P.A.C. No. 160

PUBLIC ACCOUNTS COMMITTEE
(1967-68)

SEVENTH REPORT

(FOURTH LOK SABHA)

[Action taken by Government on the Recommendations of the Public Accounts Committee contained in their 44th and 46th Reports (Third Lok Sabha) relating to Revenue Receipts.]

LOK SABHA SECRETARIAT
NEW DELHI

November 1967/Kartika 1889 (Saka)

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CORRIGENDA TO THE SEVENTH REPORT OF P.A.C.(1967-68) PRESENTED TO THE LOK SABHA ON 16TH NOVEMBER, 1967.

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(1967-68)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this 7th Report on the Action Taken by Government on the recommendations of the Committee contained in their 44th and 46th Reports (Third Lok Sabha) relating to Audit Report (Civil) on Revenue Receipts.

2. On 27th June, 1967, an "Action Taken" Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports.

The composition of the Sub-Committee is as follows: —

1. Shri D. K. Kunte	Convener.
2. Shri C. K. Bhattacharyya 3. Shrimati Tarkeshwari Sinha 4. Shri M. C. Shah 5. Shri B. K. P. Sinha	Members

3. The Draft Report was considered and adopted by the Sub-Committee at their sitting held on 4th October, 1967 and finally adopted by the Public Accounts Committee on the———1967.

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

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

NEW DELHI;
November 13, 1967
Kartika 22, 1889(S).

M. R. MASANI,
Chairman,
Public Accounts Committee.

CHAPTER I

GENERAL

In this Report the Committee deal with action taken by Government on the recommendations contained in their 44th and 46th Reports (Third Lok Sabha), which were presented to the House on the 4th March, 1966 and 29th March, 1966, respectively.

1.2 The number of recommendations contained in each Report and the number out of them to which interim or no replies have so far been received are as follows: —

No. of Report	Date of presentation	Total No. of Recommendations	No. of Recommendations to which only interim replies have been received
44th	4-3-1966	62	2
46th	29-3-1966	83	3

1.3 It will be seen that interim replies have been received in respect of 2 recommendations (S. Nos. 28 & 47) pertaining to the 44th Report and 3 recommendations [S. Nos. 16, 32 and 46 (para 1.196)] pertaining to the 46th Report.

1.4 The statement showing action taken on the recommendations of the Committee contained in their 44th and 46th Reports (Third Lok Sabha) have been categorized under the following headings: —

(i) Recommendations observations that have been accepted by Government.

(ii) Recommendations/observations which the Committee do not desire to pursue in view of the Government's reply.

(iii) Recommendations/observations in respect of which replies of Government have not been accepted by the Committee or which require reiteration.

(iv) Recommendations/observations to which Government have furnished interim replies.

1.5 In respect of a number of recommendations the Committee observe that the Ministries/Departments have replied as 'noted'. It is not clear from such replies as to what specific action Government have

taken or intend to take to give effect to the *Committee's recommendations in letter and spirit. The Committee desire that Government's replies should be explicit and self contained. In particular where remedial measures are called for the details of action taken or intended to be taken should be specifically spelt out.*

1.6 The Public Accounts Committee in para 1.111 of their 46th Report (Third Lok Sabha) had expressed surprise to learn that Wealth Tax, Gift Tax and Estate Duty which are also direct taxes had not been authorised by Government for being brought under the purview of Revenue Audit. The Committee felt that this should have been done simultaneously when Revenue Audit was extended to Income Tax. It was the considered opinion of the Committee that the scope of the Revenue Audit should be suitably extended forthwith so as to include all the central taxes without any distinction and reservation.

1.7 *The Committee are glad to note that Government have now extended the statutory audit to the Estate Duty, Wealth Tax and Gift Tax receipts and refunds, and that the scope of audit in respect of these taxes will be the same as in the case of Income Tax receipts and refunds.*

1.8 The recommendations/observations in respect of which Government's replies have not been accepted by the Committee or which require reiteration have been dealt with in Chapter II.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH HAVE BEEN REITERATED

MINISTRY OF FINANCE

(Department of Revenue & Insurance)

Non-levy of Additional Excise Duty on Jute Batching Oil—Paras 3.37, 3.38 and 3.40 of 44th Report (Third Lok Sabha) (S. Nos. 32 & 33).

In paras 3.37, 3.38 and 3.40 of their 44th Report (Third Lok Sabha) the Committee had regretted the action of the Government in giving retrospective exemption from additional excise duty, in the case of jute batching oil, in their notification issued on 26th December, 1964 although there was no legal authority empowering the Government to give exemption retrospectively. They had observed "The Committee appreciate that there might be a practical necessity to issue exemptions retrospectively in some cases. They however, desire that the question of extent of authority required and of amending law for the purpose should be thoroughly examined in consultation with the Ministry of Law."

2.2 The Ministry of Finance have in their reply dated the 26th August, 1967 stated:—

> ".....after discussion with the Ministry of Law, it is proposed to take enabling powers for the Central Government to give retrospective effect to excise duty exemptions under Central Excise Law. The wording of such a provision has in fact been finalised and incorporated in the draft Central Excise Bill which seeks to consolidate and amend the existing Central Excises and Salt Act, 1944. This draft Bill at present is being rescrutinized in consultation with the Ministry of Law. Finalization of the draft Bill for introduction in the Parliament will however, take some time."

2.3 ***The Committee regret to note that the Ministry of Finance have taken a considerably long time in scrutinizing the provisions of the Bill. They hope that the Bill in question will now be drafted in consultation with the Ministry of Law without any further delay and brought before Parliament as early as possible.***

Duty foregone on Nitrocellulose Lacquers—Para 3.70 of 44th Report (Third Lok Sabha) (S. No. 37).

2.4 The Public Accounts Committee had observed in para 3.70 of their 44th Report (Third Lok Sabha) that "the question of separating the executive and judicial functions of the Collectors of Excise Department should be seriously examined so that the parties do not have to go in appeal to the very same persons who had already passed executive orders in the same case". The Committee had further observed that "both in the Income Tax and Customs Departments, Appellate Authorities have been separated from the executive. They would, therefore, suggest that Government should consider the question of extending the same principle to the Excise Department also".

2.5 The Ministry of Finance in their reply dated the 24th August, 1967 stated:

> "Similar suggestions have been considered by Government earlier but have not been found feasible.....The matter could be considered afresh when the new Central Excise Bill (to replace the existing enactments) is taken up for consideration by Parliament."

2.6 The Ministry of Finance were asked to supply further information indicating the reasons why it is not feasible to separate the executive and judicial functions of the Collector. They were further asked to state whether the new Central Excise Bill has been drafted or not whether the recommendations of the Committee have been kept in view while drafting it.

2.7 The Ministry of Finance in their reply dated the 15th September, 1967 have stated:—

> "At the outset it may be stated that even under the existing practice, appeals do not have to go to the very same persons who passed the executive orders in the same case. Attention in this connection is invited to the provisions in rule 213 of the Central Excise Rules, 1944————".
>
> 2. "The question of setting up an appellate tribunal as in Income-tax was considered more than once in the past. It was felt that a purely judicial authority like the Income-tax tribunal might place undue emphasis on technical requirements which might be difficult of accomplishment. It would lead to delays in the settlement of disputes, encourage litigation in regard to classification of goods for duty purposes and ultimately hamper clearance of goods. The existing system was cheap and fairly quick and the volume of work was not likely to be sufficient to justify setting up of wholetime appellate tribunals. The analogy of income-tax

is not applicable to customs or Central Excise appeals; income-tax is assessed with reference to the 'previous year' while customs or excise duties are assessed before the goods are about to pass into consumption.

3. "In this connection, the proposal for constituting Appellate Collectors as in Customs was also considered. In Customs, such Appellate Collectors started functioning only in April, 1963. They hear appeals against decisions of all officers other than those of the Collector of Customs. The Appeals against the decisions of the Collector of Customs still lie to the Board. No change was made in the procedure for dealing with revision applications. However, the experiment with Appellate Collectors was new and its working was to be watched for sometime before any firm conclusions could be drawn. In view of this, the draft Central Excises Bill contains provisions only to continue the existing procedure under the Central Excises and Salt Act, 1944 and the rules made thereunder."

4. "Recently, the Customs Study Team has examined the working of the Appellate Collectors and have recommended as follows:—

"92. Appellate machinery somewhat on the lines of Income-tax appellate tribunals should be set up. They may deal with revision applications against the orders of the Appellate Collectors as also against the orders of the Collectors. (7.14)."

93. In case of delay in setting up of such machinery, at least the appellate and revisionary functions should be separated from the executive and administrative functions by suitable arrangements at the Board's and Government's level. (7.15)."

The above recommendations are still under consideration and it will take some time before Government's decision thereon is available. It is also understood that Administrative Reforms Commission are looking into this very question. The Board has, therefore, kept the question open for the time being.

5. "The draft Central Excises Bill is still under scrutiny in consultation with the Ministry of Law, in the light of the comments and suggestions received from the Collectors of Central Excise, Director of Inspection, Customs and Central Excise and the concerned Ministries."

2.8 *The Committee would like to reiterate their observations contained in para 3.70 of their 44th Report. They desire that the question of setting up separate authorities for the exercise of judicial and executive functions in the Department of Central Excise should be examined seriously in all its aspects and an early decision taken.*

Short levy of duty on aluminium products—Paras 3.176 to 3.192 of 44th Report (Third Lok Sabha) Sl. No. 51.

2.9 The Public Accounts Committee in paras 3.191 and 3.192 of their 44th Report had observed as under:—

"The Committee are not convinced of the logic of the Board's clarification of September, 1964 laying down that aluminium pipes and tubes having uniform wall thickness are assessable as such at the higher rate of duty (*i.e.* 10 per cent *ad valorem*) whatever be the shape of the cross sections, whereas in case of extrusious only the tubular pieces having a circular cross-section are made assessable as such at the higher rate. They are of the view that the instructions of September, 1964 issued by the Board in fact create an exemption in favour of extruded hollow sections, which could be given only by a notification issued under Rule 8 of the Central Excise Rules. The Committee have already in another case, disapproved the practice of making exemptions through executive orders. The Committee, however understand that with effect from 1-3-1965, the tariff item '27-aluminium' has been amended so as to provide for levy of duty at the higher rate (*i.e.* 10 per cent *Ad valorem*) for all extruded shapes and sections including extruded pipes and tubes. The Committee hope that in future such artificial distinctions will not be introduced in determining the classification of a product for levy of duty." Para 3.191.

"As regards the applicability of these clarificatory instructions to earlier clearances, the Chairman of the Central Board of Excise and Customs agreed during evidence that the ruling could not be said to be relevant to the earlier assessments particularly those made before the tariff was amplified in 1964. Logically a distinction could be drawn between the position before and after the inclusion of extrusions of the class within the tariff schedule. The Committee hope that necessary steps will now be taken to recover duty short levied in the clearances made prior to 1964." (para 3.192).

2.10 The Ministry have sent a reply to these recommendations as follows:—

"As already explained before the Public Accounts Committee, no artificial distinction had been introduced in determining the classification of hollow extrusions under Item 27(c). Since the trade practice and specifications in the technical treatise on the subject, *viz.*, the Indian Standards, the British Standards and the American Society for Testing Materials Specifications, recognised the distinction between items of aluminium, produced by the process of extrusions and otherwise for the purpose of their

classification as 'Pipes and Tubes' this distinction was accepted and adopted for Central Excise Tariff also. The September, 1964 instructions, merely clarified as to what the term 'Pipes and Tubes' denotes and any extruded piece, which could accordingly be classified to be a 'pipe' or a 'tube' was liable to pay duty at the higher rate. These instructions, therefore, by themselves did not create any exemption.

The clarification was to the effect that only those extruded tubular pieces which have circular cross section and uniform wall thickness should be classified to attract duty under Item 27(c) and *that all other hollow extrusions will attract duty as "extruded shapes and sections in any form or size" under Item* 27(*b*).

The clarification being in the nature of interpretation of the term 'Pipes and Tubes' is to apply right from the introduction of Item 27(c) in the Central Excise Tariff, *i.e.* 1-3-1961 as the ruling did not alter the law but merely stated what, in the Board's view, the law was already. The latter part of the clarification (as underlined above) indicated the sub-item under which those hollow extrusions, which according to the instructions, could not be deemed to be 'Pipes and Tubes', were to be charged to duty.

The reference in the evidence, tendered by the Chairman, Central Board of Excise and Customs, before the Public Accounts Committee about the applicability or otherwise of the clarificatory instructions to earlier clearances (during the period prior to 1-3-64) apparently was to this latter portion of the ruling. Since during the period prior to 1-3-64 extrusions as such were not covered under the then Item 27(b), extrusions other than pipes and tubes were not liable to pay any duty, though the appropriate duty on aluminium in any crude form utilised in the manufacture of such extrusions was recoverable which had all along been realised. There has, therefore, been no short-levy and the question of effecting any recovery would not, in these circumstances, arise.

Moreover, acceptance of the recommendations of the Public Accounts Committee will amount to disregarding the advise of the technical experts and the Ministry of Law. It will also mean disregarding the trade and commercial usage of the terms supported by I.S.S. and B.S.S. Standards. The alleged short-recovery during the period prior to 1-3-64, even if accepted, stands no chance of realisation since recovery thereof is barred by the statutory limit under rule 10 of the Central Excise Rules, 1944.

The Minister (Revenue and Expenditure) has approved of the stand taken by the Ministry in their inability to accept the observations of the Public Accounts Committee.

2.11 *While the Committee do not desire to pursue the matter at this stage, they feel that, in determining the rate of excise duty, Government should have taken into account the market value of the end product, apart from technicalities involved. In the present case as there was a rise in the value of extruded tubular pieces the Committee feel that to charge the lowest rate of duty and treat them as crude aluminium was no less inaccurate than to treat them as pipes and tubes.*

2.12 *The Committee note that the position has been rationalised from 28th February, 1965 by bringing all extruded sections including extruded pipes and tubes under a single item of tariff attracting the higher rate of duty* i.e., 10 *per cent* ad valorem.

INCOME ESCAPING ASSESSMENT

(Paras 1.170, 1.171, 1.172 & 1.173 of 46th Report (Third Lok Sabha) (S. No. 43)

2.13 In paras 1.160, 1.161 and 1.162 of their 46th Report (Third Lok Sabha) the Committee had pointed out that income to the extent of Rs. 26.64 lakhs involving approximately a tax of Rs. 11.56 lakhs had escaped assessment in the hands of a company.

2.14 Briefly the facts are that a joint stock company had a paid-up capital of Rs. 38.79 lakhs, Rs. 38.74 lakhs of this share capital stood registered in the name of one person and the balance of Rs. 5,000 was held by another. Of the sum of Rs. 38.79 lakhs, Rs. 38.05 lakhs represented preference shares entitled to a fixed rate of dividend of 10 per cent. No dividend was however, paid on these shares ever since 1948. Though the shares stood registered in the name of the two persons, they were actually transferred under blank transfer from time to time to certain other companies belonging to the same group.

2.15 On 31st May, 1955, a block of these shares held by one of these companies was transferred by it to a second company within the group which, in turn, sold all these shares to a third company belonging to the same group. On 31st October, 1955, dividend for 7 years was declared and the third company which held the shares at that time became entitled to the entire dividend of Rs. 26.64 lakhs. The dividend income of Rs. 26.64 lakhs became assessable in the hands of the third company for the assessment year 1956-57 but that company did not submit its return of income for this year on the plea that its books had been seized by the Special Police Establishment. An *ex-parte* assessment was, therefore, made on 17th March, 1958, estimating the income of the company at Rs. 86,488. The dividend income of Rs. 26.64 lakhs in the hands of that company, thus escaped assessment.

2.16 The Committee in paras 1.170 to 1.173 of the same Report had felt that this was a deliberately devised and planned scheme to evade tax and defraud the Government. They also felt that special care was necessary in assessing the companies and there should have been co-ordination between the Income-Tax Officers dealing with them. The Committee regretted that the Income Tax Officer made unnecessary haste in completing the assessment without looking into the books of the company which were with the Special Police Establishment.

2.17 The Committee desired to know the outcome of the present case. The Committee suggested that necessary investigation should be made to discover the possibility of collusion between the assessee Group of companies and the revenue officers. They also suggested that cases pertaining to the other companies of this Group should be reviewed. The Committee emphasised that Government should take necessary measures to prevent recurrence of such cases.

2.18 The Ministry of Finance in their reply dated 13-3-1967 informed the Committee that: —

"The observations of the Committee in paras 1.170 to 1.173 have been noted by the Government and have been brought to the notice of the officers concerned.

For proper coordination in dealing with the cases of this group, they have been centralised with one Income Tax Officer each in three Central Commissioner's charges at Bombay, Calcutta and Delhi. The Director of Inspection (Investigation) has been asked to supervise investigations in this group of cases and report the progress. It may, however, be observed that the circumstances in which the assessment was made do not indicate any deliberate hurry in completing the assessment.

Enquiries are in progress to find out the real beneficiaries and the final outcome will be intimated to the Committee. The possibility of collusion between the assessee group of companies and the Revenue Officers was examined and the Directorate of Inspection (Investigation) have stated that there is no such indication.

The cases of other companies of this group are being reviewed.

In order to prevent recurrence of such cases, the question of tightening up the provisions relating to filing of returns of dividends declared and action against failure to file the same is being examined and necessary instructions are being issued."

2.19 The Ministry of Finance in a further note dated the 24th August, 1967 have stated *inter alia* that:

(1) "It is proposed to assess the dividends in the hands of ..... Ltd., as well as in the hands of six nominees as a protective measure. Investigations regarding real ownership are not yet

complete. Instructions have been issued to complete the investigations early.

There will, however, be delay in completing the assessments as accounts books of ..... Ltd. were seized in a search by the Company Law Department in July, 1964, and are at present in the custody of Calcutta High Court. We are moving the High Court to allow us to inspect the books for purposes of assessment.

(2) Cases of this group have been centralised with 3 Income-tax Officers, one each in Central Commissioners' Charges at Delhi, Bombay and Calcutta. A review is being made by examining the returns under section 19A of Income-tax Act, 1922/286 of Income Tax Act, 1961 as well as records of the companies to check that items of large amounts of dividends declared have been accounted for by the shareholders in their respective assessments. Instructions have been issued to expedite the review.

(3) The circular letters No. 64/163/66-IT(Inv) dated 29-5-1967 containing instructions were issued on the subject in this respect. A copy of each of them is enclosed."

2.20 *The Committee note that Government propose to assess the dividends in the hands of the Company as well as in the hands of six nominees as a protective measure and that instructions have been issued to complete early investigations regarding the real ownership of the shares on which dividends have been distributed.*

2.21 *The Committee need hardly stress that Government should complete the investigations early and take every care to ensure that the taxes due on the dividend received by beneficiaries are collected.*

2.22 *The Committee would also like to stress that the review of other companies in the Group should be completed early so as to ensure that large amounts of dividends declared have been accounted for by the shareholders in their income-tax returns and that taxes due on them have not been evaded.*

2.23 *The Committee would like Government to ensure that the instructions issued under the Central Board of Direct Taxes letters No. 64/163/66-IT(Inv) dated the 29th May, 1967 on the subjects of the failure to furnish returns under Section 286 of Income Tax Act, 1961 and evasion of Income-Tax by blank transfer of shares by companies of the same group are strictly given effect to by the Income Tax Officers, so that cases of such a nature do not recur.*

NEW DELHI
November, 13, 1967
Kartika, 22 1889(s)

M. R. MASANI,
Chairman
Public Accounts Committee.

APPENDIX I

44th REPORT

Recommendations/Observations that have been accepted by Government

MINISTRY OF FINANCE

Recommendations

The Committee note that the percentage of overall variation between the budget estimates and actuals for tax revenues, which was 14 *in* 1961-62 *and* 18.24 *in* 1962-63, *has come down to* 10.99 *in* 1963-64. *The Committee, however find that the position in regard to the budget estimates of individual items have not improved in the year* 1963-64. *As against an overall variation of* (+) 10.99 *per cent in the tax revenue in the year* 1963-64, *there was a variation of* (+) 95.03 *per cent in the estimate of excise duties on coal & coke,* (+) 86 *per cent on Iron & Steel and plus* 33.71 *per cent on Rayon & Synthetic fibre and yarn. There was a variation of* (−) 18.32 *per cent in the case of excise duty on sugar in the year* 1963-64 *as against a variation of* (+) 30.54 *per cent in the year* 1962-63. *In the case of sea customs (imports), there is a variation of plus* 28 *per cent and* 20 *per cent on H.S.D. and veporising oil and machinery respectively and* (−) 25 *per cent in kerosene oil and motor spirit. In the year* 1962-63, *there was a variation of* (+) 28 *per cent under this head viz., Kerosene oil and motor spirit. There was a variation of* (+) 31.19 *per cent under the head "Corporation Tax" ordinary collection. In the case of Taxes on income other than Corporation Tax, there was a variation* (−) 58.5 *per cent under the head "additional surcharge (Union)".*

[S. No. 1 para 1.9 of Appendix XXI to the 44th Report]

From these wide variations under different heads, the Committee feel that the overall average variation under tax revenue does not give the true picture of the difference between the actuals of revenue receipts and the budget estimates. They feel that there is ample scope for improvement in the preparation of the budget estimates more accurately. Since the Committee had already commented upon the subject of variation between the actuals and the budget estimates in detail in their 27*th and* 28*th Reports, they would like to watch the results of action taken by the Government in this respect in preparation of the budget estimates for the year* 1965-66. *They, however, suggest that the Government should keep a close watch on variation between the actuals and the budget estimates and the variation exceeding* 3 *to* 4 *per cent should be regarded as a matter of concern requiring special remedial measures.*

[S. No. 2 para 1.10 of Appendix XXI to the 44th Report]

ACTION TAKEN

A memorandum explaining the position is enclosed.

No. F. 8(15)-B/66

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi the 27th October, 1966.

The observations of the Public Accounts Committee in paragraphs 1.9 and 1.10 of their 44th Report (3rd Lok Sabha) were noted by the Department of Revenue & Insurance *vide* their No. F. 2/2/66-Cus. (T.4) dated 13-5-66 for necessary action. In this connection a reference is also invited to the note No. F. 8(6)-B/66 dated the 2nd February, 1966 forwarded to the Committee in reply to S. No. 1 of Appendix XVII of the 27th Report of the Committee (3rd Lok Sabha). It was indicated therein that the question of making arrangements for collecting information on matters connected with the framing of the estimates under the main revenue heads *viz.* Customs, Union Excise Duties and Income-tax including Corporation Tax was under consideration. The question of improving the budgetary techniques in respect of the receipts under these revenue heads has since been considered. The following steps are now proposed to be taken.

(a) *Excise Duties.*—The Central Board of Excise and Customs has a Statistics & Intelligence Branch where the actuals as well as the estimates of production and revenue are compiled on the basis of information received from the Collectors and the administrative Ministries. A change has now been introduced in that the information regarding the actuals and estimates of production is obtained from the Director General, Technical Development on the basis of which better estimation would be possible. At the time of the framing of the estimates the production estimates etc. would also be discussed in a meeting of the officers of the Board, the Economic Affairs Department, the Director General, Technical Development and the administrative Ministries with a view to facilitating better estimation. In addition, a continuous study of the production trends, particularly of the major items, in order to make projections for the future, having regard to the developments taking place from time to time would also be undertaken. The assumptions made and the results of the review would also be communicated to the Collectors for their guidance.

(b) *Customs.*—The Balance of Payments statistics will be utilized for estimating the likely total value of imports and its break-up amongst different commodities etc. and for estimating the Customs Revenue with reference to these data. Further, as in the case of the Excise Revenue, a selective review in respect of Principal commodities, which account for bulk of the Customs Revenue, would be attempted at regular inter-

vals and the results thereof communicated to the Collectors for their guidance.

(c) *Income Tax and Corporation Tax.*—The revenue potential of companies which account for the bulk of the revenue from Corporation Tax is proposed to be studied continuously and necessary arrangements made for the purpose. For this purpose the following would be taken into account:

(i) amount of arrear demand likely to be collected during the current year and the following financial year;

(ii) amount of demand likely to be raised and collected on the basis of returns (on provisional assessment or self-assessment) or on regular assessment, over and above the demand which has already been collected as advance tax or by way of deduction at source;

(iii) amount of advance tax likely to be collected during the current year on the basis of the last assessed income or last returned income;

(iv) existence of unabsorbed development rebate and depreciation;

(v) the point of time at which the companies enjoying tax holiday would be emerging out of the tax holiday period; and

(vi) devaluation, upward revision of authorised prices, decontrol of prices or distribution of commodities, liberalisation of imports, credit control measures, sharp variations in crop yields etc.

Regarding Taxes on Income other than Corporation Tax also, a continuous study, on similar lines, of the revenue potential in cases accounting for the bulk of the revenue is being undertaken. Besides, a separate estimate will be made of the expected revenue from deductions of tax at source from salaries, interest on securities and dividends where the trend of revenue collections could be estimated with a reasonable degree of accuracy on the basis of the actual collections during the past year and the normal potential of growth as inferred from the trend of growth in the past few years and other relevant factors which are known at the time of framing the estimates. In case of income from house property, business and profession, etc., the methods of estimation would take into account the demands for advance tax, the collections likely to be made out of the arrears demand and the collections on completion of provisional assessments, after setting off the advance tax collections and deductions at source. It is expected that the selective study indicated above would facilitate better estimation of income and corporation tax revenue. In view of the arrangements being made, the proposal to appoint a study Group as mentioned in the note No. F.8(6)-B/65 dated 2-2-65 is not being pursued.

(A. R. SHIRALI),

Joint Secretary to the Government of India.

FURTHER INFORMATION

The observations of the Public Accounts Committee have been noted for necessary action.

[F. No. 2/2/66-Cus.(T.U.)]

Recommendations

The Committee also hope that the process of mechanisation of the calculation work which will economise on certain categories of staff would be speeded up. But if there are difficulties in switching over to mechanisation because of lack of foreign exchange or other factors, the staff deficiencies should not be allowed to continue indefinitely and impair the efficiency in revenue collection. The Committee, therefore, suggest that the Ministry should strike a balance and take necessary steps to ameliorate the present difficult position.

[S. No. 4, Para 2.13 of Appendix XXI to the 44th Report.]

ACTION TAKEN

The recommendations of the Committee have been noted for action. There has been progressive mechanisation of the calculation work in the various Custom Houses and 7 Calculating Machines have been sanctioned in addition to the existing 27 calculating machines in the Custom Houses. Adequate staff has also been provided for operating these machines. The question of purchasing 12 more calculating machines for the Customs Department is under consideration of the Government with reference to the availability of funds, surplus staff possibilities etc. The position is continually under watch.

[F. No. 24/28/66-Ad.V.]

[This has been vested by audit *vide* Shri R. K. N. Pillai's D.O. No. 3520-REV/394-65 Pt. II, dated 7th October, 1966.]

Recommendations

The Committee note that the number of mistakes detected by the Internal Audit Department have been fairly large. Though in none of these cases, mala fide *have been attributed, a few of them have been attributed to carelessness or negligence. The Committee feel that cases involving serious irregularities due to carelessness or negligence should be taken more serious notice of.*

[S. No. 5, Para 2.16 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The recommendations of the Public Accounts Committee have been noted for compliance and all Collectors of Customs and Collectors of Central Excise have been instructed that the lapses of the kind referred to therein should be viewed seriously and suitable action taken against the persons concerned.

[F. No. 23/3/66-Cus. III]

Recommendations

The Committee feel that most of the difficulties could be avoided if the Instructions issued by the Board are clearly worded avoiding any ambiguities or doubtful points. The Committee consider it a matter of utmost importance that the Board's instructions in the matter of classification etc. are uniformly followed by all collectorates. They suggest that the Board should also devise a procedure to periodically verify and ensure that their instructions are correctly and precisely carried out by all the collectorates uniformly.

[S. No. 6, para 2.18 of Appendix XXI to 44th Report.]

ACTION TAKEN

The suggestions have been noted for necessary action.

FURTHER INFORMATION

The Board has noted the Committee's observations that there is need to word the instructions issued clearly so as to avoid ambiguities or doubtful points. The Board also recognises the need to ensure uniformity of practice of classification and assessment of goods imported.

The Customs Study Team, which was set up by the Government of India, has in its report recommended (*vide* extract of recommendation No. 190 appended) that a unit called the Central Exchange for Assessment Data should be set up for achieving systematic control over assessment for ensuring uniformity. The Central Exchange will receive assessment data from all the Custom Houses and process them with a view to ascertaining whether there is uniformity in approach and also with a view to detecting errors, discrepancies, lack of consistency in assessment, abnormalities in valuation etc. so that suitable instructions may be issued to the Collecorates for rectifying the defects noticed. This will ensure that the Board's instructions are correctly and precisely carried out by all the Collectorates uniformly. The Empowered Committee which examined the recommendations of the Customs Study Team has accepted this recommendation and it has been decided to set up a Central Exchange in the Board's office on an experimental basis for 6 months; the details are being worked out.

[F. No. 2/1/66-Cus. (T.U.)]

APPENDIX

EXTRACT FROM THE REPORT OF THE STUDY TEAM ON THE CUSTOMS DEPARTMENT, PART I—CLEARANCE OF CARGO.

Chapter IX: *Miscellaneous*:

(190) For achieving systematic control over assessments, for ensuring uniformity and for equipping the department with useful data, a new unit called "Central Exchange for Assessment Data" should be set up.

Recommendations

The Committee consider it unfortunate that in spite of a provision in the Act that the date of the Bill of Entry was the date which regulated the rate of duty to be charged, incorrect procedure of charging duty in force on the date of reversion of vessels to coastal trade was followed in some Collectorates for several years, without the knowledge of the Board. On a reference received from one Collector, Law Ministry's opinion was obtained only in March, 1964 and circulated to all the Collectors in April, 1964. The Committee would like the Board to take due note of such cases of administrative failure. The Committee trust that correct procedure is now being followed in all the Collectorates.

The main reason for this failure consists in the indulgence shown by the Department to the ships in allowing them to file their bills of entry in respect of ship's stores longafter their reversion to coastal trade. In Para 29 of their twenty-seventh Report (Third Lok Sabha), the Committee have strongly deprecated inordinate delays of four to five years, and in some cases even nine years, in filing bills of entry by the steamer agents and the Department's acquiescence in allowing it. The Committee reiterate their earlier recommendations and desire that the procedure should be streamlined as early as possible.

The Committee would also like the Board to examine the cases where the plea of time bar is taken from the point of view of launching prosecution.

[S. No. 7, 8 and 9, paras 2.25, 2.26 and 2.29, Appendix XXI, 44 Report 1965.]

ACTION TAKEN

Regarding para 2.25 of the Report.—It is confirmed that the correct procedure is now being followed in all the Collectorates.

Regarding para 2.26 of the Report.—The recommendations of the Committee have been noted. Whether any amendment of the Customs Act is necessary to provide for a separate basis for assessment to duty, or some other arrangement is necessary to ensure prompt filing of bills of entry, is also being considered.

Regarding para 2.29 of the Report.—The question of launching prosecution against the parties for not filing bills of entry in time has been examined, but the Ministry of Law have advised that there is no case for prosecution.

[Duly vetted by Audit]

[F. No. 22/48/64 LCII.]

Recommendations

The Committee would like to know about the outcome to of the court case and about the recoveries made in these 74 cases relating to Tuticorin Port. They hope that demands will also be raised in respect of any other cases that might have occurred at Tuticorin Port during the period 1962-64.

[S. No. 9, para 2.28, of Appendix XXI to the 44th Report.]

ACTION TAKEN

The writ petition filed by one of the parties was decided in favour of the Government. But the party filed a writ appeal in the same court which is yet to be disposed of. The party was granted interim stay by the court. In all the 74 cases supplemental demands were issued, but as the cases were time-barred it has not been possible to recover the duty short-levied from the parties in any case. It has since been found that during the period 1962-64 there was one case of short levy amounting to Rs. 2,136.08 at Tuticorin. Supplemental demand has been issued in respect of this case also.

[Not yet vetted by Audit.]

[F. No. 22/48/64 LCII.]

Recommendation

The Committee are surprised how the Cochin and Madras Collectorates did not follow the instructions issued by Government in April, 1960, *while other Collectorates understood them correctly, particularly when the instructions were clear to the Board and other Collectorates. But for the omission being brought to the notice of the Ministry by Audit the under-assessment would have continued in the two Collectorates. The Secretary of the Department of Revenue promised that the matter would be examined fully. The Committee would like to know the outcome of this examination.*

[S. No. 11, para 2.38 of Appendix XXI to 44th Report, 1965-66.]

ACTION TAKEN

The matter is under examination. A further report will be submitted to the Committee as soon as the examination is completed.

[F. No. 20/23/66-Cus. I.]

FURTHER INFORMATION

The matter has since been examined by the Secretary of this Ministry. The then Collector of Customs, Madras has been informed that if any doubt existed in the matter the Custom House should have followed the general instructions which lay down that when the Collector is in doubt about assessment the higher duty is to be charged leaving it to the trade to agitate for refund, if necessary, and further that the clarification of the Board when brought to his notice should have been implemented straightaway and this matter taken up with the Board later if there was still any doubt regarding assessment in his mind.

The attention of all Collectors of Customs has also been drawn to the standing instructions on the subject and they have been informed that these should be strictly adhered to.

Instructions have also been issued clarifying when electric motor imported with machinery become liable to additional (Countervailing) duty. Cases of misinterpretation are, therefore, not likely to recur.

[F. No. 20/23/66-Cus. I.]

Recommendation

It was deposed before the Committee that the mistake in Madras Collectorate arose because of a special procedure already followed in the case of machinery contract consignments under which component parts imported separately were not subject to two different rates. If so, the instructions issued in April, 1960 should have also clarified this aspect. In all cases where the Government instructions are likely to clash with earlier instructions, the matter should be clarified beyond any doubt. It is also regrettable that a copy of the clarificatory instructions issued in May, 1963 was not sent to all the Collectors, with the result that Madras Collectorate continued the practice of non-levy of countervailing duty on electric motors till December, 1963. The Committee suggest that in all cases where the Ministry issued clarifications on important points of doubt, copies thereof should invariably be circulated to all the Collectors.

[S. No. 12, para 2.39 of Appendix XXI to 44th Report, 1965-66.]

ACTION TAKEN

The suggestion of the Committee has been noted by the Government.

FURTHER INFORMATION

It has all along been the general practice to endorse copies of all important communications to the Collectors of Customs and Central Excise for their information and guidance. However, on the specific omission in the instant case being pointed out by the Public Accounts Committee, extra care is now being exercised to ensure that all important communications are forwarded to all the Collectors.

[F. No. 20/71/67-Cus. I.]

Recommendation

The Committee would like to be informed of the criterion adopted by the Madras Custom House in deciding that no duty was found leviable in 630 cases. The Committee hope that the pending cases would be finalised early.

[S. No. 13, para 2.40 of Appendix XXI to 44th Report.]

ACTION TAKEN

The Collector of Customs, Madras, has reported that the criterion adopted by the Custom House in determining the levy of countervailing duty in the cases relating to the period from 18-5-63 to 25-12-63, and also in respect of importations after 25-12-63, is based on Government of India, Ministry of Finance (Department of Revenue) letter No. 15/3/63-Cus. I, dated the 21st December, 1963. It is stated therein that if the assessment of the motor is made as one article along with the machine or equipment, and it is not regarded as a separate article then no countervailing duty would be leviable on it, but that countervailing duty would be leviable if it is regarded as a separate article for assessment, even though its assessment is made as a component part of machinery under the proviso to Item No. 72(3)I.C.T. However, the whole question of non-levy of countervailing duty on electric motors in certain cases at Madras Custom House was under examination of the Government as per remarks on the recommendation contained in para 2.38 of the Committee's Report under reference. Such examination has since been completed and a reply has been issued in respect of para 2.38 of the Report.

[O.M. No. 20/23/66-Cus. I, dated 24th August, 1967.]

Recommendation

The Committee take a serious view of the issue of double refund in this case, which arose on account of (i) the emission to link up the

papers of the second application with those relating to the first application, and (ii) the failure to notice this omission even by the Internal Audit Party who pre-audited the bills before payment. They would like to know the action taken against the persons concerned. The Committee also desire that necessary investigation should be made to eliminate the possibility of official complicity and/or conspiracy. The Committee also desire that the Government should satisfy that the system relating to receipt and filing of refund applications takes adequate care against issue of such double refunds.

[S. No. 15, para 2.51, Appendix XXI of the 44th Report.]

ACTION TAKEN

The observations of the Committee have been noted and have also been brought to the notice of all concerned.

2. The appraiser and Audit Clerk concerned responsible for their lapse were warned and directed to be more careful in their work in future.

3. The system relating to receipt and filing of refund applications so as to guard against issue of double refunds is further being examined.

4. This has been vetted by the Audit.

[U.O. F. No. 16/19/66-L.C.I., dated 17-5-1966.]

Recommendations

(i) The Committee are far from happy over the manner in which Customs Tariff was maintained in the Custom House. The fact that the particular foot-note under Item 72(20) had been cancelled escaped notice at three stages. First when the Appellate Collector passed orders on the appeal for re-assessment he consulted an old book. It is serious that the Appellate Collector was not posted with up-to-date information regarding tariff. Secondly the omission was not noticed by the Custom House at the time of making re-assessment. Thirdly the internal Audit Party also failed to detect the mistake when they pre-audited the refund. The Committee feel that it is a strange coincidence that all the three agencies failed in detecting this. The Committee are surprised at the plea of Ministry that in case of Government imports, the Customs officers did not always take all pains as they did in the case of private parties. If such a tendency exists among the officers, the Committee strongly feel that it needs to be curbed, as it not only reflects on the efficiency of the Department but also amounts to applying double standards to two types of assessees.

(ii) The Committee desire that the work regarding the revision of forms should be completed as early as possible and it should be ensured that in future books in the Customs Houses are kept up-to-date.

[S. No. 16, Para 2.54, Appendix XXI of the 44th Report.]

ACTION TAKEN

The observations made by the Committee have been brought to the notice of all concerned and it has been impressed upon them that in future care should be taken to ensure that Customs Tariff is corrected immediately on receipt of the copies of notifications instructions issued by the Government so that such lapses do not recur.

2. This has been vetted by the audit.

[U.O. F. No. 16/18/66-LCI, dated 30-8-66.]

Recommendation

The Committee consider the mistake as very unfortunate and hope that officers will be more careful in future.

[S. No. 17, para 2.58 of Appendix XXI to 44th Report, 1965-66.]

ACTION TAKEN

Necessary instructions in the matter have been issued to the Customs authorities at the ports.

[F. No. 20/19/66-Cus. I.]

Recommendation

The Committee are surprised over the perfunctory manner in which the original assessment was made by the officer without going through the relevant literature to find out the functions of the equipment. The fact that the equipment was to be exported and most of the duty was to be refunded does not justify the omission. The Committee desire that necessary instructions should be issued to all concerned that duty should be assessed and levied with full care and vigilance irrespective of the fact whether the same would be refunded if and when the imported stores are exported later.

[S. No. 18, para 2.61 of Appendix XXI to 44th Report, 1965-66.]

ACTION TAKEN

Necessary instructions in the matter have been issued to the Customs authorities at the ports.

[F. No. 20/18/66-Cus. I.]

Recommendation

The Committee reiterate the observation made in para 25 of their Twenty-seventh Report (Third Lok Sabha) that over-assessment is as much as irregularity as under-assessment and it causes undue hardship to public for no fault of theirs. Over-assessment also results from the same type of failure and mistakes as are responsible for under-assessment.

[S. No. 18, Para 2.62 of Appendix XXI of the 44th Report.]

ACTION TAKEN

The Committee's earlier recommendation contained in para 25 of their 27th Report was brought to the notice of all concerned. This is again being brought to the notice of all concerned for guidance.

2. This has been vetted by the Audit.

[U.O. F. No. 11/2/66-L.C.I., dated 17-5-1966.]

Recommendations

"Para 2.69.—The Committee would like the Government to look carefully into the breach of Rule 21 by the Clearing Agent involved in this case and inform the Committee of the action taken against the agents for this breach of the Rule. They would also like that a review of the functioning of all the Custom Houses should be undertaken to ensure that similar cases of breach of Rules do not occur anywhere else.

Para 2.75.—While the Committee appreciate that Custom House is a public place and it is difficult to hace the entry of all persons who come there for various purposes, regulated they need hardly emphasize the desirability of introducing some check on representatives of clearing agents etc. so that cases of impersonation or representation by unauthorised persons which have dangerous possibilities could be avoided. They, therefore, feel that first of all the procedure for the representative of authorised agents carrying passes with their photographs should be strictly followed. Secondly, the names of representatives of the Clearing Agents should invariably be circulated to all the Appraisers so that in every case of doubt they could check up the list and insist on the production of passes. If the system of photograph passes is insisted upon, it would be possible for the cashier also to identify the authorised representative, if necessary, at the time of payment of Government dues.

Para 2.83.—(i) The Committee regret to observe that the fraud had taken place in this case due to defective procedure of presentation of bills of entry for payment of duty. The Committee also learnt during

evidence from the Chairman, Board of Customs & Central Excise that as early as 1937 a case of fraud in payment of Customs Duty came for their notice. In another case a fraud involving non-payment of Customs duty was brought to the notice of the Department in 1954 as a result of which Audit suggested to Government certain measures to prevent recurring of such cases. Again in 1964, Audit made certain other suggestions as a result of this case. The Committee regret to note that in spite of these cases no effective system was devised to eliminate their occurrence."

"Para 2.84.—(ii) They are also surprised to find that once the Bills of Entry had been appraised those were given to and remained in the possession of clearing agents and the Customs authorities did not have any means to check or detect any alteration or fraud. The clearing agents were free to manipulate the documents if and when they liked. It reveals that the whole appraising and depositing system prevailing in the Custom House is defective.

Para 2.85. (iii) The Committee would like the Central Board of Excise & Customs to adopt such a procedure early whereby the chances of perpetrating frauds of the type mentioned in this case as also in another cases mentioned in evidence could be eliminated.

Para 2.89. (iv) The Committee find from the written note furnished on the investigation conducted by the Special Police Establishment in the case of fraud relating to Custom House, Calcutta that investigation had been completed and that a charge sheet for prosecution of the culprit was to be filed in court shortly. They hope that Government will now take all action including changes in procedure that may be called for, without delay so that all the Custom authorities are able to implement them quickly.

Para 2.90. (v) They could also like to be informed of the action taken against officials involved in the case of Calcutta Customs Department.

Para 2.91. (vi) The Committee also learn from another note furnished by the Ministry of Finance (Revenue) that a scrutiny of Bills of Entry filed during the past two years in the Bombay Custom House by the clearing agent involved in a case of fraud relating to Rs. 20,000 detected by Internal Audit, has revealed 3 cases of short or non-payment of duty totalling Rs. 41,802.73. The cases are stated to be under investigation. The Committee would like to be appraised of the result of these investigations through future Audit Report."

[S. Nos. 19, 20 and 21, paras 2.69, 2.75, 2.83, 2.84, 2.85, 2.89, 2.90 and 2.91 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

In the case referred to in para 2.69 above the Bills of Entry were presented in the name of the Clearing Agents M/s. Sanyal & Company who in fact had lent their name to V. D. Arya and his Co. M/s. Veekay Agencies and the latter were performing the functions of the Clearing Agents. The Clearing Agency Licence of M/s. Sanyal & Company has since been cancelled. As regards the general observations made by the Committee in the para, they have been brought pointedly to the notice of the Collectors of Customs for compliance.

2. The recommendations of the Public Accounts contained in para 2.75 have been noted for appropriate action.

3. The recommendations of the Committee contained in paras 2.83, 2.84, 2.85 & 2.89, have been noted for appropriate action. This Ministry have always been making efforts to prevent frauds and are, even at present, examining certain proposals for retifying the procedural drawbacks which leave scope for frauds.

4. As regards para 2.90 of the Report, the Special Police Establishment have not yet reported any collusion of Customs officials in the fraud. The action against the Departmental Officials, if any, will be considered after their statements in the Court of Law are recorded as they are important witnesses in the case against Shri V. D. Arya.

5. The observations of the Committee contained in para 2.91 have been noted for compliance.

[F. No. 55/9/66-Cus. IV.]

FURTHER INFORMATION

S. No. 20, Para 2.75.—Besides noting for appropriate action the recommendations of the Public Accounts Committee contained in para 2.75, the Central Board of Excise and Customs have issued instructions to all the Collectors of Customs at various ports to note the recommendations of the Public Accounts Committee carefully and put the same into effect. They have also been asked to encourage Customs Officials to check up the identity of persons coming to do business with the Custom Houses in all cases in which they feel any doubt about the identity or *bona-fides* of such persons with a view to check impersonation and unauthorised persons dealing fraudulently with the Custom Houses. A copy of the instructions dated 10th December, 1966 issued to the Collectors of Customs in this behalf, is enclosed herewith.

[F. No. 55/9/66-Cus. IV.]

/COPY/

EXPRESS DELIVERY

F. No. 55/9/66-Cus.IV

GOVERNMENT OF INDIA

CENTRAL BOARD OF EXCISE & CUSTOMS

From

Shri A. C. Saldanha,
Under Secretary.

To

The Collector of Customs,
Bombay/Calcutta/Madras/Cochin/Goa
Deputy Collector of Customs,
Visakhapatnam
The Collector of Central Excise,
New Delhi.

New Delhi, the 10*th December* 1966
19*th Agrahayana*, 1888
(*Saka*)

Sir,

I am directed to enclose a copy of para 2.75 of the 44th Report of the Public Accounts Committee (1965-66) and to say that the Board particularly desire the observations made therein by the Public Accounts Committee to be carefully noted and put into effect. The Board would like the Collectors to encourage Customs officials to check up the identity of persons coming to do business with the Custom Houses in all cases in which they feel any doubt about the identity or *bona fides* of such persons. In view of the cases noticed in the past of impersonation and unauthorized persons dealing fraudulently with the Custom Houses, the Board wish every care to be exercised in this behalf.

2. I am to request that the receipt of these instructions may kindly be acknowledged.

Yours faithfully,
(Sd./-)
(A. C. SALDANHA),
Under Secretary,
Central Board of Excise & Customs

S. No. 21, *para* 2.89.—It has been reported by the Collector of Customs, Calcutta that it has not been possible to obtain a copy of the judgment in the case against Shri V. D. Arya, which failed in the City Sessions Court, Calcutta. In the absence of a copy of the judgment, it is not possible to state the grounds on which the case failed. Efforts are being made to obtain a copy of the judgment.

2. As regards, the fate of other five cases, it is learnt that these cases are still pending trial.

[F. No. 55/62/67-Cus.IV.]

Recommendation

(i) *The Committee are constrained to find that goods which were confiscated in* 1951 *could not be disposed of till* 1957 *due to lack of understanding between Railways and the Customs Department. This resulted in a heavy amount of Rs.* 10.85 *lakhs being paid by the Customs Department on account of wharfage on goods and loss on account of less sale proceeds realised by the Customs Department. On auctioning the confiscated goods as the goods deteriorated while lying with Railway for years together. This is borne out by the fact that* 459 *bags of cement when auctioned after the period of about six years fetched only Rs.* 100 *while wharfage paid on them was Rs.* 1,41,199.

(ii) *The Committee feel that had timely action been taken in disposing of confiscated goods the payment of a huge amount of wharfage would have been avoided and also better prices could have been realised in disposal. The failure of the two organisations of Government to come to a settlement for so many years is indeed regrettable.*

(iii) *The Committee are unable to appreciate the indifference shown by the Customs Department in dealing with this case. In their opinion even if the Customs Department had constructed a godown to store the goods the cost of construction of godown and maintenance charges would have perhaps been less than the wharfage paid to Railways. They trust that the Customs Department would benefit by the lesson learned in this case and avoid recurrence of such cases in future.*

[S. No. 22, para 2.101—2.102 of Appendix XXI of the 44th Report.]

ACTION TAKEN

The observations of the Committee have been noted and have been brought to the notice of all concerned. A copy of Central Board of Excise & Customs letter F. No. 30/30/65-L.C.I., dated 12-4-1966 addressed to all Collectors of Customs/Central Excise in this regard is enclosed.

2. This has been vetted by the Audit.

[U.O. F. No. 30/30/65-L.C.I., dated 16-5-1966.]

F. No. 30/30/65-L.C.I.

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, the 12th April, 1966.

From

The Under Secretary,
Central Board of Excise & Customs.

To

All Collectors of Customs.
All Collectors of Central Excise.
The Deputy Collector of Central Excise.
Amritsar, Jaipur/Jalpaiguri/Tiruchinapalli, Cuttack.

SUBJECT.—*Audit Report (Civil on Revenue Receipts*, 1965—*Para 22—Loss on Account of Wharfage Charges paid to the Railways—Recommendations made by the P.A.C.* (1965-66)—*44th Report —Regarding.*

I am directed to say that a case occurred in a Collectorate where a huge amount had to be paid to the Railways as wharfage charges on goods confiscated and left with the Railway authorities for more than 5 years. The matter became the subject of audit objection and the P.A.C. (1965-66) in their 44th Audit Report (Civil) on Revenue Receipts, 1965 have opined that had timely action been taken in disposing of confiscated goods, the payment of a huge amount of wharfage would have been avoided and also better prices could have been realised in disposal. They are also of the view that if the Customs Department had constructed a godown to store the goods, the cost of construction of godown and maintenance charges would have perhaps been less than the wharfage paid to the Railways. A copy of paras 2.101—2.103 of the 44th Report of the P.A.C. (1965-66) is enclosed.

2. It is requested that the observations made by the P.A.C. in this instant case may be brought to the notice of all officers and it may be impressed on them to profit by the lesson learnt in this case and that they should be asked to ensure that such cases do not recur in future.

(M. G. VAIDYA)
Under Secretary
Central Board of Excise and Customs.

Copy forwarded to Customs III Section.

(M. G. VAIDYA)
Under Secretary
Central Board of Excise and Customs.

COPY OF PARAS 2.101—2.103 OF THE 44TH REPORT OF THE P.A.C. (1965-66).

2.101. The Committee are constrained to find that goods which were confiscated in 1951 could not be disposed of till 1957 due to lack of understanding between Railways and the Customs Department. This resulted in a heavy amount of Rs. 10.85 lakhs being paid by the Customs Department on account of wharfage on goods and loss on account of less sale proceeds realised by the Customs Department on auctioning the confiscated goods as the goods deteriorated while lying with Railway for years together. This is borne out by the fact that 459 bags of cement when auctioned after the period of six years fetched only Rs. 100 while wharfage paid on them was Rs. 1,41,199.

2.102. The Committee feel that had timely action been taken in disposing of confiscated goods the payment of a huge amount of wharfage would have been avoided and also better prices could have been realised in disposal. The failure of the two organisations of Government to come to a settlement for so many years is indeed regrettable.

2.103. The Committee are unable to appreciate the indifference shown by the Customs Department in dealing with this case. In their opinion, even if the Customs Department had constructed a godown to store the goods the cost of construction of godown and maintenance charges would have perhaps been less than the wharfage paid to Railways. They trust that the Customs Department would benefit by the lesson learnt in this case and avoid recurrence of such cases in future.

Recommendation

The Committee regret to note that the sale of goods was not done systematically. They hope that the remaining items would be reconciled soon. The Committee cannot help feeling that in the absence of such correlation there is no check at all on the sale of confiscated goods and the entire system becomes faulty whatever be its other merits. The Committee cannot overstress the importance of following correct accounting procedure to avoid the possibility of malpractices.

[S. No. 23, para 2.108 of Appendix XXI of the 44th Report.]

ACTION TAKEN

The observations made by the Committee have been noted and communicated to the Collector of Customs, Calcutta. Efforts are being made to reconcile the remaining items.

2. This has been vetted by the Audit.

[U.O. F. No. 30/60/61-L.C.I., dated 26-5-1966.]

FURTHER INFORMATION

The observations made by the Committee had been communicated to the Collector of Customs, Calcutta, who has now reported that sale proceeds amounting to Rs. 94,282.00 remain to be reconciled. Out of this Rs. 43,100.65 relates to goods which did not bear any label or tag or other identifying particulars and cannot, therefore, be reconciled. Attempts are, however, being made to reconcile the remaining amount of Rs. 51,181.35.

2. The accounting procedure has already been modified to facilitate correlation and to prevent malpractices.

3. The Audit has stated that they have no comments to offer as the particulars furnished are not readily verifiable.

[U. O. F. No. 14/8/67-L.C.I., dated 4-10-1967.]

Recommendation

The Committee note from the statement furnished by the Ministry that there are a large number of cases where goods confiscated during the period 1961 to September, 1965 in Bombay, Calcutta and Madras Custom Houses, have not yet been disposed of. They desire that these cases of confiscated goods should be pursued vigorously with a view to expedite their disposal.

[S. No. 23, para 2.110 of Appendix XXI of the 44th Report.]

ACTION TAKEN

The observations made by the Committee have been noted and communicated to all concerned. Vigorous efforts are being made to dispose of the confiscated goods in question.

2. This has been vetted by the Audit.

[U.O. F. No. 30/60-64-L.C.I., dated 26-5-1966.]

FURTHER INFORMATION

The observations of the Committee were communicated to the Collector of Customs, Bombay, Calcutta and Madras and they were urged to speed up disposal.

Steps taken for the disposal of goods include the following: —

(a) *sale of confiscated consumer goods*—

(i) in bulk to the Canteen Stores Department, Consumers Co-operative Societies/Stores.

(ii) in retail through retail shops run departmentally at all important centres.

(b) sale to the S.T.C. of goods such as cloves whose import is through the corporation.

(c) sale of confiscated trade goods by public auctions as frequently circumstances warrant; and

(d) sale of uncut and unpolished diamonds and precious stones by public auctions to import licence holders.

2. The Department has succeeded in the efforts to dispose the goods to a larger extent as will be seen from the following figures:—

Custom House	Value of goods confiscated	Disposal till 31-8-1967	Pending disposal on 1-9-1967
1. Bombay . .	8,04,36,290 (Jan., 61-Sept., 65)	7,27,71,620	76,36,102
2. Calcutta . .	2,63,32,242 (April 61— March 66)	2,45,01,650	18,30,634
3. Madras . .	45,89,092 (Sept., 61-Sept., 65)	30,91,690	14,97,402
TOTAL .	11,13,57,624	10,03,64,960	1,09,64,138

3. The Audit have stated that they have no comments to offer as the particulars furnished are not readily verifiable.

[U.O. F. No. 11-8/67-L.C.I., dated 1-10-1967.]

Recommendation

The Committee are unable to understand as to why in the present case the precious stones (Reserve price Rs. 1,60,650) were not put to auction again after the first auction was not successful. They feel that the system of public auction has its own advantages and is definitely preferable to sale by private negotiations. They, therefore, suggest that in such cases an atempt should be made to put the precious articles to a subsequent public auction in case the first attempt fails.

[S. No. 23, para 2.116 of Appendix XXI of 44th Report.]

ACTION TAKEN

The observations made by the Committee have been noted and communicated to all concerned. A copy of letter No. 30/60/64-L.C.I. (para 2.116), dated 20-4-1966, addressed to all Collectors by this Ministry is enclosed.

2. This has been vetted by the Audit.

[U.O. F. No. 30/60/64-L.C.I., dated 26-5-1966.]

F. No. 30/60/64 L.C.I. (Para 2.116)

CENTRAL BOARD OF EXCISE & CUSTOMS

New Delhi, the 20th April, 1966.

From

The Secretary,
Central Board of Excise & Customs.

To

All Collectors of Customs.
All Collectors of Central Excise.
The Deputy Collector of Central Excise.
Amritsar Jaipur Jalpaiguri Tiruchinapalli Cuttack.

SUBJECT.—*Audit Report (Civil) on Revenue Receipts*, 1965—*Para* 23—*Non-submission of accounts in proper form—Recommendations of the P.A.C. 14th Report—Disposal of confiscated goods by public auctions private negotiations—Instructions regarding.*

I am directed to invite your attention to para 6 of Board's letter F. No. 4/63/57-Cus.III/IV, dated 7-9-1961, which *inter alia* stipulates that sale of confiscated goods by private negotiation may be resorted to if other methods have been tried and have failed. The question of sale by private negotiation *vis a vis* by public auction was considered by the P.A.C. and their observations made in this regard are contained in para 2.116 of their 14th report. A copy of para 2.116 of the 14th Report of the P.A.C. is enclosed. The P.A.C. has opined that the system of public auction has its own advantages and is definitely preferable to sale by private negotiation. They have, therefore, suggested that in all such cases, an attempt should be made to put the goods to a subsequent public auction in case the first attempt fails. The observations of the P.A.C. should be kept in view before sale by private negotiation is resorted to.

(G. P. DURAIRAJ)

Secretary, Central Board of Excise & Customs.

1. Copy forwarded to Cus. III Section.

2. Copy forwarded to:—

(i) D.I. (Cus. & CX)/D.R.I.

(ii) The O.S.D. Manual Bulletin (with 4 spare copies).

(G. P. DURAIRAJ)
Secretary, Central Board of Excise & Customs.

COPY OF PARA 2.116 OF THE 44TH REPORT OF THE P.A.C.

2.116. The Committee are unable to understand as to why in the present case the precious stones (reserve price Rs. 1,60,650) were not put to auction again after the first auction was not successful. They feel that the system of Public Auction has its own advantages and is definitely preferable to sale by private negotiations. They, therefore, suggest that in such cases an attempt should be made to put the precious articles to a subsequent public auction in case the first attempt fails.

Recommendation

(i) *The Committee regret to note that 14,000 items pertaining to the imports for the period from 1940 onwards were outstanding pending clearance at the time of Audit Report. They feel that there cannot be any reasonable justification for non-clearance of items for such a long time as 25 years. They are of the view that had the Custom authorities taken prompt action in accordance with the Manifest clearance Department Manual, there would not have been accumulation of items pending clearance for 25 years. That it is possible to have these items cleared quickly, if efforts are made, is evidenced by the fact that as many as 9447 items out of 14,000 could be cleared within a short period after receipt of audit report."*

(ii) *In the opinion of the Committee if the confiscated goods are allowed to lie for a long period then there are chances of misuse, damage etc. of goods and it may lead to loss of revenue to Government. The Committee desire that all efforts should be made to clear out standing items without any further delay and some suitable be found to check accumulation of goods at ports. They feel that accumulation of goods could be stopped to a large extent by proper co-ordination between the Customs Department and the Port authorities."*

[S. No. 24, paras 2.122 and 2.123 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

In pursuance of the Board's instructions to all the Custom Houses special efforts are being made by them to liquidate the pending items expeditiously and the progress made in this direction is being watched. Out of 14,348 pending items, 11,723 have already been cleared and only 2,625 are pending clearance. It is expected that these pending items will also be disposed of in the next few months.

2. The recommendations of the Public Accounts Committee contained in Para 2.123 have been noted for appropriate action.

[F. No. 55/80/64-Cus.IV.]

Recommendation

The Committee consider it unfortunate that Customs duty to the extent of Rs. 77.22 lakhs as on 31st October, 1964 was still pending realisation a major portion of which (viz., Rs. 72.10 lakhs) pertains to private parties. They deprecate such abnormal delay in clearing arrears and desire that the Customs Department should take effective steps to realise the outstanding Customs duty as speedily as possible.

[S. No. 25, para 2.127 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been brought to the notice of the offices concerned for early compliance.

(This note has been seen and vetted by Audit.)

[F. No. 27/20/66-Cus.VI.]

Recommendation

The Committee regret to note that the arrears of revenue as old as since 1955 should have been still pending. They would like the Ministry to take effective steps to clear these arrears and to avoid such old accumulations in future.

[S. No. 25, para 2.128 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted and suitable instructions have been issued to the officers concerned to take effective steps to realise the outstanding amounts as speedily as possible and to ensure that such accumulations do not take place in future.

(This note has been seen and vetted by Audit.)

[F. No. 27/21/66-Cus.VI.]

FURTHER INFORMATION

As intimated earlier, the observations made by the Committee had been noted and suitable instructions were issued to the officers concerned to take effective steps to realise the outstanding amounts as speedily as possible and to ensure that such accumulations did not take place in future. In this connection a copy of the Ministry's orders F. No. 27/21/66-Cus.VI, dated the 4th April, 1966 is enclosed. It would be appreciated that assessment and recovery proceedings are a continuous process in the Revenue Department and all possible efforts are continuously made to recover the assessed demands as speedily as possible.

(This note has been seen and vetted by Audit).

[F. No. 27/21/66-Cus.VI.]

IMMEDIATE

F. No. 27/21/6-Cus.VI

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue & Insurance)

New Delhi, the 4th April, 1966.

From

The Under Secretary
to the Government of India.

To

The Collectors of Customs,
Bombay/Calcutta/Madras/Cochin/Pondicherry/Goa.
The Collector of Central Excise,
Bombay/Baroda/Madras/Delhi/Shillong/West Bengal,
Calcutta/Calcutta & Orissa. Calcutta.
The Deputy Collector of Customs,
Visakhapatnam.
The Assistant Collector of Customs,
Kandla.

SUBJECT.—*PAC* (1965-66) *44th Report—Arrears of duty outstanding for more than one year up to* 31-3-1963.—*Suggestion for clearance of.*

Sir,

I am directed to enclose a copy of para 2.128 of the 44th Report of the Public Accounts Committee (1965-66) (Third Lok Sabha) for your information and necessary action. It is requested that the importance of the observations made by the PAC may be impressed on all concerned and effective steps taken to clear these arrears and to avoid accumulation of such old cases in future.

2. A report may also please be sent to this Department showing the progress made in the recovery of these outstanding amounts up to the 31st March 1966. The report should reach this Department by the 20th April, 1966 positively.

Sd/- S. VENKATARAMA IYER,
Under Secretary to the Government of India.

Copy forwarded to the Customs III Section with reference to their Note for Circulation No. 23/1/66-Cus.III, dated the 28th March, 1966.

Sd/- S. VENKATARAMA IYER,
Under Secretary to the Government of India.

PAC No. 128

PUBLIC ACCOUNTS COMMITTEE

(1965-66)

44th Report.

(Third Lok Sabha)

[Audit Report (Civil) on Revenue Receipts, 1965.]

2.128. At the instance of the Committee, the Ministry of Finance (Deptt. of Revenue) have furnished a statement showing year-wise break up of the amount outstanding for more than one year up to 31-3-1963. The figures furnished are as under:—

Year	Amount
	Rs.
1955	14,747.43
1956	3,14,860.81
1957	59,079.04
1958	1,06,363.48
1959	2,00,957.35
1960	2,62,184.57
1961	3,88,974.55
1962	5,76,174.53
1963	470.00
TOTAL	19,24,311.76

The Committee regret to note that the arrears of revenue as old as since 1955, should have been still pending. They would like the Ministry to take effective steps to clear these arrears and to avoid such old accumulations in future.

Recommendation

The Committee would like to be informed of the progress made in the direction of withdrawing Note Pass facilities.

[S. No. 25, para 2.130 of Appedix XXI to the 44th Report.]

ACTION TAKEN

The decision for gradual withdrawal of Note Pass facilities was taken at an inter-departmental meeting held on the 14th May, 1965. This was followed by another inter-departmental meeting on 23rd July, 1965 when it was decided that for all practical purposes Note Pass facilities would be withdrawn with effect from the 1st January, 1966. The facility could, however, be utilised by the Ministries concerned, in exceptional circumstances, in consultation with the Central Board of Excise & Customs. As a result, the Note Pass facility has been extended only in exceptional cases, and this has brought down considerably the arrears of Note Pass cases. The reports received from the Collectors concerned indicate that at the end of December, 1965, only about 12,000 Note Pass cases were pending for adjustment as against 25,000 cases reported by the Public Accounts Committee. There has since then been further improvement during the first quarter of 1966 and the arrears figure as on 31st March, 1966 stood at 11,600 cases only.

2. The overwhelming number of Note Pass cases were availed of by the Ministry of Defence, the Oil and Natural Gas Commission, Bharat Electronics, Madras and Hindustan Aeronautics Ltd., Bangalore, who are engaged in defence oriented production. Even in these cases assessment is being made on a provisional basis and deposits made which are adjusted against final assessments. The need for final assessments at the initial stage in these cases on the basis of complete documents and early submission of the necessary documents in the pending cases has been impressed on the Departments concerned and it is expected that the remaining arrears would be disposed of at a faster pace.

[F. No. 10/6/66-Cus.VI.]

Recommendation

The Committee are not satisfied with the explanation offered in justification of the exemption granted from the payment of Customs duty to a private party manufacturing aluminium. While the exemption that was given does seem to satisfy the criterion of serving the public interest (conservation of foreign exchange), it does not appear to satisfy the other condition viz., the circumstances of exceptional nature".

[S. No. 26, para 2.136 of Appendix XXI to 44th Report.]

ACTION TAKEN

The observations of the P.A.C. have been noted.

FURTHER INFORMATION

The action to withdraw the concessions given in Ministry of Finance Orders No. 13/34/63-Cus.V, dated the 27th March, 1963 had already been taken on 2nd June, 1965 under Finance Ministry's letter F. No. 13/94/64-Cus.V, dated the 2nd June, 1965. The observations of the Public Accounts Committee have ever since been borne in mind in granting *ad hoc* exemptions from duty.

(copy)

F. No. 13/34/63-Cus.V.

GOVERNMENT OF INDIA

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 27th March, 1963.

ORDER

Whereas the Central Government is satisfied that it is necessary in the public interest (that is to say, for conservation of foreign exchange) to allow export of aluminium ingots manufactured by the Hindustan Aluminium Corporation, New Delhi for fabrication and re-export in the form of aluminium foil stock and that aluminium foil stock on such re-import into India should not be subjected to the full import duty leviable thereon;

Now, therefore, the Central Government, in exercise of the powers conferred by sub-section (2) of section 25 of the Customs Act, 1962 (52 of 1962) under the aforesaid circumstances of exceptional nature, hereby exempts all aluminium foil stock (manufactured from aluminium ingots exported by the Hindustan Aluminium Corporation, New Delhi), when imported into India by the said Corporation from so much of that portion of the import duty leviable thereon under the First Schedule to the Indian Tariff Act, 1934 (32 of 1934) which is relatable to the value of the aluminium ingots from which the aluminium foil stock have been manufactured:

Provided that the Assistant Collector of Customs is satisfied that the aluminium foil stock in respect of which the above exemption is claimed

have been manufactured from the aluminium ingots exported by the said Corporation.

Sd/- J. BANERJEE,

Deputy Secretary to the Government of India.

(copy)

F. No. 13/34/63-Cus.V.

GOVERNMENT OF INDIA

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 27th March, 1963.

ORDER

Whereas the Central Government is satisfied that it is necessary in the public interest (that is to say, for conservation of foreign exchange) to allow export of aluminium ingot manufactured by the Hindustan Aluminium Corporation, New Delhi for fabrication and reimport in the form of electrolytic aluminium rods and that aluminium electrolytic rods on such reimportation should not be subjected to full import duty leviable thereon;

Now, therefore, the Central Government, in exercise of the powers conferred by sub-section (2) of section 25 of the Customs Act, 1962 (52 of 1962) under the aforesaid circumstances of an exceptional nature, hereby exempts electrolytic aluminium rods (manufactured from aluminium ingots exported by the Hindustan Aluminium Corporation, New Delhi), when imported into India by the said Corporation, for manufacture of aluminium conductors steel reinforced or all aluminium conductors, from so much of the import duty leviable thereon under the Indian Tariff Act, 1934 (32 of 1934) as is in excess of the duty of 15% *ad valorem* leviable on such rods after excluding the value of aluminium ingots from which the rods have been manufactured, plus Rs. 360 per tonne:

Provided that the Assistant Collector of Customs is satisfied that the electrolytic aluminium rods in respect of which the above exemption is claimed have been manufactured from the aluminium ingots exported by the said Corporation.

Provided also that the importer undertakes to place the entire quantities of such electrolytic aluminium rods imported into India at the disposal of the Central Government for allocation to actual users.

Sd/- J. BANERJEE,

Deputy Secretary to the Government of India.

(copy)

F. No. 13/94/64-Cus.V.

GOVERNMENT OF INDIA

MINISTRY OF FINANCE
(*Department of Revenue*)

New Delhi, the 2nd June, 1965.

To

M/s. Hindustan Aluminium Corporation Ltd.,
U. Co. Bank Building, Parliament Street,
New Delhi.

SUBJECT.—*Export of aluminium ingots by Hindustan Aluminium Corporation and import of fabricated items—Concession in Custom duty—Question regarding.*

Dear Sir,

I am directed to refer to your letter dated the 13th August, 1964 regarding levy of surcharge and to say that the Government of India have decided that the amount of Rs. 360 mentioned in this Ministry's exemption order F. No. 13/34/63-Cus.V, dated 27-3-63 would be *excluded* when computing surcharge leviable on the imports of fabricated E.C. rods, and consequential refund, if any allowed. Necessary instructions in the matter have been issued to the Collector of Customs, Calcutta/Bombay, who may be approached direct in the matter.

2. I am to add that the Government of India have further decided to withdraw with immediate effect the concession in Custom duty allowed on electrolytic aluminium rods, and aluminium foil stock imported into India after manufacture from aluminium ingots exported by you.

Yours faithfully,
Sd/- M. G. VAIDYA,
Under Secretary.

Copy forwarded to:—

1. The Collector of Customs, Bombay/Calcutta with reference to their letter No. C/1301/63, dated the 15th December, 1964/No. C.VI(37)/63, dated the 6th April, 1965.

2. The Ministry of Steel & Mines (Deptt. of Mines & Metals), New Delhi, with reference to their U.O. No. (18)Met/64, dated the 17th May, 1965.

Sd/- M. G. VAIDYA,
Under Secretary to the Government of India.

Recommendation

(i) The Committee feel concerned to note the increase in the short-levy of excise duties disclosed in test audit from Rs. 8.52 lakhs as reported in the Audit Report, 1962 to 181.72 lakhs as reported in the Audit Report 1965. As against this, the Internal Audit parties which numbered 30 in 1963-64 and covered 936 out of 3,223 ranges were able to detect an under-assessment of about Rs. 15.56 lakhs during the year. While the Committee appreciate that the present scope of the Internal Audit parties is limited inasmuch as they do not question the interpretations by the Collector or the Board they feel that their performance leaves much leeway.

(ii) In their 27th Report (Para 45) the Committee expressed their sense of alarm at the extremely inadequate internal audit organisation in the Central Excise Department as revealed by the Report of the Central Excise Reorganisation Committee. In their note (Appendix IX) showing action taken on the recommendation of the Committee, the Ministry have stated that the Government have under consideration a scheme for the implementation of the recommendations of the Central Excise Reorganisation Committee in regard to the strengthening of the Internal Audit Organisation. The main features of the scheme are that the Audit and Accounts staff functioning in the Collectorates and Custom Houses will form a separate cadre under the technical control and guidance of an independent Directorate of Audit. Pending the examination of the full implications of such a long-term scheme in all its aspects, certain interim measures for the strengthening of the internal audit organisation in the Central Excise Department are stated to be under examination, such as:

(i) *The amalgamation of the Regional Audit which looks after the auditing of accounts of factories producing excisable commodities which are under audit type of control and the internal audit department.*

(ii) *The augmentation of the number of audit parties.*

(iii) *The upgrading of the status of the Examiner from Superintendent of C.E. to an Assistant Collector.*

(iii) The Committee regret to observe that despite recommendation of the Central Excise Reorganisation Committee and the P.A.C's recommendation referred to above not much progress has been made in strengthening the internal Audit Organisation of the Central Excise Department. The Committee desire that early action should be taken in the matter. The Committee understand from the C. & A.C. that a comprehensive review of the internal Audit Department from the point of view of adequacy and scope is being undertaken by him. They would await the results through future Audit reports.

[S. No. 27, paras 3.8 to 3.10 of Appendix XXI to 44th Report.]

ACTION TAKEN

(i) The observation has been noted.

(ii) & (iii). The scheme of strengthening the Internal Audit Organisation by constituting a separate cadre of the Audit and Accounts staff under the guidance and control of an independent Directorate has had to be deferred for the present on grounds of economy; this decision was taken in December, 1965, with the approval of the then Finance Minister. However necessary organisational changes within the limits of the manpower and financial resources available have been made to improve the functioning of the Internal Audit parties and the more important of such changes effective from 8-12-1966 are listed below:—

(a) Regional audit parties has been merged with the Internal Audit in each Collectorate and placed exclusively under the charge of an Assistant Collector.

(b) The number of audit parties has been enhanced from 31 to 54.

(c) Audit work in each Collectorate has been made the personal responsibility of each Collector.

(d) The Examiner(s) of Accounts has/have been placed under immediate supervision and direct control of the Assistant Collector (Audit).

[F. No. 1/48/67-CERC(Admn.)Cell.]

Recommendation

The Committee appreciate that the Excise Officers cannot prevent the sugar factories from exporting sugar out of fully rated stock even if concessionally rated sugar of the previous year is lying in stock. But, since there is year-wise segregation of stocks, it should be possible for the officers to know whether any export is made from the left over stock of concessionally rated sugar of a particular year at the fag end of the year or early next year, and they should be cautious if such sugar is cleared for export.

The fact that demands for Rs. 1.51 lakhs out of under-assessment of Rs. 20.49 pointed out by Audit is sustainable according to the Board, indicates that there have been failures in some cases.

[S. No. 29, paras 3.20 & 3.21 of Appendix XXI to 44th Report.]

ACTION TAKEN

The observations of the Committee have been noted.

[F. No. 15/12/66-CXIV.]

Recommendation

The Committee are surprised to learn that the two Collectorates in this case did not issue supplementary demands under Rule 9A of the Central Excise Rules consequent upon enhancement of duty in April, 1962 and March, 1963, in anticipation of the decision of Government to withdraw such supplementary demands and to recover duty only at the rate at which the initial assessments were made at the curer's premises. The decision was actually taken only in September, 1965 i.e. 3½ years after. In the opinion of the Committee it is a clear case of failure of the two collectorates for which responsibility should be fixed.

[S. No. 30, para 3.27 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted and action to fix responsibility on individual officers for failure to issue supplementary demands has already been initiated.

(Vetted by Audit).

[F. No. 15/17/66-CXIV.]

Recommendation

The Committee consider it unfortunate that originally duty was charged only on alcohol mixed with other denaturants was omitted from levy of duty. While the committee appreciate that Central Excise Duty was levied on power alcohol for the first time they feel that the Ministry should have known about the various types of denatured alcohol used by the industry. The Commitee feel that once a tariff item is clear and unambiguous, the practice of modifying it with reference to what the executive considers as practical consideration or de-facto position is not desirable.

[S. No. 31, para 3.32, of Appendix XXI 44th Report, 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted.

[F. No. 18/29/64-CX.III]

Recommendation

While the Committee appreciate that introduction of compounded duty scheme is intended to be a step towards simplification of excise control in the case of small manufacturing units, they cannot view with equanimity irregularities committed by the excise officers while deciding the eligibility of the manufacturers to work under the scheme. The Committee desire that the Ministry should take necessary steps to ensure that no malpractices are followed with regard to the eligibility of manufacturers to work under the scheme.

[S. No. 35, para 3.47 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted. It may, however, be mentioned in this connection that consequent on the withdrawal of duty on raw V.N.E. Oils the compounded levy scheme has also been withdrawn since 1-3-1963 and is no longer in vogue.

[F. No. 18/7/64-CXIII.]

Recommendations

3.62. *The Committee regret to note that nitro-cellulose lacquers, an excisable product, which was being manufactured by the factory since October, 1955 was brought under excise control only w.e. from September, 1962. They feel that this inordinate delay is hardly excusable.*

3.63. *The Committee would have liked the Board to take into consideration the failure of the party to pay excise duty from 1955 to 1962, before they agreed to give exemption on grounds of equity etc.*

3.64. *The Committee note that the Department agreed with the Audit view that the whole of the quantity produced is excisable but that for the sake of equity and on economic considerations it had decided to charge duty only on the product consumed.*

3.65. *The Committee note from the evidence tendered that the appeal of the manufacturer contending that the nitrocellulose lacquers being produced by it is not excisable at all is still pending. They would like to be informed about the final outcome of the case.*

[S. No. 36 Paras. 3.62, 3.63 and 3.65 of Appendix XXI to 44th Report]

ACTION TAKEN

3.62. The manufacturers were manufacturing cellophane which was brought under excise control in 1961 for the first time and it was not known that they were also manufacturing nitrocellulose lacquers as well,

since it was not cleared from the factory. It only came to the notice of the Department in 1962 that nitrocellulose lacquer was also being manufactured and it was brought under excise control. The Committee's observation has been noted.

3.63. The Recommendation has been noted.

3.64. The Committee's views have been noted.

3.65. The revision application of the party has since been rejected.

[F. No. 22/9/66-CX. VI]

Recommendations

3.90. *The Committee find this to be a clear case of evasion of duty. The facts that the assessee company changed the name, advertisement and surrendered the licence under drug control act, show a clear and deliberate intention on its part to evade the payment of duty on the product which was in any case dutiable.*

3.91. *They note that the necessary demand had since been raised and paid but they wish to point out that the omission to license the factory and to recover duty constitutes a very serious negligence on the part of the Central Excise officials concerned. The Committee are of the opinion that mere surrender of the drug licence on the part of the firm was no reason to assume that the firm was not manufacturing a medicinal preparation, particularly when the Central Excise Inspector had recorded in his file in March, 1961 that "Vox Jubes" had the same formula as "Vox Pastilles" and the factory commenced production of the Jutes in April, 1961, no excise licence was insisted upon and the clearance of the "Vox Jubes" was allowed free of duty.*

3.92. *The Committee regret to note that even after the evasion was discovered, the firm was treated with undue leniency. The Committee also note with regret that a supplementary demand for the difference of 2½ per cent. in the rate of duty was raised only on the insistence of audit. In view of the circumstances the Committee cannot completely discount the possibility of collusion and malafides in the transaction. They, therefore, suggest a thorough investigation and adequate action in the matter.*

3.93. *The Committee hope that steps would be taken to prevent administrative lapses on the part of the Excise Officers which result in omission to assess excisable products.*

[S. No. 39—Paras. 3.90 to 3.93, Appendix XXI to 44th Report 1965-66.]

Action Taken

The observations of the Committee have been brought to the notice of the Collector of Central Excise, Madras with instructions to institute a thorough investigation and take adequate action in respect of non-recovery of duty on "Vox Jubes" w.e.f. 7-4-1961. The Collector of Central Excise, Madras has also been asked to hand over the case to the S.P.E. for a thorough investigation separately.

Necessary instructions have also been issued to all Collectors of Central Excise to take effective steps so as to prevent administrative lapses which result in omission to assess excisable product.

[F. No. 36/27/64-CX.I.]

Further Information

A copy of the instructions issued in this regard is enclosed *vide* F. No. 36/27/64-CX-I, dated 16-5-1966.

2. The Collector, Central Excise Madras was asked to hand over the case to the S.P.E. for investigation. It is reported by the Collector of Central Excise Madras that the S.P.E. has since completed the investigation and the report of the investigating Officer is under scrutiny by the Headquarters Office of the S.P.E. Their final decision is awaited.

[F. No. 36/27/64-CX-I.]

Copy of Board's letter F. No. 36/27/64-CX-1(Pt.), dated the 16th May, 1966 [Circular letter No. 5 (Medicine) 66] addressed to All Collectors of Central Excise.

Subject:- *Patent or Proprietary Medicines—Omission to assess excisable product—44th Report of the Public Accounts Committee (1965-66)—Regarding.*

I am directed to say that the Public Accounts Committee have observed as follows in para 93 of their 44th Report, 1956—66 in a case of omission to assess an excisable product. (*Vide* para 37 of the Audit Report, 1965 extract enclosed).

> "The Committee hope that steps would be taken to prevent administrative lapses on the part of the Excise Officers which result in omission to assess excisable products."

2. The Board desires that effective steps should be taken so as to prevent recurrence of such administrative lapses on the part of the Excise Officers.

PUBLIC ACCOUNTS COMMITTEE

Audit Report (Civil) on Revenue Receipts, 1965

CHAPTER III

Union Excise Duties

Para 37 (Pages 28-29)

PATENT OR PROPRIETARY MEDICINES

(*Tariff Item No.* 14-*E*)

Omission to assession excisable products—Rs. 1,56,607.

A factory was manufacturing under a drug licence, a medicinal preparation called "Vox Pastilles" which was advertised as a remedy for cough and sore throat. On the imposition of excise duty on patent or proprietary medicines with effect from 1st March, 1961, the factory stopped the manufacture of the drug after clearing the stocks on hand by 21st March, 1964 on payment of duty. From 7th April, 1961, the company started manufacture of a preparation named as "Vox Jubes" having the same ingredients and medicinal properties as its predecessor, but the specification that it was a remedy for cough and sore throat was omitted from the packets. The factory also intimated the stoppage of manufacture of the "Vox Pastilles" to the Drug Control authorities and got its drug licence cancelled. While doing so, it did not inform them about the introduction of the "Vox Jubes". The cancellation of the drug licence was, however, taken by the Central Excise Department as proof that the new product was not a drug and when the factory commenced production of the Jubes in April, 1961, no excise licence was insisted upon and the clearance of "Vox Jubes" were allowed free of duty.

2. During the audit conducted in July, 1963, it was observed that even though the Central Excise Inspector had recorded in his file in March, 1961 that "Vox Jubes" had the same formula as "Vox Pastilles", no action was taken to levy duty on the product. The failure was pointed out to the Department as also the fact that there was no specific declaration by the Drug Controller that the "Vox Jubes" was not a drug. The Department replied that no action was called for in the matter as the Drug Controller had cancelled the licence given to the factory. On the matter being pursued further by Audit, a detailed questionnaire was issued to the manufacturers in December, 1963 calling for full particulars relating to the manufacture of "Vox Jubes" and asking them to state why they should not be required to take out an excise licence. The manufacturers agreed to obtain the excise licence as well as the drug licence with effect from 1st March, 1964 and agreed also to pay duty for past clearances. The Central Excise Department

raised demands amounting to Rs. 1,29,489 in respect of the clearances for the period 7th April, 1961 to 28th February, 1964 by applying the concessional effective rate of 7½ per cent. *ad valorem*. Audit pointed out that no concessional rate was applicable in this case as initially, goods were cleared without payment of duty and that the full standard rate of 10 per cent. should be applied. The Department has accepted the contention of Audit and has raised a supplementary demand of Rs. 27,118 making in all Rs. 1,56,607. Out of this amount, a sum of Rs. 85,000 has since been paid. The balance remains uncollected so far. (December, 1964).

Recommendations

(*i*) *The Committee consider it unfortunate that the Board should have left commercial plywood undefined when in June, 1962 it issued the notification limiting the duty on it to 15 paise per square metre.*

(*ii*) *They are of the opinion that while the matter of fixing the rates of duty on different varieties of plywood was under consideration of the Board, the Board could easily have asked the Collector concerned to withhold payment of any refund due till the matter was decided finally. They are also of the view that if the amendment made in July, 1963 to the Government notification had been made earlier, the additional revenue should have legitimately and equitably accrued to Government.*

[S. No. 40, paras 3.100 and 3.101 of Appendix XXI to 44th Report, 1965-66.]

ACTION TAKEN

(i) In June, 1962, specific rates of duty were fixed for (a) 'Commercial plywood other than decorative' and (b) 'decorative plywood and all boards'. Decorative plywood was defined in our letter F. No. 22/4/62-CX.VII, dated the 15th June, 1962 as "plywood with ornamental veneers on one or both sides, used for decorative purposes, of a superior timber like teak, walnut, rose, mahagany, ash or chenar etc." All other plywood which was not decorative in terms of these instructions may be deemed to have been implicitly covered by the term 'commercial plywood'.

(ii) In view of what is stated in the preceding paragraph, the plywood in question was assessable at the specific rate applicable to commericial plywood and the question of withholding payment of refund did not arise.

The question of amending Notification No. 126/62-CE, dated the 13th June, 1962 on the lines subsequently incorporated in Notification No. 105/63-CE, dated the 1st July, 1963 was in fact considered in the month of January, 1963 but as the production of costly varieties of plywood was reported to be less than 5000 sq. metre involving relatively

insignificant additional revenue of Rs. 7,500 against total revenue of seventy lakhs from this product, the decision on the issue was deferred until reveiw of Notification No. 126/62-CE, dated the 13th June, 1962 was undertaken in June, 1963.

(Not vetted by Audit.)

[O.M. No. 9/6/65-Cx.VII, dated 23rd August, 1967.]

Recommendations

(i) The Committee regret to note that due to three different findings of the Chemical Examiner on three occasions, in regard to the same type of paper, duty could not be realised at the proper rates and at the proper time, with the result that the recovery of duty due became time-barred. The Committee desire that the classification of different varieties of paper should be systematised as far as possible in order to minimise the risk of wrong assessment.

(ii) The Committee are glad to note that the Government proposes to amend the law in order to take powers of review and to extend the period of limitation in cases of mis-classification or collusion or fraud. They note that steps have been taken to effect recovery in the present case through a civil suit. They would like to be informed of the result of this suit. Keeping in view the outcome of this case, the question of taking specific powers to effect recovery by means of civil suit should also be decided.

(iii) The Committee hope that instructions issued by the Board that Chemical Examiners should be responsible for finding out the constituents etc. only and the actual classification should be done by the officers and not by the examiner, will be strictly adhered to.

[S. No. 41, paras 3.112 to 3.114 of Appendix XXI to 44th Report.]

ACTION TAKEN

(i) Paper and paperboard are grouped into four different sub-items under Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944, sub-item (4) *ibid* covering varieties not specified in other sub-items. In cases of doubt whether a particular variety of paper/board is to be assessed under one or the other sub-item the matter is referred to the Board by the Collector concerned after making necessary enquiries and consulting other Collectors. In such cases the Board examine the matter having regard to all relevant factors and issue a ruling, where considered necessary.

However, the Committee's suggestion that the classification of different varieties of paper should be systematised as far as possible, is noted.

(ii) A Writ Petition filed by the party in the High Court at Calcutta against the demands for duty raised by the Department is at present pending. The question of effecting recovery of dues through a civil suit will be considered further after the Writ Petition has been disposed of by the High Court.

(iii) The Committee's observations have been noted.

[Vetted by Audit.]

[F. No. 22/14/67-CX.VI]

FURTHER INFORMATION

Para 41 (iii) The instructions have been reiterated and the Committee's observations in the matter have been brought to the notice of all Collectors of Central Excise etc. for strict compliance, *vide* Board's circular letter F. No. 40/68/66-CX.I, dated the 2nd January, 1967, a copy of which is enclosed.

[Vetted by Audit.]

[F. No. 22/14/67-CX.VI.]

COPY OF CENTRAL BOARD OF EXCISE AND CUSTOMS CIRCULAR LETTER MISC. NO. 1/67-CX.I (F. NO. 40/68/66-CX.I), DATED THE 2ND JANUARY, 1967 ADDRESSED TO ALL COLLECTORS OF CENTRAL EXCISE AND ALL DEPUTY COLLECTORS OF CENTRAL EXCISE, ETC.

SUBJECT.—*Test reports of samples and technical opinions for Customs and Central Excise purposes.*

I am directed to say that instances have come to the notice of the Board in the recent past wherein the laboratories had given categorical tariff classification. Based on this opinion the products were assessed to duty by the assessing officers. Subsequently, at a higher level the classification was decided to be otherwise. This has resulted in an embarrassing situation.

2. It has been pointed out from time to time that it is not the function of the Board's laboratories to classify a product for purposes of tariff. In this connection your attention is drawn to (i) paragraphs 147, 148 and 189 of Manual of Chemical Laboratory Custom House, Calcutta, which is applicable *mutatis mutandis* to all the Board's laboratories, (ii) paragraph 5 of Board's letter No. 54(14)-Cus.III/54, dated the 18th January 1955 (iii) paragraphs 2 and 3 of Board's letter F. No. 35/75/63-CX.II, dated the 2nd July, 1964 (iv) Item No. 5 of the Combined Conference of Collectors of Central Excise and Customs held at Madras in November, 1964 and (v) paragraphs 3.114 of the Public Accounts Committee report 1965-66 extract of which are enclosed.

3. The Board reiterate that the assessing officers at the various levels should not ask the Deputy Chief Chemist/Chemical Examiner, to give

the tariff classification but should put the proper query enabling the laboratory to carry but tests required for determining the classifications. When technical *opinions* regarding classification are obtained from the Deputy Chief Chemist/Chemical Examiner, these should neither be made available to the party nor should they state that their assessment is based on such opinions.

4. Receipt of this letter may please be acknowledged and the Board informed of the steps taken to ensure strict compliance with these instructions.

COPY OF EXTRACT FROM MANUAL OF THE CHEMICAL LABORATORY CUSTOMS HOUSE, CALCUTTA.

REPORTS

147. The reports must contain enough data to help the Executive Departments take a decision about assessment, classification etc. The chemist must not load the report with figures and observations which are not of use to the executive officers. Similarly no extraneous matter should be entered on the Test Memo by any officer of the department sending samples for test. The memo should strictly be confined to the queries concerning the test and replies of the Chemical Examiner as the independent technical adviser. They should not be used as note sheets.

148. Classification, assessment and similar matters are the province of the Executive departments. In order to save embarrassment, the report must as far as possible avoid all mention of these aspects. It is, however, impossible in many cases to eschew all such indications and be at the same time intelligible. Reports like, "it is Sago flour", "it is bleaching powder", "it is Portland Cement other than white" cannot be helped and can do no harm.

COPIES OF TEST REPORTS FOR PARTY

189. If a party asks for it, there is no objection to issue to him a copy of the technical details of the Chemical Examiner's report. If the Chemical Examiner has made any suggestion regarding classification or assessment, it should not be transmitted. These copies are issued by the department concerned (not the Laboratory) usually after consulting the Chemical Examiner about the technical portions which may be issued to the party. Fee of Re. 1 is charged for each copy.

EXTRACT OF LETTER NO. 54(14)Cus.III/54, DATED 18-1-1955 FROM THE UNDER SECRETARY, CENTRAL BOARD OF REVENUE, ADDRESSED TO COLLECTORS OF CUSTOMS, BOMBAY, CALCUTTA AND MADRAS.

5. The report from the laboratory should similarly be confined to data which would assist the Appraising Department to decide classifica-

tion, assessment etc. If the Chemical Examiner wishes to make a recommendation re: the classification or on other aspects, it should not be made on the test report itself, but on a separate note sheet. There are certain types of materials where a report should not be loaded with figures or observations which are not likely to be of use to the appraising Department.

EXTRACT OF CIRCULAR LETTER NO. MISC. 3/64, F. NO. 35/75/63-CX. II FROM SECRETARY, CENTRAL BOARD OF EXCISE AND CUSTOMS, NEW DELHI, ADDRESSED TO ALL COLLECTORS OF CENTRAL EXCISE, ETC. ETC.

2. Some recent instances of assessment problems which have been considered by the Board show that the assessing and the controlling officers do not often apply their own minds to the problem of classification of articles for assessment and the tendency seems to be growing on their part to take the path of least resistance and refer samples in doubtful or disputed cases to Chemical Examiner, Chief Chemist, etc. not merely for analysis and opinion as to the nature of goods but also asking for their advice about the item of the tariff under which the goods should be classified. On receipt of such opinion they merely ditto the advice disregarding all other factors. At times this often leads to palpably wrong orders which it takes time to correct, resulting meanwhile in avoidable hardship to the manufacturers and additional work all along the line for the administration.

3. In this connection your attention is invited to Part II, Chapter II, paragraph 21 on p. 100 of the Report of the Central Excise Reorganisation Committee in regard to the role of regional and control laboratories in excise administration. The Government has noted this recommendation. The Board would like to emphasise that the decision as to the item of the Central Excise Tariff under which any article should be classified has to be that of the assessing officer. He may obtain expert technical market advice from any sources from where useful advice can be had, but in the final analysis the decision has to be his and not that of any adviser including the Chemical Examiners or the Chief Chemist.

EXTRACT OF MINUTES OF THE COMBINED CONFERENCE OF COLLECTORS OF CENTRAL EXCISE AND COLLECTORS OF CUSTOMS HELD AT MADRAS FROM 10TH TO 13TH NOVEMBER, 1964.

Item No. V

Role of technical experts in deciding classification for assessments.

It was once more stressed upon the Collectors that the responsibility for deciding the correct classification lay on the assessing officers and on their superior executive officers and not on the Chemists or the technical

experts. It was also pointed out that while the technical experts would give correct analysis of the article in dispute, they were not expected to be equally familiar with the actual use of the article, legal decisions etc. As such they would be handicapped in suggesting the actual classification. Further the tendency of shelving responsibility by requesting Chemists to advice classification was producing other undesirable, effects, *e.g.*, slackness on the part of assessing officers, resort to provisional assessment in avoidable cases etc. The Collectors were therefore, advised that while they were free to seek the advice of the experts regarding the chemical or physical composition of the article under dispute, they (and their assessing officer) should apply their own minds and come to a decision on the correct classification themselves.

(Action all Collectors)

Para 3.114 of Public Accounts Committee (1965-66)

FORTY-FOURTH REPORT

The Committee hope that instructions issued by the Board that the Chemical Examiners should be responsible for finding out the constituents etc. only and the actual classification should be done by the officers and not by the examiner, will be strictly adhered to.

Recommendations

(i) The Committee are not happy over the time-lag of four years which occurred in this case between the issue of the report of the Tariff Commission regarding actual use of off-set paper above particular grammage for drawing and the final decision taken by Government to classify it as such for the purpose of levy of excise duty. (The Tariff Commission reported on the matter in 1959 and Government issued instructions in August, 1963.) In case of one factory the loss of revenue due to delay in issue of classification amounted to Rs. 1.78 lakhs during the period July, 1962 to August, 1963.

(ii) While the Committee note that the Tariff Commission's report was not directly concerned with enforcement of excise tariff, they are surprised why the Board did not then take note of their expert opinion on a matter having a bearing on the excise control. What is more disturbing is that even after the point was raised by a Collector in 1961, the ruling given by the Board in March, 1962 was not in consonance with the opinion of tariff Commission and it took them a further period of about 1 1/2 years to come to the final conclusion. Obviously the earlier ruling was given after a perfunctory examination of the matter.

(iii) The Committee are also not satisfied over the different Collectorates charging different rates of duty on the same article. They feel that the Board should have a close coordination with the various Collectorates in order to ensure uniform application of excise tariff, and necessary steps should be taken in this direction.

[S. No. 42, paras 3.121 to 3.123 of Appendix XXI to 44th Report.]

ACTION TAKEN

(i) and (ii) The Committee's observations have been noted.

(iii) Instructions already existed to the effect that in matter of classification of paper where a doubt arises in any Collectorate, the Collector concerned should consult the other Collectors and where there is divergence of practice get a ruling of the Board, thus ensuring that the same variety of paper is classified in the same way in all the different Collectorates. Instructions have also been issued laying down certain guiding principles regarding classification and assessment of paper and paper board.

Further general instructions emphasising the need to avoid lack of uniformity in administration of tax laws have also since been issued *vide* this Ministry's letter F. No. 1 14 64-CX.II, dated the 16th February, 1967, a copy of which is enclosed.

[Vetted by Audit]

[F. No. 22/15 67-CX.VI.]

COPY OF MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE) CIRCULAR LETTER NO. MISC. 1 67 (F. No. 1 14 64-CX.II), DATED THE 16TH FEBRUARY, 1967 ADDRESSED TO ALL COLLECTORS AND DEPUTY COLLECTORS OF CENTRAL EXCISE, ETC.

SUBJECT.—*Public Accounts Committee's 46th Report—Administration of Tax Laws—Recommendations of the P.A.C. Instructions regarding.*

The Public Accounts Committee in their 44th Report had drawn attention to the disquieting feature regarding lack of uniformity in administration of tax laws; different officers sometimes give different interpretations of the law with the result that citizens may be taxed differently under the same statute which in their view obviously amounts to executive discrimination. The Committee have further stated in their 46th Report that they cannot overemphasise the basic need of ensuring that under the same statute and at the same time people are not charged different rates of tax only due to different administrative interpretations or other failures.

2. The Government of India have noted the recommendations of the Committee and desire that suitable steps may be taken to implement the recommendations of the Committee of different levels. While the Government of India have already taken necessary steps to strengthen the internal audit in all the Collectorates, the Board feels that *effective* watch at all supervisory levels and proper training of the assessing officers will go a long way towards avoiding the executive discrimination pointed out by the P.A.C. I have, therefore, been directed to request that necessary action may be taken in the matter urgently.

Recommendations

(i) The Committee regret to find from the note furnished (Appendix XII) that in these cases there was delay in drawing out samples for chemical analysis. Further, although the cases relate to the same Collectorate no uniform practice was followed in recovering back duty (after the Chemical Examiner's report was received).

(ii) The Committee note with surprise that not only no uniform procedure was followed in the recovery of back duty but also the decisions were taken by the officers at different levels. The Committee feel that the procedure needs streamlining with a view to achieving uniformity in regard to both realisation of back duty and delegation of these powers to the officers.

[S. No. 43 paras 3.132 and 3.133 of Appendix XXI, 44th Report.]

ACTION TAKEN

The Committee's observations have been noted for necessary action.

[F. No. 22/8/66-CX.VI.]

Recommendations

The Committee regret to point out that this was a clear case of failure of the Central Excise Officers to levy duty on the yarn used in trade samples in spite of the clear instructions of the Board to impose such a levy. They hope that the officers will be more careful in future, and that such lapses will not occur again.

The Committee are not happy over the practice of allowing exemption of duty by executive orders instead of issuing a proper notification as required under rule 8(1) of the Central Excise Rules. Apart from the legal position, they are not satisfied with the explanation that there being already so many notification, bulletins etc. involving the possibility of the officers overlooking some provisions, the Board were not keen on issuing too many notification. For, the same difficulties will arise in the

case of issue of executive orders. But if for administrative flexibility, Government desire some latitude in such matter, they should obtain authority to do so from Parliament by introducing an amendment to excise law. The Committee hope that the difficulties faced by the Department and the extent of delegation of powers required to resolve them would be carefully examined.

The Committee desire that the procedure should be rectified early making it obligatory to lay a copy each of all notifications issued by the Department before Parliament.

[S. Nos. 44, 45, 46, paras 3.138, 3.141 and 3.142 of Appendix XXI, 44th Report.]

ACTION TAKEN

The above observations/recommendations of the Committee have been noted.

[F. No. 1/7/64-CXII.]

Recommendations

(i) *The Committee consider it unfortunate that the particular Collectorate should have ignored the classification given by the Board in October, 1962 that 'Sized waste of yarn' was assessable to duty and continue to clear such yarn without payment of duty. Such a tendency on the part of Collectorates to ignore Board's instructions needs to be put down. In the present case if the Collector had a genuine doubt about levy of duty on sized waste of yarn having regard to the definition given in the Textile Control Order that this type of yarn was to be treated as waste yarn, he should have referred the matter to Board, and in the meanwhile imposed duty thereon.*

(ii) *The Committee have come across a few other instances also where the Board's instructions have not been followed by the Subordinate officers. The Committee regard this as both serious and unfortunate. They desire that a very serious view should be taken of such deliberate violation and immediate steps should be taken to ensure supervisions and precise compliance with such orders.*

[S. No. 48, paras 3.152 and 3.153 of Appendix XXI, 44th Report.]

ACTION TAKEN

The above observations of the Committee have been noted.

[F. No. 1/6/64-CX.II.]

Recommendations

The Committee regret to note the omission of the Board to define the word 'hank'. This resulted in the hanks of longer length being cleared at concessional rates of duty before the issue of clarification in August, 1962, involving a considerable loss of revenue (Rs. 40.03 *lakhs in nine Collectorates). Apart from this loss, the purpose of giving the concession* i.e. *not to levy duty on that part of the cotton yard which was used by the handloom weavers, was also not probably fully achieved, for according to the Ministry's own admission there was a greater danger of hanks of longer length being misused by powerlooms. The Committee desired that in view of the financial and other important implications involved in the notifications issued by the Board, these should be more specific and worded more carefully.*

[S. No. 49, para 3.161 of Appendix XXI to 44th Report.]

ACTION TAKEN

The above recommendation of the Committee has been noted.

With regard to para 3.160 of the Committee's report it may incidentally be observed that in the light of further data that has since become available, the information furnished to them earlier (and which has been reproduced at Appendix XIII of the Committee's Report) needs to be revised as shown in the enclosed note.

[F. No. 1/22/64-CX.II.]

NOTES

The total number of units producing and clearing cotton yarn in the form of 'Hank' is 388. The number of those units where hanks produced and cleared contained more than 840 yards, and concessional rates of duty were denied on the strict interpretation of the term 'hank', was only 10. In the remaining 378 units *either* the hanks produced and cleared did not contain more than 840 yards or the concessional rates of duty were applied irrespective of the length of yarn contained in hanks.

[F. No. 1/22/64-CX.II.]

Recommendation

The Committee also desire that both in view of letter of the Law and the intention efforts should be made to recover this amount from those who got this unintended profit.

[S. No. 49, para 3.162 of Appendix XXI to 44th Report.]

ACTION TAKEN

The desire of the Committee to make good the amount of Central Excise duty involved in the case under consideration is appreciated but it has been felt that further action in the matter may not be taken in view of the following considerations: —

(i) in terms of the wording of the notifications in force during the relevant period it could not legally be possible to deny grant of exemption to those hanks also which contained more than 840 yards of cotton yarn;

(ii) assessment of cotton yarn of longer length had acquired the force of an established practices: and

(iii) even if despite (i) and (ii) above demands were to be issued at this late stage the legality of such an action in view of the time-limit imposed by rule 10 of Central Excise Rules, 1944, would be doubtful.

[F. No. 1/22/64-CX.II.]

Recommendation

The Committee note that in the present case the whole question hinges on the interpretation of the expression 'fully manufactured conditions' used in the budget instructions. The Committee understand from Audit that in another case, the earlier instructions of the Board were that only the goods in packed condition and ready for delivery on the date of imposition of duty were not chargeable to duty and in other jute Mills this practice was followed. (The Chairman of the Board promised to check up the position). If so, the Committee hope that this aspect will also be examined before coming to a final decision. The Committee feel that such difficulties can be avoided if the instructions issued by the Board are more specific.

[S. No. 50, para 3.171 of Appendix XXI to 44th Report.]

ACTION TAKEN

The position has been checked upon an all India basis and it is found that generally speaking only those jute manufactures were considered to be "fully manufactured" as were lying on the crucial date in a properly packed or baled condition ready for delivery.

Regarding the appeal, referred to by the Committee, it may be stated by way of elucidation that till now it is a claim for refund of part of the duty in the specific case of New Central Jute Mills, under consideration. While finalising action on that claim, and while dealing with

appeal/revision application, if any, that might be preferred in connection therewith, the local Central Excise authorities in Calcutta and Orissa Collectorate, as well as the appellate/revisional authorities, will no doubt take the above position into account.

The need of the instructions issued by the Board being more specific, stressed by the Committee, has been noted.

[F. No. 1/14/64-CXII.]

Recommendation

(ii) *The Committee cannot over-emphasize the basic need of ensuring that on the same commodity at the same time people are not charged different rate of duty due to different administrative interpretation other failures. This would obviously amount to executive discrimination. Therefore, there must be a system of giving uniform interpretation, so that all the assessees who were liable to pay a certain tax on a certain commodity under a certain statute were uniformly treated.*

(iii) *The Committee are not satisfied over the present administration of the excise duties, where the instances of short levy and excess levy are not infrequent. Normally the burden of excise duty is passed on to the consumer by the producer. Moreover, when duty is short levied in the first instance, the burden of the extra duty paid later had to be borne by the manufacturer himself, as he might not be able to pass it on to the consumer. In case of collection of excess duty in the first instance, the refund paid to the manufacturer later would be retained by him, as he would have already passed on the burden of higher duty to the consumer. There would also be cases where persons who have paid excise duty might not get refund either due to time-bar or other reasons. Such persons would be sufferers. The Committee desire that these aspects should be carefully examined and necessary steps taken to mitigate the difficulties, and to ensure uniform application of excise duties throughout the country.*

[S. No. 50, paras 3.173 and 3.175 of Appendix XXI to 44th Report.]

ACTION TAKEN

The above observations/recommendations of the Committee with regard to steps being taken to avoid, as far as possible, short levies and excess levies, have been noted.

[F. No. 1/14/64-CX.II.]

Recommendation

Since the case is sub-judice *the Committee would like to await the judgment of the High Court.*

[S. No. 52, para 3.196 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

Since the Committee have not recommended any action, Government have no comments to offer, except to say that the case filed by the party in Bombay High Court has already been decided against the Government. However an appeal against the said decision has since been filed.

[File No. 12/27/66-CXVII.]

Recommendation

(i) *The Committee regret to note that there was an initial failure of the administrative machinery of the Delhi Collectorate to enforce licensing of small assemblers of wireless receiving sets after the Central Excise duty was levied thereon from 1st March 1961. While the Committee appreciate that the product having been brought under excise control for the first time, there was some agitation by the manufacturers, they are surprised that the Department waited till September-Ocober, 1961, i.e., for more than six months, before the manufacturers were made to take out a licence. What is worse, the manufacturing firm 'A' referred to in the present case took out a licence only in November, 1961, and firm 'B' continued to manufacture sets without a licence and without being detected till June, 1962. The inertia of the Officers merits serious notice. The Committee hope that such delays will be avoided in future.*

(ii) *Another failure was that in this case at the time of issue of the licence to the manufacturing firm concerned or even after, no attempts was made to verify whether the actual value of receiving sets manufactured by it during the period 1st March to November, 1961, did not exceed the non-excisable limit of Rs. 150, until a complaint was received from a competitor. That the party to whom the manufacturing firm was selling its sets at Rs. 130 at Rs. 145 was only an associate firm of its own could not be discovered by the Department. The Committee desire that the excise control in the imposition and collection of duties should be more strict. With this end in view and gaining experience from this case, the Ministry should examine to which extent procedure and supervision need tightening up.*

(iii) *The Committee also desire that the investigation by the Special Police Establishment into this present case should be finalised early and they should be informed about the outcome.*

[S. No. 53, paras 3.205 to 3.207 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

(i) The observations of the Committee have been noted.

(ii) Action is being taken.

(iii) Special Police Establishment are being informed of the Committee's observations and the outcome of the case will be intimated to the Committee in due course.

[Vetted by Audit.]

[F. No. 5/17/64-CXVII.]

FURTHER INFORMATION

Para 3.207—As stated in this Ministry's earlier reply "Statement showing action taken on the recommendations of the Public Accounts Committee made in their 44th Report, 1965-66" sent under U.O. F. No. 5/17/64-CXVII the Special Police Establishment were informed of the Committee's observations. The Special Police Establishment recommended regular departmental action against three non-gazetted staff besides suggesting that such action as may be deemed fit be taken against the Assistant Collectors of Central Excise concerned. The Department in consultation with the Central Vigilance Commission has warned the non-gazetted staff involved in the case. It has also been decided that no action is called for against the Assistant Collectors. The Commission have not advised black-listing of the firm as such a course was neither feasible nor would it serve the purpose of denying them any import licence. Demands for excise duty have already been raised against Shri Jagatjit Singh on 1322 Wireless Receiving Sets.

2. After action on the lines advised by the Central Vigilance Commission had been completed, the Central Bureau of Investigation approached the Central Vigilance Commission for re-consideration of their advice. The Commission has stated that no re-consideration of the advice is called for.

[Vetted by Audit.]

[F. No. 5/17/64-CXVII.]

FURTHER INFORMATION

The report furnished by the Special Police Establishment stated that such action as deemed fit may be taken by the Department against [S/Shri ——] the then Superintendent of Central Excise (Technical) and later Assistant Collector of Central Excise [.....] and [C. L. Beri,] Assistant Collector of Central Excise. The report of the Special Police Establishment was referred to the Central Vigilance Commission who advised in their letter No. 11/33/66-V, dated the 21st January, 1967 (copy enclosed) that "it would be sufficient if the officials against whom regular departmental action has been recommended by the Special Police Establishment are warned." No regular departmental action was suggested against S/Shri [Iyer and Beri] by the Special Police Establishment. The Deputy Inspector-General of Police later addressed the Central Vigilance Commission on 4th April, 1967, requesting the Central Vigilance Commission to reconsider their advice. In their letter No. 11/33/66-V, dated the 1st May, 1967 (copy enclosed), the Commission observed that 'it does not appear necessary that reconsideration of the advice given earlier is called for'. In the light of the views expressed by the Central Vigilance Commission, the question of instituting departmental action, apart from warning the said officers, did not arise and had to be dropped.

[Vetted by the Comptroller &

Auditor General of India.]

[F. No. 5/17/64-CXVII.]

COPY OF LETTER NO. 11/33/66-V, DATED THE 21ST JANUARY, 1967 FROM SHRI C. M. NARAYANAN, DEPUTY SECRETARY, CENTRAL VIGILANCE COMMISSION, 3, DR. RAJENDRA PRASAD ROAD, NEW DELHI ADDRESSED TO SHRI S. P. KAMPANI, DIRECTOR OF INSPECTION (V) CUSTOMS AND CENTRAL EXCISE, INDRAPRASTHA BHAWAN, NEW DELHI.

SUBJECT.—*R. C. No. 48/65-DLI against Shri Mathura Dass, Deputy Superintendent, Central Excise and six others.*

Please refer to the report of S.P.E. in the above case. The report only shows how a dealer has evaded excise duty and the officials have not been sufficiently vigilant in (a) bringing the manufacturer on their list, (b) in assessing the correct duty; and (c) in taking adequate steps to recover the duty. No complicity or wanton negligence has been proved. The Commission would, therefore, advise that it would be sufficient if the officials against whom regular department action has been recommended by the SPE are warned. No action is suggested against the other two officials. Blacklisting of the firm is not possible nor would it serve the purpose of denying them any import licence.

COPY OF CONFIDENTIAL LETTER NO. F. 11/33/66-V, DATED THE 1ST MAY, 1967 FROM SHRI C. M. NARAYANAN, DY. SECRETARY, CENTRAL VIGILANCE COMMISSION ADDRESSED TO THE CENTRAL BUREAU OF INVESTIGATION, NEW DELHI.

SUBJECT.—*R.C. No. 48/65-DLI against Shri Mathura Dass, Dy. Supdt., Central Excise and six others.*

Please refer to your letter No. 2607/3/48/65-GW I-DLI, dated the 5th April, 1967. The Commission has examined the note forwarded. It does not appear that reconsideration of the advice given earlier is called for.

Recommendation

Last year it came to the notice of the Committee that the tariff value fixed in respect of certain motor vehicles produced by a particular company was far less than the wholesale price of many vehicles in this category, resulting in less collection of duty amounting to Rs. 30.45 lakhs. In the present case according to Audit less collection of duty on carbon dioxide and cellophane amounted to Rs. 10.74 lakhs and Rs. 4.85 lakhs respectively. As pointed out by the Committee last year [c.f. Para 61 of 27th Report (Third Lok Sabha)] apart from the loss of revenue suffered, fixing of lower tariff rate amounts to circumventing the Parliament's intention by executive fiat. The Committee had desired last year that in view of the anomalies brought to notice and their observations, Government should give an early attention to this question and take necessary remedial action. The Committee cannot but express their disappointment at the delay which has taken place in taking action on the recommendation contained in para 61 of their 27th Report (1964-65). The Committee desired that such recommendations which have an important bearing on the administration of taxation in the country should be given prompt attention by the Ministry of Finance. In the meantime, the Committee cannot view with the equanimity such huge losses of revenue due to unscientific and ad hoc fixation of tariff values which results in dilution of authority of Parliament in the field of taxation.

[S. No. 54, para 3.216 of Appendix XXI to the 44th Report, 1965-65.]

ACTION TAKEN

So far as the loss said to have occurred in respect of carbon dioxide is concerned, tariff values had been fixed much earlier than the Committee's recommendations made in para 61 of their 27th Report (1964-65). Regarding the remedial measures in the matter of fixation of tariff values, the Government had informed in para 2 of their reply to those recommendations of the Committee, that this could be achieved by suitable

amendment of section 3(2) of the Central Excises and Salt Act, 1944. Amendment of Section 3(2) is a part of the over-all amendment of the said Act, a bill in regard to which is being processed for introducing in the Parliament. In the aforesaid reply, it had also been stated that the procedure for fixing tariff values itself had already been revised. It is expected that this would ensure that the tariff values fixed would correspond more closely to the weighted average values of the products.

[File No. 7/4/66-CXVII.]

FURTHER INFORMATION

The Central Excise Bill incorporating amendment of section 3(2) of the Central Excises and Salt Act, 1944, has not been introduced in the Parliament so far.

2. The Bill referred to above does not merely seek to revise section 3(2) of the existing Central Excises and Salt Act, 1944 but is a consolidating and amending Bill in order to make the Central Excise Law self-contained. The Bill also incorporates a provision requiring copies of all notifications including those relating to tariff values to be laid before the Parliament. The draft of the Bill is at present under re-scrutiny in consultation with the Ministry of Law. Because of its comprehensive nature, its finalisation for introduction in the Parliament will take some time.

3. Meanwhile the work of fixation of tariff values for excisable goods has been entrusted to the Economic Adviser, Ministry of Industry and Supply—an agency independent of the Central Board of Excise & Customs—so that such tariff values could be fixed after proper enquiry. It is expected that this revised procedure would ensure that the tariff values fixed correspond more closely to the weighted average values of the goods.

[Vetted by Audit.]

[F. No. 7/7/67-CXVII.]

Recommendation

The Committee are not fully convinced that in the present case the manufacturer had not passed on the burden of higher duty, already paid, to the consumer. The Committee, therefore, do not consider it proper to fix lower tariff values with retrospective effect as it involves granting a concession retrospectively. They desire that it should also be examined in consultation with the Ministry of Law whether there is a legal authority for taking such action by the Ministry giving retrospective effect to the notification fixing tariff values.

[S. No. 55, para 3.222 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The Committee's observation that in this particular case the concession should not have been granted retrospectively has been noted. Similarly, the Committee's observation that the general question, whether Government have powers to give retrospective effect to such exemption notification requires to be further examined in consultation with the Ministry of Law has also been noted for action accordingly.

[Vetted by Audit.]

[F. No. 7/5/66-CXVII.]

FURTHER INFORMATION

The general question, whether Government have powers to give retrospective effect to notifications fixing Tariff values has been examined in consultation with the Ministry of Law and it has now been decided that Notifications affecting tariff value will in future be effective from the date of issue or from a later date to be specified in the notification.

[Vetted by Audit.]

[F. No. 7/5/66-CX.VII.]

Recommendation

The Committee are surprised over the delay of three years on the part of the Collector in passing orders in this case. Such delays do not speak well of the working of the Executive machinery. The Committee trust that overtime fees are being levied in other cigarette factories after the Central Excise offices were declared as Customs Offices. The Committee would like to be informed of the action taken against the Collector for the unjustifiable delay of 3 years.

[S. No. 56, Para 3.226, Appendix XXI of 44th Report, 1965-66.]

ACTION TAKEN

The Director of Inspection (Customs & Central Excise) has been asked to enquire into the reasons for the delay mentioned by the Committee and to recommend suitable action against the officer responsible for it.

It may also be mentioned that overtime fees are being collected from all cigarette factories as and when such fees are leviable.

[Duly vetted by Audit.]

[F. No. 13/2/66-LC.II.]

Recommendation

The Committee feel concerned to note that the particular Collectorate omitted to enforce the clear provision in the Central Excise Rules that overtime fees will be double of the prescribed rates if work chargeable to such fees was done from 6 P.M. on any day to 6 A.M. on the following day including Sundays and Public holidays. They trust that necessary remedial measures have been taken to avoid such mistakes in future.

[S. No. 57, para 3.229 of Appendix XX to 44th Report, 1965-66.]

ACTION TAKEN

Soon after the short-levy of overtime fees was brought to the notice of the Government, correct rates of overtime fees leviable were again brought to the notice of all concerned.

[F. No. 15/14/66-CXIV.]

Recommendations

(i) *The Committee regret to note that the establishment charges which were previously recovered from the two factories in respect of the Customs staff attached to them for supervision of bond arrangements of imported tobacco, were omitted to be recovered after the same work was taken over by the Central Excise Officers from December, 1955. What is more disturbing, the mistake was continued for about seven years until this was pointed out by audit in August, 1962. In view of the fact that under the General Bond entered into by the factories enjoying the benefit of deferred payment of duty, they were liable to pay the establishment charges, the Committee are surprised at the explanation given for non-recovery, i.e., there was no provision in the Central Excise law for recovery of such charges. The Committee hope that such a routine approach in financial matters would be avoided by Collectors in future, and also that the supervision over the performance of the Collector would be more strict.*

(ii) *The Committee would also like the Ministry of Finance to reconcile the recovery of Rs. 78,107, against Rs. 2,13,548 pointed out by audit.*

[S. No. 58, Paras 3.233 and 3.234 of Appendix XXI of 44th Report, 1965-66.]

ACTION TAKEN

Para 3.233.—Public Accounts Committee's recommendations have been duly noted and communicated to all the concerned Collectors.

Para 3.234.—The difference between the amount pointed out by Audit as the arrears recoverable from the two factories and the amount actually recovered by the Department has arisen due to the fact that Audit's contention that establishment charges should have been recovered for at least 2 Inspectors, 3 Sub-inspectors and one Sepoy in respect of one factory and one Inspector and 3 Sub-inspectors in respect of the other factory could not be accepted by this Department. Considering the requirement of staff determined for the same type of work in cigarette factories in other places in India this Department came to the conclusion that establishment charges for one inspector and one sepoy only were recoverable from each of the two factories. The Collector was asked to recover charges from the two factories on the above basis. Accordingly, a total amount of Rs. 78,107-01 P. was recovered from the two factories.

[Duly vetted by Audit.]

[F. No. 13/1/66-LC.II.]

Further information relating to recommendations in Serial No. 58 (para 3.233):—

The Government took note of the observations of the Committee and also communicated the same to the Collectors of Central Excise concerned for future guidance. Instructions have been issued again to the Collectors to take steps to ensure that such failures to recover establishment and other charges when due are avoided in future. They have also been asked to intimate whether any other case of similar nature has come to their notice. The Directorate of Inspection (Customs and Central Excise) have also been asked to keep a special watch on cases of this nature and to bring to the notice of the Board lapses on the part of Customs authorities in this regard whenever they are noticed.

[Vetted by Audit as intimated by the Ministry *vide* F. No. 13/1/66-L.C.II, dated 18-10-67.]

[F. No. 13/1/66-LC.II.]

Recommendations

3.261.—*According to Audit the total amount of demands outstanding as on 1st April, 1961 in respect of Union Excise Duties was Rs. 801.03 lakhs. The Chairman of the Board stated in evidence that there was some discrepancy between the Audit figures and the Board's figures which had not been reconciled so far, the witness stated that Audit para was not sent to them for verification. On being pointed out that the matter could be discussed with Audit after the publication of the Audit Report, the Secretary of Department of Revenue agreed that this should have been done. The Comptroller and Auditor General pointed out that Audit had written to the Ministry on 1-1-1965 asking for the figures, but these were not supplied. Again in June, 1965 the Ministry were asked to verify the Audit figures but they had not done so far.*

3.262.—*The Committee regret to note that the figures of arrears of Central Excise duties asked for by Audit in January, 1965, were not supplied by the Ministry and subsequently the figures given in Audit Report were not reconciled even after the Ministry were requested to do so by Audit in June, 1965. The Committee desire that in all cases where the Ministry want to controvert any facts and figures appearing in Audit Reports, which had not been verified at the draft stage for any reasons whatever, the correct position should be brought to the notice of the Committee through Audit as soon as possible to enable them to arrive at proper conclusions without any waste of time. The Committee in this connection would like to draw attention to para 9 (Introduction) of their 42nd Report (Third Lok Sabha).*

3.263.—*The Committee desired to be furnished with a statement showing* (i) *the total amount of arrears as on 1-4-1964, (giving break-up of the amount pending for more than one month but not more than one year);* (ii) *the charges that accrued during the period* 1-4-1964 to 1-4-1965; *and* (iii) *the outstanding as on 1-4-1965. The information furnished by the Ministry is given in Appendix XVII.*

[S. No. 60, paras 3.261, 3.262 and 3.263 of Appendix XXI of 44th Report, 1965-66.]

Action Taken

The Directions of the Public Accounts Committee have been noted.

[F. No. 36/12/66-CX.I.]

Recommendations

3.264. *According to the Ministry's note the arrears as on 1st April, 1964 amounted to Rs. 602 lakhs out of which an amount of Rs. 368 lakhs was pending for more than one year. The total demands outstanding as on 1-4-1965 amounted to Rs. 1,110 lakhs (Provisional) out of which an amount of Rs. 458 lakhs was pending for more than one year. The position of arrears in the previous year was Rs. 366 lakhs on 1-4-1961, Rs. 409 lakhs on 1-4-1962 and Rs. 565 lakhs on 1-4-1963.*

3.265. *The Committee feel concerned to note considerable increase in the arrears of excise duties from year to year. The Committee had vide para 62 of their 27th Report (Third Lok Sabha) desired that vigorous steps should be taken to liquidate the arrears. They regret to note that the position in this respect, instead of improving has deteriorated further.*

[S. No. 60, Para 3.265 of the Appendix XXI of 44th Report, 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted. The Collectors of Central Excise have again been instructed to pursue arrear cases energetically so that arrears could be effectively reduced.

[F. No. 36/11/66-CX.I.]

FURTHER INFORMATION

(Para 3.265) From time to time we have been issuing directions to the Collectors to devote personal attention and pursue recovery action in all pending cases energetically so that arrears are effectively reduced. Copies of instructions issued are enclosed.

[F. No. 36/3/66-CX.I]

COPY OF BOARD'S LETTER F. NO. 36/11/66-CX.I, DATED 20-4-1966 (CIRCULAR LETTER NO. MISC. (CE)-21/66) TO ALL COLLECTORS OF CENTRAL EXCISE.

SUBJECT.—*Union Excise Duties—Arrears of Revenue—Recommendations of the Public Accounts Committee, Para 265 of 44th Report.*

I am directed to reproduce below the conclusions of the Public Accounts Committee in para 265 of their 44th Report, 1965-66.

"265. The Committee feel concerned to note considerable increase in the arrears of Excise duties from year to year. The Committee had

vide para 62 of their 27th Report (Third Lok Sabha) desired that vigorous steps should be taken to liquidate the arrears. They regret to note that the position in this respect instead of improving has deteriorated further."

2. The Board desires that the above recommendations of the Public Accounts Committee should be kept in view and suitable measures taken to pursue recovery action in all pending cases energetically so that arrears are effectively reduced. In this connection your attention is also invited to Board's letter F. No. 36/8/64-CX-I, dated the 5th December, 1964.

The Board may be furnished with analysis of the pending arrears with an indication of the steps taken to liquidate the same. Monthly progress reports should thereafter be sent to the Board regularly to enable the Board to appreciate the efforts made to reduce the arrears. Bad cases of arrears where there are no chances of recovery, and cases where the matter is pending because of Court cases should be indicated suitably. In regard to cases where there is no chance of recovery, it is better to write off the arrears after proper examination in conformity with the instructions on the subject, instead of carrying a dead load of arrears on record, year after year.

COPY OF BOARD'S D.O. LETTER F. NO. 36/11/66-CX-I, DATED 23RD AUGUST, 1966, BY NAME TO ALL COLLECTORS OF CENTRAL EXCISE.

SUBJECT.—*Union Excise Duties—Arrears of Revenue—Recommendations of the Public Accounts Committee—Para 265 of 44th Report.*

I am directed to invite your attention to the Board's letter of even number, dated 20-4-1966 and to state that the Board is seriously perturbed to find that the arrears of revenue, particularly in manufactured products are showing an upward trend year after year. Adverse comments of the Public Accounts Committee in this connection and the Ministry's assurance to initiate energetic measure to liquidate the arrears have already been communicated to you. In view of the present economic situation of the country, it has become all the more necessary that all Government dues should be realised without delay.

I am directed by the Board to request you to devote your personal attention to the matter and to ensure that the arrears particularly those pertaining to cases which are not *sub judice*, are realised promptly. It is also desired that the monthly progress report called for under the Board's letter of even number dated 20-4-1966 should be critically examined by you before being despatched to the Board.

COPY OF BOARD'S LETTER F. NO. 36/8/67-CX-I(PT.), DATED 31ST MARCH, 1967 (CIRCULAR LETTER NO. 16-MISC/67-C.E.) TO ALL COLLECTORS OF CENTRAL EXCISE.

SUBJECT.—*Arrears of Central Excise Revenue—Liquidation of.*

I am directed to refer to the Board's D.O. F. No. 36/11/66-CX-I, dated the 23rd August, 1966 and to say that Chief Secretary or Revenue Secretary of the State Government concerned may be addressed by you demi-officially and if necessary contacted personally to request him to issue urgent instructions to District Collectors or other Recovery Officers for expediting recovery of arrears of Central Excise duty in cases where certificate action has been taken.

COPY OF BOARD'S LETTER F. NO. 36/8/67-CX-I, DATED THE 27TH JULY, 1967 TO ALL COLLECTORS OF CENTRAL EXCISE.

SUBJECT.—*Union Excise Duties Arrears of Revenue—Liquidation of.*

I am directed to refer to Board's letter F. No. 36/11/66, dated the 20th April, 1966 and the 23rd August, 1966. A copy of paras 1 to 3 of the Director of Inspection, Customs and Central Excise's U.O. Note No. 503/2/67, dated the 11-7-1967 on the subject noted above is enclosed. The Board desires that suitable measures may please be taken to effectively reduce the arrears and to dispose of appeals as quickly as possible.

Para 1 to 3 from U.O. Note No. 503/2/67 dated 11-7-1967 of Director of Inspection, Customs and Central Excise, New Delhi.

Reference is invited to the statement of arrears of revenue for the month ending March, 1967. It would be observed that the total amount of arrears in case of manufactured and unmanufactured products at the end of March, 1967 are more than the corresponding month of the last year except in case of West Bengal, Poona, Madhya Pradesh and Calcutta and Orissa Collectorates. An analysis of the statement of arrears of different Collectorates shows that hardly any efforts are being made to liquidate the arrears in right earnest. It has been observed in a large number of cases that the disputed assessments in case of manufactured products are under correspondence either between the assessees and the assessing officers or they are pending at the Collectorate Headquarters for one reason or the other. In a large number of appeals, the papers are reported to be under scrutiny in the Collectorate offices. In most of the cases, the Collectorate offices have taken more than two to three years to finalise the cases. By and large the officers take their own time in finalising cases, with the result that the arrears are mounting up day by day.

2. In case of unmanufactured products, the position is far from satisfactory. Every year the arrears show an upward trend. Special terms to realise the arrears have not been formed in most of the Collectorates. In fact, the realisation of the arrears is not being given the attention, it deserves. In most of the Collectorates, the arrears in respect of tobacco pertain to the years as far back as 1956.

3. It is high time that all officers take up the work of liquidation of arrears and finalisation of appeals and other cases under disputes with all zeal and earnestness since the total amount involved is of the order of about Rs. 15,00,00,000.

Recommendation

(iii) *The Committee desire that the information may be made available to them as soon as possible. Further, in the light of these details, the Board should consider what steps are necessary to realise/write off the arrears pending for long periods and to prevent their accumulation in future.*

[S. No. 60 (Para 3.268) of Appendix XXI to 44th Report 1965-66.]

ACTION TAKEN

The information desired by Public Accounts Committee has been furnished separately. All possible steps are continuously being taken to liquidate the arrears in respect of unmanufactured tobacco. The arrears that have become irrecoverable are invariably written off.

[F. No. 15/15/66-CXIV.]

Recommendation

3.272. *The following statement gives the position relating to the number of cases prosecuted for offences under the Central Excise law for fraud and evasion, together with the amount of penalties imposed and the value of goods confiscated:—*

		Rs.
(*i*)	Total number of offences under the Central Excise law prosecuted in Courts.	10
(*ii*)	Total number of cases resulting in conviction .	1
(*iii*)	Total value of goods seized	87,59,877
(*iv*)	Total value of goods confiscated . .	1,00,072
(*v*)	Total number of penalties imposed . .	5,22,642

		Rs.
(*vi*)	Total amount of duty assessed to be paid in respect of cases where levy of duty was adjudged.	35,32,592
(*vii*)	Total amount of fine adjudged in lieu of confiscation.	3,72,620
(*viii*)	Total amount settled in composition . .	1,06,021
(*ix*)	Total value of goods destroyed after confiscation	92,530
(*x*)	Total value of goods sold after confiscation .	72,656

3.273. *The Committee desired to be furnished with a note (i) stating the total value of the goods seized, and (ii) the outcome of the prosecutions in the remaining 9 cases out of 10 mentioned in the Audit para. The information* furnished by the Ministry is given at Appendix XX.*

3.274. *Judging from the above figures of value of goods seized and confiscated and amount of penalties/fines imposed, the Committee feel that the magnitude of the offences committed under the Central Excise law for fraud and evasion is fairly large. They are, however, surprised that only in 10 cases, prosecutions were launched, out of which four cases have resulted in convictions, three are pending and in the remaining three, the persons concerned were acquitted. They desire that in glaring cases of frauds and large scale evasions, prosecution of delinquents should be preferred to imposing penalties as the former course would be more deterrent to check offences.*

[S. No. 62—Para 3.274—Appendix XXI 44th Report 1965-66].

ACTION TAKEN

The observations of the Committee have been brought to the notice of all Collectors of Central Excise for guidance.

[F. No. 36/8/66-CX.II]

MINISTRY OF COMMERCE

Recommendations

The Committee are far from happy to note the manner in which this Act has been kept on the Statute book for over 8 years without being implemented. They observe that the Government issued a notification enforcing the Act from 15th January, 1958 but merely by not framing the rules thereunder, it effectively prevented the intentions of Parliament from being carried out on a technical ground and thus frustrated the expressed intentions of Parliament and sidetracked its authority.

The Committee were told in evidence that after about one year only **100** *looms had been put up as against* **18,000** *which had to be put up and it became clear that the scheme would not work in the way in which it was intended. The Committee, therefore, doubt the wisdom of Government in taking the time of Parliament in getting the Bill passed without assessing the likely reactions or response of the industry to the scheme envisaged in it.*

They feel that the statement made during evidence that the manufacturers were prepared to pay additional excise duty but objected to its method of payment as penal excise duty is hardly convincing, as the initial scheme envisaged in the Act remains practically unchanged in as much as the export obligation and the obligation to pay penalty on any shortfall against export obligation still remains. The rate of penalty was, if anything, higher than the contemplated penal excise duty.

The Committee note from evidence that at least 2,000 automatic looms have been set up by millowners to date. They are of opinion that if the rules had been framed, the Act would have been in operation and the Government would have been entitled to collect revenue from them.

The Committee also feel perturbed to note that the Rules required to be framed under the Act had not been framed as it was decided that no further steps need be taken to implement the Act. They are not convinced by this argument. When an Act of Parliament specifically provides for framing of Rules thereunder, it is incumbent upon Government to do so within a reasonable period of time. If on the other hand, it was decided that no further steps be taken to implement the Act, it is not understood why the Parliament's permission was not taken for that and why steps were not taken immediately to have the Act repealed.

The other action of the Ministry to which the Committee take objection is the substitution of the scheme envisaged in the Act by a new scheme introduced under Executive Order. Since the new scheme, is not the one envisaged in the Act, the Government should have obtained the previous approval of Parliament to it. This, in the opinion of the Committee, is a serious lapse.

[S. No. 59 Paras. 3.255 to 3.260 of the 44th Report.]

ACTION TAKEN

The Cotton Fabrics (AAditional Excise Duty) Act, 1957 was enacted by the Parliament so as to provide for the levy and collection of an additional duty of excise in those cases where the quantity of cotton fabrics exported by any mill in any year fell short of the export quota for that year. The Act was passed on 17th September, 1957 and brought into force in January, 1958 but no rules were framed by the Government for the purpose of collecting excise.

3.255. The implementation of the Act (framing of rules and collection of additional excise duty) depended upon the successful working of the scheme for the licensing and installation of 18,000 automatic looms on the basis of export obligation which comprised the entire production of cloth on new automatic looms and 87½% of the past exports of the licensee mill, if any. Licences for the installation of automatic looms started to be issued in the beginning of 1957 The Cotton Fabrics (Additional Excise Duty) Act, 1957 was brought into force in January, 1958. The experience during the year 1957 and part of 1958 showed that the scheme for the licensing and installation of 18,000 automatic looms was not making any headway.

In the middle of 1958, representatives of cotton textile industry represented to the Commerce & Industry Minister about the problems which the industry was then facing. After examination of the same, it was decided that it would be necessary to set up a Committee to consider these problems and suggest a solution. A Textile Enquiry Committee was accordingly set up on 29-5-58 to undertake a rapid study of the problems facing the industry with a view to diagnosing the causes thereof and to explore and suggest remedial measures. The Committee, *inter alia* was to make special studies of the causes of the decline in the export of cloth which had occurred just then and suggest appropriate measures to arrest the tendency and to promote and maintain exports. The Committee submitted its Report in July, 1958 which contained a chapter on export promotion. The Committee observed that it had been represented to it with great force that exports could not be maintained even at the then existing levels and would continue to fall unless cloth to be exported was produced on automatic looms. The Committee admitted the force of this contention and reviewed the scheme for the installation of 18,000 automatic looms in that context. The Committee's observation was that the response to the scheme had been extremely inadequate and that it was anticipated that the scheme might not function effectively. The Committee, therefore, recommended a revised scheme under which 3,000 automatic looms were to be licensed on condition that the entire production of such looms was exported. This recommendation of the Committee was accepted and a decision was taken in November, 1958 not to proceed with the licensing scheme involving the penal excise duty. It was only thereafter that in January, 1959 for the first time, a report was received from the Textile Commissioner that 112 automatic looms had been installed. Since the scheme for the licensing of 18,000 automatic looms could not be made fully effective, it was not found practicable to frame rules under the Cotton Fabrics (Additional Excise Duty) Act, 1957. It is much regretted that because of change in the situation, the intention with which the Act had been passed by Parliament could not be implemented by the Ministry

3.256. Before the scheme for the installation of 18,000 automatic looms was formulated, Government had taken full care to consult the representative organisations of the industry and took them into confidence. The proposals for the scheme had been discussed with the representatives of the Export Promotion Council and millowners of Bombay and Ahmedabad at a meeting held on the 5th April, 1956. All present at the meeting agreed that in allocating the automatic looms a guarantee from the individual mills about exports should be taken and the guarantee should cover (a) the entire production of cloth on the additional automatic looms and (b) a quantity equivalent to a fixed percentage of past exports of the mills. The representatives also agreed that some sort of sanction was required to enforce the export obligation and a suggestion was made at the meeting that this could take the form of penalty regulated according to the quantity of cloth. Cash payment and penal excise duty were mentioned in this context. After the scheme was approved by the Government, detailed discussions were again held with the various Millowners Associations in June and July, 1956 and the scheme was put into effect only thereafter. It was, however, only after industrial licences had been issued to the individual mills that the response of the mills was found to be unenthusiastic. It will be seen that Government did not spare any efforts to consult the industry before putting into operation the scheme of 18,000 automatic looms.

Export figures in respect of cotton textiles for the years 1954 to 1958 are indicated below:

Year	Exports in metres
1954	792,901,000
1955	688,322,000
1956	680,169,000
1957	802,815,000
1958	563,947,000

It will be seen that when the scheme was discussed with the industry in 1956, the exports were quite encouraging and further prospects seemed bright and perhaps this determined the then attitude of the industry to the scheme. Exports in 1957 were higher but prospects for subsequent exports were not bright. There was sharp decline in export in 1958 and the export market was becoming difficult. It seems when the licences were issued in 1957 and 1958, the mills did not find it worth-while to implement them because of the export obligation in the face of difficult export market.

3.257. While the scale of penalty remained more or less the same as the penal excise duty, the revised export obligation comprised entire production of cloth on additional automatic looms plus 50% of the past exports, if any, as against 87½% of the past exports envisaged originally. Penal excise duty could be collected as arears of land revenue against which collection of penalty was taken to be less rigorous.

3.258. As stated under para 3.255 there was hardly any installation of automatic looms until the original scheme was given up and a decision was taken in November, 1958 to introduce a new scheme for the installation of automatic looms on the basis of revised export obligation. For the first time in January, 1959 it was reported that 112 automatic looms had been installed. It may be added that hitherto there has been no case where a mill has been called upon to pay the penalty as the mills have been fulfilling their export obligation satisfactorily. It is, therefore, difficult to say whether Government has suffered or would have suffered any loss in revenues.

3.259 & 3.260. After a decision was taken to give up the scheme for the installation of 18,000 automatic looms in the light of the recommendations made by the Textile Enquiry Committee, 1958, the question of repealing the Act was taken up for consideration in consultation with the Ministry of Law. Meanwhile, the policy and programme for the expansion of cotton textile industry during the Third Plan period also came up for consideration. A Scheme was in the offing for the licensing of 25,000 automatic looms on the condition of export; this was also a much bigger scheme than the earlier scheme of 18,000 automatic looms. It was, therefore, felt that there could be a possibility of the provisions of the Cotton Fabrics (Additional Excise Duty) Act, 1957 being made use of. It was decided that the repeal of the Act need not be proceeded with for some time. Later however, it was decided some time in 1962 that the allocations of 25,000 automatic looms may be made on condition of export which may also be enforced by means of bond and guarantee. A Bill (No. 42 of 1966) has since been introduced in the Lok Sabha on 27-7-66 for the repeal of the Cotton Fabrics (Additional Excise Duty) Act, 1957. However, the Department of Parliamentary Affairs have intimated that a large number of Bills introduced in the July-September 1966 session of Parliament have remained pending and in view of a heavy programme awaiting the November-December, 1966 session, it may not be possible to take up all the pending Bills and have asked this Ministry to re-examine the pending bills and indicate such of those as could conveniently wait till the next General Elections. The Department of Parliamentary Affairs is being told that this repeal bill is not of such urgency as to justify its taking precedence over other more important bills.

[F. No. 1/31/Tex(H)/65.]

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE & INSURANCE)

Recommendation

The Committee would like to be furnished with complete information in respect of the amounts realised out of the under assessments pointed out by Audit.

[S. No. 1, Para 1.3 of Appendix XIV to 16th Report.]

ACTION TAKEN

The complete information in respect of the amounts realised out of the Audit Reports, 1962, 1963 and 1964 is as under:—

Audit Report	Amount realised (Figures in lakhs of Rs)
1962	15.19
1963	54.14
1964	96.52*

*This figure includes the amounts realised out of under-assessments pointed out by aduit in the Audit Reports 1962 and 1963 in respect of Bombay City I, II & III Charges.

(This has been vetted by audit vide Shri R. K. N. Pillai's D.O. No. 3987-Rev. A 25(64. VIII dated the 7th Nov., 1966).

Recommendation

The Committee are glad to note the steps taken to improve the working of the Income-tax Department and the Internal audit organisation. They trust that with the enlargement of the scope of internal audit, its effectiveness would improve. The Committee would suggest that the Ministry should consider the feasibility of maintaining in the Central Office or in the Commissioner's office a register showing the nature of audit objections, the officers responsible, the tax effect and the action taken on cases detected by the Revenue Audit. Such a register would help the Board as well as to pursue and settle the cases objected to by Revenue Audit at one place. It would also help in keeping a watch over cases which are likely to get time barred with the passage of time.

[S. No. 2—Para 1.10 of Appendix XIV to the Forty-Sixth Report].

ACTION TAKEN

Instructions regarding maintenance of a register of audit objections in the headquarters office of the Commissioner of Income-tax have been issued *vide* Board's letters dated 19-12-1966 and 2-6-1966 (copies enclosed).

(This has been vetted by audit *vide* Shri Gauri Shanker's D.O. No. 2399-Rev. A/200-66 dated 11-7-66.)

[F. No. 83/71/65-I.T.(B).]

F. No. 83/71 65 I.T.(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 19th February, 1966.

FROM

Shri M. M. Prasad,
Under Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income tax.

Sir,

SUBJECT:—*Registers showing the progress of audit objections Maintenance of—Suggestion by the Comptroller and Auditor General of India—*

I am directed to say that in the course of the recent meeting of the Public Accounts Committee the Comptroller and Auditor General of India had suggested that a register showing the progress of the audit objections pointed out in the Audit Reports should be maintained in the Headquarters office of the Commissioner of Income tax. This suggestion has been agreed to by the Board. I am to request that arrangements may be made to open a register on the lines indicated below:—

(i) A Register should be maintained in the office of the Commissioner of Income-tax in the Proforma at annexure I enclosed. The Register should consist of the following parts:—

Part I—Cases of under-assessment involving a tax effect of Rs. 10,000/- or more.

Part II—Cases of Under-assessment involving a tax effect of less than Rs. 10,000/-.

Part III—Cases of over-assessment.

(ii) Every year the C.A.G. is sending to the Board draft audit paras in respect of the cases mentioned in each of the parts mentioned above. These paras are forwarded to the Commissioners of

Income-tax for report. Entries should be made in the register as and when the draft para is received from the Board. All the cases mentioned in the para should be entered in the register, the serial number given in the A.G's/C.A.G's list should be followed for the purpose of making entries in the register so that the total number shown in the list tallies with the total number of cases shown in the register.

(iii) A separate register is to be opened for Audit Report of each year.

(iv) Instructions should be issued to the I.T.Os to report about the developments of each case entered in the register. Details of the rectifications, recoveries etc. should be entered in the register as and when such intimations are received from the I.T.Os so that it should be possible to ascertain the latest position of rectification at any given time.

(v) If any of the cases entered in the register is transferred to some other charge an extract of the register should be sent to the concerned C.I.T., in case the audit objection has not been finally settled. The Commissioner of Income-tax concerned should be asked to make necessary entries in the register of the relevant year. An audit objection should be treated as finally settled where either the amount of undo over assessment is either completely recovered refunded or where the objection has been withdrawn by the A. G.

(vi) The Register should be kept until all the objections entered therein are finally settled.

(vii) The Chief Auditor or the I.T.O. (Hqrs.) should be made responsible for the maintenance of the Registers and watching the disposal of audit objections.

(viii) The Registers should be periodically reviewed and instructions issued to the I.T.Os for expeditious action in respect of cases remaining unsettled. It should also be ensured that no case is barred by limitation for want of action by the Department.

2. The registers are to be opened for and from the Audit Report 1965 onwards. I am to request that immediate action may please be taken to open the registers in respect of audit reports 1965 and 1966.

3. The Comptroller and Auditor General of India desires to have information relating to rectification and realisation of tax in respect of

under-assessment cases pointed out in the Audit Reports, 1963, 1964 and 1965 in the proforma in Annexure II. I am to request that the required information may please be furnished to the Board at a very early date.

Yours faithfully,
(Sd.) (M. M. PRASAD)
Under Secretary.

Copy forwarded to the Comptroller and Auditor General with reference to Shri V. Gaurishankar's D.O. letter No. 76-Rev.A/297/65 dated 7-1-1966 to Shri Wasiq Ali Khan.

Sd. (M. M. PRASAD)
Under Secretary.

ANNEXURE I

REGISTER OF CASES POINTED OUT IN THE AUDIT REPORT.....

* Part I — Cases involving a tax effect of Rs. 10,000 or more
Part II — Cases involving a tax effect of less than Rs. 10,000
Part III — Cases of over-assessments.

Serial No.	Name of assessee	Assessment Year	Amount of under-assessment./over-assessment as per audit	Amount of under-assessment./over asstt. as per Department
1	2	3	4	5

Whether rectification has been made	Amount of actual demand raised/ refund due	Amount recovered/ refunded	If the recovery is likely to take considerable time, the reasons thereof.
6	7	8	9

If audit objection has not been accepted, indicate whether the A.G. has withdrawn the objection. If so, indicate the Number and date of A.G.'s letter intimating the withdrawal	Indicate whether the assessment is barred by limitation either partly or fully. If so, the amount time-barred	Remarks
10	11	12

* *Delete* whichever is inapplicable.

ANNEXURE II

Statement showing the present position of under-assessment cases reported in Audit Reports (Civil) on Revenue Receipts, 1963, 1964 and 1965.

AUDIT REPORTS

	1963		1964		1965	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
(*i*) Under-assessment pointed out by Audit.						
(*ii*) Under-assessment in respect of which the Department has accepted the audit objection (fully or partly)						
(*iii*) Cases out of (*ii*) above where rectification action has been taken/is being taken.						
(*iv*) Amount realised out of (*iii*) above.						
(*v*) Cases out of (*ii*) above which could not be rectified having become time-barred.						
(*vi*) Cases where the department is yet to take action.						
(*vii*) Brief reasons for the delay in (*vi*) above.						

F. No. 83/71/65-I.T.(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 2nd June, 1966.

From

Shri M. M. Prasad,

Under Secretary.

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Registers showing the progress of audit objections—Maintenance of—Suggestion by the C.A.G.—*

I am directed to refer to Board's letter of even number dated the 19th February, 1966 on the above subject prescribed being a proforma for the register showing the progress of audit objections and to say that the Public Accounts Committee has suggested that the register should contain information regarding the nature of audit objections as also the particulars of the officers responsible for the mistakes. The proforma prescribed for the register has accordingly been revised and the revised proforma is enclosed herewith. I am to request that the columns of the registers already opened may be suitably amended so as to bring them in line with the revised proforma.

Yours faithfully,

Sd. (M. M. PRASAD)

Under Secretary.

Copy of Comptroller & Auditor General, New Delhi in continuation of Board's endorsement No. 83/71/65-I.T.(B) dated the 19th February, 1966.

Sd. (M. M. PRASAD)

Under Secretary.

REGISTER OF CASES POINTED OUT IN THE AUDIT REPORT.....

* Part I — Cases involving a tax effect of Rs. 10,000 or more

Part II — Cases involving a tax effect of less than Rs. 10,000

Part III— Cases of over-assessments.

Serial No.	Name of assessee	Assessement year	Brief nature of audit objection	Amount of under assesstment./ over-assesstment as per audit.
1	2	3	4	5

Amount of under-assesstment./over-assesstment. as per Deptt.	Whether rectification has been made	Amount of actual demand raised/refund due	Amount recovered/ refunded
6	7	8	9

If the recovery is likely to take considerable time the reasons thereof	If the audit objection has not been accepted, indicate whether the A.G. has withdrawn the objection. If so, indicate the number & date of A.G.'s letter intimating the withdrawal	Indicate whether the assessment is barred by limitation either partly or fully. If so, the amount time barred
10	11	12

Name and designation of the officer responsible for the mistake	REMARKS
13	14

* *Delete* whichever is inapplicable.

Recommendation

The Committee regret to note that information desired by them in para 3 of their 28th Report has taken the Board 12 months to collect and is still incomplete. This gives the impression that the Commissioners do not act promptly on the instructions of the Board. The Committee hope that steps would be taken to collect the factual information forthwith and supplied to the Committee.

[S. No. 3, Para 1.11 of Appendix XIV to 46th Report (1965-66).]

ACTION TAKEN

The required information has already been sent to the Committee *vide* Ministry of Finance (Department of Revenue & Insurance) O.M. No. 7/82/64-Coord dated 19-1-66.

Recommendation

From the note furnished by the Board of Direct Taxes, the Committee observe that sums of Rs. 15.83 lakhs, Rs. 57.61 lakhs and Rs. 59.83 lakhs were reported to have been recovered out of the under-assessment pointed out in Audit Report for the years 1962, 1963 and 1964 respectively. The Audit pointed out the under-assessment to the extent of Rs. 1.21 crores, Rs. 1.19 crores and Rs. 2.29 crores in the Audit Reports of 1962, 1963 and 1964 respectively. The Committee feel that the Department has not been quite prompt in settlement of the cases of under-assessment pointed out by Audit. During evidence the Committee were informed that still there were 132 cases involving a sum of Rs. 76.12 lakhs in respect of which action had yet to be taken by the Ministry though more than 12 months had elapsed. The Committee feel that there is a danger of some of these cases getting time-barred. The Committee desire that the Board should first clearly decide whether the audit objections raised on different cases of under-assessment are to be accpted and if so, demands should be raised well in time in order to prevent these cases from getting time-barred. They desire that the Commissioner of Income-tax and the Board should keep a watch over the cases of under-assessment, so that the amounts under-assessed are realised promptly. In this connection, the Committee were concerned to learn that the work-load of I.T. officers had further increased in 1964-65. The average disposals from I.T.O. in 1964-65 was 1293 cases as against 1003 cases in 1962-63. The Committee would also like to reiterate the recommendations made by them in para 3 of their 28th Report regarding reducing the work-load of Income-tax Officers with a view to obtaining the optimum efficiency and also the desirability of investigating in detail the cases involving an under-assessment beyond a certain amount.

[S. No. 4, Para 1.12 of Appendix XIV to 46th Report.]

ACTION TAKEN

The observations of the Committee have been noted. Instructions have already been issued to the Commissioners of Income-tax that they should conduct a review of cases pending rectification, take necessary steps to have the mistakes rectified and ensure that no case of rectification gets barred by limitation. In order to reduce the work-load of I.T.Os the following further steps have been taken:—

(i) 300 posts of I.T.Os were sanctioned in 1964-65 which have since been practically filled up. Another 200 posts were sanctioned in September 1965. Recruitment to these posts is yet to be made through the U.P.S.C.

(ii) Instructions have been issued to utilise qualified inspectors for disposal of small income cases and for examining the accounts in higher category cases, if the Commissioners of Income-tax so desire.

(iii) In order to relieve the I.T.Os of some routine work, instructions have been issued, for the creation of Special Recovery Units comprising of one Inspector, one Upper Division Clerk and one Lower of one Inspector, one Upper Division Clerk and one Lower Division Clerk in each unit, which will be assisting the I.T.Os in collection work.

[F. No. 83/25/66-IT(B)]

Recommendation

The Committee regret to note that this calculation mistake committed by the U.D.C. escaped notice of not only by the Income-tax Officer but also that of Internal Audit Party. It appears that even the Internal Audit did not check arithmetical calculation which was one of their main duties to do, as otherwise this should have been detected by them and it was only when this case came to the notice of the Revenue Audit that the under-assessment came to light. The Committee feel that all the persons involved in this case viz., the U.D.C., Income-tax Officer and the Internal Audit Party were negligent. The Committee note that the U.D.C. and the Internal Audit Party had been warned in this case and that the mistake in calculation has been rectified and the necessary demands issued. They would, however, recommend that learning from this case the Board should examine the desirability of eliminating the paise *and introducing the system of rounding off of the amounts to the nearest* rupee *in such cases in order to minimise the risk of wrong calculation in future.*

[S. No. 5 para 1.19 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary amendment has been made in law by inserting section 288-B, by Finance Act, 1966.

[Duly vetted by Audit *vide* D.O. No. 2743-Rev. A/200-66, dated 6-8-66.]

[F. No. 36/26/64-IT (AI) dated 1-9-66.]

Recommendation

The Committee are surprised to note that in this case, the Income-tax Officer took the hasty step of trying to rectify the mistake without reference to records and in the process committed another mistake. While the Committee note that the Department has since recovered the amount of under-assessment, they would impress upon the Board to instruct the Officers to exercise greater vigilance and caution. They also trust that with extension of scope of internal audit, such cases will not recur.

[S. No. 6, para 1.24 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

As desired by the Committee, necessary instructions have been issued to all the Commissioners of Income tax that the observations made by the Committee should be brought to the notice of the assessing Officers in their charges and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the instructions issued [F. No. 36/8/66-IT(AI), dated 27-8-66.] is enclosed.

[Duly vetted by audit *vide* D.O. No. 3351/Rev. A/200—60, dated 23-9-66.]

[F. No. 36/31-64-IT(AI) dated 27-9-66.]

Immediate

F. No. 36/8/66-IT (AI) (II)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 27th August, 1966.

From

Shri J. C. Kalra,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT: —*Irregularities noticed by the Audit parties of the O.& A.G.— Observations made by the Public Accounts Committee— 46th Report*, 1965-66.

I am directed to say that in their 46th Report, 1965-66 the Public Accounts Committee have made certain observations in regard to the irregularities which are commonly noticed by the audit parties of the Comptroller and Auditor General in the Income-tax Department. The various irregularities as well as the observations made by the Public Accounts Committee thereon, are listed in the Annexure.

2. The Board desire that the Public Accounts Committee's observations should be brought to the notice of the various assessing officers in your charge and they should be advised to take special care to see that such irregularities are avoided in future.

3. It may also be emphasized that disregard of the Board's instructions and a repetition of such irregularities will be seriously viewed by the Board and suitable action will be taken against the delinquent officers.

Yours faithfully,

(Sd.) J. C. KALRA,

Secretary, Central Board of Direct Taxes.

ANNEXURE

Showing the various irregularities committed by the officers in the Income-tax Department and observations made by the Public Accounts Committee thereon.

(1) After the completion of the assessment of a company, reassessment was made to tax an escaped income amounting to Rs. 75,119. Subsequently Audit noticed that there had been an excess allowance of depreciation. While the excess depreciation allowance was withdrawn by re-opening the re-assessment, the assessment was based on the original income instead of on the revised as per the re-assessment income. This mistake occurred because at the time of the second revision, the records containing the reassessment proceedings completed earlier, were not available and the Income-tax Officer rectified the mistake without a reference to those records.

PAC's Observations: —

The Committee are surprised to note that in this case the Income-tax Officer took the hasty step to rectify the mistake without reference to the

records and in the process committed another mistake. The Committee would impress upon the Board to instruct the Officers to exercise greater vigilance and caution. They also trust that with extension of scope of Internal Audit, such cases will not occur. (Paragraph 1.24)

(2) Two Companies were allowed rebate from Corporation Tax on their exempted income at the maximum rate. In addition, a rebate @ 30% was also allowed on the total income including this exempted income with the result that the Companies not only did not pay any tax on their exempted income, but also obtained an irregular refund on such income at 30% resulting in a short levy of tax. In one of these cases, the mistake was pointed out by the Internal Audit Party in the middle of 1962 but necessary action to rectify the mistake was not taken until it was again pointed out by the Revenue Audit in January, 1964.

PAC's Observations:—

The Committee hope that suitable steps would be taken to ensure that prompt action is taken to rectify the mistakes as soon as they are detected by any Agency. (Paragraph 1.38)

(3) A business carried on by an individual as his proprietary concern was taken over by a firm consisting of himself and his daughter as partners. In connection with this transfer of ownership, gratuity payments were made by the individual and these were allowed as deductions in computing his total income. However the gratuity amount was not allowable as a deduction in this particular case as it was necessitated by the closing down of the proprietary business and the transfer of ownership and not for the purposes of carrying on business and earning profits. The rectification of the mistake could not be made as it had become *time-barred*. It was observed that the mistake was first pointed out by Audit on 29-8-63 and if quick action had been taken on receipt of the audit objection to bring to the notice of the Appellate Assistant Commissioner, with whom on appeal against Assessment was pending at the time, the Appellate Assistant Commissioner could have enhanced the assessment and the loss of revenue could have been avoided.

PAC's Observations:—

The Committee regret that the Income-tax Officer failed to take prompt action in this case after the mistake was pointed out by the Audit. This failure reflects the apathy on the part of the Income-tax Officer in regard to the points raised in audit. (Paragraph 1.51)

(4) In the assessment of a Public Limited Co., the assets on which depreciation was claimed were re-classified by the Income-tax Officer. As a result, some assets on which depreciation had been claimed by the assessee @ 10% with an extra allowance of 5%, without extra shift allowance. While working out the depreciation admissible to the assessee, the Income-tax Officer deducted 10 per cent of the cost of the reclassified assets from the total claim made by the assessee and added 5% of such

cost as the depreciation admissible. In doing so, the extra shift allowance claimed at 5% was lost sight of. This resulted in an underassessment. It was stated by the Income-tax Officer concerned that the mistake in calculation had been committed through an oversight.

PAC's Observations: —

The Committee feel concerned over such costly mistakes committed through oversight by Income-tax Officers as occurred in the present case, which resulted in non-levy of tax amounting to Rs. 64,332/-. They desire that the Income-tax Officers should be more careful in dealing with the assessments involving large amounts of tax with a view to avoiding not only mistakes on points of law but also those relating to calculations. (Paragraph 1.80)

(5) Gains arising out of the sales of capital assets are chargeable to tax as capital gains but jewellery and furniture held for the personal use of the assessee are not regarded as capital assets for this purpose. In the case of an assessee the statement of jewellery and ornaments included melted gold worth Rs. 1,62,150/-. The melted gold was sold in the subsequent year for Rs. 1,95,977/- resulting in a gain of Rs. 33,827. This gain was however, not charged to capital gains tax by the Income-tax Officer on the ground that it was covered by the exemption available in respect of jewellery.

PAC's Observations: —

The Committee are surprised how the Income-tax Officer treated the melted gold as jewellery and allowed the exemption from capital gains tax. It was a case of negligence as capital gain even though casual, was taxable. The Committee feel that general instructions may be issued by the Board for the guidance of the Income-tax Officers to prevent recurrence of such cases. (Paragraph 1.105)

(6) According to the provisions of the Income-tax Act, if a minor child is admitted to the benefits of partnership in a firm in which the father or mother is also a partner, the income of the minor child has to be included in the total income of the parent. In one particular case, the Income-tax Officer who made the first assessment in the case of a firm having minors as well as their father as partners, the share income of the minors was assessed separately instead of being assessed in the hands of the father. The various Income-tax Officers who made the subsequent assessments in that case, committed the same mistake over a period of 8 years mechanically followed the basis of the earlier assessment and did not care to check up the correctness of the basis of assessment.

PAC's Observations: —

The Committee suggest that based on the defects noticed in this case, suitable instructions may be issued to all Income-tax Officers to be more careful in such cases. (Paragraph 1.118)

(7) In the course of assessment of the income of an assessee for the assessment year 1957-58 the Income-tax Officer came across a dividend warrant of Rs. 44,000 the income from which was included by the assessee in his return for 1957-58. The accounting year of the assessee was Diwali year and the dividend income was not considered by the Income-tax Officer for the purpose of the assessment of the total income for the assessment year 1957-58 on the ground that the dividend pertained to the period prior to the previous year. Accordingly, the assessment for the year 1956-57 should have been reopened for taxing the dividend income. This was, however, not done and the entire income of Rs. 44,000 thus escaped assessment. This particular case was dealt with in a Special Investigation Circle.

PAC's Observations: —

The Committee regret to observe that this is a clear case of omission to tax the income when all the facts were available on record. The Committee rather feel concerned over such omissions occurring in the Special Investigation Circles who have to deal with comparatively less number of cases. (Paragraph 1.81)

(8) *Cases of over-assessments*

For the taxation of individuals the Finance Act provides slab rates both for Income-tax and Super-tax upto certain limits of income. In respect of that portion of the total income which exceeds these limits tax is payable at a fixed rate. The Audit have pointed out that in some cases where the total income exceeded these limits the fixed rates of 25% for income-tax and 45 per cent for super-tax were applied to the entire total income ignoring the slab rates which applied to part of the total income, resulting in over-assessment of tax. In one case the amount of tax over-assessed was Rs. 57,167, the refund of which has become time-barred.

PAC's Observations: —

The committee are not happy over the cases of over assessments which are as serious mistakes as under assessments. The Committee feel that for no fault on the part of the assessees, they had been penalised. The Committee take a serious view of the cases of over assessments which have become *time-barred*. (Paragraph 1.210)

Recommendation

The Committee would like to re-iterate the recommendation made by them in para 29 of their 28th Report (Third Lok Sabha) that since calculations of depreciation allowance is complicated, the Department should give adequate training in this respect to the staff in Company Circles so that such mistakes are eliminated.

[S. No. 6 and para 1.26 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

As desired by the Committee necessary instructions have been issued to all the Commissioners of Income-tax emphasising the need for giving adequate training to the staff working in Company Circles. In this connection a copy of D. I. (IT)'s letter No. M-30/3/66-DIT, dated 20-9-66 is enclosed.

[Duly vetted by Audit *vide* D. O. No. 3692—Rev. A/200-666 II, dated 20-10-66.]

(File No. 36/25/64-IT (AI) II, dated 26-10-66.)

M-30/3/66-DIT

DIRECTORATE OF INSPECTION (INCOME-TAX)

New Delhi, Dated 20-9-66

From

The Director of Inspection (Income-tax),
New Delhi.

To

All Commissioners of Income-tax.

Sir,

SUBJECT.—*PAC—Implementation of the recommendations—Para* 1.26 *of the 46th Report*, 1965-66—*Instructions regarding.*

The Public Accounts Committee in its 46th Report has once again referred to the complicated nature of calculation for the allowance of depreciation and has emphasised the need for giving adequate training to the staff working in Company Circles.

Though calculation of depreciation is one of the subjects included in the training scheme for ministerial staff. (advanced course) the special importance of depreciation cannot be overemphasised. It is necessary to see that the training staff devotes more time in explaining the various provisions regarding allowance of depreciation. Intensive practical training should be given in actual calculation of depreciation allowance. The trainees should also be put in companies circles for sometime and work out the different type of complicated and difficult calculations there so that may have the experience of the actual problems.

A report on the steps taken in this respect may please be sent to this Directorate at an early date.

Yours faithfully,
(Sd.) R. N. JAIN
Director of Inspection (Income-tax).

Recommendation

The Committee would like to be informed whether Inspecting Assistant Commissioner's explanation has been received and whether it has been found to be satisfactory.

[S. No. 7 and para 1.27 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The Inspecting Assistant Commissioner's explanation had been received and has found acceptable to the Board.

[Duly vetted by Audit *vide* D.O. No. 2022-Rev. A/200-66. III, dated 25th May, 1967.]

[F. No. 36/25/64-IT(A1)III, dated 15-6-1967.]

Recommendation

While the Committee observe from the note that the relief given by the ITO was strictly according to the letter of the law, as it stood then, and he applied it uniformly in all cases, they feel that the time-lag between the enforcement of the original Act and its amendment for the purpose of removing the defect in the wording of the relevant section was inordinately long.

[S. No. 8, para 1.35, Appendix XIV to the 46th Report (1965-66).]

ACTION TAKEN

The point referred to in this paragraph relates to the provision in section 99 (1) (iv) read with section 110 of the Income-tax Act, 1961, under which a company was entitled to a rebate of super-tax calculated at the average rate of super-tax applicable to its total income in respect of certain inter-corporate dividends. The scheme of the Income-tax Act in allowing rebates on various items of income has always been to calculate such rebates at the average rate of tax applicable to the total income. Upto and inclusive of the year 1963, the annual Finance Acts prescribed the levy of super-tax at a concessional rate on that part of the total income of the company which consisted of inter-corporate dividends. As the rebate of super-tax allowed to the company under section 99 (1) (iv) of the Income-tax Act in respect of its income from inter-corporate dividends was required to be calculated at the average rate of super-tax applicable to its total income, companies often obtained a larger rebate of super-tax in respect of inter-corporate dividends than the super-tax chargeable on such dividends under the annual Finance Act.

In September, 1963, this anomalous position came to the notice of the Board at the instance of audit. Thereafter, this anomaly was eliminated by the Finance Act, 1964, which discontinued the provision existing in

the earlier Finance Acts for levy of super-tax at a concessional rate on that part of the total income of the company which consisted of inter-corporate dividends. For the assessment year 1964-65 companies are in the first instance chargeable to super-tax under the Finance Act, on inter-corporate dividends at the full rate of super-tax applicable to their total income, and, thereafter, a rebate is allowable to them in respect of the inter-corporate dividends at the average rate of super-tax applicable to their total income. This scheme of rebate in respect of inter-corporate dividends in substance, continues to be followed for subsequent years.

[Duly vetted by Audit.]

[F. No. 6(51)-66/TPL.]

Recommendation

The Committee consider it a serious matter that although the Internal Audit Party checked one of the two cases involving an under-assessment and pointed out the mistake in middle of 1962, *necessary action to rectify the assessment was not taken until it was again pointed out by Revenue Audit in January,* 1964. *The Committee hope that suitable steps would be taken to ensure that prompt action is taken to rectify mistakes as soon as they are detected by any agency.*

[S. No. 9, Para 1.38 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary instructions have been issued to all the Commissioners of Income-tax *vide* Board's letter No. 36 8 66-IT(AI) dated 27-8-66, that the observations made by the Committee should be brought to the notice of the various assessing officers and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the said instructions has been sent to the Committee under our reply to para 1.24 of the Report.

[Duly vetted by Audit *vide* D.O. No. 3349-Rev.A 200 66, dated the 23rd September, 1966.]

[F. No. 36 16 64-IT(AI) dated 27-9-1966.]

Recommendation

(*a*) *The Committee regret to note that the incorrect exemption given in this case resulted in an under-assessment of tax to the extent of Rs.* 28,200 *and that four Income-tax Officers did not detect this under-assessment. It appears that the assessments were made in a routine manner by all the officers. This also resulted in a loss of revenue of Rs.* 10,726 *for the assessment years* 1958-59 *and* 1959-60 *on account of time-bar.*

(b) The Committee would also like to be informed of the recovery of Rs. 2,892 relating to the demand for the year 1962-63.

[S. No. 10, Para 1.41 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

(a) Warnings have been issued to the Officers concerned.

(b) The amount of Rs. 2,892 has since been collected.

[Duly vetted by Audit *vide* D.O. No. 4125-Rev. A/200-60 II, dated 17-11-66.]

[F. No. 36-18/63-IT(A-I), dated 9-12-1966.]

Recommendation

The Committee note that the mistake in this case has been rectified and the full amount due recovered. They would, however, like to point out that such mistakes are mainly due to the complicated nature of the tax laws which are subjected to changes every year. These changes are confined not only to the rate of tax, but even the structural changes are made frequently. The Committee appreciate that in a growing economy appropriate changes in tax structure sometimes do become inevitable. They, however, feel that the basic change in the scheme of the Act must be avoided as far as possible. They also feel that an attempt should be made to simplify the taxation law as far as possible and that the changes in the taxation laws should thereafter be kept to the minimum necessary.

[Sl. No. 11, Paragraph 1.45, Appendix XIV to the Forty-Sixth Report, (1965-66).]

ACTION TAKEN

The observations of the Public Accounts Committee have been noted.

[Duly vetted by Audit.]

[F. No. 6(47)/66-TPL.]

Recommendation

The Committee hope that care will be taken to avoid such mistakes in future.

[S. No. 12, Para 1.48 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit *vide* D.O. No. 2742-Rev. A/200-66, dated 6-8-66.]

[F. No. 36/20/64-IT(AI) dated 1-9-66.]

Recommendation

It is learnt from Audit that the local audit Memo was issued on 29-8-1963 *and the draft report was discussed on* 9-9-63. *The appeal was disposed of on* 28-9-63. *The report received by the Income-tax Officer on* 11-10-63 *was the formal inspection report. Therefore there was adequate time for the Income-tax Officer to ask for enhancement on the basis of the local audit Memo which he had received in August,* 1963 *itself before the Appellate Assistant Commissioner disposed of the appeal. The Committee regret that this has not been done. This failure reflects an apathy on the part of the Income-tax Officers in regard to points raised in audit.*

[S. No. 13, Para 1.51 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

In the Board's letter F. No. 36/8/66-IT (AI) dated 27-8-66, necessary instructions have been issued to all the Commissioners of Income-tax that the observations made by the Committee should be brought to the notice of the various assessing officers and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the said instructions has been sent to the Committee under reply to para 1.24 of their Report.

[Duly vetted by Audit *vide* D.O. No. 3350-Rev.A/200-66, dated the 23rd September, 1966.]

[F. No. 36/14/64-IT(AI), dated 28-9-66.]

Recommendation

The Committee hope that with the amendment of Section 154 *of the Income-tax Act, such losses of revenue would be avoided as it confers powers on the Government to rectify mistakes by Income-tax Officers even where an order has been passed by the Appellate Assistant Commissioner.*

[S. No. 14, Para 1.53 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit *vide* D.O. No. 2744-Rev. A/200/66, dated 6-8-66.]

[F. No. 36/14/64-IT(AI) dated 1-9-66.]

Recommendation

The Committee would like to know the circumstances under which the Commissioner of Income made reference to the High Court that royalties and dividends should be regarded as capital expenditure, when the Board's circular was to the contrary.

[S. No. 15, Para 1.63 of **Appendix XIV** to the 46th Report, 1965-66.]

ACTION TAKEN

The position has been explained in this Ministry's Note F. No. 36/32/64-IT(AI), dated 24-3-66, a copy of which is sent herewith.

[Duly vetted by Audit, *vide* D.O. No. 2943-Rev. A/200-66, dated 22-8-66.]

[F. No. 36/32/64-IT(AI), dated 1-9-66.]

F. No. 36/52/64-IT(AI) (II)

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 24th March, 1966

SUBJECT.—*Para 65(c)—Failure to compute the income from business property—M/s. Dholpur Stone & Co. Ltd.*

The Public Accounts Committee raised the following two questions while discussing para 65(c) of the Audit Report (Civil) on Revenue Receipts, 1965:

Question 1:—When the Supreme Court's decision in Pingle Industries case was received did the Board consider this point specifically with a view to review its earlier instructions issued in 1952?

Question 2:—Why did the Board agree to a reference to the High Court in the case of Gotan Lime Syndicate when such expenditure was considered allowable under the Board's instructions issued in 1952.

A note explaining the position in regard to the points raised by the Public Accounts Committee is enclosed.

[Duly vetted by Audit *vide* D.O. No. 1094-Rev./297-65-II dated the 16th March, 1966.]

(Sd.) G. S. SRIVASTAVA,

Joint Secretary to the Government of India.

NOTE

In 1952, the Board had issued instructions that tonnage royalty should be treated as revenue expenditure incurred wholly and exclusively for the purposes of business as it was in substance a rent for the liberties and privileges of entering the land and extracting the mineral and such royalties could not be considered as part of a pre-ascertained capital sum paid for the right to exploit mineral for a term of years or upto a given quantity. These instructions were issued after considering the decision of the Allahabad High Court in the case of Sardar Bahadur Singh & Sons (12 ITR 504) where it was held that the price or compensation for earth paid for manufacture of bricks was capital expenditure.

2. In 1960, the Supreme Court decided in the case of Pingle Industry Ltd. Vs. CIT (40 ITR 67) that the payment to acquire the right to limestone was neither rent nor royalty but a lump payment in instalments for acquiring a capital asset of enduring benefit to the trade. The leases conveyed to the assessee a part of land which was a capital asset from which, after extraction, the assessee could get his stock-in-trade. In view of this the payment was held to be capital expenditure. When this decision was received, the question of the review of earlier instructions was not specifically considered. The reason for this was that this decision of the Supreme Court did not enunciate any new principle as the Bombay High Court had upheld the contention of the Department in 1954 in the same case. The decision of the Supreme Court or the earlier decision of the Bombay High Court in this case was not on the question of allowability of tonnage royalty as contemplated in Board's circular of 1952. The fact that the payment was in the nature of rent or royalty was not accepted either by the High Court or by the Supreme Court. The Courts had come to the decision which they did on the particular facts of the case. The Supreme Court also felt that no conclusive tests have been laid down which can apply to all the cases. The decision was that the payment could not be allowed as it was for the acquisition of an enduring benefit. The tonnage royalty had, however, been considered by the Board as rent and not expenditure for bringing into existence any asset of an enduring nature. In view of the specific mention by the Supreme Court that what they were holding as capital expenditure was neither rent nor royalty the question of making any modification in the Board's instructions issued in 1952 did not arise.

3. In the case of M/s. Gotan Lime Syndicate the question was regarding the allowability of the fixed amount of royalty of Rs. 96,000 for each year. This amount was not based on the quantity of lime extracted but on the area of land in respect of which mining rights were granted.

The Tribunal held this payment to be revenue expenditure but considering the ratio of the judgment of the Supreme Court in the case of

Pingle Industry Ltd., it was considered that the Government had a fairly arguable case. The Law Ministry which was also consulted advised that the payment was not for acquisition of raw materials but for acquiring a right to a source of raw material. As in the particular case, the decision was not regarding tonnage royalty, the decision to contest the decision of the Tribunal was not in conflict with the instructions issued by the Board in 1952. However, when the decision of the High Court was received, it appeared that it had very wide implications and after considering the ratio of the judgment it was decision to withdraw the earlier instructions regarding the allowance of tonnage royalty.

The Supreme Court has since held in the case of Gotan Lime Syndicate that payment of deed rent was of a revenue nature as it had relation with the stock-in-trade. They have also distinguished this case from Pingle Industries Ltd., wherein the question considered was not regarding royalty. In view of this decision, the instructions have been revised clarifying the legal position as it stands now.

Recommendation

Since the numerous mistakes take place in calculation of development rebate and depreciation allowance which result in an under-assessment, the Committee suggest that

(a) *suitable instructions containing comprehensive details should be issued to all the Income-tax Officers for calculation of these rebates and allowances.*

(b) *training should be given to the field staff in making such calculations.*

[S. No. 17, Para 1.69 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

(a) A compendium of the various instructions issued from time to time on the subject of development rebate was compiled as desired by the Public Accounts Committee and issued to the Income-tax Officers in Oct., 1965. A similar circular consolidating the Board's instructions on depreciation is being prepared and will be issued to the Income-tax Officers shortly.

(b) Instructions have been issued to all the Commissioners of Income-tax about giving more time to practical training in calculation of depreciation, etc. to the staff under training.

[Duly vetted by Audit *vide* D.O. No. 4126-Rev./A/200/60, II, dated 17-11-66.]

[F. No. 36/28/64-IT(AI)II, dated 20-12-66.]

Recommendation

The Committee are not convinced by the explanation given by the Department for this error. Where there is a dispute or absence of information in regard to the figures of actual cost of written down value, it is understandable that the figures are taken provisionally, subject to revision later on. But where a particular asset is not at all entitled to depreciation allowance or extra shift allowance such as those referred to in this case it is not understood how a provisional depreciation or extra shift allowance was at all given. It appears that the Income-tax Office had not looked into the nature of assets.

1.73. *The Committee note that this assessment has been set aside on appeal. They would like to be informed whether the mistake has been rectified in the re-assessment and tax due recovered.*

[S. No. 18, paras 1.72 and 1.73 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The Public Accounts Committee's observation that the Income-tax Officer had not looked into the nature of assets while allowing depreciation is correct and the Income-tax Officer, whose explanation had been called for, has been warned to be more careful in future.

2. As regards completion of assessments, which were set aside by the Appellate Assistant Commissioner, these could not be completed for want of the correct valuation of the assets which were taken over by the Mysore State Electricity Board from the Electricity Department of the Government of Mysore and which had to be certified by the Accountant General. However, the necessary audit certificates have since been furnished by the Accountant General, Mysore, and the Commissioner of Income tax has been asked to expedite the completion of these assessments.

[Duly vetted by Audit *vide* D.O. No. 4052-Rev. 200-66 II, dated 15-11-66.]

[F. No. 36 28 61—IT (AI) III, dated 18-8-1967.]

Recommendation

The Committee are greatly surprised to note that the mistakes of allowing a higher rate of depreciation on machinery went on undetected for almost 22 years and was noticed only when pointed out by Audit. They would desire that responsibility should be fixed for the loss of mistake

in the assessments earlier to 1957-58 having become time-barred. If depreciation was allowed at 20% as was done by the ITO who originally committed the mistake in 1943, the entire machinery would have been written off in five to six years and the succeeding ITOs should have realised the mistake while calculating the depreciation on new machinery.

The Committee would like to be informed whether the additional demand raised in respect of assessment years 1957-58 to 1959-60 has since been realised.

[S. No. 19, paras 1.76 and 1.77 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

With reference to PAC's observations concerning the loss of revenue, it may be mentioned that, since the assessment year 1939-40, depreciation is being allowed on the diminishing value basis, *i.e.*, depreciation is calculated on the w.d.v. which is arrived at by deducting the depreciation actually allowed in the earlier years from the original cost. Thus, the depreciation in each succeeding year is calculated with reference to a progressively declining w.d.v. but the w.d.v. never becomes zero.

The revenue loss for the assessment years 1942-43 to 1956-57 (which have become time-barred and which could not be rectified) is Rs. 1,06,240. It may be mentioned that this is not actual loss to revenue, because according to the diminishing value method of granting depreciation, this amount will be realised in later years.

The assessments for 1942-43 to 1956-57 have been made by different officers (seven in number) and some of them are no longer in the service of the Department now.

As regards recovery, the Commissioner of Income-tax has reported that the entire demand of Rs. 1,69,197 raised for the assessment years 1957-58 to 1959-60 has been realised.

[Not vetted by Audit]

[F. No. 36/27/61-IT(AI), dated -11-66.]

Recommendation

The Committee feel concerned over such costly mistakes committed through oversight by Income-tax Officers as occurred in the present case which resulted in non-levy of tax amounting to Rs. 64,332. They desire

that the Income-tax Officers should be more careful in dealing with assessments involving large amounts of tax with a view to avoiding not only mistakes on points of law, but also those relating to calculations.

[S. No. 20, Para 1.80 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary instructions (Board's letter F. No. 36/8/66-IT(AI) dated the 27th August, 1966) have been issued to all the Commissioners of Income-tax that the observations made by the Committee should be brought to the notice of the various assessing officers and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the said instructions has been sent to the Committee under reply to para 1.24 of the Report.

[Duly vetted by Audit *vide* D.O. No. 3350-Rev.A/200-66, dated the 23rd September, 1966.]

[F. No. 36/11/64-IT(AI) dated 28/9/66.]

Recommendation

The Committee regret to point out that in this case the Income-tax Officer made a mistake in not disallowing a clearly inadmissible item of development rebate on a certain asset. It is also surprising that although the Inspecting Assistant Commissioner checked up the assessment, he did not go into the accuracy of the arithmetical computation of income. If the inspection by Assistant Commissioners is to be purposeful, they should, while inspecting the assessments, besides going into the legal points also ensure that the arithmetical calculations are correct, especially in the case of companies, when large amounts are involved.

[S. No. 21, Para 1.83 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary instructions have been issued to Commissioners of Income-tax, that the observations made by the Public Accounts Committee may be brought to the notice of all the Income-tax Officers and the Inspecting Assistant Commissioners and they may be asked to carry out their duties in a more efficient manner. A copy of the instructions issued *vide* Board's letter F. No. 36/8/66-IT(AI), dated the 4th August, 1966, is enclosed.

[Duly vetted by Audit *vide* D.O. No. 2914-Rev.A/200-66, dated 22-8-66.]

[F. No. 36/11/64-IT(AI) dated 1-9-66.]

F. No. 36/8/66-IT(AI)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, dated 4th August, 1966.

From

Shri J. C. Kalra,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Scrutiny made by Income-tax Officers and Inspecting Assistant Commissioners and inspections carried out by them—Observations made by the PAC in their 46th Report,* 1965-66.

I am directed to say that in their 46th Report for the year 1965-66, the Public Accounts Committee have made certain observations in regard to the scrutiny of accounts and statements by the Income-tax Officers and inspections by the Inspecting Assistant Commissioners. The observations are enumerated in the Annexure to this letter. It is requested that the observations made by the Public Accounts Committee may be brought to the notice of all the Income-tax Officers and the Inspecting Assistant Commissioners and they may be advised to carry out their duties in a more efficient manner.

Yours faithfully,

(Sd.) J. C. KALRA,

Secretary, Central Board of Direct Taxes.

ANNEXURE

Observations made by the Public Accounts Committee

(1) The Committee regret to point out that in this case the Income-tax Officer made a mistake in not allowing a clearly inadmissible item of development rebate on a certain asset. It is also surprising that although the Inspecting Assistant Commissioner checked the assessment, he did not go into the accuracy of the arithmetical computation of income. If the inspection by Assistant Commissioners is to be purposeful, they should, while inspecting the assessments, besides going into the legal points also

ensure that the arithmetical calculations are correct, especially in the case of companies, where large amounts are involved.

(Paragraph 1.83)

(2) The Committee regret to note that in the present case neither the Income-tax Officer who made the assessment, nor the Inspecting Assistant Commissioner who checked it, was able to detect that a clear item of business profit was shown as a capital gain. This was perfunctory. The Committee desire that the officers should be more careful while scrutinising the accounts of companies, even though these might have been certified by qualified accountants.

(Paragraph 1.115)

(3) The Committee regret to note that although in each of these three cases, the excess refund involved was more than Rs. 1 lakh, the calculation was not checked by the I.T.O. concerned as required under departmental instructions and the mistake remained unnoticed for about 30 months, till it was pointed out by Audit. The Committee hope that the I.T.Os. will strictly observe the instructions issued by the Board in July, 1964, that in all cases where refund granted as a result of revision of assessment consequent on an appellate order exceeded Rs. 1 lakh, the I.T.O. should obtain prior approval of the Inspecting Assistant Commissioner and such cases of large excess refunds will be strictly avoided. The Committee suggest that the Inspecting Assistant Commissioners should specifically check during these inspections as to how far the departmental instructions were carried out by the Income-tax Officers so far as assessment of taxes was concerned. Failure to carry out departmental instructions should be viewed seriously.

(Paragraph 1.144)

Recommendation

The Committee regret to find that in this case the clear provisions of the Income-tax Act were ignored by the Income-tax Officer, resulting in underassessment of Rs. 24,065. They hope that such mistake would be avoided in future.

[S. No. 22, para 1.87 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit *vide* D.O.No. 2864-Rev. A/200-66, dated 18-8-66.]

[F. No. 36/14/66-IT (AI) III, dated 2-9-66.]

Recommendation

The Committee take serious note of such omissions in determination of the income in case of firms. It is unfortunate that even though the Department had a system of internal audit, this aspect was outside their scope at that time. The Committee hope that with the extension of the scope of Internal Audit such mistakes will not go undetected by them.

[S. No. 23, para 1.91 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit, *vide* D.O. No. 2863-Rev.A/200-66, dated 18-8-1966.]

[F. No. 36/29/64-IT (AI)-I, dated 1-9-66.]

Recommendation

In view of the fact that two contradictory opinions have been expressed by the Ministry of Law in 1959 and 1964, the Committee suggest that the opinion of the Attorney-General may be obtained.

[S. No. 24, para 1.97 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

As suggested by the Public Accounts Committee, the opinion of the Attorney-General is being obtained. The Committee will be informed of the opinion given by the Attorney General.

[Duly vetted by Audit *vide* D.O. No. 3353 Rev. A 200/66, dated 23/9/1966.]

[F. No. 36/32/64/IT (AI) dated 27/9/1966.]

Recommendation

FURTHER INFORMATION

In this connection a reference is invited to this Ministry's Note of even number dated 27th September, 1966.

The opinion of the Solicitor General has since been obtained in the matter and a copy is enclosed for the information of the Public Accounts Committee. The Solicitor General has expressed the view that the character of income in the hands of the partner is the same as in the hands of the firm (*e.g.* capital gains etc.), and that the interpretation that the share of a partner is assessable in his hands as business income, regardless of the source of that income in the hands of the firm, is not correct. Thus, according to the Solicitor General's view, the Audit objection may be withdrawn.

[F. No. 36/32/64/IT (AI), dated 19/9/1967.]

OPINION

It seems to me that the question which arises for consideration must be answered by reference to the scheme of, and the principles embodied in, the Act and not by reference to the consequences such as whether the individual partner would receive the benefit of section 17 (6) of the consequences indicated in the Finance Ministry's reply to the Audit objection (Annexure A) at page 3 of the case for opinion. Equally what the Law Commission said (quotation at Annexure A) is not relevant. Nor can section 67 (2), since it is not declaratory of the law as it stood before, be of assistance in answering the question. Nor is section 16 (1) (b) of the Act of 1922 of much use. Since 'salary' paid by a firm to a partner would not come within section 10 [since it is paid by himself (and others)] a specific provision has been made in section 16(1) (b) namely, whether or not there is profit or loss made by the firm any salary, commission or remuneration received by him from the firm would be deemed to be his share for the purpose of his assessment.

The decisions cited in Annexure 2 (Mr. Gae's Note) do not deal with the question with which we are concerned. The decisions in Shantikumar Morarji *Vs.* C.I.T. (1955) 27 I.T.R. 69 and Ramanlal Prabhudas Shah *V.* CIT (1957) 31 I.T.R. 924 lay down that where a business is carried on by a firm and the profits of the firm are allocated to different partners, the income received by each partner from the profits of the firm is assessable under the head 'profit and gain of business' (section 10) and not under the head 'income from the other sources' (section 12) either for the purpose of determining the rate of tax or for the purpose of charge since each partner carries on the business of the firm. The specific question here posed did not arise in those cases, the question being whether section 10 or section 12 applied.

What is pertinent is that since prior to 1956, whatever the position under the general law of partnership (which does not recognise a firm as an entity separate from the partners), a firm has been recognised as a separate taxable entity or an entity apart from its individual members, for the purpose of taxation. Though by the Finance Act, 1956 only the registered firms got the benefit of specially reduced rates, an individual partner as an assessee and the firm of which he is a member continued to be and are still regarded as two separate taxable entities. It is only to avoid double taxation that provision is made in section 14 (2) (a). Income-tax is levied and paid by an individual partner on what he actually receives as his share of the total income less the income-tax paid by the firm. Once one reaches the conclusion that under the Act an individual partner is separately assessed as an entity (apart from the firm) it must follow, unless an express provision is found in the Act, that his assessment must proceed without any reference to the assessment of the partnership firm and go through all those normal processes to which

the income of any other assessee is subject. In other words at that stage the Assessing Authority has to assess his income by reference to the heads mentioned in section 6. In view of this approach I take the view that where the income of a firm or part of it is determined under the head 'Capital gains' the share of partners in such income would be assessable not as business income but as capital gains and that the same observation would apply to every head of source which goes up to make up his total income.

There is no express provision to the contrary. There is however one provision which falls to be considered in this context. That provision is to be found in section 23(5)(a)(ii) and (b). For instance the provision in (a)(ii) reads "the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined". The provision lays down that the total income of each partner of the firm shall be assessed and the sum payable by him on such assessment shall be determined. This would naturally mean that his total income, that is, his income, profits or gains from whatever source shall be assessed and the sum payable by him on the basis of such assessment shall be determined. He, like any other assessee, has to be assessed in the same manner under the heads mentioned in section 6 unless a different course is laid down. His total income would indisputably include any salary he may have received from sources other than the firm, his dividend income, his income from property, his profits and gains from any other business, and his income from securities and so on. What the provision however brings out is that the total income of each partner of the firm would include therein "his share of his income, profits and gains of the previous year". What is significant is the use of word 'income' as well as the words 'profits and gains'. In other words his share in the firm may be his share of *income* of the firm as well as the *profits and gains* of the business properly so called; such share of the 'income' of a firm is referable to the income of the firm in the shape of capital gains, dividends, securities or of properties of the firm. In other words the share in the firm is taken to include the share not only of the profits and gains under section 10 but also of the income under section 8, 9 and 12 (as the case may be) as well. This would tend to show that it is intended that the share of the income and profits and gains is to be taken by reference to the heads mentioned in section 6; otherwise it would have been enough to use only the words "profits and gains". In the absence therefore of an express provision, such as now been made in section 67(2) it is not permissible to depart from the normal method or process of assessment by reference to different heads. A similar provision is made in section 23(5)(b) in regard to unregistered firms. The language used in section 23(5)(b) is the same 'income, profits and gains' and surely it cannot be suggested that an individual partner of an unregistered firm is not to be assessed by reference to separate heads. What is more, the Act does not show that

any distinction is sought to be made in this regard between a partner in an unregistered and a partner of a registered firm.

I am therefore of the view that the question must be answered in the negative. [*N.B.*—I should however like to add that it is possible to urge the view taken by Shri Gae on the basis of the forms on which he has relied and section 4 of the Indian Partnership Act.]

S. V. GUPTA,
Solicitor General of India.

NEW DELHI,

January 27, 1967.

Recommendation

The Committee feel concerned over such omissions of the Income-tax Officers as occurred in the present case in respect of the assessment years 1955-56, 1956-57, *and* 1957-58. *The Income-tax Officer failed to notice that the firm's application for registration was not complete inasmuch as it had not been signed by all the adult partners of the firm and granted registration for the years without having this requirement fulfilled. What is more serious, although the officer who scrutinised the application for the assessment year* 1958-59 *did detect the mistake, he took the extreme step of refusing renewal of registration for want of this rather technical requirement and assessing it as an unregistered firm. He should better have asked the firm, to get the application signed by all its adult partners. This omission on the part of the Income-tax Officer resulted in the case going before the tribunal and hardship to the firm.*

The Committee are glad to note that the Income-tax Act, 1961, *contains a provision that an Income-tax Officer should not reject the applications merely on the ground that the same was not in order, but he should give sufficient opportunity to the assessee to rectify defects within one month. The Committee understand that the Board have also issued instruction in* 1961 *that if the technical defects were of the nature that could be removed, these should be got removed. But what the Committee are anxious about is that this liberalisation envisaged in the Income-tax Act and instructions should actually be observed in letter and spirit by the Income-tax Officer so that the intention of the Parliament may be implemented and undue hardship to the assessee avoided. The Committee would like the Board to take effective steps to ensure that the spirit of the Act, as well as instructions of the Board in this respect are precisely observed.*

[S. No. 25 and 26, paras 1.101 and 1.102 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary instructions have been issued to all Cs. I. T. in the matter *vide* Board's F. No. 36/14/64-IT (AI) dated the 22nd August, 1966. A copy of the said instruction is enclosed.

[Duly vetted by Audit *vide* D.O. No. 3167-Rev.-A/200-66, dated the 12th September, 1966.]

[F. No. 36/14/64-IT (AI) dated 22-9-66.]

F. No. 36/14/64-IT (AI) II

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, dated the 22nd August, 1966.

From

Shri J. C. Kalra,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SUBJECT.—*Grant of registration to firms—Need for observance of the provisions of the Income-tax Act in the matter of.*

I am directed to refer to the observations made by the Public Accounts Committee in paras 1.101 and 1.102 of their 46th Report, 1965-66 (extracts enclosed) in regard to the grant of registration to firms.

2. The Board desire that the attention of the assessing officers should once again be drawn to the provisions of section 185 (2) of the Income-tax Act, 1961, which lay down that the Income-tax Officer should not reject an application for registration merely on the ground that the same is not in order, but he should give the firm an opportunity to rectify the defects in the application within a period of one month.

Yours faithfully,

(Sd.) J. C. KALRA,

Secretary, Central Board of Direct Taxes.

EXTRACTS FROM P. A. C's REPORT, 1965-66

* * * * *

1.101. The Committee feel concerned over such omissions of the ITOs as occurred in the present case in respect of the assessment years 1955-56, 1956-57 and 1957-58. The ITO failed to notice that the firm's application for registration was not complete inasmuch as it had not been signed by all the adult partners of the firm and granted registration of the years without having this requirement fulfilled. What is more serious, although the officer who scrutinised the application for the assessment year 1958-59 did detect the mistake, he took the extreme step of refusing renewal of registration for want of this rather technical requirement and assessing it as an unregistered firm. He should better have asked the firm to get the application signed by all its adult partners. This omission on the part of the ITO resulted in the case going before the tribunal and hardship to the firm.

1.102. The Committee are glad to note that the Income-tax Act, 1961, contains a provision that an ITO should not reject the applications merely on the ground that the same was not in order, but he should give sufficient opportunity to the assessee to rectify defects within one month. The Committee understand that the Board have also issued instructions in 1961 that if the technical defects were of the nature that could be removed, these should be got removed. But what the Committee are anxious about is that this liberalisation envisaged in the Income-tax Act and instructions should actually be observed in letter and spirit by the Income-tax Officers so that the intention of the Parliament may be implemented and undue hardship to the assessee avoided. The Committee would like the Board to take effective steps to ensure that the spirit of the Act, as well as instructions of the Board in the respect are precisely observed.

Recommendation

The Committee feel concerned about the practice adopted by the assessee in this case to circumvent the levy of capital gains tax while submitting his income-tax return by undervaluing the share sold to his own relative. In his return for Wealth-tax submitted earlier and subsequently the shares were assessed at a much higher value (about double the face value). Similar cases of undervaluing assets in income-tax returns were reported in para 34(b) of the Audit Report (Civil) on Revenue Receipts, 1963. The Committee suggest that a suitable procedure should be adopted by the Department whereby assessment of both the income-tax and Wealth-tax is done simultaneously so that the I.T.O. should be able to correlate the value of assets disclosed in the two returns.

[S. No. 27, para 1.109 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

As suggested by the Committee, necessary instructions have been issued to all the Commissioners of Income-tax in the matter, *vide* Board's letter F. No. 36/25/64-IT(AI) II, dated 19-9-66. A copy of the circular giving the instructions is sent herewith.

[Duly vetted by Audit, *vide* D.O. No. 3692-Rev. A/200-66 II, dated 20-10-66.]

[F. No. 36/25/64-IT(AI) II, dated 26th October, 1966.]

Recommendation

The Committee are surprised to learn that Wealth tax, Gift tax, and Estate duty which are also direct taxes have not yet been authorised by Government for being brought under the purview of Revenue Audit. The Committee feel that this should have been done simultaneously when Revenue Audit was extended to Income-tax. The receipts from these taxes are increasing and it is also necessary to correlate the data given in income tax returns and other taxes returns to detect malpractices of the kind reported in the present case. In view of the singular service rendered by the Revenue Audit to the assessment and collection of Income-tax, Customs and Central Excise, it is considered opinion of the Committee that the scope of the Revenue Audit should be suitably extended forthwith so as to include all the Central taxes without any distinction and reservation.

[S. No. 28 para 1.111 of the Appendix XIV to the 46th report]

ACTION TAKEN

The observation of the Committee have been noted.

[This has been vetted by Audit *vide* Shri Gauri Shankar's D.O. No. 3130-Rev. A/200-66 dt. 7-9-66.]

[F. No. 83/29/66-I.T.(B).]

FURTHER INFORMATION

The recommendations made by the P. A. C. in para 1.111 of its 46th report have since been implemented *vide* Ministry of Finance (Department of Revenue and Insurance), letter No. 83/65/66-I. T. (B) dated 10th May, 1967 (copy enclosed).

[This has been vetted by Audit *vide* Shri Gauri Shankar's D.O. No. 3383-Rev. 200-66/III, dated 1-9-1967.]

[F. No. 83/32/7-ITB.]

F. No. 83/65/66-IT (B)

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

New Delhi, the 10th May, 1967.

FROM

Shri R. N. Muttoo,

Joint Secretary to the Government of India.

To

The Comptroller & Auditor General of India,

New Delhi.

Sir,

SUBJECT.—*Audit-Extension of audit to the Estate Duty, Wealth Tax and Gift Tax receipts and refunds.*

I am directed to state that under paragraph 13(2) of the Audit and Accounts Order 1936 read with Article 149 of the Constitution, the President has approved the extension of statutory audit to the Estate Duty, Wealth Tax and Gift Tax receipts and refunds. The scope of audit in respect of these Taxes will be the same as in the case of Income Tax receipts and refunds.

(This has reference to Shri R. K. Khanna's D. O. letter No. 2882-Rev. A/272-65 dated the 6th August, 1966 addressed to Shri R. C. Dutt.)

Yours faithfully,

(Sd./-) R. N. MUTTOO,

Joint Secretary to the Government of India.

Copy to:—

All Commissioners of Income tax/Directorates of Inspection.

All Sections in the Income tax Wing.

(Sd./-) WASQ ALI KHAN,

Deputy Secretary to the Government of India.

Recommendation

The Committee regret to note that in the present case neither the Income-tax Officer who made the assessment, nor the Inspecting Assistant Commissioner who checked it, was able to detect that a clear item of business profit was shown as a capital gain. This indicates that scrutiny made by the two officers was perfunctory. The Committee desire that the officers should be more careful while scrutinising the accounts of companies, even though these might have been certified by qualified accountants."

[S. No. 29, para 1.115 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been brought to the notice of the Commissioners of Income-tax *vide* letter F. No. 36/8/66-IT (AI), dated the 4th August, 1966, a copy of which has been sent to the Public Accounts Committee under reply to para 1.83 of the Report.

[Duly vetted by Audit *vide* D.O. No. 2942-Rev.A/20-66, dated 22-8-66.]

[F. No. 36/18/64-IT(AI)II, dated 1-9-66.]

Recommendations

(i) *The Committee regret to note that the same mistake,* i.e., *failure to apply the provisions of the Income-tax Act to assess the income of minors in the hands of partners, was persistently committed by nine I.T.Os., over a period of eight years from* 1947-48 *to* 1955-56. *Once the mistake occurred, the succeeding officers repeated it without independently going into the basis of assessment. It is most unfortunate that in spite of the Board telling their officers repeatedly not to follow the basis of the earlier assessment, a mistake like the present one has happened. This shows the routine or casual treatment which is given to the Board's instructions/ advice. The Committee suggest that based on the defects noticed in this case, suitable instructions may be issued to all Income-tax Officers to be more careful in future.*

(ii) *The Committee would like to know the result of the appeal made by the Department.*

[S. No. 30, para 1.118 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

(i) Necessary instructions have been issued to all the Commissioners of Income-tax in the matter, *vide* Board's letter F. No. 36/8/66-IT(AI), dated 27-8-66. A copy of the said instructions has been sent to the Committee under reply to para 1.24 of the Report.

(ii) The appeal filed by the Department against the orders of the single judge for the assessment years 1952-63 to 1955-56 have been unsuccessful. The High Court has confirmed the decision of the single judge. The Department has accepted the High Court's decision.

[Duly vetted by Audit, *vide* D.O. No. 3840-Rev.A/200—66II, dated 26-10-66.]

[F. No. 36/18/64-IT(AI)II, dated 28-10-66.]

Recommendation

The Committee are surprised that in 1953-54, *the Commissioner at his own level gave a ruling that the ladies in question were not wives of the assessee but 'ladies in position'. As the case was complicated and unique, without any parallel, and also involved a large amount of revenue, the officer should have referred it to the Board and the Law Ministry. This omission on the part of the officers resulted in jeopardising considerable revenue (Rs.* 38,496 *for the years* 1951-52 *to* 1954-55, *the assessments for which have become time barred, and Rs.* 996,828 *for the subsequent years* 1955-56 *to* 1958-59.

[S. No. 31, Para 1.122 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been brought to the notice of the Commissioner of Income-tax.

[Duly vetted by Audit *vide* D.O. No. 3266-Rev./200-66, dated the 21st September, 1966.]

[F. No. 36/15/64-IT(AI), dated 20-9-66.]

Recommendation

The Committee feel concerned to note that even though these cases of allowance of insurance rebates were not so complicated, there appeared to be a general type of mistake committed by the Income-tax Officers, as judged from occurrence of 155 *defective cases out of a small number of cases checked in test audit in the charges of only* 16 *Commissioners. The Committee hope that with the simplification of the law by providing for straight deductions instead of rebates, the mistakes would be substantially reduced, if not completely eliminated. The Committee suggest that the matter should be kept under review with a view to introducing further simplification in procedure, if necessary. For this purpose, it would be desirable that some percentage of cases is checked by the Internal Audit also.*

[S. No. 33, para 1.130 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted. Instructions have already been issued to the Internal Audit Parties regarding checking of life insurance premium rebates *vide* Board's letter F. No. 83/40/65-IT(B), dated the 17th March, 1966 (copy enclosed).

[Duly vetted by Audit *vide* their D.O. No. 3753-Rev.A/200-6-III, dated 3-10-67.]

[U.O. F. No. 36/34/64-IT(AI), dated 25-9-67.]

Recommendation

The Committee find it surprising that in these 40 cases, rebate was allowed on the amount in excess of the sum claimed by the assessee. They hope that these cases will be scrutinised carefully and action taken against the delinquent officers.

[S. No. 34, para 1.132 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

In the earlier Note submitted by this Ministry to the Public Accounts Committee, it was stated that in about 40 cases rebate had been allowed on an amount in excess of the sum claimed by the assessees. However, on receipt of the detailed information from the Commissioners of Income-tax it is found that only in 6 cases was rebate on life insurance premium allowed on amounts in excess of those claimed by the assessees. In the remaining cases excess rebate was wrongly allowed, not on an amount in excess of the sum claimed by the assessee, but due to mistake of other types.

2. A scrutiny of the above 6 cases has shown that the mistakes had occurred for reasons like:

(i) the figure shown in the earlier year's return being adopted by mistake;

(ii) the figure shown in the earlier year's assessment being adopted by mistake; and

(iii) arithmetical mistake caused by decimal point being lost sight of.

The total tax involved in the mistakes in the above 6 cases is about Rs. 3,000.

3. The delinquent officers have been asked to be careful.

[Not vetted by Audit.]

[F. No. 36/34/64-IT(AI), dated 25-8-66.]

Recommendation

The Committee regret to note that this is another case where although a difficult point was involved, the Income-tax Officer did not consider it necessary to refer the matter to the higher authorities before completing the assessment of a big company like the one in the present case for the years 1957-58 *to* 1960-61. *What is more regrettable is that even after the Board issued a circular in* 1961 *containing comprehensive instructions regarding computing of capital employed in an undertaking, the Income-tax Officer made the same mistake in January,* 1962 *while making the assessment for the year* 1961-62. *The mistake made in* 1961-62 *merits serious notice. The Committee also view with concern the omission on the part of the Inspecting Assistant Commissioner who looked into some of these assessments, but did not report anything. But for the point taken up by the Audit a tax revenue of Rs.* 3.90 *lakhs would have remained unrealised in these two cases of companies and Rs.* 3.92 *lakhs in the case of shareholders.*

The Committee suggest that the Board of Direct Taxes should take serious veiew of such omission and cases involving an under-assessment of tax of Rs. 10,000 *or above should be investigated in detail with a view to remove any defects in procedure as also to see that no* mala fide *was involved. They should also fix responsibility for such lapses.*

[S. No. 35, para 1.137 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit *vide* D.O. No. 3267-Rev.A/200-66, dated 20th September, 1966.]

[F. No. 36/18/64-IT(AI), dated 27th August, 1966.]

Recommendation

The Committee desire that the performance of the Income-tax Officers in Company Circles should be assessed from time to time in order to apply any further corrective.

[S. No. 36, para 1.139 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

As desired by the Committee, steps have been taken for an annual assessment of the performance of the Income-tax Officers in Company Circles in January, every year. The first such assessment will be made in January, 1967.

[Duly vetted by Audit *vide* D.O. No. 3169-Rev.A/200-66, dated the 12th Sept., 1966.]

[F. No. 36/18/64-IT(AI) dated 20-9-66.]

Recommendations

(1) *The Committee regret to note that although in each of these three cases, the excess refund involved was more than Rs. 11 lakhs, the calculation was not checked by the I.T.O. concerned as required under departmental instructions and the mistake remained unnoted for about 30 months, till it was pointed out by Audit. The Committee hope that the I.T.Os. will strictly observe the instructions issued by the Board in July, 1964, that in all cases where refund granted as a result of revision of assessment consequent on an appellate order exceeded Rs. 1 lakh, the I.T. should obtain prior approval of the I.A.C. and such cases of large excess refunds will be strictly avoided. The Committee suggest that the I.A.C. should specifically check during these inspections as to how far the departmental instructions were carried out by the I.T.Os so far as assessment of taxes was concerned. Failure to carry out departmental instructions should be viewed seriously.*

(2) *The Committee also desire that adequate action should be taken against the I.T.O. for his negligence and failure which jeopardised the Government revenue to this large extent.*

[S. No. 37, para 1.144 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

(1) Necessary instructions have been issued to all Commissioners of Income-tax that the observations made by the P.A.C. may be brought to the notice of all the Income-tax Officers and I.A.C. and that they may be asked to carry out their duties in a more efficient manner. A copy of the Board's letter F. No. 36/8/66-I.T.(AI), dated the 4th August, 1966, is enclosed.

(2) The Income-tax Officers concerned have been warned to be more careful in future.

[Duly vetted by Audit *vide* D.O. No. 3076-Rev.A/200-66 dated 2-9-66.]

[F. No. 36/16/64-IT(AI), dated 7-9-66.]

Recommendation

The Committee consider it unfortunate that A.A.C. mentioned the figure of development rebate as 34.98 lakhs instead of Rs. 26.90 lakhs. What is more regrettable is that the I.T.O. who had himself earlier corrected the arithmetical error of a sum of Rs. 8.08 lakhs having been added twice over did not check up the amount of allowance while giving effect to the order of the A.A.C. and this resulted in an excess refund of

Rs. 5.08 lakhs. The Committee are surprised to know that although this case related to a big company involving a substantial amount of refund, it was neither checked by the Internal Audit Party nor the inspecting staff.

[S. No. 38, para 1.148 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit *vide* D.O. No. 3075-Rev.A/200-66, dated 2-9-66.]

[F. No. 36/29/64-IT(AI) dated 7-9-66.]

Recommendation

The Committee regret to observe that in this case the orders of Appellate Tribunal were not properly given effect to resulting in an under-assessment of tax to the extent of Rs. 19,412. The Committee consider it very unsatisfactory that the I.T.O. who committed the mistake was so much over-burdened with work at the particular time that he had to hold five important charges. The Committee hope that suitable administrative arrangements will be made to avoid such mistakes in future.

[S. No. 39, para 1.151 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted.

[Duly vetted by Audit, *vide* D.O. No. 3047-Rev.A/200-66, dated 2-9-66.]

[F. No. 36/14/64-IT(AI), dated 7-9-66.]

Recommendation

The Committee feel concerned over the mistakes made by the I.T.O. in the levy of additional super-tax involving short-levy of tax to the extent of Rs. 3,14,756. It is regrettable that the Assistant Commissioner who checked up this case, could not detect the mistake, although it involved a question of application of law. The Committee hope that the Central Board of Direct Taxes would take suitable steps to ensure that such mistakes are avoided in future.

[S. No. 40, Para 1.154 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The mistake in this case has since been rectified and the additional demand of Rs. 3,14,773 has since been collected.

2. The Committee have observed that the Assistant Commissioner failed to check the mistake which was one of law. It may be mentioned that the Inspecting Assistant Commissioner only gave approval for applying the provisions of section 23A(1) and he had no occasion to detect the mistake committed by the I.T.O.

3. The explanation of the I.T.O. who committed the mistake, has been obtained. He has been warned.

4. Instructions have also been issued to the Commissioners to bring to the notice of all the Income-tax Officers the proper method of calculating super-tax under section 23A/104.

[Not vetted by Audit.]

[F. No. 52/13/66-IT(A-II), dated 16-9-67.]

Recommendation

The Committee regret to observe that the incorrect notice issued by the Income-tax Officer to the company to declare further dividends resulted in clear loss of revenue to the extent of Rs. 47,900.

[S. No. 41, para 1.158 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted by the Government. The Officer concerned has been warned and a copy of the warning has been kept in his character roll.

[Vetted by audit *vide* Comptroller and Auditor General's D.O. No. 2401/Rev.A/200-66, dated 11-7-66.]

[F. No. 52/14/66-IT(Inv.)]

Recommendation

In their earlier Reports (Para 53 of 21st Report and para 41 of 28th Report—Third Lok Sabha), the Committee have adversely commented upon non-levy of additional super-tax under section 23A of the Income-tax Act, 1922 *and desired that the procedure should be tightened, and the Board should keep close watch on the position. The Committee are concerned to find that the Audit Report,* 1965 *had also disclosed under-assessment of super-tax of Rs.* 25.57 *lakhs involved in* 80 *cases. The*

Committee would like to know about the action taken by the Board of Direct Taxes to tighten the procedure with a view to eliminate such cases.

[S. No. 42, Para 1.159 of Appendix XIV to 46th Report, 1965-66.]

ACTION TAKEN

There was no time-limit for taking action under section 23A of the 1922 Act. This was remedied in section 106 of the Income-tax Act, 1961. Administratively also, a register has been prescribed by the Board which is required to be maintained by the Income-tax Officers. Administrative time-limits have also been laid down for completing each stage of action. Though the time-limit laid down in the 1961 Act does not apply to proceedings under section 23A of the Income-tax Act, 1922, Board have directed that these time-limits, should be kept in view for completion of section 23A proceedings under the 1922 Act also. A copy of the instructions issued on 13-6-1963 is enclosed.

2. Instructions are again being issued for expeditiously completing pending cases relating to assessment years up to 1961-62. A copy of the instructions is enclosed.

[Vetted by Audit *vide* Comptroller & Auditor General's D.O. No. 2416/Rev.A/200-66, dated 6-7-1966.]

[F. No. 52/15/66-IT(Inv.).]

EXTRACTS FROM BOARD'S CIRCULAR NO. 15-D(LXXV-22) OF 1963, DATED 13-6-1963.

The provisions of section 23-A of 1922 Act have been split up into a number of convenient sections in the New Act. The relevant Sections are 104 to 109 of the 1961 Act. "A company in which the public are substantially interested" is defined in Clause (18) of Section 2 of the 1961 Act.

2. Under the Act of 1922, there was no time limit for the passing of an order creating a demand for additional super-tax. However, under section 106 of the new Act, the following time-limits have been laid down for making such an order: —

(a) 4 years from the end of the assessment year relevant to the previous year;

or

(b) one year from the end of the financial year in which the assessment or re-assessment has been made,

whichever is later. The following example, taking assessment year 1962-63 into consideration, will illustrate the manner in which the time limits imposed under the new Act will operate: —

Assessment year	Date of completion of assessment or re-assessment	Last date for completing proceedings under section 104 of the Income-tax Act, 1961.
1. 1962-63	Before 1-4-1966	31-3-1967
2. 1962-63	After 1-4-1966 but before 1-4-67.	31-3-1968
3. 1962-63	Reopened under section 147 after 31-3-1967 and re-assessment completed later.	By 31st March of the Financial year following the Financial year, in which the re-assessment was completed *e.g.* if the re-assessment was completed on 30-12-1968 the last date for making order under section 104 is 31-3-1970.

3. The imposition of these time-limits makes it absolutely essential that the scrutiny of such cases should be made in a systematic manner immediately after the assessment or reassessment. For this purpose, all the facts relevant to the application of section 104 for each year of assessment will be obtained by the Income-tax Officer from the Company to which the provisions of section 104 are applicable, in form Annexure I before the completion of the assessment. On completing the assessment, the Income-tax Officer should simultaneously make entries in the form Annexure II. A separate sheet should be used for each company and such sheets should be used for making entries for six years.

4. After scrutiny of the information obtained from such companies in form Annexure I, the Income-tax Officer should be in a position to conclude whether the provisions of Section 104 are applicable to the company. If it is applicable, he will enter the name of the company in the register in form Annexure II. After filling up Annexure II the Income-tax Officer will satisfy himself that additional super-tax is payable owing to short distribution of dividends. If he is so satisfied, the Income-tax Officer will have to examine whether action as contemplated in section 105 is necessary. The notice under section 105(1) should be served within a period of 45 days from the date of the assessment order. The report to the Inspecting Assistant Commissioner should be submitted after considering the company's reply within 6 months from the date of the order of assessment or re-assessment. The approval of the Inspecting

Assistant Commissioner for orders under section 104 should be given within one month of the receipt of the Income-tax Officer's report.

5. The register should be put up on the 1st of May, 1st of August, 1st of November and 1st of February to the Inspecting Assistant Commissioner for scrutiny. This register should be brought into use immediately in all Circles which deal with the assessments of the companies. The Commissioners will arrange to print the forms (Annexure I & II) locally under the powers of local printing delegated to them in Board's letter No. 28/41/62-IT, dated 16-5-1963. The entries in the registers should be made for and from assessment year 1962-63. Annexure I which the companies are required to furnish, will be filled in the assessment folder along with the assessment order.

6. Though the above time limits apply only to 1962-63 and later assessments, the Board desires that section 23A proceedings for earlier years should also be completed keeping the above time-schedules in mind. Commissioner should, therefore, ensure that all 23A assessments pertaining to assessment years 1955-56 to 1961-62 are completed by 31-3-1964. Particulars regarding such assessments need not be entered in form Annexure II, but these details should be collected and filed below the assessment order.

F. No. 52/15/66-IT(Inv.)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 21st June, 1966.

FROM

The Secretary,
Central Board of Direct Taxes.

TO

All Commissioners of Income-tax.

SIR,

SUBJECT.—*Section 23A/104—Delay in initiating action and omission to take action under—Need for proper compliance with Board's instructions.*

As you are aware, the lapse on the part of the officers of the Department to initiate prompt action under section 23A/104 of the Income-tax Act, 1922/1961 has come in for severe criticism by the Public Accounts Committee in its various reports to the Lok Sabha. In order to avoid such delays and omissions, instructions were issued in Board's Circular No. 15-D of 1963 for the maintenance of a register by the Income-tax Officers for keeping a proper watch on the proceedings under section 104.

2. Even after the issue of the aforesaid instructions, audit objections indicating long delays are still being received which shows that the instructions are not being followed by the Income-tax Officers. The audit objections also show that all cases under section 23A pertaining to assessment years 1955-56 to 1961-62 which, according to Board's instructions, had to be disposed of by 31-3-1964, have still not been disposed of.

3. I am directed to request you to please ensure that the register prescribed by the Board of 23A/104 cases is not only maintained properly but is also used as an effective instrument for sub-serving the purpose for which it is meant, and old cases are disposed of expeditiously. An attempt should be made to dispose of as many as of these cases in June and July 1966 as possible.

4. A list of cases for the assessment 1955-56 to 1961-62, requiring action under section 23A, pending on 31-7-1966, along with reasons for pendency, may be sent so as to reach the Board by 31-8-1966.

Yours faithfully,

(Sd.) WASIQ ALI KHAN,

Secretary, Central Board of Direct Taxes.

Recommendation

The Committee are not happy over the delay in the disposal of the appeal filed by the assessee in this case, resulting in a large amount of demand (Rs. 3.18 lakhs) outstanding. They hope that the Commissioners will strictly follow the recent instructions of the Board and that where substantial amounts were involved pending decision on appeals, the Appellate Assistant Commissioner would take up such cases quickly.

[S. No. 44, para 1.177 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The appeal filed by the assessee was disposed of by the Appellate Assistant Commissioner in February, 1966. As a result of this decision, there was a reduction in the outstanding demand by Rs. 91,835. The latest position regarding recovery is as under:

	Rs.
Original demand raised	4,40,000.00
Less reduced in appeal	91,834.75
Net demand of tax recovered by the Deptt. . .	3,48,165.25
Interest accrued on delayed payments also recovered by the Deptt.	11,865.00

In addition, a further demand of Rs. 4,723 an account of interest on outstanding demand for the period 1-4-66 to 8-10-66 has also been raised by the Department.

[Duly vetted by Audit *vide* D.O. No. 4240-Rev.A/200-66.II, dated 26-11-66.]

[F. No. 36/27/64-IT(AI), dated 16-8-67.]

Recommendation

The Committee regret to observe that this is a clear case of omission to tax the income when all the facts were available on record. The Committee rather feel concerned over such omissions occurring in the Special Investigation Circles who have to deal with Comparatively less number of cases.

[S. No. 45, para 1.181 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary instructions have been issued to all the Commissioner of Income-tax *vide* Board's letter F. No. 36/8/66-IT(AI), dated 27-8-66 that the observations made by the Committee should be brought to the notice of the various assessing officers and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the said instructions has been sent to the Committee under reply to para 1.24 of the Report.

[Duly vetted by Audit *vide* D.O. No. 3350-Rev.A 200-66, dated the 23rd September, 1966.]

[F. No. 36/14/64-IT(AI), dated 28-9-66.]

Recommendation

In the present case before the Income-tax Officer relinquished charge in April 1962, he should have mentioned in detail the action required to be taken to his successor, so that the assessment for the year 1956-57 could be re-opened. This apparently was not done. It is all the more regrettable to note that the same Income-tax Officer was concerned with another case involving an under-assessment of Rs. 67,000. The Committee suggest that this case may be investigated in detail with a view to fixing responsibility, and taking disciplinary action against officers concerned.

[S. No. 45, para 1.182 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The explanation of the officer concerned has been obtained and he has been warned to be careful in future.

[Duly vetted by Audit *vide* D.O. No. 3170-Rev.-A/200-66. dated the 12th September, 1966.]

[F. No. 36/14/66-IT(AI)I, dated 22-9-66.]

Recommendations

The Committee regret to note that in the case of the first company the Income-tax Officer failed to gross up dividends correctly, though the assessment records of the company declaring dividends were available in the same income-tax Office. What is more serious is that although the percentage of taxed profits was indicated as 'nil' in the dividend warrant filed by the assessee for the year 1959-60, the Income-tax Officer concerned grossed up the net dividend by taking 100 per cent of profits as taxable. The lapse on the part of the Income-tax Officers resulted in excess credit of Rs. 2,36,344 in respect of the years 1955-56 to 1959-60, a part of which has become a loss as the rectification of assessments had become time-barred.

Another unsatisfactory aspect of this case is that there was delay in investigating into this after it was brought to the notice of the Board by Audit. The Committee would like to know about the action taken against the company for filing false certificates and also against the Income-tax Officer for his omission. The Ministry should also examine what further remedial measures are necessary to guard against the shareholder filing false returns.

[S. No. 46, paras 1.194 and 1.195 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Para 1.194:—

The P.A.C. have observed in paragraph 1.194 of their report that even though the assessment records of the Company declaring the dividends were available in the same Income-tax Office, the Income-tax Officer failed to gross up the dividends correctly. It might however, be explained that while it is true that the assessment records of both the Companies, namely, the dividend paying company and the dividend receiving Company were in District III, Calcutta, under the same Commissioner of Income-tax's charge, but the said two Companies were being assessed by different Income-tax Officers in the same District. M/s. Rickitt and Colman Ltd., were being assessed in B. Ward, whereas M/s. Rickett & Colman (India) Ltd. was being assessed in D. Ward.

The Public Accounts Committee have also observed that the lapse on the part of the Income-tax Officer resulted in excess credit of Rs. 2,36,344 in respect of the years 1955-56 to 1959-60, a part of which has become a loss as the rectification of assessments has become time-barred. This is not quite correct. The Commissioner of Income-tax has stated that in the case of this Company (M/s. Reckitt and Colman, U.K.) the assessments have been revised under section 35 for all the 5 years in question and in no case rectification action has become time-barred and hence there is no loss of revenue.

It is no doubt true that in respect of the assessment year 1959-60, the Income-tax Officer grossed up the dividends by taking 100% of the profits as taxable was indicated as 'nil' in the dividend warrant.

Para 1.195:—

The Public Accounts Committee has observed that there was delay in the investigation of this case after it was brought to the Department's notice by the audit. In this connection the position is that as stated by the Commissioner of Income-tax, the audit objections were received by the Income-tax Officer on 4-2-64 and the mistakes in all the cases were rectified by him on 3-7-64.

The Public Accounts Committee has been pleased to ask for following points:—

(i) Action taken against the Income-tax Officer for his omission.

(ii) Action taken against the Company for filing false certificates; and

(iii) The remedial measures taken for future.

The position on these points is explained below seriatim:—

1. *Action taken against the Income-tax Officer*

In regard to the assessments relating to the assessment years 1955-56 to 1958-59, the Income-tax Officer merely adopted the percentages shown in the dividend certificates for the purpose of grossing up. According to the instructions issued by the Board, the percentage should have been verified later with reference to the records of the dividend-paying Co. or by making a reference to the Income-tax Officer assessing the dividend paying Co. The Commissioner of Income-tax has reported that the officer assessing the dividend paying Company had not communicated the percentage of taxable profits to the Income-tax Officer who made the assessment of the non-resident Company. It is unfortunate that the Income-tax Officer also failed to maintain a Register showing the percentages of taxed profits of companies, as required under the Board's instructions.

In regard to the assessment for the year 1959-60, the dividend warrants showed the percentage of taxable profits "nil" but the Income-tax

Officer grossed up the net dividend on the footing that 100% of the Company's profits were taxable. It is true that in this case, the Income-tax Officer was clearly in error. Although the Income-tax Officer has tried to explain the reasons for his action but the Board are not satisfied and the Commissioner of Income-tax has been asked to administer a warning to the Officer.

2. *Action taken against the Company*

The Company was called upon to explain why incorrect certificates had been issued by it. In their reply, the Company has stated that as the questions of 15-C relief, Development rebate and Depreciation etc. had not yet been finalised at the time of issuing the dividend warrants, it was not practicable for the Company to issue the certificate of deduction in any other satisfactory manner than what was actually done. The question whether any legal or penal action can be taken against the Company for issuing incorrect certificate, has been examined by the Board. It is seen that the form of the certificate which was in force prior to the introduction of the revised form in 1957, was so worded that it will be difficult to maintain that any false statement had been made by the officials of the Company who had given these certificates. So far as the dividend paying Company is concerned, whatever profit is computed under the Income-tax Act, the whole of it would be chargeable to tax at 100%, at Indian rates. The main portion of the exempted profits is the portion which represents the depreciation allowance and development rebate allowed in excess of the provision made in the accounts of the Company. Working out the correct percentage by taking into account such item, was not provided for in the old form prescribed for dividend warrants and it will be very difficult to take any legal action against the Company for mentioning the percentage of taxable profits as 100. The revised form prescribed in 1957 is relevant for assessment year 1959-60 and in that year, the percentage mentioned by the Company in the dividend warrant is "nil" and hence there was no mistake in the certificate of that year. The accompanying statement shows the various details regarding the declaration of dividends, completion of assessments and settlement of 15-C claims etc. for the various assessment years. Having regard to the circumstances of the case, the Board are of the view that no legal action can reasonably be taken against the Indian Company.

3. *Remedial Measures*

Although the grossing up of dividends has been abolished from 1960-61 onwards, instructions have been issued impressing upon the Income-tax Officers to exercise greater care and vigilance in allowing credit for tax in such cases.

[Duly vetted by Audit *vide* D.O. No. 198-Rev.A/200-66 II, dated the 17th January, 1967.]

[F. No. 36/18/64-IT(AI)-II, dated 26-8-1967.]

STATEMENT

Assessment Year	Date of declaration of dividends	Date of Completion of assessment	Date of A.A.C's order	Date of order of I.T.A.T.	Date of settlement of 15-C claims
1955-56	7-4-54 8-6-55	25-2-60	28-8-61	14-2-63	5-4-60
1956-57	8-6-55 6-10-55 7-5-56	30-11-60	28-8-61	14-2-63	25-11-60
1957-58	2-4-58 8-10-56 6-5-57	3-2-61	28-8-61	14-2-63	28-9-61
1958-59	14-8-56 25-7-57	3-2-61	28-8-61	14-2-63	28-2-61
1959-60	11-11-58				

Recommendation

The Committee are surprised that the Internal Audit Party did not even check that the I.T.O. had got the certificates furnished by the companies verified. The Committee were informed that instructions would be issued to the Internal Audit to conduct this type of examination. They trust that in future the Internal Audit would be careful so that such mistakes may not get undetected.

[S. No. 46 and para 1.197 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted. It may be added that necessary instructions regarding the exercise of greater vigilance by the Internal Audit Party were issued in the Board's letter F. No. 83/70/66-IT(B), dated 24-9-66 (copy enclosed).

[Not vetted by Audit.]

[F. No. 36/18/64-IT(A-I), dated -10-67.]

F. No. 88/70/66-IT(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi the 24th September, 1966.

To

All Commissioners of Income-tax.

SIR,

SUBJECT.—*Public Accounts Committee—46th Report of the Committee—Recommendations regarding Internal Audit Parties.*

I am directed to say that the Public Accounts Committee 1965-66 has made the following recommendations in its 46th Report (Third Lok Sabha) regarding the items of work to be checked by the internal audit parties: —

Para 1.130

The Committee feel concerned to note that even though these cases of allowance of insurance rebate were not complicated there appeared to be a general type of mistake committed by the I.T.Os. as judged from occurrence of 155 defective cases out of a small number of cases checked in the test audit in the charges of only 16 Commissioners. The Committee hope that with the simplification of the law by providing for straight deductions instead of rebates the mistakes would be substantially reduced, if not completely eliminated.

The Committee suggest that the matter should be kept under review with a view to introducing further simplification in procedure, if necessary. For this purpose it would be desirable that some percentage of cases is checked by the Internal Audit also.

Para 1.197

The Committee were informed during evidence that the internal audit party which looked into two assessments could not detect the mistake because the files of the company were not with them at the time of checking and they also went by the certificates of the companies. The Committee are surprised that the Internal Audit party did not even check that the ITO had got the certificates furnished by the companies verified. The Committee were informed that instructions would be issued to the Internal Audit to conduct this type of examination. They trust that in future the Internal Audit would be careful so that such mistakes may not go undetected.

Para 1.220

The Committee appreciate that in order to avoid assessments becoming time-barred after four years, the Internal Audit is arranged in such

a way that assessments are checked within a period of three years so as to allow one year for rectification. But at present the Internal Audit parties checked only a limited number of assessments and even out of a few cases checked by them in some cases mistakes escaped their notice. The Committee therefore, feel that remedy lies in improving the efficiency of the assessing machinery and the vigilance by the internal audit department.

2. The recommendations made by the Committee in para 1.190 relate to para 71(b) of the Audit Report (Civil) on revenue receipts 1965, which refers to mistakes committed while allowing rebates on life insurance premia. The provisions relating to rebates on insurance premia are applicable only to individuals and Hindu undivided families and as such only a percentage of such cases is liable to be checked in terms of Board's Circular No. 1-D(LVII-3) of 1965, dated the 13th January, 1965. While checking these cases it should, however, be ensured that the rebate on Life Insurance Premia is correctly allowed and recurrence of the mistakes of the type pointed out by Audit is avoided in future.

3. The recommendations made by the Committee in para 1.197 relate to para 75(a) of the Audit Report (Civil) on Revenue Receipts, 1965, dealing with irregular grossing up of dividends. In the cases referred to in this para, the Internal Audit Parties failed to check whether the tax deduction certificates furnished by the Company have been verified by the I.T.O. In order to avoid such mistakes in future, it has been decided that the Internal Audit Parties should check up the tax deduction certificates with reference to the files of the companies or the intimations received from the I.T.O. assessing the companies.

4. This may be brought to the notice of all the officers working in your charge, particularly, the Internal Audit Parties so that the efficiency of the assessing machinery may improve and there should be greater vigilance on the part of the Internal Audit Department.

Yours faithfully,

(Sd.) M. M. PRASAD,

Under Secretary.

Copy to:—

D.I. (I.A.)/D.I. (RSP) and D.I. (Inv.),

All Officers and Branches in the I.T. Wing.

(Sd.) M. M. PRASAD.

Under Secretary.

Recommendations

The Committee are unhappy to note that in spite of their earlier recommendations—Para 66 of 21st Report (Third Lok Sabha) and para 44 of 28th Report (Third Lok Sabha)—there had been omission to levy penal interest. Out of the 347 cases reported in the audit para, in five cases alone the penal interest omitted to be levied was about Rs. 3.19 lakhs. This resulted to the loss of revenue to Government as in one case Rs. 50,475 were waived and in another case Rs. 72,329 could not be rectified because of time-bar. The Committee desire that such lapses should be strictly avoided and penal interest, wherever leviable should be levied, unless waived by the competent authority, for adequate reasons to be recorded.

During evidence, it was stated that instructions had been issued to Commissioners of Income-tax to ensure that penal interest would be levied in all the cases wherever it was leviable. The I.T.Os. had also been asked while making assessment, to look into the earlier assessment also and to see whether there had been any mention of it in earlier year also. They hope, that with the issue of these instructions, such lapses will not occur in future.

[S. No. 47, paras 1.204 and 1.205 of Appendix XIV to 46th Report, 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted.

[F. No. 83/20/66-I.T.(B)

Recommendation

They, however, regret to note that such a mistake had taken place and yet it was not detected at any level in Income-tax Department. It is surprising that even though this irregularity was pointed out by Audit in June, 1962, yet the Commissioner, who was looking into the case had not submitted his final report. The Committee desire that the report in this case should be finalised early and suitable action should be taken against persons responsible for the lapse.

[S. No. 48, para 1.211 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Explanations of the officials concerned have been obtained and examined. The explanations have not been found to be satisfactory and the officials concerned have been warned.

[Duly vetted by Audit *vide* D.O. No. 2817-Rev.A/200-66.III, dated 1-8-67.]

[F. No. 36/31/64-IT(AI), dated the 7th August, 1967.]

Recommendation

The Committee are not happy over the cases of over-assessments which are as serious mistakes as under-assessments. The Committee feel that for no fault on the part of the assessees, they had been penalised. The Committee take a serious view of the cases of over-assessments which have become time-barred.

[S. No. 49, para 1.219 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

Necessary instructions have been issued to all the Commissioner of Income-tax that the observations made by the Committee should be brought to the notice of the various assessing officers and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the said instructions has been sent to the Committee under reply to para 1.24 of the Report.

[Duly vetted by Audit *vide* D.O. No. 3349-Rev.A/200-66, dated the 23rd September, 1966.]

[F. No. 36/16/64-IT(AI), dated 28-9-66.]

Recommendation

The Committee appreciate that in order to avoid assessments becoming time-barred after four years, the Internal Audit is arranged in such a way that assessments are checked within a period of three years so as to allow one year for rectification. But at present the Internal Audit Parties checked only a limited number of assessments and even out of a few cases checked by them in some cases mistakes escaped their notice. The Committee, therefore, feel that remedy lies in improving the efficiency of the assessing machinery and the vigilance by the Internal Audit Department.

[S. No. 49, para 1.220 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted by the Department. Instructions have already been issued regarding the exercise of greater vigilance by the Internal Audit Parties under the Board's letter F. No. 83/70/66-IT(B), dated 24-9-66 (a copy of which has been sent to the Committee under reply to para 1.197 of the Report).

2. Suitable steps are also being taken to improve the efficiency of the assessing machinery.

[Not vetted by Audit.]

[F. No. 36/16/64-IT(A-I), dated 10-67.]

Recommendations

The Committee feel concerned over the type of mistakes committed by the assessing officers in these three cases, even though they were dealt within Company Circles, where generally efficient officers are posted. The concerned officers included in the computation of capital "Provision for Taxation" and "Provision for dividends", neither of which could be construed as reserve being the amounts set apart to meet specific liabilities known to exist on the date of the balance sheet. This resulted in short levy of tax amounting to Rs. 1,41,700 which was realised after being pointed out by Revenue Audit. The Committee were informed that, at present, it was beyond the scope of the Internal Audit to check computation of the capital. The Committee were, however, assured that the Internal Audit Department would now be instructed to check up the Super Profit Tax cases also. The Committee desire that suitable instructions extending scope of Internal Audit to such cases may be issued and the cases already completed may also be reviewed.

[S. No. 52, para 1.234 of Appendix XIV to the 46th Report 1965-66.]

ACTION TAKEN

Instructions have been issued *vide* Board's Circular No. 10D of 1966 and F. No. 83/40/65-I.T.(B), dated 18-3-66 and 13-6-1966 (copies enclosed) extending the scope of the Internal Audit to assessments under the Super Profits Tax Act, 1963 and the Companies (Profits) Surtax Act, 1964 and also a review of cases already completed.

[This has been vetted by Audit *vide* Shri Gauri Shankar's D.O. No. 2862—Rev.A/200-66, dated 18th August, 1966.]

[F. No. 6(25)66/TPL.]

F. No. 83/40/65-I.T.(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 18th March, 1966:

CIRCULAR NO. 10-D (LXXIX-4) of 1966

SUBJECT.—*Internal audit parties—Checking of—Revised instructions regarding—*

Reference is invited to Board's Circular No. 5-D(LXXIX-2) of 1964, dated the 14th February, 1964 wherein certain specific items were entrusted to I.T.Os either full time or part-time for purposes of checking. During the course of the last meeting of the Public Accounts Committee, the Committee desired that the calculations made in the Super Profits Tax assessments should also be checked by the Internal Audit Parties. The Board have decided that the checking of the calculations of Super Profits Tax as also of the Surtax Assessments should be entrusted to the Income-tax Officers in addition to the six items mentioned in Board's circular referred to above.

(Sd.) M. M. PRASAD,
Under Secretary.

To

All Commissioners of Income-tax.
D.I. (I.T.)/D.I.(Inv.)/D.I.(R.S.P.) with 4 spare copies.
Bulletin Branch with 2 spare copies.
The C.A.G. with 20 spare copies.
All Officers and sections in the I.T. Wing.

(Sd.) M. M. PRASAD,
Under Secretary.

Recommendations

From the statement furnished to them, the Committee regret to note that there was inordinate delay in making assessments which ultimately resulted in writing off of the tax demands. In some cases assessments were completed after the companies had gone into liquidation. The Committee emphasize the need for making timely assessments and recoveries in cases of companies involving large tax liabilities, as delay in such cases is fraught with risks of huge losses to Government. The Committee also suggest that in future, cases of abnormal delays in making assessments should also be investigated with a view of finding out the failure of the Departmental Officers.

[S. No. 53, para 1.241 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The importance of expeditious completion of company assessments has already been emphasized in Board's letter F. No. 9/14/65-IT(AI), dated the 20th November, 1965 wherein instructions have been issued to the effect that, normally, company assessments should be completed before the close of the assessment year itself, and in no case should such assessments be allowed to drag on beyond the 31st March of the following year. The suggestion to investigate into the cases of abnormal delays in making assessments has been noted and necessary instructions have been issued to the authorities concerned *vide* Board's Circular F. No. 83/22/66-I.T.(B) (copy enclosed).

[This has been vetted by audit *vide* Shri R. K. N. Pillai's D.O. No. 2713-Rev.A/200-66, dated 3-8-66.]

[F. No. 83/22/66-I.T.(B).]

F. No. 83/22/66-I.T.(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 9th June, 1966.

FROM

Shri G. R. Hegde,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SIR,

SUBJECT.—*Write off of tax demands in cases of Companies where assessments completed after they had gone into liquidation—Need for timely assessments and recoveries in such cases—Instructions regarding—*

The Public Accounts Committee in para 1.241 of their 46th have observed as under:

"From the statement furnished to them, the Committee regret to note that there was inordinate delay in making assessments, which ultimately resulted in writing off of the tax demands. In some cases assessments were completed after the Companies had gone into liquidation. The Committee emphasize the need for making timely assessments and recoveries in cases of companies involving large tax liabilities, as delay in such cases is fraught with risks of huge losses to Government. The Committee also suggest that in future, cases of abnormal delays in making assessments

should also be investigated with a view of finding out the failure of the Departmental Officers."

2. In this connection, attention is invited to the last para of Board's letter F. No. 9/14/65-IT(AI), dated the 20th November, 1965 wherein emphasis has already been laid on the importance of expeditious completion of company assessments. Instructions have been issued therein to the effect that, normally, company assessments should be completed before the close of the assessment year itself, and in no case should Company assessments be allowed to drag on beyond the 31st March of the following year. The Board desire that the Commissioners should ensure that the above instructions are scrupulously followed by the I.T.Os to avoid any delay in completing assessments leading to demands becoming irrecoverable. The Board further desire that at the time of considering the proposal of write off of irrecoverable demand enquiries should be made to find out if the delay was due to the negligence of the Officers, and take suitable action against the Officers concerned.

Yours faithfully,

(Sd.) G. R. HEGDE,

Secretary, Central Board of Direct Taxes.

Copy to:—

1. All Directors of Inspection.
2. C.A.G. with 20 spare copies.
3. All Officers and Branches in the I.T. Wing.
4. Bulletin Section.

(Sd.) G. R. HEGDE,

Secretary, Central Board of Direct Taxes.

Recommendations

(i) *The Committee regret to note that the tax liability of Rs. 22.67 lakhs created initially was over estimated and that "if over-assessment and over-lapping additions were set right, the tax demand of Rs. 22,89,867.45 could be fixed at Rs. 7.74 lakhs". The Committee emphasize the need for curbing the tendency on the part of officers to inflate the assessments as such a tendency would result in undue hardship and harassment to the assessee.*

(ii) *It is also surprising to the Committee that in the present case even after the net liability was fixed at Rs. 7.44 lakhs, the Special Committee while analysing the liability of the assessee again took the tax liability as Rs. 22 lakhs against the assets of Rs. 15 lakhs. Ultimately, however,*

the Special Committee came to the finding that if the assessee paid a sum of Rs. 3 lakhs, the settlement would be fair and reasonable. The Committee do not find adequate justification in settling the tax liability of the assessee at Rs. 3 lakhs when the assessee had property worth Rs. 15 lakhs. In their opinion Government should have realised Rs. 7.44 lakhs which was considered as reasonable assessments.

[S. No. 54, Paras 1.246 & 1.247 of Appendix XIV to the 46th Report of the Public Accounts Committee, 1965-66.]

ACTION TAKEN

(i) The observations made by the Committee have been noted and necessary instructions have been issued to the Commissioners of Income-tax, *vide* Board's letter F. No. 83/24/66-IT(B) dated 23rd June, 1966 (copy enclosed).

(ii) The observations of the Committee have been noted.

[Vetted by Audit *vide* Shri R. K. N. Pillai's D.O. No. 4072-Rev. A/200-66-II dated the 6th Nov. 1966.]

[F. No. 83/24/66-IT(B).]

F. No. 83/24/66-I.T.(B)

Central Board of Direct Taxes

New Delhi, the 23rd June, 1966.

FROM

Shri Wasiq Ali Khan,

Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

Sir,

SUBJECT.—*Recommendations of the P.A.C. regarding tendency of Officers to inflate assessments—curbing of—Instructions regarding—*

In their 46th Report, the Public Accounts Committee referred to a case where a large amount was written off, as a substantial portion of the demand was due to over-assessment and overlapping additions. They have emphasized the need for curbing the tendency on the part of officers to inflate the assessments as such as tendency would result in undue hardship and harassment to the assessee.

2. The importance of making realistic assessments which may stand the test of appeals and may facilitate the recovery of taxes assessed need hardly be emphasized. It should, therefore, be impressed upon the Officers not to make inflated assessments which may only result in paper demand and expose the Department to adverse criticism.

Yours faithfully,

(Sd.) WASIQ ALI KHAN,

Secretary Central Board of Direct Taxes.

Copy to:—

1. All the Directors of Inspection.
2. C.A.G. with 20 spare copies.
3. All Officers and Branches of the I.T. Wing.

(Sd.) WASIQ ALI KHAN,

Secretary, Central Board of Direct Taxes.

Recommendations

The Committee are surprised how the Special Committee recommended that the assessee's offer of Rs. 3 lakhs should be accepted. Actually when the Government insisted on the payment of Rs. 4 lakhs, the assessee accepted to pay the amount. The Committee desire that the Special Committee should not be unduly liberal in recommending write off of tax demands.

[S. No. 55, Para 1.248 of Appendix XIV to the 46th Report of the Public Accounts Committee, 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted and necessary instructions have been issued to the Officers concerned.

[This has been vetted by audit *vide* Gauri Shanker's D.O. No. 2689—Rev. A/200-66, dated 1-8-66.]

[F. No. 83/26/66-I.T.(B).]

Recommendations

(i) *The Committee feel concerned to note that the gross arrears have increased from 270.43 crores as on 31-3-63 to Rs. 282.37 crores as on 31-3-64 out of which effective arrears are stated to be Rs. 161.41 crores. What is more an amount of Rs. 38.95 crores relates to the period prior to 31-3-64 out of which Bombay and West Bengal charges account for Rs. 13.21 crores and Rs. 15.86 crores respectively (about 75 per cent).*

(ii) *The Committee have repeatedly impressed that in the context of the present national emergency and economic development, it is imperative that the past arrears should be realised by intensifying the collection effort and current collections should not be allowed to accumulate (of para 31 of 6th Report, Para 72 of 21st Report and Para 67 of 28th Report—Third Lok Sabha). But there is no perceptible improvement in the position. They hope that efforts will continue to be made to liquidate the arrears.*

(iii) *During the evidence the Committee were informed that a fair portion of the arrears would be irrecoverable on account of the demands being inflated. It was stated that only course to reduce the arrears was to expedite the writing off process. The Committee hope that as a result of the instructions issued recently after consultation with the Comptroller and Auditor General, to write off inflated demands partially leaving a sufficient margin for recovery, the arrears would be substantially reduced. The Committee desire that the process should be kept under review. The Committee also recommend that at the time of agreeing to scale down the demand which is accepted as inflated full payment of the balance or security in lieu thereof should as far as possible be insisted upon. Then, the inflated portion of the demand as well as the correct amount of arrears would disappear. They would watch the results through future Audit Reports.*

(iv) *The Committee feel that the root cause of the inflated demands* i.e. *over assessments by the ITOs should be effectively dealt with. They were informed during evidence that it had been impressed upon the officers that over-assessment was worse than under-assessment; but that the introduction of a system of evaluating the work of individual officers on the basis of a record of over-assessments or under-assessments was a very complicated question, which had to be considered much more carefully. The Committee hope that some more effective procedure would be devised with a view to ensuring that reasonable demands are raised by the ITOs and any tendency towards over or under-assessments is rooted out.*

[S. No. 56, Paras 1.257, 1.258 and 1.259 of Appendix XIV to the 46th Report.]

ACTION TAKEN

The observations of the Committee have been noted.

[This has been vetted by Audit *vide* Shri Gauri Shankar's D.O. No. 2587-Rev. A/200-66 dated 25th July, 1966.]

[F. No. 83/30/66-I.T.(B)]

FURTHER INFORMATION

Consequent on the recommendations made by the Public Accounts Committee, instructions have been issued *vide* Board's circular No. 83/24/66-IT(B) dated the 23rd June, 1966, emphasising the importance of making realistic assessments, which may stand the test of appeal and may facilitate the recovery of taxes assessed. It has also been impressed upon the officers that they should not make inflated assessments, which may only result in paper demand.

During the course of hearing of appeals the Appellate Assistant Commissioners examine a large number of assessments made by the Income-tax Officers. They are in a position to judge the Income-tax Officer's work from judicial angle. Instructions were issued, *vide* Directorate of Inspection (Income-tax)'s letter No. M(5)(3)/67/DIT/201, dated the 7th February, 1967, that for the purpose of assessing the quality of the assessment of an Income-tax Officers' work, the Appellate Assistant Commissioner should maintain a Income-tax Officer-wise register of disposal of appeals. This register will show whether a particular Income-tax Officer is in the habit of making over-assessments or under-assessments. These entries should be taken into consideration by the Appellate Assistant Commissioners while writing the Confidential Reports of Income-tax Officers. The reports of the Appellate Assistant Commissioners will be taken into consideration by the Commissioner of Income-tax while evaluating the work of an Income-tax Officer at the time of writing annual Confidential Report. Since the Confidential Reports are taken into consideration for the promotion of officers, they provide sufficient check against the tendency towards making over/under-assessments. In case the work of an Income-tax Officer is not up to the mark he is also pulled up by the Inspecting Assistant Commissioner and Commissioners of Income-tax.

Some of the important measures taken to bring down the gross arrears of Income-tax since 1966 are as under: —

1. The Commissioners of Income-tax have been asked to form special Recovery units comprising of one inspector, one upper division clerk and one lower division clerk in multi-ward circles where there are more than 5 Income-tax Officers. These units are to take all possible steps for expeditious recovery of outstanding arrear and current demands in respect of all the Direct Taxes, do all the routine work, make enquiries wherever necessary, and take further follow-up action.

2. The Commissioners of Income-tax have been asked to take the following steps in case of small demands outstanding for more than 8 years: —

(a) if the amount of arrears is Rs. 25 and below it should be written off with the remark "ignored as obviously irrecoverable".

(b) in all cases of arrears of Rs. 500 and below [excluding (a) above] the inspectors of Income-tax have been asked to enquire into the assets of the defaulters and chances of recovery. In case the arrears demand is irrecoverable the Income-tax Officer or Inspecting Assistant Commissioner may straightaway write off the demands without waiting for a formal certificate of irrecoverability from the Tax Recovery Officer.

3. In case of demand, part of which is irrecoverable, partial write-off of the irrecoverable demand is done. The Commissioners of Income-tax have been asked to expedite the process of partial write off so that the overall arrears are considerably reduced.

4. A new system of functional distribution of work has been introduced in the Department. This system envisages the separation of collection and assessment work so that collection Income-tax Officers can concentrate exclusively on collection of tax.

5. Recovery work is being taken over from State Governments gradually. It has been taken over fully in Mysore and partially in Gujarat and Rajasthan charges. It is also being taken over from the State Government in West Bengal with effect from 31st August, 1967. Steps for taking over recovery work from State Government in Bombay are being processed.

[Not vetted by Audit.]

Recommendation

1.260. *In reply to a question, the witness stated that there was a provision in the Income-tax law to stay recovery of demands pending an appeal before Appellate Assistant Commissioner but there was no such provision in regard to the appeals pending before High Courts or Supreme Court. The witness promised to examine whether a similar provision should be made in the case of appeals with High Courts or Supreme Court.* The Committee would like to know the results of this examination.

[S. No. 57, Para 1.260 of Appendix XIV to the 46th Report (1965-66).]

ACTION TAKEN

Section 220(6) of the Income-tax Act, 1961 provides that where an assessee has presented an appeal to the Appellate Assistant Commissioner, the Income-tax Officer *may, in his discretion,* and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount of tax in dispute in appeal, even though the time for payment has expired, as long as such appeal remains undisposed of. Under this provision, the collection of the disputed amount of tax is stayed by the Income-tax

Officer in a considerable number of cases till the disposal of the appeal by the Appellate Assistant Commissioner. Although this provision is discretionary, the courts have held that the discretion in the matter should be exercised by the Income-tax Officer in an objective and judicious manner.

2. There is no similar provision for stay of the disputed amount of tax in cases where further appeals or references are pursued by the assessees before the Appellate Tribunal, High Court or the Supreme Court. In fact section 265 of the Income-tax Act, 1961 provides (following a similar provision in the Indian Income-tax Act, 1922) that notwithstanding that a reference has been made to the High Court or to the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case. This provision does not, however, prevent the Income-tax Officer from granting time to assessees for payment of the tax disputed in reference before the High Court or appeal to the Supreme Court where this is considered to be justified. This is clear from section 225(1) which provides that "notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax, the Income-tax Officer may grant time for the payment of the tax, and thereupon the Tax Recovery Officer shall stay the proceedings until the expiry of the time so granted." In view of this position, no hardship arises to tax payers by reason of the absence of a specific provision in the Income-tax Act on the lines of section 220(6), for stay of recovery of the tax disputed in appeal before the higher appellate courts, namely, the Appellate Tribunal, High Court and the Supreme Court.

3. In this connection, it may be mentioned that the question as to whether there should be a specific provision in the Income-tax Act for stay of collection of the tax disputed in appeal before the higher appellate authorities like the Tribunal, High Court, etc., on the lines of the provision in the 1922 Act for the stay of collection of the tax disputed in appeal before the Appellate Assistant Commissioner, or otherwise, was specifically considered by the Direct Taxes Administration Enquiry Committee (Tyagi Committee). The relevant observations of the Committee on this question are reproduced below:

> "However, we do not favour any statutory provisions being made for the stay of collections as obtaining in U.K. and U.S.A. In our opinion, the circumstances prevailing in this country are different and the introduction of such a system would only result in putting a premium on defaults in payment of taxes. We are not in favour of the suggestion made in this regard by the Income-tax Investigation Commission either. We feel that it would lead to the filing of frivolous appeals merely with a view to obtaining time for payment of tax. Moreover, it would also

result in a duplication of the work of appellate authorities inasmuch as a case will have to be heard by the appellate authority twice—once for taking a decision on the request made for stay of collection and a second time for deciding the appeal on merits of the questions raised."

[Paragraph 4.52, page 95.]

4. In view of the position stated above, it is not considered necessary to make a specific provision in the Income-tax Act, apart from the existing provision in section 225(1), for the stay of recovery of taxes disputed in appeal before the appellate authorities after the stage of the Appellate Assistant Commissioner.

[Duly vetted by Audit.]

[F. No. 6(28)/66-TPL.]

Recommendations

The Committee feel concerned to find that the number of pending appeals increased from 74120 *as on* 31*st March,* 1963 *to* 84736 *as on* 30*th June,* 1964 *and* 1,16,356 *as on* 1*st September,* 1965. *This indicates that the position has been steadily deteriorating. The oldest case relates to* 1953-54. *In their* 21*st and* 28*th Reports* (3*rd Lok Sabha*) *the Committee had observed that early and adequate action should be taken to bring down the arrears with the Appellate Assistant Commissioners so as not to exceed four months workload, as suggested by the Direct Taxes Administration Enquiry Committee. The Committee hope that with the proposed increase in the number of Appellate Assistant Commissioners, the number of appeals pending disposal would be reduced and special attention would be given to dispose of old outstanding appeals which have been pending disposal since* 53-54. *The Committee also suggest that the number of the Appellate Assistant Commissioners should be increased to the sanctioned strength without any further delay.*

[S. No. 58, para 1.263 of Appendix XIV to 46th Report.]

ACTION TAKEN

The observations of the Public Accounts Committee have been noted. Instructions have been issued to the Income-tax Officers to make balanced assessments to bring down the rate of fresh institution of appeals. Further, keeping the norm of 4 months' workload with an Appellate Assistant Commissioner in view, 40 additional posts of Appellate Assistant Commissioners

have already been created. It is expected that with these measures the pendency of appeals will be considerably reduced.

Vigorous steps are also being taken to dispose of old appeals.

[Duly vetted by Audit.]

[U/O F. No. 50/51/65-ITJ, Dated the 15th July, 1966.]

Recommendation

(i) *The Committee regret that the percentage of disposals of assessments had been progressively declining from* 1959-60. *The percentage has declined from* 69.6 *in* 1959-60 *to* 54.7 *in* 1963-64. *The pending assessments have increased from* 5,08,777 *at the end of* 1959-60 *to* 12,26,406 *at the end of* 1963-64.

(ii) *They trust that the proposed addition of* 300 *Income-tax Officers and introduction of mechanisation the position will improve the Committee hope that the Board will carefully examine various aspects while planning the assessing machinery, so that the past arrears and increasing future assessments are tackled effectively. In this connection the Ministry should also examine the feasibility of laying down targets to complete the arrears of assessments. The Committee would like to watch the progress made by the Department of Revenue in this direction through future Audit Reports.*

[S. No. 59, Para 1.269 of Appendix XIV to the 46th Report.]

ACTION TAKEN

[The observations of the Committee have been noted.]

[F.No. 83/9/66—IT (B)]

Recommendation

The Committee are not satisfied about the progress of disposal of super profits tax assessments. They desire that vigorous efforts should be made to expedite the final assessments. At the same time, utmost care should be taken in dealing with these complicated cases involving large amounts of tax.

[S. No. 60, Para 1.274 of Appendix XIV to the 46th Report.]

ACTION TAKEN

Further 767 and 441 Super Profits tax assessments have been completed in 1964-65 and 1965-66 leaving a pendency of 1128 cases as on 31-3-1966. Instructions have also been issued to the Commissioners of Income-tax *vide* Board's letter No. 83/16/66-I.T.(B) dated the 2nd June, 1966 (copy enclosed) to accelerate the pace of disposal of pending assessments.

[This has been vetted by Audit *vide* Shri R. K. Pillai's D.O. No. 2330-Rev. A/200-66, dated 4-7-66.]

[F. No. 83/16/66-I.T.(B).]

F. No. 83/16/66-I.T.(B)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 2nd June, 1966.

From

Shri M. M. Prasad,
Under Secretary.

To

All Commissioners of Income-tax.

Sir,

SUBJECT.—*Public Accounts Committee—Forty-sixth Report of the Committee—Recommendations made in para 1.274 of the report—Disposal of S.P.T. Assessments—*

I am directed to say that in its 46th Report the Public Accounts Committee has made the following recommendations regarding the progress of disposal of Super Profits Tax assessments:—

"The Committee are not satisfied about the progress of disposal of Super Profit Tax assessments. They desire that vigorous efforts should be made to expedite the final assessments. At the same time utmost care should be taken in dealing with these complicated cases involving large amounts of tax."

2. According to the progress statement of Super Profits Tax assessment work received from the D.I. (RSP), only 441 cases have been disposed of during the year 1965-66 out of the total number of 1569 cases for disposal. The Board desire that immediate steps should be taken to accelerate the pace of disposals keeping in view the above recommendations of the Public Accounts Committee.

[Copy to D.I. (R.S.P.), New Delhi.]

Yours faithfully,
M. M. PRASAD,
Under Secretary.

Recommendation

The Committee feel concerned over the delay in disposal of applications for refund. 862 applications for refund involving a refund of about Rs. 6,57,000 are outstanding for more than a year. The Committee desire that necessary steps should be taken to expedite disposal of applications for refunds. The Ministry may also consider if it is necessary to simplify the procedure in this regard.

[S. No. 61, Para 1.280 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The Central Board of Direct Taxes have been issuing executive orders from time to time impressing upon the officers concerned to expedite the disposal of refund claims. Last year, the Commissioners were asked to observe a 'Refund Week' devoted exclusively to the clearance of refund cases. Wide publicity was given to the observance of the refund week in the local papers. The Income-tax Practitioners were encouraged to bring to the notice of the Department refund matters pending for a long period.

A similar 'Refund Week' is going to be observed in the current year.

[Duly vetted by Audit *vide* D.O. No. 3265-Rev. A/200-66, dated the 20th September, 1966.]

[F. No. 36/8/66-IT(AI) dated the 20th Sept., 1966.]

Recommendation

The Committee are alarmed at the amount of concealed income (Rs. 100 crores) disclosed as a result of about 600 raids and searches carried out by the Department. The largest amount involved in a single case was Rs. 1 crores. The Committee feel that the existence of large scale concealed income indicates that the Income-tax Department has not been fully effective in assessing the income correctly and preventing their concealment. The Committee suggest that immediate steps should be taken by the Government to devise means to prevent such concealment and evasion of taxes.

The Committee are glad to note that Ministry is looking into the question of introducing organisational and legal changes in consultation with experts to make prosecutions more effective and that officers have also been sent to the U.S.A. for training in this particular aspect. The Committee hope that the matter would be kept under constant review.

[S. No. 62, Paras 1.285 and 1.286 of Appendix XIV to the 46th Report 1965-66.]

ACTION TAKEN

The observations of the Committee have been noted. Government is taking all possible steps to prevent concealment and evasion of taxes.

The observations of the Committee have been noted. The matter is kept under constant review.

[F. No. 15/239/66-I.T.(INV.)]

[F. No. 58/61/66-I.T.(INV.)]

Recommendation

The Committee strongly deprecate the tendency as has been quite evident in the present case to continue to act on old agreements/contracts which had expired without entering into new ones resulting in a loss of public revenues. They desire that the Ministry of Finance should issue suitable instructions on the subject so that this tendency is totally curbed.

[S. No. 76, Para 2.72 of Appendix XIV to the 46th Report.]

ACTION TAKEN

As desired by the Committee, suitable instructions have been issued *vide* copy enclosed of this Ministry's O.M. No. F. 12(9)-E (Coord)/66, dated the 14th April, 1967.

[U.O. No. F. 12(9)-E (Coord)/66, dt. 26-7-67.]

F. 12(9)-E (Coord)/66

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, dated April 14, 1967.

OFFICE MEMORANDUM

SUBJECT:—*46th Report of the P.A.C. (3rd Lok Sabha) Recommendation No. 76.—Proper execution of contract documents.*

The Public Accounts Committee, while commenting on a case in which an Administrative authority had continued to act on an old contract which had already expired without entering into new ones resulting in some avoidable loss of revenues, have observed in Para 2.72 of their 46th Report (3rd Lok Sabha) as follows:—

"The Committee strongly deprecate the tendency as has been quite evident in the present case to continue to act on old agreements/

contracts which had expired without entering into new ones resulting in a loss of public revenues. They desire that the Ministry of Finance should issue suitable instructions on the subject so that this tendency is totally curbed".

2. Attention in this connection is invited to the existing instructions on the subject contained in Rules 12 to 14 of G.F.Rs. 1963 and the various Government of India decisions thereunder. Normally no work of any kind should be commenced without the execution of proper contract documents. It is an obvious requirement that where the tenure of contract/agreement has expired and the work has to be continued, timely action is taken for renewing the contract/agreement for the further period required, after a suitable review of the provisions of the old agreements to see whether any modifications are needed.

3. The Ministry of Commerce etc. are requested kindly to note the observations of the Public Accounts Committee and issue suitable instructions to all concerned to avoid the occurence of such situations as have been referred to by the Public Accounts Committee.

(Sd.) K. SANKARAN,

Deputy Secretary to the Govt. of India.

To

All Ministries Departments of Government of India.

Copy forwarded for information to:—

(i) All Expenditure Divisions.

(ii) E. II-A Branch.

(iii) Department of Parliamentary Affairs.

(iv) Lok Sabha Secretariat (P.A.C. Branch).

(v) Ministry of Home Affairs (A. C. II Section).
with reference to their O.M. No. 20/1/66-AC II date 18-3-67.

(vi) A.G.C.R., New Delhi.

K. SANKARAN,

Deputy Secretary to the Govt. of India.

Recommendation

The Committee take a strong exception to the dilution of the authority of Parliament by executive fiat and or to the non-carrying of the intentions of Parliament as per the letter and spirit of law. The Committee desire that the Acts passed by the Parliament should be implemented fully in letter and spirit. If however, some difficulties arise in implementing an Act, the Executive should approach the Parliament promptly with suitable amendments to the statutes. The Committee also desire that the Ministry of Finance should issue suitable instructions in this regard.

[S. No. 82, Para 3.6 of Appendix XIV to 46th Report.]

ACTION TAKEN

Replies to paras 3.255 to 3.260 of the 44th Report also cover para 3.6 (S. No. 82 of Appendix XIV of the Report) of the 46th Report.

(Please See Page——.)

Recommendation

Another dis-quieting feature pointed out by the Committee in paras 3.173 to 3.175 of their Forty-Fourth Report is regarding lack of uniformity in administration of tax laws. Different officers sometimes give different interpretations of the law with the result that citizens may be taxed differently under the same statute. This obviously amounts to executive discremination. The Committee cannot over emphasise the basic need of ensuring that under the same statute and at the same time, people are not charged different rates of tax due to different administrative interpretations or other failures.

[S. No. 83, Para 3.7 of Appendix XIV to 46th Report.]

ACTION TAKEN

Recommendations of the Committee have been noted.

[F. No. 1/14/64-CXII.]

Recommendation

The Committee are surprised how the Income-tax Officer treated melted gold as jewellery and allowed the exemption from capital gains tax. It was a case of negligence as capital gain though casual, was taxable. The Committee feel that general instructions should be issued by the Board for the guidance of Income-tax Officers, to prevent recurrence of such cases.

[Para 1.105 of Appendix XIV to 46th Report 1965-66.]

ACTION TAKEN

As desired by the Committee, necessary instructions have been issued to all the Commissioners of Income-tax that the observations made by the Committee should be brought to the notice of the various assessing officers in their charges and they should be advised to take special care to see that such irregularities are avoided in future. A copy of the said instructions has been sent to the Committee under reply to para 1.24 of the Report.

[Duly vetted by Audit *vide* D.O. No. 3352-Rev. A/200/66, dated the 23rd September, 1966.]

[F. No. 36/18/64-IT(AI) Dated 28-9-66.]

MINISTRY OF TRANSPORT AND SHIPPING

Recommendations

The Committee consider it very unfortunate that a serious mistake cropped while drafting the Delhi Motor Vehicles Taxation Act, 1962. What is more serious was that officers concerned, while giving effect to the provisions of Act as passed by Parliament, failed to implement the provisions regarding levy of tax at the rate of Rs. 100 for every tonne or part thereof on all vehicles with a laden weight exceeding 10 tonnes. The Committee take a serious note of the action of the officers which was not in conformity with the provisions of the Act as passed by the Parliament.

The Committee were given to understand that an enquiry had been ordered in the case. The Committee understand from the Delhi Administration that as a result of the enquiry made into this, action is being taken against the officers concerned who have been found negligent in performance of their duties. The Committee desire that Acts of Parliament once passed must be implemented by executive without any change or modification by themselves. If they find any mistake or 'absurd' situation arising from implementation, they must come to Parliament for necessary correction. The committee also hope that the officers concerned with the drafting of various bills having financial implication would give utmost care in embodying the intentions of Government therein before bringing them to Parliament.

[S. No. 63, Para 2.7 of Appendix XIV to 46th Report.]

ACTION TAKEN

The observations of the Committee in para 1 above have been noted for future guidance.

The remarks of the Committee were brought to the notice of the officers concerned and their explanations obtained. After studying the replies submitted by them, a written warning was issued to both the officers and suitable entries made in their character rolls.

[Not vetted Audit]

Recommendation

The Committee are not happy over an Automobile Association exercising the powers of a Motor Licensing officer for the years 1962-63 and 1963-64 without any notification by the Chief Commissioner empowering it to do so as required under the Act. The tax collected by the Association amounted to about Rs. 4.16 lakhs and Rs. 5.79 lakhs during 1962-63 and 1963-64 respectively. Notification authorising the association to collect the tax was issued by the Chief Commissioner only on the 26th February, 1965. Even no security was obtained from the Association till March-April 1965 (according to Audit, the security actually obtained from the Association was Ten Year Defence Deposit Certificates X. Rs. 22,000, cash, Rs. 3,000 and Bank Guarantee, which was under consideration of Ministry Rs. 12,000). The Committee are surprised to find that the financial interest of Government was not safeguarded during this period.

The Committee are not convinced of the reasons for the delay in drafting the agreement with the Automobile Association. In all cases where the financial interests of Government are involved in transactions with private bodies, agreement future should be finalised in advance. The Committee hope that in future such cases will not occur.

[S. No. 64. Para 2.13 of Appendix XIV to 46th Report.]

[S. No. 64. Para 2.13 of Appendix XIV to 46th Report.]

ACTION TAKEN

No comments are necessary on the first para. The observations in the second para have been noted for future guidance.

(Not vetted by Audit.)

Recommendation

The Committee feel concerned over the delay in finalising the question of obtaining security from the Cashiers who handled the large amounts of cash ranging upto Rs. 78,000 per day. They desire that final decision should be taken in the matter without further loss of time. The Committee are surprised that the Government should not have agreed to pay Rs. 10/- towards fidelity bond. The Committee cannot understand why Clerks utilised to work as Cashiers should be penalised for the work.

[S. No. 65, para 2.18 of Appendix XIV to 46th Report]

ACTION TAKEN

The necessary securities have been obtained from the Cashiers in the form of fidelity bonds, amounting to Rs. 5,000 from the Head Cashier and Rs. 2,000 from the Cashiers. The question of suitably compensating the Cashiers for paying the fee to secure the coverage of risk by the companies is under consideration of the Delhi Admn. The Administration has already mooted a proposal to sanction special pay to the Cashiers or in lieu thereof to pay the fee for fidelity bonds so that the Cashiers are not required to incur undue expenditure.

[Not vetted by Audit.]

Recommendation

(i) The Committee feel concerned over the persisting non-observance of the rules regarding authentication of individual entries by the Motor Licensing Officer, cheking of the totals of subsidiary cash books etc.

[S. No. 66, para 2.22 of Appendix XIV to 46th Report.]

ACTION TAKEN

A system of internal Audit has been introduced.

[Not vetted by Audit.]

Recommendation

(ii) They are surprised how, in the absence of authentication of individual entries by the Motor Licensing Officer and checking of totals of subsidiary cash books, it was ensured that there was no leakage of revenue.

[S. No. 66, Para 2.23 of Appendix XIV to 46th Report.]

ACTION TAKEN

The Delhi Administration have stated that it is impracticable for one Gazetted officer to carry-out cent-per-cent authentication of individual entries but Upper Division Clerks carry out cent-per-cent authentication and at the end of each day's transaction a certificate is recorded by the clerks concerned to the effect that authentication has been carried out on individual entry basis. Thereafter a SAS Accountant carries out review of 25% of all the daily entries. Then the Accounts Officer also checks a certain percentage, normally 10% of the above entries.

[Not vetted by Audit.]

Recommendation

(iii) The Committee desired that the staff should be adequately augmented as necessary to cope with the work as the non-observance of the rules in this behalf is likely to result in defalcations, losses etc.

[S. No. 66 para 2.24 of Appendix XIV to 46th Report.]

ACTION TAKEN

38 additional posts (including 12 for Accounts Cell) have already been sanctioned on 30-12-1966.

[Not vetted by Audit.]

Recommendation

The Committee feel concerned to note that a test check of one month's account showed 23 cases of shortages of cash and 13 cases of cash in excess. This points to the need of having daily reconciliation, as prescribed under the rules, between the total amounts for which the tax taken, permits, etc. had been issued and the total amount collected in cash by the cheques and by deposits into Treasury etc. They desire that adequate staff should be provided for doing this reconciliation work.

[S. No. 67, para 2.28 of Appendix XIV to 46th Report.]

ACTION TAKEN

The question of further augmentation of staff in the Directorate of Transport, Delhi, is under active consideration.

[Not vetted by Audit.]

Recommendation

The Committee regret to note that there is no effective machinery in Delhi to assess the demand of tax on motor vehicles and to watch its recoveries. The Committee desire that the systems followed in other States, especially in Bombay City and Calcutta City should be studied with a view to devising an effective machinery in Delhi with out adding much to the cost of collection.

[S. No. 68, Para 2.34 of Appendix XIV to 46th Report.]

ACTION TAKEN

The working of the Directorate of Transport, Delhi, was reviewed by the Officer on Special Duty (Accounts) in the Delhi Administration, with a view to overhauling and streamlining the accounting procedure. He suggested a revised procedure in this behalf. This is under consideration and is likely to be finalised soon. Steps have also been taken to study the accounting procedure followed in the motor tax collection offices in the cities of Bombay and Calcutta.

[Not vetted by Audit.]

Recommendation

The Committee emphasized the need for introducing a system of internal check in the Department in order to prevent and detect errors and irregularities in the financial proceedings of the subordinate officers. They desire that the necessary action should be taken to provide adequate (accounts-knowing) staff in the Department.

[S. No. 69, para 2.38 of Appendix XIV to 46th Report.]

ACTION TAKEN

A system of internal check has since been introduced by the Delhi Administration.

[Not vetted by Audit.]

MINISTRY OF HOME AFFAIRS

Recommendation

The Committee are surprised to know that because of change of Administration only, there was a delay of 10 years in finalising the agreement between the Administration and the company. The Committee feel that a delay of 10 years in finalising an agreement with the company cannot be justified on any account. In the absence of any agreement in force, the Administration had to act on the provision of the old agreement which was not legally binding on any of the parties. The Committee desire that the circumstances leading to such delay in renewing the agreement be examined with a view to fixing the responsibility.

[S. No. 70, Para No. 2.48 of Appendix XIV to 46th Report.]

ACTION TAKEN

The circumstances leading to the delay in renewing the agreement have been investigated and in the light of the investigation, action is being taken with a view to fixing responsibility.

[Not vetted by Audit.]

[D.O. No. 20/1/66-AC.II dated 23-8-67.]

Recommendation

The Committee cannot approve of this ad-hoc *method of a private company working Government properties without any valid agreement but merely on mutual understanding as in the opinion of the Committee such a procedure is not only irregular but also fraught with risks and should always be avoided.*

[S. No. 71, Para No. 2.51 of Appendix XIV to 46th Report.]

ACTION TAKEN

The Committee's observations have been noted for future guidance.

[Not vetted by Audit.]

[D.O. No. 20/1/66-AC.II dated 23-8-67.]

Recommendation

The Committee regret to note that the Assam rates of royalty which were followed by the NEFA Administration upto 30th September, 1956, were given up without any reason w.e.f. 1st October, 1956. Further, the profitability of the company and consequently its capacity to pay the enhanced rates was not investigated at the time when the royalty rates required revision w.e.f. 1st October, 1957 and when this was investigated in August, 1960 by the Chartered Accountants it was found that the plea of the company that they were unable to pay enhanced rate of royalty due to the fact that they were incurring loss even on the old rate of royalty, was found to be incorrect. It is all the more surprising that when the Administration increased the rate of royalty from 11¼ annas to Re. 1 w.e.f. 1st October, 1959, they went only by the figures which the company had given regarding extra expenditure incurred by them, and the Administration accepted those figures without any verification. The Committee cannot therefore, view with equanimity the various lapses on the part of the Administration viz., (i) failure to follow the Assam rates from 1st October

1956 (*ii*) *non-examination of the profitability of the company and not taking action when it was investigated by the Chartered Accountants that the Company was in a position to pay enhanced royalty* (*iii*) *acceptance of the figures of extra expenditure furnished by the Company without any verification and* (*iv*) *non-checking of balance-sheet of the company with their income-tax return.*

[S. No. 72, Para 2.55 of Appendix XIV to 46th Report.]

ACTION TAKEN

The circumstances in which the Assam rates of royalty were not followed from 1st October 1956, the profitability of the company and the report of the Chartered Accountants with regard to the capacity of the company to pay enhanced royalty were not taken into account, the company's figures of extra expenditure were accepted, and the balance sheet of the company was not checked with their income tax return, have all been covered by the investigation referred to against S. No. 70 and necessary further action is being taken.

[Not vetted by Audit.]

[D.O. No. 20/1/66-AC.II dated 23-8-67.]

Recommendation

The Committee are unable to appreciate the action of the NEFA Administration about the fixation of royalty from time to time. There is neither logic nor consistency in the way the royalty has been fixed. The royalty rate was Rs. 1-6-0 per c.ft. from 1st October 1960 to 30th September 1961 with a provision of waiver of 6 annas per c.ft. for lack of road but again from 1st October 1961 to 30th September 1963, the royalty was Re. 1, while from 1st October 1963 to 30th September, 1966, the rate has again been fixed at Rs. 1-6-0 irrespective of absence of road. Although it was stated in evidence that the rate would increase by 6 annas per c.ft. as soon as road was provided, this increase has taken place because of increase in sale proceeds, though the road is not yet there.

[S. No. 73, Para 2.57 of Appendix XIV to 46th Report.]

ACTION TAKEN

The royalty rate was actually only Re. 1 c.ft. from 1-10-1960 to 30-9-1961 because of the lack of road communication. This rate continued upto 30-9-1963 for the same reason. From 1-10-1963 the rate was increased

to Rs. 1-6-0 because by that time the N.E.F.A. Administration had entered into another contract with the Nogte Timber Company Ltd. at a rate of royalty of Rs. 2 per c.ft. for an area which was only 11 miles from the nearest rail head, as against 25 miles in the case of the Assam Saw Mills & Timber Company and it was felt by the Administration that a reduction of 10 annas per c.ft. was reasonable in the case of the latter in view of the higher cost of transportation due to the absence of an all-weather road link and the longer distance from the rail head. It was in these circumstances that the rate of Rs. 1-6-0 was fixed from 1-10-1963.

[Not vetted by Audit.]

[D.O. No. 20/1/66-AC.II dated 23-8-67.]

Recommendation

The Committee fail to understand as to why the NEFA Administration considered the market rate of Rs. 3-6-0 per c.ft. adopted by the Chartered Accountant excessive as they themselves had informed the company that the market rate was not less than Rs. 3-8-0 per c.ft. If the Administration considered the rate of Rs. 3-6-0 per c.ft. adopted by the Chartered Accountant as too high, they should have explained the same in detail to the Chartered Accountant giving the reasons therefor. The Committee regret to note that this was not done. The Committee are not impressed by the argument that this rate of Rs. 3-8-0 per c.ft. was a 'negotiating plea'. Since there is nothing to support this argument they feel that this is put forward now to cover up their lapse.

[S. No. 74, Para No. 2.64 of Appendix XIV to 46th Report.]

ACTION TAKEN

When the report of the Chartered Accountant was examined by the Administration, it was felt by the latter that the assumption made by the former as to the savings that the Company had made was not consistent with the losses as revealed in the audited accounts of the Company. Thereafter, the royalty rates were fixed after taking into account the rates prevalent in Assam as also the financial results of the Company's working as disclosed in their audited accounts. Thus, the market rate of timber mentioned in the Chartered Accountants' report was not one of the factors that was ultimately taken into account for fixation of the royalty rates.

[Not vetted by Audit.]

[D.O. No. 20/1/66-AC.II dated 23-8-67.]

Recommendations

(i) The Committee regret to note that while in fixing the royalty rates, the Administration wholly depended on the figures supplied by the company and claims made by them without any complete or proper verifications; they totally ignored the findings of the Chartered Accountant specially appointed by them to look into the affairs of the company.

(ii) What is more objectionable, is the fact that in rejecting the findings of the Chartered Accountant, the Administration took up the argument that the examination was not complete and Government of India justified that action to Audit by criticising the findings of the Accountant, whereas the Accountant was prevented from examining the complete records, being asked not to go to Namsai.

(iii) In view of the fact that the Chartered Accountant's report was not acceptable to the NEFA Administration and further in view of the fact that the Administration did not verify in detail the figures of extra expenditure supplied by the company, for determining their claims for royalty, the Committee feel that the working of this contract needs through and independent investigation. The Committee, therefore, suggest that the working of this contract should be investigated in detail taking into consideration the records of the Chartered Accountant, the balance sheets of the Company, and the Income Tax returns of the company with a view to finding out whether the rates of royalties were fixed correctly from time to time.

[S. No. 75, Para Nos. 2.68, 2.69 and 2.70 of Appendix XIV to 46th Report.]

ACTION TAKEN

As already stated against S. No. 72, the circumstances in which the royalty rates were fixed from time to time by the Administration have been investigated and further action is being taken.

[D.O. No. 20/1/66-AC.II dated 23-8-67.]

Recommendation

The Committee suggest that on expiry of this lease, a fresh agreement may be entered into after inviting open tenders. Necessary action in this *connection may be initiated well in advance. The rates prevalent in the neighbouring areas of Assam should also be duly taken into consideration when fixing the rate of royalty. The agreement should also include a clause regarding revision of royalty rates at intervals of 3 to 5 years.*

[S. No. 77, Appendix XIV Para No. 2.74 of the 46th Report.]

ACTION TAKEN

It has been decided to invite open tenders with a view to entering into a fresh agreement after the present agreement expires. Action in this regard has been initiated and the Committee's observations will be duly taken into account, while fixing the rate of royalty and in making provision in the agreement for periodical revision of the rates.

A. D. PANDE,
Joint Secretary to the Government of India.

Recommendation

The Committee note that out of the arrears of Rs. 54.38 lakhs stated to be irrecoverable, a sum of about Rs. 14 lakhs has been written off so far. The Committee also note that the need for writing off arose because of the bogus dealers coming into existance for the purpose of evading sales tax liability. In this connection the committee would like the administration to investigate and make special efforts to find out whose nominee these bogus dealers were i.e., *who had created them for evading Sales Tax. It is only thereafter that the question of write off should be considered.*

[S. No. 78 para 2.84 of Appendix XIV to 16th Report.]

ACTION TAKEN

A sum of Rs. 18.96 lakhs has been written off by the Delhi Administration up-to-date. Cases for remaining amounts are being scrutinised in the light of conditions laid down by the Government of India.

The facts about the bogus dealers are as follows:—The Bengal Finance (Sales Tax) Act, 1941, is a single point Sales Tax Act, under which sales made by one registered dealer to another registered dealer of goods specified in the Certificate of Registration of the latter dealer as being intended for re-sale, or for use as raw material in the manufacture of goods for sale, are exempt from levy of Sales Tax. This system of Sales Tax necessarily implied a scheme of registration of dealers to facilitate tax free purchases. Again, in order to substantiate the factum of such purchases, the purchasing dealer was required to sign a declaration to the effect that he had purchased the goods and that these were intended for resale, or for use as raw material in the manufacture of goods.

In view of the above in 1951, the Sales Tax Department invited applications for registration from the dealers. A large number for such applications (about 20,000) were received. With the skeleton staff of the newly formed Sales Tax Department at Delhi, it was not possible at that stage to make as detailed and thorough enquiries about the antecedents and other activities of the applying dealers before registration as is being done now. The result was that some of the dealers who had managed to obtain Registration Certificates (R.C.) in the initial stages of the imposition of Sales Tax in Delhi were later on found to have started misusing

their R.Cs., by lending their signatures on false declarations to show that they had purchased some goods from some dealers without having actually purchased them. In order to cover such false declarations of so called purchases, these dealers entered fictitious purchases in their books but had to similarly show sales (which of course were also fictitious) of these goods to some other dealers of the same type. In this way a chain of fictitious transactions got recorded in the books of several dealers.

The bogus dealers were, however, not "nominee" of any one in the sense of having been put up or sponsored by anyone; but were some unscrupulous applicants who took advantage of the heavy rush of registration and initial inadequacy of the staff to cope with it, in getting themselves registered. Keeping in view the observations of the Public Accounts Committee cases of all dealers in which dues are to be written off are, however, again being examined.

Recommendation

The Committee also desire that the Bill to amend the Delhi Sales Tax Act should be finalised early, so that the loopholes in the administration of the sales tax may be plugged. The Ministry of Home Affairs should also keep under review the question of shifting the burden of sales tax from the last to the first point in respect of more commodities in order to prevent the evasion of tax. The Committee also suggest that a census of dealers registered under the Sales Tax Act should also be taken periodically with a view to detect bogus dealers.

[S. No. 79, Para No. 2.85 of Appendix XIV to 46th Report.]

ACTION TAKEN

The Delhi Sales Tax Bill, 1966, which was introduced in Lok Sabha in August, 1966, lapsed consequent on the dissolution of Third Lok Sabha. A new Bill will now have to be introduced in the new Lok Sabha. Delhi Administration have been advised to process the matter further in the light of the Delhi Administration Act, 1966. Since the last meeting of the Public Accounts Committee, the burden of Sales Tax has been shifted from last stage to first stage in the case of country liquor (w.e.f. 1-4-1966); and some more commodities are under consideration. List of items on which the incidence of tax has been shifted from last to first stage is attached herewith as Annexure 'A'. Constant efforts are being made to select the commodities on which incidence could be shifted to the first point and for this purpose, lists of goods on which tax is being levied at first stage in other States have been collected and are being examined. In persuance of the suggestion made by the Public Accounts Committee for taking a periodical census of dealers registered under the Sales Tax Act, door to door survey in various localities comprising the Union Territory of Delhi has been intensified. This work is being undertaken by Ward Inspectors according to the programme chalked out by the Ward Officer in the beginning of

the year. In addition to this, surprise inspections are also carried out by the Department at the business premises of various registered dealers who are reported to be engaged in tax evading activities. Seasonal survey of important business localities is also taken up during important festivals, such as 'Diwali', 'Dussehra', etc. The number of surveys conducted during the years 1965-66 and 1966-67 is as under: —

Year	Surveys conducted by the Inspectorate Staff	Super checking by Officers
1965-66	17,341	3,231
1966-67	21,599	4,756

In addition to the routine surveys and over-checking of surveys, the following measures were taken to detect evasion during the year 1966-67: —

(i) 27 raids were organised on the business premises of dealers who were reported to be engaged in tax evading activities; and

(ii) Special surprise surveys were got conducted under the direct supervision of an Assistant Commissioner in respect of 1,116 dealers of different areas.

ANNEXURE 'A'

List of Items on which burden of tax has been shifted from the last stage to First Stage

Sl. No.	Name of the commodity	Date of shifting of incidence
1.	Hydrogenated vegetable oil	1-1-1961
2.	Coal	1-2-1963
3.	Motor Spirit, aviation spirit and high speed diesel oil	15-5-1963
4.	Medicines, drugs & pharmaceutical preparations	1-1-1965
5.	Cement	1-4-1965
6.	All kinds of tyres and tubes including those of motor vehicles, motor cycles, motor scooters, motorites, cycles and animal driven vehicles	1-7-1965
7.	Country Liquor	1-4-1966

Recommendation

The Committee note that in pursuance of the recommendation made in para 76 of the 28th Report, the Ministry are taking certain remedial measures to prevent accumulation of arrears of Sales Tax and current demands. They hope that the matter will be kept under review. The Committee would like to watch the progress made in this matter through future audit Reports.

[S. No. 80, Para No. 2.86 of Appendix XIV to 46th Report.]

ACTION TAKEN

Remedial measures continue to be taken to prevent the accumulation of arrears of Sales Tax and current demands. The present position of the progress made in this direction after remedial action taken by the Sales Tax Department has been indicated in the attached statement (Annexure 'B').

MINISTRY OF FOOD, AGRICULTURE, C. D. & COOPERATION

Recommendation

The Committee trust that arrears of land revenue would be recovered promptly and that such arrears would not be allowed to accumulate in future.

[S. No. 81, Para 2.90 of Appendix XIV to 46th Report (1965-66).]

ACTION TAKEN

As will be seen from the enclosed statements a sum of Rs. 14,90,100 as against the annual demand of Rs. 4,00,000 was recovered in the year 1965-66, all out efforts are now being made to liquidate the arrears. It is in this connection that a separate post of Distt. Collection Officer (Revenue) to supervise the Collection of land revenue and Taccavi dues is being created.

Annexure 'B'

Statement showing Collections out of Current Demand and Arrears

	Total Demand Created	Demand created upto the month of January, under both the Acts	Collection during the year under both the Acts	Percentage of collections on the demand created upto January	Collection out of arrears under both the Acts	Remarks
1965-66	84,44,897	72,20,805	26,13,566	36%	15,11,878	The percentage has been worked out on the demand created upto the month of Jan. as the demands created during Feb. and March are realisable in the next year.
1966-67	85,69,326	52,66,055	25,59,893	48.61%	16,21,239	

Statement showing the progress of recovery of Land Revenue during the year 1964-65, 1965-66

Year	Arrears of Land Revenue on	Demand during 1964-65	Total	Collection during the year	Balance on 31-3-65	Remarks
1964-65	1-4-64					
	35,00,537	..	35,00,537	2,04,273	32,96,264	No demand was raised during the year 1964-65.
1965-66	1-4-65 32,96,264	8,01,546	40,97,810	14,90,100	26,07,710	The amount shown in col. 3 represents 2 years demand.

COUNTERSIGNED

(J.C. MATHUR)

Joint Secretary to the Govt. of India.

(B. N. TANDON)

Deputy Commissioner, Delhi.

APPENDIX II

Recommendations/Observations which the Committee do not desire to Pursue in view of the Government's Reply.

MINISTRY OF FINANCE

Recommendation

The Committee feel concerned to note the large increase, in the short levy of customs duty, detected during test audit by the Revenue Audit, to Rs. 22·29 lakhs during the year 1963-64 from Rs. 4·23 lakhs in 1962-63 and Rs. 5·64 lakhs in 1961-62. The deterioration in the position not only reflects on the work of the executive officers but also on the efficiency of the Internal Audit Department which conducts a cent per cent verification of the assessment documents. While the Committee appreciate that under the present set up the Internal Audit Department is precluded from challenging the interpretation accepted by the Collector, they are unhappy to note that even mistakes in arithmetical calculations remain undetected. All the same, the Committee feel that to be effective in real sense, the Internal Audit Department should not merely confine itself to checking of arithmetical calculations but also independently go into the question of interpretation and classification. The Committee have often tried to impress the need for reviewing the strength of both appraising and internal audit staff and making the Internal Audit Organisation more effective. They had also suggested that it should be examined whether in order to make the Internal Audit Department free from the influence of the Appraising Department it should be re-organised and placed directly under the control of the Board (c.f. paras 7-8 of 21st Report and 12 of 27th Report—Third Lok Sabha). The Committee are glad to learn that a scheme for strengthening the Internal Audit Organisation has been drawn, and it was also proposed to transfer it from the control of the Collectorate and place it under a Director of Audit in the Central Board of Excise and Customs. The Committee desire that this should be implemented without further delay.

[S. No. 3, para 2.12 of Appendix XXI to 44th Report, 1965-66.]

Action Taken

Due to the present financial stringency, it has been decided to postpone for the present the proposal to set up the Directorate of

Revenue Audit. The question of marginally augmenting the present set up of the Internal Audit Department of the Custom Houses so as to ensure a greater qualitative performance is under examination.

Recommendation

The Committee hope that after ascertaining the position from other Collectorates and especially from Madras and Cochin ports as to whether there had been any cases of under-assessment before the issue of the order of 1964 as a result of following the incorrect procedure of charging duty in force on the date of reversion of ships to coastal trade, necessary action will be taken to recover the dues. They desire that the position in this regard should also be verified in respect of minor ports under the jurisdiction of the Madras Central Excise Collectorate.

[S. No. 10, para 2.31, Appendix XXI to Forty-Fourth Report, 1965-66.]

ACTION TAKEN

In the Cochin Custom House there were six cases of short levy involving an amount of Rs. 4843·88 during the years 1962 and 1963. Supplemental demands have been issued in all these cases. In the Madras Custom House a demand for Rs. 1092.00, being the short levy on ships stores in one case was issued to the party in August, 1963. In the other Collectorates no such case has been so far noticed. Ministry of Law have advised that where a statute created a right not existing under common law and provides a special remedy for the enforcement of such right, that remedy alone can be followed and any other remedy under the common law would not be available, and therefore, a suit for recovery of duty, which has become time-barred under section 39 of the Sea Customs Act, 1878 or section 28(1) of the Customs Act, 1962, would not lie. The position in respect of minor ports under the jurisdiction of the Madras Central Excise Collectorate has been verified, but no such case of short levy has been noticed.

(Not yet vetted by Audit).

[F. No. 22/48/64-LC.II.]

Recommendation

(i) The Committee regret to note that while making the assessment, the Customs House disregarded the instructions of the Board issued in June, 1961 according to which being components of overhead travelling cranes (which were then treated as conveyance) electric lifting magnets were assessable to duty at the higher rate under item 75 of the Indian

Customs Tariff. Although Audit pointed out the mistake in August, 1961, no action was taken to rectify it. What is more regrettable, the Board also tried to justify the action of the Custom House by referring to a subsequent ruling issued in February, 1963 under which overhead moving cranes were treated as machinery and as such were assessable at the lower rate of duty, although this ruling could not be applied retrospectively to an assessment made nearly two years back. The Committee hope that necessary action will now be taken to recover the duty short levied in 1961, before the issue of the revised instruction in February, 1963.

(ii) The Committee are not at all impressed by the argument that only those cranes which carry load over long distance should be treated as conveyance. In the opinion of the Committee the definition of crane is well understood and there should be no difficulty on that account.

(iii) The Committee are surprised that in spite of diversification of imports of modern machinery and equipment in the context of industrial development in the country over the past several years, the tariff has not been suitably revised to meet the needs. Even an important item like crane has not been specifically included for the purposes of custom duty. They feel that most of the difficulties and complications in classification of goods can be avoided if the tariff is more comprehensive. The Committee are glad to learn that a departmental Committee is going into the question of modernising the tariff, and they hope that matter would be finalised as early as possible.

[S. No. 14, paras 2.41, 2.45 & 2.46 of Appendix XXI to 44th Report, 1965-66.]

Action Taken

Para 2.44

The Chairman (E & C) while admitting that the action of the Custom House in assessing the electric lifting magnets under item 72(3) I.C.T., contrary to the then prevailing ruling of the Board was not correct, had clarified that if a case remained open till the new interpretation was given, the party would get the benefit of the new interpretation.

The Custom House had issued on 12-9-61, consequent to the objection to the assessment raised by the Customs Revenue Audit, a notice of demand for Rs. 11,520. Against this, the party made representations on 10-10-61 and 10-11-61 and in these representations they asked the Custom House to withdraw the demand and also enclosed a printed catalogue in support of their case. The matter was considered in detail

by the Custom House who felt that on merits the imported article was classifiable under Item 72(3) of the Indian Customs Tariff. The subject remained under discussion with the Customs Revenue Audit Department. The Custom House also made a reference to the Board on the correct classification of the subject goods on 2-1-63. The Board considered the matter and ruled on 21-6-63 that electric lifting magnets were assessable under Item 72(3)/72(6) of the Indian Customs Tariff. Since the importer had protested against the notice of demand and the matter had been referred to the Board, the Custom House had not enforced the demand. In accordance with the Board's long standing instructions dating from 1924, as amplified from time to time, the benefit of a tariff ruling is to be given to all cases when the party has moved in the matter and the claim is alive in any way *i.e.*, by way of refund application/representation/appeal/Revision petition etc. at the time of issue of the tariff ruling. Since the present case is still alive, the benefit of the revised ruling has to be given to the party and hence no action to recover the amount now is due.

Para 2.45

A crane as defined in the Chambers Twentieth Century Dictionary (Revised Edition) is "a machine for raising heavy weights". There is no specific item in the tariff which covers Cranes. There is an item for "machinery" (72 I.C.T.) and an item for "Conveyances not otherwise specified" (75 I.C.T.). In the assessment of Cranes, a choice has, therefore, to be made between these two items of the tariff. While all cranes are designed to lift and shift goods either vertically or laterally, the range of mobility and manoeuvrability of the crane depends on its design and the purpose for which it has been made. If the crane is designed not to move with the load or even if it can move with the load but the design is such as permits only restricted movement and manoeuvrability over pre-determined range, it would be more appropriate to consider the crane to fall in the category of "machinery" and, therefore, classifiable under item 72 I.C.T. If, on the other hand, the crane is designed to move with the load and has mobility and manoeuvrability over ranges which are not pre-determined, it would be more appropriately classifiable as "Conveyance" falling within the scope of Item 75 I.C.T.

Para 2.46

The final report of the Tariff Revision Committee is likely to be received very shortly and the matter will be finalised thereafter, as speedily as practicable.

[F. No. 2/3/66-Cus. (T.U.).]

Recommendation

The Committee are unhappy to note that in spite of the clear instructions of the Ministry, the field officers misinterpreted them and allowed ad hoc *rebate on the raw oil manufactured after the lifting of duty, which resulted in excess refund of more than one lakh rupees in three cases. The Committee desire that the matter should be investigated with a view to fixing responsibility.*

[S. No. 34, para 3.44 of Appendix XXI to the 44th Report, 1965-66.]

ACTION TAKEN

The observations made by the Committee have been noted. It may, however, be stated here that the instructions contained in the Department of Revenue letter F. No. 16/33/63-CX.III dated the 17th April, 1963 authorised the grant of *ad hoc* rebate of raw stage duty in addition to refund of the processed stage duty paid on the processed oils exported up to 15-5-1963 on the assumption that the raw oil used in the manufacture of the processed oil was duty paid. In other words for purposes of *ad hoc* refund of raw stage duty the verification of payment of duty was dispensed with.

2. Subsequently, however, when a exporter of processed oils preferred a claim for refund of the processed stage duty in addition to *ad hoc* refund of raw stage duty where the oils had been crushed and processed within the same factory after 1-3-1963 and the duty at the raw stage had not been paid, Collector of Central Excise, Baroda entertained doubts about the admissibility of *ad hoc* refund of raw stage duty in such cases. He made a reference to the Ministry of Finance and thereupon it was clarified that since in such cases the non-duty paid character of raw oils was a certainty there was no question of assuming the raw stage duty having been paid or refund thereof being allowed. The earlier instructions, though clear, were not positive about denying the benefit of *ad hoc* refund of raw stage duty in cases of this type. The Central Excise Officers put normal interpretation on the term 'assumption' taking it to mean dispensation of the verification of duty paid character of raw oils. Since the exact implication of the word 'assumption' to signify exclusion of consignments with a clear indication about their non-duty paid character was clarified only on 7-8-1963, refunds allowed prior to this clarification without verifying payment of raw stage duty do not appear to be attributable to misinterpretation of the then existing instructions. Viewed in this context this is a case of *bona fide* error in cases of certain types not contemplated at the time of the issue of the instructions and no further probe to fix responsibility therefore appears to be necessary.

[F. No. 18/10/65-CX.III.]

Recommendation

3.79. *The Committee are amazed to note that even when the licensee himself asked the Department to inform him whether the product manufactured by him was excisable no action was taken for 4 years. Such inordinate delay is hardly excusable. They would desire that responsibility should be fixed in the matter and suitable disciplinary action taken against the concerned officials.*

3.80. *The Committee are of the opinion that it would not be strictly correct to term the refund given to the manufacturer as* ex gratia *because the refund was actually a rebate of duty to which the assessee was legally entitled. Had the factory been brought under excise control in time, the due process for the grant of refund would have been gone through as required and it would have been possible to compute the exact quantity of the production of the intermediary product for the purpose of calculating the rebate, thereby obviating the necessity of* ex gratia *refund.*

3.81. *The Committee would also desire that definite criteria should be specified by Government for the purpose of determining whether a particular industry is a small-scale or large-scale industry and whether its exports should or should not be added in determining its nature if the total production is the basic criteria for determining the size.*

[S. No. 38, Paras 3.79 to 3.81 of Appendix XXI to the 44th Report.]

ACTION TAKEN

3.79. As already explained to the Committee, due to the jurisdictional changes in the Collectorate, the relevant file was lost. It has not been possible to fix the responsibility either for the misplacement of the file or lack of appropriate action in the initial stage in regard to the levy of duty. In the absence of the file it is not possible to find out the name of the officer responsible for the delay.

3.80. The recommendation made by the Committee has been noted.

3.81. The recommendation has been noted.

[F. No. 22/7/66-CX.VI.]

FURTHER INFORMATION

3.80. Since the order passed in revision in question was final, it could not be revised by the department under the Central Excise Law. The Recommendation has been noted for future guidance.

3.81. The matter was examined in detail and it was decided that to the extent feasible, excise duty concessions where they are related to the size or output of the unit should be replaced by slab concessions, as it is not always possible for the purpose of fiscal concession to distinguish small and large scale units on the basis of the criteria evolved for the purpose of licensing under the Industries Development and Regulations Act.

[Vetted by Audit.]

[F. No. 22/7/66-CX.VI.]

Recommendation

The Committee consider the irregularities committed in this case as serious, especially unauthorised substitution and surreptitious removal of tobacco. The Committee hope that the Ministry will examine how far the excise staff was responsible for negligence or collusion in these cases and also take remedial measures to tighten up supervision. The Committee also suggest that the Ministry consider what further measures are necessary to safeguard the interest of Government against the exigency of the assessees and their sureties absconding.

[S. No. 61, para 3.271 of Appendix XXI to the 41th Report.]

ACTION TAKEN

The Audit has seen "Note" mentioned in para 3.270 of the report and has accepted the view held by the department. In the circumstances explained in the "Note", the question of taking any further action with a view to knowing how far the concerned central excise staff was responsible for negligence or collusion in the present cases, does not arise. As regards remedial measures to tighten up the supervision, suitable instructions have since been issued to the Collectors of Central Excise.

[Vetted by Audit.]

[F. No. 15/18/66-CX.IV.]

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE AND INSURANCE)

Recommendation

The Committee are sorry to note that the Central Board of Revenue issued a circular in November, 1962 giving a concession to the co-operative banks, which had not been authorised by Parliament in the way it was given.

In evidence, it was admitted that the way the instructions were issued by the Deptt. of Revenue was wrong. The Committee note that the law has since been suitably amended to fill up this lacuna. The Committee trust that the Board would review their instructions if not already done, in the light of the amended law.

[S No. 50, Para 1.221, Appendix XIV to the 46th Report (1965-66).]

ACTION TAKEN

Section 19 of the Income-tax Act, 1961, provides that in computing the income chargeable under the head "interest on securities", a deduction will be allowable, *inter alia*, in respect of "any reasonable sum expended by the assessee for the purpose of realising such interest". In the case of a banking company, section 20 of the Act lays down a special basis for determining "the sum to be regarded as a sum reasonably expended" for the purpose of the deduction under section 19 referred to above. Under this method, the amount to be deducted in this behalf is taken to be such proportion of the amount of working expenses of the banking company (exclusive of interest paid on borrowed moneys, and bad debts) as its gross receipts from interest on securities bear to the total gross receipts from all sources shown in the profit and loss account. This method has been laid down in view of the position that banks make investments in securities as a part of their business and the actual amount of expenditure incurred by a banking company for realising the interest on securities is normally not ascertainable from its accounts.

2. The provisions in the Indian Income-tax Act, 1922 regarding the deduction, in the computation of the income from interest on securities, for the expenditure incurred by assessees for the purpose of realising such interest were, in substance, the same as the provisions in the Income-tax Act, 1961, as stated in the preceding paragraph, *vide* Section 8 and the Explanation thereto.

3. The provisions of section 20 of the Income-tax Act, 1961 and the corresponding provisions in the Explanation to Section 8 of the Indian Income-tax Act, 1922 do not, in terms, apply in the case of co-operative societies carrying on a banking business. However, as the problem of ascertaining the "reasonable sum" expended for the purpose of realising interest on securities in the case of co-operative banks is virtually the same as in the case of banking companies, the Board issued instructions in its circular letter dated the 3rd November, 1962 to all Cs.I.T., to the effect that the same basis as has been statutorily laid down in the case of a banking company should be adopted in the case of a co-operative society carrying on banking business for the purpose of determining the admissible amount on account of expenses for realising

the interest on securities. These instructions were not intended to confer any concession on co-operative banks. The sole purpose in issuing these instructions was to provide guidance to the Income-tax Department in the matter of computing the "reasonable sum" expended by co-operative banks in realising interest on securities. In the absence of such guidance, assessment of co-operative banks would have been delayed and given rise to avoidable litigation, besides leading to the adoption of divergent practices in this respect in various charges of Commissioners of Income-tax.

4. In this connection, it may be mentioned that by the enactment of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), the legislature has placed co-operative banks (other than co-operative land mortgage banks) on the same footing as banking companies for the purpose of the Banking Companies Act, 1949, *vide* section 14 of the Banking Laws (Application to Co-operative Societies) Act, 1965. In view of this position, it seems that the instructions in the Board's circular letter referred to above do not need revision.

[Duly vetted by Audit.]

[F. No. 6(53)/66-TPL.]

Recommendations

The Committee note the stand taken by the Ministry. However, the Committee have come across several instances where instructions have been issued and because of Audit subsequently objecting to them, the Government had to withdraw or change those orders. It seems to the Committee that instead of starting on wrong lines and rectifying them later, it would be advantageous to all concerned to have an independent check to ensure that the instructions issued are well within the four corners of the law and the rules. On a consideration of the cases before them, the Committee are satisfied that it would be better if such instructions are issued in consultation with the Comptroller and Auditor General. This procedure need not, of course, extend to Administrative instructions with which the C. & A.G. is not generally concerned. The Committee would accordingly urge the Government to reconsider the matter.

[S. No. 51, Para 1.229 of Appendix XIV to 46th Report.]

Action Taken

The suggestion of the Public Accounts Committee in the above paragraph has been carefully considered in this Ministry. The instructions issued from this Ministry to the Income-tax Department relating to the provisions of the Income-tax law may be broadly classified under two categories, namely, (a) those which seek to clarify the intention, scope or meaning, of the provisions of the law and illustrate their

application and (b) those which seek to apply these provisions in a manner which results in a modification or extension of the scope of the provisions in favour of the tax-payer.

2. In regard to instructions of the category referred to at (a) above, the Ministry of Law are consulted by us on all matters where there is any ambiguity or doubt in the interpretation of the provisions and the advice given by that Ministry is followed. The scope of a provision of the Acts is generally clear from the notes on clauses and from the discussions in Parliament. As an independent check exists in the form of the guidance given by the Ministry of Law, we do not consider it necessary to consult Revenue Audit as well. The Administration of the Direct Taxes being the responsibility of the Central Board of Direct Taxes, it is appropriate that these instructions are issued by the Central Board of Direct Taxes. Moreover, prior consultation with Revenue Audit will delay the process of communication to the field officers. All circulars issued by the Board are endorsed to Revenue Audit for information.

3. As regards instructions of the category referred to at (b) above, in recent years, we have been avoiding issuing such instructions and, instead, taking steps to amend the law or the rules, wherever considered necessary, at the earliest opportunity. However, if any occasion arises in the future of the issue of any such instructions we agree to consult Revenue Audit in the matter beforehand.

[Duly vetted by Audit.]

AUDIT COMMENTS

Copy of D.O. No. 158-Rev.A 522-65, dated 18th January, 1966 from Shri V. Gauri Shankar, Director (Revenue Audit) to Shri V. Ramaswami Iyer, Secretary, Central Board of Direct Taxes, New Delhi.

In paragraph 2 of the Ministry's proposed reply it has been stated, by way of drawing a distinction between the general practice of the Expenditure Department and of the Revenue Department, that the Comptroller & Auditor General is the final arbitor in regard to the modifications and interpretations of the financial rules. This statement is factually incorrect. In regard to the modification and interpretation of the financial rules, the Government is the final authority to decide and not the Comptroller & Auditor General of India. The Comptroller & Auditor General of India is the final arbitor only in matters falling within the purview of Article 150 of the Constitution. Further, you are, no doubt, aware that service rules are also, under the Constitution, matters falling within the judicial purview of the High Courts and the Supreme Court. Therefore, the statement made by the Ministry that the Income-tax and other Direct Taxes enactments are to be interpreted

on the basis of the views expressed by the High Courts and the Supreme Court does not place them in a special category.

3. Having regard to these facts, the basis for the argument that the Revenue Department is different from the Expenditure Department and therefore calls for a different practice, does not appear to us to be sustainable. Moreover, as the Ministry are aware, many of interpretations, instructions — and in some cases even the notifications — issued by the two Boards on the application of the provisions of the Direct Taxes Acts, the Customs Act and the Central Excise and Salt Act have been found, by Audit, to be not in accordance with the provisions of the law under which they were issued and this position has been accepted by the Revenue Department itself. Therefore, in making the suggestion in paragraph 77(6) the Comptroller & Auditor General was only moved by a desire to help the Revenue Department to avoid recurrence of such mistakes leading to future audit objections.

Copy of D.O. No. 4259-Rev 522-65, dated 24th November, 1966 from Shri R. K. Khanna, Addl. Deputy Comptroller & Auditor General to Shri S. A. L. Narayana Row, Joint Secretary to the Govt. of India, Ministry of Finance (Deptt. of Revenue), New Delhi.

I am afraid that the spirit behind the recommendation of the P.A.C. in para 1.229 of the Fortysixth Report remains still to be appreciated and one has to consider the context in which it was made. The recommendation of the Committee does not raise the issue as to the advantages of consulting the Law Ministry or the Revenue Audit or who is better qualified etc. Consultation with the Ministry of Law is an internal matter within Government and it is always presumed in audit that the Government takes legal advice at an appropriate level before issuing any instructions bearing on interpretations of law. It is the resultant instructions, orders and notifications (as also, the question of their proper implementation, where they are correct) that form the subject matter of audit scrutiny. The P.A.C. has noticed that in several instances, as admitted by Government also, such orders or notifications have been found, on audit, not to be in accordance with law or the rules framed thereunder. It was with a view to avoiding such embarrassing situations that the P.A.C. made the suggestion that it would be helpful to Government themselves if they extended the practice of prior consultation with Audit in revenue matters also.

I may also mention in this connection that the Comptroller & Auditor General is not necessarily bound to offer advice to the Executive on matters he scrutinises in Audit. However, in deference to the wishes of the P.A.C. he is prepared to scrutinise instructions, orders of notifications proposed to be issued by the Ministry prior to their finalisation,

as he does in the case of amendments, orders and instructions relating to Financial Rules and Regulations. Now, it is for the Government to accept or not to accept the suggestion made by the P.A.C. and make their stand clear and unambiguous in their reply.

The matter was further pressed with the Department of Revenue and Insurance and they have stated in a note dated 18-8-67 as follows: —

"The Department has carefully reconsidered the matter. It is felt that, where instructions in regard to the interpretation of the Act and Rules are concerned, the Ministry of Law should continue to be consulted before the said instructions are issued. Even in such cases, if it is felt that it would be useful to show the instructions in question to the Revenue Audit before their issue, this is being done. Wherever the instructions have the effect of relaxation of the law or rules, the Revenue Audit is invariably consulted beforehand."

[U.O. No. 6(27)66 TPI. dated 18-8-67.]

APPENDIX III

Recommendations/Observations in Respect of which Replies of Government have not been accepted by the Committee or which require reiteration

MINISTRY OF FINANCE

Recommendations

The Committee note from the legal position giving retrospective effect to an exemption notification was that a legislature could give retrospective effect to a piece of legislation passed by it but the Government exercising subordinate and delegated powers cannot make an order with retrospective effect unless that power was expressly conferred by the Statute. In spite of the above legal position, the Committee regret to note that the Ministry gave retrospective exemption from additional duty in their notification issued on 26th December, 1964 although there was no legal authority empowering the Government to give exemption retrospectively. What is more surprising is the fact that the Ministry of Law approved the issue of notification as stated by the witness, on the ground that containing a concession it would not be challenged by anybody. The argument that nobody would challenge a particular notification in a Court of Law, is according to the Committee, no justification for the Executive Government to exceed the power delegated to them by Parliament. The Committee also feel that the opinion of the Ministry of Law in this regard was based more on a practical expediency then on the legal aspect of the case.

The Committee, appreciate that there might be a practical necessity to issue exemptions retrospectively in some cases. They however desire that the question of extent of authority required and of amending law for the purpose should be thoroughly examined in consultation with the Ministry of Law.

The Committee regret to observe that there was an omission in the original exemption notification issued in April, 1962 inasmuch as it did not exempt jute batching oil from additional excise duty leviable under the Mineral Oils (Additional Duties of Excise & Customs) Act, 1958. They are not satisfied with the explanation that it did not then occur to Department that technically jute batching oil was refined diesel oil. The Ministry should take necessary steps to ensure that they are posted with better technical data.

[S. Nos. 32 to 35, paras. 3.37, 3.38 & 3.40, Appendix XXI. 44th Report, 1965-66.]

ACTION TAKEN

The observations/suggestions made by the Committee have been noted.

[F. No. 18/8/65-CX.III.]

FURTHER INFORMATION

".....after discussion with the Ministry of Law, it is proposed to take enabling powers for the Central Government to give retrospective effect to excise duty exemptions under Central Excise Law. The wording of such a provision has in fact been finalised and incorporated in the draft Central Excise Bill which seeks to consolidate and amend the existing Central Excises and Salt Act, 1944. This draft Bill at present is being rescrutinized in consultation with the Ministry of Law. Finalization of the draft Bill for introduction in the Parliament will however, take home time."

[D.O. No. 7/16/66-Co-ord., dated 26th August, 1967.]

Recommendation

The Committee would desire that the question of separating the executive and judicial functions of the Collectors should be seriously examined, so that the parties do not have to go in appeal to the very same persons who have already passed executive orders in the same case. The Committee would like to observe here that both in the Income-Tax and Customs Department, Appellate Authorities have been separated from the executive. They would, therefore, suggest that Government should consider the question of extending the same principle to the Excise Department also.

[S. No. 37, para 3.70 of Appendix XXI to 44th Report 1965-66.]

ACTION TAKEN

Similar suggestions have been considered by Government earlier but have not been found feasible. Attention in this connection is invited to the reply (copy annexed) made in Lok Sabha to unstarred question No. 808 dated 24th February, 1966. The matter could be considered afresh when the new Central Excise Bill, (to replace the existing enactments) is taken up for consideration by Parliament.

[F. No. 36/10/66-CX.I.]

FURTHER INFORMATION

At the outset it may be stated that even under the existing practice, appeals do not have to go to the very same persons who passed the executive orders in the same case. Attention in this connection is invited to the provisions in rule 213 of the Central Excise Rules, 1944 (copy annexed).

2. The question of setting up an appellate tribunal as in Income-tax was considered more than once in the past. It was felt that a purely judicial authority like the Income-tax tribunal might place undue emphasis on technical requirements which might be difficult of accomplishment. It would lead to delays in the settlement of disputes, encourage litigation in regard to classification of goods for duty purposes and ultimately hamper clearance of goods. The existing system was cheap and fairly quick and the volume of work was not likely to be sufficient to justify setting up of whole-time appellate tribunals. The analogy of income-tax is not applicable to customs or Central Excise appeals; income-tax is assessed with reference to the 'previous year' while customs or excise duties are assessed before the goods are about to pass into consumption.

3. In this connection, the proposal for constituting Appellate Collectors as in Customs was also considered. In Customs, such Appellate Collectors started functioning only in April 1963. They hear appeals against decisions of all officers other than those of the Collector of Customs. The appeal against the decisions of the Collector of Customs still lie to the Board. No change was made in the procedure for dealing with revision applications. However, the experiment with Appellate Collectors was new and its working was to be watched for sometime before any firm conclusion could be drawn. In view of this, the draft Central Excises Bill contains provisions only to continue the existing procedure under the Central Excises and Salt Act, 1944 and the rules made thereunder.

4. Recently, the Customs Study Team has examined the working of the Appellate Collectors and have recommended as follows: —

> "92. Appellate machinery somewhat on the lines of income-tax appellate tribunals should be set up. They may deal with revision applications against the orders of the appellate Collectors as also against the orders of the Collectors. (7.14).
>
> 93. In case of delay in setting up of such machinery, at least the appellate and revisionary functions should be separated from the executive and administrative functions by suitable arrangements at the Board's and Government's level. (7.15)".

The above recommendations are still under consideration and it will take some time before Government's decision thereon is available. It is also

understood that the Administrative Reforms Commission are looking into this very question. The Board has, therefore, kept the question open for the time being.

5. The draft Central Excises Bill is still under scrutiny in consultaton with the Ministry of Law, in the light of the comments and suggestions received from the Collectors of Central Excise, Director of Inspection, Customs and Central Excise and the concerned Ministries.

Copy of Rule 213 of Central Excise Rules, 1944.

213. APPEALS. An appeal against an order or decision of an officer shall lie—

(i) if the appeal is against an order or decision of a Superintendent—

(a) Where there are Deputy Collectors, to the Deputy Collector to whom such Superintendent is subordinate; and

(b) Where there are no Deputy Collectors, to the Collector or Deputy Collector in-charge of a Collectorate;

(ii) if the appeal is against the order or decision of an Assistant Collector—

(a) to the Collector to whom such Assistant Collector is subordinate; and

(b) Where there is no Collector, to the Deputy Collector-in-Charge of the Collectorate;

(iii) if the appeal is against the order or a decision of a Deputy Collector—

(a) to the Collector to whom such Deputy Collector is subordinate; and

(b) where there is no Collector, to the Central Board of Revenue;

(iv) if the appeal is against an original order or decision of a Collector or Deputy Collector-in-Charge of a Collectorate, to the Central Board of Revenue:

Provided that if, between the date of the order of decision appealed against and the date of the hearing of the appeal, the officer who passed the order or decision is appointed as Deputy Collector or Deputy Collector-in-Charge of a Collectorate or Collector, to whom the appeal lies under the foregoing provisions, the appeal shall be heard—

(a) if such officer is appointed as Deputy Collector, by the Collector;

(b) if such officer is appointed as Deputy Collector-in-Charge of a Collectorate or Collector, by the Central Board of Revenue.

Recommendation

The Committee are not convinced of the logic of the Board's clarification of September, 1964 laying down that aluminium pipes and tubes having uniform wall thickness are assessable as such at the higher rate of duty (i.e., 10 *per cent* ad valorem) *whatever be the shape of the cross sections, whereas in case of extrusions only the tubular pieces having a circular cross-section are made assessable as such at the higher rate. They are of the view that the instructions of September,* 1964 *issued by the Board in fact create an exemption in favour of extruded hollow sections, which could be given only by a notification issued under Rule* 8 *of the Central Excise Rules. The Committee have already in another case, disapproved the practice of making exemptions through executive orders. The Committee, however understand that with effect from* 1-3-1965, *the tariff item '27-aluminium' has been amended so as to provide for levy of duty at the higher rate* (i.e., 10 *per cent* ad valorem) *for all extruded shapes and sections including extruded pipes and tubes. The Committee hope that in future such artificial distinctions will not be introduced in determining the classification of a product for levy of duty.*

As regards the applicability of these clarificatory instructions to earlier clearances, the Chairman of the Central Board of Excise and Customs agreed during evidence that the ruling could not be said to be relevant to the earlier assessments particularly those made before the tariff was amplified in 1964. *Logically a distinction could be drawn between the position before and after the inclusion of extrusions of the class within the tariff schedule. The Committee hope that necessary steps will now be taken to recover duty short levied in the clearances made prior to* 1964.

[S. No. 51, Paras 3.191 and 3.192 of Appendix XXI to 44th Report, 1965-66.]

ACTION TAKEN

3.191. As already explained before the Public Accounts Committee no artificial distinction had been introduced in determining the classification of hollow extrusions under Item 27(c). Since the trade practice and specifications in the technical treatise on the subject, *viz.*, the Indian Standards, the British Standards and the American Society for Testing Materials Specifications, recognised the distinction between items of aluminium, produced by the process of extrusions and otherwise for the purpose of their classification as 'Pipes and Tubes' this distinction was accepted and adopted for Central Excise Tariff also. The September, 1964 instructions merely clarified as to what the term 'Pipes and Tubes'

denotes and any extruded piece, which could accordingly be classified to be a 'pipe' or a 'tube' was liable to pay duty at the higher rate. These instructions, therefore, by themselves did not create any exemption.

3.192. The clarification was to the effect that only those extruded tubular pieces which have circular cross section and uniform wall thickness should be classified to attract duty under Item 27(c) and *that all other hollow extrusions will attract duty as "extruded shapes and sections in any form or size" under Item* 27(b).

The clarification being in the nature of interpretation of the term 'Pipes and Tubes' is to apply right from the introduction of Item 27(c) in the Central Excise Tariff, *i.e.*, 1-3-1961 as the ruling did not alter the law but merely stated what, in the Board's view, the law was already. The latter part of the clarification (as underlined above) indicated the sub-item under which those hollow extrusions, which according to the instructions, could not be deemed to be 'Pipes and Tubes', were to be charged to duty.

The reference in the evidence tendered by the Chairman, Central Board of Excise and Customs, before the Public Accounts Committee about the applicability or otherwise of the clarificatory instructions to earlier clearances (during the period prior to 1-3-64) apparently was to this latter portion of the ruling. Since during the period prior to 1-3-64 extrustions as such were not covered under the then Item 27(b), extrusions other than pipes and tubes were not liable to pay any duty, though the appropriate duty on aluminium in any crude form utilised in the manufacture of such extrusions was recoverable which had all along been realised. There has, therefore, been no short-levy and the question of effecting any recovery would not, in these circumstances, arise.

Moreover, acceptance of the recommendations of the Public Accounts Committee will amount to disregarding the advise of the technical experts and the Ministry of Law. It will also mean disregarding the trade and commercial usage of the terms supported by I.S.S. and B.S.S. Standards. The alleged short-recovery during the period prior to 1-3-64, even if accepted, stands no chance of realisation since recovery thereof is barred by the statutory limit under rule 10 of the Central Excise Rules, 1944.

The Minister (Revenue and Expenditure) has approved of the stand taken by the Ministry in their inability to accept the observations of the Public Accounts Committee.

[F. No. 18/5/66-CX.III]

MINISTRY OF FINANCE

Recommendations

The Committee feel that this was a deliberately devised and planned scheme to evade tax and defraud the Government. They also feel that special care is necessary in assessing the companies of this group and there should be proper co-ordination between the Income-tax Officers dealing with them.

The Committee regret to note that in this case there was failure on the part of the Income-tax Officer who assesses the company declaring the dividend to verify that the company had filed a statutory return to this effect as required under the law. The officer also failed to inform the Income-tax Officer assessing the other companies to whom shares were transferred about the declaration of dividend. The result was that the Income-tax Officer assessing company No. 3 in whose name the dividends stood credited on the crucial date and whose books were with the Special Police Establishment, was not aware of the declaration of the dividend while making the assessment on the basis of the previous year's income. It is also regrettable that the Income-tax Officer assessing the third company made unnecessary hurry in completing the assessment without looking into the books of the company which were with the S.P.E. It is surprising that the S.P.E. kept the books for seven years from September, 1955 to September, 1962. It is also surprising that the Income-tax Officer made no efforts either to obtain copies of relevant entries or inspect the books while they are in the S.P.E's custody.

The Committee note the remedial action taken by the Department to establish better co-ordination among Income-tax Officers in communicating the information about the declaration of dividends. Further, the companies controlled by the same group are concentrated in the same charge at various stations. The Committee desire that the Government should consider what further measures are necessary to prevent recurrences of such cases. They would also like to know the outcome of the present case. The Committee suggest that necessary investigation should be made to discover the possibility of collusion between the assessee Group of companies and the revenue officers.

The Committee also suggest that cases pertaining to the other companies of this group referred to in this case should be reviewed.

[S. No. 43, Paras 1.170, 1.171, 1.172 and 1.173 of Appendix XIV to 46th Report of the Public Accounts Committee, 1965-66.]

ACTION TAKEN

The observations of the Committee in para 1.170 to 1.173 have been noted by the Government, and have been brought to the notice of the officers concerned.

2. For proper co-ordination in dealing with the cases of this group, they have been centralised with one Income-tax Officer each in three Central Commissioners' charges at Bombay, Calcutta and Delhi. The Director of Inspection (Investigation) has been asked to supervise investigations in this group of cases and report the progress. It may, however, be observed that the circumstances in which the assessment was made do not indicate any deliberate hurry in completing the assessment.

3. Enquiries are in progress to find out the real beneficiaries and the final outcome will be intimated to the Committee. The possibility of collusion between the assessee group of companies and the Revenue Officers was examined and the Directorate of Inspection (Investigation) have stated that there is no such indication.

4. The cases of other companies of this group are being reviewed.

5. In order to prevent recurrence of such cases, the question of tightening up the provisions relating to filing of returns of dividends declared and action against failure to file the same is being examined and necessary instructions are being issued.

[Vetted by audit *vide* Comptroller & Auditor General's D.O. No. 371-Rev-A/200-66. II dated 2-2-1967.]

[F. No. 64/163/66-IT(Inv.)]

FURTHER INFORMATION

"It is proposed to assess the dividends in the hands of [redacted] as well as in the hands of six nominees as a protective measure. Investigations regarding real ownership are not yet complete. Instructions have been issued to complete the investigations early.

There will, however, be delay in completing the assessments as accounts books of [redacted] were seized in a search by the Company Law Department in July 1964 and are at present in the custody of Calcutta High Court. We are moving the High Court to allow us to inspect the books for purposes of assessment.

(2) Cases of this group have been centralised with 3 Income-tax Officers, one each in Central Commissioners' Charges at Delhi, Bombay and Calcutta. A review is being made by examining the returns under

section 19A of Income-tax Act, 1922/286 of Income-tax Act, 1961 as well as records of the companies to check that items of large amounts of dividends declared have been accounted for by the shareholders in their respective assessments. Instructions have been issued to expedite the review.

(3) The circular letters No. 64/163/66-IT(Inv.) dated 29-5-1967 containing instructions were issued on the subject in this respect. A copy of each of them is enclosed".

[Vetted by audit *vide* Comptroller & Auditor General's D.O. No. 3384-Rev/200-66/III, dated 6-9-1967.]

[F. No. 64/163/66-IT(Inv.)]

F. No. 64/163/66-IT(Inv.)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 29th May, 1967.

FROM

Shri G. R. Hegde,
Secretary, Central Board of Direct Taxes.

To

All Commissioners of Income-tax.

SIR,

SUBJECT.—*Evasion of income-tax by "blank transfer" of shares by companies of the same group—Centralisation of cases—Instructions reg.*

A case has come to the notice of the Board where income from dividend declared by a company on a block of shares escaped assessment to tax.

2. These shares were registered in the books of the company in the name of three individuals, who transferred these shares under "blank transfer" to three different companies 'B' 'C' and 'D' of the same group in quick succession. The shares were later on sold by company 'D' to another company 'E', who ultimately assigned them to various individuals belonging to that group. On the date when the dividend was declared, the shares in question were held beneficially by Company 'D' although the registered shareholders continued to be the three individuals as before. The various individuals and companies involved in the above chain of

transactions belong to a well known group of assessees, and at the material time, were assessed by different Income-tax Officers at different places and were observing different accounting periods for their assessments. Although the various Income-tax Officers examined the question of assessability of the dividend income in the hands of the respective persons, assessed by them, a concerted effort could not be made to find out the real person/persons in whose hands the dividend should be assessed, due to lack of co-ordination among the different officers. The cases of this group and other connected cases have now been centralised with one Income-tax Officer each in three Central Commissioners' charges at Bombay, Calcutta and Delhi for proper co-ordination of investigations.

3. The Board desire that the Income-tax Officers should be on their guard against attempted tax evasion of the above nature, especially by bigger groups of assessees, whose cases are scattered at various places under different Income-tax Officers. The Commissioners should, in particular examine the cases of companies controlled by the same group and centralise them with one or more Income-tax Officers so that there is proper co-ordination among the Income-tax Officers dealing with them.

Yours faithfully,

(Sd.) G. R. HEGDE.

Secretary, Central Board of Direct Taxes.

F. No. 64/163/66-IT(Inv.)

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 29th May, 1967.

FROM

Shri G. R. Hegde,

Secretary, Central Board of Direct Taxes.

SIR,

SUBJECT:— *Prosecution under section 276 for not furnishing information under section 286 regarding share-holders to whom dividends have been paid — Instructions regarding.*

Section 286 of the Income-tax Act, 1961 read with Rule 117 of the Income-tax Rules, 1962 enjoins on all principal officers of Companies to file returns in the prescribed form on or before 15th June in each year showing the details of share-holders to whom dividends has have been distributed during the preceding year. Section 276 prescribes a fine of Rs. 10 for every day of default in this respect.

2. In a case, which came to the notice of the Audit, it was found that due to the non-enforcement of these provisions, huge loss to revenue had resulted. I am, therefore, desired by the Board to request you to instruct all the Income-tax Officers in your charge dealing with the cases of companies to verify whether returns are received from companies under section 286 of the Income-tax Act, 1961 by the due date and if such returns are not received, to proceed under section 276(b) of the Income-tax Act, maintained in the office of each Income-tax Officer dealing with company 1961.

3. To watch the proper filing of these returns, a register should be cases, showing the name and address of the company, the date on which the return under section 286 was filed, and action taken for default. By 31st August, the Income-tax Officer should report to the Commissioner of Income-tax all cases of default with proposal for action under section 276/279. The Commissioner of Income-tax should apply his mind to each case and give sanction under section 279, wherever called for. Prosecution under section 276 should then be sanctioned. Commissioners of Income-tax should ensure that compliance with the provisions of section 286 is enforced.

4. Under the existing instructions where the returns are received, the receiving Income-tax Officer has to send the returns to the office of the Commissioner of Income-tax who, in turn, issue intimation slips to the Commissioners of Income-tax concerned. However, in order to ensure that bigger items of dividends are not lost sight of, in addition to reporting through Commissioner's of Income-tax Office as at present, the dividends paid in excess of Rs. 25,000 to one share-holder should be communicated by the Income-tax Officer assessing the company directly to the Income-tax Officer assessing the share-holders and a note to this effect should be made in the order-sheet by the Income-tax Officer assessing the company. The Income-tax Officer assessing the share-holders should acknowledge the intimation by communicating the G.I.R. No. of the share-holder.

Yours faithfully,

(Sd.) G. R. HEGDE,

Secretary, Central Board of Direct Taxes.

APPENDIX IV

Recommendations/Observations to which Government have Furnished Interim Replies.

MINISTRY OF FINANCE

Recommendation

The Committee regret to find that in the case of the five sugar factories referred to in the Audit para, the Excise Officers disregarded the Board's orders which prohibited the inclusion of not-fully manufactured sugar in the production for the year. The Committee desire that the question of taking action against the officers concerned should be examined. They also desire that it should be ascertained from all the Collectorates, whether correct procedure was being followed in other sugar factories. The Committee would also like to be informed of the result of the appeal filed by the department in the High Court.

[S. No. 28, para 3.16 of Appendix XXI to 44th Report 1965-66.]

ACTION TAKEN

The recommendations of the Public Accounts Committee contained in para 3.16 of their report have been noted. Necessary action against the concerned officers will be initiated after the decision in the appeal filed by the Department in the Allahabad High Court against the judgement delivered by the Civil Judge, Meerut, in the case of Daurala Sugar Mills, is known. The Committee will also be apprised of the Allahabad High Court's decision as soon as it is known.

2. As regards ascertaining the position from other Collectorates whether the correct procedure was being followed while granting rebate to the sugar factories, the information is being collected and the Committee will be informed of the outcome shortly.

[F. No. 15/13/66-CXIV.]

Recommendation

The Committee feel concerned over as many as 41 cases of omission to follow the Board instructions in the same Collectorate resulting in a large amount of excess refund. The Committee would like to know the out-come of the investigation into the matter by the Directorate of Inspection and the action taken against the officers concerned.

[S. No. 47, para 3.147 of Appendix XXI to 44th Report 1965-66.]

ACTION TAKEN

The matter is under examination and further communication will follow.

[F. No. 1/9/64-CX.II.]

Recommendation

The Committee dealt with in same detail the mistakes resulting in wrong computation of depreciation and development rebates in para 24(a) and in para 29 of their 28th Report (Third Lok Sabha). They regret to note that the number of cases in which mistakes were detected in computing depreciation and development rebates admissible, increased to 2,089 involving an under assessment of tax to the extent of Rs. 75.97 lakhs as against 574 cases in 1963, involving an amount of Rs. 29.13 lakhs and 673 cases in 1964, involving an amount of Rs. 33.33 lakhs. Even during evidence the witness stated that a review of such cases in the city of Bombay has brought out mistakes in 912 cases out of a total of 6,822 cases reviewed. The amount involved in these 912 cases was Rs. 24.23 lakhs. In view of the result of review in Bombay the Committee suggest that the Board should get special review conducted in all other charges also. They would like to be informed of the results of such a special review.

[S. No. 16, para 1.68 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

As suggested by the Public Accounts Committee, orders have been issued that a review should be conducted in all other charges also, with a view to check the correctness of the calculations of development rebates and depreciation allowance. The proposed review will cover the assessments made during the financial years 1961-62, 1962-63 and 1963-64 and it will be confined to cases where the depreciation and development rebate allowed in any assessment is more than Rs. 10,000.

The result of the review will be intimated to the Committee as early as possible.

[Duly vetted by Audit, *vide* letter No. 4296-Rev. A/200-66-II, dated 30-11-1966.]

[F. No. 36/28/64-IT(AI)III, dated 16-1-67.]

Recommendation

The Committee would like to know the outcome of writ petition filed by assessee in the High Court challenging the jurisdiction of the Income-tax Officer to reopen the assessments for 1955-56 *to* 1958-59 *involving tax effect of Rs.* 9,96,928.

[S. No. 32, para 1.123 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The writ petition filed by the assessee in the High Court is still pending. It has not come up for hearing so far.

[Duly vetted by Audit *vide* D.O. No. 3266-Rev. 200-66. dated 21st September, 1966.]

[F. No. 36/15/64-IT(AI) dated 20-9-66.]

Recommendation

The Committee would like to know the outcome of the appeal filed by the Commissioner of Income-tax before the Tribunal.

[S. No. 46, para 1.196 of Appendix XIV to the 46th Report, 1965-66.]

ACTION TAKEN

The Tribunal has not so far disposed of the appeals in both the cases. The decisions in the appeals will be intimated as soon as the appeals are disposed by the Tribunal.

[Duly vetted by Audit, *vide* D.O. No. 3691-Rev.A/200/66-II. dated 20-10-66.]

[F. No. 36/28/64-IT(AI)II. dated 26-10-66.]

APPENDIX V

Summary of Main Conclusions/Recommendations

Serial No.	Para No.	Ministry/Deptt. concerned	Conclusions/Recommendations
1	1.5	Finance	The Committee desire that Government's replies should be explicit and self contained. In particular, where remedial measures are called for the details of action taken or intended to be taken should be specifically spelt out.
2	1.7	Do.	The Committee are glad to note that Government have now extended the statutory audit to the Estate Duty, Wealth Tax and Gift Tax receipts and refunds, and that the scope of audit in respect of these taxes will be the same as in the case of Income Tax receipts and refunds.
3	2.3	Do.	The Committee regret to note that the Ministry of Finance have taken a considerably long time in scrutinizing the provisions of the Bill. They hope that the Bill in question will now be drafted in consultation with the Ministry of Law without any further delay and brought before Parliament as early as possible.
4	2.8	Do.	The Committee would like to reiterate the observations contained in para 3.70 of their 44th Report. They desire that the question of setting up separate authorities for the exercise of judicial and executive functions in the Department of Central Excise should be examined seriously in all its aspects and an early decision taken.
5	2.11	Do.	While the Committee do not desire to pursue the matter at this state, they feel that in determining the rate of excise duty, Government should have taken into account the market value of the end product, apart from technicalties involved. In the present case as there was a rise in the value of extruded tubular pieces

			the Committee feel that to charge the lowest rate of duty and treat them as crude aluminium was no less inaccurate than to treat them as pipes and tubes.
	2.12	Do.	The Committee note that the position has been rationalised from 28th February, 1965, by bringing all extruded sections including extruded pipes and tubes under a single item of tariff attracting the higher rate of duty *i.e.* 10 per cent *ad valorem*.
6	2.20	Do.	The Committee note that Government propose to assess the dividends in the hands of the Company as well as in the hands of six nominess as a protective measure and that instructions have been issued to comlete early investigations regarding the real ownership of the shares on which dividends have been distributed.
	2.21	Do.	The Committee need hardly stress that Government should complete their investigations early and taken every care to ensure that the taxes due on the dividend received by beneficiaries are collected.
	2.22	Do.	The Committee would also like to stress that the review of other companies in the Group should be completed early so as to ensure that large amounts of dividends declared have been accounted for by the share-holders in their income-tax returns and tat taxes due on them have not been evaded.
	2.23	Do.	The Committee would like Government to ensure that the instructions issued under the Central Board of Direct Taxes letters No. 64/163/66-IT (Inv) dated dated the 29th May, 1967, on the subjects of the failure to furnish returns under section 286 of Income Tax Act, 1961 and evasion of Income-Tax by blank transfer of shares by companies of the sa megroup are strictly given effect to by the Income-Tax Officers, so that cases of such a nature do not recur.

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