

COLLECTION AND RECOVERY OF TAX AND ARREARS OF DEMANDS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

NINETY-THIRD REPORT



LOK SABHA SECRETARIAT
NEW DELHI

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(TENTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)



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PAC No. 1469

Price: Rs. 11.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Seventh Edition) and Printed by the Manager, P.L. Unit, Government of India Press, Minto Road, New Delhi.

CORRIGENDA TO 93RD REPORT OF PAC (10TH LOK SABHA)

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**COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(1994-95)**

Shri Bhagwan Shankar Rawat—*Chairman*

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3. Shri Anil Basu
4. Shri Dileep Singh Bhuria
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6. Dr. K.V.R. Chowdary
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SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Shrimati P.K. Sandhu — *Director*
3. Shri P. Sreedharan — *Under Secretary*

INTRODUCTION

1, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Ninety-third Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 1st Report (Tenth Lok Sabha) on collection and recovery of Tax and arrears of demands.

2. The Committee in their earlier Report had observed that the main reason for the sharp increase in arrears of tax demands was due to their pendency in appeals before Appellate authorities/courts. Emphasising the need for bringing down the arrears of tax demands the Committee had *inter-alia* recommended setting up of additional benches of the Appellate Tribunal to cope with the increasing workload and also expediting the proposal for establishment of a National Court of Direct Taxes/National Tribunal of Direct Taxes which would replace the jurisdiction of High Court on Direct Taxes matters. The Ministry of Finance have stated that according to the Law Commission, it would not be proper and desirable to go ahead with the setting up of the National Tribunal in view of the appeal pending before the Supreme Court against a ruling of Andhra High Court on the interpretation of Article 323B of the Constitution. The Ministry have added that Government decision on the subject matter would, therefore, take some more time. Considering the large number of appeals pending disposal and the amount of revenue locked up therein, the Committee have desired that Government should vigorously pursue the matter so that the National Tribunal of Direct Taxes is established expeditiously. The Committee have considered that such a Tribunal is highly essential since it can effectively seek to tackle the situation arising out of the diverse decisions pronounced by various High Courts on identical issues.

3. Expressing their concern over the mounting arrears of tax demands pending in appeal before the various Appellate authorities, the Committee in their earlier Report had reiterated their of repeated recommendation for prescribing a time limit in the law for disposal of appeals upto the Appellate Tribunal in consultation with the Ministry of Law, if necessary. The Committee have noted with regret that their recommendation has not been accepted by the Ministry mainly on the plea that it would create administrative problems. The administrative problems apprehended by the Ministry by stipulating a legal time frame include, necessity for creation of more posts, constant review of posting of officers, review of the existing system of disposal of appeals, appeals getting barred by limitation

(vi)

which will have to be taken up in preference etc. The Committee have pointed out that these difficulties were considered by them earlier also and found as not insurmountable. The Committee have expressed their view that prescribing a time limit in the law coupled with setting up of additional benches of the Tribunal will go a long way in quick disposal of appeals pending with Appellate authorities and thereby bringing down arrears of tax demands.

4. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 23 March, 1995. Minutes of the sitting form Part-II of the Report.

5. For facility of reference and convenience, the recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix of the Report.

6. The Committee place on record their appreciation of the Assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;

27 March, 1995

6 Chaitra, 1917 (Saka)

BHAGWAN SHANKAR RAWAT,

*Chairman,
Public Accounts Committee.*

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the recommendations, and observations of the Public Accounts Committee contained in their First Report (10th Lok Sabha) on Paragraph 2.01 of the Report of C&AG of India for the year ended 31st March, 1988 and Para 1.07 of the Report of C&AG of India for the year ended 31st March, 1989 regarding 'Collection and recovery of tax and arrears of demands'.

1.2 The First Report which was presented to Lok Sabha on 11th December, 1991 contained 21 recommendations. Action Taken Notes have been received in respect of all the 21 recommendations. The replies received so far have been broadly categorised as under:—

- (i) Recommendations and observations which have been accepted by Government:
Sl. Nos. 1—5, 7, 8, 15, 18, 20 and 21.
- (ii) Recommendations and Observations which the Committee do not desire to pursue in the light of the replies received from Government:
Sl. Nos. 6 & 11.
- (iii) Recommendations and Observations replies to which have not been accepted by the Committee and which require reiteration.
Sl. Nos. 10, 12—14, 16 and 19.
- (iv) Recommendations and Observations in respect of which Government have furnished interim replies:
Sl. Nos. 9 and 17.

Arrears of Tax Demand

1.3 The mounting arrears of tax demands had constantly engaged the attention of the Public Accounts Committee in the past. The Committee had time and again emphasised the need for taking effective steps with a view to reducing the tax arrears to the barest minimum.

1.4 In thier First Report (Tenth Lok Sabha) the Committee had expressed their concern over the accumulated arrears of tax demands which were of the order of Rs. 6,560.71 crores as on 1.4.1990 as against Rs. 2,625.81 crores as on 1.4.1986. The Committee had observed that the targets fixed for recovery of tax demands had not been achieved even once

during the period 1985-86 to 1989-90. The various recommendations of the Committee contained in their First Report (10th Lok Sabha) and the action taken notes received thereon from the Ministry of Finance (Department of Revenue) are reproduced in the relevant chapters of the Report.

1.5 The Committee desire that final replies to the recommendations contained at paragraph 78 and 86 (Sl. Nos. 9 and 17) in respect of which only interim replies have been submitted so far should be expeditiously furnished after getting them duly vetted by Audit.

1.6 The Committee will now deal with the action taken by Government on some of their recommendations.

Disposal of Tax Recovery Certificates

(Sl. Nos. 9, 10 and 19 — Paragraphs 78, 79 and 88)

1.7 According to the procedure prescribed under Income-tax Act, in respect of any tax, interest, penalty, fine or any other sum as is payable in consequence of any order passed under the Act, a notice of demand shall be served upon the assessee. If the sum specified in the demand notice is not paid within the prescribed time or such extended time as may be allowed, the assessee shall be deemed to be in default and a certificate specifying the demand in arrears shall be drawn up by the Tax Recovery Officer who shall proceed to recover the specified amount.

1.8 Commenting on the pendency in disposal of tax recovery certificates, the Committee in paragraphs 78 and 79 of their First Report (10th Lok Sabha) had recommended:

“The Committee are distressed to find that out of 22.25 lakhs tax recovery certificates involving an amount of Rs. 1508.41 crores, the disposal during the year 1988-89 was nearly 2.56 lakhs certificates involving demand of Rs 398.13 crores. The figures of certificates which were locked in appeals, was 39,650 involving an amount of Rs. 305 crores. During evidence the Revenue Secretary while conceding that the disposals of tax recovery certificates had been going down, apprised the Committee of the decision taken by the Ministry to have an indepth study made of the working of the Tax Recovery Officers by the Director General (O&MS). The Committee hope that the indepth study might have, by now, been completed. They would like to be informed of the outcome of the study and the action taken thereon.

One of the reasons advanced for pendency of tax recovery certificates is that most of the pending cases related to habitual tax defaulters where recovery was very difficult. According to the Committee this only demonstrates the weakness of the Department. The Income-tax Act, 1961 has conferred adequate powers in the

hands of the Department, including some stringent and deterrent measures to discipline the tax defaulters. The Committee desire that appropriate measures may be resorted to wherever required.

1.9 Emphasising the need for stern action against defaulters the Committee in Paragraph 88 of their earlier Report had further recommended:—

“The Committee further note that one of the modes available for recovery of tax is the arrest and detention of the defaulters. The tax evasion is no less an offence than any other under the law of the land and should be dealt with accordingly with the seriousness it calls for. The mode of arrest and detention is a very effective and deterrent instrument in the hands of the Department to instill fear in the minds of the habitual tax evaders and to bring down the arrears of tax. The Committee are of the view that the provision of law relating to the aforesaid modes of tax recovery should be invoked in deserving cases.

1.10 In their action taken reply on the recommendation contained in Para 78, the Ministry of Finance (Department of Revenue) *inter alia* stated:—

“The report of the Directorate of O&M Services (IT) has since been received. It has been recommended, *inter alia*, that the norms for disposal of recovery certificates should be fixed at 1000 recovery certificates per annum per TRO and the number of TROs should be doubled and increased to 446. the recommendations made in the report are under consideration.”

1.11 The Ministry in response to the recommendations contained in Paragraphs 79 and 88 stated:—

“Central Board of Direct Taxes has already issued Instruction No. 1670 dated 5.12.1985 (copy enclosed) wherein the points raised in the recommendations above have been brought to the notice of the field officials.”

1.12 The Committee regret to note that the Ministry of Finance have not taken any effective step either to liquidate the pendency in disposal of tax recovery certificates or to deal sternly with habitual tax defaulters. Even after the expiry of a period of more than three years, the Ministry are yet to act upon the report of the Directorate of O&M Services (IT) regarding the norms for disposal of the number of recovery certificates by the Tax Recovery Officers (TROs). As regards the need for initiating stringent action against habitual tax defaulters, the Ministry have merely furnished a copy of their circular to the Commissioners of Income tax which had already been issued much earlier. Evidently, no concrete action has been taken by the Ministry on the lines suggested by the Committee. This is clearly indicative of the casual approach of the Ministry to the whole issue,

which is deplorable. The Committee, therefore, reiterate their earlier recommendations and would like to be informed of the concrete action taken in the matter.

Tax Demands Pending in Appeals

(Sl. Nos. 12,13 and 16 — Paragraphs 81,82 and 85)

1.13 The Committee in their First Report (10th Lok Sabha) had observed that the main reason for the sharp increase in arrears of tax demands was due to their pendency in appeals with Appellate Authorities/ Courts. In this connection, the Committee in paragraphs 81 and 82 of the Report had recommended:—

“The pendency with the first appellate authorities was 2.97 lakhs as on 1.4.1986, 2.14 lakhs as on 1.4.1989 and 2.74 lakhs on 1.4.1990. The Committee find that the declining trend of pendency of appeals witnessed in the years 1985-86 to 1988-89 was reversed in the year 1989-90. The pendency with the High Courts and Supreme Court was 50,544. No figures have been furnished about the pendency with the Appellate Tribunals, the magnitude of which cannot be anything small.

The Committee consider that the reasons advanced for the increase in arrears are all normal incidents and could well have been foreseen and a viable strategy planned to meet the challenges. The Committee recommend that the Ministry may augment the strength of the first appellate authorities and also take steps to set up additional benches of the Appellate Tribunal to cope with the increasing workload.”

1.14 In their action taken reply, the Ministry of Finance (Department of Revenue) stated:—

“In respect of Deputy Commissioner of Income-tax (Appeals), the pendency of appeals as on 31.3.1992 was 1,35,075 appeals which represents 8 months workload. In respect of Commissioner of Income-tax (Appeals), the pendency of 1,59,279 appeals as on 31.3.1992 represented 20 months workload. A review was recently undertaken regarding the workload with individual Commissioner of Income-tax (Appeals) and some posts of Commissioner of Income-tax (Appeals) were redeployed. In view of the high pendency of appeals, that is being carried forward and also taking note of the flow of fresh appeals, it may be necessary to augment the strength of first appellate authorities. This matter is being examined. The recommendation for setting up of additional benches of Appellate Tribunal has been referred to the concerned Ministry, i.e. the Ministry of Law.”

1.15 When asked for the latest position, the Ministry in their communication dated 9.3.1995 stated:—

“For augmentation of the strength of First Appellate Authorities, 40 temporary posts of Commissioners of Income-tax (Appeals) and supporting staff were created for a period of 2 years from the date they are filled. These posts were notified *vide* S.O. No. 879(E) dated 19.11.1993.

As regards the recommendation for setting up Additional Benches of Appellate Tribunal, the Ministry of Law had intimated that action taken on the recommendation for setting up of additional benches of Income-tax Appellate Tribunal will be communicated after decision regarding setting up of National Court of Direct Taxes is taken by the Department of Revenue, Ministry of Finance.

The Law Commission has however, in view of the Andhra High Court interpretation of Article 323 B of the constitution opined that it would not be proper and desirable to go ahead with the setting up of the National Tribunal. Decision of the Government on the subject matter would, therefore, take some more time.”

1.16 In paragraph 85 of their earlier Report, the Committee had recommended:—

“Another reason which the Ministry have adduced for the huge pendency of appeals is the diverse decisions pronounced by various High Courts on identical issues. The Committee, however, note that such a situation was sought to be tackled through setting up of a National Court of Direct Taxes with same jurisdiction as enjoyed by the High Court over Direct Taxes. The Ministry have stated that with the setting up of this Tribunal the number of pending appeals will reduce. The idea of setting up such a court was conceived as back as in 1986 when the Ministry of Finance (Department of Revenue) brought out a ‘Discussion Paper on Simplification and Rationalisation of Direct Tax Laws’ which was also presented to the House. Though the idea was worthwhile yet it has not so far received the deserved attention to get a concrete shape. Considering the large number of appeals pending disposal, and the amount of revenue locked up therein the Committee desire the Ministry of Finance (Department of Revenue) to take adequate measures to finalise the proposal for setting up a National Court of Direct Taxes/National Tribunal of Direct Taxes without any further delay.”

1.17 In response to the above recommendation, the Ministry in their action taken reply stated:—

“The proposal for establishment of the National Tribunal of Direct Taxes, which would replace the jurisdiction of High Court of Direct Tax matters, is under consideration in consultation with the various Departments”.

While the Law Commission has undertaken an indepth study of the functioning of the various Tribunals under direction of the Supreme Court of India, separately an appeal has been filed before the Supreme Court of India against a ruling of Andhra High Court on the interpretation of Article 323 B of the Constitution, decision on which will have far reaching implications for the proposed Tribunal. The Law Commission has, therefore, opined that it would not be proper and desirable to go ahead with the setting up of the National Tribunal. Decision of the Government on the subject matter would, therefore, take some more time.”

1.18 The Committee in their earlier Report had observed that the main reason for the sharp increase in arrears of tax demands was due to their pendency in appeals before Appellate Authorities/Courts. Emphasising the need for bringing down the arrears, the Committee had *inter-alia* recommended setting up of additional benches of the Appellate Tribunal to cope with the increasing workload and also expediting the proposal for establishment of a National Court of Direct Taxes/National Tribunal of Direct Taxes which would replace the jurisdiction of High Court on Direct Taxes matters. As regards setting up of Additional Benches of Appellate Tribunal, the Committee have been informed that a decision will be taken by the Ministry of Law only after the proposal for constituting the National Court/Tribunal was decided. The Ministry of Finance have further stated that according to the Law Commission, it would not be proper and desirable to go ahead with the setting up of the National Tribunal in view of the appeal pending before the Supreme Court against a ruling of Andhra High Court on the interpretation of Article 323 B of the Constitution. The Ministry have added that Government decision on the subject matter would, therefore, take some more time. Considering the large number of appeals pending disposal and the amount of revenue locked up therein, the Committee desire that Government should vigorously pursue the matter so that the National Tribunal of Direct Taxes is established expeditiously. The Committee consider that such a Tribunal is highly essential since it can effectively seek to tackle the situation arising out of the diverse decisions pronounced by various High Courts on identical issues.

Need for prescribing a time-limit for Disposal of Appeals

(Sl. No. 14 — Paragraph 83)

1.19 Stressing the need for prompt disposal of appeals by the various Appellate Authorities, the Committee in paragraph 83 of their First Report (Tenth Lok Sabha) had further recommended:—

“The Committee observe that despite the assurances held out to the Committee by the Ministry from time to time and the several administrative and legal measures taken by the Board to tackle the

problem of mounting arrears under a time-bound programme including making requests to the President/Vice President of the Income-Tax Appellate Tribunal for out of turn disposals of appeals involving large amounts, there is no let up in the overall pendency. Instead, the pendency with the first Appellate Authorities as on 1.4.1990 had gone up by 22 per cent while the average clearance during 1988-89 was 10 per cent. Reacting to a time-limit for disposal of appeals, the Ministry of Finance (Department of Revenue) have advanced the same arguments advanced while replying to the Committee's recommendations for a time-limit in their 217th Report (Seventh Lok Sabha) (1985-86), of consequences of non-disposal of appeals, which would be viewed as avoidable irritant. The Ministry of Finance further stated that they are not aware of any law where such a time-limit is prescribed for disposal of appeals by Appellate Authorities. The Committee are not convinced in respect of the misgivings expressed by the Ministry about non-disposal of appeals within the time-limit resulting in either hardship of tax payers or frivolous appeals, as these could be safeguarded by systematic planning and strict implementation. Considering the fact that the law provides for a time-limit for completion of assessments which at one time was four years and which was later smoothly brought down to two years, the Committee do not consider that the prescription of a definite time-limit for disposal of appeals would lead to any operational or practical problems. The Committee are, therefore, constrained to reiterate their earlier recommendation that a time-limit may be incorporated in the law for disposal of appeals upto the Appellate Tribunal, if necessary in consultation with the Ministry of Law."

1.20 In their action taken reply, the Ministry of Finance (Department of Revenue) stated:—

"The figures of pendency of appeals with the Appellate Authorities within the Income-Tax Department for the last 3 years are given below:—

As on	Pendency with CIT(A)	Pendency with OCs(A)
31.3.1990	1,27,073	1,47,246
31.3.1991	1,37,440	1,45,028
31.3.1992	1,63,052	1,35,075

The question of imposing a time for disposal of appeals has several repercussions:—

- (i) Appeals getting barred by limitation will be taken up in preference to others including appeals involving large tax demand;

- (ii) The existing quota system of disposal of appeals by Appellate Authorities will have to be reviewed taking into account the workload involving limitation matters;
- (iii) Postings of officers will have to be constantly reviewed in the context of pendency of time-barring appeals; and
- (iv) More posts will have to be created urgently as scope for increasing quota limit for disposal is almost nil.

The above problems would have to be taken into account before making amendment of law. Introducing limitation for disposal of appeals by the ITAT will have to be considered in the context of the Tribunal being the final fact-finding authority.

Imposing a time-limit would, apart from creating administrative problems, (adversely) affect the quality of the arrears. Administrative Instructions already exist laying guidelines for age-wise disposal of appeals.

1.21 Expressing their concern over the mounting arrears of tax demands pending in appeal before the various Appellate Authorities, the Committee in their earlier Report had reiterated their oft repeated recommendation for prescribing a time-limit in the law for disposal of appeals upto the Appellate Tribunal in consultation with the Ministry of Law, if necessary. The Committee regret to note that their recommendation has not been accepted by the Ministry mainly on the plea that it would create administrative problems. The administrative problems apprehended by the Ministry by stipulating a legal time-frame include, necessity for creation of more posts, constant review of posting of officers, review of the existing system of disposal of appeals, appeals getting barred by limitation which will have to be taken up in preference etc. The Committee would like to point out that these difficulties were considered by them earlier also and found as not insurmountable. The action taken reply is also silent whether the recommendation was considered afresh in consultation with the Ministry of Law, as desired by the Committee. The Committee are of the considered view that prescribing a time-limit in the law coupled with setting up of additional benches of the Tribunal will go a long way in quick disposal of appeals pending with Appellate Authorities and thereby bringing down arrears of tax demands. The Committee therefore reiterate their earlier recommendation and would like to be informed of the concrete steps taken in the matter.

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The mounting arrears of tax demands have repeatedly invited adverse comments against the Income-tax Department from various quarters, including the Parliament, Press, Audit, various Committees and Commissions etc. set up from time to time by the Government on matters pertaining to direct taxes. A number of recommendations made in the past by the Wanchoo Committee, the Chokshi Committee and the Economic and Administrative Reforms Commission as also the Public Accounts Committee led to issuance of a plethora of instructions by the CBDT and also frequent amendments to provisions of the Income-tax Act. However, these have not produced any tangible results. The total arrears of demands (i.e. current and arrears) at the beginning of the year 1990-91 i.e. as on 1.4.1990 were Rs. 6560.71 crores (provisional figures) as against Rs. 2625.81 crores as on 1.4.1986. Arrears at the end of March, 1989 were of the order of Rs. 5291.66 crores involving 37,71,232 cases. The maximum arrear demand was registered by cases involving demand exceeding Rs. 25 lakhs. The total amount involved in these cases (numbering 2256) was Rs. 3012.24 crores which represented about 57% of the total arrears whereas the number of cases involved was only .06% of the total cases.

The Action Plan Targets fixed for recovery of tax demands every year have not been achieved even once as is evidence from the following charges:

	Arrears demand		Current demand	
	Target	Achievement	Target	Achievement
1985-86	55%	54.09%	85%	76.66%
1986-87	85% of demands raised in 85-86 & 55% of old arrears.	58.18% of arrears of 85-86 & 33.47% of old arrears.	85%	70.49%
1987-88	60%	48.58%	85%	70.49%
1988-89	Demand carried forward on 1.4.83 should be 10% less than the demand brought forward on 1.3.88.		Demand carried forward on 1.4.1989 was 29.29% more than the demand brought forward on 1.4.1988.	
1989-90	60%	50.72%	85%	68.81%

The plea put forth by the Ministry is that the targets are kept slightly higher in order to have an element of challenge for the tax recovery machinery. The Committee, however, take serious note of the following findings made by the Director of Income-tax (Recovery) Delhi during a sample study of some of the Commissioners Charges, conducted in 1987 which reflect the state of affairs in the Income-tax charges.

"The most shocking aspect that has emerged from this study relates to apathy of higher functionaries in the matter of collection of outstanding demand. In the charges that have been inspected, it has been found that there has been practically no involvement of the IACs or the Commissioners of Income-tax and almost no action has been taken from their side to ensure that outstanding demand is expeditiously collected. Even stay petitions filed before them have not been disposed of for long periods".

Obviously the study, apart from pinpointing the neglect of duty on the part of assessing officers and the supervisory staff of the Department, highlighted a number of disquieting reasons for pendency of arrears demands.

[S.Nos. 1 to 3 (Para Nos. 70 to 72) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

There are no specific recommendations in the above paras. The paras contain observations of the Public Accounts Committee on the counting tax arrears of the Income-tax Department.

These observations of the Public Accounts Committee are 'commentative' and have been noted by the Government.

[Ministry of Finance (Department of Revenue) letter No. 241/2// 91—A&PAC-I dated 29th January, 1993]

Recommendation

From this, the Committee are led to the inevitable conclusion that the targets remained unachieved not because the supervisory officers have not taken requisite interest in this work besides other administrative deficiencies. The Committee desire that the studies of the kind made by the Director of Income-tax (Recovery) should be conducted periodically in various charges and action taken against the persons for dereliction of duty besides taking remedial measures to improve the efficiency.

[S.No. 4 (Para No. 73) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The Directorate of Income-tax (Recovery) has now been carrying out inspections of the work relating to recovery of taxes in the charges of Commissioners of Income tax regularly. The shortcomings observed during such inspections are noted by the Central Board of the Direct Taxes and

the Chief Commissioners are asked to take appropriate action against the persons found violating the Board's instructions.

[Ministry of Finance (Department of Revenue) letter No. 241/2/91—A&PAC-I dated 6th January, 1993]

Recommendation

The Committee are surprised to find that a sizeable portion of the demand remained in arrears merely because of non-verification or non-adjustment of the payments claimed to have been made by the assesseees. As on 1.4.1990, demand amounting to Rs. 100.89 crores was outstanding on that account. The Committee are of the view that the procedure for verification/adjustment of claims should be simplified so that such claims do not unnecessarily inflate the already large outstandings. Prompt adjustments will also remove an avoidable irritant often complained of by the assesseees. The Committee desire that the field formations of the Department should be suitably alerted in this regard.

[S.No. 5 (Para No. 74) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

It has been decided that with effect from 1.4.1992, all the challans relating to the entire respective Chief Commissioners' region or the Commissioner's charge as the case may be, will be processed by Computers instead of manually. This is likely to not only ensure complete and timely receipt of collection figures but also expeditious settlement of verification/adjustment claim.

[Ministry of Finance (Department of Revenue) letter No. 241/2/91—A&PAC-I dated 6th January, 1993]

Recommendation

The position regarding clearance, both quantitatively and in terms of amounts involved, of dossier cases is equally bad. The percentage-wise clearance of cases during the years 1985-86 to 1989-90 ranged between 23.19% of 32.6% while the recovery of arrears was between 51% to 56% (arrear demand) and between 14% to 26.21% (current demand). The Committee note that monitoring of these high demand cases is done at sufficiently high levels and Director General of Income-tax (Recovery) also monitors the compliance of instructions issued by the Board from time to time. But unfortunately, with this seemingly well organised system there is no marked improvement in the situation. The Committee desire that a review Committee consisting of members of the Central Board of Direct Taxes may be set up to go into the pendency of the dossier cases and to suggest ways and means of early recovery of demands involved therein. The action taken in this behalf may be reported to them at the earliest.

[S. No. 7 (Para No. 76) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

Consequent to the recommendation made above, the Chairman, Central Board of Direct Taxes constituted on 3.2.1992 a Dossier Review Committee, consisting of two Members of Central Board of Direct Taxes and Director General of Income-tax (Administration). The Committee met and went into the reasons for high pendency of the Dossier Cases to suggest ways and means for early recovery of demands involved therein. The Committee submitted its Report on 19.5.1992. The Report of the dossier Review Committee was discussed in a full Board Meeting and the recommendations made therein have largely been accepted. The recommendations of the Committee accepted are as under:—

- (i) Where the total demand outstanding is Rs. 1 crore or above the stay of recovery, after the decision of first appeal should be granted only with the approval of the Board. i.e. by Member (R&A). Likewise, where the total demand outstanding is Rs. 10 lakhs or above, the stay of recovery, after the first appeal, should be granted only with the approval of the Chief Commissioner.
- (ii) The law may be amended to provide for payment of minimum 50% of the disputed demand before an appeal filed by the assessee is admitted by the Tribunal. In respect of the appeals which are presently pending before the Tribunal, a time of three months may be allowed for payment of such amount, failing which the appeal may be disallowed. Wherever the Tribunal grants stay of recovery in respect of the balance 50% of the disputed demand, the stay shall be deemed to be vacated if the Tribunal does not dispose of the appeal within three months of the grant of stay. [Section 249(4) may also be amended to provide for payment of the whole of undisputed demand (instead of tax due on the income returned, etc.) before an appeal is admitted by the Commissioner (Appeal)/Deputy Commissioner (Appeal).]
- (iii) A High Demand Appeal should be required to be decided by the Commissioner (Appeal) within 6 months from the date of filing of appeal. The proforma for reporting by the Commissioner (Appeal) and also for the D.U. letter from the Chief Commissioner to Chairman will be suitably modified so that the disposal of High Demand Appeals can be monitored by the Board.
- (iv) A system of quarterly review of the results achieved by the dossier review may be introduced. Under this system, the Commissioners may be required to send quarterly reports on the number of dossier cases (of outstanding demand of Rs. 10 lakhs and above) reduced during the quarter and also the amount of demand involved therein. The emphasis will be not only on the reduction of *arrears* demand but also on the reduction of number of *arrears* dossier cases. Similar quarterly reports will be required

to be sent by the Chief Commissioners. A suitable reporting system in this regard may be devised by the Deputy General of Income-tax (Admn.)

- (v) Besides the centralised review of dossier cases of outstanding demand of Rs. 1 crore and above by the Deputy General of Income-tax (Admn.). In addition to the review by the Chief Commissioners and the Commissioners, Director of Income-tax (Recovery) may also conduct centralised review of dossier cases of outstanding demand between Rs. 50 lakhs and Rs. 1 crore. Wherever the Director of Income-tax (Recovery) finds that the review in such cases by the Chief Commissioner/Commissioner is inadequate, he may suggest suitable recovery action to the field through the Deputy General of Income-tax (Admn.).

The recommendation of the Review Committee that the definition of High Demand(HD) Appeal before the Commissioner(Appeal) may be modified to mean an appeal with disputed demand of Rs. 10 lakhs (instead of Rs. 1 lakh) and above and for grant of suitable weightage criteria for disposal of HD appeals and also suitable targets for disposal of old appeals has, however, not been accepted as it would be contrary to work norms/weightage of work of Commissioner of Income-tax (Appeal) earlier decided by the Board.

[Ministry of Finance (Department of Revenue) letter No. 241/2/91-A & PAC-I dated 6th January, 1993]

Recommendation

The Income tax Department being one of the revenue raising department of the Government, recovery and collection of tax is its prime function. A very efficient tax recovery machinery is, therefore, needed to back it. Unfortunately, the Department is lacking the same. The tax recovery Wing has been functioning with depleted strength and most of the existing staff is stated to be not sufficiently experienced in the recovery work. The disposal of tax recovery certificates by TRUs has been much below the norms fixed therefor during the years 1985-86. The actual strength of TRUs during the years 1985-86 to 1988-89 has been between 187 and 202 against the sanctioned strength of 223. During evidence, Revenue Secretary conceded that though high level posts had been created, subordinate staff had not been provided on account of economic reasons. The Committee cannot but express their concern over the apathetic attitude of the Ministry towards such vital area as the tax recovery and recommended that urgent steps be taken to assess the staff requirements of the Wing and provide adequate staff so that the recovery work does not suffer on that account. The Committee suggest that the Central Board of Direct Taxes undertake a detailed exercise of the overall manpower requirements applying the yardstick of marginal cost to marginal revenue

and apprise them of the findings alongwith follow up action. Suitable arrangements should also be made to impart training to the personnel deployed in the field of tax recovery with a view to optimise their level of efficiency.

[S.No. 8 (Para No. 77) of First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken.

The Cadre Review for Groups B, C, & D in the Income Tax Department is at an advanced stage of consideration of the Government. As soon as the cadre review proposals are approved by the Government, the Tax Recovery Wing in the Department will be suitably strengthened. The Department has already accorded a high priority to the reduction of tax arrears and higher targets have been laid down in this regard in the Central Action Plan 1992-93. As a result of concerted efforts made by the Department, the arrear demands have been reduced by 32.84% during the period 1.4.1992 to 31.10.1992. Suitable arrangements to impart training to the personnel deployed in the field of tax recovery are proposed to be made separately.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I dated 6th January, 1993]

Recommendation

Under Section 249(4), of the Income-tax Act, 1961 the tax payer has to pay the tax due on the income returned by him before an appeal is admitted. The Ministry of Finance (Department of Revenue) have admitted that under this section the assessee is not obliged to pay the entire undisputed demand before the appeal is admitted and he is required to pay the tax due on the income returned by him or the amount equal to advance tax where no return has been filed. During evidence, to a suggestion that the law be made clear to provide for payment of that part of undisputed demand remaining unpaid, the Chairman, Central Board of Direct Taxes agreed to consider the suggestion for amendment. The Committee consider that this deficiency in law should be plugged by suitable amendment of law and the payment of the full undisputed demand should be made a pre-condition to the admission of appeal so that there is no avoidable accumulation of arrears.

[S.No. 15(Para No. 84) of 1st Report of PAC (1991-92) 10th Lok Sabha)]

Action Taken

At present the law is that the tax payable on the income disclosed by the taxpayer has to be paid before an appeal is admitted. The Public Accounts Committee recommendation is only an extension of this principle and is accepted.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I dated 6th January, 1993]

Recommendation

From the information made available by the Ministry of Finance (Department of Revenue) the Committee find that the Ministry have finally agreed in principle to lay down a time limit for disposal of immovable properties attached towards tax recovery and also to take steps, where practicable, to obtain the title deeds in respect of the attached properties to guard against surreptitious sale of such properties by the assesseees. These are welcome steps initiated by the Ministry for dealing with tax evaders. The Committee hope that early action would be taken to give them a concrete shape. They may be informed of the outcome within six months.

[S.No. 18 (Para No. 87) of First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

Instructions have already been issued by the Central Board of Direct Taxes on 21st November 1990 to the field officers advising them that wherever possible, all efforts should be made to obtain the title deeds of the attached properties from the assesseees. A copy of the instruction is enclosed.

Further, the Second Schedule to the Income-tax Act has been amended through the Finance Act, 1992 to provide a time-limit for disposal of immovable properties attached towards tax recovery. Rule 68B has been inserted in the second Schedule to this effect and provides a time limit of three years from the end of the financial year in which the order, giving rise to a demand of any tax, interest, fine, penalty or any other sum for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I of the Income-tax Act or has become final, as the case may be, in term of the provisions of Chapter XX (Appeals and Revision) of the Income-tax Act. The period of three years shall stand extended by one year in certain cases where the sale of the immovable property falls through. Certain periods during which the order is stayed by any court, are also to be excluded from the period of limitation set out in rule 68B. This amendment has taken effect from 1st June, 1992.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I dated 6th January, 1993]

INSTRUCTION NO. 1866

F.No. 404/173/90-ITCC
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes.

New Delhi, the 21st November, 1990.

To

All Chief Commissioners of Income-tax and
All Directors General of Income-tax.

SUBJECT: *Securing possession of title deeds of immovable properties attached by Tax Recovery Officers and expeditious disposal of such properties — action on recommendations contained in the 152nd report of the Public Accounts Committee*

Sir.

In its 152nd report, the Public Accounts Committee has recommended that the Income-tax Department should take possession of title deeds in respect of immovable properties attached by the Tax Recovery Officers, so that surreptitious sales or transfers otherwise, of such immovable properties subsequent to attachment are forestalled. This recommendation has been accepted by the Government, in principle. Therefore, wherever possible, all efforts should be made to obtain the title deeds of the attached property from the assessee. Such an action can be taken without any difficulty wherever the assessee asks for stay of recovery, grant of instalments etc.

2. The Public Accounts Committee has also noticed that in many cases, auctions of immovable properties attached by the department had to be postponed for want of a bid equal to or more than the reserve price. Rule 59 of the Second Schedule to the Income-tax Act, 1961 provides for participation of the Central Government (through the assessing Officer authorised in this behalf by the Chief Commissioner or Commissioner of Income-tax) in a subsequent auction for the sale of such properties. Therefore, wherever practicable, the Assessing Officers should actively participate in such second or subsequent auctions so that the attached properties are disposed of expeditiously.

3. The above instructions may be brought to the notice of all Officers in your region.

Sd/-
(V.K. BHATIA)
DIRECTOR (BUDGET)

Recommendation

The Committee note that 2083 applications were pending with the Settlement Commission for disposal as on 1.4.1990. The reasons for the pendency have been attributed to the lengthy procedure involved in the processing of the Settlement applications at various levels. The Ministry of Finance (Department of Revenue) have however, taken steps by setting up additional benches of the Settlement Commission at Bombay, Calcutta and Madras apart from augmenting the staff strength in the Commission. The Committee trust that these steps would go a long way in reducing the pendency of Settlement cases. The Committee would like to be apprised of the latest position of the pendency.

[S.No. 20 (Para No. 89) of 1st Report of PAC (1991-92) 10th Lok Sabha]]

Action Taken

The number of applications pending before the Settlement Commission as on 30th September, 1991 was 1034.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I dated 6th January, 1993]

Recommendation

The Committee note that the Department of Revenue does not enjoy freedom in the matter of appointment of lawyers/counsels to defend their cases in Courts as selection of lawyers from the panel of advocates has to be made by the Department with the concurrence of the Ministry of Law which it is stated, takes quite a long time to clear the proposals. The suggestions made by the Department of Revenue for delegation of powers to them to appoint lawyers has also not found favour with the Ministry of Law. The Committee desire that keeping in view the experience of delay in the appointment of lawyers a fresh review be undertaken by both the Ministries of Finance and Law etc. mutually arrive at a satisfactory arrangement whereby suitable lawyers are available to the Department of Revenue expeditiously especially in the cases involving high stakes of revenue. The Committee would like to be apprised of the outcome of the review.

[S. No. 21 (Para No. 90) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The Ministry of Law has not so far agreed to the suggestions that the Income-tax Department should be given powers to engage lawyers of its choice in suitable cases. The matter is being pursued.

[Ministry of Finance (Deptt. of Revenue) letter No-241/2/91-A&PAC&I dated-6th January, 1993]

Recommendation

The Committee note that the Department of Revenue does not enjoy freedom in the matter of appointment of lawyers/counselors to defend their cases in courts as selection of lawyers from the panel of advocates has to be made by the Department with the concurrence of the Ministry of Law which, it is stated, takes quite a long time to clear the proposals. The suggestions made by the Department of Revenue for delegation of powers to them to appoint lawyers has also not found favour with the Ministry of Law. The Committee desire that keeping in view the experience of delay in the appointment of lawyers a fresh review be undertaken by both the Ministries of Finance and Law to mutually arrive at a satisfactory arrangement where by suitable lawyers are available to the Department of Revenue expeditiously especially in the cases involving high stakes of revenue. The Committee would like to be apprised of the outcome of the review.

[S. No. 21 (Para No. 90) of the First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

Kind attention of the Hon'ble Committee is invited to this Ministry's O.M.F. No. 241/291-A&PAC-I dated 6.1.1993.

2. The recommendation was considered in a meeting held by the Law Secretary on 13-10-1992, when Chairman (CBDT) and Member (CBDT) were present. The extent of delay in giving concurrence to appointment of Counsels including Special Counsels was emphasized by Central Board of Direct Taxes. The period of delay has since been reduced but further reduction is required, which would be possible if the Department of Revenue is delegated more powers for appointment of Counsels including Special Counsels. The Ministry of Law, however, is not agreeable to this suggestion.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/291-A&PAC-I dated 26th February, 1993]

Recommendation

"The Committee note that the Department of Revenue does not enjoy freedom in the matter of appointment of lawyers/counselors to defend their cases in courts as selection of lawyers from the panel of advocates has to be made by the Department with the concurrence of the Ministry of Law which, it is stated, takes quite a long time to clear the proposals. The suggestions made by the Department of Revenue for delegation of powers to them to appoint lawyers has also not found favour with the Ministry of Law. The Committee desire that keeping in view the past experience of delay in the appointment of lawyers a fresh review be undertaken by both the Ministries of Finance & Law to mutually arrive at a satisfactory

arrangement whereby suitable lawyers are available to the Department of Revenue expeditiously especially in the cases involving high stakes of revenue. The Committee would like to be apprised of the outcome of the review".

[Sl. No. 21-Paragraph 90 of the First Report of PAC 1991-92 (10th Lok Sabha)]

Action Taken

The report was examined in consultation with the Ministry of Finance, Department of Revenue. No delay was found in clearing the proposals made by the Deptt. of revenue in the matter of appointment of counsel.

2. With regard to appointment of suitable lawyers to defend cases of the Department of Revenue especially in the cases involving high stakes of revenue, this Deptt. have constituted special panel counsel in the Supreme Court, and some of the High Courts like Bombay, Delhi, Calcutta, Madras and Karnataka. The Ministry of Finance have also been requested to recommend the names of any other Senior Counsel for inclusion in panel.

3. It has also been decided to hold quarterly meetings with the officers of Department of Revenue so that all problems regarding litigation could be sorted out expeditiously.

[Ministry of Law, Justice Company Affairs (Deptt. of Legal Affairs) letter No. 48(1)92- Judl. dated 4th December, 1992]

CHAPTER III

RECOMMENDATIONS AND OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

Another reasons that contributed to the pendency on tax demand is the stay granted by the Courts, Settlement Commission, Income-tax Tribunals and the Income-tax authorities. As on 1.4.1990, the demand stayed involved Rs. 1607.24 crores. While the Committee expect the Department of Revenue to have close liaison with the Courts, Settlement Commission and Tribunal to ensure expeditious disposal of the stay petitions, they view with concern the heavy amount involved in the stays granted by the Income-tax authorities as per the Ministry's own information accounted for arrears to the tune of Rs. 1352.31 crores as on 1.4.1990. The Committee, therefore, recommend that a study be conducted to go into the reasons for the pendency with Income tax authorities and they be apprised of the findings of such a study alongwith action taken thereon by the Department within a period of six months.

[S. No. 6, Para No. 75 of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

A study was carried out to ascertain the reasons for the stays granted by the Income tax authorities in dossier cases involving outstanding demand of Rs. 1 crore and above.

2. It was found that in 587 dossier cases as on 31.12.1991, the total demand involved was Rs. 3436.53 crores, out of these, in 106 dossier involving demand of Rs. 1188 crores, the departmental authorities had stayed the realisation of demand of Rs. 586 crores. The percentage of the demand stayed is about 25% of the total outstanding demand of Rs. 3436.53 crores.

3. It was further found that out of the demand of Rs. 1188 crores, Rs. 983 crores (83%) was disputed in first appeals and Rs. 114 crores (10%) in second appeals. Thus, demand of as much as Rs. 1097 crores (93%) was stayed on account of pending appeals.

4. The main reasons for granting stay included the following:

- (i) Demand in dispute was attributable to issues which were decided in favour of the assessee by an appellate authority/Court in assessee's own cases in earlier years.

- (ii) On similar issues Commissioner of Income tax (Appeals) had set aside the assessment in earlier years.
- (iii) Part payment was made in lump-sum or in instalment.
- (iv) Financial stringency in the case of public sector undertakings.
- (v) Assessee's funds were blocked abroad and no liquid funds were available in India.
- (vi) Company had become sick.
- (vii) Verification of assessee's claim of refund in earlier years was pending.
- (viii) Petition of waiver of interest was pending.
- (ix) Petition under section 264 was pending.

5. Since over 90% of the demand which was stayed by the departmental authorities was disputed in appeals, the Ministry feel that the position does not call for concern in the matter.

[Ministry of Finance (Deptt. of Revenue) letter No-241/291-A and PAC-I dated-6th January, 1993]

Recommendation

With effect from 1.4.1989, certain amendments have been incorporated in the provisions of Income-tax Act, 1961 relating to tax recovery procedures and these are in operation now for over two years. The Committee would like to be apprised of the impact of these provisions on the tax recovery work.

[S.No. 11 (Para No. 80) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The changes regarding the abolition of the posts of Commissioner of Income-tax (Recovery), delegation of power to the Chief Commissioner to post an Officer as a Tax Recovery Officer and empowering the Tax Recovery Officer to cancel/amend a recovery Certificate or to stay the recovery of demand under certificate have been brought about to achieve better co-ordination and simplification.

2. As regard the changes referred to in item No. 4, of the reply, the objective of the changes was to limit the number of recovery certificates to manageable limits and to ensure correctness of demand and other details (like details of assets of defaulter) in the recovery certificate. Administrative instructions in this regard, regarding the drawing up of

recovery certificates were issued by the Board in February, 1990. The following statistics, regarding the pendency of tax recovery certificates at the end of each of the last 5 years ended 31.3.1991 would show that the number of pending recovery certificates has come down after the changed procedure was introduced:-

Date	Pendency of recovery certificates
31.3.87	2033252
31.3.88	1968938
31.3.89	1968642
31.3.90	1741574
31.3.91	1603568

As regards qualitative improvement in the contents of tax recovery certificates. Since these certificates are to be issued in only a limited number of cases where the Deputy Commissioner of Income-tax approve that specialised recovery action by the TRO is called for, the contents of certificates would be complete and accurate.

So far as changes referred to in item 5 of the reply are concerned, the objective was to eliminate the duplication in the work of Assessing Officer and the TRO, so as to maximise the reduction of arrear demand. The following figures regarding the income tax demand outstanding at the end of the last 5 years is indicative of the results:-

Date	Income-tax demand outstanding (Rs. in crores)
31.3.87	3475
31.3.88	3992
31.3.89	5292
31.3.90	6638
31.3.91	6695

Point No. 7: With effect from 1.4.1989, certain amendments were brought about in the procedure for tax recovery. Has any impact of these changes been felt so far?

Reply

The legal and administrative changes brought about after 1.4.1989 are as under:-

1. *Abolition of the posts of Tax Recovery Commissioners in the cities of Delhi, Bombay, Calcutta, Madras and Ahmedabad*

The experiment of placing the tax Recovery Officers in these cities under the control of Recovery Commissioners did not prove successful. Therefore, in order to bring about better co-ordination between the TROs and the

Assessing Officers, it was decided to place both of them under the same Commissioner.

2. Delegation of power by the Central Government to the Chief Commissioners to post an officer as TRO

Earlier, an officer used to be authorised by the Central Government through issue of notification in the official gazette, to function as TRO. This requirement of gazette notification caused avoidable delays and difficulties in authorising a departmental officer to work as TRO. Now, TRO has been defined as an ITO authorised by the Chief Commissioner or Commissioner, by general or special orders in writing, to exercise the powers of the TRO.

3. Drawing up of recovery certificate by the TRO himself instead of Assessing Officer sending the recovery certificate

Now, instead of Assessing Officer sending the tax recovery certificate to the TRO, the TRO can himself draw up a tax recovery certificate under section 222 of the Income-tax Act. ' Consequently, section 224 and 225 have also been amended to give power to the TRO to cancel or demand a recovery certificate or to stay the recovery of demand under certificate. However, since the relevant records remain in the possession of Assessing Officer, it has been administratively prescribed that the recovery certificates and details of assets of defaulter, will be get, prepared by the Assessing Officer for the signatures of TRO.

4. Abolition of time limit for issue of recovery certificate

Earlier there was an outer time limit of 3 years from the end of financial year in which demand was raised to issue a recovery certificate in respect of that demand. As a result as this time limit approached, recovery certificates used to be issued by the Assessing Officer mechanically in all the cases, irrespective of the quantum and nature of demand to be recovered. This increased the number of recovery certificates to unmanageable limits. Besides, since the certificates used to be issued in a hurry towards the close of this 3 years time limit, these used to be deficient in some cases regarding correctness of demand and other details, like details of assets of defaulter. Therefore, this time limit of 3 years have been abolished. Now, it has been prescribed administratively that the Assessing Officer will review every 3 months as to which are the cases which require specialised recovery action by the TRO. Recovery Certificates would be drawn up only in such cases with the approval of Deputy Commissioner. This staggering of issues or recovery certificates over 3 months and that too in limited number of cases, would ensure correctness of certificates. Besides TRO will take recovery action in only hard core cases.

5. Bifurcation of areas of work of Assessing Officer and the TRO

Earlier, Assessing Officer and TRO might be simultaneously pursuing recovery of the same demand. Now, it has been provided in law that after a recovery certificate has been issued by the Assessing Officer or drawn up by the TRO, the Assessing Officer will be precluded from exercising powers of recovery like attachment of bank accounts, debtors etc. under section 225 of the Income-tax Act in respect of that demand. TRO alone will pursue recovery of such demands. Thus, duplication in the work of Assessing Officer and the TRO has been eliminated.

Impact of Changes

It is too early to feel or gauge the impact of above changes. However, it is hoped that the above changes will be of great help in controlling the growth of tax arrears and their recovery.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A&PAC-I dated 6th January, 1993]

CHAPTER IV

RECOMMENDATIONS AND OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

One of the reasons advanced for pendency of tax recovery certificates is that most of the pending cases related to habitual tax defaulters where recovery was very difficult. According to the Committee this only demonstrates the weakness of the Department. The Income-tax Act, 1961 has conferred adequate powers in the hands of the Department, including some stringent and deterrent measures to discipline the tax defaulters. The Committee desire that appropriate measures may be resorted to wherever required.

[S.No. 10 (Para No. 79) of First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

Central Board of Direct Taxes has already issued Instruction No. 1670 dated 5.12.1985 (copy enclosed) wherein the points raised in the recommendations above have been brought to the notice of the field officials.

[Ministry of Finance (Deptt. of Revenue) letter No.241 12/91-A & PAC-I dated 6th January, 1993]

INSTRUCTION NO. 1670

F.No. 375/25/85-IT (B)
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

New Delhi, the 5.12.1985.

To

All Chief Commissioner of Income-tax and Commissioners of Income-tax including Commissioner of Income-tax (Recovery).

SUBJECT: *Consideration of write off proposals—*

Sir,

When an assessee is in default or deem to be in default in making payment of tax, the Income-tax Officer forwards to the Tax Recovery Officer a Tax Recovery Certificate and the TRO on receipt of such certificate shall proceed to recover from such assessee the amount specified therein by one or more of the following modes in accordance with the rules laid down in the II Schedule:—

- (a) Attachment and sale of assessee's movable property.
- (b) Attachment and sale of assessee's immovable property.
- (c) Arrest of the assessee and his detention in prison.
- (d) Appointing a receiver for the management of the assessee's moveable or immovable properties.

2. It is thus imperative that all efforts should be made to recover the outstanding demand by exercising the powers given in the Income-tax Act. The question of writing off the arrear demands would normally arise only when the amount remains irrecoverable inspite of the exercise of the powers given under the Act.

Recently, while considering the write off proposal in a case the Finance Minister minuted as under:—

1. When evasion was detected in books why was not prosecution launched? Who were the officers then concerned with the case?
2. If attachment was not yielding result recourse to civil prison should be resorted to.
3. Unless the recourse of civil prison is also exhausted we should not normally write off.

It is, therefore, impressed on all Commissioners of Income-tax and Commissioners of Income-tax (Recovery) that recourse to committing the

defaulter to Civil prisons should be pursued vigorously wherever possible to the extent permissible under the law. Unless this mode of recovery is also exhausted it is not morally correct to term the outstanding demand as irrecoverable. The action taken in this regard may be brought out specifically in the minutes of the Zonal Committee which considers the proposal for write off. If for any reason this mode of recovery could not be resorted to in any particular case, the reason therefor may also be recorded in the said minutes. These instructions may be brought to the notices of all officers working under your charge.

Yours faithfully,

Sd/-

(B. NAGARAJAN)

Secretary

Central Board of Direct Taxes.

Recommendation

The Committee note that the main reason for the sharp increase in arrears during the last few years is the increase in unrealised current demand most of which is disputed in appeals. The Ministry of Finance have stated that the information regarding the number of cases which are in tax arrears for the last five years and the number out of them pending in High Courts/Supreme Court or with the income-tax authorities are not available with them. The pendency with the first appellate authorities was 2.97 lakhs as on 1.4.1986, 2.14 lakhs as on 1.4.1989 and 2.74 lakhs on 1.4.1990.

The Committee find that the declining trend of pendency of appeals witnessed in the years 1985-86 to 1988-89 was reversed in the year 1989-90.

The pendency with the High Courts and Supreme Court was 50,544. No figures have been furnished about the pendency with the Appellate Tribunals, the magnitude of which cannot be anything small.

The Committee consider that the reasons advanced for the increase in arrears are all normal incidents and could well have been foreseen and a viable strategy planned to meet the challenges. The Committee recommend that the Ministry may augment the strength of the first appellate authorities and also take steps to set up additional benches of the Appellate Tribunal to cope with the increasing workload.

[S.No. 12 & 13 (Para Nos. 81 & 82) of 1st Report of PAC (1991-92)
(10th Lok Sabha)]

Action Taken

In respect of Deputy Commissioner of Income-tax (Appeals), the pendency of appeals as on 31.3.1992 was 1,35,075 appeals which represents 8 months workload. In respect of Commissioner of Income-tax (Appeal), the pendency of 1,59,279 appeals as on 31.3.1992 represented 20 months workload. A review was recently undertaken regarding the workload with

individual Commissioner of Income-tax (Appeals) and some posts of Commissioner of Income-tax (Appeals) were redeployed. In view of the high pendency of appeals, that is being carried forward and also taking note of the flow of fresh appeals, it may be necessary to augment the strength of first appellate authorities. This matter is being examined.

The recommendation for setting up of additional benches of Appellate Tribunal has been referred to the concerned Ministry, i.e. the Ministry of Law.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I, dated 6th January, 1993]

Recommendation

The Committee observe that despite the assurances held out to the Committee by the Ministry from time to time and the several administrative and legal measures taken by the Board to tackle the problem of mounting arrears under a time-bound programme including making requests to the President/Vice President of the Income-tax Appellate Tribunal for out of turn disposals of appeals involving large amounts, there is no let up in the overall pendency. Instead, the pendency with the first appellate authorities as on 1.4.1990 had come up by 22 per cent while the average clearance during 1988-89 was 10 per cent. Reacting to a time limit for disposal of appeals, the Ministry of Finance (Department of Revenue) have advanced the same arguments advanced while replying 217th Report (Seventh Lok Sabha) (1985-86), of consequences of non-disposal of appeals, which would be viewed as avoidable irritant. The Ministry of Finance further stated that they are not aware of any law where such a time limit is prescribed for disposal of appeals by appellate authorities. The Committee are not convinced in respect of the misgivings expressed by the Ministry about non-disposal of appeals within the time limit resulting in either hardship of tax payers of frivolous appeals, as these could be safeguarded by systematic planning and strict implementation. Considering the fact that the law provides for a time limit for completion of assessments which at one time was four years and which was later smoothly brought down to two years, the Committee do not consider that the prescription of a definite time limit for disposal of appeals would lead to any operational or practical problems. The Committee are, therefore, constrained to reiterate their earlier recommendation that a time limit may be incorporated in the law for disposal of appeals upto the Appellate Tribunal, if necessary in consultation with the Ministry of Law.

[S.No. 14 (Para No. 83) of First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The figures of pendency of appeals with the appellate authorities within the income-tax Department for the last 3 years are given below:—

As on	Pendency with CIT (A)	Pendency with OCs(A)
31.3.1990	1,27,073	1,47,246
31.3.1991	1,37,440	1,45,028
31.3.1992	1,63,052	1,35,075

The question of imposing a time limit for disposal of appeals has several repercussions:

- (i) Appeals getting barred by limitation will be taken up in preference to others including appeals involving large tax demand.
- (ii) The existing quota system of disposal of appeals by appellate authorities will have to be reviewed taking into account the workload involving limitation matters; and
- (iii) Postings of officers will have to be constantly reviewed in the context of pendency of time-barring appeals.
- (iv) More posts will have to be created urgently as scope for increasing quota limit for disposal is almost nil.

The above problems would have to be taken into account before making amendment of law. Introducing limitation for disposal of appeals by the ITAT will have to be considered in the context of the Tribunal being the final fact-finding authority.

Imposing a time limit would, apart from creating administrative problems, (adversely) affect the quality of the arrear. Administrative instructions already exist laying guidelines for age-wise disposal of appeals.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I, dated 6th January, 1993]

Recommendation

Another reason which the Ministry have adduced for the huge pendency of appeals in the diverse decisions pronounced by various High Courts on identical issues. The Committee, however, note that such a situation was sought to be tackled through setting up of a National Court of Direct Taxes with same jurisdiction as enjoyed by the High Court over direct taxes. The Ministry have stated that with the setting up of this Tribunal the number of pending appeals will reduce. The idea of setting up such a court was conceived as back as in 1986 when the Ministry of Finance (Department of Revenue) brought out a "Discussion Paper on Simplification and Rationalisation of Direct Tax Laws" which was also

presented to the House. Though the idea was worthwhile yet it has not so far received the deserve attention to get a concrete shape. Considering the large number of appeals pending disposal, and the amount of revenue locked up therein, the Committee desire the Ministry of Finance (Department of Revenue) to take adequate measures to finalise the proposal for setting up National Court of Direct Taxes/National Tribunal of Direct Taxes without any further delay.

[S.No. 16 (Para No. 85) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The matter of setting up of National Tribunal of Direct Taxes is under consideration of the Government.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I, dated 6th January, 1993]

Recommendation

Another reason which the Ministry have adduced for the huge pendency of appeals is the diverse decisions pronounced by various High Court on identical issues. The Committee, however, note that such a situation was sought to be tackled through setting up of a National Court of Direct Taxes with same jurisdiction as enjoyed by the High Court over direct taxes. The Ministry have stated that with the setting up of this Tribunal the number of pending appeals will reduce. The idea of setting up such a court was conceived as back as in 1986 when the Ministry of Finance (Department of Revenue) brought out a "Discussion paper on Simplification and Nationalisation of direct Tax Laws" which was also presented to the House. Though the idea was worthwhile yet has not so far received the deserve attention to get a concrete shape. Considering the large number of appeals pending disposal, and the amount of revenue locked up therein, the Committee desire the Ministry of Finance (Department of Revenue) to take adequate measures to finalise the proposal for setting up a National Court of Direct Taxes/National Tribunal of Direct Taxes without any further delay.

[S.No. 16 (Para No. 85) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

Kind attention of the Hon'ble Committee is invited to this Ministry's O.M.F. No. 241/2/91-A & PAC-I, dated 6.1.1993.

2. The proposal for establishment of the National Tribunal of Direct Taxes, which would replace the jurisdiction of High Court of Direct Tax matters, is under consideration in consultation with the various departments.

3. While the Law Commission has undertaken an indepth study of the functioning of the various Tribunals under direction of the Supreme Court of India, separately an appeal has been filed before the Supreme Court of

India against a ruling of Andhra High Court on the interpretation of Article 323B of the Constitution, decision on which will have far reaching implications for the proposed Tribunal. The Law Commission has, therefore, opined that it would not be proper and desirable to go ahead with the setting up of the National Tribunal. Decision of the Government on the subject matter would, therefore, take some more time.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I, dated 7th February, 1995]

Recommendation

The Committee further note that one of the modes available for recovery of tax is the arrest and detention of the defaulters. The tax evasion is no less an offence than any other under the law of the land and should be dealt with accordingly with the seriousness it calls for. The mode of arrest and detention is a very effective and deterrent instrument in the hands of the Department to instill fear in the minds of the habitual tax evaders and to bring down the arrears of tax. The Committee are of the view that the provision of law relating to the aforesaid modes of tax recovery should be invoked in deserving cases.

[S.No. 19 (Para No. 88) of First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

Central Board of Direct Taxes has already issued Instruction No. 1670, dated 5.12.1985 (copy enclosed) wherein the points raised in the recommendations above have been brought to the notice of the field officials.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I, dated 6th January, 1993]

INSTRUCTION NO. 1670

F.No. 375/25/85-IT(B)
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

New Delhi, the 5.12.1985.

To

All Chief Commissioner of Income-tax
 and Commissioners of Income-tax
 including Commissioner of Income-tax (Recovery).

SUBJECT: *Consideration of write off proposals.*

Sir,

When an assessee is in default or deem to be in default in making payment of tax, the Income-tax Officer forwards to the Tax Recovery Officer a Tax Recovery Certificate and the TRO on receipt of such certificate shall proceed to recover from such assessee the amount specified therein by one or more of the following modes in accordance with the rules laid down in the IIInd Schedule:—

- (a) Attachment and sale of assessee's movable property.
- (b) Attachment and sale of assessee's immovable property.
- (c) Arrest of the assessee and his detention in prison.
- (d) Appointing a receiver for the management of the assessee's movable or immovable properties.

2. It is thus imperative that all efforts should be made to recover the outstanding demand by exercising the powers given in the Income-tax Act. The question of writing off the arrear demands would normally arise only when the amount remains irrecoverable inspite of the exercise of the powers given under the Act.

Recently, while considering the write off proposal in a case the Finance Minister minuted as under:—

- 1. When evasion was detected in books why was not prosecution launched? Who were the officers then concerned with the case?
- 2. If attachment was not yielding result recourse to civil prison should be resorted to.
- 3. Unless the recourse of civil prison is also exhausted we should not normally write off.

It is, therefore, impressed on all Commissioners of Income-tax and

Commissioners of Income-tax (Recovery) that recourse to committing the defaulter to Civil prisons should be pursued vigorously wherever possible to the extent permissible under the law. Unless this mode of recovery is also exhausted it is not morally correct to term the outstanding demand as irrecoverable. The action taken in this regard may be brought out specifically in the minutes of the Zonal Committee which considers the proposal for write off. If for any reason this mode of recovery could not be resorted to in any particular case, the reason therefore, may also be recorded in the said minutes. These instructions may be brought to the notice of all officers working under your charge.

Your faithfully,

Sd/-

(B. NAGARAJAN)

Secretary,

Central Board of Direct Taxes.

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

The Committee are distressed to find that out of 22.25 lakhs tax recovery certificates involving an amount of Rs. 1508.41 crores, the disposal during the year 1988-89 was nearly 2.56 lakhs certificates involving demand of Rs. 398.13 crores. The figures of certificates which were locked in appeals, was 39,650 involving an amount of Rs. 305 crores. During evidence, the Revenue Secretary while conceding that the disposal of tax recovery certificates had been going down, apprised the Committee of the decision taken by the Ministry to have an in-depth study made of the working of the Tax Recovery Officers by the Director General (O&MS). The Committee hope that the in-depth study might have by now been completed. They would like to be informed of the outcome of the study and action taken thereon.

[S.No. 9 (Para No. 78) of First Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The Central Board of Direct Taxes (CBDT) had assigned a study to the Directorate of O&M Services (IT) regarding the norm for disposal of number of recovery certificates by the Tax Recovery Officers (TROs). This study was considered necessary, *inter alia*, in view of the legislative changes affecting the functioning of the TROs.

The report of the Directorate of O&M Services (IT) has since been received. It has been recommended, *inter alia* that the norms for disposal of recovery certificates should be fixed at 1000 recovery certificates per annum, and the number of TROs should be doubled and increased to 446. The recommendation made in the report are under consideration.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I dated 6th January, 1993]

Recommendation

One other reason for the large volume of appeals is stated to be the diversity of judicial opinions obtaining on a given point of law. The proliferation of appeals is largely due to the admission of such appeals without apparently any preliminary scrutiny. The Committee feel that there should be a specific stage of preliminary scrutiny of appeals cases before formal admission, where cases involving legal issues that stand

settled by the Supreme Court or by the jurisdictional High Court would be weeded out.

[S.No. 17 (Para No. 86) of 1st Report of PAC (1991-92) (10th Lok Sabha)]

Action Taken

The recommendation of the Public Accounts Committee pre-supposed that at present appeals are being filed without reference to the decisions of the Supreme Court and the jurisdictional High Courts. Such an assumption may not be valid. The Tax Reforms Committee chaired by Dr. Raja Chelliah has recommended in paragraph 10.119 of its final report that an admission procedure as provided under Section 100 of Civil Procedure Code before any appeal is instituted in the ITAT be introduced. This recommendation is being separately processed.

[Ministry of Finance (Deptt. of Revenue) letter No. 241/2/91-A & PAC-I, dated 6th January, 1993]

NEW DELHI;
27 March, 1995

6 Chaitra, 1917 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

APPENDIX

STATEMENT OF CONCLUSIONS/RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Deptt. Concerned	Recommendations/Conclusions
1	2	3	4
1.	1.5	Ministry of Finance (Deptt. of Revenue)	The Committee desire that final replies to the recommendations contained at paragraphs 78 and 86 (Sl. Nos. 9 and 17) in respect of which only interim replies have been submitted so far should be expeditiously furnished after getting them duly vetted by Audit.
2.	1.12	-do-	The Committee regret to note that the Ministry of Finance have not taken any effective step either to liquidate the pendency in disposal of tax recovery certificates or to deal sternly with habitual tax defaulters. Even after the expiry of a period of more than three years, the Ministry are yet to act upon the report of the Directorate of O&M Services (IT) regarding the norms for disposal of the number of recovery certificates by the Tax Recovery Officers (TROs). As regard the need for initiating stringent action against habitual tax defaulters, the Ministry have merely furnished a copy of their circular to the Commissioner of Income tax which had already been issued much earlier. Evidently, no concrete action has been taken by the Ministry on the lines suggested by the Committee. This is clearly indicative of the casual approach of the Ministry to the whole issue, which is deplorable. The Committee, therefore, reiterate their earlier recommendations and would like to be informed of the concrete action taken in the matter.

1	2 3	4
3.	1.18 Ministry of Finance (Deptt. of Revenue)	<p>The Committee in their earlier Report had observed that the main reason for the sharp increase in arrears of tax demands was due to their pendency in appeals before Appellate authorities Courts. Emphasising the need for bringing down the arrears, the Committee had <i>inter-alia</i> recommended setting up of additional benches of the Appellate Tribunal to cope with the increasing workload and also expediting the proposal for establishment of a National Court of Direct Taxes/National Tribunal of Direct Taxes which would replace the jurisdiction of High Court on Direct Taxes matters. As regards setting up of Additional Benches of Appellate Tribunal, the Committee have been informed that a decision will be taken by the Ministry of Law only after the proposal for constituting the National Court/Tribunal was decided. The Ministry of Finance have further stated that according to the Law Commission, it would not be proper and desirable to go ahead with the setting up of the National Tribunal in view of the appeal pending before the Supreme Court against a ruling of Andhra High court on the interpretation of Article 323B of the constitution. The Ministry have added that Government decision on the subject matter would, therefore, take some more time. Considering the large number of appeals pending disposal and the amount of revenue locked up therein, the Committee desire that Government should vigorously pursue the matter so that the National Tribunal of Direct Taxes is established expeditiously. The Committee consider that such a Tribunal is highly essential since it can effectively seek to tackle the situation arising out of the diverse decisions pronounced by various High Courts on identical issues.</p>

1	2 3	4
4.	1.21 Ministry of Finance (Deptt. of Revenue)	<p>Expressing their concern over the mounting arrears of tax demands pending in appeal before the various Appellate authorities, the Committee in their earlier Report had reiterated oft repeated recommendation for prescribing a time limit in the law for disposal of appeals upto the Appellate Tribunal in consultation with the Ministry of Law, if necessary. The Committee regret to note that their recommendation has not been accepted by the Ministry mainly on the plea that it would create administrative problems. The administrative problems apprehended by the Ministry by stipulating a legal time frame include, necessity for creation of more posts, constant review of posting of officers, review of the existing system of disposal of appeals, appeals getting barred by limitation which will have to be taken up in preference etc. The Committee would like to point out that these difficulties were considered by them earlier also and found as not insurmountable. The action taken reply is also silent whether the recommendation was considered afresh in consultation with the Ministry of Law, as desired by the Committee. The Committee are of the considered view that prescribing a time limit in the law coupled with setting up of additional benches of the Tribunal will go a long way in quick disposal of appeals pending with Appellate authorities and thereby bringing down arrears of tax demands. The Committee therefore reiterate their earlier recommendation and would like to be informed of the concrete steps taken in the matter.</p>

PART-II

MINUTES OF THE TWENTY-THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1994-95) HELD ON 23 MARCH, 1995.

The Committee sat from 1500 to 1520 hrs. on 23 March, 1995 in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhagwan Shankar Rawat — *Chairman*

MEMBERS

2. Sqn. Ldr. Kamal Chaudhry
3. Dr. K.V.R. Chowdary
4. Shri Sharad Dighe
5. Shri Jagat Veer Singh Drona
6. Shrimati Geeta Mukherjee
7. Shri Mrutyunjaya Nayak
8. Shri V. Krishna Rao
9. Shri Triloki Nath Chaturvedi

SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Smt. Paramjeet Kaur Sandhu — *Director*
3. Shri. P. Sreedharan — *Under Secretary*

REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri S.H. Manghani — *Addl. Dy. C&A.G. of India*
2. Shri A.K. Banerjee — *Pr. Director of Audit*
3. Shri Vikram Chandra — *Pr. Director of Audit*
4. Shri Rakesh Jain — *Director (CX)*

2. The Committee considered the following draft Reports:—

- | | | | |
|-------|--|--------|--------|
| (i) | xxxxxx | xxxxxx | xxxxxx |
| (ii) | xxxxxx | xxxxxx | xxxxxx |
| (iii) | The Collection and recovery of Tax & Arrears of demands [Action Taken on 1st Report of PAC (10th Lok Sabha)] | | |

The Committee adopted the above mentioned draft Report without any amendment / modification.

3. The Committee authorised the Chairman to finalise the draft report on "Import of life expired ammunition" after considering the comments of the Ministry of Defence from the security angle. They also authorised the Chairman to finalise the draft Reports in the light of the comments of Audit arising out of factual verification, and also to present the Reports to the House.

The Committee then adjourned.

