

TWO HUNDRED AND ELEVENTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1983-84)

(SEVENTH LOK SABHA)

ACQUISITION OF IMMOVABLE PROPERTIES

**MINISTRY OF FINANCE
(Department of Revenue)**

**[Paragraph 1.18 of the Report of the Comptroller and
Auditor General of India for the year 1981-82, Union
Government (Civil), Revenue Receipts, Volume II,
Direct Taxes]**



Presented in Lok Sabha on 30 April, 1984

Laid in Rajya Sabha on 30 April, 1984

**LOK SABHA SECRETARIAT
NEW DELHI**

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PART II*

**Minutes of sittings of the Public Accounts
Committee (1981-82) held on :**

- (i) 25 October, 1983
- (ii) 26 October, 1983
- (iii) 23 April, 1984

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

PUBLIC ACCOUNTS COMMITTEE
(1983-84)

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(iv)

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- 2. Shri H.S. Kohli—*Chief Financial Committee Officer*
- 3. Shri R.C. Anand—*Senior Financial Committee Officer*

* Ceased to be Members of the Public Accounts Committee consequent on their retirement from Rajya Sabha with effect from 2 April, 1984.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two Hundred and Eleventh Report of the Committee on paragraph 1.18 of the Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes relating to Acquisition of Immovable properties.

2. The Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes was laid on the Table of the House on 4 April, 1983.

3. Investment in immovable property is one of the common outlets for concealed wealth. To counter evasion of tax resorted through understatement of the value of immovable property in sale deeds and also to check the circulation of black money, Chapter XXA of the Income-tax Act, 1961 was introduced with effect from 15-11-1972 empowering the Central Government to acquire immovable properties. The Committee have pointed out that one of the tests of efficacy of any legislative measure is how effectively it is administered. Seen from this angle, the Committee have found that as against over 77 lakh intimations of sale/transfer of properties received from the Registering authorities during the period 15-11-1972 to 21-3-1983, and 53,310 notices issued during the same period, the number of properties actually taken over by the Department so far was merely 15. The Committee have pointed out that if the Department want to make the provisions of Chapter XXA truly deterrent, it is imperative that once acquisition proceedings are initiated, they should be pursued to their logical conclusion.

4. As already mentioned, the total number of intimations in form No. 37G received in all the 29 acquisition ranges from 15 November 1972 upto 31 March, 1983 was 77.17 lakhs. These intimations had necessarily to be scrutinised within 9 months. After the Committee drew the attention of the representatives of the Ministry during evidence to the need for eliminating unproductive work in handling a large number of relatively smaller cases, Finance Bill (No. 11), 1984, has been introduced.

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The Bill seeks to amend with effect from 1 June, 1984, the provisions of the Act by raising the monetary limit from Rs. 10,000 to Rs. 25,000 in respect of intimations in form No. 37G. While expressing satisfaction at the proposed move, the Committee have expressed hope that appropriate administrative measures will also be taken with a view to eliminating unproductive work.

5. Proviso to Section 269C of the Act requires that before initiating acquisition proceedings, the competent authority shall record reasons for doing so. The Committee have, however, regretted to observe that in Madhya Pradesh, all the 56 cases referred to the Audit paragraph had to be dropped as reasons for initiating the acquisition proceedings had not been recorded. In eight of the dropped cases, the fair market values were substantially in excess of the apparent consideration, *i. e.* Rs. 25.60 lakhs as against Rs. 8.84 lakhs. The Committee have taken a serious view of this lapse. As to the remedial measures, the Committee have been informed that on discovery of these cases, the Board issued instructions in May 1983 drawing attention of the competent authorities to the mandatory provisions of the Act regarding recording of reasons in writing, with direction to invariably record reasons in writing before initiating proceedings for acquisition. The Committee have expressed the hope that the Board will see to it that the instructions issued by them in this regard are strictly complied with by the competent authorities.

6. The Committee have expressed concern over a phenomenal increase in the pendency of acquisition cases. As against 8,237 cases pending as on 1-4-1979, there were as many as 26,759 cases pending as on 31-3-83. Furthermore, as many as 1120 cases are such wherein no pursuance action was taken for over three years. The Committee have pointed out that the prolongation of proceedings only causes undue harassment to the parties by keeping them in suspense. Such a heavy pendency not only points to the need for a review of the existing procedures prescribed for finalisation of acquisition proceedings but also for all-out efforts for their liquidation. In this connection, the Committee have suggested to Government to consider the feasibility of imposing a statutory time-limit for the disposal of acquisition orders.

7. The Public Accounts Committee (1983-84) examined this paragraph at their sittings held on 25 and 26 October, 1983. The Committee (1983-84) considered and finalised this Report at their sitting held on

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23 April, 1984. Minutes of the sittings form Part II* of the Report.

8. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix-II). For facility of reference, these have been printed in thick type in the body of the Report.

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

10. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

New Delhi :
April 26, 1984

Vaisakha 6, 1906 (Saka)

SUNIL MAITRA,
Chairman
Public Accounts Committee

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REPORT

CHAPTER I

ACQUISITION OF IMMOVABLE PROPERTIES

(a) Audit Paragraph

1.01 Chapter XXA of the Income-tax Act, 1961, introduced with effect from 15 November, 1972, empowers the Central Government to acquire an immovable property, where such property is transferred by sale or exchange and the true consideration for such transfer is concealed with the object of evading tax. The scope of these provisions has been extended through the Income-tax (Amendment) Act, 1981 with effect from 1 July, 1982, to cover :

- (a) transfer of flats or premises owned through the medium of cooperative societies and companies;
- (b) agreements of sale followed by part performance viz. by actual physical possession of the property by the *de facto* buyer ; and
- (c) long term leases *i. e.* leases for a period of 12 years or more.

1.02 Acquisition proceeding under these provisions can be initiated where an immovable property of fair market value exceeding Rs. 25,000 is transferred for an apparent monetary consideration, which is less than the fair market value by more than 15 per cent of the apparent monetary consideration. The compensation payable on acquisition is the amount of the monetary consideration shown in the transfer document plus 15 per cent of such amount.

1.03 According to the Annual Report 1981-82 of the Ministry of Finance there were 34 Inspecting Assistant Commissioners (Acquisition) functioning as on 31 October, 1981.

1.04 A study of the records maintained in 25 acquisition ranges indicated the following position :--

- (i) Number of cases where notices of acquisition were issued from 1-4-1979 to 31-3-1982 15,755

(ii)	Number of cases out of (i) above where notices were withdrawn/dropped.....	6,211
(iii)	Number of cases where acquisition orders were made pursuant to the notices.....	26
(iv)	Value of apparent consideration in respect of properties in (iii)	Rs. 40.01 lakhs
(v)	No. of properties actually taken over.....	1
(vi)	Cases where acquisition notices were pending finalisation.....	9,518

Proceedings dropped (6,211 cases) accounted for 39 per cent of the total number of notices issued for acquisition. Pendency made up for another 60 percent. The cases finalised were a negligible proportion of the total.

1.05 A test check conducted in a few acquisition ranges indicated that the following were typical reasons for the dropping of proceedings :—

- (i) In Bihar, out of 234 acquisition notices issued, 55 were withdrawn for the reasons that the order sheets of the case-files were not signed by the competent authority and the proceedings had become void *ab initio* or the acquisition proceedings had been initiated before obtaining valuation reports from the Valuation Officers.
- (ii) In Maharashtra, in 41 cases, acquisition proceedings were dropped as the difference between the apparent consideration and the fair market value did not exceed 15 percent or exceeded in only marginally.
- (iii) In Madhya Pradesh, in 56 cases, acquisition proceedings were dropped as reasons for initiating the proceeding were not on record. In 8 such cases the fair market values were substantially in excess of the apparent considerations (Rs 25.60 lakhs as against Rs. 8.84 lakhs).

1.06 The acquisition proceedings have to be initiated by issue of notices to that effect published in the official gazette. No such proceedings can be initiated after the expiry of a period of 9 months from the

end of the month in which the instrument of transfer in respect of the property is registered under the Registration Act, 1908. while giving evidence before the Public Accounts Committee in November, 1976, the Ministry of Finance had informed the Committee that the statutory provision for the publication of the notice in the gazette was a little cumbersome and that the law was being amended retrospectively. In para 3.9 of their 7th Report (6th Lok Sabha) the Public Accounts Committee recommended that Government should take early action to bring forward an amendment to enable all cases which had become time-barred being reopened. The Ministry apprised the Committee in December 1978 and in December 1980 that the proposed amendment was under consideration. Final action is still pending.

1.07 A few instances where acquisition proceedings could not be initiated because of the department's inability to publish the notice within the prescribed time are mentioned below :—

- (i) In Haryana, agricultural lands and buildings having consideration value of Rs. 125,000 were transferred by an assessee to a firm on 27 December, 1978. On a reference made on 5 July 1979, the departmental Valuer determined the fair market value as Rs. 2,38,800 on 17 September, 1979. Due to the inability of the press to publish the notice in the official gazette before 30 September 1979, the proceedings had to be dropped.
- (ii) In Haryana again, a building comprising godown and office block having apparent consideration value of Rs. 70,000 was transferred as per sale deeds dated 22 February, 1977 and 1 April, 1977. The fair market value determined by the Valuation Officer on 14 November, 1977 was Rs. 1,48,500. The proceedings had to be dropped as notice was not published within the statutory time limit.
- (iii) In Orissa, a property having apparent consideration of Rs. 45,000 and sold on 12 May, 1980 was referred to the Valuation Officer for ascertaining the fair market value on 30 October, 1980. The fair market value of the property was determined at Rs. 3,90,000 on 4 November, 1980. The proceedings had to be dropped as the notice could not be published in the official gazette by 28 February, 1981.

- (iv) In Orissa also, land with building having apparent consideration of Rs. 32,500 (sold on 7 May, 1980) was referred to the Valuation Cell on 28 May, 1980 for ascertaining the fair market value. The valuation report affixing the fair market value at Rs. 1,45,000 was received on 7 January, 1981. The proceedings had to be dropped as the notice could not be published in the official gazette.

1.08 For the purpose of initiating proceedings for the acquisition of any immovable property the competent authority may require a Valuation Officer to determine the fair market value of such property and report to him. Under the analogous provisions of the Wealth-tax Act, and the Gift-tax Act, such valuation by a valuation Officer is binding on the assessing authority who cannot reject or vary it. That is not so in respect of the valuation for acquisition proceedings. The Act, however, provides that the decision of the competent authority in respect of objections heard against a proposed acquisition shall be in writing and shall state the reasons for the decision with respect to each objection.

- (a) In Haryana, in 11 cases, the difference between the fair market value (Rs. 16.53 lakhs) and the apparent consideration (Rs. 10.03 lakhs) was more than 25 per cent of the latter, but the acquisition proceedings were dropped without recording any reasons and without giving any opportunity to the concerned Valuation Officer who had determined the fair market values. The Department accepted that in certain cases the reasons might not have been on record but held that the dropping of proceedings is entirely discretionary and cannot be challenged. The fact remains that the legal requirements had not been complied with.

- (b) In 35 other cases, the acquisition proceedings were dropped even though the fair market values determined by the departmental Valuation Officer exceeded the apparent consideration by more than 25 percent in each case. The percentage of variation in these cases ranged from 25 percent to 182 percent but the department deemed the Valuation Officers' reports as incorrect/erroneous and dropped the proceedings on the basis of valuation reports of approved valuers.

1.09. The Income-tax Act does not provide any time limit for finalisation of the acquisition proceedings. Inordinate delay was noticed in finalisation of cases after issue of notices. A few cases in Bombay where the difference between the fair market value and the apparent consideration was over Rs. 20-lakhs each and the notices were issued prior to 1 April 1979, but the cases were still pending finalisation (August 1982) are indicated below :

- (a) A property constructed on an area of 4233.33 sq. mtrs. transferred at an apparent consideration of Rs 20.25 lakhs had fair market value of Rs. 45 lakhs. The acquisition notice was served on the transferor on 6 March, 1976. Subsequently, the Inspecting Assistant Commissioner wrote to the Commissioner of Income-tax on 21 March, 1979 regarding the matter. No further action was taken.
- (b) A property having a fair market value of Rs. 60.70 lakhs held by a private company was transferred at an apparent consideration of Rs. 35.84 lakhs. The notices of acquisition were served on 11 April, 1977 and also affixed on the property on 17 April, 1978 when a panchnama was also made. No action was taken thereafter.
- (c) An assessee transferred property which had an apparent consideration of Rs. 88.35 lakhs. The fair market value of the property was estimated at Rs. 2 crores. Acquisition proceedings were initiated by issue of notice on 13 December, 1977. The Counsels attended on 23 March, 1979 and copy of the reasons recorded were given to them for comments. No further developments were noticed in the case.
- (d) A property situated on an area of 4521.79 sq. metres transferred by a private company at an apparent consideration of Rs. 22.08 lakhs was estimated to have a fair market value of Rs. 50 lakhs. Notice of acquisition was issued on 14 November, 1971.

The Deputy Director of Investigation Circle I-Settlement Commission, Bombay returned the acquisition papers of the transferee on 6 January, 1979. No further action was taken in the matter.

- (e) An assessee transferred a building situated on an area of 6249 sq. yards at an apparent consideration of Rs. 2.40 lakhs. The fair market value was estimated at Rs. 48.22 lakhs. The notice of acquisition was issued on 15 June 1977. A notice for hearing objection was issued to the transferee on 19 February 1979. There was no further action.
- (f) A property having an apparent consideration of Rs. 80.51 lakhs was transferred by an individual. The fair market value of the property was estimated at Rs. 145.50 lakhs. The notice of acquisition was served on 30 July 1977. The transferee responded to the notice and requested for adjournment of hearing in his letter dated 26 February, 1977. No further developments were known.

1.10 The results of the review were sent to the Ministry of Finance in September 1982; their remarks are awaited (December 1982).

[Paragraph 1.18 of the Report of the C & AG of India for the year 1981-82. Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes (pp. 46-52)]

1.11 The draft Audit paragraph was sent to the Ministry of Finance in September, 1982. However, reply to this paragraph was sent to Audit on 30 September, 1983. Asked to indicate the reasons for not adhering to the prescribed time schedule for furnishing reply to Audit, the Ministry of Finance (Department of Revenue) have stated (February 1984) :

“Paragraph 1.18 has been in the nature of an omnibus paragraph encompassing the working of Acquisition Ranges all over India and a large number of cases (208 cases) noted by the Audit. As the information had not been collected from various field authorities and in a large number of cases, more time was taken in replying to this paragraph than the time normally taken for furnishing reply to the draft paras pertaining to individual cases.”

(b) Introductory

1.12 Chapter XXA containing provisions dealing with acquisition of immovable property was brought on the statute book on the recommendations contained in the interim report of the Direct Taxes Enquiry

Committee popularly known as Wanchoo Committee (1971). The Wanchoo Committee made the following recommendations also in their Final Report.

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Para 2.193 : After considering the adequacy of the provisions in the Taxation Laws (Amendment) Bill, 1971, the Committee recommended acquisition of properties in certain cases under the Land Acquisition Act, 1894 after amending the provisions relating to market value therein.

1.13 Specific objects of the introduction of Chapter XXA in the Income-tax Act, 1961 and the amendments made in 1972 and 1981 have been explained by the Ministry of Finance (Department of Revenue) as follows :

“Chapter XXA relating to Acquisition of immovable properties in certain cases of transfer to counter-act tax evasion was inserted in the Income-tax Act, 1961 by the Taxation Laws (Amendment) Act, 1972 with effect from 15-11-1972. The object of introducing Chapter XXA in the Income-tax Act is to counter evasion of tax through under-statement of the value of immovable property in sale deeds and also to check the circulation of black money by empowering the Central Government to acquire immovable properties, including agricultural lands, at prices which correspond to those recorded in sale deeds.

The Income-tax (Amendment) Act, 1972 amended Chapter XXA with a view to removing certain practical difficulties experienced in the administration of the provisions of the Chapter.

Under section 269D of the Income-tax Act, proceedings for the acquisition of immovable property are initiated by the competent authority by publication of a notice to that effect in the Official Gazette. The proceedings had to be initiated before the expiry of a period of six months from the end of the month in which the instrument of transfer in respect of the property was registered under the Registration Act, 1908. The statutory limitation of six months resulted in a practical difficulty in view of the large volume of work involved, in-as much as some of the notices which were sent to the Government of India Press could not be published in time. Having regard to the fact that the estimation of the fair market value of the immovable property by the competent authority often involves reference of the question of valuation to the Valuation Officer, which is time consuming, and the fact that sufficient advance

notice is required by the Government of India Press for publishing these notices, the limitation for initiating acquisition proceedings was extended by three months. Past actions in cases where these notices were published in the Official Gazette after the expiry of six months but before the expiry of nine months from the end of the month in which the instrument of transfer was registered were specifically validated. Consequential provisions were also made to allow extension of time to interested persons to file objections in respect of cases which were so validated.

Section 269P of the Income-tax Act provides that no registering officer shall register any document purporting to transfer any immovable property unless a statement in duplicate in respect of such transfer is furnished to him alongwith the instrument of transfer. Under the provisions as originally enacted, the statement was required to be furnished in respect of every immovable property regardless of its value. The registering officer was required to forward the statements received by him to the competent authority concerned in fortnightly batches. The collection and submission of statements under section 269P threw a considerable burden on registering officers. With a view to keeping administrative work within manageable limits, Section 269P was amended to provide that no statement will be required to be furnished in any case where the consideration declared in the instrument of transfer does not exceed Rs. 10,000.

Objects of amendments made by the Income-tax (Amendment) Act, 1981

Provisions of Chapter XXA of the income-tax Act, 1961 were applicable only in cases of transfer of immovable property by way of sale or exchange and did not cover cases of other types of transfer. The Income-tax (Amendment) Act, 1981 extended the provisions of Chapter XXA to cover—

- (i) transfer of flats or premises owned through the medium of co-operative societies and companies;
- (ii) agreements of sale followed by part performance as visualised in section 53A of the Transfer of property Act, 1882; and
- (iii) long term leases (namely leases for a period of not less than 12 years).

Parties to a transfer of the type referred to at (i) and (ii) above are required to register with the competent authority a statement in the

prescribed form giving particulars of such transfer within the prescribed time. Failure to furnish the prescribed statement in time renders the defaulter liable to punishment of rigorous imprisonment which may extend to 2 years and also with fine."

(C) Efficacy of the provisions relating to acquisition of immovable property

1.14 The Chokshi Committee in their interim Report (December 1977) pleaded for deletion of existing provisions from the Act for the following reasons :

1. The statistics relating to the progress of the work during the past years in Bombay, where the evil of under-statement of property values is considered to be widely prevalent show that notices of acquisition have been issued in only about 20% of the cases where intimations were received from the Registrar and Acquisition orders have been actually issued only in a very small fraction of these cases. The acquisition order has been upheld in only one case. The conclusion is inescapable that the provisions have failed to achieve their intended purpose.
2. There is no evidence of the deterrent effect of these provisions. The statistics do not disclose any steps rise in the yield from capital gains tax. Increases in stamp revenue, if any, may merely be part of the general phenomenon of rising tax revenues or the result of increased rates of stamp duty. There is no indication of any unusual rise in the value of immovable properties disclosed for wealth tax purposes.
3. Introduction of Section 54E 'capital gain on transfer of capital assets not to be charged in certain cases' from 1st April 1978, the temptation to evade or reduce the capital gains tax has largely disappeared.
4. The effectiveness of the provisions depends entirely on the ability of the administration to sustain the estimated market value before the courts. If the market value can be effectively established, the remedy under Section 52(2) would be more direct and less cumbersome.

1.15 Government have not accepted the above recommendation of the Chokshi Committee for the deletion of the existing provisions relat-

ing to acquisition of property. The reasons therefor were explained by the Member, CBDT as follows :

“The Chokshi Committee’s Report was not based on adequate data. Their data related only to the Bombay city. The data was not fully representative and therefore the Government took the view that the recommendation should not be accepted. The Chokshi Committee only took into consideration the working of acquisition proceedings in Bombay city, but that was not enough. Now with the amendment of the Act, we have also become the registering authority simultaneously. The opinion of the Chokshi Committee was of limited validity.”

1.16 The Member, CBDT added :

“The Chokshi Committee recommended that these provisions serve the purpose and the purpose was to act as a deterrent and the number of notices issued makes it a deterrent and the fact of the existence of the provisions itself is a deterrent. Now I would like to add that from the very beginning we were anxious that the public should not suffer. That is why, in the very beginning, soon after that Section was introduced, we introduced this idea of a limit of 10,000 for the apparent consideration. That was in 1964.....”

1.17 Subsequently, in a note the Ministry of Finance (Department of Revenue) have stated (February 1984) :

“It is submitted that the Chokshi Committee had in their Interim Report recommended deletion of the provisions relating to acquisition of immovable properties. However, the recommendation was not found acceptable, primarily for the following reasons, namely :

- (i) the effectiveness of these provisions is not to be judged merely by the number of properties acquired by the Department; and
- (ii) the study conducted by the DI (RS & P) showed that the provisions have served as a deterrent against the uncontrolled circulation of unaccounted money in real estate transactions.”

1.18 The Committee desired to know in evidence if this particular piece of legislation has worked well and how far it was serving the intended purpose. The Member, C.B.D.T. stated :

“The very question whether this legislation should be continued or not has been examined by the Chokshi Committee. The Government has taken a view, and we also subscribe to it, that this is serving the purpose for which it is intended. The purpose is, first of all, to have some kind of a fear in the minds of those who indulge in black money transactions that their property is liable to be acquired by the Government if the apparent consideration is substantially different from what it is. With your permission, I will read some of the extracts in the various newspapers which have appeared in Bombay after the amendment came into force in July, 1982.....”

1.19 The Member, C.B.D.T. added :

“After reviewing the working in the field in Bombay we feel that it has served a very useful purpose and substantial increase has been seen (in) the property values shown in the documents.”

1.20 The Member, C.B.D.T. supplemented :

“The social purpose of this legislation cannot be denied. It is a fact that a lot of black money is involved in construction activity.”

1.21 In the same context, the Member, C.B.D.T. added :

“As far as I understand, this Section and the amendment effective from July 1982 is not to help us to become the property owners, but to create in the society a general fear so that they do not choose to record the transaction at a much lower price than the apparent consideration.”

1.22 The Committee desired to know if any review had been undertaken about the efficacy of the provisions of Chapter XXA and the need for their continuance. The Ministry of Finance (Department of Revenue) have stated that ‘in 1976, the Board directed the Directorate of Research, Statistics and Publication to undertake a study of the effectiveness of the provisions of Chapter XXA of the Income-tax Act, 1961’. The Directorate submitted its Report in February, 1979. On the

analysis of the data collected, the Directorate observed as follows while summing up the results of the Study :

“The provisions of Chapter XXA had served as a deterrent against the uncontrolled circulation of unaccounted money in real estate transactions. Although in view of the margin between the declared value and the value adopted by the Valuation Cell in cases referred to it, it could not be denied that the ‘black money’ role in real estate deals continued to exist, say, to the extent of 25 to 30 percent, this was much less than what it was before and one of the reasons for the fall in the ‘black money’ could be said to be the deterrent role played by provisions of Chapter XXA. It could, therefore, be said that the provisions of Chapter XXA had, to a great extent induced disclosures of true sale prices or at least near-true prices in transactions of immovable properties.”

1.23 During evidence, the Chairman, CBDT stated :

“Sir, in a way, the answer is contained in the remark of the Hon. Minister for Finance Mr. R. Venkataraman when last year (1981) he introduced an amendment making additions to this section for acquiring the flats at Bombay, dealing with certain situations which were not covered in the original Sections. There he had said :

‘I really concede that in the matter of actually carrying out acquisition(s) of property, the results have not been as good as we wanted or expected. But that is not because of a lack of will (on our part).’”

1.24 The Chairman, CBDT added :

“I should concede that we are not happy.”

1.25 The Chairman, CBDT, further added :

“.....The idea was to keep these sections as a deterrent. Even to serve that purpose we would require a little more action.....”

1.26 In a note, furnished subsequently, the Ministry of Finance (Department of Revenue) have (February 1984) stated :

“The primary purpose of the provisions of Chapter XXA is to counteract tax evasion and also to check the circulation of

black money. As submitted earlier, the Competent Authority have to select cases for initiation of acquisition proceedings from out a very large number of transactions which come to their notice. From out of the proceedings initiated, orders of acquisition are passed in suitable cases, with a view to create an impact and also to punish the under-statement of consideration in property transactions.

The success or failure of these provisions should not be judged by the number of properties acquired. The main purpose of these provisions have been to maintain the deterrent and to keep mal-practices in the transactions of immovable property under control. With these provisions on the statute book the parties to the transaction have necessarily to reckon with them and therefore they cannot grossly under-state the consideration of transfer. This results in further collection of Income-tax, Capital Gains Tax, Wealth Tax and Stamp Duty and at the same time check the transactions in the immovable property from becoming an easy mode for keeping and transferring black money.

In 1976, the Central Board of Direct Taxes directed the Directorate of Research, Statistics and Publications to undertake a study of the effectiveness of the provisions of Chapter XXA of the Income-tax Act 1961 relating to acquisition of immovable property to counteract tax evasion. The Directorate submitted its report in February 1979. On the analysis of the data collected, the Directorate came to the conclusion that :

- (i) There was a definite trend in disclosure of higher prices in respect of main categories in which transactions actually took place.
- (ii) By and large, where acquisition proceedings had been initiated in a few cases, deeds of conveyance of immovable properties in the same locality registered after such initiation, recorded an increase in the value of properties transferred. From this it could be inferred that one of the factors responsible for the disclosure of higher consideration is the deterrent effect of the likelihood of acquisition proceedings.

- (iii) A study of the figures of collections by way of stamp duties and registration fees in transfers of immovable properties showed that the collections had increased even though the rates of levy had not increased appreciably and the number of documents reported had also not gone up. One of the factors responsible for this phenomenon seemed to be the deterrent potential behind the provisions of Chapter XXA.
- (iv) The statistics relating to references made to the Valuation Cell for the Northern Zone showed that the variation between the figures adopted by the Valuation Cell and the figures disclosed in the transfer, was about 35% in cases where the references were made in connection with acquisition proceedings. The variation in the valuations made under different provisions of other Direct Tax laws was much higher. This showed that the assesseees do not want to run the risk of inviting acquisition proceedings where as under the other references the danger of losing the property is absent.
- (v) The comparative figures of all proceedings initiated and acquisition orders passed over a period 1973-74 to 1976-77 in selected centres showed that over the years, the number of cases inviting departmental action under Chapter XXA (are on the decline. This would show that the provisions of Chapter XXA) have had, at least to some extent, the intended impact on transactions in immovable properties.

In this context the impact of the new provisions of acquisition covering transactions in flats in multi-storey buildings etc. which became effective from 1st July, 1982 also needs mention. In Bombay it was more in 1982 than in 1972 that the provisions of acquisition were felt because most of the transactions in the immovable property in Bombay were carried through the medium of multi-storeyed builders and co-operative housing societies etc. without seeking the registration of transfer for a long period. When these provisions became effective from 1st July, 1982 there was an upheaval in the property market of Bombay City. Not only that the quantum of undisclosed consideration, popularly known as payment in cash considerably disappeared, there was also an appreciable fall in the overall price of immovable property. Several leading newspapers

and periodicals such as "Times of India", "Indian Express", "The Daily", "India Today", "Business India", "Investment Today" have published detailed news items and articles acknowledging these facts.

It would, therefore, appear that it is incorrect to say that these provisions have failed in achieving their objectives. It may, at best, be said that in terms of passing actual orders of acquisition the number has been small. However, there have been a number of constraints which would account for the small number of orders of acquisition passed which are as follows :

- (i) The IACs (Acq.) have to process a very large number of transactions for identifying out of them the cases requiring initiation of acquisition proceedings. This part of the work which is fraught with stupendous task of evaluating immovable property all over India within the prescribed time limit consumes considerable time and resources at the disposal of the Competent Authorities.
- (ii) The proceedings for acquisition are in their inherent nature very contentious. The parties to the transaction many times adopt dilatory tactics which have to be reckoned with in accordance with the requirements of the legal process.
- (iii) Under the provisions, the burden of proving the fair market value and the prescribed difference between the fair market value and the apparent consideration is entirely on the department. There are a number of methods of valuation and the selection of relevant method and compilation of relevant data for its application raises a number of disputes and controversies."

1.27 The span of the study for the purpose, was the period 1969 to 1976 and the centres chosen for purposes of collecting the information were Bombay, Calcutta, Delhi, Madras, Karnataka, M. P., A. P. and Gujrat. In each of the centres the information was to be collected in respect of two areas, one urban and the other rural and semi-urban. The following extracts from the study would show that data compiled and processed was not truly representative and there existed several other factors influencing the prices declared or undeclared in real estate deals :

- “(i) The increase or decrease of land prices in a particular locality to some extent depends upon Government policies also which change from time to time. The present policy in Delhi of the public authorities being given a virtual monopoly for dealing in new developed land has resulted in shrinkage of available land with private parties and this has naturally pushed up the price of such lands.
- (ii) The ceilings on urban and agricultural lands imposed or proposed to be imposed by Government and the speculation arising as a result of such ceiling policy have resulted in considerable fluctuation of land prices.
- (iii) An important development is the concession given by the Finance (No. 2) Act, 1977 through the insertion of Section 54E to the Income-tax Act, 1961. This provides for exemption from Income-tax in respect of capital gains arising from the transfer of any long term capital asset in a case where the full value of the consideration received as a result of the transfer is invested or deposited by the transferor in specified assets, within a period of six months after the date of transfer. The concession would reduce the need for any reduced value of consideration being shown in the deed of transfer.
- (iv) Too much reliance cannot be placed on the figures furnished by the field offices, which form the basis for the study. The conclusions to be drawn from the figures will therefore be affected to this extent. Besides, the study does not take into account various other factors such as land development, demand and supply position, exact location etc.

The provisions of Chapter XXA are but one of the tools designed to reduce the evil of tax evasion by unaccounted money passing in property deals. They are also meant to play a policeman's role, viz, one of prevention of crime. The study has broadly revealed the efficacy of the provisions of Chapter XXA in its deterrent role against suppres-

sion of sale price in transactions of immovable properties. Nevertheless in view of the margin between the declared value and the value adopted by the Valuation Cell in cases referred to it, it cannot be denied that the 'black money' role in real estate deals still exists, say to the extent of 25 to 30%. But this is much less than what it was before and one of the reasons for the fall in the 'black money' can be said to be the deterrent role played by provisions of Chapter XXA."

1.28. The Committee enquired if any further review of the nature had been conducted after February, 1979. The Ministry of Finance (Department of Revenue) stated :

"There has not been any formal review of the efficacy of the provisions of Chapter XXA after February, 1979."

1.29 Investment in immovable property is one of the common outlets for concealed wealth. To counter evasion of tax resorted through under-statement of the value of immovable property in sale deeds and also to check the circulation of black money by empowering the Central Government to acquire immovable properties, including agricultural lands, at prices which correspond to those recorded in sale deeds, Chapter XXA of the Income-tax Act, 1961 was introduced with effect from 15.11.1972. These provisions were brought on the statute book on the recommendations contained in the interim report of the Direct Taxes Enquiry Committee, popularly known as Wanchoo Committee (1971). With a view to removing certain practical difficulties experienced in the administration of the provisions of this Chapter, its scope was extended by the Income-tax Amendment Act 1981 with effect from 1.7.1982 to cover : (i) transfers of flats or premises owned through the medium of cooperative societies and companies; (ii) agreement of sale followed by part performance; and (iii) long term leases.

The Chokshi Committee in their interim report (December 1977) recommended deletion of the existing provisions relating to acquisition of immovable properties on the ground that the provisions have failed to achieve their intended purpose. The Public Accounts Committee have been informed that the Chokshi Committee's report was not based on adequate data and related only to Bombay City. The recommendation was not found acceptable by Government primarily for the following reasons, namely :

- (i) The effectiveness of these provisions is not to be judged merely by the number of properties acquired by the Department; and
- (ii) The study conducted by the Directorate of Research, Statistics and Publications (1979) showed that the provisions have served as a deterrent against the uncontrolled circulation of unaccounted money in real estate transactions.

The study conducted by the Directorate of Research, Statistics and Publications (1979) which was based on the data for the period 1969 to 1976 can at best be, called as only partly representative in that the centres chosen for collecting the information, within the framework of set parameters, were only two areas, one urban and the other semi-urban, in Bombay, Calcutta, Delhi, Madras, Karnataka, M.P, A.P. and Gujarat. Also, the study did not take into account various other factors influencing the prices of real estate such as land development, demand and supply position, exact location, etc. Also, as the study itself rightly pointed out, too much reliance cannot be placed on the figures furnished by the field offices, which formed the basis of study.

1.30 In view of the foregoing, the Committee find it difficult to agree wholly with the conclusions drawn in the above study that the provisions "have served as a deterrent against the uncontrolled circulation of unaccounted money in real estate transactions". The Chairman, Central Board of Direct Taxes rightly conceded during evidence that "the Department was not happy". "Even to serve that purpose (of deterrent) we would require a little more action." In this connection, the Committee also note the frank admission of the Finance Minister at the time of moving the 1981 Amendment Bill that "in the matter of actually carrying out acquisition of property, the results have not been as good as we wanted or expected".

While the Committee do not disagree with the argument advanced by the Ministry of Finance that the objective of these provisions is not to make Government a holder of immovable property or "land-lord" but to act as a deterrent against tax evasion and circulation of black money, they would like to point out that one of the tests of efficacy of any legislative measure is how effectively it is administered. Seen from this angle, the Committee find that as against over 77 lakh intimations of sale transfer of properties received from Registering authorities during

the period 15.11.1972 to 31.3.1983 and 53,310 notices issued during the same period, the number of properties actually taken over by the Department was merely 15. The Committee are firmly of the opinion that if the Department want to make the provisions of Chapter XXA truly deterrent, it is imperative that once acquisition proceedings are initiated they should be pursued to their logical conclusion. Indiscriminate initiation of acquisition proceedings, their prolongation and ultimate dropping even without assigning any reasons therefor, as has been noticed in some important cases, hardly serves any purpose. On the other hand, with the passage of time, it is fraught with the possibility of its proving counter-productive for, the deter or fear created in the public mind is apt to fade away once an impression gathers momentum, that the particular pieces of legislation is merely to remain on paper. The Committee are of the opinion that unless the mandatory provisions are properly and effectively implemented, indiscriminate initiation and dropping of acquisition proceedings will only open doors for corruption and harassment.

CHAPTER II

INITIATION OF ACQUISITION PROCEEDINGS

2.1 The Committee desired to know the system designed to ensure that the Department does take cognizance of all "suitable" cases where these provisions are attracted and how this system was working in practice. The Ministry of Finance (Department of Revenue) have stated :

"The provisions of Section 269P (1) of Income-tax Act, 1961, *inter alia* provide that no registering officer appointed under the Registration Act, 1908 shall register any document which purports to transfer any immovable property for an apparent consideration exceeding Rs. 10,000/- belonging to any person unless a statement in duplicate in respect of such transfer, in the prescribed form, is furnished. Sub Section (2) of Section 269P also, *inter alia* provides that the registering officer shall at the end of every fortnight forward to the competent authority one set of the statements received by him under sub-Section (1) during the fortnight. Rule 48G of Income Tax Rules, 1962 has accordingly prescribed a form known as form No. 37G which is required to be filled in and verified by the transferee in compliance to the requirements of Section 269P (1), as stated above.

On receipt of fortnightly returns of forms No.37G from the registering officer, all instruments of transfer need to be scrutinised by the Competent Authority with the assistance of his staff. For the purpose of initiating proceedings of acquisition certain conditions have to be satisfied. It is, therefore, necessary that the competent authority initiates proceedings for acquisition only in those cases where he has reason to believe that such conditions are satisfied. The provisions of Section 269L of Income Tax Act, 1961 also, *inter alia* provide that the competent authority may for the purpose of initiating proceedings for the acquisition require a Valuation Officer (Departmental Valuation Cell) to

determine the fair market value of such property and report the same to him. In other words, the present system requires the competent authority to apply his mind to all cases of transfer received by him with a view to select from among them only those cases in which the conditions precedent for initiation of acquisition proceedings are satisfied.

Income Tax (Amendment) Act, 1981 has introduced with effect from 1st July, 1982, Section 269AB which requires that every transaction whereby a person acquires any rights in or with respect to any building or part of a building which has been constructed or which is to be constructed (not being a transaction by way of sale, exchange or lease which is required, to be registered under the Registration Act, 1908) and every transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882, shall be reduced to writing in the form of a statement by each of the parties to such transaction in the prescribed form and registered with the competent authority. Rule 48DD of Income-tax Rules, 1962 lays down the form and manner in which the statement is to be registered with the competent authority u/s 269AB. On receipt of these statements in form No. 37EE the competent authority is required to register them in accordance with the manner laid down under rule 48DD. Thereafter, these statements are also to be scrutinised in the same manner as forms No. 37G for the purpose of selecting cases for initiation of acquisition proceedings.

The number of transfers and transactions which have to be scrutinised by the competent authorities have been very large. For example during the period from 15th November, 1972 to 31st March, 1976 over 43 lakh forms No. 37G were received by various IAC (Acquisition). Having regard to the very large number of cases the number of formalities prescribed for the purpose of initiating and carrying out of acquisition proceedings and the number of aspects which require to be examined and considered and the constraints of available manpower and other resources, it can be said that the present system is by and large functioning properly to counter evasion of tax through under-statement of consideration in the instruments of transfer. It is submitted that the objective of these provisions under Income-tax Act, 1961 is not to make Government a holder of immovable prop-

erty but to act as a deterrent against tax evasion and the circulation of black money.

2-2 The following table shows in a nut-shell the particulars about acquisition of immovable properties since the insertion of Chapter XXA up to 31 March, 1983:

(a) Total number of intimations in Form No. 37G received from Registering authorities from 15 November, 1972 up to 31 March, 1983.	77,15,501
(b) Total number of notices issued.	53,310
(c) Number of acquisition proceedings dropped.	26,116
(d) Properties wherein sale consideration was Rs. 5 lakhs or more.	1,094
(e) Properties for which acquisition orders were passed pursuant to proceedings.	435
(f) Properties actually taken over and their sale consideration.	15. None of these properties has been sold.

2.3 Number of Inspecting Assistant Commissioners (Acquisition) engaged on acquisition work during each of the four years 1979-80 to 1982-83 is as under.

Year	No. of I. A. Cs. (Acquisition) engaged
1979-80	30
1980-81	29
1981-82	29
1982-83	29

2.4 Out of the above, two I.A. Cs (Acquisition) were only holding additional charge of acquisition work. \

2.5 In regard to the total strength of the Acquisition Ranges, the Member, CBDT stated:

“There are 29 Assistant Commissioners. Each has got two Inspectors. The number of Inspectors is 58. They have got one U.D.C., one L.D.C. and one Stenographer each. Manpower study is being made now. Presently there are 29 U.D.Cs., 29 L.D.Cs., and 29 Stenographers in all.”

2.6 In reply to a question whether it was possible to cope with the voluminous work with the existing staff strength, the Member, C.B.D.T. stated :

“We say it is difficult to cope with it.”

2.7 The Member, C.B.D.T. further stated :

“I will explain the matter. Much of the time of the IACs there are 29 IACs doing acquisitions all over India and they have dealt with 85 lakhs of forms—is spent in sorting out the forms. These forms came in after the amendment of the Act came into force. So many intimations which under the law they had to examine within a period of nine months came and they had to decide whether they should be proceeded with or not. So, with this inflow of work continuously coming in, they have to apply their mind, and take a decision before nine months whether that case is a fit case for acquisition and get it published before nine months. So, this continuous and heavy load of screening the forms was there. So, much of the energy is fritted away in sorting out the forms.”

2.8 The Member further stated:

“What I want to submit is if the workload is too much, there are two ways of dealing with it. If the inflow of work is due to registration being large, which is of the order of 85 lakhs of cases where the apparent consideration is Rs. 10,000 and more than there should be some filtering at that stage, either legisla-

tively or administratively in order to see to it that the workload of the persons looking into these cases is manageable....."

2.9 Asked whether the deliberations going on in the Ministry related to increasing the limit recorded as apparent sale consideration in the transfer deeds the Chairman, C.B.D.T stated :

"This is the particular point on which we are deliberating. At least to a particular limit, we are trying to go on the consideration shown on the deed."

2.10 The Chairman, C.B.D.T. stated :

"That is why the administrative instructions are issued, because we still have the power to look into those cases."

2.11 The Committee enquired whether the Department has suggested to Government measures aimed at proper administration of the legislation ever since its enactment in 1972, the Chairman, C. B. D. T. replied :

"We have not yet suggested anything. We do not expect any substantial improvement in the number of properties to be acquired. It is not as if we want to acquire more and more properties. The objective of Chapter XXA, as far as we can see, is not to make the Government a landlord. It is also not something like nationalisation of various mills, etc. Here, the idea was to keep these Sections as a deterrent. Even to serve that purpose we would require a little more action but the very important aspect, as you have rightly pointed out is that the proceedings should be very quick so that the anxiety is not prolonged.

2.12 The Chairman, C. B. D. T. added:

"In the first four years 46,000 cases were received. Except 3,000 cases, all were dropped within nine months. They were not initiated at all.

2.13 He further added :

“ Out of 93 lakh cases, we have initiated proceedings only in about 56,000 cases. In other cases the proceedings have not been initiated at all.”

2.14 Asked if the stupendous task involved in sorting out 85 lakh forms with the existing staff strength had resulted in limiting the issue of acquisition notices only to 56,000 cases, the Chairman, C. B. D. T. stated :

“Because we had no time, we had to issue notices in cases where the market value may have been below that stated in the guidelines”

2.15 The Chairman, C. B. D. T. supplemented :

“The time factor is involved. You have to make optimum utilisation of man-power. That does not mean that I am dropping cases just like because we have no time. That we have no time is a point of fact.

2.16 In reply to another question whether all the 85 lakh forms were thoroughly scrutinised, the Chairman, C. B. D. T. stated :

“We have gone through almost all the cases.”

2.17 The Committee desired to have a detailed note on the proposals submitted by the Department to Government to overcome administrative and other difficulties. The Ministry of Finance (Department of Revenue) stated (February 1984) :

“With a view to restricting the initiation of proceedings for acquisition only to properties of comparatively larger value and there by reducing the workload of the IACs (Acquisition) the Board have issued secret guidelines on 20th August, 1973 (Annexure I.)* These instructions were further upward revised on 28th March 1981 (Annexure II.)* In view of the provisions of Section 269AB having come into effect from 1st July, 1982 the Board issued separate guidelines in respect of the intimations being received under Section 269AB on 10.10.1983.....

During December, 1982, the Board convened a high level meeting of certain officers engaged in the administration of acquisition

* Not reproduced

and valuation of the immovable properties. A number of proposals were made in this conference. They are briefly enumerated below:

- (i) The meeting suggested that the monetary limit under section 269P and section 269C and Section 269 F(6) should be enhanced.
- (ii) The meeting suggested that some monetary limit corresponding to Section 269P should be introduced for the provisions of Section 269 AB also below which the transactions may be exempted from compliance of Section 269AB.
- (iii) The meeting suggested that residential property with plinth area up to 40 sq. metres should be exempted from the operation of the provisions of Chapter XXA.
- (iv) The legal possibility of laying down instructions to the Competent authority for compulsory reference to the Valuation Cell in cases of apparent consideration exceeding Rs. 2 lakhs in smaller cities and Rs.3 lakhs in metropolitan cities may be examined and if possible such instructions is issued.
- (v) In view of the certain High Court decisions that the presumption under Section 269C (2) cannot be invoked by the Competent authority at the stage of initiation of acquisition proceedings, some suitable amendments be brought about to remove the difficulties.
- (vi) It was decided that an office Manual for the provisions of Chapter XXA be prepared so that the practices in respect of internal Office Procedure, forms and registers, processing of intimations of transactions etc. be standardised and applied on a uniform basis by all Competent Authorities. The existing Form No. 37 EE may be amended to incorporate columns for further details of one property in question.
- (vii) It was suggested Special Benches should be constituted by the Income-tax Appellate Tribunal to hear the appeals pertaining to the valuation of immovable property. It was felt that if Engineering Member is introduced to such

Valuation Benches, it could facilitate a better appreciation of the cases.

Detailed instructions have now been issued to all the Competent authorities that they should record their reasons in detail not only in the orders directing acquisition of the property but also in cases where the proceedings once initiated are subsequently dropped. They have also been directed to consult the Valuation Officers and discuss the matter with them before rejecting or not acting upon the reports given by such Valuation Officers.

The Directorate of Organisation and Management Services (Income tax) has been requested to conduct a study in respect of the requirements of manpower for the proper implementation of the provisions of acquisition.

In order to equip the Competent Authority with better legal and practical knowledge for the performance of their specialised functions, National Academy of Direct Taxes have carried out training courses at Calcutta and Bombay for officers at present posted as Competent Authority and also some more Assistant Commissioners who might in times to come man these posts."

2.18 Asked to indicate if considering the basic object of provisions relating to acquisition proceedings in the Act, it would be proper to amend the Act suitably so as to enhance the limit of Rs. 10,000 to be notified by the registering authorities on a more realistic basis particularly in view of large increase in the value of immovable properties in the last few years, the Ministry of Finance (Department of Revenue) replied in the affirmative.

2.19 The Finance Bill (No.11), 1984 introduced in Lok Sabha on 29.2.1984 after the presentation of General Budget for 1984-85 seeks to amend Section 269C, 269F and 269P of the Income-tax Act, 1961, and the amendments will take effect from 1 June, 1984. Clauses 25, 26 and 27 of the Bill read as under:

"25. In Section 269C of the Income-tax Act, in sub-section (1), for the words "twenty-five thousand rupees,, the words "fifty thousand rupees" shall be substituted with effect from the 1st day of June, 1984.

26. In Section 269F of the Income-tax Act in sub-section (6), in clause (a) for the words "twenty-five thousand rupees", the words "fifty thousand rupees" shall be substituted with effect from the 1st day of June, 1984.
27. In Section 269P of the Income-tax Act, in sub-section (1), in the proviso, for the words "ten thousand rupees", the words "twenty-five thousand rupees" shall be substituted with effect from the 1st Day of June, 1984."

2.20 The Memorandum, explaining the proposed modification of the provisions contained in Sections 269C, 269F and 269P of the Act relating to acquisition of immovable properties reads as follows :

"Under the provisions contained in Chapter XXA of the Income-tax Act, the Central Government is empowered, subject to the fulfilment of certain conditions, to acquire any immovable property having a fair market value exceeding Rs. 25,000 in cases where the declared consideration for transfer of the property is less than the fair market value of the property on the date of transfer.

With a view to eliminating unproductive work in handling a large number of relatively smaller cases, it is proposed to amend Section 269C contained in Chapter XXA of the Income-tax Act to raise the aforesaid monetary limit to Rs. 50,000.

Section 269F of the Act lays down the procedure for hearing of objections by the competent authority before an order of acquisition may be made by him. One of the conditions to be fulfilled before any such order is made is that the competent authority must be satisfied that the fair market value of the immovable property to which the proceedings relate exceeds Rs. 25,000. Consequential to the proposed amendment of section 269C, it is proposed to amend section 269F of the Act to raise the aforesaid monetary limit to Rs. 50,000. Under Section 269 P of the Act, any person presenting a document for transferring any immovable property for an apparent consideration exceeding Rs. 10,000 is required to furnish to the registering officer a statement in the prescribed form in

duplicate in respect of such transfer. With a view to eliminating unproductive work in handling a large number of relatively smaller cases, the Bill seeks to amend 269P of the Act to raise the aforesaid monetary limit to Rs. 25,000.

These amendments will take effect from 1st June, 1984."

2.21 The Committee find that the existing provisions of Section 269P (1) of the Income-tax Act, 1961, inter alia provide that no registering officer appointed under the Registration Act, 1908 shall register any document which purports to transfer any immovable property for an apparent consideration exceeding Rs. 10,000/- belonging to any person unless a statement in duplicate in respect of such transfer, in the prescribed form, is furnished. Sub-section (2) of Section 269P also, inter alia provides that the registering officer shall at the end of every fortnight forward to the competent authority one set of statements received by him under sub-section (1) during the fortnight. Rule 48G of the Income-tax Rules, 1962 has accordingly prescribed a form known as Form No. 37G which is required to be filled in and verified by the transferee. The Committee note that the total number of intimations in Form No. 37G received in all the 29 acquisition ranges from 15 November, 1972 up to 31 March, 1983 was as high as 77.15 lakhs. These intimations had necessarily to be scrutinised within 9 months by the available staff comprising one Assistant Commissioner and two Inspectors in each Range. The Member of the Central Board Direct Taxes informed the Committee during evidence that "it is difficult to cope with" this voluminous work of screening the forms. The Committee also note that the total number of notices issued was only 53, 310 during the relevant period. There were two ways of reducing the work load through filtering of forms either legislatively or administratively. The Committee were informed during evidence (October, 1983) that 'deliberations were going on to see that the work load is manageable.'

The Committee are glad to note that after they drew, in evidence, the attention of the representatives of the Ministry to the need for eliminating unproductive work in handling a large number of relatively smaller cases. Finance Bill (No.11), 1984 which seeks to amend with effect from 1 June, 1984-the Income-tax Act, 1961 by raising the monetary limit to Rs. 25,000 in respect of intimations in form No. 37G has been introduced. The Committee hope that appropriate administrative measures with a view to eliminating unproductive work will also be taken. The Committee suggest that to overcome the difficulty encountered in the scrutiny of a very large number of forms received from Registering authorities the

Board may examine the feasibility of adopting the random stratified sampling method, with a view to reduce the work-load of acquisition Officers and to eliminate avenues of all other extreneous considerations.

2.22 The Committee have been informed that the Directorate of Organisation and Management Services (Income-tax) has been entrusted with the conduct of a study in respect of the requirements of manpower for the proper implementation of the provisions of acquisition. Admittedly, the work of scrutiny of such a large number of forms within a specified period by a limited staff is a stupendous task and statutory requirements make the job of acquisition authorities exceedingly difficult. The heavy inflow of work and equally continuous work load of screening the forms and application of mind is apt to detract the competent authority from concentrating on more important job of acquisition proceedings. The Committee suggest that the proposed manpower study should be carried out with utmost expedition and necessary action taken in the light thereof to ensure reasonable manpower for proper implementation of statutory requirements.

2.23 The Committee find that out of 77.15 lakh intimations, scrutinised during the period 15 November, 1972 to 31 March, 1983, acquisition notices were issued in 53,312 cases, under the provisions of Chapter XXA of the Act. The number of acquisition proceedings dropped was 26,116. The number of properties for which acquisition orders were passed pursuant to proceedings was 435. Properties actually taken over were 15. The cases finalised were a negligible proportion of those taken up. Judged by any yardstick, the achievements are, in no way complimentary to the Department. The conclusion is inescapable that the departmental effort has so far failed to yield the desired results. Now, when the monetary limits in respect of intimations and fair market value for initiation of acquired proceedings have been raised, the Committee expect the Department to show better results.

CHAPTER III

(a) Issue of Notices for Acquisition Proceedings.

3.1 Section 269 D (1) of the Income-Tax Act, 1961 provides that the competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in the Official Gazette ; provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908Initially the period was six months, which was raised to nine months by the Income-tax (Amendment) Act, 1973 with retrospective effect from 15-11-1972. Unless the above said provisions are properly complied with, proceedings cannot be initiated.

For this purpose, the publication of a notification in the Gazette is complete only when the Gazette containing the publication is available to the public [Section 269D (1)]. In a case in which the registered sale deed was executed on 18-3-1974 and copy of Gazette dated 21.12.1974 containing notice of acquisition was made available to the public only on 16-1-1975, it was held that the date of publication fell beyond the period prescribed and so the competent authority failed to initiate the proceedings validly [Kishanlal V. Inspecting Assistant Commissioner (Acquisition Range) Lucknow and Others (142 I T R 312)-Allahabad.]

3.2 In their circular (D.O.F. No. 316/82/78-WT) dated 25.4.1978, the Central Board of Direct Taxes instructed the Assistant Commissioners (Acquisition) that the notices should be sent to the Government Press for publishing the Gazette notification latest by the end of six months from the end of the month in which the instrument of transfer is registered. In their circular dated 21 May, 1981, the Board have issued instructions that the notices should reach the Press at least 6 to 8 weeks in advance of the limitation date.

3.3 In paragraph 3.92 of their 7th Report (6th Lok Sabha), the Public Accounts Committee recommended that Government should take early action to bring forward an amendment to enable all cases which

had become time-barred being re-opened. The Ministry apprised the Committee in December, 1978 and in December, 1980 that the proposed amendment was under consideration. Final action is still pending.

3.4 A few instances where acquisition proceedings could not initiated because of the department's inability to publish the notices in the official Gazette within the prescribed time-limit of 9 months have been mentioned in audit paragraph 1.07. The Committee desired to know the number of cases in all the Charges during the period from 1979-80 to 1982-83 where in proceedings could not be initiated on this account together with the sale consideration and fair market value involved therein. The Ministry of Finance (Department of Revenue) have stated that in 25 cases proceedings could not be initiated for that reason. The sale consideration involved in these cases was Rs. 36.46 lakhs, whereas the fair market value was Rs. 101.46 lakhs.

3.5 Subsequently, when asked if these 25 cases included the 4 cases mentioned by Audit, the Ministry of Finance (Department of Revenue) have stated (February 1984) :

"The 25 cases reported in the reply.....pertain to the period 1.4.1979 to 31.3.1983 and therefore, include 3 out of the 4 cases mentioned in para 1.18.07. The case mentioned in 1.18.07 (ii) has not been included as it pertains to an earlier period."

3.6 Results of all the acquisition ranges during the period from 1.4.1979 to 31.3.1983, as furnished by the Ministry of Finance (Department of Revenue) are given below :

(i) Number of cases in which proceedings for acquisition were pending as on 1.4.1979	8,237
(ii) Number of cases in which proceedings for acquisition were initiated from 1.4.1979 to 31.3.1983	29,732
(iii) Number of cases in which proceedings of acquisition were made under Section 269 F (6) during this period	47

(iv) Number of cases in which proceedings were dropped duringt his period (percentage in brackets) 11,163 (38%)

3.7 Number of cases where notices of acquisition were issued during the years 1979-80 to 1982-83 according to slabs of sale consideration stated in registration documents is given below. The percentages are shown in brackets.

Aount of sale consideration	1979-80	1980-81	1981-82	1982-83	Total
Not exceeding Rs. 50,000	2713 (49)	3435 (50)	3135 (49)	5484 (51)	14767 (50)
Over Rs. 50,000 but not over Rs. 1 lakh.	1494 (27)	1724 (25)	1478 (23)	2416 (22)	7112 (24)
Over Rs. 1 lakh but not over Rs. 5 lakhs.	1285	1565	1604	2625	7079 (24)
Over Rs. 5 lakhs.	102	154	210	308	774 (2)
	5594	6878	6427	10833	29732 (100)

3.8 During evidence, the Committee drew the attention of the representatives of the Board to the figures according to which approximately 50% of the cases where notices were issued during the period 1979-80 to 1982-83 were in the slab not exceeding Rs. 50,000 the Chairman, CBDT stated :—

“We are thankful to the Committee for pointing this out and focussing our attention a little more on that are now deliberating on that.”

3.9 The Chairman, CBDT, further clarified :

“The deliberation is to increase the limit.”

3.10 Break up of the total number of notices issued during 1979-80 to 1982-83 as between urban properties and other properties (in respect of 17 acquisition charges) as furnished by the Ministry of Finance Department of Revenue) is as under :—

Amount of Sale Consideration	79-80		80-81		81-82		82-83	
	A	B	A	B	A	B	A	B
	*	**						
(i) Not exceeding Rs. 50,000	1535	777	1892	1004	1687	959	2739	2101
(ii) Over Rs. 50,000 but not over Rs. 1 lakh	826	358	1229	217	779	308	1340	548
(iii) Over Rs. 5 lakh. but not over Rs. 5 lakhs.	895	277	1115	273	1101	200	1472	637
(iv) Over Rs. 5 lakhs	78	17	110	22	158	36	197	64

3.11 The position in regard to 4 charges viz.

Gujarat, Assam, Kerala and West Bengal is as follows :—

Urban Properties	Gujarat Charge	Assam Charge	Kerala Charge	West Bengal Charge
1	2	3	4	5
1979-80	252	15	99	160
1980-81	393	2	83	240
1981-82	584	8	65	199
1982-83	734	5	51	325

*A Indicates Number of Urban Properties.

**B Indicates Number of Other properties.

	1	2	3	4	5
Other Properties					
1978-80		84	18	13	190
1980-81		100	01	11	186
1981-82		180	—	07	156
1982-83		445	—	09	166

3.12 The proviso to Section 269D (1) stipulates that no acquisition proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908. For this purpose, the publication of a notification in the Gazette is complete only when the Gazette containing the notification is available to the public. In their circular dated 21 May, 1981, the Central Board of Direct Taxes had issued instructions that the notices should reach the Press at least 6 to 8 weeks in advance of the limitation date. The Committee, however, find that during the period from 1979-80 to 1982-83, in 25 cases acquisition proceedings could not be initiated owing to delay in notification. The sale consideration involved in these cases was Rs. 36.46 lakhs, whereas the fair market value was Rs. 101.46 lakhs. In one case reported in the Audit Paragraph, the fair market value determined by the Departmental Valuation Officer was Rs. 3,90,000 against the declaration of Rs. 45,000 which only highlights the extent of under-statement. In this context, it is significant to note that initially the period was six months which was raised to nine months by the Income-tax (Amendment) Act, 1973 with retrospective effect from 15.11.1972. That cases of failure to initiate proceedings within the prescribed limit continue to occur only shows the need for more care. In paragraph 3.92 of their 7th Report (Sixth Lok Sabha), the Public Accounts Committee (1977-78) had recommended that Government should take early action to bring forward an amendment to enable all cases which had become time-barred being revalidated and re-opened. The Ministry of Finance had apprised the Committee in December, 1978 and again in December, 1980 that the proposed amendment was under consideration of Government. Although a period of over three years has since elapsed, the matter is still pending. The Committee would like Government to bring forward the proposed legislation without further delay.

(B) Dropping of Acquisition Proceedings

3.13 A test check conducted by Audit in a few acquisition ranges indicated that in Bihar, out of 234 acquisition notices issued, 55 were withdrawn for the reason that :—

- (i) the order sheets of the case files were not signed by the competent authority and the proceedings had become void *ab initio*, or
- (ii) the acquisition proceedings had been initiated before obtaining valuation reports from the Valuation Officers.

3.14 Asked to give detailed reasons for dropping the cases after issuing notices, the Ministry of Finance (Department of Revenue) have stated :—

“In Bihar charge in the 55 cases mentioned the acquisition proceedings were initiated for a variety of reasons, e.g., *prima facie* there was a case for initiation; parties to the transaction did not comply with the preliminary enquiry notices either fully or partly; the prescribed particulars were not completely or accurately given in forms No. 37G etc. However, after initiation of the proceeding the matters were examined in greater length and depth. The parties to the proceedings also came forward with necessary details which they had failed to furnish prior to the initiation of the proceedings. In a number of cases on consulting the Departmental Valuation Cell, the difference between the fair market value and the apparent consideration did not remain as large as it appeared to be while initiating the proceedings for acquisition. In certain cases the nature and the special features of the case also warranted dropping of the proceedings. In the context of the remarks that proceedings were dropped in some cases as they had been initiated before obtaining valuation reports, it may be stated that it is neither incumbent in law nor practicable in view of the heavy workload with the competent authority to obtain valuation reports in all the cases before initiating the proceedings.”

3.15 In evidence, the Committee desired to know whether, as stated in the Audit paragraph, it was a fact that 55 cases were withdrawn in Bihar because the order sheets of the case

files were not signed by the competent authority. The Member, CBDT, stated :

“The Commissioner of Income-Tax, Bihar was asked to look into the matter. On the basis of the verification, he has stated that the objection does not appear to be correct.....”

3.16 As regards initiation of acquisition proceedings before obtaining valuation reports from Valuation Officer, he stated :

“Chapter XXA does not necessarily require a valuation report from the Valuation Officer before the initiation of the proceedings.”

3.17 In reply to a question, he stated :

“We have not accepted the position about the Bihar cases as mentioned in the Audit paragraph. Only 56 cases of M.P. were dropped for not according reasons.”

3.18 The Committee enquired whether it was possible that the signatures were not there initially but were affixed subsequently. The Chairman, CBDT, stated :

“If you ask is it possible, I would say it is possible.”

3.19 In paragraph 1.05 (ii) and (iii), it has further been observed by Audit that :

“In Maharashtra, in 41 cases, acquisition proceedings were dropped as the difference between the apparent consideration and the fair market value did not exceed 15 per cent or exceeded it only marginally.

In Madhya Pradesh, in 56 cases, acquisition proceedings were dropped as reasons for initiating the proceedings were not on record. In 8 such cases the fair market value were substantially in excess of the apparent consideration (Rs. 25.60 lakhs as against Rs. 8.84 lakhs).”

3.20 The Ministry of Finance (Department of Revenue) have explained the reasons as under :

“Regarding Maharashtra charge it has been observed in paragraph 1.05 (ii) that acquisition proceedings were dropped as the difference between the apparent consideration and the fair market value did not exceed 15% or exceeded it only margin-

ally. It would be pertinent to state here that a valid order of acquisition cannot be passed on the basis alone that the fair market value exceeds the apparent consideration by more than 15% of such apparent consideration. There are other essential requirements also, i.e., fair market value of the property must exceed Rs. 25,000/- and that the consideration for transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (a) or clause (b) of sub-section (1) of sec. 269C. It is on account of these various considerations that the acquisition proceedings were by and large dropped in the cases of Maharashtra charge pointed out by the Audit. It may also be stated that as stated by IAC Acquisition Nagpur proceedings were initiated in a number of cases on account of the fact that due to the constraints of time limit for initiation of acquisition proceedings the matter of valuation of the fair market value could be referred to the Valuation Cell only after initiation of the proceedings. The subsequent valuation reports showed that such cases were not fit for an order of acquisition u/s 269 F (6).

Regarding 56 cases of Madhya Pradesh it is correct that acquisition proceedings were dropped as reasons for initiating the proceedings were not on record."

3.21 Proviso to Section 269C requires that before initiating acquisition proceedings, the competent authority shall record reasons for doing so. The Committee desired to know why the aforesaid statutory requirement was not complied with in 56 cases of Madhya Pradesh.

The Chairman, CBDT conceded that "it is neglect of duty."

3.22 Asked if disciplinary action was taken against the defaulter, the Chairman, CBOT stated :

"The gentleman has retired.....The period is relevant. If it is within two years of retirement, we can ask for his explanation and if that is not found satisfactory, we can take action against him under the Conduct Rules."

3.23 In a note furnished subsequently, the Ministry of Finance (Department of Revenue) stated ;

“In all these 56 cases, the proceedings for acquisition were initiated by Shri.....who was compulsorily retired on 23rd December, 1975 and latter on reinstate on 18th October, 1978 as Appellate Assistant Commissioner, Indore. He retired from service on 28th February, 1979 prior to the detection of these cases. In these circumstances, no departmental action has been initiated against Shri.....nor the same is contemplated.”

3.24 The Committee enquired if the Board had undertaken a review to find out if such cases had occurred in other charges, the Member, CBDT replied in the negative and stated :

“But we have taken some remedial measures.”

3.25 He added :

“We have now issued a circular in April (May), 1983 wherein we have drawn their attention to the legal requirements according to which reasons must be recorded.”

3.26 In a note furnished subsequently (February, 1984), the Ministry of Finance (Department of Revenue) have stated :

“On discovery of these cases the Board issued instructions, (4.5. 1983) a copy of which is enclosed, to all Commissioners of Income-tax (Acquisition) Jurisdiction (Annexure).* As per paragraph 3 of these instructions the attention of the Competent Authorities was brought to the mandatory provisions of the Act regarding recording of reasons in writing and they were directed to invariably record reasons in writing before initiating proceedings for acquisition.

These instructions also directed the Competent Authorities to undertake an immediate review of all the proceedings for acquisition initiated from 1.4-1981 onwards to locate the instances wherein the proceedings were initiated without recording of the reasons for initiation in writing. The results of this review have not yet been compiled.”

*Not reproduced.

3.27 Asked if these facts necessitated streamlining of the functioning of the Department, the Member, CBOT, stated :

"We have not done that. But we have taken action. We have given due weight to it. We have prepared an office manual and we have issued instructions also."

3.28 The total number of notices issued upto 31.3.1983 was 53310, out of which 26,116 notices had been dropped. In evidence the Committee desired to know the reasons for withdrawal of nearly 50% of the notices. The Member, CBDT replied :

"Mainly because of certain rebuttable presumptions given in the Section itself. There are cases where assessee proves that transferer had no motivation of avoiding Income-Tax; the transferee had no object of concealing income or wealth. We stop proceedings in these cases. Legal implications are there, To what extent can acquisition of property by the State encroach upon the principle of private property transactions ? Now because capital gains taxation is not there, automatically, defence is taken saying this Section is not attracted. That is in spite of the fact that market value is much higher than apparent consideration. Apart from legal considerations those cases which are dropped fall in the 15 to 25 per cent zone. If there is difference in valuation of 25%, the legal presumption is that fair market value is under-stated. But if the difference is less than 25% we can't proceed without getting a lot of evidence. Different valuers give different valuations; the courts have even said, that whatever is in favour of assessee has to be taken. We will give the figures, as to how many cases fall in each category."

3.29 He added :

"We are bogged by many court decisions. Assessee gives one valuation. we have our own inspectors. There is advisory jurisdiction of AVOs and DVOs. And when we have gone to the tribunal, we have not been successful. There are different methods of valuation. Land and building method is there; income valuation method is there; different computations are

there on the same set of facts different people make different valuations. There are also transactions having been entered into several years earlier but registered much later when a cooperative society comes into existence. Naturally the PAC was annoyed that legislative amendments were not brought in earlier."

3.30 Subsequently, on being asked to indicate if the Department had analysed reasons for dropping nearly 50% of the acquisition proceedings the Ministry of Finance (Department of Revenue) have in a note furnished in February, 1984 stated :

"At the outset, it may be stated that if looked from the stand point of the total number of proceedings initiated it may appear that the acquisition proceedings are being dropped in a large number of cases. But if the total number of transactions processed by the Competent Authority prior to initiation of proceedings for acquisition are taken into account it would appear that the number of cases in which proceedings are subsequently dropped constitute only a fraction. Thus, in spite of the efforts of the Competent Authority to avoid infructuous initiation of acquisition proceedings, it is not always feasible to arrive at a correct conclusion during the course of preliminary enquiries.

According to the provisions of the Act, proceedings for acquisition have to be initiated within a period of 9 months from the end of the month in which the instrument of transfer is registered under the Registration Act, 1908. Out of this period of 9 months some time is taken by the Registering Officers for sending intimations of registration to the Competent Authority. Though these intimations are required to be sent on a fortnightly basis, in actual practice longer time is taken. These intimations are received in a very large number of cases in respect of properties situated at various places and in many cases far away from the headquarters of the Competent Authority. Against this backdrop the Competent Authority has to arrive at the decision whether to initiate or not the proceedings of acquisition in respect of all these intimations. Apparently the examination of the facts carried out at the stage of initiation of acquisition

proceedings has its limitations. But, once the proceedings are initiated the facts of the case come to be discussed in greater depth particularly in the light of the objections filed by the transferer, transferee and other interested persons, As a result in many cases the Competent Authority later on comes to the conclusion that the conditions precedent for the order of acquisition were not evident.

Furthermore, there are numerous practical difficulties in carrying out a comprehensive appreciation of facts at the stage of initiation of proceeding itself. Form No. 37G furnished by the transferer/transferee before the Registering authority contain only the bare details of the location, area and the apparent consideration. Therefore certain preliminary enquiries are carried out. Many times complete information/documentary evidence is not made available by the transferor/transferee during the course of these preliminary enquiries. In cases where prompt or proper co-operation is not extended by the parties the Competent Authority cannot wait indefinitely owing to the prescribed limitation of time. In some such cases the features of the property and the special reasons for a lower price being agreed upon do not come to light. The initial estimate is generally made on the basis of available sale instances but many times the properties though situated in the same area cannot be valued identically on account of certain locational disadvantages. Some times later on it is discovered that the title of the property was in dispute or the initial agreement was entered into on a much earlier date or the property was having too many tenants or there was some special relationship between the transferer and the transferee or the sale was a distress sale. In some cases the report of the Valuation Cell is received later. All these factors put together account for subsequent dropping of the proceedings."

3.31 The Public Accounts Committee (1977-78) had in paragraph 3.91 of their 7th Report (6th Lok Sabha) *inter alia* recommended that "in issuing notices of acquisition of immovable property, due caution should be exercised so that as far as possible only genuine cases of under-statement of value are proceeded against." In their action taken note dated 20 December, 1978 the Committee were informed by the Ministry of Finance that instructions had been issued to the Commissio-

ners of Income-tax (Incharge Acquisition Ranges) to ensure that in issuing notices of acquisition of immovable properties due caution is exercised.

3.32 Acquisition proceedings under the provisions of Chapter XXA of the Act can be initiated where an immovable property of fair market value exceeding Rs. 25,000 is transferred for an apparent consideration, which is less than the fair market value by more than 15 per cent of the apparent monetary consideration. Indiscriminate selection of cases for initiating acquisition proceedings not only causes infructuous work in the Department but also results in unnecessary harassment to both the transferer/transferee of property. It is, therefore, important that cases for initiating acquisition proceedings are selected with utmost care. The fact that out of 53,310 cases in which acquisition proceedings were initiated upto 31.3.1983, as many as 26,116 cases had to be dropped indicates that the care had not been taken in selecting cases for initiating aquisition proceedings. The Committee would like to reiterate their earlier recommendation contained in paragraph 3.91 of their 7th Report (Sixth Lok Sabha) that in issuing notices of acquisition of immovable property, due caution should be exercised so that as far as possible only genuine cases of under-statement of value are proceeded against. This step would also make the job of the acquisition officers more manageable. The Committee cannot help feeling that so many notices would not have been issued had the lower formations followed the circular instructions issued by the Board scrupulously.

3.33 One common reason for subsequent dropping of acquisition proceedings given by the Ministry of Finance is that, according to the provisions of the Act, proceedings for acquisition have to be initiated within a period of nine months from the end of the month in which instrument of transfer is registered. Although intimation of Registration are required to be sent by the Registering Officers on a fortnightly basis, in actual practice longer time is taken. In order that the acquisition proceedings do not become timebarred, sometimes the competent authorities initiate acquisition proceedings even when they are not in possession of full facts establishing that conditions precedent for the order of acquisition exist. It has been mentioned in this connection that reports of the Departmental Valuation Cell are, in quite a number of cases, not received by the time the acquisition proceedings are initiated. It is only after the reports of the Departmental Valuation Cell are received that the difference between the fair market value and the apparent consideration is found in some cases to be

not as large as it appeared to be in the first instance. Thus, the main reason for dropping the acquisition proceedings in 41 cases in Maharashtra, referred to in the Audit paragraph, was that the difference between the apparent consideration and the fair market value did not exceed 15 per cent or it exceeded only marginally. This has also been stated as one of the main reasons for dropping 55 cases in Bihar. Another reason given by the Ministry is that Form 37G furnished by the transferor/transferee before the registering authority contains only bare details of location, area and the apparent consideration. It is only after acquisition proceedings are initiated that full facts come to light. The Committee feel that in the light of its experience gained so far, the Department should do some hard thinking and find a solution to the above problems. In particular, the Department may examine in what way the existing Form 37G needs to be revised so as to be more purposive.

3.34 Proviso to Section 269C of the Act requires that before initiating acquisition proceedings, the competent authority shall record reasons for doing so. The Committee, however, regret to observe that in Madhya Pradesh, all the 56 cases referred to in the Audit paragraph had to be dropped as reasons for initiating the acquisition proceedings had not been recorded. The Committee find that in eight such dropped cases the fair market values were substantially in excess of the apparent consideration, i.e. Rs. 25.60 lakhs as against Rs. 8.84 lakhs. The Committee take a serious view of this lapse. As to the remedial measures, the Committee have been informed that on discovery of these cases the Board issued instructions in May 1983 drawing attention of the competent authorities to the mandatory provisions of the Act regarding recording of reasons in writing, with direction to invariably record reasons in writing before initiating proceedings for acquisition. The Committee trust that the Board will see to it that the instructions issued by them in this regard are strictly complied with by the competent authorities. The Committee observe that the Central Board of Direct Taxes have also ordered an immediate review of all the proceedings for acquisition initiated from 1.4.1981 onwards to locate the instances wherein the proceedings were initiated without recording of reasons in writing. They have been informed that the results of this review have not yet been compiled. While the Committee hope that necessary corrective action would be taken in the light of the results of the aforesaid review they need hardly emphasise the imperative need for strict compliance with the aforesaid mandatory provisions as their non-compliance results in only nullifying the whole work already done by the Department, necessitating re-initiation of such proceedings

which may sometimes become barred by limitation. The Committee would like to be informed of the results of the review and the follow-up action taken by the Board pursuant thereto.

3.35 The Committee are informed that the incumbent holding the charge of IAC, Acquisition, Madhya Pradesh, due to whose failure to comply with the provisions of the proviso to Section 269C all the 56 cases, mentioned in the Audit paragraph, had to be dropped was compulsorily retired on 23 December, 1974 and later on reinstated on 18 October, 1978 as Appellate Assistant Commissioner, Indore. He retired from service on 28 February, 1975 prior to the detection of these cases. In these circumstances, the Ministry have stated that no departmental action has been initiated against him, nor is the same now contemplated. The Committee wish to make it clear that they consider the failure to comply with the mandatory provisions of Proviso to Section 269 C as a serious lapse. The present case only underscores the need for quick disciplinary action when such lapses come to light.

(c) Pendency of Acquisition Proceedings

3.36 The Public Accounts Committee (1977-78) had stressed the need for identification of the stages at which delays generally occurred in disposal of acquisition proceedings with a view of streamline them. In paragraph 3.90 of their 7th Report (Sixth Lok Sabha), the Committee had recommended :

“The Committee find that upto 31st January, 1978 acquisition notices were issued in as many as 18,970 cases, under the provisions of Chapter XX-A of the Income-tax Act. Proceedings were dropped in 10,161 cases. Acquisition orders were made in 315 cases covering 288 properties, whose total consideration as stated in the instruments of transfer, was Rs. 3.70 crores against the fair market value of Rs. 6.64 crores. The Committee have been informed that by 31st January, 1977, acquisition orders had been made in 260 cases. Acquisition orders had become final in 15 cases and in 4 cases the properties have vested in Government. Explaining the reasons for delay in confirmation of a large number of acquisition orders, the Department have stated that acquisition order is a quasi-judicial

order and entails time-consuming processes, of giving adequate hearings to the parties. More often than not, these hearings-raise contentious issues both of law and fact. As these orders could be appealed against, they could be taken as confirmed only when no further appeal was pending. If these processes are said have time the Committee fail to understand why the Ministry did not re-examine them with a view to indentify the stages at which delays generally occurred and revamped the procedure with a view to streamline them. The Committee hope that Ministry would look into this matter."

3.37 In their action taken note furnished in January, 1979, the Ministry of Finance (Department of Revenue) had stated :

"The processes and procedures involved in the completion of acquisition proceedings are both legal and administrative ones.

As to the legal processes the same have been incorporated in the relevant sections of Chapter XX-A of the Income-tax Act, 1961, after due consideration. It seems that because of the very nature of the provisions of Chapter XX-A, short-cut procedures cannot be adopted in the interest of justice and fair play. In this connection it is worth noting that probably keeping in view the special features for these provisions, it was not considered deslrable to provide fo a limitation for completion of these proceedings at the time the Taxation Laws (Amendment) Bill, 1972 which brought Chapter XX-A on the Statute Book was considered by Parliament.

As to the administrative processes involved in the completion of the acquisition proceedings, it may be mentioned that a part from the fact that the Board have been issuing instructions from time to time for their expeditious disposal, the Board asked the Director of Inspection (R & S) to carry out a study with a view to indentifying causes for slow progress of disposal of proceedings under Chapter XX-A of the Income-tax Act, 1961 so that remedial measures could be taken expedite the same. On receipt of the report of the Director of Inspection (R & S), the Board has issued instructions *vide* letter F. No. 316/48/77-WT, dated 13.2.1978 (Annexure)* to

* Not reproduced

Commissioners of Income-tax incharge of acquisition Ranges with a view to ensure that acquisition proceedings are expedited."

3.38 The pendency of acquisition proceedings which was 8,492 cases as on 31 January, 1978 and 8,237 cases as on 1 April, 1979, has increased to 26759 cases as on 31.3.1983. The Committee enquired whether the Department favoured the idea to free the assesseees of the suspense and undue harassment caused by prolongation of the proceedings, the Chairman, CBDI stated :

"we are also very unhappy about it, Sir."

3.39 The Committee desired to know whether Department had drawn up any action plan to liquidate the heavy pendency of 26759 acquisition cases as at the end of 31 March, 1983. The Ministry of Finance (Department of Expenditure) have stated :

"The Department is aware of accumulation of pendency of acquisition proceedings during last few years. The Department is considering about introducing an action Plan for partly liquidating these proceedings during the year commencing on 1st April 1984. The Directorate of Organisation and Management Services (Income-tax) have also undertaken a manpower requirement study for the purposes of provisions of acquisition of immovable property under the Income-tax Act."

3.40 The Income-tax Act, 1961 does not provide any time limit for finalisation of the acquisition proceedings. In this context, the Chairman, CBDT elaborated during evidence :

"There is no time limit firstly for finalisation of the acquisition order, and secondly, I would add, even after finalisation of the acquisition order, there is no time limit for the actual acquisition of the property."

3.41 In part 109 the audit has reported six specific cases where acquisition proceedings were not pursued by the Department for about 4 years since the issue of notices of acquisition prior to 1 April, 1979. The apparent consideration, date of instrument of transfer, the date

of last proceedings and the date of resumption there of are tabulated here under :

Case No.	Date of instrument transfer	Apparent consideration Rs. (in lakhs)	Fair Market Value Rs. (in lakhs)	Date of Last proceeding	Date of resumption of prceeding
a)	1.8.1975	20.25	45.00	13.3.1979	28.6.1983
b)	10.8.1976	35.84	60.70	17.4.1978	28.6.1983
c)	18.4.1977	88.35	282.54	23.3.1979	14.2.1983
d)	17.3.1977	22.08	66.87	3.7.1979	15.2.1983
e)	5.10.1976	24.00	48.22	12.2.1979	14.2.1983
f)	1.11.1976	80.51	145.51	3.3.1979	14.2.1983

3.42 Asked to give reasons why the acquisition proceedings came to an abrupt end in 1978-79, the Member, CBDT stated :—

“Sir, before the amendment there was one basic difficulty about the situation in Bombay. It was like this. In the cases of Cooperative Housing Society constructing a building and registration of the same there were three or four stages. First they acquire land and demolish the existing building. Then they advertise in the newspapers and then the intending buyers will come up and enter into individual contracts. After all the contracts have been arrived at the builder will start constructing the building and go for registration under Cooperative Societies Act. Then only the Society seeks registration of the land transaction. Before the amendment there was a considerable hiatus between the actual transaction and the date of registration. Since we follow the date of registration we got one set of values and if we followed date of actual transaction we got a different figure.

There was a recommendation of the PAC for amendment of this law."

3.43 The Members, CBDT further stated :

"It was at the instance of the PAC. Originally, it was the Wanchoo Committee's proposal."

3.44 The Committee enquired if the Department had ascertained reasons for the failure to pursue acquisition proceedings in these cases for about 4 years till this fact was pointed out by Audit. The Member, CBDT, replied :—

"Sir, I must first admit that it restarted on our having received this draft para. But I would like to point out that even now we are facing the same difficulty in our proceedings even though they are revived now."

3.45 Supplementing the above statement, the Chairman, CBDT, stated :

"In these cases the land itself had passed hands much earlier."

3.46 In the above context, the Ministry of Finance (Department of Revenue) have stated in a note (March 1984) :

"Out of these six cases in the case mentioned in paragraph 1.09 (a) the IAC (Acq) made a reference to the Commissioner of Income-tax on 2nd August, 1978 seeking instructions whether it will be proper to dispute the sale price since the sale had been approved by the High Court and whether the proceedings for acquisition should be continued even when some other parts of the plot had not been registered although sold by a common conveyance deed. After consideration of the matter, the Commissioner of Income-tax replied on 19th August, 1978 that the proceedings should be kept pending till such time other parts of the plot were registered. Thus in this case no further action was taken for some time on account of a specific reason. However, no such specific reasons have been mentioned in the records of the remaining cases for not pursuing action for over 4 years.

However, it would appear that all these cases, in their nature involved considerable complications. In all these cases the

registration of the instrument of transfer which formed the basis of acquisition proceedings was only a culmination of a series of transactions and agreements which had taken place from time to time. As a result in most of these cases neither the date of registration nor the date of execution of the instrument was the material date for ascertaining the genuineness of the apparant consideration. It would not be out of place to mention here that with a view to remove difficulties of this type experienced in Bombay City Charge, the provisions of Chapter XXA have now been amended by Income-tax (Amendment) Act, 1981 which have come into force from 1st July 1982. A newly inserted provision of section 269 AB now enables the IAC (Acq) to assume jurisdiction soon after the occurrence of the transaction instead of waiting, for several years after the transaction for the final instrument of transfer being registered in favour of the Cooperative Society for the buyers. Apart from this difficulty, it would be seen that in three out of six cases *viz* cases mentioned in sub-paras (a) (c) (e) three have been a difference of opinion between the IAC (Acq) and the departmental valuer on the question of fair market value in as much as according to the estimates of the departmental valuers the fair market value did not vary sufficiently from the apparent consideration so as to justify the proceedings for acquisition. This question also required to be sorted out.

Out of these six cases the order of acquisition under section 269 F (6) has since been passed in the case mentioned in sub-para (f). Similarly the proceedings for acquisition have been dropped *vide* order under Section 269 F (7) passed in the case mentioned in sub para (c). In the cases mentioned in sub-paras (a) and (e), as there has been a difference of opinion on the question of market value between the IAC (Acquisition) and the departmental valuers, a reference has since been made to Chief Engineer (Valuation) to examine the question of correct fair market value as on the material dates. Further action in the matter would be taken after the question of valuation is settled. In the case mentioned in sub-para (a) a reference has also been made to the Ministry of Law to examine whether it would be appropriate to carry out the proceedings for acquisition even though the sale transaction in question had been approved by the High Court. Out of the remaining two cases in the case mentioned in sub-

para (d) the High Court of Bombay have granted a stay of further proceedings in response to the party's writ petition. The efforts are under way to file suitable application before the High Court so as to expedite the matter. In so far as the case enumerated in sub-para (b) is concerned, the IAC. (Acquisition) has now taken up the case and the finalisation of the proceedings is expected in due course of time.

3.47. The Committee desired to know the number of cases out of the pendency of 26759 cases as on 31 March, 1983 wherein no pursuance action was taken for over three years. The Member, CBDT, stated :

"Sir, we will gather this information and submit the same within one month."

3.48 Subsequently, the Ministry of Finance have furnished the following note :

"The total number of such cases reported by Commissioners of Income-tax is 1120."

3.49 The Committee are perturbed over a phenomenal increase in the pendency of acquisition cases. As against 8,237 cases pending as on 1.4.1979, there were as many as 26,759 cases pending as on 31.3.1983. The Committee need hardly point out that the prolongation of proceedings not only causes undue harassment to the parties by keeping them in suspense but also generates new avenues of corruption. The Chairman, CBDT conceded during evidence that they were "also very unhappy about it." Such a heavy pendency not only points to the need for a review of the existing procedures prescribed for finalisation of acquisition proceedings but also all-out efforts for their liquidation. On the Committee's enquiring about the steps proposed to be taken to liquidate the pendency, the Ministry have stated that the Department is "Considering about introducing an action plan for partly liquidating these proceedings during the year commencing on 1 April, 1984." The Committee desire that the Ministry should introduce the proposed action plan without delay and implement it with vigour. The Committee would like to be apprised of the targets fixed in the action plan 1984-85 and the achievements made thereunder. The Committee would also like to be informed of the steps, if any, taken or proposed to be taken to streamline the existing procedure with a view to accelerating the pace of disposal of acquisition procee-

things. At the same time, the Committee would also like Government to consider the feasibility of imposing a statutory time-limit for the disposal of acquisition orders, as in the case of other tax laws.

3.50 The six specific cases of Bombay charge highlighted in the Audit paragraph where the difference between the fair market value and the apparent consideration was over Rs. 20 lakhs, show that acquisition proceedings were not pursued by the acquisition officers for about four years after the issue of notices of acquisition prior to 1 April, 1979, till the omission was pointed out in Audit. The Chairman, CBDT admitted before the Committee that pursuance action in these cases was resumed on receipt of the draft Audit paragraph. The Committee are shocked to learn this. As for the latest position in these cases, it is seen that in one case proceedings have now been taken up, in two cases there has been a difference of opinion on the question of fair market value between the IAC (Acquisition) and the departmental valuer, necessitating a reference to the Chief Engineer (Valuation) to examine the question of correct fair market value. Order of acquisition under Section 269F(6) has since been passed in one of these cases. In yet another case, a reference has been made to the Ministry of Law to examine whether it would be appropriate to carry out the proceedings for acquisition even though the sale transaction in question had been approved by the High Court. In the last case, the High Court of Bombay has granted a stay of further proceedings in response to the party's writ petition and efforts are under way to file suitable application before the High Court so as to expedite the matter. The Committee expect that pursuance action in all these cases wherein the fair market value determined is substantially higher than apparent consideration, would be taken with utmost expedition. The Committee would like to be informed of the latest position in these cases. The Committee also would like the Department to fix responsibility and to take appropriate action against the officers concerned.

3.51. The Committee find it rather perturbing that out of the total pendency of 26,759 cases as on 31 March, 1983, as many as 1120 are such wherein no pursuance action was taken for over three years as reported by Commissioners of Income-tax. This is indicative of not only laxity at the level of competent authority but also of laxity in supervision exercised at higher levels. Such a state of affairs should cause serious concern to Government. The Committee would like the Department to ensure resumption of proceedings in these 1120 cases without any further loss of time. The Committee desire that in all such cases responsibility for the lapse should invariably be fixed for appropriate action.

CHAPTER IV

(a) Determination of Fair Market Value

4.1 It is seen from chronological sequence of events given in the history sheet of the six cases referred to in the preceding Chapter that the fair market values of properties in question were fixed by departmental valuation Officers. Asked to state whether these values had been communicated by the Assistant Commissioner (Acquisition) concerned to the Income-tax/Wealth-tax Officers assessing the Income/wealth in these cases, the Chairman, CBDT, replied :

“When we feel that the fair market value is higher, the fair market value determined is taken into consideration for all the taxes.”

4.2 In a note furnished subsequently (March 1984) the Ministry of Finance (Department of Revenue) have stated :

“From the reply cited in paragraph. 3.46 it would be seen that the question of fair market value is not yet settled in the case mentioned in sub-paras (a) and (e). In the case mentioned in sub para (c), the proceedings have been dropped as ultimately it was found that there is not much variation between fair market value and the apparent consideration. The value estimated in the remaining three cases have since been communicated by the IAC (Acquisition) to the concerned assessing officers.”

4.3 The Committee desired to know what were the values shown in the Wealth-tax assessments, wherever chargeable and whether income wealth had been recomputed in these six cases. The Ministry of Finance (Department of Revenue) have stated (March, 1984) :

“As in the case referred in sub-para (a) the value shown in the wealth tax assesment was below even the apparent consideration

the wealth-tax assessments for assessment years 1971-72 to 1974-75 have been reopened and are pending at present. In respect of cases mentioned in sub-para (b) and (d) the transferors being companies, there was no Wealth tax. However, in the case mentioned in sub-para (d), additions were made to the wealth-tax assessments of the erstwhile tenants of the property on the basis of the sale transactions. In the case mentioned in sub-para (c), the value declared in the wealth-tax return was in accordance with the apparent consideration. Since in the wealth-tax assessments the District Valuation Officer confirmed the returned value, no further action was taken. In the case mentioned in sub para (e) the value disclosed in the wealth tax return has been even lower than the apparent consideration for sale. However, as the original transaction dates back to October 1972, no further action is possible now. In the case referred to in sub-para (f) the assessee was carrying on the business of construction. The property in question being stock-in-trade was therefore not shown separately in the wealth-tax return."

4.4 The Committee enquired if separate valuation by a Departmental valuer was ever made for purposes of wealth tax and capital gains in these six cases. The Ministry of Finance (Department of Revenue) have stated (March, 1984) :

"In the case mentioned in sub-para (c), the departmental valuer separately estimated the fair market value for the purpose of wealth-tax and Capital gains. These valuations go to support the apparent consideration for sale. In the case mentioned in sub para (e) a separate valuation had been carried out for the purpose of capital gains by the District Valuation Officer which again supports the apparent consideration for sale."

4.5 In regard to action taken in these six cases for levy of capital gains tax and gift-tax on the difference between the fair market value and the apparent sale consideration, the Ministry of Finance (Department of Revenue) have informed as follows :

"Out of these six cases, in the cases enumerated in sub-paras (d) and (f) the property was held as business assets and therefore

the income was computed as business income. In the case mentioned in sub-para (b), however the assessment for assessment year 1977-78 being the year in which the instrument of transfer was registered has been reopened under section 147. In the remaining three cases the Capital gains have been brought to assessment on the basis of the apparent consideration for sale. In the cases mentioned in sub-para (c) and (e), the valuation made under Section 55A of Income-Tax Act, 1961 had supported the sale consideration. Even otherwise in view of the Supreme Court judgement in the case of K.P. Varghese (131 ITR. P. 597) the capital gains have to be assessed on the basis of the disclosed sale price unless it can be proved as a fact that the consideration actually received by the assessee was more than the disclosed sale price.

In so far as the levy of gift tax is concerned, it would be seen from reply (cited in paragraph 3.46) that the question of fair market value has not yet been settled in the cases mentioned in sub-para (a) and (e). In the case mentioned at sub-para (c) the proceedings for acquisition have since been dropped as it was found that there was no difference between the fair market value and the apparent consideration. Out of the remaining three cases, gift tax proceedings have been initiated in the case mentioned in sub-para (b). In so far as the case mentioned in sub-para (d) and (f) are concerned, the assessing officers are fully aware of the initiation of acquisition proceedings and the fair market value estimated for the purpose of initiation of acquisition proceedings. The question of taking further action is under their consideration."

4.6 In regard to instructions for close liaison between the Income-tax/wealth tax officers and the Acquisition Assistant Commissioners and for communication of values of properties as determined by the Valuation Officers to Income tax officers/wealth-tax officers for eventual action the Ministry of Finance (Department of Revenue) have stated :

"It is generally expected that the officers in the department suitably co-ordinate with each other. The Board are however considering laying down of some specific guidelines for the co-ordination between Competent authorities and assessing officers."

4.7 Under the provisions of the Income-tax Act, 1961, the Assistant Commissioner (Acquisition) may require valuation by a Departmental Valuation Officer to determine the fair market value. But the valuation is not binding, as in the case of wealth-tax Act, and Gift Tax Act whereunder such valuation reports cannot be rejected by departmental officers. Asked to state reasons for not making such a provision in Income tax Act, the Member, CBDT, replied :

“The reason why the view of the Valuation Officer is not binding on the Assistant Commissioner of Income tax is that the competent authority is a senior officer of the rank of Assistant Commissioner whereas the Wealth-tax Officer is a comparatively junior officer.

For instance, even under the Wealth-tax Act, the position is that the Appellate Commissioner is not bound by the opinion of the Valuation Officer. His rank is equal to that of the Assistant Commissioner. Neither the appellate authorities nor the revisionary authorities under the Wealth-tax Act are bound by the valuation Officer's opinion. It does not always work. Many a time the Valuation Officer's valuation is much lower than that of our officers. When a senior officer is entrusted with the job his judgement, the advice of the Valuation Officer along with the opinion given by the registered valuer of the assessee and other relevant evidence, including his own inspection and opinion must be trusted. We cannot bind him hand and foot with the opinion of the Valuation Officer.”

4.8 The Member, CBDT, further stated :

“.....I have pointed out that the proceedings before a competent authority are separate proceedings, the whole scheme is separate. Wealth-tax is an annual levy. One of the reasons why the Act thought it fit to formulate certain rules to value properties, is because there will be some finality about the valuation of certain properties.”

4.9 The Committee enquired if the binding clause may be uniformly applied to an immovable property for both wealth-tax and acquisition purposes. The Member, CBDT, stated :

“In the case of Wealth-tax, there are certain built in rules. There is rule 1-BB under which a property may be worth Rs. 10 lakhs but I may be forced to Value that at Rs. 6 lakhs or Rs. 5 lakhs.”

4.10 Asked if Rule 1-BB of Wealth-tax Rules applies to only residential properties, the witness replied in the affirmative.

4.11 The Member, CBDT, added :

"There are two methods of valuation, the land and building method and income capitalisation method. However, the Wealth-tax Act has brought in several rules which introduce an artificial but necessary principle of computation of wealth on a particular basis on a given valuation date. When there was a difference in valuation between the valuation done by the valuation Officer and the Wealth-tax Officer, we give an opportunity to the other party to explain the difference."

4.12 The Member, CBDT, further stated :

"I would only touch on the scheme of valuation under the Wealth Tax Act and for the purposes of acquisition. The first thing which I would like to point out is that Wealth Tax is an annual levy. Valuation of property leads to considerable litigation. The purpose of introducing the rule prescribing the mode of valuation is to cut down litigation and ensure that there will be a certain amount of finality about these valuations, instead of leaving it to the judgments of either the Valuation Officer or the Wealth Tax Officer. This rule which has been introduced for valuation of the residential properties has secured that objective to a large extent.

Wealth Tax is an annual levy. It is recurring. The thrust is on the determination of the fair market value of the property. In the Wealth Tax Act, it is mentioned that notwithstanding anything contained in Section 7 (1), in the case of self-occupied residential property, the value is frozen as stated therein even though its market value on the relevant valuation date may be higher. Here, notwithstanding the fact that the Wealth-Tax Officer is concerned with the determination of market value, the Section has taken care to freeze the market value."

4.13 The Committee enquired if the discretionary powers vested in the competent authority to initiate acquisition proceedings and to arrive at fair market value were unfettered or the mode of valuation was based on objective principles to reduce the area of variation in property values. The Member, CBDT, replied :

"Our understanding is that these principles are objective. There may be some mistakes. I am not saying that we do not commit mistakes."

4.14 The Member, CBDT, further stated :

"The whole concept of market value is such that if the same property is entrusted to two different values the valuation could be different. This does not admit of arithmetical accuracy."

4.15 Asked if the authorities favoured the idea of uniformity as between different Acts, the Member, CBDT, stated :

"As I have stated earlier, if the competent authority feels that the Wealth-tax Officer's valuation is based on some method, he (acquisition authority) accepts it. But if there is some mistake in the valuation, you do not want the competent authority to be bound by the valuation of the wealth-tax officer."

But I certainly agree with the necessity of ensuring uniformity. But that can be done administratively—even without an amendments."

4.16 Subsequently, in a note furnished (February, 1984), the Ministry of Finance (Department of Revenue) have stated :

"In the Department's view it is not necessary to make the valuations by the Valuation Officer under Section 269L of the Income-tax Act binding on the Competent Authority in the same manner as they are binding on the Wealth-tax Officer and Gift-tax Officer. The reasons appear to be as under :

- (i) Under the provisions of chapter XX A proceedings for acquisition can be initiated and an order of acquisition can be passed only when the Competent Authority is satisfied that the required conditions are fulfilled. Unlike wealth-tax and gift-tax proceedings the matter does not entirely rest upon the estimation of fair market value, there are various other conditions which need to be satisfied. The powers and functions of the Competent Authority may not therefore to split between IAC (Acq-**

quisition) and the Valuation Officer as it may introduce complications and make the proceedings cumbersome.

- (iv) The valuation of immovable property under direct taxes is now not entirely a question of technical knowledge. The estimation of market value equally requires commercial knowledge of the market needs and practices. Over the course of years a considerable case law has also developed in respect of valuation of immovable property under various direct taxes Acts. Thus the estimation of a fair market value needs technical, commercial and legal expertise put together."

4.17 Section 269F of the Income-tax Act, 1961, provides that the decision of the competent authority in respect of objections heard against a proposed acquisition shall be in writing and shall state the reasons for the decision with respect to each objection. In paragraph 1.08 (a), 11 cases of Haryana have been cited, which show that the fair market determination by the Valuation Officer was rejected and the acquisition proceedings dropped without recording any reason for doing so. Similarly, in 35 other cases, the acquisition proceedings were dropped even though the fair market values determined by the department valuation Officer exceeded the apparent consideration by more than 25 percent in each case.

4.18 The Committee enquired if the Department has looked into the reasons for the rejection of reports of the Valuation Officers in these 46 cases and whether any opportunity was provided to the Valuation Officers to justify their assessment. The Ministry of Finance (Department of Revenue) have stated :

"The Competent Authorities have not given very elaborate reasons in these 46 cases for dropping of the proceedings. One reason for not enumerating the detailed reasons could be that the provisions of Section 269F(7) do not require recording of detailed reasons since orders thereunder are not appealable. However, from the material collected in these files it can be said that by and large the proceedings were dropped after looking into the details on files and the objections of the parties to the transactions.

It is true that before rejecting the reports of the Valuation Officers, no fresh opportunity was given to them to justify their valuations.

The Board have now issued instructions to all IACs (Acq) that in future they should record their reasons in detail not only in the cases where orders for acquisition are passed but also in the cases in which proceedings once initiated are subsequently dropped. They have also been instructed to discuss in detail the reasons for rejecting or not acting upon the valuation reports furnished by Valuation Officers. A copy of these instructions is enclosed (Annexure)*

4.19 The Committee desired to have information about the total number of cases wherein the reports of Valuation Officers were rejected in all the charges for each of the four assessment years 1979-80 to 1982-83. The Ministry of Finance, however, furnished a consolidated report for all the 4 years, stating :

“The total number of cases in which the valuation made by the Valuation Officer were not accepted during the period 1.4.1979 to 31 March. 1983 is 604, for all the charges except Amritsar and Jaipur for which figures are not available.”

4.20 In case No. (e) cited under paragraph 3.41 the apparent consideration shown in the conveyance deed was Rs. 88.35 lakhs. Fair market value was estimated at Rs. 2.83 crores. The date of instrument of transfer in this case was 18.4.1977 and the Inspectors report was received on 1.12.1977. The last proceedings in this case were recorded on 23.3.1979 and resumed after 4 years on 14.2.1983. The Committee enquired if protracted proceedings caused avoidable harassment to the parties concerned. The Member CBDT stated :

“Sir it is a very interesting case. The facts of this case highlight many of the principles which the Committee has been discussing. In this particular case the apparent consideration is about Rs. 88 lakhs. The valuation officers for wealth tax purposes say that this apparent consideration is alright but in the opinion of the Inspecting Assistant Commissioner who after obtaining

*Not reproduced

two reports from his Inspectors and independently examining himself comes to the conclusions that its value is Rs. 2.8 crores. Now the point is should we take this opinion as correct or not? All I would like to say is that the competent authority who has been entrusted with the work should do his work independently and should not be guided by the valuation officer and in this case the competent authority has also recorded reasons for arriving at his conclusion that the property transacted was worth Rs. 2.8 crores."

4.21 Section 269L of the Income-tax Act, 1961, provides that the Inspecting Assistant Commissioner (Acquisition) may, for the purpose of initiating proceedings for the acquisition of immovable property or for the purpose of making an order in respect of any immovable property, require a Valuation Officer to determine the fair market value of such property and report the same to him. For the purpose of determination of the value, the Valuation Officer has all the powers conferred under Section 38A of the Wealth-tax Act. Under the analogous provisions of the Wealth-tax Act, and the gift tax Act, such valuation by a Valuation Officer is binding the assessing authority. This is not so on in respect of valuation for acquisition proceedings. In the Department's view, it does not appear to be necessary to make the valuations by the Valuation Officers under section 269 L of the Income-tax Act binding on the competent authorities in the same manner as they are binding on the Wealth-tax Officer and Gift-tax Officer *inter alia* on the ground that the IAC (Acquisition), being an officer of the same rank as Appellate Assistant Commissioner, is considered to be sufficiently senior and knowledgeable to go into the merits of the valuations made by the Valuation Officers who are quite often Officers of junior ranks such as Assistant Engineer or Executive Engineer. The Committee cannot accept this approach as they feel that Valuation Officers are expert in their field work and the question of relative seniority or juniority should not be allowed to come in the way of acceptance of their valuation reports.

4.22 46 instances have been mentioned in the Audit Paragraph wherein either the acquisition proceedings were dropped without recording reasons and without giving any opportunity to the concerned Valuation Officers who had determined the fair market value or the Department

deemed the Valuation Officers' reports as incorrect/erroneous and dropped the proceedings on the basis of valuation reports of approved valuers. The Department had conceded to audit that in certain cases the reasons might not have been on record, but held that the dropping of proceedings is entirely discretionary and cannot be challenged. The committee have now been informed that the competent authorities have not given elaborate reasons in the 46 cases mentioned in the Audit paragraph for dropping of the proceedings. According to the Department, "one reason for not enumerating the detailed reasons could be that the provisions of Section 269 F (7) do not require recording of detailed reasons since orders thereunder are not appealable". The Committee need hardly point out that the discretionary power vested in the competent authority has to be exercised in a manner that could carry conviction with all. The Committee find that the total number of cases in which the valuation made by the Valuation Officers were not accepted during the four-year period from 1.4.1979 to 31.3.1983 is 604 for all the Acquisition Charges except Amritsar and Jaipur for which figures have not been available. The possibility of excessive reliance having been placed on the reports of the registered valuers engaged by the parties, which are tilted in their favour, cannot be ruled out in some cases. The Committee have been informed that the competent authorities have now been directed to record reasons in detail not only in the orders directing acquisition of property but also in cases where the proceedings once initiated are subsequently dropped. They have also been directed to consult the Valuation Officers and discuss the matter with them before rejecting or not acting upon the reports given by such Valuation Officers. The Committee would like the Department to ensure that these instructions are complied with in letter and spirit.

4.23 The Committee find that a proposal was made at a high level meeting of officers engaged in the administration of acquisition and valuation of immovable properties, convened in December, 1982 to examine the "legal possibility of laying down instructions to the competent authority for compulsory reference to the Valuation Cell in cases of apparent consideration exceeding Rs. 2 lakhs in smaller cities and Rs. 3 lakhs in metropolitan cities and if possible issue such instructions". The Committee would like Government to give a serious consideration to the above proposal.

4.24 The Committee find that in at least three cases out of the six mentioned in paragraph 4.2, the values estimated for acquisition

proceedings have since been communicated by the I.A.C. (Acquisition) to the concerned Income-tax/Wealth Tax Officers assessing the income wealth in these cases. In one case, the value shown in the wealth tax return being lower than even the apparent consideration, the wealth-tax assessments for assessment years 1971-72 to 1974-75 have been re-opened and are pending. In another similar case, as the original transaction dates back to October 1972, no further action is possible now. In yet another case, the assessee was carrying on the business of construction and, therefore, the property in question being stock-in-trade was not shown separately in the wealth-tax return. In regard to subjecting the cases to levy of capital gains tax on the difference between the fair market value and apparent sale consideration, the Ministry have informed that in three cases the capital gains have been brought to assessment on the basis of the apparent consideration for sale. In so far as the levy of gift tax is concerned, in one case, gift tax proceedings have been initiated and in respect of other two cases, the Ministry have informed that the assessing officers are fully aware of the initiation of acquisition proceedings and the fair market value estimated for the purposes of initiation of acquisition proceedings. The question of taking further action is reportedly under their consideration. The Committee would like to be informed of the further action taken in these cases. It is apparent that action in most of the cases is initiated only after the Committee are seized of the matter. They deplore such a tendency. The Committee desire that immediate action should invariably be taken as soon as such cases come to notice.

4.25 The facts narrated in the preceding paragraph show that in the matter of correlation in assessments under various direct tax laws on the one hand and coordination between competent authorities and assessing officers on the other, the position is far from satisfactory. The Committee are not satisfied with the explanation of the Ministry of Finance that the officers in the Department are generally expected to suitably coordinate with each other. In the opinion of the Committee, this explanation only betrays complacency on the part of the Ministry. The Committee have now been informed that the Board are considering laying down some specific guidelines for coordination between competent authorities and assessing officers. The Committee desire that these should be issued without any further loss of time. The Committee find that in two cases, the properties were already valued by the Departmental Valuation officers for purposes of Capital gains tax/wealth-tax. The proposed

guidelines may specifically require the competent authority to obtain copies of such reports, where available, before considering a fresh valuation for acquisition purposes. As under-statements in the value of property detected during acquisition proceedings give an idea of the extent of black-money involved, the Committee desire that the competent authority should be required to invariably intimate the value determined to the jurisdictional assessing officers of both transferor and transferee for appropriate action.

4.26 The discussion in the preceding paragraphs only reinforces some of the Committee's earlier findings* that the multitude of legal provisions, modes of valuation and valuation authorities in the valuation of some properties has created a situation where property tax have become a matter of great harassment as well as abuse. In the circumstances, the Committee reiterate their earlier views that the only solution to overcome this problem is to set up an autonomous valuation authority for the valuation of some properties, which could apply a common principle of valuation and determine objectively the values of all real estate properties at least in the urban centres of the country. The valuation certificates of the authority should be binding for all taxes relating to that property. The Committee were informed in October, 1982, that the attention of the Economic Administration Reforms Commission had specifically been drawn to the above recommendation of the Committee. They desire that an early decision should be taken in the matter.

(b) Actual Acquisition of Properties

4.27 The number of cases in which proceedings for acquisition were initiated during the period 1 April, 1979 to 31 March, 1983 as reported by the Department was 29732. Orders for acquisition were made only in 47 cases. Asked to indicate in how many cases, the orders had become final, the Ministry of Finance stated :

"None of the orders of acquisition made during the period 1.4.79 to 31st March, 1983 have become final. However, many of these 47 cases are at present at various stages of appeal."

101st Report (7th Lok Sabha) Paragraph 3.79

181st Report (7th Lok Sabha) Paragraph 1.16

206rd Report (7th Lok Sabha) Paragraph 1.25

4.28 From the annual report of the Ministry of Finance for the year 1982-83, it is found that upto 30.11.1982, 15 immovable properties had been acquired by the Department under the acquisition proceedings.

4.29 During evidence, the Committee enquired how many properties have been actually taken over upto 31 March, 1983 and what is the total value thereof. The Chairman, C.B.D.T, replied that "only 15 properties have been taken over" and the total value is "Rs. 35 lakh aggregate."

4.30 The Chairman, C.B.D.T., further stated :

"Rs. 45 lakhs was paid as compensation. It is not merely the expenditure involved."

4.31 Particulars of the properties taken over so far and their utilisation, as furnished by the Ministry of Finance (February 1984), are given in Appendix I. An analysis of the apparent consideration and the fair market value as estimated in the order under Section 269 E (6) of the Income-tax Act, 1961 shows that against the apparent consideration of Rs. 15,15,259 shown by the parties, the fair market value assessed was Rs. 24,38,261 in these 15 properties. The amount of compensation in 9 cases finalised was 15% more than the apparent consideration. None of these 15 properties has been sold.

4.32 The statement given below shows the apparent consideration, the fair market value as estimated in the order under Section 269 F (6) and the amount of compensation paid :

Sl. No.	Apparent consideration	Fair market value as estimated in the order U/s. 269 F (6)	Amount of compensation paid
1.	2.	3.	4.
1.	1,60,000	2,28,400	1,84,000
2.	25,000	1,19,290	28,750
3.	40,000	52,486)	1,23,826
4.	41,000	52,486)	

1.	2.	3.	4.
5.	36,000	1,05,000	41,000
6.	45,000	70,000	—
7.	1,20,000	2,06,000	—
8.	3,50,000	5,62,000	4,02,500
9.	26,500	41,500	30,475
10.	5,00,000	7,18,000	5,75,000
11.	35,000	67,000	71,200
12.	28,000	53,459	
13.	49,000	72,000	56,420
14.	36,932	56,400	
15.	22,827	34,240	
Total :	15,15,259	24,38,261	

4.33 In accordance with the provisions contained in Section 269I of the Act, after the acquisition orders have passed the period prescribed for appeal and become final, the property shall vest absolutely in the Central Government.

4.34 The Central Board of Direct Taxes had issued guidelines *inter alia* on auction of the properties acquired and taken possession of. In their circular instruction No.316/84/76-W.T. dated 18 May, 1977 the Commissioners of Income-tax were apprised of the decision not only for their own guidance and necessary action, but also for keeping the same in mind while maintaining appropriate liaison with officers of the Central Public works Department. It was brought to their notice that:

“It has also been decided as a guideline that properties which are not required for Government use should be sold, as early as possible, in the open market so that Government's funds are replenished from time to time and there is no undue burden on the exchequer in providing funds for payment of compensation for the properties acquired.”

4.35 Asked whether these guidelines were followed in respect of 15 properties so far acquired by the Department in which acquisition orders had become final, the Member, CBDT, stated:

"There were deliberations on this between the various Ministries and it was decided that all these properties would be given to the works and Housing Ministry for further action."

4.36 In reply to a question as to the reaction of the Department about the auction of the properties acquired to vouchsafe the correctness of acquisition in the eyes of the public who could know that the fair market value was more, the Member, CBDT, stated:

"It is a good suggestion. We, however, do not want to become landlord....."

The Member, CBDT, further stated:

"It is a good suggestion. But the present decision is to hand over these properties to the works and Housing Ministry."

4.37 Asked if compensation had been paid to the parties concerned the Member, CBDT replied in the affirmative. In regard to replenishment of the funds of the exchequer, the Member, CBDT, stated:

"They provide the funds straightaway."

Whether it is Works and Housing Ministry or any other Ministry they are all part of the Government. It was decided that Works and Housing Ministry would be the best agency for disposal of these properties or maintenance thereof. This has become a part of the Government property. The question will then be what has the Works and Housing Ministry done. We will have to find out how many properties have been kept by them for Government use and how many have been disposed of in auction and how much has been realised."

4.38 The Member, CBDT, further stated:

"Whatever information we get from the works and Housing Ministry, we will pass it on to you."

4.39 Subsequently, the Ministry of Finance have furnished a copy of the letter of Minister of works, Housing and Parliamentary Affairs dated 18 November, 1976 addressed to the then Minister of State for Revenue and Banking, which is reproduced below:

“Kindly refer to your d.o. letter No. 2476/MRB/76 dated the 9th September, 1976 regarding taking over and management of immovable properties vested in the Government of India under Chapter XXA of the Income Tax Act, 1961.

As desired, the Central P. W. D. will take over the immovable properties in question from the Revenue authorities after the forfeiture has become absolute, and all formalities relating to appeal etc. as provided under the law have been completed, and manage the same. Further procedural details may please be settled by the Revenue Department in consultation with Engineer-in-Chief.”

4.40 The Committee find that upto 30.11.1982, only 15 immovable properties, had been acquired by the Department. In these properties, against the apparent consideration of Rs. 15.15 lakhs, the fair market value estimated was Rs. 24.38 lakhs. Compensation has been paid for 9 properties at 15% above the apparent consideration. The Act only provides that once the possession of the property is taken over, it shall vest absolutely in the Central Government. The Central Board of Direct Taxes had issued guidelines on 18 May, 1977 to the effect that properties which are not required for Government use would be sold, as early as possible, in the open market so that Government's funds are replenished from time to time and there is no undue burden on the exchequer in providing funds for payment of compensation for properties acquired. The Committee, however, note that even prior to the issue of these guidelines, a decision had already been taken that the Central P.W.D. would take over the immovable properties in question from the revenue authorities after the forfeiture had become final. This was communicated to the Ministry of Finance on 18 November, 1976. The Committee would like to know what prompted the Board to issue such guide-lines for sale when a decision had already been taken to hand over these properties to the CPWD. The Committee find from the statement of 15 properties so far acquired that one of the properties for which a compensation of Rs. 1,84,000 has been paid is tenanted and the tenants are paying only a monthly rent of Rs. 440/to the Executive Engineer, 'K' Division, C.W P.D., New Delhi. Another

property, a bungalow in Jalandhar, is let out to the Income-tax Officer. Yet another property in Delhi is still in possession of the Commissioner of Income-tax and efforts are being made to sell the same. Two of the properties are plots in Meerut and it is noticed that the C.P.W.D, has not yet physically taken possession of these plots. The Member, C.B.D.T. appreciated during evidence the suggestion of the Committee for auctioning the properties to vouchsafe the correctness of acquisition in the eyes of the public, for the fair market value would be even more than what was estimated at the time of initiation of proceedings. In any case the Committee trust that the properties acquired under the Act will be utilised in the best interest of Government. All that the Committee are concerned with is that prompt decisions should be taken by Government in regard to their retention/disposal. In case, however, it is decided to dispose of any of the acquired properties, the Committee desire that these should be disposed of through open auction. The Committee are positive that in no case any of the acquired properties should be allowed to be used for any individual officer of the Department.

NEW DELHI :

April 26, 1983

Vaisakha 6, 1906 (Saka)

SUNIL MAITRA

Chairman,

Public Accounts Committee.

APPENDICES

APPENDIX-I
(Vide paragraph 4.31)

S.No.	Name of the Transferror	Name of the Transferee	Description of the property	Date of registration	Apparent consideration	Date of order u/s 269F(6)
1	2	3	4	5	6	7
					Rs.	
1.	Sh. Sunder Lal, Advocate, 40 Wazir Bagh Siri Nagar, Kashmir.	Sh. S.D. Malik 18/31, West Patel Nagar, New Delhi	10-South Patel Nagar, New Delhi	17-5-74	1,60,000	9-1-76
2.	Sh. Dewan Karta Krishan S/o Sh. Dewan Chand, Kothi No. 1 Link Road, Model Town, Nakodar Road, Jalandhar.	Sh. Krishan Kumar Kapoor, S/o Kewal Krishan Kapoor H.No. 272, Charanjit Pura Julandhar.	Banglow No. 1 Link Road Between Nakodar Rd., and Model Town, Jalandhar	21-5-75	25,000	31-3-77

Fair market value as estimated in the order under sec. 269F(6)	Date on which the order u/s 269 F(6) become final.	Date of payment of compensation	Amount of compensation paid.	Date of taking over the possession.	How the property has been used.
8	9	10	11	12	13
Rs.			Rs.		
2,28,400	9-1-76	30-3-78 9-11-78	1,84,000	30-3-78	The property is tenanted. The tenants are paying monthly rent of Rs. 440/- to the Executive Engineer, K. Division CPWD, N. Delhi.
1,19,290	14-9-77	30-6-79	28,750	7-3-79	Let out to I.T.O.

1	2	3	4	5	6	7
					Rs.	
3	S/Sh. Onkar Mal Banwari Lal Panna Lal, Kedar Nath, Shiv Chander and Kishan Dass, Chandni Mahal Delhi	Sh. Ram Kanwar Krishna Devi, Naurang Rai, Ram Richpal, Rup Chand, Ram Kanwar, Phulwati r/o Julana	$\frac{1}{2}$ portion of the factory Bld. Plot No. 715 Indl. Area Bahadurgarh	17-4-73	40,000	20-5-76
4.	-do-	-do-	-do-	-do-	41,000	20-5-76
5.	S/Sh. Gurdip Singh & Gurcharan Singh S/o Shri Khan Singh r/o Delhi.	S/Sh. Rajinder Singh & Harinder Singh S/o Sh. Mohan Singh r/o Mall Road, Karnal	Land measuring 4 Bigha, 4B at G.T. Rd., Karnal	20-1-76	36,000	31-3-79
6.	Allahabad Iron Sindicate Pvt. Ltd.	Prem Narain & Krishan Lal	833 Sq. yds. of land in Gandhi Nagar, Allahabad & 230, Godown, Tinshed etc. Muthiganj, Allahabad	18-3-74	45,000	28-10-75
7.	Janak Rishori Devi	Jagdish Prasad & Others.	House No. 16 (Old No. 30) Chowk, Allahabad.	12-11-74	1,20,000	16-1-76

8	9	10	11	12	13
Rs.			Rs.		
52,486	6-11-77	19-7-80		19-7-80	The property is still in possession of CIT and efforts are being made to sell the same.
			Rs. 1,23,826		
52,486	6-11-77	19-7-80			
1,05,000	8-8-79	6-3-81	41,400	6-3-81	The property has been taken over by CPWD.
70,000	23-8-79	**	Nil	23-8-79	**
<p>**One of the vendees, Sh. Krishan Lal has filed a writ petition before the High Court against the order u/s 269F(6) and taking over possession which is pending. Hence no comp. paid.</p>					
2,06,000	27-8-79	***	Nil	1-9-79	***
<p>***The vendee is not turning up to receive compensation despite CPWD's several reminders. The entire properties are let out to tenants. All tenants have accepted the ownership of the Central</p>					

1	2	3	4	5	6	7
					Rs.	
8.	Gulram Prasad and Ishwar Prasad	Kwality Ice Cream Pvt. Ltd. Calcutta.	½ portion 16-1-74 Plot No. 277/1, 1.48 acres & Plot No. 586, 7.32 acres, Shivpur, Varanasi.	3,50,000	11-11-75	
9.	Shiv Kumar Naranrao Amlegaonkar	Shirubhai Nandlal Patel S/o Manubhai Hirabhai Patel, R.V. Desai Rd., Baroda.	Open Plot 25-7-73 of land admn. 6660 Sq. ft. S. No. 589 & 590 of Baroda Kasba Nagar, Priya Laxmi Mill, Baroda.	26,500	13-8-76	
10.	Jaipur Investment Co. Ltd., 31, Netaji Subhas Rd., Calcutta.	Standard Holding Ltd.	46/1A, Chowringhee Rd., Calcutta with Bld. covering of Kathas 4 Chittack 4 Sq. Ft.	6-4-73 5,00,000	23-9-74	

8	9	10	11	12	13
Rs.			Rs.		
					Govt. except one Sh. S.M. Roy who had filed a Writ in Allahabad High Court against order u/s 269F(6) and taking over possession. The appeal has been allowed in his favour.
5,62,000	May, 80	11-7-80	4,02,500	May, 80	For constructing Officers' Colony.
41,500	28-9-76	20-12-77	30,475	20-12-77	It is in possession with CPWD Baroda.
7,18,000	6-2-76	6-2-79	5,75,000	1-12-78	The property has been taken over by CPWD for the purpose of construction of office Bldg.

1	2	3	4	5	6	7
					Rs.	
11.	Sh. Hardyal Chand	Smt. Gian Kaur & Sh. Avtar Singh.	5 shops at Batala Rd.	3/73	35,000	23-9-74
12.	-do-	Smt. Sant Kaur Smt. Balbir Kaur.	4 shops at Batala Rd.	3/73	28,000	23-9-74
13.	Sh. G.S. Sardhana	Shri R.S. Ghai	Plot No. 107, Sector 23, Chandigarh.	11-2-76	49,000	22-2-77
14.	Sh. Muktar S/o Mangal	Sh. R.S. Gupta	Plot No. 6 to 8 Deopuri, Meerut.	6-1-75	36,932	15-3-76
15.	-do-	Sh. Mahendra Kumar	Plot No. 1 & 2 Deopuri Meerut.	-do-	22,827	-do-

8	9	10	11	12	13
Rs.			Rs.		
67,000	23-9-74	13-7-77 for 5 shops	Rs. 71,200	7-4-77	Handed over to C.P.W.D.
53,459	23-9-74	17-7-77 for 4 shops		7-4-77	-do-
72,000	9-4-77	1-6-77	56,420	1-6-77	The property is in possession of CPWD. There is a proposal for construction of 4 type-IV Quarters for CPWD.
56,400	22-5-76	—	—	—	The CPWD has not yet physically taken possession of the plots.
34,240	-do-	—	—	—	-do-

APPENDIX II
(Vide Introduction)

Conclusions and Recommendations

Sl. No.	Para No.	Ministry/ Department	Recommendation
1	2	3	4
1.	1.29	Finance (Revenue)	Investment in immovable property is one of the common outlets for concealed wealth. To counter evasion of tax resorted through under-statement of the value of immovable property in sale deeds and also to check the circulation of black money by empowering the Central Government to acquire immovable properties, including agricultural lands, at prices which correspond to those recorded in sale deeds, Chapter XXA of the Income-tax Act, 1961 was introduced with effect from 15-11-1972. These provisions were brought on the statute book on the recommendations contained in the interim report of the Direct Taxes Enquiry Committee, popularly known as Wanchoo Committee (1971). With a

view to removing certain practical difficulties experienced in the administration of the provisions of this Chapter, its scope was extended by the Income-tax Amendment Act, 1981 with effect from 1-7-1982 to cover : (i) transfers of flats or premises owned through the medium of cooperative societies and companies ; (ii) agreement of sale followed by part performance ; and (iii) long term leases.

The Chokshi Committee in their interim report (December 1977) recommended deletion of the existing provisions relating to acquisition of immovable properties on the ground that the provisions have failed to achieve their intended purpose. The Public Accounts Committee have been informed that the Chokshi Committee's report was not based on adequate data and related only to Bombay City. The recommendation was not found acceptable by Government primarily for the following reasons, namely :

(i) the effectiveness of these provisions is not to be judged merely by the number of properties acquired by the Department ; and

(ii) the study conducted by the Directorate of Research, Statistics and Publications (1979) showed that the

1	2	3	4
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provisions have served as a deterrent against the uncontrolled circulation of unaccounted money in real estate transactions.

The study conducted by the Directorate of Research, Statistics and Publications (1979) which was based on the data for the period 1969 to 1976 can at best be called as only partly representative in that the centres chosen for collecting the information, within the framework of set parameters, were only two areas, one urban and the other semi-urban, in Bombay, Calcutta, Delhi, Madras, Karnataka, M.P., A.P., and Gujarat. Also the study did not take into account various other factors influencing the prices of real estate such as land development, demand and supply position, exact location, etc. Also, as the study itself rightly pointed out, too much reliance cannot be placed on the figures furnished by the field offices, which formed the basis of study.

22

2. 1.30 Finance
(Revenue)

In view of the foregoing, the Committee find it difficult to agree wholly with the conclusions drawn in the above

study that the provisions "have served as a deterrent against the uncontrolled circulation of unaccounted money in real estate transactions". The Chairman, Central Board of Direct Taxes rightly conceded during evidence that "the Department was not happy". Even to serve that purpose (of deterrent) we would require a little more action." In this connection, the Committee also note the frank admission of the Finance Minister at the time of moving the 1981 Amendment Bill that "in the matter of actually carrying out acquisition of property, the results have not been as good as we wanted or expected".

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While the Committee do not disagree with the argument advanced by the Ministry of Finance that the objective of these provisions is not to make Government a holder of immovable property or "land-lord" but to act as a deterrent against tax evasion and circulation of black money, they would like to point out that one of the tests of efficacy of any legislative measure is how effectively it is administered. Seen from this angle, the Committee find that as against over 77 lakh estimations of sale/transfer of properties received from Registering authorities during the period 15-11-1972 to 31-3-1983 and 53,310 notices issued during the same period,

the number of properties actually taken over by the Department was merely 15. The Committee are firmly of the opinion that if the Department want to make the provisions of Chapter XXA truly deterrent, it is imperative that once acquisition proceedings are initiated, they should be pursued to their logical conclusion. Indiscriminate initiation of acquisition proceedings, their prolongation and ultimate dropping even without assigning any reasons therefor, as has been noticed in some important cases, hardly serves any purpose. On the other hand, with the passage of time, it is fraught with the possibility of its proving counter productive, for, the deter or fear created in the public mind is apt to fade away once an impression gathers momentum that the particular piece of legislation is merely to remain on paper. The Committee are of the opinion that unless the mandatory provisions are properly and effectively implemented, indiscriminate initiation and dropping of acquisition proceedings will only open doors for corruption and harassment.

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3.

2.21

-do-

The Committee find that the existing provisions of Section 269P (1) of the Income-tax Act, 1961, *inter alia*

provide that no registering officer appointed under the Registration Act, 1908 shall register any document which purports to transfer any immovable property for an apparent consideration exceeding Rs. 10,000/- belonging to any person unless a statement in duplicate in respect of such transfer, in the prescribed form, is furnished. Sub-section (2) of Section 269P also *inter alia* provides that the registering officer shall at the end of every fortnight forward to the competent authority one set of statements received by him under Sub-section (1) during the fortnight. Rule 48G of the Income-tax Rules, 1962 has accordingly prescribed a form known as Form No. 37G which is required to be filled in and verified by the transferee. The Committee note that the total number of intimations in Form No. 37G received in all the 29 acquisition ranges from 15 November, 1972 upto 31 March, 1983 was as high as 77.15 lakhs. These intimations had necessarily to be scrutinised within 9 months by the available staff comprising one Assistant Commissioner and two Inspectors in each Range. The Member of the Central Board Direct Taxes informed the Committee during evidence that "it is difficult to cope with" this voluminous work of screening the forms. The Committee also note that the total number of notices issued was only 53,310 during the relevant period. There were

two ways of reducing the work load through filtering of forms either legislatively or administratively. The Committee were informed during evidence (October, 1983) that 'deliberations were going on to see that the work load is manageable'.

The Committee are glad to note that after they drew, in evidence, the attention of the representatives of the Ministry to the need for eliminating unproductive work in handling a large number of relatively smaller cases, Finance Bill (No. 11), 1984 which seeks to amend with effect from 1 June, 1984—the Income-tax Act, 1961 by raising the monetary limit to Rs. 25,000 in respect of intimations in form No. 37G has been introduced. The Committee hope that appropriate administrative measures with a view to eliminating unproductive work will also be taken. The Committee suggest that to overcome the difficulty encountered in the scrutiny of a very large number of forms received from Registering authorities the Board may examine the feasibility of adopting the random stratified sampling method, with a view to reduce the workload of acquisition officers and to eliminate avenues of all other extraneous considerations.

4. 2.22 Finance
(Revenue)

The Committee have been informed that the Directorate of Organisation and Management Services (Income-tax) has been entrusted with the conduct of a study in respect of the requirements of manpower for the proper implementation of the provisions of acquisition. Admittedly, the work of scrutiny of such a large number of forms within a specified period by a limited staff is a stupendous task and statutory requirements make the job of acquisition authorities exceedingly difficult. The heavy inflow of work and equally continuous work load of screening the forms and application of mind is apt to detract the competent authority from concentrating on more important job of acquisition proceedings. The Committee suggest that the proposed manpower study should be carried out with utmost expedition and necessary action taken in the light thereof to ensure reasonable manpower for proper implementation of statutory requirements.

5. 2.23 -do-

The Committee find that out of 77.15 lakh intimations, scrutinised during the period 15 November, 1972 to 31 March, 1983, acquisition notices were issued in 53,310 cases, under the provisions of Chapter XXA of the Act. The number of acquisition proceedings dropped was 26,116. The number of properties for which acquisition orders were passed pursuant to proceedings was 435. Properties actually taken over were 15. The cases finalised were a negligible proportion

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of those taken up. Judged by any yardstick, the achievements are, in no way, complimentary to the Department. The conclusion is inescapable that the departmental effort has so far failed to yield the desired results. Now, when the monetary limits in respect of intimations and fair market value for initiation of acquired proceedings have been raised, the Committee expect the Department to show better results.

6

3.12

Finance
(Revenue)

The proviso to Section 269D (1) stipulates that no acquisition proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908. For this purpose, the publication of a notification in the Gazette is complete only when the Gazette containing the notification is available to the public. In their circular dated 21 May, 1981, the Central Board of Direct Taxes had issued instructions that the notices should reach the Press at least 6 to 8 weeks in advance of the limitation date. The Committee, however, find that during the period from 1979-80 to 1982-83, in 25 cases acquisition proceedings could not be initiated owing to delay in notification. The sale consideration involved in

these cases was Rs. 36.46 lakhs, whereas the fair market value was Rs. 101.46 lakhs. In one case reported in the Audit Paragraph, the fair market value determined by the Departmental Valuation Officer was Rs. 3,90,000 against the declaration of Rs. 45,000 which only highlights the extent of under-statement. In this context, it is significant to note that initially the period was six months which was raised to nine months by the Income-tax (Amendment) Act, 1973 with retrospective effect from 15.11.1972. That cases of failure to initiate proceedings within the prescribed limit continue to occur only shows the need for more care. In paragraph 3.92 of their 7th Report (Sixth Lok Sabha), the Public Accounts Committee (1977-78) had recommended that Government should take early action to bring forward an amendment to enable all cases which had become time-barred being revalidated and re-opened. The Ministry of Finance had apprised the Committee in December, 1978 and again in December, 1980 that the proposed amendment was under consideration of Government. Although a period of over three years has since elapsed, the matter is still pending. The Committee would like Government to bring forward the proposed legislation without further delay.

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fair market value exceeding Rs. 25,000 is transferred for an apparent consideration, which is less than the fair market value by more than 15 per cent of the apparent monetary consideration. Indiscriminate selection of cases for initiating acquisition proceedings not only causes infructuous work in the Department but also results in unnecessary harassment to both the transferer/transferee of property. It is, therefore, important that cases for initiating acquisition proceedings are selected with utmost care. The fact that out of 53,310 cases in which acquisition proceedings were initiated upto 31.3.1983, as many as 26,116 cases had to be dropped indicates that the care had not been taken in selecting cases for initiating acquisition proceedings. The Committee would like to reiterate their earlier recommendation contained in paragraph 3.91 of their 7th Report (Sixth Lok Sabha) that in issuing notices of acquisition of immovable property, due caution should be exercised so that as far as possible only genuine cases of under-statement of value are proceeded against. This step would also make the job of the acquisition officers more manageable. The Committee cannot help feeling that so many notices would not have been issued had the lower formations followed the circular instructions issued by the Board scrupulously.

One common reason for subsequent dropping of acquisition proceedings given by the Ministry of Finance is that, according to the provisions of the Act, proceedings for acquisition have to be initiated within a period of nine months from the end of the month in which the instrument of transfer is registered. Although intimations of registration are required to be sent by the Registering Officers on a fortnightly basis, in actual practice longer time is taken. In order that the acquisition proceedings do not become time-barred, sometimes the competent authorities initiate acquisition proceedings even when they are not in possession of full facts establishing that conditions precedent for the order of acquisition exist. It has been mentioned in this connection that reports of the Departmental Valuation Cell are, in quite a number of cases, not received by the time the acquisition proceedings are initiated. It is only after the reports of the Departmental Valuation Cell are received that the difference between the fair market value and the apparent consideration is found in some cases to be not as large as it appeared to be in the first instance. Thus, the main reason for dropping the acquisition proceedings in 41 cases in Maharashtra, referred to in the Audit paragraph, was that the difference between the apparent consideration and the fair market value did not exceed 15 per cent or it exceeded only

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marginally. This has also been stated as one of the main reasons for dropping 55 cases in Bihar. Another reason given by the Ministry is that Form 37G furnished by the transferor/ transferee before the registering authority contains only bare details of location, area and the apparent consideration. It is only after acquisition proceedings are initiated that full facts come to light. The Committee feel that in the light of its experience gained so far, the Department should do some hard thinking and find a solution to the above problems. In particular, the Department may examine in what way the existing Form 37G needs to be revised so as to be more purposive.

92

9 3.34 Finance
(Revenue)

Proviso to Section 269C of the Act requires that before initiating acquisition proceedings, the competent authority shall record reasons for doing so. The Committee, however, regret to observe that in Madhya Pradesh, all the 56 cases referred to in the Audit paragraph had to be dropped as reasons for initiating the acquisition proceedings had not been recorded. The Committee find that in eight such dropped cases the fair market values were substantially in

excess of the apparent consideration, i.e. Rs. 25.60 lakhs as against Rs. 8.84 lakhs. The Committee take a serious view of this lapse. As to the remedial measures, the Committee have been informed that on discovery of these cases the Board issued instructions in May 1983 drawing attention of the competent authorities to the mandatory provisions of the Act regarding recording of reasons in writing, with direction to invariably record reasons in writing before initiating proceedings for acquisition. The Committee trust that the Board will see to it that the instructions issued by them in this regard are strictly complied with by the competent authorities. The Committee observe that the Central Board of Direct Taxes have also ordered an immediate review of all the proceedings for acquisition initiated from 1.4.1981 onwards to locate the instances wherein the proceedings were initiated without recording of reasons in writing. They have been informed that the results of this review have not yet been compiled. While the Committee hope that necessary corrective action would be taken in the light of the results of the aforesaid review, they need hardly emphasise the imperative need for strict compliance with the aforesaid mandatory provisions as their non-compliance results in only nullifying the whole work already done by the Department, necessitating re-initiation of such proceedings which may sometimes become barred by limitation. The Committee

1	2	3	4
			would like to be informed of the results of the review and the follow-up action taken by the Board pursuant thereto.
10	3.35	Finance (Revenue)	<p>The Committee are informed that the incumbent holding the charge of IAC, Acquisition, Madhya Pradesh, due to whose failure to comply with provisos of the proviso to Section 269C all the 56 cases mentioned in the Audit paragraph, had to be dropped was compulsorily retired on 23 December 1975 and later on reinstated on 18 October 1978 as Appellant Assistant Commissioner, Indore. He retired from service on 28 February 1979 prior to the detection of these cases. In these circumstances, the Ministry have stated that no departmental action has been initiated against him, nor is the same now contemplated. The Committee wish to make it clear that they consider the failure to comply with the mandatory provisions of proviso to Section 269C as a serious lapse. The present case only underscores the need for quick disciplinary action when such lapses come to light.</p>
11	3.49	-do-	<p>The Committee are perturbed over a phenomenal increase in the pendency of acquisition cases. As against 8,237 cases pending as on 1-4-1979, there were as many as 26,759 cases pending as on 31-3-1983. The Committee need hardly</p>

point out that the prolongation of proceedings not only causes undue harassment to the parties by keeping them in suspense but also generates new avenues of corruption. The Chairman, CBDT conceded during evidence that they were "also very unhappy about it." Such a heavy pendency not only points to the need for a review of the existing procedures prescribed for finalisation of acquisition proceedings but also all-out efforts for their liquidation. On the Committee's enquiring about the steps proposed to be taken to liquidate the pendency, the Ministry have stated that the Department is "Considering about introducing an action plan for partly liquidating these proceedings during the year commencing on 1 April, 1984." The Committee desire that the Ministry should introduce the proposed action plan without delay and implement it with vigour. The Committee would like to be apprised of the targets fixed in the action plan 1984-85 and the achievements made thereunder. The Committee would also like to be informed of the steps, if any, taken or proposed to be taken to streamline the existing procedure with a view to accelerating the pace of disposal of acquisition proceedings. At the same time, the Committee would also like Government to consider the feasibility of imposing a statutory time-limit for the

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disposal of acquisition orders, as in the case of other tax laws.

12. 3 50 Finance
(Revenue)

The six specific cases of Bombay charge highlighted in the Audit paragraph where the difference between the fair market value and the apparent consideration was over Rs. 20 lakhs, show that acquisition proceedings were not pursued by the acquisition officers for about four years after the issue of notices of acquisition prior to 1 April, 1979, till the omission was pointed out in Audit. The Chairman, CBDT admitted before the Committee that pursuance action in these cases was resumed on receipt of the draft Audit paragraph. The Committee are shocked to learn this. As for the latest position in these cases, it is seen that in one case proceedings have now been taken up, in two cases there has been a difference of opinion on the question of fair market value between the IAC (Acquisition) and the departmental valuers, necessitating a reference to the Chief Engineer (Valuation) to examine the question of correct fair market value. Order of acquisition under Section 269F(6) has since been passed in one of these cases. In yet another case, a reference has been made to the Ministry of Law to examine whether it would be appropriate to carry out the proceedings for acquisition even though the

1	2	3	4
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• cases responsibility for the lapse should invariably be fixed for appropriate action.

14, 4.21 Finance
(Revenue)

Section 269L, of the Income-tax Act, 1961, provides that the Inspecting Assistant Commissioner (Acquisition) may, for the purpose of initiating proceedings for the acquisition of immovable property or for the purpose of making an order in respect of any immovable property require a Valuation Officer to determine the fair market value of such property and report the same to him. For the purpose of determination of the value, the Valuation Officer has all the powers conferred under Section 38A of the Wealth-tax Act. Under the analogous provisions of the Wealth-tax Act and the Gift-tax Act such valuation by a Valuation Officer is binding on the assessing authority. This is not so in respect of valuation for acquisition proceedings. In the Department's view, it does not appear to be necessary to make the valuations by the Valuation Officers under Section 269L of the Income-tax Act binding on the competent authorities in the same manner as they are binding on the Wealth-tax Officer and Gift-tax Officer *inter alia* on the ground that the IAC (Acquisition), being an officer of the same rank as Appellate Assistant Commissioner, is considered to be sufficiently senior and knowledgeable to go into the merits of

the valuations made by the Valuation Officers who are quite often officers of junior ranks such as Assistant Engineer or Executive Engineer. The Committee cannot accept this approach as they feel that Valuation Officers are expert in their field work and the question of relative seniority or juniority should not be allowed to come in the way of acceptance of their valuation reports.

15.

4.22

Finance
(Revenue)

46 instances have been mentioned in the Audit Paragraph wherein either the acquisition proceedings were dropped without recording reasons and without giving any opportunity to the concerned Valuation Officers who had determined the fair market value or the Department deemed the Valuation Officers' reports as incorrect/erroneous and dropped the proceedings on the basis of valuation reports of approved valuers. The Department had conceded to audit that in certain cases the reasons might not have been on record, but held that the dropping of proceedings is entirely discretionary and cannot be challenged. The Committee have now been informed that the competent authorities have not given elaborate reasons in the 46 cases mentioned in the Audit paragraph for dropping of the proceedings. According to the Department, "one reasons for not enumerating the detailed reasons could be that the pro-

visions of Section 269F(7) do not require recording of detailed reasons since orders thereunder are not appealable". The Committee need hardly point out that the discretionary power vested in the competent authority has to be exercised in a manner that could carry conviction with all. The Committee find that the total number of cases in which the valuation made by the Valuation Officers were not accepted during the four-year period from 1-4-1979 to 31-3-1983 is 604 for all the Acquisition Charges except Amritsar and Jaipur for which figures have not been available. The possibility of excessive reliance having been placed on the reports of the registered valuers engaged by the parties, which are titled in their favour, cannot be ruled out in some cases. The Committee have been informed that the competent authorities have now been directed to record reasons in detail not only in the orders directing acquisition of property but also in cases where the proceedings once initiated are subsequently dropped. They have also been directed to consult the Valuation Officers and discuss the matter with them before rejecting or not acting upon the reports given by such Valuation Officers. The Committee would like the Department to ensure that these instructions are complied with in letter and spirit

16	4.23	Finance (Revenue)	<p>The Committee find that a proposal was made at a high level meeting of officers engaged in the administration of acquisition and valuation of immovable properties, convened in December, 1982 to examine the 'legal possibility of laying down instructions to the competent authority for compulsory reference to the Valuation Cell in cases of apparent consideration exceeding Rs. 2 lakhs in smaller cities and Rs. 3 lakhs in metropolitan cities and if possible such instructions'. The Committee would like Government to give a serious consideration to the above proposal.</p>
17	4.24	-do-	<p>The Committee find that in at least three cases out of the six mentioned in paragraph 4.2, the values estimated for acquisition proceedings have since been communicated by the I.A.C. (Acquisition) to the concerned Income-tax/Wealth-tax Officers assessing the Income/Wealth Tax in these cases. In one case, the value shown in the wealth-tax return being lower than even the apparent consideration, the wealth-tax assessments for assessment years 1971-72 to 1974-75 have been re-opened and are pending. In another similar case, as the original transaction dates back to October 1972, no further action is possible now. In yet another case, the assessee was carrying on the business of construction and therefore, the property in question being</p>

stock-in-trade was not shown separately in the wealth-tax return. In regard to subjecting the cases to levy of capital gains tax on the difference between the fair market value and apparent sale consideration, the Ministry have informed that in three cases the capital gains have been brought to assessment on the basis of the apparent consideration for sale. In so far as the levy of gift-tax is concerned, in one case, gift tax proceedings have been initiated and in respect of other two cases, the Ministry have informed that the assessing officers are fully aware of the initiation of acquisition proceedings and the fair market value estimated for the purpose of initiation of acquisition proceedings. The question of taking further action is reportedly under their consideration. The Committee would like to be informed of the further action taken in these cases. It is apparent that action in most of the cases is initiated only after the Committee are seized of the matter. They deplore such a tendency. The Committee desire that immediate action should invariably be taken as soon as such cases come to notice.

The facts narrated in the preceding paragraph show that in the matter of correlation in assessments under various direct tax laws on the one hand and coordination between competent authorities and assessing officers on the other, the position is far from satisfactory. The Committee are not satisfied with the explanation of the Ministry of Finance that

the officers in the Department are generally expected to suitably coordinate with each other. In the opinion of the Committee, this explanation only betrays complacency on the part of the Ministry. The Committee have now been informed that the Board are considering laying down some specific guidelines for coordination between competent authorities and assessing officers. The Committee desire that these should be issued without any further loss of time. The Committee find that in two cases, the properties were already valued by the Departmental Valuation Officers for purposes of Capital gains tax/wealth-tax. The proposed guidelines may specifically require the competent authority to obtain copies of such reports, where available, before considering a fresh valuation for acquisition purposes. As under-statements in the value of property detected during acquisition proceedings give an idea of the extent of black-money involved, the Committee desire that the competent authority should be required to invariably intimate the value determined to the jurisdictional assessing officers of both transferor and transferee for appropriate action.

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4.26

Finance
(Revenue)

The discussion in the preceding paragraphs only reinforces some of the Committee's earlier findings* that the multi-

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- * 101st Report (7th Lok Sabha) Paragraph 3.79
 - 181st Report (7th Lok Sabha) Paragraph 3.16
 - 203rd Report (7th Lok Sabha) Paragraph 1.25

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tude of legal provisions. modes of valuation and valuation authorities in the valuation of same properties has created a situation where property taxes have become a matter of great harassment as well as abuse. In the circumstances, the Committee reiterate their earlier views that the only solution to overcome this problem is to set up an autonomous valuation authorities for the valuation of same properties, which could apply a common principle of valuation and determine objectively the values of all real estate properties at least in the urban centres of the country. The valuation certificates of the authority should be binding for all taxes relating to that property. The Committee were informed in October, 1982, that the attention of the Economic Administration Reforms Commission had specifically been drawn to the above recommendation of the Committee. They desire that an early decision should be taken in the matter.

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The Committee find that up to 30.11.1982, only 15 immovable properties had been acquired by the Department. In these properties, against the apparent consideration of Rs. 15.15 lakhs, the fair market value estimated was Rs. 24.38 lakhs. Compensation has been paid for 9 properties at 15% above the apparent consideration. The Act only provides that

once the possession of the property is taken over, it shall vest absolutely in the Central Government. The Central Board of Direct Taxes had issued guidelines on 18 May, 1977 to the effect that properties which are not required for Government use would be sold, as early as possible, in the open market so that Government's funds are replenished from time to time and there is no undue burden on the exchequer in providing funds for payment of compensation for properties acquired. The Committee, however, note that even prior to the issue of these guidelines, a decision had already been taken that the Central P.W.D. would take over the immovable properties in question from the Revenue authorities after the forfeiture had become final. This was communicated to the Ministry of Finance on 18 November, 1976. The Committee would like to know what prompted the Board to issue such guidelines for sale when a decision had already been taken to hand over these properties to the C.P.W.D. The Committee find from the statement of 15 properties so far acquired that one of the properties for which a compensation of Rs. 1,84,000 has been paid is tenanted and the tenants are paying only a monthly rent of Rs. 440/- to the Executive Engineer. 'K' Division, C. P. W. D., New Delhi. Another property, a bungalow in Jalandhar, is let out to the Income-tax Officer. Yet another property in Delhi is still in possession of the Commissioner of Income-tax and efforts are

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being made to sell the same. Two of the properties are plots in Meerut and it is noticed that the C.P.W.D. has not yet physically taken possession of these plots. The Member, C.B.D.T. appreciated during evidence the suggestion of the Committee for auctioning the properties to vouchsafe the correctness of acquisition in the eyes of the public, for the fair market value would be even more than what was estimated at the time of initiation of proceedings. In any case, the Committee trust that the properties acquired under the Act will be utilised in the best interest of Government. All that the Committee are concerned with is that prompt decisions should be taken by Government in regard to their retention/disposal. In case, however, it is decided to dispose of any of the acquired properties, the Committee desire that these should be disposed of through open auction. The Committee are positive that in no case any of the acquired properties should be allowed to be used for any individual officer of the Department.

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