred the case to the Valuation Officer (Executive Engineer, Valuation Cell), a statutory official employed by the Department itself, who, in his report of 26th July 1972, had determined its value at Rs. 1,03,60,000 for the years 1963 to 1965, at Rs. 67,15,000 for the years 1966 to 1969 and at Rs. 74,45,000 for the year 1970-71. Strangely enough, however, the values as determined by the Valuation Officer were not adopted in the relevant assessments, re-opened under section 17 (1) of the Wealth-tax Act, as the assessee had in the meantime approached the Central Board of Direct Taxes who held that clause 4 of the trust deed relating to the sale of the property at Rs. 8 lakhs only to a beneficiary in the course of distribution of the corpus of the trust was a restriction or encumberance on its sale to outsiders at the prevailing market price. This view appears to have been taken on the advice of the Minstry of Law who had examined the case on the basis of certain legal opinions (including one from a retired Chief Justice of the Supreme Court) obtained by the assessee trust.

1.83 On a scrutiny of these opinions, the Committee consider it significant that the initial opinion (30th October 1972) made available by the assessee's legal adviser had not taken into account the fact that under clause 6 of the trust deed, sale of the property was possible during the settler's life time, if he so desired, and after his death, with the consent of all the surviving beneficiaries or with the consent of the majority of the said beneficiaries with the sanction of the Court. Instead, this opinion had confined itself only to an examination of the implications of clause 4 and it was only subsequently (21 November 1972) presumably on the omission

being pointed out by the Central Board of Direct Taxes/Law Ministry, that a supplementary opinion covering this aspect also was made available by the assessee trust. The Law Ministry's advice dated 10 January 1973 also appears to have been influenced largely by the opinion obtained by the assessee from his legal adviser.

1.84. In his opinion of 30 October 1972, the assessee's legal adviser drew attention to an earlier judgment of the Supreme Court in the case of Ahmed G. F. Ariff and Other Vs. Commissioner of Wealth-tax, Calcutta (76 ITR 471) that the words "if sold in the open market" used in Section 7 (1) of the Wealth-tax Act once not predicate actual sale or an actual market but only enjoins that it should be assumed, that there is an open market and the property can be sold in such a market. He had nevertheless, observed that any restrictions and covenants as reduce the value must be taken into account in valuing the property and had said as follows :

"The right which Behram K. Dubesh has in the property will arise only on the death of all the three brothers, this right is contingent; this right to purchase property at the price fixed by the settler cannot, however, on that account be ignored; for the trustees must hold and apply the property according to the directions of the settler because any purchaser of the property from the trustees will take the property subject to the restriction imposed by the settler. In my opinion the value of the property in the hands of the trustees in no circumstances can exceed Rs. 8 lakhs."

1.85. Again, in his supplementary opinion of 21 November 1972 furnished on his attention being drawn to clause 6 of the trust deed, the legal expert had held that though there was a possibility of sale of the property under this clause, the right vested in certain specified persons to purchase the property for a fixed amount of Rs. 8 lakhs after the death of the last surviving son of the settler must also be taken into account in considering whether there was any reasonable possibility of obtaining the consent of all or a majority of the surviving beneficiaries. Pointing out in the context that it was difficult to believe that any of these persons would agree to the sale of the property to his or her own detriment or to the detriment of his or her children and close relatives, he had gone, on to observe :

"Granting that in certain circumstances the property may be sold at the market price with the consent of the persons named in cl. 6 but that consent is not in the existing circumstances capable of being obtained. The valuer accordingly cannot ignore the restrictions which are inherent in the right of the trustees to sell the property at the market value. The market value of the property, it may be repeated is that amount which the property, subject to the restrictions, encumberances and limitations may fetch, and so long as the restrictions under cl. (4) remain there is so reasonable possibility of the property being sold for a price exceeding Rs. 8 lakhs. The mere circumstances that the settler envisaged a situation in which the property may be sold free

from the restriction and which situation is impossible to be achieved, is in my opinion, not a ground for holding that the value of the property is more than the value at which the property would be offered for sale by the trustees on the death of the last son of the settler."

1.86. Endorsing these views in their advice of 10 January 1973, the Law Ministry had observed, *inter alia*, that in the event of the trustees offering to sell the property, the prudent buyer would know that the trustees were under an obligation to offer it for sale to certain named persons for Rs. 8 lakhs and, therefore, even assuming that the trustees sold the property in breach of trust, the purchaser would hold the property subject to the same obligations of the trustees and in the event of any of the named beneficiaries exercising his option, the purchaser would be compelled to part with the property to him for Rs. 8 lakhs. Dealing with the implications of clause 6 of the trust deed, the Ministry had opined as follows:

"The question whether the necessary consent of all the parties or a consent of the majority of the persons concerned and the sanction of the Court would be forthcoming are, however, matters, on which it is not possible to speculate.

Till such consent or sanction is forthcoming, the possibility of a sale without the restriction of having to offer the property to the named individuals for prior purchase would merely be hypothetical and would not be relevant in determining the market value which the property in question would fetch in the open market on the valuation date. On this aspect of the matter, I am in agreement with the views expressed in the opinion of Shri..... (the assessee's legal adviser). The opinion would appear to set out the correct principles with regard to the manner in which the property has to be valued."

1.87. The Committee are, unfortunately, unable to appreciate these arguments. Looking at the trust deed of 2 August, 1945 in its entirety and not at caluses 4 and 6 in isolation as the Law Ministry appear to have done, the Committee found that in terms of the provisions of clause 1(b)(vii), the property could be sold to Behram K. Dubash for Rs. 8 lakhs only if it had not already been sold under clause 6. Thus, the so-called "encumbrance" or "restriction" in clause 4 is subject to a possible sale under clause 6 and such a sale would also be more beneficial to all the beneficiaries who under the instrument were fully competent to arrange the sale. In these circumstances, it would appear that there would always be a greater presumption of a sale under clause 6 than that of a sale under clause 4. A sale under clause 6 would also not involve any breach of trust as contended by the Law Ministry since the sale would have been effected only in accordance with the testator's intentions with the consent of the surviving beneficiaries or of a majoriy of them with the Court's sanction. By presuming that the possibility of a sale under clause 6 would be merely hypothetical and would not be relevant in determining the market value of the

property till the necessary consent of all the beneficiaries or of the majority of the personars concerned and the sanction of the Court were forthcoming, the Law Ministry appear to have committed the very error against which various judicial pronouncements have cautioned, namely, assuming the sale to be an actual sale in an actual market. Instead, the Ministry, following the judgements in the case of Ahmed G. H. Ariff and Other Vs. Commissioner of Wealth-tax, Calcutta (76 ITR 471) and Purshottam N. Amarsey and Another Vs. Commissioner of Wealth-Tax, Bombay City II (88 ITR 417), ought to have assumed that on a hypothetical sale, the necessary sanction and consent of the beneficiaries would be available and proceeded to determine the value of the property on that basis.

The Committee's attention has also been invited by Audit to P. 573 of Dymond's Death Duties for the citation of House of Lords decision in Lord Advocate V. Wood's Trustees (1910) ISLT 186 under the provisions in English Law similar to the provisions in section 7(1) of the Wealth Tax Act, 1957, according to which 'The price or the value which a testator may have given by his will to a particular person the option to acquire property is not a test of its market value'.

1.88. On a reading of the deed as a whole it is clear that provisions of clause 4 of the trust deed could not be considered a charge, debt or encumbrance depressing the market value of property. The trustees, under the vesting declaration, hold the property for the purposes of the trust and though the title to property rests, for the time being, with them, they are not owners of the property, the beneficial ownership resting only with the beneficiaries. Keeping this in view, the Committee feel that it would not be correct to conclude that the manner of distribution of the corpus of the trust after the date of distribution (date of the death of the last surviving son of the settler), namely, offer for sale of a property worth nearly a crore of rupees at Rs. 8 lakhs only was a debt or encumbrance. In view of the fact that the provisions of clause 4 amount, in effect, to a situation where the sale is effected by the trustees, in the course of distribution of the corpus of the trust, at the going market value of Rs. 1 crores and Rs. 92 lakhs are given to, one particular beneficiary, the balance of Rs. 8 lakhs being finally distributed to all the beneficiaries of the trust, the Committee feel

that clause 4 should have been construed merely as an adjustment of the rights of the beneficiaries *inter se* in the course of distribution of the corpus of the trust and not as restriction or encumbrance.

1·89. In any event, it would be amply clear from the subsequent course of events that in this case, the provisions of clause 7 had been misapplied to the detriment of revenues. The Committee find that in contravention of these provisions, the property in question had been offered for sale at Rs. 8 lakhs in 1973 to Behram K. Dubash even while the settler's last surviving son (Bomanji A. Dubash) was still alive, which was clearly against the settler's intentions and, therefore, irregular. Apparently with a view to landing a semblance of regularity to an otherwise irregular sale, Bomanji A. Dubash and his wife, Jean, had relinquished, on 5 February 1973, their right or interest of residence in the property. This relinquishment cannot, however, be taken as the death of the settler's last surviving son and, in any case, there was also no provision in the trust deed for such renunciation. This particular transaction as well as the subsequent lease of the property by Behram K. Dubash to M/s. Napean Estate (P) Ltd., whose shareholders were all significantly members of the Dubash family including himself, only serve to reinforce the Committee's impression that whatever might have been the settler's intention in stipulating in 1945, that the property should be sold to certain named beneficiaries for Rs. 8 lakhs, the beneficiaries had cleverly utilised, to their own advantage, clause 4 of the trust deed as an instrument of tax-avoidance and deliberately and grossly under-stated the value of the property with a view to reducing the tax liability.

1.90. The incorrect valuation of the property apart, the Committee's attention has also been drawn to a number of other omissions irregularities in the assessment of the trust and its beneficiaries, which are indicated below:

(a) The value of the vested interest created by the settler in favour of his grandson, Behram K. Dubash, and of the contingent interest created in favour of the great grandson, Ardeshir Behram Dubash, and the other grandson, Ardeshir Bomanji Dubash, though correctly includible in their net wealth were not so included.

(b) Exmeption of Rs. 1 lakh under Section 5(1)(iv) of the Wealth-tax Act had been incorrectly allowed to the trustees in each of the years 1968-69 to 1970-71 while the said exemption was not allowed in the year 1971-72.

(c) The release relinquishment by Bomanji A. Dubash and Jean of their right of residence in "Mount Napean" had not been subjected to Gift-tax under Section 4(1) of the Gift-tax Act, 1958.

(d) As property admittedly worth several times more was sold only for Rs. 8 lakhs, capital gains tax leviable under Section 52(2) of the Income-tax Act, 1961, had not been levied.

1.91. The Committee find that the Law Ministry, which had also examined the question of assessing to tax the value of the vested and contingent interests of the beneficiaries, had opined that no assessment of the value of the rights of these beneficiaries could be made as these rights could arise only after the happening of the contingencies mentioned in clause 6 of the trust deed. The Committee understand in this connection that it has been held by the Bombay High Court (71 ITR 180) and approved by the Supreme Court (76 ITR 471 and 88 ITR 417) that when Section 3 of the wealth-tax Act imposes the charge of wealth-tax upon the net wealth, it necessarily includes property of any and every description of the assessee, barring the exceptions stated in Section 2 (e) and other provisions of the Act. Besides, the Bombay High Court has also held that the provisions of Section 7(1) of the Act could not be utilised to nullify the provisions of Section 3 and that the mere fact that a property was not capable of being transferred was not a consideration which ought to prevail. Again, clarifying their decision in the case of Ahmed G. H. Ariff and Others *Vs.* Commissioner of Wealth-tax, Calcutta, the Supreme Court, in their judgement in the case of Purshottam N. Amarsey and Another *Vs.* Commissioner of Wealth tax, Bombay City II (88 ITR 417), had held that even if a property was incapable of being sold, being a personal estate, in that event also the interest of the assessee had to be valued by the Wealth-tax Officer. In yet another case [Commissioner of Wealth-tax *Vs.* Smt. Rani Kaniz Abid (93 ITR 332)], the Allahabad High Court had also held that even if on account of the peculiar incidents of a property or because of statutory or contractual restrictions, the potential right of the owner of the property may be abridged or excluded altogether, what remains in none the less property and merely because the right of transfer is absent, it does not mean that the other incidents of ownership do not continue in the property.

1.92. In terms of Section 21(1) of the Wealth-tax Act, wealth-tax, in the case of assets chargeable to tax under the Act held by any trustee appointed under a trust, shall be levied upon and recoverable from the trustees in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held. Section 21(2) further provides for the direct assessement of the person or persons on whose behalf or for whose benefit the assets are held or for the recovery from such person (s) of the tax payable in respect of such assets. However, where the shares of the persons on

whose behalf or for whose benefit such assets are held are indeterminate or unknown the wealth-tax is to be levied upon and recovered from the trustees, under Section 21(4) of the Act, as if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for purposes of the Act. The Committee learn that the Bombay High Court has held (71 ITR 180) that under Section 21(1) read with Section 21(2), the assessment can be made in the hands of the trustee or the beneficiaries according as the interest of revenue dictates, and that the effect of Section 21(4), which creates an exception to this choice given to the department, is that sub-section (2) would not be available to the department where the shares of the person(s) on whose behalf or for whose benefit any assets are held are indeterminate or unknown. In the light of these provisions and the judicial pronouncements, it would appear that the vested/contingent interest of the beneficiaries in the present case who had a pre-exemption right under clause 4 of the trust deed was to be valued and included in their wealth-tax assessments and that the provisions of Section 21(4) would be applicable to the case in view of the fact that the shares of the beneficiaries both as to life-interest and on distribution of the corpus of the trust are unknown and unascertainable on account of successive life-interests and interests of remaindermen. The Committee, however, note that the applicability to this case of Section 21 of the Wealth-tax Act was not at all considered, which is regrettable.

1.93. As regards the exemption available under Section 5(1)-(iv) of the Act in respect of a house or part thereof belonging to the assessee, the Committee find that though the Law Ministry had initially held, in October, 1975, that as the property in questions did not "belong" to a beneficiary, the exemption was not allowable to him and the exemption under this Section was accordingly not allowed in the assessments for the assessment years 1968-69 to 1970-71, that Ministry had subsequently (October, 1976) reconsidered their earlier opinion and advised that the exemption would be allowable in respect of a beneficiary's interest in the property subject to certain conditions. On a scrutiny, however, of the revised opinion of the Law Ministry, the Committee observe that the Ministry had not expressed any categorical views on this question but had merely pointed out that the admissibility of the exemption would depend upon the facts and circumstances of each case whether or not a beneficiary had "an absolute right of user or a life-interest in the property" and that "if it could be said that in view of such interest, the house belongs to him, then, it would be reasonable to exempt the same under Section 5(1))(iv) of the Act". The circumstances in which it become necessary for the Law Ministry to reconsider their earlier views on the question are also not very clear to the Committee.

1.94. The Committee have been informed that the question whether the release relinquishment in February, 1973 by Bomanji A. Dubash and his wife of their right of residence in "Mount Napean" constituted a gift within the meaning of Section 2(xii) read with Section 2(xxiv) of the Gift-tax Act, 1958, was referred to the Bombay

Branch of the Law Ministry who, in their opinion of 16 September, 1976, had advised that this release might not amount to a gift and that even if it were to be treated as a gift, it could not have any ascertainable value particularly because all the rights of residence of Bomanji A. Dubash were not affected. The Committee are unable to appreciate the rationale behind this opinion, particularly in view of the fact that a similar relinquishment by Bomanji A. Dubash, in November, 1962, of his right or interest in the share of the net income and reserve fund in respect of three other trust properties ("Hamiltan Villa", "Romana Villa" and "Rughby House") belonging to the Dubash family in favour of his three children had been treated as a gift and assessed to Gift-tax for the assessment year 1963-64. It is also evident that the release in the present case had been resorted to solely with a view to facilitating the sale of the property at Rs. 8 lakhs to Behram K. Dubash and cannot, therefore, be considered bonafide. It would, therefore, appear that the provisions of Section 4(1)(c) of the Gift-tax Act would be attracted in respect of this transaction. The Law Secretary was also good enough to admit during evidence that the opinion of the Bombay Branch of the Law Ministry on this question "requires a second look" and to state that he would "personally have no objection" to re-examine this transaction.

1.95. The Bombay Branch of the Law Ministry had also examined, in September, 1976, the question whether there were any capital gains, under Section 52(2) of the Income-tax Act, 1961, in this case a property worth several times more had been sold only for Rs. 8 lakhs. While opining that the sale of "Mount Napean" to Behram K. Dubash for Rs. 8 lakhs was "a bonafide transaction in pursuance of the Trust Deed which had been drawn as far back as in 1945" and Section 52(2) of the Income-tax Act could not, therefore, be invoked, the Ministry had, however, held that this Section could be resorted to in respect of the lease of the property, after Bomanji A. Dubash and Jean had executed the Release Deed giving up their right of residence in the property, to M/s Napean Estate (P) Ltd. by Behram K. Dubash. Dealing further with the question whether Gift-tax or Capital gains tax would be attracted in respect of the difference between the capitalised market value of the lease and the capitalised value of the lease as actually given, the Bombay Branch of the Law Ministry had also advised that since it could not be said with certainty whether the transaction would be treated as a gift, the Department might resort to proceedings under both the Acts so that one of them would ultimately sustain and that the case for capital gains should, however, be made out strongly.

1.96. The Committee are, to say the least, surprised that the settler in this case, by stipulating that the property should be sold to certain specified persons only for a specified amount when it was in fact capable of being sold for a much larger price, as well as the beneficiaries should have been able to bind the State for all time to come. If this position were to be accepted, it is not unlikely that other wealthy assessees might also follow suit and create similar trusts in respect of their properties stipulating that they should be sold only to a specified person or persons at prices

that have no relevance whatsoever to their market value and thereby reduce their tax liability and defeat the very purpose of Section 7 of the Wealth-tax Act. The Finance Secretary was also good enough to concede during evidence that he did not think that this case had "really been treated in the right way" and that "it seems amazing that it should be possible to arrange things in such a manner that property once valued at Rs. 103 Lakhs should be valued at Rs. 8 lakhs and Government asked to accept such a position." He also offered to look into the matter afresh and the representative of the Central Board of Direct Taxes has also agreed to re-examine the case in its entirety and to give a fresh look where assessements have already been settled.

1.97. The Committee have been informed subsequently by the Department of Revenue& Banking that a detailed note incorporating therein the various issues arising out of the transaction relating to "Mount Napean" had been referred for advice once again to the Ministry of Law on 7 December, 1976 and that their advice was awaited. Meanwhile, the Commissioner of Income-tax, Bombay, is also understood to have been requested by the Central Board of Direct Taxes, in March, 1977 to take protective measures. The question of valuation of the property afresh also appears to have been referred, on 12 August, 1975, to the District Valuation Officer (Superintending Engineer, Valuation Cell) and his report was stated to be awaited. Considerable time having elapsed since these steps were initiated, the Committee would like to be apprised in detail of the outcome of these efforts and of the action taken thereafter to revise all the relevant assessements under the various Direct Taxes enactments. Delay being undersirable in such cases, the Committee would urge the Department to proceed with the utmost expedition in regard to these matters.

1.98. Incidentally, the Committee note that in view of the fact that this property had apparently been sold for a consideration which was less than the fair market value as determined by the Valuation Officer, the feasibility of acquiring the property, under the provisions of Chapter XXA of the Income-tax Act, 1961, had also been considered by the inspecting Assistant Commissioner (Acquisition Range) and the Commissioner. However, here again on the basis of the Law Ministry's advice, which in turn was based on the opinion of the assessee's legal adviser, that in view of the restrictive clauses in the trust deed, the market value of the property could not exceed Rs. 8 lakhs, the department had concluded that there was no ground whatsoever to hold that the consideration for the transfer had not been truely stated in the instrument of transfer and there was, therefore, no case for starting acquisition proceedings under Chapter XXA of the Act. In view of the fact that the Law Ministry's views in regard to the fair market value of the property themselves are open to question and that Ministry has also been asked to reconsider the entire matter afresh, the Committee are doubtful how far the decision not to go in for acquisition of the property was a sound one. They, therefore, desire that this should also be re-examined with a view to taking necessary action.

1.99. This case also raises a serious question of principle and propriety. The Committee are of the view that even if more than one interpretation of the trust deed were possible, the correct and proper course of action would have been to allow the law to take its own course instead of the Central Board of Direct Taxes interfering, on the assessee's initiative and in clear violation of the statutory principal enshrined in Section 119 of the Income Tax Act which prohibits, inter alia, the issue of orders, instructions or directions by the Board requiring any assessing officer to make a particular assessment or dispose of a particular case in a particular manner, with the jurisdiction of the Wealth-tax Officer by issuing an advance ruling on the case. The Supreme Court had clearly held in Sirpur Paper Mill Ltd. Vs. Commissioner of Wealth Tax (1970) 77-ITR (6) that it was not open to the Board to issue any instructions or directions to the Wealth Tax Officer or Commissioner in the exercise of his quasi-judicial functions. The Committee are concerned to find that despite the fact that the property had been valued at a much larger amount by the Valuation Officer, the Wealth-tax Officer appears to have been in a pathetic quandary, overruled as she was by the Board and prevented from performing her legitimate duties and completing the assessments according to her own judgement. The Board's instructions in regard to this case, on the basis of which the assessments were completed, also appear to have been issued, on 18 January 1973 and 26 February 1973, after the Wealth-tax Act, 1957, had been amended, with effect from 1 January 1973, by the Taxation Laws (Amendment) Act, 1972, making the acceptance of the valuation by the Valuation Officer mandatory under Section 16A(6) of the Act. It is also significant in this context that the assessee trust had obtains opinions from its legal adviser only after it had approached the Central Board of Direct Taxes. All this naturally give rise to serious suspicion in the Committee's mind which needs to be allayed. The Committee are, therefore, firmly of the view that the manner in which the Central Board of Direct Taxes had interfered with the jurisdiction of the Wealth-tax Officer and the handling of the case by senior officials of the Board call for a principled and thorough probe of the circumstances in which the property in this case had been under valued in a view to ensuring that no malafids were involved. They accordingly recommend that such an investigation should be undertaken forthwith and its outcome intimated expeditiously.

1.100. What causes greater concern to the Committee is the admission during evidence by the Chairman of the Central Board of Direct Taxes that "it was quite a common practice" for the Board to give advance rulings as well as to deal with individual petitions of assessees, though it was contrary to provisions of law. The impropriety of such a practice had also been criticised earlier by the Public Accounts Committee. Now that instructions are stated to have been issued, although belatedly, that the Board shall not interfere in individual cases, the Committee expect that these would be followed scrupulously by the Central Board of Direct Taxes.

1.101 The Committee note that apart from the heavy under-assessments in respect of "Mount Napean" reported in the Audit paragraph, four other properties ("Hemilton Villa", "Romana Villa", "Rughby House" and "Belmont" belonging to the same family and located near "Mount Napean") on Napean Sea Road Bombay, has been grossly under-valued by ignoring the very high land values comprised therein. While the value of the land on which "Mount Napean" is located was adopted by the Valuation Officer at Rs. 550 per square yard as on 31st March 1963, 31 March 1964 and 31 March, 1965, at Rs. 350 per square yard as on 31 March 1966, 31 March 1967, 31 March 1968 and 31 March 1969 and at Rs. 390 per square yard as on 31 March 1970 and 31st March 1971 and in the valuation relating to "Belmont" as on 31 December 1969 and 31 December 1970, the value of the land was taken into account at Rs. 400 per square yard, the value of the land comprised in the three other buildings had been accepted at Rs. 100 per square yard only in the assessments completed upto 1971-72. Further, though the area of the land with the property "Belmont" was 3068 square yards and the value of the land alone, computed at the rate of Rs. 400 per square yard would, therefore, work out to Rs. 12,27,000, the value adopted was only Rs. 6 lakhs. Unfortunately, the assessment records do not indicate any reasons for the adoption of different values for the land comprised in these buildings. While the Committee can understand marginal difference in the land values, they are, however, not prepared to believe that there could be such wide variations in respect of properties located at the same place. Moreover it is a matter of common knowledge that prices of land have over the years increased manifold. The Committee understand that if the value of the land adopted by the Valuation Officer in respect of "Mount Napean" were also to be adopted in respect of the other three properties ("Hamilton Villa", "Romana Villa" and "Rughby House"), the under-valuation of the land comprised in these three properties would amount to Rs. 25.70 lakhs for the assessment years 1963-64 to 1971-72. They have also been informed that the valuation of these three properties has also been referred to the District Valuation Officer on 22 September 1975 and that the concerned Wealth-tax Officer has been requested to look into the question of under valuation. The Committee desire that while apprising them of the further developments in this regard, the Department should review carefully the assessments relating to these three properties as well as "Belmont" and re-open them, wherever found necessary, so as to recover the tax correctly leviable. The circumstances in which different values were accepted by the Department in respect of these properties should also be gone into in detail with a view to ensuring that no malafides were involved. The Committee would await a detailed report in this regard.

NEW DELHI;

December 9, 1977.

Agrahayana 18, 1899 (*S*).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

APPENDIX I

INSTRUCTION No. 796

F. No. 225/121/74-II (A. II)

Government of India

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 22-11-1974.

To

All Commissioners of Income-tax

Sir,

SUBJECT :—Scope of section 119 of the Income-tax Act, 1961—Power of the Board to give instructions, directions and advance rulings in individual cases. Clarification regarding.

Reference is invited to Board's Circular letter No. 225/32/74-II (A. II) dated 27th March, 1974 on the above subject.

2. The Board have recently examined the question regarding the scope of section 119 of the Income-tax Act, 1961 in consultation with the Ministry of Law, with particular reference to the power of the Board to give advance rulings/directions/instructions in individual cases. Section 119 prohibits the Board from issuing orders, instructions or directions so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner. In view thereof, the Board has decided that it will not issue any advance rulings/directions/instructions in individual cases to any income-tax authority or to any quertist. However, the Board would continue to over-see administratively the functioning of the lower formations and give advice in individual cases if the facts of the case so justify. Such an advice may also be given in respect of references from the Commissioners only in respect of any difficult proposition of law or fact. Such an advice will not be in the nature of directions or instructions and it would be for the authority concerned to come to a decision on the merits of the case in the light of its individual judgment. As a corollary, it would be necessary to ensure that the Income Tax authorities refrain from quoting or referring to the advice or guidance given by the Board in any orders passed by them. Of course, there would be no objection to their adopting the reasonings contained in the advice of guidance given by the Board.

3. Necessary instructions may kindly be issued to the officers working in your charge on the lines indicated above.

Yours faithfully,

(Sd.) T. P. JHUNJHUNWALA,
Secretary, Central Board of Direct Taxes.

APPENDIX II

Copies of Opinions dated 30-10-1972 *and* 21-11-1972 *given by the former Chief Justice of India*

QUERISTS. TRUSTEES OF MOUNT NAPEAN TRUST.

The Querists are the present Trustees of a familly trust, created under Deed of Settlement dated 2nd May, 1928, and relating to a property in Bombay, known as "MOUNT NAPEAN". There were several subsequent subsidiary Deeds, which it is unnecessary to refer to by a Deed executed in September, 1966, the Querists were appointed "Trustees" of the Trust. The original Settlement was made by the Late Mr. A. B. Dubash. By another Deed of Settlement, executed in 1945, the Settler directed that the trust property shall be utilised for the benefit of his three sons and their family members. He directed *vide* Paragraph 4 of the Deed of Settlement that after the death of his three sons, the Trustees shall offer for outright sale Mount Napean, alongwith the permanent fixtures, fittings, fixed decorations, chandeliers, lights, fans, furniture and statues in the gardens for a sum of Rs. 8 lacs to Behram K. Dubash, grandson of the Settler, if he then be alive, and if Behram be not alive, to his son Ardeshir, and if he also not be alive, to the eldest male child of Shri B. K. Dubash, who may then be alive, on terms and conditions stated in the Deed of Settlement.

Two of the sons of the Settler, *viz.*, (i) Kaikhashroo and (ii) Ratanji have died before this date.

The Trustees of the Settlement are assessed to Income-tax and Wealth-tax, by the Tax Officers at Bombay. The Wealth-tax assessment of the Trustees for the Asstt. Year 1970-71 and onward are pending.

In the past, Mount Napean was valued at Rs. 6,92,000/- for Wealth Tax purposes, but in the pending assessment proceedings, the Wealth-tax Officer is disinclined to accept the Valuation as shown by the Querists and had expressed his intention to value the building at a very much higher amount.

It appears that the Querists were informed that the question of valuation of the building was referred to the Valuation Cell, and the Departmental Valuers have valued the property far in excess of Rs. 8 lacs.

The Querists seek advice on the question whether the Wealth-tax Officer is justified in valuing the property on a presumption that it is free from various restrictions, imposed by the Settler under the Deed of Settlement and the restrictions on account of existing tenants who are protected under the Bombay Rents, Hotel and Lodging House Rate Control Act, 1947.

The property Mount Napean is, at present, occupied by five tenants, *viz.*, (i) Messers Ardeshir B. Cursetjee & Sons Pvt. Ltd., (2) Ardeshir B. Dubash, (3) Ardeshir Bomanji Dubash, (4) B. K. Dubash and (5) B.A. Dubash, Miss Goolbai A. Dubash was occupying premises in the said property since 1952, till 1971 when she expired.

These tenants occupy different portions of the house. Tenants No. 1 and 5 have been occupying the portion in their occupation since 1952. Number 4 since 1965, after the death of his father Shri K. Dubash, and Nos. 2 and 3 are occupying since 1971 as tenants. There is no dispute that these five tenants pay rent to the Trustees and the payments are accepted as "Rent". Rent receipts in printed forms have been issued from time to time by the Trustees in favour of the occupants and hence the said persons are entitled to protection under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Under the provisions of the said Act, a tenant is entitled to occupation which may be forfeited only on strict proof of the circumstances mentioned in the appropriate provision of the Act. As per the provisions of the Rent Act, the landlord is not entitled to an order in ejectment against a tenant occupying the premises, unless the landlord proves his case, which squarely falls in one of the clauses of the Act, and in absence of such proof, a tenant is entitled to continue in occupation of the premises which is occupied by him as a tenant.

Occupation of the house by the tenants is accordingly a circumstance which must depress the value below the value at which, the house may be sold, if it were vacant property.

Normally, the valuation of such a tenanted property will be determined by capitalising the net rental at a rate slightly above the prevailing gilt-edge securities rate of interest or the prevailing market rate of interest.

The rental receipt is about Rs. 3,300/- per month (approx.) and capitalising the net Rental after payment of the taxes and other outgoings, the value of the building and land, which is appurtenant thereto, cannot exceed Rs. 6,92,000/- as valued in the earlier assessment years.

It is true that two of the tenants are persons entitled to occupation of the building, under the terms of the settlement, but, they are occupying parts of the house as tenants having agreed to pay and have regularly been paying rent, which has been accepted by the Trustees as rent. The payments are in excess of the amounts specified in the deed document dated August 2,1945. In these circumstances, though they are under the Deed of Trust entitled to occupation, they must be deemed in law to occupy portions of the house as tenants and entitled to the protection of that Act. The Trustees in the face of the rent receipts for higher amount, cannot deny the tenancy of any of these occupants.

I am, therefore, of the opinion that the property cannot be valued for the purpose of Wealth-tax, as vacant property. The normal method of valuation in such a case is capitalisation of net Return from the house, at an appropriate rate.

The other restrictions imposed on the property, by the Deed of Settlement of 1945, is also serious. The Settler has directed under the Deed of Trust, in paragraph 4 that, after the death of his three sons, the Trustees shall offer for outright sale of the house inclusive of fixtures, fittings, etc. to Behram K. Dubash, if he then be alive, and if he is not alive, to the other persons, named in the Deed of Settlement. Without committing a breach of the trust, the Trustees cannot refuse to sell the house to the persons

named in the Deed of Settlement, nor demand price in excess of the amount of Rs. 8 lacs. In my opinion Behram K. Dubash, and in his absence, persons named in the Deed of Settlement, will be entitled when the contingency mentioned in the Deed arises, to compel the Trustees to sell the property together with furniture, fixtures, etc., for a sum of Rs. 8 lacs. They may also restrain the Trustees by action in Court from acting in a manner contrary to the directions of the deceased. The right of the trustees over the property is subject to the restrictions placed by the Settler upon the authority of the trustees. There is no ground to believe that, when the Deed of Settlement was made, and the right was conferred upon Behram K. Dubash to purchase the Property at Rs. 8 lacs the property was worth more than that amount.

Since the Wealth-tax Officer has, upto the year 1969-70, accepted the value of the house at Rs. 6,92,000/-, the directions in the Deed of Settlement that the house should be sold at Rs. 8 lacs, indicated that the Settler desired to obtain for the Trust an amount not less than the value of the property at the time of the Settlement.

Under S. 3 of the Wealth-tax Act, tax to be called Wealth-tax is charge-wise in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and Company at the rate or rates specified in the Schedule. By virtue of S. 21 of the Act, wealth-tax shall be levied upon and recoverable from Trustees, in the like manner to the same extent as it would be leviable upon and recoverable from the person for an on whose behalf or for whose benefit, the assets are held.

The term "Net Wealth" has been defined in S. 2(m) of the Act as meaning the amount by which, the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the valuation date.

The expression "assets" is defined under S. 2(e) of the Act, as inclusive of property of every description, movable or immovable subject to certain exceptions, which are not material for the purposes of this opinion.

Under S. 7 of the Act, the value of the property shall be estimated to be the price which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

It is true that for purposes of valuation under S. 7(i) of the Act, the words "if sold in the open market"does not predicate actual sale or an actual existing market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market. The Wealth-tax Officer must assume a notional market for the sale of the property and determine the value at which, the property may be sold in the market.

See : The judgment of the Supreme Court in Ahmed G.H. Ariff and Others *vs.* Commissioner of Wealth-tax, Calcutta (76 ITR 471).

The judgment does not expressly state nor does it imply that the restrictions which are imposed upon the property either by virtue of legal provisions or because of Settlement to which the property is subjected, are to be ignored. If the property is subjected to restrictions which restrict its marketability

as encumbered property the value of the same will be less than the value it could have fetched if it were unencumbered. Such restrictions and covenants as reduce the value must be taken into account in valuing the property.

If the property is subject to a prior charge, in determining the value of the property, the capitalised value of such charge will have to be deducted from the value of the property. Similarly, if the property is mortgaged, the value of the encumberance will be deducted from the value of the property. The value of the interest of an owner of property would similarly be reduced because of the existence of restrictions. On the same ground, it would be held that, where by a Deed of Settlement the property is subject to restrictions that it shall be sold only to certain persons and at a price, fixed by the Settler the value of the property in the hands of the owner unless it is proved that it was deliberately undervalued shown in the Settlement is to avoid or reduce tax liabilities. In 1928 and subsequent years, when the Deed of Settlement was made and added to, there was no wealth-tax payable and therefore, there is no reason to believe that the consideration of Rs. 8 lacs mentioned in the Deed of Settlement of 1945 was deliberately kept at a low figure. On the other hand, it could be presumed that the value mentioned therein was a fair figure to enable the trustees to distribute surplus funds amongst other beneficiaries. In any case, since the Settler had directed that the house should be sold to a specified person at a specific price, which was not less than the then prevailing price, which would have been realised, the said amount, must be regarded as the market value of the house, which may be below the price which would not be fetched, if it were vacant.

Looking at the problem from another angle: if the legal ownership of the trustees is subjected to restriction, the value of the property must be distributed between the persons for whose benefit the rights and restrictions are enforceable, for the trustees have a mere truncated ownership. The Trustees as well as the persons, who are competent to exercise those rights will have vested rights in the Property. The ownership of the Trustees in the property would to the extent to which other persons have right to the property, being restricted, in determining the tax liability of the trustees, the value of the interest of the trustees alone must be taken into account and not the Interest or the right that the other persons requiring the Trustees to act in a certain manner have the value of the interest of trustee and of the other person must be separately determined. If at all the liability to pay wealth-tax is there on the value such restrictive right, it will fall upon such other persons. In making this observation it is necessary to bear one consideration in mind that it is wrong to assume that the aggregate of the interests of different persons in property is equal to the value of the property as a unit, which is not subject to any restrictions.

If, for instance, different persons A, B, C & D have rights in the property the aggregate value of such interests will not necessarily be equal to the value of the property. A property in which land is owned by one person and a house built there to another is a familiar instance. The value of the land subject to the obligation to allow the house to stand there and the value of the house do not taken together amount to the value of the land and building—See the observation of Macleod J. in Government of Bombay *vs.* Merwanji Manoherji Cama 10Bom. L.R.907. The right which Behram K. Dubash has in the property, will arise only on the death of all the three brothers;

this right is contingent. The right to purchase property at the price fixed by the Settler cannot however on that account be ignored; for the trustees must hold and apply the property according to the directions of the Settler because any purchaser of the property from the trustees will take the property subject to the restriction imposed by the Settler.

In my opinion, the value of the property in the hands of the Trustees in no circumstances can exceed Rs. 8 lacs.

In this connection, it is also important to bear in mind that the amount of Rs. 8 lacs includes the value of the permanent fixtures, fittings decorations, chandeliers, fans, furniture and statues etc., the value of which has to be ignored while valuing the property for wealth-tax purposes, and hence the value of the house and land would be less than Rs. 8 lacs, for the purposes of the Wealth-tax Act, and in any circumstances cannot exceed Rs. 8 lacs.

Bombay Oct. 30, 1972 Sd/-

QUERIST MOUNT NEPEAN TRUST

The Querist seeks a supplementary opinion on points not covered by the earlier opinion dated October 30th, 1972. My attention is invited to Cl. (6) of the Indenture of Trust dated August, 2, 1945. Under the Identure of Trust diverse provisions with regard to sale of settled property Mount Nepean have been made. To get a complete picture it is necessary to refer to all the relevant provisions relating to sale of the trust property. Cl. 4 provides in so far as it is relevant: (1) From and after the death of the late survivor of the said Kaikhushru, Ratanji and Bomanji, the trust shall hold the aforesaid Mount Nepean with permanent fixtures, fittings, fixed decorations....upon the following terms : (a) the trustees shall offer for outright sale for Rs. 8 lacs to the said Behram K. Kaikhushru if he be alive and if Behram be not alive to his son Ardeshir and if Ardeshir be also not alive then to the eldest male child of the said Behramji or Ardeshir Dubash as then be alive on the following terms.... (b) if the offer of sale made by the trustees shall not be accepted by any one of the person named above or for and on their own behalf.... the trustees shall at their discretion be at liberty to sell them to whosoever they think fit. (2) Cl. (6) provides that the trustees shall during life time of the settler if the settler so desires sell the said Mount Napean free from the trust and the rights of residence created under the deed of settlement in favour of the members of the settler's family. Upon such sale the trust provisions and conditions created in respect of such right of residence shall be deemed to have been revoked and at an end....(3) After the death of the settler the trustees may with the written consent of the beneficiaries here under named *i.e.*, to XX Kaikhushru, Dinbai. Behram, Ratanji Manekbai, Bomanji, Jean and in case of death of any one of them with, the cosent of the survivor or survivors of them and in case majority of them agree than with the sanction of the Court first obtained sell the said Mount Nepean free from the right of residence so created.

These are all the provisions relating to sale of the trust property. On an analysis of these provisions, the following position result: (1) the settler preserved to himself the right to sell the property during his life time. In case of sale, the right of residence given to various persons by the Indenture of Trust were to come to an end. (2) that after the death of the settler with the consent of all the persons named in Cl. (6) the property could be sold by the trustee, and if all the named persons did not agree but a majority agreed with the proposal for sale than with the sanction of the Court first obtained the trustees may sell the property. (3) The property has to be

offered for sale after the death of the three sons of the settlor to the named persons in Cl. (6) Under the Wealth-tax Act, is charged on the net wealth i.e., the aggregate value of the property computed in accordance with the provisions of the Act belonging to the assessee on the Valuation date which is in excess of the aggregate value of all debts owned by the assessees on the valuation date. Value of the net wealth is assessed not in the abstract but on the valuation date and assessing the value the relevant circumstances, which have a bearing on the value of the property on the valuation date must be taken into account. All covenants restrictions encumbrances which on the date of the valuation are embodied in the title of the owner and have a bearing on the market value of the property must be taken into account and the value of immovable property *e.g.*, here must be determined in the light of its situation, cost of construction, age of the building, materials of which it is built, suitability for the use to which it is actually put and its proposed or prospective user enter into the consideration.

It is true that under Cl. (6) the property may be sold with the consent of all the persons mentioned in paragraph 6 or a majority of those persons with the sanction of the Court. But the right vested in certain specified persons to purchase the property for a fixed amount of Rs. 8 lacs after the death of the last surviving son of the settlor must also be taken into account in considering whether there is any reasonable possibility of such consent of a majoirty of the persons. The present market value of the property free from encumbrances may be large but the persons named whose consent must be obtained for sale of the property would not normally be expected to assent to any sale to outsiders. It is difficult to believe that any of these persons will agree to the sale of the property to his or her own detriment or to the detriment of his or her children and close relatives. Out of the three sons of the settlor Kaikhushru, Ratanji and Bomanji, two are dead. After the death of the third son the property must be offered for sale to Bahram son of Kaikhushru and if Bahram be not then alive to his son Ardeshir and if if Ardashir be not alive to the eldest male child of Bomanji. These are restrictions inherent in the title to the property and must reduce the value of the property. Granting that in certain circumstances the property may be sold at the market price with the consent of the persons named in Cl. (6) but that consent is not in the existing circumstances capable of being obtained. The valuer accordingly can not ignore the restrictions which are inherent in the right of the trustees to sell the property at the market value. The market value of the property it may be repeated is that amount which the property subject to the restrictions, encumbrances and limitations may fetch, and so long as the restrictions under cl. (4) remain there is no reasonable possibility of the property being sold for a price exceeding Rs. 8 lacs. The mere circumstances that the settlor envisaged a situation in which the property may be sold free from the restrictions and which situation is impossible to be achieved, is in my opinion, not a ground for holding that the value of the property is more than the value at which the property would be offered for sale by the trustees on the death of the last son of the settler.

Bombay Sd/-

November, 21, 1972.

APPENDIX III

Copy of the opinion of the Law Ministry Dated 10-1-1973

MINISTRY OF LAW
Department of Legal Affairs.
(Advice F.) Sec.

The question for consideration is the manner in which the property in question is to be valued in the hands of the trustees for the purpose of Wealth-tax.

2. The principles in this regard are contained in section 7 of the Wealth Tax Act, Sub-section (1) thereof which applies in the present case provides that the value of any asset other than cash for the purposes of this Act shall be estimated to be the price which in the opinion of the wealth tax Officer it would fatch if sold in the open market on the valuation date.

3. The question, therefore, would arise as to whether in the event of the trustees being willing to sell the property, the price which it would fetch can be determined on the basis that the property is not subject to any condition of prior sale to the named persons.

4. It is true that for the purposes of this case, what is to be determined is a sale in the open market and not restricted market. But, nevertheless, what is to be determined is the price which the particular property would fetch and for this purpose regard should be had not only to its advantages but also to any disabilities which may attach to the property. Under paragraph 4 of the Deed of Settlement and Trust, after the death of the three sons of the settlor, the trustees are required to offer the property "Mount Napean" to certain members of the family in a specified order for a sum of Rs. 8 lakhs. It is only if the persons concerned fail to avail themselves of this offer that the trustees would be free to dispose it off. (I should deal with the implications of clause 6 of the deed later).

5. Thus, in the event, of the trustees offering to sell the property, the prudent buyer would know that the trustees are under an obligation to offer it for sale to certain named persons for a sum of Rs. 8 lakhs.

6. Assuming that the trustees sell the property in breach of trust, the purchaser would held the property subject to the same obligations of trustees. Thereafter, in the event of any of the named persons exercising their option, he will be compelled to part with the property to them, for a sum of Rs. 8 lakhs. He cannot expect to get anything more.

7. This would necessarily have a bearing upon the price which the property would fetch in the open market. As observed by Hedge J., in *C.W.T.* Vs., Ramchandran (LX ITR 103) "the true test would be the price the assessee would get on the valuation date for his landlord's right in transaction between a willing seller and a willing buyer" (at p. 109.).

8. If this test were to be applied , no person would willingly part with any sum exceeding Rs. 8 lakhs for the property, as another party has an enforceable right to get it from the trustees at this price.

9. While the assumption has to be made that there is no open market in which the asset can be sold (*Ahmed. G.H. Ariff Vs. C.W.T.*, 76 *I. T.R.* 472), it has to be kept in mind that what is relevant is the particular property subject to all the covenants and restrictions which go with it and not and unencumbered asset. Hence clause 4 of the Deed of Settlement and Trust stood by itself it would be difficult to sustain the proposed valuation.

10. Reference, however, has been made to clause 6 of the Deed of Settlement and Trust which provides that in certain contingencies, the trustees can sell the property to any person they choose at the best possible price when the obligation to offer Rs. 8 lakhs would not operate. The trustees would be able to do this with consent of all the persons mentioned in that paragraph or a majority of these persons and with the sanction of the Court.

11. The questions whether the necessary consent of all the parties or a consent of the majority of the persons concerned and the sanction of the Court would be forthcoming are, however, matters on which it is not possible to speculate. Till such consent or sanction is forthcoming, the possibility of a sale without the restriction of having to offer the property to the named individuals for prior purchase, would merely be hypothetical and would not be relevant in determining the market value which the property in question would fetch in the open market on the valuation date. On this aspect of the matter, I am in agreement with the views expressed in the opinion of...(former Chief Justice). The opinion would appear to set out the correct principles with regard to the manner in which the property has to be valued.

12. Secretary may please see.

Sd/—
(P. B. Venkatesubramanian).
23-12-1972

Secretary In the circumstances, I agree in general with the view expressed in the opinion of Shri .....

Sd/—

8-1-1973

Min. of Fin. (R & I Deptt.)—Shri R.D. Shah,

Min. of Law U.O. F. No. 25396/72-Adv. (F) dt. 10-1-73.

Extracts from F. No. 319/25/72—W.T.

APPENDIX IV

COPY

CENTRAL BOARD OF DIRECT TAXES

F. No. 319/25/72—WT. 18th January 1973.

To,

Shri J. R. Shah,
Income-tax Practitioner,
Maskati Mahal, Lohar Street,
Bombay-2.

Sir,

SUB :—Wealth-tax Act, 1957—Valuation of property known as Mount Napean at Napean Sea Road, Bombay-6.

In continuation of Board's letter of even number dated the 24th October, 1972 and with reference to your letter dated the 21st November, 1972 on the above subject, I am directed to request you to contact the Commissioner of Income-tax and Wealth-tax, Bombay City-III, Bombay in the matter.

Yours faithfully,

Sd/-
(B. NIGAM)
UNDER SECRETARY
CENTRAL BOARD OF DIRECT TAXES

Copy with a copy of the petition dated 22-9-72, one copy each of opinions dated 30-10-1972 and 21-11-72 and also the opinion of the Ministry of Law including the comments of the Law Secretary, is forwarded to the Commissioner of Income-tax and Wealth-tax, Bombay City-III, Bombay. The Board desire that necessary further action may be taken in the light of the opinion given by the Ministry of Law.

Sd/-
(B. NIGAM)
UNDER SECRETARY
CENTRAL BOARD OF DIRECT TAXES.

BALBIR SINGH
SECRETARY.

D. O. F. No. 319/25/72—W.T.
26th Feb. 1973

Dear Shri Rao,

SUB :—Wealth-tax Act, 1957—Valuation of property known as 'Mount Napean', Napean Sea Road, Bombay.

Will you kindly refer to your letter No. SIB. III/512(46)/71, dated the 20th February, 1973

2. I am desired to inform you that the matter of valuation of the property in question has at first to be seen in the context of the legal position. In view of the Law Ministry's opinion, it matters little what the valuation by the Valuation Cell is as the value that has to be taken is the restricted value at which the trustees are bound to sell the property under the terms of the trust. The Board are, therefore, of the view that the valuation of the property may be made in the light of the legal position as enunciated in the note of the Ministry of Law which has already been furnished to you.

Yours sincerely,

Sd /-
(BALBIR SINGH)

Shri T.Y.C. Rao,
Commissioner of Income-tax,
Bombay City-III,
Aayakar Bhawan, BOMBAY.

Copy forwarded to Shri V.V. Badami, Director of Inspection (Inv.), New Delhi, for information. His office file No. Inv. II BB (ii) DI 71 is also returned herewith.

Sd -
(Balbir Singh),
Secretary,
Central Board of Direct Taxes.

APPENDIX V

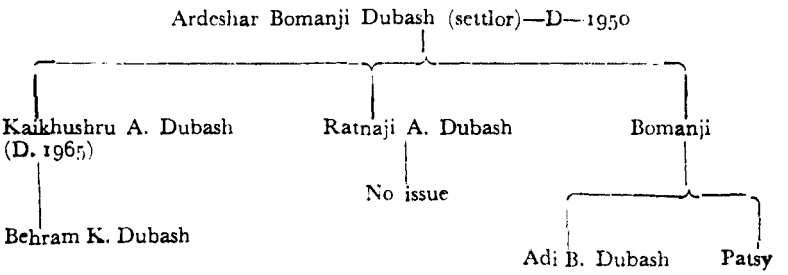
F.No. 236/736/75-AC-I

MINISTRY OF LAW & JUSTICE

(DEPARTMENT OF LEGAL AFFAIRS)
BOMBAY

Re: your No.: Com Cir.II(2)/Misc. 76-77 dt. 30th April 1976.

Ardeshir B. Dubash by Deed of Settlement dated. 2-5-28 created a Trust of his immovable properties. By a subsequent deed of trust dated 2-8-45 he made separate provision for his property known as Mount Napean situated at Nepean Sea Road and it is by the Supplementary Trust deed that the property was being governed at the material time. The geneological tree of Dubash family is as follows :



The trust deed *inter alia* provide that Bomanji had a right of residence during his life-time. The property was to be used during their lifetime by the three sons of the settlor. Bomanji was to use the 3rd floor and was to pay Rs. 300/- p.m. after the death of settlor as contribution towards maintenance of the estate. He had also a right to construct. The three sons had to pay one thousand rupees per month as contribution towards the property expenses. Kaikhushru died in 1965 and Ratnaji died in 1966 leaving Bomanji as the only surviving son. Bomanji was made a tenant in 1969 and had to pay Rs. 400/- as rent. The Trust Deed also provided that the trustees shall offer for outright sale the property for Rs. 8 lakhs to Behram K. Dubash if he is alive and to his son Adi in case Behram K. Dubash is not alive after the death of the 3 sons of the settlor. In case of Ardeshir not being alive, to the eldest child of Bomanji. The property was to be offered for sale only after the death of all the sons of the settlor. Bomanji the youngest and his wife Jean executed a Release Deed on 5-2-1973 giving up the right to residence given under the trust deed. The property was leased to M/s. Nepean Estate P. Ltd. on the same day for a period of 98 years. The stipulation was that for the first three years a token rent of Re. 1/- was to

be paid if demanded and after three years the lease rent was fixed at *Rs. 12,700/- p.m.* The Nepean Estate P. Ltd. consists of the members of the Dubash family. On the same day M/s. Nepean Estate P. Ltd. sub-leased a portion of the property for 97 years an 11 months. The rent payable was Re. 1/- for the first three years and thereafter Rs. 2,500/ p.m.

2. It is against this background that several questions have been posed. The first question raised is whether the right of residence would constitute property in the hands of Shri Bomanji and would have to be taken into account for the purpose of wealth-tax. Sec. 2(e) of the W.T. act provides that assets include property of every description, movable or immovable. Exceptions are carved out but they have no application. Right of residence is an interest in property and therefore an asset. See Natesan Vs. Controller of Estate Duty (1965) 56 ITRE.D.5. In Purshottam N. Amersey R. Anr. Vs. Commissioner of Wealth-tax, Bombay City-II (1973) 88 ITR 417, the Supreme Court held that even if property is a personal estate and is incapable of being sold in the open market the int of the settler had to be valued by the W.T.O. Applying the same principle the right of residence would be valued on the basis of principles enunciated in the W.T. but since the portion occupied by Bomanji was converted into tenancy what will have to be assessed in his right of residence under the tenancy. It would not be advisable to assess the right of residence under the tenancy for W.T. purpose.

3. The next question posed is whether the relinquishment of the right of the residence by Shri Bomanji and his wife Smt. Jean of residence and of construction is a gift within the meaning of Sec. 2 (xii) read with Sec. 2 (xxiv). Gift has been defined to mean the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideraion in money or money's worth and includes transfer of property. There is no difficulty in constructing the relinquishment as transfer of property. But the question is whether this was gift. At the time of the release Bomanji was already a tenant and was protected under the Bombay Rent Control Act. "What actually was given up was a right of residence under the "Will" but the right to reside continues as a tenant. Even today Bomanji has continued to stay in the premises. In effect there was no consideration for giving up a right which was less than right he had under the tenancy. In this connection a reference may be made to para 4 of Circular No. 1(1)-59/GT dt. 27-2-59 from CBR. These circulars are binding on the Department.

4. Transfers deemed to be gifts: Section 4 (6) has been inserted with the object of roping in so-called business transactions which are really gifts in a camouflaged form. It is not howeever, the intention to penalise cases where the release, discharge, surrender forfeiture or abandonment has been made for bonafide reasons. For example, a debt may be abandoned because it is genuinely irrecoverable and the person may not have taken legal steps to recover the amount as it would have meant only throwing good money after bad. Such an abandonment will not be treated as gift. This provision would be invoked only in cases where the circumstances justify an inference of collusion between the person who makes the discharge, surrender, abandonment, etc. and the person in whose favour the discharge, surrender or abandonment etc. has been made. There could be no question of any market price for this transaction.

Under the circumstances, I am of the view that the release may not amount to gift. Even if it were to be treated as a gift it could not have any ascertainable value particularly as all his rights of residence are not affected.

5. The third query is whether Behram Ardeshiron of Behram and Ardeshir Bomanji could be said to possess any contingent right or vested interest prior to 24-3-1973. There can be no doubt that these persons had contingent right. However, the right to purchase the property depended on a large number of factors. So long as the three sons of the settler were alive the property could not be offered for sale. The right vested only in case of person survived. The right was not a transferable right. Hence it cannot be said to be assent in the hands of any of the three persons referred to above. This also disposes of question No. 4 which relates to the valuation of the contingent right.

6. That leads to the next question which is *whether there was any capital gains under Sec. 52(2) of the I.T. Act as the property which was admittedly worth several times more was sold for Rs. 8 lakhs to Behram.* This question had been examined previously by this Ministry and under our U.O. No. 25396/72-Adv. (F) dated 10-1-73 wherein for the purpose of valuation for wealth-tax the property was held to be worth Rs. 8 lakhs. The opinion expressed by Ex-Chief Justice of the Supreme Court was considered and the view expressed by him that since the property could not be sold in the market as the trustees were bound to sell it for Rs. 8 lakhs, the value of the property could not be placed higher than Rs. 8 lakhs was accepted. Since this property was sold to Bomanji for Rs. 8 lakhs it cannot be said that there had been any capital gains. This was a bonafide transaction in pursuance of the Trust Deed which had been drawn up as far back as in 1945. I am of the view that Sec. 52(2) of the I. T. Act cannot be invoked.

7. Behram leased the property for a sum of Rs. 12,700/- per month for a period of 98 years. Very valuable property was leased out to M/s. Napean Estate P. Ltd. whose shareholders were all members of the family including himself. Lease sold rights are valuable rights and obviously, these rights have been transferred for inadequate consideration. It should be possible to ascertain what 98 years lease of this property would have fetched in the market. No lumpsum amount was received as per the deed before executing the lease deed as consideration. In this connection, Ex-Chief Justice in his opinion has expressed meaning of Sec. 2(47) of the I.T. Act. The said sub-clause "transfer", in relating to a capital asset includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law. It is an inclusive definition. The word transfer should be accorned its normal meaning. Lease for 98 years is undobtedly a transfer, *See* Capsulation Services P. Ltd. *Vs.* C.I.T., Bombay (1973) 91 ITR 566. In the case of Traders and a lease of a mine or a land is a transfer and salami or premium rates for this may be assessable as capital gains. The same effect is the ruling of the Andhra Pradesh High Court in the case of Rajendra Mining Syndicate *Vs.* C.I.T. 43 ITR 460. (Ex-Chief Justice) in his opinion has expressed the view that these rulings do not lay down that ordinary lease of a building or a land amounts to a transfer which gives rise to capital gains. But what has been done in this case, a valuable

right has been transferred for obviously inadequate consideration. In my view it may be worthwhile resorting to Sec. 52(2) of the I.T. Act.

8. The next two questions arise out of the same question as to whether gift tax or capital gains could be attracted with regard to the difference between the capitalised market value of the lease and the capitalised value of the lease as given. Normally, if the gift tax is levied the capital gains cannot be levied and *vis-a-vis*. It cannot be said with certainty whether the transaction will be treated as a gift. It is left to the Department to choose the course of action. To err on safe side, perhaps, the Department may resort to both courses of action so that one of them would ultimately sustain. However, the case for capital gains should be made out strongly. Board's circular 340/22/76-G.T. dated 2nd July, 1976 may be seen.

9. Before expressing this opinion I had discussions with Shri R. J. Joshi, Sr. Standing Counsel as the matter is of considerable importance and the stakes involved are heavy. This note is being issued after Shri R. J. Joshi has gone through the same.

Sd/- V. N. LOKUR,

Joint Secretary & Legal Adviser to the Govt. of India.

Commissioner of Income-tax, Bombay,
Min. of Law & Justice U.O. No. 3036/76—Adv. (Bom.)
dated. 16-9-76.

(Read. on 29-10-76 at 4 p.m.)

APPENDIX VI

Copy of the Opinion of Solicitor-General dated 12-9-1975.

Extract from F. No. 321/45/75—*WT*

The question of applicability of section 21(1) *vis-a-vis* Section 21(4) of the Wealth Tax Act to the residual value of the corpus of the trust (after excluding the interests of the beneficiaries taxed separately) arises for consideration in this as well as in another (F. No. 321/48/75-/—WT) reference for Special leave.

2. Reference is invited to the C.I.T.'s letter dated 30th August, 1975 (F/A) as well as letter dated 21st January 1975 (F/B). Copies of the relevant orders are all annexed to the latter.

3. An application under section 27(3) of the Wealth-tax Act would appear to have been disallowed on 19th June, 1975.

4. Section 21(4) of the Wealth Tax Act would appear to have been held in-applicable to the facts of this reference on the ground that the shares of the beneficiaries were not indeterminate or unknown on the date of valuation, notwithstanding that the vesting of the balance of the corpus in the ultimate beneficiaries is contingent and their shares themselves may be subject to fluctuation by the time they become entitled thereto, following the ration of the decision of the Bombay High Court in Trustees of Putlibai R.F. Mulla Trust *Vs.* Commissioner of Wealth Tax in 66 (1967) I.T.R. p. 653.

5. A second ontenrion in the alternative to the effect that in as much as the total value of the assets in the hands of the trustees exceeded the aggregate of the valuation of the life interest and of the interest of ultimate beneficiaries, there was a liability of the trustees with reference to such excess, was negatived on the ground that the liability of the assessee is to be found in Section 21 only and, if it is not comprehended within that Section, it is not possible to assume that there was a liability with reference to the balance in terms of Section 3 of the Wealth Tax Act.

6. Learned Counsel is requested to persue an extract of the opinion of the Standing Counsel Shri H. K. Kaji placed at F/K, along with a copy of the note of Shri P. M. Ramchandani, J S & L A of this Ministry at F/L.

7. While it may appear in the first blush that it is possible to ascertain the shares of the ultimate beneficiaries on the date of valuation, the fact still remains that their interests are contingent and acquire definiteness only when the contingency occurs and in the meanwhile they may be subject to such unforeseen fluctuations as there may be. In this view of

the matter they cannot but be held indeterminate in terms of Section 21(4) of the Wealth Tax Act.

8. Government Advocate may kindly see, consult the Learned Counsel and take appropriate action in the matter.

L.D. as reported: 16-9-75.

Sd/-

(M. GOWRI SHANKER)

Deputy Legal Adviser.

11-9-75

Govt. Advocate (Shri R.N. Sachthey)

Learned Solicitor General may kindly see advice.

Sd -

12-9-

Not fit; The vesting is complete and not intermediate. Amendment of the Law is called for.

Sd/-

Solicitor General.

APPENDIX VII

Statement of Conclusions Recommendations

Sl. No.	Para of the Report	Ministry/Department concerned	Conclusion/Recommendation
1	2	3	4
1.	1.81	Ministry of Finance (Department of Revenue)	According to Section 7(1) of the Wealth-tax Act, 1957, the value of any asset other than cash shall be estimated, for purposes of the Act, to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. Various judicial pronouncements have also held that the words "if sold in the open market" used in this Section contemplate only a hypothetical case and not any actual sale or the actual state of the market, and, therefore, the tax officer must assume that there is an open market in which the asset can be sold and proceed to value it on that basis. In the present case under consideration relating to a family trust, however, the Committee are concerned to find that despite this clear and unambiguous decision of the courts and in spite of the fact that the Department's own valuation officer had also determined the value of the property at nearly a crore of rupees, the value of a palatial property, located in a posh residential area of Bombay, had been adopted, for purposes of wealth tax, at the ridiculously low figure of Rs. 8 lakhs only. After a study of the evidence tendered before the Committee, the conclusion that this case with large revenue implications was not given the thought and attention that it deserved is fairly inescapable. The case also reveals, *prima facie*, certain suspicious features which have given rise to serious misgivings in the Committee's mind.

2. 1.82 Ministry of Finance (Department of Revenue)

The Committee note that the property in question known as "Mount Napean" formed part of a family trust created in 1928 by one Ardeshir B. Dubash in respect of his immovable properties and that by a supplementary trust deed dated 2 August 1945, the settler had made certain separate provisions in regard to the benefits accruing from the said property, its sale under certain conditions, the mode of distribution of the corpus of the trust, etc. While a clause (clause 6) in the supplementary trust deed provided that the property could be sold free from the trust and rights of residence created therein if the settler so directed, or after his death with the written consent of all the beneficiaries or of a majority of those persons with the sanction of the Court, the settler, by another clause (clause 4) in the trust deed, had also made certain other provisions for the sale of the property at a fixed price to certain specified members of the Dubash family. Under this clause, the settler had declared that after the death of the last survivor of his three sons, the property shall be offered for outright sale for Rs. 8 lakhs to his grandson (Behram K. Dubash) from his first son (Kaikhushru A. Dubash) and if he he not alive, then to his great grandson (Ardeshir B. Dubash) and if he be also not alive, then to the eldest male child of the youngest son (Bomanji A. Dubash) as may then be alive. For purposes of wealth-tax, the property had initially been valued at Rs. 4,21,500 for the assessment years 1963-64 to 1966-67 and at Rs. 6,92,000 for the assessment years 1967-68 to 1969-70. Apprehending that the property was being considerably under-valued, the Department had referred the case to the Valuation Officer (Executive Engineer, Valuation Cell), a statutory official employed by the Department itself, who, in his report of 26 July 1972, had determined its value at Rs. 1,03,60,000 for the years 1963 to 1965, at Rs. 67,15,000 for the years 1966 to 1969 and at Rs. 74,45,000 for the year 1970-71. Strangely enough, however, the values as determined by the Valuation Officer were not adopted in the relevant assessments, re-opened under Section 17(1) of the Wealth-tax Act, as the assessee had in the meantime approached the Central Board of Direct Taxes who held that clause 4

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			of the trust deed relating to the sale of the property at Rs. 8 lakhs only to a beneficiary in the course of distribution of the corpus of the trust was a restriction or encumbrance on its sale to outsiders at the prevailing market price. This view appears to have been taken on the advice of the Ministry of Law who had examined the case on the basis of certain legal opinions (including one from a retired Chief Justice of the Supreme Court) obtained by the assessee trust.
3	1.83	Ministry of Finance (Department of Revenue)	On a scrutiny of these opinions, the Committee consider it significant that the initial opinion (30 October 1972) made available by the assessee's legal adviser had not taken into account the fact that under clause 6 of the trust deed, sale of the property was possible during the settler's life time, if he so desired, and after his death, with the consent of all the surviving beneficiaries or with the consent of the majority of the said beneficiaries with the sanction of the Court. Instead, this opinion had confined itself only to an examination of the implications of clause 4 and it was only subsequently (21 November 1972), presumably on the omission being pointed out by the Central Board of Direct Taxes/Law Ministry, that a supplementary opinion covering this aspect also was made available by the assessee trust. The Law Ministry's advice dated 10 January 1973 also appears to have been influenced largely by the opinion obtained by the assessee from his legal adviser.
4.	1.84	Do.	In his opinion of 30 October, 1972, the assessee's legal adviser drew attention to an earlier judgement of the Supreme Court in the case of Ahmed G.H. Ariff and Others *Vs.* Commissioner of Wealth-tax, Calcutta (76-ITR 471) that the words "if sold in the open market" used in Section 7(1) of the Wealth-tax Act does not predicate actual

sale or an actual market but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market. He had, nevertheless, observed that any restrictions and covenants as reduce the value must be taken into account in valuing the property and had said as follows :

"The right which Behram K. Dubash has in the property will arise only on the death of all the three brothers ; this right is contingent. The right to purchase property at the price fixed by the settler cannot however on that account be ignored ; for the trustees must hold and apply the property according to the directions of the settler because any purchaser of the property from the trustees will take the property subject to the restriction imposed by the settler.

In my opinion, the value of the property in the hands of the trustees in no circumstances can exceed Rs. 8 lacs."

5. 1.85 Ministry of Finance (Deptt. of Revenue)

Again, in his supplementary opinion of 21 November, 1972, furnished on his attention being drawn to clause 6 of the trust deed, the legal expert had held that though there was a possibility of sale of the property under this clause, the right vested in certain specified persons to purchase the property for a fixed amount of Rs. 8 lakhs after the death of the last surviving son of the settler must also be taken into account in considering whether there was any reasonable possibility of obtaining the consent of all or a majority of the surviving beneficiaries. Pointing out in this context that it was difficult to believe that any of these persons would agree to the sale of the property to his or her own detriment or to the detriment of his or her children and close relatives, he had gone on to observe :

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			"Granting that in certain circumstances the property may be sold at the market price with the consent of the persons named in Cl. (6) but that consent is not in the existing circumstances capable of being obtained. The valuer accordingly cannot ignore the restrictions which are inherent in the right of the trustees to sell the property at the market value. The market value of the property it may be repeated is that amount which the property subject to the restrictions, encumbrances and limitations may fetch and so long as the restrictions under Cl. (4) remain there is no reasonable possibility of the property being sold for a price exceeding Rs. 8 lakhs. The mere circumstances that the settler envisaged a situation in which the property may be sold free from the restriction and which situation is impossible to be achieved, is in my opinion, not a ground for holding that the value of the property is more than the value at which the property would be offered for sale by the trustees on the death of the last son of the settler."
	86	Ministry of Finance (Deptt. of Revenue)	Endorsing these views in their advice of 10 January, 1973, the Law Ministry had observed, *inter alia*, that in the event of the trustees offering to sell the property, the prudent buyer would know that the trustees were under an obligation to offer it for sale to certain named persons for Rs. 8 lakhs and, therefore, even assuming that the trustees sold the property in breach of trust, the purchaser would hold the property subject to the same obligations of the trustees and in the event of any of the named beneficiaries exercising his option, the purchaser would be compelled to part with the property to him for Rs. 8 lakhs. Dealing with the implications of clause 6 of the trust deed, the Ministry had opined as follows :

"The question whether the necessary consent of all the parties or a consent of the majority of the persons concerned and the sanction of the Court would be forthcoming are, however, matters on which it is not possible to speculate. Till such consent or sanction is forthcoming, the possibility of a sale without the restriction of having to offer the property to the named individuals for prior purchase would merely be hypothetical and would not be relevant in determining the market value which the property in question would fetch in the open market on the valuation date. On this aspect of the matter, I am in agreement with the veiws expressed in the opinion of Shri .....(the assessee's legal adviser). The opinion would appear to set out the correct principles with regard to the manner in which the property has to be valued."

7	1.87	Do.	The Committee are, unfortunately, unable to appreciate these agruments. Looking at the trust deed of 2 August, 1945 in its entirety and not only at clauses 4 and 6 in isolation as the Law Ministry appear to have done, the Committee find that in terms of the provisions of clause 1(b)(vii), the property could be sold to Behram K. Dubash for Rs. 8 lakhs only if it had not already been sold under clause 6. Thus, the so-called "encumbrance" or "restriction" in cluase 4 is subject to a possible sale under clause 6 and such a sale would also be more beneficial to all the beneficiaries who under the instrument were fully competent to arrange the sale. In these circumstances, it would appear that there would always be a greater presumption of a sale under clause 6 than that of sale under clause 4. A sale under clause 6 would also not involve any breach of trust as contended by the Law Ministry since the sale would have been effected only in accordance with the testator's intentions with the consent of surviving beneficiaries or of a majority of them with the Court's sanction. By presuming that the possibility of a sale under clause 6 would be merely hypothetical and would not be relevant in determining the market value of the property till the necessary consent of all the beneficiaries or of the majority of the persons con-

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			cerned and the sanction of the Court were forthcoming, the Law Ministry appear to have committed the very error against which various judicial pronouncements have cautioned, namely, assuming the sale to be an actual sale in an actual market. Instead, the Ministry, following the judgements in the case of Ahmed G.H. Ariff and other *Vs.* Commissioner of Wealth-tax, Calcutta (76 ITR 471) and Purshottam N. Amarsey and Another *Vs.* Commissioner of Wealth-tax, Bombay City II (88 ITR 417), ought to have assumed that on a hypothetical sale, the necessary sanction and consent of the beneficiaries would be available and proceeded to determine the value of the property on that basis.
			The Committee's attention has also been invited by Audit to P. 573 of Dymond's Death Duties for the citation of House of Lord's decision in Lord Advocate *V.* Wood's Trustees (1910) ISLT 186 under the provisions in English Law similar to the provisions in Section 7(1) of the Wealth Tax Act, 1957, according to which 'The price or the value which a testator may have given by his will to a particular person the option to acquire property is not a test of its market value.'
8	1.88	Do.	On a reading of the deed as a whole it is clear that provisions of clause 4 of the trust deed could not be considered a charge, debt or encumbrance depressing the market value of property. The trustees, under the vesting declaration, hold the property for the purposes of the trust and though the title to property rests, for the time being, with them, they are not owners of the property, the beneficial ownership resting only with the beneficiaries. Keeping this in view, the Committee feel that it would not be correct to conclude that the manner of distribution of the corpus of the trust after the date of distribution (date of the death of the last surviving son of the settler), namely, offer for sale of a property

worth nearly a crore of rupees at Rs. 8 lakhs only was a debt or encumbrance. In view of the fact that the provisions of clause 4 amount, in effect, to a situation where the sale is effected by the trustees, in the course of distribution of the corpus of the trust, at the going market value of Rs. 1 crore, and Rs. 92 lakhs are given to one particular beneficiary, the balance of Rs. 8 lakhs being finally distributed to all the beneficiaries of the trust, the Committee feel that clause 4 should have been construed merely as an adjustment of the rights of the beneficiaries *inter se* in the course of distribution of the corpus of the trust and not as a restriction or encumbrance.

9 1 89	Do.	In any event, it would be amply clear from the subsequent course of events that in this case, the provisions of clause 4 had been misapplied to the detriment of revenues. The Committee find that in contravention of these provisions, the property in question had been offered for sale at Rs. 8 lakhs in 1973 to Behram K. Dubash even while the settler's last surviving son (Bomanji A. Dubash) was still alive, which was clearly against the settler's intentions and, therefore, irregular. Apparently with a view to lending a semblance of regularity to an otherwise irregular sale, Bomanji A. Dubash and his wife, Jean, had relinquished, on 5 February, 1973, their right or interest of residence in the property. This relinquishment cannot, however be taken as the death of the settler's last surviving son and, in any case, there was also no provision in the trust deed for such renunciation. This particular transaction as well as the subsequent lease of the property by Behram K. Dubash to M/s. Napean Estate (P) Ltd., whose shareholders were all significantly members of the Dubash family including himself, only serve to reinforce the Committee's impression that whatever might have been the settler's intention in stipulating, in 1945, that the property should be sold to certain named beneficiaries for Rs. 8 lakhs, the beneficiaries had cleverly utilised, to their own advantage, clause 4 of the trust deed as an instrument of tax avoidance and deliberately and grossly understated the value of the property with a view to reducing the tax liability.

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10	1.90	Do.	The incorrect valuation of the property apart, the Committee's attention has also been drawn to a number of other omissions/irregularities in the assessment of the trust and its beneficiaries, which are indicated below : (a) The value of the vested interest created by the settler in favour of his grandson, Behram K. Dubash, and of the contingent interest created in favour of the great grandson, Ardeshir Behram Dubash, and the other grandson, Ardeshir Bomanji Dubash, though correctly includable in their net wealth were not so included. (b) Exemption of Rs. 1 lakh under Section 5 (1) (iv) of the Wealth-tax Act had been incorrectly allowed to the trustees in each of the years 1968-69 to 1970-71 while the said exemption was not allowed in the year 1971-72. (c) The release/relinquishment by Bomanji A. Dubash and Jean of their right of residence in "Mount Napean" had not been subjected to Gift-tax under Section 4(1) of the Gift-tax Act, 1958. (d) As property admittedly worth several times more was sold only for Rs. 8 lakhs, capital gains tax leviable under Section 52(2) of the Income-tax Act, 1961, had not been levied.
11	1.91	Do.	The Committee find that the Law Ministry, which had also examined the question of assessing to tax the value of the vested and contingent interests of the beneficiaries, had opined that no assessment of the value of the rights of these beneficiaries could be made as these rights could arise only after the happening of the contingencies mentioned in clause 6 of the trust deed. The Committee understand in this connec-

tion that it has been held by the Bombay High Court (71 ITR 180) and approved by the Supreme Court (76ITR 471 and 88ITR 417) that when Section 3 of the Wealth-tax Act imposes the charge of wealth-tax upon the net wealth, it necessarily includes property of any and every description of the assessee, barring the exceptions stated in Section 2 (e) and other provisions of the Act. Besides, the Bombay High Court has also held that the provisions of Section 7(1) of the Act could not be utilised to nullify the provisions of Section3 and that the mere fact that a property was not capable of being transferred was not a consideration which ought to prevail. Again, clarifying their decision in the case of Amed G.H. Ariff and Others *Vs.* Commissioner of Wealth-tax, Calcutta, the Supreme Court, in their judgement in the case of Purshottam N.Amarsey and Another *Vs.* Commissioner of Wealth-tax, Bombay City II (88 ITR 417), had held that even if a property was incapable of being sold, being a personal estate, in that event also the interest of the assessee had to be valued by the walth-tax Officer. In yet another case [Commissioner of Wealth-tax *Vs.* Smt. Rani Kaniz Abid (93 ITR 332)], the Allahabad High Court had also held that even if on account of the peculiar incidents of a property or because of statutory or contractual restrictions, the potential right of the owner of the property may be abridged or excluded altogether, what remains is nonetheless property and merely because the right of transfer is absent, it does not mean that the other incidents of ownership do not continue in the property.

12	1.92	Do.	In terms of Section 21 (1) of the Wealth Tax Act, wealth-tax in the case of assets, chargeable to tax under the Act held by any trustee appointed under a trust, shall be levied upon and recoverable, from the trustees in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held. Section 21(2) further provides for the direct assessment of the person or persons on whose behalf or for whose benefit the assets

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are held or for the recovery from such person (s) of the tax payable in respect of such assets. However, where the shares of the persons on whose behalf or for whose benefit such assets are held are indeterminate or unknown, the wealth-tax is to be levied upon and recovered from the trustees, under Section 21 (4) of the Act, as if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for purposes of the Act. The Committee learn that the Bombay High Court has held (71 ITR 180) that under Section 21 (1) read with Section 21 (2), the assessment can be made in the hands of the trustees of the beneficiaries according as the interest of revenue dictates, and that the effect of Section 21 (4), which creates an exception to this choice given to the department, is that sub-section (2) would not be available to the department where the shares of the person (s) on whose behalf or for whose benefit any assets are held are indeterminate or unknown. In the light of these provisions and the judicial pronouncements, it wouod appear that the vested/contingent interest of the beneficiaries in the present case who had a pre-emption right under clause-4 of the trust deed was to be valued and included in their wealth-tax assessments and that the provisions of Section 21 (4) would be applicable to the case in view of the fact that the shares of the beneficiaries both as to life-interest and on distribution of the corpus of the trust are unknown and unascertainable on account of successive life-interest and interests of remainermen. The Committee, however, note that the applicability to this case of Section 21 of the Wealth-tax Act was not at all considered, which is regrettable.

13	1.93	Ministry of Finance (Department of Revenue)	As regards the exemption available under Section 5(1)(iv) of the Act in respect of a house or part thereof belonging to the assessee, the Committee find that though the Law Ministry had initially held, in October, 1975, that as the property in question did not 'belong' to a beneficiary, the exemption was not allowable to him and the exemption under this Section was accordingly not allowed in the assessments for the assessment years 1958-59 to 1970-71, that Ministry had subsequently (October 1976) reconsidered their earlier opinion and advised that the exemption would be allowable in respect of a beneficiary's interest in the property subject to certain conditions. On a scrutiny, however, of the revised opinion of the Law Ministry, the Committee observe that the Ministry had not expressd any categorical views on this question but had merely pointed out that the admissbility of the exemption would depend upon the facts and circumstances of each case whether or not a beneficiary had "an absolute right of user or a life-interest in the property" and that "if it could be said that in view of such interest, the house belongs to him, then, it would be reasonable to exempt the same under Section 5(1)(iv) of the Act." The circumstances in which it became necessary for the Law Ministry to consider their earlier views on the question are also not very clear to the Committee.
14	1.94	Dc.	The Committee have been informed that the question whether the release/relinquishment in February, 1973 by Bomanji A. Dubash and his wife of their right of residence in "Mount Napean" constituted a gift within the meaning of Section 2(xii) read with Section 2(xxiv) of the Gift-tax Act, 1958, was referred to the Bombay Branch of the Law Ministry who, in their opinion of 16 September, 1976, had advised that this release might not amount to a gift and that even if it were to be treated as a gift, it could not have any ascertainable value particularly because all the rights of residence of Bomanji A. Dubash were not affected. The Committee are unable to appreciate the rationale behind this opinion, particularly in view of the

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			fact that a similar relinquishment by Bomanji A. Dubash, in November, 1962, of his right or interest in the share of the net income and reserve fund in respect of three other trust properties ("Hammilton Villa", "Ramana Villa" and "Rughby House") belonging to the Dubash family in favour of his three children had been treated as a gift and assessed to Gift-tax for the assessment year 1963-64. It is also evident that the release in the present case had been resorted to solely with a view to facilitating the sale of the property at Rs. 8 lakhs to Behram K. Dubash and cannot, therefore, be considered *bonafide*. It would, therefore, appear that the provisions of Section 4(1)(c) of the Gift-tax Act would be attracted in respect of this transaction. The Law Secretary was also good enough to admit during evidence that the opinion of the Bombay Branch of the Law Ministry on this question "requires a second look" and to state that he would "personally have no objection" to re-examine this transaction.
15	1.95	Do.	The Bombay Branch of the Law Ministry had also examined, in September 1976, the question whether there were any capital gains, under Section 52(2) of the Income-tax Act, 1961, in this case property worth several times more had been sold only for Rs. 8 lakhs. While opining that the sale of "Mount Napean" to Behram K. Dubash for Rs. 8 lakhs was "a *bonafide* transaction in pursuance of the Trust Deed which had been drawn up as far back as in 1945" and Section 52(2) of the Income-tax Act could not, therefore, be invoked, the Ministry had, however, held that this Section could be resorted to in respect of the lease of the property, after Bomanji A. Dubash and Jean had executed the Release Deed giving up their right of resi-

			dence in the property, to M s. Napean Estate (P) Ltd., by Behram K. Dubash. Dealing further with the question whether Gift Tax or Capital Gains Tax would be attracted in respect of the difference between the capitalised market value of the lease and the capitalised value of the lease as actually given, the Bombay Branch of the Law Ministry had also advised that since it could not be said with certainty whether the transaction would be treated as a gift, the Department might resort to proceedings under both the Acts so that one of them would ultimately sustain and that the case for capital gains should, however, be made out strongly.
16.	1.96	Do.	The Committee are, to say the least, surprised that the settler in this case, by stipulating that the property should be sold to certain specified persons only for a specified amount when it was in fact capable of being sold for a much larger price, as well as the beneficiaries should have been able to bind the State for all time to come. If this position were to be accepted, it is not unlikely that other wealth-assessees might also follow suit and create similar trusts in respect of their properties stipulating that they should be sold only to a specified person or persons at prices that have no relevance whatsoever to their market value and thereby reduce their tax liability and defeat the very purpose of Section 7 of the Wealth Tax Act. The Finance Secretary was also good enough to concede during evidence that he did not think that this case had "really been treated in the right way" and that "it seems amazing that it should be possible to arrange things in such a manner that property once valued at Rs. 103 lakhs should be valued at Rs. 8 lakhs and Government asked to accept such a position". He also offered to look into the matter afresh and the representative of the Central Board of Direct Taxes has also agreed to re-examine the case in its entirety and to give a fresh look where assessments have already been settled.

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17.	1.97	Do.	The Committee have been informed subsequently by the Department of Revenue & Banking that a detailed note incorporating therein the various issues arising out of the transaction relating to "Mount Napean" had been referred for advice once again to the Ministry of Law on 7 December, 1976 and that their advice was awaited. Meanwhile, the Commissioner of Income Tax, Bombay is also understood to have been requested by the Central Board of Direct Taxes, in March, 1977 to take protective measures. The question of valuation of the property afresh also appears to have been referred, on 12 August, 1975, to the District Valuation Officer (Superintending Engineer, Valuation Cell) and his report was stated to be awaited. Considerable time having elapsed since those steps were initiated, the Committee would like to be apprised in detail of the outcome of these efforts and of the action taken thereafter to revise all the relevant assessments under the various Direct Taxes enactments. Delay being undesirable in such cases, the Committee would urge the Department to proceed with the utmost expedition in regard to these matters.
18.	1.98	Do.	Incidentally, the Committee note that in view of the fact that this property had apparently been sold for a consideration which was less than the fair market value as determined by the Valuation Officer, the feasibility of acquiring the property, under the provisions of Chapter XXA of the Income Tax Act, 1961, had also been considered by the Inspecting Assistant Commissioner (Acquisition Range) and the Commissioner. However, here again on the basis of the Law Ministry's advice, which in turn was based on the opinion of the assessee's legal adviser, that in view of the restrictive clauses in the

			trust deed, the market value of the property could not exceed Rs .8 lakhs, the department had concluded that there was no ground whatsoever to hold that the consideration for the transfer had not been truly stated in the instrument of transfer and there was, therefor, no case for starting acquisition proceedings under Chapter XXA of the Act. In view of the fact that the Law Ministry's views in regard to the fair market value of the property themselves are open to question and that Ministry has also been asked to reconsider the entire matter afresh, the Committee are doubtful how far the decision not to go in for acquisition of the property was a sound one. They, therefore, desire that this should also be re-examined with a view to taking necessary action.
19	1.99	Do.	This case also raises a serious question of principle and propriety. The Committee are of the view that even if more than one interpretation of the trust deed were possible, the correct and proper course of action would have been to allow the law to take it own course instead of the Central Board of Direct Taxes interfering, on the assessee's initiative and in clear violation of the salutory principle enshrined in Section 119 of the Income Tax Act which prohibits, *inter alia*, the issue of orders, instructions or directions by the Board requiring any assessing officer to make a particular assessment or dispose of a particular case in a particular manner, with the jurisdiction of the Wealth-tax Officer by issuing an advance ruling on the case. The Supreme Court had clearly held in Sirpur Paper Mill Ltd. *Vs*. Commissioner of Wealth-tax (1970) (77-ITR 6), that it was not open to the Board to issue any instructions or directions to the Wealth Tax Officer or Commissioner in the exercise of his quasi-Judicial functions. The Committee are concerned to find that despite the fact that the property had been valued at a much larger amount by the Valuation Officer, the Wealth-tax Officer appears to have been in a pathetic quandary, overruled as she was by the Board and prevented from performing her legitimate duties and completing the assessments according to

her own judgement. The Board's instructions in regard to this case, on the basis of which the assessments were completed, also appear to have been issued, on 18 January 1973 and 26 February 1973, after the Wealth-tax Act, 1957, had been amended, with effect from 1, January 1973, by the Taxation Laws (Amendment) Act, 1972, making the acceptance of the valuation by the Valuation Officer mandatory under Section 16A(6) of the Act. It is also significant in this context that the assessee trust had obtained opinions from its legal adviser only after it had approached the Central Board of Direct Taxes. All this naturally give rise to serious suspicion in the Committee's mind which needs to be allayed. The Committee are, therefore, firmly of the view that the manner in which the Central Board of Direct Taxes has interferred with the jurisdiction of the Wealth-tax Officer and the handling of the case by senior officials of the Board call for a principled and thorough probe of the circumstances in which the property in this case had been under-valued with a view to ensuring that no malafides were involved. They accordingly recommend that such an investigation should be undertaken forthwith and its outcome intimated expeditiously.

2C	1.00	Do.

What causes greater concern to the Committee is the admission during evidence by the Chairman of the Central Board of Direct Taxes that "it was quite a common practice" for the Board to give advance rulings as well as to deal with individual petitions of assessees, though it was contrary to provisions of law. The impropriety of such a practice had also been criticised earlier by the Public Accounts Committee. Now that instructions are stated to have been issued, although belatedly, that the Board shall not interfere in individual cases, the Committee expect that these would be followed scrupulously by the Central Board of Direct Taxes.

21	1.101	Do.	The Committee note that apart from the heavy under-assessments in respect of "Mount Napean" reported in the Audit paragraph, four other properties ("Hamilton Villa", "Romana Villa", "Rughby House" and "Belmont" belonging to the same family and located near "Mount Napean" on Napean Sea Road Bombay, had been, grossly under-valued by ignoring the very high land values comprised therein. While the value of the land on which "Mount Napean" is located was adopted by the Valuation Officer at Rs. 550 per square yard as on 31 March 1963, 31 March 1964 and 31 March 1965, at Rs. 350 per square yard as on 31 March 1966, 31 March 1967, 31 March 1968 and 31 March 1969 and at Rs. 390 per square yard as on 31 March 1970 and 31 March 1971 and in the valuation relating to "Belmont" as on 31 December 1969 and 31 December 1970, the value of the land was taken into account at Rs. 400 per square yard, the value of the land comprised in the three other buildings had been accepted at Rs. 100 per square yard only in the assessments completed upto 1971-72. Further, though the area of the land with the property "Belmont" was 3068 square yards and the value of the land alone, computed at the rate of Rs. 400 per square yard would, therefore, work out to Rs. 12,27,000, the value adopted was only Rs. 6 lakhs. Unfortunately, the assessment records do not indicate any reason for the adoption of different values for the land comprised in these buildings. While the Committee can understand marginal difference in the land values they are, however, not prepared to believe that there could be such wide variations in respect of properties located at the same place. Moreover it is a matter of common knowledge that prices of land have over the years increased manifold. The Committee understand that if the value of the land adopted by the Valuation Officer in respect of "Mount Napean" were also to be adopted in respect of the other three properties ("Hamilton Villa", "Romana Villa" and "Rughby House"), the under-valuation of the land comprised in these three properties would amount to Rs. 25.70 lakhs for the assessment years 1963-64 to 1971-72. They have also been informed

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			that the valuation of these three properties has also been referred to the District Valuation Officer on 22 September 1975 and that the concerned Wealth-tax Officer has been requested to look into the question of under-valuation. The Committee desire that while apprising them of the further developments in this regard, the Department should review carefully the assessments relating to these three properties as well as "Belmont" and reopen then, wherever found necessary, so as to recover the tax correctly leviable. The circumstances in which different values were accepted by the Department in respect of these properties should also be gone into in detail with a view to ensuring that no malafides were involved. The Committee would await a detailed report in this regard.