

**PUBLIC ACCOUNTS COMMITTEE  
(1969-70)**

**(FOURTH LOK SABHA)**

**HUNDRED AND TWENTY-FIRST REPORT**

**(Charitable and Religious Trusts)**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*April, 1970/Vaisakha, 1892 (S)*

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### PART II\*

Minutes of the sitting of the Public Accounts Committee held  
on 29-4-1970 (AN)

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

**PUBLIC ACCOUNTS COMMITTEE**  
(1969-70)

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**Shri A. L. Rai—Deputy Secretary.**

**Shri K. Seshadri—Under Secretary.**

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\*Cessd to be a Member of the Committee w.e.f. 3rd April, 1970.

## INTRODUCTION

1. I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Twenty-First Report (Fourth Lok Sabha) on Charitable and Religious Trusts.

2. The question of tax avoidance through formation of charitable and religious trusts was considered by the Committee at their sittings\* held on 19-12-1969 (AN) and 5-1-1970 (AN). The Committee considered and finalised this Report at their sitting held on the 29th April, 1970 (AN). Minutes of this sitting form Part II\*\* of the Report.

3. A statement showing the summary of the main conclusions| recommendations of the Committee is appended to the Report (Appendix). For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of the matter by the Comptroller and Auditor General of India.

5. The Committee would also like to express their thanks to the officers of the Ministry of Finance for the cooperation extended by them in giving information to the Committee.

ATAL BIHARI VAJPAYEE,  
Chairman,  
Public Accounts Committee.

NEW DELHI;  
April 29, 1970  
Vaisakha 9, 1892 (S).

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\*Vide pages 10-16 of Hundred and seventeenth Report of the public Accounts Committee on Direct Taxes part II Minutes (Cyclostyled copy).

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

## **REPORT**

### **(i) Introductory**

1.1. During the course of evidence on paragraph 55(a) of Audit Report (Civil) on Revenue Receipts, 1969, the Committee raised the question of exemptions enjoyed by charitable trusts under the Income-tax Law. The present Report attempts an analysis of some of the issues arising out of this question in the light of information that has been made available to the Committee.

1.2. Religious and charitable trusts are a manifestation of the instincts of piety and benevolence of the human race. Almost all countries very rightly recognise the need to encourage such philanthropy. This recognition has led to properties applied for religious and charitable purposes being excluded from the rule against perpetuity and an exemption from Income-tax liability being given to such properties. In India, the concession under the Income-tax law has been a regular feature right from 1886. Under the present Act, any income derived from property including a business undertaking held under trust wholly for charitable or religious purposes is exempt from Income-tax and Super-tax, subject to certain restrictive stipulations. Any voluntary contributions received by such Trusts and institutions are also exempt from tax, subject to certain conditions. Such a donation given to an institution or fund established in India for a charitable purpose qualifies for relief from Income-tax under the provisions of Section 80G. Likewise, any donation for a charitable purpose by a company in which the public are not substantially interested which will earn relief under Section 80G is allowed to be deducted from its profits for finding out whether the provisions of Section 104 are applicable or not (*vide* Section 109).

### **(ii) Trusts as a means of tax avoidance**

1.3. While trusts fulfil a laudable social objective, they have also been used as a device to avoid tax. This has been a universal phenomenon. In U.K., the Royal Commission on Taxation of Profits and Income called attention to this problem in a report submitted in 1955. They made the following observations:

"In our view what is amiss in the present system is not the idea of giving Income-tax relief in respect of charity but the undue width of the range of what ~~comes~~ as a charity for this purpose. It is the vagueness of definition or, more precisely, the absence of definition which provokes criticism for it enables the very substantial benefits of exemption to be claimed by activities which, in extreme

- (ii) where the property is held under trust or other legal obligation created after such commencement, and the income therefrom is applied without the taxable territories to charitable purposes which tend to promote international welfare in which India is interested, the Central Board of Revenue may, by general or special order, direct that it shall not be included in the total income;
- \* (b) in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either—
  - (i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or
  - (ii) the work in connection with the business is mainly carried on by beneficiaries of the institution;
- (c) if it is applied to purposes other than religious or charitable purposes or ceases to be accumulated or set apart for application thereto in which case it shall be deemed to be the income of the year in which it is so applied or ceases to be so accumulated or set apart.
- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes."

1.8. Commenting upon the loopholes in the then prevailing law relating to exemption of income of charitable trusts, the Direct Taxes Administration Enquiry Committee in their Report (1953-54) observed as follows:

"The existing provisions relating to exemption of the income of charitable trusts under Section 4(3)(i) of the Income-tax Act contain certain loopholes which help the formation of pseudo charitable trusts."

"Under the law as it is at present, the Income of a trust will be exempt from tax so long as the ultimate objects of the trust are of a religious or charitable character and so long as the income is applied or accumulated for being ultimately applied to such religious or charitable purposes. Thus, even though for long periods of time, the trust funds may be invested and utilised for furthering the donor's business interests, the income of the trust fund would,

\*In introduced by the Income Tax (Amendment) Act, 1953.

...etheless, continue to enjoy exemption from tax. In a reported case, where an industrialist created a trust for charitable purposes but stipulated that for a period of 18 years the trust funds and the income therefrom was to be invested in the shares of a company through which the donor controlled other companies in which he was interested, it was held by the Court that the income of the trust still enjoyed exemption from tax under Section 4(3)(i), because the income of the trust property was ultimately set apart for charitable purposes. In this way the objects of a trust as also the object of granting exemption under Section 4(3)(i) of the Income-tax Act, are being defeated."

"Another wide loophole rests in the interpretation of the word 'property', whereunder a trust could carry on business which had nothing to do with the primary object of the trust itself and still get exemption in respect of the income from this business. Courts have held that business can also be 'property' held under trust. Certain amendments in Section 4(3)(i) of the Income-tax Act were made through the Indian Income-tax (Amendment) Act, 1953 to try to ensure that income of a 'charitable' business got exemption only if the business was carried on on behalf of a religious and charitable institution and was carried on in the course of implementing a primary purpose of the institution or the work of the business was mainly done by the beneficiaries of the Institution. This was done by adding proviso (b) to Section 4(3)(i) of the Indian Income-tax Act. That proviso says that the income derived from property held under trust for religious or charitable purposes shall not be exempt and shall consequently be included in the total income."

"Courts have, however, taken the view that the above two conditions (in the proviso) for getting exemption apply only where business is carried on on behalf of a religious or charitable institution and not where the business itself is held upon trust, and that as such the income of such a business would still be entitled to exemption under the substantive part of Section 4(3)(i) despite non-fulfilment of the conditions set out in the proviso."

"Some recent judicial decisions have also held that if the primary object of a trust was of a charitable nature, the fact that there was a provision in the trust deed that in carrying out the trust the needs of the relations and family members of the donor would be given priority, would not result in the trust being denied the exemption under Section 4(3)(i) of the Income-tax Act. Thus, a trust created



by a person for the purpose of giving education, medical aid and monetary help for various other purposes, to the poor, may still enjoy exemption under Section 4(3)(i) of the Income-tax Act even if, by virtue of a clause in the trust deed, the trustees are asked to give preference to the poor relations of the donor and even if in so doing the entire income of the trust is spent only on the relations of the donor."

1.9. To plug the above loopholes, the Direct Taxes Administration Enquiry Committee made the following suggestions for the amendment of the law:

- "(a) The accounts of all charitable institutions with the exception of those audited under the requirement of any other law or regulation, having an income of Rs. 5,000 or over, must be compulsorily audited and a certificate from the auditor in a form to be prescribed should be furnished to the assessment officer in support of its claim for exemption from tax.
- (b) A charitable trust carrying on a business which is not in the course of carrying out the primary object of the trust itself should not be entitled to the exemption under Section 4(3)(i) of the Income-tax Act and this should be made clear in the substantive part of the Section itself.
- (c) Where a trust deed contains a clause that the funds of the trust should also be utilised for the relations and family members of the donors or that in carrying out the charitable objects of the trust priority should be given to such relations or members, exemption should not be available under Section 4(3)(i) of the Income-tax Act, or under Section 5(1)(i) of the Wealth-tax Act.
- (d) If any charitable trust had invested, at any time during the previous year, in the shares or capital of an industrial or commercial undertaking, in which the donor was himself substantially interested, an amount more than five per cent of the paid-up capital of that undertaking, then the dividends or share income from such investments should not be eligible for exemption and should be taxed in the hands of the trustees.
- (e) As regards the other incomes of the trust, they will be exempt if the conditions under Section 4(3)(i) of the Income-tax Act are fulfilled, but if more than 25 per cent of such income of a trust is set apart for being spent subsequently for charitable purposes, the amount set apart in excess of 25 per cent should be taxed in the year in which it is so set apart. The Central Board of Revenue should,

however, be empowered to increase this percentage in fit cases.

- (f) If on enquiries into the use to which the properties belonging to a charitable trust were being put, the assessing officer found that they were being utilised (i) by the donor or his nominees or any of his family members or, (ii) by a trustee or his nominee or his family, the properties should not be allowed the exemption admissible under Section 5(1) (i) of the Wealth-tax Act, unless in the case of (ii) above, the occupation of the property by the trustee was necessary for carrying out the objects of the trust. The assessing officer should also ensure that gift-tax is recovered in respect of the properties enjoyed by such persons."

1.10. The law relating to exemptions of incomes of charitable trusts was amended in the light of the Direct Taxes Administration Enquiry Committee. The major changes brought about by the 1961 Act were as follows:

- (i) Under the 1922 Act, charitable and religious trusts enjoyed exemption without any restriction upon accumulation of income. The new Act provided that any income accumulated in excess of 25 per cent or Rs. 10,000 whichever is greater, would be taxable under Section 11(1) (a) unless the following special conditions regarding accumulation set out in Section 11(2) were fulfilled:
  - (a) The person in receipt of the income has, by notice in writing given to the Income-tax Officer, specified the purpose for which the income is being accumulated or set apart and the period for which the income is to accumulate or set apart. But in no case, the period is to exceed ten years.
  - (b) The accumulated income is invested in any Central Government security or any other security approved by the Central Government in this behalf.

If the accumulated income is not applied to the purposes for which it was accumulated within one year of the expiry of the 10 year period, the exemption would be forfeited and the accumulated income would be chargeable to tax.

- (ii) Any charitable trust which is created on or after the 1st April, 1962 would not be entitled to exemption if (a) the trust property is held in part only for charitable purposes, or (b) the trust is for the benefit of any particular religious community or caste, or (c) any part of the income enures directly or indirectly for the benefit of

the settlor or his relations. A religious trust which is created on or after the 1st April, 1962 would likewise be not entitled to exemption. The 1922 Act did not withhold exemption to any trust on any of these three grounds.

- (iii) Under the 1922 Act as amended, if a business was carried on on behalf of a charitable or religious institution, its profits were exempt from tax only if certain special conditions were fulfilled. These were; the business was carried on in the course of the actual carrying out of a primary purpose of the institution or the business was mainly carried on by beneficiaries of the institution. Under the new Act, the income of a business undertaking held under a charitable or religious trust qualifies for the same exemption as income from any other species of property, subject only to the condition that if the income of the business computed in accordance with the provisions of Act relating to assessment is in excess of the income shown in the accounts of the business, such excess is deemed to be applied to non-charitable purposes and is chargeable to tax accordingly.
- (iv) Under the 1922 Act any object of "general public utility" was regarded as a charitable purpose whereas the new Act has inserted a qualification—the object should not involve "the carrying on of any activity for profit."

#### (iv) Donations for charitable purposes

1.11. Section 80-G of the Indian Income-tax Act, 1961, also provides for donations for "charitable purposes" being deducted as specified from an assessee's income. The 1922 Act gave exemption from tax to donations to any institution or fund established in India for a charitable purpose and approved by the Government of India. The lists of such institutions approved by Government were published by Government from time to time. With effect from the assessment year 1953-54; Section 15B of the 1922 Act was amended dispensing with need for Government's approval of the institution or fund. Relief, therefore, became admissible in respect of donations to any non-communal charitable fund or institutions established in India, provided it fulfilled some specified conditions. Up to the assessment year 1967-68, the relief was in the form of rebates at the average rate of tax (including Super-tax for certain categories of assesseees) from the tax payable on the donor's total income. From the assessment year 1968-69, the donations to charitable funds and institutions, made within specified limits, are totally excluded from the total income of the donors. [vide Section 15B of the Income-tax Act, 1922 and Sections 88 and 80G of the Income-tax Act, 1961].

(v) Definition of the term 'charitable purpose'.

1.12. In Section 2(15) of the Income-tax Act, 1961, the expression "charitable purpose" has been defined as follows:

"Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

1.13. It would be observed that charitable purposes have been grouped under four headings: (a) Relief of the poor, (b) Education, (c) Medical Relief, (d) Any other object of general public utility not involving the carrying on of any activity for profit. Commenting on the connotation of the last group, a leading commentary\* on the subject states—

"Any other object of general public utility' are very wide words. Their exact scope has not yet been and perhaps cannot be defined . . . . The definition seems to include all objects of general public utility in the category of charitable purposes except those 'involving the carrying on of any activity for profit . . . . ."

1.14. The Supreme Court's decision in *C.I.T. vs. Andhra Chamber of Commerce* is the leading authority on the concept and construction of 'any other object of general public utility'. In that it was held that a Chamber of Commerce which is incorporated as a company under Section 25 of the Companies Act, 1956, without a profit motive, with the object of promoting trade, commerce and industry is established for charitable purpose. Like such a company, incorporated without a profit motive, with the object of running and maintaining a stock exchange\*\* or promoting home industries, arts and crafts† or a society whose object is the general improvement and promotion of agriculture†† or to effect economic amelioration by imparting technical education, setting up model industries and reducing unemployment@ is established for charitable purposes . . . . ."

1.15. The Committee desired to know the total number of charitable trusts and endowments in India which enjoyed basic exemption and the total tax involved in such exemptions. In a written reply, the Ministry have stated:

"After the amendment of Section 15B of the Income-tax Act, 1922 with effect from 1st April, 1953 the Central Government is not required to approve an institution or fund set

\*"Income Tax"—Kanga and Palkiwala  
(Sixth Edition—Volume 10).

\*\*Hyderabad Stock Exchange Ltd. *V.C.I.T.*  
(1967) 66 I.T.R. 195.

†*C.I.T. v. Bengal Home Industries Association* 1963 48 I.T.R. 181.

††*Royal Agricultural Society v. Wilton* & *T.C.Ps. v. I.R.V. Yorkshire Agricultural Society*  
13 T.C. 58 (C.A.)

@ *C.I.T. v. Radhaswami Satsang Sabha* (1954) 25 I.R. 472, 513.

up for charitable purposes. Thereafter, the Commissioners of Income-tax have been approving trusts and other charitable institutions for the purposes of the grant of exemption u/s 4(3)(i) of the Income-tax Act, 1922 and Section 11 of the Income-tax Act, 1961. As such, the information is not available with the Ministry. The Commissioners of Income-tax will be able to furnish the total number of charitable endowments and trusts enjoying basic exemption in their charges, but it may be quite impossible for them to indicate the amount of tax involved in such exemptions."

1.16. During evidence, the Committee enquired whether there was any system of registering charitable trusts. The representative of the Board stated: "There is no system of registering. But I may explain. The procedure is this. When for the first time, a charitable trust comes up for assessment, the case is, I think, submitted to the Commissioner for checking whether the grant of exemption is correct or not."

1.17. The Finance Secretary added: "Most of them may have to register as societies. We will have probably to go to the State Governments to collect this information as to what are the trusts which have been actually registered. A great number of these may have been so registered."

The Committee desired to have an idea of the extent of tax evasion through charitable trusts. The representative of the Board stated: "I do not have any statistics to show that. This sort of evasion is practised through trusts, where donations are given without disclosing the sources of money. We do attempt to find out or check up. As to how many such cases we have come across, we do not have statistics on this."

The Finance Secretary added: "There is a great deal of room for evasion through the medium of trusts. That the extent of evasion is large is a recognised fact even without going into the collection of facts as to what are they actually doing and so on. I think we are aware of this fact that this is a loophole and so evasion is possible. This is a matter which of course is now engaging the attention as how to tighten this up by law. The matter is under examination."

1.18. In a subsequent note furnished to the Committee, the Ministry of Finance have stated:

"On 30-4-1963, further instructions were issued under the Board's F. No. 20/26/62-IT(AI), directing that a register of all cases in which exemption under Section 11 of the Income-tax Act, 1961 is granted, be maintained in each Commissioner's charge. The latest instructions were issued on 18-4-1969 under the Board's F. No. 20/3/69-IT(AI), directing that exemption certificates should be initially made valid for only one assessment year and only after a scrutiny of the accounts of the first year should a certificate be issued for the subsequent three years. Further, renewals are to be given only after careful examination of the whole case again."

1.19. The Committee desired to know whether any action was taken against a person who after accumulating the income from property held for charitable or religious purposes for a number of years—less than 10 years—suddenly winds up the institution. The representative of the Board stated: "These trust deeds are to be irrevocable. You cannot wind up. If it is misappropriated, then it is utilised for a purpose which is not prescribed here. It would be liable to be taxed in the year in which it is misappropriated."

1.20. The Finance Secretary added: "Misappropriation is a separate question. But if under any law it is possible to wind up the trust before the expiry of the period and for any person connected with that trust, to get money into his own hands, it would certainly be taxable in his hands. From that point of view, he does not escape the tax." Asked under what provision of the law the aforementioned action could be taken against the assessee, the representative of the Board promised to examine the legal position.

#### *Trusts connected with Industrial Houses*

1.21. The Committee desired to know the number of charitable trusts connected with big industrial groups. In their reply, the Ministry of Finance have stated:

"The information presently available concerns 45 trusts, each with a corpus of over Rs. 5 lakhs, in which 25 per cent or more of the total corpus is invested in public/private companies and other concerns connected with some group of business."

1.22. From the data furnished by Government, the Committee observe that the total amount in the corpus of the above 45 trusts was about Rs. 24.11 crores. Out of these 45 trusts, the investment of 32 in the industrial concerns of the group was more than 50 per cent of the total amount in the corpus. The investment of quite a number of them was more than 90 per cent of the entire amount in the corpus.

1.23. The Committee enquired what safeguards had been provided against tax evasion in the following category of cases. An individual transfers the shares held by him for being kept in a trust's name but keeps full control over the profits accruing from the shares nominally shown to be accumulated in the accounts of the trust. The representative of the Board stated: "The point has to be looked into. This does leave that viability."

1.24. The Committee drew attention to the observations of the Tax Evasion Enquiry Committee about concealed income "masquerading as donations" to trusts "from a large number of ghost or anonymous donors". The representative of the Board stated: "What you say is correct. Under Section 12, particularly where the Trust is created and donations given or contributions given, those contributions are not liable to tax. I invite attention to Section 12(1)."

1.25. The Committee desired to know the checks exercised by the Income-tax Department to guard against tax evasion in abuse of the exemption provisions of the Income-tax law in regard to charitable trusts. They desired to know in particular the steps taken by the Department to ascertain whether the exempted income had in fact been applied for the avowed purposes. In a note furnished to the Committee, the Ministry of Finance have stated:

"The officers of the Income-tax Department are expected to find the factual position."

"Instructions were issued by the Board under the C.B.R. Circular No. 1 (XXIII—8) D of 1955 dated 10-1-1955 directing that the cases of exemption to trusts should be reviewed and the accounts of the trusts for the years for which they had enjoyed exemption scrutinised and that if the scrutiny disclosed that certain income did not actually qualify for exemption under Section 4(3) (i), steps were taken to bring such income to tax."

1.26. Under clauses 5, 6 and 20 of the Finance Bill, 1970 it is proposed to effect important changes in the provisions relating to accumulation and application of income of charitable and religious trusts. The following extracts from the Memorandum explaining the provisions in the Finance Bill, 1970 explain the position:

"The tax concessions (such as exemption of accumulated income) have facilitated accumulation of tax exempt funds with charitable and religious trusts and such funds are often used for acquiring control over industry and business. Further, although the law provides for forfeiture of the exemption in a case where the income of a charitable trust or institution enures, or the income or property of the trust or institution is used or applied for the benefit of the author of the trust or founder of the institution, these provisions have not been effective in preventing indirect benefits being provided to such author or founder out of the trust funds in a variety of ways. With

a view to checking these abuses and reducing the scope for the use of tax-exempt funds of charitable and religious trusts and institutions to acquire control of industry and business, it is proposed to make certain changes in the provisions relating to the exemption from tax of the income of charitable and religious trusts, as explained in the following paragraphs.

- (i) Exemption from tax will be allowed only in respect of income actually applied to the purposes of the trust in India in the same year or within a period of 3 months immediately following. Any income which is not so applied to the purposes of the trust but is accumulated or set apart for future application to such purposes will be subjected to tax. The existing provision for exemption from tax of accumulations of such income upto 25 per cent. of the income of the trust or Rs. 10,000, whichever is higher, is being dropped altogether.
- (ii) The existing provision for accumulation of income for a 10-year period with the permission of the Income-tax Officer and subject to certain requirements regarding investment of the funds so accumulated in Government securities or other approved securities will, however, continue.
- (iii) The exemption from tax will be forfeited, in the case of a trust or institution created or established after 31-3-1962, if under the terms of the trust or the rules governing the institution, any part of the trust income enures for the direct or indirect benefit of the author of the trust, or founder of the institution or certain persons connected with them. In the case of a trust or institution, whenever created or established, the exemption will be forfeited also where the trust income or property is used or applied during the relevant year for the direct or indirect benefit of such persons. (This disability will not apply in the case of a trust or institution created or established prior to 1-4-1962, if the use of the trust income or property is in compliance with a mandatory provision in the terms of the trust or rules governing the institution).
- (iv) In particular, the trust income or property will be regarded as having been used or applied for the benefit of such persons if the trust or institution engages in certain categories of transactions. These are broadly:
  - (a) lending of the income or property of the trust or institution to any one of the specified persons without either adequate security or adequate interest or both;
  - (b) making available land, building or other property of the trust or institution, for the use of any of the specified



persons without charging adequate rent or other compensation;

- (c) payment of excessive remuneration to any of the specified persons for services rendered by him to the trust or institution;
  - (d) making the services of the trust or institution available to any of the specified persons without adequate remuneration or other compensation;
  - (e) purchase of shares, securities or other properties for the trust or institution from any of the specified persons for more than adequate consideration;
  - (f) sale of shares, securities or other property of the trust or institution to any of the specified persons for less than adequate consideration;
  - (g) diversion of a substantial portion of the income or property of the trust or institution in favour of any of the specified persons;
  - (h) investment of the trust funds in any concern in which any of the specified persons has a substantial interest.
- (v) The persons specified for the purposes of the above mentioned transactions are (a) the author of the trust or founder of the institution; (b) any person who has made a substantial contribution to the trust or institution; (c) where such author, founder or person is a Hindu undivided family, any member of the family; (d) any relative of any such author, founder, person or member; and (e) any concern in which any of the above mentioned persons has a substantial interest. A person will be regarded as having a substantial interest in a concern if, in a case where the concern is a company, equity shares in the company carrying not less than 20 per cent of the voting by him and beneficially owned by such person or partly by him and partly by other such persons; and in any other case, where such person is entitled, or such person and one or more of other such persons are entitled, in the aggregate, to not less than 20 per cent of the profits of the concern. Where the trust funds are invested in any concern in which any of the specified persons has a substantial interest and the quantum of the investment does not exceed 5 per cent of the capital of the concern, the trust or institution will forfeit the exemption from tax only in respect of the income arising from such investment.
- (vi) For the effective enforcement of the new provisions as stated earlier, it is being specifically provided that it will

be obligatory on the part of the persons in charge of charitable or religious trusts or institutions to furnish a return in respect of the income of the trust or institution in all cases where the total income of the trust or institution, without taking credit for the exemption from tax, exceeds the minimum taxable limit. Such a return has to be furnished in the form to be prescribed in the Income-tax Rules and verified in the prescribed manner and shall set forth such other particulars as may be prescribed in the said rules. The return will be due by the 30th June of the assessment year, or later date as in the case of other tax-payers. Information contained in such return may be made available by the Commissioner of Income-tax, to a person who applies for it, in accordance with the existing provisions in the law and subject to the usual conditions.

- (vii) These provisions are being made effective from 1st April, 1971, i.e., in relation to current incomes of the financial year 1970-71 or other corresponding accounting year relevant to the assessment year 1971-72."

1.27. During the course of evidence in December last, the Committee expressed concern over the problem of tax avoidance through formation of trusts. In a note furnished to the Committee, the Ministry of Finance have, *inter-alia* stated: "Taking due notice of the importance attached by the Committee in the course of the evidence given by this Ministry before them on December 19 and 22, 1969 to the problem of trusts in general, the Government have since set up a Commission under the Chairmanship of Shri K. N. Wanchoo, ex-Chief Justice of the Supreme Court, which will study the problem of trusts, 'inter alia' others."

1.28. The following are the terms of reference of the Commission:

"The Committee will:

- (a) recommend concrete and effective measures;
  - (i) to unearth black money and prevent its proliferation through further evasion,
  - (ii) to check avoidance of tax through various legal devices, including the formation of trusts, and
  - (iii) to reduce tax arrears;
- (b) examine various exemptions allowed by the Tax Laws with a view to their modification, curtailment, or withdrawal;
- (c) indicate the manner in which tax assessment and administration may be improved for giving effect to all its recommendations."

1.29. The Committee recognise that trusts serve a very laudable social objective. At the same time unscrupulous elements have been and continue to employ them as tax-dodging devices. This is a phenomenon that is universally prevalent. In U.K. a Royal Commission which investigated the problem found that a number of trusts managed to avoid tax, though they were conducting activities which "have no real connection with the idea of charity at all". In U.S.A., the Ways and Means Committee of the House of Representatives pointed out as recently as 1969 that "unlimited" deduction on account of charitable contributions "has allowed a small number of high income persons to pay little or no tax on their income."

1.30. In India, the problem of tax avoidance through trusts has been the subject matter of investigations on a number of occasions. As a result, changes have also been made in the tax statute. However, the problem continues to elude a satisfactory solution. Following certain recommendations made by the Direct Taxes Administration Enquiry Committee in 1958-59, the provisions in the Act relating to trusts were overhauled. While this might have improved the position, it still left loopholes. The Tax Evasion Enquiry Committee pointed out in 1968 that "trusts" continue to be used as one of "tax-dodging" devices. They went on to say: "Charitable trusts are created with a corpus of concealed income masquerading as donations from a large number of ghost or anonymous donors. Exemption is obtained in regard to the income of these trusts, although a suitable portion of the trust funds and income, in fact, remains at the disposal of the donor himself through handpicked assesseees. Even businesses are carried on by such trusts created ostensibly for charitable purposes."

1.31. In what manner trust funds are deployed would be evident from the data furnished to the Committee (which unfortunately is not complete). There are 45 trusts connected with industrial houses, each with a corpus of funds of over Rs. 5 lakhs. Their total funds amounted to Rs. 24.11 crores. 32 of these trusts have invested 50 per cent of their funds or more in concerns managed by the connected industrial houses. In some cases the investment amounted to as much as 90 per cent of the funds of the Trust.

1.32. The Committee note that a number of changes are being proposed in the tax statute through the Finance Bill, 1970. This should rectify the situation to some extent. However, the dimensions of the problem being what they are, a comprehensive study by Government is clearly indicated. The Committee note that, after evidence on this point was taken by them, Government have constituted a Commission to recommend concrete and effective measures *inter alia* "to unearth black money" and "to check avoidance of tax through various legal devices, including the formation of trusts." The Committee have no doubt that this Commission will examine the problem of

trusts in all its aspects. The following points which have a bearing on this problem call for investigation:

- (i) Whether it would not be necessary to have a system of registration of trusts with the Income-tax Authorities, in order that their activities could be watched.
- (ii) Whether it would not be desirable to have a system of compulsory auditing of the accounts of trusts having income above certain stipulated minimum limits.
- (iii) Whether the term 'charitable purpose' occurring in the Income-tax Act, which is at present rather loosely defined, could be made more precise in scope, so that it applies only to cases of genuine charity.
- (iv) Whether the existing provisions in the Act relating to accumulation of funds with trusts leave scope for tax avoidance and if so, how the position should be rectified.
- (v) What procedures would be necessary to track down trusts constituted with concealed income donated by "ghost or anonymous donors."
- (vi) Whether, in cases where the income and/or property of a trust is found to have been used for purposes not germane to the objects of the trusts, the assessee concerned should be made liable to pay not only income-tax but also wealth-tax.

1.33. The Committee would like to make it clear that it is not their intention that the law should be made so draconian as to discourage the growth of genuine trusts or charities. Traditionally, from ancient times these institutions have served as a medium for genuine philanthropy in the country and have, by and large, met to some extent not only the requirements of the poor and needy sections of the population but have also contributed to the advancement of health, education and technology. The Committee therefore feel that the law should continue to provide a congenial climate for the growth of these institutions.

NEW DELHI;  
April 29, 1970.

Vaisakha 9, 1892 (S).

ATAL BIHARI VAJPAYEE,  
Chairman,  
Public Accounts Committee.

## APPENDIX

### Summary of Main Conclusions/Recommendations

S. No.	Para	Ministry/ Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1	1.29	Finance	<p>The Committee recognise that trusts serve a very laudable social objective. At the same time unscrupulous elements have been and continue to employ them as tax dodging devices. This is a phenomenon that is universally prevalent. In U.K. a Royal Commission which investigated the problem found that a number of trusts managed to avoid tax, though they were conducting activities which "have no real connection with the idea of charity at all". In U.S.A., the Ways and Means Committee of the House of Representatives pointed out as recently as 1969 that "unlimited" deduction on account of charitable contributions "has allowed a small number of high income persons to pay little or no tax on their income."</p>
2	1.30	Po	<p>In India, the problem of tax avoidance through trusts has been the subject matter of investigations on a number of occasions. As a result, changes have also been made in the tax statute. However, the problem continues to elude a satisfactory solution. Following certain recommendations made by the Direct Taxes Administration Enquiry Committee in 1958-59, the provisions in the Act relating to trusts were overhauled. While this might have improved the position, it still left loopholes. The Tax Evasion Enquiry Committee pointed out in 1968 that "trusts" continue to be used as one of "tax-dodging" devices. They went on to say: "Charitable trusts</p>

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